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State of Oregon



The Oregon Department of Education (ODE) Office of Finance & Administration Procurement Services Unit

Issues the following

REQUEST FOR PROPOSALS (RFP)

For

E-rate and Connectivity Grant Services

Date of Issuance: June 1, 2011

Proposals Due: June 30, 2011 at 2:00 pm (PT)
At the Issuing Office
Facsimiles **will not** be accepted.
Postmarks **will not** be considered.

Issuing Office: Oregon Department of Education,
Procurement Services

Single Point of Contact: Attn: Phyllis Reynolds
255 Capitol Street NE, 3rd Floor
Salem, Oregon 97310
Telephone: 503-947-5886
Fax: 503-378-8713
E-mail: phyllis.reynolds@state.or.us

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SECTION 1 – GENERAL INFORMATION

The State of Oregon, acting by and through its Oregon Department of Education, Office of Finance and Administration, Procurement Services Unit issues this Request for Proposal on behalf of the Office of Assessment and Information Services, in seeking a qualified Contractor to provide E-rate and Connectivity Grant Services.

1.1 BACKGROUND

- E-Rate is a telecommunications discount program for schools and libraries paid for by the Universal Service Fund. This fund is collected by telecommunication providers on behalf of the federal government in the form of the “Universal Service Charge” on most telephone and internet access bills.
- The biennial Connectivity Grants are from a General Fund Allocation to assist in the extension of high-speed internet services to upgrade connections to schools that are considered under-served, (typically less than 10Mbps of bandwidth) from copper to fiber-optic cable.

1.2 PURPOSE

The Department of Education (ODE) is seeking an Education Service District (ESD) to provide E-rate services in conjunction with the ODE State E-rate Coordinator, and to coordinate the applications and subsequent distribution of the biennial connectivity grants in conjunction with the Oregon Association of Education Service Districts.

ODE intends to award one (1) contract to a qualified Contractor for this service.

1.3 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.

- A. Less than \$5,000
- B. Between \$5,000 and \$10,000
- C. Between \$10,000 and \$25,000
- D. Between \$25,000 and \$50,000
- E. Between \$50,000 and \$75,000
- F. **Between \$75,000 and \$100,000**
- G. Between \$100,000 and \$125,000
- H. Between \$125,000 and \$149,999

This project is expected to be in price range F. “**\$75,000 - \$100,000**”

1.4 COMPLETION DATE

The anticipated end date for this work is **June 30, 2013**.

1.5 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 on the cover page of this RFP.

1.6 DEFINITIONS

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

1.6.1 “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 Agency, and shall be made available to all interested Proposers as set forth in this RFP.

1.6.2 “Agency” hereafter means Oregon Department of Education (ODE).

1.6.3 “Closing Date” means the date and time on or before which all Proposals must be submitted

1.6.4 “Contract” means the legal agreement between the Agency and the Successful Proposer.

1.6.5 “Contractor” means the person or entity which is the Successful Proposer and with which Agency enters into the Contract.

1.6.6 “Non Responsive” means *not having* the characteristic of substantial compliance in all material respects with the applicable solicitation requirements

1.6.7 “Proposal” means a Proposal submitted in response to this RFP.

1.6.8 “Proposer” means a person, organization or governmental entity that is making the Proposal.

1.6.9 “Protocol” means for this RFP the agreed upon guidelines for conversation.

1.6.10 “Responsive” means having the characteristic of substantial compliance in all material respects with applicable solicitation requirements

1.6.11 Responsive Proposal” is defined in ORS 279B.006 and means a bid or proposal that substantially complies with the Request for Proposal and all prescribed procurement procedures and requirements

1.6.12 “Request for Proposal” means all documents, either attached or incorporated by reference, and any Addenda thereto, used for soliciting Proposals.

1.6.13 “RFP” is the acronym for Request for Proposal.

1.6.14 “Scope of Work” means the general character of the supplies and services, the work’s purpose and objectives, and Agency’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.

1.6.15 “State” hereafter means the State of Oregon.

1.6.16 “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.

1.6.17 “Successful Proposer” means person or firm to whom the RFP award is made.

SECTION 2 - SOLICITATION SCHEDULE & PROCESS

2.1 SCHEDULE

RFP Issued	June 1, 2011
RFP Questions and Appeals Due by	June 14, 2011 by 2:00 pm (PT)
RFP Closes	June 30, 2011 by 2:00 pm (PT)
Contract Award (anticipated)	July 15, 2011

2.2 PROCUREMENT AUTHORITY AND METHOD

Agency is conducting the RFP pursuant to its authority under OAR 125-246-0170(2) and ORS 190.110.

2.3

AGENCY BUSINESS MANGER LISTSERVE

The RFP, including all Addenda and Attachments, shall be posted on the Oregon Department of Education's (Agency) Business Manager List Serve. Agency is not required to mail the RFP, its Addenda or Attachments. Notification of any substantive clarifications provided in response to any question will be provided and published using the Department's Business Manager List Serve.

2.4 QUESTIONS AND CLARIFICATION REQUESTS

Any Proposer may submit written questions, including requests for explanations of the meaning or interpretation of provisions, specifications, or contract terms and conditions of the RFP to the Oregon Department of Education, Procurement Services, Attn: **Phyllis Reynolds**, Public Service Building, 3rd Floor, 255 Capitol Street NE, Salem, OR 97310-0203", by **2:00 pm (PT) on June 14, 2011**. Facsimile or electronic transmissions will be accepted. Agency responses to Proposer requests and questions will be distributed electronically through the Agency's Business Manager List Serve.

