



**INVITATION TO BID
No. DC166427B**

Recreational Sports/Fitness Equipment

BID DUE DATE AND TIME:
September 20, 2013 (2:00 PM, PT)

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

SUBMITTAL LOCATION:

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

1.0 GENERAL

1.01 SCHEDULE OF EVENTS

- Issue Date September 6, 2013
- Deadline for Requests for Clarification or Change September 13, 2013 (2:00 pm, PT)
- Bid Due Date and Time September 20, 2013 (2:00 pm, PT)

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

1.02 PRE-BID CONFERENCE

A Pre-Bid Conference will not be held.

1.03 ISSUING OFFICE

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

1.04 ADMINISTRATIVE CONTACT

Name: Donna Cain
Title: Purchasing Analyst 3
Telephone: 541-737-3423
Fax: 541-737-2170
E-Mail: donna.cain2@oregonstate.edu

1.05 DEFINITIONS

As used in this Invitation to Bid, the terms set forth below are defined as follows:

- a. "Addenda" means an addition to, deletion from, a material change in, or general interest explanation of the Invitation to Bid.
- b. "Exhibits" means those documents which are attached to and incorporated as part of the Invitation to Bid.
- c. "Bid" means an offer, binding on the Bidder and submitted in response to an Invitation to Bid.
- d. "Bidder" means an entity that submits a Bid in response to an Invitation to Bid.
- e. "Bid Due Date and Time" means the date and time specified in the Invitation to Bid as the deadline for submitting Bids.
- f. "Invitation to Bid" (ITB) means a Solicitation Document for the solicitation of competitive, Written, signed and sealed Bids in which Specifications, price, and delivery (or project completion) are the predominant award criteria.
- g. "Responsible" means an entity that demonstrates their ability to perform satisfactorily under a Contract by meeting the applicable standards of responsibility outlined in OAR 580-061-0130.
- h. "Responsive" means a Bid that has substantially complied in all material respects with the criteria outlined in the Invitation to Bid.
- i. "Written or Writing" means letters, characters, and symbols inscribed on paper by hand, print, type, or other method of impression intended to represent or convey particular ideas or meanings.

2.0 INTRODUCTION AND BACKGROUND

2.01 INTRODUCTION

Procurement and Contract Services is seeking Responsive Responsible Bidders to submit Bids for a variety of fitness equipment. The Department of Recreational Sports at Oregon State University is in the process of replacing existing fitness equipment. This fitness equipment encompasses both strength and cardio that will be utilized in the Dixon Recreation Center.

2.02 BACKGROUND

Through staff passion, innovation, and steadfast commitment to creating dynamic learning experiences, the Department of Recreational Sports has established itself as an essential campus partner in student wellness, a

healthy campus, and the success of students and campus alike. OSU RecSports is recognized as a leader and source of best practices in the growing and evolving field of recreation. Dixon Recreation Center serves over 80% of the campus population and operates approximately 122 hours a week.

2.03 OREGON STATE UNIVERSITY

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

Through its centers, institutes, Extension offices and Experiment Stations, OSU has a presence in almost every one of Oregon's 36 counties, including its main campus in Corvallis, the Hatfield Marine Sciences Center in Newport and OSU-Cascades Campus in Bend. OSU offers undergraduate, masters and doctoral degrees through 12 academic colleges enrolling more than 25,000 students from every county in Oregon, every state in the country and more than 90 nations.

3.0 SPECIFICATIONS

3.01 REQUIRED SPECIFICATIONS

In order to qualify as a Responsive Bidder, the Bid needs to meet the required specifications below.

New Equipment Specifications for handling ALL items being purchased:

- **Equipment is “Brand Specific” or an equivalent. Bidder must provide specifications if providing an “equivalent” manufacturer.**
- Equipment must be delivered and Installed in final locations as designated by OSU by **11/1/2013**.
- At the time of installation, each item to be inspected by installer & OSU to determine functionality and product damage/defect.
- At the time of installation, basic on-site training must be provided for each item.
- All crating/packaging supplies and all trash must be removed and disposed of off-site.
- Facility does not have loading dock or forklift. All equipment to unload or support unloading to be provided by successful bidder.
- Installation to occur between the hours of 7:00am (PT) to 5:00pm (PT), Monday thru Friday and must be prearranged with OSU.

