



**INFORMAL REQUEST FOR PROPOSAL
No. JK193236IP**

NCAA Division 1 Athletics Operating Compliance Services

PROPOSAL DUE DATE AND TIME

April 17, 2018 (11:00 AM, PT)

SUBMITTAL LOCATION

Oregon State University
Procurement, Contracts and Materials Management
644 SW 13th Avenue
Corvallis, Oregon 97333

OSU Procurement, Contracts and Materials Management Offices are open Monday through Friday 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.

ELECTRONIC SUBMITTAL ADDRESS

jennifer.koehne@oregonstate.edu

1.0 GENERAL

1.01 SCHEDULE OF EVENTS

- Issue Date..... March 28, 2018
- Deadline for Requests for Clarification or Change..... April 9, 2018 (3:00 pm, PT)
- Proposal Due Date and Time..... April 17, 2018 (11:00 am, PT)

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

1.02 ISSUING OFFICE

The Procurement, Contracts and Materials Management (PCMM) department of Oregon State University ("OSU") is the issuing office and is the sole point of contact for this Request for Proposal. Address all concerns or questions regarding this solicitation to the Administrative Contact identified below.

1.03 ADMINISTRATIVE CONTACT

Name: Jennifer Koehne
Title: Procurement Contract Officer
Telephone: 541-737-7353
Fax: 541-737-2170
E-Mail: jennifer.koehne@oregonstate.edu

1.04 DEFINITIONS

As used in this solicitation, 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 Request for Proposal.
- b. "Exhibits" means those documents which are attached to and incorporated as part of the Request for Proposal.
- c. "Proposal" means an offer, binding on the Proposer and submitted in response to the Request for Proposal.
- d. "Proposer" means an entity that submits a Proposal in response to the Request for Proposal.
- e. "Proposal Due Date and Time" means the date and time specified in the Request for Proposal as the deadline for submitting Proposals.
- f. "Request for Proposal" (RFP) means the document issued to obtain Written, competitive Proposals to be used as a basis for making an acquisition or entering into a Contract when price will not necessarily be 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 OSU Standard 580-061-0130.
- h. "Responsive" means a Proposal that has substantially complied in all material respects with the criteria outlined in the Request for Proposal.
- i. "Written or Writing" means letters, characters, and symbols that are intended to represent or convey particular ideas or meanings and are made in electronic form or inscribed on paper by hand, print, type, or other method of impression.

2.0 INTRODUCTION AND BACKGROUND

2.01 INTRODUCTION

Procurement, Contracts and Materials Management is seeking Responsive Responsible Proposers to submit Proposals for NCAA Division 1 Athletic Compliance Services for Oregon State University's (OSU) Athletics Compliance Program - The objective is to assist OSU Intercollegiate Athletics in the refinement of a best in class Compliance Program.

2.02 BACKGROUND

The major purpose of the Department of Intercollegiate Athletics is to establish an intercollegiate athletic program for students at Oregon State University and to serve the best interests of the University, based upon high standards of scholarship and sportsmanship. The program should promote and develop educational leadership, community involvement, and athletic excellence in accordance with NCAA, Pac-12, and University policies. The University, as a member of the National Collegiate Athletic Association (NCAA) and the Pacific-12 Conference, seeks to assist its student-athletes, faculty, staff (both athletic and non-athletic), alumni and friends in their compliance with applicable NCAA and Pac-12 Conference rules and regulations.

As a result, the Compliance Office is responsible for the establishment of procedures that are to be followed by all OSU parties involved with NCAA compliance. These procedures in the various compliance areas will be placed upon the guiding principles detailed later in this document. These procedures are not intended to serve as an educational tool regarding NCAA legislation.

2.03 OREGON STATE UNIVERSITY

Founded in 1868, Oregon State University is a comprehensive, research-extensive, public university located in Corvallis. OSU is one of only two American universities to hold the Land Grant, Sea Grant, Space Grant and Sun Grant designations. OSU is also the only institution to have earned both Carnegie Foundation classifications for Highest Research Activity and Community Engagement, 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 all 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 11 academic colleges, the Honors College, Graduate School and online Ecampus, enrolling more than 31,000 students from every county in Oregon, every state in the country and more than 110 nations.

