



Request for Proposals: FDI Services Consultant For Europe

Proposal due date: July 16, 2021, at 3:00 p.m. Pacific Time

Single Point of Contact (SPC):
Devon Thorson, Contracts Officer
Oregon Business Development Department
775 Summer St., NE, Suite 200
Salem, OR 97301-1280
Telephone: (971) 600-4484
Email: Devon.T.Thorson@oregon.gov

1.0 SOLICITATION INFORMATION AND REQUIREMENTS

1.1 GENERAL INFORMATION

The State of Oregon, acting by and through the Business Development Department (“Department” or “Business Oregon”), is issuing this Request for Proposals for a foreign direct investment (“FDI”) recruitment consultant for Europe. FDI recruitment should focus primarily on the Department’s target industries such as Advanced Manufacturing (Renewable Energy, Metals and Transportation Equipment), High Tech Manufacturing (Electronics/Precision Instruments), Software/Information-Based Industries, and Data Centers. Final industry focus will be determined and mutually agreed upon during the first 30 days of the contract.

The budget Business Oregon has for these Services is \$100,000 over 12 months.

The Department anticipates the award of one Contract from this RFP. The initial term of the Contract is anticipated to be two years with the option to renew up to a maximum of eight years.

1.2 DESCRIPTION OF SERVICES NEEDED / PROPOSED STATEMENT OF WORK

During the term of this Contract, Contractor shall perform the following services:

Industry Outreach Planning/Strategic Plan: During first 30 days of the Contract, Contractor shall partner with the Department’s Business Recruitment Team (BRT) to create a European FDI outreach strategy. Specifically, the Contractor shall work with the BRT to get input on a European FDI outreach and marketing plan for the year and which industries/industry segments will be focused on during the Contract. The strategy must be geared towards developing investment opportunities from European FDI prospects within the industry sectors mutually agreed upon. A Strategic Plan will be presented to the Department no later than 30 August 2021. Corrections and edits will be finalized no later than 10 September 2021.

Target Prospect Parameter Refinement: During first 60 days of the Contract, Contractor shall partner with the BRT to develop agreed upon parameters for prospective leads. Specifically, minimum criteria for targeted companies – including minimum projected job numbers, financial standing and ability to manage and implement projects from abroad will be mutually agreed upon.

Messaging and Value Proposition Refinement: During first 60 days of the Contract, Contractor shall partner with the BRT to refine and update the Oregon FDI value proposition for European audiences. Specifically, the Contractor shall work with the BRT to get input on a European FDI value proposition and marketing materials (PowerPoint, web-based materials and brochure).

Social Media Strategy: During first 90 days of the Contract, Contractor shall partner with the BRT and the Department’s Communications Manager to develop a low-cost social media campaign to more effectively disseminate information regarding Oregon’s value proposition to European prospects.

Project Pipeline Development and Virtual Meetings: Contractor shall generate and maintain a verified pipeline of company leads and potential projects in Europe and mutually vetted and agreed upon markets for target industry sectors that may result in FDI opportunities in Oregon. This shall be the Contractor’s principal responsibility. Specifically, Contractor shall:

- a. Work with the the BRT to discuss and agree on industry-specific companies to contact during the term of this Contract. Contactor should emphasize company decision-makers and/or high ranking corporate officials.
- b. Conduct target industry analysis for up to four (4) mutually agreed upon sectors. Prepare and share information in reports provided to the Department.
- c. Develop database of companies to be contacted during the term of the Contract. The database should include a mutually agreed upon number of European firms who are COVID-19/pandemic-resistant and anticipated to expand into the U.S. in the next 0-3 years. To account for rapid changes taking place in the global economy, the database will be developed in mutually agreed upon intervals during the life of the Contract.
- d. Arrange an agreed number of monthly virtual meetings with prospective companies, an average of 3-5 meetings per month (or 36-60 meetings total per year) for the 12-month Contract term. Relationships should be maintained with companies deemed to have characteristics that could portend future projects into the U.S. West Coast.
- e. Provide simple one-page company overview at least 36 hours prior to each virtual meeting which includes company background and relevant information to provide context for the initial discussion.
- f. Enter details of these meetings and interactions, and other meetings and events, into monthly reports. Monthly report input shall include:
 - Investment leads generated from all sources as well as descriptions
 - Companies contacted and a summary of communications
 - Virtual conferences, webinars and seminars and exhibitions participated in
 - Strategic alliances/intermediaries contacted and a summary of communications
- g. The Contractor should pre-schedule a monthly review and planning call with the BRT and submit a monthly report of the activities undertaken during the past month and that are proposed for the upcoming month. Both parties may agree to a more frequent meeting schedule.
- h. Cultivate FDI commitments and target solid leads during the Project Pipeline Development process.

The Department expects the Contractor will achieve 10-20 solid leads and 2-5 concrete project commitments within each 12-month Contract month period.

Outbound Missions: The Contractor shall support up to 3 (three) business recruitment/FDI missions to Europe by Department staff during each 12 (twelve) month Contract cycle. During these trade missions, the Contractor shall support integration of business retention/aftercare meetings (recruitment and retention missions). Outbound trade missions will be limited to Western Europe during the initial Contract period for Department staff.