Trade In Equipment:

- Successful bidder to remove equipment and associated items.
- All crating/packing supplies and all trash must be removed and disposed of off-site.
- Facility does not have loading dock or forklift. All equipment to unload or support unloading is to be provided by successful bidder.
- Equipment removal to occur between the hours of 7:00am to 5:00pm Monday through Friday.

PRECOR EQUIPMENT MUST:

Treadmills:

- Match current inventory
- Provide parts inventory
- Provide consistent preventative maintenance procedures
- Provide consistent repairs
- Match aesthetics of cardio rooms
- Retain consistent user familiarity with machines and workout programs

AMT Machines:

- Match current inventory
- Provide parts inventory
- Provide consistent preventative maintenance procedures

Provide consistent repairs
Match aesthetics of cardio rooms
Retain consistent user familiarity with machines and workout programs

KEISER EQUIPMENT MUST:

Match current inventory
Provide parts inventory
Provide consistent preventative maintenance procedures
Provide consistent repairs
Match aesthetics of cardio rooms
Retain consistent user familiarity with machines and workout programs

PARAMOUNT EQUIPMENT MUST:

Provide Lifetime warranty on frame components
Provide specific dimensions of equipment
Allow ease of moving the equipment (rollers and hand grip)
Provide simple 3-stage seat adjustment for adjustable bench seat
Provide parts inventory
Provide consistent preventative maintenance procedures
Provide consistent repairs
Match aesthetics of cardio rooms
Made in the USA

CYBEX EQUIPMENT MUST:

Provide Lifetime warranty on frame components
Provide specific dimensions of equipment
Provide ease of moving the equipment (rollers and hand grip)
Provide simple 3-stage seat adjustment for adjustable bench seat
Provide parts inventory
Provide consistent preventative maintenance procedures
Provide consistent repairs
Match aesthetics of cardio rooms
Made in the USA

UMAX EQUIPMENT (DUMBELLS) MUST:

Provide a Dual-Lock fastening system
Provide a 6-year warranty against loosening weight heads
Provide a 6-year warranty against structural breakage
Provide a 6-year warranty against bent handles
Provide a 6-year warranty against urethane breakage
Provide heat treated stainless steel handles
Provide permanent laser engraved urethane custom logo and numbers

SCI FIT EQUIPMENT MUST:

Provide parts inventory
Provide consistent preventative maintenance procedures
Provide consistent repairs
Match aesthetics of cardio rooms
Retain consistent user familiarity with machines and workout programs

MATRIX EQUIPMENT MUST:

Provide repairs consistency
Provide consistent preventative maintenance procedures
Provide consistent repairs

Match aesthetics of cardio rooms

Retain consistent user familiarity with machines and workout programs.

3.02 TERMS AND CONDITIONS

OSU's terms and conditions governing the purchase resulting from this ITB are included at Exhibit A.

4.0 BIDDER QUALIFICATIONS

4.01 MINIMUM QUALIFICATIONS

In order to qualify as a Responsive Bidder, the Bidder needs to meet the minimum qualifications below.

- 5 years minimum in representing equipment line
- 24 hour response to warranty work
- Manufacturer certified repair technicians

5.0 REQUIRED SUBMITTALS

5.01 QUANTITY OF BID

Submit one (1) original Bid and 2 duplicate copies. Mark original Bid as "ORIGINAL". Original should contain original signatures on any pages where a signature is required. Bids should contain the submittals listed in this section below.

5.02 REQUIRED SUBMITTALS

It is the Bidder's sole responsibility to submit information in fulfillment of the requirements of this Invitation to Bid. If pertinent information or required submittals are not included within the Bid, it may cause the Bid to be rejected.

