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## **State of Oregon**



### **The Oregon Department of Education (ODE)**

Issues the following

#### **REQUEST FOR PROPOSALS (RFP) For**

**Direct Access to Achievement (DATA) Project Year 3**

**Date of Issuance:** **July 21, 2009**

**Proposals Due:** **August 4, 2009 at 2:00 pm (PDT)**  
At the Issuing Office  
Facsimiles will be considered.  
Postmarks will not be considered.

**Issuing Office:** **Oregon Department of Education,  
Procurement Services  
Attn: Phyllis Reynolds**  
255 Capitol Street NE  
Salem, Oregon 97310  
Telephone 503.947.5849  
E-mail: [phyllis.reynolds@state.or.us](mailto:phyllis.reynolds@state.or.us)

It is the policy of the State Board of Education and a priority of the Oregon Department of Education there will be no discrimination or harassment on the grounds of race, color, sex marital status, religion, national origin, age, sexual orientation, or disability in any education programs, activities or employment. Persons having questions about equal opportunity and nondiscrimination should contact the state Superintendent of Public Instruction at the Oregon Department of Education.

## **Table of Contents**

### **SECTION 1 – BACKGROUND/PURPOSE**

- 1.1 BACKGROUND
- 1.2 OBJECTIVES
- 1.3 PROJECT OVERVIEW
- 1.4 PROJECT BUDGET

### **SECTION 2 – SOLICITATION SCHEDULE & PROCEDURE**

- 2.1 SCHEDULE OF EVENTS
- 2.2 DEFINITION OF TERMS
- 2.3 SINGLE POINT OF CONTACT
- 2.4 PROCUREMENT METHOD
- 2.5 QUESTIONS AND RFP ADDENDUM
- 2.6 CLOSING DATE FOR SUBMISSION OF PROPOSAL
- 2.7 RESERVATION OF AGENCY RIGHTS
- 2.8 AWARD NOTIFICATION
- 2.9 CONTRACT NEGOTIATIONS
- 2.10 CERTIFICATE OF INSURANCE
- 2.11 WITHDRAWAL
- 2.12 RELEASE OF INFORMATION
- 2.13 PUBLIC INFORMATION
- 2.14 COST OF PREPARING AND SUBMITTING PROPOSALS
- 2.15 RECYCLABLE MATERIALS
- 2.16 CONTRACTUAL OBLIGATION
- 2.17 CONTRACT AMENDMENTS

### **SECTION 3 – MINIMUM QUALIFICATIONS**

- 3.1 MINIMUM PROPOSE QUALIFICATIONS
- 3.2 CURRENT REFERENCES
- 3.3 DISQUALIFICATION

### **SECTION 4 – PROPOSAL FORMAT AND GUIDELINES**

- 4.1 GENERAL INFORMATION
- 4.2 PROPOSAL COVER SHEET
- 4.3 SIGNATURE REQUIRED, PROPOSE AFFIRMATIONS
- 4.4 PROPOSAL EXPIRATION
- 4.5 PROPOSE RESPONSE EXPECTATIONS
- 4.6 KEY PERSONS
- 4.7 PROPOSAL SECTIONS

### **SECTION 5 – THE PROPOSAL**

- 5.1 EVALUATION PROCESS
- 5.2 EVALUATION AND SCORING CRITERIA
- 5.3 SELECTION AND AWARD(S)

### **SECTION 6 – GENERAL TERMS AND CONDITIONS**

### **ATTACHMENTS**

- ATTACHMENT A – SCOPE OF WORK
- ATTACHMENT B – INSURANCE REQUIREMENTS
- ATTACHMENT C – CERTIFICATION OF COSTS
- ATTACHMENT D – CERTIFICATION DENYING CONFLICT OF INTEREST
- ATTACHMENT E – CURRENT REFERENCES

## **SECTION 1 – BACKGROUND/PURPOSE**

### **1.1 BACKGROUND**

The Oregon Department of Education (ODE) is interested in contracting with Oregon Education Service Districts (ESDs) on a project designed to improve data-related practices among Oregon school districts. The Direct Access to Achievement (DATA) Project is a three-year initiative designed to improve student achievement by collecting, analyzing and using longitudinal student and school practices data to inform individual instruction and make critical program decisions. It is a collaborative project of ODE and the statewide Education Enterprise Steering Committee (EESC), and is funded by a \$4.7 million grant from the U.S. Department of Education's Institute of Education.

The DATA Project, along with several complementary statewide initiatives, was developed in response to the increasingly important role of data in the educational environment. Data are becoming the backbone of the continuous improvement process in education. ODE requires that each district develop a Continuous Improvement Plan (CIP). A key feature of this process is the longitudinal analysis of district and school level data, with the ultimate goal of improving student performance.

An essential goal of the CIP, as well as School Improvement Plans (SIP), is to have stakeholders engage in data-driven decision-making (DDDM). DDDM is a process that utilizes data to inform the broad picture of student achievement and school improvement, which is also a central focus of the No Child Left Behind Act (NCLB).

Given these factors, the Oregon DATA Project endeavors to provide Oregon educators statewide with the training necessary to recognize the importance of data and how it can be used to positively affect student success, and the skills and tools needed to embed the effective use of data into their school culture. The Oregon DATA Project offers three different professional-development opportunities in each of two tracks: instructional (for teachers and administrators) and technical (for data entry & reporting personnel).

A research paper released by the national Data Quality Campaign in March 2009 identifies professional development as an essential element of success for data systems. In "The Next Step: Using Longitudinal Data Systems To Improve Student Success," the authors single out Oregon as one of the few states currently providing that training.

### **1.2 OBJECTIVES**

The contracts resulting from this RFP will enable three ESDs representing different parts of the state to work with one or two carefully chosen school districts, to study implementation considerations and then gather the information and develop the processes necessary to embed these data-related practices into the culture of the school districts. These contracts will provide the financial resources necessary for an in-depth, carefully crafted and well-documented implementation of the data practices taught in the professional development strands of the Oregon DATA Project.

Ultimately, these contracts will help build the capacity of school and district staff to correctly interpret and appropriately utilize data on student achievement, and use that data in a meaningful way to plan classroom instruction and positively affect student success. Training for longitudinal data analysis, and how it relates to the planning process and instructional practices,

will strengthen the connection between data and decisions and further the field's ability to be successful in meeting the needs of students.

### 1.3 PROJECT OVERVIEW

In order to ensure the practices taught through professional development are replicated, it is necessary to take the Oregon DATA Project from the training phase into the implementation phase. A deep implementation guided by three knowledgeable ESDs working with committed school district partners would provide the data and best practices needed to develop a model process from which all Oregon educators can benefit.

### 1.4 PROJECT BUDGET

ODE has determined disclosure of the project budget helps potential Proposers in preparing a proposal meeting the standards and expectations of the RFP. ODE states the magnitude of all requirements in terms of fixed price ranges. The disclosure of range does not mean that funding is available at the high end of the range.

