

STATE OF IDAHO
DEPARTMENT OF LANDS



GRAPHIC DESIGN SERVICES
WEIGHTED REQUEST FOR QUOTE (WRFQ) NO. 24-0130
DUE BEFORE 3:00:00 P.M. M.T. on JUNE 5, 2024

**WEIGHTED REQUEST FOR QUOTE
AND
INSTRUCTIONS**

The Idaho Department of Lands (IDL) is soliciting quotes for Graphic Design Services intended for the production (i.e., design, printing, and electronic version) of IDL's annual reports and for ad-hoc graphic design services.

DELIVERY LOCATION: Idaho Department of Lands
300 N 6th St., STE 103
Boise, ID 83702

INSTRUCTIONS: All price quotes must be entered on the attached Cost Schedule and returned via email along with all required documents outlined in this solicitation. IDL will award the contract to the vendor receiving the highest point total after adding all criteria. In the case of math errors, the **UNIT PRICE** will be correctly extended, and the corrected **TOTAL PRICE** will be utilized. Please quote Year 1 and the Optional Years on the Cost Schedule. IDL reserves the right to enter negotiations in accordance with IDL Procurement Policy #455.

WRFQ DEADLINE AND DELIVERY REQUIREMENTS: Quotes must be received electronically **before 3:00:00 P.M. M.T. on June 5th, 2024**. IDL is not responsible for delayed delivery of electronically submitted quotes. The date and time of electronically received quotes to the email address listed below, will be used to determine whether the quote was received by the due date and specified time. **Late, faxed, or mailed/hardcopy quotes will not be accepted.**

Electronic Quote Address:

mrsande@idl.idaho.gov

Subject line for the correspondence must read as follows:

Quote – Graphic Design Services – 24-0130
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QUESTIONS: Questions pertaining to this WRFQ must be submitted in writing by email to mrsande@idl.idaho.gov. The deadline for receiving questions is 1:00 P.M., MT, on May 28, 2024. Only questions answered by written amendment are binding. Oral interpretations have no legal effect. Unofficial communication streams are not binding and at the Contractors own risk. Responses to all questions received will be posted as an addendum on the IDL website at www.idl.idaho.gov. Verbal questions will not be accepted.

Any contract related to this solicitation will be awarded in LUMA.

You must be registered in LUMA to receive a contract.

COST SCHEDULE

STATE OF IDAHO
DEPARTMENT OF LANDS

Requisition Number: 24-0130

Date: _____

WEIGHTED REQUEST FOR QUOTE

INSTRUCTIONS: Responders must use this form in submitting prices.

YEAR	QTY.	UNIT	ARTICLES	UNIT PRICE	TOTAL PRICE
2024-2025	1250	EACH	IDL's General Annual Report, per the attached scope of work	\$ _____	\$ _____
2024-2025	1	HOUR	Maximum Fully Burdened Hourly Rate for ad-hoc general graphic design services including but not limited to: logo, brochure, poster, business card and letterhead.		\$ _____
2025-2026	1250	EACH	IDL's General Annual Report, per the attached scope of work	\$ _____	\$ _____
2025-2026	1	HOUR	Maximum Fully Burdened Hourly Rate for ad-hoc general graphic design services including but not limited to: logo, brochure, poster, business card and letterhead.		\$ _____
2026-2027	1250	EACH	IDL's General Annual Report, per the attached scope of work	\$ _____	\$ _____
2026-2027	1	HOUR	Maximum Fully Burdened Hourly Rate for ad-hoc general graphic design services including but not limited to: logo, brochure, poster, business card and letterhead.		\$ _____
2027-2028	1250	EACH	IDL's General Annual Report, per the attached scope of work	\$ _____	\$ _____
2027-2028	1	HOUR	Maximum Fully Burdened Hourly Rate for ad-hoc general graphic design services including but not limited to: logo, brochure, poster, business card and letterhead.		\$ _____
2028-2029	1250	EACH	IDL's General Annual Report, per the attached scope of work	\$ _____	\$ _____
2028-2029	1	HOUR	Maximum Fully Burdened Hourly Rate for ad-hoc general graphic design services including but not limited to: logo, brochure, poster, business card and letterhead.		\$ _____