Bidders must submit the following information:

- Description of how the goods or services offered specifically meet the required specifications described in section 3.
- Detailed information about how the Bidder meets the minimum qualifications detailed in section 4.
- Exhibit B: Certifications, fully completed.
- Exhibit C: References, fully completed.
- Exhibit D: Bid Price Form, fully completed.

6.0 EVALUATION

6.01 EVALUATION

Bids will be evaluated to determine the lowest Responsive Responsible Bidder based upon the Invitation to Bid, Exhibits and Addenda. OSU may engage in any of the processes identified in the applicable Oregon Administrative Rules to determine Contract award.

6.02 INVESTIGATION OF REFERENCES

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

7.0 INSTRUCTIONS TO BIDDERS

7.01 APPLICABLE STATUTES AND RULES

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

7.02 MANUFACTURER'S NAMES AND APPROVED EQUIVALENTS

Unless qualified by the provision "NO SUBSTITUTE" any manufacturers' names, trade name, brand names, information and/or catalogue numbers listed in a specification are for information and not intended to limit competition. Bidders may offer any brand for which they are an authorized representative, which meets or exceeds the specification for any item(s). If Bids are based on equivalent products, indicate in the Bid form the manufacturers' name and number. Bidders shall submit with their Bid, sketches, and descriptive literature, and/or complete specifications. Reference to literature submitted with a previous Bid will not satisfy this provision. Bidders shall also explain in detail the reason(s) why the proposed equivalent will meet the specifications and not be considered an exception thereto. Bids that do not comply with these requirements are subject to rejection. Bids lacking any written indication of intent to provide an alternate brand will be received and considered in complete compliance with the specification as listed in the ITB.

7.03 REQUESTS FOR CLARIFICATION OR CHANGE

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

7.04 ADDENDA

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

7.05 PREPARATION AND SIGNATURE

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

7.06 PUBLIC RECORD

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

7.07 SUBMISSION

Bids must be submitted in a sealed envelope and be delivered to the submittal location listed on the Invitation to Bid cover sheet no later than the Bid Due Date and Time. Bidder must specify on the outside of the envelope the Invitation to Bid number, the Invitation to Bid title and the Bid Due Date and Time. **E-MAIL OR FACSIMILE BIDS WILL NOT BE ACCEPTED.**

7.08 MODIFICATION

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

7.09 WITHDRAWALS

A Bidder may withdraw their Bid by submitting a Written notice to the Administrative Contact identified in this Invitation to Bid prior to the Bid Due Date and Time. The Written notice must be on the Bidder's letterhead and signed by an authorized representative of the Bidder. The Bidder, or authorized representative of the Bidder, may also withdraw their Bid in person prior to the Bid Due Date and Time, upon presentation of appropriate identification and evidence of authority to withdraw the Bid satisfactory to OSU.

7.10 LATE SUBMITTALS

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

7.11 BID OPENING

Bids will be opened immediately following the Bid Due Date and Time at the Submittal Location. Bidder may attend the Bid opening. Only the names of the Bidders submitting Bids will be announced. No other information regarding the content of the Bids will be available.

7.12 BIDS ARE OFFERS

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

7.13 CONTINGENT BIDS

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

7.14 RIGHT TO REJECT

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

7.15 AWARDS

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

7.16 LEGAL REVIEW

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

7.17 BID RESULTS

A Written notice of intent to award will be issued to all Bidders. The Bid file will be available for Bidder's review during the protest period at the PaCS Department. Bidders must make an appointment with the Administrative Contact to view the Bid file. After the protest period, the file will be available by making a Public Records Request to OSU Office of General Counsel.

7.18 BID PREPARATION COST

OSU is not liable for costs incurred by the Bidder during the Invitation to Bid process.

7.19 BID CANCELLATION

If an Invitation to Bid is cancelled prior to the Bid Due Date and Time, all Bids that may have already been received will be returned to the Bidders. If an Invitation to Bid is cancelled after the Bid Due Date and Time or all Bids are rejected, the Bids received will be retained and become part of OSU's permanent Bid file.