This project is expected to be in price range between **\$100,000.00** and **\$125,000.00** per contract

## **SECTION 2– SOLICITATION SCHEDULE & PROCEDURE**

### 2.1 SCHEDULE OF EVENTS

RFP Issued	<b>July 21, 2009</b>
RFP Questions and Appeals Due by	<b>July 27, 2009 by 2:00 pm (PDT)</b>
RFP Closes / Proposals Due (“Closing Date and Time”)	<b>August 4, 2009 by 2:00 pm (PDT)</b>
Proposal Opening	<b>August 4, 2009 by 4:00 pm (PDT)</b>
Notice of Intent to Award (NIA)	August 24, 2009
Contract Award (approximately)	<b>August 30, 2009</b>

### 2.2 DEFINITION OF TERMS

For the purposes of this RFP, the following definitions will be used.

- 2.2.1 “Addenda”** means an addition to or a deletion of, a material change in, or clarification of, the RFP. Addenda shall be labeled as such, issued by ODE, and shall be made available to all interested Proposers as set forth in this RFP.
- 2.2.2 “Agency”** means Oregon Department of Education (ODE).
- 2.2.3 “Closing Date”** means the date and time on or before which all Proposals must be submitted.
- 2.2.4 “Contract”** means the legal agreement between ODE and the Successful Proposer.
- 2.2.5 “Contractor”** means the person or entity which is the Successful Proposer and with which ODE enters into the Contract.
- 2.2.6 “Proposal”** means a Proposal submitted in response to this RFP.
- 2.2.7 “Proposer”** means a person, organization or governmental entity that is making the Proposal.

- 2.2.8 “Request for Proposal”** means all documents, either attached or incorporated by reference, and any Addenda thereto, used for soliciting Proposals.
- 2.2.9 “RFP”** is the acronym for Request for Proposal.
- 2.2.10 “Scope of Work”** means the general character of the supplies and services, the work’s purpose and objectives, and ODE’s expectations. Examples of expectations include, if applicable, a description of the purchase, specifications, tasks (obligations), deliverables, delivery or performance schedule, and acceptance requirements. The Scope of Work helps the prospective Proposers develop the Proposals.
- 2.2.11 “State”** means the State of Oregon.
- 2.2.12 “Statement of Work”** means the specific provision in the final Contract which sets forth and defines in detail the agreed-upon objectives, expectations, performance standards, and other obligations.
- 2.2.13 “Successful Proposer”** means the person or company to whom the RFP award is made.

## **2.3 SINGLE POINT OF CONTACT**

All questions or protest about the technical requirements of this RFP, contractual requirements, or the procurement process must be directed to the person identified under “Issuing Office” on the cover page of this RFP.

## **2.4. PROCUREMENT METHOD**

ODE intends to initially conduct a single-step competitive sealed Proposal method but reserves the right, based upon evaluation of Proposals, to conduct discussions and revised rounds of negotiations.

## **2.5 QUESTIONS AND RFP ADDENDUM**

Any Proposer may submit a written request for change or questions of particular RFP provisions, specifications, or contract terms and conditions to the issuing office contact, specified on the RFP coversheet as “Issuing Office”, by **2:00 pm (PDT) on July 27, 2009**. Facsimile and e-mailed transmissions will be accepted. Any interpretation, correction or change to this RFP will be made by ODE through written addendum. Interpretations, corrections or changes to this RFP made in any other manner will not be binding, and Proposers shall not rely upon such interpretations, corrections or changes

## **2.6 CLOSING DATE FOR SUBMISSION OF PROPOSAL**

Proposals must be received by the issuing office. Mail to: Oregon Department of Education, Procurement Services, Attn: Phyllis Reynolds, Public Service Building, 3<sup>rd</sup> Floor, 255 Capitol Street NE, Salem, OR 97310 and must be received no later than **2:00 pm (PDT), on August 4, 2009**. Facsimile transmissions received prior to the Closing Date and Time will be considered if followed within 30 days by receipt of the original proposal by US mail. Email copies will not be accepted. Please address proposals to the attention of Phyllis Reynolds, Contracting Officer, and clearly designate **RFP for DATA Project Year 3**.

## **2.7 RESERVATION OF AGENCY RIGHTS**

ODE reserves all rights regarding this RFP, including, without limitation, the right to:

- 2.7.1** Amend or cancel this RFP without liability if it is in the best interest of the public to do so;
- 2.7.2** Reject any and all Proposals upon finding it is in the best interest of the public to do so;
- 2.7.3** Waive any minor irregularity, informality, or non-conformance with the provisions or procedures of this RFP, and to seek clarification from the Proposer, if required;
- 2.7.4** Reject any Proposal failing to substantially comply with all prescribed solicitation procedures and requirements;
- 2.7.5** Negotiate a final Contract within the Scope of Work described in this RFP and to negotiate separately in any manner necessary to serve the best interest of the public;
- 2.7.6** Amend any contracts which are a result of this RFP;
- 2.7.7** Engage other contractors by selection or procurement independent of this RFP process and/or any contracts/agreements under it;
- 2.7.8** Extend any contract which results from this RFP without an additional solicitation process;
- 2.7.9** Although cost is a consideration when engaging a Proposer, the intent is to provide ODE with a Proposer who has a given level of specialized skill, knowledge and resources. Qualifications, performance history, expertise, knowledge and the ability to exercise sound professional judgment are primary considerations in the selection process. Due to the highly technical nature of some of these tasks, the Proposer with the lowest cost will not necessarily be awarded the Contract. ODE reserves the sole right to make this determination.

## **2.8 AWARD NOTIFICATION**

The Apparent Successful Proposer shall be notified in writing and the time lines for contract negotiation will be set. The Contract may include by reference this RFP, the Proposal and any additional contractual language as may be required.

## **2.9 CONTRACT NEGOTIATIONS**

ODE may negotiate Attachment A, Scope of Work of the RFP with an Apparent Successful Proposer. Upon Contract extension, the Scope of Work and provisions specific to this Contract may be negotiated.

## **2.10 CERTIFICATE OF INSURANCE**

The successful Proposer(s) will be required to provide Certificates of Insurance to ODE for levels of Insurance coverage shown in Section 6, General Terms and Conditions, Sub-Section XII, Insurance.

## **2.11 WITHDRAWAL**

If a Proposer wishes to withdraw a submitted Proposal, it must be withdrawn prior to the Closing Date and Time. A written request to withdraw must be signed by the Proposer and submitted to the name and address specified on the RFP coversheet "Issuing Office".

## **2.12 RELEASE OF INFORMATION**

No information shall be given to any Proposer (or any other individual) relative to their standing with other Proposers during the RFP process.

## **2.13 PUBLIC INFORMATION**

All Proposals are public information after the Proposals have been opened and all protests are public information after the protest period ends. However, copies of proposals will not be provided until the evaluation process has been completed and an Apparent Successful Proposer has been selected and notified. Copies of public information must be requested in writing. A fee of \$0.25 per page copied will be assessed and payment must be received by the Issuing Office before copies are delivered to the requester. Any person may request copies of public information.