2.5 REQUESTS FOR CHANGES TO THE RFP, CONTRACTUAL TERMS OR SPECIFICATIONS

Any Proposer may submit a written request for changes to the RFP, contractual terms or specifications. To be considered, the request for changes must be submitted no later than **2:00 pm (PT) on June 14, 2011** or by any extension made by subsequent Addenda and addressed to the Oregon Department of Education, Procurement Services, Attn: **Phyllis Reynolds**, Public Service Building, 3rd Floor, 255 Capitol Street NE, Salem, OR 97310-0203. Facsimile or electronic transmissions will be accepted.

The request shall include the reason for requested changes, supported by factual documentation, any proposed changes and shall contain all other information required by ORS 279B.405 and OAR 125-247-0730. Any interpretation, correction or change to this RFP will be made by written addendum and will be distributed electronically through the Agency's Business Manager List Serve. 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. Appeals shall be handled according to Oregon Administrative Rule.

2.6 ADDENDA

Any interpretations, corrections or changes to this RFP will be made by written Addendum, and

posted to the Agency's Business Managers List Serve. Interpretations, corrections or changes to this RFP made in any other manner will not be binding on the State of Oregon.

Agency will advertise Addenda only on the Agency's Business Managers List Serve. Proposers are solely responsible for checking their e-mail regularly to determine whether an Addendum has been issued and then must download the Addendum.

Addenda are incorporated into the RFP by this reference and can be viewed and downloaded by interested Proposers. Proposers should consult their e-mail regularly until the Closing Date and Time to assure that they have not missed any Addendum or announcements. Agency is not responsible for sending any Addendum to any potential Proposer, whether requested or not.

2.7 CLOSING DATE FOR SUBMISSION OF PROPOSAL

Proposals must be received by the issuing office no later than **2:00 pm (PT)**, on **June 30, 2011**. Mail or deliver to: Oregon Department of Education, Procurement Services, Attn: **Phyllis Reynolds**, Procurement and Contract Specialist, Public Service Building, 3rd Floor, 255 Capitol Street NE, Salem, OR 97310-0203. Please clearly designate on the envelope **"E-Rate and Connectivity Grant Services"**. Facsimile or electronic transmissions will **NOT** be considered.

2.8 PROPOSAL WITHDRAWAL

If a Proposer wishes to withdraw a submitted Proposal, it must be withdrawn prior to the Closing Date. A written request to withdraw must be signed by the Proposer and submitted to the name and address specified on the RFP coversheet as the "Issuing Office". Facsimile or electronic transmissions will not be considered.

2.9 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.

2.10 CONFIDENTIAL OR PROPRIETARY INFORMATION

Following the award of a contract, responses to this RFP are subject to release as public information unless the response or specific information contained therein is identified as exempt from public disclosure. Proposer is advised to consult with legal counsel regarding disclosure issues.

If a Proposer believes that any portion of a Proposal contains any information that is considered a trade secret under Oregon Revised Statutes Chapter 192.501(2), or otherwise is exempt from disclosure under the Oregon Public Records Law, ORS 192.410 through 192.505, each page containing such information must include the following:

"This data is exempt from disclosure under the Oregon Public Records Law pursuant to ORS 192, and is not to be disclosed except in accordance with the Oregon Public Records Law, ORS 192.410 through 192.505."

Identifying the Proposal, in whole, as exempt from disclosure is not acceptable. Proposer is cautioned that cost information submitted in response to an RFP is generally not considered a trade secret under Oregon Public Records Law. If Proposer fails to identify the portions of the Proposal that Proposer claims are exempt from disclosure, Proposer is deemed to waive any future claim of non-disclosure of that information.

2.11 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.

2.12 TRADE SECRET

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.

2.13 COST OF PREPARING AND SUBMITTING PROPOSALS

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

2.14 RECYCLABLE MATERIALS

Contractors shall use recyclable products to the maximum extent economically feasible in the performance of the contract services or work set forth in this document and the subsequent contract. (ORS 279B.060 (2)(f), and ORS279B.220-279B.235)

2.15 STATEWIDE E-WASTE/RECOVERY POLICY

If applicable, Proposer must include information in its Proposal that demonstrates compliance with this policy effective January 1, 2007.

2.16 CONTRACTUAL OBLIGATION

All Proposers who submit a Proposal in response to this RFP understand and agree Agency 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 that any resulting Contract will be utilized by Agency based on its need.

SECTION 3 - MINIMUM QUALIFICATIONS

3.1 DESIRED CONTRACTOR AND KEY PERSONS QUALIFICATIONS

Proposers must meet all minimum qualifications to be considered responsive. Proposer(s) must provide levels of specialized skill, knowledge and resources, qualifications, performance history, expertise, knowledge and the ability to exercise sound professional judgment and are primary considerations in the selection process. Agency will evaluate the required minimum qualifications on a Pass/Fail basis. Failure to provide any of the information may result in rejection of the Proposal. Agency reserves the rights to determine which Proposals have met the Proposal Submission Pass/Fail Qualifications of this RFP and which are responsive.

