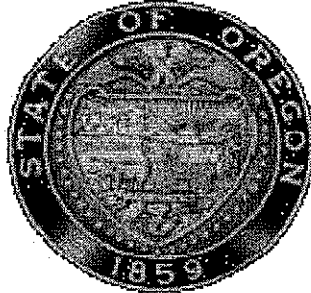


State of Oregon



INVITATION TO BID (ITB)

COVER SHEET

Department of Administrative Services
State Procurement Office
On Behalf of

The State Of Oregon

For

Toyota Vehicles

ITB NUMBER: 102-1738-10

Date of Issue: 28 May 2010

Bid Due Date: 12 July 2010, 3:00 PM (Pacific)

Issuing Office:	DAS/State Procurement Office
Contact Name:	Dave Reynolds
Address:	1225 Ferry Street SE U140
City, State, Zip:	Salem, OR 97301-4285
Phone (voice):	503-378-4643
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SECTION B – INTRODUCTION

B.1 PURPOSE OF SOLICITATION: The purpose of this ITB is to establish a Price Agreement for the purchase of vehicles by Authorized Purchasers (as defined in Exhibit A) to cover **ALL Toyota** passenger cars, light trucks, cab and chassis trucks, passenger/cargo vans and wagons, police vehicles, sport utility vehicles, alternative fuel vehicles and all Electric Vehicles currently under production for Model Year 2011 and that are placed into production by Toyota Motor Corporation in Model Years during the term of the Price Agreement.

All Toyota dealerships are invited and encouraged to submit a bid. The State intends to award a Price Agreement or Price Agreements to a Toyota dealership or dealerships. This is a Price Agreement for an initial term of about five years with option to extend for additional one-year terms not to exceed a cumulative Price Agreement term of ten (10) years. See Price Agreement Section 2.3.

This ITB is a multiple award opportunity. See Section B.5 for method of award of price agreement.

ORS 279B.215 authorizes specification of particular brands. DAS SPO is issuing ITBs for vehicles by brand name, with the intent to make concurrent price agreements for comparable vehicles of several brands.

The State invites all Toyota dealerships, in association with the manufacturer, to extend their most favorable pricing to the State and Authorized Purchasers. The State will consider bids from dealerships that provide at least Triple Net Prices on Standard Equipped vehicles and all factory installed options. State also invites Bidders to make available to the Authorized Purchaser all advertised and unadvertised customer and dealer incentives, rebates and optional equipment discounts not included in the Triple Net Price and offered by the manufacturer to encourage sales.

Dealerships are encouraged to work closely with the manufacturer in obtaining any additional discounts, such as bid assistance, that may be passed on to the State and Authorized Purchasers. The State desires each dealership to offer a fixed percentage discount ("Discount" in Attachment 1) for each vehicle and factory installed options purchased under the Price Agreement. The contract price for a vehicle ("Final Bid Price" in Attachment 1) must be inclusive of dealer overhead, profit, vehicle registration fee, initial gas, diesel or alternative fuel, preparation and pre-delivery servicing expenses, and on-site customer delivery within 60 miles of Contractor's location. The State encourages dealerships to carefully consider their Discount amount to assure that it is adequate to cover dealership requirements and still provide high quality customer assistance and support; yet slim enough to provide a competitive edge sufficient to win the competitive bidding for Price Agreement.

Authorized Purchasers will place vehicle orders directly with the successful Contractor. In most cases, Authorized Purchasers will have predetermined their vehicle configuration and will provide a worksheet listing the vehicle to be purchased; selected optional equipment with the manufacturer's codes for package, option, or other equipment; selected exterior and interior colors; and computed purchase price using price for vehicle and factory installed options in Attachment 1.

In Attachment 3 to Price Agreement SPO encourages Authorized Purchasers to compare one model or vehicle against that offered under another price agreement and check with other Authorized Purchasers regarding group or quantity buys in order to obtain the best price from competition at time of purchase.

B.2 Estimate of Purchases:

B.2.1 INITIAL PURCHASE: This is an invitation to bid for a Price Agreement with no guarantee of a minimum or maximum purchase. Past purchases are no guarantee for future purchases.

B.2.2 ORCPP Participants and WSPC Participants (as defined in Exhibit A) may also be entitled to make purchases under an awarded Price Agreement. SPO has no estimate of the volume of those potential purchases. However, by agreeing to accept orders stated in Section G, Offeror agrees to supply all Goods ordered by ORCPP Participants and WSPC Participants (subject to the qualifications stated in Section G pertaining to WSPC Participants) during the term of any awarded Price Agreement.

B.3 OFFER SUBMISSION ITEMS: The information listed below shall be included in Offer submission, and the Bid must be SIGNED BY OFFEROR'S AUTHORIZED REPRESENTATIVE.

Page one (1) of the ITB document

Section D: Responsibility Inquiry and Contractor References

Section E: Recycled Products

Section F: Residency Statement

Section G: ORCPP and WSPC Participation

EXHIBIT A, PRICE AGREEMENT (Complete and Return the entire Exhibit with Offer.)

All other documents identified in the ITB as required submissions, all submissions shall be signed or initialed when required.

B.3.1 INFORMATION TO BE SUBMITTED WITH OFFER: Offerors must submit the following information/documentation with the Offer or by Offer modification prior to Closing. **Attachment 1.**

B.3.2 Certain Addenda (when so instructed) Bidder shall sign and return all designated Addenda with the Offer documents.

B.3.3 The apparent successful Offeror shall provide all required proofs of insurance to SPO within (7) seven calendar days of notification of intent to award. SPO may reject the Offer if the apparent successful Offeror fails to present the required documents within the (7) calendar-day period. Offerors are encouraged to consult their insurance agent(s) prior to Offer submission about the insurance requirements contained in the ITB.

All Offers and copies must be complete in all respects, including necessary signatures, certifications, documentation, responses on pricing and Specifications pages, and any other required information. All necessary attachments (residency statement, Bid bond, references,

descriptive literature, manufacturers' warranties, e.g.) must be submitted with the Offer in the required format.

B.4 METHOD OF BIDDING

Bidder must correctly fill all blanks in this Invitation to Bid requiring a response where applicable.

Bidder must complete Attachment 1 using the instructions in Attachment 1.

Bidder must submit its Bid for receipt by SPO by the required due date and time.

See Section C.12 Offer Evaluation Criteria and Section C.12.1 Responsiveness.

SPO seeks a Discount by Model based on computation of Triple Net Price for the "market basket" of vehicles listed in Attachment 1

Bidders note particularly this instruction in Attachment 1:

" Bidder must state a Discount by model for each vehicle bid. Discount is a total of available bid assistance. It must include at least the Triple Net Price of the Standard Equipped base vehicle (net invoice LESS HOLDBACK, LESS ADVERTISING, LESS FINANCING) and should include any other incentives offered by the manufacturer, such as bid allowance, DAA, PPA, bid assistance, advertising allowance, financing allowance, incentive or other industry names."

Bidder should be prepared to provide detail about Bidder's computation of Triple Net Price and Discount. SPO must be able to verify the Bidder's calculations and the substance of Bidder's bid in order to find the bid responsive. Specifically, a Bidder must provide supporting data, calculations, or clarification if SPO requests it. SPO will reject a bid as nonresponsive if SPO cannot verify it.

SPO must be able to verify independently Bidder's Triple Net Prices offered. Prices that cannot be verified by the State will not be considered and the bid will be rejected as nonresponsive.

All Standard Equipment must be installed in all vehicles and included as part of the Base Model Price. Bidder must not delete Standard Equipment from the vehicle or add Standard Equipment as additional cost item(s) to increase the Base Model Price. Bid prices that include amounts for Standard Equipment in addition to the Base Model Price will be rejected as unresponsive.

Bidder should consider three "nets" in triple net price to determine Final Bid Price. The first net is the difference between the manufacturer suggested retail price (MSRP) of the vehicle and the vehicle invoice price. The second net is all advertised and unadvertised customer and dealer incentives and rebates available to the dealer on the vehicle and model. Use the invoice price of the vehicle and take out the amount of all rebates and incentives. The third net, is the vehicle holdback, which SPO expects to be between 1% to 4% of manufacturer

suggested retail price for the vehicle depending on the manufacturer.

B.5 METHOD OF AWARD: The State intends to award at a minimum one (1) Price Agreement to a Toyota dealership based on the lowest total Final Bid Price for the list of Models designated "market basket" in Attachment 1. DAS SPO will rank the responsive Bids from all Bidders from lowest to highest total Final Bid Price for the market basket and make an award from that list.

The State reserves the right to make a multiple awards by geographic region from the ODOT (Oregon Department of Transportation) regional map dated April of 2008 in the number of Price Agreements and regions that would best serve the needs of State in a region. If DAS SPO awards by region, it will rank the responsive Bids from Bidders at locations in a region from lowest to highest total Final Bid Price for the market basket, and award in order of rank for that region. Award by region may result in an award to a Bidder in a region at a higher bid than an unsuccessful Bidder with a lower bid in another region. DAS SPO has determined that a total Final Bid Price that is x% higher than the lowest total Final Bid Price overall is not reasonably competitive and not eligible for regional award. The ODOT regional zones and regions map are available for view online at: <http://www.oregon.gov/ODOT/HighwayRegions.shtml>

The State may also choose to split an award along product lines in the best interest of the State: e.g. light trucks to a dealership specializing in truck sales only or alternative fuel vehicles to a dealership equipped and authorized by the manufacturer to support/service AFC's.

State's choice to use region as a basis for award does not limit statewide sales by Contractor or purchases by Authorized Purchasers

B.6 DEFINITIONS: Unless otherwise indicated, the definitions in Exhibit A, Section 1 are applicable to the entire ITB. Additional Definitions applicable to this ITB and not applicable to the resulting Price Agreement are found in section C.1 of this ITB.

B.7 SOLICITATION LAW AND RULES: Oregon Law governs this ITB and any awarded Price Agreement and resulting Contracts. Specific laws and rules that govern the solicitation process are found in ORS Chapter 279A and 279B of the Oregon Revised Statutes, and the Administrative Rules of the Department of Administrative Services OAR Chapter 125, Divisions 246 and 247 that adapt certain Attorney General's Model Public Contract Rules ("Model Rules"). The ITB and resulting Contract may be subject to other laws and rules. Offerors should obtain and become acquainted with the applicable provisions of the above laws and rules. Copies may be obtained as follows:

B.7.1 OREGON REVISED STATUTES (ORS 279A and 279B): Can be obtained from Legislative Counsel Committee, S101 State Capitol, Salem, OR 97310-0630. Phone (503) 378-8146, or on line at: <http://www.leg.state.or.us/ors/home.html>.

B.7.2 OREGON ATTORNEY GENERAL'S MODEL PUBLIC CONTRACT RULES (OAR 137-046 and 047): Can be obtained from the Department of Justice, Publications Center, 16 Justice Building, Salem, OR 97310. Phone (503) 378-2663 or on line at: <http://arcweb.sos.state.or.us/banners/rules.htm>

B.7.3 OREGON DEPARTMENT OF ADMINISTRATIVE SERVICES

ADMINISTRATIVE RULES (OAR 125): Can be obtained from the Department of Administrative Services, 1225 Ferry Street SE U140, Salem, OR 97301-4285. Phone (503) 378-4642 or on line at: <http://arcweb.sos.state.or.us/banners/rules.htm>

SECTION C - GENERAL BIDDING INFORMATION

C.1 ITB DEFINITIONS: Together with the Definitions found in Exhibit A, Section 1 of the attached Price Agreement, the following definitions apply to this ITB.

C.1.1 "Addendum" or "Addenda" means an addition or deletion to, a material change in, or general interest explanation of this ITB. Addendum or Addenda shall be labeled as such and shall be made available to all interested Offerors in accordance with the OAR 125-247-0430).

C.1.2 "Bid" means a response to an Invitation to Bid.

C.1.3 "Bidder" means a Person who submits a Bid in response to an Invitation to Bid. Bidder is used interchangeably with "Offeror".

C.1.4 "Closing" means the date and time announced in this ITB as the deadline for submitting Offers.

C.1.5 "Invitation to Bid" or "ITB" is defined in ORS 279B.005 and means all documents, whether attached or incorporated by reference, and any Addenda thereto, used for soliciting Bids in accordance with ORS 279B.

C.1.6 "Opening" means the date, time and place announced in the Solicitation Document for the public opening of Written sealed Offers.

C.1.7 "Offer" means Bid.

C.1.8 "Offeror" means Bidder.

C.1.9 "ORPIN" means the on-line electronic Oregon Procurement Information Network administered by the State Procurement Office, as further defined in OAR 125-246-0500.

C.1.10 "Price Agreement" means a Public Contract for the Procurement of Supplies and Services at a set price with:

(a) No guarantee of a minimum or maximum purchase; or

(b) An initial order or minimum purchase combined with a continuing Contractor obligation to provide Supplies and Services in which SPO and Authorized Purchasers do not guarantee a minimum or maximum additional purchase.

C.1.11 "SPO" means the State of Oregon acting by and through its Department of Administrative Services - State Procurement Office. SPO is used interchangeably with DAS

SPO.

C.1.12 "State" means the State of Oregon.

C.1.13 "Vendor" means Bidder.

C.2 GENERAL INFORMATION:

C.2.1 OFFERS ARE FIRM OFFERS: A Price Agreement resulting from this ITB constitutes a firm offer by the Contractor regardless of whether any order or purchase has been made or any performance has been tendered under the Price Agreement. A resulting Price Agreement is enforceable for the period stated in the Price Agreement and notwithstanding ORS 72.2050, obligations hereunder are not revocable by the Contractor. See ORS 279B.140.

