

Client Agency Policy & Operations Manual

SECTION: 90 Purchasing and Contracting

NUMBER: SCS-90-030

TITLE: Personal Service Contracts

EFFECTIVE DATE: May 6, 2002

APPROVED: Signature on file in State Controller's Division

PURPOSE and/or RESULTS DESIRED:

Department of Administrative Services Administrative Rules OAR 125-020-0100 through 125-020-0620 govern personal service contracts. Within this policy, each Client Agency is required to develop its own procedures for screening and selecting procedures.

AUTHORITY:

[ORS 184.305](#) Oregon Department of Administrative Services.
[ORS 184.340](#) Rules.
[ORS 279.712](#) Department to purchase for state agencies; approval of personal services; exemption procedure.
[ORS 279.727](#) State agency may be authorized to purchase directly; procedure.
[OAR 125-246](#) Department of Administrative Services; Personal Service Contracts.
[OAM 20.30.00.PO](#) Expenditure recognition.

DEFINITIONS:

DAS Purchasing means the State Procurement Office within the Department of Administrative Services Transportation, Purchasing & Print Services Division.

Client Agency means state boards and commissions that have an interagency agreement for services with the Department of Administrative Services State Controller's Division.

Contracting Agency means an agency that has authority to procure, enter into and sign the contract. A Contracting Agency does not have approval authority except as provided by [OAR 125-246](#).

Direct Negotiation means a Client Agency may procure and enter into contract directly through negotiation, if the contract value is no more than \$5000 as allowed under [OAR 125-246](#). Direct Negotiation is not considered a sole source contract.

Informal Selection means a Client Agency may solicit responses from a minimum of three proposers, if the estimated contract value is no more than \$75,000 as allowed under [OAR 125-246](#).

Formal Selection means a Client Agency must procure services sought through the formal solicitation process defined in [OAR 125-246](#) when the contract value is anticipated to exceed \$75,000.

Sole Source means a contractor that provides professional or technical expertise of such unique nature that the contractor is clearly and justifiably the only source to provide the service to achieve the agency's objectives.

APPLICABILITY: Client Agencies assigned and/or contracting for accounting, budgeting, and financial reporting services with the State Controller's Division, DAS.

POLICY: This policy establishes guidelines and provides the process to be followed when Client Agencies contract for personal services.

GUIDELINES:

I. Personal Service Contracts

- A. The State of Oregon requires personal service contracting competition to be fair and open.
- B. Client Agencies can contract for personal services with independent contractors when one of the following occur:
 - 1. Requires specialized skills, knowledge, and resources not available with the agency;
 - 2. Work cannot be done in a reasonable time with agency's own workforce;
 - 3. An independent and impartial evaluation is required; or
 - 4. It will be less expensive to contract for the work.
- C. Client Agencies are encouraged to use qualified public sources through interagency or intergovernmental agreements before using private contractors. The authority to enter into these types of contracts is under [ORS 190.110](#).
- D. A Contractor is to be selected primarily on the basis of qualifications to ensure the agency's needs are met and will result in satisfactory contract performance and value for the State.
- E. Architect, Engineer and Related Services, [OAR 125-248](#), and Commodities & Trade Services, [OAR 125-247](#), 300-360 are not covered by this policy.

II. Contract Requirements

- A. Unless an alternate form is approved for use by DAS Purchasing, all personal services contracts must be prepared using the standard "boiler plate" contract form and must include the following:
 - 1. A clear statement of work depicting what the deliverables will be;
 - 2. Allowable circumstances, in alignment with the original solicitation, defining how and under what circumstances the contract may be amended;
 - 3. Total sum of money to be paid for the satisfactory accomplishment of the work;
 - 4. A billing and payment schedule; and
 - 5. The client agency head or designee monitoring contract performance accepts a provision that payments will be made only for completed work.
- B. If paid with monies provided by grant funds, services must relate directly to the grant purpose, and must be allowable expenditures under grant provisions.
- C. There are special approval circumstances to be considered when seeking accounting, printing, telecommunications, information technology, insurance changes or bond counsel services according to [OAR 125-246](#) sections (4) and (5).