For each outbound mission, the Contractor shall assist with message development, coordinating travel, logistics, and accommodations as well as arranging meetings with prospects. The BRT will communicate frequently with the Contractor during the weeks leading up to the mission to develop an

agenda and travel plan which can be revised as new meetings are confirmed. A PDF mission document shall be shared by Contractor with Department staff prior to departure from Oregon to Europe.

Note regarding budget for Outbound Mission: Business Oregon BRT staff are experienced in outbound FDI work, having conducted numerous missions to both Europe and Asia during the past several years. Department staff does not require Contractor attendance for the entirety of outbound missions but expect a minimum 1-2 days of face-to-face interaction during each outbound mission. The Department understand that business travel within the broad geography of Western Europe often translates into substantial costs. Therefore, in order to reduce expenses it is not necessary that the consultant accompany Business Oregon staff on entire outbound missions.

For occasional trade missions which may include other government officials and key allies, we understand that additional fees may be required. Such fees should be negotiated prior to planning and execution of said events. We recognize that these missions (such as a Governor's or Department Director's mission) may not focus specifically on FDI activities; as such, we estimate that these will occur at infrequent intervals (every 2-3 years).

Due to COVID-19, limited vaccine availability, new virus strains and uncertainty regarding travel guidelines, it is likely that in-person outbound missions will not begin until Q4 2021 at the earliest.

Other Duties:

Contractor shall also conduct the following activities:

- a. Ongoing Market Intelligence – The Contractor shall inform the BRT about important changes as they occur in Europe which may impact foreign direct investment.
- b. Annual Inbound Visit by Contractor to Oregon – The Contractor will visit Oregon one-week per year for a 5-business/work day inbound visit to meet with the BRT, Department staff, Oregon businesses and economic development partners. The cost of this inbound trip shall be included in the total Contract amount.
- c. Event Participation—The Contractor shall participate in occasional mutually agreed upon industry roundtables, SelectUSA events, conferences or trade shows as a representative of Business Oregon.

1.3 QUESTIONS AND CLARIFICATIONS

The Single Point of Contact (SPC) for this RFP is identified on the Cover Page, along with the SPC's contact information. All inquiries, whether relating to the RFP process, administration, deadlines, award, or to the intent or technical aspects of the services must be submitted in writing (email preferred; mail or fax are acceptable) to the SPC. All inquiries must reference the RFP number; identify Proposer's name and contact information; and refer to the specific area of the RFP being questioned (i.e. page, section and paragraph number if applicable).

All questions must be received **not later than (7) calendar days prior** to the Proposal due date specified on the title page of this RFP.

Substantive questions and answers will be issued as official addenda to this RFP. Changes or modifications to this RFP shall be binding on Department only if in the form of written addenda issued by Department.

The Department will provide addenda by posting them to Oregon Procurement Information Network (ORPIN) or Oregon Buys, and on the Department's website at <https://www.oregon4biz.com/Contracting/>. In addition, the Department may directly provide addenda to directly solicited firms. Anyone who has received a copy of this RFP from a source other than Department is responsible for checking with designated procurement staff or online postings. Department is not responsible for sending addenda to any unknown potential Proposers.

Department may require any clarification it needs to understand a Proposal.

1.4 PROTESTS

1.4.1 RFP PROTESTS

Proposers who believe RFP specifications are unnecessarily restrictive or limit competition may submit a protest to the SPC. Protests concerning the RFP, including requests for change of particular provisions, specifications, or Personal Services Contract terms and conditions, must be submitted in writing to the SPC **not later than (7) calendar days prior to** the Proposal due date specified on the cover page of this RFP. A protest must clearly, specifically and in detail explain the reason(s) for the protest and specify any proposed changes to the RFP specifications. Department will respond to protests in writing. Department will not consider any solicitation protest submitted after the deadline established in this subsection.

1.4.2 PROTESTS TO ADDENDA

Prospective Proposers may submit a written protest of anything contained in the respective Addendum. Protests to Addenda, if issued, must be submitted by the date/time specified in the respective Addendum, or they will not be considered. Protests of matters not added or modified by the respective Addendum will not be considered.

1.4.2 AWARD PROTESTS

An affected offeror will have 7 calendar days from the date of the intent to award notice to file a written protest. A Proposer is an affected offeror only if the Proposer would be eligible for an award in the event the protest was successful and is protesting for one or more of the following reasons:

- All higher ranked proposals are non-responsive.
- Agency has failed to conduct an evaluation of proposals in accordance with the criteria or process described in the RFP.
- Agency abused its discretion in rejecting the protestor's proposal as non-responsive.

