

# STATE OF OREGON



## COVER PAGE

Oregon Department of Fish and Wildlife

**Hook-and-Line Surveys for Cape Perpetua Marine Reserve**

Request for Proposal (RFP)

**ORPIN OPPORTUNITY: ODFW-3156-18**

Date of Issue: February 1, 2018

Closing Date: 5:00 pm, March 6, 2018

Single Point of Contact (SPC):	Alan Hansen
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City, State, Zip	Salem, Oregon 97302
Phone (voice)	(503) 947-6134
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## SECTION 1 – GENERAL INFORMATION

### 1.1 Introduction

The State of Oregon acting by and through the Department of Fish and Wildlife, is seeking a contractor to provide an at-sea vessel, vessel operator, and one deckhand for 6-pack boats or 2 deckhands for larger vessels, and rod and reel fishing equipment to assist the Department in conducting hook-and-line fishing surveys. Surveys will entail multiple trips to and from Newport out to the Cape Perpetua Marine Reserve and associated comparison areas, located between Cape Perpetua Marine Reserve and Seal Rock, within 3 nautical miles from shore.

### 1.2 Schedule

The table below represents a tentative schedule of events. All times are listed in Pacific Time. All dates listed are subject to change.

**Issue Date:** February 1, 2018

**Question & Answer Deadline:** March 6, 2018 at 5:00pm

**Proposal Due Date:** March 6, 2018 at 5:00pm

**Tentative Issue of Notice to Intent to Award:** March 20, 2018

**Date to Begin Services:** April 1, 2018

### 1.3 Single Point of Contact (SPC)

The SPC for this RFP is identified on the Cover Page, along with the SPC's contact information. Proposer shall direct all communications related to any provision of the RFP, whether about the technical requirements of the RFP, contractual requirements, the RFP process, or any other provision only to the SPC.

### 1.4 Reservation of Rights

The Oregon Department of Fish and Wildlife (ODFW) reserves all rights regarding this RFP including, without limitation, the right to:

- Cancel the solicitation, or reject in whole or in part, any or all Proposals when the cancellation or rejection is in the best interest of the state as determined by the contracting agency, in accordance with ORS 279B.100.
- Modify the proposed time line for the solicitation process for this RFP with appropriate notice to prospective Proposers. The proposed dates represent a tentative schedule of events. All times are local (Pacific) times;
- Waive any minor irregularity, informality, or non-conformance with the provisions or procedures of this RFP, and to seek clarification of each Proposal, if required;
- Reject any Proposal that fails to substantially comply with all prescribed RFP procedures and requirements including the alteration of forms required to be submitted as part of the response;
- Require interview(s) of some or all of the Proposers;
- Postpone award or execution of the resulting contract to complete reference check(s);
- Reject a Proposal based on (a) negative reference check(s), negative claims history, negative financial audit or for any reason within the scope of ORS 279B.110. (See also, OAR 125-047-0640)
- Amend, within the Scope of Work, any contracts that are a result of this RFP;
- Engage contractors by selection or procurement independent of this RFP and/or any contracts under it;
- Negotiate with the successful Proposer to develop a Statement of Work within the Scope of Work described in this RFP.
- Enter into direct negotiations with a Proposer without evaluation of Scored Evaluation Components if there is only one Proposal to this solicitation and that Proposal is judged responsive to this solicitation.
- Reject Proposals that are deemed illegible or too difficult to read.
- Reject Proposals considered by ODFW to be non-responsive to this solicitation.

## 1.5 Cost of Proposals

All costs incurred in preparing and submitting a Proposal and participating in interview(s), if required, in response to this RFP will be the responsibility of the Proposer and shall not be reimbursed by ODFW. All Proposers who respond to this RFP do so solely at their own expense.

## 1.6 Equal Opportunity Employer

ODFW is an Equal Opportunity Employer, and is committed to achieving a workforce that represents the diversity of Oregon, and being a leader in providing fair and equal employment opportunity for all interested applicants and Employees. (ODFW Policy 20.4.1).

## SECTION 2 – AUTHORITY, OVERVIEW AND SCOPE

### 2.1 Authority and Method

Agency is issuing this RFP pursuant to its authority under OAR 125-246-0170. This is an Intermediate Procurement. Agency will not be accepting protests.

### 2.2 Overview

Contractor agrees to provide an at-sea vessel, vessel operator, and one deckhand for 6-pack boats or 2 deckhands for larger vessels, and rod and reel fishing equipment to assist the Department in conducting hook-and-line fishing surveys. Surveys will entail multiple trips to and from Newport out to the Cape Perpetua Marine Reserve and associated comparison areas, located between Cape Perpetua Marine Reserve and Seal Rock, within 3 nautical miles from shore.

Subject to the provisions of the contract resulting from this RFP (the “Contract”) shall become effective upon last date of signature by all parties thereto. Agency may seek authority to make one or more amendments (the “Anticipated Amendments”) to the Contract for the purpose of extending the term of the Contract and the maximum not-to-exceed compensation payable under the Contract or to modify the Services to be provided by the Contractor.

### 2.3 Scope of Work

Contractor agrees to provide an at-sea research platform (vessel) to perform hook-and-line fishing at various sites near Cape Perpetua Marine Reserve, in depths ranging from approximately 30-120 feet. The departure/return port for all operations is Newport, Oregon. Eight (8) vessel days (day = approximately 8 hours/day) are estimated to be needed for hook-and-line surveys. Fishing effort will be split into two seasonal windows (spring and fall), taking place over four (4) days in spring (i.e., April-June), and four (4) days in fall (i.e., late August-October). Each 4-day effort will be compressed into as short a time-frame as possible, ideally consecutive days as allowable due to weather or logistics. Fishing will occur over hard bottom substrate at a variety of depths.

No fish encountered shall be retained for the purpose of consumption.

This contract extends from April 1, 2018 through December 31, 2018.

The days on which sampling shall take place shall be subject to joint determination by the Department and the Contractor within the following limitations:

- a. Cruise dates shall be set in advance for scheduling purposes, though can be modified as necessary to accommodate modifications such as weather shifts or angler availability.
- b. **Contractor shall identify in their bid the dates during the spring and fall sampling windows that the vessel will not be available for work due to other obligations** (halibut or other special seasons, scheduled maintenance, etc.)

The cruises will be terminated when, as determined by the Department, either:

- a. the scientific objectives of the cruises have been met, or the available funds have been exhausted, or when;

- b. due to equipment failure, inclement weather, lack of available fishing dates within the spring and fall sampling windows or other cause it appears that the scientific objectives cannot be met within a reasonable time frame, or when;
- c. the limit of eight (8) total sampling days has been reached.

For the terms of this agreement, a full fishing day is defined as an 8-hour day, dock-to-dock. For the terms of this agreement, compensable time begins when the vessel leaves port to commence sampling operations, with all scientific and fisher crew and necessary equipment aboard, and ends upon returning to port. If during a cruise inclement weather, equipment failure or other developments make it impossible or unwise to continue fishing operations, the Contractor may elect to terminate the cruise and return to port. Alternatively, ODFW staff and the Contractor may jointly elect to suspend fishing operations and wait for conditions to improve. Time lost due to vessel equipment breakdown or time spent at the dock, such as waiting for the tide, or waiting to unload product or to load ice, fuel, vessel supplies or crew, is not compensable under this agreement.

Captain will ensure that the vessel is fishing in the prescribed 500m by 500m fishing cell selected by ODFW lead scientist aboard and is not outside the cell boundaries nor outside the marine reserve or comparison area being fished. Up to 6-7 cells will be fished in a single day. Within each of the cells, the captain will choose three discrete drifts to fish. Drifts may be repeated if necessary to achieve the three drifts of approximately 15 minutes each within a given cell. Captain will inform the scientific crew of the depth and drift speed at the beginning of each drift. Captain will give clear warning for anglers to prepare to make a drift, and indicate when to begin fishing once they have the boat in position. Captain will control drift speed to the extent possible, using a sea-anchor if the vessel is so equipped.

Crew members/deckhand responsibilities: Rig fishing rods with appropriate terminal gear as supplied by ODFW. If a volunteer brings their own rod, make sure it also is rigged with ODFW-supplied gear. When an angler hangs up, hand them a new rod and re-rig the one with broken-off gear. Refill fish-holding tote with seawater and wash buckets down when necessary. Help anglers de-hook fish and bring them to the measuring station. Handle all fish carefully and securely, no throwing fish. Notify scientific crew of floaters. If possible, retrieve with net. Assist with recompressing fish with descending devices. After survey work is finished, remove terminal gear from rods.

The Contractor hereby assumes full responsibility for the operation, repair, and maintenance of the boat and other equipment furnished by him/her. The Contractor agrees to provide all fuel and operating supplies and equipment. The Department shall not control the means or manner of the operation of the vessel except to specify sampling locations, but shall rely on the skills, knowledge and guidance of the Contractor.

The Contractor agrees to provide an Operator that has knowledge of:

- 1) Safe vessel operation,
- 2) Appropriate fishing gear and fishing locations
- 3) Weather and its effects.

Contractor agrees to provide certifications of all required insurance, mechanical inspections, operator license, US Coast Guard inspection and boater safety cards. The Contractor agrees to provide all fuel and operating supplies and equipment. The Contractor hereby assumes full responsibility for the operation, repair, and maintenance of the boat and other equipment furnished by him/her. The Department shall not control the means or manner of the operation of the vessel except to specify sampling locations, but shall rely on the skills, knowledge and guidance of the Contractor. The Contractor agrees to cooperate with the Department in collecting GPS location information at each sample site so that the Agency may return to each site later to repeat hook and line sampling in the same area.

## SECTION 3 – PROCUREMENT REQUIREMENTS AND EVALUATION

### 3.1 Requirements

To be considered for evaluation, Proposal must demonstrate how Proposer meets all requirements of this section.

#### 3.1.1. Minimum Proposer Requirements

The contractor, and captain if different, will be required to attend a pre-season meeting (approx. 1 hour) with ODFW Marine Reserves staff to become familiar with the survey being performed, the locations to be fished, and the desired goals of the survey, at an agreed-upon place and time.

