MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date:	September 18, 2019				
Department:	Public Works	Agenda Planning Date:	September 12, 20	Time required:	5 min.
☐ Audio/Visual aids					
Contact:	Scott Wilson	Phone:	503-365-3129		

Department Head Signature:

Brian Nicholas

TITLE	Consider approval of a Purchase Order (PO) for the purchase of reflective marking spheres (beads) from Potter Industries.
Issue, Description & Background	Public Works maintains roadway lines throughout Marion County, which involves the application of paint and reflective beads to enhance the visibility of the lines in low visibility conditions. This PO will allow Public Works to continue purchasing the beads that are added to the paint. Purchase of the beads will use state price agreement (SPA) #9265.
Financial Impacts:	For FY 2019-20, the PO amount is $175,000. This expense is included in the Public Works FY 2019-20 budget as a maintenance item.
Impacts to Department & External Agencies	There are no impacts to other departments. Purchase of these beads will allow Public Works to continue striping roads for Marion County and for external agencies, which will enhance the safety of the traveling public and continue a current source of revenue to Public Works.
Options for Consideration:	1. Approve the PO and allow continued purchasing of beads from Potters Industries. 2. Deny approval of the PO at this time and direct Public Works to source a different product.
Recommendation:	Public Works recommends the Board of Commissioners choose option one and approve the PO and allow continued purchasing of beads from Potters Industries.
List of attachments:	Contract Review Sheet ORPIN Summary Page Purchase Order Purchase Order Request State Price Agreement #9265
Presenter:	Scott Wilson

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)

Copies to:	Jacob Clotfelter - Jclotfelter@co.marion.or.us Scott Wilson - swilson@co.marion.or.us Tim Beaver - Tbeaver@co.marion.or.us Jeniffer Scales - Jscales@co.marion.or.us

Marion County
OREGON
FINANCE DEPARTMENT

Contract Review Sheet

Contract #: PO 88186

Person Sending: **Tim Beaver** Department: **Public Works**

Contact Phone #: **503-365-3100** Date Sent: **Wednesday, August 28, 2019**

☑ Contract ☐ Amendment# ___ ☐ Lease ☐ IGA ☐ MOU ☐ Grant (attach approved grant award transmittal form)

Title: **Purchase of Paint Beads**

Contractor's Name: **Potters Industries**

Term - Date From: **Aug 28, 2019** Expires: **June 30, 2020**

Contract Total: **$175,000.00** Amendment Amount: _____ New Contract Total: _____

Source Selection Method: Cooperative Procurement (attach number) **# SPA 9265**

Additional Considerations (check all that apply)

☐ Board Order# _____
☐ Incoming Funds
☐ Independent Contractor (LECS) approval date: _____
☐ Insurance Waiver (attach)
☐ CIP# _____ (required for all goods /software greater than $5,000)
☐ Feasibility Determination (attach approved form)
☐ Federal Funds (attach sub-recipient / contractor analysis)
☐ Reinstatement (attach written justification)
☐ Retroactive (attach written justification)

Description of Services or Grant Award:

Purchase of reflective marking speres (beads) for use in roadway striping.

State Price Agreement 5551 is administered by Oregon DAS and made available for use by Marion County.

FOR FINANCE USE

Date Finance Received: BOC Planning Date: Date Legal Received: 9/5/19

Comments:

REQUIRED APPROVALS:

Finance - Contracts 9-5-19 Date | Risk Manager Date

Legal Counsel Jane E Vetto 9/6/19 Date | Chief Administrative Officer Date

Date _____ ☐ To be filed ☐ Added to Finance Table

☐ Date _____ Returned to department for signature

Awards/Agreements

Potters Industries
Glass Beads (Spheres) for use with Roadway Markings and Paint

Attachments Exist
Secondary Suppliers Do Not Exist

Supplier Address

Potters Industries
PO Box 841
Valley Forge, PA 19482

Contact: Yvonne D. Harris
Phone: 1 (610) 651-4714
Fax: 1 (610) 408-9723
Email: yvonne.harris@pottersbeads.com

Contract #
9265
Revision # 0.2
Revision Date
07/29/2019
Opportunity #
DASPS-2232-18
Vers 1
Contract Start Date
07/11/2019
Expiration Date
07/10/2023
Supplier Number
1446

All dates are mm/dd/yyyy

Contract Administrator

DAS Procurement Services
DAS / EGS - Procurement Services
Salem, OR 97301

Contact: John Starrs Jr.
Phone: 1 (503) 378-4643
Fax:
Email: John.Starrs@oregon.gov

Receiving Address

See purchase order

Contract Filed At

DAS PS

Revision #2: JRS Added 1500 lb. packaging option

Revision #1: JRS updated Price sheets with Product Code #s.

Delivery Requirements
20 Days A.R.O.
Payment Terms
Net 30
FOB
FOB Destination

Item #	Quantity / Unit	Description	Unit Cost
3	1 POUND	Commodity No. 550-04 Beads, Glass, Sign and Stripe ********** Will-Call Pricing for Glass Beads(Spheres) supplied in 50 or 2400 lb. Bags **********	$0.48
4	1 POUND	Commodity No. 550-04 Beads, Glass, Sign and Stripe ********** Delivered Pricing for Glass Beads(Spheres) supplied in 50 or 2400 lb. bags. **********	$0.49

Awards/Agreements

Potters Industries
Glass Beads (Spheres) for use with Roadway Markings and Paint

Mandatory or Convenience	Renewal Option	Contract Value
Mandatory	Three(3) each, 2-Year Extensions available	$0.00
Minimum Order		
Refer to Price Agreement		
Return Policy		
Refer to Price Agreement		
Warranty		
Refer to Price Agreement		
Best Value Analysis		
Freight/Surcharge		

MARION COUNTY
FINANCE DEPARTMENT

PO Box 14500
555 Court St NE #4247
Salem, OR 97309-5036

Purchase Order		
Purchase Order No	Revision	Page
881186	0	1

Ship To:
Marion County Public Works
5155 Silverton Rd

Salem,OR 97305
United States

Bill To:
Marion County Public Works
5155 Silverton Rd

Salem,OR 97305
United States

POTTERS INDUSTRIES LLC
PO BOX 90414
CHICAGO, IL 60696-0414 United States

Customer Acct No	Supplier No	Order Date / Buyer	Revised Date / Buyer
	507761	03-SEP-19 J Scales	J Scales
Payment Terms		**Ship Via**	**F.O.B**
Immediate		Best method	Destination
Freight Terms		**Request Or Deliver To**	**Confirm To / Telephone**
Prepaid			()

Line #	Description	Delivery Date	Quantity	Unit	Unit Price	Total
	THIS PURCHASE IS PLACED AGAINST STATE OF OREGON SOLICITATION # AND/OR PRICE AGREEMENT #9265. THE CONTRACT TERMS AND CONDITIONS AND SPECIAL CONTRACT TERMS AND CONDITIONS (T'S & C'S) CONTAINED IN THE PRICE AGREEMENT ARE HEREBY INCORPORATED BY REFERENCE AND SHALL APPLY TO THIS PURCHASE AND SHALL TAKE PRECEDENCE OVER ALL OTHER CONFLICTING T'S & C'S, EXPRESS OR IMPLIED.					
	CONTACT MIKE HARMEL 503-588-5036					
1	SPA#9265 REFLECTIVE BEADS FOR HIGHWAY STRIPING			US Dollar		$175,000.00

Total $175,000.00

INSTRUCTIONS TO VENDOR

1. Please direct any questions concerning this purchase order to invoiced department.
2. Purchase Order Number must appear on all invoices, packages and shipping documents relating to this order.
3. Separate invoices must be submitted for each Purchase Order.
4. Do not overship or substitute.
5. If you cannot supply the items requested, please notify issuing authority at once.

Note : Please notify department contact (above) for all inquiries regarding this Purchase Order

Authorized By: Camber Schlag
MARION COUNTY PURCHASING
NOT VALID Unless Signed By Purchasing

MARION COUNTY TERMS AND CONDITIONS

1. INSPECTIONS: County may inspect and test the Goods and related Services (collectively, Goods). County may reject non-conforming Goods and require Contractor to correct them without charge or deliver them at a reduced price, as negotiated. If Contractor does not cure any defects within a reasonable time, County may reject the Goods and cancel the PO in whole or in part. This paragraph does not affect or limit County's rights, including its rights under the Uniform Commercial Code, ORS chapter 72 (UCC).

2. DELIVERY: Deliveries will be F.O.B destination. Contractor shall pay all transportation and handling charges. Contractor is responsible and liable for loss or damage until final inspection and acceptance of the Goods. Contractor remains liable for latent defects, fraud, and warranties.

3. PAYMENT: County shall pay Contractor within 30 days from (i) the date the Goods are delivered and accepted or (ii) the date the invoice is received, whichever is later

4. COUNTY PAYMENT OF CONTRACTOR CLAIMS: If Contractor does not pay promptly any claim that is due for Goods or Services furnished to the Contractor by any subcontractor in connection with this PO, the County may pay such claim and charge that payment against any payment due to the Contractor under this PO. The County's payment of a claim does not relieve the Contractor or its surety, if any, from their obligations for any unpaid claims.

5. WARRANTIES: Contractor agrees to perform its services with that highest standard of care, skill and diligence normally provided by a professional individual in the performance of similar services. Contractor represents and warrants that the Goods are new, current, and fully warranted by the manufacturer. Delivered Goods will comply with specifications and be free from defects in labor, material and manufacture. All UCC implied and expressed warranties are incorporated in this PO. Contractor shall transfer all warranties to the County.