1.5 DUE DATE

Proposals must be received by July 16, 2021 **on or before 3:00 p.m. Pacific Time**. Absolutely no Proposals will be accepted after this date and time. Department relies on the State of Oregon email system clock to determine the correct time and is not responsible for any delays or difficulties experienced in the transmission of any Proposal. **Please do not wait until the last minute to email your Proposal; it will be too late to correct any problems.**

1.6 ELECTRONIC RESPONSES BY EMAIL ONLY

Only electronic proposals sent by email are acceptable. Proposals sent by fax, regular mail, and physical deliveries are not acceptable. **The email subject or reference line for all submittals must include the RFP title and RFP number.**

Proposals will be received only at the SPC's email address.

1.7 NO LATE OR MISDIRECTED SUBMISSION OF PROPOSALS

Submittals that are late or misdirected will be considered non-responsive, without exception. The Department is not responsible for errors of any kind involved with electronic submission, nor for notifying Proposers of complete or incomplete receipt of a Proposal.

1.8 FORMAT AND PAGE LIMIT FOR PROPOSALS

The Department will accept Proposals in electronic files compatible with Microsoft Office applications. The signed cover sheet required by section 1.9 must be submitted as a .PDF file. Files in excess of 15 megabytes must be submitted incrementally. Proposals must not be submitted as .zip, .exe or .com files.

Proposers may choose how to allocate pages between any sections, within the overall page limit. The Proposal **must not exceed 15 pages total (excluding the work sample and Cover Sheet (Attachment A)), and also comply with the page limits provided in the instructions in Section 2 below.** Department will consider the pages up to that allowable number and discard all pages in excess of the allowable number. One (1) page is defined as: one side of a single 8-1/2" x 11" page, with 12-point minimum font size for the substantive text. Proposers may use their discretion for the font size of other materials (e.g., graphics, charts). Any page or partial page with substantive text, graphics, charts, resumes, etc., will be counted as one (1) page.

1.9 COVER SHEET

A Proposal must include a completed Cover Sheet (substantially in the form of RFP Attachment A), signed by a duly authorized representative of the Proposer empowered to bind the Proposer.

1.10 PUBLIC RECORDS

This RFP, and one copy of every proposal accepted in response to it, will be kept by Department and made a part of its records. All accepted Proposals will become part of the public file without obligation to Department. If a Proposal contains any information that may be exempt from disclosure under the Oregon Public Records Law, ORS 192.410 through 192.505, the Proposer must clearly designate that portion of its Proposal it considers to be exempt, along with a justification and citation to the authority relied upon. Application of the Uniform Trade Secrets Act (UTSA), ORS 646.461 and 646.475, and the Oregon Public Records Law will determine whether any information is actually exempt from disclosure. Identifying an entire Proposal as exempt from disclosure is not acceptable and will not be effective to exempt the Proposal or any part of it from disclosure. Failure to identify the portion of the Proposal claimed as exempt from disclosure, and to specify a justification and the authority relied upon, will be deemed a waiver of any future claim based on disclosure of that information.

1.11 TERMS AND CONDITIONS

By submitting its Proposal, the selected Proposer agrees to be bound by the terms and conditions of the State of Oregon Personal/Professional Services Contract that is attached to this RFP as Attachment B, including requirements for insurance as determined by Department. **Any Proposal that is conditioned on Department's acceptance of any other terms and conditions or rights to negotiate will be rejected as non-responsive.**

PROPOSAL SUBMISSION CHECKLIST FOR USE BY PROPOSERS - INFORMATION ONLY	
<input type="checkbox"/>	Due Date Met
<input type="checkbox"/>	Proposal Addressed Correctly

<input type="checkbox"/>	Proposal in Acceptable Electronic File Type(s)
<input type="checkbox"/>	Proposal Format and Page Limit Requirements Met
<input type="checkbox"/>	Signed Cover Sheet Included
<input type="checkbox"/>	Proposal Does Not Include Conditional Language About Terms and Conditions
<input type="checkbox"/>	Public Records Disclosure Exemption Statement Included (If Applicable)

2.0 INFORMATION REQUESTED FROM PROPOSERS; SCORED CRITERIA

Scoring for the Project Implementation Plan, Capabilities and Experience, FDI Assessment, and Billing Rates will be separate, and each Task will be scored based on the categories described below.

The response to the criteria in each subsection of this Section 2.0 must not exceed the allowable page limit described. The Department will consider the pages up to that allowable number and discard all pages in excess of the allowable number.

2.2.1 Project Implementation Plan (10 page limit) 50 Points

Please provide answers to the following prompts:

- Provide a description of the techniques, approaches and methods that you believe are most applicable for this project, and critique the proposed statement of work in section 1.2 with your confirmations, potential risks, and recommended changes or optional tasks to include.
- Please describe the process or protocols you will use as you conduct the Industry Outreach Planning. Your strategy must be geared toward development of investment opportunities from recession and COVID-19 pandemic resistant European FDI prospects. With these circumstances, describe the type of strategy will you use to achieve the desired results. Provide factual details on your process in project pipeline development and what success and/or experience you have in developing and facilitating virtual meetings.
- Share details on your process for organizing Outbound FDI/Recruitment Missions.
- Business Intelligence and Lead Identification- Please describe your sources (to the extent you are able) and approach for identifying prospects. Additionally, it is important for the BRT to start receiving better business development intelligence from the targeted Western European nations—please describe how will you report that information back to the recruitment team.