The Contractor must have knowledge of hook-and-line fishing for bottom fish species, and have the ability to exercise sound

judgment in conducting safe, efficient and effective vessel operations. The captain must have previous knowledge of the Cape Perpetua area, and specific fishing locations within that area.

Vessel is adequate in size for a minimum of five (5) anglers and up to 10 anglers, one or two deckhands, and two ODFW data collectors. Vessel must be equipped with functional standard navigation, communication and safety equipment including life raft, EPIRB, GPS chart plotter, video sounder, VHF radio, radar, running lights, fire extinguishers, immersion suits for operator and any crew, etc. ODFW will provide immersion suits for Department staff. The Contractor agrees to provide a safety orientation/training to staff and volunteers. Vessel will have a rail area suitable for attaching a floating release pen, and a structure above the cabin suitable for attaching a research flag.

Contractor supplies fishing rods and reels suitable for groundfishing, with enough good-quality line to reach bottom on all drifts (max depth 30 fathoms). Volunteers shall be allowed to use their own gear if they bring it with them on the trip. Contractor supplies 2 heavy rods for fish recompression devices. ODFW supplies all terminal gear and leader material.

The crew (captain and deckhand) will fulfill responsibilities listed in the Scope of Work.

#### 3.1.1.1 Demonstrate Project Team Qualifications and Experience (Attachment 3)

Using Attachment 3, demonstrate Proposal team's qualifications and experience relating to the requested services. Response should address the following:

- Vessel description
- Captain experience
- Crew experience

#### 3.1.1.2 Project Approach (Attachment 3)

Demonstrate Proposer's ability to clearly provide the services listed in the Statement of Work. Include a description of the methods to be used to accomplish the statement of work. Response should include the proposed schedule for delivery and the approach to be utilized when addressing key issues of the project.

#### 3.1.1.3 Bidder Qualifications and References (Attachment 4)

Proposers must provide a minimum of 3 references of people or entities for which they have provided services comparable to those required under this contract. These should be listed where indicated on Attachment 4. Additional references may be provided on a separate page. References listed may be used by the Agency during the evaluation of this criterion.

Proposer must have a minimum of 3 years of professional experience providing goods and/or performing services comparable to those required under this contract.

### 3.2 Minimum Submission Requirements

#### 3.2.1 Proposal Format and Quantity

To simplify and expedite Proposal evaluation and to ensure that each Proposal receives the same orderly review, all Proposals must follow the format described in this section.

- Proposals must be in the form of a Proposal "package" containing 1 original copy of the Proposal.
- Proposals should be prepared in a simple, economical manner, without stiff binders or covers, fastened in the top left-hand corner.
- Attachment 1 (Proposal Cover Sheet), Attachment 2 (Request and Authorization to Release Information, Release of Liability/Claims, and Agreement Not to Sue), Attachment 3 (Scored Proposal Components Form), and Attachment 4 (Price Proposal and Mandatories Certification Form) and Attachment 5 (Affidavit of Compliance with Tax Laws) must be completed and placed on top of the Proposal.

#### 3.2.2 Authorized Representative

A representative authorized to bind the Proposer shall sign the Proposal. Failure of the authorized representative to sign the Proposal may subject the Proposal to rejection by Agency.

### 3.3 Procurement Process

#### 3.3.1 Public Notice

The RFP, including all Addenda and attachments, is published in the Oregon Procurement Information Network (ORPIN) at <http://www.orpin.oregon.gov>. RFP documents will not be mailed to prospective Proposers.

Agency shall advertise all Addenda on ORPIN. Prospective Proposer is solely responsible for checking ORPIN to determine

whether or not any Addenda have been issued. Addenda are incorporated into the RFP by this reference.

### 3.3.2 Questions / Requests for Clarification

All inquiries, whether relating to the RFP process, administration, deadline or method of award or to the intent or technical aspects of the RFP must:

- Be delivered to the SPC via email, facsimile, hardcopy
- Reference the RFP number
- Identify Proposer's name and contact information
- Be sent by an authorized representative
- Refer to the specific area of the RFP being questioned (i.e. page, section and paragraph number); and
- Be received by the due date and time for Questions/Requests for Clarification identified in the Schedule

### 3.3.3 Pre-Proposal Conference

A Pre-Proposal conference will not be held for this RFP.

### 3.3.4 Solicitation Protests – Agency will not be accepting protests

### 3.3.5 Proposal Submission Options

Proposer is solely responsible for ensuring its Proposal is received in accordance with the RFP requirements before Closing. Agency is not responsible for any delays in mail or by common carriers or by transmission errors or delays or mistaken delivery. Proposal submitted by any means not authorized will be rejected.

#### 3.3.5.1 Submission through ORPIN

Submission through ORPIN is not allowed for this RFP.

## 3.4 Submission of Proposal

Proposals must be received no later than the Proposal Due Date specified on the RFP Cover Page. Late Proposals will not be accepted.

Proposals delivered in person must be during Agency's normal Monday-Friday business hours of 8:00 am to 5:00 pm except during State of Oregon holidays and other times when Agency is closed.

The entire Proposal must arrive at the place and by the time specified. The Agency is not responsible for any failure attributable to the transmission or receipt of the bid (Proposal).

### **Mail, E-Mail, Fax or Deliver Proposals in person, addressed as follows:**

**Mail or Delivery in Person** (submitted in sealed envelope, package or box)

ODFW-3156-18 (**Hook-and-Line Surveys for Cape Perpetua Marine Reserve**

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Attention: Alan Hansen, Procurement Services  
Oregon Department of Fish and Wildlife  
4034 Fairview Industrial Drive SE  
Salem, Oregon 97302

### **Email**

Email Address: [ODFW.Bids@state.or.us](mailto:ODFW.Bids@state.or.us)

When emailing in bids, Proposers must address the Subject line as follows: **Subject Line:** Bid for ODFW-3156-18

### **Fax**

Fax Number: (503)947-6069

### 3.4.1 Proposal Modification or Withdrawal

Any Proposer who wishes to make modifications to a Proposal already received by Agency shall submit its modification in one of the manners listed in the Proposal Submission Options section and must denote the specific change(s) to the Proposal submission.

If a Proposer wishes to withdraw a submitted Proposal, it shall do so prior to Closing. The Proposer shall submit a Written notice

Signed by an authorized representative of its intent to withdraw its Proposal in accordance with OAR 125-247-0440. The notice must include the RFP number and be submitted to the SPC.

#### 3.4.2 Proposal Due

Proposal and all required submittal items must be received by the SPC on or before Closing. Proposal received after the Closing will not be accepted. All Proposal modifications or withdrawals must be completed prior to Closing.

Proposals received after Closing are considered LATE and will NOT be accepted for evaluation. Late Proposals will be returned to the respective Proposer or destroyed.

#### 3.4.3 Proposal Rejection

Agency may reject a Proposal for any of the following reasons:

- Proposer fails to substantially comply with all prescribed RFP procedures and requirements, including but not limited to the requirement that Proposer's authorized representative sign the Proposal in ink.
- Proposer fails to meet the responsibility requirements of ORS 279B.110.
- Proposer makes any contact regarding this RFP with State representatives such as State employees or officials other than the SPC or those the SPC authorizes, or inappropriate contact with the SPC.
- Proposer attempts to inappropriately influence a member of the Evaluation Committee.
- Proposal is conditioned on Agency's acceptance of any other terms and conditions or rights to negotiate any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the RFP or Addenda.

#### 3.4.4 Opening of Proposal

There will be no public Opening of Proposals.

Proposals received will not be available for inspection until after the evaluation process has been completed and the Notice of Intent to Award is issued pursuant to OAR 125-247-0630. However, Agency will record and make available the identity of all Proposers after Closing by posting on ORPIN.

### 3.5 Proposal Content Requirements

Proposal must address each of the items listed in this section and all other requirements set forth in this RFP. Proposer shall describe the Goods to be provided or the Services to be performed or both. A Proposal that merely offers to provide the goods or services as stated in this RFP will be considered non-Responsive to this RFP and will not be considered further.

#### 3.5.1 Proposal Check-List Summary - Proposals not containing this information may be considered non-responsive and be rejected by the Agency.

- 1 original copy of Proposal
- Completed Proposal Cover Sheet (Attachment 1)
- Signed Request and Authorization to Release Information (Attachment 2)
- Scored Proposal Components Form (Attachment 3)
- Price Proposal and Mandatories Certification Form (Attachment 4)
- Affidavit of Compliance with Tax Laws (Attachment 5)

#### 3.5.2 Key Persons

Specify key persons to be assigned to this Project and include qualifications and experience for the Work described.

#### 3.5.3 References

Proposers must provide a minimum of 3 references where indicated on Attachment 4. Additional references may be provided on a separate page. ODFW may contact references of highest scoring Proposer(s).

References must have specific knowledge of experience described in qualifications of Key Person(s). Negative reference information may result in elimination from consideration.

#### 3.5.4 Project Implementation Plan

#### 3.5.5 Price Proposal & Mandatories Certification Form

Submit a detailed Price Proposal & Mandatories Certification Form (Attachment 4) stating the total cost for the entire project. Include a breakdown of all labor, profit and expenses.

### 3.5.6 Public Record / Confidential or Proprietary Information

All Proposals are public record and are subject to public inspection after Agency issues the Notice of the Intent to Award. If a Proposer believes that any portion of its Proposal contains any information that is a trade secret under ORS Chapter 192.501(2) or otherwise is exempt from disclosure under the Oregon Public Records Law (ORS 192.410 through 192.505), each sheet of such information must be marked with the following legend:

"This data constitutes a trade secret under ORS 192.501(2) and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 92."

The Oregon Public Records Law exempts from disclosure only bona fide trade secrets, and the exemption from disclosure applies only "unless the public interest requires disclosure in the particular instance", ORS 192.501(2). Therefore, nondisclosure of documents or any portion of a document submitted as part of a Proposal may depend upon official or judicial determinations made pursuant to the Public Records Law.

Proposer is cautioned that cost information generally is not considered a trade secret under Oregon Public Records Law (ORS 192.410 through 192.505) and identifying the Proposal, in whole, as exempt from disclosure is not acceptable, and may result in the rejection of the Proposal. Agency advises each Proposer to consult with its own legal counsel regarding disclosure issues.