7.20 PROTEST OF CONTRACTOR SELECTION, CONTRACT AWARD

Any Bidder who feels adversely affected or aggrieved may submit a protest within three (3) business days after OSU issues a notice of intent to award a Contract. The protest must be clearly identified as a protest, identify the type and nature of the protest, and include the Invitation to Bid number and title. The rules governing protests are at OAR 580-061-0145.

EXHIBIT A TERMS AND CONDITIONS

These Standard Terms and Conditions for goods or services shall govern the purchase by OSU from the Contractor and shall replace and supersede any terms and conditions presented by Contractor or any sales quotations, order acknowledgements, or similar forms unless otherwise specified in the Solicitation Documents or on the face of the Purchase Order issued by OSU.

DEFINITIONS: As used in this Contract, the terms set forth below are defined as follows:

- a. "Contract" means only the documents listed below, which, in the event of any conflicts among them, must be interpreted in the following order of precedence:
 - i. The Solicitation Document and its Attachments and Addenda, if any; and
 - ii. The Purchase Order Issued by OSU
- b. "Contractor" means a person or organization with whom OSU has contracted for the provision of goods or services pursuant to this Contract;
- c. "Contractor Intellectual Property" means any intellectual property owned by Contractor and developed independently from Contractor's performance of this Contract;
- d. "OAR" means the Oregon Administrative Rules;
- e. "ORS" means the Oregon Revised Statutes;
- f. "OSU" means the State of Oregon, acting by and through the State Board of Higher Education, on behalf of Oregon State University.
- g. "Solicitation Document" means the Request for Quotes, Invitation to Bid, Request for Proposals, or any other written document issued by OSU that outlines the required specifications necessary to submit a responsive quote, bid, proposal, or any other response;

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

ACCESS TO RECORDS: Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. OSU, the Oregon State Board of Higher Education, Oregon Secretary of State, federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Contractor shall maintain such books and records for OSU's review for at least six years beyond the Term of the Contract unless OSU authorizes a shorter period in writing. Contractor shall promptly remedy any discrepancies involving deviation from the terms of this Contract and shall promptly reimburse OSU for any commitments or expenditures found by OSU to have been in excess of amounts authorized by OSU.

AFFIRMATIVE ACTION: Pursuant to OAR 580-061-0030, Contractor certifies that Contractor has not discriminated against Minority, Women or Emerging Small Business Enterprises in obtaining any required subcontracts.

APPLICABLE LAW, JURISDICTION AND VENUE: This Contract is governed and shall be construed in accordance with the laws of the State of Oregon, without resort to any other jurisdiction's conflict of law rules or doctrines. Any claim, action, or suit between OSU and Contractor that arises out of or relates to performance of this Contract must be brought and conducted solely and exclusively within the Circuit Court for Marion County, for the State of Oregon.

- a. Notwithstanding the foregoing paragraph, if a claim must be brought in federal forum, it must be brought and adjudicated solely and exclusively in the United States District Court for the District of Oregon. This paragraph applies to a claim brought against OSU only to the extent Congress has validly abrogated OSU's sovereign immunity and is not consent by OSU to be sued in federal court. This paragraph is also not a waiver by OSU of any form of immunity, including without limitation sovereign immunity and immunity based on the Eleventh Amendment to the United States Constitution.
- b. Except as set forth in the paragraph above, the parties consent to in personam jurisdiction in the above courts and waive any objection to venue and any objection that the forum is inconvenient.

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

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

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

DELIVERY: All deliveries are F.O.B. destination with all transportation and handling charges paid by the Contractor, unless specified otherwise in the Solicitation Documents or on the face of the Purchase Order issued by OSU. Responsibility and liability for loss or damage remain with the Contractor until final inspection and acceptance, when responsibility passes to OSU except as to latent defects, fraud and Contractor's warranty obligations.

EXPORT CONTROL: Contractor acknowledges that OSU has students and faculty who are foreign nationals who may work with the services, product or technology received from Contractor pursuant to this Contract. Contractor represents that it has informed OSU in writing, prior to executing this Contract if it is providing OSU any product or technology subject to the U.S. Export Administration Act of 1979, the Export Administration Regulations and the International Traffic in Arms Regulations, and if so, under what Commerce Control List number(s) or U.S. Munitions List number(s) it is controlled.

