

**REQUEST FOR PROPOSALS (RFP)**  
**(Lease Financing for IT Computer Equipment)**  
**RFP No. 2014-01**

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**ATTENTION POTENTIAL**  
**PROPOSERS!**

**IMPORTANT NOTICE**

**Responsibility of Each Proposer Participating in the Bidding Process**

It is the responsibility of each participating proposer to refer daily to the OUS Business Opportunities website to check for any available amendments or addenda, responses to inquiries and/or questions, cancellations, or notices of intent to award, and any and all additional information regarding this opportunity that is posted. It is not Southern Oregon University's responsibility to notify participating proposers by email or by any other means of any of the above. Copies of this document can be obtained on the web site as well. The web link follows.

<http://www.ous.edu/about/bid>

All requests for changes or clarifications regarding technical information, procedural requirements, contractual requirements or other issues must be submitted in accordance with Section 1, Instructions to Proposers and Section 3, Questions or Requests For Clarification/Change.

**NO LATE PROPOSALS WILL BE ACCEPTED**

**Minority, Women, and Emerging Small Businesses**

SOU is committed to increasing opportunities for Minority, Women, and Emerging Small Businesses (MWESB). SOU strongly encourages its proposers to use these businesses in providing services and materials for SOU contracts and projects.

*SOU 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.*

Commodity Title: Lease Financing for IT Computer Equipment  
Buyer: State Board of Higher Education acting by and through  
Southern Oregon University  
Contact: Brad Christ  
Phone/Fax: (541) 552-6451  
Email: brad.christ@sou.edu  
Date Issued: July 5, 2013

**RFP Proposal Deadline for Receipt by SOU Office of Information Technology**

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**PROPOSALS ARE TO BE SUBMITTED BY FAX OR E-MAIL ONLY**

Day/Date: Friday, July 19, 2013  
Time: 3:00 p.m.  
Location/Address: [brad.christ@sou.edu](mailto:brad.christ@sou.edu)  
(541) 552-6210 fax  
Southern Oregon University  
Office of Information Technology  
1250 Siskiyou Boulevard  
Medford, OR 97520

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## SCHEDULE OF EVENTS

**These dates are for reference only; SOU may change these dates at its discretion. SOU will post any changes to schedule dates on the OUS website: <http://www.ous.edu/about/bid>.**

Issue RFP to potential proposers	July 5, 2013
Deadline for proposer inquiries, request for changes or protest of specifications	July 12, 2013
Deadline for SOU to respond to proposer inquiries and/or protest of RFP specifications and/or contract terms and conditions	July 17, 2013
<b>Proposals due*</b>	July 24, 2013
Evaluation period, ending	July 29, 2013
Anticipated notice(s) of intent to award	August 2, 2013
Deadline to protest award(s)	<b>Seven (7) <u>calendar</u> days <u>after</u> date of intent to award</b>
Anticipated date of contract(s) execution (no later than)	August 12, 2013

**\* Proposals must be received by the SOU Office of Information Technology no later than 3:00 p.m. local time on this date.**

## **SECTION 1: INSTRUCTIONS TO PROPOSERS**

All Proposals submitted in response to this RFP are subject to the provisions and requirements of the applicable Oregon Revised Statutes (ORS), the applicable Attorney General's Model Public Contract Rules and the Administrative Rules of the Oregon University System.

1. **Right to Reject:** SOU reserves the right to cancel this procurement or RFP, and reserves the right to reject any or all Proposals received as a result of this RFP, upon finding that it is in the public interest to do so or for any other reason set forth in this RFP.
2. **Preparation Costs:** SOU shall not be liable for any costs incurred by proposers in the preparation of Proposals to this RFP, including any meetings and demonstrations that may be required or requested.
3. **Questions or Requests For Clarification/Change:** All requests for changes or clarifications regarding technical information, procedural requirements, contractual requirements or other issues must be submitted, in writing, and received no later than the date and time listed in the Schedule of Events to the name and address listed on page 2 of this RFP. Any exception or a concern regarding this RFP, must be raised in writing, which must be received by the deadline date for Requests for Changes listed in the Schedule of Events.