If Proposer fails to identify the portions of the Proposal that Proposer claims are exempt from disclosure, Proposer has waived any future claim of non-disclosure of that information.

## 3.6 Agency Proposal Evaluation Process

ODFW will conduct an evaluation of the responses received to this solicitation in accordance with OAR 125-247-0260(2)(c). An Evaluation Committee will be established to evaluate and score the Scored Proposal Components. Any attempt by a Proposer to improperly influence a member of the Evaluation Committee during the Proposal review and evaluation process will result in the elimination of that Proposer's Proposal from consideration.

The evaluation of the responses will be conducted in up to four phases:

Phase 1: Evaluation of Price Proposal & Mandatory Certification Form

Phase 2: Evaluation of Scored Proposal Components

Phase 3: Ranking of Proposals

Phase 4: Interview(s), if necessary

### 3.6.1 Responsiveness and Responsibility Determination

Proposals received prior to Closing will be reviewed for Responsiveness to all RFP requirements including compliance with Minimum Requirements section and Proposal Content Requirements section. If the Proposal is unclear, the SPC may request clarification from Proposer. However, clarifications may not be used to rehabilitate a non-Responsive Proposal. If the SPC finds the Proposal non-Responsive, the Proposal may be rejected, however, Agency may waive mistakes in accordance with OAR 125-247-0470.

At any time prior to award, Agency may reject a Proposer found to be not responsive.

### 3.6.2 Evaluation Criteria

#### 3.6.2.2 Evaluation of Mandatory (Pass / Fail) Proposal Components

The purpose of this phase is to determine if the Proposal meets the Mandatory Proposal requirements listed in Section 3. Proposals will be reviewed by the Contracts Administrator to determine if they are complete. Complete Proposals will be forwarded to the Evaluation Committee for evaluation and scoring.

#### 3.6.2.3 Evaluation of Scored Proposal Components

(Respond using Attachment 3 and 4 as indicated) Proposals will be scored according to how well the Proposer responds to each of the elements described in Section 3, Scored Proposal Components. Each member of the Evaluation Committee will evaluate the Scored Proposal Components of each Proposal. Points given by each evaluator will be summed and divided by the number of evaluators to compute an average performance score for each Proposal.

Responses may be typed and printed using a word-processing program, and then attached to the proposal. Provide full, direct, and substantive responses.

The ODFW will award to the Pricing Proposal with the lowest Estimated Total Price the maximum points possible. ODFW will award to Pricing Proposals with higher Estimated Total Prices a percentage of the maximum possible points available relative to the lowest Pricing Proposal Total Price.

ODFW will use the following formula for this purpose:

$(L/X)*Y = A$ , where:

- X = Proposed Estimated Total Price/day being scored
- L = Lowest Estimated proposed Total Price/day scored
- Y = Maximum possible points
- A = Awarded points

Proposals not containing the following information may be considered non-responsive and be rejected by the Agency.

**Estimated Fees (20 Points Possible)**

The proposer must bid pursuant to requirements on Attachment 4 for the proposed services. Please state cost per 8-hour fishing day, additional insurance costs (if any), and additional cost for personnel/deck hands per day.

**Project Team Qualifications and Experience (40 Points Possible)**

Demonstrate Proposal team’s qualifications and experience relating to the requested services. References listed may be used by the Agency during the evaluation of this criterion. Response should address the following:

- Vessel description
- Captain experience and qualifications (including any specified licenses or certifications)
- Crew experience

**Project Approach (40 Points Possible)**

Demonstrate Proposer’s ability to clearly provide the services listed in the statement of work. Include a description of the methods to be used to accomplish the statement of work. Response should include the proposed schedule for delivery and the approach to be utilized when addressing key issues of the project. List any dates during the spring and fall sampling windows that the vessel will **not** be available for work due to other obligations (halibut or other special seasons, scheduled maintenance, etc.)

Points	
<u>Possible</u>	<u>Scored Proposal Component</u>
20	Estimated Fees
40	Project Team Qualifications
40	Project Approach

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100 Total Maximum Points possible

3.6.2.4 Ranking of Proposals  
Points awarded to each Scored Proposal Component will be added together to determine the total score and the ranking of each Proposal.

3.6.2.5 Interviews, if necessary.  
At Agency’s discretion, an interview process with the top ranked Proposers may be conducted. If an interview process is initiated, ODFW shall decide on the number of high-scored Proposers to be invited for an interview. The method of evaluation, content of interview questions, and other specifics shall be announced at the time Proposers are invited for interview.

**3.7 Preferences**

3.7.1 Oregon Supplies and Services  
Agency prefers Oregon goods and services, and for evaluation purposes, per ORS 279A.128.

3.7.2 Reciprocal Preference  
For evaluation purposes per OAR 125-246-0310, Agency shall add a percent increase to each out-of-state Proposer's Proposal price that is equal to the percent preference, if any, given to a Resident Offeror of the [Proposer's state](#).

3.7.3 Recycled Materials  
Contractors shall use recyclable products to the maximum extent economically feasible in the performance of the contract work

set forth in this document.

### **3.8 Ranking of Proposers**

Points awarded to each Scored Proposal Component will be added together to determine the total score and the ranking of each Proposal.

## **SECTION 4 – AWARD AND NEGOTIATIONS**

### **4.1 Award Notification Process**

#### **4.1.1 Award Consideration**

Subject to the provisions of Section 4 and other applicable law, the final selection will be made based upon the highest Proposal score, or, if interviews are held, the final selection will be made based upon the highest total score of Proposal score plus interview score.

#### **4.1.2 Intent to Award Notice**

ODFW will notify the apparent successful Proposer (“Notice of Award”) and request that the apparent successful Proposer sign a contract in substantially the form set forth as Attachment 6 of this RFP. If the apparent successful Proposer is not able to execute the contract offered within 10 business days of Apparent Successful Proposer's receipt of the contract, or such later date as ODFW may authorize, ODFW may make another selection. If all Proposals are rejected, all Proposers will be promptly notified.

### **4.2 Intent to Award Protest**

#### **4.2.1 Protests must:**

- Be delivered to the SPC via email, facsimile or hardcopy
- Reference the RFP number
- Identify prospective Proposer's name and contact information
- Be signed by an authorized representative
- Specify the grounds for the protest
- Be received within 7 calendar days of the intent to award notice

#### **4.2.2 Response to Protest**

Agency will address all timely submitted protests within a reasonable time and will issue a written decision to the respective Proposer. Protests that do not include the required information may not be considered by Agency.

### **4.3 Apparent Successful Proposer Submission Requirements**

#### **4.3.1 Insurance**

Prior to execution of the Contract, the apparent successful Proposer shall secure and demonstrate to Agency proof of insurance coverage meeting the requirements identified in the RFP or as otherwise negotiated.

Failure to demonstrate coverage may result in Agency terminating Negotiations and commencing Negotiations with the next highest ranking Proposer. Proposer is encouraged to consult its insurance agent about the insurance requirements contained in Insurance Requirements (Exhibit B of Attachment 6) prior to Proposal submission.

#### **4.3.2 Taxpayer Identification Number**

The apparent successful Proposer shall provide its Taxpayer Identification Number (TIN) and backup withholding status on a completed W-9 form if either of the following applies:

- When requested by Agency (normally in an intent to award notice), or
- When the backup withholding status or any other information of Proposer has changed since the last submitted W-9 form, if any.

Agency will not make any payment until Agency has a properly completed W-9.

#### **4.3.3 Tax Affidavit**

Proposer shall complete and submit the Affidavit of Compliance with Tax Laws (Attachment 5) to demonstrate compliance with Oregon Tax Laws. Failure to demonstrate compliance may result in a finding of non-responsibility.

#### **4.3.4 Business Registry**

If selected for award, Proposer shall be duly authorized by the State of Oregon to transact business in the State of Oregon before executing the Contract. The selected Proposer shall submit a current Oregon Secretary of State Business registry number or an explanation if not applicable.

All Corporations and other business entities (domestic and foreign) must have a Registered Agent in Oregon. See requirements and exceptions regarding Registered Agents. For more information, see Oregon Business Guide, How to Start a Business in Oregon and Laws and Rules. The titles in this subsection are available at the following Internet site:  
<http://www.filinginoregon.com/index.htm>.

#### **4.4 Contract / Price Agreement Negotiation**

##### **4.4.1 Negotiation**

The Proposal is an offer to enter into a contract that, if accepted for award by ODFW will result in a contract substantially in the form attached hereto as Attachment 6 (Sample Contract). A Proposer shall not make a Proposal contingent upon the Department of Fish and Wildlife's acceptance of specifications or contract terms that conflict with or are in addition to those contained in the RFP. Proposers must submit requests for changes of particular RFP or sample contract provisions, specifications, or other contract terms and conditions in accordance with Section 3.

##### **4.4.2 Contractor Selection Methodology**

Subject to the provisions of Section 4 and other applicable law, the final selection will be made based upon the highest Proposal score, or, if interviews are held, the final selection will be made based upon the highest total score of Proposal score plus interview score.

### **SECTION 5 – ADDITIONAL INFORMATION**

#### **5.1 OMWESB Participation**

Pursuant to Oregon Revised Statute (ORS) Chapter 200, and as a matter of commitment, Agency encourages the participation of minority, women, and emerging small business enterprises in all contracting opportunities. Agency also encourages joint ventures or subcontracting with minority, women, and emerging small business enterprises. For more information please visit <http://www.oregon.gov/gov/MWESB/Pages/index.aspx>

#### **5.2 Governing Laws and Regulations**

This RFP is governed by the laws of the State of Oregon. Venue for any administrative or judicial action relating to this RFP, evaluation and award is the Circuit Court of Marion County for the State of Oregon; provided, however, if a proceeding must be brought in a federal forum, then it must be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, to or from any Claim or from the jurisdiction of any court.

#### **5.3 Ownership/Permission to Use Materials**

All Proposals submitted in response to this RFP become the Property of Agency. By submitting a Proposal in response to this RFP, Proposer grants the State a non-exclusive, perpetual, irrevocable, royalty-free license for the rights to copy, distribute, display, prepare derivative works of and transmit the Proposal solely for the purpose of evaluating the Proposal, negotiating an Agreement, if awarded to Proposer, or as otherwise needed to administer the RFP process, and to fulfill obligations under Oregon Public Records Law (ORS 192.410 through 192.505). Proposals, including supporting materials, will not be returned to Proposer unless the Proposal is submitted late.

