

17. Oregon, Umatilla-Morrow Educational Service District (UMESD)

A. *Additional Agency Terms and Conditions*

Umatilla Morrow Education Service District (“UMESD”) is an educational service district organized under the laws of the STATE OF OREGON. Pursuant to Oregon Law, UMESD is authorized to cooperate with other entities and in such regard is authorized to cooperate with them in the purchasing of goods and services pursuant to these contract documents. As other entities cooperate with UMESD to take advantage of the goods and services made available pursuant to these contract documents, the terms and conditions of any such sales shall be in accordance with the contract documents.

These provisions provide: (1) instructions to bidders that are required for certain public contracts in Oregon, (2) procedural provisions, and (3) provisions that must be in Oregon public contracts depending upon the subject matter of the contract.

INSTRUCTIONS TO BIDDERS

1. Prevailing wage rates/Davis-Bacon.

As set forth in the general Oregon conditions below, if this is a public works project (as defined below) Oregon State prevailing wage rates will apply unless exempted. If federal funds are being used, bidders must take into account the need to comply with the Davis-Bacon Act. If both the federal and state prevailing wages are required the contractor is required by law to pay the greater of the applicable prevailing wage. If the contract is for public works no bid will be considered by Owner unless the bid contains a statement by the bidder as a part of its bid that all applicable prevailing wage laws including (unless exempted by law) the provisions of ORS 279C.800 and 279C.870 and 40 U.S.C. 276a.

2. Residence status of bidder.

Each bidder must identify in its bid whether the bidder is a resident bidder, as defined in ORS 279A.120.

4. Bid security.

If the contract is for a public improvement, at the time the bid is submitted, bid security of 5 percent of the bid shall be given to the Owner. Unsuccessful bidders shall have their bid security returned immediately when the selected bidder is chosen. The successful bidder shall have its bid security returned when all contract documents are fully executed and all pre-work requirements have been met.

5. Subcontractor Disclosure.

For public improvement contracts, all bidders shall within two hours of the date and time of the deadline when bids are due submit information about certain first-tier subcontractor when the contract value for public improvements is greater than \$100,000 (see ORS 279C.370). Specifically, when the contract amount of a first-tier subcontractor furnishing labor or labor and materials would be greater than or equal to: (i) 5% of the project bid, or \$15,000, or (ii) \$350,000 regardless of the percentage, bidders must disclose the following information about that subcontractor:

- (a) the subcontractor’s name, and
- (b) the category of the work that the subcontractor would be performing, and
- (c) the dollar amount of the subcontract

If Contractor will not be using any subcontractors that are subject to the above disclosure requirements, Contractor is required to indicate “NONE” on the reply form.

THE OWNER MUST REJECT A BID IF THE BIDDER FAILS TO SUBMIT THE DISCLOSURE FORM WITH THIS INFORMATION BY THE STATED DEADLINE.

SUBCONTRACTOR DISCLOSURE FORM

Project name:
Bid #:
Bid closing:
Date:
Time:

This form must be submitted at the location specified in the Invitation to Bid on the advertised bid closing date and within two working hours after the advertised bid closing time.

List below the name of each subcontractor that will be furnishing labor or will be furnishing labor and materials and that is required to be disclosed, the category of work that the subcontractor will be performing and the dollar value of the subcontract. Enter "None" if there are no subcontractors that need to be disclosed. (Attach additional sheets if needed.)

NAME OF SUBCONTRACTOR	CATEGORY OF WORK	DOLLAR VALUE
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Failure to submit this form by the disclosure deadline will result in a nonresponsive bid. A nonresponsive bid will not be considered for award.

Form submitted by (insert bidder name)
Contact name:
Telephone number:

PROCEDURAL

Once the award is made to the vendor, UMESD will inform its members of the contract by: 1) including the contract in the agency database that will be available on the UMESD website, 2) announcing the award in a periodic newsletter, and 3) publishing the contract information in a cooperative purchasing catalog hard copy and online catalog and disseminated to all members. A list of members, institution names, contact names, addresses and phone number on a computer disk is made available to the vendor. At this point the vendor contacts the members and members may contact the vendor. When the member identifies a product or services and agrees on price it issues to Vendor a purchase order for that item or service, referencing the AEPA Bid number. The purchase order must include an additional one percent (1%) administrative fee in the total to be forwarded by the vendor to UMESD after the sale. All participating vendors agree to and are subject to audit proceedings of UMESD member sales.