6. TERMINATION OF PO: The PO may be terminated under the following conditions: a. By written mutual agreement of both parties. Termination under this provision may be immediate. b. Upon fifteen (15) calendar days written notice by either Party to the other of intent to terminate. c. The County may terminate all or part of this PO for the following reasons: (1) If the consultant fails to provide services, or fails to meet the performance standards as specified in this PO (or subsequent modifications of this PO), within the time specified herein or any extension thereof. Termination under this provision may be immediate; (2) If the consultant fails to start services on the date specified by Marion County in this PO or subsequent modifications to this contract. Termination under this provision may be immediate. (3) Failure of the consultant or Marion County to comply with the provisions of this PO and all applicable federal, state, and local laws and rules may be cause for termination of this contract. Such termination shall be without prejudice to any obligations or liabilities of either party accrued prior to such termination. If this PO is terminated by either party, for reasons other than breach of contract, the County agrees to pay to the consultant all costs and expenses associated with services satisfactorily provided to the effective date of termination.

7. INDEMNIFICATION. The Contractor shall save harmless, indemnify, and defend the County for any and all claims, damages, losses and expenses including but not limited to reasonable attorney's fees arising out of or resulting from Contractor's performance of or failure to perform the obligations of this PO to the extent same are caused by the negligence or misconduct of Contractor or its employees or agents.

8. GOVERNING LAW, VENUE: This PO shall be governed by the laws of the State of Oregon. Any action commenced in connection with this PO shall be in the Circuit Court of Marion County. All rights and remedies of the County shall be cumulative and may be exercised successively or concurrently. The foregoing is without limitation to or waiver of any other rights or remedies of the County according to law.

9. FORCE MAJEURE: Neither party is responsible for delay or default caused by an event beyond its reasonable control. County may terminate this PO without liability to Contractor upon written notice after determining the delay or default reasonably prevents performance of this PO.

10. SUBCONTRACTING/NONASSIGNMENT. No portion of the PO may be contracted or assigned to any other individual, firm or entity without the express and prior approval of the County.

11. MAINTENANCE, RETENTION, AND CONFIDENTIALITY OF RECORD. The Contractor agrees to establish and maintain records and statistics as follows: Financial records, which indicate the number of hours of service provided under this contract and other appropriate records pertinent to this contract shall be retained for a minimum of three (3) years after the end of the contract period. If there are unresolved audit questions at the end of the three-year period, the records must be maintained until the questions are resolved. To the extent applicable, client records shall be kept confidential in accordance with ORS 179.505, OAR 309-11-020, 45 CFR 205.50 and 42 CFR Part 2.

12. COMPLIANCE WITH APPLICABLE LAWS: The Contractor shall comply with all applicable Federal, State and local laws, rules and regulations. All provisions of ORS 279B (Public Contracts and Purchasing) are incorporated herein to the extent applicable to POs.

13. WORKERS' COMPENSATION: Contractor shall comply with ORS 656.017 and provide the required workers' compensation coverage, unless exempt under ORS 656.126(2). Contractor shall ensure that its Subcontractors, if any, comply with these requirements.

14. SAFETY AND HEALTH REQUIREMENTS: Contractor represents and warrants that the Goods comply with all federal and Oregon safety and health requirements.

15. MATERIAL SAFETY DATA SHEET: Contractor shall provide County with a Material Safety Data Sheet for any Goods which may release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use (OAR 437- 002-0360 and 29 CFR 1910.1020). Contractor shall label, tag or mark such Goods.

16. AMENDMENTS: All amendments to this PO must be in writing, signed by County.

17. SEVERABILITY: If a court of competent jurisdiction declares any provision of this PO to be invalid, the other provisions and the rights and obligations of the parties remain in effect.

18. WAIVER: Failure of either party to enforce any provision of this PO is not a waiver or relinquishment of that party's rights to such performance in the future or to enforce any other provisions.

19. TAX CERTIFICATION: Contractor hereby certifies under penalty of perjury: (a) the number shown on this form is the correct Federal Employer Identification Number; (b) it is not subject to backup withholding because (i) it is exempt from backup withholding, (ii) it has not been notified by the IRS that it 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 it is no longer subject to backup withholding; and (c) it is not in violation of any Oregon tax laws.

STANDARD PURCHASE ORDER 881186
MARION COUNTY and POTTERS INDUSTRIES LLC
SIGNATURE PAGE

MARION COUNTY
BOARD OF COMMISSIONERS

_____
Chair

_____
Commissioner

_____
Commissioner

_____
Date

APPROVED AS TO FORM:

Anne E Votto 9/6/19
Marion County Legal Counsel Date

9-5-19
Marion County Contracts & Procurement Date

*Division Approval Attached

PURCHASE REQUEST

For additional forms and guidelines see: http://intra.co.marion.or.us/Dept/FIN/ContractMgt_Purchasing.htm

Revised: 04/29/2016

Complete the following section if quotes are required. Guidelines are listed on the "Solicitation Limits." Please attach documentation as required.

	Supplier #1:	Supplier #2:	Supplier #3:
	POTTERS INDUSTRIES		
Address:	PO BOX 90414		
Address:	CHICAGO IL 60696		
Co. Rep.:			
Phone #:			
Fax:			
Email.:			
Accepts Credit Cards?			

Low quote chosen ? No *(see explanation)* Yes Explanation of why low quote not used:

ORDER DESCRIPTION

Be sure to check for CIP and quote requirements - see back for definitions

Circle supplier that is chosen:

Item Description	# of Units		Supplier #1 Cost per Unit	Supplier #1 Total Unit Cost	Supplier #2 Cost per Unit	Supplier #2 Total Unit Cost	Supplier #3 Cost per Unit	Supplier #3 Total Unit Cost
REFLECTIVE MARKING SPHERES FOR	357,143		$ 0.49	= $ 175,000	$ -	= $ -	$ -	= $ -
HIGHWAY SAFETY MARKING (uom = pounds)		x		= $ -		= $ -		= $ -
		x		= $ -		= $ -		= $ -
SPA#9265		x		= $ -		= $ -		= $ -
		x		= $ -		= $ -		= $ -
		x		= $ -		= $ -		= $ -
		x		= $ -		= $ -		= $ -
			Shipping	$ -		$ -		$ -
			TOTAL COST	*$ 175,000*		*$ -*		*$ -*

(Attach additional form if more lines are needed)

STATE PRICE AGREEMENT

Using State Price Agreement for cost? No Yes

If yes, State Price Agreement number: 9265

FUNDING

Service	Account	Project	Task	Amount
4101	141000			
				TOTAL $ 175,000

NOTIFICATION

Requester notified of approved PO # by *(Circle/Border)*

None E-mail Phone Fax

Requester needs printed copy of PO?

No Yes

Supplier notified of approved PO with copy of PO by:

None E-mail Phone Fax

AUTHORIZATION

Requested by: MIKE HARMEL 8/21/19

Signature Date

CIP Verified:

Signature Date

Authorized by:

Signature Date 8/26/2019

G:\Administration\Accounting\Forms & Templates\AP Forms & Templates\PORequest_online

State of Oregon
Price Agreement No. 9265
with
Potters Industries
for supply of the following materials and support services:

Glass Beads (Spheres)

This Price Agreement No. 9265 ("Price Agreement") is created as a result of a qualifying and acceptable submission to Invitation-To-Bid [ITB] Solicitation No. DASPS-2232-18 and is between the State of Oregon, acting by and through its Department of Administrative Services – Procurement Services ("DAS-PS"), on behalf of all State of Oregon Agencies and authorized ORCPP members, and Potters Industries, a Pennsylvania Corporation ("Contractor").

Section 1 –Agreement

1.1 Parties

1.1.1 The only parties to this Price Agreement are DAS-PS and Contractor.

1.1.2 AUTHORIZED PURCHASERS may purchase goods ("Goods") and related products specified in Exhibit D by issuing ordering instruments which create, and become, separate contracts ("Contracts"). The only parties to each of these Contracts are the applicable Authorized Purchaser and Contractor. DAS-PS is an intended beneficiary of each Contract.

1.2 Process

1.2.1 AUTHORIZED PURCHASERS may order Goods during the Term of this Price Agreement using any of the following ordering instruments:

1. DAS-approved Purchase Order form. A sample form is provided as Exhibit A
2. Authorized Purchaser's Purchase Order Form.
3. Small Order Transaction System (SPOTS) card.

Each ordering instrument must specify, at a minimum, the following details:

1. Price Agreement No. 9265
2. The specific Goods and quantity of each item ordered.
3. The net price.
4. The requested delivery schedule.
5. The delivery location(s).
6. The invoicing address.
7. Authorized Purchaser's authorized representative and relevant contact information,

including e-mail address.

1.2.2 A Contract created by an ordering instrument consists only of the terms specified or required by this Price Agreement. Additional, different or conflicting terms and conditions in any ordering instrument or any other form used by an Authorized Purchaser or Contractor may not varythe terms of a Contract. Additional, different or conflicting terms and conditions on a purchase order or other form are of no effect.

1.2.3 **State Agency Purchase Order Limitation.** Authorized Purchaser(s) who are State of Oregon agencies are authorized to issue Purchase Orders for any value underthis Price Agreement.

1.2.4 Contractor shall accept ordering instruments from AUTHORIZED PURCHASERS complying with the provisions of this Price Agreement until this Price Agreementterminates.

1.2.5 An ordering instrument is deemed accepted by Contractor unless Contractor rejects the ordering instrument within two (2) business days after it is received. Contractor may reject an ordering instrument: i) using the same means used to deliver the ordering instrument, or ii) by e-mail providing the email address information is evident on the ordering instrument. Contractor shall specify the reason(s) for rejection.