#### **5.4 Cancellation of RFP; Rejection of Proposals; No Damages**

Pursuant to ORS 279B.100, Agency may reject any or all Proposals in-whole or in-part, or may cancel this RFP at any time when the rejection or cancellation is in the best interest of the State or Agency, as determined by Agency. Neither the State nor Agency is liable to any Proposer for any loss or expense caused by or resulting from the delay, suspension, or cancellation of the RFP, award, or rejection of any Proposal.

#### **5.5 Cost of Submitting a Proposal**

Proposer shall pay all the costs in submitting its Proposal, including, but not limited to, the costs to prepare and submit the Proposal, costs of samples and other supporting materials, costs to participate in demonstrations, or costs associated with protests.

#### **5.6 Statewide E-Waste / Recovery Policy**

If applicable, Proposer shall include information in its Proposal that demonstrates compliance with the Statewide [E-Waste/Recover Policy](#) effective July 1, 2012.

**5.7 Recyclable Products**

Proposer shall use recyclable products to the maximum extent economically feasible in the performance of the Services or Work set forth in this document and the subsequent Contract. (ORS 279B.025)

**5.8 Checklist Disclaimer**

Any checklists that may be contained in this RFP are provided only as a courtesy to prospective Proposer. Agency makes no representation as to the completeness or accuracy of any Checklist. Prospective Proposer is solely responsible for reviewing and understanding the RFP and complying with all the requirements of this RFP, whether listed in a checklist or not. Neither the State nor Agency is liable for any claims, or subject to any defenses, asserted by Proposer based upon, resulting from, or related to, Proposer's failure to comprehend all requirements of this RFP.

**5.9 Foreign Contractor**

If the successful Proposer is not domiciled in or registered to do business in the State of Oregon, Proposer shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to the successful Proposer's performance of any resulting Contract. Proposer shall demonstrate its legal capacity to perform the services set forth under the Scope of Work under this RFP in the State of Oregon prior to entering into any resulting Contract. The Oregon Secretary of State website can be accessed at <http://www.filinginoregon.com/bizreg/index.htm>

**5.10 No Contractual Obligation**

All Proposers who submit a Proposal in response to this RFP understand, acknowledge and agree that ODFW is not obligated thereby to enter into a contract with any Proposer.

**5.11 Non-Discrimination against Minority, Women or Emerging Small Business**

All Proposers who submit a Proposal in response to this RFP certify that the Proposer has not and will not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055.

**5.12 Debarment and Suspension Clause**

The Recipient or Contractor has certified that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this transaction by any Federal department or agency. The Contractor shall complete a Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion form certifying this information. Any such form completed by the Recipient or Contractor for this transaction shall be incorporated into this Grant or Contract by reference.

Recipient or Contractor accepts the responsibility to ensure that that it does not enter into either (a) a subgrant or (b) a contract with a value of \$25,000 or more, with an individual or entity which is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Grant by any Federal department or agency. Recipient or Contractor may satisfy this requirement by including this clause in any covered lower-tier transaction by obtaining a certificate (See Exhibit D of Sample Contract) certifying such from the subrecipient or contractor or by checking [www.epls.gov](http://www.epls.gov).

AUTHORITY: Federal Financial Assistance (grants): E.O. 12549; 2 CFR Part 180 and 2 CFR Subtitle B (individual agency regulations); Federal Procurement (contracts): 48 CFR 9.409; 48 CFR 52.209-6.

**SECTION 6 – LIST OF ATTACHMENTS**

ATTACHMENT 1	Proposal Cover Sheet
ATTACHMENT 2	Request and Authorization Form to Release Information, Release of Liability/Claims, Agreement not to Sue
ATTACHMENT 3	Scored Proposal Components Form
ATTACHMENT 4	Price Proposal and Mandatories Certification Form
ATTACHMENT 5	Affidavit of Compliance with Tax Laws
ATTACHMENT 6	Sample Contract
EXHIBIT A	Scope of Work
EXHIBIT B	Insurance Requirements
EXHIBIT C	Certification Statement for an Independence Contractor
EXHIBIT D	Certification Regarding Federal Debarment, Suspension, Ineligibility & Voluntary Exclusion Lower Tier



## ATTACHMENT 1 Proposal Cover Sheet

Name of Firm (tax filing):	Street Address:  E-mail address:									
Fed Tax ID# or Social Security #:	Telephone #:  Fax #:									
<p><b>Business Designation (check one):</b></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 33%;"><input type="checkbox"/> Corporation (what state? _____)</td> <td style="width: 33%;"><input type="checkbox"/> Partnership</td> <td style="width: 33%;"><input type="checkbox"/> Sole Proprietorship</td> </tr> <tr> <td><input type="checkbox"/> Professional Corporation</td> <td><input type="checkbox"/> Limited Partnership</td> <td><input type="checkbox"/> Other _____</td> </tr> <tr> <td><input type="checkbox"/> Limited Liability Company</td> <td><input type="checkbox"/> Limited Liability Partnership</td> <td></td> </tr> </table>		<input type="checkbox"/> Corporation (what state? _____)	<input type="checkbox"/> Partnership	<input type="checkbox"/> Sole Proprietorship	<input type="checkbox"/> Professional Corporation	<input type="checkbox"/> Limited Partnership	<input type="checkbox"/> Other _____	<input type="checkbox"/> Limited Liability Company	<input type="checkbox"/> Limited Liability Partnership	
<input type="checkbox"/> Corporation (what state? _____)	<input type="checkbox"/> Partnership	<input type="checkbox"/> Sole Proprietorship								
<input type="checkbox"/> Professional Corporation	<input type="checkbox"/> Limited Partnership	<input type="checkbox"/> Other _____								
<input type="checkbox"/> Limited Liability Company	<input type="checkbox"/> Limited Liability Partnership									
<p>The individual signing on behalf of Proposer has the authority to bind Proposer, and certifies that Proposer possesses, or has the ability to obtain, all necessary permits and licenses to perform the Work; and hereby accepts on Proposer's behalf, all terms and conditions contained in this Request for Proposal and the attached sample Contract.</p> <p><i>Signature of Authorized Representative:</i> _____ <i>Date:</i> _____</p>										
<p><i>Print Name of Authorized Representative:</i> _____ <i>Title:</i> _____</p>										
<p><b>List all Addenda of the RFP received:</b></p>          										

**ATTACHMENT 2**  
**Request and Authorization Form to Release Information,**  
**Release of Liability/Claims, and Agreement not to Sue**

(This form will be provided to references indicated in Proposal)

**To Whom It May Concern:**

I the undersigned have submitted a response to a Request for Proposal (RFP) to contract with the State of Oregon, Department of Fish & Wildlife. I request and authorize you to furnish to the Oregon Department of Fish & Wildlife (“ODFW”) any and all information you may have regarding my services, including but not limited to, evaluations or assessments of my job performance and educational records.

I request and authorize you to provide the information requested or to participate in a phone or in-person interview with a representative of ODFW.

In consideration of your cooperation with this request, I hereby release you, and any and all other persons employed by or connected with your agency and/or organization from any and all liability and/or claims now or in the future arising from the furnishing of any information, including good faith expressions of opinion, to ODFW as requested. I further agree not to sue ODFW, you, or any and all other persons employed by or connected with your agency/organization as a result of the furnishing of any information, including good faith expressions of opinion, to ODFW.

I am aware and understand that the information and good faith opinions furnished to ODFW pursuant to this request will remain confidential with ODFW if requested by you, and will not be disclosed to me or to any other person, except as required by law.

\_\_\_\_\_  
Name (Please Print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Note: Photocopy or Fax reproduction of this request shall be for all intents and purposes as valid as the original. You may retain this form for your files.

**ATTACHMENT 3  
Scored Proposal Components Form**

**3.1.1. Total Fees (Use Attachment 4 to complete your budget in detail)**

**20 points possible**

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**3.1.1.1 Vessel Description; Captain and Crew Experience**

**40 points possible**

Describe the vessel and it's equipment, and the experience of the captain and crew relating to the requested services. References listed may be used by the Agency during the evaluation of this criterion. Response should address the following:

A) Vessel Description:

Name of the Vessel: \_\_\_\_\_

Date of manufacture of vessel: \_\_\_\_\_

Expiration date of Coast Guard inspection: \_\_\_\_\_

List any other applicable vessel inspections and certifications (with expiration dates): \_\_\_\_\_

B) Vessel Specifications:

Back deck dimensions: \_\_\_\_\_

Total Length: \_\_\_\_\_

Beam: \_\_\_\_\_

Draft: \_\_\_\_\_

Number of propulsion engines: \_\_\_\_\_ Running Speed: \_\_\_\_\_ Knots

AC power: \_\_\_\_\_

List vessel's other equipment (plotter, deck hose, others):

C) Cabin Description:

Total number of seats:

Number of "Heads":

Freshwater:

Storage for survival suits (location/size):

Passenger personal gear storage (location/size):

D) Vessel Master Qualifications Description:

Please describe qualifications, training, certificates (e.g. Sea safety training, CPR, First aid, boaters safety card etc.) and relevant individual experience (years working on Charter vessels, catching rockfish; special knowledge of rockfish and other species, etc) **for the vessel Master(s)** likely to work on these projects, including subcontractors:

a. Training and certificates include expiration dates:

b. Relevant experience fishing in Cape Perpetua area waters?