SOU reserves the right to reject Proposals from proposer(s) that raise any objections to the terms and conditions of this RFP after the deadline date for requests for changes. Proposers' proposed agreements, including proposed supplemental terms and conditions may be considered by SOU in its sole discretion, pursuant to Sections 16, 17 and 18 below. SOU will consider all protests and requested changes that are timely submitted and, if reasonable and appropriate, amend this RFP.

Envelopes or faxes containing requests for change or protest of RFP requirements or contract provisions shall be marked as follows:

- Attention: RFP Document Number and title;
- RFP Specification (or Contract Provisions) being questioned; or,
- Request for Change (or Protest); and,
- Date Submitted.

Emailed requests for change or protest of RFP requirements or contract provisions shall be marked as follows:

- Email subject line must state: RFP Document Number and title.
- The body of the email must state: RFP Specification (or Contract Provisions) being questioned; or, Request for Change (or Protest).

SOU will not consider or respond to requests that are submitted in any manner other than as provided in this Section 3.

4. **Submittal Location:** All Proposals must be submitted to the SOU Office of Information Technology identified on Page 2 of this RFP.

5. **Change or Modification Addenda(s):** Any change or clarification to the specifications or the procurement process or to SOU's Standard Contract Terms and Conditions will be issued in the form of an Addendum to this RFP and will be made available to all proposers. Only documents issued as addenda by the SOU Office of Information Technology will serve to change this RFP in any way. No other direction, written or oral, shall serve to change this RFP document.

Proposers are not required to return addenda with their Proposal. However, proposers are responsible for making themselves aware of and obtaining and incorporating any changes made in any addenda issued into their final Proposal. Failure to do so may cause the proposer's Proposal to be rejected.

6. **Proposal Preparation and Submission:** Proposals to the RFP shall be of sufficient length and detail to demonstrate that the proposer has a thorough understanding of the SOU environment and why the proposer best meets SOU's needs.

Proposers shall submit **ONE (1) ORIGINAL** of all Proposal pages, which shall be submitted to the SOU Office of Information Technology by the RFP Proposals Due date to the location listed on Page 2 of this RFP. **Proposals are to be submitted by fax or e-mail only.** The Proposal shall contain no pricing information whatsoever. Pricing shall be submitted in a separate Pricing Proposal as detailed below.

Proposals shall be prepared in printed form, not handwritten, and shall be signed in ink by an authorized representative of the proposer. The person signing the RFP shall initial alterations or erasures in ink. The original Proposal submitted by a proposer must bear an original signature. Failure to submit a Proposal bearing an original signature will result in rejection of the Proposal. No oral, telegraphic, telephone, e-mail or facsimile Proposals will be accepted. Proposals and Pricing Proposals must not be submitted in three ring binders or with any binding that cannot be easily removed. Comb binding or large clips are acceptable. It is also recommended that Proposals be printed on 100% recycled paper. Proposals must not include any tabbing or glossy paper, must be printed two sided, and graphics only those graphics essential to the Proposal should be included. Proposers must also submit an electronic copy of the complete Proposal on one CD in a PDF format, and the Pricing Proposal on a separate CD in a Microsoft Excel format. Presentations formatted in Microsoft Power Point will also be accepted. Each CD should be clearly marked with the proposer's company name and identified as "Proposal" and "Pricing Proposal". Proposers must include a cover sheet that identifies the company name, the company's primary and secondary contact person's name for the Proposal, primary and secondary person's email, phone and fax number and company's web address. **SOU, in its sole discretion, may determine that a Proposal is non-responsive if the Proposal and pricing are not submitted as required, including separate CD's, in the required identified format.**

Proposals must be submitted in a sealed package(s) or envelope(s). To ensure proper identification and handling, all package(s) or envelope(s) must be clearly marked with the RFP Number and the date and time RFP Proposals are due. Pricing information must be submitted at the same time in a separate sealed package, and must be clearly marked "Pricing Proposal", with the name of the proposer submitting the Proposal clearly identified on each page of the Pricing Proposal. Pricing information must not be included with the rest of the Proposal in any manner whatsoever. **Failure to completely separate pricing from the rest of the Proposal may result in rejection of the Proposal.**

**Section 4: Proposal Certification must bear an original signature and be completed and submitted in its entirety. Failure to comply may result in the rejection of the Proposal.**

Proposals and pricing information must be received and time-stamped by the SOU Office of Information Technology (unless otherwise specified) no later than the scheduled RFP Proposals due date and time listed in the Schedule of Events of this RFP. **Late Proposals or modifications will be rejected.**

Proposers should note that SOU has an internal campus mail system which is used to distribute all U.S. mail sent to SOU. This internal mail system sometimes experiences delays in distributing mail to campus departments and, upon rare occasion, loses mail intended for campus departments. Thus, proposers using the U.S. mail to submit their Proposals do so at their own risk.