III. **Client Agency Policies Governing Use of Personal Service Contracts**

- A. Each client agency head will develop and implement policies and procedures to govern the use of personal service contracts. If applicable, board and commission members may review the use of personal service contracts.
 - 1. Provide approval indicating the need for contract services;
 - 2. Help write a statement of work or scope of services that is clear and concise and shows what the deliverables will be;
 - 3. Discern the estimated contract value and approve the proposed method of contractor selection in alignment with the rules governing personal services contracting; and
 - 4. Help the agency prepare an informal solicitation or RFP document.
- B. The agency head or designee is responsible for making sure the contract statement of work is written to the best extent possible. The Client Agency Head will need to sign the signature page of the contract, affirming that all contract form requirements meet or exceed standards.
- C. The Client Agency Head or designee will review the solicitation process and/or the RFP document before the documents are sent out to the public, and may indicate appropriate modifications to the solicitation or RFP documents. The agency head or designee will answer questions as to the process and requirements of Personal Services Contracts, and can provide examples of RFP's and Statements of Work.

IV. **Approvals for Personal Service Contracts**

- A. DAS Purchasing must approve all Personal Service Contracts before the Client Agency executes the contract, except as provided in [OAR 125-246](#).
- B. All requisite approvals must be obtained, including the approval of the Attorney General, if required, before any Personal Service Contract becomes binding upon the state and before any service may be performed or payment made under the contract, unless the contract is exempt from the prohibition against services being performed before review for legal sufficiency is obtained under [ORS 291.047\(6\)](#).
- C. Unless exempted by the Attorney General under [ORS 291.045](#) and [291.047](#), DAS Purchasing may not approve a Personal Service Contract calling for payment of more than \$75,000 before the Contract has been reviewed for legal sufficiency and approved by the Attorney General.
- D. Parties to Contract Approval
 - 1. When Attorney General legal sufficiency approval is required under [ORS 291.045](#), the Client Agency shall seek legal approval;
 - 2. The Client Agency and Contractor execution; and
 - 3. DAS Central Purchasing approval, when required, is last. DAS Central Purchasing shall use its best efforts to approve all Personal Services Contracts within five (5) business days. A longer period might be necessary for contracts that are incomplete or contracts where additional information must be acquired.

V. Special Approval Circumstances

- A. When a Client Agency contracts for services normally provided by another Agency, or services for which another Agency has statutory responsibilities, the Client Agency is required to seek the other Agency's approval, prior to final approval by DAS Central Purchasing. Examples of these special approvals include, but are not limited to:
1. Department of Administrative Services, Risk Management Division for revising insurance coverage or providing tort liability coverage;
 2. Department of Administrative Services, Transportation, Purchasing and Print Services Division for printing services;
 3. Department of Administrative Services, State Controller's Division for accounting services;
 4. Office of the Treasurer, Debt Management Division for financial and bond counsel services (bond counsel services also require the approval of the Attorney General);
 5. Department of Administrative Services, Information Resources Management Division for information-system related and telecommunications services. The Agency is also encouraged to use this Division's Planning and Review Section as a resource in carrying out information system-related projects. This may include:
 - i. Assistance to the Agency in developing Statements of Work related to information system projects.
 - ii. Reviews to assure consistency with State standards and direction; and a listing of vendors that provide information system-related services.
 6. The Attorney General has sole authority to contract for attorney services. Exceptions may be granted in writing on a case-by-case basis only by the Attorney General; and
 7. The Secretary of State Audits Division has sole authority to contract for financial auditing services. Exceptions may be granted in writing on a case-by-case basis only by the Secretary of State Audits Division.