3.0 STATEMENT OF WORK

3.01 SAMPLE CONTRACT

A sample contract, containing contractual terms and conditions, is included in Exhibit A.

3.02 STATEMENT OF WORK

The objective of the engagement is to provide Oregon State University with feedback on the effectiveness and efficiency of the Athletics Compliance program related to NCAA Division I Operating Bylaws and gain insights into continual operational improvements.

Oregon State University will engage a firm for an annual assessment under a one (1) year contract with an option for two (2) additional annual renewals, with the intent to have a three year cycle review.

SERVICES

1. Planning:

The firm will work with the Senior Associate Athletic Director to obtain background needed to develop the fieldwork testing plan. The fieldwork selected should be based upon a risk assessment provided by the firm covering all major operating bylaws areas as outlined in the NCAA Division I manual over a three year cycle. The firm will identify areas of high risk to

include in the fieldwork testing plan. The firm will also consult with the Office of Audit Services for input on areas of potential priority.

The firm will be responsible for developing the annual fieldwork testing plan and the firm will present their plan at each year's entrance conference.

Firm will be responsible to follow up on any prior year recommendations and to include an update in the current years testing plan presented at the entrance conference.

2. Fieldwork:

Testing will take place in the fall months. An entrance conference will be held on the first day of the campus visit to discuss the scope of work and risk assessment findings from the planning stage. The firm will visit campus for up to a five day period to complete the necessary fieldwork.

Areas of fieldwork will include all major **operating bylaws** as set out in the NCAA Division 1 Manual. Examples of fieldwork topical areas include—

- Governance and organization
- Eligibility
- Financial aid administration, including individual and team limits
- Recruiting (e.g., contacts and evaluations, official and unofficial visits), including telephone contacts, phone logs, text messaging and electronic contacts, and any other relevant contact issues deemed appropriate for review
- Camps and clinics
- Investigations and self-reporting of rules violations
- Rules education
- Extra benefits
- Playing and practice seasons
- Student-athlete employment
- Amateurism

Topical areas to be tested annually will be identified in the fieldwork testing plan.

3. Summary:

At the end of the campus visit, the firm will consult with the Athletics Director, Senior Associate Compliance Director, General Counsel, and the Chief Audit Executive about results of on-site work and areas of focus. Results will be submitted to the University Chief Audit Executive and the General Counsel for review within 4 weeks of the on-site visit.

The firm will provide a summary report no later than March 1st annually.

The parties understand that as the project develops, related services not listed above may be required to achieve the parties' objectives. Any modifications to the Contract, including the Scope of Work, shall be made in writing and by mutual consent of the parties.

Cost:

Services are to be provided under a flat, not to exceed fee. Travel and Expenses must be agreed to in writing before reimbursement and will be subject to the OSU Travel and Reimbursement Policy.

Confidentiality

Contractor may be required to have staff assigned to this Contract sign Confidentiality Agreements in order to protect confidential information which the Contractor may obtain in performance of this Contract.

4.0 PROPOSER QUALIFICATIONS

4.01 MINIMUM QUALIFICATIONS

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

- a. The proposed lead must have at least six (6) years of NCAA Division 1 Athletics Compliance Program experience assessing operating bylaws for compliance as defined in the NCAA Division 1 Manual. Compliance Program experience is separate and distinct from financial audit experience that relates to the NCAA Constitution Section 6.2.3.1. Financial audit experience based on section 6.2.3.1 of the NCAA Constitution may not be substituted for Athletic Compliance experience.
- b. Proposer has experience auditing NCAA Division 1 universities of similar size and complexity to OSU.
- c. Proposer may not currently or in the past be under contract with OSU's Office of General Counsel providing NCAA related legal services.

5.0 REQUIRED SUBMITTALS AND EVALUATION

5.01 REQUIRED SUBMITTALS

Proposers must submit the following information:

Required Submittals:	Check Off
➤ Description of how the goods or services offered specifically satisfy the statement of work described in section 3 and the Minimum Qualifications in Section 4 including the following detail:	<input type="checkbox"/>
○ Project plan including a narrative as to how Proposer will meet the statement of work.	<input type="checkbox"/>
○ Provide background on your firm, including number of years in business performing athletics compliance services.	<input type="checkbox"/>
○ Provide the name, a brief biography, the qualifications and the number of years' experience of the lead staff member who would oversee the Athletic Compliance services for OSU. Also provide a list of any potential staff member that may be assigned to work on the project. Include name, number of years of Athletic Compliance experience and current position.	<input type="checkbox"/>
○ Provide a list of at least three NCAA Division 1 clients that similar compliance services were provided to, including description of services, dates of services, and a client contact to validate work done. Use Exhibit C, References for this required submittal.	<input type="checkbox"/>
➤ Complete pricing of the goods or services requested listed as a flat, not to exceed fee per year. Travel and Expenses must be agreed to in writing prior for reimbursement and are subject to the OSU Travel and Reimbursement Policy.	<input type="checkbox"/>
➤ Exhibit B: Certifications, completed	<input type="checkbox"/>
➤ Exhibit C: References, completed	<input type="checkbox"/>

5.02 EVALUATION

This is a multistage evaluation. OSU will first review all Proposals to determine Responsiveness. Proposals that do not comply with the instructions, that are materially incomplete, that do not meet the minimum requirements, or that are submitted by Proposers who does not meet minimum qualifications may be deemed non-Responsive. Written notice will be sent to Proposers whose Proposal is deemed non-Responsive identifying the reason. The evaluation committee will then perform first stage evaluations on the Written Proposals based on the following evaluation criteria. Points will be given in each criteria and a total score will be determined. The maximum points available for each criterion are identified below.

<u>Evaluation Criteria</u>	<u>Points</u>
Proposal relative to the Statement of Work	45
Proposer's qualifications	10
Price of the goods or services	35
Quality of Proposal and responsiveness to submittal components	10
Total	100

OSU may award after the first stage evaluation to the highest ranked Proposer without moving on to the second stage evaluation. If OSU decides to move to a second stage evaluation, the highest ranked Proposers from the first stage evaluation will move to the second stage evaluation. Proposers who are included in the second stage evaluation may be requested to provide additional information about their Proposal through interviews, presentations, requests for best and final Proposals or other methods relevant to the goods or services, in order for the evaluation committee to make a final determination. Points awarded in the first stage evaluation will not be carried to the second stage evaluation. If a second stage evaluation of all Proposers does not produce an award that is in OSU's best interest, OSU may return to the first stage evaluation to advance additional Proposers to a second stage evaluation.

5.03 AWARD

Contract will be awarded to the Proposer who, in OSU's opinion, meets the requirements and qualifications of the RFP and whose Proposal is in the best interest of OSU. If a successful Contract cannot be completed after award, OSU may conclude contract negotiations, rescind its award to that Proposer, and return to the most recent RFP evaluation stage to negotiate with another Proposer(s) for award.

5.04 INVESTIGATION OF REFERENCES

OSU reserves the right to investigate and to consider the references and the past performance of any Proposer 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 Proposal, Proposer interviews, references, OSU or any other source in the evaluation process. 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.

6.0 INSTRUCTIONS TO PROPOSERS

6.01 APPLICABLE STATUTES AND RULES

This RFP is subject to the applicable provisions and requirements of the Oregon Revised Statutes, Oregon Administrative Rules, as well as OSU Standards, Policies and Procedures.

6.02 COMMUNICATIONS DURING RFP PROCESS

In order to ensure a fair and competitive environment, direct communication between OSU employees other than the Administrative Contact or other PCMM representative and any party in a position to create an unfair advantage to Proposer or disadvantage to other Proposers with respect to the RFP process or the award of a Contract is strictly prohibited. This restricted period of communication begins on the issue date of the solicitation and for Proposer(s) not selected for award ends with the conclusion of the protest period identified in OSU Standard 580-061-0145(3) and for Proposers(s) selected for award ends with the contract execution. This restriction does not apply to communications to other OSU employees during a Pre-Proposal conference or other situation where the Administrative Contact has expressly authorized direct communications with other staff. A Proposer who intentionally violates this requirement of the RFP process or otherwise deliberately or unintentionally benefits from such a violation by another party may have its Proposal rejected due to failing to comply with all prescribed solicitation procedures. The rules governing rejection of individual solicitation responses and potential appeals of such rejections are at OSU Standard 580-061-0130.