C.2.2 OFFER SUBMISSION ADDRESS AND CLOSING: SPO will receive sealed Bids until **3:00 pm** (Pacific time) on the Closing date specified on page one (1) of the ITB, or as amended by Addenda, at the office of SPO, at the receptionist's desk, on the north end of the second floor, in the General Services Bldg., at 1225 Ferry St. SE U140, Salem, Oregon 97301-4285.

C.2.3 SINGLE POINT OF CONTACT: There will be only one SPO point of contact during this procurement process. The designated point of contact for questions concerning the procurement process, requests for brand approval, change, clarification, and protests, the award process, and any other questions that may arise is **Dave Reynolds**, who can be contacted at (503) **503-378-4643**, via fax (503) 373-1626, **david.reynolds@state.or.us** or by regular mail delivered to 1225 Ferry St. SE, U140, Salem, OR 97301-4285.

C.2.4 ORPIN:

C.2.4.1 ORPIN VENDOR HANDBOOK: Offerors unfamiliar with ORPIN are encouraged to contact SPO at: 1225 Ferry St. SE – U140, Salem, OR 97301-4285; telephone (503) 378-4642.

C.2.4.2 ITBs, ADDENDA AND ATTACHMENTS: ITBs, including all Addenda and most attachments, are posted on the ORPIN and will not be mailed to prospective Offerors. Offerors without access to the ORPIN System may download copies at a Plan Center, or at SPO, 1225 Ferry St. SE – U140, Salem, Oregon. Offerors may also order hard copies from SPO for a fee.

C.2.4.3 ATTACHMENTS: Some exhibits and attachments may not be available on the ORPIN System. Offerors must purchase these separately from SPO, where so specified in this ITB.

C.2.4.4 ADDENDA: Addenda can be downloaded from ORPIN. Offerors should consult ORPIN regularly until Closing to avoid missing any Addenda.

C.2.4.5 PLAN HOLDER'S LIST: IN ORDER TO APPEAR ON THE BID PLAN HOLDERS LIST, VENDORS MUST BE ENTERED ON ORPIN. Vendors can enter their

vendor information via the internet at: <http://tpps.das.state.or.us/purchasing> VENDORS ARE RESPONSIBLE FOR ENSURING THAT THEIR VENDOR INFORMATION IS CURRENT AND CORRECT. SPO accepts no responsibility for missing or incorrect vendor information contained on ORPIN.

C.2.5 TRADE SECRETS: Any information Offeror submits in response to the ITB that Offeror considers a trade secret under ORS 192.501(2) or confidential proprietary information, and that Offeror wishes to protect from public disclosure, must be clearly labeled with the following: "This information constitutes a trade secret under ORS 192.501(2) or confidential proprietary information, and is not to be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192." Bidders are cautioned that price information submitted in response to an ITB is generally not considered a trade secret under the Oregon Public Records Law. Further, information submitted by Offeror that is already in the public domain is not protected. The State shall not be liable for disclosure or release of information submitted by Offeror when such release is authorized or required by law, or is pursuant to a court or administrative order. The State is immune from liability for disclosure or release of information submitted by Offeror under the circumstances set out in ORS 646.473(3).

C.3 OFFER FORMAT:

C.3.1 SIGNATURE REQUIRED; OFFEROR AFFIRMATIONS: All Offer documents requiring signature must be signed in ink by an authorized representative of the Offeror. Offeror's signature and submission of the Contractor's signature page in Section 9 of the Price Agreement in response to the ITB constitutes Offeror's affirmation that:

C.3.1.1 Offeror has completely read and understands all the provisions of this ITB.

C.3.1.2 The Offer submitted is in response to the specific language contained in this ITB, and Offeror has made no assumptions based upon either (a) verbal or written statements not contained in the ITB, or (b) any previously-issued ITB, if any.

C.3.1.3 The Offer was prepared independently from all other Offerors, and without collusion, fraud, or other dishonesty.

C.3.1.4 The State shall not be liable for any claims or be subject to any defenses asserted by Offeror based upon, resulting from, or related to, Offeror's failure to comprehend all requirements of this ITB.

C.3.1.5 The State shall not be liable for any expenses incurred by Offeror in preparing and submitting its Offer or in participating in the Offer evaluation/selection process.

C.3.1.6 Offeror accepts and agrees to be bound by the terms and conditions of the Price Agreement and any resulting Contract(s), and agrees to provide all Goods ordered by Authorized Purchasers.

C.3.2 IN WRITING: Offerors must prepare all Offers including pricing information by word processor, typewriter or in ink. SPO will not accept oral, telephone, e-mail or facsimile Offers.

C.3.3 FORMS TO BE USED: Offerors must submit all required information on the forms specified in this ITB. Any information Offeror submits that is not required to be included on forms prescribed by SPO shall be formatted in the manner called for in the ITB and submitted on Offeror's letterhead.

C.4 OFFER CONTENTS:

C.4.1 PRODUCT IDENTIFICATION: Offerors must clearly identify all Goods offered. Brand name, model, and model, serial, or identification number, where applicable, must be shown. SPO reserves the right to reject any Offer when the Goods information submitted with the Offer is incomplete.

C.4.2 JOINT VENTURES/PARTNERSHIPS: When an Offeror is a partnership or joint venture, Offeror shall supply, with Offer submission, the name of the contact person for the partnership or joint venture. Prior to award, joint ventures and partnerships submitting Offers must provide a copy of the joint venture agreement or partnership agreement evidencing authority to Offer and to enter into the resulting Price Agreement that may be awarded and Contracts resulting therefrom, together with corporate resolutions (if applicable) evidencing corporate authority to participate as a joint venturer or partner. Such Offeror must also designate a contact person for purposes of receiving all notices and communications under the Price Agreement and resulting Contracts. All partners and joint venturers will be required to sign the awarded Price Agreement.

C.4.3 SUBSTANTIAL COMPLIANCE REQUIRED: SPO will not consider Offers not in substantial compliance with ITB requirements, and Offerors cannot supplement such Offers by delivering submissions after Closing. However, SPO may waive minor informalities and irregularities, and may seek clarification from Offerors of any response that, in its sole discretion, it deems necessary or advisable.

C.5 METHODS OF SEEKING MODIFICATIONS TO ITB PROVISIONS:

C.5.1 PROCEDURE: The appropriate means of seeking modifications to provisions of an ITB are through (a) requests for clarification; (b) formal submittal of requests for changes to contractual terms or Specifications; and (c) formal submittal of protests of contractual terms or Specifications. DAS SPO may deem non-responsive and reject any Offer that includes non-approved alternate brands of Goods where approval is required, or that takes exception to the Specifications or contractual terms of the ITB.

C.5.2 Reserved

C.5.3 REQUEST FOR CLARIFICATION: Any Offeror requiring clarification of any provision of the ITB may make a request for clarification in writing, to the contact point listed in section C.2.3 "SINGLE POINT OF CONTACT". To be considered, SPO must receive the request for by the deadline specified in section C.5.6.

C.5.3.1 RESPONSE TO REQUESTS FOR CLARIFICATION: CLARIFICATIONS, WHETHER VERBAL, IN WRITING, OR INCLUDED IN AN ADDENDUM AS A "CLARIFICATION," DO NOT CHANGE SPECIFICATIONS, CONTRACTUAL TERMS, OR PROCUREMENT REQUIREMENTS OF AN ITB. IF A REQUEST FOR

CLARIFICATION. RAISES AN ISSUE THAT SPO DETERMINES SHOULD BE HANDLED BY FORMALLY AMENDING THE ITB, SPO WILL DO SO ONLY BY ANNOUNCING SUCH A CHANGE IN THE ADDENDUM, NOT THROUGH INFORMATION IDENTIFIED AS A "CLARIFICATION." (Refer to Section C.5.2.)

C.5.4 REQUEST FOR CHANGES TO PRICE AGREEMENT TERMS OR SPECIFICATIONS: Any Offeror may submit a request for changes to the Price Agreement contractual terms or Specifications, in writing, to the contact point listed in section C.2.3 "SINGLE POINT OF CONTACT". To be considered, SPO must receive the request for changes by the deadline specified in section C.5.6. Offeror must include in the request the reason for requested changes, supported by factual documentation, and any proposed changes.

C.5.4.1 If any omitted specification results in ambiguity as to material characteristics of the Goods, and inclusion is necessary to enable a reasonable person in the particular industry to properly identify such characteristics, an Offeror shall seek a formal request for change to the specification, as set forth in this section C.5.4. Failure to make such a request is at Contractor's risk, and the Offeror awarded a Price Agreement shall be required to provide Goods meeting the Authorized Purchaser's needs with regard to any omitted specification for which change should reasonably have been sought .

C.5.5 PROTEST OF PRICE AGREEMENT TERMS, CONTRACTUAL TERMS OR SPECIFICATIONS: Any Offeror who believes that any Price Agreement term(s)contractual term(s) or Specification(s) are unnecessarily restrictive or limit competition may submit a protest, in writing, to the contact point listed in section C.2.3 "SINGLE POINT OF CONTACT." To be considered, SPO must receive the protest by the deadline specified in section C.5.6. Offeror must include in the protest the legal and factual grounds for the protest, a description of the resulting prejudice to the Offeror if the protest is not granted, and any proposed changes to the Price Agreement terms, contractual terms or Specifications.

C.5.6 METHOD OF SUBMITTING REQUESTS FOR MODIFICATION OF ITB PROVISIONS: Offerors must mark envelopes containing requests for clarification, requests for change, and Bid protests as follows:

Bid Request for Clarification or
Request for Change or
Protest and the
ITB Number and the
Bid Closing Date and time

SPO must be receive the request by **3:00 P.M. (Pacific time) on 25 June 2010**. Unless this specific deadline is extended by subsequent Addendum, SPO will not consider requests for clarification, requests for change, or protests pertaining to provisions contained in the originally-issued ITB after the date specified herein.

C.5.7 RESPONSE TO REQUESTS FOR CLARIFICATION: CLARIFICATIONS, WHETHER VERBAL, IN WRITING, OR INCLUDED IN AN ADDENDUM AS A "CLARIFICATION," DO NOT CHANGE SPECIFICATIONS, CONTRACTUAL

TERMS, OR PROCUREMENT REQUIREMENTS OF AN ITB. IF A REQUEST FOR CLARIFICATION RAISES AN ISSUE THAT SPO DETERMINES SHOULD BE HANDLED BY FORMALLY AMENDING THE ITB, SPO WILL DO SO ONLY BY ANNOUNCING SUCH A CHANGE IN AN ADDENDUM, NOT THROUGH INFORMATION IDENTIFIED AS A "CLARIFICATION." (Refer to Section C.5.8.)

C.5.8 RESPONSE TO REQUESTS FOR CHANGE AND PROTESTS: SPO will promptly respond to each properly-submitted request for change, and protest. Where appropriate, SPO will issue ITB revisions via Addenda posted on ORPIN. SPO may also informally respond to Offeror questions. HOWEVER, INFORMAL RESPONSES DO NOT AFFECT THE PROVISIONS OF THE ITB. SPECIFICATIONS, PRICE AGREEMENT AND CONTRACTUAL TERMS, AND PROCUREMENT REQUIREMENTS OF THE ITB CAN ONLY BE CHANGED VIA FORMAL ADDENDA ISSUED BY SPO AND POSTED ON ORPIN.

C.6 PROTEST OF ADDENDA: SPO must receive requests for clarification, requests for change, and protests of Addenda provisions by 5:00 P.M. (Pacific time) on the date specified in the Addendum, or SPO may not consider them. SPO will not consider requests or protests of matters not added or modified by the Addendum.

C.7 OFFER SUBMISSION:

C.7.1 NUMBER OF COPIES; SIGNATURE REQUIRED: Bidders shall submit a total of [one] copie(s) of the Offer. AT LEAST ONE COPY SUBMITTED BY OFFEROR MUST BEAR AN ORIGINAL SIGNATURE OR THE OFFER WILL BE REJECTED.

C.7.2 SEALED ENVELOPE; ADDRESS AND COVER INFORMATION: Offerors shall submit Offers in sealed packages or envelopes. To ensure proper identification and handling, Offerors must clearly mark Offer packages or envelopes as follows:

ITB Number
Closing Date
Closing Time
OREGON DEPT. OF ADMINISTRATIVE SERVICES
State Procurement Office
1225 FERRY STREET SE U140
SALEM, OR 97301-4285

SPO shall not be responsible for the proper handling of any Offer not properly identified, marked and submitted in a timely manner.

C.8 OFFER MODIFICATION: The person signing the Offer must initial in ink each individual alteration and erasure made before Offer submission. Offerors may, in writing, modify Offers, once submitted, before Closing. Offeror shall prepare modifications on Offeror's letterhead. Each Offer modification document must be signed by an authorized representative, and state that the modifications amend and supersede the identified portions of the Offer. SPO will reject any Offer that fails to comply with the provisions of this paragraph or OAR 125-247-0440.

C.8.1 Offerors must submit modifications in a sealed envelope marked as follows:

Bid Modification
ITB Number
Closing Date
Closing Time

C.8.2 OFFERORS MAY NOT MODIFY OFFERS AFTER CLOSING.

C.9 OFFER WITHDRAWALS:

C.9.1 IN WRITING. Offerors may withdraw Offers before Closing. Offer withdrawals must be submitted in writing on Offeror's letterhead, signed by an authorized representative, and received by SPO prior to Closing. Offer withdrawals must be labeled as such and contain the ITB number.

C.9.2 IN PERSON: Offers may also be withdrawn in person before Closing if Offeror's representative presents appropriate identification and evidence of authorization to act for Offeror. SPO may require that the Offeror's representative sign appropriate documentation to confirm withdrawal.