E) Experience with Similar Projects:

Please describe the project manager's and/or Master's experience with similar projects (e.g. collecting organisms for aquarium; tagging projects; surveys; etc. dates of projects)

Project name, description:

Dates:

1)	
2)	
3)	
4)	

F) Crew Member Description:

Please list the names of all crew members who will or likely will be performing the work on this project and the # of years working with the vessel master

Crew #1: Name: \_\_\_\_\_; # of years working with vessel master: \_\_\_\_\_

Crew #2: Name: \_\_\_\_\_; # of years working with vessel master: \_\_\_\_\_

G) Crew Member Qualifications Description:

Please describe the qualifications, training, certifications, licenses (e.g. Sea safety training, CPR, First aid, boaters safety card, Masters license, etc.) and relevant individual experience (years working on Charter vessels, catching rockfish and other species; special knowledge of rockfish, etc) **for all crew members** likely to work on these projects:

Crew #1:

Crew #2:

Alternate Crew:

**3.1.1.2 Vessel Availability and Flexibility**

**40 points possible**

Demonstrate vessel and the crew’s ability to clearly provide the services listed in the statement of work. Describe your ability to schedule and complete the field work for the project (at-sea days) in the time-frames described by ODFW, and the approach – i.e., how the Proposer will conduct a day at-sea to meet the project goals. List any dates during the spring and fall sampling windows that the vessel will **not** be available for work due to other obligations (halibut or other special seasons, scheduled maintenance, etc.)

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**ATTACHMENT 4  
Price Proposal & Mandatories Certification Form**

The Bidder proposes to furnish all required material, equipment, labor and perform all Work for the Oregon Department of Fish and Wildlife Project **Hook-and-Line Surveys for Cape Perpetua Marine Reserve**  
**Hook-and-Line Surveys for Cape Perpetua Marine Reserve**  
 for the lump sum and/or unit prices as follows:

**All costs must be included in the final Total Price**

ITEM	DESCRIPTION	EST. QTY.	UNIT	UNIT PRICE	TOTAL PRICE
1.	Vessel charter including equipment and labor	8	Days	\$	\$
2.				\$	\$
3.				\$	\$
4.				\$	\$
				<i>Total Price</i>	\$ _____

**Mandatory Requirements**

**A. Bidder Qualifications** Proposer must have a minimum of 3 years of professional experience providing goods and/or performing services comparable to those required under this contract.

Bidder must have a minimum of 1 year and the Vessel Master must have a minimum of 3 years of professional experience providing charter fishing services, has local knowledge of Cascade Head fishing areas for rockfish and other near shore fish.

Bidder's name and number of years of experience the bidder has providing charter fishing services:

Name: \_\_\_\_\_ Years of experience: \_\_\_\_\_

Name of vessel master and number of years of experience as a CPFV Master:

Name: \_\_\_\_\_ Years of experience: \_\_\_\_\_

Number of years conducting charter fishing within the Cascade Head fishing areas: \_\_\_\_\_

**References (Mandatory)**

**B. References:** Proposers must provide a minimum of 3 references of people or entities for which they have provided services comparable to those required under this contract.

**Reference 1**

Company Name & Address: \_\_\_\_\_

Name, Title and Phone Number of Contact Person: \_\_\_\_\_

Nature of Work: \_\_\_\_\_

**Reference 2**

Company Name & Address: \_\_\_\_\_

Name, Title and Phone Number of Contact Person: \_\_\_\_\_

Nature of Work: \_\_\_\_\_

**Reference 3**

Company Name & Address: \_\_\_\_\_

Name, Title and Phone Number of Contact Person: \_\_\_\_\_

Nature of Work: \_\_\_\_\_

**By signing this document, Contractor certifies that all the mandatories have been met.**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

**ATTACHMENT 5**  
**Affidavit of Compliance with Tax Laws**

State of \_\_\_\_\_)

County of \_\_\_\_\_)

\_\_\_\_\_ (Affiant), being first duly sworn under oath, and representing

\_\_\_\_\_ [insert Bidder Name] (hereafter "Bidder"), hereby deposes and swears or affirms under penalty of perjury that:

1. I am an employee of the Bidder, I have knowledge of the Request for Quote referenced herein, and I have full authority from the Bidder to submit this affidavit and accept the responsibilities stated herein.
2. I am aware that the Bidder has submitted a Quote, dated on or about \_\_\_\_\_ [insert date] (the "Bid"), to the State of Oregon (State) in response to Request for Quote \_\_\_\_\_, for \_\_\_\_\_

\_\_\_\_\_ [insert brief description of the goods and/or services sought in the Request for Quote] and I am familiar with the contents of the Request for Quote.

3. The number shown on this form is Bidder's correct taxpayer identification;

A. Federal Tax Number: \_\_\_\_\_

B. Oregon Tax Number: \_\_\_\_\_

4. Bidder is not subject to backup withholding because (i) Bidder is exempt from backup withholding, (ii) Bidder has not been notified by the IRS that Bidder is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Bidder that Bidder is no longer subject to backup withholding;

5. I am authorized to act on behalf of Bidder, and have authority and knowledge regarding Bidder's payment of taxes, and to the best of my knowledge, Bidder is not in violation of any Oregon tax laws, including, without limitation, those tax laws listed in ORS 305.380(4), namely ORS Chapters 118, 314, 316, 317, 318, 320, 321 and 323 and Sections 10 to 20, Chapter 533, Oregon Laws 1981, as amended by Chapter 16, Oregon Laws 1982 (first special session); the elderly rental assistance program under ORS 310.630 to 310.706; and any local taxes administered by the Oregon Department of Revenue under ORS 305.620.

\_\_\_\_\_  
Affiant's Signature

Signed and sworn to before me on \_\_\_\_\_ (date) by \_\_\_\_\_ (Affiant's name).

\_\_\_\_\_  
Notary Public for the State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

## ATTACHMENT 6 Sample Contract Form

**Notice to Proposers:** This Attachment 6 (Sample Contract Form) is provided for informational purposes only.

Please **do not** return any portion of this sample contract, including attached Exhibits, with your Proposals.

### STATE OF OREGON PERSONAL/PROFESSIONAL SERVICES CONTRACT

## Hook-and-Line Surveys for Cape Perpetua Marine Reserve

This Contract is between the State of Oregon, acting by and through its **Oregon Department of Fish and Wildlife**, hereafter called **Agency**, and

Vendor Name  
Address  
City, State, Zip  
Phone #  
(fax)

Hereafter called **Contractor**.

Agency's Contract Administrator for this Contract is:

Cristen Don  
Oregon Department of Fish and Wildlife  
Marine Resources Program  
2040 SE Marine Science Drive  
Newport, Oregon 97365  
Phone: (541) 867-7701  
Email: Cristen.N.Don@state.or.us

Agency's Project Manager for this Contract is:

Lindsay Aylesworth  
Oregon Department of Fish and Wildlife  
Marine Resources Program  
2040 SE Marine Science Drive  
Newport, Oregon 97365  
Phone: (541) 867-7701 x227  
Email: lindsay.x.aylesworth@state.or.us

#### **I. Contract Period**

This Contract shall become effective on the date this Contract has been fully executed by every party and, when required, approved by the Department of Administrative Services and the Department of Justice. Unless extended or terminated earlier in accordance with its terms, this Contract shall terminate when Agency accepts Contractor's completed performance or on **December 31, 2018** whichever date occurs first. Contract termination shall not extinguish or prejudice Agency's right to enforce this Contract with respect to any default by Contractor that has not been cured.

#### **II. Statement of Work**

Contractor shall perform the work (the "Work") as set forth in the Statement of Work, which includes the delivery schedule for such Work, and that is attached hereto as Exhibit A. Contractor shall perform the Work in accordance with the terms and conditions of this Contract.

**III. Consideration**

- A. The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses, is **\$16,000.00**. Agency will not pay Contractor any amount in excess of the not-to-exceed compensation of this Contract for completing the Work, and will not pay for Work performed before the date this Contract becomes effective or after the termination of this Contract. If the maximum compensation is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.
- B. Interim payments to Contractor shall be subject to ORS 293.462, and shall be made in accordance with the payment schedule and requirements in Exhibit A.
- C. Agency will pay only for completed Work that is accepted by Agency.
- D. Contractor shall submit invoices to Agency's Accounts Payable Unit for Work performed. The invoices shall describe all Work performed with particularity and by whom it was performed and shall itemize and explain all expenses that this Contract requires Agency to pay and for which Contractor claims reimbursement. Reference Exhibit A for Payment Provisions.

**IV. Contract Documents**

This Contract consists of the following documents, which are listed in descending order of precedence: this Contract less all exhibits, attached Exhibit A (Statement of Work), Exhibit B (Insurance Requirements), Exhibit C (Independent Contractor Certification Statement) Exhibit D (Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transaction) and Attachment 4 (Price Proposal and Mandatories Certification Form). Exhibits A-D and Attachment 4 are attached hereto and incorporated herein by this reference.

**V. Independent Contractor; Responsibility for Taxes and Withholding**

- A. Contractor shall perform all Work as an independent contractor. The Agency reserves the right (i) to determine and modify the delivery schedule for the Work and (ii) to evaluate the quality of the Work Product; however, the Agency may not and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work.
- B. If Contractor is currently performing work for the State of Oregon or the federal government, Contractor by signature to this Contract, represents and warrants that: Contractor's Work to be performed under this Contract creates no potential or actual conflict of interest as defined by ORS 244 and no statutes, rules or regulations of the state or federal agency for which Contractor currently performs work would prohibit Contractor's Work under this Contract.
- C. Contractor understands and agrees that it is not an "officer", "employee", or "agent" of the Agency, as those terms are used in ORS 30.265.
- D. Contractor shall be responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, Agency will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.

**VI. Subcontracts, Successors, and Assignments**

- A. Contractor shall not enter into any subcontracts for any of the Work required by this Contract without Agency's prior written consent. In addition to any other provisions Agency may require, Contractor shall include in any permitted subcontract under this Contract provisions to ensure that Agency will receive the benefit of subcontractor performance as if the subcontractor were the Contractor with respect to Sections V, VI, VII, IX, X, XI, XIV, XV, XVI, XVIII, and XXIII. Agency's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- B. The provisions of this Contract shall be binding upon and inure to the benefit of the parties, their respective successors, and permitted assigns, if any.
- C. Contractor shall not assign, delegate or transfer any of its rights or obligations under this Contract without Agency's prior written consent.

**VII. No Third Party Beneficiaries**

Agency and Contractor are the only parties to this Contract and are the only parties entitled to enforce the terms of this Contract. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

**VIII. Funds Available and Authorized; Payments**

Contractor shall not be compensated for Work performed under this Contract by any other agency or department of the State of Oregon. Agency certifies that it has sufficient funds currently authorized for expenditure to finance the costs of this Contract within the Agency's current biennial appropriation or limitation. Contractor understands and agrees that Agency's payment of amounts under this Contract is contingent on Agency receiving appropriations, limitations, allotments or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to continue to make payments

under this Contract.

