



## INVITATION TO BID REVERSE AUCTION

**Bid No: 4000004432**

**Bid Title: DANY Grant - Sexual Assault Kit (SAK) Backlog  
Elimination Program**

**Issue Date: 12/22/2105**

**Bid Registration Packet Due: January 12, 2016  
Not Later Than 2:00 PM**

**Reverse Auction Scheduled: January 21, 2016**

**Bid Opening (State time): 10:00 AM PST**

**Bid Closing (Stop time):** The auction event will have a scheduled duration of **fifteen (15) minutes**. The event may be extended if bids are received within **three (3) minutes** of the time limit. The event will conclude at either the scheduled time limit or at the time at which all extensions are completed, whichever is later.

**Pre-Bid Conference: There will not be a pre-bid conference for this Solicitation**

This ITB is issued under the provisions of the Oregon Revised Statutes Chapters 279A and 279B and Multnomah County PCRB public contracting rules. All bidders are charged with presumptive knowledge of the cited authorities. Submission of a valid executed proposal by any bidder will constitute admission of such knowledge on the part of such bidder.

***OFFERORS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE SOLICITATION. PLEASE REVIEW ALL BIDDING INSTRUCTIONS AS WELL AS THE CONTRACT TERMS AND CONDITIONS.***

Electronic copies of this ITB and attachments, if any, can be obtained from the Multnomah County Purchasing Website at: <http://www.multcopurch.org>.

All Bid Registration documents will be submitted in hard copy. Electronic or facsimile submissions will be rejected.

## INVITATION TO BID

Notice is hereby given that sealed Bid Registration Packets for Bid Number: **4000004432** for: **DANY Grant – Sexual Assault Kit (SAK) Backlog Elimination Program** will be received by the Purchasing Manager, Multnomah County, 501 SE Hawthorne, Suite 125 (mail)/Suite 125 (in person), Portland OR 97214 until **the date and time listed on the cover page of this Invitation To Bid (ITB)**.

A Reverse Auction will be held at the date and time listed on the cover page of this ITB to establish pricing for the services outlined in the Invitation to Bid.

**It is the sole responsibility of the bidder to ensure that Multnomah County receives the bid registration packet by the specified time. ALL BID REGISTRATION PACKETS WILL BE TIME STAMPED AT THE BID WINDOW BY THE STATED DEADLINE.** All late bid registration packets will be rejected.

The outside of the sealed envelope must be clearly marked with the bidder's name, address, bid name and number, and the due date. Bidder must submit one (1) original Bid Registration Packet. Please retain a copy for your records.

Pre-Bid Conference: **None**

Interested parties may register at [www.multcopurch.org](http://www.multcopurch.org) to receive bid notices and addenda, if issued.

The bid documents and Bid Registration Packets may be obtained or examined at: Multnomah County Purchasing, 501 SE Hawthorne Blvd., Suite 125, Portland OR 97214. Requests to receive the bid document may be made in person, by mail or by telephone by calling (503) 988-5111. PLEASE REVIEW ALL BIDDING INSTRUCTIONS AND CONTRACT TERMS AND CONDITIONS.

Publication Date: **12/22/2015**

## INTRODUCTION

Multnomah County has received a grant from the New York County District Attorney known as the DANY Grant to fund the Sexual Assault Kit (SAK) Backlog Elimination Program. The grant covers several law enforcement agencies across three counties; Multnomah County, Lane County and Marion County. There are approximately 3,000 unprocessed SAKs maintained at multiple law enforcement agencies across these counties. Multnomah County has until September 30, 2017 to test all backlog SAKs.

Proposers are strongly encouraged to provide recommendations on how this project can be completed within the time constraints in the most effective and efficient manner. In addition, we would like the proposers to provide pricing alternatives and tiered pricing models that leverage the existing volume.

## BACKGROUND

Multnomah County anticipates the need for DNA analysis on approximately 3,000 SAKs that contain, on average, between 3-8 samples per kit. The SAKs will require analysis of two unknown samples and the known victim reference. Where multiple perpetrators are suspected, more than two unknown samples may require analysis.

## SCOPE OF WORK

### SPECIFIC SERVICES TO BE PROVIDED

The Contractor will document the contents of all SAKs.

1. The SANE Evaluation Form or Sexual Assault Information Form included in the SAK shall be used to determine the two most probative exhibits for analysis. A representative sample of the swabs from these two exhibits shall be Y-screened in order to determine those samples that will be forwarded for DNA profiling. A representative sample is defined as a small portion of each available swab combined into a single DNA extract (i.e. if 4 vaginal swabs are submitted, a portion of each swab will be sampled and combined prior to extraction.)
2. A differential extraction will be performed when appropriate based upon the case scenario. If a differential extraction is performed, STR analysis will be performed on both the sperm and non-sperm fractions.
3. A sperm cell slide will be made during the differential extraction process and preserved for future analysis if necessary.
4. DNA profiles will be obtained using the Identifiler Plus Amplification Kit in conjunction with the ABI 3100 series genetic analyzers and GeneMapper *ID-X* until the anticipated expansion of the FBI core loci in January 2017. After January 2017, all DNA profiles will be obtained using the Globalfiler Amplification Kit in conjunction with the ABI 3500 series genetic analyzers and GeneMapper *ID-X*
5. Blind proficiency samples may be included in these casework samples (known and/or unknown) at any time, to be charged at the same rate as casework samples.
6. Contractor will compare any unidentified DNA profile to other profiles obtained from samples extracted and/or otherwise processed with that item.
7. Contents of each SAK, analytical documentation, and reports should be supplied in electronic format to Multnomah County within 5 to 10 working days of completing the case.
  - a. Reports will be sent via email to the Multnomah County District Attorney.
  - b. Supporting documentation shall consist of, at a minimum: sampling and extraction worksheets that clearly document the extract volumes of all samples and controls, quantification values for all samples and controls, qPCR values for slope, y-intercept, and  $R^2$ , amplification template, volume or target amount for all samples and controls, CE injection times, GeneMapper *ID-X* project lists, ladders used for analysis, analyzed data for all samples and controls, and any mixture interpretation performed.

8. Contractor will return all remaining case evidence and packaging to the Submitting Agency. Contractor will be responsible for all costs incurred in this process and will ensure the chain of custody remains intact.
9. Contractor will provide transportation, supplies, equipment, personnel, supervision and certifications necessary to provide forensic DNA analysis for Multnomah County. No shipping costs will be charged to the County.
10. A letter from the Contractor will accompany the final shipment certifying that the Contractor has returned all remaining evidence and extracts, destroyed all amplified DNA, and deleted any profiles from the SAK project from any relevant Quality Assurance database(s).
11. Any remaining DNA extracts, reagent blanks, and evidence samples/cuttings tested for DNA will be properly preserved by the Contractor for a period of three (3) years after the end of the Contract period. At the end of the three (3) year period the DNA extracts and reagent blanks will be lyophilized (dried) and will be returned to the submitting agency along with the evidence samples/cuttings.

### **PRICING FOR ADDITIONAL ANALYSIS**

1. Contractor shall provide the cost for the following additional analysis options, separate from the cost for the analysis of the SAK:
  - a. Analysis of one slide, previously prepared during the differential extraction, for the presence of spermatozoa
  - b. P30 testing
  - c. Amylase testing
  - d. DNA analysis of one reference sample and comparison to a previously obtained evidence profile
  - e. RUSH SAK analysis

### **CONFIDENTIALITY**

Contractor acknowledges that the results of a DNA analysis and the comparison of analytical results are made confidential by law, and will treat such information with due care to prevent improper disclosure.

### **RECEIVING AND CHAIN OF CUSTODY**

Samples will be stored and handled in a proper manor to prevent loss, cross transfer, contamination and/or deleterious change.

As a result of the multiple law enforcement agencies that will be submitting untested SAKs, Contractor will be required to receive kits in various quantities from each participating agency.

Prior to beginning testing, Contractor will verify that received kits are on the SAK Backlog Elimination Program Inventory List. The SAK Backlog Elimination Program Inventory List identifies all SAKs to be tested under this agreement using a SAK ID as a unique identifier (such as case number) and will be provided by the Multnomah County District Attorney's Office upon award of contract.

Contractor will return SAKs that are received but are not listed on the SAK Backlog Elimination Program Inventory List to the originating agency at the submitting agency's expense.

The grant does not allow prioritization of any SAKs EXCEPT for SAKs marked "Priority – Statue of Limitations". No other SAKs received by the Contractor will be deemed a priority.

The chain of custody for samples will be documented to include sample receipt by the Contractor, as well as processing; typing and returning evidence samples back to the respective Submitting Agency. Any exchange of samples between laboratory personnel will require a documented transfer record. Final verification of the chain of custody procedure by the laboratory supervisor or her/his designee is required.

Documentation of chain of custody will be maintained. Work product, however defined by the Contractor, is not subject to these requirements.

**TESTIMONY** Test results produced as a result of testing conducted under this ITB, may lead to cases prosecuted that will require the successful bidder to appear and provide expert testimony in court.