2.2.2 Proposer’s Capabilities and Experience (2 page limit) 25 Points

Please provide answers to the following prompts:

- (1) Provide brief bios of the key member(s) who will be performing the work on this project, and their associated role, responsibilities and committed percentage availability. Please provide information that demonstrates:
 - Knowledge and experience related to FDI recruitment and lead generation.
 - Minimum of five years of proven experience in FDI recruitment some of which includes experience in the target industries.
 - Current network of businesses and industry associations contacts in Europe.
 - Business language fluency (speaking, reading and writing) in English, German and other agreed upon languages.
 - Knowledge and experience related to European markets.

- (2) Attach a copy of a work sample for a project comparable to Department's need.
- (3) You may optionally provide additional resumes or links to online resumes (such as LinkedIn), which will not count toward the page limit.

2.2.3 Oregon FDI Assessment and Approach to Lead Generation (2 page limit) 15 Points

- Please include a brief assessment of Oregon's ability to attract FDI from Western Europe including perceived competitive advantages and weaknesses.
- Outline your planned approach to lead generation including research methods and databases and other tools that will be used in your work.

2.2.4 Value (1 page limit) 10 Points

- Please list billing rates for the team members described in Section 2.2.2, and any other costs.

In **addition to the scored criteria** in this Section 2.0, Proposers must also submit contact information for two references who can address proposer's skill in relation to this RFP and in what capacity they can speak to the skills.

3.0 EVALUATION PROCESS

The selection process will be administered in accordance with the authority and procedures in OAR Chapter 123, Division 6 and OAR 137-047-270. Proposals received on time will be reviewed against any Pass/Fail criteria. Proposals meeting those criteria will be forwarded to an evaluation committee that will independently score each Proposal according to the scored criteria set forth in Section 2.

Without limiting the possibilities allowed under OAR 137-047-0261, the Department may, at any time in its sole discretion, (a) provide notice to a Proposer of selection for Contract negotiation and possible award; (b) gather more information for evaluation; (c) provide notice to a Proposer(s) of non-selection; or (d) provide notification to Proposer(s) that the RFP is cancelled (and either that the RFP may be resolicited or that Department intends to take no further action with respect to the RFP).

The Department reserves the right to employ any of the procedures allowed by Oregon Administrative Rule 137-047-0261, such as additional competitive steps or Proposals, modified or additional selection criteria, interviews, competitive simultaneous discussions or negotiations, etc. Information or issues revealed by a Proposer's questions or Proposal, may, in the Department's sole discretion, trigger such modifications or further steps. If there are further steps beyond the initial Proposal and scoring, the scoring results from the first step and any subsequent step will be added together.

Department reserves the right to reject any or all Proposals for good cause if it is in the public interest, and is not liable for any costs a Proposer incurs while preparing or presenting its Proposal or during further evaluation stages.

4.0 CONTRACT AWARD REQUIREMENTS

4.1 NEGOTIATIONS

The Department, in its sole discretion, reserves the right to negotiate all terms and conditions in the attached Sample Contract to the extent allowed by law.

If negotiations with the top ranked Proposer are not successful, Department may terminate negotiations and begin negotiating with the next highest ranked Proposer.

4.2 CERTIFICATES OF INSURANCE

The Contractor will be required to provide certificates of insurance for the insurance coverages required by the Personal Services Contract (Attachment B, Exhibit B).

4.3 CONTRACTOR RESPONSIBILITIES

The Contractor shall assume responsibility for any and all contractual matters, including performance of work and the stated deliverables finalized in the Contract, whether the Contractor, an agent or an allowed subcontractor produces them.

RFP ATTACHMENT A - COVER SHEET & CERTIFICATIONS
STATEMENT OF PROPOSAL to Oregon Business Development Department

_____ (Legal Name of Proposer) accepts all the terms and conditions contained in the FDI SERVICES CONSULTANT FOR EUROPE RFP, and the attached sample Contract (as they may have been modified or reserved for negotiation).

<input type="checkbox"/> Corporation <input type="checkbox"/> Professional Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Ltd. Liability Company <input type="checkbox"/> Ltd. Liability Partnership <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Other _____ Mailing Address _____ _____

Type name of contact/authorized representative _____ Email address _____ Telephone _____ Other _____ Type name of person(s) authorized to sign Contract _____
--

Affirmative Action, Nondiscrimination: Department is an equal-employment-opportunity employer and values diversity in its work force. It also requires Proposers to have an operating policy as an equal employment opportunity employer, and to follow good faith diversity efforts when subcontracting.

We certify that we have a formal statement of nondiscrimination in employment policy and have an affirmative action program if over 50 employees. (Firms of 50 people or less do not need a formal program, but must have a policy). Does your firm have 50 or more employees? Yes No

We also certify that we have not and will not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055, and will follow good faith efforts in ORS 200.045 during any subcontracting.

Responsibility Certifications

Has your company ever been declared in breach of any contract to provide services for unperformed or defective work?

