



**REQUEST FOR PROPOSAL
No. BT160409P**

Providing Produce Products

PROPOSAL DUE DATE AND TIME:

April 15, 2013 (2:00 PM, PST)

OSU Procurement and Contract Services Offices are open from 8:00 am – 12:00 noon and 1:00 pm – 5:00 pm.
Offices are closed during the 12:00 noon – 1:00 pm lunch hour.

SUBMITTAL LOCATION:

Oregon State University
Procurement and Contract Services
644 SW 13th Avenue
Corvallis, Oregon 97333

1.0 GENERAL

1.01 SCHEDULE OF EVENTS:

- Request for Proposal Issue Date February 14, 2013
- Pre-Proposal Conference March 4, 2013 (10:00 am, PST)
- Deadline for Request for Clarification or Change March 18, 2013 (2:00 pm, PST)
- Proposal Due Date and Time April 15, 2013 (2:00 pm, PST)

This Schedule of Events is subject to change. Any changes will be made through the issuance of Written Addenda.

1.02 PRE-PROPOSAL CONFERENCE:

A voluntary Pre-Proposal Conference will be held on Monday, March 4th, 2013 at 10:00am, in the "large east" meeting room at Marketplace West Dining Center, 351 SW 30th St. Parking is limited on campus please plan to allow extra time to accommodate this situation.

1.03 ISSUING OFFICE:

The Procurement and Contract Services (PaCS) department of Oregon State University (OSU) is the issuing office and is the sole point of contact for this Request for Proposal. Address all concerns or questions regarding this Request for Proposal to the Administrative Contact identified below:

1.04 ADMINISTRATIVE CONTACT:

Name: Bonnie Tufts
Title: Procurement Analyst
Telephone: 541-737-7353
Fax: 541-737-2170
E-Mail: Bonnie.tufts@oregonstate.edu

1.05 DEFINITIONS:

As used in this Request for Proposal, the terms set forth below are defined as follows:

- a. "Addenda" means an addition to, deletion from, a material change in, or general interest explanation of the Request for Proposal.
- b. "Exhibits" means those documents which are attached to and incorporated as part of the Request for Proposal.
- c. "Proposal" means an offer, binding on the Proposer and submitted in response to a Request for Proposal.
- d. "Proposer" means an entity that submits a Proposal in response to a Request for Proposal.
- e. "Proposal Due Date and Time" means the date and time specified in the Request for Proposal as the deadline for submitting Proposals.
- f. "Request for Proposal" (RFP) means a Solicitation Document to obtain Written, competitive Proposals to be used as a basis for making an acquisition or entering into a Contract when price will not necessarily be the predominant award criteria.
- g. "Responsible" means an entity that demonstrates their ability to perform satisfactorily under a Contract by meeting the applicable standards of responsibility outlined in OAR 580-061-0130.
- h. "Responsive" means a Proposal that has substantially complied in all material respects with the criteria outlined in the Request for Proposal.
- i. "Written or Writing" means letters, characters, and symbols inscribed on paper by hand, print, type, or other method of impression intended to represent or convey particular ideas or meanings.

2.0 INTRODUCTION AND BACKGROUND

2.01 INTRODUCTION

Oregon State University (OSU) Procurement and Contract Services (PaCS) is seeking Responsive Responsible Proposers to submit Proposals for company to provide produce products to University Housing and Dining Service (UHDS). It is anticipated that OSU UHDS will procure a majority of these items from one contractor; however, the contract will not limit or restrict OSU UHDS from procuring these products from alternate sources when it is in the best interest of OSU UHDS to do so.

2.02 BACKGROUND:

OSU UHDS summarizes their philosophy with the following mission statement:

"To Provide Exceptional Food and Service to the Campus Community"

The mission of Dining Services is to provide meals, furnish retail and catering food service to students, faculty, staff, conference groups and campus visitors. As a self-funded auxiliary, Dining Services supports the residential life experience, promotes nutrition education, encourages diversity and cultural awareness, and enhances the image of the University.

OSU UHDS Dining services areas:

- Marketplace West
- McNary Central Dining
- Arnold Dining
- Cascadia Market /Into Living Learning Center

Estimated Amount: OSU UHDS estimates that the annual contract usage amount is somewhere between \$550,000 and \$600,000. This amount is an estimate only and OSU UHDS does not guarantee this as a contracted amount.

2.03 OREGON STATE UNIVERSITY:

Founded in 1868, Oregon State University is a comprehensive, research-extensive, public university located in Corvallis. OSU is a member of the Oregon University System and one of only two American universities to hold the Land Grant, Sea Grant, Space Grant and Sun Grant designations. OSU is also the only Oregon institution to hold the Carnegie Foundation's top ranking for research universities, a recognition of the depth and quality of OSU's graduate education and research programs.

Through its centers, institutes, Extension offices and Experiment Stations, OSU has a presence in almost every one of Oregon's 36 counties, including its main campus in Corvallis, the Hatfield Marine Sciences Center in Newport and OSU-Cascades Campus in Bend. OSU offers undergraduate, masters and doctoral degrees through 12 academic colleges enrolling more than 20,000 students from every county in Oregon, every state in the country and more than 90 nations.

3.0 CONTRACT

3.01 SAMPLE CONTRACT:

A sample Contract containing the statement of work and contractual terms and conditions is included at Exhibit A.

4.0 PROPOSER QUALIFICATIONS/SERVICES

4.01 MINIMUM QUALIFICATIONS/SERVICES:

In order to qualify as a Responsive Proposer, the Proposer needs to meet the minimum qualifications below. After verification that the minimum qualifications have been met, OSU UHDS will award points based on the level of the Proposer's qualifications.

- a. Bidder must have been an established business for a minimum of three (3) years providing the services required in this Request for Proposal.
- b. Proposers shall state their policy regarding sale of broken cases and individual sale items. This statement shall indicate if any additional cost will be charged to OSU UHDS for partial cases or individual items ordered. Details on special order products and thresholds for bringing requested products into stock for future orders.
- c. Proposers shall state their policy regarding special cut items. This information shall include the ability to produce such items and the associated time frame for delivery of custom produce items that require special preparation to OSU UHDS's specifications, such as stir-fry vegetables.
- d. Proposers shall deliver ordered products a minimum of three (3) times per week on Monday, Wednesday and Friday between the hours of 6:00AM and 9:00AM.
- e. Proposers must include a statement indicating cut-off times for orders to be placed for each delivery.
- f. Proposers must include a complete list of all items stocked, all available special-order items, all current associated pricing and delivery lead-times. The list shall be separate and in addition to the Price Sheet, Exhibit D.
- g. The Proposer shall submit a resume for an in-house Customer Service Representative who will be assigned to assist OSU UHDS in placing orders by phone and/or with on-line support.
- h. The Proposer shall submit a resume for a knowledgeable Sales Representative and outline a strategic plan detailing how they will carry out the duties listed below:
 - Familiarize themselves with the menus and operations of the various OSU UHDS venues
 - Make recommendations on new and different products for OSU UHDS venues
 - Supply information on market conditions, new products and industry trends
 - Supply a newsletter and additional product and industry information on a regular and continued basis
 - Supply a link to manufacturer's representatives and brokers to show new products that may be of interest to OSU UHDS venues.
- i. Proposers shall include a plan outlining how both the representatives will interact with OSU UHDS personnel including Proposer's strategy to develop successful working relationships.
- j. The Proposer shall provide a sample weekly sales report detailing total purchases by item for the previous week, including all out-of-stock shortages, backordered items, late delivered items, substitutions and other activities for the week. Proposers shall detail how this report will be produced and provided and include a complete listing and description of the required information as well as any additional information their report provides.
- k. Proposers shall submit an order guide (a worksheet that lists products that have been ordered and possibly suggested order amounts, etc.).
- l. Proposers shall offer order placement via electronic submission, phone call and fax. Proposers shall outline exactly what information will be needed from UHDS in order to place an order expediently.
- m. Proposers must include a statement agreeing to the price audits outlined in the proposed contract.
- n. All purchases off this contract will be processed through the EATEC inventory and menu management system. The EATEC system is capable of placing orders electronically as well as receiving automated order guides and invoices from the Contractor. Contractor has the option to use an interface with EATEC at their expense for the software, upgrades and maintenance fees. Contractor is not required to have the capability to receive orders or issue invoices on the EATEC system but they must be able to email invoices as .csv files for each of the dining centers for each delivery.
- o. Proposers shall participate in the Hazard Analysis Critical Control Point (HACCP) safety program.