	TOTAL		\$ _____				
	<table border="1"> <tr> <th>Action</th> <th>Due Date</th> </tr> <tr> <td><i>Request for Quote Responses Due Before:</i></td> <td><i>3:00:00 P.M. M.T. 6/5/2024</i></td> </tr> </table>		Action	Due Date	<i>Request for Quote Responses Due Before:</i>	<i>3:00:00 P.M. M.T. 6/5/2024</i>	
Action	Due Date						
<i>Request for Quote Responses Due Before:</i>	<i>3:00:00 P.M. M.T. 6/5/2024</i>						
Delivery requested <u>per specifications</u> <u>EMAIL QUOTE TO:</u> mrsande@idl.idaho.gov	We have stated hereon the prices at which <u>we will furnish and at destination named above</u> , the articles or services as specified. Delivery will be made as specified above. Firm _____ Street _____ City _____ State _____ Zip Code _____ Phone _____ Fax _____ E-Mail _____ Taxpayer ID# _____ Signed by _____ Printed Name _____ Title _____						

SCOPE OF WORK

PROJECT REQUIREMENTS:

Vendor will furnish all materials, labor and equipment necessary for work described below.

Work Production:

- Annual Reports: physical print version, print-quality PDF and a web-optimized PDF for online viewing.
 - o **IDL's General Annual Report:**
 - 8.5" x 11.5"
 - Full Color – 2 Sided Printing – with Embedded Images
 - Booklet Construction with Stapled Binding
 - Approximately 46 pages long
 - Off-set printing
 - 100# cover stock
 - 100# book weight
- Other Graphic Design Services: business related publications (physical print version, print-quality PDF and a web-optimized PDF for online viewing), brand/logo design, including compliance with brand/logo usage & guidelines, preparation of documents for commercial offset printing, photo editing, collateral design (both print and electronic) for brochures, posters, packaging, business cards, letterhead, interactive media, etc.

MANDATORY REQUIREMENTS & EVALUATION CRITERIA OVERVIEW

Vendors are instructed to read the following carefully. The sections below require a written response when submitting a quote in response to this solicitation. Failure to include responses as required may be cause for rejection of a vendor's entire response.

MANDATORY and EVALUATED REQUIREMENTS

- Completed and signed Cost Schedule
- Vendor must have at least one Creative Art Director on staff overseeing IDL's projects.
- Provide resumes for the Creative Art Director and the lead graphic designer for IDL's projects:
 - o Education
 - o Experience
 - o Certifications
- Provide a minimum of three (3) references to include:
 - o Name, title
 - o Organization name and address
 - o Contact information (telephone and email)
- Provide digital examples of recently completed projects similar to the annual report referenced above via electronic link(s) (historical work completed by the people for which you've provided resumes)

EVALUATION CRITERIA

In addition to the quoted cost, IDL will evaluate each response. The criteria listed below will be used to evaluate and score each responsive quote to establish an apparent awardee (i.e., the high-point respondent). Scores will be normalized according to the following: the vendor receiving the highest score for any one criterion will receive all points for that criterion and the competitive responses to that criterion will receive a portion of the total points by weighing the score of the response in question to the initial (or raw) score given to the high point vendor for that criterion. The vendor receiving the highest point total after adding all criteria will be offered the contract award.

Experience – 300

- Resumes – 150
- References – 50
- Digital Examples – 100

Cost - 700

- Cost Schedule

Maximum Total Points - 1,000**WORK COORDINATION:**

All work performed must be coordinated through the designated Idaho Department of Lands. All production materials are the property of IDL.

PAYMENT DETAILS:

All payments will be made in accordance with Idaho Statute 67-2302, Prompt Payment for Goods and Services.