The Multnomah County District Attorney allowable reimbursement rate for expert testimony is set by the Public Defense Services Commission at \$110.00 per hour.

Travel and lodging arrangements for expert testimony resulting from prosecution of cases generated as a result of testing will be made by the submitting agency unless approved in advance by the submitting agency. All reimbursable travel and lodging expenses will not exceed the current GSA scheduled amounts, which can be located online at <http://www.gsa.gov/portal/content/104877>.

The ability to testify regarding DNA analysis to a lay jury is required.

Cancellation fees for DNA testing and/or expert witness testimony will not apply.

Contractor will be responsible for the professional quality, technical accuracy, completion and delivery of all deliverable and other services furnished by the contractor.

## **SPECIAL REQUIREMENTS**

### **PROFICIENCY TESTS AND QUALITY ASSURANCE**

Contractor will participate in an external proficiency testing program from a test provider that has been approved by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB).

Copies of the most recent proficiency testing results for each analyst will be provided to Multnomah County. Blind proficiency samples may be provided to the Contractor for quality assurance purposes.

Contractor will be required to present documentation of any corrective action taken to address any quality assurance issue identified by an incorrect result. Additional information is provided as attachment 4.

### **CERTIFICATION**

The Contractor will be accredited to ISO 17025 standards.

Contractor will not subcontract any portion of the casework sample handling, processing, analysis, reporting to any other laboratory.

### **GENERAL REQUIREMENTS**

Multnomah County reserves the right to request additional information from selected candidates.

The estimated quantities specified herein are not a guarantee of actual quantities. Upon acceptance of bid Multnomah County or designee (Oregon State Police) may perform facility walk-thru of the Contractor's facilities and review relevant documents and case for bidding Contractor.

Multnomah County reserves the right to have OSP conduct periodic inspections and audits after the contract is awarded to ensure continued compliance.

### **OREGON STATE POLICE LABORATORY APPROVAL PROCESS**

Prior to award of contract the Contractor will provide Multnomah County with documentation of compliance with the FBI Quality Assurance Standards, to include a copy of the most recent external audit and any associated corrective action(s) and allow the Oregon State Police DNA Technical Leader, or designated NDIS participating laboratory to perform an on-site inspection.

## INSTRUCTIONS TO BIDDERS

### BID RESPONSE - PROVISIONS AND CONDITIONS

**REGISTRATION PACKET SUBMITTAL:** By submitting a registration packet, the bidder, agrees to furnish any and all product(s) required by this ITB, at the prices quoted during the reverse auction process, pursuant to all requirements and specifications contained herein.

All bid registration packets must be typewritten or prepared in ink and must be submitted in accordance with the instructions on the cover of this ITB. Failure to return all required information and forms may result in registration packet being considered non compliant and rejected from the reverse auction process. Each registration packet must contain the following:

- Signed Vendor Representations and Certifications – See Solicitation Attachment 1
- Current Accreditation Certificate including scope of the accreditation
- EASI Terms and Conditions – signed by the duly authorized representative

**REVERSE AUCTION INFORMATION:** The County will accept bids for DANY Grant – Sexual Assault Kit (SAK) Backlog Elimination Program using an online Reverse Auction Process managed and hosted by Electronic Auction Services, Inc (EASI).

Sealed registration packets for DANY Grant – Sexual Assault Kit (SAK) Backlog Elimination Program will be received by the County in accordance with the schedule listed on the cover page of this ITB.

Pricing for DANY Grant – Sexual Assault Kit (SAK) Backlog Elimination Program will be received via the reverse auction process scheduled to take in accordance with the schedule listed on the cover page or this ITB.

The reverse action will be conducted in accordance with County procurement provisions PCRB public contracting rules and Oregon Revised Statutes Chapters 279A and 279B. By submitting a bid through the reverse auction process, the bidder agrees to abide by County, State and Federal policies and procedures for the purchase of the product(s), the terms and conditions of the reverse auction as well as, the terms, conditions and specifications for this bid.

A condition of participation in the reverse auction process is that the vendors must complete the registration packet and be deemed responsive to all requirements and responsible to provide the product. Such determination will be a pre-requisite to participation in the reverse auction.

### REVERSE AUCTION PROCEDURES:

After review of the registration packets, the County will provide written notice to each bidder, via email and in accordance with County procurement policies, regarding the bidder's inclusion or exclusion from the reverse auction process.

EASI will work directly with the bidder to prepare for the auction. Preparation may include, but not limited to the following:

- Configuration of the auction computer system
- Testing of the bidder interface
- Review and discussion of Online Reverse Auction event procedures
- Other training and documentation as required

During the Online Reverse Auction process, only those bidders who have received notification of inclusion from the County will be allowed to participate in the auction. EASI will provide the necessary administrative support to ensure that the integrity of the auction is not compromised.

EASI will maintain an event record, which will include the prices offered by the bidders.

The EASI bidder interface will be configured such that a bidder will not know the identity of the competing bidders.

EASI will begin the event through electronic notification to all responsive bidders. Bidders may submit multiple pricing during the auction. The lowest price offered by each bidder will become the price portion of the bid response.

Bids must be submitted by, or under the direction of, an authorized representative of the bidder as designated in the registration packet, Vendor Representations and Certifications.

The auction will have a scheduled stop time. The auction may be extended if bids received within the predetermined amount of time prior to the scheduled stop time. Specific procedures on time extension will be contained in the event procedures that will be reviewed and discussed with the bidders.

The auction will conclude at either the scheduled stop time or at the time at which all extensions are completed, whichever is later.

After the conclusion of the auction, the County, in consultation with OPS, will consider the registration packet summary and price offered during the action to determine the lowest responsive and responsible vendor.

**REVERSE AUCTION TRANSACTION FEES:** The awarded bidder who enters into a contract with the County agrees to and is required to pay a transaction fee to EASI in accordance to the terms and conditions signed and returned to the County prior to the registration packet due date listed on the cover page of this ITB. The fee will be two percent (2%) of the total billable amounts paid by Multnomah County.

**BID PROCESS:** The bid process will be as follows:

1. Receipt of registration packets
2. Auction
3. Low bid awarded via Reverse Auction
4. On-site inspection by OSP
5. Contract executed

Contract will not be awarded unless the low bidder is able to successfully complete each step of the above outlined process. If the low bidder is unable to successfully complete the process, the County will move to the next lowest bidder.

**CONFORMANCE TO BID REQUIREMENTS:** The company name and the signature of an authorized person are to be inserted in the designated spaces. ALL BID REGISTRATION PACKETS MUST BE SIGNED by an individual of the company who is authorized to legally obligate the company. *No oral, telegraphic, telephone or facsimile bids or signatures will be accepted.* Bid prices are to exclude Federal Excise Tax. Federal exemption certificates will be furnished to successful bidders upon written request. BID PRICE(S) MUST BE F.O.B. DESTINATION.

**TERMS OF PAYMENT:** Bidder will indicate terms of payment where indicated in the bid documents. The County will only apply discounts that allow a minimum of 20 days to provide payment.

**CLARIFICATION/PROTEST:** Any bidder requiring clarification or protesting any of the Specifications must submit specific questions in writing and received by Purchasing at least ten (10) calendar days prior to the bid opening date. Submit request in writing either by email, fax, or delivery with envelope marked as follows, to the procurement analyst named on the cover page:

Clarification/Protest, Bid No. **400004432**  
Multnomah County Purchasing  
501 SE Hawthorne, Suite 125  
Portland, OR 97214  
(503) 988-5111, Fax (503) 988-3252  
E-Mail Address: **patricia.bride@multco.us**

A written response will be provided to those questions that are deemed appropriate. A copy of all written responses will be sent by mail or e-mail to all vendors known to have received this Invitation to Bid from County Purchasing or registered on the County Purchasing website for this solicitation. Oral instructions of information concerning the Specifications provided by County officers, employees, or agents to prospective

bidders will not bind the County.

**ADDENDA:** The County Purchasing Manager, no later than five (5) calendar days prior to the bid opening, will issue any addendum. After bid closing date, any claims or misunderstanding in regard to the nature, quality or description of the item(s) to be supplied by this Invitation to Bid will be considered waived.

**DOCUMENTS ARE PUBLIC RECORDS:** All documents, reports, bids, submittals, working papers or other material submitted to the County, from the bidder, will become the sole and exclusive property of the County, in the public domain, and not the property of the bidder. The bidder will not copyright, or cause to be copyrighted, any portion of any said documents submitted to the County as a result of this Invitation to Bid.

**TABULATION OF BIDS:** Bidders may request a Tabulation of Bid Results.

### **REJECTION OR ACCEPTANCE OF BIDS**

**REJECTION/ACCEPTANCE:** The County reserves the right to waive technical defects, discrepancies and minor irregularities, or not to award a contract when it finds such action to be in the public interest.

**PUBLIC INTEREST:** The County reserve the right to reject any or all bids when it is in the public interest to do so per ORS 279B.100 (1). Written notice of rejection of all bids will be sent to all bidders.