Proposers must complete all applicable information and provide all information requested in this RFP. Failure to comply may be grounds for Proposal rejection.

Proposer shall also include in the Proposal the name, title and phone number of the person who is assigned the responsibility of answering questions and resolving problems for the proposer.

7. **Public Records:** This RFP and one copy of each original Proposal received in response to it, together with copies of all documents pertaining to the Award of a Contract, shall be kept by SOU and shall be open to public inspection. If a Proposal contains any information that is considered a trade secret by the proposer 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.

Proposers are requested to mark only specific pages or text in their Proposal considered a "trade secret" under Public Records Law. Proposals in which the entire document is marked or otherwise identified in its entirety as confidential or a "trade secret" will be rejected.

**Pricing information cannot be labeled a trade secret and must be open to public inspection.**

8. **Information Submitted:** Proposers are cautioned that it is the proposer's sole responsibility to submit information related to the evaluation categories, and that SOU is under no obligation to solicit such information if it is not included within the Proposal. Failure by the proposer to submit such information may cause an adverse impact on the evaluation of the Proposal, including rejection of the Proposal as non-responsive.

9. **Evaluation Criteria:** Any contract(s) resulting from this RFP will be awarded based upon the evaluation criteria and methodology given in this RFP and in accordance with the Oregon University System, SOU, and State of Oregon administrative purchasing rules and laws.
10. **The Evaluation Process:** All Proposals received by the due time and date will be reviewed by an evaluation committee. The evaluation committee will determine the extent to which the Proposals conform to the specifications set forth herein and will evaluate the Proposals according to criteria identified in this RFP. The following process will be used:
- a. Proposals will be evaluated for completeness and compliance with the requirements of this RFP. SOU reserves the right to reject those Proposals that are incomplete. SOU also reserves the right to waive what are, in SOU's judgment, minor informalities or discrepancies. Proposals considered complete will be evaluated to determine if they comply with the administrative, contractual and technical requirements of this RFP. If the Proposal is unclear, proposers may be asked to provide written clarification if it is in the best interest of SOU to do so. SOU reserves the right to reject those Proposals that do not meet all requirements.
  - b. The selection of "finalist" proposer(s) will be determined by the evaluation committee independently scoring the Proposals and then combining the scores and pricing information to determine the overall Proposal score.
  - c. The findings of the evaluation team will be summarized and the summary and award recommendation(s) will be forwarded to the SOU Office of Information Technology.
  - d. The SOU Office of Information Technology will review the recommendation and approve or reject the evaluation team's selection.
  - e. At SOU's sole discretion, proposers may be invited to make a presentation and/or perform a demonstration to the evaluation committee in support of the Proposal.
11. **Investigation of References:** SOU reserves the right to investigate the references and the past performance of any proposer with respect to its successful performance of similar projects, compliance with specifications and contractual obligations, its completion or delivery of a project on schedule, and its lawful payment of suppliers, sub-contractors, and workers. SOU may postpone the award or execution of the contract before or after Notice of Intent to Award to complete its investigation. SOU reserves the right to reject any Proposal or to reject all Proposals at any time prior to SOU's execution of a contract if proposer's reference checks prove unsatisfactory.
12. **Consideration of Past Performance:** SOU reserves the right to consider past performance, historical information and other facts, whether gained from the proposer's Proposal, question and answer conference, references, demonstrations, or any other source in the evaluation process.
13. **Reservation of Rights:** SOU has and reserves the right to refuse to enter into a contract if SOU, based upon reasonable grounds, determines that the interests of SOU would not be served. Specifically, this right may be exercised if SOU does not believe that a given proposer can perform a contract, or for any reason set forth in Oregon Administrative Rules. SOU, at its option, may give the proposer notice, specifying the grounds for rejection, and allow the

proposer 15 calendar days to respond in writing.