VI. Acquiring Services Before Obtaining Requisite Approvals

- A. Pursuant to [OAR 125-246](#), Personal Services may be performed before all requisite approvals are obtained under a Personal Services Contract as follows:
- B. DAS Purchasing may authorize a Client Agency to acquire services before obtaining all requisite approvals when circumstances exist that create substantial risk of loss, damage, interruption of services or threat to public health or safety and that require prompt action to protect the interests of the State of Oregon. A Client Agency may seek such authorization for a Personal Services Contract or a class of Personal Services Contracts to address specific recurring needs to acquire services on short notice. A Client Agency seeking DAS Purchasing authorization shall describe particular circumstances that make it impracticable to obtain all requisite approvals before acquiring services. DAS Purchasing will only authorize an Agency to acquire services before obtaining all requisite approvals if the Agency follows the procedures set forth in this policy. DAS Purchasing authorization pursuant to this policy only allows the Client Agency to acquire services before obtaining all requisite approvals. It does not authorize the Client Agency to make any payments before obtaining all requisite approvals.

- C. The Client Agency seeking DAS Purchasing authorization to acquire services before obtaining all requisite approvals shall provide:
 - 1. Written findings to DAS Purchasing that describes the specific recurring circumstances that requires the Client Agency to take prompt action to protect the interests of the State of Oregon because they create substantial risk of loss, damage, interruption of services or threat to public health or safety. The Client Agency shall also describe why, under these specific circumstances, it will be impracticable to obtain all requisite approvals before acquiring services;
 - 2. The Personal Services Contract form that the Client Agency will use for the contract entered into after acquiring services, but before making payments; and
 - 3. Documentation demonstrating that the Client Agency has established procedures to administer the Contract or class of Contracts, for which it seeks authorization.
- D. DAS Purchasing, after review of the material required by section (C) above, may authorize the Client Agency to acquire the specific services under the specific circumstances described in response to section (C)(1) above before obtaining all requisite approvals. If DAS Purchasing provides authorization, DAS Purchasing will do so in writing, subject to any conditions or limitations DAS Purchasing deems appropriate, including but not limited to the duration of the authorization, and any other terms and conditions DAS Purchasing may determine are appropriate.
- E. If Client Agency acquires services before obtaining all requisite approvals when authorized by DAS Purchasing, the Client Agency, as soon as practicable after acquiring the services, shall enter into a written contract in the form submitted by the Client Agency and approved by DAS Purchasing. The Client Agency shall not revise the terms of the approved Contract form submitted by Client Agency without DAS Purchasing approval.
- F. The Client Agency shall not make any payments for services before obtaining all requisite approvals.
- G. DAS Purchasing authorization to perform services before obtaining all requisite approvals does not exempt the Client Agency from obtaining legal sufficiency review, if required under the provisions of [ORS 291.047](#).
- H. A Client Agency authorized to perform services before obtaining all requisite approvals must follow all applicable screening and selection requirements unless otherwise exempt from those requirements.

VII. Screening and Selection Process

- A. The policy of the State of Oregon is to select Contractors based on demonstrated qualifications and competence to perform the required services, encourage competition, discourage favoritism and obtain services at a fair and reasonable price. The purpose of this rule is to specify the Division's policies and procedures for screening and selection of Contractors to perform Personal Services.
- B. The Client Agency shall comply with these procedures for screening and selecting Contractors to perform Personal Services Contracts.
- C. The Client Agency shall provide Evidence of competition for all contracts except for contracts entered into under [OAR 125-246](#) for no more than \$5000. While qualifications are the primary criteria, whenever a Client Agency determines that the services offered by two or more individuals or firms are equally able to meet the Agency's needs and are of equal value, the Client Agency shall award the contract to the individual or firm offering

the service at the lowest price.

- D. An Agency may procure Personal Services from Contractors who are under contract with another Agency pursuant to an Interagency or Intergovernmental Agreement pursuant to [ORS 190.110](#) if such action is expressly permitted under the original contract (between the Client Agency and Contractor) and if the original contract was solicited in accordance with [OAR 125-246](#).

VIII. Ethics and Responsibility

- A. Agency officers, employees or agents involved in the process of screening and selecting Personal Services Contractors should carefully review the provisions of [ORS 244.040](#). That statute prohibits Agency officers, employees and agents from:
 - 1. Soliciting or receiving Gifts as defined by [OAR 125-246](#);
 - 2. Using their official position for personal or financial gain; or
 - 3. Using confidential information gained in the course of the screening and selection procedures for personal or financial gain.
- B. The Client Agency Head is responsible to ensure the client agency's compliance with [OAR 125-246](#).

