

# Biological Waste Disposal

<p style="text-align: center;"><b>PORTLAND STATE UNIVERSITY REQUEST FOR QUOTATIONS</b></p>
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Portland State University (PSU) Purchasing Rules, Policies and Guidelines allows PSU departments to use an “Informal Procurement Process” for all purchases of supplies, equipment, and trade and professional services where the estimated cost exceeds \$25,000 but does not exceed \$100,000. The Informal Procurement Process is the solicitation of a minimum of three competitive quotes. Solicitation shall be accomplished by advertisement on the OUS Procurement Website making a request for vendors to provide a quote. A clearly documented record must be kept per the State of Oregon’s records retention rules, showing the vendors contacted, their responses including quote amounts, the basis for selection, evaluation results, and any other pertinent information to the solicitation.

The posting of solicitation on the OUS Procurement Website shall serve as the primary solicitation requirements document which in conjunction with the vendors’ written responses and proposals and/or quotes shall satisfy the “clearly documented record” requirement described above. Additionally, depending on the nature of the scope of work of the project and other specific project details, there may be other documented “pertinent information” required to ensure a complete and clearly documented record for the informal solicitation.

**PORTLAND STATE UNIVERSITY SHALL CONSIDER VENDOR QUOTES RECEIVED AS  
VALID FOR ONE HUNDRED TWENTY (120) DAYS.**

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## IMPORTANT NOTICE

### Responsibility of Each Vendor Participating in the Bidding Process

It will be the responsibility of each participating Vendor to refer daily to the OUS Business Opportunities web site to check for any available amendments or addenda, responses to inquiries and/or questions, cancellations, or intents to award, and any and all additional information regarding this opportunity that is posted. It is not Portland State University’s responsibility to notify participating Vendors by email or by any other means of any of the above. Copies of this document can be obtained on the Oregon University System web site as well.

All proposal questions and inquiries must be sent by email to [fapcontracts@pdx.edu](mailto:fapcontracts@pdx.edu). **The subject line of the email must state the following: Biological Waste Disposal RFQ.**

### Emerging Small Businesses and Minority and Women Owned Businesses

PSU is committed to increasing opportunities for Emerging Small Businesses and Minority and Women Owned Businesses and PSU strongly encourage its contractors to use these businesses in providing services and materials for PSU contracts and projects.

*PSU promotes equal opportunity for all individuals without regard to age, color, disability, marital status, national origin, race, religion or creed, sex or gender, sexual orientation, or veteran status.*

### **OVERVIEW**

PSU generates approximately 10,000 pounds a year of biological wastes including sharps, animal carcasses (both treated and untreated), biological samples, and gloves and paper towels related to work with biological samples. Wastes are to be picked up once a week at Science Building One located at 1025 SW Mill Street, Portland, Oregon.

Contractor will safely pick up, transport, and dispose of campus biological wastes once a week. Contractor will provide tubs (e.g. 28 gallon plastic totes) and red bags for safe storage and transportation of wastes. Wastes may occasionally be shipped in poly drums of 15, 30 or 55 gallon size. All work performed by the contractor will comply with applicable federal, state, and local regulations.

***CONTRACT TERM***

The initial term for the contract awarded pursuant to this solicitation will be for a three (3) year period effective from date of signing by both Parties, with options to renew for two (2) additional one-year terms.

***PERMISSIVE COOPERATIVE PROCUREMENT ALLOWED***

As provided by ORS 279A.200 to 279A.225, other public contracting agencies may establish contracts or price agreements under the terms, conditions, and pricing of the contract awarded pursuant to this solicitation. Contracts or price agreements between the selected contractor and any purchasing contracting agencies (as that term is defined in ORS 279A.200(1)(h)) are entirely independent of, and have no effect upon the contract with Portland State University awarded pursuant to this solicitation.

