

Springfield Utility Board
Terms & Conditions
Contracts for the Purchase of Supplies and/or Services

1. **DEFINITIONS:** "Contract" means the entire written agreement between the parties, including but not limited to the Invitation to Bid or Request for Proposal and its specifications, terms and conditions; solicitation instructions; solicitation addenda and contract amendments, if any, the purchase order or price agreement document.
"Contractor" means a person or organization with which Springfield Utility Board (SUB) has contracted for the purchase of goods the terms "Contractor" and "Seller" as used in the Uniform Commercial Code (ORS Chapter 72) are synonymous; "ORS" means the Oregon Revised Statutes;
"SUB" means the agency making the purchase and is synonymous with "Buyer" as used in ORS Chapter 72. "SUB" also means an Oregon Cooperative Procurement Program (ORCPP) member if the purchase is being made under the State's cooperative purchasing program authorized by ORS 190.240.
2. **WORKERS' COMPENSATION:** The Contractor, its subcontractor, if any, and all employers providing work, labor or materials under this Contract are subject employers under the Oregon Worker's Compensation Law and shall comply with ORS 656.017, which requires them to provide Oregon workers' compensation coverage that satisfies Oregon law for all their subject workers.
3. **STANDARD AND SPECIAL TERMS AND CONDITIONS:** The terms and conditions printed on this page are standard to SUB contracts for the purchase of goods. There may also be special terms and conditions in an Invitation to Bid or Request for Proposal which apply only to this contract.
4. **DELIVERY:** All deliveries shall be FOB destination with all transportation and handling charges paid by Contractor, unless otherwise specified in the solicitation documents. Responsibility and liability for loss or damage shall remain with Contractor until final inspection and acceptance when responsibility shall pass to SUB except as to latent defects, fraud and Contractor's warranty obligations.
5. **INSPECTIONS:** Goods furnished under this contract shall be subject to inspection and test by SUB at times and places determined by SUB. If SUB finds goods furnished to be incomplete or not in compliance with solicitation specifications, SUB may reject the goods and require Contractor to either correct them without charge or deliver them at a reduced price, whichever is equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by SUB, SUB may reject the goods and cancel the contract in whole or in part. Nothing in this paragraph shall in any way affect or limit SUB's rights as buyer, including the right and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.
6. **WARRANTIES:** Unless otherwise stated, all goods shall be new and the current model and shall carry full manufacturer warranties. Contractor warrants all goods delivered to be free from defects in labor, material and manufacturer and to be in compliance with solicitation specifications. All implied and expressed warranty provisions of the Uniform Commercial Code (ORS Chapter 72) are incorporated in this contract. All warranties shall run to the State.
7. **CASH DISCOUNT:** If SUB is entitled to a cash discount, the period of computation shall commence on the date of the entire order is delivered or the date the invoice is received, whichever is later.
8. **TERMINATION:** This contract may be terminated by mutual consent of both parties or by SUB at its discretion. SUB may cancel an order for goods at any time with written notice to Contractor, stating the extent and effective date of termination. Upon receipt of this written notice, Contractor shall stop performance under this contract as directed by SUB. If this contract is so terminated, Contractor shall be paid in accordance with the terms of this contract for goods delivered and accepted if Contractor's damages arising out of return of the goods cannot be mitigated by the resale as provided in the Uniform Commercial Code (ORS 72.7060).
9. **FORCE MAJEURE:** Neither party to this contract shall be held responsible for delay or default caused by fire, riot, acts of God and/or war, which is beyond the party's reasonable control. SUB may terminate this contract upon written notice after determining such delay or default will reasonably prevent successful performance of this contract.
10. **BREACH OF CONTRACT:** Should Contractor breach any of the provisions of this contract, SUB reserves the right to cancel this contract upon written notice to Contractor. Contractor shall be liable for any and all damages suffered by SUB as a result of Contractor's breach of contract including but not limited to incidentals and consequential damages, as provided in ORS 72.7110 to 72.7170 in the event of repeated breach of public and/or private contracts, Contractor shall be subject to disqualification on SUB contracts, as provided in ORS Chapter 279 and OAR Chapter 137.