4.02 PREFERRED SERVICES:

OSU will award additional points for Proposers able to meet the preferred services below.

- a. Proposer to supply a delivery schedule including days and times for deliveries. The preferred proposal will offer the following:
 - Additional days of delivery beyond the mandatory Monday, Wednesday and Friday deliveries.
 - A lesser amount of time between customer ordering and product delivery.
 - Guaranteed early morning deliveries.
 - Proposers offering on-line customer access to proposer's in-stock quantities will be awarded more points.
- b. Proposers to outline sales strategies detailing creative, proactive and strategic methods to improve customer service with OSU UHDS.
- c. Proposers should indicate if they have the following processes available electronically:
 - On-line ordering process,
 - On-line training program for UHDS employees
- d. Proposals should include food safety handling information regarding the following:
 - Facility USDA inspection results
 - Suppliers that are third-party certified
 - Documentation detailing applications of the HACCP principles
 - Protocols for any level of recall or trace-back programs
- e. Providing information that demonstrates their experience with Universities or similar institutions and cost plus contract management pricing.

5.0 REQUIRED SUBMITTALS

5.01 QUANTITY OF PROPOSAL:

Submit one (1) original Proposal and four (4) duplicate copies. Mark original Proposal as "ORIGINAL". Original should contain original signatures on any pages where a signature is required. Proposals should contain the submittals listed in this section below:

5.02 REQUIRED SUBMITTALS:

It is the Proposer's sole responsibility to submit information in fulfillment of the requirements of this Request for Proposal. If pertinent information or required submittals are not included within the Proposal, it may cause the Proposal to be rejected or have an adverse impact on evaluation.

Proposers should submit the following information:

- a. Detailed information about how the Proposer meets the minimum and preferred qualifications/services detailed in section 4.01 and 4.02.
- p. Exhibit D items and the quantities listed are for the purpose of determining the price totals only. OSU
- q. Exhibit B, Certifications, fully completed.
- r. Exhibit C, References, fully completed.
- s. Exhibit D, Price Sheet, fully completed.
 - The Price Sheet, Exhibit D, lists items and quantities for the purpose of determining the ability of the proposer to provide a wide variety of produce items and to tabulate the price section of the RFP. Proposers shall bid on the exact products listed and shall not offer substitutes. If the proposer cannot offer the exact product indicate "no" in the notes column.

6.0 EVALUATION AND AWARD

6.01 EVALUATION:

The stages of review and evaluation are as follows:

a. Determination of Responsiveness:

OSU will first review all Proposals to determine Responsiveness. Proposals that do not comply with the instructions or are incomplete may be deemed non-Responsive. Written notice will be sent to Proposers whose Proposal is deemed non-Responsive identifying the reason. A proposer has the right to appeal the decision pursuant to OAR 580-061-130(5)(a).

b. First Stage Evaluation:

Those Proposals determined to be Responsive will be evaluated using the required submittals. Proposals will be scored based on the evaluation criteria listed below in section 6.03. Scores will be used to determine Proposer's within a competitive range. The competitive range will be made of Proposers whose individual scores, when viewed together, form a group of the highest ranked Proposers above a natural break in the scores.

OSU may award after the first stage evaluation to the highest ranked Proposer without moving on to the second stage evaluation. If this option is selected, Written notice of intent to award the Contract to the highest ranked Proposer will be provided to all Responsive Proposers.

c. Second Stage Evaluation:

If award is not made after the first stage evaluation, OSU may choose any of the following methods in which to proceed:

- i. Issue a Written invitation to Proposers within the competitive range requesting an interview, presentation, site visit or any other evaluative method that is relevant to the goods or services solicited in the Request for Proposal. Written invitations will contain the evaluation criteria and scoring that will be used by the evaluation committee.
- ii. Engage in oral or Written discussions with and receive best and final Proposals from all Proposers in the Competitive Range or all Proposers submitting Responsive Proposals. Discussions may be conducted for the following purposes:
 - Informing Proposers of deficiencies in their initial Proposals;
 - Notifying Proposers of parts of their Proposals for which OSU would like additional information; or
 - Otherwise allowing Proposers to develop revised Proposals that will allow OSU to obtain the best Proposal based on the requirements set forth in this Request for Proposal.

The conditions, terms, or price of the Proposal may be altered or otherwise changed during the course of the discussions provided the changes are within the scope of the Request for Proposal. Best and final Proposals will be scored based on the evaluation criteria listed below in section 6.03.

Points awarded in the first stage evaluation will not be carried to the second stage evaluation. Contract will be awarded to the Proposer who in OSU's opinion, best meets the requirements and qualifications of the RFP and OSU's needs.

d. Additional Stages of Evaluation:

If after completion of the second stage of evaluation, an award is not made, OSU may add another stage of evaluation using any of the methods outlined in the second stage evaluation above.

6.02 NEGOTIATIONS:

OSU may commence serial negotiations with the highest-ranked Proposer or commence simultaneous negotiations with all eligible Proposers. OSU may negotiate:

- a. The statement of work;
- b. The Contract price as it is affected by negotiating the statement of work; and
- c. Any other terms and conditions determined by OSU in its sole discretion to be reasonably related to those expressly authorized for negotiation. Accordingly, Proposers will not submit and OSU will not accept for negotiation, any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation.

Terms and conditions within the sample contract that are unrelated to the statement of work or Contract price may be negotiated after award, but before legal sufficiency review or execution of the Contract.

