

STATE OF OREGON



COVER PAGE

Oregon Department of Fish and Wildlife

HOOK-AND-LINE SURVEYS FOR CAPE PERPETUA MARINE RESERVE

Intermediate Request for Proposal (RFP)

ODFW-2338-20

Date of Issue: March 5, 2020

Closing Date: March 24, 2020

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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, (“Agency” or “ODFW”), is issuing this Request for Proposal seeking a contractor to provide an at-sea vessel, vessel operator, deckhands (1 deckhand for a 6 pack boat or 2 deckhands for a larger vessel), and rod and reel fishing equipment to assist ODFW in conducting hook-and-line fishing surveys. These surveys are a part of ODFW’s scientific monitoring of Oregon’s marine reserve sites. Surveys entail multiple trips to and from Newport out to the Cape Perpetua Marine Reserve and associated comparison areas, spanning between Seal Rock and Heceta Head, within 3 nautical miles from shore.

ODFW anticipates the award of one Contract from this RFP. The initial term of the Contract is anticipated to be nine (9) months extending from April 1, 2020 through December 31, 2020 and entails 8 days of fishing; four (4) days in the spring (i.e., April-June), and four (4) days in fall (i.e., late August-October). ODFW 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 within the scope of this RFP to be provided by the Contractor.

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. N/A denotes that event is not applicable to this solicitation.

Event	Date	Time
Questions / Requests for Clarification Due	March 17, 2020	3:00 PM
Closing (Proposal Due)	March 24, 2020	3:00 PM
Issuance of Notice of Award (approx.)	March 26, 2020	

1.3 SINGLE POINT OF CONTACT (SPC)

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

SECTION 2: AUTHORITY, OVERVIEW, AND SCOPE

2.1 AUTHORITY AND METHOD

Agency is issuing this solicitation pursuant to its authority under ORS496.146 (11).

Agency is using the solicitation method, pursuant to ORS 279B.070 and OAR 137-047.0270.

2.2 DEFINITION OF TERMS

For the purposes of this solicitation, capitalized words will refer to the following definitions.

2.2.1 General Definitions

Capitalized terms not specifically defined in this document are defined in OAR 137-046-0110.

2.3 OVERVIEW

2.3.1 Agency Overview and Background

The Oregon Department of Fish and Wildlife (ODFW) is responsible for managing Oregon's fish and wildlife resources. As part of the ODFW, the Marine Resources Program (MRP) works with Oregonians to sustain ocean and estuary resources by: 1. Building understanding about fish, wildlife, and their habitats as well as peoples' connections to them; 2. Conducting work that benefits Oregon's marine species, ecosystems, and people; and 3. Taking actions that ensure resources and opportunities for use and enjoyment for today and into the future.

2.3.2 Project Overview and Background

ODFW is the lead agency responsible for managing and scientifically monitoring five marine reserve sites that are located in the ocean off the Oregon coast. Long term monitoring of the sites includes conducting hook and line fishing surveys in rocky reef areas to collect data on fish species, growth, and relative abundance.

2.3.3 Purpose

Offeror agrees to provide an at-sea vessel, vessel operator, deckhands (1 deckhand for a 6-pack boat or 2 deckhands for a larger vessel), and rod and reel fishing equipment to assist the Agency in conducting hook-and-line fishing surveys. These surveys are a part of ODFW's scientific monitoring of Oregon's marine reserve sites. Surveys entail multiple trips to and from Newport out to the Cape Perpetua Marine Reserve and associated comparison areas, spanning between Seal Rock and Heceta Head, within 3 nautical miles from shore.

2.4 SCOPE OF WORK

Offeror 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 timeframe 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, 2020 through December 31, 2020.

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

- a. Cruise dates shall be set in advance for scheduling purposes, though may be changed as necessary to accommodate modifications such as weather shifts or angler availability.
- b. **Offeror shall identify in their response 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 one of the following goals is achieved, and will be determined solely by ODFW:

- a. The scientific objectives of the cruises have been met, or the available funds have been exhausted, or;
- 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;
- 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. 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 Offeror may elect to terminate the cruise and return to port. Alternatively, ODFW staff and the Offeror 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, waiting to unload product, or to load ice, fuel, vessel supplies or crew, is not compensable under this agreement.

Captain responsibilities: Captain will ensure that the vessel is fishing in the prescribed 500m by 500m fishing cell selected by ODFW lead scientist aboard, 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: Crew will rig fishing rods with appropriate terminal gear as supplied by ODFW. If a volunteer brings their own rod, crew will make sure it also is rigged with ODFW supplied gear. When an angler hangs up, crew will hand them a new rod and re-rig the one with broken off gear. They shall refill fish holding tote with seawater and wash buckets down when necessary, help anglers de-hook fish and bring them to the measuring station, and handle all fish carefully and securely, no throwing fish. Crew will notify scientific crew of floaters. If possible, they will retrieve with net. Crew will assist with recompressing fish with descending devices. After survey work is finished, crew will remove terminal gear from rods.

The Offeror will assume full responsibility for the operation, repair, and maintenance of the boat and other equipment they have furnished. The Offeror agrees to provide all fuel and operating supplies and equipment. ODFW 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 Offeror.

The Offeror 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.

Offeror agrees to provide certifications of all required insurance, mechanical inspections, operator license, US Coast Guard inspection, and boater safety cards. The Offeror agrees to cooperate with ODFW in collecting GPS location information at each sample site so that ODFW may return to each site later to repeat hook and line sampling in the same area.

The Offeror agrees to provide all fuel and operating supplies and equipment. The Offeror hereby assumes full responsibility for the operation, repair, and maintenance of the boat and other equipment furnished by Offeror. ODFW 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 Offeror.

SECTION 3: PROCUREMENT REQUIREMENTS AND EVALUATION

3.1 MINIMUM OFFEROR REQUIREMENTS

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

The Successful Offeror, and captain if different, will be required to attend a preseason 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 Offeror 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 must be 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 have all USCG required safety equipment onboard and be in good working order. 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, and immersion suits for operator and any crew, etc. ODFW will provide immersion suits for ODFW staff. The Offeror 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.

Offeror will supply 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. Offeror will supply 2 heavy rods for fish recompression devices. ODFW will supply all terminal gear and leader material.

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

3.1.1 Project Team Qualifications and Experience (Attachment H)

Using Attachment H, demonstrate Offeror's team qualifications and experience relating to the requested Services. Response should address the following:

- Vessel description
- Captain experience
- Crew experience

3.1.2 Project Approach and Availability(Attachment H)

Demonstrate Offeror'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 Work. Response should include the proposed schedule for delivery and the approach to be utilized when addressing key issues of the project.

3.1.3 Offeror Qualifications and References (Attachment D)

Offerors must have a minimum of 3 years of professional experience performing services comparable to those required under a resulting contract.

Offerors 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. References will be evaluated on a Pass/Fail basis. References must verify Offeror experience successfully providing similar work, meeting required timelines, and completing within budget.

In addition, Key Person Requirements include:

Captain: Contractor must provide a vessel captain with a minimum of 3 years of professional experience providing goods and/or performing services comparable to those required under this contract.

Crew members/deckhands: Contractor must provide deckhands (1 deckhand for a 6-pack boat or 2 deckhands for a larger vessel) capable of fulfilling the responsibilities in the Scope of Work.

3.2 MINIMUM SUBMISSION REQUIREMENTS

3.2.1 Offer Format and Quantity

Offer should follow the format and reference the sections listed in the Offer Content Requirements section. Responses to each section and subsection should be labeled to indicate the item being addressed. Offer must describe in detail how requirements of this solicitation will be met and may provide additional related information. Cost information must be submitted as a separate file.

3.2.2 Authorized Representative

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

3.3 PROCUREMENT PROCESS

3.3.1 Public Notice

The solicitation, including all Addenda and attachments, is published in the Oregon Procurement Information Network (ORPIN) at <http://orpin.oregon.gov>.

Agency shall advertise all Addenda on ORPIN. Prospective Offeror is solely responsible for checking ORPIN to determine whether or not any Addenda have been issued. Addenda are incorporated into the solicitation by this reference.

3.3.2 Questions / Requests for Clarification

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

- Be submitted in writing via mail, fax, or email to the SPC
- Reference the RFP number
- Identify Offeror's name and contact information
- Be sent by an authorized representative
- Refer to the specific area of the solicitation 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 Offer Conference

A pre-Proposal conference will not be held for this solicitation.

3.3.4 Offer Submission

Offeror is solely responsible for ensuring its Offer is received by the SPC in accordance with the solicitation 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. Offer submitted by any means not authorized may be rejected. The following delivery options are permitted for this RFP:

3.3.4.1 Submission through Mail or Parcel Carrier

An Offer may be submitted through the mail or via parcel carrier, and must be clearly labeled and submitted in a sealed envelope, package or box. The outside of the sealed submission must clearly identify the Offeror's name and the RFP number and title. It must be sent to the attention of the SPC at the address listed on the Cover Page.