Following such response, SOU, in its sole discretion may reject the Proposal as provided in the referenced administrative rules.

14. **Post-Selection Review & Finalists:** After evaluation is complete, and provided that the RFP is not canceled by SOU, SOU may rank the Proposals to determine the "finalist" proposer(s), based upon the highest-ranked Proposals as determined by the evaluation and selection criteria in this RFP and applicable statutes and administrative rules. In making these determinations, SOU reserves the right to conduct discussions with the finalist proposer(s), to accept best and final offers from those finalist(s), and to negotiate changes to the Proposal(s).

Following such determinations, the SOU Office of Information Technology will name one or more apparent successful proposer(s) and announce its Intent to Award to one or more of these proposer(s). Identification of the "apparent successful proposer" is procedural only and creates no right in the named proposer to award of the contract. All competing proposers shall be notified in writing of SOU's Intent to Award and the identity of the apparent successful proposer and shall be given seven (7) calendar days to review the RFP file and evaluation report in the SOU Office of Information Technology. Any questions or concerns about, or protests of, the evaluation process must be in writing and must be delivered to and received by the SOU Office of Information Technology within seven (7) calendar days after the date of the letter of Intent to Award identifying the apparent successful proposer(s).

Within a reasonable time following the end of this seven (7) day protest period, SOU will consider all protests received, if any, and may:

- a. reject the protest(s) and proceed with final evaluation of the apparent successful proposer(s) and, upon a satisfactory outcome of this final evaluation, enter into a contract with the apparent successful proposer or proposers; or
  - b. sustain a meritorious protest(s) and reject the apparent successful proposer(s) as non-responsive, if such proposer(s) is unable to demonstrate that its Proposal(s) complied with all material requirements of the solicitation and Oregon public procurement law; thereafter, SOU may name a new apparent successful proposer or proposers; or
  - c. reject all Proposals and cancel the procurement.
15. **Best and Final Offer:** Pursuant to OAR 580-061-0155, SOU reserves the right to select the proposer that, in the collective opinion of the evaluation committee, offers the best overall benefit, convenience, functionality and service at the best-value cost to SOU. SOU 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 SOU's best interest to do so.
16. **Negotiation of Final Contract:** A limited negotiation of the proposed contract may be required to effect include certain supplemental terms and conditions from the proposers' software license agreements, maintenance contracts, technical support agreements and other similar documents in the final contract. Such negotiation shall be at SOU's discretion.

17. **Negotiable Terms and Conditions:** At such time as the disposition of any protests has been completed, SOU reserves the right to negotiate specific terms of the contract including, but not limited to: indemnification, confidentiality, intellectual property ownership and license provisions, and limitation of liability provisions, with the successful proposer(s) prior to contract execution. Proposers should note that any such negotiation shall be minimal, and should be expedited and completed by the anticipated Contract Execution Date listed in the Schedule of Events. Failure of the selected proposer(s) to execute a contract by the Contract Execution Date may result in cancellation of the award. This time period may be extended at the sole discretion of SOU.
  
18. **Proposer Agreements and Supplemental Terms and Conditions:** Proposers may include in proposal(s) supplemental agreement terms and conditions of any form (contracts or documents) that the proposer desires to be incorporated in contract. SOU is not bound to accept them or incorporate such supplemental terms and conditions in any contract. While SOU will not consider supplemental terms and conditions that materially conflict with the provisions of this RFP, SOU may consider and negotiate the inclusion of such terms and conditions which are reasonably related to this RFP as supplemental to SOU's Standard Terms and Conditions contained in this RFP. If the parties do not agree on the inclusion of the supplemental terms and conditions, SOU may: 1) enter into a contract with the apparent successful proposer without incorporating the terms and conditions submitted by the proposer; or (2) consider the proposal(s) non-responsive and enter into a contract with another responsive proposer. Any proposal that desires to have terms and conditions negotiated must submit the terms and conditions at the time of submission of the Proposal. SOU will not consider any terms and conditions that are not submitted with the Proposal.

