

**PORTLAND STATE UNIVERSITY
REQUEST FOR QUOTATIONS #21736 – Affirmative Action Plan Consulting Services**

Portland State University (PSU) Purchasing Rules, Policies and Guidelines allows PSU departments to use an “Informal Procurement Process” for all purchases of supplies, equipment, and trade and professional services where the estimated cost exceeds \$25,000 but does not exceed \$100,000. The Informal Procurement Process is the solicitation of a minimum of three competitive quotes. Solicitation shall be accomplished by advertisement on the OUS Procurement Website making a request for vendors to provide a quote. A clearly documented record must be kept per the State of Oregon’s records retention rules, showing the vendors contacted, their responses including quote amounts, the basis for selection, evaluation results, and any other pertinent information to the solicitation.

The posting of solicitation on the OUS Procurement Website shall serve as the primary solicitation requirements document which in conjunction with the vendors’ written responses and proposals and/or quotes shall satisfy the “clearly documented record” requirement described above. Additionally, depending on the nature of the scope of work of the project and other specific project details, there may be other documented “pertinent information” required to ensure a complete and clearly documented record for the informal solicitation.

PORTLAND STATE UNIVERSITY SHALL CONSIDER VENDOR QUOTES RECEIVED AS VALID FOR ONE HUNDRED TWENTY (120) DAYS.

RFQ ISSUE DATE:

February 20, 2013

VENDOR RESPONSE DATE:

To be considered for selection, quotations must arrive at Portland State University, Office of Global Diversity & Inclusion by 3 p.m. local time, **February 25, 2013**. Please email your response to the contact information listed below. No other responses will be accepted. The contact information:

Only email responses will be accepted:

Attention: Charles Lopez
Email: chlopez@pdx.edu
Portland State University
Office of Global Diversity & Inclusion
PO Box 751, Mailcode: OGI
Portland, OR 97207
Contact phone number: 503-725-5919

Emailed quotes shall include the name, title and contact information of the primary contact who prepared the quote. Respondents selected may be requested to provide additional information, either formally or via interview process, to clarify their quotations and to ensure mutual understanding of the scope of work requirements and schedule.

Emerging Small Businesses and Minority and Women Owned Businesses

PSU is committed to increasing opportunities for Emerging Small Businesses and Minority and Women Owned Businesses. PSU strongly encourages its contractors to use these businesses in providing services and materials for PSU contracts and projects.

PSU promotes equal opportunity for all individuals without regard to age, color, disability, marital status, national origin, race, religion or creed, sex or gender, sexual orientation, or veteran status

OVERVIEW:

The Office of Equity & Compliance housed within the Office of Global Diversity & Inclusion is responsible for Portland State University's Affirmative Action Plan. To that end, Portland State University seeks the services of a Consultant to assist the Office of Equity & Compliance in the preparation of the yearly Affirmative Action Plan. This RFQ represents PSU's good faith effort to detail the Scope of Work, experience, and special requirements desired for the Affirmative Action Plan Consulting Services that will best meet PSU's requirements.

CONTRACT TERM:

The term for the contract awarded pursuant to this RFQ solicitation shall be for a period effective from the date of contract execution and extending until completion of the Scope of Work as detailed herein, but not longer than one year from execution date. PSU, at its sole discretion, may choose to amend any ensuing contract for additional work and extend the Term to a maximum of two additional one year Terms. Your quotation should include data for both the first year, and up to three total years.

SCOPE OF WORK:

The purpose of this RFQ is to retain an Affirmative Action Plan consultant who will assist in preparation of PSU's Affirmative Action Plan by analyzing PSU's employee data (**approximately 6,517 employees**) and performing the following tasks:

- 1.** Set up the structure of the Affirmative Action Plan (AAP) reports
- 2.** Determine external availabilities of protected classes of employees
- 3.** Determine internal availabilities of protected classes of employees
- 4.** Perform utilization analysis
- 5.** Assist in setting of Affirmative Action Goals

PAYMENT/INVOICING:

The contract awarded pursuant to this RFQ shall be a flat-fee deliverables-based contract. If it is a multiple year contract, then the fee will be paid for work done specifically for that year. The flat fee(s) proposed by Contractor shall be inclusive of all costs and expenses. Contractor may invoice PSU anytime after a project deliverable is completed and PSU has accepted the deliverable. Payment of Contractor invoices by PSU is normally made within 30-45 days of receipt of complete and accurate invoices. Contractor is responsible for ensuring that each invoice clearly references the associated PSU Purchase Order and that all items on the invoice match those listed in the Contractor's quote. PSU will not be responsible for paying any invoices that are not complete and accurate. Contractor terms may not require payment in less than 30 days after receipt of invoice by PSU. Any late payment or delinquency fees shall be in accordance with ORS 293.462.