PROCEDURES:

<u>Step</u>	<u>Responsible Party</u>	<u>Action</u>
1.	Agency Head, or Designee	<p>Contract Solicitation Procedure</p> <p>Determine the scope of work and the approximate cost of the potential contract.</p> <p>The Governor's Advocate for Minority, Women and Emerging Small Business office must be notified of any solicitation over \$5,000 (ORS 200.035). The VIP system will automatically notify the Advocate's office of the potential contract. Agencies may obtain names of potential contractors for the solicitation process from the Advocate's office as well.</p> <ul style="list-style-type: none">A. Contracts between \$0 and \$5000 – A Client Agency may procure a contractor by Direct Negotiation, unless prohibited or limited by internal procedures to contract for personal services. However, the Client Agency contract file must contain: a copy of the solicitation and justification for method of selection; a list of prospective contractors notified of the solicitation; a copy of any proposal received; method of evaluating proposals; record of negotiations and results; and any other information pertaining to the selection and awarding of a contract (including names of firms or individuals and cost estimates or quotes considered).B. Contracts between \$5,000.01 and \$75,000 - All contracts over \$5,000 must show evidence of competition. The Informal Selection process may be used on contracts up to and including \$75,000. This process meets the requirements of soliciting proposals from at least three potential contractors. <p>An advertisement must be placed on the VIP system for a minimum of five business days. In addition, contacts may be made via phone, letter</p>

or fax. The advertisement must provide a brief summary of the proposed contract, the services sought, where copies of solicitation may be obtained, and the deadline for submitting a proposal. The Governor's Advocate for Minority, Women and Emerging Small Business office will be notified automatically via VIP of the impending contract.

The agency contract file must contain: a copy of the solicitation and justification for method of selection; a list of prospective contractors notified of the solicitation; copy of any proposal received; method of evaluating proposals; record of negotiations and result; and any other information pertaining to the selection and awarding of a contract (including names of firms or individuals and cost estimates or quotes considered). All required approvals must be obtained including the Attorney General and DAS Purchasing, if required, before the contractor begins work or payment may be made.

- C. **Contracts Greater than \$75,000** – A Client Agency must use a formal solicitation process for any contract more than \$75,000. A formal solicitation must be advertised on the VIP system for at least fourteen (14) days. It is optional to advertise in periodicals of general circulation, though such advertisements ensure full competition. The Governor's Advocate for Minority, Women and Emerging Small Business office will be notified automatically via VIP.

A formal solicitation requires the use of a Request for Proposal (RFP) in accordance with [OAR 125-246](#). This document describes specific services to be performed and the time frame. Criteria and methods for screening, selecting and ranking the best proposals will be defined in the RFP, as well as solicitation and cancellation ability. A protest procedure must be a part of the RFP, as well as language to allow for time and cost amendments. A pre-proposal conference may be held at the Client Agency's discretion. If RFP's are not posted on the VIP system, a copy must be sent to the Governor's Advocate for Minority, Women and Emerging Small Business office. All RFP's must include the following language: Vendors shall use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document.

The agency contract file must contain: a copy of the solicitation and justification for method of selection; a list of prospective contractors notified of the solicitation; copy of any proposal received; method of evaluating proposals; record of negotiations and result; and any other information pertaining to the selection and awarding of a contract (including names of firms or individuals and cost estimates or quotes considered). All required approvals must be obtained including the Attorney General and DAS Purchasing, if required, before the contractor begins work or payment may be made.

- D. **Sole Source Contracting** A Client Agency may procure service from a single source as allowed under [OAR 125-246](#) when findings have been documented in the contract file to support:
- i. The is clearly only one contractor with the qualifications and expertise required to achieve the Client Agency's objectives or,
 - ii. Contractor selection is unlikely to substantially diminish competition.

To award a sole source contract, the Client Agency's intent to sole source must be advertised on the VIP system for ten days and in at least one newspaper or trade journal of general circulation.