1.2.6 Accepted ordering instruments establish separate Contracts between AUTHORIZED PURCHASERS and Contractor and include the terms set forth in Sections 2 and 3. When used in Contracts, "Price Agreement" means specifically Price Agreement No. 9265

1.2.7 DAS-PS is not obligated or liable under a Contract unless DAS-PS is purchasing Goods as the Authorized Purchaser.

1.2.8 Nothing in this Price Agreement obligates DAS-PS or AUTHORIZED PURCHASERS to purchase any Goods at any time during its Term.

1.2.9 Contractor shall reject an ordering instrument from any entity not identified as an Authorized Purchaser under this Price Agreement unless an amendment has been executed prior to the order allowing for such entity to purchase materials specifically listed in this Price Agreement.

1.210 Contractor shall reject an ordering instrument that does not meet the requirements of this Price Agreement.

1.3 Pricing

1.3.1 All Contractor pricing given in Exhibit D will remain fixed until December 31, 2019.

1.3.2 Contractor and Authorized Purchaser may agree to lower prices for Goods. In such cases, the revised, lower prices only apply to applicable Contracts between Contractor and Authorized Purchaser.

1.3.3 Contractor shall subtract from prices charged to AUTHORIZED PURCHASERS any unit price decrease achieved or gained by Contractor whether through the manufacturer or otherwise. Contractor shall give AUTHORIZED PURCHASERS the immediate benefit of the decrease. Contractor shall promptly notify the DAS-PS Contract Administrator of the amount and effective date of the decrease.

1.3.4 Either party to this Price Agreement may request a price adjustment, in whole or in part.

1.3.5 Contractor may request unit price increases no more than one (1) time annually. Contractor must submit a request to the DAS-PS Contract Administrator in writing at least 60 days prior to proposed, effective date of the increase. The request must show all proposed increases by line item and include supporting documentation acceptable to DAS-PS. DAS-PS may require Contractor to provide U.S. Bureau of Labor Statistics Producer Price Index data, Consumer Price Index data or other relevant manufacturer or industry data substantiating the increase.

1.4 Reporting Requirements

Contractor will be required to submit two activity reports during the Term of the Price Agreement.

(1) Volume Sales Report (VSR) / Vendor Collected Administrative Fee (VCAF)

During the Term of this Price Agreement, Contractor shall submit a quarterly VSR detailing total dollars spent by each Authorized Purchaser during the previous quarter. Contractor will also remit a quarterly VCAF paid directly to DAS-PS. The VCAF amount for this Price Agreement" is equal to two percent (2%) of the total sales as reported in the quarterly VSR. A sample VSR with instructions for calculation of the VCAF is attached to this Price Agreement and identified as Exhibit C.

(2) EASi Buy, LLC. Report / SupportFee

During the Term of this Price Agreement, Contractor is required to submit a monthly sales report to EASi Buy, LLC, and make associated payments. Contractor represents and warrants it has entered into and will comply with its agreement with EASiBuy, LLC. This is a material representation of fact on which DAS PS may rely. Contractor's failure to maintain or comply with its agreement with EASiBuy, LLC, including but not limited to failing to make reports or payments under that agreement, constitutes a material default under this Price Agreement.

1.5 Term of Agreement; Termination

1.5.1 The initial Term of this Price Agreement begins on the date this Price Agreement has been signed by DAS-PS and Contractor, and all required approvals have been obtained ("Effective Date"), and terminates on the 4th anniversary of the Effective Date unless sooner terminated or extended as allowed in this Price Agreement. DAS-PS has in its sole discretion the option to extend this Price Agreement for an additional six (6) years in increments of 2-year allotments. DAS-PS will exercise the option to extend, if at all, by giving Contractor written notice of the intention to extend no later than thirty (30) calendar days before the expiration of the then-current term. The initial term, and all extension terms collectively, is considered the "Term" of this Price Agreement. The Term of this Price Agreement may not exceed a total of ten (10) years.

1.5.2 Once the Price Agreement has been terminated, Contractor shall not accept new ordering instruments.

1.5.3 Termination of this Price Agreement also terminates any outstanding ordering instruments under which an Authorized Purchaser and Contractor agreed to have Contractor deliver specific quantities of Goods on a pre-determined, future date or schedule. The intent of this is to terminate what is commonly known as a Blanket Purchase Order (BPO), if any exist at time oftermination.

1.5.4 Except as provided in Section 1.5.3, termination of this Price Agreement does not terminate any right or obligation of a party to a Contract that is based on an ordering instrument accepted before termination of this Price Agreement.

1.5.5 Parties' Right to Terminate for Mutual Consent. This Price Agreement may be terminated at any time by mutual written consent of Agency and Contractor.

1.5.6 DAS-PS Right to Terminate. DAS-PS may, in its sole discretion, terminate this Price Agreement, in whole or in part, for any reason upon 30 Calendar Days' written notice to Contractor.

1.6 Insurance

Contractor shall obtain and maintain all insurance specified in Exhibit B for the Term of this Price Agreement, and all Contracts entered into under this Price Agreement.

1.7 Miscellaneous

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

1.7.2 Designation of Forum and Consent to Jurisdiction. A party bringing a legal action or proceeding against the other arising out of or relating to this Price Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

1.7.3 Amendment(s). No amendment of this Price Agreement is valid unless it is in writing and signed by both DAS-PS and Contractor.

1.7.4 Transfer. Contractor shall not assign, delegate or otherwise transfer any of its rights or obligations under this Price Agreement without first obtaining the written consent of DAS-PS. DAS-PS' consent to any subcontract (or other delegation of duties) does not relieve Contractor of any of its duties or obligations under this Price Agreement. This Price Agreement is binding upon and inures to the benefit of each of the parties, and, except as otherwise provided their permitted legal successors and assigns.

1.7.5 Counterparts. This Price Agreement may be executed in two or more counterparts, each of which is an original, and all of which, together, are deemed one and the same instrument, notwithstanding that the parties are not signatories to the same counterpart.

1.7.6 Force Majeure. Neither DAS-PS nor Contractor will be held responsible for delay or default caused by fire, riot, and acts of God or war, or by any other cause not within the control of the party whose performance is interfered with, and, which by the exercise of reasonable diligence, the party is unable to prevent. DAS-PS may terminate this Price Agreement upon written notice after determining such delay or default will reasonably prevent successful performance of this Price Agreement. In the event of any such delay, Contractor's obligations are suspended to the extent and duration of such causes. However, Contractor shall take all good-faith efforts to eliminate the cause of any such delay, and upon the cessation of such cause, shall resume performance of Contractor's obligations with all reasonable diligence. If necessary, the period for performance under this Price Agreement will be extended to enable Contractor, once such causes have been removed, to fulfill its

obligations hereunder.

1.7.7 Entire Agreement. This Price Agreement, together with the attached exhibits, constitutes theentire agreement between the parties and merges all prior and contemporaneous communications with respect to the subject matter.

1.7.8 Notices. Except as otherwise expressly provided in this Price Agreement, any communications between the parties, or notices to be given under this Price Agreement, are effective only if given in writing by personal delivery, facsimile, email or United States Postal Service, postage prepaid, to the Contract Administrator for Contractor or DAS-PS at the address or number set forth below in Section 4, as applicable, or to such other addresses or numbers as either party may later indicate pursuant to this Section. Any communication or notice via the United States Postal Service is deemed given five (5) days after mailing. Any communication or notice by personal delivery is deemed given immediately upon such delivery. Any communication or notice by facsimile is deemed given on the day the transmitting machine generates a receipt of a successful transmission of the notice, if transmission was during normal business hours, or on the next business day, if transmission was outside normal business hours. Any communication or notice by email is deemed given when the recipient, by an email sent to the email address for the sender or by a notice given by another method in accordance with this section, acknowledges having received that email, with an automatic "read receipt" not constituting acknowledgment of an email for purposes of this section.

1.7.9 No Third Party Beneficiaries. DAS-PS and Contractor are the only parties to this Price Agreement and are the only parties entitled to enforce its terms. Nothing in this Price Agreement gives, is intended to give, or will 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 Price Agreement.

1.7.10 Waiver. The failure of DAS-PS to enforce any provision of this Price Agreement or the waiver of any violation or nonperformance of this Price Agreement in one instance does not constitute a waiver by DAS-PS of that or any other provision nor is it a waiver of any subsequent violation or nonperformance. Such failure to enforce waiver, if made, is effective only in the specific instance and for the specific purpose given.

1.7.11 Certification of Compliance with Tax Laws. Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state. Contractor shall, for the Term of this Price Agreement, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this section, "tax laws" includes: (i) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (ii) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (iii) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to Goods, services, or property, whether tangible or intangible, provided by Contractor; and (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions. Any failure to comply with the provisions of this subsection 1.7.11 constitutes a material default of this Price Agreement. Such default entitles DAS-PS to terminate this Price Agreement and pursue and recover any and all damages arising from the default or termination of the Price Agreement, and to pursue any or all remedies available under this Price Agreement, at law, or in equity, including but not limited to:

1. Termination of this Price Agreement, in whole or in part; Exercise of the right of setoff, and

withholding of amounts otherwise due and owing to Contractor, in an amount equal to State's or Authorized Purchaser's setoffright, without penalty; and

2. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. DAS-PS may recover any and all damages suffered as the result of Contractor's default under this Price Agreement, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Goods.

1.7.12 Recycled Products: Contractor shall, to the maximum extent economically feasible in the performance of this Agreement, use recycled products where possible. This includes paper, "PETE" and other materials as defined in ORS 279A.010[1][gg], [hh] and [ii].

