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## PORTLAND STATE UNIVERSITY

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### REQUEST FOR QUOTATIONS #22991, "Instructional Media Producer"

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Portland State University (PSU) Purchasing Rules, Policies and Guidelines allow PSU departments to use an "Informal Procurement Process" for all purchases of supplies, equipment, and trade and professional services where the estimated cost 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.**

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#### RFQ ISSUE DATE:

August 30, 2013

WEB LINK: <https://secure.ous.edu/bid/>

#### VENDOR BID RESPONSES:

All Quote Responses shall be in writing (email or hard copy, typewritten or printed legibly) and submitted by an authorized representative of the vendor submitting the quote. Quote Responses must be submitted to **Samad Hinton no later than 5:00 PM (local time) on September 5, 2013**, by email, or by hard copy (mail or hand-delivered).

Quote Responses shall be submitted:

#### If by U.S. Mail, to:

Portland State University  
School of Business Administration  
Attention: Mr. Samad Hinton  
P.O. Box 751 - SBA  
Portland, OR 97207-0751

**If by email, to:**

[shinton@pdx.edu](mailto:shinton@pdx.edu)

Respondents selected may be requested to provide additional information, either formally or via interview process, to clarify their quotations.

### ***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, and PSU strongly encourages its contractors to use these businesses in providing services and materials for PSU contracts and projects.

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## **BACKGROUND**

As a part of the Provost reThink Challenge, the School of Business Administration (SBA) received a grant to support its cluster project. A key aspect of the cluster project involves contracting an agency/contractor to support and train in the area of instructional media design and producing. This project involves delivering multimedia production training and support to instructors teaching in those reThink related SBA programs, and for those involved with online multimedia marketing of those reThink related SBA programs. The training and support will cover the areas of multimedia available for online teaching, planning of instructional media, video production techniques specific to the SBA's video studio, editing of multimedia productions, and creating web-ready media files. This training and support will enable online instructors to create a rich array of online teaching materials. Additionally, this contractor will produce video for designated faculty or staff who are unable to manage post-production.

## **PROJECT OVERVIEW**

The School of Business Administration's (SBA) project leaders for the cluster project are seeking an interactive instructional media producing agency/contractor that possesses the experience and skills necessary to train and support instructors in the creating of video and multimedia teaching materials, from planning and design of teaching materials, and through the production and editing of those materials to create web-ready media for online instruction. Such contractors must be conversant in the studio technology and build out and enhance standard operating procedure documents such that staff and faculty can manage planning, production and post-production independently. Additionally, this contractor will provide regular reports on potential technology for program design and execution with the goal of moving our online programs to the front edge of relevant technology for online learning.

## **KEY EVENTS**

The Table below outlines the schedule for important action dates.

|  |   |
|--|---|
| <b>SBA Issues Request for Quotations (RFQ)</b>     | <b>Tuesday, September 3, 2013</b>               |
| <b>Deadline for Submission of Bidder Questions</b> | <b>Wednesday, September 4, 2013</b>             |
| <b>Bid Due Date/ Bid Opening Date</b>              | <b>Thursday, September 5, 2013<br/>@ 5:00pm</b> |
| <b>Contract Start Date</b>                         | <b>Tuesday, October 1, 2013</b>                 |

## OBJECTIVES

### *Primary Objectives*

- To provide training to instructors in the design and planning of teaching multimedia.
- To provide training to instructors in the use of the multimedia production equipment on hand in the SBA's Multimedia Production Studio.
- To provide training to instructors in the editing of their multimedia projects and in creating web-ready multimedia files designed for streaming,
- After training, to provide support and guidance to trained instructors in the production and editing their materials using studio equipment and software.
- To share latest technological advancements relevant to the programs.

### *Secondary Objectives*

- To create reusable media for use in studio productions
- To help in assessing and improving the pedagogical quality of the produced media
- To expand the range of media produced using the studio equipment and software
- To develop and guide the style of the studio productions as the set director

## AUDIENCES

- reThink related Faculty Members (present and future)
- Staff (present and future)
- Student Workers (present and future)

## SCOPE OF WORK

**A. Video Production Training.** The SBA has created a multimedia studio and production lab for the support of its online programs. This studio has been equipped with film production equipment, computer hardware, multimedia production software, and an established core of standard operating procedures. The contractor/agency selected will train instructors in the use of the equipment and software, and be available to assist with its use.

The training to be provided to instructors must be specifically geared to an audience of online higher education educators, and be conducted in adherence to the Studio Manual and the studio's operating procedures.

**B. Work Environment.** Work is to be performed working closely with the **leadership team of the Online Business Education unit in the SBA**. The contractor/agency selected is to be paid dependent on the hours worked and deliverables produced and accepted by SBA.

**This contract shall not exceed \$40,000 in total cost in any given year of this Agreement and shall not exceed a total project cost of \$80,000 in the initial Term of this Agreement which shall not end later than May 31, 2015.**

The contractor/agency selected will invoice SBA monthly with a list of tasks accomplished and hours per task. Consultant will provide a bi-weekly/monthly status reports. All costs associated with parking at PSU are the responsibility of the contractor/agency.