3.3.4.2 Submission in Person

An Offer may be hand delivered, and must be clearly labeled and submitted in a sealed envelope, package or box. A Proposal will be accepted, prior to Closing, during Agency's normal Monday – Friday business hours of 8:00 a.m. to 5 p.m. Pacific Time, except during State of Oregon holidays and other times when Agency is closed. The outside of the sealed submission must clearly identify the Offeror's name and the RFP number and title. It must be delivered to the attention of the SPC at the address listed on the Cover Page.

3.3.4.3 Submission via Email or Facsimile

An Offer may be submitted via email as an attachment or via facsimile (Fax). It must be emailed to the SPC at ODFW.Bids@state.or.us or faxed to the fax number listed on the Cover Page. The Subject line or cover sheet must reference the RFP number and title.

3.3.5 Modification or Withdrawal of Proposals

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

If an Offeror wishes to withdraw a submitted Offer, it shall do so prior to Closing. The Offeror shall submit a Written notice Signed by an authorized representative of its intent to withdraw its Offer in accordance with OAR 137-047-0440. The notice must include the RFP number and be submitted to the SPC.

3.3.6 Offer Due Date

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

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

3.3.7 Offer Rejection

Agency may reject an Offer for any of the following reasons:

- Offeror fails to substantially comply with all prescribed solicitation procedures and requirements, including but not limited to the requirement that Offeror's authorized representative sign the Offer in ink.
- Offeror fails to meet the responsibility requirements of ORS 279B.110.
- Offeror makes any contact regarding this solicitation with State representatives such as State employees or officials other than the SPC or those the SPC authorizes, or inappropriate contact with the SPC.

- Offeror attempts to inappropriately influence a member of the Evaluation Committee.
- Offer 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.

3.3.8 Opening of Offers

There will be no public Opening of Offers. Offers received will not be available for inspection until after the evaluation process has been completed and the Notice Award is issued. However, Agency will record and make available the identity of all Offerors after Opening.

3.4 OFFER CONTENT REQUIREMENTS

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

3.4.1 Offer Information and Certification Sheet

The Offeror shall complete and submit the Offeror Information and Certification Sheet (Attachment C).

3.4.2 The Offeror shall complete and submit the Offeror Qualification and Reference Form (Attachment D).

References will be evaluated on a Pass/Fail basis. References must verify Offeror experience successfully providing similar work, meeting required timelines, and completing within budget.

Provide at least 3 references from current or former client firms for similar projects performed for any clients within the last 5 years. References must verify Offeror experience successfully providing similar work, meeting required timelines, and completing within budget. References will be evaluated on a Pass/Fail basis.

3.4.3 COBID Certification/Outreach Plan

The Offeror shall complete and submit a COBID Certification/Outreach Plan (Attachment F).

3.4.4 Costs

Submit a detailed Price Cost Form (Attachment E) stating the price for services requested, to include all required material, equipment, labor, and performance of all Work, in a lump sum and detailing unit price per day.

3.4.5 Public Record/Confidential or Proprietary Information

All Offers are public record and are subject to public inspection after Agency issues the Notice of the Intent to Award. If an Offeror believes that any portion of its Offer contains any information that is a trade secret under ORS Chapter 192.345(2) or otherwise is exempt from disclosure under the Oregon Public Records Law (ORS 192.311 through 192.478), Offeror shall complete and submit the Disclosure Exemption Affidavit (Attachment B) and a fully redacted version of its Offer.

Offeror is cautioned that cost information generally is not considered a trade secret under Oregon Public Records Law (ORS 192.311 through 192.478) and identifying the Offer, in whole, as exempt from disclosure is not acceptable. Agency advises each Offeror to consult with its own legal counsel regarding disclosure issues.

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

3.5 EVALUATION PROCESS

3.5.1 Responsiveness and Responsibility Determination

Offers received prior to Closing will be reviewed for Responsiveness to all solicitation requirements including compliance with Minimum Requirements section and Offer Content Requirements section. If the Offer is unclear, the SPC may request clarification from Offeror. However, clarifications may not be used to rehabilitate a non-Responsive Offer. If the SPC finds the Offer non-Responsive, the Offer may be rejected, however, Agency may waive mistakes in accordance with OAR 137-047-0470.

Agency will determine if an apparent successful Offeror is Responsible after award and prior to execution of the Contract. Selected Offeror shall submit a signed Responsibility Inquiry form (Attachment G) within 5 business days of receipt of Intent to Award notice.

At any time prior to award, Agency may reject an Offeror found to be not Responsible.

3.5.2 Evaluation Criteria

Offers meeting the requirements outlined in the Offer Content Requirements section will be evaluated by an Evaluation Committee. Evaluators will assign a score of 0 to 10 for each evaluation criterion listed below in this section.

SPC may request further clarification to assist the Evaluation Committee in gaining additional understanding of Offers. A response to a clarification request must be to clarify or explain portions of the already submitted Offer and may not contain new information not included in the original Offer.

SCORE	EXPLANATION
10	OUTSTANDING - Response meets all the requirements and has demonstrated in a clear and concise manner a thorough knowledge and understanding of the subject matter and project. The Offeror provides insight into its expertise, knowledge, and understanding of the subject matter.
6 - 9	VERY GOOD – Response provides useful information, while showing experience and knowledge within the category. Response demonstrates above average knowledge and ability with no apparent deficiencies noted.
5	ADEQUATE – Response meets all requirements in an adequate manner. Response demonstrates an ability to comply with guidelines, parameters, and requirements with no additional information put forth by the Offeror.
1 - 4	FAIR – Offeror meets minimum requirements, but does not demonstrate sufficient knowledge of the subject matter.
0	RESPONSE OF NO VALUE – An unacceptable response that does not meet the requirements set forth in the solicitation. Offeror has not demonstrated knowledge of the subject matter.

3.5.2.1 Vessel Specifications: Captain and Crew Experience

- How well does the vessel meet the needs of the project?
- How well does the vessel cabin meet the needs of the project?
- How well does the vessel captain’s experience meet the needs of the project?
- Does the captain have experience with similar projects?
- How well do the deckhand’s qualifications meet the needs of the project?
- Does the crew/deckhand have experience with similar projects?

3.5.2.2 Project Approach and Availability

- How well does the project approach meet the needs to complete the fieldwork in the allotted timeframe?
- Does the vessel, captain, and crew have sufficient availability to conduct the work?

3.6 PRICE EVALUATION

The SPC will conduct the price evaluation. The SPC will award a price score to each Price Proposal based upon the percentage of the proposed price as compared to the lowest Offeror’s price using the following formula:

$$\frac{\text{lowest price of all Offerors}}{\text{price being scored}} \times \text{price points possible} = \text{price score}$$

3.7 NEXT STEP DETERMINATION

Agency may conduct additional rounds of competition if in the best interest of the State. Additional rounds of competition may consist of, but will not be limited to:

- Establishing a Competitive Range
- Presentations/Demonstrations/Additional Submittal Items
- Interviews
- Best and Final Offers

If Agency elects to conduct additional round(s), Agency shall provide written notice to all Offerors describing the next step. At any time, Agency may dispense with the selected additional round and: (1) issue a Notice of Intent to Award to the highest ranking Responsible Offeror; or (2) elect to conduct an alternative round of competition; or (3) cancel the solicitation.

3.8 PREFERENCES

3.8.1 Recycled Materials

In comparing Goods from two or more Offerors, if at least one Offeror offers Goods manufactured with Recycled Materials, and at least 1 Offeror does not, Agency will select the Offeror offering Goods manufactured from Recycled Materials if each of the conditions specified in ORS 279A.125 (2) exists following any adjustments made to the price of the Goods according to any applicable reciprocal preference.

3.8.2 Tiebreakers

Oregon Supplies: If Agency receives Offers identical in price, fitness, availability and quality and chooses to award a Contract, Agency shall award the Contract in accordance with the procedures outlined in OAR 137-046-0300.

3.9 POINT AND SCORE CALCULATIONS

Scores are the values (0 through 10) assigned by each evaluator.

The SPC will average all scores for each evaluation criterion. The average score will be used as a percentage multiplier of the maximum possible points for that criterion. 1=10%, 5=50%, 9=90%, etc.

Price points are calculated as stated in the Price Evaluation section. Total points possible are as follows:

TOTAL POINTS POSSIBLE :		100
POINTS POSSIBLE		
3.1.1	Vessel Specifications – Captain and Crew Experience	35
3.1.2	Project Approach and Availability	35
3.4.4	Price Points Possible	30
3.1.3	Offeror Qualifications and References – Pass or Fail (Attachment D)	NA

EXAMPLE:

Offeror A receives scores of 10, 9, and 8 for a criterion worth 50 points. The SPC averages 10, 9, and 8 for a score of 9. 9 is used as a 90% multiplier to the possible points of 50. 50 multiplied by 90% is 45. Offeror A’s points for the criterion is 45.

3.10 RANKING OF OFFERORS

The SPC will total the final average score (calculated by totaling the points awarded by each Evaluation Committee member and dividing by the number of members), together with references, and final price. After each applicable preference has been applied, SPC will determine rank order for each respective Offer and Offeror, with the highest score receiving the highest rank, and successive rank order determined by the next highest score.