**COLLUSION:** Upon evidence that collusion exists among bidders, none of the bids of participants in such collusion will be considered. All involved bids will be rejected. Bids in which prices are obviously unbalanced may be rejected.

**POWER OF ATTORNEY:** When bid registration packets are signed by an agent, other than the officer(s) of a corporation authorized to sign contracts on its behalf, or a member of a partnership, a Power of Attorney must be submitted with the bid. Failure to submit said Power of Attorney will result in the bid being rejected as non-responsive.

### **AWARD AND CONTRACT**

**CONTRACT AWARD:** Award will be made to the lowest bidder who is determined to be responsive and responsible. The award will be made on an all-or-none basis, by category or by individual item as in the best interest of the County. The delivery or furnishing of any of the bid items cannot commence until a contract is properly executed.

**CANCELLATION OF AWARD:** The County reserves the right to cancel award of the contract at any time before execution of the contract(s) by both parties if cancellation is deemed to be the County's best interest. In no event will the County have any liability for the cancellation of award. The bidder assumes the sole risk and responsibility for all expenses connected with the preparation of its bid.

**CONTRACT EXTENSION:** In the event more than sixty (60) calendar days lapse between the bid opening date and the date the contract is submitted to the bidder, the County may grant an extension of time to the bidder for fulfillment of the contract to offset any delay in the contract actually occasioned by the delay.

#### **PROTEST OF AWARD:**

1. All protests must be in writing and physically received by the Purchasing Manager no later than 4:00 P.M. on the fifth (5th) working day after the postmarked notice of intent to award or disqualification.

Address protests to:

PROTEST OF AWARD OR DISQUALIFICATION TO BID NO. **400004432**

ATTN: Purchasing Manager  
Multnomah County Purchasing  
501 SE Hawthorne Blvd, Suite 125  
Portland OR 97214

2. Bidders may protest only deviations from laws, rules, regulations, or procedures. Protests must specify the grounds for the protest including the specific citation of law, rule, regulation, or procedure



upon which the protest is based.

Protests not filed within the time specified in paragraph 1, above, or which fail to cite the specific law, rule, regulation, or procedure upon which the protest is based will be dismissed.

**EEO AND ADA REQUIREMENTS:** All bidders will be required to comply with applicable provisions of ORS Chapter 279A-C, the Equal Opportunity Act of 1972 and the Civil Rights Act of 1962, as amended. Bidders must comply with all applicable provisions of Executive Order #11246 as amended by Executive Order #11375 of the President of the United States dated September 24, 1965, Title VI, of the Civil Rights Act of 1964 (43 U.S.C. 2000[d]) and Section 504 of the Rehabilitation Act of 1973 as implemented by 45 C.F.R. 84.4 and the Americans With Disabilities Act of 1990, Public Law #101-336 and all enacting regulations of the EEOC and Department of Justice.

**PRE-AWARD RISK ASSESSMENT:** Successful bidders whose contract award includes federal funding (as identified by a Catalog of Federal Domestic Assistance number) will be subject to a Pre-Award Risk Assessment (which includes an evaluation of financial stability, quality of financial /management systems, experience with federal funds, reports and findings from audits) completed by Multnomah County (if one has not been submitted in the last year) prior to the issuance of a contract. Contractors who fail to submit the required documents will not be eligible for a contract from the County.

### GENERAL PROVISIONS

**TERM:** The contract term will not exceed three (3) years. County may at its discretion re-bid the work before the end of the contract period.

**STANDARDS:** The items purchased by the County will conform to the Specifications attached hereto as a part of the Invitation to Bid. The bidder must include any required descriptive literature and warranty of the item(s) being bid.

The apparent silence of the general provisions and Specifications as to any detail or the apparent omission from it of a detailed description concerning any point will be regarded as meaning that only best commercial practice is to prevail and that only material and workmanship of first quality are to be used.

It is understood that if any manufacturers' names, trade names, make, model or catalog numbers are used in the Specifications, they are for the purpose of describing and establishing general quality levels. Such references are not intended to be restrictive. Bids for equivalent items will be considered provided that such items are identified as to manufacturers' name, trade name, make, model, and catalog number.

**HAZARDOUS MATERIALS:** All materials that include solvents, paints, cleaning agents, chemicals, reagents or other hazardous materials will be labeled in accordance with Oregon Administrative Rule (OAR) 437-155-020 with the name(s) of the hazardous ingredient(s), the hazard(s) of the material(s) and the appropriate precautions. Those materials for which toxicological or hazard data are unavailable will carry a label stating: "Toxicological and other hazards unknown. Handle as extremely hazardous."

**INTERGOVERNMENTAL COOPERATIVE PURCHASING:** (Optional) Pursuant to ORS 279A.215, Multnomah County PCRB Rules, and agreement by the selected Contractor to extend the terms, conditions and prices of the original Contract, this offer will be extended to any authorized public agency. Said agency/agencies will have the power and authority to purchase specified goods/services directly from the Contractor under the terms and conditions of the Multnomah County contract. Each Contracting agency will execute a separate contract with the successful bidder for its own requirements. Quantities listed in this document reflect County's estimated usage only.

Any bidder, by written notification of the time of the bid opening, may decline to extend prices and terms of this bid to any, and/or all other public agencies. Contractor will provide information regarding total usage of Contract upon the request of the County.

### CONTRACT REQUIREMENTS

**EEO CERTIFICATION REQUIREMENT:**

Contracts in excess of \$75,000 which originate from this ITB are subject to the County's Equal Employment Opportunity (EEO) requirements, as outlined in PCRB 60-0040 and the sample Multnomah County contract

attached to this ITB.

**CONTRACT FORM AND INSURANCE:** In order to deliver services to the County, bidder(s) will be required to execute a contract with the County. Goods may be delivered either under contract or purchase order. No goods or services will be provided without a signed contract or purchase order. Contractor will be required to provide the insurance coverage described in the attached Sample Contract.

**CERTIFICATE OF INSURANCE:** The successful Bidder will be required to submit a standard insurance certificate with additional insured endorsement as evidence of compliance with the insurance requirements set forth in the attached Sample Contract. This will be sent to the County with the contract before execution by the County.

**CONTRACTOR GENERAL RESPONSIBILITIES:**

- Comply with all Federal, State and County laws, ordinances, and rules.
- Comply fully with specifications as attached for the agreed bid and/or contract, especially where materials and work are involved.
- Meet any and all registration requirements where required for contractors as set forth in the Oregon Revised Statutes.

**CONTRACT CHANGES:** The Contractor will not make any changes in the specifications, method of fabrication or other requirements without the express prior written consent of the County. Any proposed changes will be presented in writing to the assigned County point of contact not less than ten business days prior to the proposed effective date of said change.

Any claims made for adjustment hereunder will be served within 30 calendar days of completion of delivery or service.

Nothing in this clause will excuse the Contractor from proceeding with the Contract as changed.

**PERFORMANCE:** Contractor will perform all services required by this solicitation within the time specified. All services will be performed in the most highly professional manner, and in accordance with the highest industry standards. Unless the means or methods of performing a task are specified elsewhere in the Contract, Contractor will employ methods that are generally accepted and used by the industry.

Any performance that is found unacceptable will be documented and the Contractor will be given written notice to correct the problem within a specified period. If the problem continues beyond the specified period the Contractor may be found in breach of this Contract, and the Contract may be terminated.

**NON-PERFORMANCE:** In the event of nonperformance under the resulting contract or purchase order the County will have the right to obtain from other sources such equipment, supplies, and/or services as may be required to fulfill the contract. It is agreed that the difference in cost, if any, for said equipment, supplies and/or services will be borne by the contractor.

**OSHA:** During the performance of this Contract, the Contractor is required to comply with the conditions of the Federal Occupational Safety and Health Act of 1972 (OSHA) and the standards and regulations issued thereunder. The Contractor will further agree to hold the County, its employees, agents, commissioners, and assigns harmless and free from liability for failure to comply with said standards and regulations by the Contractor. It will be the sole responsibility of the Contractor to remain familiar with applicable standards and regulations and maintain their enforcement.

**ATTACHMENT 1**

**BIDDER REPRESENTATIONS AND CERTIFICATIONS**

**FAILURE OF THE PROPOSER TO COMPLETE AND SIGN THIS FORM MAY RESULT IN REJECTION OF THE SUBMITTED OFFER**

The undersigned, having full knowledge of the specifications for the goods or services specified herein, offers and agrees that this offer shall be irrevocable for at least 30 calendar days after the date offers are due or as stated in the solicitation, and if accepted, to furnish any and/or all goods or services as described herein at the prices offered and within the time specified.