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## SCHEDULE OF EVENTS

These dates are for reference only; we may change these dates at our discretion. Any changes to schedule dates will be posted on the OUS website: <https://secure.ous.edu/bid/opportunities>

Issue RFQ to potential proposers	March 26, 2012
Deadline for proposer inquiries, request for changes Or to file a protest of specifications (due by 2:00 pm Pacific Daylight Time)	April 6, 2012
Deadline for PSU to respond to proposal inquiries and/or any protest of RFQ specifications and/or contract conditions	April 9, 2012
<b>Proposals due at 3:00 P.M., Pacific Standard Time on</b>	<b>April 16, 2012</b>
Evaluation period, ending	April 20, 2012
Anticipated Notice of Intent to Award	April 23, 2012
Deadline to protest award	April 30, 2012
Anticipated date of contract award	May 2, 2012

### ***RFQ PROPOSAL DEADLINE FOR RECEIPT BY PSU FACILITIES & PLANNING***

To be considered for selection, quotations must arrive at Portland State University, Facilities and Planning by **3:00 pm** local time, **Monday April 16, 2012**. Please hand-deliver or mail your response to the addresses listed below. Those who mail packages should allow ample delivery time to ensure timely arrival. The address is:

For DELIVERY:

Facilities and Planning  
Attn: Contracts Department  
University Services Building Room 202  
617 SW Montgomery Street  
Portland, OR 97201

FOR MAIL: (Not recommended)

Contracts Department  
Facilities and Planning-FAP  
PO Box 751  
Portland, OR 97207

## SECTION 1: INSTRUCTIONS TO PROPOSERS

All Proposals submitted in response to this RFQ are subject to the provisions and requirements of the applicable Oregon Revised Statutes (ORS), and the Administrative Rules of the Oregon University System.

**1. Right to Reject:** PSU reserves the right to cancel or reject this procurement, RFQ, and any or all Proposals received as a result of this RFQ upon finding that it is in the public interest to do so.

**2. Preparation Costs:** PSU shall not be liable for any costs incurred by proposers in the preparation of proposals to this RFQ, including any meetings and demonstrations that may be required or requested.

**3. Questions or Requests for Clarification/Change:** All requests for changes or clarifications regarding technical information, procedural requirements, contractual requirements or other issues must be submitted, in writing, and received no later than the date and time listed in the Schedule of Events to [fapcontracts@pdx.edu](mailto:fapcontracts@pdx.edu).

**4. Change or Modification Addenda(s):** Any change or clarification to the specifications or the procurement process or to the terms and conditions of the contract will be issued in the form of an Addendum to this RFQ and will be made available to all proposers. Only documents issued as addenda by the PSU Facilities and Planning Office will serve to change this RFQ in any way. No other direction received by the proposer, written or oral, serves to change this RFQ document.

### **5. Proposal Preparation and Submission:**

Proposers shall submit **ONE (1) ORIGINAL** of all proposal pages and **two (2) photocopies** of the same pages. Proposals shall be prepared in printed form, not handwritten, and shall be signed in ink by an authorized representative of the Proposer. The person signing the RFQ shall initial alterations or erasures, in ink. The original proposal submitted by a proposer must bear an original signature. Failure to submit a proposal bearing an original signature will result in rejection of the proposal. No oral, telegraphic, telephone, e-mail or facsimile proposals will be accepted. To ensure proper identification and handling, all package(s) or envelope(s) must be clearly marked with the RFQ Name and the date and time RFQ proposals are due. Proposals and pricing information must be received and time-stamped by the PSU Facilities and Planning Office prior to the scheduled RFQ. Proposals due date and time listed in the Schedule of Events of this RFQ. **Late Proposals or modifications will be rejected.** Proposers using the U.S. mail to submit their proposals do so at their own risk. Proposers must complete all applicable information and provide all information requested in the RFQ. Failure to comply may be grounds for proposal rejection.