1.7.13 Records Archiving: Contractor shall retain, maintain, and keep accessible all records relevant to the this Price Agreement (the "Records") for a minimum of six (6) years, or such longer period as may be required by applicable law following termination of the Price Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to the Price Agreement and any Contract, whichever date is later. Financial Records must be kept in accordance with Generally Accepted Accounting Principles (GAAP). During the record-retention period established in this section, Contractor shall permit DAS-PS and the State of Oregon and their duly authorized representatives, EASiBuy LLC, and the federal government access to the Records at a reasonable time and place for purposes of examination and copying.

1.7.14 Performance Evaluations: DAS-PS may conduct evaluations of Contractor's performance during the Term of this Price Agreement. DAS-PS will compile and maintain completed evaluations, which will become a written record of Contractor's performance. DAS-PS may also maintain as part of that written record information obtained from Contractor during an exit interview following Price Agreement termination. DAS-PS may provide copies of any documents in the written record to Contractor and third parties upon request. DAS-PS may use performance evaluations in any way it deems necessary, in its sole discretion, including but not limited to making responsibility determinations and decisions to award contracts.

1.7.15 Reporting. This Price Agreement and Contract(s) with AUTHORIZED PURCHASERS who are state agencies will be reported to the Oregon Department of Revenue. The Department of Revenue may take any and all actions permitted by law relative to the collection of taxes due to the State of Oregon or a political subdivision, including (i) garnishing Contractor's compensation under this Price Agreement or a Contract or (ii) exercising a right of setoff against Contractor's compensation under a Contract for any amounts that may be due and unpaid to the State of Oregon or its political subdivisions for which the Department of Revenue collects debts.

1.7.16 Pay Equity Compliance: As required by ORS 279B.235, Contractor shall comply with ORS 652.220 and shall not discriminate against any of Contractor's employees in the payment of wages or other compensation for work of comparable character, the performance of which requires comparable skills, or pay any employee at a rate less than another for comparable work, based on an employee's membership in a protected class.

1. Contractor must comply with ORS 652.220 as amended and shall not unlawfully discriminate against any of Contractor's employees in the payment of wages or other compensation for work of comparable character on the basis of an employee's membership in a protected class. "Protected class" means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability or age. Contractor's compliance with this section constitutes a material element of this Price Agreement and a failure to comply constitutes a breach that entitles DAS-PS to terminate this Price Agreement for cause.
2. Contractor may not prohibit any of Contractor's employees from discussing theemployee's

rate of wage, salary, benefits, or other compensation with another employee or another person. Contractor may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits, or other compensation with another employee or another person

1.7.17 Survival: All rights and obligations cease upon termination or expiration of this Price Agreement, except for the rights and obligations and declarations which expressly or by their nature survive termination, including without limitation this Section 1.7.17, and provisions regarding warranties and liabilities, independent Contractor status and taxes and withholding, compensation, Contractor's representations and warranties, control of defense and settlement, remedies, dispute resolution, order of precedence, maintenance and access to records, notices, severability, successors and assigns, third party beneficiaries, waiver, headings, and integration.

Section 2 – Standard Terms for Contracts under this Price Agreement

2.1 Contract Documents; Order of Precedence: The Contract consists of the ordering instrument and the provisions in Sections 2 and 3 of the Price Agreement. In the event of a conflict between the ordering instrument and provisions in Sections 2 and 3, the provisions in Sections 2 and 3 take precedence.

2.2 Payment: Authorized Purchaser is solely responsible for payment under this Contract. Contractor shall look solely to Authorized Purchaser for payment of all amounts due under this Contract. Subject to Authorized Purchaser's acceptance of Goods, payment is due from Authorized Purchaser within 45 calendar days after the date of the invoice.

2.3 Overdue Charges: At Contractor's option, it may assess overdue account charges to Authorized Purchaser up to a maximum rate of two-thirds of one percent per month (8% per annum).

2.4 Payment Address: Payments will be sent to the address specified in Contractor's invoice.

2.5 Invoices: Contractor shall invoice Authorized Purchaser only after valid acceptance of Goods has been confirmed. Invoices must be sent to the address provided by Authorized Purchaser and include, at a minimum, the following:

1. Price Agreement No.
2. Purchase Order No.
3. Quantity of Goods
4. Unit Price of Goods
5. Total Invoice Value

2.6 Prices: Contractor represents all prices for Goods under this Contract are equal to or better than the prices listed in the Price Agreement.

2.7 Cancellation, Inspections **and Acceptance:** Authorized Purchaser may cancel an order in whole or in part before Goods described in the cancelled whole or part are delivered. Authorized Purchaser has ten (10) calendar days from date of delivery of the entire order within which to inspect and accept or reject the Goods. If the Goods are rejected, Authorized Purchaser will provide Contractor with written notice of rejection. Notice of rejection must include itemization of apparent defects, including but not limited to:

(i) discrepancies between the Goods and the applicable specifications or warranties (including variance from demonstrations or sample characteristics where demonstrations or samples have been provided), or (ii) otherwise nonconforming Goods (including late delivery).
(iii) If cure is allowed, notice of rejection must also specify when cure will be allowed.

2.7.1 Authorized Purchaser may elect to have Contractor deliver substitute conforming Goods at no additional cost within 14 calendar days of Contractor's receipt of notice of rejection or other acceptable timeline if warranted and agreed by both parties.

2.7.2 If Goods are rejected or acceptance is revoked, Contractor shall refund any payments made with regard to the rejected Goods and shall, at Contractor's sole cost and expense, remove the Goods within seven (7) calendar days of Authorized Purchaser's notice of rejection or revocation of acceptance.

2.7.3 Nothing contained in Section 2.7 precludes Authorized Purchaser from other remedies to which it may be entitled upon rejection or revocation of acceptance.

2.8 Contractor's Representations and Warranties:

2.8.1 **Employee Status:** Contractor warrants it and its personnel are not "officers," "employees," or "agents" of Authorized Purchaser, as those terms are used in ORS 30.265.

2.8.2 **Authority; Binding Obligation**: Contractor represents and warrants Contractor has the power and authority to enter into and provide the Goods set forth in the Price Agreement, and that any Purchase Order issued under the Price Agreement, when executed and delivered, will be a valid and binding obligation of Contractor enforceable in accordance with its terms.

2.8.3 **Warranty on Service Standards:** Contractor warrants all services, if required, be performed in a good, workmanlike manner in accordance with standards prevalent in the industry.

2.8.4 **Warranty of Title:** Contractor represents and warrants all Goods are free and clear of any liens or encumbrances and that Contractor has full legal title to the Goods. Contractor further warrants no other person or entity has any right, title or interest in the Goods which is superior to, or infringes upon, the rights granted to the Authorized Purchaser after acceptance of Goods.

2.8.5 **Warranty on Safety and Health Requirements:** Contractor represents and warrants Goods provided under this Contract comply with all applicable federal health and safety standards including, but not limited to, Occupational Safety and Health Administration (OSHA) and all Oregon safety and health requirements, including but not limited to those of the Oregon Consumer and Business Services Department.

2.8.6 **Manufacturer Warranty:** Contractor shall have all manufacturer warranties covering the Goods and component parts, if any, transferred to the Authorized Purchaser and provide warranty documents to Authorized Purchaser at time of delivery at no charge.

2.8.7 **Warranties Cumulative:** The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided under the Price Agreement or Authorized Purchaser's Contract. All warranties provided are cumulative and intended to afford Authorized Purchaser the broadest warranty protection available.

2.8.8 **Warranty on Materials, Design, and Manufacture.**

a) Contractor represents and warrants all Goods will be new, unused, current production models (for optional equipment), where applicable, and will be free from defects in materials, design and manufacture for at least the duration of the manufacturer's standard warranty period, as required below. Where specifications have been made a part of the ITB, Contractor further represents and warrants all Goods will be in compliance with and meet or exceed all specifications.
b) Contractor shall provide detailed instructions for proper application of all Goods supplied to Authorized Purchaser, and assure complete compliance with, and enforceability of, the manufacturer's warranty on the Goods. All Goods supplied by Contractor under this Price Agreement to Authorized Purchaser must carry a manufacturer's warranty.

1. The warranty must provide that the manufacturer is required to repair or replace, at the discretion of the Authorized Purchaser and at no additional cost to the Authorized Purchaser, all markings that fail top bond or drop below the required minimum retro reflectivity during the Surface-Mounted Warranty Period and In-Laid Warranty Period, as applicable.
2. When Authorized Purchaser makes written request to the manufacturer for repair or replacement, the Warranty Period will be tolled until the requested repair(s) or replacement(s) are made and accepted.

2.9 COMPLIANCE WITH APPLICABLE LAWS AND STANDARDS:

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

2.9.2 **STATUTORY TERMS:** Authorized Purchaser's performance under this Contract is conditioned upon Contractor's compliance with the obligations intended for contractors under ORS 279B.220, 279B.225 (if applicable to this Contract), 279B.230 and 279B.235 (if applicable to this Contract), which are incorporated into this Contract by reference. Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled products where possible. This includes paper, "PETE" and other materials as defined in ORS 279A.010[1][gg], [hh] and [ii].

2.9.3 **NONCOMPLIANT GOODS:** In the event of a conflict between the specifications in this Contract and applicable federal or state law, the law prevails. Contractor shall make any modifications required to achieve compliance with law. When Contractor is notified or becomes aware of any required modifications, Contractor shall immediately notify DAS-PS and Authorized Purchaser.

2.9.4 **RECALLED GOODS OR COMPONENTS:** In the event any Goods or component parts are recalled by a regulatory body or the manufacturer, or discovered by Contractor not to be in compliance with the applicable specifications, Contractor shall immediately notify DAS-PS and Authorized Purchaser of the recall or non-compliance, and shall provide copies of the notice or other documentation. Upon notification, Authorized Purchaser may elect to do any of the following:

a) Cancel any portion of the ordering instrument.
b) Reject the Goods.
c) Revoke its acceptance of the Goods.
d) Require Contractor to complete necessary modifications, where applicable, in a timely manner, at no charge to Authorized Purchaser.
e) Terminate the Contract.