SECTION 4: AWARD AND NEGOTIATION

4.1 AWARD NOTIFICATION PROCESS

4.1.1 Award Consideration

Agency, if it awards a Contract, shall award a Contract to the highest ranking Responsible Offeror(s) based upon the scoring methodology and process described in Section 3. Agency may award less than the full Scope defined in this solicitation.

4.1.2 Notice of Award

Agency will notify all Offerors in Writing that Agency is awarding a Contract to the selected Offeror(s) subject to successful negotiation of any negotiable provisions.

4.2 SUCCESSFUL OFFEROR SUBMISSION REQUIREMENTS

4.2.1 Insurance

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

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

4.2.2 Taxpayer Identification Number

The apparent successful Offeror 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 Offeror 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.

4.2.3 Business Registry

If selected for award, Offeror shall be duly authorized by the State of Oregon to transact business in the State of Oregon before executing the Contract. The selected Offeror 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>.

4.3 CONTRACT NEGOTIATION

4.3.1 Negotiation

By submitting an Offer, Offeror agrees to comply with the requirements of the solicitation, including the terms and conditions of the Sample Contract (Attachment A), with the exception of those terms reserved for negotiation. Offeror shall review the attached Sample Contract and note exceptions. Unless Offeror notes exceptions in its Offer, the State intends to enter into a Contract with the successful Offeror substantially in the form set forth in Sample Contract (Attachment A). It may be possible to negotiate some provisions of the final Contract; however, many provisions cannot be changed. Offeror is cautioned that the State of Oregon believes modifications to the standard

provisions constitute increased risk and increased cost to the State. Therefore, Agency will consider the Scope of requested exceptions in the evaluation of Offers.

Any Offer that is conditioned upon Agency's acceptance of any other terms and conditions may be rejected. Any subsequent negotiated changes are subject to prior approval of the Oregon Department of Justice.

All items, except those listed below, may be negotiated between Agency and the apparent successful Offeror in compliance with Oregon State laws:

- Choice of law
- Choice of venue
- Constitutional requirements
- All applicable Federal and State requirements

In the event that the parties have not reached mutually agreeable terms within 10 calendar days, Agency may terminate Negotiations and commence Negotiations with the next highest ranking Offeror.

SECTION 5: ADDITIONAL INFORMATION

5.1 CERTIFIED FIRM PARTICIPATION

Pursuant to Oregon Revised Statute (ORS) Chapter 200, Agency encourages the participation of small businesses, certified by the Oregon Certification Office for Business Inclusion and Diversity ("COBID") in all contracting opportunities. This includes certified small businesses in the following categories: disadvantaged business enterprise, minority-owned business, woman-owned business, a business that a service-disabled veteran owns or an emerging small business. Agency also encourages joint ventures or subcontracting with certified small business enterprises. For more information, visit:

<https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp?XID=6787&TN=oregon4biz>

If the Contract has potential subcontracting opportunities, the successful Offeror may be required to submit a completed Certified Disadvantaged Business Outreach Plan (Attachment F) prior to execution.

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 Offers submitted in response to this RFP become the Property of Agency. By submitting an Offer in response to this RFP, Offeror 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 Offer solely for the purpose of evaluating the Offer, negotiating an Agreement, if awarded to Offeror, or as otherwise needed to administer the RFP process, and to fulfill obligations under Oregon Public Records Law (ORS 192.311 through 192.478). Offers, including supporting materials, will not be returned to Offeror unless the Offer is submitted late.

5.4 CANCELLATION OF RFP; REJECTION OF OFFERS; NO DAMAGES.

Pursuant to ORS 279B.100, Agency may reject any or all Offers in whole or in part, or may cancel this solicitation 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 Offeror for any loss or expense caused by or resulting from the delay, suspension, or cancellation of the solicitation, award, or rejection of any Offer.

5.5 COST OF SUBMITTING A PROPOSAL

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

5.6 STATEWIDE E-WASTE/RECOVERY PROCEDURE

If applicable, Offeror shall include information in its Offer that demonstrates compliance with the Statewide E-Waste/Recovery Procedure 107-011-050_PR. Download the procedure by visiting www.oregon.gov/DAS, then enter the procedure number into the search bar, and find the procedure in the search results window.

5.7 RECYCLABLE PRODUCTS

Offeror 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)

SECTION 6: LIST OF ATTACHMENTS

ATTACHMENT A SAMPLE CONTRACT

ATTACHMENT B DISCLOSURE EXEMPTION AFFIDAVIT

ODFW-2338-20 Hook-and-Line Surveys for Cape Perpetua Marine Reserve

ATTACHMENT C	OFFEROR INFORMATION AND CERTIFICATION SHEET
ATTACHMENT D	OFFEROR QUALIFICATION AND REFERENCES
ATTACHMENT E	PRICE COST FORM
ATTACHMENT F	COBID CERTIFICATION / OUTREACH PLAN
ATTACHMENT G	RESPONSIBILITY INQUIRY
ATTACHMENT H	SCORED PROPOSAL COMPONENTS FORM

ATTACHMENT A – SAMPLE CONTRACT

State of Oregon

Contract for Services

This Contract for Services (this “Contract”) is by and between the State of Oregon, acting through its Oregon Department of Fish and Wildlife (“Agency” or “ODFW”) and _____, a [_____] [doing business as ____] (“Contractor”) and is effective as of the Effective Date.

Contractor’s Contract Administrator
for this Contract is:

Agency's Contract Administrator for this
Contract is:

Name and Title
**Address
**City, State ZIP
Phone: (xxx) xxx-xxxx
Fax: (xxx) xxx-xxxx
anyname@yahoo.com

Cristen Don, ODFW Marine Reserves
Program Leader
Oregon Department of Fish and Wildlife
2040 SE Marine Science Drive
Newport, Oregon 97365
Phone: (541) 867-7701 x228
cristen.n.don@state.or.us

Either party may change its Contract Administrator by providing the other notice in compliance with Section 17.6 of this Contract.

1. Contract Term.

The “Effective Date” of this Contract is the later of (i) April 1, 2020 or (ii) the date this Contract has been fully executed by each party and, approved as required by applicable law. Unless extended or terminated earlier in accordance with its terms, this Contract terminates on December 31, 2020. The termination of this Contract will not extinguish or prejudice Agency’s right to enforce this Contract with respect to any default by Contractor that has not been cured.

2. Contract Documents. This Contract consists of the following documents, which are listed in descending order of precedence:

- 2.1. this Contract less all exhibits;
- 2.2. Exhibit D, (Federal Terms and Conditions);
- 2.3. Exhibit C (Special Terms and Conditions);
- 2.4. Exhibit A (Statement of Work);
- 2.5. Exhibit B (Required Insurance), and
- 2.6. Exhibit E (Independent Contractor Certification)

The foregoing documents and Exhibits are attached hereto and made a part of the Contract by this reference.

3. Services.

- 3.1. Performance of Services.** Contractor shall perform the services (the “Services”) and deliver to agency the deliverables (“Deliverables”) set forth in Exhibit A, the Statement of Work (the “Statement of Work”). The Statement of Work includes the delivery schedule for the Deliverables and Services. Contractor shall perform the Services in accordance with the terms and conditions of this Contract.
- 3.2. Submission and Acceptance of Deliverables.** When the Statement of Work requires Contractor to deliver Deliverables to Agency, then Contractor shall deliver Deliverables that comply with the requirements and acceptance criteria set forth in the Statement of Work. Contractor shall provide written notice to Agency upon delivery of a completed Deliverables to Agency. By no later than (i) 15 business days after receipt of such notice, or (ii) the date or period for review set forth in the Statement of Work, Agency will determine whether the Deliverables has the characteristics and otherwise meets the acceptance criteria set forth in the Statement of Work. If Agency determines that the Deliverables has the characteristics and meets acceptance criteria set forth in the Statement of Work in all material respects, Agency will notify Contractor in writing of Agency’s acceptance of the Deliverables.
- 3.3. Rejection of Deliverables; Corrections.** If Agency determines that a Deliverables does not have the characteristics or otherwise meet the acceptance criteria set forth in the Statement of Work in all material respects, Agency will notify Contractor in writing of Agency’s rejection of the Deliverables, and describe in reasonable detail in such notice the Agency’s basis for rejection of the Deliverables. Upon receipt of notice of non-acceptance, Contractor shall, within a 15 business day period, modify or improve the Deliverables at Contractor’s sole expense so that the Deliverables has the characteristics described in the Statement of Work and meets, in all material respects, the acceptance criteria, and notify the Agency in writing that it has completed such modifications or improvements and re-tender the Deliverables to Agency. Agency will thereafter review the modified or improved Deliverables within 15 business days of receipt of the Contractor's delivery of the Deliverables. Failure of the Deliverables to have the characteristics or meet in all material respects the acceptance criteria set forth in the Statement of Work after the second submission will constitute a default by Contractor. In the event of such default, Agency may either, (i) notify Contractor of such default and instruct Contractor to modify or improve the Deliverables as set forth in this Section, or (ii) notify Contractor of such default and pursue its remedies for default provided for by law or the terms of this Contract.

