

BIDDING DOCUMENTS

PROJECT: SUPPLYING AND DELIVERY OF
OF HI-BUILD, HI-PERFORMACE
WATERBORNE TRAFFIC LINE PAINT
2021

**BID OPENNING
DATE:** 2:00 PM, JANUARY 22, 2021

**CONTRACT
COMPLETION DATE:** DECEMBER 31, 2021

CONTRACTING AGENCY:



**ROAD
DEPARTMENT**

**61150 SE 27TH STREET
BEND, OREGON 97702
PHONE: (541) 388-6581
FAX: (541) 388-2719
WEB: www.deschutes.org/road**

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HI-BUILD, HI-PERFORMANCE WATERBORNE TRAFFIC LINE PAINT
2021

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**DESCHUTES COUNTY, OREGON
ROAD DEPARTMENT**

**INVITATION TO BID
FOR SUPPLYING AND DELIVERY OF
HI-BUILD, HI-PERFORMANCE WATERBORNE
TRAFFIC LINE PAINT 2021**

Sealed bids will be received at the Deschutes County Road Department, 61150 SE 27th Street, Bend, Oregon 97702, until but not after, 2:00 p.m. on January 22, 2021 at which time all bids for the above-entitled public works project will be publicly opened and read aloud.

The contract calls for supplying and delivery of approximately 25,000 gallons of yellow traffic line paint and approximately 25,000 gallons of white traffic paint of DURABLE ULTRA HI-BUILD, HI-PERFORMANCE WATERBORNE TRAFFIC LINE PAINT (100% Latex Polymer Emulsion).

Specifications and other bid documents may be inspected and obtained at the Deschutes County Road Department, 61150 S.E. 27th Street, Bend, Oregon 97702 or the Deschutes County website, www.deschutes.org. Inquiries pertaining to these specifications shall be directed to Chuck Schutte, Operations Manager, telephone (541) 322-7124.

Bids shall be made on the forms furnished by the County, incorporating all contract documents, addressed and mailed or delivered to Chris Doty, Department Director, 61150 SE 27th Street, Bend, Oregon 97702 in a sealed envelope plainly marked "**BID FOR THE SUPPLYING AND DELIVERY OF DURABLE ULTRA HI-BUILD, HI-PERFORMANCE WATERBORNE TRAFFIC LINE PAINT 2021**" and the name and address of the bidder.

Deschutes County may reject any bid not in compliance with all prescribed bidding procedures and requirements, and may reject for good cause any or all bids upon a finding of Deschutes County it is in the public interest to do so. The protest period for this procurement is seven (7) calendar days.

CHRIS DOTY
Department Director

PUBLISHED:
DAILY JOURNAL OF COMMERCE: January 8, 2021 and January 15, 2021
THE BEND BULLETIN: January 8, 2021 and January 15, 2021

**DESCHUTES COUNTY, OREGON
CONTRACT FOR THE PURCHASE OF GOODS**

**THE SUPPLY AND DELIVERY OF
WATERBORNE TRAFFIC LINE PAINT
2021**

This Contract is between Deschutes County, Oregon ("County"), acting by and through the Road Department ("Agency"), and _____ ("Contractor"). This Contract is effective on the date it has been signed by all parties and all required County approvals have been obtained. Except as provided in the immediately following sentence, this Contract expires on the latest of the following: December 31, 2021, the date all warranties have expired, or the date Contractor has completed delivery of all Goods and Services in accordance with the requirements of this Contract, as determined by Agency. Upon mutual agreement, parties may extend the term of this Contract, at unit prices provided herein, provided that the Contract term does not extend beyond December 31, 2023 plus the applicable warranty term.

Contract is for the purchase and sale of the following: Supply and delivery of approximately 25,000 gallons of yellow traffic line paint and approximately 25,000 gallons of white traffic line paint as further described in the Special Provisions in Appendix "A" attached and by this reference incorporated herein.

Contractor agrees to sell, and Agency agrees to purchase, Goods and Services for the benefit of Agency subject to the following terms and conditions:

1. DEFINITIONS.

- A. "Goods" means the goods specified in Section 2.
- B. "IRS" means the Internal Revenue Service.
- C. "Services" means the services, if any, that are incidental to the purchase of Goods and that Contractor is required to perform under Section 2.
- D. "Specifications" means the specific attributes of Goods and Services described in Section 3.

2. REQUIRED GOODS, SERVICES, PRICING AND DELIVERY SCHEDULE.

Contractor shall deliver to Agency the following Goods and Services for the prices specified in the bid schedule in this Section 2 under paragraph D.

- A. GOODS. - Contractor shall deliver Goods F.O.B. place of destination.
 - i. Description, Quantities and Delivery Location: The material description and quantity is described in the Bid Schedule and Special Provisions of this Contract, with site address

location to be provided by Deschutes County at time of order. Agency, at its sole discretion, may reduce or increase the estimated quantity at the unit prices set forth on the Bid Schedule.

ii. AUTHORIZATION FOR ADDITIONAL ORDERS. This contract allows for the designation of additional orders by other public agencies pursuant to ORS 279A.215. Contractor will complete Appendix "B" attached and by this reference incorporated herein.

B. SERVICES.

N/A

C. DELIVERY.

i Delivery location: Deschutes County Road Department, 61150 SE 27th Street, Bend, OR 97702.

ii. Contractor shall deliver Goods to Agency and shall perform Services, if any, at the specific locations described at the time goods are ordered.

iii. Contractor shall retain the risk of loss of Goods until Agency accepts Goods in accordance with Section 4.D.

iv. Contractor shall deliver Goods as scheduled by Deschutes County.

D. BID SCHEDULE AND UNIT PRICING.

BID SCHEDULE

The Supply and Delivery of Waterborne Traffic Line Paint

#	Item	Est. Quantity	Unit Price	Units	Total Cost
1	Yellow Durable Ultra Hi-Build, Hi-Performance Waterborne Traffic Line Paint	25,000	\$	Gallons	\$
2	White Durable Ultra Hi-Build, Hi-Performance Waterborne Traffic Line Paint	25,000	\$	Gallons	\$
3	Total Cost at Estimated Quantity				\$

BID PRICE OF TOTAL COST OF ESTIMATED TONNAGE: (written words)

Written:

NOTE: A. Bidder must bid on all Items #1 and #2. Failure to bid on all items will disqualify the bid.