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

GOVERNMENT EMPLOYMENT STATUS: Contractor certifies that it is not currently employed by the federal government and not an employee of OSU.

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

- a. Except as set forth in the paragraph above, the parties consent to in personam jurisdiction in the above courts and waive any objection to venue and any objection that the forum is inconvenient.
- b. Without limiting the generality of this section a., Contractor expressly agrees to defend, indemnify, and hold OSU, the Oregon State Board of Higher Education, the State of Oregon and their agencies, subdivisions, officers, directors, agents, members, and employees harmless from any and all claims, suits, actions, losses, liabilities, costs, expenses and damages arising out of or related to any claims that the services or any other tangible or intangible goods delivered to OSU by Contractor that may be the subject of protection under any state or federal intellectual property law or doctrine, or OSU's use thereof infringes any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any third party; provided, that OSU shall provide Contractor with prompt written notice of any infringing claim.
- c. Contractor shall have control of the defense and settlement of any claim that is subject to a. or b.; however, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without first receiving from the Oregon Attorney General, in a form and manner determined appropriate by the Attorney General, authority to act as legal counsel for the State of Oregon, nor shall Contractor settle any claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that Contractor is prohibited from defending the State of Oregon, or is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.

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

INSPECTIONS: Goods furnished under this Contract are subject to inspection and test by OSU at times and places determined by OSU. If OSU finds goods furnished to be incomplete or not in compliance with the Contract, OSU, at its sole discretion, may either reject the goods, require Contractor to correct any defects without charge, or negotiate with Contractor to sell the goods to OSU at a reduced price, whichever OSU deems appropriate under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by OSU, OSU may reject the goods and cancel the Contract in whole or in part. Nothing in this paragraph is to in any way affect or limit OSU's rights as a Buyer, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.

INSURANCE: Contractor shall secure at its own expense and keep in effect during the term of this Contract general liability or professional liability insurance as deemed applicable by OSU with limits of not less than four million dollars (\$4,000,000) aggregate, unless otherwise specified in writing by OSU. Insurance policies are to be issued by an insurance company authorized to do business in the State of Oregon with a rating of A or better, or as deemed acceptable by OSU. If requested, Contractor shall provide proof of insurance of said insurance policy. If any of the liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration commiserate with the statute of limitations for tort claims in Oregon.

INVOICES AND PAYMENT TO CONTRACTOR: Contractor shall send invoices to OSU for goods and services accepted by OSU to OSU's Department at the address specified in the Purchase Order.

Contractor shall include in each invoice:

- a. The Purchase Order number;
- b. The quantity of goods ordered, the quantity of goods delivered, the date goods were delivered, the price per unit;
- c. A detailed description of any services performed, the dates services were performed, the rate or rates for services performed, and the total cost of services; and
- d. The total amount due and the payment address.

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

NECESSARY COMPONENTS: Unless specified otherwise, Contractor shall include all components, hardware and parts necessary for complete and proper assembly, installation and operation of goods.

NON-COMPLIANCE: If any goods or component parts are recalled by a regulatory body or the manufacturer, or discovered by Contractor not to comply with applicable regulatory standards or the Specifications, Contractor shall immediately notify OSU of the recall or non-compliance, and shall provide copies of the recall notice or notice of non-compliance, as applicable, and all other supporting documentation for the recall or non-compliance determination. OSU may elect to (a) reject goods in whole or in part, or (b) revoke its acceptance of goods in whole or in part. If OSU rejects goods or revokes its acceptance of goods, Contractor shall remove the particular goods from OSU's possession at no cost to OSU and shall reimburse OSU for all payments made for those goods.

NOTICE: Unless otherwise specified, any notice pursuant to this Contract shall be validly given if in writing and delivered to the other party via e-mail, fax, or by registered or certified mail, postage prepaid, to the respective addressees of Contractor and OSU.