INFORMATION REQUESTED:

Include in your response:

1. A quote to complete the Scope of Work as detailed herein. Respondents quote shall not exceed \$30,000 USD in the first year. Respondents shall include in their quote a chronological schedule of deliverables (“Deliverables Schedule”) based upon the Scope of Work as detailed herein, the flat fee that PSU shall be charged for Consultant’s completion of each deliverable, and the estimated dates of completion for each deliverable. Respondents shall submit their Deliverables Schedule in the following format:

Task/Deliverable	Payment (Flat Fee)	Estimated Date of Completion
#1	\$	M/D/Y
#2	\$	
#3	\$	
#4	\$	

2. Respondents shall include in their quote a separate section that details for each deliverable, the hourly rates and total number of hours that will be worked.
3. A one-page (maximum) summary of your specific qualifications and experience in preparing a federally and state compliant Affirmative Action Plan.
4. A list with descriptions of three (3) similar or related prior assignments, including references for each of the projects for which you have provided similar services and relative to the requirements stated herein. Short summaries of projects are preferred – one or two paragraphs.

QUOTE EVALUATION CRITERIA:

Quotes will be evaluated by the following Project Components:

1. Experience in preparing a federal and state compliant Affirmative Action Plan for an academic institution of higher education. **(50 points)**
2. Availability during desired time period. **(15 points)**
3. Cost/rates in relation to services and alignment of quote to stated PSU budget estimated number of employees is 6,517. **(25 points)**
4. Optional Interview, to be held at PSU’s sole discretion. **(10 points)**

MAXIMUM TOTAL POSSIBLE POINTS = 100

AWARD:

The Consultant shall be selected based upon the highest points awarded for the quotation evaluation criteria with consideration of cost, experience, and availability to contract period. PSU reserves the right to not award this contract to any of the Proposers if it is in the best interest of PSU to do so.

PUBLIC RECORDS:

This RFQ and one copy of each original quote received in response to it, together with copies of all documents pertaining to the Award of a Contract, shall be kept by PSU and shall be open to public

inspection. If a quote contains any information that is considered a trade secret by the Contractor under ORS 192.501(2), each sheet of such information must be clearly marked with the following:

"This data constitutes a trade secret under ORS 192.501(2), and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192."

The Oregon Public Records Law, ORS 192.501(2), exempts from disclosure only bona fide trade secrets, and the exemption from disclosure applies "unless the public interest requires disclosure in the particular instance." Therefore, non-disclosure of documents or any portion of a document submitted as part of a proposal may depend upon official or judicial determinations made pursuant to the Public Records Law.

Pricing information cannot be labeled a trade secret and must be open to public inspection. Contractors are requested to mark only specific pages or text in their quote considered a "trade secret" under Public Records Law. Quotes in which the entire document is marked or otherwise identified in its entirety as confidential or a "trade secret" will be rejected.

CHANGES AFTER AWARD/ACCEPTANCE OF QUOTE:

After award or acceptance of the vendor's quotation, any changes in the Scope of Work, or additional work otherwise unforeseen at the time of preparation of this solicitation document and subsequent award, shall be addressed in writing and signed by the parties.

BEST AND FINAL OFFER:

Pursuant to OAR 580-061-0155, PSU reserves the right to select the Contractor that, in the collective opinion of the evaluation team, offers the best overall benefit, convenience, functionality and service at the best-value cost to PSU. In the event that finalist proposals do vary significantly, PSU reserves the right to conduct discussions with the finalist proposers, to accept best and final offers from those finalists, and to negotiate changes, if it's in PSU's best interest to do so.

SUPPLEMENTAL TERMS AND CONDITIONS:

Respondents may submit proposed agreements of any form (contracts or documents) that contain supplemental terms and conditions that the proposer desires to be included as part of the contract. By accepting delivery of these items, PSU is not bound to accept them as part an ensuing contract. PSU will not consider any terms and conditions that are not submitted with the proposal.

PSU may negotiate such supplemental terms and conditions that are not already covered by PSU's Contract Terms and Conditions. Respondents must submit any additional or supplemental terms and conditions that they would like PSU to take into consideration at the time of submission of response to this Request for Quotes. Acceptance of any of the respondents' supplemental terms and conditions will be at PSU's sole discretion. Additionally, in the response to the RFQ, respondents must identify their objections to any of PSU's Contract Terms and Conditions incorporated into this Request for Quotes.