Yes No

If "yes," explain. _____

Has any employee or agent of your company been convicted under state or federal law of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty?

Yes No

If "yes," explain. _____

Has your company or any employee or agent of your company been indicted under state or federal false claims or antitrust laws, or charged with any other criminal offense arising out of obtaining, attempting to obtain, or performing a public or private contract or subcontract? Yes No

If "yes," explain. _____

During the last ten years, has your firm changed majority ownership or been the debtor in a bankruptcy case? Yes No

If “yes,” explain. _____

Does your firm have any outstanding judgments pending against it? Yes No

If “yes,” explain. _____

During the last ten years, has your firm been a party to litigation, arbitration or mediation where the amount in dispute exceeded \$10,000? Yes No

If “yes,” explain. (Include court, and party names.) _____

Conflicts of Interest: Please select (only) one of the following three options:

Our firm has no current, known actual, potential, or reasonably perceived, financial or other interest in the outcome of the services described in this RFP.

Our firm has a potential or reasonably perceived financial or other interest in the outcome of the services described in this RFP as described here: _____. Our firm proposes to mitigate the potential or perceived conflict according to the following plan: _____.

Our firm has an actual financial or other interest in the outcome of the services described in this RFP as described here: _____.

What does “financial interest” mean?

If your firm, or employee of your firm working on the project (or a member of the employee’s household), will/may or may be perceived to receive or lose private income depending on government business choices based on your firm’s services, findings or recommendations, this must be listed as a financial interest. An example would be ownership in physical assets affected by government business choices related to these services. The possibility of contracting for further consulting services is not included in this definition and is not prohibited.

What does “other interest” mean?

If your firm, or employee of your firm working on the project (or a member of the employee’s household), will/may or may be perceived to have political, legal or any other interests that will affect what goes into your firm’s services, findings or recommendations, or will be/may be, or may be perceived to be, affected by government business choices related to these services, this must be listed as an other interest.

Tax Information and Tax Compliance: Any individual signing on behalf of Contractor hereby certifies under penalty of perjury: (a) Contractor’s correct taxpayer identification number is [_____]; (b) Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding; (c) s/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor’s payment of taxes, and to the best of her/his knowledge, for a period of no fewer than six calendar years preceding the Effective Date of this Contract, Contractor has faithfully complied with and is not in violation of: (i) all tax laws of this state, including but not limited to those included in: ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and local taxes administered by the Department of Revenue; (ii) any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor’s property, operations, receipts, or income, or to Contractor’s performance of or compensation for any work performed by Contractor; (iii) any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (iv) any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions; and(d) Contractor is an independent

contractor as defined in ORS 670.600; (e) if required by 40CFR1506.5(c), Contractor has no financial or other interest in the outcome of the project; and (f) in the event that Contractor is a general partnership or joint venture, that Contractor signature(s) on this Contract constitute certifications to the above statements pertaining to the partnership or joint venture, as well as certifications of the above statements as to any general partner or joint venturer signing this Contract.

Signature of Authorized Representative certifying the truth of all statements:

[signature]
[Type name] Date

RFP ATTACHMENT B – SAMPLE CONTRACT

STATE OF OREGON PERSONAL/PROFESSIONAL SERVICES CONTRACT

Number _____

Title: _____

This Contract is between the State of Oregon, acting by and through its Oregon Business Development Department (“Department”), and _____ (“Contractor”).

1. Effective Date and Duration. This Contract is effective once fully executed, and approved as required by applicable law. Unless terminated or extended, this Contract expires when Department accepts Contractor’s performance or on _____, _____ whichever date occurs first. Expiration or termination does not extinguish or prejudice Department’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.

2. Statement of Work. The Statement of Work (the “Services”), including the delivery schedule for such Services, is contained in Exhibit A, attached.

3. Compensation

a. The [maximum, not-to-exceed compensation] payable to Contractor under this Contract, which includes any allowable expenses, is \$ _____ and is more particularly described in Exhibit A – Compensation.

b. Any progress payments to Contractor will be made only in accordance with the schedule and requirements in Exhibit A – Compensation.

4. Contract Documents. This Contract consists of the following documents, incorporated by reference, which are listed in descending order of precedence: this Contract less all exhibits, attached Exhibits A and B.

5. Independent Contractor; Responsibility for Taxes and Withholding

a. Contractor will perform all required Services as an independent contractor. Although Department reserves the right (i) to determine the delivery schedule for the Services to be performed and (ii) to evaluate the quality of the completed performance, Department will not control, and Contractor is responsible for determining, the means and manner of Contractor’s performance.

b. If Contractor is currently performing services for the State of Oregon or the federal government, Contractor by signature to this Contract declares and certifies that: Contractor’s Services to be performed under this Contract create 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) prohibit Contractor’s Services under this Contract. Contractor is not an “officer,” “employee,” or “agent” of Department, as those terms are used in ORS 30.265.

c. Contractor is responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract, and unless Department is aware that Contractor is subject to backup withholding, Department 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. Except as described in Exhibit A, Contractor cannot enter into any subcontracts for any of the Services required by this Contract, or assign or transfer any of its interest in this Contract, without Department’s prior written consent. In addition to any other provisions Department may require,

Contractor will include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by Sections 5, 6, 10, 11, 14, 15, and 18 of this Contract as if the subcontractor were the Contractor. Department's consent to any subcontract does not relieve Contractor of any of its duties or obligations under this Contract.