**6. Public Records:** This RFQ and one copy of each original proposal received in proposal to it, together with copies of all documents pertaining to the Award of a Contract, shall be kept by PSU and shall be open to public inspection. If a proposal contains any information that is considered a trade secret by the proposer under ORS 192.501(2), each sheet of such information must be clearly marked with the following: **"This data constitutes a trade secret under ORS 192.501(2), and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192."** The Oregon Public Records Law, ORS 192.501(2), exempts from disclosure only bona fide trade secrets, and the exemption from disclosure applies "unless the public interest requires disclosure in the particular instance." Therefore, non-disclosure of documents or any portion of a document submitted as part of a proposal may depend upon official or judicial determinations made pursuant to the Public Records Law. Pricing information cannot be labeled a trade secret and must be open to public inspection. Proposers are requested to mark only specific pages or text in their proposal considered a "trade secret" under Public Records Law. Proposals in which the entire document is marked or otherwise identified in its entirety as confidential or a "trade secret" will be rejected.

**7. Reservation of Rights:** PSU has, and reserves, the right to refuse to enter into a contract if PSU, based upon reasonable grounds, determines that the interests of PSU would not be served. Specifically, this right

may be exercised if PSU does not believe that a given proposer can perform a contract, or for any reason set forth in Oregon Administrative Rules. PSU, at its option, may give the proposer notice, specifying the grounds for rejection, and allow the proposer 15 calendar days to respond in writing. Following such response, PSU, in its sole discretion may reject the proposal as provided in the referenced administrative rules.

**8. Best and Final Offer:** Pursuant to OAR 580-061-0155, PSU reserves the right to select the vendor that, in the collective opinion of the evaluation committee, offers the best overall benefit, convenience, functionality and service at the best-value cost to PSU. PSU reserves the right to conduct discussions with the finalist proposers, to accept best and final offers from those finalists, and to negotiate changes, if it's in PSU's best interest to do so.

**9. Negotiation of Final Contract:** PSU has found that limited negotiation of the proposed contract is sometimes required to effect a successful procurement because of their experience that proposers may desire to include in the final contract certain supplemental terms and conditions from the proposers' software license agreements, maintenance contracts, technical support agreements and other similar documents. Such negotiation may occur at PSU's discretion.

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

Weekly pick up, transport, and disposal of biological wastes generated at PSU.

1. Establish a day and time for weekly waste pick-up.
2. Provide enough empty waste containers at the time of each weekly pick-up to ensure a minimum of 20 empty containers are on-site.
3. Ensure applicable regulatory requirements are met for labeling, shipping papers, container integrity, and safe handling of materials, and/or follow best practices for biological waste handling and transportation.
4. Dispose of biological wastes at a facility permitted for disposal of sharps, biological samples, animal carcasses, and related materials.

### Qualifications, Professionalism and Behavior of Contractor Employees

All Contractor employees performing work on PSU premises shall behave in a professional and courteous manner at all times. Contractor employees must complete their work efficiently and communicate effectively with PSU staff.

PSU places a strong emphasis on good customer service and fully expects all of its contractors and vendors to endorse this service ethic when deploying technicians and other employees on the PSU campus. All Contractor technicians and employees shall wear appropriate work attire on the job and shall present themselves in a professional manner in terms of attire and overall appearance.

1. Wear appropriate personal protective equipment (PPE).
2. PSU biological waste containers must be attended to at all times during the loading and transportation process.
3. Contractor is responsible for their employee hazard awareness, personal protective equipment, and safety training. The Contractor shall comply with all the requirements of applicable federal, state, and local safety, health, and environmental regulations while working at the job-site

### Applicable Regulations

Biological waste handling, transportation and disposal are governed by the following state regulations:

- **OAR 333-056-0010 through 333-056-0050**  
Health Services Oregon Administrative Rules addressing infectious waste definitions, treatment, and storage times and temperatures.
- **OAR 340-093-0190**  
DEQ's Solid Waste Rules regarding "Wastes Requiring Special Management".
- **OAR 340-094-0040(11)(b)(J) and 340-095-0020(3)(j)**  
Requiring landfills that accept IW/medical waste to have a Special Waste Management Plan in place.
- **OAR 340-025-0850 - 0905**  
DEQ's Air Quality Incineration Rules.
- **OAR 740-110-0030**  
Oregon Department of Transportation Rules addressing the transport of medical waste and the requirement to register as a hazardous materials carrier.