## **IX. Representations and Warranties.**

- A. Contractor represents and warrants to Agency that:
1. Contractor has the power and authority to enter into and perform this Contract;
  2. This Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms;
  3. Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in Contractor's industry, trade or profession;
  4. Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work;
  5. Computer hardware and software delivered under this Contract will, individually and in combination, correctly process, sequence, and calculate all date and date-related data for all dates prior to, through and after January 1, 2000;
  6. Software products delivered under this Contract that process date or date-related data shall recognize, store and transmit date data in a format which explicitly and unambiguously specifies the correct century; and
  7. Contractor prepared its proposal related to this Contract, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty.
- B. Warranties cumulative. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

## **X. Ownership of Work Product.**

- A. Definitions. As used in this Section 10, and elsewhere in this Contract, the following terms have the meanings set forth below:
1. "Contractor Intellectual Property" means any intellectual property owned by Contractor and developed independently from the Work.
  2. "Third Party Intellectual Property" means any intellectual property owned by parties other than Agency or Contractor.
  3. "Work Product" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein that Contractor is required to deliver to Agency pursuant to the Work.
- B. Original Works. All Work Product created by Contractor pursuant to the Work, including derivative works and compilations, and whether or not such Work Product is considered a work made for hire or an employment to invent, shall be the exclusive property of Agency. Agency and Contractor agree that such original works of authorship are "work made for hire" of which Agency is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created pursuant to the Work is not "work made for hire," Contractor hereby irrevocably assigns to Agency any and all of its rights, title, and interest in all original Work Product created pursuant to the Work, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Agency's reasonable request, Contractor shall execute such further documents and instruments necessary to fully vest such rights in Agency. Contractor forever waives any and all rights relating to original Work Product created pursuant to the Work, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

In the event that Work Product created by Contractor under this Contract is a derivative work based on Contractor Intellectual Property, or is a compilation that includes Contractor Intellectual Property, Contractor hereby grants to Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Contractor Intellectual Property employed in the Work Product, and to authorize others to do the same on Agency's behalf.

In the event that Work Product created by Contractor under this Contract is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Contractor shall secure on the Agency's behalf and in the name of the Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Third Party Intellectual Property employed in the Work Product, and to authorize others to do the same on Agency's behalf.

- C. Contractor Intellectual Property. In the event that Work Product is Contractor Intellectual Property Contractor hereby grants to Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Contractor Intellectual Property, and to authorize others to do the same on Agency's behalf.
- D. Third Party Works. In the event that Work Product is Third Party Intellectual Property, Contractor shall secure on the Agency's behalf and in the name of the Agency, an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual

Property, and to authorize others to do the same on Agency's behalf.

## **XI. Indemnity**

- A. GENERAL INDEMNITY. CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY THE STATE OF OREGON AND AGENCY AND THEIR OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER, INCLUDING ATTORNEYS FEES, RESULTING FROM, ARISING OUT OF, OR RELATING TO THE ACTIVITIES OF CONTRACTOR OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS CONTRACT.
- B. INDEMNITY FOR INFRINGEMENT CLAIMS. WITHOUT LIMITING THE GENERALITY OF SECTION 11.a, CONTRACTOR EXPRESSLY AGREES TO DEFEND, INDEMNIFY, AND HOLD AGENCY, THE STATE OF OREGON AND THEIR AGENCIES, SUBDIVISIONS, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES HARMLESS FROM ANY AND ALL CLAIMS, SUITS, ACTIONS, LOSSES, LIABILITIES, COSTS, EXPENSES, INCLUDING ATTORNEYS FEES, AND DAMAGES ARISING OUT OF OR RELATED TO ANY CLAIMS THAT THE WORK, THE WORK PRODUCT OR ANY OTHER TANGIBLE OR INTANGIBLE ITEMS DELIVERED TO AGENCY BY CONTRACTOR THAT MAY BE THE SUBJECT OF PROTECTION UNDER ANY STATE OR FEDERAL INTELLECTUAL PROPERTY LAW OR DOCTRINE, OR THE AGENCY'S USE THEREOF, INFRINGES ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK, TRADE DRESS, MASK WORK, UTILITY DESIGN, OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY; PROVIDED, THAT STATE SHALL PROVIDE CONTRACTOR WITH PROMPT WRITTEN NOTICE OF ANY INFRINGEMENT CLAIM.
- C. CONTROL OF DEFENSE AND SETTLEMENT. CONTRACTOR SHALL HAVE CONTROL OF THE DEFENSE AND SETTLEMENT OF ANY CLAIM THAT IS SUBJECT TO SECTIONS XI.A. OR XI.B.; HOWEVER, NEITHER CONTRACTOR NOR ANY ATTORNEY ENGAGED BY CONTRACTOR SHALL DEFEND THE CLAIM IN THE NAME OF THE STATE OF OREGON OR ANY AGENCY OF THE STATE OF OREGON, NOR PURPORT TO ACT AS LEGAL REPRESENTATIVE OF THE STATE OF OREGON OR ANY OF ITS AGENCIES, WITHOUT FIRST RECEIVING FROM THE OREGON ATTORNEY GENERAL, IN A FORM AND MANNER DETERMINED APPROPRIATE BY THE ATTORNEY GENERAL, AUTHORITY TO ACT AS LEGAL COUNSEL FOR THE STATE OF OREGON, NOR SHALL CONTRACTOR SETTLE ANY CLAIM ON BEHALF OF THE STATE OF OREGON WITHOUT THE APPROVAL OF THE ATTORNEY GENERAL. THE STATE OF OREGON MAY, AT ITS ELECTION AND EXPENSE, ASSUME ITS OWN DEFENSE AND SETTLEMENT IN THE EVENT THAT THE STATE OF OREGON DETERMINES THAT CONTRACTOR IS PROHIBITED FROM DEFENDING THE STATE OF OREGON, OR IS NOT ADEQUATELY DEFENDING THE STATE OF OREGON'S INTERESTS, OR THAT AN IMPORTANT GOVERNMENTAL PRINCIPLE IS AT ISSUE AND THE STATE OF OREGON DESIRES TO ASSUME ITS OWN DEFENSE.

**XII. Insurance.** Contractor shall maintain insurance as set forth in Exhibit B, which is attached hereto.

## **XIII. Default; Remedies; Termination.**

- A. Default by Contractor. Contractor shall be in default under this Contract if:
  1. Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or
  2. Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under the Contract and Contractor has not obtained such license or certificate within 14 calendar days after Agency's notice or such longer period as Agency may specify in such notice; or
  3. Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Contractor's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within 14 calendar days after Agency's notice, or such longer period as Agency may specify in such notice.
- B. Agency's Remedies for Contractor's Default. In the event Contractor is in default under Section XIII, Agency may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, including, but not limited to:
  1. Termination of this Contract under Section XIII;
  2. Withholding all monies due for Work and Work Products that Contractor has failed to deliver within any scheduled completion dates or has performed inadequately or defectively;
  3. Initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief;
  4. Exercise of its right of setoff.

These remedies are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies

singly, collectively, successively or in any order whatsoever. If a court determines that Contractor was not in default under Sections XIII, then Contractor shall be entitled to the same remedies as if this Contract was terminated pursuant to Section XIII.

- C. Default by Agency. Agency shall be in default under this Contract if:
1. Agency fails to pay Contractor any amount pursuant to the terms of this Contract, and Agency fails to cure such failure within thirty (30) calendar days after Contractor's notice or such longer period as Contractor may specify in such notice; or
  2. Agency commits any material breach or default of any covenant, warranty, or obligation under this Contract, and such breach or default is not cured within 30 calendar days after Contractor's notice or such longer period as Contractor may specify in such notice.
- D. Contractor's Remedies for Agency's Default. In the event Agency terminates the Contract under Section XIII, or in the event Agency is in default under Section XIII and whether or not Contractor elects to exercise its right to terminate the Contract under Section XIII, Contractor's sole monetary remedy shall be:
1. With respect to services compensable on an hourly basis, a claim for unpaid invoices, hours worked within any limits set forth in this Contract but not yet billed, authorized expenses incurred and interest within the limits permitted under ORS 293.462, and
  2. With respect to deliverable-based Work, a claim for the sum designated for completing the deliverable multiplied by the percentage of Work completed and accepted by Agency, less previous amounts paid and any claim(s) that Agency has against Contractor. In no event shall Agency be liable to Contractor for any expenses related to termination of this Contract or for anticipated profits. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section XIII, Contractor shall pay immediately any excess to Agency upon written demand provided in accordance with Section XIII.
- E. Termination.
1. Agency's Right to Terminate at its Discretion. At its sole discretion, Agency may terminate this Contract:
    - a. For its convenience upon 30 days' prior written notice by Agency to Contractor;
    - b. Immediately upon written notice if Agency fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for the Work or Work Products; or
    - c. Immediately upon written notice if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the Agency's purchase of the Work or Work Products under this Contract is prohibited or Agency is prohibited from paying for such Work or Work Products from the planned funding source.
  2. Agency's Right to Terminate for Cause. In addition to any other rights and remedies Agency may have under this Contract, Agency may terminate this Contract immediately upon written notice by Agency to Contractor, or at such later date as Agency may establish in such notice, or upon expiration of the time period and with such notice as provided in Section XIII below, upon the occurrence of any of the following events:
    - a. Contractor is in default under Section XIII because Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;
    - b. Contractor is in default under Section XIII because Contractor no longer holds a license or certificate that is required for it to perform services under the Contract and Contractor has not obtained such license or certificate within 14 calendar days after Agency's notice or such longer period as Agency may specify in such notice; or
    - c. Contractor is in default under Section XIII because Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Contractor's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within 14 calendar days after Agency's notice, or such longer period as Agency may specify in such notice.
  3. Contractor's Right to Terminate for Cause. Contractor may terminate this Contract with such written notice to Agency as provided in Sections XIII below, or at such later date as Contractor may establish in such notice, upon the occurrence of the following events:
    - a. Agency is in default under Sections XIII because Agency fails to pay Contractor any amount pursuant to the terms of this Contract, and Agency fails to cure such failure within 30 calendar days after Contractor's notice or such longer period as Contractor may specify in such notice; or
    - b. Agency is in default under Sections XIII because Agency commits any material breach or default of any covenant, warranty, or obligation under this Contract, fails to perform its commitments hereunder within the time specified

or any extension thereof, and Agency fails to cure such failure within 30 calendar days after Contractor's notice or such longer period as Contractor may specify in such notice.