Proposer must identify Key Persons who will perform the Work, their resumes of background, experience, and expertise related to the specific work and provides evidence of previous experience in the following areas

The Successful Proposer shall possess the following qualifications:

3.1.1 A minimum of two (2) years experience interpreting and understanding:

3.1.1.1 The Telecommunications Act of 1996,

3.1.1.2 The Federal Communications Commission (FCC) Establishing Orders,

- 3.1.1.3 Oregon Revised Statutes 279,
 - 3.1.1.4 The Oregon Department of Justice Model Rules, and
 - 3.1.1.5 The Oregon Contracting Rules.
- 3.1.2 A minimum of two (2) years of experience with the following:
- 3.1.2.1 Communicating with the Universal Service Administrative Company (USAC),
 - 3.1.2.2 Filing window deadlines,
 - 3.1.2.3 Reading and evaluating district technology plans, and the
 - 3.1.2.4 Filing of FCC forms 470, 471, and 472.

3.2 CURRENT REFERENCES

Proposers shall provide **four (4)** references with their Proposal. References shall be public entities that have knowledge of Proposer's services similar to those required by this RFP. For each reference, state the company 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 D – CURRENT REFERENCES. The Agency or Agency staff **may not** be used as a reference.

SECTION 4 - PROPOSAL REQUIREMENTS

4.1 GENERAL INFORMATION

Proposals must be submitted in the name of the Proposer's legal entity registered with the State of Oregon, Corporations Division, to do business in the State of Oregon or an Independent Contractor. Proposals must be submitted using only 8 ½" x 11" white papers. Proposals shall be typed but without expensive art work, unusual printing or other materials not essential to the utility and clarity of the Proposals.

4.2 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. The Proposal package must include **one (1)** original, marked "original" and **three (3)** copies of the **Proposal** and submitted in accordance with sub-section 2.7. Each Proposal must be signed and dated by the Proposer or a representative legally authorized by the Proposer.

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

- 4.2.1.1 Proposer has completely read and understands all the provisions of the RFP.
- 4.2.1.2 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.
- 4.2.1.3 The Proposal was prepared independently from all other Proposers, and without collusion, fraud, or other dishonesty.
- 4.2.1.4 No attempt has been made or will be made by the Proposer to induce any other person or firm to submit or not submit a Proposal.
- 4.2.1.5 Agency 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.
- 4.2.1.6** Agency shall not be liable for any expenses incurred by Proposer in preparing and submitting its Proposal or in participating in the Proposal evaluation/selection process.
 - 4.2.1.7** 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.
 - 4.2.1.8** By submitting a Proposal in response to this RFP, Proposer is verifying they can perform the work described in Exhibit A, Scope of Work.
- 4.2.2** The Proposal package must be contained in a single sealed package addressed to the Issuing Office and clearly marked **“E-Rate and Connectivity Grant Services”**.
- 4.2.3** 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, that merely offer to provide services as stated in this RFP will be considered non-responsive.
- 4.2.4** Proposers shall submit a resume and other pertinent qualifications as listed in subsection 3.1 Desired Contractor and Key Person Qualifications.
- 4.2.5** Proposals will be evaluated on overall quality of content and responsiveness to the purpose and specifications of this RFP. Only those Proposal(s) that include complete information as required by this RFP will be considered for evaluation.

4.3 PROPOSAL SUBMISSIONS (GENERAL)

4.3.1 PROPOSAL FORMAT:

Proposer should describe in detail how they will meet the requirements of this RFP and may provide additional related information with their Proposal. The Proposal should be presented in a format that corresponds to, and references, the sections contained in the specifications or statement of services and should be presented in the same order. Responses to each section and subsection should be labeled to indicate which item is being addressed.

Proposals should be straightforward and concise and provide “layman” explanations of technical terms used. Emphasis should be focused on responding to the RFP requirements, on providing a complete and clear description of the Proposal, and conforming to the RFP instructions. If a complete response cannot be provided without referencing supporting documentation, Proposer must provide such documentation with the Proposal indicating where the supplemental information can be found. Proposals merely offering to provide supplies and/or services as stated in this RFP may be considered non-responsive and may not be considered for further evaluation.

4.4 PROPOSAL EXPIRATION

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

SECTION 5 - PROPOSAL EVALUATION

5.1 EVALUATION PROCESS

- 5.1.1** Proposals will be evaluated by a committee consisting of representatives of the requesting Agency 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 which are incomplete, do not meet all requirements of this RFP, or are otherwise deemed by Agency 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 this RFP. If the Proposal is unclear, Proposers may be asked to provide written clarification.
- 5.1.5** At the option of Agency, the Proposer may be required to demonstrate the proposed product or service.

5.2 EVALUATION AND SCORING CRITERIA (100 Points)

5.2.1 Technical (15 Points)

- Technical approach
- Suitability of the technical approach to the Agency’s environment
- Methodology
- Applicability of the methodology to project and potential to achieve required outcomes
- Ease of maintainance
- Proposed tools

5.2.2 Management (35 Points)

- Availability and capability to perform the Scope of Work
- Identities of proposed Key Persons and their qualifications
- Experience of staff on comparable projects
- Demonstrated ability to successfully complete similar projects or perform similar services on time and within budget
- Knowledge and understanding of required services as shown through proposed approach to staffing and scheduling needs

5.2.3 Pricing (15 Points)

- Minimum administrative overhead
- Meets the requirement of the Program
- All proposed costs are justifiable
- All in-kind resources are displayed
- Hourly rates
- Total price

5.2.4 Staffing Plan (35 Points)

- Staffing is adequate to complete the Work
- Staff have the skill to perform the Scope of the Work

5.3 DISQUALIFICATION

Any attempt by a Proposer to influence a member of the review panel during the Proposal

review and evaluation process will result in the elimination of that Proposer's Proposal from consideration.

