



Oregon
University
System

CHANCELLOR'S OFFICE
PURCHASE ORDER STANDARD TERMS AND CONDITIONS

DEFINITIONS: (i) "Contract" means the entire written agreement between the parties, including, but not limited to the Invitation to Bid or Request for Proposal and its specifications, terms, and conditions, solicitation instructions, solicitation addenda and contract amendments, if any, and the purchase order or price agreement document signed by the parties. (ii) "Contractor" means a person or organization with whom the State of Oregon has contracted for the purchase of goods or goods and services. The terms "Contractor" and "Seller" as used in file Uniform Commercial Code (ORS chapter 72) are synonymous; "ORS" means the Oregon Revised Statutes; "OAR" means Oregon Administrative Rule. (iii) "State" means the State of Oregon, acting by and through the State Board of Higher Education, on behalf of the Chancellor's Office, making the purchase and is synonymous with "Buyer" as used in ORS chapter 12. "State" also means an ORCPP member if the purchase is being made under the State's cooperative purchasing program authorized by ORS 190.240.

STANDARD AND SPECIAL TERMS. In addition to the terms and conditions contained herein, there may also be special terms and conditions in an Invitation to Bid or Request for Proposal, if one is issued, which apply to this contract.

AMENDMENTS. The terms of this contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the State.

INDEPENDENT CONTRACTOR STATUS. This contract is not intended and nothing contained herein shall be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association between the State and Contractor, but is rather an agreement between independent parties, these being the State and the Contractor.

WAIVER. Failure of the State to enforce any provision of this contract shall not be a waiver or relinquishment by the State of its right to such performance in the future nor of the right to enforce any other provisions of this contract.

SEVERABILITY. If any provision of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held to be invalid.

OWNERSHIP OF WORK PRODUCT. All work products or any form of property originated or prepared by Contractor, which result from this contract, are the exclusive property of the State.

GOVERNING LAW; JURISDICTION; VENUE. This contract shall be governed and construed in accordance with the laws of the State of Oregon, without resort to any jurisdiction's conflict of laws, rules or doctrines. Any claim, action, suit, or proceeding between the State (and/or any other agency or department of the State of Oregon), and the Contractor that arises from or relates to this contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon. Provided, however, if the claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. Contractor hereby consents to the in personam jurisdiction of said courts.

WORKERS' COMPENSATION. Contractor, its subcontractors, if any, and all employers providing work, labor, or materials under this Contract are subject employers under the Oregon Workers' Compensation Law, and shall either comply with ORS 656.017, which requires said employers to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, or shall comply with the exemption set out in ORS 656.126.

FOREIGN CONTRACTOR. If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division, all information required by those agencies relative to this contract. The State shall withhold final payment under this contract until Contractor has met this requirement.

NON-RESIDENT ALIEN CONTRACTOR. If Contractor is a non-resident alien, the required work authorization VISA code must be provided to State prior to the performance of any service under the contract. If the Contractor is unable to obtain the required work authorization VISA code, allowing Contractor to work and receive the compensation described in the contract, the contract shall be null and void. If a tax treaty exists between the United States and Contractor's country, and the Contractor wishes to be exempt from Federal tax withholding, the Contractor must file a Federal Internal Revenue Service Form 8233 with the State prior to the commencement of the contract.

RESIDENT ALIEN CONTRACTOR. If Contractor is a resident alien, the required evidence of both identity and employment eligibility must be provided to Buyer prior to the performance of any service under this contract. If the Contractor is unable to obtain or provide this evidence, the contract shall be null and void. Acceptable documentation to establish identity are driver's license or ID cards issued by federal, state or local government bearing a photograph. Acceptable documentation to establish employment authorization is an unexpired employment authorization document issued by the

INS. Acceptable evidence of both identity and employment eligibility are: Alien Registration Receipt Card or

Permanent Resident Card (INS Form I-551); foreign passport with a Temporary I-551 stamp; unexpired Employment Authorization Document issued by the INS which contains a photograph (Form I-776, Form I-688, Form I-688A, or Form I-688B); or in the case of a nonimmigrant alien, a foreign passport with an Arrival-Departure Record (Form I-94) bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, so long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the Form I-94.