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

7. No Third Party Beneficiaries. Department and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, or is to be construed to give any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name and expressly described as intended beneficiaries of the terms of this Contract.

8. Funds Available and Authorized; Payments

a. No other agency or department of the State of Oregon will compensate Contractor for Services performed under this Contract. Department has sufficient funds currently available and authorized for expenditure to finance the costs of this Contract within Department's biennial appropriation or limitation. Contractor understands and agrees that Department's payment of amounts under this Contract attributable to Services performed after the last day of the current biennium is contingent on Department receiving from the Oregon Legislative Assembly appropriations, limitations, or other expenditure authority sufficient to allow Department, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract.

b. Department will only pay for completed Services that are accepted by Department.

9. Representations and Warranties

a. Contractor's Representations and Warranties. Contractor represents and warrants to Department that (1) Contractor has the power and authority to enter into and perform this Contract, (2) this Contract is a valid and binding obligation of Contractor enforceable in accordance with its terms, (3) the Services under this Contract will be performed in accordance with the highest standards prevalent in the industry, and (4) Contractor will, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Services.

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 Services.

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

(iii) "Work Product" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all Services that Contractor delivers or is required to deliver to Department pursuant to this Contract.

b. Ownership and License. All intellectual property rights in the Work Product created by Contractor pursuant to this Contract, including derivative works and compilations, are the exclusive property of Department. All Work Product authored by Contractor under this Contract is deemed "work made for hire" to the extent permitted by the United States Copyright Act. To the extent the Department

is not the owner of the intellectual property rights in such Work Product, Contractor hereby irrevocably assigns to Department any and all of its rights, title, and interest in such Work Product. Upon Department's reasonable request, Contractor will execute such further documents and instruments reasonably necessary to fully vest such rights in Department. Contractor forever waives any and all rights relating to original Work Product created pursuant to this Contract, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

In the event that intellectual property rights in the Work Product are Contractor Intellectual Property, Contractor hereby grants to Department an irrevocable, non-exclusive, perpetual, royalty-free license to use, make, 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 Department's behalf.

To the extent Contractor has the authority, Contractor will sublicense or pass through to the Department all Third Party Intellectual Property. Contractor represents and warrants that it has provided written disclosure to the Department of all Third Party Intellectual Property that must be independently licensed by the Department to fully enjoy the benefits of the Work Product. If Contractor failed to provide such written disclosure, Contractor will secure on Department's behalf and in the name of Department an irrevocable, non-exclusive, perpetual, royalty-free license to use, make, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property employed in the Work Product, and to authorize others to do the same on Department's behalf.

11. Indemnity

a. Claims for Other than Professional Liability. Contractor will defend (subject to ORS chapter 180), save and hold harmless the State of Oregon, the Oregon Business Development Commission and its members, the Oregon Business Development Department, their officers, agents and employees from all claims, suits or actions of whatsoever nature, including intentional acts resulting from or arising out of the activities of Contractor or its subcontractors, agents or employees under this agreement.

b. Claims for Professional Liability. Contractor will defend (subject to ORS chapter 180), save and hold harmless the State of Oregon, the Oregon Business Development Commission and its members, the Oregon Business Development Department, their officers, agents and employees, from all claims, suits or actions arising out of the professional negligent acts, errors or omissions of Contractor or its subcontractors and subcontractors, agents or employees in performance of professional services under this agreement.

c. Control of Defense and Settlement. Contractor will 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 will 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 authority to act as legal counsel for the State of Oregon from the Oregon Attorney General, in a form and manner determined appropriate by the Attorney General, nor will 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.

12. Insurance. Contractor will provide insurance as indicated on Exhibit B.

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. Department's Right To Terminate For Convenience. Department may, at its sole discretion, terminate this Contract, in whole or in part, upon 30 days notice to Contractor.

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

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

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

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

(iv) Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Services under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Services as to endanger Contractor's performance under this Contract in accordance with its terms.

d. Contractor's Right to Terminate for Cause. Contractor may terminate this Contract upon 30 days' notice to Department if Department fails to pay Contractor pursuant to the terms of this Contract and Department fails to cure within 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 13a, 13b, 13c(i), 13c(ii) or 13d, Contractor's sole remedy is a claim for the sum designated for accomplishing the Services multiplied by the percentage of Services completed and accepted by Department, less previous amounts paid and any claim(s) which State has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this subsection, Contractor will promptly pay any excess to Department.

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

f. Contractor's Tender Upon Termination. Upon receiving a notice of termination of this Contract, Contractor will immediately cease all activities under this Contract, unless Department expressly directs otherwise in such notice. Upon termination of this Contract, Contractor will deliver to Department all documents, information, works-in-progress and other property that are or would be deliverables had the Contract been completed. Upon Department's request, Contractor will surrender to anyone Department designates, all documents, research or objects or other tangible things needed to complete the Services.