5.4 SELECTION AND AWARD(S)

Agency will award one (1) Contract. Agency will notify the Proposer with the highest points awarded and request a signed Contract. If no Contract is executed with the Proposer 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 considered to enter into a Contract. This protocol will be followed until a Contract has been signed. If all Proposals are rejected, Proposers will be promptly notified. Should Agency cause the execution of the Contract to exceed the 30-day period, the Proposer will not be held responsible for the delay(s).

5.5 INTENT TO AWARD

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.

5.6 NOTIFICATION OF AWARD

Every Proposer shall be notified in writing of its selection status..

5.7 CERTIFICATES OF INSURANCE

The apparent successful Proposer shall provide all required Certificates of Insurance for levels of Insurance coverage shown in Exhibit B to the Agency within seven (7) calendar days of the Intent to Award Notice. Failure to present the required documents within the seven (7) calendar-day period may result in proposal rejection. Proposers are encouraged to consult their insurance agent(s) about the insurance requirements of Exhibit B of this RFP prior to proposal submission.

5.8 NEGOTIATION

Agency may negotiate Exhibit A, Scope of Work of this RFP with the Apparent Successful Proposer. Unless an official Addenda or subsection 2.5 of this RFP has modified or reserved the right to negotiate any contract terms and conditions, Agency will not negotiate any contract terms or conditions after the solicitation protest period. By Proposal submission, the Successful Proposer(s) agree(s) to be bound by the Contract terms and conditions at Section 7, and as they may have been modified or reserved by Agency for negotiation. Any Proposal received conditioned on Agency's acceptance of any other terms and conditions or rights to negotiate will be rejected. Any subsequent negotiated changes may be subject to prior approval of the Department of Justice.

5.9 NEGOTIATION OF OTHER ITEMS

Agency reserves the right to negotiate the following:

- Term of the Contract
- Extensions
- Prices or Considerations
- Schedules
- Statement of Work
- Deliverables
- Insurances

SECTION 6 – ADDITIONAL CONTRACT TERMS

6.1 GOVERNMENTAL ENTITIES

Government bodies subject to ORS Chapter 190 do not bid or compete on the same basis as private-sector Proposers, however, Agency will initially review Proposals from government bodies according to the same evaluation criteria described in this RFP. Government bodies, submitting Proposals must comply with all applicable Proposal requirements described in this RFP. In addition to any other Proposer selection, Agency reserves the right to enter into an ORS Chapter 190 agreement with any government body for the services or work if it would be in the public interest as determined by Agency..

6.2 OWNERSHIP OF MATERIALS

All materials submitted in response to this RFP become the property of Agency. Proposals and supporting materials will not be returned to Proposer unless the Proposal is submitted late.

6.3 COST AND DAMAGES

In accordance with ORS 279B.100, any solicitation or procurement described in a solicitation may be delayed, suspended or canceled and any or all bids or proposals may be rejected in whole or in part, when the delay, suspension, cancellation or rejection is in the best interest of the contracting agency as determined by the contracting agency. A contracting agency is not liable to any Bidder or Proposer for any loss or expense caused by or resulting from the delay, suspension, cancellation, or rejection of a solicitation, bid, proposal or award.

6.4 CANCELLATION AND/OR REJECTION OF PROPOSALS

Agency reserves the right to reject any or all Proposals in-whole or in-part, and reserves the right to cancel this RFP at any time when the rejection or cancellation is in the best interest of the State as determined by the Agency. The Agency is not liable to any Proposer for any loss or expense caused by or resulting from the rejection or cancellation of this RFP, Proposal or Award. All Proposals will become part of the public file without obligation to the Agency.

6.5 RESERVATION OF AGENCY RIGHTS

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

- 6.5.1** Amend or cancel this RFP without liability if it is in the best interest of public to do so;
- 6.5.2** Reject any and all Proposals upon finding it is in the best interest of public to do so;
- 6.5.3** 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;
- 6.5.4** Reject any Proposal that fails to substantially comply with all prescribed solicitation procedures and requirements;
- 6.5.5** 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;
- 6.5.6** Amend any Contract that is a result of this RFP;
- 6.5.7** Engage other contractors by selection or procurement independent of this RFP process and any contracts/agreements under it;
- 6.5.8** If there is only one (1) response to this RFP and Proposer is judged a qualified Proposer, Agency will enter into direct negotiations with Proposer. In the event the sole Proposer is not judged a qualified Proposer, then Agency reserves the right to solicit other Proposers;
- 6.5.9** Although cost is a consideration when engaging a Proposer, the intent is to provide Agency 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. The Proposer with the lowest cost will not necessarily be awarded the Contract. The Agency reserves the sole right to make this determination.

6.6 ACCEPTANCE AND APPROVAL

6.6.1 Acceptance and Approval of Work Products and Deliverables

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.

The 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.

6.6.2 Standards

Where work is proposed, if no standards exist, standards must be agreed upon and approved in the Statement of Work by Agency before work begins. Contractor shall provide a document set of all standards and guidelines applying to the work during the development of the work plan. Both parties must agree to any changes to the work plan and all standards and guidelines.