OTHER TERMS AND CONDITIONS:

In addition to all of the requirements above, Contractor shall comply with Portland State University's Standard Contract Terms & Conditions, incorporated within this document (see below).

PSU STANDARD CONTRACT TERMS & CONDITIONS

(The following terms and conditions will govern the agreement entered into by Contractor (Consultant) and PSU, resulting from this RFQ.)

1. **DEFINITIONS:**
"Agreement" or "Contract" means the entire written agreement between the parties, including but not limited to any Work Order and any subsequent change notices. "Contractor" means a person or organization with whom PSU has contracted for the purchase of goods or services. The terms "Contractor" and "Seller" as used in the Uniform Commercial Code (ORS Chapter 72) are synonymous. "ORS" means Oregon Revised Statutes. "PSU" means the State Board of Higher Education acting by and through Portland State University and is synonymous with "Buyer".
2. **ACCESS TO RECORDS:**
Contractor shall maintain all records pertinent to this agreement in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that PSU, the Oregon Secretary of State's Office, federal government, and their duly authorized representatives shall have access to such fiscal records and other books, documents, paper, plans and writings of Contractor that are pertinent to this Agreement to perform examination and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such records for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this agreement, or until the conclusion of any audit, controversy or litigation arising out of or relating to this agreement, whichever date is later.
3. **AMENDMENTS:**
The terms of this agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without the prior written approval of PSU.
4. **APPROVALS:**
No work shall commence under this agreement until the agreement has been approved and signed by all parties.
5. **ASSIGNMENT/SUBCONTRACT:**
Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this agreement, in whole or in part, without the prior written approval of PSU. No such written approval shall relieve Contractor of any obligations of this agreement, and any transferee or subcontractor shall be considered the agent of Contractor. Contractor shall remain liable as between the original parties to the agreement as if no such assignment had occurred.
6. **BREACH OF AGREEMENT:**
If Contractor breaches any of the provisions of this agreement, PSU reserves the right to cancel this agreement effective immediately upon written notice to Contractor. Contractor shall be liable for any and all damages, including incidental and consequential damages, suffered by PSU as the result of Contractor's breach of agreement. PSU shall also have any and all remedies provided under the Uniform Commercial Code (ORS chapter 72) in the event of breach of agreement by Contractor.
7. **CAPTIONS:**
The captions or headings in this agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this agreement.
8. **CASH DISCOUNT:**
If PSU is entitled to a cash discount, the period of computation shall commence on the date the entire order is delivered or the date the invoice is received, whichever is later.
9. **COMPLIANCE WITH APPLICABLE LAW:**
Contractor shall comply with all federal, state, and local laws, codes, regulations and ordinances applicable to the goods to be purchased and the work to be done under this Agreement. Contractor shall comply with the Americans with Disabilities Act of 1990 (Public Law No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659.425, and all regulations and administrative rules established pursuant to the laws. Failure to comply with such requirements shall constitute a breach of Agreement and shall be grounds for agreement cancellation. Damages or costs resulting from noncompliance shall be the sole responsibility of Contractor.
10. **CONFIDENTIAL INFORMATION:**
Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this contract, be exposed to or acquire information that is confidential to PSU or the State of Oregon. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this contract shall be deemed confidential information of PSU and of State ("Confidential Information"). Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce,

sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than in the performance of the contract, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor agrees that Contractor will not at any time during or after the term of this contract disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this contract, or at PSU's request, Contractor will turn over to PSU all documents, papers and other material in Contractor's possession which contain Confidential Information.

11. CONFLICT OF INTEREST:

Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Contractor further covenants that in the performance of this agreement no person having any such interest shall be employed by Contractor.

12. CONSIDERATION:

The consideration paid in this agreement represents the total amount of remuneration for goods and services.

13. DEFAULT:

PSU by written notice of default (including breach of agreement) to Contractor may terminate the whole or any part of this Agreement: (a) If 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; or (b) If Contractor no longer holds a license or certificate that is required for Contractor to perform services under the contract, and Contractor has not obtained such license or certificate within ten (10) business days after delivery of PSU's notice; or (c) If Contractor fails to provide services or materials called for by this agreement within the time specified herein or any extension thereof; or (d) If Contractor fails to perform any of the other provisions of this Agreement or fails to pursue the work so as to endanger performance of this Agreement in accordance with its term and, after receipt of written notice from PSU, fails to correct such failures within 10 days or such longer period as PSU may authorize. The rights and remedies of PSU provided in the above clause related to defaults (including breach of agreement) by Contractor shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement. Contractor shall be liable for any and all damages, including incidental and consequential damages, suffered by PSU as the result of Contractor's breach of agreement. In the event of repeated breach of public and/or private contracts, Contractor shall be subject to possible disqualification as a bidder on future PSU contracts.