4. Compensation.

- 4.1. Not to Exceed Compensation.** The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses, is \$***,***.**. Agency will not pay Contractor any amount in excess of the not-to-exceed compensation of this Contract, and will not pay for Services performed before the Effective Date or after the expiration or termination of this Contract. If the maximum compensation is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Services subject to the amendment.
- 4.2. Payments.** Payments, including interim payments, to Contractor are subject to ORS 293.462, will be made only for completed and accepted Deliverables and Services, and will be made in accordance with the payment schedule and requirements set forth in Exhibit A.

4.3. Invoices. Contractor shall submit invoices to Agency as set forth in the Statement of Work or, if not set forth therein, to Agency's Contract Administrator. Contractor may submit invoices in accordance with the payment schedule set forth in the Statement of Work or, if no payment schedule is set forth therein, then no more frequently than once per month for accepted Deliverables and Services. The invoices must describe all Services performed with particularity, including the dates Contractor performed the Services for which it is requesting payment, and by whom the Services were performed and shall itemize and explain all expenses that this Contract requires Agency to pay and for which Contractor claims reimbursement. [OPTIONAL: *Each invoice must also include the total amount invoiced to date by Contractor prior to the current invoice. Contractor will specifically note in the appropriate invoice when it has requested payment for one-third and two-thirds of the maximum, not-to-exceed compensation.*]

4.4. Expenses. Agency will not pay or reimburse any expenses incurred by Contractor during the completion of the Services except as authorized in the Statement Work or elsewhere in this Contract. Any such authorized travel expenses must comply with the Oregon Travel Policy available on the Internet at:
<http://www.oregon.gov/das/cfo/sars/policies/oam/40.10.00.pdf>

4.5. Funds Available and Authorized. Contractor will not be compensated for Services performed under this Contract by any agency or department of the State of Oregon other than Agency. Agency believes it has sufficient funds currently available and authorized for expenditure to make payments under this Contract within Agency's biennial appropriation or limitation. Contractor understands and agrees that Agency's payments under this Contract are contingent on Agency receiving appropriations, limitations, or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract.

5. Contractor's Personnel.

5.1. Key Persons. Contractor acknowledges and agrees that Agency selected Contractor, and is entering into this Contract, because of the special qualifications of Contractor's key persons identified in the Statement of Work (each a "Key Person" and, together, "Key Persons"). Neither Contractor nor a Key Person may delegate performance of the powers and responsibilities that a Key Person is required to provide under this Contract to another Contractor employee, subcontractor or agent without first obtaining the written consent of Agency. Further, Contractor may not re-assign or transfer a Key Person to other duties or positions such that the Key Person is no longer available to provide the Agency with the required expertise, experience, judgment, and personal attention, without first obtaining Agency's written consent to such re-assignment or transfer, which Agency will not unreasonably withhold or delay. Notwithstanding the foregoing, Contractor may replace a Key Person in the event the Key Person is no longer available due to circumstances beyond Contractor's reasonable control, such as death, illness, or termination of employment with Contractor. In the event Contractor requests that Agency approve a re-assignment or transfer of a Key Person, or if Contractor must replace a Key Person, Agency may interview, review the qualifications of, and approve or reject the proposed replacement for the Key Person. Any such replacement must have substantially equivalent or better qualifications than the Key Person being replaced. Any replacement personnel approved by Agency in writing (email acceptable) will thereafter be deemed a Key Person for purposes of this Contract, and the Statement of Work will be deemed amended to include such Key Person.

5.2. Payment for Replacement Key Personnel. If Agency is paying Contractor on an hourly or other periodic basis, then Contractor will not charge Agency, and Agency will not pay, for a replacement Key Person while such replacement acquires the project knowledge and skills necessary to perform the Services. Such period of non-charge will be agreed upon by the parties.

5.3. State Premises. Contractor and Contractor staff shall comply with all policies, rules, procedures, and regulations established by Agency and the State for access to and activities in and around premises controlled by Agency or any other agency of the State.

6. Independent Contractor; Responsibility For Taxes And Withholding

6.1. Independent Contractor. Contractor shall perform all Services as an independent contractor. Agency reserves the right (i) to determine and modify the delivery schedule for the Services and (ii) to evaluate the quality of the Services; however, 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 Services.

6.2. No Conflicts. Contractor, by signature to this Contract, represents and warrants that Contractor's performance of the Services under this Contract creates no potential or actual conflict of interest as defined by ORS 244; and no statutes, rules or regulations of any State of Oregon or federal agency for which Contractor currently performs work would prohibit Contractor from performing the Services under this Contract.

6.3. Affiliation. Contractor understands and agrees that it is not an "officer," "employee," or "agent" of the State of Oregon, as those terms are used in ORS 30.265 or otherwise.

6.4. Taxes and Benefits. Contractor is responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless required by applicable law, Agency will not withhold from such compensation or payments any amount 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.

7. Subcontracts, Successors, And Assignments

7.1. Subcontracts. Contractor shall not enter into any subcontracts for any of the Services 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's performance as if the subcontractor were Contractor. Agency's consent to any subcontract does not relieve Contractor of any of its duties or obligations under this Contract.

7.2. Successors and Assigns. The provisions of this Contract are binding upon and inure to the benefit of the parties to this Contract, their respective successors, and permitted assigns, if any.

7.3. No Assignment. Contractor shall not assign or transfer any of its rights or delegate its obligations under this Contract without Agency's prior written consent.

8. Representations and Warranties.

8.1. Contractor's General Representations and Warranties. Contractor represents and warrants to Agency that:

8.1.1. Contractor has the power and authority to enter into and perform this Contract;

8.1.2. This Contract, when executed and delivered, is a valid and binding obligation of Contractor enforceable in accordance with its terms;

8.1.3. Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Services;

8.1.4. Contractor prepared its proposal related to this Contract, if any, independently from all other offerors, and without collusion, fraud, or other dishonesty; and

8.1.5. Contractor (to the best of Contractor's knowledge, after due inquiry), for a period of no fewer than six calendar years preceding the Effective Date, faithfully has complied with:

8.1.5.1. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;

8.1.5.2. Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor;

8.1.5.3. Any tax provisions imposed by a political subdivision of this State that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor;

8.1.5.4. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions; and

8.1.6. Contractor has no undisclosed liquidated and delinquent debt owed to the State or any department or agency of the State.

8.2. Contractor's Performance Warranties.

8.2.1. Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor shall apply that skill and knowledge with care and diligence to perform the Services in a professional manner and in accordance with the highest standards prevalent in Contractor's industry, trade or profession;

8.2.2. The Services and each Deliverables delivered by Contractor pursuant to the Services will materially comply with any service descriptions, specifications, standards or requirements set forth in this Contract;

8.2.3. Except as otherwise provided in this Contract (including Section 9), Contractor shall transfer all Deliverables to Agency free and clear of any and all restrictions on or

conditions of transfer, modification, licensing, sublicensing, direct or indirect distribution, or assignment, and free and clear of any and all liens, claims, mortgages, security interests, liabilities, and encumbrances of any kind; and

8.2.4. Except as otherwise set forth in this Contract, any subcontractors performing work for Contractor under this Contract have assigned all of their rights in the Deliverables to Contractor or Agency and no third party has any right, title or interest in any Deliverables supplied to Agency under this Contract.

8.3. Warranties cumulative. The warranties set forth in Section 8 are in addition to, and not in lieu of, any other warranties set forth elsewhere in this Contract.

9. Ownership of Work Product.

9.1. Definitions. As used in this Section 9, and elsewhere in this Contract, the following terms have the meanings set forth below:

9.1.1. "Contractor Intellectual Property" means any intellectual property owned by Contractor and developed independently from the Services.

9.1.2. "Third Party Intellectual Property" means any intellectual property owned by parties other than Agency or Contractor.

9.1.3. "Work Product" means everything that is originally made, conceived, discovered, or reduced to practice by Contractor or Contractor's subcontractors or agents (either alone or with others) pursuant to this Contract, including every invention, modification, discovery, design, development, customization, configuration, improvement, process, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection).

9.2. Original Works. All Work Product created by Contractor pursuant to the Services, including derivative works and compilations of Work Product, and whether or not such Work Product is considered a work made for hire or an employment to invent, is the exclusive property of Agency. Agency and Contractor agree that such Work Product is "work made for hire" of which Agency is the author within the meaning of the United States Copyright Act. If for any reason the Work Product is not "work made for hire," Contractor hereby irrevocably assigns to Agency any and all of its rights, title, and interest in all Work Product, 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 Work Product, 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.

9.3. License in Contractor Intellectual Property. In the event that a Deliverables delivered by Contractor under this Contract is or 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 Deliverables, and to authorize others to do the same on Agency's behalf.