ORIGINAL WORKS: All inventions, discoveries, work of authorship, trade secrets or other tangible or intangible items and intellectual property rights created by Contractor pursuant to this Contract, including derivative works and compilations, together the "Work Product", and whether or not such Work Product is considered a work made for hire or an employment to invent, shall be the exclusive property of OSU. OSU and Contractor agree that such original works of authorship are "work made for hire" of which OSU is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created pursuant to this Contract is not "work made for hire," Contractor hereby irrevocably assigns to OSU any and all of its rights, title, and interest in all original Work Product created pursuant to this Contract, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon OSU's reasonable request, Contractor shall execute such further documents and instruments necessary to fully vest such rights in OSU. Contractor forever waives any and all rights relating to original Work Product created pursuant to this Contract, 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.

In the event that Work Product created by Contractor under this Contract is a derivative work based on Contractor intellectual property, or is a compilation that includes Contractor intellectual property, Contractor hereby grants to OSU an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Contractor intellectual property employed in the Work Product, and to authorize others to do the same on OSU's behalf. In the event that Work Product created by Contractor under this Contract is a derivative work based on third party intellectual property, or is a compilation that includes third party intellectual property, Contractor shall secure on OSU's behalf and in the name of OSU an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the third party intellectual property employed in the Work Product, and to authorize others to do the same on OSU's behalf.

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

PARKING: Contractors doing business on the OSU campus may be required to have a permit to park, if utilizing restricted street parking or parking lots. Contractor parking permits may be picked up from OSU's Office of Transit & Parking Services.

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

REMEDIES FOR CONTRACTOR'S DEFAULT: In the event Contractor is in default, OSU may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, including, but not limited to: (a) rejection of the services, (b) requiring Contractor to correct any defects without charge, (c) negotiation with Contractor to sell the services to OSU at a reduced price, (d) termination of the Contract, (e) withholding all moneys due for the services Contractor has failed to deliver within any scheduled completion dates or has performed inadequately or defectively, (f) initiation of an action or proceedings for damages, specific performance, or declaratory or injunctive relief, or (g) exercise of its right of set off. These remedies are cumulative to the extent the remedies are not inconsistent, and OSU may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

RETIREMENT SYSTEM STATUS: Contractor is not a contributing member of the Public Employees' Retirement System and will be responsible for any federal or state taxes applicable to payment under this Contract. Contractor will not, by virtue of this Contract, be eligible for federal Social Security, employment insurance, workers' compensation or the Public Employees' Retirement System, except as a self-employed individual.

SAFETY AND HEALTH REQUIREMENTS/HAZARD COMMUNICATION: Goods and services supplied under this Contract shall comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all Oregon safety and health requirements, including those of the State of Oregon Workers' Compensation Division. Contractor shall notify OSU prior to using products containing hazardous chemicals to which OSU employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon OSU's request, Contractor shall immediately provide Material Safety Data Sheets, as required by OAR 437-155-025, for the products subject to this provision.

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

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

STANDARD COMPONENTS: Unless specified, Contractor shall provide goods with all components and accessories that the manufacturer lists as "standard" for goods.

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

TAX COMPLIANCE CERTIFICATION: Contractor certifies under penalty of perjury that Contractor is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620.

TERMINATION: This Contract may be terminated at any time by mutual consent of both parties or by OSU upon thirty (30) days' notice in writing and delivered by certified mail or in person to the other party. In addition, OSU may terminate this Contract at any time by written notice to Contractor if (a) Federal or state statutes, regulations or guidelines are modified or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract; (b) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; or (c) OSU fails to receive sufficient legislative appropriations (or from applicable federal, state, or other sources) to permit OSU, in the exercise of its reasonable administrative discretion, to fulfill its obligations under this Contract, or if the OSU program for which this Contract was executed is abolished. This Contract may also be terminated by OSU for default (including breach of contract) if (a) Contractor fails to timely provide services or materials called for by this Contract; or (b) Contractor fails to perform any of the other provisions of this Contract, or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms and conditions, and after receipt of written notice from OSU, fails to correct such failures within ten (10) days. The rights and remedies of OSU 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.