The name of the Bidder who is submitting this Proposal is:

Name:	
CCB#:	
Address:	
City:	
State:	
Zip:	
Phone:	
Facsimile:	

The above is the address to which all communications concerned with this proposal and with the Contract shall be sent.

3. SPECIFICATIONS.

Contractor shall deliver all Goods and Services specified in Section 2 in accordance with this Section 3. Contractor’s failure to deliver Goods and Services in accordance with the provisions of this Contract is a material breach of this Contract.

A. GENERAL PROVISIONS.

i. **NON-COMPLIANCE.** If any Goods or component parts are recalled by a regulatory body or the manufacturer, or discovered by Contractor not to comply with applicable regulatory standards or the Specifications, Contractor shall immediately notify Agency of the recall or non-compliance, and shall provide copies of the recall notice or notice of non-compliance, as applicable, and all other supporting documentation for the recall or non-compliance determination. Agency may elect to (a) reject Goods in whole or in part, or (b) revoke its acceptance of Goods in whole or in part. If Agency rejects Goods or revokes its acceptance of Goods, Contractor shall remove the particular Goods from Agency’s possession as provided in Section 4.D.iv at no cost to Agency and shall reimburse Agency for all payments made for those Goods.

ii. **STANDARD COMPONENTS.** Unless specified otherwise in this Section 3, Specifications, Contractor shall provide Goods with all components and accessories that the manufacturer lists as “standard” for Goods.

iii. **NECESSARY COMPONENTS.** Unless specified otherwise in this Section 3, Specifications, Contractor shall include all components, hardware and parts necessary for complete and proper assembly, installation and operation of Goods.

iv. **NEW AND UNUSED GOODS.** Unless specified otherwise in this Section 3, Specifications, Contractor shall deliver Goods that are new, unused and produced from current production

inventory. Contractor shall provide Goods manufactured from only those components that the manufacturer offers in the manufacturer's current parts catalogue for Goods.

B. DETAILED SPECIFICATIONS/SPECIAL PROVISIONS.

SEE APPENDIX "A" ATTACHED AND BY THIS REFERENCE INCORPORATED HEREIN.

4. TERMS AND CONDITIONS.

A. PAYMENT.

i. Agency's Payment. Agency shall pay Contractor for Goods delivered and Services performed at the unit prices and rates specified in Section 2. Contractor shall look solely to Agency for payment of all amounts Agency owes to Contractor. Contractor shall not be compensated by any agency or department of County other than Agency for Goods delivered or Services performed.

ii. If Contractor is a nonresident alien as defined in 26 USC § 7701(b)(1)(B), then Contractor shall, upon execution of this Contract, deliver to Agency a completed and signed W-8 form, 8233 form, or W-9 form, as applicable, from the IRS, as evidence that Agency is not required by 26 USC 1441 to withhold part of Contractor's payment. Such forms are currently available at <http://www.irs.gov>. Agency may withhold payments to Contractor pending Agency's receipt from Contractor of the applicable, completed and signed form. If Agency does not receive the applicable, completed and signed form from Contractor, or if the IRS provides notice to Agency that Contractor's information on the form provided is incorrect, Agency will withhold as federal income tax 30% of all amounts Agency owes to Contractor under this Contract.

iii. Funds Available and Authorized; Payments. Contractor understands and agrees that Agency's payment of amounts under this Contract is contingent on Agency receiving funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to make payments under this Contract.

B. INVOICES.

i. Contractor shall send invoices to Agency no more often than monthly after Agency's acceptance in accordance with Section 4.D of Goods delivered under this Contract. Contractor shall send invoices to Agency for completed Services no more often than monthly.

ii. Contractor shall send all invoices to the Agency mailing address specified in Section 7 or to any other address that Agency may indicate in writing to Contractor. Contractor shall include in each invoice:

- a. The Solicitation number if any, the Contract number if any;
- b. The quantity of Goods ordered, the quantity of Goods delivered, the date Goods were delivered, the price per unit, if applicable;

- c. A detailed description of Services performed, including the name or names of the individuals who performed Services and prepared the deliverables to which the invoice applies, the dates Services were performed, all deliverables delivered during the period of the invoices, the rate or rates for Services performed, and the total cost of Services
- d. Itemization and explanation of all expenses for which Contractor claims reimbursement authorized under this Contract; and
- e. The total amount due, and the payment address.

C. MOST FAVORABLE PRICES AND TERMS.

Contractor represents and warrants that all prices, terms and benefits offered by Contractor under this Contract are equal to or better than the equivalent prices, terms and benefits being offered by Contractor to any other County or local governmental entity or commercial customer.

- i. If during the term of this Contract Contractor enters any contract, agreement or arrangement that provides lower prices, more favorable terms or greater benefits to any other County or local governmental entity or commercial customer, Contractor shall provide the same price or prices, terms and benefits to Agency. The prices, terms and benefits shall be effective as of the date Contractor made the more favorable terms or greater benefits available to any other County or local governmental entity or commercial customer. This provision applies to comparable goods and services and to purchase volumes by Agency that are not less than the purchase volumes of the County or local governmental entity or commercial customer that has received the lower prices, greater benefits or more favorable terms.
- ii. Section 4.C.i does not apply to Contractor's donations of comparable goods and services to charitable, nonprofit or governmental entities if the donations are recognized as donations and are deductible under the Federal Internal Revenue Code. These donations are not considered contracts, agreements or arrangements with other County or local governmental entities or commercial customers for purposes of Section 4.C.i.

D. ACCEPTANCE, REJECTION AND REVOCATION OF ACCEPTANCE:

- i. ACCEPTANCE. Agency shall test if Agency, in its sole discretion deems testing necessary, inspect and either accept or reject Goods delivered within fourteen (14) calendar days from the date Contractor delivers Goods to Agency. If Agency does not provide written notice of acceptance or rejection of Goods to Contractor within fourteen (14) calendar days **following** the date of delivery of Goods, Agency is deemed to have accepted Goods.
- ii. REJECTION. If Agency rejects Goods, then Agency's written notice of rejection shall, at a minimum, itemize the apparent defects and include:
 - a. a description of nonconformance between Goods delivered and the required Specifications and warranties (including any variance from demonstrations or sample characteristics of Goods if Contractor provided demonstrations or samples);
 - b. a description of any other nonconformance of Goods (including late delivery); and

c. a statement indicating whether Contractor may cure the nonconformance and if so, the method by which and time period within which Contractor may cure.

iii. REVOCATION OF ACCEPTANCE. Notwithstanding Agency's acceptance of Goods under Section 4.D.i Agency may revoke its acceptance of Goods for nonconformance with the Specifications. If Agency revokes acceptance of Goods, Agency shall deliver a written notice of revocation of acceptance to Contractor that includes the same information required for a written notice of rejection under Section 4.D.ii.

iv. EFFECT OF REJECTION OR REVOCATION OF ACCEPTANCE. If Agency rejects Goods or revokes its acceptance of Goods, Contractor shall refund all payments Agency has made to Contractor for those Goods and shall, at no cost to Agency, remove Goods from Agency's possession within nine (9) calendar days following the latest of the date of Agency's notice of rejection, the date of Agency's notice of revocation of acceptance, or the date of Contractor's failure to cure if cure is permitted. Nothing contained in this Section 4.D precludes Agency from pursuing any remedies to which either may be entitled upon rejection or revocation of acceptance of Goods or otherwise under this Contract.