The Governor's Advocate for Minority, Women and Emerging Small Business office will be notified automatically via VIP.

The agency contract file must contain: a copy of the solicitation and justification for method of selection; a list of prospective contractors notified of the solicitation; copy of any proposal received; method of evaluating proposals; record of negotiations and result; and any other information pertaining to the selection and awarding of a contract (including names of firms or individuals and cost estimates or quotes considered). All required approvals must be obtained including the Attorney General and DAS Purchasing, if required, before the contractor begins work or payment may be made.

Attachment 1

STATE OF OREGON PERSONAL/PROFESSIONAL SERVICES CONTRACT

This Contract is between the State of Oregon, acting by and through its _____, hereafter called Agency, and _____, hereafter called Contractor. Agency's Contract Administrator for this Contract is _____.

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

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

3. Consideration

- a. Agency agrees to pay Contractor the [sum of \$ _____] [at the hourly rate of \$ _____] for accomplishing the Work required by this Contract. The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses, is \$ _____.
- b. Interim payments to Contractor shall be made only in accordance with the schedule and requirements in Exhibit A.

4. Contract Documents. This Contract consists of the following documents which are listed in descending order of precedence: this Contract less all exhibits, attached Exhibits A, B, and C and other requirements as set forth in attached Exhibits ___ and ___. All attached Exhibits are hereby incorporated by reference.

5. Independent Contractor; Responsibility for Taxes and Withholding

- a. Contractor shall perform all required Work as an independent contractor. Although the Agency reserves the right (i) to determine (and modify) the delivery schedule for the Work to be performed and (ii) to evaluate the quality of the completed performance, Agency cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work.
- b. If Contractor is currently performing work for the State of Oregon or the federal government, Contractor by signature to this Contract declares and certifies that: Contractor's Work to be performed under this Contract creates no potential or actual conflict of interest as defined by ORS 244 and no rules or regulations of Contractor's employing agency (state or federal) would prohibit Contractor's Work under this Contract. Contractor is not an "officer", "employee", or "agent" of the Agency, as those terms are used in ORS 30.265.
- c. Contractor shall be responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, Agency will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.

6. Subcontracts and Assignment; Successors and Assigns

- a. Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract, without Agency's prior written consent. In addition to any other provisions Agency may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by Sections 6, 10, 11, 15, and 17 of this Contract as if the subcontractor were the Contractor. Agency's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- b. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns, if any.

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

8. Funds Available and Authorized; Payments

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

authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract.

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

9. Representations and Warranties.

- a. **Contractor's Representations and Warranties.** Contractor represents and warrants to Agency that (1) Contractor has the power and authority to enter into and perform this Contract, (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms, (3) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards, (4) Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work, (5) all computer hardware and software delivered under this Contract will, individually and in combination, correctly process, sequence, and calculate all date and date related data for all dates prior to, through and after January 1, 2000, and (6) any software products delivered under this Contract that process date or date related data shall recognize, store and transmit date data in a format which explicitly and unambiguously specifies the correct century.
- b. **Contractor's Limitation of Liability.** Contractor's liability with respect to items (5) and (6) of 9a. above shall not exceed: (1) twice the total contract amount (including any amendments) or (2) \$100,000, whichever is greater.
- c. **Warranties cumulative.** The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

10. Ownership of Work Product. All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of Agency. Agency and Contractor intend that such Work Product be deemed "work made for hire" of which Agency shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire", Contractor hereby irrevocably assigns to Agency all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as Agency may reasonably request in order to fully vest such rights in Agency. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

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

12. Insurance. Contractor shall provide insurance as indicated on Exhibit B, attached hereto and by this reference made a part hereof.