6.7 CONTRACT ADMENDMENTS

In accordance with OAR 125-246-0560, Agency reserves the right to amend the resulting Contract to extend its term, to modify the Statement of Work to address activities related to the Scope of Work described in this RFP, to modify payment terms as agreed upon by Agency and Contractor, or any combinations of the foregoing.

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, listed below, in accordance with the rules of OAR 125-246-0560.

Anticipated Amendments may include:

- (a) Amendments to change the nature, type and processes related to the deliverables reflected in the RFP and the Contract Statement of Work.
- (b) Amendments required as a result of necessary changes in applicable federal and State law, and/or the State's or Agency's business processes that may restructure the Agency or the Agency's requirements related to the Statement of Work;
- (c) Amendments to the Statement of Work to add or otherwise change or clarify the Work within the Scope of the RFP and the Contract

- (d) Amendments to delete Deliverables from the Statement of Work;
- (e) Amendments to extend the term of the Contract in accordance with the RFP and Contract;
- (f) Amendments to increase Maximum Compensation of Contract based on changes to Work, and
- (g) Amendments to reduce the Maximum Compensation of the Contract based on changes to Work and Agency funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for the Work or Work Products.

6.8 AMENDMENT PROCESS

Should Amendment(s) to the resulting Contract become necessary, the parties will need to comply with Oregon's Public Contracting Rules and the Agency's internal procurement and contracting policies. The Amendment process may take eight (8) to twelve (12) weeks for completion. All amendments must be in writing and signed by all approving parties before becoming effective.

SECTION 7 – GENERAL TERMS AND CONDITIONS

THE FOLLOWING GENERAL TERMS AND CONDITIONS SHALL BE INCORPORATED INTO THE RESULTING INTERGOVERNMENTAL CONTRACT FOR PROFESSIONAL SERVICES FOR THE STATE OF OREGON.

This Intergovernmental Contract for Professional Services (the "Contract") is between the State of Oregon, acting by and through its Department of Education, hereafter called **Agency**, and _____, hereafter called **Contractor**.

1. Effective Date and Duration.

a. This Contract shall become effective on the date this Contract has been signed by every party hereto and, when required, approved by Department of Justice. Unless terminated or extended, this Contract shall expire when Agency accepts Contractor's completed performance or on June 30, 2012, whichever date occurs first. Expiration shall not extinguish or prejudice Agency's right to enforce this Contract with respect to any breach of a Contractor warranty or any default or defect in Contractor performance that has not been cured.

b. 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) and Exhibit B (Insurance Requirements), which are hereby incorporated by reference.

2. Statement of Work. The statement of work (collectively, the "Work"), including the delivery schedule for such Work, is contained in Exhibit A attached and incorporated by reference into this Contract. Contractor agrees to perform the Work in accordance with the terms and conditions of this Contract.

3. Consideration

- a. Agency agrees to pay Contractor the sum of \$ _____ for accomplishing the Work required by this Contract.
- b. The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses, is \$ _____ (the "Maximum Compensation").
- c. Quarterly payments to Contractor shall be made only in accordance with the schedule and requirements in Exhibit A.
- d. Contractor shall not submit invoices for, and Agency will not pay, any amount in excess of the Maximum Compensation. If this Maximum Compensation is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs work subject to the amendment. Contractor shall notify Agency's Contract Administrator in writing thirty (30) calendar days before this Contract expires of the upcoming expiration of the Contract.

4. 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 _____ 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.

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 (i) to determine (and modify) the delivery schedule for the Work to be performed and (ii) to evaluate the quality of the completed performance, 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 rules or regulations of Contractor's employing Agency (state or federal) would prohibit Contractor's Work under this Contract. Contractor is not an "officer", "employee", or "agent" of the Agency, as those terms are used in ORS 30.265.

c. 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 and Assigns

a. Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in 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 a requirement that the subcontractor be bound by Sections 6, 10, 11, 15, and 16 of this Contract as if the subcontractor were the Contractor. 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.

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, 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 the 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.

b. Agency will only pay for completed work that is accepted by Agency.

9. Representations and Warranties.

a. Contractor's Representations and Warranties. Contractor represents and warrants to Agency that (1) Contractor has the power and authority to enter into and perform this Contract, and that its governing body has taken all actions necessary and appropriate to authorize Contractor to enter into 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 profession and Contractor will apply that skill and knowledge with care and diligence to ensure that it performs the Work in a professional manner and in accordance with the standards of its profession, and (4) Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work.

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. All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of Agency. Agency and Contractor intend that such Work Product be deemed "work made for hire" of which Agency shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire", Contractor hereby irrevocably assigns to Agency all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as Agency may reasonably request in order to fully vest such rights in Agency. Contractor forever waives any and all rights relating to the 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.