E. OTHER REPRESENTATIONS AND WARRANTIES.

All express and implied warranties that are applicable to goods under ORS Chapter 72 apply to Goods delivered under this Contract. Contractor represents and further warrants that:

i. Contractor has the authority to enter into and perform in accordance with this Contract, and that this Contract, when executed and delivered, is a valid and binding obligation of Contractor that is enforceable in accordance with its terms;

ii. All Goods delivered to Agency are new, unused, current production models and are free from defects in materials, design and manufacture for "the duration of the warranty period specified in Section 3." ("Warranty Period"). Contractor further represents and warrants that all Goods meet or exceed all Specifications;

iii. All Goods delivered shall comply with all applicable federal health and safety standards.

iv. Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence and perform Services, including but not limited to delivery of goods, in a timely, professional and workmanlike manner in accordance with standards applicable to Contractor's industry, trade or profession; and

v. Contractor is, and shall be at all times during the term of this Contract, qualified, professionally competent and duly licensed to perform Services.

The warranties specified in this Section 4.E are in addition to, and not in lieu of, any other warranties provided in this Contract. All warranties are cumulative and shall be interpreted broadly to give Agency the greatest warranty protection available.

F. MANUFACTURER WARRANTIES.

At no charge to Agency, Contractor shall transfer or cause the transfer of all manufacturers' warranties for Goods and component parts, if any, to the Agency for Agency's benefit when Contractor delivers Goods to Agency. If a conflict or inconsistency exists between a manufacturer's warranty and Contractor's warranty, the warranty that provides the greatest benefit and protection to County shall prevail.

G. COMPLIANCE WITH APPLICABLE LAWS AND STANDARDS.

- i. Contractor shall comply with all federal, state and local laws, regulations, and ordinances applicable to this Contract or to Contractor's obligations under this Contract, as they may be adopted or amended from time to time.
- ii. Agency'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 paper (as defined in ORS 279A.010(1)(ee)), recycled PETE products (as defined in ORS 279A.010(1)(ff)), and other recycled plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010(1)(gg)).

H. AMENDMENTS.

- i. All amendments to this Contract are Unanticipated Amendments unless subsections ii and iii of this Section H are completed for Anticipated Amendments. OAR 137-047-0800 applies to all Contract amendments.
- ii. Circumstances Requiring Amendments.
- iii. Amendment Method.

I. MATERIAL SAFETY DATA SHEET.

At the time Contractor delivers Goods to Agency, Contractor shall provide to Agency a "Material Safety Data Sheet" as defined by (OSHA) for any Goods delivered which may release or otherwise cause exposure to a hazardous chemical substance under normal conditions of use. Contractor shall properly label, tag or mark those Goods.

J. TIME IS OF THE ESSENCE.

Contractor agrees that time is of the essence in the performance of this Contract.

K. FORCE MAJEURE.

Neither Agency nor Contractor shall be responsible for any failure to perform or for any delay in the performance of any obligation under this Contract caused by fire, riot, acts of God, terrorism, war, or any other cause which is beyond the delaying or breaching entity's reasonable control. Contractor shall make all reasonable efforts to eliminate the cause of Contractor's delay or breach

and shall, upon elimination of the cause, continue performing under this Contract. Agency may terminate this Contract upon written notice to Contractor after reasonably determining that this delay or breach could likely prevent successful performance of this Contract.

L. INSURANCE.

Contractor shall obtain the insurance required under Section 5 prior to performing under this Contract and shall maintain the required insurance throughout this duration of this Contract and all Warranty Periods.

M. INDEPENDENT CONTRACTOR STATUS; RESPONSIBILITY FOR TAXES AND WITHHOLDING.

i. Contractor shall perform all Services as an independent contractor. Although Agency may (a) determine and modify the delivery schedule for Goods to be delivered and Services to be performed and (b) evaluate the quality of the completed performance, Agency 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 Services required under this Contract. Contractor is not an "officer", "employee", or "agent" of Agency as those terms are used in ORS 30.265 of County.

ii. If Contractor is currently performing work for County, the State or the federal government, Contractor by signature to this Contract declares and certifies that Contractor's performance under this Contract creates no potential or actual conflict of interest as defined by ORS 244 and that no rules or regulations of Contractor's employing agency (County, State or federal) would prohibit Contractor's performance under this Contract.

iii. Contractor shall pay or cause to be paid all federal and state taxes applicable to Contractor's compensation under this Contract, and Agency will not withhold from Contractor's compensation any amount to cover Contractor's federal or State tax obligations unless Contractor is subject to backup withholding. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from Contractor's compensation under this Contract.