13. Termination

- a. **Parties' Right to Terminate For Convenience.** This Contract may be terminated at any time by mutual written consent of the parties.
- b. **Agency's Right To Terminate For Convenience.** Agency may, at its sole discretion, terminate this Contract, in whole or in part, upon 30 days notice to Contractor.
- c. **Agency's Right to Terminate For Cause.** Agency may terminate this Contract, in whole or in part, immediately upon notice to Contractor, or at such later date as Agency may establish in such notice, upon the occurrence of any of the following events:
 - (i) Agency fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for Contractor's Work;
 - (ii) Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Work under this Contract is prohibited or Agency is prohibited from paying for such Work from the planned funding source;
 - (iii) Contractor no longer holds any license or certificate that is required to perform the Work; or
 - (iv) Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Contractor's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within 10 business days after delivery of Agency's notice, or such longer period as Agency may specify in such notice.
- d. **Contractor's Right to Terminate for Cause.** Contractor may terminate this Contract upon 30 days' notice to Agency if Agency fails to pay Contractor pursuant to the terms of this Contract and Agency fails to cure within 30 business days after receipt of Contractor's notice, or such longer period of cure as Contractor may specify in such notice.
- e. **Remedies**
 - (i) In the event of termination pursuant to Sections 13.a, 13.b, 13.c(i), 13.c(ii) or 13.d, Contractor's sole remedy shall be a claim for the sum designated for accomplishing the Work multiplied by the percentage of Work completed and accepted by Agency, less previous amounts paid and any claim(s) which State has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this subsection, Contractor shall pay any excess to Agency upon demand.
 - (ii) In the event of termination pursuant to Section 13.c(iii) or 13.c(iv), Agency shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Section 13.c(iii) or 13.c(iv), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 13.b.

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

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

15. Records Maintenance; Access. Contractor shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that Agency and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans and writings of Contractor that are pertinent to this Contract to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

16. Compliance with Applicable Law. Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Work under this Contract. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with: (i) Title VI of Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.425; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Agency's performance under this Contract is conditioned upon Contractor's compliance with the provisions of ORS 279.312, 279.314, 279.316, 279.320, and 279.555, which are incorporated by reference herein.

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

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

19. Survival. All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Sections 1, 9, 10, 11, 13, 14, 15, 19 and 26.

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

21. Notice. Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or Agency at the address or number set forth on the signature page of this Contract, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section 21. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against Agency, such facsimile transmission must be confirmed by telephone notice to Agency's Contract Administrator. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

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

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

24. Department of Administrative Services Approval. Department of Administrative Services, and in certain cases Department of Justice, approval is required before any work may begin under this Contract or an amendment to this Contract.

25. Disclosure of Social Security Number. Contractor must provide Contractor's Social Security number unless Contractor provides a federal tax ID number. This number is requested pursuant to ORS 305.385, OAR 125-20-410(3) and OAR 150-305.100. Social Security numbers provided pursuant to this authority will be used for the administration of state, federal and local tax laws.

26. Governing Law; Venue; Consent to Jurisdiction. This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between Agency (and/or any other agency or department of the State of Oregon) and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

27. Year 2000 Compliance Notice. In the event Contractor learns or has reason to believe that Agency's computer hardware or software environment fails to use a date format that explicitly specifies century in any date data, Contractor shall promptly advise Agency of such failure.

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

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

CONTRACTOR DATA AND CERTIFICATION

Name (tax filing): _____

Address: _____

Citizenship, if applicable: Non-resident alien Yes No

Business Designation (check one):

Corporation Partnership Limited Partnership Limited Liability Company Limited Liability Partnership

Sole Proprietorship Other

Federal Tax ID#: _____ - _____ **or SSN#:** _____ - _____ - _____

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

Certification: The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury: (a) the number shown on this form is Contractor's correct taxpayer identification; (b) Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding; (c) s/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, Contractor is not in violation of any Oregon tax laws (including, without limitation, those listed in Exhibit B); (d) Contractor is an independent contractor as defined in ORS 670.600; and (e) the above Contractor data is true and accurate.

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

CONTRACTOR

By: _____ Title: _____ Date: _____

Phone Number: _____ Fax number: _____

AGENCY

Authorized Signature: _____ Title: _____ Date: _____

Phone Number: _____ Fax Number _____

Mailing Address: _____ Contract Number: _____

Approved by the Department of Administrative Services:

Authorized Signature

Date

Other Required Signature:

Other DAS Division or Agency Name/Title

DAS or Other Agency Signature

Date

Approved as to Legal Sufficiency by the Attorney General's Office

Attachment 2

Amendment To Personal / Professional Services Contract

1. This Amendment number _____ to Contract number _____ (as amended from time to time the "Contract") dated _____ between the State of Oregon acting by and through its Department of Administrative Services, _____ Division, hereafter called Agency, and _____, hereafter called Contractor.