**C. Performance Expectations.** Competition shall be limited to a contractor who has experience training online educators in multimedia production, using all of the video production hardware and essential multimedia production software to be used in the production of SBA course content and marketing media. Training of instructors and project assistance must also be conducted in adherence to the Studio Manual and conducted by an instructor who is versed in the studio's standard operating procedures. Specifically, the contractor will:

1. **Train instructors in the design and planning of teaching multimedia.**
2. **Train instructors in the use of the multimedia production equipment on hand in the SBA's Multimedia Production Studio.**
3. **Train instructors in the editing of their multimedia projects and in creating web-ready multimedia files designed for streaming,**
4. **After training, provide support and guidance to trained instructors in the production and editing their materials using studio equipment and software.**
5. **Provide full production support in some specific cases as designated by Online Business Education Unit leadership or the SBA deans.**
6. **Train hired student workers in the various phases of the pre-production and post-production to further assist faculty and staff members.**
7. **Identify emerging technology and continue to provide on-going support for student workers.**

**D. REQUIREMENTS AND SPECIFICATIONS of Core Deliverables.**

| <b>Deliverables</b>   | <b>Description</b>  |
|---|---|
| Standard Operation Procedures (SOP) for Video Production Technology | SOP manuals will provide faculty members and supporting staff with the required step-by-step process in operating technology/equipment used in the pre & post production stages.  |
| Semi-annual Technology Gap Analysis Report                          | Technology gap analysis report will identify bottlenecks and potential areas of enhancement in providing services to internal SBA stakeholders. In addition, the agency/contractor will provide recommendations within this report as well. |
| Quarterly Report on Emerging Technology                             | This quarterly report will describe and identify emerging technology in the instructional media design and producing sector.  |

**Work must be completed by May 31, 2015.**

See included documents: **EXHIBIT A: SBA's Multimedia Production Studio Manual.**

**PROPOSAL FORMAT AND CONTENT:**

In order for SBA to evaluate bids fairly and completely, bidders must follow the format set forth herein and must provide all of the information requested. All items identified in the following list must be addressed as concisely as possible in order for a bid to be considered complete. Failure to conform to the stated requirements may necessitate rejection of the bid.

**1. Cover Letter.** The cover letter must confirm that the bidder understands all the terms and conditions contained in this RFQ and will comply with all the provisions of this RFQ. Further, that should the contract be awarded to your company, you would be prepared to begin services

on October 1, 2013. A bidder representative authorized to make contractual obligations must sign the cover letter.

**2. Experience & Operational Plan.** Bidders must describe their capabilities to provide the services requested in this RFQ by providing the following:

- Indicate the number of consecutive years bidder has been active in the business of process serving.
- Details of how the bidder intends to provide services to support SBA's instructional media producing needs.

**3. Proposed Price.** Indicate the estimate cost of services to be rendered by the agency/contractor.

**4. References.** Provide a current list of references with contact information and a description of contract services (a minimum of three references, including contact information, is required).

### **Selection Process**

The assigned SBA reThink project leads will start reviewing the proposal on September 6th, 2013 and begin contacting a short list of agencies/contractors for personal interviews based on the criteria below.

### **Selection Criteria for Instructional Media Producer**

1. Experience & Operational Plan (70%)
2. Proposed price (20%)
3. Cover Letter & Response of references (10%)

It is expected that the draft scope of work included in the proposals will be reviewed and revised as necessary based on negotiations upon project commencement. A contract will be drafted based upon the contractor's ability to complete the work within the allotted budget and timeframe for this project. The assigned SBA reThink project leads will notify firms of the outcome of this process. A final selection will be made after the personal interviews.

### **PAYMENT/INVOICING:**

Payment of vendor invoices by PSU is normally made within 30-45 days of receipt of complete and accurate invoices. The vendor is responsible for ensuring that the invoice clearly references the associated PSU Purchase Order and that all items on the invoice match those listed in the quote response. PSU will not be responsible for paying any invoices that are not complete and accurate. Vendor payment terms may not require payment in less than 30 days after receipt of invoice by PSU and any payment delinquency terms are subject to the provisions of ORS (Oregon Revised Statute) 293.462.

### **CHANGES AFTER AWARD/ACCEPTANCE OF QUOTE:**

After award or acceptance of vendor 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, and signed by authorized representatives of the parties.

#### **BEST AND FINAL OFFER:**

Pursuant to OAR 580-061-0155, PSU reserves the right to select the vendor 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.

#### **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.

#### **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 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 of Oregon acting by and through the State Board of Higher Education on behalf of Portland State University, making the purchase and is synonymous with "Buyer" as used in ORS Chapter 12. "PSU" also means another Oregon Public agency if the purchase is being made under a cooperative purchasing program as authorized by ORS 190.240.

**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 three (3) 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, indemnify, and hold harmless the State of Oregon, the Oregon University System, the State Board of Higher Education, PSU, and their agencies, 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. 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. 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.

**27. 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.

**28. 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.

**29. SEVERABILITY:**

If any provision of this agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any 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.

**30. 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.

**31. 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).

**32. 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.

**33. 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 Contractor.

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 related to defaults (including breach of contract) by Contractor shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

**34. TIME IS OF THE ESSENCE:**

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

**35. 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.

**36. 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.

**37. 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.

**38. WARRANTIES:**

Unless otherwise stated, all goods shall be new and unused, or refurbished and unused, and shall be provided with a minimum one year warranty. 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.

**PLEASE SEE EXHIBIT A AS A SEPARATE DOCUMENT IN THIS RFQ #22991.**