PROPOSER NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_ City, State, Zip

TELEPHONE NO: \_\_\_\_\_

STATE OF INCORPORATION: \_\_\_\_\_ DATE OF INCORPORATION: \_\_\_\_\_

BUSINESS DESIGNATION:  Corporation  Sole Proprietor  Partnership  
 S. Corporation  Non-Profit  Government  
 Other: \_\_\_\_\_

OREGON MWESB CERTIFICATION NUMBER: \_\_\_\_\_  Minority Owned  Woman Owned  Emerging, Small  N/A

**ASSURANCES - The Proposer attests that:**

- 1. The person signing this offer has the authority to submit an offer and to represent Proposer in all phases of this procurement process;
- 2. The information provided herein is true and accurate;
- 3. The Proposer is a resident proposer, as described in ORS 279A.120, of the State of \_\_\_\_\_, [insert State] and has not discriminated against any minority, women, or emerging small business enterprises certified under ORS 200.055 or a business enterprise that is owned or controlled by or that employs a disabled veteran as defined in ORS 408.225 in obtaining any required subcontracts, in accordance with ORS 279A.110;
- 4. "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, has a business address in this state and has stated in the bid whether the bidder is a "resident bidder". ORS 279A.120 (1) (b);
- 5. Any false statement may disqualify this offer from further consideration or because of contract termination; and
- 6. The Proposer will notify the Department Contracts Officer within 30 days of any change in the information provided on this form.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS - The Proposer certifies to the best of its knowledge and belief that neither it nor any of its principals:**

- Are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from submitting bids or proposals by any federal, state or local entity, department or agency;
- Have within a five-year period preceding the date of this certification been convicted of fraud or any other criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- Are presently indicted for or otherwise criminally charged with commission of any of the offenses enumerated in paragraph 2. of this certification;
- Have, within a five-year period preceding the date of this certification had a judgment entered against contractor or its principals arising out of the performance of a public or private contract;
- Have pending in any state or federal court any litigation in which there is a claim against contractor or any of its principals arising out of the performance of a public or private contract; and

Have within a five-year period preceding the date of this certification had one or more public contracts (federal, state, or local) terminated for any reason related to contract performance.

Compliance with Tax Law. Contractor shall pay all taxes owed to a public body, as defined in ORS 174.109, and attests to compliance with the tax laws of this state or a political subdivision of this state including, but not limited to ORS 305.620, and ORS chapters 316, 317, and 318. Contractor will continue to comply with the tax laws of this state or a political subdivision of this state during the term of this contract. Failure to comply with this contract term is a default for which County may terminate the contract and seek damages and other relief available.

**CERTIFICATION REGARDING CONFLICT OF INTEREST**

“Organizational conflict of interest” means that, because of other activities or relationships with other persons or firms, a Contractor or Consultant (including its principal participants, directors, proposed consultants or subcontractors) would be unable or potentially unable to render impartial, technically sound assistance or advice to Multnomah County; or the Contractor’s or Consultant’s objectivity in performing the Work would or might be otherwise impaired. The Proposer certifies to the best of its knowledge and believe that neither it nor any of its principal participants and agents:

Has any relationships with any firms or individuals that are or appear to be an organizational conflict of interest.

Has or has had the following relationships with the specific firm(s)/individual(s), identified below, which may be determined to be an organizational conflict of interest. I understand that based on the information provided by Proposer, Multnomah County may exclude the Proposer from further consideration and may withdraw its selection if the real or apparent organizational conflict of interest cannot be avoided or mitigated. Proposer further certifies that the degree and extent of the relationship of the Proposer with these named firm(s)/individual(s) have been fully disclosed below.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Where Proposer is unable to certify to any of the statements in this certification, Proposer shall attach an explanation to their offer. The inability to certify to all of the statements may not necessarily preclude Proposer from award of a contract under this procurement.**

**SIGNATURE OF AUTHORIZED PERSON**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name & Title: \_\_\_\_\_

Contact Person for this Procurement: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_



## ATTACHMENT 2 MULTNOMAH COUNTY SERVICES CONTRACT Contract Number: [insert contract number]

This contract ("Contract") is between MULTNOMAH COUNTY ("County") and [insert contractor name] ("Contractor"), referred to collectively as the "Parties."

CONTRACTOR ADDRESS: [insert]  
CITY, STATE, ZIP: [insert]

The Parties agree as follows:

**Effective Date and Termination Date.** The effective date of this Contract shall be [insert date] or the date on which all Parties have signed this Contract, whichever is later. Unless earlier terminated as provided below, the termination date shall be [insert date].

**Statement of Work.** Contractor shall perform the work described in Exhibit 1 ("Work").

**Payment for Work.** County agrees to pay Contractor in accordance with Exhibit 1.

**Contract Documents.** This Contract includes the following Standard Terms and Conditions and the terms and conditions contained in the following attached documents:

**Exhibits**

Exhibit Number	Description
1	Statement of Work, Compensation, Payment, and Renewal Terms
2	Insurance Requirements
3	Certification Statement for Corporation or Independent Contractor
4	Worker's Compensation Exemption Certificate
5	NOT USED
6	Invoice/Budget Forms
7	Criminal History Background Authorization
8	Accounts Payable Electronic Payment Authorization
[Insert As Needed]	[Insert additional exhibits as needed]

**Attachments**

Attachment Letter	Description
F	Post Federal Award Requirements Standards
H	Health Insurance Portability and Accountability Act of 1996 (HIPAA) Business Associate Agreement

**MULTNOMAH COUNTY SERVICES CONTRACT**  
**Contract Number: [insert contract number]**

**CONTRACTOR SIGNATURE**

*I have read this Contract including the attached Exhibits and Attachments. I understand the Contract and agree to be bound by its terms.*

Signature: \_\_\_\_\_ Title: \_\_\_\_\_

Name (print): \_\_\_\_\_ Date: \_\_\_\_\_

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**MULTNOMAH COUNTY SIGNATURE**

This Contract is not binding on the County until signed by the Chair or the Chair's designee.

County Chair or Designee: \_\_\_\_\_ Date: \_\_\_\_\_

**Department Director Review (optional):**

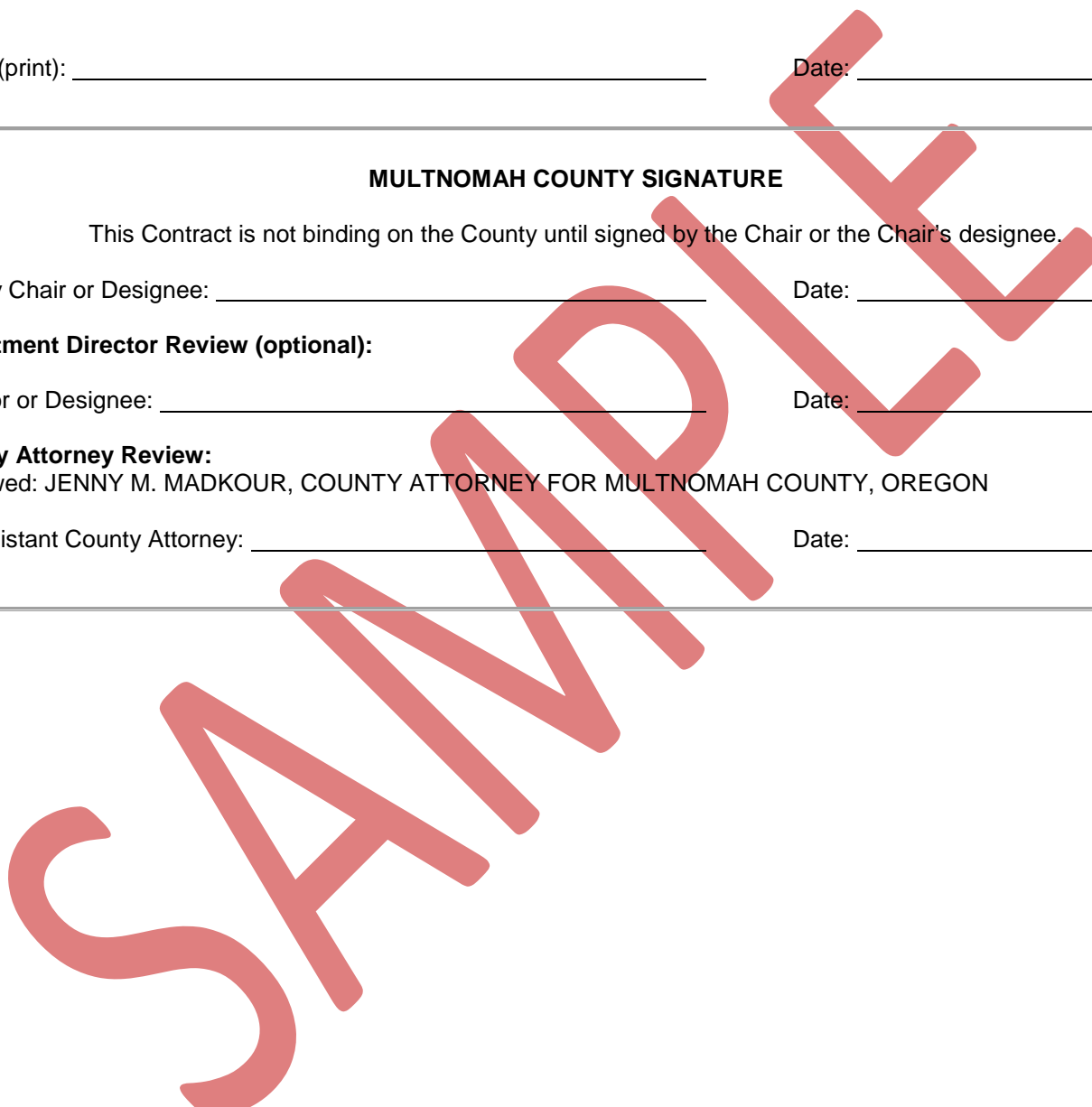
Director or Designee: \_\_\_\_\_ Date: \_\_\_\_\_