N. INDEMNIFICATION.

i. GENERAL INDEMNITY. TO THE GREATEST EXTENT AUTHORIZED BY LAW CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY AGENCY, ITS OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER ("CLAIMS") RESULTING FROM, ARISING OUT OF, OR RELATING TO THE ACTS OR OMISSIONS OF CONTRACTOR OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS CONTRACT.

ii. AGENCY SHALL REASONABLY COOPERATE IN GOOD FAITH, AT CONTRACTOR'S REASONABLE EXPENSE, IN THE DEFENSE OF CLAIMS, AND CONTRACTOR SHALL SELECT COUNSEL REASONABLY ACCEPTABLE TO THE AGENCY'S ATTORNEY TO DEFEND SUCH CLAIMS AND INFRINGEMENT CLAIMS AND SHALL BEAR ALL COSTS OF SUCH COUNSEL. COUNSEL MUST ACCEPT APPOINTMENT AS A SPECIAL ASSISTANT LEGAL COUNSEL BEFORE COUNSEL MAY ACT IN THE NAME OF, OR REPRESENT THE INTERESTS OF, AGENCY, ITS AGENCIES, OFFICERS, EMPLOYEES OR AGENTS. AGENCY MAY ELECT TO ASSUME ITS OWN DEFENSE WITH AN ATTORNEY OF ITS OWN

CHOICE AND AT ITS OWN EXPENSE AT ANY TIME AGENCY DETERMINES IMPORTANT AGENCY INTERESTS ARE AT STAKE. SUBJECT TO THE LIMITATIONS NOTED ABOVE, CONTRACTOR MAY DEFEND SUCH CLAIMS AND INFRINGEMENT CLAIMS WITH COUNSEL OF ITS OWN CHOOSING PROVIDED THAT NO SETTLEMENT OR COMPROMISE OF ANY SUCH CLAIMS AND INFRINGEMENT CLAIMS SHALL OCCUR WITHOUT THE CONSENT OF AGENCY, WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD, CONDITIONED OR DELAYED.

O. ASSIGNMENT OF ANTITRUST RIGHTS.

i. CONTRACTOR IRREVOCABLY ASSIGNS TO AGENCY 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 AGENCY'S OPTION, THE RIGHT TO CONTROL ANY SUCH LITIGATION ON SUCH CLAIM FOR RELIEF OR CAUSE OF ACTION.

ii. CONTRACTOR SHALL REQUIRE ANY SUBCONTRACTORS HIRED TO PERFORM ANY OF CONTRACTOR'S DUTIES UNDER THIS CONTRACT TO IRREVOCABLY ASSIGN TO AGENCY, 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 AGENCY'S OPTION, THE RIGHT TO CONTROL ANY SUCH LITIGATION ON SUCH CLAIM FOR RELIEF OR CAUSE OF ACTION.

P. EVENTS OF BREACH.

i. Breach by Contractor. Contractor breaches 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 its obligations under this Contract and Contractor has not obtained the required license or certificate within fourteen (14) calendar days after delivery of Agency's notice of breach or a longer period as Agency may specify in its notice; or

c. Contractor commits any material breach of any covenant, warranty, obligation or certification under this Contract, and Contractor fails to cure its breach within fourteen (14) calendar days after delivery of Agency's notice of breach or within a longer period as Agency may specify in its notice.

ii. Breach by Agency. Agency breaches this Contract if:

a. Agency fails to pay Contractor any amount pursuant to the terms of this Contract, and Agency fails to cure this failure within fourteen (14) business days after delivery of

Contractor's notice of breach or within a longer period as Contractor may specify in its notice; or

b. Agency commits any material breach of its obligations under this Contract, fails to perform its obligations hereunder within the time specified or any extension thereof, and fails to cure its failure within fourteen (14) calendar days after delivery of Contractor's notice of breach or a longer period as Contractor may specify in its notice.

Q. REMEDIES.

i. County's Remedies. If Contractor is in breach under Section 4.P.i, then in addition to the remedies afforded elsewhere in this Contract, Agency shall be entitled to recover for any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, as provided in ORS Chapter 72. Agency may, at its option, pursue any or all of the remedies available under this Contract and at law or in equity, including, but not limited to:

- a. Termination of this Contract under Section 4.S.ii;
- b. Withholding all amounts Contractor has invoiced for Goods and Services that Contractor is obligated to 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; or
- d. Exercise of the right of setoff and withholding amounts otherwise due and owing to Contractor in an amount equal to Agency's setoff right, without penalty.

These remedies are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If Contractor is found to not be in breach under Section 4.P.i, the rights and obligations of the parties shall be the same as if this Contract was terminated pursuant to Section 4.S.ii.a.

ii. Contractor's Remedies. If Agency terminates this Contract for convenience under Section 4.S.ii.a, or if Agency is in breach under Section 4.P.ii and whether or not Contractor elects to exercise its right to terminate this Contract under Section 4.S.iii, Contractor's sole remedy is a claim against Agency for the unpaid price for any Goods delivered and accepted by Agency less any claims Agency has against Contractor and is as follows for unpaid Services completed and accepted by Agency:

- a. For Services compensable on an hourly basis, a claim against Agency for unpaid invoices, hours worked but not yet invoiced, and authorized expenses for Services completed and accepted by Agency less any claims Agency has against Contractor.
- b. For deliverable-based Services, a claim against Agency for the amount specified for completing the deliverable multiplied by the percentage of Services completed and

accepted by Agency, less previous amounts paid and the amount of any claims Agency has against Contractor.

If previous amounts paid to Contractor for Goods and Services exceed the amount due to Contractor under this Section 4.Q.ii, Contractor shall pay the excess amount to Agency immediately upon written demand.

R. ATTORNEYS' FEES.

Except for defense costs and expenses pursuant to Section 4.N, neither Agency nor Contractor is entitled to recover attorney's fees, court and investigative costs, or any other fees or expenses associated with pursuing a remedy arising out of or relating to this Contract.

S. TERMINATION.

i. MUTUAL CONSENT. The Contract may be terminated at any time by mutual written consent of the parties.

ii. Agency:

a. Agency may, at its sole discretion, terminate the Contract for its convenience upon 30 days written notice to Contractor.

b. Agency may, in its sole discretion, terminate this Contract, immediately upon notice to Contractor, or at a later date as Agency may establish in its notice, upon the occurrence of any of the following events:

1. Agency fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to make payments under this Contract;
2. Agency may reduce quantity of goods and services purchased if anticipated funding is reduced;
3. Federal or State laws, regulations, or guidelines are modified or interpreted in a way that either the purchase of Goods or Services, or both, by the Agency under this Contract is prohibited, or the Agency is prohibited from paying for Goods or Services, or both, from the planned funding source; or
4. Contractor commits any material breach of this Contract.

Contractor shall stop performance under this Contract as directed by Agency in any written notice of termination delivered to Contractor under this Section 4.S.ii.

iii. CONTRACTOR. Contractor may terminate this Contract immediately upon written notice to Agency, or at a later date as Contractor may establish in its notice, if Agency is in breach under Section 4.P.ii.