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

WAIVER: Failure of OSU to enforce any provision of this Contract will not constitute a waiver or relinquishment by OSU of the right to such performance in the future nor of the right to enforce any other provision of this Contract.

WARRANTIES: Unless specified, Contractor shall deliver goods that are new, unused and produced from current production inventory. Contractor shall provide goods manufactured from only those components that the manufacturer offers in the manufacturer's current parts catalogue for goods and 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 specifications in the Solicitation Document. All implied or expressed warranty provisions of the Uniform Commercial Code, at ORS Chapter 72, are incorporated into this Contract. All warranties run to OSU.

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

MERGER: THIS CONTRACT CONSTITUTES THE ENTIRE CONTRACT BETWEEN THE PARTIES. THERE ARE NO UNDERSTANDINGS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER IS EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN.

**EXHIBIT B
CERTIFICATIONS**

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

SECTION I. OREGON TAX LAWS

The undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Bidder and that Bidder is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620.

SECTION II. AFFIRMATIVE ACTION

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

SECTION III. COMPLIANCE WITH SOLICITATION

The undersigned agrees and certifies that they:

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

SECTION IV. PERMISSIVE COOPERATIVE PROCUREMENTS

If Bidder is awarded a contract from this Invitation to Bid, Bidder hereby (check one)

- agrees
- disagrees

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

Authorized Signature: _____ Date: _____

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

Title: _____ Fax: (_____) _____

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

Company: _____

Address, City, State, Zip: _____

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

Business Designation (check one):

- Corporation
- Partnership
- LLC
- Sole Proprietorship
- Non-Profit

**EXHIBIT C
REFERENCES**

REFERENCE 1

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

REFERENCE 2

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

REFERENCE 3

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

**EXHIBIT D
BID PRICE FORM**

ITEM	CATALOG OR MODEL NO. & DETAILED DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL PRICE
	PRECOR Equipment: <u>MUST</u> meet the required specification in ITB Section 3.01.				
1	AMT885 Precor Precision AMT w/p80 Touchscreen	8	EA		
2	TRM885 Precor Precision Treadmill w/p80 Touchscreen	5	EA		
3	Freight and Installation	1	EA		
	KEISER Equipment: <u>MUST</u> meet the required specifications in ITB Section 3.01.				
4	M3+C Spin Bike w/ Computer	30	EA		
5	Freight and Installation	1	EA		
	PARAMOUNT Equipment: <u>MUST</u> meet the required specifications in ITB Section 3.01				
6	XFW-6700 Paramount Flat / incline / decline bench	10	EA		
7	XFW-4400 Paramount Triceps Seat	3	EA		
8	XFW-7000 Paramount Flat Bench	4	EA		
9	Freight and Installation	1	EA		
	CYBEX Equipment: <u>MUST</u> meet the required specifications in ITB Section 3.01.				
10	16171 Cybex bent leg ab board	2	EA		
11	16020 Cybex 45 hyperextension	2	EA		
12	16131 Cybex Scott Curl Bench	2	EA		
13	16161 Cybex Adjustable Decline Bench	2	EA		
14	Freight and installation	1	EA		
	UMAX Equipment (Dumbbells) <u>MUST</u> meet the required specifications in ITB Section 3.01.				
15	USUD1055 UMAX USD Series: Ultra-Premium Urethane Dumbbells 55lb pr	1	EA		
16	USUD 1060 UMAX USD Series: Ultra-Premium Urethane Dumbbells 60lb pr	1	EA		
17	USUD1065 UMAX USD Series: Ultra-Premium Urethane Dumbbells 65lb pr	1	EA		
18	USUD1070 UMAX USD Series: Ultra-Premium Urethane Dumbbells 70lb pr	1	EA		
19	USUD1075 UMAX USD Series: Ultra-Premium Urethane Dumbbells 75lb pr	1	EA		
20	USUD1080 UMAX USD Series: Ultra-Premium Urethane Dumbbells 80lb pr	1	EA		
21	USUD1085 UMAX USD Series: Ultra-Premium Urethane Dumbbells 85lb pr	1	EA		
22	USUD1090 UMAX USD Series: Ultra-Premium Urethane Dumbbells 90lb pr	1	EA		
23	USUD1095 UMAX USD Series: Ultra-Premium Urethane Dumbbells 95lb pr	1	EA		