- 9.4. License in Third Party Intellectual Property.** In the event that a Deliverables delivered by Contractor under this Contract is or 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 Deliverables, and to authorize others to do the same on Agency's behalf.
- 9.5. No Rights.** Except as expressly set forth in this Contract, nothing in this Contract may be construed as granting to or conferring upon Contractor any right, title, or interest in any intellectual property that is now owned or subsequently owned by Agency. Except as expressly set forth in this Contract, nothing in this Contract may be construed as granting to or conferring upon Agency any right, title, or interest in any Contractor Intellectual Property that is now owned or subsequently owned by Contractor.
- 9.6. Marks.** Neither party grants the other the right to use its trademarks, trade names, service marks or other designations in any promotion or publication without prior written consent. Each party grants only the licenses and rights specified in this Contract.
- 9.7. Competing Services.** Subject to the provisions of this Section 9, and Contractor's obligations with respect to Confidential Information, including as defined in Section 10, nothing in this Contract precludes or limits in any way the right of Contractor to: (i) provide services similar to those contemplated in this Contract, or consulting or other services of any kind or nature whatsoever to any individual or entity as Contractor in its sole discretion deems appropriate, or (ii) develop for Contractor or for others, Deliverables or other materials that are competitive with those produced as a result of the Services provided hereunder, irrespective of their similarity to the Deliverables delivered pursuant to this Contract. Each party is free to utilize any concepts, processes, know-how, techniques, improvements or other methods it may develop during the course of performance under this Contract free of any use restriction or payment obligation to the other.

10. Confidential Information.

- 10.1. Confidential Information.** Contractor acknowledges that it and its employees, officers, directors, agents or subcontractors (collectively, "Contractor Staff") may, in the course of performing the Services under this Contract, be exposed to or acquire information that is confidential to Agency or Agency's clients. Any and all information of any form (including but not limited to records, files, papers, materials, documents, and communications in written, verbal, oral and electronic form) that Contractor or any Contractor Staff may come into contact with or that is obtained by Contractor or Contractor Staff in the performance of this Contract shall be considered for the purposes of this Contract the confidential information of Agency ("Confidential Information"). Contractor shall, and shall cause Contractor Staff to treat any reports or other documents or items (including software) that result from the use of the Confidential Information in the same manner as the Confidential

Information. Confidential Information does not include information that (i) is or becomes (other than by disclosure by Contractor or Contractor Staff acquiring such information) publicly known or is contained in a publicly available document except to the extent applicable law still restricts disclosure; (ii) is furnished by Agency to others without restrictions similar to those imposed by this Contract; (iii) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Contract; (iv) is obtained from a source other than Agency without the obligation of confidentiality, (v) is disclosed with the written consent of Agency, or; (vi) is independently developed by Contractor or Contractor Staff who can be shown to have had no access to the Confidential Information.

10.2. Non-Disclosure. Contractor shall hold, and shall cause Contractor Staff to hold, all Confidential Information in confidence, using the highest standard of care applicable, and shall not copy, reproduce, sell, assign, license, market, transfer, distribute, or otherwise dispose of, give, make available or disclose, in whole or in part, directly or indirectly, Confidential Information to third parties (other than its authorized subcontractors), or use Confidential Information for any purposes whatsoever other than the provision of Services to Agency hereunder, and shall advise Contractor Staff of their obligations to keep Confidential Information confidential. Contractor shall assist Agency in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Agency immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract, and Contractor will at its expense cooperate with Agency in seeking injunctive or other equitable relief in the name of Agency or Contractor against any such person. Contractor shall not at any time during or after the term of this Contract, except as directed by Agency, disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Contract. Upon expiration or termination of this Contract or at Agency's request, Contractor shall deliver to Agency all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing and unless otherwise specified in this Contract, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of performance of the Services.

10.3. Confidentiality Policies. Contractor shall, upon Agency's request, provide its policies and procedures for safeguarding Confidential Information to Agency for Agency's review and consent. Such policies must address information conveyed in oral, written, and electronic format and include procedures for how Contractor will respond when a violation or possible violation occurs.

10.4. Injunctive Relief. Contractor acknowledges that breach of this Section 10, including disclosure of any Confidential Information, will cause irreparable injury to Agency that is inadequately compensable in damages. Accordingly, Agency may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Agency and are reasonable in scope and content.

10.5. Publicity. Contractor agrees that it will not disclose the form, content or existence of this Contract or any Deliverables in any advertising, press releases or other materials

distributed to prospective customers, or otherwise attempt to obtain publicity from its association with Agency or the State of Oregon, whether or not such disclosure, publicity or association implies an endorsement by Agency or the State of Oregon of Contractor's services, without the prior written consent of Agency.

11. Indemnity by Contractor.

11.1. Claims. Contractor shall defend, save, hold harmless, and indemnify the State of Oregon and Agency and their officers, employees and agents from and against all third party claims, suits, actions, losses, damages, liabilities, costs (including attorneys' fees) and expenses (collectively, "Claims") of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under this Contract, including but not limited to, unauthorized disclosure of Confidential Information, professional malfeasance, infringement of intellectual property rights, intentional, willful, or wanton wrongful acts, and acts outside the scope of Services set forth in this Contract.

11.2. Legal Counsel. If Contractor is required to defend the State of Oregon or Agency or their officers, employees or agents under Section 11.1, then Contractor shall select legal counsel reasonably acceptable to the Oregon Attorney General to act in the name of, or represent the interests of, the State of Oregon, Agency or their officers, employees and agents. Such legal counsel must accept appointment as a special assistant attorney general under ORS chapter 180 before such action or representation. Further, the State of Oregon, acting by and through its Department of Justice, may assume its own defense, including that of its officers, employees and agents, at any time when in the State of Oregon's sole discretion it determines that (i) proposed counsel is prohibited from the particular representation contemplated; (ii) counsel is not adequately defending the interests of the State of Oregon or its officers, employees and agents; (iii) important governmental interests are at stake; or (iv) the best interests of the State of Oregon are served thereby. Contractor's obligation to pay for all costs and expenses includes those incurred by the State of Oregon in assuming its own defense or that of its officers, employees, and agents under (i) and (ii) above.

11.3. Damages to State Property and Employees. Contractor is liable for all Claims for personal injury, including death, damage to real property and damage to tangible and intangible personal property of the State of Oregon or any of its employees, subcontractors or agents resulting from, arising out of, or relating to the intentional, reckless or negligent acts or omissions of Contractor or its officers, employees, subcontractors, or agents under this Contract

11.4. CONTRACTOR IS NOT AUTHORIZED TO SETTLE OR COMPROMISE ANY CLAIM REFERENCED IN THIS SECTION WITHOUT THE EXPRESS WRITTEN CONSENT OF AGENCY.

12. Limitation of Liabilities.

12.1. EXCEPT FOR LIABILITY ARISING OUT OF OR RELATED TO (i) SECTION 10, OR (ii) SECTION 11, CONTRACTOR'S LIABILITY FOR DAMAGES FOR ANY CAUSE WHATSOEVER SHALL BE LIMITED TO ONE AND ONE HALF TIMES THE MAXIMUM-NOT-TO-EXCEED AMOUNT OF THIS CONTRACT.

12.2. EXCEPT FOR LIABILITY TO THIRD PERSONS ARISING OUT OF OR RELATED TO (i) SECTION 10, OR (ii) SECTION 11, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR

ANY LOST PROFITS, LOST SAVINGS, OR PUNITIVE, INDIRECT, EXEMPLARY, CONSEQUENTIAL, OR INCIDENTAL DAMAGES.

13. Insurance. Contractor shall maintain insurance as set forth in Exhibit B.

14. Default; Remedies; Termination.

14.1. Default by Contractor. Contractor will be in default under this Contract if:

- 14.1.1. 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
- 14.1.2. 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
- 14.1.3. Contractor commits any material breach or default of any covenant, warranty, obligation, certification, or agreement under this Contract, fails to perform the Services under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Services 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; or
- 14.1.4. Contractor has liquidated and delinquent debt owed to the State of Oregon or any department or agency of the State.

14.2. Agency's Remedies for Contractor's Default. In the event Contractor is in default under Section 14.1, 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:

- 14.2.1. Termination of this Contract under Section 14.6.2; or
- 14.2.2. Withholding all monies due for Services and Deliverables that Contractor has failed to deliver within any scheduled completion dates or has performed inadequately or defectively; or
- 14.2.3. Initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief; or
- 14.2.4. Exercise of its right of setoff, and withholding of amounts otherwise due and owing to Contractor, without penalty; or
- 14.2.5. Undertaking collection by administrative offset, or garnishment if applicable, of all monies due for Services and Deliverables to recover liquidated and delinquent debt owed to the State of Oregon or any department or agency of the State. Offsets or garnishment may be initiated after the Contractor has been given notice if required by law.

14.3. Remedies Cumulative. The remedies set forth in Section 14.2 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 14.1, then Contractor will be entitled to the same remedies as if this Contract was terminated pursuant to Section 14.6.1.

14.4. Default by Agency. Agency will be in default under this Contract if:

14.4.1. 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

14.4.2. 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.

14.5. Contractor's Remedies. In the event Agency terminates this Contract under Section 14.6.1, or is in default under Section 14.4, and whether or not Contractor elects to exercise its right to terminate the Contract under Section 14.6.3, Contractor's sole monetary remedy will be (i) with respect to Services compensable at a stated rate, a claim for unpaid invoices, time worked within any limits set forth in this Contract but not yet invoiced and authorized expenses incurred and interest, subject to ORS 293.462, and (ii) with respect to Deliverables-based Services, a claim for the sum designated for completing the Deliverables multiplied by the percentage of Services completed and accepted by Agency, less previous amounts paid and any claim(s) that Agency has against Contractor. In no event will 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 14.5, Contractor shall pay immediately any excess to Agency upon written demand.