Applicable federal regulations include: 29 CFR 1910.1030 Bloodborne Pathogens; Standards for the Tracking and Management of Medical Waste, 40 CFR Parts 22 and 259; and 49 CFR Hazardous Materials Regulations and Interpretations. Contractor is responsible for ensuring compliance with all applicable regulations, including regulations that may not be specifically listed in this document.

### Chemical Spills

If the contractor is responsible for a loss of containment of biological waste, the contractor will clean-up that spill, consistent with federal, state, and local regulations.

## **SECTION 3: EVALUATION CRITERIA**

Proposals submitted in response to this RFQ will be evaluated in accordance with the following criteria. Responses should be of sufficient length and detail to demonstrate that the proposer has a thorough understanding of the PSU environment and why the proposer feels it best meets PSU's needs.

- 1) Qualifications: Describe your company's experience managing biological waste. Please include the following:
  - Date company was founded
  - How long company has been managing biological wastes and in what capacities (transporter, waste treatment, etc....)
  - Information regarding company's regulatory permits and authorizations for biological waste management and disposal
  - Information regarding regulatory agency violations (at company facilities that will be handling PSU wastes) from the past 3 years (2009 – present).
  - Limit Qualifications response to 5 pages or less
  - 30 points
  
- 2) Waste Management and Disposal Plan: Describe how the waste will be managed after being picked up from Portland State University. Please include the following:
  - Description of transfer or consolidation operations, if applicable
  - Final disposal methods and options
  - Information regarding company efforts to address and improve the sustainability of company operations (e.g., fuel efficiency of waste transportation vehicles, energy efficiency of treatment plants, etc...)

- Limit Waste Management and Disposal Plan response to 5 pages or less
- 30 points

3) Price List: Provide pricing for pick up, transportation, and disposal of biological wastes.

- Include per pound pricing
- Other pricing proposals (such as per tub/volume pricing) may be included and will be considered at PSU's discretion. If including be sure to specify the unit of measure (such as 5 gal. tub)
- If applicable, provide separate pricing for different waste streams (e.g., sharps, animal carcasses, biological samples)
- If applicable, provide separate pricing for separate disposal options (e.g., landfill, incineration)
- Limit Price List response to 5 pages or less
- 40 points

### *Summary*

Qualifications (30 points)

Waste Management and Disposal Plan (30 points)

Price List (40 points)

**TOTAL** 100 Points

**SAMPLE CONTRACT**

**PORTLAND STATE UNIVERSITY  
CONTRACT FOR BIOLOGICAL WASTE DISPOSAL**

**FAP00**\_\_\_

This Contract is entered into between the State Board of Higher Education acting by and through Portland State University, hereinafter referred to as "PSU" and \_\_\_\_\_, hereinafter referred to as "Contractor";

WHEREAS, PSU solicited a quote from Contractor for biological waste disposal ("Work"); and

WHEREAS, the Contractor has provided a quote to provide the Service, attached as \_\_\_\_\_ and is incorporated by reference only for the Work Description and Pricing.

NOW, THEREFORE, PSU and the Contractor agree as follows:

**1. CONTACT INFORMATION**

Contractor Contact Information:

Customer Service Supervisor	
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PSU Contact Information and Invoicing Information:

Portland State University	Heather Randol Facilities and Planning University Services Building Room 202 617 SW Montgomery Street Portland, OR 97207 hrandol@pdx.edu (503) 725-9948 Fax: (503) 725-4329
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**2. SERVICES**

Contractor shall perform the Work based on the rates in \_\_\_\_\_. Contractor shall complete the Work no later than \_\_\_\_\_.