PERIOD OF PERFORMANCE:

The contract resulting from this WRFQ is anticipated to commence upon execution of all parties and shall remain active for one (1) year with the option to renew for four (4) additional one (1) year periods according to the executed terms and cost provided in the Cost Schedule.

STATE OF IDAHO
DEPARTMENT OF LANDS



PROJECT NAME
AGREEMENT NO. TBD
CONTRACTOR

STATE OF IDAHO
DEPARTMENT OF LANDS
PROFESSIONAL SERVICES AGREEMENT NO. TBD

THIS AGREEMENT is by and between the STATE OF IDAHO, acting through the DEPARTMENT OF LANDS on behalf of the Idaho State Board of Land Commissioners, hereafter referred to as the "STATE," and COMPANY NAME., hereafter referred to as the "CONTRACTOR."

1. DEFINITIONS

- a. Agreement: This duly executed written agreement between the State and the Contractor resulting from a solicitation, which shall include these Terms and Conditions, the Scope of Work, the Cost Proposal, and all attachments thereto.
- b. Contracting Officer: The State employee with the authority to enter into, administer, modify, and/or terminate this Agreement, and make related determinations and findings. The Contracting Officer is responsible for handling the contractual relationship with the Contractor.
- c. Contracting Officer Representative: The designated State representative, also referred to as "COR" or "Representative", who will provide daily technical oversight to the Contractor and ensure the Contractor performs according to the Scope of Work. The COR cannot modify the stated terms of the Agreement unilaterally or direct the Contractor to perform work not specified in the Agreement. Only the Contracting Officer and the Contractor may do so bilaterally.
- d. Contractor: The individual or business who has been awarded this Agreement to furnish goods or services for a certain price.
- e. IDL: The Idaho Department of Lands.
- f. Property: Goods, services, parts, supplies and equipment, both tangible and intangible, including, but not exclusively, designs, plans, programs, systems, techniques and any rights and interest in such property.
- g. Scope of Work: Detailed outline of the location, project description, timeline, and deliverables.
- h. Services: Includes services performed, workmanship, and materials furnished or utilized in the performance of services, including any deliverables.
- i. State of Idaho Board of Land Commissioners or Land Board: The State Board of Land Commissioners (Land Board) is comprised of Idaho's Governor, Secretary of State, Attorney General, Superintendent of Public Instruction, and State Controller. The Land Board serve as the trustees for more than 2.4 million acres of state endowment trust lands in Idaho, with the State acting as the administrative arm of the Board, carrying out the executive directives necessary to meet the mandated Constitutional charge codified in Article IX Section 8 of the Idaho Constitution. The Land Board also oversees the work of the State in its regulatory and assistance duties, and in managing Idaho's public trust lands.

2. CONTRACTOR RESPONSIBILITY

The Contractor hereby assumes responsibility for production and delivery of all material and services included in this Agreement, whether or not the Contractor is the manufacturer or producer of such material or services. Further, the Contractor will be the sole point of contact on contractual matters, including payment of charges resulting from the use or purchase of goods or services.

3. REGISTRATION WITH SECRETARY OF STATE AND SERVICE OF PROCESS

- a. Contractor must independently verify whether it is required by Idaho law to register its business entity or assumed business name with the Idaho Secretary of State and, if required to do so, must remain in good standing during the term of this Agreement.
- b. Regardless of its registration with the Idaho Secretary of State, and in addition to any methods of service allowed by Idaho law, Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested, at its last known address. Contractor must notify the State in writing of any change of address to which service of process can be made. Service shall be completed upon Contractor's actual

receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor shall have thirty calendar days after completion of service in which to respond.