T. REPRESENTATION AND COVENANT.

- a. Contractor represents and warrants that Contractor has complied with the tax laws of this state, and where applicable, the laws of Deschutes County, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318.
- b. Contractor covenants to continue to comply with the tax laws of this state, and where applicable, the laws of Deschutes County, during the term of this contract.
- c. Contractor acknowledges that failure by Contractor to comply with the tax laws of this state, and where applicable, the laws of Deschutes County, at any time before Contractor has executed the contract or during the term of the contract is and will be deemed a default for which Deschutes County may terminate the contract and seek damages and/or other relief available under the terms of the contract or under applicable law.

U. ACCESS TO RECORDS.

Contractor shall retain, maintain, and keep accessible all records relevant to this Contract ("Records") for six (6) years following Contract termination or full performance, the period required by applicable law following Contract termination or full performance, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever ending date is later. Contractor shall maintain all financial Records in accordance with generally accepted accounting principles. During this Record-retention period, Contractor shall permit County, its duly authorized representatives, and the federal government access to the Records at reasonable times and places for purposes of examination and copying.

V. NOTICES.

All notices required under this Contract shall be in writing and addressed to the party's authorized representative. For Agency, the authorized representative is the Agency contact person identified in Section 8. Contractor's authorized representative is the contact person identified in Section 7. Mailed notices are deemed received five (5) days after the post mark date when properly addressed and deposited prepaid into the U.S. postal service. Faxed notices are deemed received upon electronic confirmation of successful transmission to the designated fax number. Notices delivered by personal delivery are deemed received when delivered to the address specified for the receiving party's authorized representative.

W. GOVERNING LAW.

The Contract is governed by and construed in accordance with the laws of State of Oregon without regard to principles of conflicts of laws. To the extent not modified by the terms of this Contract, the Uniform Commercial Code as codified in ORS Chapters 71 and 72 governs Goods under this Contract. The applicability of the UN Convention on Contracts for the International Sale of Goods is hereby expressly waived by the parties, and it does not apply to this Contract.

X. VENUE; CONSENT TO JURISDICTION.

Any claim, action, suit or proceeding (collectively, "Proceeding") between County and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively

within the Circuit Court of Oregon for Deschutes County; provided, however, if a Proceeding 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 THESE COURTS AND WAIVES ANY OBJECTION TO VENUE IN THESE COURTS AND ANY CLAIM THAT THE FORUM IS AN INCONVENIENT FORUM. Nothing in these provisions shall be construed as a waiver of governmental immunity, whether derived from the Eleventh Amendment to the United Counties Constitution or otherwise, or a waiver of any defenses to Proceedings or jurisdiction based thereon.

Y. SURVIVAL:

In addition to all provisions which by their nature extend beyond the Contract termination or full performance, the following provisions shall remain in effect beyond any Contract termination or full performance: Sections 1, 3, 4.A, 4.D, 4.E, 4.F, 4.L, 4.N, 4.O, 4.Q, 4.R, 4.T, 4.U, 4.W, 4.X, 4.Y, 4.CC and Section 5.

Z. SEVERABILITY.

If a court of competent jurisdiction declares any provision of this Contract to be illegal or otherwise invalid, 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 this Contract did not contain the particular provision held to be invalid.

AA. SUBCONTRACTS; ASSIGNMENT; SUCCESSORS.

i. SUBCONTRACTS. Contractor shall not enter into any subcontracts for any Services required under this Contract without Agency's prior written consent. In addition to any other provisions Agency may require, Contractor shall include in any permitted subcontract provisions to ensure that Agency will receive the benefit of subcontractor's performance as if the subcontractor were Contractor with respect to Sections 3, 4.E, 4.F, 4.I, 4.J, 4.N, 4.O, 4.T, 4.U, 4.W, 4.X, and 4.AA. Agency's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

ii. Contractor shall not assign, delegate or transfer any of its rights or obligations under this Contract without Agency's prior written consent. Agency's written consent does not relieve Contractor of any obligations under this Contract, and any assignee, transferee, or delegate is considered Contractor's agent.

iii. The provisions of this Contract are binding upon, and inure to the benefit of the parties and their respective successors and permitted assigns, if any.

BB. MERGER CLAUSE; AMENDMENT; WAIVER.

This Contract constitutes the entire agreement between the parties on the subject matter thereof. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Contract. This Contract may be amended to the extent permitted by applicable statutes and administrative rules. For Anticipated Amendments, this Contract may be amended only in accordance with and to the extent provided in the Solicitation, if any, and this Contract, in

accordance with OAR 137-047-0800. No waiver, consent or amendment of terms of this Contract shall bind either party unless in writing and signed by Agency and Contractor, and all necessary approvals have been obtained. Waivers and consents shall be effective only in the specific instance and for the specific purpose given. The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.

CC. THIRD PARTY BENEFICIARIES.

Agency and Contractor are the only parties to this Contract and are the only parties entitled to enforce the terms of this Contract. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless the third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract. Agency is an intended beneficiary of the terms of this Contract.

DD. COUNTERPARTS.

This Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Contract so executed shall constitute an original.

5. INSURANCE

A. REQUIRED INSURANCE. Contractor shall obtain the insurance specified in this Section 5 prior to performing under this Contract and shall maintain it in full force and at its own expense throughout the duration of this Contract and all Warranty Periods. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in County and that are acceptable to Agency.

i. WORKERS COMPENSATION.

All employers, including Contractor, that employ subject workers who work under this Contract in Oregon shall comply with ORS 656.017 and provide the required workers' compensation coverage, unless these employers are exempt under ORS 656.126(2). Contractor shall require each of its subcontractors, if any, to comply with, and shall ensure that each of its subcontractors, if any, complies with, these requirements.

ii. COMMERCIAL GENERAL LIABILITY.

Required by Agency **Not required by Agency.**

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to Agency. This insurance shall include personal and advertising injury liability, products and completed operations liability. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Combined single limit per occurrence shall not be less than \$ 1,000,000 for each job site or location. Each annual aggregate limit shall not be less than \$ 2,000,000 .

iii. AUTOMOBILE LIABILITY INSURANCE: AUTOMOBILE LIABILITY.

Required by Agency **Not required by Agency.**

Automobile Liability Insurance covering all owned, non-owned, and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance. Combined single limit per occurrence shall not be less than \$500,000.

iv. EMPLOYERS' LIABILITY.

Required by Agency **Not required by Agency.**

If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall obtain employers' liability insurance coverage with combined single limit per occurrence of not less than \$500,000, and annual aggregate limits of not less than \$1 million.

v. POLLUTION LIABILITY.