If any part of a Proposal or protest is considered a trade secret, the Proposer or protestor must clearly designate that portion as confidential in order to obtain protection, if any, from disclosure at the time of submission. See Oregon Revised Statutes 192.501(2) and 646.461 to 646.475. Application of the Oregon Public Records Law shall determine if the confidential information claimed to be exempt is in fact exempt from disclosure.

## **2.14 COST OF PREPARING AND SUBMITTING PROPOSALS**

All costs incurred in preparing and submitting a Proposal in response to this RFP will be the responsibility of the Proposer and will not be reimbursed by ODE.

## **2.15 RECYCLABLE MATERIALS**

Contractor shall use recyclable products to the maximum extent economically feasible in the performance of the Contract.

## **2.16 CONTRACTUAL OBLIGATION**

All Proposers who submit a Proposal in response to this RFP understand and agree ODE is not obligated thereby to enter into a contract with any Proposer and, further, has absolutely no financial obligation to any Proposer. It is further understood any resultant contract will be utilized by ODE based on their need.

## **2.17 CONTRACT AMENDMENTS**

ODE reserves the right to amend the Contract to extend its term, to modify the Statement of Work to address activities related to the scope of the services described in the RFP, to modify payment terms as agreed upon by ODE and Contractor, or any combinations of the foregoing.

Anticipated amendments may include:

- Amendments to the Statement of Work of the Contract to add services within the scope of the RFP and the Contract;
- Amendments to delete services from the Statement of Work of the Contract;
- Amendments to extend the term of the Contract;
- Amendments to change pricing;
- Amendments to change scheduled delivery due dates for deliverables and milestones in the Statement of Work
- Amendments to reduce maximum compensation due to ODE budget reductions.

## **SECTION 3 - MINIMUM QUALIFICATIONS**

### **3.1 MINIMUM PROPOSER QUALIFICATIONS**

It is essential ESDs chosen as contractors meet certain qualifications, as must the school districts they identify as partners. Primarily, the three ESDs and their partner school districts

must represent student populations from geographically different parts of the state and of different sizes (large and small). It is imperative to capture the differences which do exist between, for example, eastern and western Oregon, and medium and small districts.

### **3.2 CURRENT REFERENCES**

Proposers shall provide a minimum of four (4) references from similar projects performed for any clients within the last 5 years. References shall be public entities having knowledge of Proposer's services similar to those required by this RFP. For each reference, state the entity name, address, name of the person to contact having knowledge of the work performed, telephone number, facsimile number and e-mail address if available. All Proposers must complete ATTACHMENT E– CURRENT REFERENCES.

ODE may check to determine if references provided are supportive of the Proposer's ability to comply with the requirements of this RFP. ODE will attempt to contact each of the references provided by the Proposer. A maximum of three (3) attempts will be made for each reference. If the three (3) attempts are unsuccessful, the Proposer will not receive consideration for that reference. Failure to provide complete and/or accurate information may be cause for rejections.

ODE may conduct other reference checks as needed, which have not been provided by Proposer, but ODE has knowledge. ODE may use references to obtain additional information, break tie scores, verify information, etc.

### **3.3 DISQUALIFICATION**

Any attempt by a Proposer to influence a member of the Evaluation Committee during the Proposal review and evaluation process will result in the elimination of Proposer's Proposal from consideration.

## **SECTION 4 – PROPOSAL FORMAT AND GUIDELINES**

### **4.1 GENERAL INFORMATION**

Proposals must be submitted using white paper, only 8 ½" x 11" in size. Proposals shall be typed in MS Word without expensive art work, unusual printing or other materials not essential to the utility and clarity of the Proposals.

### **4.2 PROPOSAL COVER SHEET**

The Proposal must include a completed cover sheet signed by a duly authorized representative empowered to bind the Proposer.

The cover sheet must include the following requirements:

- Identify the submitting Proposer;
- Identify the name and title of the person authorized by the Proposer to obligate the Proposer contractually;
- Identify the name, title, and telephone number of the person authorized to negotiate the Contract on behalf of the Proposer;
- Identify the complete business address.
- Bear the signature of the person authorized to obligate the Proposer contractually;
- Identify the names, titles, and telephone numbers of persons to be contacted for clarification;



- Indicate acceptance of the requirements in this RFP; and
- Acknowledge receipt of any and all Addenda(s) to this RFP.

### 4.3 SIGNATURE REQUIRED, PROPOSER AFFIRMATIONS

Each part of the Proposal Package must be signed and dated by the Proposer or a representative legally authorized by the Proposer. One original (1), and **three (3)** copies of the proposal must be submitted. The Proposal Package must be submitted in accordance with Section 2.6.

**4.3.1** Proposer's signature and submission of a signed Proposal in response to the RFP constitutes Proposer's affirmation:

- 4.3.1.1 Proposer has completely read and understands all the provisions of the RFP.
- 4.3.1.2 The Proposal submitted is in response to the specific language contained in the RFP, and Proposer has made no assumptions based upon either (a) verbal or written statements not contained in the RFP, or (b) any previously-issued RFP, if any.
- 4.3.1.3 The Proposal was prepared independently from all other Proposers, and without collusion, fraud, or other dishonesty.
- 4.3.1.4 No attempt has been made or will be made by the Proposer to induce any other person or company to submit or not submit a Proposal.
- 4.3.1.5 ODE shall not be liable for any claims or be subject to any defenses asserted by Proposer based upon, resulting from, or related to, Proposer's failure to comprehend all requirements of the RFP.
- 4.3.1.6 Proposer accepts and agrees to be bound by the terms and conditions of the Contract, and agrees to provide all services set out in the Contract.
- 4.3.1.7 By submitting a Proposal in response to this RFP, Proposer is verifying they can perform the work described in Attachment A, Scope of Work.

**4.3.2** The Proposal Package must be contained in a single sealed package addressed to the Issuing Office and clearly marked "**RFP DATA Project Year 3.**"

**4.3.3** Proposals must address the entire Proposal and submission requirements set forth in this RFP, and must describe **how** the services will be provided, including total number of hours necessary to deliver services. Proposals, which merely offer to provide services as stated in this RFP will be considered non-responsive to this RFP.

**4.3.4** Proposers shall submit a resume and other pertinent qualifications.

**4.3.5** Proposals will be evaluated on overall quality of content and responsiveness to the purpose and specifications of this RFP. Only those Proposal(s), which include complete information as required by this RFP, will be considered for evaluation.

### 4.4 PROPOSAL EXPIRATION

The submitted Proposal and costs shall remain in effect for ninety (90) days after the Proposal due date or until a Contract is awarded, whichever comes first.

## 4.5 PROPOSER RESPONSE EXPECTATIONS

Proposers will need to expound on their capabilities to meet the following expectations in their proposal:

4.5.1. Document a level of commitment (such as trainings conducted and evidence of sustainability) to using data in a meaningful way, with multiple systems such as Response to Intervention (RTI), Positive Behavioral Support (PBS), and Effective Behavioral and Instructional Support Systems (EBISS).