4. SUBCONTRACTING

Unless otherwise allowed by the State in this Agreement, the Contractor shall not, without written approval from the State, enter into any subcontract relating to the performance of this Agreement or any part thereof. Approval by the State of Contractor's request to subcontract or acceptance of or payment for subcontracted work by the State shall not in any way relieve the Contractor of responsibility for the professional and technical accuracy and adequacy of the work. The Contractor shall be and remain liable for all damages to the State caused by negligent performance or non-performance of work under the Agreement by Contractor's subcontractor or its sub-subcontractor.

5. ASSIGNMENTS

The Contractor shall not assign a right or delegate a duty under this Agreement without the prior written consent of the State.

6. ANTIDISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY CLAUSE

Acceptance of this Agreement binds the Contractor to the terms and conditions of Section 601, Title VI, Civil Rights Act of 1964 in that "No person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance." In addition, "No otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance" (Section 504 of the Rehabilitation Act of 1973). Furthermore, for Agreements involving federal funds, the applicable provisions and requirements of Executive Order 11246 as amended, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, Section 701 of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967 (ADEA), 29 USC Sections 621, et seq., the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, U.S. Department of Interior regulations at 43 CFR Part 17, and the Americans with Disabilities Action of 1990, are also incorporated into this Agreement. The Contractor must include this provision in every subcontract relating to purchases by the State to insure that subcontractors and vendors are bound by this provision.

7. RESTRICTIONS ON AND WARRANTIES – ILLEGAL ALIENS

Contractor warrants this Agreement is subject to Executive Order 2009-10 [http://gov.idaho.gov/mediacenter/execorders/eo09/eo_2009_10.html]; it does not knowingly hire or engage any illegal aliens or persons not authorized to work in the United States; it takes steps to verify that it does not hire or engage any illegal aliens or persons not authorized to work in the United States; and that any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach and shall be cause for the imposition of monetary penalties up to five percent (5%) of the Agreement price, per violation, and/or termination of its Agreement.

8. INSURANCE REQUIREMENTS

- a. Contractor shall obtain and maintain insurance at its own expense as required herein for the duration of this Agreement, and comply with all limits, terms and conditions stipulated. Policies shall provide, or be endorse to provide, all required coverage. Contractor shall provide certificates of insurance or certified endorsements as applicable for the insurance required. Contractor shall not commence work under this Agreement until satisfactory evidence of all required insurance is provided to the State.
- b. All insurance, except for Workers Compensation, and Professional Liability/Errors and Omissions shall be endorsed to name the State of Idaho, the State Board of Land Commissioners, and the Idaho Department of Lands as Additional Insured.
- c. All insurance shall be with insurers rated A-, VII, or better in the latest Bests Rating Guide, and be in good standing and authorized to transact business in Idaho. The coverage provided by such policies shall be primary. Policies may contain deductibles, but such deductibles shall not be deducted from any damages due the State.
- d. If any of the liability insurance required for this Agreement is arranged on a "claims-made" basis, then "tail coverage" will be required at the completion or termination of this Agreement for a duration of twenty-four (24) months

thereafter. Continuous "claims-made" coverage will be acceptable in lieu of "tail-coverage" provided the retroactive date is on or before the effective date of this Agreement, or twenty-four months "prior acts" coverage is provided. Contractor will be responsible for furnishing certification of "tail coverage" or continuous "claims-made" coverage.

- e. By requiring insurance herein, the State does not represent that coverage and limits will necessarily be adequate to protect Contractor, and such coverage and limits shall not be deemed as a limitation on Contractor's liability under the indemnities granted to the State.
- f. Contractor shall maintain insurance in amounts not less than the following;

(1) Commercial General and Umbrella Liability Insurance

Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a combined single limit of not less than \$1,000,000 each occurrence, \$2,000,000 annual aggregate. The CGL shall be written on standard ISO occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury, advertising injury, and liability assumed under an insured contract including the tort liability of another assumed in a business contract.