4. Return of Property. Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to Agency all of Agency's property (including without limitation any Work or Work Products for which Agency has made payment in whole or in part) that is in the possession or under the control of Contractor in whatever stage of

development and form of recordation such Agency property is expressed or embodied at that time. Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless Agency expressly directs otherwise in such notice of termination. Upon Agency's request, Contractor shall surrender to anyone Agency designates, all documents, research or objects or other tangible things needed to complete the Work and the Work Products.

**XIV. Records Maintenance; Access.**

Contractor shall maintain all financial records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that Agency and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of Contractor that are pertinent to this Contract, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of 6 years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

**XV. Compliance with Applicable Law**

Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Contract. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract:

- A. Titles VI and VII of the Civil Rights Act of 1964, as amended;
- B. Sections 503 and 504 of the Rehabilitation Act of 1973, as amended;
- C. The Americans with Disabilities Act of 1990, as amended;
- D. Executive Order 11246, as amended;
- E. The Health Insurance Portability and Accountability Act of 1996;
- F. The Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended;
- G. The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended;
- H. ORS Chapter 659, as amended;
- I. All regulations and administrative rules established pursuant to the foregoing laws; and
- J. All other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated. Department's performance under the Contract is conditioned upon Contractor's compliance with the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235, and 279B.270 which are incorporated by reference herein. Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(ee)), recycled PETE products (as defined in ORS 279A.010(ff)), and other recycled products (as "recycled product" is defined in ORS 279A.010(gg)).

**XVI. 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. Contractor shall demonstrate its legal capacity to perform the Work under this Contract in the State of Oregon prior to entering into this Contract.

**XVII. Force Majeure**

Neither Agency 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 the reasonable control of Agency or Contractor, respectively. 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 obligations under this Contract.

**XVIII. Survival**

All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Sections I, VII, VIII, IX, X, XI, XII, XIII, XIV, XVIII, XXIII, and XXIV.

**XIX. Time is of the Essence**

Contractor agrees that time is of the essence under this Contract.

**XX. Notice**

Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by email, personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or

Agency at the address, number or email address set forth in this Contract, or to such other addresses or numbers as either party may indicate pursuant to this Section XXI. Any communication or notice so addressed and mailed shall be effective 5 days after mailing. Any communication or notice delivered by facsimile shall be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours, or on the next business day, if transmission was outside normal business hours of the recipient. To be effective against Agency, any notice transmitted by facsimile must be confirmed by telephone notice to Agency's Contract Administrator. Any communication or notice given by personal delivery shall be effective when actually delivered. Any communication or notice given by email shall be effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system.

**XXI. Severability**

The parties agree that if any term or 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 term or provision held to be invalid.

**XXII. Counterparts**

This Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Contract so executed shall constitute an original.

**XXIII. Governing Law; Venue; Consent to Jurisdiction**

This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between Agency (and/or any other agency or department of the State of Oregon) and 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 a 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. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

**XXIV. Merger Clause; Waiver**

This Contract and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. No waiver, consent, modification or change of terms of this Contract shall bind all parties unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of Agency to enforce any provision of this Contract shall not constitute a waiver by Agency of that or any other provision.

**XXV. Amendments**

Agency may amend this Contract to the extent permitted by applicable statutes and administrative rules. Additionally, for Anticipated Amendments (as defined in OAR 125-246-0560(2)(a)(A)) Agency may amend this Contract to the extent i) provided in the solicitation document, if any, from which this Contract arose, and ii) to the extent described in Exhibit A. No amendment to this Contract shall be effective unless it is in writing signed by the parties, and all approvals required by applicable law have been obtained before becoming effective.

**XXVI. Certifications and Signature of Contractor’s Authorized Representative**

This Contract must be signed in ink by an authorized representative of the Contractor.

The undersigned certifies under penalty of perjury both individually and on behalf of Contractor that:

- A. The undersigned is a duly authorized representative of Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Contract and to execute this Contract on behalf of Contractor;
- B. To the best of the undersigned’s knowledge, Contractor has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts.
- C. Contractor and Contractor’s employees and agents are not included on the list titled “Specially Designated Nationals and Blocked Persons” maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>;
- D. Contractor is bound by and will comply with all requirements, terms and conditions contained in this Contract; and
- E. Contractor \_\_\_ is / \_\_\_ is not a nonresident alien as defined in 26 USC § 7701(b)(1) (check one).

**Contractor**

Federal Tax Number \_\_\_\_\_ Oregon/State Tax Number \_\_\_\_\_

Contractor (print Contractor’s name): \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

By (print name): \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_

Contact Person (Type or Print): \_\_\_\_\_

Contact Telephone Number: (\_\_\_\_\_) \_\_\_\_\_ Contact Fax Number: (\_\_\_\_\_) \_\_\_\_\_

Contact E-Mail Address: \_\_\_\_\_

**XXVII. Signature of State’s Authorized Representative**

State of Oregon acting by and through its Department of Fish and Wildlife

Authorized Signature: \_\_\_\_\_

By (print name): Cameron Smith \_\_\_\_\_ Title: Deputy Director for Administration \_\_\_\_\_

Date: \_\_\_\_\_

**Contract Services:**

Agency Contact Person: Alan Hansen  
 Contact Telephone Number: (503) 947-6134  
 Fax Number: (503) 947-6069  
 E-Mail Address: [alan.s.hansen@state.or.us](mailto:alan.s.hansen@state.or.us)

**SAMPLE CONTRACT**  
**EXHIBIT A**  
**SCOPE OF WORK**

**Part I. General Information**

The State of Oregon acting by and through the Department of Fish and Wildlife, is seeking a contractor to provide an at-sea vessel, vessel operator, and one deckhand for 6-pack boats or 2 deckhands for larger vessels, and rod and reel fishing equipment to assist the Department in conducting hook-and-line fishing surveys. Surveys will entail multiple trips to and from Newport out to the Cape Perpetua Marine Reserve and associated comparison areas, located between Cape Perpetua Marine Reserve and Seal Rock, within 3 nautical miles from shore.

**Part II. Description of work**

Contractor agrees to provide an at-sea research platform (vessel) to perform hook-and-line fishing at various sites near Cape Perpetua Marine Reserve, in depths ranging from approximately 30-120 feet. The departure/return port for all operations is Newport, Oregon. Eight (8) vessel days (day = approximately 8 hours/day) are estimated to be needed for hook-and-line surveys. Fishing effort will be split into two seasonal windows (spring and fall), taking place over four (4) days in spring (i.e., April-June), and four (4) days in fall (i.e., late August-October). Each 4-day effort will be compressed into as short a time-frame as possible, ideally consecutive days as allowable due to weather or logistics. Fishing will occur over hard bottom substrate at a variety of depths.

No fish encountered shall be retained for the purpose of consumption.

This contract extends from April 1, 2018 through December 31, 2018.

The days on which sampling shall take place shall be subject to joint determination by the Department and the Contractor within the following limitations:

- c. Cruise dates shall be set in advance for scheduling purposes, though can be modified as necessary to accommodate modifications such as weather shifts or angler availability.
- d. **Contractor shall identify in their bid the dates during the spring and fall sampling windows that the vessel will not be available for work due to other obligations** (halibut or other special seasons, scheduled maintenance, etc.)

The cruises will be terminated when, as determined by the Department, either:

- d. the scientific objectives of the cruises have been met, or the available funds have been exhausted, or when;
- e. due to equipment failure, inclement weather, lack of available fishing dates within the spring and fall sampling windows or other cause it appears that the scientific objectives cannot be met within a reasonable time frame, or when;
- f. the limit of eight (8) total sampling days has been reached.

For the terms of this agreement, a full fishing day is defined as an 8-hour day, dock-to-dock. For the terms of this agreement, compensable time begins when the vessel leaves port to commence sampling operations, with all scientific and fisher crew and necessary equipment aboard, and ends upon returning to port. If during a cruise inclement weather, equipment failure or other developments make it impossible or unwise to continue fishing operations, the Contractor may elect to terminate the cruise and return to port. Alternatively, ODFW staff and the Contractor may jointly elect to suspend fishing operations and wait for conditions to improve. Time lost due to vessel equipment breakdown or time spent at the dock, such as waiting for the tide, or waiting to unload product or to load ice, fuel, vessel supplies or crew, is not compensable under this agreement.

Captain will ensure that the vessel is fishing in the prescribed 500m by 500m fishing cell selected by ODFW lead scientist aboard and is not outside the cell boundaries nor outside the marine reserve or comparison area being fished. Up to 6-7 cells will be fished in a single day. Within each of the cells, the captain will choose three discrete drifts to fish. Drifts may be repeated if necessary to achieve the three drifts of approximately 15 minutes each within a given cell. Captain will inform the scientific crew of the depth and drift speed at the beginning of each drift. Captain will give clear warning for anglers to prepare to make a drift, and indicate when to begin fishing once they have the boat in position. Captain will control drift speed to the extent possible, using a sea-anchor if the vessel is so

equipped.

Crew members/deckhand responsibilities: Rig fishing rods with appropriate terminal gear as supplied by ODFW. If a volunteer brings their own rod, make sure it also is rigged with ODFW-supplied gear. When an angler hangs up, hand them a new rod and re-rig the one with broken-off gear. Refill fish-holding tote with seawater and wash buckets down when necessary. Help anglers de-hook fish and bring them to the measuring station. Handle all fish carefully and securely, no throwing fish. Notify scientific crew of floaters. If possible, retrieve with net. Assist with recompressing fish with descending devices. After survey work is finished, remove terminal gear from rods.

The Contractor hereby assumes full responsibility for the operation, repair, and maintenance of the boat and other equipment furnished by him/her. The Contractor agrees to provide all fuel and operating supplies and equipment. The Department shall not control the means or manner of the operation of the vessel except to specify sampling locations, but shall rely on the skills, knowledge and guidance of the Contractor.