Upon receipt of the purchase order, the vendor provides the goods or service listed on the purchase order. It is important to remember the vendor makes delivery to the member unless other arrangements are made in cooperation with UMESD. When all items and services on the purchase order have been delivered to the member in a complete and satisfactory manner, vendor then invoices in duplication the member and UMESD for the goods and service.

This invoice includes the additional one percent (1%) administrative fee to the total amount invoiced of the goods or service provided by the vendor. This percent is based on the total sales of goods or services. The member then pays the vendor including the one percent (1%) administrative fee. UMESD then invoices the Vendor for the 1% administrative fee based on the sale of goods and services collected by the vendor. In the event of a lease the total administrative fee for the value of the goods shall be paid to UMESD by the vendor at the front end of the lease.

Additional Requirements of Oregon Law for Public Contracts, Public Works, and Improvements:

Miscellaneous Provisions

The following shall be a part of the contract documents and obligations of Contractor:

“Owner” means the public entity executing the Contract of which the provisions are a part.

“Public improvement” means projects for construction, reconstruction or major renovation of real property by or for a public agency.

“Public Works” shall mean roads, highways, buildings, structures and improvement of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by any public agency to serve the public interest by does not include the reconstruction or renovation of privately owned property which is leased by a public agency.

(1) In reference to ORS 279B.220 and 279C.505. Contractor shall:

(a) Make payment promptly, as due, to all persons supplying to Contractor labor or material for the prosecution of the work provided for in the contract.

(b) Pay all contributions or amounts due the Industrial Accident Fund from the Contractor or subcontractor incurred in the performance of the contract.

(c) Not permit any lien or claim to be filed or prosecuted against the Owner on account of any labor or material furnished.

(d) If the contract is for a public improvement, demonstrate to Owner that Contractor has an employee drug testing program in place.

(e) Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

(2) In reference to ORS 279C.515 regarding contracts for public improvements and works:

(a) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with the contract as such claim becomes due, the Owner may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of such contract.

(b) If the contract is for a public improvement and if the Contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the contract within thirty days after receipt of payment from the Owner or a contractor, the Contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the ten day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the Contractor or first-tier subcontractor on the amount due shall equal three times the discount rate on ninety-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is thirty days after the date when payment was received from the Owner or from the Contractor, but the rate of interest shall not exceed 30 percent. The amount of interest may not be waived.

(c) If the contract is for a public improvement, or is related to a contract for a public improvement, and if the Contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the contract, that person may file a complaint with the Construction Contractor’s Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

(d) The payment of a claim in the manner authorized in this section of this contract shall not relieve the Contractor or the Contractor’s surety from any obligation with respect to any unpaid claims.

(3) Relating to ORS 279B.020 and ORS 279C.520. Contractor shall comply with ORS 279B.020 and ORS 279C.520 in their entirety (when applicable), and in this regard:

(a) No person shall be employed for more than ten hours in any one day, or forty hours in any one week except in cases of necessity, emergency, or where the Owner absolutely requires it, and in such cases, the employee shall be paid at least time and half pay:

(I) For all overtime in excess of eight hours a day or forty hours in any one week when the work week is five consecutive days, Monday through Friday; or

(ii) For all overtime in excess of ten hours a day or forty hours in any one week when the work week is four consecutive days, Monday through Friday; and

(iii) For all work performed on Saturday and on any legal holiday specified in ORS 279B.020 and 279C.540.

(iv) Contractor shall comply with the notice and posting requirements of ORS 279B.020 and 279C.520(2).

Contractor shall pay employees for overtime work performed under this Contract in accordance with ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 USC 201, et seq.).