(2) Worker's Compensation Insurance

The Contractor shall maintain worker's compensation insurance in amounts as required by statute in all states in which the Contractor performs work, and employer's liability insurance with a limit of \$100,000 Bodily Injury by Accident each Accident; \$100,000 Bodily Injury by Disease – each employee; and \$500,000 Bodily Injury by Disease – Policy Limit.

- g. The Contractor shall require all subcontractors utilized in performance of this Agreement to provide certificates of insurance to the State evidencing insurance coverage with the required additional insured endorsements as set forth in the preceding paragraphs.

9. TAXES

The State is generally exempt from payment of Idaho State Sales and Use Tax for property purchased for its use under the authority of Idaho Code, Section 63-3622 as a government instrumentality. In addition, the State is generally exempt from payment of Federal Excise Tax under a permanent authority from the district Director of the Internal Revenue Service. Exemption certificates will be furnished upon written request by the Contractor. If the Contractor is required to pay any taxes incurred as a result of doing business with the State, it shall be solely responsible for the payment of those taxes. If the Contractor is performing public works construction (installation of fixtures, etc.), it shall be responsible for payment of all sales and use taxes as required.

10. LICENSES, PERMITS & FEES

The Contractor shall, without additional expense to the State, obtain all required licenses and permits and pay all fees necessary for executing provisions of this Agreement unless specifically stated otherwise herein.

11. INDEMNIFICATION

- a. Contractor shall indemnify, defend, and save harmless the State, its officers, agents, employees, and volunteers from and against any and all liability, claims, damages, losses, expenses, actions, settlements, attorneys' fees, and suits whatsoever caused by, arising out of, or in connection with Contractor's acts or omissions under this Agreement or Contractor's failure to comply with any state or federal statute, law, regulation, or rule.
- b. Upon receipt of the State's tender of indemnity and defense, Contractor shall immediately take all reasonable actions necessary, including, but not limited to, providing a legal defense for the State, to begin fulfilling its obligation to indemnify, defend, and save harmless the State. Contractor's indemnification and defense liabilities described herein shall apply regardless of any allegations that a claim or suit is attributable in whole or in part to any act or omission of the State under this Agreement. However, if it is determined by a final judgment that the State's negligent act or omission is the sole proximate cause of a suit or claim, the State shall not be entitled to indemnification from Contractor with respect to such suit or claim, and the State, in its

discretion, may reimburse Contractor for reasonable defense costs attributable to the defense provided by any Special Deputy Attorney General appointed pursuant to section 12.c.

- c. Any legal defense provided by Contractor to the State under this section must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Any attorney appointed to represent the State must first qualify as and be appointed by the Attorney General of the State of Idaho as a Special Deputy Attorney General pursuant to Idaho Code Sections 67-1401(13) and 67-1409(1).

12. OFFICIALS, AGENTS AND EMPLOYEES OF THE STATE NOT PERSONALLY LIABLE

In no event shall any official, officer, employee or agent of the State be in any way personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this Agreement. This section shall not apply to any remedies in law or at equity against any person or entity that exist by reason of fraud, misrepresentation or outside the terms of this Agreement.

13. RISK OF LOSS

Risk of loss and responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State except as to latent defects, fraud and Contractor's warranty obligations. Such loss, injury or destruction shall not release the Contractor from any obligation under this Agreement.

14. PROHIBITED CONTRACTS

No member of the legislature or officer or employee of any branch of the state government shall directly himself, or by any other person execute, hold or enjoy, in whole or in part, any contract or agreement made or entered into by or on behalf of the State, if made by, through or on behalf of the department in which he is an officer or employee or if made by, through or on behalf of any other department unless the same are made after competitive bids. (Idaho Code Section 67-9230(2)).

15. SAFETY INFORMATION

- a. The Contractor assumes full responsibility for the safety of his employees, equipment and supplies.
- b. Contractor guarantees that all items provided by Contractor in performance of this Agreement meet or exceed those requirements and guidelines established by the Occupational Safety and Health Act, Consumer Product Safety Council, Environmental Protection Agency, or other regulatory agencies.