Required by Agency **Not required by Agency.**

Pollution coverage shall be required with a combined single limit of not less than:

Per Occurrence limit	Annual Aggregate limit
• \$1,000,000	• \$2,000,000

Pollution Liability insurance includes coverage for claims involving bodily injury, property damage (including loss of use of tangible property that has not been physically injured), cleanup costs, remediation, disposal or other handling of pollutants, including costs and expenses incurred in the investigation, defense, or settlement of claims arising out of:

- Contractor's operations related to this project; and/or
- Remediation, abatement, repair, maintenance or other work with lead-based paint or materials containing asbestos; and/or
- Transportation of hazardous materials away from any site related to this project.

By separate endorsement, the policy shall name Deschutes County, its officers, agents, employees and volunteers as an additional insured. The additional insured endorsement shall not include declarations that reduce any per occurrence or aggregate insurance limit. The contractor shall provide additional coverage based on any outstanding claim(s) made against policy limits to ensure that minimum insurance limits required by the County are maintained. Construction contracts may include aggregate limits that apply on a "per location" or "per project" basis.

B. ADDITIONAL INSURED.

The commercial general liability insurance and automobile liability insurance required under this Contract shall include by separate endorsement Deschutes County, and its departments, divisions, commissions, branches, officers and employees as Additional Insureds with respect to

Contractor's performance obligations under this Contract. Contractor shall ensure that coverage is primary and non-contributory with any other insurance and self-insurance.

C. "TAIL" COVERAGE.

If any of the required liability insurance is on a "claims made" basis, Contractor shall either 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. Agency's acceptance of all Goods in accordance with Section 4.D (if acceptance has not been revoked in accordance with Section 4.D.iii),
- ii. The completion of all Services required under this Contract, or
- iii. The expiration of all warranty periods provided under this Contract. Notwithstanding the foregoing 24-month requirement, if Contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then Contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace for the coverage required under this Contract. Contractor shall provide to Agency, upon request, certification of the coverage required under this Section 5.C.

D. NOTICE OF CANCELLATION OR CHANGE.

There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without sixty (60) days' written notice from this Contractor or its insurer(s) to Agency. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract by Agency. No later than fourteen calendar days following the effective date of any insurance policy renewals, Contractor shall deliver to Agency all documentation evidencing renewal of the particular insurance policy renewed.

E. CERTIFICATE(S) OF INSURANCE.

Upon Agency's request, Contractor shall provide to Agency Certificate(s) of Insurance for all required insurance. The Certificate(s) must specify all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees). Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

6. RESERVED.

7. CERTIFICATIONS AND SIGNATURE OF CONTRACTOR'S AUTHORIZED REPRESENTATIVE.

THIS CONTRACT MUST BE SIGNED IN INK BY AN AUTHORIZED REPRESENTATIVE OF CONTRACTOR.

The undersigned certifies under penalty of perjury both individually and on behalf of Contractor that:

A. The undersigned is a duly authorized representative of Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Contract and to execute this Contract on behalf of Contractor;

B. The undersigned is authorized to act on behalf of Contractor and that Contractor is, to the best of the undersigned’s knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, “Oregon Tax Laws” means a State tax imposed by ORS 401.792 to 401.816 (Tax For Emergency Communications), 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 320 (Amusement Device and Transient Lodging Taxes), 321 (Timber and Forestland Tax), 323 (Cigarettes and Tobacco Products Tax), and the elderly rental assistance program under ORS 310.630 to 310.706; and any local taxes administered by the Department of Revenue under ORS 305.620.

C. To the best of the undersigned’s knowledge, Contractor has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts.

D. Contractor and Contractor’s employees and agents are not included on the list titled “Specially Designated Nationals and Blocked Persons” maintained by the Office of Foreign Assets Control of the United County’s Department of the Treasury and currently found at <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>;

E. Contractor’s Federal Employee Identification Number or Social Security Number specified below is correct;

F. Contractor is bound by and will comply with all requirements, terms and conditions contained in this Contract and will provide Goods and Services in accordance with the Specifications; and

G. Contractor ___ is / ___ is not a nonresident alien as defined in 26 USC § 7701(b)(1) (check one). See Section 4.A.ii.

Contractor (print name):	
Authorized Signature:	
By (print name):	
Title:	
Date:	
FEIM ID# or SSN# (required):	
Contractor’s Contact Person:	
Contact Phone #:	

Contact Fax #:	
Contact Email:	
Mailing Address:	

8. SIGNATURE OF COUNTY'S AUTHORIZED REPRESENTATIVE.

Agency accepts Contractor's offer and awards this Contract to Contractor for Goods and Services described in this Contract.

Deschutes County, Oregon, acting by and through its Board of County Commissioners.

IN WITNESS WHEREOF, DESCHUTES COUNTY has caused this agreement to be signed in its name, by its Board of County Commissioners, duly attested by its Recording Secretary; and the said Contractor has caused this Agreement to be signed and sealed the same as of the _____ day of _____, 2021.

Attest:
Recording Secretary

DESCHUTES COUNTY BOARD OF COUNTY COMMISSIONERS
Chair
Vice Chair
Commissioner

Authorized Signature:	
By (print name):	Chris Doty
Title:	Road Department Director
Date:	
Agency's Contact Person:	Chuck Schutte
Contact Phone #:	541.322.7124
Contact Fax #:	541.388.2719
Contact Email:	Chuck.Schutte@deschutes.org
Agency Mailing Address:	61150 SE 27 th Street, Bend OR 97702

APPENDIX "A"

SPECIAL PROVISIONS

SCOPE

This specification covers a ready-mixed, one-component, 100% latex waterborne latex traffic line paint. The paint is suitable for application on such traffic-bearing surfaces as Portland cement concrete, bituminous cement concrete, asphalt, tar, and previously painted areas of these surfaces. The paint may be used either alone or to bind reflective beads.

APPLICABLE SPECIFICATIONS

The following Specifications, Test Methods, and Standards to be used as a bend mark for minimum quality and performance.