In the event of rejection or revocation of acceptance under this subsection, Contractor shall promptly remove the Goods at its sole cost and expense, and reimburse Authorized Purchaser for

any payments made.

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

2.11 **SAFETY DATA SHEET:** Contractor shall provide Authorized Purchaser at time of delivery with a Safety Data Sheet (SDS) as defined by the Occupational Safety and Health Administration (OSHA) for any Goods provided under the Price Agreement which may release or otherwise result in exposure to a hazardous chemical under normal conditions of use. In addition, Contractor must properly label, tag or mark such Goods. Additionally, Contractor shall deliver EPA labels and SDS information if available and as requested by AUTHORIZED PURCHASER.

2.12 **TIME IS OF THE ESSENCE:** Time is of the essence for performance of Contractor's obligations under this Contract.

2.13 **FORCE MAJEURE:** Neither Authorized Purchaser nor Contractor will be held responsible for delay or default caused by fire, riot, acts of God, war, or any other cause which is beyond the party's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract. Authorized Purchaser may terminate this Contract upon written notice to Contractor after reasonably determining that such delay or default will likely prevent successful performance of the Contract.

2.14 **FUNDS AVAILABLE AND AUTHORIZED; PAYMENTS:** If Authorized Purchaser is an agency of the State of Oregon or another governmental body, payment obligations under this Contract are conditioned upon Authorized Purchaser's receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Authorized Purchaser, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Contract. At the time the ordering instrument was issued, Authorized Purchaser had sufficient funds available and authorized to make payments under this Contract.

2.15 INDEPENDENT CONTRACTOR STATUS; RESPONSIBILITY FOR TAXES AND WITHHOLDING:

2.15.1 Contractor is an independent contractor. Although the Authorized Purchaser reserves the right (i) to determine (and modify) the delivery schedule for the Goods and (ii) to evaluate the quality of completed performance, Authorized Purchaser cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing any obligations required by this Contract.

2.15.2 Contractor is responsible for all federal and state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, Authorized Purchaser will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.

2.16 INDEMNIFICATION:

2.16.1 Contractor shall defend, save, hold harmless, and indemnify Authorized Purchaser, the State of Oregon and its officers, employees and agents from and against all claims, suits, actions, proceedings, losses, damages, liabilities, awards and costs of every kind and description (including reasonable attorney's fees and expenses at trial, on appeal and in connection with any petition for review) (collectively, "claim") which may be brought or made against any Authorized Purchaser, the State of Oregon, or their agents, officials, employees and arising out of or related to (i) any personal injury, death or property damage caused by any alleged act, omission, error, fault, mistake or negligence of contractor, its employees, agents, related to this Contract, (ii) any act or omission by contractor that constitutes a material default of this Contract, including without limitation any default of warranty, or (iii) the infringement of any patent, copyright, trade secret or other proprietary right of any third party by delivery or use of the Goods. Authorized Purchaser or the State of Oregon will promptly notify Contractor in writing of any claim of which Authorized Purchaser or the State becomes aware. Contractor's obligations under this section do not extend to any claim primarily caused by (i) the negligent or willful misconduct of Authorized Purchaser, or (ii) Authorized Purchaser's modification of Goods without Contractor's approval and in a manner inconsistent with the purpose and proper usage of such Goods.

2.16.2 However, the Oregon Attorney General must give written authorization to any legal counsel purporting to act in the name of, or represent the interests of, the State of Oregon or its officers, employees or agents prior to such action or representation. Further, the State of Oregon, acting by and through its Department of Justice, may assume its own defense, including that of its officers, employees and agents, at any time when in the state's sole discretion it determines that (i) proposed counsel is prohibited from the particular representation contemplated; (ii) counsel is not adequately defending or able to defend the interests of the State of Oregon, its officers, employees or agents; (iii) important governmental interests are at stake; or (iv) the best interests of the State of Oregon are served thereby. Contractor's obligation to pay for all costs and expenses includes those incurred by the State of Oregon in assuming its own defense and that of its officers, employees, or agents under this section.

2.17 DEFAULT:

2.17.1 **BY CONTRACTOR:** Contractor is in default under this Contract if:

a) Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;
b) Contractor no longer holds a license or certificate that is required for Contractor to perform Contractor's obligations under this Contract; or
c) Contractor commits any default of any covenant, warranty, obligation or certification under this Contract, provided however that Contractor may cure the default within the period specified in Authorized Purchaser's notice of default when Authorized Purchaser determines the default is curable by Contractor.

2.17.2 **BY AUTHORIZED PURCHASER:** Authorized Purchaser is in default of this Contract if:

a) Authorized Purchaser fails to pay Contractor any amount pursuant to the terms of this Contract, and Authorized Purchaser fails to cure such failure within twenty (20) business days after delivery of Contractor's notice or such longer period as Contractor may specify in such notice; or
b) Authorized Purchaser commits any default of any covenant, warranty, or obligation under this Contract and such default is not cured within twenty (20) business days after delivery of Contractor's notice of default or such longer period as Contractor may specify in such notice.

2.18 DEFAULT REMEDIES:

2.18.1 **AUTHORIZED PURCHASER'S REMEDIES:** If Contractor is in default under Section 2.17.1, in addition to the remedies afforded elsewhere in this Contract, Authorized Purchaser may recover any and all damages suffered as the result of Contractor's default, including but not limited to direct, indirect, incidental and consequential damages, as provided in ORS 72.7110 to 72.7170. Authorized Purchaser may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, including, but not limited to:

a) Termination of the Contract as provided in Section 2.19;

b) Withholding all monies due for invoiced Goods that Contractor is obligated but has failed to deliver or perform within any scheduled completion dates or has performed inadequately or defectively;
c) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief; and
d) Exercise of its right of setoff, and withholding of monies otherwise due and owing in an amount equal to Authorized Purchaser's setoff without penalty to Authorized Purchaser.
e) These remedies are cumulative to the extent the remedies are not inconsistent and Authorized Purchaser may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

2.18.2 **CONTRACTOR'S REMEDIES:** If Authorized Purchaser terminates this Contract, or if Authorized Purchaser is in default under Section 2.17.2 and whether or not Contractor elects to exercise its right to terminate this Contract under Section 2.19, Contractor's sole remedy is: (a) A claim against Authorized Purchaser for the unpaid purchase price for Goods delivered and accepted by Authorized Purchaser, less previous amounts paid and any claim(s) which Authorized Purchaser has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this section, Contractor shall pay any excess to Authorized Purchaser upon written demand.

2.19 TERMINATION:

2.19.1 **BY MUTUAL CONSENT:** This Contract may be terminated at any time by mutual written consent of DAS-PS and Contractor.

2.19.2 **RIGHTS OF AUTHORIZED PURCHASER.** Authorized Purchaser may, at its sole discretion, terminate a Contract or other ordering instrument for convenience with thirty (30) calendar-days' written notice. Authorized Purchaser may terminate a Contract or other ordering instrument immediately upon notice to Contractor, or at such later date as Authorized Purchaser may establish in such notice, upon the occurrence of any of the following events: (a) Authorized Purchaser fails to receive funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Authorized Purchaser, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Contract; (b) federal or state laws, regulations, or guidelines are modified or interpreted in such a way resulting in either the purchase of the Goods by AUTHORIZED PURCHASER under the Price Agreement is prohibited, or AUTHORIZED PURCHASER is prohibited from paying for such Goods from the planned funding sources; or (c) Contractor is in default under this Contract under Section 2.17.1. Upon receipt of written notice of termination, Contractor shall stop performance under this Contract if and as directed by Authorized Purchaser.

2.19.3 **RIGHTS OF CONTRACTOR:** Contractor may terminate a Contract with a minimum twenty (20) calendar-days written notice to Authorized Purchaser, if Authorized Purchaser is in default of the subject Contract as described in Section 2.17.2.

2.20 **ACCESS TO RECORDS:** Contractor shall retain, maintain, and keep accessible all records relevant to the this Contract (the "Records") for a minimum of six (6) years, or such longer period as may be required by applicable law following expiration or termination of the Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to the Contract, whichever date is later. Financial Records must be kept in accordance with Generally Accepted Accounting Principles (GAAP). During the record-retention period established in this section, Contractor shall permit DAS-PS, Authorized Purchaser, their duly authorized representatives, and the federal government access to the Records at a reasonable time and place for purposes of examination and copying.

2.21 **NOTICES:** Except as otherwise expressly provided in this Contract, any communications between the parties, or notices to be given under this Contract, are effective only if given in writing by personal delivery, facsimile, email or United States Postal Service, postage prepaid, to the party's authorized representative. For Authorized Purchaser, the authorized representative and the address or number for notices or communications to be given to that authorized representative are as identified in the ordering instrument or as later indicated by Authorized Purchaser pursuant to this section. For Contractor, the authorized representative and the address or number for notices or communications to be given to that authorized representative are as identified in the Price Agreement or as later indicated by Contractor pursuant to this section. Any communication or notice via the United States Postal Service is deemed given five (5) days after mailing. Any communication or notice by personal delivery is deemed given immediately upon such delivery. Any communication or notice by facsimile is deemed given on the day the transmitting machine generates a receipt of a successful transmission of the notice, if transmission was during normal business hours, or on the next business day, if transmission was outside normal business hours. Any communication or notice by email is deemed given when the recipient, by an email sent to the email address for the sender or by a notice given by another method in accordance with this section, acknowledges having received that email, with an automatic "read receipt" not constituting acknowledgment of an email for purposes of this section.