16. USE OF THE IDAHO DEPARTMENT OF LANDS NAME

Contractor agrees that it will not, prior to, in the course of, or after performance under this Agreement, use the State's name in any advertising or promotional media as a customer or client of Contractor without the prior written consent of the State.

17. CONTRACT TERMINATION

a. TERMINATION FOR CAUSE WITH NOTICE:

1. The occurrence of any of the following events shall be an Event of Default under this Agreement:
 - a. A material breach of any term or condition of this Agreement; or
 - b. Any representation or warranty by Contractor in response to the Solicitation or in this Agreement proves to be untrue or materially misleading; or
 - c. Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
 - d. Any default specified in another section of this Agreement.
2. The State may terminate this Agreement (or any order issued pursuant to this Agreement) when the Contractor has been provided written notice of default or non-compliance and has failed to cure

the default or non-compliance within a reasonable time, not to exceed thirty (30) calendar days. If the Agreement is terminated for default or non-compliance, the Contractor will be responsible for any costs resulting from the State's placement of a new Agreement and any damages incurred by the State, as a result of the default. The State, upon termination for default or non-compliance, reserves the right to take any legal action it may deem necessary including, without limitation, offset of damages against payment due.

3. Upon written notice of default, Contractor shall be in breach of its obligations under this Contract and the State shall have the right to exercise any or all of the following remedies:
 - a. Exercise any remedy provided by law or equity;
 - b. Terminate this Agreement and any related Agreements or portions thereof;
 - c. Impose liquidated damages as provided in this Agreement;
 - d. Suspend Contractor from receiving future bid solicitations;
 - e. Suspend Contractor's performance;
 - f. Withhold payment until the default is remedied.

b. TERMINATION FOR CAUSE WITHOUT NOTICE

The State shall not be required to provide advance written notice or a cure period and may immediately terminate this Agreement in whole or in part for an Event of Default if the State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Agreement.

c. TERMINATION FOR CONVENIENCE

1. The State may terminate this Contract for its convenience in whole or in part, if the State determines it is in the State's best interest to do so.
2. After receipt of a notice of termination for convenience, and except as directed by the State, the Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:
 - a. Stop work.
 - b. Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continuing portion of the Agreement.
 - c. Terminate all subcontracts to the extent they relate to the work terminated.
 - d. Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts.
3. Unless otherwise set forth in the Solicitation, if the Contractor and the State fail to agree on the amount to be paid because of the termination for convenience, the State will pay the Contractor the following amounts; provided that in no event will total payments exceed the amount payable to the Contractor if the Agreement had been fully performed:
 - a. The Agreement price for Deliverables or services accepted by the State and not previously paid for; and
 - b. The total of:
 - i. The reasonable costs incurred in the performance of the work terminated, including initial costs and preparatory expenses allocable thereto, but excluding any cost attributable to deliverables or services paid or to be paid;

- ii. The reasonable cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Agreement; and
 - iii. Reasonable storage, transportation, demobilization, unamortized overhead and capital costs, and other costs reasonably incurred by the Contractor in winding down and terminating its work.
- 4. The Contractor will use generally accepted accounting principles, or accounting principles otherwise agreed to in writing by the parties, and sound business practices in determining all costs claimed, agreed to, or determined under this clause.

d. **TERMINATION FOR FISCAL NECESSITY**

The State is a government entity and it is understood and agreed that the State's payments herein provided for shall be paid from Idaho State Legislative appropriations. The Legislature is under no legal obligation to make appropriations to fulfill this Agreement. This Agreement shall in no way or manner be construed so as to bind or obligate the State beyond the term of any particular appropriation of funds by the State's Legislature as may exist from time to time. the State reserves the right to terminate this Agreement in whole or in part (or any order placed under it) if, in its sole judgment, the Legislature of the State of Idaho fails, neglects, or refuses to appropriate sufficient funds as may be required for the State to continue such payments, or requires any return or "give-back" of funds required for the State to continue payments, or if the Executive Branch mandates any cuts or holdbacks in spending, or if funds are not budgeted or otherwise available, or if the State discontinues or makes a material alteration of the program under which funds were provided. The State shall not be required to transfer funds between accounts in the event that funds are reduced or unavailable. All affected future rights and liabilities of the parties shall thereupon cease within ten (10) calendar days after notice to the Contractor. Further, in the event of non-appropriation, the State shall not be liable for any penalty, expense, or liability, or for general, special, incidental, consequential or other damages resulting therefrom.