- American Society for Testing and Materials (ASTM) Designations: D65, ASTM D75, ASTM D93, ASTM 476, ASTM D562, ASTM D711, ASTM D713, ASTM D869, ASTM D1210, ASTM D1475, ASTM D1640, ASTM D1729, ASTM D1849, ASTM D2243, ASTM D2369, ASTM D2486, ASTM D3168, ASTM D3335, ASTM D3718, ASTM D3723, ASTM D3960, ASTM D4563, ASTM D5380, ASTM D6459-98, ASTM D6628 01, ASTM E70, ASTM E313, ASTM E1710-97, ASTM G151 and ASTM G154.
- Federal Specification 595b, Color #33538 and #37038
- 49 CFR
- 40 CFR Part 60, Appendix A
- 29 CFR Part 1910.1200

REQUIREMENTS

This specification is intended to specify traffic paint that will meet pavement delineation requirements for highway construction and maintenance. This traffic paint is to be used in conjunction with glass spheres to produce pavement delineation that is visible during both day and night conditions.

COMPOSITION

The composition of the paint shall be determined by the manufacturer. It will be the manufacturer's responsibility to produce a waterborne traffic paint containing all the necessary ingredients to conform to all the properties as specified herein.

- **Polymer Emulsion**
The non-volatile portion of the vehicle shall be composed of emulsion polymer and shall not be less than 42.0% by non-volatile vehicle. Emulsion polymer shall be **equal to or exceed** the performance of Rohm & Haas Fastrack IID-21A Emulsion.
- **Pigment**
The pigment portion shall be a combination of prime and extender pigments as required to produce either white or yellow traffic paint meeting the color and other requirements of the finished product for white, or yellow as specified in this specification. A high grade pigment is required.

The white paint shall be pigmented with titanium dioxide meeting ASTM D476 Type II (Rutile).

The yellow paint shall be pigmented with Pigment Yellow C.I. #65 and/or Pigment Yellow C.I. #75. Other pigments may be added to meet the yellow color and opacity requirements. However, the paint shall not contain lead or chromium at levels above the limit set.

The percent pigment by weight of the finished product shall not be less than 60%.

Characteristics of the Finished Paint

Condition in the Container:

The paint, as received, shall show no evident of biological growth, corrosion of the container, livering or hard settling. The paint shall be returned to a smooth and homogeneous consistency, which is free from gel structures, persistent foam or air bubbles – using only hand mixing.

	<u>White</u>	<u>Yellow</u>
Degree of Settling, ASTM D869, min	7	7
Total Pigment, % by weight, min	60	60
Nonvolatile Vehicle, % by weight of paint, min	42.0	42.0
Total Nonvolatile Vehicle, % by vol. of paint, min	60.0	60.0
PH, ASTM E70 min	9.5	9.5
Density, pounds, min	13.90	13.70
Viscosity, KU	80-9	80-95
Fineness of Grind, Hegman, min	3	3
Laboratory Dry Time, ASTM D711, minutes, max	10	10
Dry Through (Early Washout), minutes, max @ 15 mils wet, 72.5±5°F & 90%±5% RH	125	125
No Tracking Time, field tested, seconds	20-90	20-90
Volatile Organic Compound, grams/lit, max	100	100
Dry Opacity @ 5 mils wet, min	0.94	0.94
Daylight Reflectance @ 15 mils wet, %	>84	52-58
Scrub Resistance, cycles, min @15 mils wet	1500	1500
Lead, mg/kg in dried paint, max	20	20
Chromium, mg/kg in dried paint, max	5	5

Cracking of Paint Film

The dry film shall show no cracks when examined after drying for 24 hours at room temperature. The film shall be cast with a 30 mils wet film on 15 pounds asphalt saturated felt.

WORKMANSHIP, SETTLING AND SHELF-LIFE

The paint shall be free from foreign materials such as dirt, sand, fibers, or other materials capable of clogging: screens, valves, pumps, or other equipment used in paint striping apparatus.

The paint pigment shall be well ground and properly dispersed in the vehicle. The pigment shall not cake or thicken in the container and shall not become granular or curdled. Any settlement of the pigment in the paint shall result in a thoroughly wetted soft mass that permits the complete and easy vertical penetration of a paddle. Settled pigment shall be easily re-dispersed, with a minimum of

resistance to the sidewise manual motion of the paddle across the bottom of the container. This stirring shall return the paint to a smooth uniform product of the proper consistency. If the paint cannot be easily re-dispersed, due to excessive pigment settlement or any other cause, then the paint shall be considered unfit for use.

PREPARATION FOR DELIVERY

Specification for Polyethylene Paint Totes

Scope

This specification covers cylindrical paint totes {a.k.a. intermediate bulk containers (IBCs)} molded in one-piece seam construction by rotational molding. Included are requirements for materials, properties, design, construction, dimensions, tolerances, workmanship, and appearance. Tank capacity is 275 gallons (1,040 L).

Materials

The material used shall be virgin linear polyethylene resin as compounded and certified by the manufacturer. Tanks shall be made from linear polyethylene resin (0.5" thick).

All polyethylene resin material shall contain a minimum of a U.V. 8 stabilizer as compounded by the resin manufacturer. Pigments may be added at the purchaser's request, but shall not exceed 0.25% (dry blended) of the total weight.

Mechanical Properties of tank material:

<u>PROPERTY</u>	<u>ASTM</u>	<u>Value</u>
Density (Resin)	D1505	0.940-0.947 g/cc
Tensile (Yield Stress 2"1min)	D638	2700 PSI
Elongation at Break (2"1min.)	D638	350%
ESCR (100% Igepal, Cond. A, F50)	D1693	400-1000 hours
ESCR (10% Igepal, Cond. A, F50)	D1693	200-500 hours
Vicat Softening Degrees F. Temperature	D1525	235
Flexural Modulus	D790	97,000-103,000 PSI

Design Requirements

Totes shall be reusable, translucent, heavy-duty linear polyethylene intermediate bulk containers capable of handling bulk liquids of 1.9 specific gravity.

Totes shall be UN / D.O.T certified for shipping and handling of bulk liquids with a maximum of 1.9 specific gravity.

Totes shall have a heavy duty polyethylene base that allows four-way forklift and pallet jack entry compatible with most material handling equipment and stacking frame and top protector with 4 legs allowing tote to be capable of being stacked a minimum of two high when completely filled

with paint.

Totes shall have a certificate of compliance with 49CFR Subpart O section 178.2 (c).

The base and top protector for the totes to be done in yellow (for yellow paint totes) and in natural white (for white paint totes). The front side of each top protector shall have the paint supplier's name/logo (minimum height 2" in contrasting color) molded into it for identification purposes.