4.5.2. Have a clear capacity for ongoing support and mechanisms for helping to share the knowledge and skills.

## 4.6 KEY PERSONS

Proposer must identify all Key Persons who will perform more than ten percent (10%) of the total work, including their resumes of background, experience, and expertise related to the specific work. Include the percent amount of each Key Person allocated to the total work.

## 4.7 PROPOSAL SECTIONS

Proposers must include the following sections in their Proposal:

**Section A:** Introduction and Executive Summary

**Section B:** Detailed Implementation Plan

**Section C:** Proposed budget

**Section D:** Team Experience and References – Resumes attached

## **SECTION 5 – THE PROPOSAL**

### 5.1 EVALUATION PROCESS

5.1.1 Proposals will be evaluated by a committee consisting of representatives of the requesting ODE offices, and when applicable, other users.

5.1.2 Proposals will be evaluated for completeness and compliance with the requirements of this RFP.

5.1.3 Proposals incomplete, which do not meet all requirements of the RFP, or are otherwise deemed by ODE to be “non-responsive” will be rejected.

5.1.4 Proposals considered complete, or "responsive", will be evaluated to determine if they comply with the administrative, contractual, and technical requirements of the RFP. If the Proposal is unclear, Proposers may be asked to provide written clarification.

### 5.2 EVALUATION AND SCORING CRITERIA

#### Management (points 35)

- Availability and capability to perform the Statement of Work - evidence of being an organization promoting data quality and analysis and have demonstrated involvement and commitment to both Teaching and Learning Connection (TLC) and Direct Access to Achievement (DATA) project efforts. K-12 should provide evidence of participation in EBISS, RTI or the Instructional Strand training from the

DATA Project. ESDs should provide evidence of conducting training and follow-up support on data driven decision making practices.

- Experience of agency with TLC, DATA, RTI, EBISS efforts.
- Demonstrated ability to successfully complete similar projects or perform similar services on time and within budget
- References from past public clients
- Knowledge and understanding of the required services as shown through the proposed approach to staffing and scheduling needs

**Technical (points 25)**

- Technical approach.
- Suitability of the technical approach to the Department environment.
- Methodology - Must identify one district (or two, if they are small) as its implementation partner. The ESD must be able to describe an effective and strong working relationship already in place between the two entities. In addition, the ESD must have a letter of support from the K-12 superintendent willing and supportive of district-wide implementation of these practices.
- Applicability of the methodology to the project and potential to achieve required outcomes.

**Staffing Plan (points 20)**

- Resumes of proposed staff – demonstrated data driven decision making experience.
- Staff has the skill to perform the statement of work

**Pricing (points 20)**

- Minimum administrative overhead
- Meet requirement of programs
- All proposed cost are justifiable
- All in-kind resources are displayed
- Total price
- Hourly rate(s)

### **5.3 SELECTION AND AWARD(S)**

ODE may award three Contracts. ODE will notify the Proposers with the three highest points awarded and the Proposers will be invited to negotiate a contract with ODE. If no contract is executed with the Proposers with the highest points awarded within thirty (30) days of that Proposer's receipt of the contract, then the Proposer with the next highest ranking will be invited to negotiate a contract. This protocol will be followed until all contracts have been signed. If all Proposals are rejected, Proposers will be promptly notified. Should ODE cause the execution of the Contracts to exceed the 30-day period, the Proposers will not be held responsible for the delay(s).

## **SECTION 6 – GENERAL TERMS AND CONDITIONS**

**THE FOLLOWING GENERAL TERMS AND CONDITIONS SHALL BE INCORPORATED INTO THE RESULTING PROFESSIONAL/PERSONAL SERVICES CONTRACT FOR THE STATE OF OREGON. IN THE EVENT AN AWARD IS ISSUED TO A GOVERNMENTAL ENTITY, INTERGOVERNMENTAL PROVISIONS WILL BE SUBSTITUTED.**

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

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

**3. Consideration**

a. The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses, is **\$XXXXXX (the 'Maximum Compensation')**. Agency will not pay Contractor any amount in excess of the not-to-exceed compensation of this Contract for completing the Work, and will not pay for Work performed before the date this Contract becomes effective or after the termination of this Contract. If the maximum compensation is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

b. Interim payments to Contractor shall be subject to ORS 293.462, and shall be made in accordance with the payment schedule and requirements in Attachment A.

c. Contractor shall submit invoices to Agency's Contract Administrator for work performed according to the Deliverables and Payments Schedule. Each invoice also shall include the total amount invoiced to date by Contractor prior to the current invoice. Contractor shall send invoices to Agency's Contract Administrator.

d. Agency will pay only for completed Work that is accepted by Agency. Acceptance is the physical receiving of the work product or deliverable. Approval is the formal process by which a work product or deliverable is deemed by Agency to meet the requirements of the Contract. All work products or deliverables are subject to standards as described below. Failure to meet the standards will result in disapproval by Agency. Authorization by Agency for payment cannot be made until Agency has approved the work product or deliverable. If a work product is disapproved and returned to the Contractor as described below, Agency may withhold all future payment authorizations until the work product or deliverable is approved.

Agency shall have a reasonable length of time to review and approve the work product or deliverable. If a work product or deliverable is disapproved, it will be returned to Contractor with a written notice for correction, detailing changes that need to be made in order for the work product or deliverable to be approved. Contractor must remedy the work product or deliverable and re-submit it and be approved before payment will be made by Agency.

**4. Contract Documents.** This Contract consists of the following documents, which are listed in descending order of precedence: this Contract less all exhibits, attached Exhibit A (the Statement of Work), Exhibit B (Insurance Requirements), Exhibit C (Independent Contractor Certification Statement), which are hereby incorporated by reference.

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

a. Contractor shall perform all required Work as an independent contractor. Although the Agency reserves the right to (1) determine (and modify) the delivery schedule for the Work to be performed and (2) evaluate the quality of the completed performance, the Agency cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work.

b. If Contractor is currently performing work for the State of Oregon or the federal government, Contractor by signature to this Contract declares and certifies that: Contractor's Work to be performed under this Contract creates no potential or actual conflict of interest as defined by ORS 244 and no statutes, rules or regulations of the state or federal agency for which Contractor currently performs work would prohibit Contractor's Work under this Contract.

c. Contractor understands and agrees that it is not an "officer," "employee," or "agent" of Agency, as those terms are used in ORS 30.265.

d. Contractor shall be responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, Agency will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any Social Security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.

**6. Subcontracts and Assignment; Successors in Interest**

a. Contractor shall not enter into any subcontracts for any of the Work required by this Contract without Agency's prior written consent of Agency. In addition to any other provisions Agency may require, Contractor shall include in any permitted subcontract under this Contract provisions to ensure that Agency will receive the benefit of subcontractor performance as if the subcontractor were the Contractor with respect to Sections 5, 6, 7, 9,10,11, 14,

15,16,18, 19 and 23 of this Contract. Agency's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

b. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns, if any.

c. Contractor shall not assign, delegate or transfer any of its right or obligations under this Contract without Agency's prior written consent.