(4) If the contract is for a public improvement, Contractor shall at its sole expense comply with any and all applicable statutes or ordinances, and all regulations of any agencies, whether federal, state, local, or tribal, dealing with the prevention of environmental pollution and the preservation of natural resources including without limitation water that affect the performance of this contract. The following agencies, as well as others, may have pertinent regulations:

Federal: Army Corps of Engineers, Federal Energy Regulatory Commission, Environmental Protection Agency, Dept. of Human and Health Services, Dept. of Interior including but not limited to the US Fish and Wildlife Service, Department of Labor, and Water Resources Council.

State: Columbia River Gorge Commission, Department of Energy, Department of Environmental Quality, Department of Fish and Wildlife, Department of Human Resources, Soil and Water Conservation Commission, and Water Resources Department.

Local: City and County wherein the project is to be undertaken.

Tribal: Governing body of any tribal authority if the work is to be carried out on tribal-owned lands or federal law otherwise requires.

(5) In relation to ORS 279B.230 and 279C.530, Contractor shall comply in their entirety, and in this regard:

(a) Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums which the Contractor agrees to pay for such services and all monies and sums which the Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

(b) All employers, including Contractor, that employ subject workers who work under this contract in the State of Oregon shall comply with ORS 656.017 and provide the required workers compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.

(6) If the contract is for public works, Contractor, unless exempted by law, shall comply with ORS 279C.800 to 279C.870 relating to the payment of prevailing wages and, to the extent applicable, with the Davis-Bacon Act. If the state and federal prevailing wage laws both apply, Contractor shall pay as wages the greater of the applicable prevailing wage. A fee is required to be paid to the Commissioner of the Bureau of Labor and Industries as provided in ORS 279C.825, and Contractor shall pay the fee to the commissioner pursuant to the administrative rules of the commissioner. Contractor shall comply with all wage reporting and certification requirements of the prevailing wage laws and/or the Davis-Bacon Act, as applicable. If prevailing rates are required, contractor shall file with the Construction Contractor's Board of the State of Oregon a public works bond of \$30,000 as required by ORS 279C.800 before work is commenced. Every contract with a subcontractor shall include these provisions.

(7) The following apply to contracts for public improvements:

(a) Contractor shall comply with ORS 279C.580, dealing with Contractor's relations with subcontractors. Without limiting the generality of the foregoing, in this regard Contractor shall include a clause in each subcontract for property or services entered into by the Contractor and a first-tier subcontractor, including a material supplier, for the purposes of performing the contract:

- (I) that obligates the Contractor to pay the first-tier subcontractor for satisfactory performance under its subcontract within ten days out of such amounts as are paid to the Contractor by the Owner; and
- (ii) that obligates the Contractor, if payment is not made within thirty days after receipt of payment from the Owner, to pay to the first-tier subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause required by the preceding Paragraph. The interest penalty shall be for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made, and shall be computed at the rate specified in ORS 279C.515(2).
- (b) Contractor shall include in each of its subcontracts, for the purpose of performance of work in relation to project, a provision requiring the first-tier subcontractor to include a before clause and an interest penalty clause conforming to the foregoing standards in each of its contracts and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.
- (c) Nothing stated herein shall be construed to preclude the negotiations allowed pursuant to ORS 279C.580(5).
- (8) If any work supplied pursuant to the contract requires licensing with the Construction Contractors Board or the State Landscape Contractors Board, Contractor must be so licensed in order to submit a bid for the contract, and Contractor and all relevant subcontractors must remain licensed during the period required for performance. Contractor certifies that all subcontractors and workers will be properly licensed to perform the work required by this Contract before their commencement of work.
- (9) If this contract is for public improvements, then retainage shall be withheld in accordance with Oregon laws, including ORS 279C.550 et seq.
- (10) If this contract is for a public improvement, Contractor shall comply with ORS 279C.380 and execute and deliver to Owner a good and sufficient performance bond and payment bond to be approved by Owner in a sum equal to the contract price.
- (11) Contractor must certify compliance with the Oregon tax laws in accordance with ORS 305.385 when applicable.
- (12) Upon receipt by Contractor of any notice or claim, pursuant to ORS 279C.600 et seq (concerning action against bonds) Contractor shall immediately notify Owner in writing.
- (13) Unless agreed to by Owner in writing, Contractor may not assign, transfer, dispose of, or delegate its duties under the contract.
- (14) Contractor shall be responsible for compliance with all local, state, tribal, and federal laws, applicable to any aspect of the work to be performed. It shall be Contractor's responsibility to determine the applicability and requirements of any such laws and to abide by them. Contractor shall indemnify, defend, and hold harmless Owner for any default or breach of Contractor in this regard.
- (15) The submission of a bid for this contract is certification by Contractor that Contractor has not discriminated and will not discriminate in violation of ORS 279A.110 against any minority, women, or emerging small business enterprises in obtaining any required subcontracts.
- (16) If this contract is a public improvement contract for demolition, Contractor shall salvage or recycle constructions and demolition debris if feasible and cost-effective.
- (17) If this contract is a public improvement contract for lawn and landscape maintenance, Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.
- (15) Any dispute arising out of any of the contract documents, or out of their performance, shall be decided by litigation in the Circuit Court of the State of Oregon in the county of Owner's residence, the parties consenting to jurisdiction in said court and permanently waiving jurisdiction in any other court, state or federal. In the event of litigation the prevailing party shall be entitled to an award of reasonable attorneys fees and costs at trial and upon any appeal thereof.