6.03 EVALUATION CRITERIA:

Points will be given in each criteria and a total score will be determined. The maximum points available for each criteria are identified below.

| <u>Evaluation Criteria:</u> | <u>Points:</u> |
|------------------------------------|-----------------------|
| Produce Products | 20 |
| Delivery | 20 |
| Additional Items | 15 |
| Sales Support | 15 |
| Sales Reports & Order Guides | 10 |
| Ordering & Invoicing | 15 |
| Food Safety Programs | 10 |
| Experience and Past Performance | 20 |
| Price | 75 |
| Total Possible Points | 200 |

- a. Produce Products
The committee will review the complete list of items stocked, available special-order items, cost reasonableness and availability of exact items from Exhibit D. The proposal giving us the largest quantity of items, the greatest availability of stock items, online access to inventory quantities and cost reasonableness will be awarded the most points.
- b. Delivery
The committee will review the Proposers delivery schedule. Proposers who indicate early morning guaranteed delivery, additional days of delivery, and the least amount of time between customer ordering and product delivery will be awarded the most points.
- c. Additional Items
The committee will review the Proposers policy on breaking of cases; sale of individual items; preparation of special cut items with the lead time needed for these and the additional cost of the services. The proposal giving us the least restrictive policies at reasonable cost will be awarded the highest number of points.
- d. Sales Support
The committee will review the Proposers resume for the account sales representative and the in-house customer service representative. The committee will also review the proposed informational sources for market conditions/industry trends, newsletter, online product information and manufacturer's

information. The best qualified team supplying the best information to the OSU UHDS team will be awarded the highest number of points.

e. Sales Reports & Order Guides

The committee will review the proposed sample weekly sales reports and market forecast reports and ordering guide. The proposal giving us the cleanest complete reporting, the best access to online market forecasting and the best ordering guide will be awarded the highest number of points.

f. Ordering & Invoicing

The committee will review the proposed options for order placement via electronic submission, phone call and fax as well as the proposed invoicing system. The proposal giving the easiest efficient ordering system options and clear invoicing system will be awarded the highest number of points.

g. Food Safety Programs

The committee will review the Proposers information/documentation outlining their food safety program. The proposal giving the most comprehensive food safety program will be awarded the highest number of points

h. Experience and Past Performance

All bidders shall submit at least three (3) references on Exhibit C. References from, universities, schools or similar institutions are particularly desirable. The list of references will include company/agency name, contact name, current phone number, mailing address, and e-mail address.

The questions asked will include:

1. What has the quality of the product been like over the term of your use of this vendor?
2. How was the overall delivery performance and did they maintain promised delivery schedules?
3. Was order scheduling responsive to your needs and did they meet scheduling promises?
4. Did you have a responsive, knowledgeable, dedicated sales team?
5. Did the vendor provide accurate invoicing?
6. Did the prices remain market competitive?
7. How was overall communication, trouble shooting and problem resolution?

The Evaluation Committee will attempt to contact each reference during normal OSU business hours. A maximum of three (3) attempts over a period of no more than five (5) working days will be made to contact each reference. If the three (3) attempts are unsuccessful, the bidder will receive a "0" for that reference.

i. Price

The committee will use Exhibit D for calculations then compare the total order cost. The proposal with the lowest order cost will be awarded the highest number of points using the method outlined below.

Example of Pricing Points Calculation

Proposer A's is the lowest cost at \$1000 and they are awarded 75 points.

Proposer B's is next lowest cost at \$1500 and they are awarded 50 points ($1000/1500 \times 75$)

6.04 INVESTIGATION OF REFERENCES:

OSU reserves the right to investigate and to consider the references and the past performance of any Proposer with respect to such things as its performance or provision of similar goods or services, compliance with specifications and contractual obligations, and its lawful payment of suppliers, subcontractors, and workers. OSU further reserves the right to consider past performance, historical information and facts, whether gained from the Proposal, Proposer interviews, references, OSU or any other source in the evaluation process. OSU may postpone the award or execution of the Contract after the announcement of the notice of intent to award in order to complete its investigation.

7.0 INSTRUCTIONS TO PROPOSERS

7.01 APPLICABLE STATUTES AND RULES:

This RFP is subject to the applicable provisions and requirements of the Oregon Revised Statutes, Oregon Administrative Rules, and OSU Policies and Procedures.

7.02 REQUEST FOR CLARIFICATION OR CHANGE:

Requests for clarification or change of the Request for Proposal must be in Writing and received by the Administrative Contact no later than the Deadline for Request for Clarification or Change as specified in the Schedule of Events. Such requests for clarification or change must include the reason for the Proposer's request. OSU will consider all timely requests and, if acceptable to OSU, amend the Request for Proposal by issuing an Addendum. Envelopes, e-mails or faxes containing requests should be clearly marked as a Request for Clarification or Change and include the RFP Number and Title.

7.03 ADDENDA:

Only documents issued as Written Addenda by PaCS serve to change the Request for Proposal in any way. No other direction received by the Proposer, written or verbal, serves to change the Request for Proposal. PaCS will notify potential Proposers through publication of the Addenda on the OUS procurement website. If you have received a Request for Proposal you should consult the OUS procurement website, prior to Proposal submittal, to assure that you have not missed any Addenda. Proposers are not required to return Addenda with their Proposal. However, Proposers are responsible for obtaining and incorporating any changes made by the Addendum into their Proposal. Failure to do so may, in effect, make the Proposal non-Responsive, which may cause the Proposal to be rejected.

7.04 PREPARATION AND SIGNATURE:

All Required Submittals must be Written or prepared in ink and signed in ink by an authorized representative with authority to bind the Proposer. Signature certifies that the Proposer has read, fully understands, and agrees to be bound by the Request for Proposal and all Exhibits and Addenda to the Request for Proposal.

7.05 PUBLIC RECORD:

Upon completion of the Request for Proposal process, information in your Proposal will become subject records under the Oregon Public Records Law. Only those items considered a "trade secret" under ORS 192.501(2), may be exempt from disclosure. If a Proposal contains what the Proposer considers a "trade secret" the Proposer must mark each sheet of information as such. Only bona fide trade secrets may be exempt and only if public interest does not require disclosure.

7.06 SUBMISSION:

Proposals must be submitted in a sealed envelope and be delivered to the submittal location listed on the Request for Proposal cover sheet no later than the Proposal Due Date and Time. Proposer must specify on the outside of the envelope the Request for Proposal number, the Request for Proposal title and the Proposal Due Date and Time. **E-MAIL OR FACSIMILE PROPOSALS WILL NOT BE ACCEPTED.**

7.07 MODIFICATION:

Prior to submittal, Proposers should initial modifications or erasures in ink by the person signing the Proposal. After submittal but prior to the Proposal Due Date and Time, Proposals may be modified by submitting a Written notice indicating the modifications and a statement that the modification amends and supersedes the prior Proposal. After the Proposal Due Date and Time, Proposers may not modify their Proposal.

7.08 WITHDRAWALS:

A Proposer may withdraw their Proposal by submitting a Written notice to the Administrative Contact identified in this Request for Proposal prior to the Proposal Due Date and Time. The Written notice must be on the Proposer's letterhead and signed by an authorized representative of the Proposer. The Proposer, or

authorized representative of the Proposer, may also withdraw their Proposal in person prior to the Proposal Due Date and Time, upon presentation of appropriate identification and evidence of authority to withdraw the Proposal satisfactory to OSU.

7.09 LATE SUBMITTALS:

Proposals and Written notices of modification or withdrawal must be received no later than the Proposal Due Date and Time. OSU may not accept or consider late Proposals, modifications, or withdrawals except as permitted in OAR 580-061-0120.

7.10 PROPOSAL OPENING:

Proposals will be opened immediately following the Proposal Due Date and Time at the Submittal Location. Proposer may attend the Proposal opening. Only the names of the Proposers submitting Proposals will be announced. No other information regarding the content of the Proposals will be available.

7.11 PROPOSALS ARE OFFERS:

The Proposal is the Proposer's offer to enter into a Contract pursuant to the terms and conditions specified in the Request for Proposal, its Exhibits, and Addenda. The offer is binding on the Proposer for one hundred twenty (120) days. OSU's award of the Contract constitutes acceptance of the offer and binds the Proposer. The Proposal must be a complete offer and fully Responsive to the Request for Proposal.