11. INDEMNITY.

a. TO THE EXTENT PERMITTED BY APPLICABLE LAW, 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. CONTRACTOR SHALL INCLUDE IN ALL CONTRACTS WITH SUBCONTRACTORS A PROVISION REQUIRING THE SUBCONTRACTOR TO DEFEND, SAVE, HOLD HARMLESS AND INDEMNIFY THE STATE OF OREGON, THE AGENCY AND THE CONTRACTOR, TOGETHER WITH THE OFFICERS, EMPLOYEES AND AGENTS OF THOSE ENTITIES, AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, LIABILITIES, COSTS AND EXPENSES OF ANY NATURE RESULTING FROM, ARISING OUT OF, OR RELATING TO THE ACTIVITIES OF THE SUBCONTRACTOR OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS OR AGENTS UNDER THE CONTRACT.

b. WITHOUT LIMITING THE GENERALITY OF THE ABOVE SUBSECTION (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. CONTRACTOR SHALL HAVE CONTROL OF THE DEFENSE AND SETTLEMENT OF ANY CLAIM THAT IS SUBJECT TO THE ABOVE SUBSECTIONS (a) AND (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 obtain the insurance specified on Exhibit B, which is incorporated herein by this reference, prior to performing any work under the Contract, and shall maintain all such insurance for the term of this Contract.

13. Termination

a. Parties' Right to Terminate For Convenience. This Contract may be terminated at any time by mutual written consent of the Parties.

b. Agency's Right to Terminate For Convenience. Agency may, at its sole discretion, terminate this Contract, in whole or in part, upon thirty (30) days' notice to Contractor.

c. Agency's Right to Terminate For Cause. Agency may terminate this Contract, in whole or in part, immediately upon notice to Contractor, or at such later date as Agency may establish in such notice, upon the occurrence of any of the following events:

(i) Agency fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for Contractor's Work;

(ii) Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Work under this Contract is prohibited or Agency is prohibited from paying for such Work from the planned funding source;

(iii) Contractor no longer holds any license or certificate that is required to perform the Work; or

(iv) 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 ten (10) business days after delivery of Agency's notice, or such longer period as Agency may specify in such notice.

d. Contractor's Right to Terminate for Cause. Contractor may terminate this Contract upon thirty (30) days' notice to Agency if Agency fails to pay Contractor pursuant to the terms of this

Contract and Agency fails to cure within thirty (30) business days after receipt of Contractor's notice, or such longer period of cure as Contractor may specify in such notice.

e. Remedies

(i) In the event of termination pursuant to Sections 13.a, 13.b, 13.c(i), 13.c(ii) or 13.d, Contractor's sole remedy shall be a claim for the sum designated for accomplishing the Work multiplied by the percentage of Work completed and accepted by Agency, less previous amounts paid and any claim(s) which Agency has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this subsection, Contractor shall pay any excess to Agency upon demand.

(ii) In the event of termination pursuant to Section 13.c(iii) or 13.c(iv), Agency shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Section 13.c(iii) or 13.c(iv), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 13.b.

f. Contractor's Tender Upon 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 termination of this Contract, Contractor shall deliver to Agency all documents, information, works-in-progress and other property that are or would be deliverables had the Contract been completed. 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.

14. LIMITATION OF LIABILITIES. EXCEPT FOR LIABILITY ARISING UNDER OR RELATED TO SECTIONS 13.(e)(ii) or 9(a), NEITHER PARTY SHALL BE LIABLE FOR (i) ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES UNDER THE CONTRACT OR (ii) ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS CONTRACT IN ACCORDANCE WITH ITS TERMS.

15. 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 and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans and writings of Contractor that are pertinent to this Contract to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of three (3) 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.

16. Compliance with Applicable Law.

a. Applicable Law. Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this 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) Americans with Disabilities Act of 1990, as amended;
- (iv) Executive Order 11246, as amended;
- (v) Health Insurance Portability and Accountability Act of 1996;
- (vi) Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination

Act of 1975, as amended;

(vii) 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 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)(ee)), recycled PETE products (as defined in ORS 279A.010(1)(ff)), and other recycled products (as "recycled product" is defined in ORS 279A.010(1)(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.

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, 9, 10, 11, 15, 18, 24 and 25.

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

20. 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 personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or Agency at the address or number set forth on the signature page of this Contract, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section 20. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against Agency, such facsimile transmission must be confirmed by telephone notice to Agency's Contract Administrator. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

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. Amendments. Agency may amend this Contract to the extent permitted by applicable statutes and administrative rules. Additionally, for Anticipated Amendments (as defined in OAR 125-246-0560(3)(A)) Agency may amend this Contract i) to the extent provided in the solicitation document, if any, from which this Contract arose.

Contractor and Agency may amend, modify, supplement or otherwise change this Contract and any of the Exhibits hereto only by a written Amendment that both Agency and Contractor have signed and that Agency or its designee and DOJ, if applicable law so requires, have approved. When the Parties change terms or conditions in this Contract or any costs or pricing associated with this Contract, other than costs incurred by reason of Agency's or its agents' failure to perform its or their responsibilities under this Contract, the Parties shall do so via an Amendment. Any Amendment that provides for additional Work may provide only for Work directly related to the scope of work described in the RFP, and no Amendment shall be effective until the Parties have obtained all requisite signatures and approvals.

At such time as either Party proposes any such Amendment, and to the extent necessary, Agency and Contractor shall negotiate to finalize the terms of and costs, if any, associated with the Amendment and upon mutual agreement shall reduce those terms and costs to writing. Unless this Contract provides otherwise, the Parties shall in their negotiations take account of current market conditions and prices for the Work to be provided under any Amendment. Any Amendment shall be subject to the terms and conditions of this Contract except to the extent that the Parties mutually and specifically agree in an Amendment to alter a term or condition of this Contract.

No amendment to this Contract shall be effective unless it is in writing signed by the parties, and all approvals required by applicable law have been obtained before becoming effective.

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 and Unanticipated Amendment, listed below, in accordance with the rules of OAR 125-246-0560.