14.6. Termination.

14.6.1. Agency's Right to Terminate at its Discretion. Agency may terminate this Contract:

14.6.1.1. Upon 30 calendar days' prior written notice by Agency to Contractor;

14.6.1.2. Immediately upon written notice by Agency to Contractor if Agency fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for the Services or Work Products; or

14.6.1.3. Immediately upon written notice by Agency to Contractor if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the Agency's purchase of the Services or Work Products under this Contract is prohibited or Agency is prohibited from paying for such Services or Work Products from the planned funding source.

14.6.2. 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, if Contractor is in default under Section 14.1.

14.6.3. Contractor's Right to Terminate for Cause. Contractor may terminate this Contract immediately upon written notice to Agency, or at such later date as Contractor may establish in such notice, if Agency is in default under Section 14.4.

14.7. 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 Services 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.

14.8. Effect of Termination. 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 Services and the Deliverables.

15. Compliance with Law.

15.1. Compliance with Law Generally. Contractor shall comply, and cause all subcontractors to comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Contract and the performance of the Services. 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 this Contract: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Title V and Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act portion of the American Recovery and Reinvestment Act of 2009 (ARRA), including the Privacy and Security Rules found at 45 CFR Parts 160 and 164, as the law and its implementing regulations may be updated from time to time; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) Section 188 of the Workforce Investment Act (WIA) of 1998, as amended; (ix) ORS Chapter 659, as amended; (x) all regulations and administrative rules established pursuant to the foregoing laws; and (xi) 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. Agency'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(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).

15.2. Compliance with Oregon Tax Laws.

15.2.1. Contractor shall, throughout the duration of this Contract, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this section, "tax laws" includes the tax laws described in Section 8.1.5.1 through 8.1.5.4.

15.2.2. Any violation of Section 15.2.1 constitutes a material breach of this Contract. Further, any violation of Contractor's warranty in Section 8.1.5 of this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also constitutes a material breach of this Contract. Any violation entitles Agency to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to:

15.2.2.1. Termination of this Contract, in whole or in part;

15.2.2.2. Exercise of the right of setoff, or garnishment if applicable, and withholding of amounts otherwise due and owing to Contractor without penalty; and

15.2.2.3. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. Agency is entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Services.

15.2.3. 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.

15.3. Compliance with Federal Law. Contractor shall comply with all applicable federal laws, including, without limitation, those set forth in Exhibit D, which is attached and incorporated into this Contract by this reference.

15.4. Pay Equity. As required by ORS 279B.235, Contractor shall comply with ORS 652.220 and shall not unlawfully discriminate against any of Contractor's employees in the payment of wages or other compensation for work of comparable character on the basis of an employee's membership in a protected class. "Protected class" means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability or age. Contractor's compliance with this section constitutes a material element of this Contract and a failure to comply constitutes a breach that entitles Agency to terminate this Contract for cause.

Contractor may not prohibit any of Contractor's employees from discussing the employee's rate of wage, salary, benefits, or other compensation with another employee or another person. Contractor may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits, or other compensation with another employee or another person.

16. Governing Law; Venue and Jurisdiction.

16.1. Governing Law. This Contract is governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.

16.2. Venue and Jurisdiction. Any claim, action, suit or proceeding between Agency (or any other agency or department of the State of Oregon) and Contractor that arises from or relates to this Contract must be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon. CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. In no event may this section be construed as (i) 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, action, suit or proceeding, or (ii) consent by the State of Oregon to the jurisdiction of any court.

17. Miscellaneous Provisions.

17.1. 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, books, documents, papers, plans, records of shipments and payments and writings of Contractor, whether in paper, electronic or other form, that are pertinent to this Contract ("Records") 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 will have access to such financial records and other Records 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 and other Records 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.

17.2. 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 Services under this Contract in the State of Oregon prior to entering into this Contract.

17.3. Force Majeure. Neither Agency nor Contractor may 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.

17.4. Survival. All rights and obligations cease upon termination or expiration of this Contract, except for the rights and obligations and declarations which expressly or by their nature survive termination of this Contract, including without limitation this Section 17.4, and provisions regarding Contract definitions, warranties and liabilities, independent

Contractor status and taxes and withholding, maximum compensation, Contractor's duties of confidentiality, ownership and license of intellectual property and Deliverables, confidentiality and non-disclosure, Contractor's representations and warranties, control of defense and settlement, remedies, return of Agency property, dispute resolution, order of precedence, maintenance and access to records, notices, severability, successors and assigns, third party beneficiaries, waiver, headings, and integration.

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

17.6. Notice. Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder must be given in writing by email, personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or Agency at the email address, postal address or telephone number set forth in this Contract, or to such other addresses or numbers as either party may indicate pursuant to this Section 17.6. Any communication or notice so addressed and mailed is effective five business days after mailing. Any communication or notice delivered by facsimile is 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 is effective when actually delivered. Any notice given by email is effective when the sender receives confirmation of delivery, either by return email, or by demonstrating through other technological means that the email has been delivered to the intended email address.

17.7. 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 may 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.

17.8. 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 otherwise invalid, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties will be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

17.9. 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 will bind the 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, will be effective only in the specific instance and for the specific purpose given. The failure of Agency to enforce any provision of this Contract in one instance will not constitute a waiver by Agency of its right to enforce that or any other provision.

17.10. Amendments. Agency may amend this Contract to the extent permitted by applicable statutes and administrative rules. No amendment to this Contract is effective unless it is in writing signed by the parties, and has been approved as required by applicable law.

17.11. Counterparts. This Contract may be executed in several counterparts, all of which when taken together 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 constitutes an original.

17.12. Oregon False Claims Act. Contractor acknowledges the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any action by Contractor pertaining to this Contract, including the procurement process relating to this Contract, that constitutes a "claim" (as defined by ORS 180.750(1)). By its execution of this Contract, Contractor certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or causes to be made that pertains to this Contract. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false claim or performs a prohibited act under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against Contractor. Contractor understands and agrees that any remedy that may be available under the Oregon False Claims Act is in addition to any other remedy available to the State or Agency under this Contract or any other provision of law.

17.13. Certifications. The individual signing on behalf of Contractor hereby:

17.13.1. Certifies and swears under penalty of perjury to the best of the individual's knowledge that: (a) Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding; (b) s/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, that Contractor is not in violation of any Oregon tax laws and that for a period of no fewer than six (6) calendar years preceding the Effective Date of this Contract, Contractor faithfully has complied with: (i) all tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (ii) any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (iii) any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (iv) any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions; (c) Contractor is an independent contractor as defined in ORS 670.600; and (d) the supplied Contractor tax identification numbers are true and accurate;

17.13.2. Certifies that, to the best of the undersigned's knowledge, Contractor has not discriminated against and will not discriminate against any disadvantaged business enterprise, minority-owned business, woman-owned business, business that service-

disabled veteran owns or emerging small business certified under ORS 200.055 in obtaining any required subcontracts;

- 17.13.3. Certifies that Contractor has a written policy and practice that meets the requirements, described in ORS 279A.112, of preventing sexual harassment, sexual assault, and discrimination against employees who are members of a protected class. Contractor agrees, as a material term of the Contract, to maintain the policy and practice in force during the entire Contract term.
- 17.13.4. Certifies that the information provided on the attached Exhibit E, Independent Contractor Certification, is true and correct as of the Effective Date; and
- 17.13.5. Certifies that 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 <https://www.treasury.gov/ofac/downloads/sdnlist.pdf>.

[SIGNATURE BLOCKS]

Exhibit A

Statement of Work

Exhibit B

Required Insurance

INSURANCE REQUIREMENTS:

Contractor shall obtain at Contractor's expense the insurance specified in this Exhibit B prior to performing under this Contract and shall maintain it in full force and at its own expense throughout the duration of this Contract, as required by any extended reporting period or tail coverage requirements, and all warranty periods that apply. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to Agency. Coverage shall be primary and non-contributory with any other insurance and self-insurance, with the exception of Professional Liability and Workers' Compensation. Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

WORKERS' COMPENSATION & EMPLOYERS' LIABILITY

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements. If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If Contractor is an employer subject to any other state's workers' compensation law, Contractor shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

If Contractor is an employer subject to any other state's workers' compensation law, Contractor shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000.

As applicable, Contractor shall obtain coverage to discharge all responsibilities and liabilities that arise out of or relate to the Jones Act with limits of no less than \$5,000,000 and/or the Longshoremen's and Harbor Workers' Compensation Act.

Contractor shall require and ensure that each of its subcontractors complies with these requirements.

COMMERCIAL GENERAL LIABILITY:

Required

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this contract, and have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.

MARINE PROTECTION LIABILITY

Required Not required

Marine Protection and Indemnity Coverage. Contractor shall obtain, at contractor's expense, and keep in effect during the term of the contract, marine protection and Indemnity coverage. Combined single limit per occurrence shall not be less than \$ 1,000,000.