14. Records Maintenance; Access. Contractor will maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor will maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that Department and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives 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 will 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. Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Services under this Contract. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with: (i) Title VI of Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Department's performance under this Contract is conditioned upon Contractor's compliance with the provisions of ORS 279B.220, 279B.230, 279B.235, and 279B.270, which are incorporated by this reference. Contractor shall continue to comply with the tax laws of this state or a political sub-division of this state during the term of the public contract.

16. Business Registration. Contractor has provided to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies to do business in the State of Oregon relative to this Contract.

17. Force Majeure. Neither Department nor Contractor will be held responsible for delay or default caused by fire, riot, acts of God, terrorist acts, or other acts of political sabotage, or war where such cause was beyond the reasonable control of Department or Contractor, respectively. Contractor will, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and will, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

18. Survival. All rights and obligations cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Sections 1, 8, 9, 10, 11, 13, 14, 15, 21, 25, and 26.

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

20. Notices and Communication. Except as otherwise expressly provided in this Contract, any communication between the parties or notices required or permitted must be given in writing by personal delivery, email, or by mailing the same, postage prepaid, to Contractor or OBDD at the addresses set forth below, or to such other persons or addresses that either party may subsequently indicate pursuant to this Section.

Any communication or notice by personal delivery will be deemed effective when actually delivered to the addressee. Any communication or notice so addressed and mailed will be deemed to be received and effective five (5) days after mailing. Any communication or notice given by email becomes effective 1) 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 or 2) the recipient's confirmation of receipt, whichever is earlier. Notwithstanding this provision, the following notices may not be given by email: notice of default or notice of termination.

OBDD: Assistant Director for Economic Development
Oregon Business Development Department
775 Summer Street Suite 200
Salem OR 97301-1280

Contractor: According to the Contractor Data and Certification below

or to such other addresses or numbers as either party may later designate pursuant to this Section 20. Any notice so addressed and mailed is deemed to be given five (5) days after mailing. Any notice by personal delivery is 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 are not affected, and the rights and obligations of the parties are to 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 constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Contract so executed constitutes an original.

23. Oregon False Claims Act. Contractor acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to this Contract. Contractor certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or causes to be made that pertains to this Contract.

24. Disclosure of Social Security Number. Contractor must provide Contractor's Social Security number unless Contractor provides a federal tax ID number. This number is requested pursuant to ORS 305.385. Social Security numbers provided pursuant to this authority will be used for the administration of state, federal and local tax laws.

25. Choice of Law; Designation of Forum; Federal Forum

a. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Contract, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

b. Any party bringing a legal action or proceeding against any other party arising out of or relating to this Contract shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

c. Notwithstanding the preceding paragraph, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This Section applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This Section is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

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 binds 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, is effective only in the specific instance and for the specific purpose given. The failure of Department to enforce any provision of this Contract does not constitute a waiver by Department of that or any other provision.

27. Amendments. Department 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 is effective unless it is in writing signed by the parties, and all approvals required by applicable law have been obtained.

28. Attorney Fees and Other Expenses. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Contract is entitled to recover from the other its reasonable attorney fees, costs and expenses at trial and on appeal. Reasonable attorney fees cannot exceed the rate charged to the State by its attorneys. The Contractor will, on demand, pay to the State reasonable expenses incurred by the State in the collection of such payments.

29. Confidential Information.

a. In the course of performing Services under this Contract, Contractor acknowledges that it and its employees or agents may be exposed to or acquire information that is confidential to Department or Department’s clients. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract shall be deemed to be confidential information of Department (“Confidential Information”). Any reports or other documents or items which result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (i) is or becomes (other than by disclosure by Contractor) publicly known or is contained in a publicly available document; (ii) is furnished by Department to others without restrictions similar to those imposed by this Contract; (iii) is rightfully in Contractor’s possession without the obligation of nondisclosure prior to the time of its disclosure under this Contract; or (iv) is independently developed by employees or agents of Contractor who can be shown to have had no access to the Confidential Information.

b. Standard of Care. Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to Department hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential.

c. Cooperation. Contractor agrees to comply with all reasonable requests by Department to ensure the confidentiality and nondisclosure of the Confidential Information, including without limitation (i) obtaining nondisclosure agreements, in a form approved by Department, from each of Contractor’s employees and agents who are performing Services, and providing copies of such agreements to Department, and (ii) performing criminal background checks on each of Contractor’s employees and agents who are performing Services, and providing a copy of the results to Department.

CONTRACTOR DATA AND CERTIFICATION

Name (tax filing): _____

Address: _____

Email: _____

Telephone: _____ **Facsimile:** _____

Citizenship, if applicable: Non-resident alien Yes No

Business Designation (check one):

- | | |
|--|--|
| <input type="checkbox"/> Private for-profit, or non-profit Corporation | <input type="checkbox"/> Professional Corporation |
| <input type="checkbox"/> Partnership | <input type="checkbox"/> Limited Partnership |
| <input type="checkbox"/> Limited Liability Company | <input type="checkbox"/> Limited Liability Partnership |
| <input type="checkbox"/> Sole Proprietorship | <input type="checkbox"/> Other: |

Above payment information must be provided prior to Contract approval. This information may be reported to the Internal Revenue Service (IRS) under the name and taxpayer identification submitted. (See IRS 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records could subject Contractor to 31 percent backup withholding.