Anticipated Amendments may include amendments to:

- (a) Amendment to extend the term of the Contract
- (b) Amendment to add compensation as a result of extending the Contract term

Unanticipated Amendments may include, but not limited to:

- (a) Amendments to change the type or processes of the work or deliverables described in the Statement of Work;
- (b) Amendments required as a result of changes in applicable federal and State law or the State's, or Agency's business processes that may restructure Agency or Agency's requirements related to the Statement of Work;
- (c) Amendments to add or otherwise clarify work within the Statement of Work of the Contract
- (d) Amendments to delete Work or Deliverables from the Statement of Work;
- (e) Amendments to increase or decrease compensation under the resulting contract based on changes to the Work or Deliverables

24. Department of Justice Approval. Department of Justice, approval may be required by law before any Work may begin under this Contract or an amendment to this Contract.

25. 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 a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

26. 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.

CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY ACKNOWLEDGES THAT CONTRACTOR HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

CONTRACTORS: YOU WILL NOT BE PAID FOR SERVICES RENDERED PRIOR TO NECESSARY STATE APPROVALS

Contractor

By:	Title:	Date:
Printed Signature	Email Address:	

Oregon Department of Education

Authorized Signature:	Title:	Date:
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Approved for Legal Sufficiency (Required for Contracts in excess of \$150,000, unless exempt)

Authorized Signature:	Title:	Date
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EXHIBIT A
SCOPE OF WORK

SCOPE OF WORK:

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

Background:

- E-Rate is a telecommunications discount program for schools and libraries paid for by the Universal Service Fund. This fund is collected by telecommunication providers on behalf of the federal government in the form of the “Universal Service Charge” on most telephone and internet access bills.
- The biennial Connectivity Grants are from a General Fund Allocation to assist in the extension of high-speed internet services to upgrade connections to schools that are considered under-served, (typically less than 10Mbps of bandwidth) from copper to fiber-optic cable.

Purpose:

Agency is seeking an ESD to provide E-rate services in conjunction with the Agency State E-rate Coordinator, and to coordinate the applications and subsequent distribution of the biennial connectivity grants in conjunction with the Oregon Association of Education Service Districts.

Specific Work to be Accomplished:

Provide annual training to districts in conjunction with the Agency State E-rate Coordinator

Review district technology plans and provide assistance to districts revising plans.

Track technology plan correspondence and lifecycle.

Provide written weekly program updates as well as special updates geared directly toward Oregon applicants.

Assist district coordinators with interpretation of Universal Service Administrative Company Schools and Library Division (USAC SLD) guidelines for the purpose of filing applications.

Research USAC guidelines and provide recommendations to district coordinators for the purpose of resolving unusual application issues.

Research and request copies of statewide statistical data compiled and reported by Agency such as free and reduced lunch percentages and technology plan approval status.

Attend USAC and State E-rate Coordinators Alliance (SECA) sponsored training(s) to keep current on program changes.

Participate in weekly SECA conference calls to keep current on program changes.

Coordinate work sessions with the Oregon Association of Education Service Districts (OAESD) to develop allotments, evaluation criteria, and an application form for connectivity sub grants.

Manage the collection and review of connectivity sub grant applications. Coordinate with the Agency Procurement Services Unit to execute sub grant awards.

DESIRED DELIVERABLES AND PAYMENT SCHEDULE

Activities	Deliverables	Due Dates	Amount
Weekly update to list-serve from E-rate Central	Written summary of correspondence in electronic or hard copy format	Quarterly: September 30, 2011 December 31, 2011 March 30, 2012 June 30, 2012 September 30, 2012 December 31, 2012 March 30, 2013 June 30, 2013	\$
E-Rate Technical plan assistance	Written summary of assistance given in electronic or hard copy format	Quarterly: September 30, 2011 December 31, 2011 March 30, 2012 June 30, 2012 September 30, 2012 December 31, 2012 March 30, 2013 June 30, 2013	\$
Connectivity grant assistance	Written summary of assistance given in electronic or hard copy format	Quarterly: September 30, 2011 December 31, 2011 March 30, 2012 June 30, 2012 September 30, 2012 December 31, 2012 March 30, 2013 June 30, 2013	\$
E-Rate Technical plan reviews	Written summary of plans reviewed in electronic or hard copy format	Annually: June 30, 2012 June 30, 2013	\$
Annual training for school districts on E-Rate program changes	Written copy of roster, agenda, and materials in electronic or hard copy format	Annually: October 31, 2011 October 31, 2012	\$
Execution of approved connectivity sub grants	Electronic Grant Management System (EGMS) report indicating fund availability	March 31, 2012	\$
Maximum Compensation			\$

DELIVERABLES AND PAYMENT SCHEDULE

As part of their Proposal, Proposer shall provide a **TENTATIVE** list of the proposed activities, schedule with deliverables and milestones in a format similar to this table. Proposer shall propose paypoints tied to the tasks and deliverables and indicate those paypoints and deliverables in the Schedule. Actual prices for each deliverable must be clearly identified in the Proposal. The final schedule may be adjusted based on a mutually acceptable Proposal.

Activities	Deliverable	Date	Paypoint

EXHIBIT B

INSURANCE REQUIREMENTS

A. REQUIRED INSURANCE. 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 and all warranty periods. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in State and that are acceptable to Agency.

i. 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.

ii. EMPLOYERS' LIABILITY.