An endorsement to the Commercial General Liability or Automobile Liability policy, covering Contractor's or subcontractor' liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related clean-up cost incurred by the Contractor that arise from the Goods delivered or Services (including transportation risk) performed by Contractor under this Contract is also acceptable.

EXCESS/UMBRELLA INSURANCE:

A combination of primary and excess/umbrella insurance may be used to meet the required limits of insurance.

ADDITIONAL INSURED:

All liability insurance, except for Workers' Compensation, Professional Liability, and Network Security and Privacy Liability (if applicable), required under this Contract must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, 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. The Additional Insured endorsement with respect to liability arising out of your ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 07 04 or equivalent.

WAIVER OF SUBROGATION:

Contractor shall waive rights of subrogation which Contractor or any insurer of Contractor may acquire against the Agency or State of Oregon by virtue of the payment of any loss. Contractor will obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Agency has received a waiver of subrogation endorsement from the Contractor or the Contractor's insurer(s).

TAIL COVERAGE:

If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, Contractor shall maintain either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of this Contract, for a minimum of 24 months following the later of (i) Contractor's completion and Agency's acceptance of all Services required under this Contract, or, (ii) Agency or Contractor termination of this Contract, or, iii) The expiration of all warranty periods provided under this Contract.

CERTIFICATE(S) AND PROOF OF INSURANCE:

Contractor shall provide to Agency Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional

Insured. The Certificate(s) shall also include all required endorsements or copies of the applicable policy language effecting coverage required by this Contract. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance Agency has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Contract.

NOTICE OF CHANGE OR CANCELLATION:

The Contractor or its insurer must provide at least 30 days' written notice to Agency before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

INSURANCE REQUIREMENT REVIEW:

Contractor agrees to periodic review of insurance requirements by Agency under this Contract and to provide updated requirements as mutually agreed upon by Contractor and Agency.

STATE ACCEPTANCE:

All insurance providers are subject to Agency acceptance. If requested by Agency, Contractor shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to Agency's representatives responsible for verification of the insurance coverages required under this Exhibit B.

Exhibit D

Federal Terms and Conditions

[See DOJ for Federal Terms appropriate for your Agency/Use]

Exhibit E

Independent Contractor Certification

Contractor certifies he/she meets the following standards:

1. I am registered 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):**
 - A. 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.
 - B. Commercial advertising or business cards are purchased for the business, or I have a trade association membership.
 - C. Telephone listing used for the business is separate from the personal residence listing.
 - D. Labor or services are performed only pursuant to written contracts.
 - E. Labor or services are performed for two or more different persons within a period of one year.
 - F. 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:** _____

ATTACHMENT B — DISCLOSURE EXEMPTION AFFIDAVIT

_____ (Affiant), being first duly sworn under oath, and representing [insert Offeror Name] (hereafter “Offeror”), hereby deposes and swears or affirms under penalty of perjury that:

1. I am an employee of the Offeror, I have knowledge of the Request for Proposals referenced herein, and I have full authority from the Offeror to submit this affidavit and accept the responsibilities stated herein.
2. I am aware that the Offeror has submitted a Proposal, dated on or about [insert date] (the “Proposal”), to the State of Oregon (State) in response to Request for Proposals [insert RFP #], for [insert description of RFP], and I am familiar with the contents of the RFP and Proposal.
3. I have read and am familiar with the provisions of Oregon’s Public Records Law, Oregon Revised Statutes (“ORS”) 192.311 through 192.478, and the Uniform Trade Secrets Act as adopted by the State of Oregon, which is set forth in ORS 646.461 through ORS 646.475. I understand that the Proposal is a public record held by a public body and is subject to disclosure under the Oregon Public Records Law unless specifically exempt from disclosure under that law.
4. I have reviewed the information contained in the Proposal. The Offeror believes the information listed in Exhibit A is exempt from public disclosure (collectively, the “Exempt Information”), which is incorporated herein by this reference. It is my opinion that the Exempt Information is exempt from disclosure under Oregon’s Public Records Law under the specifically designated sections as set forth in Exhibit A or constitutes “Trade Secrets” under either the Oregon Public Records Law or the Uniform Trade Secrets Act as adopted in Oregon because that information is either:
 - A. A formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information that:
 - i. is not patented,
 - ii. is known only to certain individuals within the Offeror’s organization and that is used in a business the Offeror conducts,
 - iii. has actual or potential commercial value, and
 - iv. gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

or

 - B. Information, including a drawing, cost data, customer list, formula, pattern, compilation, program, device, method, technique or process that:

- i. Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and
- ii. Is the subject of efforts by the Offeror that are reasonable under the circumstances to maintain its secrecy.

5. I understand that disclosure of the information referenced in Exhibit A may depend on official or judicial determinations made in accordance with the Public Records Law.

Affiant's Signature

State of _____)

) ss:

County of _____)

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

Notary Public for the State of _____

My Commission Expires: _____

EXHIBIT A TO ATTACHMENT B

Offeror identifies the following information as exempt from public disclosure under the following designated exemption(s):

ATTACHMENT C — OFFEROR INFORMATION AND CERTIFICATION SHEET

Legal Name of Offeror: _____

Address: _____ City, State, Zip: _____

State of Incorporation: _____ Entity Type: _____

Contact Name: _____ Telephone: _____ Email: _____

Oregon Business Registry Number (if required): _____

Any individual signing below hereby certifies they are an authorized representative of Offeror and that:

1. Offeror understands and accepts the requirements of this RFP. By submitting a Proposal, Offeror agrees to be bound by the Contract terms and conditions in Attachment A and as modified by any Addenda, except for those terms and conditions that Agency has reserved for negotiation, as identified in the RFP.
2. Offeror acknowledges receipt of any and all Addenda to this RFP.
3. Proposal is a Firm Offer for 180 days following the Closing.
4. If awarded a Contract, Offeror agrees to perform the scope of work and meet the performance standards set forth in the final negotiated scope of work of the Contract.
5. I have knowledge regarding Offeror's payment of taxes and by signing below I hereby certify that, to the best of my knowledge, Offeror is not in violation of any tax laws of the state or a political subdivision of the state, including, without limitation, ORS 305.620 and ORS chapters 316, 317 and 318.
6. Offeror does not discriminate in its employment practices with regard to race, creed, age, religious affiliation, gender, disability, sexual orientation, national origin. When awarding subcontracts, Offeror does not discriminate against any business certified under ORS 200.055 as a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business. If applicable, Offeror has, or will have prior to contract execution, a written policy and practice, that meets the requirements described in ORS 279A.112 (formerly HB 3060), of preventing sexual harassment, sexual assault and discrimination against employees who are members of a protected class. Agency may not enter into a contract with an anticipated contract price of \$150,000 or more with a Offeror that does not certify it has such a policy and practice. See <https://www.oregon.gov/DAS/Procurement/Pages/hb3060.aspx> for additional information and sample policy template.
7. Offeror complies with ORS 652.220 and does not unlawfully discriminate against any of Offeror's employees in the payment of wages or other compensation for work of comparable character on the basis of an employee's membership in a protected class. "Protected class" means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability or age.

Contractor's continuing compliance constitutes a material element of this Contract and a failure to comply constitutes a breach that entitles Agency to terminate this Contract for cause.

Contractor may not prohibit any of Contractor's employees from discussing the employee's rate of wage, salary, benefits, or other compensation with another employee or another person. Contractor may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits, or other compensation with another employee or another person.

8. Offeror is not engaged in the provision of broadband Internet access service, or if at any time Offeror is engaged in or may engage in the provision of broadband Internet access service Offeror is in compliance with Oregon Laws 2018, Chapter 88 (HB 4155) and applicable Public Utility Commission rules, and will remain in compliance throughout the term of the Contract.
9. Offeror and Offeror's employees, agents, and subcontractors are not included on:
 - A. the "Specially Designated Nationals and Blocked Persons" list maintained by the Office of Foreign Assets Control of the United States Department of the Treasury found at: <https://www.treasury.gov/ofac/downloads/sdnlist.pdf>, or
 - B. the government wide exclusions lists in the System for Award Management found at: <https://www.sam.gov/portal/>
10. Offeror certifies that, to the best of its knowledge, there exists no actual or potential conflict between the business or economic interests of Offeror, its employees, or its agents, on the one hand, and the business or economic interests of the State, on the other hand, arising out of, or relating in any way to, the subject matter of the RFP. If any changes occur with respect to Offeror's status regarding conflict of interest, Offeror shall promptly notify the State in writing.
11. Offeror certifies that all contents of the Proposal (including any other forms or documentation, if required under this RFP) and this Proposal Certification Sheet are truthful and accurate and have been prepared independently from all other Offerors, and without collusion, fraud, or other dishonesty.
12. Offeror understands that any statement or representation it makes, in response to this RFP, if determined to be false or fraudulent, a misrepresentation, or inaccurate because of the omission of material information could result in a "claim" {as defined by the Oregon False Claims Act, ORS 180.750(1)}, made under Contract being a "false claim" {ORS 180.750(2)} subject to the Oregon False Claims Act, ORS 180.750 to 180.785, and to any liabilities or penalties associated with the making of a false claim under that Act.
13. Offeror acknowledges these certifications are in addition to any certifications required in the Contract and Statement of Work in Attachment A at the time of Contract execution.