HOLD HARMLESS. Contractor shall indemnify, defend, and hold harmless the State and its divisions, officers, employees, agents, and members from all claims, suits, or actions of any nature arising out of or related to the activities of Contractor, its officers, subcontractors, agents or employees under this contract.

COMPLIANCE WITH APPLICABLE LAW. Contractor agrees to comply with all federal, state, county, and local laws, ordinances, and regulations applicable to work to be done under this Contract. The Contractor agrees to comply with all federal and state laws prohibiting discrimination on the basis of race, sex, national origin, religion, age, or handicap, and the provisions of the American Disabilities Act, 42 U.S. Code 12100 et seq. Failure or neglect on the part of the Contractor to comply with any or all such laws, ordinances, rules, and regulations shall not relieve the Contractor of these obligations nor of the requirements of this contract.

TAX COMPLIANCE CERTIFICATION. Contractor hereby affirms, under penalty of perjury, as provided in ORS 305.385(6), that to the best of Contractor's knowledge, Contractor is not in violation of any of the tax laws described in ORS 305.380(4).

DELIVERY. All deliveries shall be F.O.B. destination with all transportation and handling charge paid by Contractor, unless specified otherwise in the solicitation documents. Responsibility and Liability for loss or damage shall remain with Contractor until final inspection and acceptance when responsibility shall pass to the State except as to latent defects fraud and Contractor's warranty obligations.

INSPECTIONS. Goods or goods and services furnished under this contract shall be subject to inspection and test by the State at times and place determined by the State. If the State finds goods or services furnished to be incomplete or not in compliance with solicitation specifications, the State may reject the goods or goods and services and require Contractor to either correct them without charge, or provide at a reduced price, whichever is equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by the State, the State may reject the goods or services and cancel the contract in whole or in part. Nothing in this paragraph shall in any way affect or limit the State's rights as buyer, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.

YEAR 2000 COMPLIANCE NOTICE. In the event Contractor learns or has reason to believe that State's computer hardware or software environment fails to use a date format that explicitly specifies century in any date data, Contractor shall promptly advise State of such failure.

WARRANTIES. Unless otherwise stated, all goods shall be new and current model and shall carry full manufacturer warranties. Contractor warrants all goods delivered to be free from defects in labor, material and manufacture and to be in compliance with solicitation specifications. All implied and expressed warranty provisions of the Uniform Commercial Code (ORS chapter 72) are incorporated in this contract. All warranties shall run to the State.

PAYMENTS REQUIRED. For all goods or goods and services provided under this contract, Contractor shall: (i) pay promptly, as due, all persons supplying labor or material; (ii) pay all contributions or amounts due the industrial accident insurance provider from the Contractor or any subcontractors; (iii) not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision therefore; and (iv) pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

STATE PAYMENT OF CONTRACTOR CLAIMS. If Contractor fails, neglects, or refuses to pay promptly, as due, any claim for labor or services furnished to the Contractor or any subcontractor by any person in connection with the goods, or services if applicable, provided under this contract, the State may pay such claim and charge the amount of the payment against funds due or to become due to the Contractor under this contract. The payment of a claim by the State pursuant to this paragraph shall not relieve the Contractor or its surety, if any, from obligation with respect to any unpaid claims.

CASH DISCOUNT. If the State is entitled to a cash discount, the period of computation shall commence on the date the entire order is delivered, services complete, if applicable, or the date the invoice is received, whichever is later.

PAYMENT. Payment for completion of State contracts is normally made within 30 days following the date the entire order is delivered, services complete, if applicable, or the date the invoice is received, whichever is later. After 45 days, Contractor may assess overdue account charges up to a maximum rate of two-thirds of one percent per month (8 APR) on the outstanding balance (ORS 293.462).