☐ Required by Agency ☒ Not required by Agency.

iii. PROFESSIONAL LIABILITY

☐ Required by Agency ☒ Not required by Agency.

iv. COMMERCIAL GENERAL LIABILITY.

☐ Required by Agency ☒ Not required by Agency.

v. AUTOMOBILE Liability Insurance: Automobile Liability.

☒ Required by Agency ☐ Not required by Agency.

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

Bodily Injury/Death:

☒ Per occurrence limit for any single claimant:

From commencement of the Contract term 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).

☒ Per occurrence limit for multiple claimants:

From commencement of the Contract term 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).

AND

Property Damage:

☒ Per occurrence limit for any single claimant:

From commencement of the Contract term to June 30, 2011: \$100,100, and

☒ Per occurrence limit for multiple claimants:

From commencement of the Contract term to June 30, 2011: \$500,600.

From July 1, 2010, and every year thereafter, the adjusted limitation will be as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).

vii. EXCESS/UMBRELLA INSURANCE.

A combination of primary and excess/umbrella insurance is acceptable. If you are using excess/umbrella insurance to meet the minimum insurance requirement, your certificate must include a list of the policies that fall under the excess/umbrella insurance. Sample wording is "The Excess/Umbrella policy is excess over General Liability, Auto Liability, etc."

B. ADDITIONAL INSURED. The Commercial General Liability insurance and Automobile Liability insurance required under this Contract shall include the State of Oregon, its 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.

C. "TAIL" COVERAGE. If any of the required professional liability insurance is on a "claims made" basis, Contractor shall either 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) 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 Exhibit B, Subsection C.

D. NOTICE OF CANCELLATION OR CHANGE. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days' written notice from this Contractor or its insurer(s) to Agency. Any failure

to comply with the reporting provisions of this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract by Agency.

E. CERTIFICATE(S) 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) must specify all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees). Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

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.

EXHIBIT C

CERTIFICATION STATEMENT FOR AN INDEPENDENT CONTRACTOR

(An Independent Contractor Certification is required, regardless of corporate status.)

1. I am free from direction and control over the means and manner of providing the services, subject only to the right of the person for whom the services are provided to specify the desired results;
2. I am licensed under ORS Chapters 671 or 701 to provide the services, if such license is required under ORS Chapters 671 or 701.
3. I am responsible for obtaining other licenses or certificates necessary to provide the services.
4. I am customarily engaged in an independently established business because **three (3)** of the following requirements are satisfied: *(Contractor to mark those which apply)*

___ **A.** I maintain a business location:

- 1) that is separate from the business or work location of the person for whom the services are provided; or
- 2) is located in a portion of my residence, and that portion is used primarily for business.

___ **B.** I bear the risk of loss related to the business or the provision of services as shown by factors such as:

- 1) Entering into a fixed-price contract;
- 2) Being required to correct defective work;
- 3) Warranting the services provided; or
- 4) Negotiating indemnification agreements, or purchasing indemnification liability insurance, performance bonds or errors and omissions insurance.

___ **C.** I provide contracted services for two (2) or more different persons within a 12-month period, or routinely engage in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.

___ **D.** I make a significant investment in the business, through means such as:

- 1) Purchasing tools or equipment necessary to provide the services;
- 2) Paying for the premises or facilities where the services are provided; or
- 3) Paying for licenses, certificates or specialized training required to provide the services.

___ **E.** I have the authority to hire other persons to provide or to assist in providing the services and have the authority to fire those persons.

CONTRACTOR

By:

Title:

Printed

Signature:

Date:

ATTACHMENT A

BUDGET FORM

Prices must include all personnel costs, materials and supplies, travel, administrative and indirect costs, and any other costs associated with the provision of the services under the resultant contract. (It is at the option of the Proposer to use this budget form or to use Proposer's own budget form.)

CATEGORIES	ESTIMATE
Personnel Services (Salaries and Benefits) Project Management Professional Staff Clerical/Support Staff Other (describe) _____	
Materials and Supplies	
Travel	
Contracted Services (describe)	
Other Supplies and Services (describe)	
TOTAL DIRECT COSTS	
Administrative/Indirect Costs	
TOTAL PROPOSED BUDGET	

ATTACHMENT B
CERTIFICATION OF COSTS

This is to confirm the work proposed by

for the Oregon Department of Education, and all supporting requirements identified in the Proposal will be available and delivered in accordance with the Activities, Deliverables and Payment 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 ninety (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.



Proposer Name (**signature**)

Proposer Name (**printed**)

Proposer Title

Entity/Company Name

Address

Phone

Fax

Email

Date

ATTACHMENT C

CERTIFICATION DENYING CONFLICT OF INTEREST

Issuing Agency: OREGON DEPARTMENT OF EDUCATION

Request for Proposal: RFP E-Rate and Connectivity Grant Services

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 OR WITH ANY PARTY CONNECTED WITH THE OREGON SCHOOL AND DISTRICT IMPROVEMENT NETWORK, DIRECTLY OR INDIRECTLY."

Proposer Name (**signature**)

Proposer Name (printed)

Proposer Title (printed)

Entity/Company Name (printed)

Date

POTENTIAL CONFLICT DECLARED: [] Yes [] No

ATTACHMENT D

CURRENT REFERENCES

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

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

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

ATTACHMENT D (cont.)

CURRENT REFERENCES

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

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