7.12 CONTINGENT PROPOSALS:

Proposer shall not make its Proposal contingent upon OSU's acceptance of specifications or contract terms that conflict with or are in addition to those in the Request for Proposal, its Exhibits, or Addenda.

7.13 RIGHT TO REJECT:

OSU may reject, in whole or in part, any Proposal not in compliance with the Request for Proposal, Exhibits, or Addenda, if upon OSU's Written finding that it is in the public interest to do so. OSU may reject all Proposals for good cause, if upon OSU's Written finding that it is in the public interest to do so. Notification of rejection of all Proposals, along with the good cause justification and finding of public interest, will be sent to all who submitted a Proposal.

7.14 AWARDS:

OSU reserves the right to make award(s) by individual item, group of items, all or none, or any combination thereof. OSU reserves the right to delete any item from the award when deemed to be in the best interest of OSU.

7.15 LEGAL SUFFICIENCY REVIEW:

Prior to execution of any Contract resulting from this Request for Proposal, the Contract may be reviewed for legal sufficiency by a qualified attorney for OSU pursuant to the applicable Oregon Revised Statutes and Oregon Administrative Rules. Legal sufficiency review may result in changes to the terms and conditions specified in the Request for Proposal, Exhibits, and Addenda.

7.16 PROPOSAL RESULTS:

A notice of intent to award containing the Proposal results will be issued to all Proposers. The Proposal file will be available for Proposer's review during the protest period at the PaCS Department. Proposers must make an appointment with the Administrative Contact to view the Proposal file. After the protest period, the file will be available by making a Public Records Request to OSU.

7.17 PROPOSAL PREPARATION COST:

OSU is not liable for costs incurred by the Proposer during the Request for Proposal process.

7.18 PROPOSAL CANCELLATION:

If a Request for Proposal is cancelled prior to the Proposal Due Date and Time, all Proposals that may have already been received will be returned to the Proposers. If a Request for Proposal is cancelled after the Proposal Due Date and Time or all Proposals are rejected, the Proposals received will be retained and become part of OSU's permanent Proposal file.

7.19 PROTEST OF CONTRACTOR SELECTION, CONTRACT AWARD:

Any Proposer who feels adversely affected or aggrieved may submit a protest within seven (7) calendar days after OSU issues a notice of intent to award a Contract. The protest must be clearly identified as a protest, identify the type and nature of the protest, and include the Request for Proposal number and title. The rules governing protests are at OAR 580-061-0145.

**EXHIBIT A
SAMPLE CONTRACT**

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OREGON STATE UNIVERSITY
CONTRACT FOR THE PURCHASE OF
PROVIDING PRODUCE PRODUCTS
CONTRACT NO. BT160409P

This Contract is between the State of Oregon acting by and through the State Board of Higher Education on behalf of Oregon State University and its University Housing and Dining department ("OSU UHDS"), and [Contractor's name] ("Contractor").

WHEREAS, OSU UHDS competitively solicited for the services outlined in this Contract under Request for Proposal number BT160409P entitled Providing Produce Services and was selected as the Proposer best able to provide this service; and

WHEREAS, Contractor understands the requirements for the services outlined in this Contract, and is willing and able to provide, in accordance with the terms of this Contract, the services;

NOW, THEREFORE, OSU UHDS and Contractor agree as follows:

1. CONTRACT TERM AND TERMINATION:

A. CONTRACT TERM.

This Contract is effective on the date of last signature and expires on insert date This Contract may be renewed, upon mutual agreement of the parties through written amendment, for additional one (1) or two (2) year terms based on the current terms and conditions provided that the total Contract Term does not extend beyond six (6) years or as otherwise allowed by law.

B. TERMINATION.

This Contract may be terminated at any time by mutual consent of both parties or by OSU UHDS upon thirty (30) days' notice in writing and delivered by certified mail or in person to the other party. In addition, OSU UHDS may terminate this Contract at any time by written notice to Contractor if (a) Federal or state statutes, regulations or guidelines are modified or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract; (b) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; or (c) OSU UHDS fails to receive sufficient legislative appropriations (or from applicable federal, state, or other sources) to permit OSU UHDS, in the exercise of its reasonable administrative discretion, to fulfill its obligations under this Contract, or if the OSU UHDS program for which this Contract was executed is abolished.

This Contract may also be terminated by OSU UHDS for default (including breach of contract) if (a) Contractor fails to timely provide services or materials called for by this Contract; or (b) Contractor fails to perform any of the other provisions of this Contract, or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms and conditions, and after receipt of written notice from OSU UHDS, fails to correct such failures within ten (10) days. The rights and remedies of OSU UHDS provided in the above clause related to defaults (including breach of contract) by Contractor shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

C. REMEDIES FOR CONTRACTOR'S DEFAULT.

In the event Contractor is in default, OSU UHDS may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, including, but not limited to: (a) rejection of the services, (b) requiring Contractor to correct any defects without charge, (c) negotiation with Contractor to sell the services to OSU at a reduced price, (d) termination of the Contract, (e) withholding all moneys due for the services Contractor has failed to deliver within any

scheduled completion dates or has performed inadequately or defectively, (f) initiation of an action or proceedings for damages, specific performance, or declaratory or injunctive relief, or (g) exercise of its right of set off. These remedies are cumulative to the extent the remedies are not inconsistent, and OSU UHDS may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

2. STATEMENT OF WORK:

A. REQUIRED GOODS, SERVICES, DELIVERABLES AND DELIVERY SCHEDULE.

Contractor shall provide OSU UHDS with the goods and services as outlined in Attachment A during the Term of this Contract:

B. KEY PERSONS.

Contractor and OSU UHDS agree that each individual specified below is an individual whose special qualifications and involvement in Contractor's performance of services form part of the basis of agreement between the parties for this Contract and is an individual through whom Contractor shall provide to OSU UHDS the expertise, experience, judgment, and personal attention required to perform the following services ("Key Person"):

- a. Assist UHDS in placing orders by phone and/or with on-line support.
- b. Familiarize themselves with the menus and operations of the various OSU UHDS venues.
- c. Make recommendations on new and different products for OSU UHDS venues.
- d. Supply information on market conditions, new products and industry trends.
- e. Supply a newsletter and additional product and industry information on a regular and continued basis.
- f. Supply a link to manufacturer's representatives and brokers to show new products that may be of interest to OSU UHDS venues.

Each of the following is a Key Person under this Contract:

| <u>Sales Representative</u> | and: | <u>In-house Customer Service Representative</u> |
|-----------------------------|------|---|
| [Name] | | [Name] |
| [Address] | | [Address] |
| [City, State, Zip] | | [City, State, Zip] |
| [Phone Number] | | [Phone Number] |
| [Fax Number] | | [Fax Number] |
| [E-Mail Address] | | [E-Mail Address] |

Neither Contractor nor any Key Person of Contractor shall delegate performance of services any Key Person is required to perform under this Contract to others without first obtaining OSU UHDS's written consent. Further, Contractor shall not, without first obtaining OSU UHDS's prior written consent, re-assign or transfer any Key Person to other duties or positions so that the Key Person is no longer available to provide OSU UHDS with that Key Person's expertise, experience, judgment, and personal attention. If Contractor requests OSU UHDS to approve a re-assignment or transfer of a Key Person, OSU UHDS shall have the right to interview, review the qualifications of, and approve or disapprove the proposed replacement(s) for the Key Person. Any individual OSU UHDS approves as a replacement for a Key Person is deemed a Key Person under this Contract.