2.22 **ORDERING INSTRUMENTS; ACKNOWLEDGEMENTS:** The parties acknowledge and agree that other than designation of order quantities, types of Goods, delivery destination, dates of order, and scheduled delivery of other performance, any purchase orders or acknowledgement documents are simply for the convenience of the parties to initiate or confirm an order of Goods under this Contract and that no other terms or conditions contained in those documents are of any force or effect or are binding upon the parties.

2.23 **GOVERNING LAW:** This Contract is governed by and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of laws.

2.24 VENUE; CONSENT TO JURISDICTION:

2.24.1 **STATE CONTRACT VENUE; CONSENT TO JURISDICTION:** Any claim, action, suit or proceeding (collectively, "Claim") between an Authorized Purchaser that is an DAS-PS 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 unless otherwise prohibited by law it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. Contractor hereby consents to the in personam jurisdiction of said courts and waives any objection to venue in such courts, and waives any claim that such forums are inconvenient. Nothing herein may be construed as a waiver of the State of Oregon's sovereign or governmental immunity, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or of any defenses to Claims or jurisdiction based thereon.

2.24.2 **ORCPP CONTRACT VENUE; CONSENT TO JURISDICTION:** Any Claims between Contractor and an ORCPP Authorized Purchaser other than an agency of the State of Oregon that arise from or relate to this Contract order must be brought and conducted solely and exclusively within the Circuit Court of the county in which such ORCPP Authorized Purchaser resides, or at the ORCPP Authorized Purchaser's option, within such other county as the ORCPP Authorized Purchaser is entitled under the laws of the relevant jurisdiction to bring or defend Claims. If any such Claim must be brought in a federal forum, then unless otherwise prohibited by law it must be brought and conducted solely and exclusively within the United States District Court for the District in which such ORCPP Authorized Purchaser resides. Contractor hereby consents to the in personam jurisdiction of said courts and waives any objection to venue in such courts, and waives any claim that such forums are inconvenient. Nothing herein may be construed as a waiver of ORCPP Authorized Purchaser's sovereign or governmental immunity, if any, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or of any defenses to Claims or jurisdiction based thereon.

2.25 **SURVIVAL:** All rights and obligations cease upon termination or expiration of this Contract, except for the rights and obligations and declarations which expressly or by their nature survive termination of this Contract, including without limitation this Section 2.25, and provisions regarding warranties and liabilities, independent Contractor status and taxes and withholding, compensation, Contractor's representations and warranties, control of defense and settlement, remedies, dispute resolution, order of precedence, maintenance and access to records, notices, severability, successors and assigns, third party beneficiaries, waiver, headings, and integration.

2.26 **SEVERABILITY:** If any provision of this Contract is declared by a court of competent jurisdiction to be illegal or otherwise invalid, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties will be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

2.27 **ASSIGNMENTS, SUBCONTRACTS AND SUCCESSORS:** Contractor shall not assign, sell, transfer, or subcontract rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written consent of Authorized Purchaser. Further, no such written consent relieves Contractor of any obligations under the Contract, and any assignee, transferee, or delegate will be considered the agent of Contractor. The provisions of this Contract are binding upon, and inure to the benefit of the parties and their respective successors and permitted assigns.

2.28 **MERGER CLAUSE, AMENDMENT and WAIVER:** This Contract constitutes the entire

agreement between Contractor and Authorized Purchaser on the subject matter of this Contract. There are no understandings, agreements, or representations, oral or written, not specified in this Contract on the subject matter. No amendment of this Contract is valid unless it is in writing and signed by the parties. No waiver or consent is effective unless in writing and signed by the party against whom it is asserted. Waivers and consents are effective only in the specific instance and for the specific purpose given. The failure of Authorized Purchaser to enforce any provision of this Contract is not a waiver by Authorized Purchaser of that or any other provision.

2.29 **Certification of Compliance with Tax Laws.** Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state. Contractor shall, for the term of this Contract, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this section, "tax laws" includes: (i) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (ii) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (iii) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to Goods, services, or property, whether tangible or intangible, provided by Contractor; and (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions. Any failure to comply with the provisions of this subsection 2.29 constitutes a material default under this Contract. Such default entitles Authorized Purchaser to terminate this Contract and pursue and recover any and all damages arising from the default or termination of the Contract, and to pursue any or all remedies available under this Contract, at law, or in equity, including but not limited to:

1. Termination of this Contract, in whole or in part;
2. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to Authorized Purchaser's setoff right, without penalty; and
3. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. Authorized Purchaser may recover any and all damages suffered as the result of Contractor's default under this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Goods.

2.30 **INTENDED BENEFICIARY.** DAS-PS is an intended beneficiary of this Price Agreement. The parties to this Contract may modify the ordering instrument or terminate this Contract without the consent of DAS PS.

2.31 **ASSIGNMENT OF ANTITRUST RIGHTS.** Contractor irrevocably assigns to the State of Oregon any claim for relief or cause of action which Contractor now has or which may accrue to Contractor in the future by reason of any violation of 15 U.S.C. § 1-15 or ORS 646.725 or ORS 646.730, in connection with any Goods or services provided to Contractor for the purpose of carrying out Contractor's obligations under this Contract, including, at the State's option, the right to control any such litigation on such claim or relief or cause of action. Contractor shall require any subcontractors hired to perform any of Contractor's duties under this Contract to irrevocably assign to the State of Oregon, as third party beneficiary, any right, title or interest that has accrued or which may accrue in the future

by reason of any violation of 15 U.S.C. § 1-15 or ORS 646.725 or ORS 646.730, in connection with any Goods or services provided to the subcontractor for the purpose of carrying out the subcontractor's obligations to Contractor in pursuance of this Contract, including, at the State's option, the right to control any such litigation on such claim or relief or cause of action.

Section 3 – Special Terms for Contracts under this Price Agreement – Reserved

Section 4 – Contact details and signatures of each party's duly-authorized representative(s)

4.1 Contractor:

(a) He/she is a duly authorized representative of Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Price Agreement and to execute this Price Agreement on behalf of Contractor;
(b) Contractor is bound by and will comply with all requirements, specifications, and terms contained in this Price Agreement;
(c) Contractor will furnish the Goods in accordance with Contracts under this Price Agreement; and
(d) Contractor shall furnish federal identification number or social security number under a separate document.
(e) All Contractor affirmations contained in its Bid related to this Price Agreement are true and correct.
(f) Contractor has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 or against a business enterprise that is owned or controlled by or that employs a disabled veteran as defined in ORS 408.225 in obtaining any required subcontracts, and that Contractor is not in violation of any nondiscrimination laws.

Contractor's Name: Potters Industries, LLC
Authorized Signature: _____
Name and Title: Yvonne D. Harris Contract Administrator
Date: July 11, 2019
Contract Administrator, if different from above: _____

4.2 DAS-PS:

Contract Administrator: John Starrs / Direct: 503-378-4643 / Email: John.Starrs@Oregon.Gov

Authorized Name and Signature: Darwin Kumpula / _____
11 July 2019

Approved by counsel via email from Ellen D. Flint / Senior Assistant Attorney General / Business Transactions Section / Oregon Department of Justice on July 10, 2019.

Exhibit A

	DAS-PS Approved Purchase Order STATE OF OREGON	PURCHASE ORDER (PO) NO.	PAGE #

Authorized Purchaser's Authorized Representative	Purchase Order Date	Requisition No.

Contractor Name and Address		Authorized Purchaser's Invoicing Address
Contractor FEIN	Price Agreement number	Authorized Purchaser's Authorized Representative Email Address
Deliver to Address		Authorized Purchaser's Authorized Representative Phone and Fax Number
		Delivery Schedule or Delivery Date

Item	Description	Quantity	U/M	Unit Price	Net Price
				Sub Total	
				Freight	
				Total	

This Purchase Order, in addition to any exhibits or addenda attached, is placed against State of Oregon Solicitation #_____and Price Agreement_____. The terms and conditions contained in the Price Agreement apply to this purchase and take precedence over all other conflicting terms and conditions, express or implied. There are no understandings, agreements or representations, oral or written, not specified herein.

Agency's Authorized Representative to Make Purchase	Date

Exhibit B
INSURANCE REQUIREMENTS

Contractor shall obtain, at Contractor's expense, all insurance specified below before accepting any ordering instruments or performing any requested services under this Price Agreement or Authorized Purchaser's Contract. All insurance shall be maintained in full force and at its own expense throughout the Term of the Price Agreement and all Contracts, including any extended reporting period, tail coverage requirements and all warranty periods, if applicable. Contractor shall obtain the following insurance from insurance companies or entities authorized to transact the business of insurance and issue coverage in State and acceptable to DAS-PS. Coverage shall be primary and non-contributory with any other insurance and self-insurance, with the exception of Professional Liability and Workers' Compensation. Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

WORKERS' COMPENSATION & EMPLOYERS' LIABILITY
All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements. If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall also obtain employers' liability insurance coverage with limits not less than $500,000 each accident. If Contractor is an employer subject to any other state's workers' compensation law, Contactor shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than
$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

COMMERCIAL GENERAL LIABILITY:
☒ **Required** ☐ **Not required**

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal and advertising injury liability, products and completed operations, Contractual liability coverage for the indemnity provided under this Price Agreement and all Contracts, and have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than $ 1,000,000.00 per occurrence. Annual aggregate limit shall not be less than $ 2,000,000.00.

AUTOMOBILE LIABILITY INSURANCE:
☒ **Required** ☐ **Not required**

Automobile Liability Insurance covering Contractor's business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than $ 1,000,000.00 for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Use of personal automobile liability insurance coverage may be acceptable if evidence the policy includes a business use endorsement is provided.