C.10 OPENING: SPO will hold Bid Opening at **3:00 p.m.** (Pacific Time) on the Closing date, at the office of the SPO, Department of Administrative Service, in the General Services Building, at 1225 Ferry St. SE, Salem, Oregon. Only Offerors' names and addresses will be read at the Opening. It is optional for Offerors to attend Opening. Award decisions will not be made at Opening.

C.11 REJECTION OF OFFERS:

C.11.1 REJECTION OF ALL OFFERS: SPO may reject all Offers for good cause upon finding that it is in the public interest to do so. SPO may cancel the procurement or reject any or all bids in accordance with ORS 279B.100.

C.11.2 REJECTION OF PARTICULAR OFFERS: SPO may reject a particular Offer for any of the reasons listed under ORS 279B.110.

C.12 OFFER EVALUATION CRITERIA: SPO will evaluate Offers to identify the lowest responsive Offer(s) submitted by a responsible Offeror and not otherwise disqualified. (Refer to ORS 279B.110) Adjustments made to account for reciprocal preferences and percentage of recycled materials incorporated into the Goods will be for Offer evaluation purposes only. (Refer to Section C.12.4 and Section F.) No such adjustments shall operate to amend Offeror's Offer or any Price Agreement awarded pursuant thereto. DAS reserves the right to make multiple awards in multiple geographic locations.

C.12.1 RESPONSIVENESS: To be considered responsive, the Offer must substantially comply with all requirements of the ITB and all prescribed public solicitation procedures. In making such evaluation, SPO may waive minor formalities and irregularities.

C.12.2 RESPONSIBILITY: Prior to award of a Price Agreement, SPO will evaluate whether the apparent successful Offeror meets the applicable standards of responsibility identified in OAR 125-247-0500. In doing so, SPO may investigate Offeror and request information in addition to that already required in the ITB, when SPO, in its sole discretion, considers it necessary or advisable.

C.12.3 DISCOUNTS: Offeror may offer cash or term discounts, or both on invoice payments. If accepted by SPO, such discounts will be binding upon Offeror in the event Offeror is awarded a Price Agreement. However, such discounts will not be considered for award purposes unless specified in this ITB.

C.12.4 RECIPROCAL PREFERENCE: For Offer evaluation purposes only, SPO will add a percentage increase to each out-of-state Offeror's Offer price which is equal to the percentage preference, if any, given to resident Offerors of the Offeror's state. For example, if the Offeror is from a state that grants a 10 percent preference to local Bidders, SPO will add 10 percent to that Offeror's Offer price. (See ORS 279A.120)

C.12.5 RECYCLED MATERIAL: For Bid evaluation purposes only, SPO will deduct from the Bid price an amount equivalent to the dollar value of the percentage of the Goods offered by Offeror constituting recycled paper and non-paper products, up to a maximum of twelve percent (12%) of the Bid price for recycled paper products, and up to a maximum of five percent (5%) of the Bid price for recycled non- paper products.

C.13 PROCESSING OF BIDS: Neither the release of a Bid bond, the return of a Offer, nor acknowledgment that the selection process is complete (whether by posting of a Bid tabulation sheet, issuance of notice of intent to award, or otherwise), shall operate as a representation by SPO that any Bid submitted was complete, sufficient, lawful in any respect, or otherwise in substantial compliance with the ITB requirements.

C.14 WITHDRAWAL BY SPO OF BID ITEMS PRIOR TO AWARD: SPO reserves the right to delete Bid items prior to award.

C.15 INTENT-TO-AWARD ANNOUNCEMENT: SPO may announce its intent to award prior to formal Price Agreement award by posting the tabulation sheet of Bid results on the ORPIN System, or by letter or fax ("Intent-to-Award Announcement"). The Intent-to-Award Announcement shall serve as notice to all Bidders that SPO intends to make an award.

C.16 REVIEW OF BID FILES: Offerors shall have 7 calendar days from the date of the Intent-to-Award announcement within which to view the Bid files (by appointment).

C.17 PROTEST OF INTENT TO AWARD: Adversely affected or aggrieved Bidders shall have 7 calendar days from the date of the Intent-to-Award Announcement within which to file a written protest. SPO will not consider protests submitted after that date. Protests must specify the grounds upon which the protest is based (Refer to OAR ORS 279B.410, ORS 279B.415 and OAR 125-247-0740).

C.18 RESPONSE TO INTENT-TO-AWARD PROTESTS: SPO will respond in writing to intent-to-award protests properly submitted by adversely affected or aggrieved Offerors.

SPO may also respond to protests submitted by other Offerors for purposes of clarification. However, any response provided by SPO is not intended to, and shall not in and of itself constitute, confirmation that the Offeror is, in fact, adversely affected or aggrieved, and therefore entitled to protest an intent to award or that the protest was timely or correctly filed.

C.19 AWARD: After expiration of the 7 calendar-day file review and intent-to-award Announcement protest period, and resolution of all properly-submitted protests, SPO will proceed with final award. (If SPO receives only one Bid, SPO may dispense with the intent-to-award protest period and proceed with award of the Price Agreement.)

C.20 BID RESULTS: After awards are completed, Offerors may download a tabulation of Bid results from the ORPIN system. Alternatively, Offerors may submit a written request to SPO for a copy of the tabulation. Offerors must include the Bid number and must include a self-addressed envelope and a **\$20.00** check payable to the Department of Administrative Services.

C.21 REVIEW OF AWARDED BID FILES: Most information contained in Bid files are public records and available for review at the SPO office by appointment.

SECTION D – RESPONSIBILITY INQUIRY AND CONTRACTOR REFERENCES (OFFEROR MUST COMPLETE AND RETURN WITH OFFER)

RESPONSIBILITY NOTIFICATION: SPO reserves the right, pursuant to OAR 125-247-0500, to investigate and evaluate, at any time prior to award and execution of the Price Agreement, the apparent successful Offeror's responsibility to perform the Price Agreement. Offeror's submission of a signed Offer shall constitute Offeror's authorization for SPO to obtain, and Offeror's agreement to produce for SPO's review and copying, any information SPO deems necessary to conduct the evaluation. The SPO shall notify the apparent successful Offeror, in writing, of any other documentation required, which may include, but is not limited to, recent profit-and-loss history; current balance statements; assets-to-liabilities ratio, including number and amount of secured versus unsecured creditor claims; availability of short and long-term financing; bonding capacity; credit information; materials/equipment/inventory; facility and personnel information; record of contract performance; etc. SPO may reject an Offer, if Offeror fails to promptly provide this information. SPO may postpone the award of the Price Agreement after announcement of the apparent successful Offeror in order to complete its investigation and evaluation. Failure of the apparent successful Offeror to demonstrate Responsibility, as required under OAR 125-247-0500, shall render the Offeror non-responsible and shall constitute grounds for Offer Rejection.

D.1 OFFERORS MUST PROVIDE THREE (3) REFERENCES HAVING CONTRACT(S) WITH OFFEROR WITHIN THE PAST TWENTY-FOUR (24) MONTHS THAT ARE EQUIVALENT IN TYPE, VOLUME, AND VALUE TO THE TERMS CONTEMPLATED IN THIS ITB:

D.1.1 OFFEROR REFERENCE #1:

FIRM NAME:

ADDRESS:

CONTACT PERSON:

POSITION TITLE:

TELEPHONE NUMBER:

D.1.2 OFFEROR REFERENCE #2

FIRM NAME:

ADDRESS:

CONTACT PERSON:

POSITION TITLE:

TELEPHONE NUMBER:

D.1.3 OFFEROR REFERENCE #3

FIRM NAME:

ADDRESS:

CONTACT PERSON:

POSITION TITLE:

TELEPHONE NUMBER:

SECTION E- RECYCLED PRODUCTS CERTIFICATION (PART A) (OFFEROR MUST COMPLETE AND RETURN WITH OFFER)

Vendors shall use recyclable products to the maximum extent economically feasible in the performance of the Price Agreement and of the contract Work set forth in this document”.

"Recycled product" means all materials, goods and supplies, not less than 50 percent of the total weight of which consists of secondary and post-consumer waste with not less than 10 percent of total weight consisting of post-consumer waste. 'Recycled product' also includes any product that could have been disposed of as a solid waste, having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of the product's form." ORS 279A.010(1)(ii)

"Post-consumer waste" means a finished material which would normally be disposed of as solid waste, having completed its life cycle as a consumer item. 'Post-consumer waste' does not include manufacturing waste." ORS 279A.010(1)(u)

"Secondary waste materials" means fragments of products of finished products of a manufacturing process which has converted a virgin resource into a commodity of real economic value, and includes post-consumer waste, but does not include excess virgin resources of the manufacturing process. For paper, 'secondary waste materials' does not include fibrous waste generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips, sawdust, or other wood residue from a manufacturing process." ORS 279A.010(1)(jj)

"Recycled PETE product" means a product containing post-consumer polyethylene terephthalate material." ORS 279A.010(1)(hh)

SECTION E – RECYCLED PRODUCTS CERTIFICATION (PART B) (OFFEROR MUST COMPLETE AND RETURN WITH OFFER)

I, the undersigned duly authorized representative of the Offeror, hereby certify that the following product, offered in this Offer contain the following minimum percentages:

Identify the Good and respond to the following regarding that Good:

- a) % (recycled product as defined in ORS 279A.010(1)(ii)) ____
- b) % (post-consumer waste as defined in ORS 279A.010(1)(u)) ____
- c) % (secondary waste materials as defined in ORS 279A.010(1)(jj)) ____
- d) % (recycled PETE product as defined in ORS 279A.010(1)(hh)) ____

Offeror must provide a separate signed Recycled Product Certification for each Good identified.

Offeror's Name

Signature of Authorized Representative

Typed or Printed Name of Authorized Representative

Title

SECTION F - RESIDENCY INFORMATION (PART A)
(OFFER MUST COMPLETE AND RETURN WITH OFFER)

ORS 279A.120 states for the purpose of awarding a public contract a contracting agency shall, "add a percent increase to the bid of a nonresident bidder equal to the percent, if any, of the preference given to that bidder in the state in which the bidder resides."

"Resident bidder" means a bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid/proposal, has a business address in this state and has stated in the bid/proposal whether the bidder is a "resident bidder".(ORS 279A.120(1)(b))

"Non-resident bidder" means a bidder who is not a "Resident bidder" as defined above.
(ORS 279A.120(1)(a))

a. Check one: Offeror is a () Resident bidder () Non-resident bidder.

b. If a Resident bidder, enter your Oregon business address:

c. If a Non-resident bidder, enter state of residency:

SECTION F - RESIDENCY INFORMATION (PART B)
(OFFEROR MUST COMPLETE AND RETURN WITH OFFER)

d. If a Non-resident bidder, do you or your firm receive, or are you or your firm eligible for, any preference in award of contracts with your state's government or with other governmental bodies in your state?

Check one: () Yes ----- () No

If yes: state the preference percentage: _____ %

If yes, but not a percentage of bid/proposal price, describe the preference:

If yes, state the law or regulation that allows the preference described (legal citation):

Offeror's Name

Signature of Authorized Representative

Typed or Printed Name of Authorized Representative

Title

**SECTION G - ORCPP, AND WSPC PARTICIPATION
(OFFEROR MUST COMPLETE AND RETURN WITH OFFER)**

Offeror shall specify below whether it will accept orders from, and provide the Goods/services specified in the ITB to, ORCPP Participants and WSPC Participants ("Contract Authorization").

a) CONTRACT AUTHORIZATION FOR ORCPP PARTICIPANTS:

Yes No ____ ____

Signature of Offeror's Authorized Representative

b) CONTRACT AUTHORIZATION FOR WSPC PARTICIPANTS:

Yes No ____ ____

Signature of Offeror's Authorized Representative

NOTE: The Price Agreement resulting from this solicitation may be used by authorized WSPC Participants only when the Contractor determines that the use of the Price Agreement does not have any negative effect on Authorized Agencies, Independent Agencies and ORCPP Participants.

**PRICE AGREEMENT
BY AND BETWEEN
STATE OF OREGON,
ACTING BY AND THROUGH ITS
DEPARTMENT OF ADMINISTRATIVE SERVICES ("SPO")
AND
[INSERT CONTRACTORS BUSINESS NAME] ("Contractor")**

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ATTACHMENT 1 - PRICE PAGES
ATTACHMENT 2 – PURCHASE ORDER FORM
ATTACHMENT 3 – SUGGESTED ORDERING PROCEDURES

This Price Agreement is between the State of Oregon, acting by and through its Department of Administrative Services ("SPO") and the undersigned ("Contractor") in Section 10.

A. SPO issued ITB # **102-1738-10** seeking offers from qualified and responsible vendors to provide to Authorized Purchasers the Goods described in Sections 6 and 7 of this Price Agreement.

B. Contractor submitted an Offer in response to the ITB offering to provide to Authorized Purchasers the Goods described in Section 6 at the prices set forth in Section 7 according to the terms and conditions of this Price Agreement.

C. SPO has awarded Contractor's a Price Agreement for the Goods and Prices as set forth in Section 11.

AGREEMENT

In consideration of the foregoing recitals and subject to the covenants, terms and conditions set forth below the parties agree as follows:

1.0 DEFINITIONS

"Alternative Fuel Vehicle" (AFV) means a vehicle equipped to operate on any of the following fuels or combination of fuels: natural gas (CNG), bi-fuel natural gas (CNG and unleaded), bi-fuel propane (LPG and unleaded), hydrogen fuel cell and flexible fuel alcohol (methanol or ethanol).

"Authorized Agency" means those State Agencies that are subject to the procurement authority of the Director of the Department pursuant to ORS 279A.050 and 279A.140 and with delegated authority pursuant to OAR 125-246-0170. This term also includes the Oregon Department of Administrative Services (the "Department") when the Department is engaged in Public Contracting (as defined under ORS 279A.010(1)(aa)).