24	USUD1100 UMAX USD Series: Ultra-Premium Urethane Dumbells 100lb pr	1	EA		
25	USUD10007.5 UMAX USD Series: Ultra-Premium Urethane Dumbells 7.5lb pr	1	EA		
26	USUD10012.5 UMAX USD Series: Ultra-Premium Urethane Dumbells 12.5lb pr	1	EA		
27	Freight and Installation	1	EA		
	SCI FIT Equipment: <u>MUST</u> meet the required specifications in ITB Section 3.01.				
28	Sci Fit Pro 1000 UBE w/adjustable crank and seat	1	EA		
29	Freight and Installation	1	EA		
	MATRIX Equipment: <u>MUST</u> meet the required specifications in ITB Section 3.01.				
30	G3MS20 Matrix Cable Crossover	1	EA		
31	Freight and Installation	1	EA		
32	TRADE-IN VALUE FOR EQUIPMENT PER <u>ATTACHMENT A</u>	1	LOT		
Delivery is F.O.B. destination, prepaid and allowed. Shipping, freight and handling must be included in quoted prices. Additional costs for such are disallowed.				TOTAL	\$

BIDDER SIGNATURE:

By signature below the undersigned certifies that they are authorized to act on behalf of the Bidder and will comply with all aspects of the Bid herein.

COMPANY:	
SIGNATURE:	
NAME:	
TITLE:	

ATTACHMENT A – TRADE - IN EQUIPMENT LIST

Required handling for the trade-in equipment:

- Successful bidder to remove equipment and associated items
- All crating/packing supplies and all trash must be removed and disposed of off-site.
- Facility does not have loading dock or forklift. All equipment to unload or support unloading is to be provided by successful bidder.
- Removal to occur between the hours of 7:00am to 5:00pm Monday thru Friday and must be prearranged with OSU.

TREADMILLS	MAKE	SERIAL #	YEAR
Precor Treadmill 4	Precor	AGJYA24070007	2007
CYCLES	MAKE	SERIAL #	YEAR
Spinner	Free Motion	CC811K30687	2008
Spinner	Free Motion	CC811K30645	2008
Spinner	Free Motion	CC811K30644	2008
Spinner	Free Motion	CC811K30439	2008
Spinner	Startrac	SBNB1003W03819	2008
Spinner	Startrac	SBEX0909W06973	2008
Spinner	Startrac	SBEX0909W06868	2008
Spinner	Startrac	SBEX0909W06888	2008
Spinner	Startrac	SBEX0909W06871	2008
ROWERS	MAKE	SERIAL #	YEAR
Concept Rower 4	Concept 2	1212060-310008384-01	2007
AMT's	MAKE	SERIAL #	YEAR
AMT 1	Precor	A927E19090003	2009
AMT 2	Precor	A927E14090052	2009
AMT 3	Precor	A927E19090005	2009
AMT 4	Precor	A927101090044	2009
AMT 5	Precor	A927101090045	2009
AMT 6	Precor	A927101090039	2009
AMT 7	Precor	A927101090010	2009
AMT 8	Precor	A927101090011	2009

DUMBELLS- Weight Iron Grip – Urethane - (#55 - #120)	Quantity	Year
#55	6	2003
#60	4	2003
#65	3	2003
#70	2	2003
#75	5	2003
#80	3	2003
#85	6	2003
#90	5	2003
#95	5	2003
#100	1	2003
#105	1	2003
#110	1	2003
#115	1	2003
#120	1	2003

Magnum – Misc Weight Benches	Quantity	Year
Flat/Incline	13	2003
Flat/Incline (no back pad)	2	2003
Seat	6	2003
Scott Curl	3	2003
Standing Scott Curl	1	2003
Decline	3	2003
Ab Board	1	2003
Reverse Sit UP	2	2003
Cable Cross Over	Quantity	Year
Cybex Galileo Cable Crossover	1	2003