C. ACCEPTANCE OF SERVICES.

Services furnished under this Contract are subject to acceptance by OSU UHDS. If OSU UHDS finds services furnished to be incomplete or not in compliance with the Contract, OSU UHDS, at its sole discretion, may either reject the services, require Contractor to correct any defects without charge, or negotiate with Contractor to reduce the price, whichever OSU UHDS deems appropriate under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by OSU UHDS, OSU UHDS may reject the services and cancel the Contract in whole or in part.

D. BUSINESS REVIEWS.

Contractor will participate in Business Reviews as requested by OSU UHDS Procurement and Contract Services. Business Reviews will be scheduled by the Contract Administrator in OSU UHDS Procurement and Contract Services and will include attendance by OSU UHDS representatives, and Contractor's Regional Representatives. The reviews may include discussion of Contract terms and conditions, work performed under the Contract, financial data, proposal of Contract improvements for increased service or lower costs, and any potential changes to the Contract.

3. PAYMENT:

A. GENERAL PAYMENT PROVISIONS.

Invoices detailing the products being delivered to UHDS must be presented at the time of delivery and signed for by UHDS staff. Invoices must be legible and include the following:

- a. Product name and brief description;
- b. Vendor product code;
- c. Quantity delivered, quantity ordered; and
- d. Price in accordance with proposal and calculated as set out in "Markup Computation" on Attachment A.

OSU UHDS shall pay Contractor for services performed at the prices and rates specified herein. Contractor shall look solely to OSU UHDS for payment of all amounts OSU UHDS owes to Contractor. Payment of OSU UHDS contracts is normally made within 30-45 days following the date the invoice is received. After 45 days, Contractor may assess overdue account charges up to a maximum of two-thirds of one percent (2/3 of 1%) per month or eight percent (8%) per annum on the outstanding balance (ORS 293.462).

B. INVENTORY AND MENU MANAGEMENT SYSTEM.

OSU UHDS operates with the EATEC inventory and menu management system. Contractor is not required to have the capability to receive Purchase Orders, issue invoices on the EATEC system but they must be able to email invoices as .csv files for each of the dining centers for each delivery. Email to be sent to DiningSystems@oregonstate.edu

C. CREDITS:

A hard copy of all credits issued for specific invoices because of either product returned or correction of original prices invoiced must be received before original invoice will be processed for payment.

D. ADMINISTRATIVE FEE.

Contractor shall pay OSU UHDS Procurement and Contract Services an administrative fee of one percent (1%) of the total gross revenue from the Contract. Total gross revenue includes any business generated from OSU UHDS or other public agencies using this under a permissive cooperative procurement. Administrative fee payments shall be made quarterly in arrears no later than 45 days after the end of each quarter, made payable to "OSU UHDS PaCS" and mailed to 644 SW 13th Street, Corvallis OR 97333. Payment shall include a report indicating Contractor's calculation of the gross revenue and the administrative fee. This administrative fee is designed to be invisible to the end users in that they will not see it as a separate, additional charge.

4. INSURANCE AND INDEMNIFICATION:

A. LIABILITY INSURANCE.

During the term of this Contract, Contractor shall maintain in force at its own expense the following insurances, if marked, to cover injury, death, errors, omissions or negligent acts related to the goods or services provided under this Contract in the amounts listed below.

Commercial General Liability

Professional Liability

Automobile Liability

Contractor shall ensure that insurance policies are issued by an insurance carrier authorized to do business in the State of Oregon with an A.M. Best rating of at least A-VII, or such other insurance carrier approved in writing, in advance, by OSU UHDS. Contractor shall ensure that OSU UHDS's employees and agents are included as additional insureds in said insurance policy.

Limit for any single claimant per occurrence:

From commencement of the Contract term to June 30, 2013: \$1,800,000.

July 1, 2013 to June 30, 2014: \$1,900,000.

July 1, 2014 to June 30, 2015: \$2,000,000.

July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, paragraph 3 (Senate Bill 311).

Limit for all claimants per occurrence:

From commencement of the Contract term to June 30, 2013: \$3,600,000.

July 1, 2013 to June 30, 2014: \$3,800,000.

July 1, 2014 to June 30, 2015: \$4,000,000.

July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, paragraph 3 (Senate Bill 311).

Property Damage:

Limit for any single claimant per occurrence: \$101,400.

Limits for all claimants per occurrence: \$506,900.

This amount is effective on July 1, 2011 – June 30, 2012 and will be adjusted every year thereafter as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, paragraph 5 (Senate Bill 311).

B. WORKERS' COMPENSATION.

The Contractor, its subcontractors, if any, and all employers providing work, labor or materials under this Contract are subject employers under the Oregon Workers' Compensation law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, unless such employees are exempt under ORS 656.126.

C. PROPERTY INSURANCE.

The Contractor must maintain Property Insurance during the term of the Contract that covers all property used for Contract work and all Contractor-owned property that is stored at OSU UHDS.

D. PRIMARY COVERAGE.

Insurance carried by Contractor under this Contract shall be the primary coverage and OSU UHDS's insurance is excess and solely for damages or losses for which OSU UHDS is responsible.

E. CERTIFICATES OF INSURANCE.

As evidence of the insurance coverages required by this Contract, the Contractor shall furnish Certificate(s) of Insurance to the OSU UHDS Contract Administrator, upon request. In such case, Contractor shall ensure that the Certificate(s) specifies all additional insureds (or loss payees).

Contractor shall be financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder.

F. NOTICE OF CANCELLATION OR CHANGE.

Contractor shall not cause or permit any cancellation, material change, potential exhaustion of aggregate limits or notice of intent not to renew insurance coverage(s) without 30 days' written notice from the Contractor or its insurer(s) to OSU UHDS's Contract Administrator.

G. INDEMNITY AND RESPONSIBILITY FOR DAMAGES.

a. Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, any willful or negligent act or omission of Contractor, its subcontractors, or employees under this Contract. Contractor shall save, defend, indemnify, and hold harmless OSU UHDS, the Oregon State Board of Higher Education, the State of Oregon and their agencies, subdivisions, officers, directors, agents, members, and employees from all claims, suits, and actions resulting from or arising out of the willful or negligent acts or omissions of Contractor or its subcontractors, officers, agents, or employees acting under this Contract.

b. Without limiting the generality of this section a., Contractor expressly agrees to defend, indemnify, and hold OSU UHDS, the Oregon State Board of Higher Education, the State of Oregon and their agencies, subdivisions, officers, directors, agents, members, and employees harmless from any and all claims, suits, actions, losses, liabilities, costs, expenses and damages arising out of or related to any claims that the services or any other tangible or intangible goods delivered to OSU UHDS by Contractor that may be the subject of protection under any state or federal intellectual property law or doctrine, or OSU UHDS's use thereof infringes any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any third party; provided, that OSU UHDS shall provide Contractor with prompt written notice of any infringement claim.

c. Contractor shall have control of the defense and settlement of any claim that is subject to a. or b.; however, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without first receiving from the Oregon Attorney General, in a form and manner determined appropriate by the Attorney General, authority to act as legal counsel for the State of Oregon, nor shall Contractor settle any claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that Contractor is prohibited from defending the State of Oregon, or is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.