6.03 REQUESTS FOR CLARIFICATION OR CHANGE

Requests for clarification or change of the Request for Proposal must be in Writing and submitted to PCMM at least two (2) days before the Proposal Due Date and Time, unless specified otherwise herein. Such requests for clarification or change must include the reason for the Proposer's request. OSU will consider all timely requests and, if acceptable to OSU, amend the Request for Proposal by issuing an Addendum. Envelopes, e-

mails or faxes containing requests should be clearly marked as a Request for Clarification or Change and include the RFP Number and Title.

6.04 ADDENDA

Only documents issued as Written Addenda by PCMM serve to change the Request for Proposal in any way. No other direction received by the Proposer, written or verbal, serves to change the Request for Proposal. Addenda will be publicized on the OSU procurement website. Proposers are advised to consult the OSU procurement website prior to submitting a Proposal in order to ensure that all relevant Addenda have been incorporated into the Proposal. Proposers are not required to submit Addenda with their Proposal. However, Proposers are responsible for obtaining and incorporating any changes made by Addenda into their Proposal. Failure to do so may make the Proposal non-Responsive, which in turn may cause the Proposal to be rejected.

6.05 PREPARATION AND SIGNATURE

Proposals should be Written and signed in ink by an authorized representative with authority to bind the Proposer. Signature certifies that the Proposer has read, fully understands, and agrees to be bound by the RFP and all Exhibits and Addenda to the RFP.

6.06 PUBLIC RECORD

Upon completion of the Request for Proposal process, information in all Proposals will become subject records under the Oregon Public Records Law. Only those items considered a "trade secret" under ORS 192.50 (2), may be exempt from disclosure. If a Proposal contains what the Proposer considers a "trade secret" the Proposer 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.

6.07 SUBMISSION

Proposals must be received in the PCMM office no later than the Proposal Due Date and Time. Envelopes, faxes, or e-mails containing Proposals should contain the RFP No., RFP Title and the Proposal Due Date and Time. Proposals may be mailed to Oregon State University, Procurement, Contracts and Materials Management, 644 SW 13th Street, Corvallis, OR 97333-4238, faxed to (541) 737-2170 or e-mailed in PDF format to the Administrative Contact noted above. It is highly recommended that a Proposer confirms receipt of the Proposal with the Administrative Contact noted above.

6.08 PROPOSALS ARE OFFERS

The Proposal is the Proposer's offer to enter into a Contract pursuant to the terms and conditions specified in the RFP, its Exhibits, and Addenda. The offer is binding on the Proposer for one hundred twenty (120) days, unless otherwise specified herein. OSU's award of the Contract constitutes acceptance of the offer and binds the Proposer.

6.09 RIGHT TO REJECT

OSU may reject, in whole or in part, any Proposal not in compliance with the RFP, Exhibits, and Addenda. OSU may reject all Proposals if it is in the best interest of OSU to do so.

6.10 PROPOSAL PREPARATION COSTS

OSU is not liable for costs incurred by the Proposer during the RFP process.

6.11 AWARDS

OSU reserves the right to make award(s) by individual item, group of items, all or none, or any combination thereof; on a geographical basis and/or on a statewide basis with one (1) or more suppliers. OSU reserves the right to delete any item from the contract when deemed to be in the best interest of OSU.

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 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 and the federal government and their respective 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 OSU Standard 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 court, 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, Contracts and Materials Management 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, Contracts and Materials Management 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 and its officers, board members, employees, and agents 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 harmless OSU and its officers, board members, employees, and agents 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 infringement 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. 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 University Relations and Marketing.

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.

RECYCLED PRODUCTS: Contractors will use recycled products, as defined in ORS 279A.010(1)(ii), 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: OSU has 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.

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 Proposer 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 Proposer, to the best of the undersigned's knowledge, is not in violation of any tax laws described in ORS 305.380(4).

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 OSU Standard 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 Request for Proposal and all Exhibits and Addenda to the Request for Proposal; and
2. Are an authorized representative of the Proposer, that the information provided is true and accurate, and that providing incorrect or incomplete information may be cause for rejection of the Proposal or Contract termination; and
3. Will furnish the designated item(s) and/or service(s) in accordance with the Request for Proposal and the Contract; and
4. Has provided a correct Federal Employer Identification Number or Social Security Number with Proposal.

SECTION IV. PERMISSIVE COOPERATIVE PROCUREMENTS

If Proposer is awarded a contract from this Request for Proposal, Proposer 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: _____