"Authorized Purchaser" means the State of Oregon, acting by and through SPO, and Authorized Agencies submitting Purchase Orders pursuant to SPO purchasing authority and direction and Independent Agencies submitting Purchase Orders pursuant to independent purchasing authority. It may also include ORCPP Participants and WSPC Participants with appropriate purchasing authority under their applicable statutes, rules, regulations or ordinances that submit Purchase Orders to Contractor.

"Base Model Price" means the maximum cost to the Contractor for new vehicle from manufacturer at the time the Contractor buys it. It is the cost to the Contractor of the vehicle with only Standard Equipment (no packages or factory installed options). All Standard Equipment is included in the Base Model Price. Base Model Price does not include taxes, title, destination charge, delivery and other options.

"Contract" means the entire agreement between the Contractor and the Authorized Purchaser, comprised of this Price Agreement, including any Addenda and Amendments and a signed Purchase Order.

"Dealer Profit" means the amount the Contractor states in Attachment 1 for each vehicle offered that includes Contractor profit, registration costs, initial gas, diesel or alternative fuel, preparation and pre-servicing costs, costs of vehicle delivery from Contractor to Authorized Purchaser within a 60 mile radius of Contractor location, two sets of keys, and any other miscellaneous costs not chargeable to Authorized Purchaser under this Price Agreement.

"Destination Charge" means the amount the manufacturer charges the dealer to deliver a new vehicle from the factory.

"Electric Vehicle" means an Alternative Fuel Vehicle that uses electric motors and motor controllers to propel the vehicle, in place of more common propulsion methods such as the internal combustion engine (ICE).

"Goods" means the individual items and related Services, if any, described in Sections 6 and 7.

"Final Bid Price" means the maximum contract price stated in Attachment 1 that Contractor will charge Authorized Purchaser for a vehicle Model under this Price Agreement. Final Bid Price includes Contractor overhead, Contractor profit, registration costs, initial gas, diesel or alternative fuel, preparation and pre-servicing costs, costs of vehicle delivery from Contractor to Authorized Purchaser within a 60 mile radius of Contractor location, two sets of keys, and any other miscellaneous costs not chargeable to Authorized Purchaser under this Price Agreement.

"Independent Agencies" means those State Agencies with independent procurement authority pursuant to ORS 279A.050, 279A.170 and other provisions of applicable State law.

"Model" means the manufacturer designation which identifies a particular vehicle that a manufacturer produces.

"Model Year" with reference to any specific calendar year means the manufacturer's annual production period.

"MSRP" means the retail price set by the manufacturer and posted on the federally required window sticker for a Standard Equipped vehicle.

"Net Invoice" as used in Attachment 1 means Base Model Price plus Destination Charge.

"ORCPP" means the Oregon Cooperative Purchasing Program, whose Participants include but are not limited to: State Agencies not subject to SPO purchasing authority, cities, counties, school districts, special districts, Qualified Rehabilitation Facilities (QRFs), residential programs under contract with the Oregon Department of Human Services, United States governmental agencies, and American Indian tribes or agencies.

"Participants" means members of ORCPP and WSPC.

"Price Agreement" means this agreement between the Contractor and SPO under which the Contractor agrees to hold prices, terms and conditions firm for a specified period of time for the benefit of Authorized Purchasers.

"Purchase Order" means the purchase document in proper form as described in section 2.6.4 and illustrated in Attachment 2 that is submitted by an Authorized Purchaser to Contractor which together with this Price Agreement creates a Contract between Contractor and Authorized Purchasers for the purchase of the Goods described in the Purchase Order.

"Services" means the services, if any, described in Sections 6 and 7 to be performed by Contractor under the Contract that are incidental to the purchase of Goods.

"Specifications" means the specific attributes of the Goods to be purchased or Services to be provided, if any.

"SPO" means the State of Oregon acting by and through its Department of Administrative Services - State Procurement Office.

"Standard" means everything related to the Goods that the manufacturer or Contractor offers to the general public during the applicable Model Year.

"Standard Equipment" means the equipment in a vehicle Model from the factory before any upgrade, package, trim, or options are added.

"State" means the State of Oregon.

"State Agency" or "State Agencies" means boards, commissions, departments, or agencies of the State of Oregon, whose costs are paid, in whole or in part from funds held in the State Treasury.

"UCC" means the Uniform Commercial Code, ORS chapters 71 and 72, as applicable and as amended from time to time.

2.0 PRICE AGREEMENT TERMS AND CONDITIONS

2.1. PRICE DECREASE: Contractor shall give the Authorized Purchaser the immediate benefit of any price decrease. Contractor shall promptly notify SPO of the amount and effective date of each decrease. This decrease shall apply to orders placed on or after the effective date of the decrease. Invoices must reflect prices in effect on the date the Authorized Purchaser's Purchase Order document was written.

2.1.1. Should such decreased prices again increase during the term of the Contract, including extensions, the SPO shall honor the increase if acceptable documentation verifying the increase is submitted to SPO. SPO shall determine what constitutes acceptable documentation.

2.2 Fixed Terms, Conditions and Prices. (1) A Price Agreement constitutes a firm offer by the Contractor regardless of whether any order or purchase has been made or any performance has been tendered under the Price Agreement. A Price Agreement is enforceable for the period stated in the Price Agreement and, notwithstanding ORS 72.2050, obligations there under are not revocable by the Contractor ORS 279B.140.

2.3 TERM OF PRICE AGREEMENT: This is a Price Agreement for an initial term with option to extend for additional terms. The initial Price Agreement term commences on the date SPO signs the Price Agreement and expires at midnight on 31 December 2014, unless terminated earlier in accordance with the termination provisions in this Price Agreement. If it is in the best interest of the State to do so, SPO may thereafter extend the term of the Price Agreement at the end of each Model Year for up to five additional one year periods not to exceed a cumulative Price Agreement term of ten (10) years.

2.4. EXTENSIONS: SPO shall notify Contractor in writing if the SPO intends to extend the Price Agreement ("Renewal Notice") at least thirty (30) days prior to the expiration of the then current term. If Contractor consents to the extension, it shall sign and return the Renewal Notice to SPO within the time period specified therein. If the Contractor does not consent, the Price Agreement shall expire according to its terms, unless earlier terminated.

2.5. ONE MONTH EXTENSION OPTION: Notwithstanding the foregoing, the SPO reserves the right in its sole discretion to extend the Price Agreement for a maximum of one (1) calendar month beyond the end of any term. SPO shall notify Contractor in writing of the one-month extension prior to the expiration of the then current term. Consecutive one-month extensions obtained under this Section are not allowed.

2.6 PRICE AGREEMENT TERMINATION; PURCHASE ORDERS.

2.6.1 SPO and Contractor may terminate the Price Agreement at anytime by mutual written consent.

2.6.2. SPO may, at its sole discretion, terminate the Price Agreement upon 30 days written notice to Contractor including for the reasons set forth in ORS 279B.140.

2.6.3 SPO may terminate the Price Agreement if Contractor is in default under any Contract.

2.6.4 PURCHASE ORDERS; CONTRACTS. Contractor shall only accept purchase orders that: (a) contain the mandatory purchase order language set forth in Section 2.6.6, below, except that for Authorized Agencies, Contractor shall only accept purchase orders that comply with Section 2.6.5, below; (b) specify the quantity of Goods ordered; (c) specify a delivery schedule, if any; (d) specify delivery location; (e) specify invoicing address; and (f) specify Authorized Purchaser's authorized representative ("Purchase Order"). Contractor shall only accept Purchase Orders that do not vary, amend, modify, or add Contract provisions other than changes to the Authorized Purchaser's authorized representative, identification of Goods and order quantities, optional Services, equipment and accessories offered under the terms of the Price Agreement, delivery schedules in accordance with the terms of the Price Agreement, delivery destination and invoicing address. Each such Purchase Order Contractor accepts shall create a separate Contract between the parties, enforceable in accordance with the terms thereof and independent of all other such Contracts. Attachment 2 contains a sample Purchase Order form.

2.6.5 STATE AGENCIES: Authorized Agencies shall use the SPO-approved Purchase Order forms to order Goods under the Price Agreement unless otherwise authorized by SPO. Such Purchase Order forms shall reference the Price Agreement by the Price Agreement number and include the ITB number, and Bid item number(s) of the Goods ordered.

2.6.6 MANDATORY PURCHASE ORDER LANGUAGE:

THIS PURCHASE IS SUBMITTED PURSUANT TO STATE OF OREGON SOLICITATION # **102-1738-10** AND PRICE AGREEMENT # **[ORDERING ORGANIZATION WILL INSERT PRICE AGREEMENT #]**. THE PRICE AGREEMENT INCLUDING CONTRACT TERMS AND CONDITIONS AND SPECIAL CONTRACT TERMS AND CONDITIONS (T'S and C'S) CONTAINED IN THE PRICE AGREEMENT ARE HEREBY INCORPORATED BY REFERENCE AND SHALL APPLY TO THIS PURCHASE AND SHALL TAKE PRECEDENCE OVER ALL OTHER CONFLICTING T'S AND C'S, EXPRESS OR IMPLIED.

2.6.6.1 Notwithstanding any other provision of this Price Agreement, in the event that an Authorized Purchaser uses a credit card to pay for an order, an Authorized Purchaser generated Purchase Order is not a necessary document to the transaction. In lieu of a Purchase Order document, a Contractor order acknowledgement document will become a part of the Contract. However, in no event will an order acknowledgement, web order page or other Contractor generated document used to acknowledge the order such modify or provide additional terms and conditions of this Contract. Such order acknowledgement document shall be for the sole purpose of acknowledging the order and payment and are not part of this Price Agreement or any resulting Contract.

2.6.6.2 In the event a court of competent jurisdiction determines that a Purchase Order constitutes an offer rather than an acceptance, then acceptance by Contractor shall be limited to the terms and conditions of the Contract as set forth in this Price Agreement.

2.7 WASHINGTON TAXES: WSPC Participants who enter into a Contract shall be responsible for paying all sales, use and other taxes, fees, and charges imposed by the State of Washington on the transaction.

2.8 SALES TO UNAUTHORIZED PURCHASERS: It is the Contractor's responsibility to verify Authorized Purchasers' authority to contract pursuant to the Price Agreement. If Contractor is found to have entered into two or more Contracts with an entity other than an Authorized Purchaser, Contractor will be deemed to be in material breach of the Price Agreement.

2.9 VERIFICATION OF PARTICIPANT AUTHORITY:

2.9.1 ORCPP: ORCPP Participants can be verified on the SPO website: (A) Worldwide Web: <http://procurement.oregon.gov>.

(B) Procurement Centers (located throughout Oregon). Call (503) 378-4649 for information or to view list of centers identified on SPO Web page.

2.9.2 WSPC: WSPC Participants can be verified (A) by accessing Internet Address: www.wa.gov/DIS/DBWW/; or (B) by calling (360)902-7415.

2.10 VOLUME SALES REPORTS:

2.10.1 CONTENT: Contractor shall furnish to SPO quarterly reports of sales made under the Price Agreement. The reports shall identify the ITB and Price Agreement number(s), and shall provide information in the following specific categories:

2.10.1(a) Bid item number.

2.10.1(b) Customer name of Authorized Purchaser, if applicable.

2.10.1(c) Purchase Order number.

2.10.1(d) Date ordered.

2.10.1(e) Quantity of each Bid item ordered.

2.10.1(f) Unit purchase price and extended total for each Bid item ordered.

2.10.2 COMPLIANCE AUDITS: SPO shall monitor Contractor for compliance through Price Agreement volume sales reports required throughout the term of the Price Agreement. SPO reserves the right to audit Contractor's Price Agreement and Contract files.

2.10.3 REPORTING DATES: Volume sales reports are due by the 15th day following the end of each calendar quarter during the term of the Price Agreement. Calendar quarters end March 31, June 30, September 30 and December 31. SPO RESERVES THE RIGHT TO TERMINATE THE PRICE AGREEMENT IF CONTRACTOR DOES NOT SUBMIT SALES REPORTS AS SCHEDULED.

2.11 ADMINISTRATIVE FEES AND VOLUME SALES REPORTS:

2.11.1 ADMINISTRATIVE FEES/PAYMENT: Within (30) calendar/business days after the end of each quarter during the term of this Price Agreement, Contractor shall pay to State of Oregon, Department of Administrative Services (DAS) State Procurement Office (SPO), Vendor Collected Administrative Fee (VCAF), in an amount equal to One Percent (1%) of Contractor's total sales made to Authorized Agencies, Independent Agencies and ORCPP Participants and Contractor shall pay to State of Washington, Office of State Procurement (OSP), Vendor Collected Administrative Fee (VCAF), in an amount equal to One Percent (1%) of Contractor's total sales made to WSPC Participants using this Price Agreement during the preceding quarter. CONTRACTORS MAY NOT REFLECT THE VCAF FEE AS A SEPARATE LINE ITEM CHARGE TO AUTHORIZED PURCHASERS. CONTRACTOR'S BID PRICES SHALL REFLECT ALL CONTRACTOR'S CHARGES TO AUTHORIZED PURCHASERS. For the purposes of this Price Agreement, quarters end March 31, June 30, September 30, and December 31. SPO will invoice Contractor for the VCAF a State generated invoice from the volume sales report generated by the Contractor. Contractor is responsible for timely reporting and payment, regardless of entity that actually reports or makes VCAF payment to SPO.

2.11.2 ACCOUNTING AND REQUIRED REPORTS: Contractor shall submit a Volume Sales Report no later than fifteen calendar days from the end of each calendar quarter, which contains: (i) complete and accurate details of the Net Receipts for the relevant quarterly period; (ii) Contractor's corresponding calculation of the VCAF due to SPO and OSP for that period; and (iii) such other information as SPO may reasonably request. Contractor shall send a Volume Sales Report each quarter, whether or not there are reportable sales or VCAF due to SPO.