**3. COMPENSATION**

Payment for all Work performed under this Contract shall not exceed \$\_\_\_\_\_, as stated in Contractor's quote, incorporated by reference herein as Exhibit A. Contractor shall submit an invoice to the PSU Contact following completion of the Work. The invoice **shall describe all work performed with particularity, by whom it was performed, and shall itemize and explain all expenses.**

**4. TERM**

This Contract is effective upon signature of both parties. The ending date of the Contract is \_\_\_\_\_.

**5. TERMINATION**



(A) This Contract may be terminated at any time by mutual consent of the parties, or immediately by PSU for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) 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.

## **6. SPILL AND LEAK RESPONSIBILITIES**

Contractor is solely responsible for any and all spills, breakage, discharges, or leaks during the performance of this Contract to the extent such spill, breakage, discharge, or leak is caused by the actions of Contractor's agents, employees, or subcontractors. The Contractor agrees to reasonably warn and evacuate those persons who may be affected by the breakage and leaks. Contractor shall clean up such spills, breakage, and leaks to the satisfaction of the appropriate state authorities, and in a manner that complies with applicable federal, state, and local laws and regulations. The cleanup shall be at no cost to PSU. In the event of a spill, breakage or leak, the Contractor shall immediately notify the PSU Contact.

A written follow-up report shall be submitted to the PSU Contact not later than seven (7) days after the original, verbal report. The written report shall be in narrative form and, at a minimum, include the following:

- A.** Description of spill, breakage and leak, including identity and amount.
- B.** Whether amount spilled or leaked is EPA/state reportable, and, if so, whether it was reported.
- C.** Exact time and location of spill, breakage/leak, including a description of the area involved.
- D.** Containment procedures initiated.
- E.** Summary of any communications Contractor has had with other government officials, the press, or other media.
- F.** Description of clean-up procedures employed or to be employed at the site, including disposal location of spill, breakage/leak residue.

## **7. 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 the conduct of Work under this Contract, or from any act, omission, or neglect of Contractor, its subcontractors, or employees. Contractor shall save defend, indemnify, and hold harmless the State of Oregon, the State Board of Higher Education, PSU, their officers, agents, employees, and members from all claims, suits and actions of any nature resulting from or arising out of the activities or omissions of Contractor or its subcontractors, officers, agents, or employees acting under this Contract, provided that PSU shall provide Contractor with prompt written notice of any such claim, suit, action or proceeding and reasonable assistance, at Contractor's expense, in the defense thereof. Contractor shall have control of the defense and settlement thereof, but 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 the prior written consent of the Oregon 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, is not adequately defending its interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.

## **8. INSURANCE**

During the term of this Contract, Contractor shall maintain in full force at its own expense, each insurance noted below. Contractor shall commence no work under the Contract until all insurance requirements have been met.

- A. **Workers' Compensation** – 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 either comply with ORS 656.017, which requires said employers to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, or shall comply with the exemption set out in ORS 656.126.
- B. **Pollution Liability** – Contractor shall obtain Pollution Liability Insurance covering Contractor's liability for bodily injury, property damage and environmental damage resulting from either sudden accidental or gradual pollution and related cleanup costs incurred by Contractor, all arising out of the Work or services to be performed under this Contract. Combined single limit per occurrence shall not be less than \$2,000,000, or the equivalent. Annual aggregate limit shall not be less than \$4,000,000.
- C. **General Liability** – Contractor shall secure Commercial General Liability insurance with a combined single limit of not less than \$2,000,000 each occurrence for bodily injury and property damage. It shall include personal injury coverage and contractual liability coverage for the indemnity provided under this Contract and products/completed operations liability. Each annual aggregate limit shall not be less than \$4,000,000.
- D. **Automobile Liability** – Contractor shall obtain Automobile Liability insurance, including MCS-90 endorsement, with a combined single limit of not less than \$4,000,000 or equal to the U.S. Department of Transportation requirements, whichever is more. Such policy shall insure against bodily injury, property damage, or environmental damage arising out of the use (including loading, transporting and unloading) by or on behalf of the Contractor, its agents and employees of owned, hired, or non-owned vehicles.