EXCESS/UMBRELLA INSURANCE:

A combination of primary and excess/umbrella insurance may be used to meet the required limits of insurance.

ADDITIONAL INSURED:

All liability insurance, except for Workers' Compensation, Professional Liability, and Network Security and Privacy Liability (if applicable), required under this Contract must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of your ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 04 13 or equivalent.

WAIVER OF SUBROGATION:

Contractor shall waive rights of subrogation which Contractor or any insurer of Contractor may acquire against the DAS-PS or State of Oregon by virtue of the payment of any loss. Contractor will obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the DAS-PS has received a waiver of subrogation endorsement from Contractor or Contractor's insurer(s).

TAIL COVERAGE:

If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, Contractor shall maintain either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of this Contract, for a minimum of 24 months following the later of (i) Contractor's completion and DAS-PS's acceptance of all Services required under this Contract, or, (ii) DAS-PS or Contractor termination of Contract, or, iii) The expiration of all warranty periods provided under this Contract.

CERTIFICATE(S) AND PROOF OF INSURANCE:

Contractor shall provide to DAS-PS Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. The Certificate(s) shall also include all required endorsements or copies of the applicable policy language effecting coverage required by this Contract. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance DAS-PS has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Contract.

NOTICE OF CHANGE OR CANCELLATION:

The Contractor or its insurer must provide at least 30 days' written notice to DAS-PS before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

INSURANCE REQUIREMENT REVIEW:

Contractor agrees to periodic review of insurance requirements by DAS-PS under this Price Agreement and to provide updated requirements as agreed upon by Contractor and DAS-PS.

STATE ACCEPTANCE:

All insurance providers are subject to DAS-PS acceptance. If requested by DAS-PS, Contractor shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to DAS-PS's representatives responsible for verification of the insurance coverages required under this section.

EXHIBIT C
Volume Sales Report (VSR) and Vendor Collected Administrative Fee (VCAF)

Volume Sales Report (VSR)

a) Contractor shall submit a Volume Sales Report (VSR) to Department of Administrative Services, Procurement Services (DASPS) no later than thirty (30) calendar days after the end of each calendar quarter. For the purposes of this Price Agreement, calendar quarters end March 31, June 30, September 30, and December 31.

b) Contractor shall not reflect the Vendor Collected Administrative Fees (VCAF) as a separate line item charge to Authorized Purchasers.

c) The VSR must contain:

i) Complete and accurate details of all receipts (for both sales and refunds) for the reported period;

ii) The information identified in DASPS document titled Volume Sales Report Template. This document should be supplied by the DAS-PS Contract Administrator at time of execution. Minimum information that must be included in the VSR:

a. Authorized Purchaser(s)

b. Goods description

c. Price Agreement price(s)

d. Quantity

e. Total Price

f. Such other information as DAS-PS may reasonably request.

iii) Contractor shall send a VSR to DASPS each quarter, whether or not there are sales. When no sales have been recorded for the quarter a report must be submitted stating "No Sales for the Quarter." This report may be sent by e-mail without any attachment provided the subject title clearly identifies Contractor's company name, the relevant Price Agreement number, and the reporting period for the VSR.

d) Contractor shall provide the VSR in MS Excel (.xls, .xlsx) format and in spreadsheet form. The VSR must be submitted by e-mail unless the size of the file precludes transmission by email. The VSR may be submitted by CD if the file precludes transmission by email. Delivered print outs of VSRs or faxed VSRs are not acceptable. Approval from the DAS-PS Contract Administrator must be obtained for deviations from these requirements.

e) Contractor shall submit the first VSR to the DAS-PS Contract Administrator for review and approval. The approved first VSR and subsequent VSRs must be submitted to VCAF.REPORTING@OREGON.GOV. The DAS-PS Contract Administrator's receipt or acceptance of any of the VSRs furnished pursuant to this Price Agreement does not preclude

DASPS from challenging the validity thereof at anytime.

f) DAS-PS reserves the right to terminate this Price Agreement if VSRs are not received as scheduled or in the prescribed format.

Vendor Collected Administrative Fee (VCAF)

a) The Department of Administrative Services (DAS) will invoice Contractor based on the accepted VSR. Within 30 days from the date of invoice receipt, Contractor shall remit payment to DAS to the "remit to" address listed on the invoice.

b) Contractor shall not reflect the VCAF as a separate Quote, PO or Invoice line item charge to Authorized Purchasers.

c) Contractor shall keep records showing the sales of Goods pursuant to this Price Agreement in sufficient detail to enable DAS-PS to determine the VCAF payable by Contractor and further agrees to permit its books and records to be examined from time to time to the extent necessary to verify the Volume Sales Reports. Such examination is to be made at the expense of DASPS by any auditor appointed by DASPS who is reasonably acceptable to Contractor, or, at the option and expense of Contractor, by a certified public accountant appointed by Contractor.

d) In the event that such examination reveals underpayment of the VCAF, Contractor shall immediately pay to DASPS the amount of deficiency, together with any interest owed. If the examination reveals an underpayment of 5% or more, Contractor shall reimburse DASPS for the cost of the audit.

e) Effective July 1, 2019, the VCAF is two percent [2%] of Contractor's gross total sales, less any credits, made to Authorized Purchasers during the calendar quarter. For purposes of this Price Agreement, "credits" includes refunds. In some instances, due to market conditions, the VCAF may vary from the 2% standard. In such instances, the contract will clearly state the rates of such variances.

f) If VCAF is not paid by the invoice due date, the past due balance may accrue interest at a rate of 18% per annum until such past due amount has been paid in full. In addition, the account balance will be assigned to the Oregon Department of Revenue, and subsequently a private collection firm, for collection as required by Oregon Revised Statute 293.231. At that time, you will also become responsible for the payment of an additional collection fee of up to 35.14% percent of the amount you owe. This additional percentage will apply to any increase in the amount you owe due to the accrual of interest on the unpaid principal amount. DASPS' right to interest on late payments does not preclude DASPS from exercising any of its other rights or remedies pursuant to this Price Agreement or otherwise with regards to Contractor's failure to make timely remittances.

g) Contractor should make VCAF payments by Automated Clearing House (ACH) transactions. ACH Credit transactions will be initiated by Contractor to initiate transfer of funds from a bank account of Contractor's choosing to the bank for DASPS after Contractor receives from DAS SFS a completed authorization agreement for ACH Credits. These payment transactions will be processed upon receipt of invoice from DAS SFS. Contractor shall comply with DAS SFS's reasonable instructions to facilitate this method of payment as noted with the receipt of the first invoice email.

EXHIBIT D

Glass Beads (Spheres)
Potters Industries Unit Price based on Will-Call (No Delivery)
Pricing Valid through December 31, 2019

Line #	Description	UOM	Packaging	Will-Call Price
1	Glass Beads (Spheres)	LB	50 lb. Bag	**$0.479**
2			2000 - 2400 lb. Bag	**$0.479**
Contractor shall be responsible for loading pallets on to Authorized Purchaser's truck or trailer.				

Glass Beads (Spheres)
Potters Industries Unit Price based on DELIVERED to Destination
Pricing Valid through December 31, 2019

Line #	Description	UOM	Packaging	Delivered Price
REGION 1				
1	Glass Beads (Spheres)	LB	50 lb. Bag	**$0.489**
2			2000 - 2400 lb. Bag	**$0.489**
REGION 2				
3	Glass Beads (Spheres)	LB	50 lb. Bag	**$0.489**
4			2000 - 2400 lb. Bag	**$0.489**
REGION 3				

5	Glass Beads (Spheres)	LB	50 lb. Bag	**$0.489**
6			2000 - 2400 lb. Bag	**$0.489**
REGION 4				
7	Glass Beads (Spheres)	LB	50 lb. Bag	**$0.489**
8			2000 - 2400 lb. Bag	**$0.489**
REGION 5				
9	Glass Beads (Spheres)	LB	50 lb. Bag	**$0.489**
10			2000 - 2400 lb. Bag	**$0.489**
Contractor shall be responsible for delivering pallets to ODOT locations in Truckload quantities. A truckload may contain different packaging sizes and multiple destinations provided they are within the same Region.				
Returns of product by Authorized Purchaser agrees to provide in undamaged container at delivery point. Credit issued by Contractor must include materials and pickup costs.				

ODOT Delivery Locations By REGION *(Updated Nov. 2018)*	
Site Reference	**Site Address**
REGION 1	
1	620 West Historic Columbia River Hwy
	Troutdale, OR 97060
2	2440 SE Stubb Street
	Milwaukie, OR 97222
3	West US 26, M.P. 46.78
	Manning, OR 97125
4	East US 26, M.P. 25
	Sandy, OR 97055
5	East Hwy. 26, M.P. 54.23
	Government Camp, OR 97028

6	Mt. Hood Loop Hwy.; Hwy. 35, M.P. 83.67
	Parkdale, OR 97041
7	US 30, M.P. 57.3
	Clatskanie, OR 97106
REGION 2	
8	2460 Turner Road
	Salem, OR 97301
9	109 North Rush Lane, P.O. Box 272
	Lincoln City, OR 97367
10	205 Main Street
	Sweet Home, OR 97386
11	3700 SW Philomath Hwy.
	Corvallis, OR 97330
12	1960 SE Dolphin Ave.
	Warrenton, OR 97146
13	1375 Blaine St.
	Woodburn, OR 97071
14	1100 Goldfish Farm Rd.
	Albany, OR 97321
15	Marion County Public Works
	5155 Silverton Rd. NE
	Salem, OR 97305
16	Benton County Public Works
	360 SW Avery Lane
	Corvallis, OR 97330
17	Lane County Public Works
	3040 North Delta Hwy.
	Eugene, OR 97401
18	12735 NW Pacific Coast Hwy.