HOURS OF LABOR. Contractor shall comply with the Oregon Bureau of Labor and Industries rules as they pertain to hours of work.

ASSIGNMENT/SUBCONTRACTS/SUCCESSORS. Contractor shall not assign, sell, transfer, or subcontract rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the State. No such written approval shall relieve Contractor of any obligations of this contract, and any transferee or subcontractor shall be considered the agent of Contractor. Contractor shall remain liable to the State under the contract as if no such assignment, transfer, or subcontract had occurred. The provisions of this contract shall be binding upon and

shall inure to the benefit of the parties to the contract and their respective successors and assigns.

RECYCLABLE PRODUCTS. Contractor shall use recyclable products to the maximum extent economically feasible in the performance of this contract. Contractor shall specify the minimum percentage of recycled product in the goods provided.

SAFETY AND HEALTH REQUIREMENTS. Goods or services provided under this contract shall comply with all Federal Occupational Safety and Health Administration (OSHA) requirements and with all Oregon Safety and Health requirements, including those of the State Workers' Compensation Division.

MATERIAL SAFETY DATA SHEET. In accordance with the OR-OSHA Hazard Communication Rules in OAR chapter 437, division 155, Contractor shall provide the State with a Material Safety Data Sheet for any goods provided under this contract which may release, or otherwise result in exposure to a hazardous chemical under normal conditions of use (OAR 437-155-005(2), 437-155-025. In addition, Contractor must label, tag, or mark such goods.

ACCESS TO RECORDS. The Contractor shall maintain all fiscal records relating to this contract in accordance with generally accepted accounting principles and shall maintain any other records relating to this contract in such a manner as to clearly document Contractor's performance hereunder. The State and its agencies, the Secretary of State Audits Division, the Federal government and their duly authorized representatives shall have access to such fiscal records and to all other books, documents, papers, plans and writing of Contractor which relate to this contract to perform examination, and audits and make excerpts and transcripts.

BREACH OF CONTRACT. Should Contractor breach any of the provisions of this contract, the State reserves the right to cancel this contract upon written notice to Contractor. Contractor shall be liable for any and all damages suffered by the State as the result of Contractor's breach of contract, including, but not limited to incidental and consequential damages, as provided in ORS 72.7110 to 72.7170. In the event of repeated breach of public and/or private contracts, Contractor shall be subject to disqualification on State contracts, as provided in OAR chapter 137.

FORCE MAJEURE. Neither the Institution nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of god, **TERRORIST ACTS, OR OTHER ACTS OF POLITICAL SABOTAGE**, or war where such cause was beyond, respectively, OUS's, the Institution, or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligation under this contract.

TERMINATION. This contract may be terminated by mutual consent of both parties or by the State at its discretion. The State may cancel an order for goods or goods and services at any time with written notice to Contractor, stating the extent and effective date of termination. Upon receipt of this written notice, Contractor shall stop performance under this contract as directed by the State. If this contract is so terminated, Contractor shall be paid in accordance with the terms of the contract for goods delivered or services rendered, and accepted, if Contractor's damages arising out of return of the goods cannot be mitigated by the resale as provided in the Uniform Commercial Code (ORS 72.7060).

AVAILABILITY OF FUNDS. State certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract within its current biennial appropriation or expenditure limitation, provided however, that continuation of the contract, or any extension, after the end of the fiscal period in which it is written, is contingent upon a new appropriation or limitation for each succeeding fiscal period for the purpose of this contract.

TERMINATION DUE TO NONAPPROPRIATION OF FUNDS. If sufficient funds are not provided in future legislatively approved budgets of State (or from applicable Federal, state, or other sources) to permit State in the exercise of its reasonable administrative discretion to continue this contract, or if State or program for which this contract was executed is abolished, the State may terminate this contract without further liability by giving Contractor not less than 30 days notice. In determining the availability of funds from the Oregon Legislature for this Contract, State may use the budget adopted for it by the Joint Ways and Means Committee of the Oregon Legislative Assembly.