5. GENERAL TERMS AND CONDITIONS:

A. ACCESS TO RECORDS AND AUDIT.

a. OSU UHDS may randomly conduct price audits. The price audits will consist of reviews and comparisons of the Contractor's costs and pricing during a specified period of time. The Contractor will be required to provide documentation that clearly states the prices paid by the Contractor for listed items provided to OSU UHDS. Acceptable documentation would be manufacturer invoices or bills of lading for the delivery period reasonably coinciding to the timeframe for delivery of those listed items to OSU UHDS. The Contractor shall highlight the coinciding items on the invoice copies submitted to OSU UHDS and submit them organized in the same order as listed on the price audit item list provided by OSU UHDS. The Contractor will also provide verified shipping costs for the listed items. Acceptable documentation would be a contemporaneously-provided invoice from the shipper to Contractor for the items delivered to Contractor. The purpose of the price audit is to verify and validate costs of products provided by

the Contractor to OSU UHDS under the Contract. In the event that there are significant discrepancies in cost mark-up or freight charges, OSU UHDS may request an audit.

- b. Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. OSU UHDS, the Oregon State Board of Higher Education, Oregon Secretary of State, federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Contractor shall maintain such books and records for OSU UHDS's review for at least six years beyond the Term of the Contract unless OSU UHDS authorizes a shorter period in writing. Contractor shall promptly remedy any discrepancies involving deviation from the terms of this Contract and shall promptly reimburse OSU UHDS for any commitments or expenditures found by OSU UHDS to have been in excess of amounts authorized by OSU UHDS.
- c. OSU UHDS shall have the right to an independent third-party audit of the Contractor's records associated with or related to the goods or services provided for under this Contract. OSU UHDS may request an independent third-party audit no more than one time per calendar year. OSU UHDS will determine the time-period that will be the subject of the audit. However, the entire term of the Contract, including the original term and any subsequent renewals or extensions, may be the subject of the independent third-party audit at any time. Contractor shall bear the full cost of such independent third-party audit.

B. ASSIGNMENT/SUBCONTRACT/SUCCESSORS.

Contractor shall not assign, sell, transfer, or subcontract rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of the OSU UHDS Procurement and Contract Services Department, and any attempt by Contractor to assign, sell, transfer, or subcontract rights or delegate responsibilities under this Contract, without first acquiring written approval of the OSU UHDS Procurement and Contract Services Department, is void. No such written approval from OSU UHDS relieves Contractor of any obligations of this Contract, however, and any assignee, new owner, transferee or subcontractor will be considered an agent of Contractor. Contractor shall remain liable to OSU UHDS under the Contract as if no such assignment, sale, transfer, or subcontract had occurred. The provisions of this Contract are binding upon and will inure to the benefit of the parties to the Contract and their respective permitted successors and assigns.

C. APPLICABLE LAW; JURISDICTION AND VENUE.

- a. This Contract is governed and shall be construed in accordance with the laws of the State of Oregon, without resort to any other jurisdiction's conflict of law rules or doctrines. Any claim, action, or suit between OSU UHDS and Contractor that arises out of or relates to performance of this Contract must be brought and conducted solely and exclusively within the Circuit Court for Marion County, for the State of Oregon.
- b. Notwithstanding the foregoing paragraph, if a claim must be brought in federal forum, it must be brought and adjudicated solely and exclusively in the United States District Court for the District of Oregon. This paragraph applies to a claim brought against OSU UHDS only to the extent Congress has validly abrogated OSU UHDS's sovereign immunity and is not consent by OSU UHDS to be sued in federal court. This paragraph is also not a waiver by OSU UHDS of any form of immunity, including without limitation sovereign immunity and immunity based on the Eleventh Amendment to the United States Constitution.
- c. Except as set forth in the paragraph above, the parties consent to in personam jurisdiction in the above courts and waive any objection to venue and any objection that the forum is inconvenient.

D. COMPLIANCE WITH APPLICABLE LAW.

The parties shall at all times comply with all federal, state and local laws, regulations, executive orders and ordinances pertaining to their respective businesses, products or services, employment obligations, and the subject matter of this Contract. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Paragraphs 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated.

E. CONFIDENTIALITY.

This Contract is subject to the limitations and conditions of the Oregon Public Records Law, ORS 192.410-192.505.

F. EXECUTION AND COUNTERPARTS.

This Contract may be executed by facsimile or PDF and in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

G. FORCE MAJEURE.

Neither OSU UHDS nor Contractor shall be held responsible for delay or default caused by fire, riot, act of nature, terrorist acts, or other acts of political sabotage, or war where such cause was beyond, respectively, OSU UHDS's or Contractor's reasonable control. Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligations under this Contract. However, if a default or delay due to a force majeure event continues for an unreasonable time, as determined by OSU UHDS, then OSU UHDS is entitled to terminate the Contract.

H. WORK STOPPAGES.

Notwithstanding 5 G. Force Majeure, in the event of an employee strike, trucking strike or other factor that would hinder full delivery of ordered products, the Contractor shall maintain service levels as required.

I. GOVERNMENT EMPLOYMENT STATUS:

Contractor certifies that it is not currently employed by the federal government and not an employee of OSU UHDS.

J. INDEPENDENT CONTRACTOR STATUS.

The services to be rendered under this Contract are those of an independent contractor. OSU UHDS reserves the right (a) to determine and modify the delivery schedule for the services and (b) to evaluate the quality of the services; however, OSU UHDS may not and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the services. Contractor is not an officer, employee or agent of OSU UHDS as those terms are used in ORS 30.265.

K. MWESB REPORTING LANGUAGE PROVISION.

Upon request by OSU UHDS, Contractor is required to provide a report on the dollar volume of products provided under the Contract which are purchased by the Contractor from firms which are defined as follows:

Disabled Veteran Enterprise means a business that is at least 51% owned by one or more disabled veterans. A disabled veteran is a veteran of the military, naval, or air service of the United States with a service connected disability who is a resident of the State of Oregon. To qualify as a veteran with a service connected disability, the person must be currently declared by the United States Veterans Administration to be 10% or more disabled as a result of service in the armed forces. The business must be licensed and registered in the state of Oregon.

Disadvantaged Business Enterprise (DBE) is a small business with average annual gross receipts less than \$17,420,000. The business must be owned and controlled by one or more socially and economically disadvantaged individual(s). The one or more socially and economically disadvantaged individual(s) must have made a contribution of capital to the business, which is commensurate with their ownership interest. Socially and economically disadvantaged individual(s) are people who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as members of a group without regard to their individual qualities. The business must be independent. The business must be licensed and registered in the state of Oregon.

Emerging Small Business, (defined in ORS 200.005), is a licensed and registered business located in Oregon for which the average annual gross receipts for the three previous tax years do not exceed \$3,266,219 for construction and \$1,088,740 for non-construction businesses. The business must have fewer than 29 employees.

Minority Business Enterprise, (defined in ORS 200.005), is a business which is at least 51% owned by one or more minority individuals or, in the case of any publicly owned business, at least 51% of the stock of which is owned by minority individuals. Minority individuals are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and Asian-Indian Americans. The business must be licensed and registered in the state of Oregon.

Women Business Enterprise, (defined in ORS 200.005), is a business which is at least 51% owned by one or more women. The woman or women must have managerial and operational control over all aspects of the business. The one or more women owner(s) must have made a real and substantial contribution of capital or expertise to the business, which is commensurate with their ownership interest. The business must be licensed and registered in the state of Oregon.

This report shall be in consolidated form showing all such purchases under the Contract. This report will be provided on an annual basis to OSU UHDS. This report will provide a cumulative figure that shows year to date amounts for each supplier ownership category.