B. Procedures for Processing Orders

Once the award is made to the vendor, UMESD will inform its members of the contract by: 1) including the contract in the agency database that will be available on the UMESD website, 2) announcing the award in a periodic newsletter, and 3) publishing the contract information in a cooperative purchasing catalog hard copy and online catalog and disseminated to all members, and/or such other marketing as UMESD deems advisable. A list of members, institution names, contact names, addresses and phone

number on a computer disk is made available to the vendor. At this point the vendor contacts the members and members may contact the vendor. When the member identifies a product or services and agrees on price it issues to UMESD a purchase order in cooperation with the vendor for that item or service. The purchase order must include an additional one percent (1%) administrative fee in the total to be forwarded by the vendor to UMESD after the sale. UMESD reviews the member purchase order to insure it is in compliance with the contract and assigns a UMESD purchase order number authorizing the purchase and use of the contract. Sales proceeding without a UMESD purchase order number are void and subject to contract restrictions with proceeding vendor and member. All participating vendors agree to and are subject to audit proceedings of UMESD member sales. IN NO EVENT SHALL ANY CONTRACT WITH THE PURCHASING AGENCY DIFFER IN ANY MATERIAL TERMS, CONDITIONS, OR PRICE FROM THE BID ACCEPTED BY UMESD.

UMESD will then fax a copy and mail the original. Notification is also made to the member that the purchase order to the vendor has been approved and forwarded. Upon receipt of the purchase order, the vendor provides the goods or service listed on the purchase order. It is important to remember the vendor makes delivery to the member unless other arrangements are made in cooperation with UMESD. When all items and services on the purchase order have been delivered to the member in a complete and satisfactory manner, vendor then invoices in duplication the member and UMESD for the goods and service. This invoice includes the additional one percent (1%) administrative fee to the total amount invoiced of the goods or service provided by the vendor. This percent is based on the total sales of goods or services. The member then pays the vendor including the one percent (1%) administrative fee. UMESD then invoices the Vendor for the 1% administrative fee based on the sale of goods and services collected by the vendor. In the event of a lease the total administrative fee for the value of the goods shall be paid to UMESD by the vendor at the front end of the lease.

C. Members Purchasing Under the UMESD

Members Purchasing under the Agency UMESD is an educational service district organized under the laws of the STATE OF OREGON. Pursuant to Oregon Law, UMESD is authorized to cooperate with other entities and in such regard is authorized to cooperate with them in the purchasing of goods and services pursuant to these contract documents. As other entities cooperate with UMESD to take advantage of the goods and services made available pursuant to these contract documents, the terms and conditions of any such sales shall be in accordance with the contract documents.