18. **CONTRACT ADMINISTRATION**

- a. The Contracting Officer Representative will administer the Agreement as required in all specifications.
- b. The Contracting Officer Representative has the following authority in addition to that delegated to him in other portions of this Agreement.
 - (1) Decide questions of fact arising in regard to the quality and acceptability of materials furnished and all work performed.
 - (2) Make recommendations for payment.

19. **FORCE MAJEURE**

Neither party shall be liable or deemed to be in default for any Force Majeure delay in shipment or performance occasioned by unforeseeable causes beyond the control and without the fault or negligence of the parties, including, but not restricted to, acts of God or the public enemy, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, unusually severe weather, provided that in all cases the Contractor shall notify the State promptly in writing of any cause for delay and the State concurs that the delay was beyond the control and without the fault or negligence of the Contractor. If reasonably possible, the Contractor shall make every reasonable effort to complete performance as soon as possible. Matters of contractor's or subcontractor's finances shall not be a Force Majeure.

20. **GOVERNING LAW**

This Agreement shall be construed in accordance with, and governed by the laws of the State of Idaho. Any action to enforce this Agreement shall be brought in Ada County, Boise, Idaho.

21. **MODIFICATION**

This Agreement may not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

22. ENTIRE AGREEMENT

This Agreement is the entire agreement between the parties with respect to the subject matter hereof. Where terms and conditions specified in the Contractor's response differ from those specifically stated in this Agreement, the terms and conditions of this Agreement shall apply. In the event of any conflict between these standard terms and conditions and any special terms and conditions applicable to this acquisition, the special terms and conditions will govern. This Agreement may not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

23. PUBLIC RECORDS

Pursuant to Idaho Code Section 74-101 through 74-126, information or documents received from the Contractor may be open to public inspection and copying unless exempt from disclosure. The Contractor shall clearly designate individual documents as "exempt" on each page of such documents and shall indicate the basis for such exemption. The State will not accept the marking of an entire document as exempt. In addition, the State will not accept a legend or statement on one (1) page that all, or substantially all, of the document is exempt from disclosure. The Contractor shall indemnify and defend the State against all liability, claims, damages, losses, expenses, actions, attorney fees and suits whatsoever for honoring such a designation or for the Contractor's failure to designate individual documents as exempt. The Contractor's failure to designate as exempt any document or portion of a document that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any such release. If the State receives a request for materials claimed exempt by the Contractor, the Contractor shall provide the legal defense for such claim.

24. CONFIDENTIAL INFORMATION:

Pursuant to this Agreement, Contractor may collect, or the State may disclose to Contractor, financial, personnel or other information that the State regards as proprietary, confidential or exempt from disclosure ("Confidential Information"). Confidential Information shall belong solely to the State. Contractor shall use such Confidential Information only in the performance of its services under this Agreement and shall not disclose any Confidential Information to any third party, except with the State's prior written consent or under a valid order of a court or governmental agency of competent jurisdiction, and then only upon timely notice to the State. The State may require that Contractor's officers, employees, agents or subcontractors separately agree in writing to the obligations contained in this section or sign a separate confidentiality agreement. Confidential Information shall be returned to the State upon termination of this Agreement. The confidentiality obligation contained in this section shall survive termination of this Agreement. Confidential Information shall not include data or information that:

- a. Is or was in the possession of Contractor before being furnished by the State, provided that such information or other data is not known by Contractor to be subject to another confidentiality agreement with or other obligation of confidentiality to the State;
- b. Becomes generally available to the public other than as a result of disclosure by Contractor; or
- c. Becomes available to Contractor on a non-confidential basis from a source other than the State, provided that such source is not known by Contractor to be subject to a confidentiality agreement with or other obligation of confidentiality to the State.