ORS 200.090 requires all public agencies to “aggressively pursue a policy of providing opportunities for available contracts to emerging small businesses...” The Oregon Business Development Department encourages recipients and subrecipients to follow good faith efforts in ORS 200.045, available at https://www.oregonlegislature.gov/bills_laws/ors/ors200.html. Additional resources are provided by the Governor’s Office. The Office of Minority, Women, and Emerging Small Business at the Oregon Business Development Department maintains a list of certified firms and can answer questions. Search for certified MWESB firms on the web at: <https://oregon4biz.diversitysoftware.com/>.

CONTRACTOR DATA AND TAX LAW CERTIFICATION

The undersigned certifies and swears under penalty of perjury that: I am authorized to act on behalf of Contractor, I have authority and knowledge regarding Contractor’s payment of taxes, the taxpayer identification number and other information provided on Contractor’s IRS W-9 form [or for an international vendor: [W-8 series form](#)] is correct, Contractor is not subject to tax withholding, and Contractor is not in violation of any Oregon tax laws, including but not limited to a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620. Contractor shall continue to comply with the tax laws of this state or a political subdivision of this state during the term of the public contract.

Contractor, by the signature below of its authorized representative, acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

CONTRACTOR: NO SERVICES MAY OCCUR PRIOR TO NECESSARY STATE APPROVALS

CONTRACTOR

Approval Signature	Title	Date
--------------------	-------	------

STATE

Approved as to Legal Sufficiency (All Contracts over \$150,000, unless exempted)	Date
--	------

DEPARTMENT

Approval Signature	Title	Date
--------------------	-------	------

SAMPLE CONTRACT EXHIBIT A – STATEMENT OF WORK AND COMPENSATION

[This is a placeholder and will be completed upon successful negotiation with Contractor.]

If Department determines that any deliverables are not acceptable and that any deficiencies are the responsibility of the Contractor, Department will prepare a detailed written description of any deficiencies and an associated time frame for correction, and deliver such notice to Contractor in a timely manner. Contractor will correct any deficiencies within the time specified in the notice and at no cost to Department. If the corrective work will cause any further delays in Contractor’s Services, the Contractor will submit a plan for regaining the delivery schedule for remaining Services under this Contract, unless otherwise allowed by Department.

The parties may mutually agree in writing to any adjustments to any delivery schedule for Contractor’s obligations under this Contract. Department approval must be given by a person with authority to contractually bind Department. In no event can the adjusted delivery schedule exceed the expiration date of the Contract.

EXHIBIT B – INSURANCE

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

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

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, will comply with ORS 656.017 and will provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor will require and ensure that each of its subcontractors complies with these requirements.

2. **Required by Department** **Not required by Department**

Professional Liability insurance with a combined single limit, or the equivalent, of not less than \$200,000, \$500,000, \$1,000,000, or \$2,000,000 each claim, incident or occurrence. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract.

3. **Required by Department** **Not required by Department**

General Liability insurance with a combined single limit, or the equivalent, of not less than \$200,000, \$500,000, \$1,000,000, or \$2,000,000 each occurrence for Bodily Injury and Property Damage. It will include contractual liability coverage for the indemnity provided under this Contract. The policy will be endorsed to name State of Oregon, the Oregon Business Development Commission and its members, and the Oregon Business Development Department, its officers and employees as Additional Insureds but only with respect to the Contractor's commercial services to be provided under this Contract.

4. **Required by Department** **Not required by Department**

Automobile Liability Contractor will obtain, at Contractor's expense, and keep in effect during the term of this Contract, Commercial Business 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). Combined single limit per occurrence cannot be less than Oregon Financial Responsibility Law (ORS 806.060), \$200,000, \$500,000, or \$1,000,000, each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable. The policy will be endorsed to name the State of Oregon, the Oregon Business Development Commission and its members, and the Oregon Business Development Department, its officers and employees as Additional Insureds but only with respect to the Contractor's commercial services to be provided under this Contract.

5. **Notice of cancellation or change.** There will 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 Department.

6. **Certificates of insurance.** As evidence of the insurance coverages required by this Contract, the Contractor will furnish acceptable insurance certificates to Department prior to commencing the Services. The certificate will specify **"The State of Oregon, the Oregon Business Development Commission and its members, and the Oregon Business Development Department, its officers and employees"** as Additional Insureds for Automobile and General Liability. It need not reference a specific Contract name or number. Insuring companies or entities are subject to State acceptance. If requested, complete copies of insurance policies, trust agreements, etc. will be provided to the State. The Contractor is financially responsible for all pertinent deductibles, self-insured retentions or self-insurance.