



# 2011 National Association of State Procurement Officers Cronin Award Nomination

## Terms and Conditions Templates Initiative for Information Technology Agreements

### State of Oregon



#### Project Sponsors

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#### Project Participants

IT Business Community through the Information Technology Association of America  
Department of Administrative Services

- Enterprise Information Strategy and Policy Division
- Risk Management Division
- State Data Center
- State Procurement Office

Department of Human Services  
Department of Revenue  
Department of Transportation  
Department of Justice, Office of the Attorney General

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<http://www.oregon.gov/DAS/SSD/SPO/IT-Procurement.shtml>

## Executive Summary

The goal of increasing the efficiency of procurements and opportunities for the business community to more fully participate in information technology procurements is an ongoing but necessary challenge. The State of Oregon's statute ORS 279A.015 and its implementing administrative rules establish the State's policy to have a public contracting system that:

- supports practices which reflect the marketplace and industry standards,
- instills public confidence through ethical and fair dealing,
- promotes efficient use of government resources,
- maximizes economic investment in public contracting,
- allows impartial and open competition, and
- protects the integrity and the competitive nature of the public contracting process.

To that end, the Department of Administrative Services (DAS) State Procurement Office and the State's Chief Information Officer (CIO) Management Council chartered an Information Technology Procurement Task Force. The Task Force invited stakeholders to discuss issues and develop alternative procurement strategies related to information technology (IT) which would embody all aspects of the State's public procurement policy. Task Force members included chief information officers and executives from several State of Oregon agencies, the Deputy State Chief Information Officer from DAS Enterprise Information Strategy and Policy Division, a risk management analyst from DAS' Risk Management Division, two assistant attorneys general from the Department of Justice, Office of the Attorney General, and a contractor's advocate representing the IT business community (TechAmerica).

The Task Force reviewed how Oregon currently contracts with firms. The group explored terms and conditions commonly used for IT agreements, and discussed alternative strategies to solicit, negotiate, and administer IT contracts. Members also explored stakeholder concerns, developed templates for commonly used IT contract terms and conditions, and developed guidance around the use of these templates.

The templates that resulted from this project provide a baseline/starting point for developing IT contracts that support different types of information technology projects, such as those that require IT consulting and solution development, software licenses, and hardware. They reflect collaboration among Task Force participants about such issues as risk allocation, liability, ownership, and warranties.

DAS State Procurement Office has shared the templates and associated guide with the IT business community, government representatives, and the American Bar Association's State and Local Procurement Section, and presented them at NASPO's 2010 "*How to Market to State Governments*" meeting in San Francisco. These resources and other related white papers and source documents are also available through the DAS State Procurement Office website at <http://www.oregon.gov/DAS/SSD/SPO/IT-Procurement.shtml>.

The Task Force agreed on a plan to continue its work on the project, including a one-year review of project outcomes in March 2011 and an effectiveness review that will occur at the two-year mark in 2012.

## Description

### Business Statement

State and local governments are increasingly dependent on IT systems to accomplish their missions, increase operational efficiencies and to be more accessible and transparent to customers and the public. These needs highlight the importance of responsive procurement systems that reflect an understanding of the business needs of both government and the marketplace; specifically, the IT business community. Oregon's IT contract terms and conditions were not in line with industry practices and were not consistent with market expectations. As a result, a number of IT suppliers were not submitting responses to Oregon Requests for Proposals. Oregon's procurement outcomes were not delivering cost competitive solutions.

To some degree this is a shared problem within the public procurement arena. State procurement officers from 48 states discussed this topic at the 2008 National Association of State Procurement Officers (NASPO) annual conference. As NASPO's president-elect, the State of Oregon's Chief Procurement Officer (CPO) agreed to establish a national task force to explore the issues and invited an IT community representative to present this topic and associated issues at the 2009 national forum, "*Marketing to the States.*"

### Initiative

To support the State of Oregon's public procurement policy and respond to an increased need for contracted IT services and products, in January of 2009, DAS State Procurement Office and the CIO Management Council created a State task force made up of agency stakeholders and TechAmerica, an advocate representing nearly 1,200 member companies in the commercial sector technology industry. They began with a discussion about ways to increase the effectiveness of, and participation in, Oregon's IT procurements, and developed strategies to accomplish these objectives.

Oregon's Task Force members also included the State's deputy state chief information officer, a risk management analyst from DAS' Risk Management Division, two assistant attorneys general from the Department of Justice, Office of the Attorney General.

### Challenge

The Task Force focused its efforts on two primary areas: reviewing the terms and conditions commonly used for IT agreements and providing education about their application.

The objectives were to:

- reach consistent understanding of terms and conditions among the IT business community and State representatives;
- explore differences in understanding and the underlying needs of each stakeholder;
- collaborate to develop a core template of terms and conditions often applicable to contracts for commonly used IT services and products, and riders that focus on specific areas, such as maintenance; and
- provide training and guidance to state agencies and local governments about use of the templates and opportunities to negotiate them.

