

PORTLAND STATE UNIVERSITY
REQUEST FOR QUOTES #21935
Consultant to Oregon Consensus Coordinated Care Organization Mediators

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.

TITLE:

Consultant to Oregon Consensus Coordinated Care Organization Mediators

RFQ ISSUE DATE:

April 9, 2013

RFQ DUE DATE:

To be considered for selection, quotations must arrive at Portland State University, National Policy Consensus Center (NPCC) by **4 p.m. PDT, Friday, April 12, 2013**. Please email or fax your quotation to the addresses listed below. The contact information for NPCC is:

Only emailed or faxed responses will be accepted:

Attention: Heather Binns
hbinns@pdx.edu

Portland State University
Academic Personnel and Leadership Development, Office of Academic Affairs
PO Box 751, 720 Urban Center
Portland, OR 97207-0751
Contact phone number, 503-725-9071
Contact fax number, 503-725-5199

Emailed quotes shall be in a PDF file and 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.

SCOPE OF WORK

The Oregon Senate recently approved SB 568 to require the Oregon Health Authority to establish a dispute resolution process for conflicts between health care entities and coordinated care organizations (CCOs). The bill supplements a law passed in 2011 to include disputes regarding contract terminations, renewals and extensions. Oregon Consensus has been providing collaboration support and conflict resolution services to the Oregon Health Authority since 2012 to assist the agency in establishing the CCOs. OC practitioners have provided mediation to CCOs around the state to help resolve governance related issues. As these CCOs are now established, mediation services will continue to be needed to address conflict outlined in the bill.

Experience has demonstrated that it is critical for those involved in a dispute to have input in to the selection of the mediator. Assistance is often needed at this stage given the level of tension between the parties. Oregon Consensus can play a key role in the case development stage of mediations including helping parties make a selection as well as having a team of skilled mediators available for these situations.

Oregon Consensus is seeking a consultant to provide expertise resolving particularly contentious issues. The consultant would provide the following services:

- Provide consultation to the OC Director in designing and delivering CCO mediation services
- Consult on the criteria for CCO mediators
- Assist OC staff in the selection of the mediators to serve as part of a pool of qualified CCO mediators.
- Provide case consultation and mentorship to individual mediators assigned to a case
- Provide case consultation and mentorship as needed for team meetings, as needed
- Assist OC Director and NPCC Director in consulting to OHA leadership regarding the delivery of mediation services.

Timeline: Not to exceed 20 hours through June 30, 2013.

MANDATORY REQUIRED QUALIFICATIONS:

PSU has identified the following **MANDATORY REQUIRED QUALIFICATIONS AND MANDATORY REQUIRED SKILLS/ATTRIBUTES** for a Consultant to Oregon Consensus Coordinated Care Organization Mediators

1. Demonstrated success and experience in public policy dispute resolution and consensus building, and mediation/facilitation.
2. Experience with alternative means of dispute resolution and collaborative approaches to problem solving.
3. Experience with all phases of administration of mediations including, dispute resolution systems design and mediation/facilitation.
4. Experience providing and presenting written analysis with recommendations for next steps in progress.

MANDATORY REQUIRED SKILLS/ATTRIBUTES:

1. Actual and perceived neutrality and independence.
2. Excellent process management skills.
3. An ability to work in partnership with the project managers at NPCC to organize and run meetings efficiently.
4. An ability to help stakeholders find common ground and to think constructively and creatively about alternative approaches for resolving issues of concern.
5. An ability to provide an objective ear for stakeholders in a public policy dispute.
6. Understanding of the complexities of government agencies.

ADDITIONAL REQUIREMENTS:

1. PSU's relationship with the successful respondent will be that of an Independent Contractor. Portland State University will not pay for Consultant expenses (telecommunications, supplies, travel, etc) nor will Portland State University provide dedicated office space for Consultant.
2. The maximum dollar value of any individual contract awarded under this solicitation shall not exceed **\$25,000 USD**. This amount may be amended at PSU's sole discretion.

PAYMENT/INVOICING:

Consultant shall invoice PSU at the end of each month for all hours worked, if any. Payment of Consultant invoices by PSU is normally made within 30-45 days of receipt of complete and accurate invoices. Consultant is responsible for ensuring that each invoice clearly references the associated PSU Purchase Order and that Consultant's hourly rate match the rate listed in the Consultant's quote. PSU will not be responsible for paying any invoices that are not complete and accurate. Consultant 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 general resume.
2. A one-page (maximum) summary of your specific qualifications and experience that meet the **MANDATORY REQUIRED QUALIFICATIONS AND MANDATORY SKILLS/ATTRIBUTES**, including challenges you have worked on in the past, your approach, and your successes.
3. A list with descriptions of three (3) similar or related prior assignments, including references for each of the projects for which you have provided facilitation or mediation services and relative to the requirements stated herein. PSU is interested in both the process (how well it worked) and the result (what outcome was achieved). Short summaries of projects are preferred – one or two paragraphs.
4. A statement of your rates for these services.

EVALUATION CRITERIA:

Only those quotations from Consultants meeting the **MANDATORY REQUIRED QUALIFICATIONS AND MANDATORY SKILLS/ATTRIBUTES** listed above will be deemed responsive to this RFQ. PSU reserves the right to not award this contract to any of the bidders if it is in the best interest of PSU to do so.

Those quotes which have been deemed responsive will be evaluated based on the following criteria:

1. Specific qualifications and experience relevant to PSU needs; optional interview may be held at PSU's sole discretion (40 points).
2. Related projects description (3); References; Process/outcomes (40 points).
3. Consultant rates for services (20 points).

TOTAL POSSIBLE POINTS = 100

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.

AWARD:

Selection of the Consultant shall be based upon the quote evaluation criteria as provided herein. PSU reserves the right to not award this contract to any of the respondents if it is in the best interest of PSU to do so.

CHANGES AFTER AWARD/ACCEPTANCE OF QUOTE:

After award or acceptance of respondent quote, 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, signed by the parties.

BEST AND FINAL OFFER:

Pursuant to OAR 580-061-0155, PSU reserves the right to select the respondent 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 Contract Terms and Conditions, incorporated within this document-see below.

PSU CONTRACT TERMS & CONDITIONS

(The following terms and conditions will govern the agreement entered into by Contractor 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. **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.
15. **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.
16. **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.
17. **HOURS OF WORK:**
The Contractor shall comply with the Oregon Bureau of Labor and Industries rules pertaining to hours of work.
18. **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.
19. **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.
20. **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.

21. 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.

22. 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.

23. NONDISCRIMINATION:

Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

24. 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.

25. 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).

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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).

34. 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.

35. 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.

36. TIME IS OF THE ESSENCE:

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

37. 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.

38. 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.

39. 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.

END OF REQUEST FOR QUOTATION #21935