**County Attorney Review:**

Reviewed: JENNY M. MADKOUR, COUNTY ATTORNEY FOR MULTNOMAH COUNTY, OREGON

By Assistant County Attorney: \_\_\_\_\_ Date: \_\_\_\_\_

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**STANDARD TERMS AND CONDITIONS**

1. **Time is of the Essence.** Time is of the essence in the performance of this Contract.
2. **Subcontracts and Assignment.** Contractor shall not subcontract any of the Work required by this Contract or assign or transfer any of its interest in this Contract, without the prior written consent of County.
3. **No Third Party Beneficiaries.** County and Contractor are the only Parties to this Contract and are the only Parties entitled to enforce its terms. Nothing in this Contract gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name in this Contract and expressly described as intended beneficiaries of this Contract.
4. **Successors in Interest.** The provisions of this Contract shall be binding upon and inure to the benefit of the Parties and their successors and approved assigns, if any.
5. **Early Termination.** This Contract may be terminated as follows:
  - a. County and Contractor, by mutual written agreement, may terminate this Contract at any time.
  - b. County in its sole discretion may terminate this Contract for any reason on 30 days written notice to Contractor.
  - c. Either County or Contractor may terminate this Contract in the event of a breach of the Contract by the other. Prior to such termination the party seeking termination shall give to the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured the breach within 15 days of the date of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.
  - d. Notwithstanding section 5(c), County may terminate this Contract immediately by written notice to Contractor upon denial, suspension, revocation or non-renewal of any license, permit or certificate that Contractor must hold to provide services under this Contract.
6. **Payment on Early Termination.** Upon termination pursuant to section 5, payment shall be made as follows:
  - a. If terminated under 5(a) or 5(b) for the convenience of the County, the County shall pay Contractor for Work performed prior to the termination date if such Work was performed in accordance with the Contract. County shall not be liable for direct, indirect or consequential damages. Termination shall not result in a waiver of any other claim County may have against Contractor.
  - b. If terminated under 5(c) by the Contractor due to a breach by the County, then the County shall pay the Contractor for Work performed prior to the termination date if such Work was performed in accordance with the Contract.
  - c. If terminated under 5(c) or 5(d) by the County due to a breach by the Contractor, then the County shall pay the Contractor for Work performed prior to the termination date provided such Work was performed in accordance with the Contract less any setoff to which the County is entitled.
7. **Remedies.** In the event of breach of this Contract the Parties shall have the following remedies:
  - a. If terminated under 5(c) by the County due to a breach by the Contractor, the County may complete the Work either itself, by agreement with another Contractor, or by a combination thereof. If the cost of completing the Work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then the Contractor shall pay to the County the amount of the reasonable excess.
  - b. In addition to the remedies in sections 5 and 7 for a breach by the Contractor, the County also shall be entitled to any other equitable and legal remedies that are available.
  - c. If the County breaches this Contract, Contractor's remedy shall be limited to termination of the Contract and receipt of Contract payments to which Contractor is entitled.
8. **Access to Records.** Contractor shall retain, maintain and keep accessible all records relevant to this Contract ("Records") for a minimum of six (6) years, following Contract termination or full performance or any longer period as may be required by applicable law, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever is later. Contractor shall maintain all financial Records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, Contractor shall permit the County's authorized representatives access to the Records at reasonable times and places for purposes of examination and copying.
9. **Ownership of Work.** For purposes of this Contract, "Work Product" means all services Contractor delivers or is required to deliver to County pursuant to this Contract. "Contractor Intellectual Property" means any intellectual property owned by Contractor and developed independently from services.

County shall have no rights in any pre-existing Contractor Intellectual Property provided to County by Contractor in the performance of this Contract except to copy, use and re-use any such Contractor Intellectual Property for County use only. However, all Work Product created by the Contractor as part of Contractor's performance of this Contract shall be the exclusive property of the County. All Work Product authored by Contractor under this Contract shall be deemed "works made for hire" to the extent permitted by the United States Copyright Act. To the extent County is not the owner of the intellectual property rights in such Work Product, Contractor hereby irrevocably assigns to County any and all of its rights, title and interest in such Work Product. Upon County's reasonable request, Contractor shall execute such further documents and instruments reasonably necessary to fully vest such rights in County. Contractor forever waives any and all rights relating to such Work Product created under this Contract, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

If intellectual property rights in the Work Product are Contractor Intellectual Property, Contractor hereby grants to County an irrevocable, non-exclusive, perpetual, royalty-free license to use, make, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Contractor Intellectual Property, and to authorize others to do the same on County's behalf. If this Contract is terminated prior to completion, and the County is not in default, County, in addition to any other rights provided by this Contract, may require the Contractor to transfer and deliver all partially completed Work Product, reports or documentation that the Contractor has specifically developed or specifically acquired for the performance of this Contract.

10. **Compliance with Applicable Law.** Contractor shall comply with all federal, state, and local laws applicable to the Work under this Contract, and all regulations and administrative rules established pursuant to those laws, including, without limitation ORS 279B.020 and the following:
  - a. Pursuant to ORS 279B.220, Contractor shall (1) make payment promptly, as due, to all persons supplying to the Contractor labor or material for the performance of the Work provided for in the Contract; (2) pay all contributions or amounts due the Industrial Accident Fund from the Contractor or subcontractor incurred in the performance of the Contract; (3) not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished; and (4) pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
  - b. Pursuant to ORS 279B.225, Contractor shall, if providing lawn and landscape maintenance services, shall salvage, recycle, compost or mulch yard waste material at an approved site, if feasible and cost-effective.
  - c. In accordance with ORS 279B.230, Contractor shall promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the Contractor, of all sums that the Contractor agrees to pay for the services and all moneys and sums that the Contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services. All subject employers working under the Contract warrant they are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
  - d. Pursuant to ORS 279B.235, Contractor shall not employ any person for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it. The laborer shall be paid at least time and a half pay when: (i) overtime is in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; (ii) overtime is in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and (iii) Work is performed on Saturday and any legal holiday specified in a collective bargaining agreement or ORS 279B.020. The requirement to pay at least time and a half for all overtime worked in excess of 40 hours in any one week, shall not apply to individuals who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. sections 201 to 219 from receiving overtime.
11. **Compliance with Tax Law.** Contractor shall pay all taxes owed to a public body, as defined in ORS 174.109, and attests to compliance with the tax laws of this state or a political subdivision of this state including, but not limited to ORS 305.620, and ORS chapters 316, 317, and 318. Contractor will continue to comply with the tax laws of this state or a political subdivision of this state during the term of this contract. Failure to comply with this contract term is a default for which County may terminate the contract and seek damages and other relief available.
12. **Indemnity.** Contractor shall defend, save, hold harmless, and indemnify County and its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, including attorneys fees, resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under this Contract. Contractor shall have control of the defense and settlement of any claim that is subject to this section. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Multnomah County Attorney's Office authority to act as legal counsel for County, nor shall Contractor settle any claim on behalf of County without the approval of the Multnomah County Attorney's Office. County may, at its election and expense, assume its own defense and settlement.