### Innovation/Service Improvement

The Task Force selected IT project categories most commonly used to achieve the broadest level of benefit. In addition, they adopted a collaborative and consensus-driven process that encouraged participation and understanding among all members. The Task Force agreed on a standard of "commercially reasonable" as an approach. They reviewed the then-current IT terms and conditions template from the perspective of their application to each of the selected categories, and revisions to right-size and re-allocate the risks and benefits. As a result, the members proposed, reviewed, and came to agreement on over 100 proposed revisions.

## Significance

The Task Force and its efforts were the result of NASPO's work at the national level and the joint effort of Oregon's State CIO and CPO to support partnership building between government and the IT business community to increase the efficiency and effectiveness in the contracting process.

Further, because almost all State of Oregon agencies and local governments, such as cities and counties, are subject to the same procurement statutes and legal review requirements, the template and guide, have significance and benefits throughout Oregon. These foundational documents comply with the procurement statutes and have received approval from the Office of the Oregon Attorney General.

## Benefits/Transferability/Cost Reduction

Oregon state agencies and local governments all benefit from the outcomes of the work done by this Task Force. The IT business community will benefit as well, having been a partner in the project.

The deliverables that resulted from these efforts include:

- A sustainable, collaborative relationship between the State Procurement Office, agency Task Force members, and the IT business community through its representative, TechAmerica;
- a *corner stone* template finalized in March, 2010, that includes terms and conditions that are common to contracts for most the most commonly used IT-based projects, with a combination of hardware, software, and services, on which two of the other templates are based;
- templates based on the corner stone model that are limited to IT-based projects for:
  - hardware only or hardware with only minor services;
  - software only or software with only minor services; or
  - consulting for IT-based projects;
- contract riders for use with contractor's software license and software maintenance agreements;
- a guide to understanding the template structures and frequently asked questions;
- a website with links to the templates, the guide, a slide presentation summarizing the project, TechAmerica's white paper of recommendations, the State's response and rationale regarding its recommendation decisions, and a National Association of State Chief Information Officers white paper, "Gaining Traction on the Road to Win-Win," (available at <http://www.oregon.gov/DAS/SSD/SPO/IT-Procurement.shtml>);
- educational presentations to state agencies, local governments, and the IT business community about the project and the templates;
- process and document models for other states and governmental entities; and
- accessibility to the documents, resources, and transparency to the IT business community, state agencies, local governments, and the public through their availability on the Internet.

These tangible benefits will assist in achieving outcomes that the Task Force anticipates as a result of its efforts:

- increased IT supplier participation in IT procurements;
- improved understanding of needs, awareness of perspectives, and partnership building between government agencies and the IT business community;
- reduction in time and resource commitments and costs associated with IT procurements for agencies as well as the IT business community;
- improved understanding of project needs and objectives, resulting in increased opportunities to submit proposals and negotiate contracts;
- cost proposals that reflect risk allocation decisions more closely related to exposures associated with this type of project;

- increased opportunities for education about the IT procurement process for government agencies and the IT business community;
- support for public procurement policies and goals;
- improved efficiency and effectiveness of public IT procurements;
- support for cost-effective service to the public; and
- improved accessibility to the documents and resources, and transparency to the public by posting these resources on the Internet.

### **Partnership Building/Collaboration**

Key to the project's success was openness and partnership building among state agencies and the IT business community. In its May 2010 webcast, TechAmerica summarized the process used by the Task Force and described the project as "an example for other states to follow," stating that "Oregon addressed its procurement process realistically ... worked with the vendor community to fully understand the industry perspective ... engaged in thorough process well supported by internal state resources (notably, the AG's office) ... embraced tailoring through negotiations" and finally, that "Oregon now sets the standard – in process and substance." TechAmerica followed with a letter to the State's governor, stating that TechAmerica and its 1200 member companies...commends...the State of Oregon," that its officials "demonstrated true leadership" and "engage[d] in a serious and thoughtful approach to procurement reform – by soliciting the input of the vendor community" and that "this will go a long way to streamlining procurement, which at the end of the day is good for the State and good for its taxpayers."

Likewise, the State Procurement Office expressed gratitude in its March 2010 letter to TechAmerica as an "insightful partner" for its "valuable input in the development of the updated terms and conditions," and "sincere thanks for working with us on this important project."

DAS State Procurement Office presented the template and associated guide to the business community and government representatives at the Effective Oregon Government conference on October 6, 2010. Oregon's CPO, Dianne Lancaster, presented the project to the American Bar Association's State and Local Procurement Section in Seattle in May 2010 and at NASPO's 2010 "*How to Market to State Governments*" meeting in San Francisco. She continues to participate on a workgroup to review IT terms and conditions on the national level through NASPO, and uses lessons learned through this project to benefit other states.

Task Force members planned and implemented the project as a two-year pilot, including a one-year follow-up. TechAmerica hosted the follow-up during its March 2011 State Procurement Committee meeting. The meeting was well attended by IT business community members represented on the project through Tech America, including representatives from firms such as Accenture, CDW, CGI, Cisco, Dell, Deloitte, EMC, HID Global, Maximus, Microsoft, and Xerox, and by Oregon's CPO. Members had positive comments about project outcomes, reporting improved IT terms and conditions negotiations with Oregon's agencies. They further expressed a desire for more widespread use by Oregon's agencies and expansion to use by other states as well. The Task Force plans further discussion at the two-year effectiveness review in March 2012.