L. NOTICE.

All notices or other communications under this Contract must be in writing and, unless otherwise expressly set forth in this Contract, shall be delivered in person, by email (and confirmed by mail), first class mail, fax (and confirmed by mail), registered or certified mail, or overnight delivery service to the other party at its respective address, email address, or fax number set forth below. All notices are effective upon receipt by the party to be notified.

OSU UHDS Contract Administrator and: OSU UHDS Departmental Administrator
Bonnie Tufts Jeff LaMagra
Procurement Analyst Assistant Director Dining Services
644 SW 13th St. 102 Buxton Hall
Corvallis, Oregon 97331 Corvallis, OR 97331
541-737-7353 541-737-4045
541-737-2170 541-737-0686
Bonnie.Tufts@oregonstate.edu Jeff.Lamagra@oregonstate.edu

CONTRACTOR Contract Administrator

[Name]
[Title]
[Address]
[City, State, Zip]
[Phone Number]
[Fax Number]
[E-Mail Address]

M. ORDER OF PRECEDENCE.

In the event of a conflict, all the terms and conditions of this Contract, its exhibits, and any amendments thereto supersede all terms and conditions on any forms used by the Contractor.

N. OSU UHDS NAME AND TRADEMARK.

Contractor's shall not use names, marks or trademarks identifying OSU UHDS, or any department or office of OSU UHDS, or in any other way identify OSU UHDS without prior written approval from OSU UHDS's Office of University Advancement.

O. PARKING.

All Contractors, vendors and commercial vehicles on the OSU UHDS campus are required to have a permit to park, whether utilizing designated street parking or parking in the parking lots. Permits are available for purchase at Transit & Parking Services, located in Adams Hall, 606 SW 15th Street.

P. PERMISSIVE COOPERATIVE PROCUREMENTS.

Contractor agrees to make prices offered under this Contract available to other Oregon public agencies upon the same terms and conditions set forth in this Contract. The prices offered to other public agencies shall be at the same rate as offered to OSU UHDS. OSU UHDS does not guarantee purchases from any other public agencies. Any purchases pursuant to this Contract by a public agency other than OSU UHDS are directly between the Contractor and the public agency and the obligations and rights of OSU UHDS under this Contract, except for the Administrative Fee (which shall be paid to OSU UHDS and not to the other public agency), are that of the other public agency. Contractor shall provide written notification to OSU UHDS when a new public agency begins utilizing this Contract. The total expenditures of other public entities shall be included in the volumes reported to OSU UHDS and included in the calculation of the Contract Administrative Fee. Should the total purchases by OSU UHDS and other public entities collectively trigger any volume discounts, Contractor shall apply such discounts to fees charged to OSU UHDS.

Q. RECYCLABLE PRODUCTS.

Contractors will use recyclable products to the maximum extent economically feasible in the performance of the Contract.

R. SAFETY AND HEALTH REQUIREMENTS/HAZARD COMMUNICATION:

Services supplied under this Contract shall comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all Oregon safety and health requirements, including those of the State of Oregon Workers' Compensation Division. Contractor shall notify OSU UHDS

prior to using products containing hazardous chemicals to which OSU UHDS employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon OSU UHDS's request, Contractor shall immediately provide Material Safety Data Sheets, as required by OAR 437-155-025, for the products subject to this provision.

S. SALES AND USE TAXES.

OSU UHDS shall pay all applicable sales, excise, or use taxes in connection with this Contract. Invoices shall separately identify all such taxes and shall include either Contractor's sales tax or use tax permit number. Contractor shall be responsible for all other taxes, including taxes based upon Contractor's income. Contractor shall indemnify, defend, and hold harmless OSU UHDS from and against any interest, penalties, or other charges resulting from the non-payment or late payment of taxes or other charges for which Contractor failed to invoice OSU UHDS or which Contractor otherwise failed to pay in a timely manner.

T. SEVERABILITY.

The invalidity, illegality or enforceability of any provision of this Contract shall not affect the validity, legality or enforceability of any other provision of this Contract, which shall remain in full force and effect and shall be liberally construed in order to effectuate the purpose and intent of this Contract.

U. SEXUAL HARASSMENT.

The State Board of Higher Education has adopted policies applicable to Contractors that prohibit sexual harassment, and Contractor's company and employees are required to adhere to OSU UHDS's policy prohibiting sexual harassment in their interactions with members of the OSU UHDS community.

V. SURVIVAL.

The terms and conditions of this Contract that by their sense and context are intended to survive termination or expiration hereof shall so survive.

W. NO THIRD PARTY BENEFICIARY.

OSU UHDS and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third parties

X. WAIVER.

The waiver by either party of any breach of this Contract by the other party shall not waive subsequent breaches of the same or different kind. The failure of either party to enforce any rights under this Contract in a particular instance shall not operate as a waiver of said party's right to enforce the same or different rights in subsequent instances.

Y. ENTIRE CONTRACT.

This Contract, including all documents referred to herein and attached hereto, constitutes the entire agreement between the parties and supersedes all prior representations, understanding and agreements between the parties. No amendment, consent, or waiver of terms of this Contract shall bind either party unless in writing and signed by authorized representatives of each of the parties. Any such amendment, consent, or waiver is effective only in the specific instance and for the specific purpose given.

6. CERTIFICATIONS AND SIGNATURES:

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 and that this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms;

- B. Contractor is not a contributing member of the Public Employees' Retirement System and will be responsible for any federal or state taxes applicable to payment under this Contract. Contractor will not, by virtue of this Contract, be eligible for federal Social Security, employment insurance, workers' compensation or the Public Employees' Retirement System, except as a self-employed individual.
- C. Pursuant to OAR 580-061-0030, Contractor certifies that Contractor has not discriminated against Minority, Women or Emerging Small Business Enterprises in obtaining any required subcontracts;
- D. The undersigned hereby certifies under penalty of perjury that 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 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620.

Each of the parties has caused its duly authorized representative to execute this Contract on the date set forth in its respective signature block below.

CONTRACTOR:

Signature: _____

Date: _____

By: _____

Title: _____

OSU:

Signature: _____

Date: _____

By: _____

Title: _____

**ATTACHMENT A
PERFORMANCE TERMS AND CONDITIONS**

PRODUCTS: OSU UHDS will make the sole determination as to exactly what products will be purchased.

ORDERING:

- Contractor shall work with OSU UHDS to establish and maintain an efficient, expeditious ordering guide and ordering system.
- Order cut off schedule will be agreed upon between Contractor and OSU UHDS.
- OSU UHDS may transmit orders electronically, via fax, or phone.
- Policy for broken cases and individual sale items will be fill from proposal and any changes to this policy must be agreed upon between Contractor and OSU UHDS.
- Policy for special cut items will be fill from proposal and any changes to this policy must be agreed upon between Contractor and OSU UHDS.
- Contractor will offer online access to in-stock inventories

ORDER CANCELLATION: An order may be canceled in whole or in part if:

- Items are not received on the scheduled delivery date and no extension has been agreed upon between the Contractor and OSU UHDS.
- Contractor fails to promptly replace or correct rejected items.
- Contractor cannot meet time requirements to replace a shipment of a rejected product with an acceptable product.

DELIVERY: Delivery schedule will be fill from proposal.

FOB DESTINATION: Any method of delivery for all orders shall be FOB Destination at no cost to OSU.

INSPECTION AND ACCEPTANCE: All products will be inspected by the Contractor for compliance with appropriate specifications (count, condition, dates, etc.) prior to delivery to OSU. OSU UHDS may inspect orders to verify compliance to the specifications.