**7. No Third Party Beneficiaries.** Agency and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

## **8. Funds Available and Authorized; Payments**

a. Contractor shall not be compensated for Work performed under this Contract by any other agency of the State of Oregon. Agency has sufficient funds currently available and authorized for expenditure to finance the costs of this Contract within Agency's biennial appropriation or limitation. Contractor understands and agrees that Agency's payment of amounts under this Contract attributable to Work performed after the last day of the current biennium is contingent on Agency receiving from the Oregon Legislative Assembly 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.

## **9. Representations and Warranties**

a. **Contractor's Representation and Warranties.** Contractor represents and warrants to Agency that (1) Contractor has the power and authority to enter into and perform this Contract, (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms, (3) Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in Contractor's industry, trade or profession, (4) Contractor shall, at all times during the term of this Contract, be qualified, professionally competent and duly licensed to perform the Work, and (5) Contractor prepared its proposal relate to this Contract, if any, independently from all other Offerors, and without collusion, fraud, or other dishonesty.

b. **Warranties Cumulative.** The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

## **10. Ownership of Work Product**

a. **Definitions.** As used in this Section 10, and elsewhere in this Contract, the following terms have the meanings set forth below:

(i) "Contractor Intellectual Property" means any intellectual property owned by Contractor and developed independently from the Work.

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

(II) "Work Product" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein that Contractor is required to deliver to Agency pursuant to the Work.

b. **Original Works.** All Work Product created by Contractor pursuant to the Work, including derivative works and compilations, and whether or not such Work Product is considered a work made for hire or an employment to invent, shall be the exclusive property of Agency. Agency and Contractor agree that such original works of authorship are "work made for hire" of which Agency is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created pursuant to the Work is not "work made for hire," Contractor hereby irrevocably assigns to Agency any and all of its rights, title, and interest in all original Work Product created pursuant to the Work, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Agency's reasonable request, Contractor shall execute such further documents and instruments necessary to fully vest such rights in Agency. Contractor forever waives any and all rights relating to original Work Product created pursuant to the Work, including without limitation, any and all rights arising under 17 U:SC 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

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

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

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

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

## **11. Indemnity.**

**a. General Indemnity.** Contractor shall defend, save, hold harmless, and indemnify the State of Oregon and Agency and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, including attorneys fees, resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under this Contract.

**b. Indemnity For Infringement Claims.** Without limiting the generality of section 11.a, Contractor expressly agrees to defend, indemnify, and hold Agency, the State of Oregon and their agencies, subdivisions, officers, directors, agents, and employees harmless from any and all claims, suits, actions, losses, liabilities, costs, expenses, including attorneys fees, and damages arising out of or related to any claims that the Work, the Work Product or any other tangible or intangible items delivered to Agency by Contractor that may be the subject of protection under any state or federal intellectual property law or doctrine, or the Agency's use thereof, infringes any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any third party; provided, that Agency shall provide Contractor with prompt written notice of any infringement claim.

**c. Control Of Defense And Settlement.** Contractor shall have control of the defense and settlement of any claim that is subject to sections 11.a. or 11.b; however, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the State of Oregon or any Agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without first receiving from the Oregon Attorney General, in a form and manner determined appropriate by the Attorney General, authority to act as legal counsel for the State of Oregon, nor shall Contractor settle any claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that Contractor is prohibited from defending the State of Oregon, or is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.

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

## **13. Default; Remedies; Termination.**

**a. Default by Contractor.** Contractor shall be in default under this Contract if:

- (i) 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
- (ii) 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 fourteen (14) calendar days after Agency's notice or such longer period as Agency may specify in such notice; or
- (iii) Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Contractor's performance under this

Contract in accordance with its terms, and such breach, default or failure is not cured within 14 calendar days after Agency's notice, or such longer period as Agency may specify in such notice.

**b. Agency's Remedies for Contractor's Default.** In the event Contractor is in default under Section 13.a, 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:

- (i) termination of this Contract under Section 13.e(ii);
- (ii) withholding all monies due for Work and Work Products that Contractor has failed to deliver within any scheduled completion dates or has performed inadequately or defectively;
- (iii) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief;
- (iv) exercise of its right of setoff.

These remedies are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If a court determines that Contractor was not in default under Sections 13.a, then Contractor shall be entitled to the same remedies as if this Contract was terminated pursuant to Section 13.e(i).

**c. Default by Agency.** Agency shall be in default under this Contract if:

- (i) Agency fails to pay Contractor any amount pursuant to the terms of this Contract, and Agency fails to cure such failure within thirty (30) calendar days after Contractor's notice or such longer period as Contractor may specify in such notice; or
- (ii) 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 thirty (30) calendar days after Contractor's notice or such longer period as Contractor may specify in such notice.

**d. Contractor's Remedies for Agency's Default.** In the event Agency terminates the Contract under Section 13.e(i), or in the event Agency is in default under Section 13.c and whether or not Contractor elects to exercise its right to terminate the Contract under Section 13.e(iii), Contractor's sole monetary remedy shall be (a) with respect to services compensable on an hourly basis, a claim for unpaid invoices, hours worked within any limits set forth in this Contract but not yet billed, authorized expenses incurred and interest within the limits permitted under ORS 293.462, and (b) with respect to deliverable-based Work, a claim for the sum designated for completing the deliverable multiplied by the percentage of Work completed and accepted by Agency, less previous amounts paid and any claim(s) that Agency has against Contractor. In no event shall Agency be liable to Contractor for any expenses related to termination of this Contract or for anticipated profits. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section 13.d, Contractor shall pay immediately any excess to Agency upon written demand provided in accordance with Section 20.

**e. Termination.**

**(i) Agency's Right to Terminate at its Discretion.** At its sole discretion, Agency may terminate this Contract:

- (A) For its convenience upon thirty (30) days' prior written notice by Agency to Contractor;
- (B) Immediately upon written notice if Agency fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for the Work or Work Products; or
- (C) Immediately upon written notice if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the Agency's purchase of the Work or Work Products under this Contract is prohibited or Agency is prohibited from paying for such Work or Work Products from the planned funding source.

**(ii) Agency's Right to Terminate for Cause.** In addition to any other rights and remedies Agency may have under this Contract, Agency may terminate this Contract immediately upon written notice by Agency to Contractor, or at such later date as Agency may establish in such notice, or upon expiration of the time period and with such notice as provided in Section 13.e(ii)(B) and 13.e(ii)(C) below, upon the occurrence of any of the following events:

- (A) Contractor is in default under Section 13.a(i) because Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;
- (B) Contractor is in default under Section 13.a(ii) because Contractor no longer holds a license or certificate that is required for it to perform services under the Contract and Contractor has not obtained such license or certificate within fourteen (14) calendar days after Agency's notice or such longer period as Agency may specify in such notice; or
- (C) Contractor is in default under Section 13.a(iii) because Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Contractor's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within 14 calendar days after Agency's notice, or such longer period as Agency may specify in such notice.