2.11.3 VOLUME SALES REPORT (VSR) INFORMATION. Contractor shall provide the following information on the VSR:

- 2.11.3.1 Price Agreement number,
- 2.11.3.2 Recycled/non-recycled content,
- 2.11.3.3 Customer name. Separately identify Authorized Agencies, Independent Agencies, ORCPP and WSPC. List each state Participant separately,
- 2.11.3.4 Purchase Order number,
- 2.11.3.5 Date ordered,
- 2.11.3.6 Quantity ordered (Price List Items),
- 2.11.3.7 Unit price and extended total,
- 2.11.3.8 Total Dollar Amount for ending Quarter.

2.11.4 VOLUME SALES REPORT FORMAT: Contractor shall provide report(s) in a format approved by SPO. Reports on 3.5 inch diskette or by e-mail are preferred; however, hard copy reports are acceptable. The following format examples are preferred for VSR:

- 2.11.4.1 Excel Spreadsheet
- 2.11.4.2 Lotus Spreadsheet
- 2.11.4.3 All other report formats must be approved by the SPO Contract Administrator and prior to submission of the first report.

2.11.5 REPORT RECEIPT/ACCEPTANCE: The SPO's receipt or acceptance of any of the reports furnished pursuant to this Price Agreement, or any sums paid hereunder, shall not preclude SPO from challenging the validity thereof at any time.

2.11.6 SPO RESERVES THE RIGHT TO TERMINATE THIS PRICE AGREEMENT IF VOLUME SALES REPORTS ARE NOT RECEIVED AS SCHEDULED.

2.11.7 PAYMENT OF VCAF. Upon receipt of the invoice from SPO, Contractor shall remit payment to SPO for the amount indicated on the invoice. Contractor shall contact the Contract Administrator as identified in the Price Agreement if no invoice is received within thirty (30) days after sending the VSR to SPO. Failure to submit VSR does not release Contractor from requirement to timely remit required VCAF.

2.11.7.1 Contractor shall pay the fee in the form of a check remitted to:

FOR AUTHORIZED AGENCIES, INDEPENDENT AGENCIES AND ORCPP PARTICIPANTS PURCHASES

State of Oregon

Department of Administrative Services/PFSS
Attn: State Procurement Office
1225 Ferry Street SE, U140
Salem, Oregon 97301-4285

FOR WSPC PARTICIPANTS PURCHASES

State of Washington
Department of General Administration
Attn: Office of State Procurement
PO Box 41017
Olympia, Washington 98504-1017

2.11.8 INTEREST: Any payments Contractor makes or causes to be made to SPO after the due date as indicated on invoice, shall accrue interest at a rate of 18% per annum or the maximum rate permitted by law, whichever is less, until such overdue amount shall have been paid in full. SPO's right to interest on late payments shall not preclude SPO from exercising any of its other rights or remedies pursuant to this Price Agreement or otherwise with regards to Contractor's failure to make timely remittances.

2.11.9 AUDIT: SPO, as its own expense (except as provided herein), shall have the right during regular business hours, at Contractor's premises, and upon reasonable notice, by itself or by a person authorized by it, to audit Contractor's Records and other pertinent data, to determine and verify the figures reported in any Administrative Reports furnished by Contractor. In the event that any such audit reveals underpayment of Administrative Fees, Contractor shall forthwith pay the amount of deficiency, together with interest thereon at the rate provided in Section 2.11.8. At SPO'S request, Contractor shall pay the reasonable cost of an audit, but only if such audit reveals that an underpayment may exist as determined by SPO.

3.0 STANDARD CONTRACT TERMS AND CONDITIONS

3.1 ORDER OF PRECEDENCE: The printed terms and conditions set out in this Section 3 are the Standard Terms and Conditions for State of Oregon contracts for Goods. SPO may also provide Special Contract Terms and Conditions in Section 4, which apply only to this Contract. Whenever possible, all terms and conditions of this Price Agreement are to be harmonized. In the event of a conflict between the Standard and Special Contract Terms and Conditions, the Special Contract Terms and Conditions take precedence, unless the Standard term in question is required by law. In the event of any other conflict, the Contract will be interpreted in the following order of precedence: (i) amendments, (ii) addenda (iii) the Special Contract Terms and Conditions, (iv) Specifications, (v) these Standard Contract Terms and Conditions, and (vi) Price Agreement Terms and Conditions.

3.2 PAYMENT; Contractor shall look solely to Authorized Purchaser for payment of all amounts that may be due under the Contract. **AUTHORIZED PURCHASER IS SOLELY RESPONSIBLE FOR PAYMENT UNDER THE CONTRACT.** Payment is due by Authorized Purchaser within thirty (30) days after the date of the invoice pursuant to ORS 293.462.

3.3 OVERDUE CHARGES: At Contractor's option, it may assess overdue account charges to Authorized Purchaser, in accordance with the provisions of ORS 293.462(3), up to a maximum rate of two-thirds of one percent per month (8% per annum) in accordance with the provision of ORS 293.462(4).

3.4 PAYMENT ADDRESS: Payment shall be sent to Contractor at the address specified in the invoice.

3.5 INVOICES: Invoices shall be sent to the delivery destination specified, or to a different address as may be provided by Authorized Purchaser. Contractor shall include in its invoice the Price Agreement #, Contract #, if any, Goods ordered and volume or quantity of Goods delivered, the price per item or quantity of Goods, the total amount due, and address to which payment is to be sent. See Section 4.5.

3.6 MOST FAVORABLE PRICES AND TERMS: Contractor represents that all prices, terms and benefits offered by Contractor under this Contract are equal to or better than the equivalent prices, terms and benefits being offered by Contractor to any other state or local government unit or commercial customer.

3.6.1 Should Contractor, during the term of the Contract, enter into any contract, agreement or arrangement that provides lower prices, more favorable terms or greater benefits to any other such government unit or commercial customer, this Contract shall thereupon be deemed amended to provide the same price or prices, terms and benefits to the State. This provision applies to comparable Goods and services, and to purchase volumes by the State that are not less than the purchase volumes of the government unit or commercial customer that has received the lower prices, greater benefits or more favorable terms.

3.6.2 Section 3.6.1 does not apply to donations of Goods to charitable, nonprofit or government entities, if the donations are recognized as such and are deductible under the federal Internal Revenue Code, shall not be considered contracts, agreements, sales or arrangements with other government units or commercial customers that call for the application of section 3.6.1.

3.7 INSPECTIONS/ACCEPTANCE: The Authorized Purchaser shall have ten (10) calendar days from date of delivery of the entire order within which to inspect and accept or reject the Goods. If the Goods are rejected, the Authorized Purchaser shall provide Contractor with written notification of rejection. Notice of rejection shall include itemization of apparent defects, including but not limited to (i) discrepancies between the Goods and the applicable specifications or warranties (including variance from demonstrations or sample characteristics where demonstrations or samples have been provided), or (ii) otherwise nonconforming Goods (including late delivery). Notice of rejection shall also indicate whether cure will be allowed.

3.7.1 Reserved:

3.7.2 REMOVAL/REIMBURSEMENT: If the Goods are rejected or acceptance is revoked, the Contractor shall refund any Contract payments that have been made with regard to the rejected Goods, and shall (at Contractor's sole cost and expense) remove the

Goods within seven (7) calendar days of receiving notice of rejection or revocation of acceptance.

Nothing contained in this Section 3.7 shall preclude Authorized Purchaser from other remedies to which it may be entitled upon rejection or revocation of acceptance.

3.8 REPRESENTATIONS; WARRANTIES:

3.8.1 AUTHORITY: BINDING OBLIGATION: Contractor represents and warrants that Contractor has the power and authority to enter into and perform the Contract and that the Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms.

3.8.2 WARRANTY ON MATERIALS, DESIGN, MANUFACTURE: Contractor represents and warrants that all Goods shall be new, unused, current production models, where applicable, and shall be free from defects in materials, design and manufacture. Where specifications have been made a part of the ITB, Contractor further represents warrants that all Goods shall be in compliance with and meet or exceed all specifications.

3.8.3 WARRANTY ON SERVICE STANDARDS: Contractor warrants that all services required to be performed, if any, shall be performed in a good and workmanlike manner, and in accordance with the highest applicable professional or industry standards.

3.8.4 WARRANTY OF TITLE: Contractor represents and warrants that all Goods are free and clear of any liens or encumbrances, and that Contractor has full legal title to the Goods, and that no other person has any right, title or interest in the Goods which shall be superior to or infringe upon the rights granted to the Authorized Purchasers hereunder.

3.8.5 WARRANTY ON SAFETY AND HEALTH REQUIREMENTS: Contractor represents and warrants that Goods provided under this Contract comply with all applicable federal health and safety standards, including but not limited to, Occupational Safety and Health Administration (OSHA), and all Oregon safety and health requirements, including, but not limited to, those of the State Workers' Compensation Division.

3.8.6 WARRANTIES CUMULATIVE: The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided in the Contract. All warranties provided in the Contract shall be cumulative, and shall be interpreted expansively so as to afford the Authorized Purchasers and the State the broadest warranty protection available.

3.8.7 MANUFACTURER WARRANTIES: Contractor shall have all manufacturer warranties covering the Goods and component parts, if any, transferred to the Authorized Purchasers at time of delivery at no charge.

3.9 COMPLIANCE WITH APPLICABLE LAWS AND STANDARDS:

3.9.1 Contractor shall comply with all federal, state and local laws, regulations, and ordinances applicable to this Contract or to Contractor's obligations under this Contract, as they may be adopted or amended from time to time.

3.9.2 Authorized Purchaser's performance under this Contract is conditioned upon Contractor's compliance with the obligations intended for contractors under ORS 279B.220, 279B.225 (if applicable to this Contract), 279B.230 and 279B.235 (if applicable to this Contract), which are incorporated into this Contract by reference. Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).

3.9.3 In the event of a conflict between the specifications and applicable federal and State laws, the federal or State laws shall prevail. Provided, however, in the event any conflict is based solely upon minimum standards, such as quality or safety, the higher or more stringent standard shall apply. Contractor shall be responsible for making any modifications required to achieve compliance with the required laws and standards. Contractor shall notify SPO and Authorized Purchasers of any such required modifications upon receipt of knowledge or notification of such.

3.9.4 In the event any Good or component part is recalled by a regulatory body or the manufacturer, or discovered by Contractor not to be in compliance with the applicable standards, Contractor shall immediately notify SPO and the Authorized Purchaser of the recall or non-compliance, and shall provide copies of the notice or other documentation. Authorized Purchaser may elect to (a) cancel any portion of the Contract, (b) reject the Goods (c) revoke its acceptance of the Goods, or (d) terminate the Contract in whole or in part, based upon such recall or non-compliance. In the event of rejection or revocation of acceptance under this subsection, Contractor shall promptly remove the Goods at its sole cost and expense, and reimburse Authorized Purchaser for payments made.

3.10 FOREIGN CONTRACTOR: If the amount of the Contract exceeds ten thousand dollars (\$10,000), and if Contractor is not domiciled in or registered to do business in the State, Contractor shall promptly provide to the Oregon Department of Revenue all information required by that Department relative to the Contract. Oregon Authorized Purchaser's shall be entitled to withhold final payment under the Contract until Contractor has met this requirement.

3.11 MATERIAL SAFETY DATA SHEET: Contractor shall provide the Authorized Purchaser at time of delivery with a Material Safety Data Sheet as defined by the Occupational Safety and Health Administration (OSHA) for any Goods provided under the Contract which may release or otherwise result in exposure to a hazardous chemical under normal conditions of use. In addition, Contractor must properly label, tag or mark such Goods.

3.12 TIME IS OF THE ESSENCE: Contractor agrees that time is of the essence for Contractor's performance obligations under the Contract.

3.13 FORCE MAJEURE: Neither Authorized Purchaser nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, war, or any other cause which is beyond the party's reasonable control. 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 the

Contract. The Authorized Purchaser may terminate the Contract upon written notice after reasonably determining that such delay or default will likely prevent successful performance of the Contract.

3.14 INSURANCE: Contractor shall obtain prior to performing under the Contract, and maintain during the term of the Contract (including all warranty periods), the insurance required under Section 5. With regard to workers' compensation insurance, all employers, including Contractor, that employ subject workers who work under the Contract in the State of Oregon shall comply with ORS 656.017 and provide the required workers' compensation coverage, unless such employers are exempt under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors, if any, complies with these requirements.

3.15 FUNDS AVAILABLE AND AUTHORIZED; PAYMENTS: If Authorized Purchaser is an Authorized Agency or an Independent Agency, the Authorized Purchaser represents that it has sufficient funds available and authorized within its biennial appropriation or limitation to pay the cost of purchases under the Contract prior to the end of the current biennium. Contractor understands and agrees that such an Authorized Purchaser's payment of amounts under the Contract attributable to purchases made after the last day of the current biennium is contingent on that Authorized Purchaser's receiving from the Oregon Legislative Assembly appropriations, limitations, or other expenditure authority sufficient to allow it, in the exercise of its reasonable administrative discretion, to continue to make payments under the Contract.

3.16 INDEPENDENT CONTRACTOR STATUS; RESPONSIBILITY FOR TAXES AND WITHHOLDING:

3.16.1 Contractor shall perform all required Services as an independent contractor. Although the Authorized Purchaser reserves the right (i) to determine (and modify) the delivery schedule for the Goods to be delivered and the Services to be performed and (ii) to evaluate the quality of the completed performance, Authorized Purchaser 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 any Services required by this Contract.

3.16.2 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 State or federal rules or regulations of would prohibit Contractor's Work under this Contract. Contractor is not an "officer", "employee", or "agent" of the Authorized Purchaser, as those terms are used in ORS 30.265.