The Contractor agrees to provide an Operator that has knowledge of:

- 4) Safe vessel operation,
- 5) Appropriate fishing gear and fishing locations
- 6) Weather and its effects.

Contractor agrees to provide certifications of all required insurance, mechanical inspections, operator license, US Coast Guard inspection and boater safety cards. The Contractor agrees to provide all fuel and operating supplies and equipment. The Contractor hereby assumes full responsibility for the operation, repair, and maintenance of the boat and other equipment furnished by him/her. The Department shall not control the means or manner of the operation of the vessel except to specify sampling locations, but shall rely on the skills, knowledge and guidance of the Contractor. The Contractor agrees to cooperate with the Department in collecting GPS location information at each sample site so that the Agency may return to each site later to repeat hook and line sampling in the same area.

### **Part III. Work; Acceptance Criteria; Deliverables and Delivery Schedule**

The Contract will be valid from April 1, 2018 through December 31, 2018.

The contractor, and captain if different, will be required to attend a pre-season meeting (approx. 1 hour) with ODFW Marine Reserves staff to become familiar with the survey being performed, the locations to be fished, and the desired goals of the survey, at an agreed-upon place and time.

The Contractor must have knowledge of hook-and-line fishing for bottom fish species, and have the ability to exercise sound judgment in conducting safe, efficient and effective vessel operations. The captain must have previous knowledge of the Cape Perpetua area, and specific fishing locations within that area.

Vessel is adequate in size for a minimum of five (5) anglers and up to 10 anglers, one or two deckhands, and two ODFW data collectors. Vessel must be equipped with functional standard navigation, communication and safety equipment including life raft, EPIRB, GPS chart plotter, video sounder, VHF radio, radar, running lights, fire extinguishers, immersion suits for operator and any crew, etc. ODFW will provide immersion suits for Department staff. The Contractor agrees to provide a safety orientation/training to staff and volunteers. Vessel will have a rail area suitable for attaching a floating release pen, and a structure above the cabin suitable for attaching a research flag.

Contractor supplies fishing rods and reels suitable for groundfishing, with enough good-quality line to reach bottom on all drifts (max depth 30 fathoms). Volunteers shall be allowed to use their own gear if they bring it with them on the trip. Contractor supplies 2 heavy rods for fish recompression devices. ODFW supplies all terminal gear and leader material.

The crew (captain and deckhand) will fulfill responsibilities listed in the Scope of Work.

### **Part IV. Payment Provisions**

Contractor agrees to provide an at-sea vessel, vessel operator, one or two deckhands, and rod and reel fishing equipment to assist the Department in conducting Hook-and-Line fishing surveys at a rate of \$xx.xx. Payment for all Work performed under this Contract shall be subject to the provisions of ORS 293.462 and shall not exceed the total maximum sum of **\$16,000.00**.

Contractor must submit itemized invoices to the agency for reimbursement of services performed, noting the project, the Agency's agreement number that is being performed, and the Agency's Contract Administrator, **Cristen Don to: Accounts Payable Unit**, Department of Fish and Wildlife, 4034 Fairview Industrial Drive SE, Salem, Oregon 97302.

Notwithstanding any other term of this Contract, the Agency will not make any payment to the Contractor until the Department's Contract Administrator has approved the invoice of expenditures. Payment to the Contractor will be made within 45 days following approval of the invoice of expenditures. If there are problems with the invoice submitted by the Contractor, the Department's Contract Administrator will notify the Contractor about those concerns.

**Part VI. Travel and Other Expenses**

All travel and other expenses are the contractor's responsibility.

**Part VII. Contract Amendments**

The initial term of the Contract shall be from the Contract's Effective Date through December 31, 2018. The Contract may be amended to delete services or to add any services that are within the scope of services in Exhibit A, Statement of Work. The terms of the Contract shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written amendment signed by all parties and for which all necessary State of Oregon approvals have been obtained.

## **EXHIBIT B**

### **Insurance Requirements**

During the term of this Contract Contractor shall maintain in force at its own expense, each type of insurance noted below:

#### **Workers' Compensation Required by Agency**

All employers, including Contractor, and, the sub-contractors, if any, providing Services, labor or materials under this Contract in the State of Oregon, shall comply with ORS 656.017 and provide the required workers' compensation coverage, unless such employers are exempt under ORS 656.126(2). Contractor shall require and ensure that each of its sub-Contractors complies with these requirements.

#### **Commercial General Liability Not Required by Agency**

Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to the State. This insurance shall include personal injury liability, products, and completed operations. Coverage shall be written on an occurrence basis. Contractor shall provide proof of insurance of not less than the following amounts as determined by the Agency:

Per occurrence limit for any single claimant:	\$2,048,300
Per occurrence limit for any number of claimants:	\$4,096,600

#### **Automobile Liability Not Required by Agency**

Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Contractor shall provide proof of insurance of not less than the amounts as determined by the Agency.

#### **Bodily Injury**

Per occurrence limit for any single claimant:	\$2,048,300
Per occurrence limit for any number of claimants:	\$4,096,600

#### **Property Damage**

Per occurrence limit for any single claimant:	\$112,000
Per occurrence limit for any number of claimants:	\$560,000

#### **Marine Protection and Indemnity Required by Agency**

Marine Protection and Indemnity Coverage. Contractor shall obtain, at contractor's expense, and keep in effect during the term of this contract, Marine Protection and Indemnity coverage.

Per occurrence limit for any single claimant:	\$1,000,000
Per occurrence limit for any number of claimants:	\$2,000,000

#### **Additional Insured**

The Commercial General Liability, Automobile Liability, and Aircraft Liability insurance coverages required under this Contract shall include the State of Oregon, and its agencies, departments, divisions, commissions, branches, officers, employees, and agents as Additional Insureds but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

#### **Notice of Cancellation or Change**

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days written notice from the Contractor or its insurer(s) to the Department of Fish & Wildlife.

#### **Certificates of Insurance**

As evidence of the insurance coverage required by this Contract, the Contractor shall furnish certificate(s) of insurance to the Oregon Department of Fish and Wildlife prior to its issuance of a Notice to Proceed. The certificate(s) will specify all of the parties who are Additional Insured's or Loss Payees. Insurance coverage required under this Contract shall be obtained from insurance companies or entities acceptable to Contractor and authorized to do business in Oregon. The certificates will also specify that there shall be no cancellation, material change, potential exhaustion of aggregate limits or intent not to renew insurance coverage's without thirty (30) Days' written notice from the insurer(s) to the Contractor.

## EXHIBIT C CERTIFICATION STATEMENT FOR AN INDEPENDENT CONTRACTOR

Contractor shall complete either Part A or Part B

**Part A. CONTRACTOR IS A CORPORATION**

The Contractor is a corporation authorized to do business in the State of Oregon.

Contractor Signature \_\_\_\_\_ Date \_\_\_\_\_

**Part B. CONTRACTOR IS AN INDEPENDENT CONTRACTOR**

(Used when the Contractor is an Independent Contractor or is a professional corporation and meets the following standards)

- 1) I am licensed under ORS chapter 701 to provide labor or services for which such registration is required.
- 2) I have filed federal and state income tax returns in the name of my business or a business Schedule C as part of the personal income tax return, for the previous year, or expect to file federal and state income tax returns, for labor or services performed as an independent contractor in the previous year.
- 3) I will furnish the tools or equipment necessary for the contracted labor or services.
- 4) I have the authority to hire and fire employees who perform the labor or services.
- 5) I represent to the public that the labor or services are to be provided by my independently established business as four (4) or more of the following circumstances exist.

**(Please check four or more of the following:)**

- The labor or services are primarily carried out at a location that is separate from my residence or is primarily carried out in a specific portion of my residence which is set aside as the location of the business.
- Commercial advertising or business cards are purchased for the business, or I have a trade association membership;
- Telephone listing is used for the business that is separate from the personal residence listing.
- Labor or services are performed only pursuant to written contracts.
- Labor or services are performed for two or more different persons within a period of one year.
- I assume financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

Contractor Signature \_\_\_\_\_ Date \_\_\_\_\_

**(Agency completes Part C below when Independent Contractor completes Part B above.)**

**Part C. AGENCY APPROVAL.** (Agency's certification is solely for the State's benefit and internal use.)

ORS. 670.600. Independent Contractor Standards. As used in various provisions of ORS chapters 316, 656, 657 and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an "independent contractor" if the standards of this section are met. State agency certifies the contracted work meets the following standards:

- 1) The Contractor is free from direction and control over the means and manner of providing the labor or services, subject only to the specifications of the desired results.
- 2) The Contractor is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local ordinances.
- 3) The Contractor furnishes the tools or equipment necessary for the contracted labor or services.
- 4) The Contractor has the authority to hire and fire employees to perform the labor or services.
- 5) Payment to the Contractor is made upon completion of the performance or is made on the basis of periodic progress payments as outlined in Exhibit A.

Agency Signature \_\_\_\_\_ Date \_\_\_\_\_

**EXHIBIT D**  
**Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion**  
**Lower Tier Covered Transaction**

This certification is required by the regulations implementing Executive Order 12549, "Debarment and Suspension", and 2 CFR Part 180 or 48 CFR 52.209-6.

By signing and submitting this form, the prospective lower tier participant is providing the certification set out below.

- (1) The prospective lower tier participant certifies, by submission of this form, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- (3) The prospective lower tier participant shall provide immediate written notice to the person to which this form is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (4) The prospective lower tier participant agrees by submitting this form that, should the proposed transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- (5) The prospective lower tier participant further agrees by submitting this form that it will include the clause titled "Debarment and Suspension," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- (6) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this form.

\_\_\_\_\_  
Full Organization Name

\_\_\_\_\_  
Name and Title of Authorized Representative

\_\_\_\_\_  
Signature Date

ODFW Agreement Number: \_\_\_\_\_

**EXHIBIT D**  
**Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion**  
**Lower Tier Covered Transaction**

**Instructions for Certification**

- (1) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this form is submitted for assistance in obtaining a copy of those regulations.
- (2) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (<http://epls.gov>).
- (3) Nothing contained in the foregoing shall be constructed to require establishment of a system of records in order to render in good faith the certification required by the clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.