**(iii) Contractor's Right to Terminate for Cause.** Contractor may terminate this Contract with such written notice to Agency as provided in Sections 13.e(iii)(A) and 13.e(iii)(B) below, or at such later date as Contractor may establish in such notice, upon the occurrence of the following events:

- (A) Agency is in default under Section 13.c(i) because Agency fails to pay Contractor any amount pursuant to the terms of this Contract, and Agency fails to cure such failure within thirty (30) calendar days after Contractor's notice or such longer period as Contractor may specify in such notice; or
- (B) Agency is in default under Section 13.c(ii) because Agency commits any material breach or default of any covenant, warranty, or obligation under this Contract, fails to perform its commitments hereunder within the time specified or any extension thereof, and Agency fails to cure such failure within thirty (30) calendar days after Contractor's notice or such longer period as Contractor may specify in such notice.

**(iv) Return of Property.** Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to Agency all of Agency's property (including without limitation any Work or Work Products for which Agency has made payment in whole or in part) that is in the possession or under the control of Contractor in whatever stage of development and form of recordation such Agency property is expressed or embodied at that time. Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless Agency expressly directs otherwise in such notice of termination. Upon Agency's request, Contractor shall surrender to anyone Agency designates, all documents, research or objects or other tangible things needed to complete the Work and the Work Products.

**14. Records Maintenance; Access.** Contractor shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that Agency, the Oregon Secretary of State's Office, the Federal Government, and their duly authorized representatives shall have access to such fiscal records and all other books, documents, papers, plans, and writings of the Contractor that are pertinent to this Contract for the purpose of performing examinations and audits, and making excerpts and transcripts. Contractor shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of six (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.

**15. Compliance with Applicable Law.**

**a. Applicable Law.** Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Contract. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (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) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) 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.235 and 279B.230, which are incorporated by reference herein. Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(ee)), recycled PETE products (as defined in ORS 279A.010(ff)), and other recycled products (as "recycled product" is defined in ORS 279 A.010(gg)).

**b. FERPA.** The Family Educational Rights and Privacy Act (FERPA), 20 USC §1232g, applies to education records of individual students held by the Agency. If Contractor has access to personally identifiable education records, it shall not disclose them to anyone and upon completion of the Work it shall destroy the records. Contractor shall comply with all applicable statutes and rules related to FERPA and education records.

**16. Foreign Contractor.** If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Contract. Contractor shall demonstrate its legal capacity to perform the Work under this Contract in the State of Oregon prior to entering into this Contract.

**17. Force Majeure.** Neither Agency nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, 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.

**18. Survival.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Sections 1, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 18, 23, and 24.

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

**20. Written Notice.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by email, personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or Agency at the address, number or email address set forth in this Contract, or to such other addresses or numbers as either party may indicate pursuant to this Section. Any communication or notice so addressed and mailed shall be effective five (5) days after mailing. Any communication or notice delivered by facsimile shall be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours, or on the next business day, if transmission was outside normal business hours of the recipient. To be effective against Agency, any notice transmitted by facsimile must be confirmed by telephone notice to Agency's Contract Administrator. Any communication or notice given by personal delivery shall be effective when actually delivered. Any communication or notice given by email shall be effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system.

**21. Severability.** The parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

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

**23. Governing Law; Venue; Consent to Jurisdiction.** This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between Agency (and/or any other agency of the State of Oregon) and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if the claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court.

CONTRACTOR, BY THE EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

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

**25. Amendment.** Agency may amend this Contract to the extent provided in the Solicitation document, if any, from which this Contract arose, and to the extent permitted by applicable statutes and administrative rules. No amendment to this Contract shall be effective unless it is in writing signed by the parties, and all approvals required by applicable law have been obtained.

The Agency reserves the right to amend the Contract unilaterally to correct minor clerical errors or administrative matters that are not related to price, delivery, or other terms and conditions.

The Agency reserves the right to amend the Contract for the Anticipated Amendments, in accordance with the rules of OAR 125-246-0560. Anticipated Amendments include:

- Amendments to the Statement of Work of the Contract to add services
- Amendments to delete services from the Statement of Work of the Contract;
- Amendments to extend the term of the Contract;
- Amendments to change pricing;
- Amendments to change scheduled delivery due dates for deliverables and milestones in the Statement of Work

- Amendments to reduce maximum compensation due to ODE budget reductions.

**26. Key Contractor Personnel.** Contractor acknowledges and agrees that a significant reason Agency selected Contractor and is entering into this Contract is because of the special qualifications of certain Key Persons. Under this Contract, Agency is engaging the expertise, experience, judgment and personal attention of **Key Person** who shall be hereinafter designated as "Key Person". Neither Contractor nor any of the Key Persons shall delegate performance of the powers and responsibilities each such Key Person is required to provide under this Contract to any other employee or agent of Contractor unless Agency provides prior written consent to such delegation. Contractor shall not reassign or transfer a Key Person to other duties or positions such that the Key Person is no longer available to provide Agency with such Key Person's services unless Agency provides prior written consent to such reassignment or transfer.

In the event Contractor requests Agency to consent to a delegation, reassignment, transfer or other replacement of a Key Person, Agency may interview and review the qualifications of the proposed substitute personnel before providing its consent or rejecting such replacement. Any such replacement shall have substantially equivalent or better qualifications than the Key Person being replaced. Any replacement personnel approved by Agency shall thereafter be deemed a Key Person for purposes of this Contract and this Contract shall be deemed amended to include such Key Person.

### 1. **CONTRACTOR**

Authorized Signature:	Title:	Date:
Fax Number:	Federal Tax Number:	

### Oregon Department of Education

Authorized Signature:	Title:	Date:
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## **ATTACHMENT A**

### **SCOPE OF WORK:**

This Attachment A, Scope of Work shall be incorporated into the resulting Contract as Exhibit A, Statement of Work.

#### **Background:**

The Oregon DATA Project is a three-year initiative designed to improve student achievement by collecting, analyzing and using longitudinal student and school practices data to inform individual instruction and make critical program decisions. It is a collaborative project of the Oregon Department of Education (ODE) and the statewide Education Enterprise Steering Committee (EESC), and is funded by a \$4.7 million grant from the U.S. Department of Education's Institute of Education.

The DATA Project, along with several complementary statewide initiatives, was developed in response to the increasingly important role of data in the educational environment. Data are becoming the backbone of the continuous improvement process in education. ODE requires that each district develop a Continuous Improvement Plan (CIP). A key feature of this process is the longitudinal analysis of district and school level data, with the ultimate goal of improving student performance.

An essential goal of the CIP, as well as School Improvement Plans (SIP), is to have stakeholders engage in data-driven decision-making (DDDM). DDDM is a process utilizing data to inform the broad picture of student achievement and school improvement, which is also a central focus of the No Child Left Behind Act (NCLB).

Given these factors, the Oregon DATA Project endeavors to provide Oregon educators statewide with the training necessary to recognize the importance of data and how it can be used to positively affect student success, and the skills and tools needed to embed the effective use of data into their school culture. The Oregon DATA Project offers three different professional-development opportunities in each of two tracks: instructional (for teachers and administrators) and technical (for data entry & reporting personnel).