13. **Insurance.** Contractor shall provide insurance in accordance with Exhibit 2.
14. **Waiver.** The failure of the County to enforce any provision of this Contract shall not constitute a waiver by the County of that or any other provision. Waiver of any default under this Contract by County shall not be deemed to be a waiver of any subsequent default or a modification of the provisions of this Contract.
15. **Governing Law/Venue.** The provisions of this Contract shall be construed in accordance with the laws of the State of Oregon and ordinances of Multnomah County, Oregon. Any legal action involving any question arising under this Contract must be brought in Multnomah County, Oregon. If the claim must be brought in a federal forum, then it shall be brought and conducted in the United States District Court for the District of Oregon.
16. **Severability.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Contract did not contain the particular term or provision held invalid.
17. **Merger Clause.** This Contract and the attached exhibits constitute the entire agreement between the Parties. All understandings and agreements between the Parties and representations by either party concerning this Contract are contained in this Contract. No waiver, consent, modification or change in the terms of this Contract shall bind either party unless in writing signed by both Parties. Any written waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given.
18. **Anti-discrimination Clause.** Contractor shall not discriminate based on race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, gender identity, source of income, or political affiliation in programs, activities, services, benefits or employment. Contractor shall not discriminate against minority-owned, women-owned or emerging small businesses. Contractor shall include a provision in each subcontract requiring subcontractors to comply with the requirements of this clause.
19. **EEO Compliance.** Contractor agrees that if, at any time under the term of this Contract, it has employees and will earn more than \$75,000 as a result of this Contract, Contractor will not:
  - a. Discriminate against employees or applicants based on race, color, religion, sex, familial status, national origin, age, mental or physical disability, sexual orientation, gender identity, or source of income;
  - b. Solicit or consider employment recommendations based on factors other than personal knowledge or records of job-related abilities or characteristics;
  - c. Coerce the political activity of any person;
  - d. Deceive or willfully obstruct anyone from competing for employment;
  - e. Influence anyone to withdraw from competition for any position so as to improve or injure the employment prospects of any other person;
  - f. Give improper preference or advantage to anyone so as to improve or injure the employment prospects of that person or any other employee or applicant.
20. **Non-appropriation Clause.** If payment for Work under this Contract extends into the County's next fiscal year, County's obligation to pay for such Work is subject to approval of future appropriations to fund this Contract by the Board of County Commissioners of Multnomah County, Oregon.
21. **Warranties.** Contractor represents and warrants to County that: (a) Contractor has the power and authority to enter into and perform the Contract; (b) the Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; and (c) Contractor's performance under the Contract shall be in a good and workmanlike manner and in accordance with professional standards applicable to the Work.
22. **Federal Funds Subrecipient.** If this Contract is a subaward (making Contractor a subrecipient of Federal funds), the Catalog of Federal Domestic Assistance (CFDA) number(s), title(s) and amount(s) of the Federal funds are shown below along with other required information about the Federal award per CFR200, Subpart D – Post Federal Award Requirements Standards for Financial and Program Management, Section §200.331 (see Attachment F). Contractor shall conduct an audit as described under 2 CFR 200.500-521 (which replaces OMB Circular A-133) if such an audit is required by Federal regulations. If there is a change to funding for this Contract that adds Federal funding or changes existing funding to Federal, Contractor will be notified via a certified letter within 30 days.

CFDA #	Program Title	Program Amount
[enter number or not applicable]	[enter title or not applicable]	[enter number or not applicable]

- a. Contractor agrees to use, document, and maintain accounting policies, practices and procedures, and cost allocations, and to maintain fiscal and other records pertinent to this Contract consistent with Generally Accepted Accounting Principles (GAAP), Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (2 CFR Chapter I, Chapter II, Parts 200, 215, 220,225, and

230), Oregon Administrative Rules, County financial procedure in the *Countywide Contractor's Fiscal Policies and Procedures Manual* located at: <http://web.multco.us/finance/fiscal-compliance>. Accounting records shall be up-to-date and shall accurately reflect all revenue by source, all expenses by object of expense and all assets, liabilities, and equities consistent with the Generally Accepted Accounting Principles, Oregon Administrative Rules, and County procedures. Reports and fiscal data generated by the Contractor under this Contract shall be accessible to County upon request.

- b. Contractor shall be subject to a County fiscal compliance review to monitor compliance with the County's financial reporting and accounting requirements. The review shall be completed periodically, as described in the *Countywide Contractor's Fiscal Policies and Procedures Manual*. If Contractor's corporate headquarters are out of state, Contractor agrees to pay travel costs incurred by County to conduct fiscal review. These costs include, but are not limited to, transportation to corporate headquarters, lodging, and meals.
  - c. Contractor, if it is a state, local government or non-profit organization and a subrecipient of Federal funds, shall meet audit requirements of Office of Management and Budget (OMB) Uniform Administrative Requirements "Audits of States, Local Governments, and Non-Profit Organizations" (2 CFR Chapter I, Chapter II, Parts 200, 215, 220, 225, and 230), Subpart F (formerly OMB Circular A-133 December 25, 2014 and earlier).
  - d. Contractor agrees that audits must be conducted by Certified Public Accountants who satisfy the independence requirements outlined in the rules of the American Institute of Certified Public Accountants ( Rule 101 of the AICPA Code of Professional Conduct, and related interpretation and rulings), the Oregon State Board of Accountancy, the independence rules contained within Government Auditing Standards (2003 Revision), and ruled promulgated by other Federal, State, and local government agencies with jurisdiction over Contractor. Those rules require that the Certified Public Accountant be independent in thought and action with respect to organizations who engage them to express an opinion on Financial Statements or to perform other services that require independence.
  - e. Limited Scope and Full Audits, including the Management Letter associated with the audit, if issued, and all specifications identified in the County's *Fiscal Policies and Procedure Manual* shall be submitted to the County within thirty (30) days from the date of the report, but in no case later than nine (9) months after the end of the Contractor's fiscal year. Failure to submit required audits and Management Letter by specified deadlines shall be cause for withholding of Contract payments until audits are submitted.
-

## MULTNOMAH COUNTY SERVICES CONTRACT

Contract Number: [insert contract number]

### EXHIBIT 1: STATEMENT OF WORK, COMPENSATION, PAYMENT, AND RENEWAL TERMS

1. **Contractor shall perform the following Work:**  
[Enter information]
2. **The maximum payment under this Contract, including expenses, is \$[enter total amount].**
3. **Contractor shall be paid for Work on the following basis:**  
[Enter information]
4. **Contractor shall submit invoices for Work as follows: \***  
[Enter information]
5. **In addition to the payment provided for in Section 3, County will pay expenses on the following terms and conditions:**  
[Enter information]
6. **The Contract may be renewed on the following basis [optional]:**  
[Enter information]

\*County shall have the right to withhold from payments due Contractor such sums as are necessary in County's sole opinion to protect County from any loss, damage, or claim which may result from Contractor's failure to perform in accordance with the terms of the Contract or failure to make proper payment to suppliers or subcontractors. County shall not be obligated to pay Contractor until it has inspected and affirmatively accepted Contractor's Work.

## ATTACHMENT 3

### Electronic Auction Services, INC (“EASI”).

#### SUPPLIER AGREEMENT TERMS AND CONDITIONS

Electronic Auction Services, Inc (“EASI”) does not verify or validate any buyer information provided or representations made by users on the Solution, and makes no warranty of any kind to you concerning any buyer offerings using the Solution. You acknowledge EASI, its employees, agents and partners make no warranty of any kind, either express or implied, regarding the quality, accuracy or validity of any data and information available on the Solution, or residing or passing through its network, other than information and data that is provided directly to you from EASI. You further acknowledge any agreement entered into by you as the supplier of goods or services from a participating buyer is an agreement solely with such buyer, and EASI is in no way a party to or responsible for the performance of such agreement. Therefore: 1) EASI DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, RELATING TO ANY TRANSACTION ENTERED INTO BETWEEN A PARTICIPATING PERSON OR ENTITY AND A SUPPLIER, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR INTENDED USE, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS; AND 2) EASI FURTHER DISCLAIMS ALL WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, CONCERNING INFORMATION SUPPLIED, OR REPRESENTATIONS MADE, BY ANY BUYER, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OR REPRESENTATION RELATING TO PRODUCT SUITABILITY, SPECIFICATIONS, OR REQUESTED AVAILABILITY, OR THE TRUTHFULNESS OR ACCURACY OF ANY OTHER INFORMATION OR REPRESENTATION MADE OR SUPPLIED BY A BUYER OR ANY OTHER SUPPLIER INVOLVED IN THIS AGREEMENT.

BY YOUR SIGNATURE BELOW, AND BY SUBSEQUENTLY USING THE SOLUTION, YOU AGREE TO COMPLY WITH ALL TERMS AND CONDITIONS SET FORTH BELOW AND WITH ALL INSTRUCTIONS FOR USE POSTED ON THE SOLUTION.

READ THIS AGREEMENT (“AGREEMENT”) CAREFULLY BEFORE SIGNING. BY SIGNING, YOU WILL BE PERMITTED TO UTILIZE THE ELECTRONIC AUCTION SERVICES, INC. (“EASI”) INTERNET-BASED STRATEGIC SOURCING SOLUTION (“SOLUTION”) FOR THE PURPOSE OF PARTICIPATING IN THIS ONE-TIME, ON-LINE BIDDING EVENT. YOU WILL BE ALLOWED TO RECEIVE REQUESTS FOR INFORMATION AND QUOTATIONS AND TO SUBMIT BIDS AND PROPOSALS NECESSARY IN PARTICIPATING IN THE ONLINE BIDDING EVENT. SHOULD YOU CHOOSE NOT TO SIGN AND RETURN THIS AGREEMENT PRIOR TO THE ON-LINE BIDDING EVENT, YOU WILL BE DENIED ACCESS TO THE SOLUTION AND THE BIDDING EVENT.

**1. Utilization.** You are granted a one-time, non-transferable, non-exclusive right to access the Solution through EProcureLive website by the use of a password(s)

and/or access code(s) for the purpose of participating in a specific electronic online bid auction event. Any subsequent rights to access the Solution will require you to accept a new “Supplier Agreement Terms and Conditions”. EASI reserves the right to terminate your access to the Solution or any of its services at any time, if EASI shall determine, in its sole discretion, that you have violated any term(s) of this Agreement with respect to your access to and use of the Solution. In the event of such termination, EASI shall notify you immediately.