3.16.3 Contractor shall be responsible for all federal and state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, Authorized Purchaser 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.

3.17 INDEMNIFICATION:

3.17.1 CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY THE AUTHORIZED PURCHASER, THE STATE AND ITS OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, PROCEEDINGS, LOSSES, DAMAGES, LIABILITIES, AWARDS AND COSTS OF EVERY KIND AND DESCRIPTION (INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES AT TRIAL, ON APPEAL AND IN CONNECTION WITH ANY PETITION FOR REVIEW (COLLECTIVELY, "CLAIM") WHICH MAY BE BROUGHT OR MADE AGAINST ANY AUTHORIZED PURCHASER, THE STATE, OR THEIR AGENTS, OFFICIALS, EMPLOYEES AND ARISING OUT OF OR RELATED TO (I) ANY PERSONAL INJURY, DEATH OR PROPERTY DAMAGE CAUSED BY ANY ALLEGED ACT, OMISSION, ERROR, FAULT, MISTAKE OR NEGLIGENCE OF CONTRACTOR, ITS EMPLOYEES, AGENTS, RELATED TO THIS CONTRACT, (II) ANY ACT OR OMISSION BY CONTRACTOR THAT CONSTITUTES A MATERIAL BREACH OF THIS CONTRACT, INCLUDING WITHOUT LIMITATION ANY BREACH OF WARRANTY, OR (III) THE INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY BY DELIVERY OR USE OF THE GOODS. AUTHORIZED PURCHASER SHALL PROMPTLY NOTIFY CONTRACTOR IN WRITING OF ANY CLAIM THAT AUTHORIZED PURCHASER OR STATE BECOMES AWARE. CONTRACTOR'S OBLIGATION UNDER THIS SECTION SHALL NOT EXTEND TO ANY CLAIM PRIMARILY CAUSED BY (I) THE NEGLIGENT OR WILLFUL MISCONDUCT OF AUTHORIZED PURCHASER, THE STATE, OR THEIR AGENTS, OFFICIALS OR EMPLOYEES, OR (II) AGENCY'S MODIFICATION OF GOODS WITHOUT CONTRACTOR'S APPROVAL AND IN A MANNER INCONSISTENT WITH THE PURPOSE AND PROPER USAGE OF SUCH GOODS.

3.17.2 PROVIDED, HOWEVER, THE OREGON ATTORNEY GENERAL MUST GIVE WRITTEN AUTHORIZATION TO ANY LEGAL COUNSEL PURPORTING TO ACT IN THE NAME OF, OR REPRESENT THE INTERESTS OF, THE STATE AND ITS OFFICERS, EMPLOYEES AND AGENTS PRIOR TO SUCH ACTION OR REPRESENTATION. FURTHER, THE STATE, ACTING BY AND THROUGH ITS DEPARTMENT OF JUSTICE, MAY ASSUME ITS OWN DEFENSE, INCLUDING THAT OF ITS OFFICERS, EMPLOYEES AND AGENTS, AT ANY TIME WHEN IN THE STATE'S SOLE DISCRETION IT DETERMINES THAT (I) PROPOSED COUNSEL IS PROHIBITED FROM THE PARTICULAR REPRESENTATION CONTEMPLATED; (II) COUNSEL IS NOT ADEQUATELY DEFENDING OR ABLE TO DEFEND THE INTERESTS OF THE STATE, ITS OFFICERS, EMPLOYEES AND AGENTS; (III) IMPORTANT GOVERNMENTAL INTERESTS ARE AT STAKE; OR (IV) THE BEST INTERESTS OF THE STATE ARE SERVED THEREBY. CONTRACTOR'S OBLIGATION TO PAY FOR ALL COSTS AND EXPENSES SHALL INCLUDE THOSE INCURRED BY THE STATE IN ASSUMING ITS OWN DEFENSE AND THAT OF ITS OFFICERS, EMPLOYEES, OR AGENTS UNDER (I) AND (II) ABOVE.

3.18 EVENTS OF DEFAULT.

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

3.18.1.1 Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or

3.18.1.2 Contractor no longer holds a license or certificate that is required for Contractor to perform its obligations under this Contract and Contractor has not obtained such license or certificate within ten (10) business days after delivery of Authorized Purchaser's notice or such longer period as Authorized Purchaser may specify in such notice; or

3.18.1.3 Contractor commits any material breach or default of any covenant, warranty, obligation or certification under this Contract including but not limited to breach of the Price Agreement, and such breach, default or failure is not cured within ten (10) business days after delivery of Authorized Purchaser's notice of default or such longer period as Authorized Purchaser may specify in such notice.

3.18.2 Default by Authorized Purchaser. Authorized Purchaser shall be in default under this Contract if:

3.18.2.1 Authorized Purchaser fails to pay Contractor any amount pursuant to the terms of this Contract, and Authorized Purchaser fails to cure such failure within ten (10) business days after delivery of Contractor's notice of default or such longer period as Contractor may specify in such notice; or

3.18.2.2 Authorized Purchaser commits any material breach or default of any covenant, warranty, or obligation under this Contract, fails to perform its commitments hereunder within the time specified or any extension thereof, and Authorized Purchaser fails to cure such failure within ten (10) business days after delivery of Contractor's notice of default or such longer period as Contractor may specify in such notice.

3.19 REMEDIES

3.19.1 Authorized Purchaser's Remedies. In the event Contractor is in default under Section 3.18.1, in addition to the remedies afforded elsewhere herein, the Authorized Purchaser is entitled to recover for any and all damages suffered as the result of Contractor's breach of Contract, including but not limited to direct, indirect, incidental and consequential damages, as provided in ORS 72.7110 to 72.7170. The Authorized Purchaser may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, including, but not limited to:

3.19.1.1 Termination of this Contract under Section 3.21;

3.19.1.2 Withholding all monies due for invoiced for invoiced Goods or Services that Contractor is obligated but has failed to deliver or perform within any scheduled completion dates or has performed inadequately or defectively;

3.19.1.3 Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief;

3.19.1.4 Exercise of its right of setoff, and withholding of monies otherwise due and owing in an amount equal to Authorized Purchaser's setoff without penalty.

3.19.1.5 These remedies are cumulative to the extent the remedies are not inconsistent, and Authorized Purchaser may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If it is determined for any reason that Contractor was not in default under Sections 3.18.1, the rights and obligations of the parties shall be the same as if this Contract was terminated pursuant to Section 3.21.2.1.

3.19.2 Contractor's Remedies: In the event Authorized Purchaser terminates the Contract for convenience under Section 3.21.2.1, or in the event Authorized Purchaser is in default under Section 3.18.2 and whether or not Contractor elects to exercise its right to terminate the Contract under Section 3.21.3, Contractor's sole remedy shall be (a) A claim against Authorized Purchaser for the unpaid purchaser price for Goods delivered and accepted by Authorized Purchaser (b) with respect to Services compensable on an hourly basis, a claim for unpaid invoices, hours worked but not yet billed and authorized expenses for services completed and accepted by Authorized Purchaser (b) with respect to deliverable-based Services, a claim for the sum designated for completing the deliverable multiplied by the percentage of Services completed and accepted by Authorized Purchaser, less previous amounts paid and any claim(s) which Authorized Purchaser has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section, Contractor shall pay any excess to Authorized Purchaser upon written demand.

3.20 ATTORNEYS' FEES: With the exception of defense costs and expenses pursuant to 3.17, neither party shall be entitled to recover attorney's fees, court and investigative costs, or any other fees or expenses associated with pursuing a remedy for damages arising out of or relating to the Contract.

3.21 TERMINATION:

3.21.1 MUTUAL CONSENT: The Contract may be terminated at any time by mutual written consent of the parties.

3.21.2 AUTHORIZED PURCHASER:

3.21.2.1 AUTHORIZED PURCHASER may, at its sole discretion, terminate the Contract, for convenience, at any time upon 30 days written notice.

3.21.2.2 AUTHORIZED PURCHASER is excused from performance and may in its sole discretion terminate the Contract, in whole or in part, immediately upon notice to Contractor, or at such later date as the Authorized Purchaser may establish in such notice, upon the occurrence of any of the following events: (i) the Authorized Purchaser fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the Goods to be purchased under the Contract; or (ii) federal or state laws, regulations, or guidelines are modified or interpreted in such a way that either the purchase of the Goods by the Authorized Purchaser under the Contract is prohibited, or the Authorized Purchaser is prohibited from paying for such Goods from the planned funding source; or (iii) Contractor commits any material breach of the Contract. Pursuant to this

Section 3.21.2.2, upon receipt of written notice of termination, Contractor shall stop performance under the Contract as directed by the Authorized Purchaser.

3.21.3 CONTRACTOR: Contractor may terminate the Contract immediately upon notice to Authorized Purchaser, or at such later date as it may establish in such notice as set forth in Section 3.18.2., upon Agency's failure to pay for the Goods, in accordance with the terms of this Contract.

3.22 ACCESS TO RECORDS: Contractor shall retain, maintain, and keep accessible all records relevant to the Contract (the "Records") for a minimum of six (6) years, or such longer period as may be required by applicable law following expiration or termination of the Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to the Contract, whichever date is later. Financial Records shall also be kept in accordance with generally-accepted accounting principles. During the Record-retention period established in this Section 3.22, the Contractor shall permit the Authorized Purchaser, its duly authorized representatives, and the federal government access to the Records at a reasonable time and place for purposes of examination and copying.

3.23 NOTICES: All notices required under the Contract shall be in writing and addressed to the party's authorized representative. For Authorized Purchasers, the authorized representative shall be identified in the Purchase Order. Contractor's authorized representative shall be the individual identified in Section 10. Mailed notices shall be deemed received five (5) days after post marked, when deposited, properly addressed and prepaid, into the U.S. postal service. Faxed notices shall be deemed received upon electronic confirmation of successful transmission to the designated fax number. Personal delivery shall be effective upon delivery.

3.24 PURCHASE ORDERS; ACKNOWLEDGEMENTS: The parties acknowledge and agree that other than designation of order quantities, types of Goods, delivery destination, and dates of order and scheduled delivery of other performance, any Purchase Orders or acknowledgement documents are simply for the convenience of the parties to initiate or confirm an order of Goods under this Contract and that no other terms or conditions contained in those documents shall be of any force or effect or be binding upon the parties.

3.25 GOVERNING LAW: The Contract shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of laws. To the extent not modified by the terms of this Contract, the UCC shall govern this transaction.

3.26 VENUE; CONSENT TO JURISDICTION:

3.26.1 STATE CONTRACT VENUE; CONSENT TO JURISDICTION: Any claim, action, suit or proceeding (collectively, "Claim") between a Authorized Agency and Contractor, or an Independent Agency and Contractor, that arises from or relates to the Contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURT AND WAIVES ANY OBJECTION TO VENUE IN SUCH COURT, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM. Nothing herein shall be construed as a waiver of the

State's sovereign or governmental immunity, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or of any defenses to Claims or jurisdiction based thereon.

3.26.2 ORCPP, WSPC CONTRACT VENUE; CONSENT TO JURISDICTION: Any Claims between Contractor and an ORCPP or WSPC Authorized Purchaser that arise from or relate to the Contract shall be brought and conducted solely and exclusively within the Circuit Court of the county in which such ORCPP or WSPC Authorized Purchaser resides, or at the ORCPP or WSPC Authorized Purchaser's option, within such other county as the ORCPP or WSPC Authorized Purchaser shall be entitled under the laws of the relevant jurisdiction to bring or defend Claims. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURT AND WAIVES ANY OBJECTION TO VENUE IN SUCH COURT, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM. Nothing herein shall be construed as a waiver of ORCPP or WSPC Authorized Purchaser's sovereign or governmental immunity, if any, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or of any defenses to Claims or jurisdiction based thereon.

3.27 SURVIVAL: Any terms of this Contract, which by their context or nature are intended to survive termination or expiration including but not limited to warranty, indemnification, access to records, governing law, venue, consent to jurisdiction, termination and remedies provisions shall survive the termination or expiration of this Contract.

3.28 SEVERABILITY: If any provision of the Contract is declared by a court of competent jurisdiction to be illegal or otherwise invalid, 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 provision held to be invalid.

3.29 ASSIGNMENT/SUBCONTRACT/SUCCESSORS: Contractor shall not assign, sell, transfer, or subcontract rights, or delegate responsibilities under the Contract, in whole or in part, without the prior written approval of the Authorized Purchaser. Further, no such written approval shall relieve Contractor of any obligations under the Contract, and any assignee, transferee, or delegate shall be considered the agent of Contractor. The provisions of the Contract shall be binding upon, and shall inure to the benefit the parties to the Contract and their respective successors and permitted assigns.

3.30 MERGER CLAUSE; AMENDMENT; WAIVER: The Contract constitutes the entire agreement between the parties on the subject matter thereof. There are no understandings, agreements, or representations, oral or written, not specified therein regarding the Contract. No waiver, consent, or amendment of terms of the Contract shall bind either party unless in writing and signed by both parties, and all necessary approvals have been obtained. Waivers and consents shall be effective only in the specific instance and for the specific purpose given. The failure of the Authorized Purchaser to enforce any provision of the Contract shall not constitute a waiver by the Authorized Purchaser of that or any other provision.

SECTION 4 – SPECIAL CONTRACT TERMS AND CONDITIONS

4.1 PRICE AGREEMENT RENEWAL OPTION; PROPOSED NET INVOICE INCREASES FOR 2011 and SUCCEEDING MODEL YEARS:

4.1.1 Extension Terms. The parties by agreement may extend the term of this Price Agreement at the end of each Model Year for up to five additional one year periods after the initial term of the Price Agreement not to exceed a cumulative Price Agreement term of ten (10) years. Except as noted in this section Net Invoice changes, Contractor must agree to the same terms and conditions of the original Price Agreement as amended from time to time. Requests for Price Agreement extension must be initiated by and detailed in writing by the Contractor no later than 90 days before the expiration date of the Price Agreement. Factors that may influence the State to renew a Price Agreement include quality of customer services and assistance, increased Discount in Attachment 1, decrease in Dealer Profit, other discounts not included in Discount for 2011 models, other value-added services available to Authorized Purchaser.