11. **HOLD HARMLESS:** Contractor shall defend, indemnify and hold harmless SUB and its divisions, officers, employees, agent and members from all claims, suits or actions of any nature arising out of or related to the activities of Contractor, its officers, subcontractors, agents or employees under this contract.
12. **AMENDMENTS:** The terms of this contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of SUB.
13. **SEVERABILITY:** If any provision of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with the law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held invalid.
14. **WAIVER:** Failure of SUB to enforce any provisions of this contract shall not be a waiver or relinquishment by SUB of its right to such performance in the future nor of the right to enforce any other provisions of this contract.
15. **GOVERNING LAW, JURISDICTION, VENUE:** This contract shall be governed and construed in accordance with the laws of the State of Oregon, without resort to any jurisdiction's conflicts of laws, rules or doctrines. Any claim, action, suit, or proceeding (collectively, "the claim") between SUB and the Contractor that arises from or relates to this contract shall be brought and conducted solely and exclusively within the Circuit Court of Lane County for the State of Oregon. Provided, however, if the claim must be brought in federal forum, then 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.
16. **ASSIGNMENT/SUBCONTRACTS/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 approval of SUB. No such written approval shall relieve Contractor of any obligations of this contract, and any transferee or subcontractor shall be considered the agent of Contractor. Contractor shall remain liable to SUB under the contract as if no such assignment, transfer, or subcontract had occurred. The provisions of this contract shall be binding upon and shall inure to the benefit of the parties of the contract and their respective successors and assigns.
17. **COMPLIANCE WITH APPLICABLE LAWS:** Contractor shall comply with all applicable federal, state and local laws, codes, regulations and ordinances, as well as Springfield Utility Board policies.
18. **PAYMENTS REQUIRED BY ORS 279B.220 and 279C505;** For all goods provided under this contract, Contractor shall (i) pay promptly, as due, all persons supplying labor or material; (ii) pay all contributions or amounts due the industrial Accident Fund from the contractor or any subcontractor; (iii) not permit any lien or claim to be filed or prosecuted against SUB thereof; and (v) pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
19. **SUB PAYMENT OF CONTRACTOR CLAIMS:** If Contractor fails, neglects or refuses to pay promptly when due, any claim for labor or services furnished to the Contractor or any subcontractor by any person in connection with the goods provided under this contract, SUB may pay such claims and charge the amount of the payment against funds due to the Contractor under this contract. The payment of a claim by SUB pursuant to this paragraph 21 shall not relieve the Contractor or surety, if any, from obligation with respect to any unpaid claim.
20. **HOURS OF LABOR:** The Contractor shall employ no person for more than ten (10) hours in any one day or forty (40) hours in any one week. An exception shall be in cases of necessity or emergency, or where public policy absolutely requires it. In such cases the laborer shall be paid at least time and a half pay: (a) For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or (b) For all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and (c) For all work performed on Saturday and on any legal holiday specified in ORS 187.010.
21. **NON DISCRIMINATION:** Contractor shall not discriminate against minority, women or emerging small business enterprises in the awarding of subcontracts. Contractor's execution of the Agreement shall also constitute certification that Contractor has not discriminated against minority, women or emerging small business enterprises certified under ORS 200.055 or a business enterprise that is owned or controlled by or that employs disabled veterans as defined in ORS 408.225 in obtaining any required subcontracts. ORS 279A.110.
22. **SAFETY AND HEALTH REQUIREMENTS:** Goods and services provided under this contract shall comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all Oregon safety and health requirements, including those of the State Workers' Compensation Division.
23. **AWARD TO FOREIGN CONTRACTOR:** If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this contract. The State shall withhold final payment under this contract until Contractor has met this requirement.
24. **MATERIAL SAFETY DATA SHEET (MSDS):** In accordance with the OR-OSHA Hazard Communication Rules in OAR Chapter 437, Division 155, Contractor shall provided the State with MSDS for any goods provided under this contract with may release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use (OAR 437-002-0260 and 29 CFR 1910.1020). In addition, Contractor must label, tag or mark such goods.