2. The Contract is hereby amended as follows (new language is indicated by underlining and deleted language is indicated by brackets):

3. Agency's performance hereunder is conditioned upon Contractor's compliance with provisions of ORS 279.312, 279.314, 279.316, 279.320, and 279.555, which are hereby incorporated by reference.

4. Except as expressly amended above, all other terms and conditions of original contract are still in full force and effect. Contractor certifies that the representations, warranties and certifications contained in the original Contract are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury that s/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, Contractor is not in violation of any Oregon tax laws including without limitation state inheritance tax, gift tax, personal income tax, withholding tax, corporation income and excise taxes, amusement device tax, timber tax, cigarette tax, other tobacco tax, 9-1-1 emergency communications tax, the homeowners and renters property tax relief program and local taxes administered by the Department of Revenue (Multnomah County Business Income Tax, Lane Transit District Tax, Tri-Metropolitan Transit District Employer Payroll Tax and Tri-Metropolitan Transit District Self-Employment Tax.)

Contractor _____ Signature Date _____

Phone Number _____ Fax Number _____

Agency Authorized _____ Signature Date _____

Other DAS Division _____ Signature Date _____

Assistant Attorney General _____ Signature Date _____

(All Contracts & Amendments to Contracts over \$75,000 must be approved as to Legal Sufficiency by the Attorney General's Office)

ATTACHMENT 3



**Department of Administrative Services
Transportation, Purchasing & Print Services Division**

TRANSMITTAL NOTICE

<p>TO: TPPS/Services Team Attention: _____ 1225 Ferry St SE Salem, OR 97310 Ph. (503) 378-4642 Fax. (503) 373-1626</p>	<p>DATE: _____ FROM (Dept./Agency) _____ Name: _____ Address: _____ Phone: _____ FAX: _____ Email: _____</p>
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RE: DAS Review/Approval DAS Signature Only 5-digit Agency Number

DAS use only:
 DAS Signature _____ Date: _____ DAS File # _____

_____ **Electronic VIP PSK Justification #** _____ **Contract/Amendment #**

Document submitted on standard forms? YES NO (if No, form changes identified)

<u>Required:</u>	<input type="checkbox"/> Contract/ATA	<input type="checkbox"/> Work/Task Order
<u>Documents Attached</u>	<input type="checkbox"/> Solicitation	_____ATA #
Please check applicable documents submitted	<input type="checkbox"/> Applicable Supporting Documents	<input type="checkbox"/> Amendment
	<input type="checkbox"/> Exemption/Delegation	<input type="checkbox"/> Contract Amendment
	<input type="checkbox"/> Other	<input type="checkbox"/> Work/Task Order Amendment
		<input type="checkbox"/> Other

Comments: _____

FORM INSTRUCTIONS

1. If this Contract **HAS NOT** been reviewed by DAS, check the review/approval block. If this contract **HAS BEEN** approved by DAS and all other approval signatures have been obtained, check the DAS signature block. (A DAS file number and signature will appear on this transmittal form if this contract has been approved before).
2. Enter your 5-digit agency code to route DOJ contract review & approval invoices.
3. Enter the PSK Justification Number obtained from the VIP system and your Agency Contract or Amendment Number.
4. Under required documents attached, check the appropriate documents submitted along with this PSK transmittal form
5. In the Comment Field, please indicate if any changes have occurred to the contract between DAS' initial approval and final signature requirement. Please tab the document to show the changes. If this was a multiple award solicitation, please note if this contract was approved under another number. Please include the date of approval and the previous contract number

NOTE: This transmittal form is to be used for the entire approval process. DO NOT use a new form when submitting a contract back to DAS for final signature approval. For question regarding this form please call DAS Central Purchasing 503/378-4642.