**Certificates of Insurance.** As evidence of the insurance coverage required by this Contract, the Contractor shall furnish an endorsement from the insurance company naming the State of Oregon, acting by and through the State Board of Higher Education, on behalf of Portland State University, its officers and employees as additional insureds with respect to the Work of this Contract. Insuring companies or entities are subject to PSU's acceptance. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to PSU. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

**Notice of cancellation or change.** There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to PSU at the following address: Portland State University, Facilities and Planning, PO Box 751, Portland, OR, 97207.

**"Tail Coverage"**. If any of the aforementioned liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of the Contract for a duration of 24 months or the maximum time period the Contractor's insurer will provide such if less than 24 months. Contractor will be responsible for furnishing certification of "tail" coverage as described or continuous "claims made" liability coverage for 24 months following Contract termination. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage provided its retroactive date is on or before the effective date of this Contract.

## 9. SUCCESSORS AND ASSIGNS

Neither PSU nor the Contractor shall assign, sublet or transfer its or their interest in this Contract without the written consent of the other. In addition to any provisions PSU may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by the terms of this Contract as if the subcontractor were the Contractor. PSU's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

## **10. TAX COMPLIANCE CERTIFICATION**

By signature on this Contract, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Contractor and 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, ORS Chapters 118, 314, 316, 317, 318, 321 and 323; the elderly rental assistance program under ORS 310.630 to 310.706; and local taxes administered by the Oregon Department of Revenue under ORS 305.620. PSU will not be responsible for any taxes coming due as a result of this contract, whether federal, state, or local. It is agreed that the Contractor has anticipated these taxes and included them in the proposal.

## **11. AMENDMENTS**

Any change to the provisions of the contract shall be made only upon the written execution signed by both parties of an amendment hereto.

## **12. FUNDS AVAILABLE AND AUTHORIZED**

PSU reasonably believes at the time of entering into this Contract that sufficient funds are available and authorized for expenditure to finance costs of this Contract within PSU's appropriation or limitation.

If sufficient funds are not provided in future legislatively approved budgets of PSU (or from applicable federal, state, or other sources) to permit PSU in the exercise of its reasonable administrative discretion to continue this Contract, or if PSU or the program for which this Contract was executed is abolished, PSU may terminate this Contract without further liability by giving Contractor not less than thirty (30) days notice. In determining the availability of funds from the Oregon Legislature for this Contract, PSU may use the budget adopted for it by the Joint Ways and Means Committee of the Oregon Legislative Assembly.

## **13. INDEPENDENT CONTRACTOR STATUS.**

The Work to be rendered under this Contract is that of an independent Contractor. Although PSU reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, PSU cannot 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 Work. Contractor is not to be considered an agent or employee of PSU for any purpose, and neither Contractor nor any of Contractor's agents or employees are entitled to any of the benefits that PSU provides its employees. Contractor will be solely and entirely responsible for its acts and for the acts of its agents or employees during the performance of this Contract. PSU will report the total amount of all payments to Contractor, including any expenses, in accordance with Federal Internal Revenue Service and State of Oregon Department of Revenue regulations.

## **14. ACCESS TO RECORDS**

For not less than six (6) years after Contract expiration, PSU, the Oregon Secretary of State, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. If for any reason, any part of this Contract is involved in litigation, Contractor shall retain all pertinent records for not less than three years or until all litigation is resolved, whichever is longer. Full access will be provided in preparation for and during litigation.