Any defective or damaged, or outdated product will be rejected by OSU UHDS. OSU UHDS will contact the Contractor and the Contractor will replace rejected product(s) as agreed upon by Contractor and OSU UHDS. The Contractor shall remove and replace any rejected product(s) within 24 hours of notification and at their own expense.

SALES REPORTS AND ORDER GUIDES: The Contractor shall provide electronic weekly sales report detailing total purchases by item for the previous week, including all out-of-stock shortages, backordered items, late delivered items, substitutions and other activities for the week. Contractor shall also provide order guides as agreed on with OSU UHDS.

FOOD SAFETY PROGRAM: The Contractor shall maintain participation in the HACCP food safety program and report on their overall Food Safety Program in the annual business review.

MARKUP & MARKUP COMPUTATION: The Contractor shall not raise the mark-up (cost-plus) during the entire term of the Contract, including any optional extensions of this Contract. Contractor shall not establish or charge any surcharges or fees, of any kind, unless expressly permitted by this Contract. The markup will be fill from proposal. The Contractor shall compute the markup on all contracted items in the following manner:

Cost (including item cost and documented freight charges) x Quantity x Percentage Markup = Total price to OSU.

Example: The example item is Roma Tomatoes.

Cost to Contractor = \$25.00 per case x Quantity of 2 = \$50.00

Documented Freight Charge = \$5 per case x quantity of 2 = \$10.00

Total cost of product and freight = \$50.00 + \$10.00 = \$60.00

Markup is 15%. Cost to OSU: \$60.00 x 1.15 (15%) = \$69.00

Amount invoiced to OSU is \$69.00

**EXHIBIT B
CERTIFICATIONS**

By signature on this certification the undersigned certifies that they are authorized to act on behalf of the Proposer and that under penalty of perjury the undersigned will comply with the following:

SECTION I. OREGON TAX LAWS

The undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Proposer and that Proposer 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 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620.

SECTION II. AFFIRMATIVE ACTION

The undersigned hereby certifies that they have not discriminated against Minority, Women or Emerging Small Business Enterprises in obtaining any required subcontracts, pursuant to OAR 580-061-0030 (3).

SECTION III. COMPLIANCE WITH SOLICITATION

The undersigned agrees and certifies that they:

1. Have read, fully understands and agrees to be bound by the Request for Proposal and all Exhibits and Addenda to the Request for Proposal; and
2. Are an authorized representative of the Proposer, that the information provided is true and accurate, and that providing incorrect or incomplete information may be cause for rejection of the Proposal or Contract termination; and
3. Will furnish the designated item(s) and/or service(s) in accordance with the Request for Proposal and the Contract; and
4. Has provided a correct Federal Employer Identification Number or Social Security Number with the Proposal.

SECTION IV. PERMISSIVE COOPERATIVE PROCUREMENTS

If Proposer is awarded a contract from this Request for Proposal, Proposer hereby (check one)

- agrees
 disagrees

to offer the resulting contractual terms and prices to other public institutions.

Authorized Signature: _____ Date: _____

Name (Type or Print): _____ Telephone: (_____) _____

Title: _____ Fax: (_____) _____

FEIN ID# or SSN# (required): _____ Email: _____

Company: _____

Address, City, State, Zip: _____

Construction Contractors Board (CCB) License Number (if applicable): _____

Business Designation (check one):

- Corporation Partnership LLC Sole Proprietorship Non-Profit

Minority, Women & Emerging Small Business (MWESB) Certified Firm: Yes No

If yes, Minority, Women & Emerging Small Business (MWESB) Certification Number: _____

**EXHIBIT C
REFERENCES**

REFERENCE 1

COMPANY: _____ CONTACT NAME: _____
ADDRESS: _____ PHONE NUMBER: _____
CITY, STATE ZIP: _____ FAX NUMBER: _____
WEBSITE: _____ E-MAIL: _____
GOODS OR SERVICES PROVIDED: _____

REFERENCE 2

COMPANY: _____ CONTACT NAME: _____
ADDRESS: _____ PHONE NUMBER: _____
CITY, STATE ZIP: _____ FAX NUMBER: _____
WEBSITE: _____ E-MAIL: _____
GOODS OR SERVICES PROVIDED: _____

REFERENCE 3

COMPANY: _____ CONTACT NAME: _____
ADDRESS: _____ PHONE NUMBER: _____
CITY, STATE ZIP: _____ FAX NUMBER: _____
WEBSITE: _____ E-MAIL: _____
GOODS OR SERVICES PROVIDED: _____

**EXHIBIT D
PRICE SHEET**

Pricing on Exhibit D to be submitted as cost-plus, indicating the Proposer's aggregate cost times the proposed percentage mark-up. **Mark-up to be the same on all items.**

- Cost (**item cost + documented freight charges**) x Quantity x Percentage Markup = Total OSU Price.
 - Example: The example item is Roma Tomatoes.
 Cost to Contractor = \$25.00 per case x Quantity of 2 = \$50.00
 Documented Freight Charge = \$5 per case x quantity of 2 =\$10.00
 Total cost of product and freight = \$50.00 + \$10.00 = \$60.00
 Markup is 15%. Cost to OSU: \$60.00 x 1.15 (15%) = \$69.00
 Amount invoiced to OSU is \$69.00

Proposers will verify cost-plus pricing by submitting recent copies of invoices and documented freight charges, in the order given on the price sheet, just as they would be expected to supply these costs to meet audit requirements. *Pricing shall be submitted for market pricing from the week of November 12, 2012 only.*

Proposers shall indicate whether or not they can supply each listed product by stating "Yes" or "No" in the notes column

| Item | Qty | Unit | Cost (including freight and handling) | % Mark- up (the same on all items) | Total Price | Can Supply (yes/no) & Notes |
|---------------------------------------|-------|--------|--|---|-------------|--------------------------------|
| Apple, Fuji (case=40 lb.) | 159 | Cases | | | | |
| Avocado @ 48 per case | 167 | Cases | | | | |
| Pineapple, Maui Gold, 6ct | 1065 | Cases | | | | |
| Cataloupe, 12-18 ct | 1,499 | Cases | | | | |
| Honeydew, 25# | 650 | Cases | | | | |
| Orange, Navel, 88ct | 15 | Cases | | | | |
| Oranges, All Total | 222 | Cases | | | | |
| Grapes, Red | 316 | Cases | | | | |
| Grapes, Green | 117 | Cases | | | | |
| Lettuce, Iceberg | 15 | Pounds | | | | |
| Broccoli, Crowns, 20# | 280 | Cases | | | | |
| Broccoli, Florets, 18# | 252 | Cases | | | | |
| Potatoes, Red 50# | 112 | Cases | | | | |
| Squash, Zucchini Green, 22# | 252 | Cases | | | | |
| Pepper, Red Bell, 25# | 339 | Cases | | | | |
| Mushrooms, Dmstc, Med., Whl. 10# Flat | 443 | Cases | | | | |
| Garlic, fresh peeled, 5# plastic jars | 575 | Jars | | | | |
| Tomatoes 5x5 Repack | 596 | Cases | | | | |
| Tomatoes, Total (22# avg case) | 1028 | Cases | | | | |
| Carrots, whole, 5# bag | 18 | Bags | | | | |
| Carrots, jumbo, 25# | 142 | Cases | | | | |
| Romaine, chopped, 6/2# | 126 | Cases | | | | |