#### **Purpose:**

In order to ensure the practices taught through professional development are replicated, it is necessary to take the Oregon DATA Project from the training phase into the implementation phase. A deep implementation guided by three (3) knowledgeable Education Service Districts (ESDs) working with committed school district partners would provide the data and best practices needed to develop a model process from which all Oregon educators can benefit.

#### **Specific work to be accomplished:**

The contractor will work with its identified district partner(s) to standardize a Best Practices approach to embedding the training already received through the Oregon DATA Project into the everyday culture of the district. To accomplish this work, the contractor shall perform the following activities:

1. Planning the implementation:

The first phase of the project involves planning the implementation. To achieve this, the ESD shall perform the following tasks.

1.1. Develop a work plan:

1.1.1. The ESD will create an “implementation map” identifying implementation steps and milestones throughout the school year, beginning with an evaluation of implementation considerations in the district or district(s) that it will work with.

1.2. Framework for investigating change:

1.2.1. The ESD shall work in conjunction with EESC School Improvement Director to develop a written framework for investigating change. The goal is to determine how best to embed the data-driven decision-making process taught in the DATA Project’s professional development into the culture of the district. How can it fit into existing professional development opportunities? How can the data training, and the data practices be integrated into a district’s regular routine?

1.3. Measuring change.

1.3.1. The ESD shall work in conjunction with EESC School Improvement Director to develop a written decision-making process to measure, calculate, and analyze change due to implementation steps. The process shall include a mechanism to submit quarterly reports.

1.4. Module modifications:

1.4.1. The ESD shall work in conjunction with EESC School Improvement Director to develop a written process to track the changes made in the professional development modules and their effectiveness. For example, the process would track the ways in which the original trainings had to be changed to make implementation work in different settings. This process will help inform the summary report required at the end of the contract period.

2. Conducting the Implementation Year 09-10:

The ESD shall engage staff by working with the EESC School Improvement Director from the chosen district(s) in a process which embeds the data practices into the normal routine of the school environment—into its everyday culture. This process and the information imparted through it should be modeled after the DDDM-based professional development offered through the Oregon DATA Project, but customized to fit the unique needs of the district. They should include:

2.1 Providing specific skills: The implementation process will:

Provide districts with the DDDM skills to understand where to find data, how to organize it, and how to analyze both data reports and the Online Assessment of Knowledge and Skills (OAKS). With these skills, a district can create a CIP, and a building administrator can create a SIP that supports the district plan—and both show evidence of cause data.

2.2 Explore longitudinal data on change: Staff will be trained to:

Investigate which measures are appropriate for use in a given situation, and how to interpret change;

Use longitudinal data and understand how the properties of longitudinal data affect the trends and patterns of student data within the district as well as within the district schools.

Use data, both summative and formative, to improve instruction. Teachers in these data teams or Professional Learning Communities (PLC)s would be required to keep a log about their discussion and action items and submit to the participating ESD and their district.

2.3 Monitoring School and District Progress: School administrators and staff will be trained to increase their abilities for:

Monitoring district and school progress,

Using data to evaluate program and material effectiveness, and

Learning to clearly communicate about data to different stakeholder groups (board members, teachers, etc.)

- 2.4 Monitoring Student Progress: School administrators and staff will have the skills necessary to:
- Use data to make adjustments to instruction;
  - Plan instructional interventions; and
  - Monitor student progress, especially in relation to performance targets/predictions.
- 2.5 Providing Feedback to Students and Parents: Administrators and teachers will demonstrate the ability to communicate:
- The standards, proficiency levels, and expectations to parents and students; and
  - Student growth rates and their progress toward meeting their goals.
- ESD must provide access to project staff for direct observation and project documentation.
- 2.6 School and District Planning: Administrators and teachers will be trained to:
- Implement a support and feedback model providing tools to increase effective instructional practice; and
  - Identify the school/district improvement components schools/districts which have demonstrated either significant increase in student achievement or sustained high levels of student achievement over at least a three (3) year period
- Integrate the use of data into the CIP and SIP planning processes.

### 3. Conducting the Implementation Year 10-11,

- 3.1 Provide specific skills: The implementation process will:
- Provide districts with the DDDM skills and data team skills to understand where to find data, how to organize it, and how to analyze it. With these skills, a district can create a CIP, and a building administrator can create a SIP which supports the district plan—and both show evidence of cause data.
- 3.2 Explore data on change: Staff will be trained to:
- Investigate which measures are appropriate for use in a given situation, and how to interpret change;
  - Use data and understand how the properties of data affect the trends and patterns of student data within the district as well as within the district schools and individual classrooms.
  - Use data, both summative and formative, to improve instruction. Teachers in these data teams or PLCs would be required to keep a log about their discussion and action items and submit it to the ESD-K-12 partnership.
- 3.3 Monitoring school and district progress: School administrators and staff will be trained to increase their ability for:
- Monitoring district and school progress;
  - Using data to evaluate program and material effectiveness.
  - Learning to clearly communicate about data to different stakeholder groups (board members, teachers etc.).
  - Use data to make adjustments to instruction;
  - Plan instructional interventions; and
  - Monitor student progress, especially in relation to performance targets/predictions.
- 3.4 Providing Feedback to Students and Parents: Administrators and teachers will demonstrate the ability to communicate:
- The standards, proficiency levels, and expectations to parents and students; and
  - Student growth rates and their progress toward meeting their goals.
- 3.5 School and District Planning: Administrators and teachers will be trained to:
- Implement a support and feedback model which provides tools to increase effective instructional practice; and

Identify the school/district improvement components schools/districts that have demonstrated either significant increase in student achievement or sustained high levels of student achievement over at least a three (3) year period, and  
Integrate the use of data into the CIP and the SIP planning process.

4. Evaluating the Implementation: The Contractor should provide the following:

4.1 Status Reports:

The ESD shall provide Agency with written quarterly updates for the duration of the contract; this would preferably be in face to face meetings.

4.2 Comprehensive Evaluation Report:

The ESD shall evaluate the professional development program and all work-related efforts on how to embed practices into a district culture and create informational materials for stakeholders and policy-holders. The documentation should be produced to facilitate making the process replicable in other districts. It should include recommendations based on lessons learned, and specifics on what worked and what didn't when changing the delivery model. The ESD shall create specific "look fors" used to determine the depth of DDDM at the district and building level, data teams at the classroom level with an emphasis on "action research," effective use of standards and formative assessments that are linked to improved instruction. The ESD shall create an exit plan which gradually turns over the implementers responsibilities to existing staff in the district. Questions to be considered: How was the training scaled to create opportunities within the district? Was additional outside consultation support required – from whom, in which areas? Were professional development days allocated within the district? How many? How did the size of the district figure into the implementation model? How did the implementer and district staff creatively "find time"? What steps lead to deeper implementation? What barriers needed to be overcome?

## 2. ATTACHMENT B

### INSURANCE REQUIREMENTS

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

1. ☒ **Required by Agency of contractors with one or more workers, as defined by ORS 656.027.**

**Workers' Compensation.** All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall 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.