## **15. SEVERABILITY**

If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

## **16. FORCE MAJEURE**

Neither party shall be held responsible for delay or default caused by fire, riot, acts of God, and war which is beyond such party's reasonable control. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

## **17. WAIVER**

The failure of PSU to enforce any provision of this Contract shall not constitute a waiver by PSU of that or any other provision.

## **18. COMPLIANCE WITH APPLICABLE LAWS/GOVERNING LAW**

Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the Work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements or federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), title VI of the civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659.425, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the services provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the state on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate PSU official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.

This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between PSU and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Multnomah County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

Contractor, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

## **19. REPRESENTATIONS AND WARRANTIES**

Contractor represents and warrants to PSU that (1) Contractor has the power and authority to enter into and perform this Contract, (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms, (3) the services under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards, and (4) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the services.

## **20. NOTICES**

Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or the PSU Contact at the address or number set forth by the parties. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any such communication or notice delivered by facsimile shall be deemed to be given when receipt of transmission is generated by the transmitting machine. To be effective against PSU, such facsimile transmission must be confirmed by telephone notice to PSU Contact. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

## **22. PERFORMANCE**

Contractor shall perform all Work required by the Contract within the time specified in the Contract, including extensions. Once a shipment has been scheduled, Contractor shall be required to give the institution a minimum of 2 working days' notice if Contractor is unable to begin services. All Work shall be performed in the most highly professional manner, and in accordance with the generally accepted industry standards.

Failure to meet the performance requirements of the Contract shall constitute breach of contract.

## **23. RIGHT TO SUSPEND WORK**

The PSU Contact has the authority to suspend all Work, if, in her opinion, the Work is being performed in such a manner as to pose imminent danger to the safety and health of both the PSU students and employees or the employees of Contractor. The PSU Contact may allow the work to continue once the unsafe condition has been corrected.

## **24. PROTECTION OF WORKERS AND PROPERTY**

Contractor shall continuously maintain adequate protection of all of the Work from damage and shall protect PSU's properties from injury or loss arising in connection with the Contract. Contractor shall remedy, acceptably to the PSU Contact, any damage, injury or loss, except such as may be directly due to errors in the Contract or caused by agents or employees of PSU and shall adequately protect adjacent property as provided by law and the Contract.

Contractor shall take all necessary precautions for the safety of employees on the job site, and shall comply with the Contract and all applicable provisions of federal, state and municipal safety laws to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed.

**25. INSPECTIONS**

PSU shall have the right to inspect and obtain copies of all licenses, permits, or approvals, and regulator's records and files issued by any governmental agency or entity to the Contractor or its subcontractors, which are applicable to the performance of the Contract. PSU shall have the right to inspect on demand any transportation vehicles or vessels, containers, or temporary storage facilities provided by the Contractor. PSU shall have the right to inspect the handling, packing, labeling, marking, loading, transportation, storage, or disposal/recycling operations conducted by the Contractor or any subcontractor. No such inspection shall in any manner waive or limit any obligation or liability of the Contractor arising under or in connection with performance of the Contract.

**26. DAMAGES**

If, because of Contractor's nonperformance or negligent performance, PSU is assessed fines and/or penalties by any regulatory agency, the Contractor will be responsible for payment in full of such fines and/or penalties. In such case, PSU reserves the right to withhold any payments due Contractor, to offset the amounts assessed, or demand restitution and/or performance.

**MERGER. THIS CONTRACT CONSTITUTES THE ENTIRE CONTRACT BETWEEN THE PARTIES. THERE ARE NO UNDERSTANDINGS, CONTRACTS, OR REPRESENTATIONS, 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 AND ALL NECESSARY STATE APPROVALS HAVING BEEN OBTAINED. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.**

**CONTRACTOR and PSU SIGNATURES**

**Contractor**

**The State Board of Higher Education acting by and through Portland State University**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

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**Signature**

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**Date**

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