25. NON-WAIVER

The failure of any party, at any time, to enforce a provision of this Agreement shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of such party thereafter to enforce each and every provision hereof.

26. NO WAIVER OF SOVEREIGN IMMUNITY

In no event shall this Agreement or any act by the State, be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. If a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the State. This section applies to a claim brought against the State only to the extent Congress has appropriately abrogated the State's sovereign immunity and is not consent by the State to be sued in federal court, or a waiver of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

27. ATTORNEYS' FEES

In the event suit is brought or an attorney is retained by any party to this Agreement to enforce the terms of this Agreement or to collect any moneys due hereunder, the prevailing party shall be entitled to recover reimbursement for reasonable attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith in addition to any other available remedies.

28. EXAMINATION AND AUDIT

Contractor agrees that the State or its designated representative shall have the right to review and copy any records and supporting documentation pertaining to performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement.

29. ADEQUATE ASSURANCE OF FUTURE PERFORMANCE

If the State has reasonable grounds to question Contractor's ability to perform the Agreement, the State may demand adequate assurance from Contractor. Contractor shall respond within 30 calendar days of such demand.

30. WAGE AND LABOR COMPLIANCE

For the duration of the agreement, the Contractor attests to the following:

- a. At least the minimum Idaho wage was paid to all employees and subcontractors utilized to complete the work in accordance with Idaho Code section 44-1502;
- b. Contractor was in compliance with all labor laws;
- c. All debts incurred by the Contractor to accomplish the work requirements outlined by this agreement were paid in full.
- d. Any further claims against the State of Idaho under this agreement are relinquished, pending payment for services rendered by the Contractor and accepted by the State.

31. CERTIFICATION CONCERNING BOYCOTT OF ISRAEL

Pursuant to Idaho Code section 67-2346, if payments under this agreement exceed one hundred thousand dollars (\$100,000) and Contractor employs ten (10) or more persons, Contractor certifies that it is not currently engaged in, and will not for the duration of the agreement engage in, a boycott of goods or services from Israel or territories under its control. The terms in this clause defined in Idaho Code section 67-2346 shall have the meaning defined therein.

32. TIME IS OF THE ESSENCE

Time shall be of the essence in connection with Contractor's performance of its obligations under this Contract.

33. PAYMENT

Payment will be made in accordance with Idaho Code 67-2302 with the method described in the Scope of Work

and after receipt of the Contractor's itemized invoice for satisfactorily completed work. Total payments under this Agreement shall not exceed \$XXXX.

It is understood that full payment for all services provided under the Agreement is fully burdened to include, but is not limited to, all Contractor's costs of labor, materials, equipment, deliverables and expenses including advertising, postage, copy costs, and all other costs normally associated with the cost of doing business unless otherwise provided elsewhere in this Agreement.

34. AGREEMENT TERM

This Agreement will become effective once signed by all parties. The Contractor and Contracting Officer Representative will discuss the Agreement terms, work performance requirements, and tentative work schedule. This Agreement shall expire one year from its effective date with the option to renew for four (4) additional one (1) year periods, under the same terms and conditions, unless terminated earlier by the State under any of the provisions of paragraph 17 of this Agreement. All requirements of the Agreement must be satisfactorily completed by the Agreement expiration date.

Sample

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties have caused Agreement TBD to be executed
in Boise, Idaho and effective as of the date/time of the final signature below.

IDAHO DEPARTMENT OF LANDS

CONTRACTOR

By: _____
Andrew Evans

By: _____

Title: Procurement Manager

Title: _____

Date and Time: _____