2. ☒ **Required by Agency** ☐ **Not required by Agency.**

**Professional Liability.** This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract. Contractor shall provide proof of insurance of not less than the following amounts:

☒ Amounts not less than the amounts listed in the following schedule:

Combined single limit per occurrence:

From commencement of the Contract term to June 30, 2010:	\$1,500,000.
July 1, 2010 to June 30, 2011:	\$1,600,000.
July 1, 2011 to June 30, 2012:	\$1,700,000.
July 1, 2012 to June 30, 2013:	\$1,800,000.
July 1, 2013 to June 30, 2014:	\$1,900,000.
July 1, 2014 to June 30, 2015:	\$2,000,000.
July 1, 2015 and thereafter adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).	

Aggregate limit for all claims per occurrence:

From commencement of the Contract term to June 30, 2010:	\$3,000,000.
July 1, 2010 to June 30, 2011:	\$3,200,000.
July 1, 2011 to June 30, 2012:	\$3,400,000.
July 1, 2012 to June 30, 2013:	\$3,600,000.
July 1, 2013 to June 30, 2014:	\$3,800,000.
July 1, 2014 to June 30, 2015:	\$4,000,000.
July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).	

3. ☒ **Required by Agency** ☐ **Not required by Agency.**

**Automobile Liability.** This is to cover each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable. Contractor shall provide proof of insurance of not less than the following amounts:

**Bodily Injury/Death:**

☒ Amounts not less than the amounts listed in the following schedule:

Combined single limit per occurrence:

From commencement of the Contract term to June 30, 2010:	\$1,500,000.
July 1, 2010 to June 30, 2011:	\$1,600,000.
July 1, 2011 to June 30, 2012:	\$1,700,000.
July 1, 2012 to June 30, 2013:	\$1,800,000.
July 1, 2013 to June 30, 2014:	\$1,900,000.
July 1, 2014 to June 30, 2015:	\$2,000,000.
July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).	

Aggregate limits for all claims per occurrence shall not be less than the following amounts

listed in the following schedule:

From commencement of the Contract term to June 30, 2010:	\$3,000,000.
July 1, 2010 to June 30, 2011:	\$3,200,000.
July 1, 2011 to June 30, 2012:	\$3,400,000.
July 1, 2012 to June 30, 2013:	\$3,600,000.
July 1, 2013 to June 30, 2014:	\$3,800,000.
July 1, 2014 to June 30, 2015:	\$4,000,000.
July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).	

**Property Damage:**

☒ Amounts not less than the amounts listed in the following schedule:

Combined single limit per occurrence shall not be less than the following amounts listed in the following schedule:

From commencement of the Contract term to January 1, 2010:	\$100,000.
From January 1, 2010, and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).	

Aggregate limits for all claims per occurrence shall not be less than the following amounts listed in the following schedule:

From commencement of the Contract term to January 1, 2010:	\$500,000.
From January 1, 2010, and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).	

5. **"Tail" Coverage.** If any of the required liability insurance is on a "claims made" basis, 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
- Contractor's completion and Agency's acceptance of all Services required under this Contract, or,
  - The expiration of all warranty periods provided under this Contract. Notwithstanding the foregoing 24-month requirement, if Contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then Contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace for the coverage required under this Contract. Contractor shall provide to Agency, upon Agency's request, certification of the coverage required under this section 5.C.
6. **Notice of Cancellation or Change.** There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days prior written notice from the Contractor or its insurer(s) to **Oregon Department of Education.**
7. **Certificates of Insurance.** As evidence of the insurance coverages required by this Contract, the Contractor shall furnish acceptable insurance certificates to:
- Oregon Department of Education**  
**Attn: Lisa Kennedy**  
**255 Capitol ST NE**  
**Salem OR 97310**
- prior to commencing the work. The certificate must specify all of the parties who are Additional Insureds. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the State. The Contractor shall pay for all deductibles, self-insured retention and self-insurance.
8. **Additional Insured.** The Commercial General Liability and Automobile Liability insurance coverages required under this Contract shall include the State of Oregon, and its agencies, departments, divisions, commissions, branches, officers, employees, and agents as Additional Insureds but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.



**ATTACHMENT C**  
**CERTIFICATION OF COSTS**

This is to confirm the work proposed by

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for the Oregon Department of Education, and all supporting requirements identified in the Proposal will be available and delivered in accordance with the Time Schedule of this Request for Proposal.

All costs for the tasks to be performed are correct as of the date of this Proposal and are acceptable to the Proposer as a contractual obligation. The proposed costs shall remain in effect for 90 days from the due date of the proposal.

It is understood the Oregon Department of Education will compare the Proposer's capability, cost and understanding of the work to be performed with those of other Proposers. Selection will be based on the criteria established in the Request for Proposal.

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Proposer Name (**signature**)

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Proposer Name (**printed**)

---

Proposer Title

---

Entity/Company Name

---

Address

---

Phone

---

Fax

---

Email

---

Date

**ATTACHMENT D**

**CERTIFICATION DENYING CONFLICT OF INTEREST**

**Issuing Agency: OREGON DEPARTMENT OF EDUCATION**

**Request for Proposal: DATA Project Year 3**

I, \_\_\_\_\_ hereby certify I have read the statement defining conflict of interest as quoted below; that I understand the statement; that no conflict of interest exists as therein defined, which precludes an impartial Proposal to be submitted by myself or the entity/company for which the Proposal is submitted, and that if such a conflict should arise, I will immediately notify the Oregon Department of Education and disqualify my Proposal.

**"NO OFFICER, EMPLOYEE, OR AGENT OF THE PROPOSER HAS ANY PERSONAL FINANCIAL INTEREST, DIRECT OR INDIRECT, IN THE OPERATION OF THE OREGON DEPARTMENT OF EDUCATION."**

\_\_\_\_\_  
Proposer Name (**signature**)

\_\_\_\_\_  
Proposer Name (printed)

\_\_\_\_\_  
Proposer Title (printed)

\_\_\_\_\_  
Entity/Company Name (printed)

\_\_\_\_\_  
Date

**POTENTIAL CONFLICT DECLARED: [ ] Yes [ ] No**

## ATTACHMENT E

### CURRENT REFERENCES

The Contractor shall provide four (4) references in accordance with SECTION 3 – MINIMUM QUALIFICATIONS (PASS/FAIL), (*Subsection*) 3.2 – CURRENT REFERENCES.

1	Name of Entity:	
	Address:	
	Telephone:	
	E-Mail:	
	Contact Name	
	Brief Description and Period(s) of Performance	

2	Name of Entity:	
	Address:	
	Telephone:	
	E-Mail:	
	Contact Name	
	Brief Description and Period(s) of Performance	

### Attachment E (cont.)

<b>3</b>	Name of Entity:	
	Address:	
	Telephone:	
	E-Mail:	
	Contact Name	
	Brief Description and Period(s) of Performance	

<b>4</b>	Name of Entity:	
	Address:	
	Telephone:	
	E-Mail:	
	Contact Name	
	Brief Description and Period(s) of Performance	