4.1.2 Net Invoice Increases for Model Years; SPO Response. A) For 2011 Model Year vehicles, and any subsequent Model Year vehicles introduced for sale during the term of this Price Agreement, Contractor shall prepare and deliver a Net Invoice increase letter proposing Net Invoice increases for such Model Year, together with the effective Model Year pricing change date established by the manufacturer, to Price Agreement Administrator within five (5) business days of Contractor's receipt of Model Year prices from the manufacturer. The Net Invoice increase letter is the Contractor's firm offer of Net Invoice for the specified Model for that Model Year. B) Following receipt of a Net Invoice increase letter in accordance with this section, SPO may, at its sole discretion, elect for a proposed Net Invoice increase for a Model to accept it by amendment to Attachment 1, reject it and strike the Model from the Price Agreement, or conditionally reject it pending additional supporting documentation necessary to accept it. C) The Net Invoice for a Model in Attachment 1 remains unchanged for subsequent Model Year vehicles absent amendment to Attachment 1 by timely use of the process in this section 4.1.2.

4.1.3 New Models for Subsequent Model Years; SPO Response. A) For new Models introduced for sale in 2011 Model Year and any subsequent Model Year during the term of this Price Agreement, Contractor shall prepare and deliver a new Model letter proposing Attachment 1 information for all columns, to Price Agreement Administrator within five (5) business days of Contractor's receipt of Model prices from the manufacturer. The new Model letter is the Contractor's firm offer of Net Invoice for the specified Model for that Model Year. B) Following receipt of a new Model letter in accordance with this section, SPO may, at its sole discretion, elect for a proposed new Model to accept Model at Net Invoice and Discount by amendment to Attachment 1, reject it, or conditionally reject it pending additional supporting documentation necessary to accept or modify Net Invoice and Discount. C) Contractor shall follow the instructions to Bidder in Attachment 1 (and related explanation in ITB # 102-1738-10 posted at ORPIN) to compute Net Invoice and Discount for a new Model. SPO expects a product of the Triple Net Invoice pricing.

4.1.4 Contractor Cooperation: SPO may request that Contractor produce documents and information as deemed necessary in SPO's sole discretion to verify and analyze the

proposed change to Attachment 1. Contractor shall prepare and deliver documentation and information responsive to the SPO request within five (5) Business Days of Contractor's receipt of the SPO request.

4.2 SERVICE RATING AND EVALUATION: Beginning in model year 2010, the State will conduct surveys (see Reporting section 2) of Authorized Purchasers to assess the quality of services and products provided by each Contractor. Customer ratings will be incorporated into the process in determining renewals and future awards. State may consider Contractor performance which may include:

- a) Commitment to and provision of superior customer services and assistance, particularly build/delivery dates,
- b) Adherence to the terms and conditions of the Price Agreement and resulting contracts,
- c) Attention paid to pre-servicing, registration and delivery requirements,
- d) Provision of accurate invoices and vehicles free of defect and damage.

4.3 ADVERTISING: Contractor shall place no advertising, such as dealer's name, logo or emblems on vehicles. Contractor shall reimburse Authorized Purchaser for any costs incurred for removal of advertising from a vehicle.

4.4 TERMINATION OF PRICE AGREEMENT: In addition to those reasons stated in section 2.6, the State may terminate the Price Agreement(s) upon 30 days written notice to Contractor for reasons including but not limited to, unauthorized substitution of product or equipment, excessive delays in filling orders, poor workmanship, failure to perform as outlined in the specifications, inadequate customer service/support, unsatisfactory customer survey results and pricing irregularities contrary to the Price Agreement and not supported by written documentation from the manufacturer.

4.5 INVOICE: Contractor shall mail or deliver the original invoice to Authorized Purchaser within 24 hours of the time the vehicle is delivered. Authorized Purchasers will verify that correct pricing has been applied, note discrepancies in pricing and make adjustments to the invoice to reflect the correct contract price. Contractor shall include the Price Agreement and purchase order number on all invoices, bills of lading, packages and correspondence associated with the vehicle purchase transaction.

4.6 AUTHORIZED PURCHASER ORDER PROCEDURE: SPO encourages the Authorized Purchaser to follow the applicable general procedures outlined in Attachment 3 when determining with which Contractor (if multiple contracts exist) a given order will be placed or when determining which make/model will be purchased (if competing makes/models exist). SPO encourages Authorized Purchasers to compare one model or vehicle against that offered under another price agreement and check with other Authorized Purchasers regarding group or quantity buys in order to obtain the best price from competition at time of purchase. Authorized Purchaser may decide to place an order with a contractor other than the contractor with the lowest price if, through analysis based on published or empirically collected data, the Authorized Purchaser finds that additional value-added features, safety, services, or other features are in the best interests of the Authorized Purchaser. Items that may influence the decision may include 1) lead times, 2) warranties, 3) reliability reports, 4) safety ratings, 5) crash tests, 6) service reports, 7) operating costs, 8) resale values. Authorized Purchaser must determine individually if any and what documentation is necessary for this decision for the Authorized Purchaser file.

SECTION 5 – INSURANCE REQUIREMENTS

A. REQUIRED INSURANCE. Contractor shall obtain at Contractor's expense the insurance specified in this section 5 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. In this Section 5, "Agency" means the State of Oregon, acting by and through its Department of Administrative Services - State Procurement Office. 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. PROFESSIONAL LIABILITY

☐ Required by Agency ☒ Not required by Agency.

☐ **Professional Liability.** Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Contract. Contractor shall provide proof of insurance of not less than the following amounts as determined by the Agency:

☐ \$(Agency to enter amount) Combined single limit for any single claimant per occurrence; and
☐ \$(Agency to enter amount) aggregate limit for all claims per occurrence

OR

☐ Combined single limit for any single claimant per occurrence:

From commencement of the Contract term to June 30, 2010:	\$1,600,000.
July 1, 2010 to June 30, 2011:	\$1,700,000.
July 1, 2011 to June 30, 2012:	\$1,800,000.
July 1, 2012 to June 30, 2013:	\$1,900,000.
July 1, 2013 to June 30, 2014:	\$2,000,000.
July 1, 2014 to June 30, 2015:	\$2,100,000.

July 1, 2015 and thereafter, the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, sections 3 and 5 (Senate Bill 311).

Aggregate limit for all claims per occurrence:

From commencement of the Contract term to June 30, 2010:	\$3,500,000.
July 1, 2010 to June 30, 2011:	\$3,700,000.
July 1, 2011 to June 30, 2012:	\$3,900,000.
July 1, 2012 to June 30, 2013:	\$4,100,000.
July 1, 2013 to June 30, 2014:	\$4,300,000.
July 1, 2014 to June 30, 2015:	\$4,500,000.

July 1, 2015 and thereafter, the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, sections 3 and 5 (Senate Bill 311).

iii. COMMERCIAL GENERAL LIABILITY.

☒ Required by Agency ☐ Not required by Agency.

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

Bodily Injury/Death:

- ☐ \$(Agency to enter amount) Combined single limit for any single claimant per occurrence; and
☐ \$(Agency to enter amount) aggregate limit for all claims per occurrence

OR

☒ Combined single limit for any single claimant per occurrence :

From commencement of the Contract term to June 30, 2010: \$1,500,000.

July 1, 2010 to June 30, 2011: \$1,600,000.

July 1, 2011 to June 30, 2012: \$1,700,000.

July 1, 2012 to June 30, 2013: \$1,800,000.

July 1, 2013 to June 30, 2014: \$1,900,000.

July 1, 2014 to June 30, 2015: \$2,000,000.

July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

Aggregate limit for all claims per occurrence:

From commencement of the Contract term to June 30, 2010: \$3,000,000.

July 1, 2010 to June 30, 2011: \$3,200,000.

July 1, 2011 to June 30, 2012: \$3,400,000.

July 1, 2012 to June 30, 2013: \$3,600,000.

July 1, 2013 to June 30, 2014: \$3,800,000.

July 1, 2014 to June 30, 2015: \$4,000,000.

July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

AND

Property Damage:

- ☐ \$(Agency to enter amount) Combined single limit for any single claimant per occurrence; and
☐ \$(Agency to enter amount) aggregate limit for all claims per occurrence

OR

☒ Combined single limit for any single claimant per occurrence :

From commencement of the Contract term to January 1, 2010: \$100,000.

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

Aggregate limit for all claims per occurrence:

From commencement of the Contract term to January 1, 2010: \$500,000.

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

iv. 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:

- ☐ \$(Agency to enter amount) Combined single limit for any single claimant per occurrence; and
☐ \$(Agency to enter amount) aggregate limit for all claims per occurrence

OR

☒ Combined single limit for any single claimant per occurrence:

From commencement of the Contract term to June 30, 2010:	\$1,500,000.
July 1, 2010 to June 30, 2011:	\$1,600,000.
July 1, 2011 to June 30, 2012:	\$1,700,000.
July 1, 2012 to June 30, 2013:	\$1,800,000.
July 1, 2013 to June 30, 2014:	\$1,900,000.
July 1, 2014 to June 30, 2015:	\$2,000,000.

July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

Aggregate limit for all claims per occurrence:

From commencement of the Contract term to June 30, 2010:	\$3,000,000.
July 1, 2010 to June 30, 2011:	\$3,200,000.
July 1, 2011 to June 30, 2012:	\$3,400,000.
July 1, 2012 to June 30, 2013:	\$3,600,000.
July 1, 2013 to June 30, 2014:	\$3,800,000.
July 1, 2014 to June 30, 2015:	\$4,000,000.

July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

AND

Property Damage:

☐ \$(Agency to enter amount) Combined single limit for any single claimant per occurrence; and
☐ \$(Agency to enter amount) aggregate limit for all claims per occurrence

OR

☒ Combined single limit for any single claimant per occurrence:

From commencement of the Contract term to January 1, 2010: \$100,000.

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

Aggregate limit for all claims per occurrence:

From commencement of the Contract term to January 1, 2010: \$500,000.

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

AUTOMOBILE LIABILITY. Automobile Liability Insurance, including MCS-90 endorsement, with a combined single limit of no less than \$1,000,000.00 or equal to the U.S. Department of Transportation requirements, whichever is greater. The policy shall insure against bodily injury, property damage, or environmental damage arising out of the use (including loading, transporting and unloading) by or on behalf of Contractor, its agents and employees of owned, non-owned or hired vehicles.]

v. EMPLOYERS' LIABILITY.

☒ Required by Agency ☐ Not required by Agency.

If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall obtain employers' liability insurance coverage. Contractor shall provide proof of insurance of not less than the following amounts as determined by the Agency:

☐ \$(Agency to enter amount) Combined single limit for any single claimant per occurrence; and
\$(Agency to enter amount) aggregate limit for all claims per occurrence

OR

☒ Combined single limit for any single claimant per occurrence :

From commencement of the Contract term to June 30, 2010:	\$1,500,000.
July 1, 2010 to June 30, 2011:	\$1,600,000.
July 1, 2011 to June 30, 2012:	\$1,700,000.
July 1, 2012 to June 30, 2013:	\$1,800,000.
July 1, 2013 to June 30, 2014:	\$1,900,000.
July 1, 2014 to June 30, 2015:	\$2,000,000.

July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

Aggregate limit for all claims per occurrence:

From commencement of the Contract term to June 30, 2010:	\$3,000,000.
July 1, 2010 to June 30, 2011:	\$3,200,000.
July 1, 2011 to June 30, 2012:	\$3,400,000.
July 1, 2012 to June 30, 2013:	\$3,600,000.
July 1, 2013 to June 30, 2014:	\$3,800,000.
July 1, 2014 to June 30, 2015:	\$4,000,000.

July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

vi. POLLUTION LIABILITY.

☐ Required by Agency ☒ Not required by Agency.

Pollution Liability Insurance covering Contractor's liability for bodily injury, property damage and environmental damage resulting from either sudden or gradual accidental pollution and related cleanup costs incurred by Contractor, all arising out of the Goods delivered or Services (including transportation risk) performed under this Contract. Combined single limit per occurrence shall not be less than \$ Not Required By Agency. Annual aggregate limit shall not be less than \$ Not Required By Agency.

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 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 section 5.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 sixty (60) 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.

SECTION 6 – SPECIFICATIONS

6.1 GENERAL PROVISIONS:

6.1.1 SILENCE OF SPECIFICATIONS: The apparent silence of the Specifications and any supplemental Specifications as to any detail, or the apparent omission of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and that only materials and workmanship of first quality are to be used. However, if any omitted specification results in ambiguity as to material characteristics of the Goods, and inclusion is necessary to enable a reasonable person in the particular industry to properly identify such characteristics, a Bidder shall seek a formal request for change, as set forth in section C.5.4. Failure to make such a request is at Contractor's risk, and the Bidder awarded a Contract shall be required to provide Goods meeting the Agency's needs with regard to any omitted specification for which change should reasonably have been sought.

6.1.2 ADHERENCE TO THE SPECIFICATIONS. Deviations discovered after purchase shall be corrected at no cost to the Authorized Purchaser.

6.2 DELIVERY:

6.2.1 Delivery. Delivery schedules must be accurate. Contractor shall confirm and notify Authorized Purchaser within 14 days of Contractor's receipt of Purchase Order of factory acceptance of order, build date, and scheduled delivery date.. It is desirable that vehicle delivery not exceed quoted delivery date by more than 30 days. In the event confirmation and notice exceeds the 14 day window or vehicle delivery exceeds the 30 day window stated here, the Authorized Purchaser may elect to cancel the order without penalty.