14. DELIVERY:

All deliveries shall be F.O.B. destinations with all transportation and handling charges being paid by Contractor. Responsibility and liability for loss or damage shall remain with Contractor until final inspection and acceptance, when responsibility shall pass to PSU except as to latent defects, fraud and Contractor's warranty obligations.

15. ECONOMIC OPPORTUNITIES:

Contractor shall, when applicable, have made good faith efforts to subcontract or establish joint ventures with or obtain materials to be used in performing the agreement from minority, women, or emerging small business enterprises.

16. FORCE MAJEURE:

Neither party to this agreement shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. PSU may terminate this Agreement upon written notice after determining such delay or default will reasonably prevent successful performance of the agreement. Contractor shall, however, 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 obligation under this agreement.

17. FOREIGN CONTRACTOR:

If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Oregon Secretary of State Corporation Division all information required relative to this agreement. Contractor shall demonstrate its legal capacity to perform under this agreement in the State of Oregon prior to entering into this agreement.

18. GOVERNING LAW:

This agreement shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "claim") between PSU and Contractor that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Multnomah County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

19. **INDEMNIFICATION:**
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, the conduct of work under this Agreement, or from any act, omission, or neglect of Contractor, its subcontractors, or employees. Contractor shall save, defend (at PSU's request and with legal counsel acceptable to PSU), indemnify, and hold harmless the Oregon University System, the State Board of Higher Education, PSU, and their departments, subdivisions, officers, employees and agents from all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature resulting from or arising out of, or relating to the activities or omissions of Contractor or its officers, employees, subcontractors, or agents acting under this agreement.
20. **HOURS OF WORK:**
The Contractor shall comply with the Oregon Bureau of Labor and Industries rules pertaining to hours of work.
21. **INDEPENDENT CONTRACTOR:**
The services to be rendered under this agreement are those of an independent Contractor. Contractor is not to be considered an agent or employee of PSU for any purpose and neither Contractor nor any of Contractor's agents or employees is entitled to any of the benefits that PSU provides for its employees. Contractor will be solely and entirely responsible for its acts and for the acts of its agents or employees during the performance of this agreement. This agreement is not intended and nothing contained herein shall be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association between PSU and Contractor, but is rather an agreement between independent parties, these being PSU and the Contractor.
22. **INSURANCE:**
Contractor shall secure at its own expense and keep in effect during the term of this agreement either comprehensive general liability insurance with broad form CGL endorsement or commercial general liability insurance with a minimum limit of \$1,000,000 per occurrence and auto liability insurance with a minimum limit of \$1,000,000 per occurrence. Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon. The Oregon State Board of Higher Education acting by and through Portland State University, and their officers and employees, shall be included as additional insured's in said insurance policy(ies). If any of the liability insurance is arranged on a "claims made" basis, tail coverage will be required at the completion of this agreement for duration of twenty-four (24) months.
23. **INSURANCE CERTIFICATION:**
Before Contractor commences work under this agreement, Contractor must furnish to the designated PSU Contracts Officer certificate(s) of insurance as evidence of the insurance coverage required by this Agreement, including workers' compensation. The certificate(s) shall provide that the insurance company will give a 30-day written notice to PSU's Contracts Officer before the insurance is canceled or materially changed.
24. **OWNERSHIP OF WORK PRODUCT:**
All work product of Contractor that results from this Contract ("Work Product") is the exclusive property of PSU. PSU and Contractor intend that such Work Product be deemed "work made for hire" of which institution shall be deemed the author. If for any reason the work product is not deemed "work made for hire", Contractor hereby irrevocably assigns to University all its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as PSU may reasonably request in order to fully vest such rights in PSU. Contractor forever waives any and all rights relating to the work product, including without limitation, any and all rights arising under 17 USC 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
25. **NO THIRD PARTY BENEFICIARIES:**
PSU and Contractor are the only parties to this agreement and are the only parties entitled to enforce its terms. Nothing in this agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of the agreement.
26. **NONDISCRIMINATION:**
Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
27. **NOTICES AND REPRESENTATIVES:**
All notices, certificates, or other communications rendered shall be sufficiently given when delivered or mailed postage prepaid to the representatives of the parties at their designated places of business as follows: a) to PSU at its Purchasing and Contracting Office, as set forth on Page 1 of the solicitation document, and b) to Contractor as set forth on the Bid or Proposal Statement. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when satisfactory receipt of the transmission is generated by the transmitting

machine. To be effective against PSU, such facsimile transmission must be confirmed by telephone notice to PSU's contracting representative. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