Workmanship

The finished tank wall shall be free, as commercially practicable, of visual defects such as foreign inclusions, dried paint, air bubbles, pinholes, pimples, crazing, cracking and delamination that will impair the serviceability of the vessel. Fine bubbles are acceptable with tanks to the degree in which they do not interfere with proper fusion of the resin melt.

All cut edges where openings are cut into the tanks shall be trimmed smooth.

Tank Fittings / Attachments

Bottom Drain Valve. The bottom drain valve shall be recessed full port width of 2" (51mm) with a 2" (51mm) male quick disconnect fitting. The valve and disconnect shall be made of polypropylene, leak free and compatible with waterborne paint.

Top Fill Lid. The top lid will be a screw cap style lid with female threads with a minimum access opening of 20" (508 mm) to accommodate stirring blades, and shall be easily opened by hand. The screw cap shall have a 6" (152 mm) inner cap with 2" (50.8 mm) bung incorporated into it to provide for quick fill and vacuum vent attachment.

MARKINGS / CERTIFICATIONS

Gallage Marker: Tote shall have a molded-in gallon marker for at a glance monitoring.

Certification

Tote shall have molded in markings for the following:

- DOT shipping classification
- capacity
- tare mass
- gauge test pressure
- the month, day and year of manufacture
- Manufacturer name, city and state
- Customer specific labeling

Totes shall have a document holder attached that will be used to hold a document to be prepared by the paint supplier which will include the following:

- quantity of paint contained,
- color of paint
- batch number
- formula code

DELIVERY AND CONTAINER RETURN:

County shall provide Contractor with a ten (10) day written notice for each order and delivery date. Contractor will confirm receipt of order(s) and delivery date(s) in writing preferably by e-mail by 3:30 p.m. the next workday. Contractor shall notify County in writing with twenty four hours (24) of order date if delivery cannot be completed as requested. County may cancel an order and make the purchase from another source if Contractor cannot complete the order as requested. Repeated failure to meet delivery requirements may result in contract cancellation.

County may occasionally require paint within a two-week time frame. Contractor shall make every effort to deliver the paint within the two-week time frame.

County will order at a minimum of 11 containers of paint per load (a truckload).

At the time paint is delivered, Contractor shall pick up empty containers from the point of delivery at no cost to County. County shall load empty containers from stockpile site onto Contractor's transport vehicle. No empty containers shall accumulate at Deschutes County Road Department site without permission in writing by County.

County will only accept deliveries 6:30 a.m. to 5:00 p.m. Monday through Thursday. **NO FRIDAY DELIVERIES OR PICKUPS.** Deschutes County **will not accept deliveries or pickups on weekends or state-observed holidays.** Contractor shall notify Deschutes County by telephone at least twenty-four (24) hours prior to delivery.

County will acknowledge delivery of paint by signing and dating the "Bill of Lading".

Contractor shall notify the ordering party in writing preferably by e-mail by 3:30 p.m. the next work-day after delivery for complete order, if the ordering party is not present at the time of delivery. Contractor will mail the "Bill of Lading" signed and dated by the Contractor via the delivery driver if the ordering party is not present at the time of delivery.

Orders shall be accompanied by a Material Safety Data Sheet (MSDS). A copy of the MSDS for both white and yellow paint shall be provided to County at the beginning of the contract.

TESTING AND GUARANTEE:

Contractor shall sample all batches of paint manufactured for County. Samples shall be taken during the filling of the containers.

Contractor shall provide County with testing reports on each batch of paint delivered to the County.

Contractor shall test samples for weight-per-gallon and viscosity, according to test methods ASTM D1475 and using a Brookfield Viscometer or equal.

Contractor shall not deliver material(s) that are not in compliance with specifications.

Contractor shall not deliver product to County more than thirty (30) days after the date of manufacture.

Contractor shall guarantee the product for a period of twelve (12) months after manufacture and replace paint that is unfit for use due to: leaking containers, contaminates, dry caking, settling, gelling, clumping, separation, livering, skinning while stored in the original container received from Contractor, or causing any system filter to clog after less than 1,500 gallons of products used.

The paint must be capable of being re-mixed to reincorporate the solids.

FIELD REQUIREMENTS

No-Track Time. The paint shall dry to a no-track condition in no more than 90 seconds when applied at 18 mils wet film thickness on dry pavement temperature of 50 degrees Fahrenheit to 100 degrees Fahrenheit and maximum 85% relative humidity, with 1.75 lb. of glass beads per liter of paint. "No-Track" shall be the tie required for the line to withstand the running of a standard automobile over the line at a speed of approximately 40 mph simulating a passing procedure, without tracking of the reflectorized line when viewed from a distance of 50 feet downstream.

TRAINING BY A FACTORY REPRESENTATIVE

Successful Contractor will be required to provide a factory representative to conduct training to County personnel as stated herein. The County, prior to the training sessions, must approve all training materials. Handouts of the training material must be provided for each participant. The successful Contractor must allow reproduction (by the County, for County use) of all materials furnished to the participants.

Training will be required on the following subjects:

- Proper use and handling of the paint and totes
- Storage
- Receiving shipments
- Sampling procedures
- Application procedures, tip sizes, pressure, etc.

Failure to provide the factory representative as required may be cause for contract cancellation.

If a factory representative is needed on site for a major problem. The Contractor will have three (3) working days to respond in person to the site where needed. Most problems will be handled by telephone, fax or e-mail.

APPENDIX "B"

AUTHORIZATION FOR ADDITIONAL ORDERS

It is intended that this contract be available to other public agencies in the region in accordance with the requirements of ORS 279A.215(g). Deschutes County hereby concurs with such usage of this contract. Bidder shall specify below whether it will accept purchase orders for this product from other public agencies within Deschutes County and neighboring counties at the same price, allowing only for changes in price due to changes in specifications.

CONTRACT AUTHORIZATION FOR OREGON STATE AGENCIES AND/OR POLITICAL SUBDIVISIONS

#	Item	Unit Price	Units
1	Yellow Durable Ultra Hi-Build, Hi-Performance WaterborneTraffic Line Paint	\$	Gallon
2	White Durable Ultra Hi-Build, Hi-Performance WaterborneTraffic Line Paint	\$	Gallon

Oregon State Agencies and/or Political Subdivisions within and adjacent to Deschutes County are hereby authorized to use the quoted price received on this request to purchase materials at the same price structure as described above in accordance with ORS 279A.215(g). Freight rates for product delivery to additional agency's may be negotiated separately from this contract. Freight based on place and time of delivery.

Authorized Signature:	
Date:	