## **SECTION 2: SCOPE OF WORK**

The Southern Oregon University Office of Information Technology is seeking proposals to identify a vendor with whom the university will negotiate a contract to finance the leasing of computer equipment for faculty, staff, and student lab use

All lease proposals must meet the following criteria:

1. Lease term shall be for 48 months, expiring on September 30, 2016. A rental or installation period shall begin prior to lease commencement of October 1, 2013 during delivery of equipment to the University.
2. Lease rate factor(s) should be clearly noted.
3. Lease type must be fair market value.
4. The University shall have the ability to purchase some, all, or none of the leased computers at the expiration of the lease term.
5. There shall be no re-stocking fee for items returned to the vendor.
6. The original packaging will not be required upon return, but suitable packing is required.
7. The University will have the ability to substitute "like-kind" property in the event of a return or replacement.
8. The University will be required to provide a minimum of 30 days prior written notice of its intent to buyout or extend all, some, or no part of the lease at fair market value at the end of the lease term.
9. The University will not be required to return any media disks or manuals with the equipment.
10. The equipment will be returned with the original and functional operating system installed.

Southern Oregon University expects to lease the quantity and type of equipment listed below, but precise vendors, models, and quantities may differ on final quotes. Quotes will be finalized with selected vendor(s) after contract is awarded.

<b>Model</b>	<b>Quantity</b>
Apple MacBook Air 13" with AppleCare	22
Apple iMac 21.5" Core i5 with AppleCare	100
Dell XPS 13"	32
Dell OptiPlex 7010 Core i5 with 23" Monitor	255

### **SECTION 3: EVALUATION CRITERIA**

Proposals submitted in response to this RFP will be evaluated in accordance with the following criteria:

#### **MINIMUM MANDATORY REQUIREMENTS**

Only those Proposals meeting the Minimum Mandatory Requirements of this RFP will be deemed responsive to this RFP. Those Proposals which have been deemed responsive shall include the following provisions:

1. Lease term shall be for 48 months, expiring on September 30, 2016. A rental or installation period shall begin prior to lease commencement of October 1, 2013 during delivery of equipment to the University.
2. Lease rate factor(s) should be clearly noted.
3. Lease type must be fair market value.
4. The University shall have the ability to purchase some, all, or none of the leased computers at the expiration of the lease term.
5. There shall be no re-stocking fee for items returned to the vendor.
6. The original packaging will not be required upon return, but suitable packing is required.
7. The University will have the ability to substitute "like-kind" property in the event of a return or replacement.
8. The University will be required to provide a minimum of 30 days prior written notice of its intent to buyout or extend all, some, or no part of the lease at fair market value at the end of the lease term.
9. The University will not be required to return any media disks or manuals with the equipment.
10. The equipment will be returned with the original and functional operating system installed.

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#### ***Summary of Evaluation Criteria***

1. Mandatory Minimum Requirements (Pass or Fail)
2. Cost (Lease rate factor). (60 Points)
3. Responsiveness of the proposal in clearly stating the understanding of the services to be provided. (25 Points)
4. Ability to begin the services in a timely manner. (35 Points)
5. Experience (25 Points)
6. Proven record of satisfactory service (25 Points)

**TOTAL POSSIBLE POINTS = 170 Points**

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## **SECTION 4: PROPOSER CERTIFICATION**

**EACH PROPOSER MUST READ AND COMPLY WITH THE FOLLOWING SECTIONS. FAILURE TO DO SO MAY RESULT IN PROPOSAL REJECTION.**

### **SUBSECTION I: CERTIFICATION OF COMPLIANCE WITH TAX LAWS**

As required by ORS 305.385(6), I, the undersigned duly authorized representative of the proposer, hereby certify under penalty of perjury that the proposer is not, to the best of my knowledge, in violation of any of the tax laws described in ORS 305.380(4).