28. **PAYMENT:**
Payment for completion of PSU contracts are normally made within 30 days following the date the entire order is delivered or the date the accurate and complete invoice is received, whichever is later. After 45 days, Contractor may assess overdue account charges up to two-thirds of one percent per month (8% per annum) on the outstanding balance per (ORS 293.462).
29. **PAYMENTS REQUIRED:**
For all goods and services provided under this agreement, Contractor shall: (a) pay promptly, as due, all persons supplying labor or material; (b) pay all contributions or amounts due the industrial accident insurance provider from the Contractor or any sub-contracted Contractor; (c) not permit any lien or claim to be filed or prosecuted against PSU therefore; and (d) pay to the Oregon Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
30. **PSU PAYMENT OF CONTRACTOR CLAIMS:**
If Contractor fails, neglects, or refuses to pay promptly, as due, any claim for labor or services furnished to the Contractor or any subcontractor by any person in connection with the goods, or services if applicable, provided under this agreement, PSU may pay such claim and charge the amount of the payment against funds due or to become due the Contractor under this agreement. The payment of a claim by PSU pursuant to this paragraph shall not relieve the Contractor or its surety, if any, from obligation with respect to any unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.
31. **RECYCLED PRODUCTS:**
Contractor shall use recyclable products to the maximum extent economically feasible in the performance of this agreement work set forth in this document.
32. **RETIREMENT SYSTEM STATUS:**
Contractor is not a contributing member of the Oregon Public Employees' Retirement System and will be responsible for any federal or state taxes applicable to payment under this contract. Contractor will not be eligible for any benefits from these contract payments of federal Social Security, employment insurance, workers' compensation or the Public Employees' Retirement System, except as a self-employed individual.
33. **SAFETY AND HEALTH REQUIREMENTS:**
Equipment and services supplied shall comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all Oregon safety and health requirements, including those of the State Workers' Compensation Department.
34. **SEVERABILITY:**
If any provision of this agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any applicable law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain the particular term or provision held to be invalid.
35. **SUCCESSORS IN INTEREST:**
The provisions of this agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
36. **TAX COMPLIANCE CERTIFICATION:**
Contractor hereby affirms, under penalty of perjury, as provided in ORS 305.385(6), that to the best of the Contractor's knowledge the Contractor is not in violation of any of the tax laws described in ORS 305.380(4).
37. **TAXES – FEDERAL, STATE & LOCAL:**
PSU will not be responsible for any taxes coming due as a result of this contract, whether federal, state, or local. It is agreed that the Contractor has anticipated these taxes and included them in the proposal.
38. **TERMINATION:**
 - a. This agreement may be terminated for convenience at any time by mutual consent of both parties, or by PSU upon thirty (30) days notice in writing and delivered by certified mail or in person to the other party.
 - b. PSU may also terminate this agreement effective upon delivery of written notice to Contractor or at such later date as may be established by PSU under any of the following conditions:

- i) if federal or state regulations or guidelines are modified or changed in such a way that the materials or services are no longer allowable or appropriate for purchase under this agreement; or,
- ii) if PSU fails to receive funding, appropriations, limitations, allotments, or other expenditure authority as contemplated by the PSU budget or spending plan and PSU determines, in its assessment and ranking of the policy objectives explicit or implicit in the PSU budget or spending plan, that it is necessary to terminate this Agreement.

c. The rights and remedies of PSU provided in the above clause are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.

39. TIME IS OF THE ESSENCE:

Contractor agrees that time is of the essence under this agreement.

40. WORKERS' COMPENSATION:

Contractor, its subcontractors, if any, and all employers providing work, labor or materials under this agreement are subject employers under the Oregon Workers' Compensation Law, and shall comply with ORS 656.017 which requires Contractor to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, or shall comply with the exemption set out in ORS 656.126.

41. MERGER:

This agreement and attached exhibits and appendices, the RFP, any RFP amendments and Contractor's proposal constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement.

42. WAIVER:

No waiver, consent, modification or change or terms of this agreement shall bind either party unless in writing and signed by both parties and all necessary PSU approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of PSU to enforce any provision of this agreement shall not constitute a waiver by PSU of that or any other provision.

43. WARRANTIES:

Unless otherwise stated, all goods shall be new and current model and shall carry full manufacturer warranties. Contractor warrants all goods delivered to be free from defects in labor, material and manufacture and to be in compliance with solicitation specifications. All implied or expressed warranty provisions of the Uniform Commercial Code (ORS chapter 72) are incorporated in this Contract. All warranties shall run to PSU.

END OF REQUEST FOR QUOTES