**2. Responsibilities of the Parties.** Subject to the terms and conditions of this Agreement, EASI will make available to you electronic access and use of the Solution for you to participate in a one-time, online bidding event. EASI will also provide such other assistance in the way of customer support and service as are set forth below. It is solely your responsibility when using the Solution to comply with all applicable local, state and federal statutes, ordinances, regulations, and policies governing the sales of goods or services by your company. EASI shall have no responsibility for ensuring sales of goods or services using the Solution will comply with such laws, ordinances, regulations, or policies. The Supplier, in using the system, has the responsibility for the sale including, but not limited to, the following:

- Accepting the terms and conditions of this agreement as contained in the Bid Package not less than 3 business days in advance of a scheduled event
- Selecting appropriate procurement opportunities to participate
- Preparing and assuring the completeness of any bids, quotes or proposals
- Submitting any bids, quotes or proposals electronically within the buyer established deadlines
- Maintaining with the Buyer, the security and the integrity of the bid procurement process
- Participating in any Pre-bid Conference(s) and telephonic tutorial for suppliers prior to an electronic event
- Compliance with all applicable legal requirements
- Establishing and adhering to the terms and conditions of buyer contracts
- Assuring proper authorization to enter into a contract and the proper administration of any resulting contract

As a supplier, you also acknowledge that EASI’s responsibilities are, but not limited to, the following:

- Clarifying bidding processes and timelines
- Hosting telephone tutorials with all suppliers on utilization of the electronic bid process
- Participating in any Pre-bid Conference(s)
- Conducting the electronic bid event and providing help desk support during the event

## ATTACHMENT 3

### Electronic Auction Services, INC (“EASI”).

#### SUPPLIER AGREEMENT TERMS AND CONDITIONS

➤ Publishing appropriate results to the users and obtaining feedback from participants

**3. Conduit Services Only.** The Solution provides only an Internet conduit through which the following may take place: (a) you may communicate the availability of your goods and services to potential buyers, (b) potential buyers may communicate their procurement needs to you and (c) you may respond to requests for quotations, bids or proposals in online bidding events. You will be entitled only to respond to requests of potential buyers for quotations, bids or proposals if you have accepted the terms and conditions of the Supplier Agreement. EASI makes no representation of any kind concerning the reputation, reliability or any other matter concerning participating buyers. EASI recommends you conduct your own inquiries concerning the qualifications and reputation of buyers, and you must look only to the buyers with whom you choose to transact business for performance of any agreements with them.

**4. Buyer Representations and Warranties.** EASI does not verify the information supplied or representations made by buyers on the Solution and makes no warranty of any kind to you concerning any buyer using the Solution. EASI recommends you look solely to the buyer with respect to any buyer-related information, representations and warranties.

**5. Coded Access.** Participation in the online bid event is available only to persons and entities who have read and agreed to the terms of this Agreement and who have been assigned access code(s) and/or password(s). You agree not to divulge your access codes or passwords to any other person or entity. EASI is not responsible for such unauthorized use of the Solution.

**6. Availability and Operation of the Solution.** While every effort will be made to keep the Solution operating during all scheduled hours of operation, no guarantee of uninterrupted operation can be given. You agree the services provided on the Solution are provided as is and that neither you nor your business will have any claim against EASI as a result of any non-availability of the Solution at a particular time or times or any failure of the Solution to operate as intended.

**7. Sole Remedy.** If you are dissatisfied with the functionality of this Solution or the services EASI provides, your sole remedy is to cease using the Solution. YOU AGREE THAT YOU HAVE, AND WILL HAVE, NO CLAIM OR RIGHT OF ACTION OF ANY KIND AGAINST EASI RELATED TO YOUR USE OF THE SOLUTION.

**8. Virus.** You hereby agree EASI will not be liable for any harm that may be caused by the inadvertent or deliberate transmission of any malicious computer software, or such other computer program transmitted through its website from a third party.

**9. Information You Provide.** You agree any information you provide about yourself or your agents when registering to use the Solution is accurate, current

and complete and you will maintain and update that information to ensure that it remains as such. If EASI suffers any claim or incurs any liability as a result of information entered into the Solution by users of your account, you and your business will indemnify EASI against such claim or liability including costs and attorneys fees incurred in defending against it.

**10. Security.** EASI uses industry-standard security measures to safeguard any information you may provide to us on our website. You, your organization and/or your agents have the responsibility to manage your internal security by safeguarding passwords and establishing your own internal security procedures, to assure the proper use of the Solution. In the event of any compromise in the security of the Solution, you agree to immediately report the same to EASI and a new password will be assigned for your use. EASI does not and cannot guarantee that information will remain secure.

**11. Fees.** The design, maintenance and operation of the Solution requires substantial costs and investment by EASI. Thus, a transaction fee (Transaction Fee) based on the total final purchase price stated upon award will be charged to the awarded supplier. The transaction fee for specific products and services for each event shall be owed by you and your company upon the execution of each awarded sale resulting from your submission of any request for quotations through this Solution. You hereby acknowledge that once you have viewed or received a request for quotation through or as a result of the Solution, and submitted an initial quotation of which a sale has ultimately been consummated as a result thereof, whether or not consummated through the Solution or other forms of bids or negotiations, you are obligated to pay the Transaction Fee to EASI if you are the awarded supplier. Said Fee will be assessed to the awarded supplier as follows.

**Awarded Supplier Reporting and Payment Terms and Conditions:** The Awarded Supplier will be responsible to pay the Transaction Fee of 2% to EASI for all payments received from the Buyer, any of its political subdivisions or any other entity (the “Buying Agent”) resulting from this bidding event or subsequent contract.

Upon notification of award from the Buyer, the Awarded Supplier is required to provide ACH or credit card account payment information (“Preferred Transaction Fee Payment Method”) to EASI. EASI will charge the Awarded Supplier via the Preferred Transaction Fee Payment Method based on the terms below:

**One-Time Purchase Contracts:** Upon receipt of a Buying Agent purchase order (the “Purchase Order”) for a One-Time Purchase, Awarded Supplier is required to upload into the Solution a copy of the Purchase Order and submit Purchase Order details including descriptions, quantities, dollar amounts and estimated delivery dates of the anticipated purchased items (the “Purchased Items”). Fifty percent (50%) of the Transaction Fee will be charged to your Preferred

## ATTACHMENT 3

### Electronic Auction Services, INC (“EASI”).

#### SUPPLIER AGREEMENT TERMS AND CONDITIONS

Transaction Fee Payment Method fifteen (15) days of the issuance of a Purchase Order, with the remaining fifty percent (50%) charged within fifteen (15) days of delivery of the Purchased Items. If the total Payments exceed the Purchase Order amount then an incremental Transaction Fee will be charged within fifteen (15) days of receipt of any Payment.

**Term Purchases:** For Term or ongoing purchases, Awarded Supplier is required to enter into the Solution all Buying Agent payments received (the “Payment” or “Payments”) and details of the items, quantities and prices associated with those Payment(s) received within ten (10) days of the end of each month. If Awarded Supplier fails to enter Buying Agent payment information by the 10th of the month EASI will charge to Supplier’s Preferred Transaction Fee Payment Method an amount equal to one month of the overall contract value estimated by the Buying Agent times the Transaction Fee percentage. The Transaction Fee will be charged to your Preferred Transaction Fee Payment Method on the fifteenth of each month.

**Audit Right:** the Buying Agent and EASI reserve the right to audit the accuracy of the Transaction Fees. Audits shall be conducted during regular business hours, upon not less than fifteen (15) business day’s prior written notice, and in such a manner as not to unreasonably interfere with the Awarded Supplier’s normal business activities. Transaction Fees will be due immediately for any errors or omissions disclosed by any such audit. If, as a result of any such audit, Transaction Fees are determined to have been underpaid by more than five percent (5%) for the period audited, Awarded Supplier shall pay for the costs of such audit.

**12. Disclosures.** You acknowledge by using the Solution, you agree to provide EASI accurate and complete information regarding (a) any agreement entered into by you with a participating buyer through or as a result of any online bidding event conducted through the Solution; (b) the final price agreed upon between you and the participating buyer with respect to the product or service sold to such buyer, and (c) the date payment (whether a payment in full or a partial or installment payment) is delivered to you by any buyer pursuant to any agreement entered into by you with a participating buyer through or as a result of any online bidding event conducted through the Solution. You understand and acknowledge you are to provide this information to EASI immediately upon becoming aware of such information and EASI relies upon your delivery of such information for the calculation and payment of its fees as set forth in Section 11.

You acknowledge and agree the buyers conducting online bidding events through the Solution may be governmental or quasi-governmental entities, and that, prior to entering into any binding agreement with you for the purchase of any product or service, such buyers may be required to comply with numerous state and local laws, regulations and ordinances with respect to the procurement of goods and services by governmental entities. You acknowledge and agree

such compliance by participating buyers may involve public notice, public hearings, counsel meetings, and other lengthy processes.