	Seal Rock, OR 97376
19	308 Evergreen Drive
	Tillamook, OR 97141
REGION 3	
20	3339 Old Highway 99S
	Roseburg, OR 97470-4438
21	290 Hwy. 42
	Coquille, OR 97423-0606
22	345 Agness Avenue
	Grants Pass, OR 97526-3905
23	5443 Eagle Valley Road
	Drain, OR 97435-0296
24	4141 Hamrick Road
	Central Point, OR 97502-2812
REGION 4	
25	63055 North Hwy. 97
	Bend, OR 97701
26	3313 Bret Clodfelter Way
	The Dalles, OR 97058
27	201 NW Cherry Lane
	Madras, OR 97741
28	2557 Altamont Drive
	Klamath Falls, OR 97603
29	Hwy.5, M.P. 1.50, Left
	John Day Highway
	Arlington, OR 97812
30	406 E. Frazier

	Condon, OR 97823
31	220981 Ochoco Hwy
	Prineville, OR 97754
32	Hwy. 7, M.P. 41.71, Right
	43 Miles East of Bend (on Hwy 20)
	Brothers, OR 97712
33	Hwy. 49, M.P. 50.21, Left
	50 Miles S. of Riley; 40 Miles N. of Valley Falls (on Hwy 395)
	Alkali Lake, OR 97758
34	68708 Highway 97
	Moro, OR 97039
35	M.P. 60 Hwy 26 (West of Mitchell)
	Mitchell, OR 97750
36	369 Roberta Avenue
	Lakeview, OR 97630
37	65573 Hwy. 31 (behind the house)
	Silver Lake, OR 97638
38	20958 Hwy 140
	Adel, OR 97620
39	606 Chocktoot
	Chiloquin, OR 97624
40	54773 Hwy 197
	Maupin, OR 97037
41	11031 N Hwy 97
	Chemult, OR 97331
	-
42	51591 N Highway 97
	La Pine OR 97739-1199
REGION 5	

43	3014 Island Avenue
	La Grande, OR 97850
44	19775 Hwy 86
	Baker City, OR 97814
45	252 South Date
	Burns, OR 97720
46	Hwy. 5, M.P. 277.04
	Vale, OR 97918
47	6725 US Hwy. 95. South
	Basque, OR 97910
48	701 Bassett Street
	Jordan Valley, OR 97910
49	273 W. Linden Way
	Heppner, OR 97836
50	1840 S. Hwy. 395
	Hermiston, OR 97838
51	1327 SE 3rd Street
	Pendleton, OR 97801
52	715 Golf Course Road
	Baker City, OR 97814
53	541 Stanton Boulevard
	Ontario, OR 97914
54	315 North Canyon Boulevard
	Canyon City, OR 97820
55	OR 19, MP 93.7
	Spray, OR 97874
56	US Hwy 395
	Long Creek, OR 97856

SPECIFICATIONS FOR Glass Beads for Pavement Markings Retroreflection.
SILENCE OF SPECIFICATIONS: The apparent silence of this Specification and supplemental Specifications as to any detail, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and that only materials and workmanship of first quality are to be used.
Any exception to this Specification is cause for rejection of Goods. Contractor shall immediately replace at no cost to Authorized Purchaser any Goods that Authorized Purchaser determines, in its sole discretion, do not meet the required Specifications.
APPLICABLE SPECIFICATIONS: The following Specifications, test methods, and standards will apply to all Goods covered under this ITB, as well as any required samples. All Specifications referenced shall be of the most current revisions fo below:
American Association of State Highway and Transportation Officials (AASHTO) M247
American Society for Testing and Materials (ASTM) D1155
American Society for Testing and Materials (ASTM) D1214
APPEARANCE: The Glass Beads shall be transparent, clean, colorless glass, smooth and spherically shaped, free from Milkiness, pits, or excessive air bubbles. No more than 20% of the Glass Beads for each order shall have dark specs of a diameter greater than one ¼ of the Glass Bead, air inclusion of a diameter greater than ½ of the Glass Bead, surface scoring, scratching, or incipient fractures. Authorized Purchaser shall visually inspect orders delivered for compliance.
GRADATION: The Glass Beads shall meet the gradation requirements for AASHTO M247 Type 1. Other gradations slightly different than the standard AASHTO M247 type may be required during the term of the Price Agreement. Unless otherwise requested by Authorized Purchaser in Purchase Order, the gradation requirements shall be for AASHTO M247 Type 1. Glass Beads of gradations other than AASHTO M247 Type 1 will be provided under Purchase Orders without additional charge to Authorized Purchasers.
ROUNDNESS: The Glass Beads shall have a minimum of 80% (by weight) true spheres when tested in accordance with ASTM D1155-53.
REFRACTIVE INDEX: The Glass Beads shall have a minimum refractive index of 1.50 when tested by the liquid immersion method at 25 degrees C, using a Tungsten light source.
MOISTURE RESISTANCE AND FLOW CHARACTERISTICS: The Glass Beads shall not absorb moisture in storage. The Glass Beads shall remain free of clusters and lumps and shall flow freely from dispensing equipment. The Glass Beads shall be delivered dry.
SPECIFIC GRAVITY: The specific gravity of the Glass Beads at 25 degrees C shall be from 2.40 to 2.55.

COUPLING AGENT COATINGS: The Glass Beads shall be coated with a coupling agent that is compatible with the pavement marking material to be used, as requested by Authorized Purchaser. Authorized Purchasers must indicate in each Purchase Order which of the pavement marking materials will be used. The Contractor shall recommend the appropriate coating for proper binding to the pavement marking material. Following is a list of the anticipated coatings that may be necessary during the Price Agreement period:
Amino Functional Silane Acrylic Functional Silane Fluorocarbon-coated AminoNinyl Functional Silane
Dual Coating Di-amino Functional Silane and Silicone Moisture Proof Silicone Moisture-Proof
Other coatings may be required during the Price Agreement period. All coatings needed shall be provided by Contractor without additional charge to Authorized Purchasers.
PRODUCT PERFORMANCE: The Contractor shall ensure that the Goods continue to meet all required Specifications during the term of the Price Agreement and all resulting Contracts. The Contractor shall provide the services of one or more qualified persons responsible for assuring that the Goods provided under the Price Agreement and all resulting Contracts meet the required Specifications. Such person(s) shall consult with representatives of the Authorized Purchaser to resolve any issues pertaining to compliance with Specifications. Potential non-compliant Specification problems include but are not limited to clumping, coating adhesion, embedment in the pavement markings, retro-reflectivity, color, and longevity of Glass Beads in the line. When necessary, this consultation will include on-site visits to Authorized Purchaser's locations. At the discretion of Authorized Purchaser, if Goods become unusable due to non-compliance with Specifications, the Contractor shall, at no additional cost, pick up the Goods and replace them or credit Authorized Purchaser for the entire quantity affected.
Authorized Purchaser reserves the right to pick up Goods at Contractor's distribution center or manufacturing plant, and to transport the Goods whenever the Authorized Purchaser determines it is in the Authorized Purchaser's best interest to do so.
RANDOM CHECKS AND TESTS: Authorized Purchasers reserve the right to conduct random checks and tests of delivered Goods.
PRODUCT SUBSTITUTIONS: Any substitution(s) for the originally bid item(s) must have the approval of SPO or the ODOT Materials Laboratory prior to any substitution. If approved, the substituted item(s) must be offered to Authorized Purchaser at no increase in cost and the quality must not be less than the originally bid item(s). Contractor shall be responsible for securing all approvals and will also be responsible for all charges such as freight, storage, labor, etc., which accrue to any shipments of unauthorized substituted Goods. Authorized Purchaser shall not be responsible to pay for unauthorized Goods.

GLASS BEAD PACKAGING REQUIREMENTS
The Contractor shall supply Glass Beads in 50 or 2400-pound bags as specified in the Purchase Order.

Characteristics for 50-POUND BAG: Each bag must be clean, leak-proof, moisture-proof and of sufficient size and strength to contain the net weight of 50 pounds of Glass Beads. Bag must have a polyethylene inner liner of sufficient strength to provide a moisture proof barrier. The inner liner must be secured to the bag. Loose liners are unacceptable. Each bag must be approximately 14" wide x 25" high. The top and bottom of the bag must be adequately closed or sealed in a manner to prevent leaking of the Glass Beads. Side seams shall be glued. No more than 48 bags (2400 pounds maximum) per pallet.
Characteristics for 2400-POUND BAG: Each bag shall be clean, leak-proof, moisture-proof, and of sufficient size and strength to contain the net weight of the Glass Beads. Each bag shall be "U" style 6 oz. coated polypropylene with a 3 oz. coated polyethylene inner liner sewn in place. The inner liner shall be of sufficient strength to contain the Glass Beads (sift-proof) and provide a moisture barrier. Outer bag shall have four (4), 10-inch long, top lift loops with the top capable of fully opening and a 14" or longer drawstring discharge chute on the bottom. Each bag must be approximately 34" x 34" x 36". No more than 1 bag (2400 pounds maximum) per pallet. Stacking is not be accepted.
Characteristics for PALLET: Standard, wooden, 42" x 42" non-returnable topped with a double-faced, Type B fluted, 42" x 42" x 1/8" thick, 200-pound test cardboard sheet. Serviceable condition with appropriate strength to prevent bags from sagging through the top deck of the pallet. Materials on pallets will have outer shrink-wrap securing both Bags and Pallet in such a manner as to prevent the wrap from dislodging during transit.

h)