6.2.2 Pre-Delivery Inventory. Prior to delivery of any vehicle, the Contractor shall make arrangements with the Authorized Purchaser for the purpose of conducting a physical inventory of the vehicle(s).

6.2.3 Pre-Delivery Service and Adjustments. As part of contract price for vehicle, Contractor shall complete pre-delivery servicing and adjustments such that vehicle can be put into service as soon as it is delivered. Pre-delivery servicing and adjustments include but are not limited to the following:

- a. Make all adjustments required to meet Oregon safety inspection requirements and emission control certifications.
- b. Tune engine for altitude
- c. Adjust all accessories to optimal working condition.
- d. Inspect electrical, braking and suspension systems.
- e. Charge battery.
- f. Align front end.
- g. Inflate tires to optimal pressure.
- h. Computer spin balance all wheels including spare.
- i. Lubricate engine and chassis. Fill all lubrication reservoirs (crankcase, power steering, transmission, differential, power brakes) with appropriate lubricants for current operating temperatures. Affix a plastic static type sticker to upper left windshield advising of next recommended servicing.
- j. Service cooling system with permanent type antifreeze and summer coolant for -20 deg. F. Windshield washer fluid reservoir(s) should be full and of a type suitable to -20 deg. F.
- k. Ready vehicle for immediate operation, including gas, diesel and alternative fuel at a minimum of a 1/4 tank.
- l. Assure vehicle is clean and thoroughly detailed inside and out. All upholstery and floor protection removed. Floor mats are to be placed, window decals removed and all adhesive cleaned from the vehicle.
- m. Correct all factory defects.

6.3.4 Authorized Purchaser may elect to take possession of a vehicle without Dealer Preparation and Pre-Servicing. Authorized Purchaser shall advise the Contractor at the time the order is placed if the Authorized Purchaser makes that choice. In such an event, the Contractor shall reduce the vehicle price by the Dealer Preparation and Pre-Servicing Cost in Attachment 1.

6.4 Vehicles Covered by Price Agreement: This is a Price Agreement is for all Model Year 2010 Toyota models and their respective series (including all available AFV's up to and including Electric Vehicles), and any new Toyota models or series introduced in Model Years 2011 and thereafter.

6.5 Keys; Documentation

Contractor shall deliver the following items to Authorized Purchaser with each vehicle sold (*denotes documentation that must be provided only to those Authorized Purchasers registering their own vehicles):

- a. Operators (owners) manual.
- b. Manufacturers warranty information.
- c. *Original odometer statement.
- d. Copy of Manufacturer's Statement of Origin (MSO).

- e. Vehicle MSRP window sticker
- f. *Application for title properly completed and signed.
- g. Manufacturer's specifications attached to vehicle.
- h. Signed pre-delivery checklist certifying completion of the above items and those listed in Delivery 6.2 unless waived in favor of the Dealer Preparation and Pre-Servicing deduct (see Attachment 1)
- i. Two (2) sets of pre-tested keys marked with the VIN number and license plate number and the vehicle key code.

6.7 Registration:

Except as otherwise expressly agreed in advance with Authorized Purchaser, prior to delivery Contractor shall properly register the vehicle to Authorized Purchaser, and when available, affix the authorized plates to the vehicle.

Authorized Purchaser may elect to register a vehicle itself. Authorized Purchaser shall advise the Contractor at the time the order is placed if the Authorized Purchaser will register a vehicle itself. In such an event, the Contractor shall reduce the vehicle price by the Registration Cost in Attachment 1.

SECTION 7 – PRICING (OFFEROR MUST COMPLETE AND RETURN WITH OFFER)

CREDIT CARD PURCHASES: Bidders shall list all major credit card brands, if any, that it will accept:

List the early payment discount, if any, Bidder offers for credit card purchase payments received sooner than the standard net thirty (30) days:

_____ % Discount Net _____ days

7.1 Pricing: This Price Agreement and Attachment 1 are for vehicles under production for Model Year 2011 or that are placed into production by Toyota Motor Corporation during the term of the Price Agreement. The Attachment 1 Final Bid Price is for the base Standard Equipped vehicle. The Discount in Attachment 1 is a fixed percentage discount of the Net Invoice for each vehicle and factory installed options purchased under the Price Agreement. Contractor shall use the Discount applicable to a Model Code to determine both the contract price for a vehicle and the contract price for an option or package.

7.2 The Discount in Attachment 1 is effective through the life of the Price Agreement. SPO and Contractor may amend the Price Agreement to reflect Model Year Net Invoice changes, and to add and delete Toyota vehicle Models. The Price is FBO Authorized Purchaser location within 60 miles of Contractor location listed in Attachment 1. At Authorized Purchaser location greater than 60 miles, the price is FBO Authorized Purchaser location at Price plus per mile delivery stated in Attachment 1.

7.3 At time of Authorized Purchaser purchase order, Contractor shall make available to the Authorized Purchaser the greater of Discount or all incentive rebates, Standard Equipment discounts, optional equipment discounts, and all other discounts offered to the Authorized Purchaser by the manufacturer not already included in the Attachment 1 Final Bid Price. Contractor shall apply these discounts at the time Authorized Purchaser orders the vehicle and selects factory installed options.

7.4 If Discount available to Authorized Purchaser is higher for Model Year vehicles than that stated in Attachment 1, Contractor shall allow the higher Discount and the lower Final Bid Price. Contractor shall freely communicate any additional discounts offered by the Contractor over and above those in Attachment 1 and state to which Models the additional discounts are applicable.

7.5 Contractor may add additional charges, such as delivery outside of a 60 mile radius or shop/service manuals, third key or decal application or pass-through code charges to the invoice as separate line items (see Attachment 1). Contractor may give deductions, such as for Authorized Purchasers who wish to register their own vehicles or those who wish to forego dealer preparation and pre-servicing costs (see Attachment 1). Contractor shall make no addition or deduction to or from the invoice without the consent of the Authorized Purchaser in the Purchaser Order or in other writing.

7.6 Net Invoice in Attachment 1 includes the Destination Charge. The Destination Charge for a vehicle Model is fixed for the Price Agreement period, except any decreases shall be passed immediately to the Authorized Purchaser.

7.7 SPO and Authorized Purchaser must be able to verify all prices, discounts, and options for the contract price for a vehicle. Contractor shall provide documentation on request by SPO or Authorized Purchaser to support prices, discounts, options. In cases where a variation in price or discount or option is in dispute, Contractor shall consult directly with the manufacturer and provide to the Authorized Purchaser's satisfaction written documentation to support the variation. In no case shall Contractor require or shall Authorized Purchaser accept changes that are contrary to Attachment 1 or to any provision of this Price Agreement. See Sections 2.6.6 and 3.30.

SECTION 8 – CERTIFICATION OF COMPLIANCE WITH TAX LAWS (OFFEROR MUST COMPLETE AND RETURN WITH OFFER)

By my signature in Section 10 of this Contract, I, hereby attest or affirm under penalty of perjury: That I am authorized to act on behalf of the Contractor in this matter, that I have authority and knowledge regarding the payment of taxes, and that Contractor is, to the best of my knowledge, not in violation of any Oregon Tax Laws." For purposes of this certification, "Oregon tax laws" are those tax laws listed in ORS 305.380(4), namely ORS Chapters 118, 314, 316, 317, 318, 320, 321 and 323 and Sections 10 to 20, Chapter 533, Oregon Laws 1981, as amended by Chapter 16, Oregon Laws 1982 (first special session); the elderly rental assistance program under ORS 310.630 to 310.706; and any local tax laws administered by the Oregon Department of Revenue under ORS 305.620.

SECTION 9 – CERTIFICATION OF COMPLIANCE WITH NON-DISCRIMINATION LAWS (OFFEROR MUST COMPLETE AND RETURN WITH OFFER)

By my signature in Section 10 of this Contract, I hereby attest or affirm under penalty of perjury: that I am authorized to act on behalf of Contractor in this matter, and to the best of the undersigned's knowledge, Contractor has not discriminated against and will not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, women or emerging small business enterprises certified under ORS 200.055 or against a business enterprise that is owned or controlled by or that employs a disabled veteran as defined in ORS 408.225

SECTION 10 – SIGNATURE OF CONTRACTOR'S DULY AUTHORIZED REPRESENTATIVE (OFFEROR MUST COMPLETE AND RETURN WITH OFFER)

THIS CONTRACT MUST BE SIGNED IN INK BY AN AUTHORIZED REPRESENTATIVE OF THE CONTRACTOR; ANY ALTERATIONS OR ERASURES TO THE OFFER MUST BE INITIALED IN INK BY THE UNDERSIGNED AUTHORIZED REPRESENTATIVE.

The undersigned acknowledges, attests and certifies individually and on behalf of the Contractor that:

(1) He/she is a duly authorized representative of the Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Contract, if any, issued, and to execute this Contract on behalf of Contractor. (2) Contractor is bound by and will comply with all requirements, Specifications, and terms and conditions contained in this Contract (including all listed attachments and Addenda, if any, issued (3) Contractor will furnish the designated Goods in accordance with the Contract Specifications and requirements, and will comply in all respects with the terms of the resulting Contract upon award; and (4) All affirmations contained in Section C.3.1 of the ITB are true and correct.

Offeror's Name

Authorized Signature:

Title:

Contact Person (Type or Print):

Telephone Number:

() _____

Fax Number:

() _____

SECTION 11 – STATE SIGNATURE (to be completed by the State of Oregon)

The State of Oregon, acting by and through SPO hereby accepts Contractor's offer and awards a Price Agreement to the above Contractor for the item(s) and service(s) designated as Item No. [Insert item #s].

Authorized Signature:

Date:

Term of Contract:

Purchase Order No.:

SPO Contact
Contact Person (Type or Print):

Telephone Number:

() _____

Fax Number:

() _____

Attachment 2

PURCHASE ORDER FORM FOR TOYOTA VEHICLES

THIS PURCHASE IS SUBMITTED PURSUANT TO STATE OF OREGON SOLICITATION # **102-1738-10** AND PRICE AGREEMENT # **ORDERING ORGANIZATION WILL INSERT PRICE AGREEMENT**. THE PRICE AGREEMENT INCLUDING CONTRACT TERMS AND CONDITIONS AND SPECIAL CONTRACT TERMS AND CONDITIONS (T'S and C'S) CONTAINED IN THE PRICE AGREEMENT ARE HEREBY INCORPORATED BY REFERENCE AND SHALL APPLY TO THIS PURCHASE AND SHALL TAKE PRECEDENCE OVER ALL OTHER CONFLICTING T'S AND C'S, EXPRESS OR IMPLIED.

STATE OF OREGON					PURCHASE ORDER NO.	
Agency		PO Date	Delivery Date	Bid Number	Requisition No.	
Vendor Name and Address			Bill To			
Vendor Number	BPO/Contract Number		Agency Contact/Phone			
Ship To			FOB			
			Terms			
Item	Description	Quantity	U/M	Unit Price	Extended Amount	
01						
				Sub Total		
				Freight		
				Total		
Authorized Agent/Approved				Date		

This Purchase Order incorporates by reference, as though fully set forth herein, Price Agreement No. **Insert Price Agreement Number**

ATTACHMENT 3 SUGGESTED ORDERING PROCEDURES

For State Agencies

- A. Agency determines need for vehicle and required features.
- B. Agency contacts the appropriate fleet manager.
- C. The fleet manager, after consulting with agency personnel:
 - i.). determines the appropriateness of the request,
 - ii). determines the appropriate standard and optional equipment requirements, and
 - iii) configures a vehicle specification sheet by make, model and style based upon the standard and optional equipment requested.
- D. The fleet manager performs the following:
 - i) determines the final purchase price of the vehicle,
 - ii) makes a comparative price analysis of various competing makes, models, and dealers.
 - iii) provides requesting agency with the comparative analysis worksheets for review, and
 - iv) makes a recommendation to the agency as to which vehicle meets requirements at the lowest final purchase price.
- E. Agency reviews the comparative analysis and recommendation. If in agreement, agency instructs fleet manager (in writing) to proceed with purchase. If in disagreement, agency recommends the alternative to the fleet manager and submits written justification to support the alternative choice.
 - i) If the fleet manager agrees, the fleet manager generates an order listing the vehicle and all selected options, discounts, incentives, etc. and calculates the final purchase price.
- F. The fleet manager then places written order with the appropriate dealer via fax, mail. Using the purchase order form attached to the Price Agreement.
- G. Dealer enters the order and submits written documentation via mail or fax confirming order placement and factory acceptance. A build number and scheduled build date should be provided to the fleet manager within 14 business days of order placement.
- H. Dealer provides frequent status reports on all orders placed with the ordering entity's fleet manager.

For ORCPP and WSPC Authorized Purchasers

Each entity should:

- A. Work directly with their own fleet manager or motor pool personnel who will follow the same or similar procedures as those listed above, or
- B. If the ordering entity lacks the resources and desires to utilize the services of the State Motor Pool/Division of Fleet Operations, they may do so. In such case, the fleet manager of the State Motor Pool/Division of Fleet Operations will follow the same or similar procedures as those listed above EXCEPT the ordering entity will be responsible for:

- i). Determining the appropriateness of their own vehicle requirements,
- ii). justifying their own alternative decisions,
- iii). placing their own vehicle order,
- iv). obtaining their own order status reports and disseminating such information to their Authorized Purchaser entities,
- v). inspecting their own vehicles, and
- vi). approving and paying their own invoices.

ALL AUTHORIZED PURCHASERS.

All ordering agencies are strongly encouraged to compete one model or vehicle against another, thus obtaining the best price from competition, and check with other agencies on group or quantity buys.