**13. Privacy Policy.** You hereby acknowledge EASI has the right to monitor the Solution electronically from time to time and to disclose any information as necessary to satisfy any law, regulation or other government request, to operate its service properly, or to protect itself or its users. EASI reserves the right to refuse to post or to remove any information or materials, in whole or in part, that, in its sole discretion, are unacceptable or in violation of this Agreement.

The information we receive depends on what you do when visiting the Solution. If you visit the Solution to read or download information, we collect and store only the following information about you: the name of the domain and host through which you access the Internet (for example, aol.com if you are connecting from an America Online account), and the date and time you access the Solution. We use this information to measure the number of visitors to different sections of the Solution, so that we can make the Solution more useful to our visitors. If you actively participate in using or providing any of the services offered through the Solution, we collect and store the personally identifiable information needed to facilitate this participation (typically your name, company name, mailing address, email address).

If you wish to use a link to another website or to do business with another user of the Solution, you may be asked by the other user to provide certain confidential information. You agree not to hold EASI responsible for any loss or damage of any sort incurred as a result of any such disclosure to another user through the Solution. We do not control the collection or use of this information, and make no representations about the privacy policies of other sites.

**14. Reselling or Transfer.** You agree not to resell or transfer your right to use the Solution to anyone, and you will not allow your access code or password to be used by any other company or unauthorized person.

**15. Access to Internet.** You agree that in order to use the Solution you must: (a) provide your own access to the Internet, and (b) provide all equipment necessary for you to make the connection to the Internet. EASI is not responsible for the speed, reliability and/or quality of your connectivity to the Internet.

**16. Interference with Others.** You agree not to use the Solution in a manner that would restrict or inhibit any other party’s use of such services.

**17. Links to Other Sites.** This Solution may link you to other sites on the Internet. These links are provided for your convenience but the sites to which the links connect are not under EASI’s control. You understand and agree that the linking of the system to other sites does not mean that these sites are endorsed by EASI, and EASI is not responsible for the legality, accuracy or any other aspect of the operation or content of any sites to which links are provided.

ATTACHMENT 3

Electronic Auction Services, INC (“EASI”).

SUPPLIER AGREEMENT TERMS AND CONDITIONS

18. **Copyright – How you May Use the Content of the Solution.** The content of this Solution (the “Content”) is protected by intellectual property laws of both the United States and foreign jurisdictions. You may download, use, and copy the materials found on the Solution for your internal business use only, provided that all copies that you make of the material must bear any copyright, trademark, or other proprietary notice located on the Solution which pertains to the material being copied. This material is not for republication, except as authorized in this paragraph. You are not being granted a license under any copyright, trademark, patent, or other intellectual property right in the material or the services, processes, or technology described therein. All such rights are retained by EASI and/or any third party owner of such rights. You may not sell or modify the Content or reproduce, display, publicly perform, distribute, or otherwise use the Content in any way for any public or commercial purpose. The use of the Content on any other website or in a networked computer environment for any purpose is prohibited. None of the Content, including any software, may be reverse engineered, disassembled, decompiled, reproduced, transcribed, stored in a retrieval system, translated into any language or computer language, retransmitted in any form or by any means, resold, or redistributed without the prior written consent of EASI, except as described herein. Nothing in this paragraph prohibits you from printing, using or reproducing any records or reports of your transactions using the Solution.

19. **Framed Links.** You may not create framed links to the Solution without express written permission from EASI.

20. **Modification.** EASI, in its sole discretion, has the right to modify this Agreement at any time. Any modification is effective upon either posting notice of such modification on EASI’s website or upon notice by certified mail. Your continued use of the Solution following notice of any modification to this Agreement shall be conclusively deemed an acceptance of all such modifications.

21. **Non-Circumvention.** You agree you will not, directly or indirectly, take any action with the Buyer or any other Suppliers involved in this specific event which circumvents or attempts to circumvent the intent or purpose of this Agreement. Further, you agree that once (1) you have agreed to the terms and conditions contained herein and 2) electronically viewed or received a specific request for quotations from a buyer through the Solution, you will not, directly or indirectly, enter into any agreement related to such specific request for quotations with such buyer outside the Solution or in any manner such as paper or verbal bids which would result in your failure to pay to EASI the fee set out in Section 11 hereof. You agree to maintain confidentiality between the Buyer, your company and its representatives and EASI regarding the submission of quotations and subsequent pricing before and during the auction event.

22. **Governing Law.** This Agreement and the rights of the parties to this Agreement shall be governed by and interpreted in accordance with the laws of

the State of Ohio, without regard to or application of its conflict of laws principles.

23. **Partial Enforceability.** If any provision of this Agreement, or the application of any provision to any person, entity or circumstance shall be held invalid, illegal or unenforceable, then the remainder of this Agreement, or the application of that provision to persons, entities or circumstances other than those with respect to which it is held invalid, illegal or unenforceable, shall not be affected thereby.

24. **Entire Agreement.** This Agreement represents the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous written or oral agreements, negotiations, correspondence, undertakings and communications between such parties representing such subject matter.

25. **No Consequential Damages.** Except as prohibited by law, each party hereto waives any right it may have to claim or recover any special, exemplary, punitive or consequential (including business interruption), or any damages other than, or in addition to, actual damages.

26. **Headings.** The headings in this Agreement have been included solely for ease of reference and shall not be considered in the interpretation or construction of this Agreement.

YOUR SIGNATURE BELOW IS YOUR ACKNOWLEDGEMENT THAT YOU HAVE READ AND FULLY UNDERSTAND THE FOREGOING AND AGREE TO ABIDE BY ITS TERMS AND CONDITIONS IN THEIR ENTIRETY.

**❖ I understand that if “I Do Not Accept” the terms listed in this Agreement or if I do not respond to this Agreement, EASI cannot allow me or my company to participate in the online bid.**

I accept the terms listed in this agreement as well as Appendix A

Company Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

## ATTACHMENT 3

### Electronic Auction Services, INC (“EASI”).

### SUPPLIER AGREEMENT TERMS AND CONDITIONS

## Appendix A

### Please Review the following rules for participating in an Online Electronic Bid Event:

- I understand the bid configuration parameters as they are displayed in the section above, entitled, “Online Electronic Bid Event Configuration.”
- I acknowledge that I have received and fully understand the training and I am capable of bidding in the online event. If someone else is designated by me to bid in this event, I take responsibility for that bidder’s capabilities, will notify EASI, and I acknowledge that this Agreement will apply to the designated bidder.
- I understand that I should not attempt to troubleshoot any [technical problems](#) on my own, especially problems I am experiencing in the bid event and that I should call EASI IMMEDIATELY at 330-931-4687.
- I understand that if I encounter any [difficulties in placing a bid](#) that I am to contact EASI via phone immediately and that, if necessary, EASI will assist me in placing a bid. I understand that adequate time must be provided to EASI to assist me and agree that EASI is not liable if I am unable to place a bid for any reason before the online bid closes.
- I understand that the [official bid clock](#) is maintained by EASI’s server and due to Internet connection speeds the bid clock on my computer may vary. For this reason, it is important that I submit my bid with ample time remaining in the bid event to prevent late bids from being rejected due to the lag in connection speeds and clock times. Ultimately, EASI’s server is the bid clock and by following instructions in this document, I will minimize the possibility that my intended bid will not be accepted.
- I understand that in some cases, an electronic bid [might be re-opened](#) if technical issues prevented a bidder or bidders from placing bids and those issues were brought to EASI’s attention immediately. I acknowledge that a re-opening decision will be at the discretion of EASI and the Buyer. Due to the possibility of a re-opening, I understand that I should remain logged on and attentive to the EASI Auctions site until a broadcast message announces the bid has officially closed.
- I understand that EASI is under [no obligation to re-open](#) a bid for a bidder to place a bid for any reason, particularly if a bidder does not contact EASI immediately after attempting to place a rejected bid.
- I understand that the Buyer has the [right to reject any and all bids](#) and that possessing the low bid does not necessarily guarantee that the low bidder will be awarded.
- I understand that I should review all [Bid Package](#) files/documents uploaded to the Bid Manager Event or provided by the Bid Manager
- I understand that if I do not place a [test bid](#) in the training electronic bid (using the same machine I will use for the live auction), EASI will not provide assistance, including placing bids on my behalf (proxy bidding) should I experience technical problems before or during the auction.
- I understand that EASI recommends I make the following [precautions](#) to avoid any technical issues during the Electronic Bid Event:
  - I should arrange for another computer to act as a [backup](#) in case something happens to my computer during the auction. I should log into <http://ra.eprocurelive.com> prior to the live auction and place test bids in the training auction using this backup computer to make sure it will function properly in case it needs to be used as a back up during the bid event.
  - I should make sure no [other programs](#) are running during the auction to prevent my computer from running slowly and not getting my bid submitted in time.
- I understand that [important changes](#) to the configuration of the Electronic Bid Event or terms of the bid may be made after this communication is sent and that I must review all Bid Manager messages, emails, calls, and bid notices on site broadcast messages sent from EASI and the Buyer carefully and diligently.