### **SUBSECTION II: FINANCIAL RESPONSIBILITY**

SOU reserves the right to investigate and evaluate, at any time prior to award and execution of the contract, the apparent successful proposer's financial responsibility to perform the contract. Submission of a signed Proposal shall constitute approval for SOU to obtain any credit report information SOU deems necessary to conduct the evaluation. SOU shall notify the apparent successful proposer(s), in writing, of any other documentation required, which may include, but need not be limited to, recent profit-and-loss history; current balance statements; assets-to-liabilities ratio, including number and amount of secured versus unsecured creditor claims; availability of short and long-term financing; bonding capacity and credit information, etc. Failure to promptly provide this information may result in Proposal rejection.

SOU may postpone the award or execution of the contract after announcement of the apparent successful proposer(s) in order to complete its investigation and evaluation. Failure of an apparent successful proposer to demonstrate financial responsibility, as required under OAR 580-040-0275 shall render the proposer non-responsible and shall constitute grounds for Proposal rejection, as required under OAR 580-040-0275.

The undersigned agrees and certifies that he/she:

1. Has read and understands all bid instructions, specifications, and terms and conditions contained herein (including any attachments listed in this document);
2. Is an authorized representative of the proposer, that the information provided in this Proposal is true and accurate, and that providing incorrect or incomplete information may be cause for Proposal rejection or contract termination;
3. Is bound by and will comply with all requirements, specifications, and terms and conditions contained herein;
4. Will furnish the designated item (s) and/or service(s) in accordance with the RFP, Proposal and the agreement; and
5. Proposer will provide/furnish federal tax ID, federal employee identification number or social security number with Proposal submission.

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### **SUBSECTION III: SIGNATURE BLOCK**

Signature of Proposer's duly authorized representative for (Contractor)

\_\_\_\_\_

Printed Name and Title: \_\_\_\_\_

Date: \_\_\_\_\_

Tax ID / Federal Employer Identification Number (FEIN): \_\_\_\_\_

An authorized representative of the proposer must sign this Proposal as well as initial any alterations or erasures in ink.

## **SECTION 5: SOU STANDARD CONTRACT TERMS & CONDITIONS**

*(The following terms and conditions will govern the agreement entered into by the successful proposer and SOU, resulting from this RFP.)*

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 SOU 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. "SOU" means the State Board of Higher Education acting by and through Southern Oregon 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 SOU, 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 SOU.
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 SOU. 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, SOU 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 SOU as the result of Contractor's breach of agreement. SOU 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 SOU 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 SOU 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 SOU 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 SOU's request, Contractor will turn over to SOU 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:**

SOU 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 SOU'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 SOU, fails to correct such failures within 10 days or such longer period as SOU may authorize. The rights and remedies of SOU 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 SOU 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 SOU 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 SOU 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. SOU 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 SOU 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 SOU's request and with legal counsel acceptable to SOU), indemnify, and hold harmless the Oregon University System, the State Board of Higher Education, SOU, 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 SOU for any purpose and neither Contractor nor any of Contractor's agents or employees is entitled to any of the benefits that SOU 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 SOU and Contractor, but is rather an agreement between independent parties, these being SOU 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, the Oregon University System, Southern Oregon 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. **Add professional liability insurance where applicable.**

**23. INSURANCE CERTIFICATION:**

Before Contractor commences work under this agreement, Contractor must furnish to the designated SOU 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 SOU'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 SOU. SOU 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 SOU may reasonably request in order to fully vest such rights in SOU. 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:**

SOU 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 SOU at its Purchasing and Contracting Office, as set forth on Page 2 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 SOU, such facsimile transmission must be confirmed by telephone notice to SOU'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 SOU 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 SOU therefore; and (d) pay to the Oregon Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

**30. SOU 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, SOU 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 SOU 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:**

SOU 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 SOU upon thirty (30) days notice in writing and delivered by certified mail or in person to the other party.

b. SOU may also terminate this agreement effective upon delivery of written notice to Contractor or at such later date as may be established by SOU 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 SOU fails to receive funding, appropriations, limitations, allotments, or other expenditure authority as contemplated by the SOU budget or spending plan and SOU determines, in its assessment and ranking of the policy objectives explicit or implicit in the SOU budget or spending plan, that it is necessary to terminate this Agreement.

c. The rights and remedies of SOU 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 SOU 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 SOU to enforce any provision of this agreement shall not constitute a waiver by SOU 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 SOU.

## **END OF REQUEST FOR PROPOSALS**