Authorized Signature

Date

(Printed Name and Title)

ATTACHMENT D – OFFEROR QUALIFICATIONS AND REFERENCE FORM

Mandatory Requirements

Bidder Qualifications

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

Vessel Captain must have a minimum of 3 years of professional experience providing charter fishing or equivalent services, have local knowledge of fishing areas off of Seal Rock/Cape Perpetua/Heceta Head for rockfish and other nearshore fish.

Offerors name and number of years of experience the bidder has providing charter fishing services: Name: _____ Years of experience: _____

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

Name: _____ Years of experience: _____

Number of years conducting charter fishing within the Cape Perpetua fishing areas: _____

References

Offerors 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: _____

ATTACHMENT E – PRICE COST FORM

The Offeror 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** for the lump sum and/or unit prices as listed below. Additional lines are include if Offeror determines additional item costs are needed.

All costs must be included in the final Total Price

30 Points Possible

DESCRIPTION	ESTIMATED QUANTITY/DAYS	UNIT PRICE	TOTAL PRICE
Vessel charter including all labor and equipment	8	\$	\$
		\$	\$
		\$	\$
Total Price			\$ _____

ATTACHMENT F –CERTIFIED DISADVANTAGED BUSINESS OUTREACH PLAN

Offeror Name: _____ Date: _____

Contact Name: _____ Telephone: _____ Email: _____

“Certified Firm” means a small business certified under ORS 200.055 by the Oregon Certification Office for Business Inclusion and Diversity (COBID) as minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own, and emerging small businesses.

Certified Firms must have an equal opportunity to participate in the performance of contracts financed with state funds. By submitting its offer, Offeror certifies that it has taken, and if there are further opportunities, will take reasonable steps to ensure that Certified Firms are provided an equal opportunity to compete for and participate in the performance of any subcontracts resulting from this procurement.

The information submitted in response to this clause will not be considered in any scored evaluation.

1. Is Offeror an Oregon certified firm? Yes No

If yes, indicate all certification type(s): DBE MBE WBE SDV ESB and supply

Oregon State Certification Number: _____

2. Include a list of Certified Firms that Offeror has had a contractual relationship with within the last two years.

3. Include a list of firms that Offeror has had a contractual relationship with within the last two years that are not Certified Firms but may be minority-owned, woman-owned, service-disabled veteran-owned or emerging small businesses.

4. Does Offeror foresee any subcontracting opportunities for this procurement? Yes No

If no, do not complete the rest of this form and submit this first page with your Proposal.

If yes, please complete the following pages and submit all pages with your Proposal.

CERTIFIED DISADVANTAGED BUSINESS OUTREACH PLAN

5. Describe the steps Offeror will take to solicit Certified Firms for subcontracting opportunities if awarded a contract from this procurement.

6. Describe the subcontracting opportunities and the approximate dollar value of each that may be available, if awarded a Contract.

7. Would Offeror be willing to report the identity of each subcontractor and the value of each subcontract to COBID if awarded a Contract from this procurement?

ATTACHMENT G - RESPONSIBILITY INQUIRY

Agency will determine responsibility of an Offeror prior to award and execution of a Contract.

Offeror shall submit a signed Responsibility Inquiry form (Attachment G) within 5 business days of receipt of Intent to Award notice. In addition to this form, Agency may notify Offeror of other documentation required, which may include but is not limited to recent profit-and-loss history, current balance statements and cash flow information, assets-to-liabilities ratio, including number and amount of secured versus unsecured creditor claims, availability of short and long-term financing, bonding capacity, insurability, credit information, materials and equipment, facility capabilities, personnel information, record of performance under previous contracts, etc. Failure to promptly provide requested information or clearly demonstrate responsibility may result in an Agency finding of non-responsibility and rejection.

1. Does Offeror have available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to demonstrate the capability of Offeror to meet all contractual responsibilities? **YES** / **NO** .
2. Within the last five years, how many contracts of a similar nature has Offeror completed that, to the extent that the costs associated with and time available to perform the contract remained within Offeror's control, Offeror stayed within the time and budget allotted, and there were no contract claims by any party? Number: ____

How many contracts did not meet those standards? Number: ____ If any, please explain.

Response:

3. Within the last three years has Offeror (incl. a partner or shareholder owning 10% or more of Offeror's firm) or a major subcontractor (receiving 10% or more of a total contract amount) been criminally or civilly charged, indicted or convicted in connection with:
 - obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract,
 - violation of federal or state antitrust statutes relating to the submission of bids or Proposals, or
 - embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property? **YES** / **NO** .

If "YES," indicate the jurisdiction, date of indictment, charge or judgment, and names and summary of charges in the response field below.

Response:

4. Within the last three years, has Offeror had:
 - any contracts terminated for default by any government agency, or

- any lawsuits filed against it by creditors or involving contract disputes? **YES** / **NO** .

If "YES," please explain. (With regard to judgments, include jurisdiction and date of final judgment or dismissal.)

Response:

5. Does Offeror have any outstanding or pending judgments against it? **YES** / **NO** .

Is Offeror experiencing financial distress or having difficulty securing financing? **YES** / **NO** .

Does Offeror have sufficient cash flow to fund day-to-day operations throughout the proposed contract period? **YES** / **NO**

If "YES" on the first question or second question, or "NO" on the third question, please provide additional details.

Response:

6. Within the last three years, has Offeror filed a bankruptcy action, filed for reorganization, made a general assignment of assets for the benefit of creditors, or had an action for insolvency instituted against it? **YES** / **NO** .

If "YES," indicate the filing dates, jurisdictions, type of action, ultimate resolution, and dates of judgment or dismissal, if applicable.

Response:

7. Does Offeror have all required licenses, insurance and/or registrations, if any, and is Offeror legally authorized to do business in the State of Oregon? **YES** / **NO** .

If "NO," please explain.

Response:

8. Pay Equity Certificate. This certificate is required if Offeror employs 50 or more full-time workers and the prospective contract price is estimated to exceed \$500,000. [This requirement does not apply to architectural, engineering, photogrammetric mapping, transportation planning or land surveying and related services contracts.] Does a current authorized representative of Offeror possess an unexpired Pay Equity Certificate issued by the Department of Administrative Services? **YES** / **NO** / **N/A** . [If the certificate was provided with the Bid or Proposal submitted

for a solicitation related to the prospective contract, then it is not necessary to resubmit it. Just indicate “see Bid” or “see Proposal” in the response field. **Otherwise, if applicable, submit a copy of the certificate with this form.**]

Response:

AUTHORIZED SIGNATURE

By signature below, the undersigned Authorized Representative on behalf of Offeror certifies to the best of his or her knowledge and belief that the responses provided on this form are complete, accurate, and not misleading.

Offeror Name:	RFP: Project Name:
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Authorized Signature Date

Print Name Title

ATTACHMENT H SCORED PROPOSAL COMPONENTS FORM

3.1.1 Vessel Description: Captain and Crew Experience 35 points possible

Describe the vessel and it's equipment, and the experience of the captain(s) and deckhand/crew members relating to the requested services. You may attach additional pages as necessary, labeling additional information with the correct section title. References listed may be used by the Agency during the evaluation of this criterion.

Response should address the following:

A) Vessel Description:

1. Name of the Vessel:
2. Date of manufacture of vessel:
3. Expiration date of Coast Guard inspection:
4. List any other applicable vessel inspections and certifications (with expiration dates):

B) Vessel Specifications:

1. Back deck dimensions:
2. Total Length:
3. Beam:
4. Draft:
5. Number of propulsion engines: _____ Running Speed: _____ Knots
6. AC power:
7. List vessel's other equipment (plotter, deck hose, others):

C) Cabin Description:

1. Total number of seats:
2. Number of "Heads":
3. Freshwater:
4. Storage for survival suits (location/size):
5. Passenger personal gear storage (location/size):

D) Vessel Captain Qualifications Description:

Describe qualifications, training, certificates (e.g. sea safety training, CPR, First aid, Masters license, boaters safety card etc.) and relevant individual experience (years working on Charter vessels, catching rockfish; special knowledge of rockfish and other groundfish species, etc) for the vessel **Captain(s)** likely to work on this project, including subcontractors:

1. Name of Captain(s):
2. Training and certificates include expiration dates:
3. Relevant experience fishing in nearshore waters off of Seal Rock/Cape Perpetua/Heceta Head?

E) Experience with Similar Projects:

Describe the project manager’s and/or Captain’s experience with similar projects (e.g. hook and line research surveys; collecting organisms for aquarium; tagging projects; other marine science or fisheries surveys). Include dates of projects.

Project name, description:

Dates:

1)	
2)	
3)	
4)	

F) Deckhand/Crew Members 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 captain: _____

Crew #2: Name:

of years working with vessel captain: _____

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:

3.1.2 Project Approach and Availability 35 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 Offeror 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.)