



**REQUEST FOR PROPOSAL  
No. JF155566P**

**FLOOR COVERINGS**

**PROPOSAL DUE DATE AND TIME:**  
June 22nd, 2012 (2:00 PM, PST)

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 13<sup>th</sup> Avenue  
Corvallis, Oregon 97333

## 1.0 GENERAL

### 1.01 SCHEDULE OF EVENTS:

- Request for Proposal Issue Date..... May 11th, 2012
- Pre-Proposal Conference..... May 24th, 2012 (2:00 pm, PST)
- Deadline for Request for Clarification or Change..... May 31st, 2012 (4:00 pm, PST)
- Proposal Due Date and Time..... June 22nd, 2012 (2:00 pm, PST)

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

### 1.02 PRE-PROPOSAL CONFERENCE:

A voluntary Pre-Proposal Conference will be held on May 24th, 2012, 2:00 pm, PST in the Cascade Hall Conference Room located on the 2<sup>nd</sup> floor of Cascade Hall, 601 SW 17<sup>th</sup> Street, Corvallis, OR 97333. If you are unable to attend in person but wish to call in, a teleconference number will be available. Please contact the Administrative Contact listed in section 1.04 below for the teleconference number.

### 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 Request for Proposal. Address all concerns or questions regarding this Request for Proposal to the Administrative Contact identified below:

### 1.04 ADMINISTRATIVE CONTACT:

Name: James Figgins  
Title: Purchasing Analyst III  
Telephone: 541-760-6995  
Fax: 541-737-2170  
E-Mail: James.figgins@oregonstate.edu

### 1.05 DEFINITIONS:

As used in this Request for Proposal, 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 a Request for Proposal.
- d. "Proposer" means an entity that submits a Proposal in response to a 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 a Solicitation Document 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 OAR 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 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:

Oregon State University (OSU), Procurement and Contract Services (PaCS) is seeking Responsive Responsible Proposers to submit Proposals for the installation and provision of floor coverings from a variety of manufacturers. This solicitation will result in multiple contracts with contractors that are authorized to provide and install flooring from the manufacturers identified in Exhibit C. Proposers may submit Proposals for a single manufacturer or multiple manufacturers.

### 2.02 BACKGROUND:

OSU has one contract for the provision of floor coverings which was executed on May 22<sup>nd</sup>, 2006. This contract is due to expire December 31<sup>st</sup>, 2012. The contract(s) resulting from this RFP will replace the existing contract.

This contract is non-mandated; however, it is heavily used due to the aggressive price discount structure. Purchases are originated by a variety of departments in support of on-going campus projects. Historic flooring purchases average approximately \$700,000 annually. For the year 2011, 54 projects were performed at an average of \$11,296 per project. Projects were performed at OSU sites located throughout the State of Oregon. This estimation is not inclusive of major construction.

### 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 20,000 students from every county in Oregon, every state in the country and more than 90 nations.

## **3.0 SPECIFICATIONS / STATEMENT OF WORK**

### 3.01 SAMPLE CONTRACT:

A sample Contract containing the statement of work and contractual terms and conditions is included at Exhibit A.

## **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. After verification that the minimum qualifications have been met, OSU will award points based on the level of the Proposer's qualifications.

- a. A minimum of five (5) years' of commercial experience with the sale, preparation, and installation of various flooring materials.
- b. Experience performing the services requested in this RFP at dollar levels and project numbers consistent with those identified in section 2.02 Background.

- c. Experience performing the services requested in this RFP at a variety of locations in the state of Oregon.
- d. Possesses a current State of Oregon Construction Contractors Board (CCB) license.
- e. Per ORS 279C.836, Proposer must maintain a Public Works Bond on file.
- f. Authorized dealer and installer of the manufacturer(s) full product line that the Proposer identifies in Exhibit C.
- g. Able to provide a minimum of a 1 year warranty on installation work.
- h. Experience performing installations in occupied facilities.

**4.02 PREFERRED QUALIFICATIONS:**

OSU will award additional points for Proposers able to meet the preferred qualifications below.

- a. Written project management procedures for employees that at the minimum emphasize success in meeting deadlines, promote prompt communication with clients and professional interaction with other contractors.
- b. Established processes demonstrating quality control techniques such as: inspection of products prior to installation, verification that installers are using installation methods authorized by the manufacturer, review of installations during the install and final review after installation is complete.
- c. Programs that promote and integrate the use of Minority, Women-Owned, and Emerging Small Business (MWESB) companies.
- d. Programs that support OSU goals for sustainability such as reclamation of carpet, vinyl, cork linoleum, and rubber removed at the installation location, regardless of manufacture fiber, type or construction.

<b>5.0 REQUIRED SUBMITTALS</b>
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**5.01 QUANTITY OF PROPOSAL:**

Submit one (1) original Proposal and seven (7) duplicate copies. Mark original Proposal as "ORIGINAL". Original should contain original signatures on any pages where a signature is required. Proposals should contain the submittals listed in this section below:

**5.02 REQUIRED SUBMITTALS:**

It is the Proposer's sole responsibility to submit information in fulfillment of the requirements of this Request for Proposal. If pertinent information or required submittals are not included within the Proposal, it may cause the Proposal to be rejected or have an adverse impact on evaluation.

Proposers should submit the following information:

- Description of how the goods or services offered meet the contract requirements (section 3.01) including, at least, the following:
  - Examples of design services, i.e. schematics, layouts..., provided on previous work performed
  - Company product return policy
  - Company on-site safety policy

- Proposal documents detailing how the Proposer meets the minimum Qualifications outlined in Section 4.01 above including, at least, the following:
  - Company background and history
  - Company experience in providing and installing floor coverings including a list of the top 5 categories of floor coverings sold and installed by your company
  - Experience performing services at the dollar level and project numbers consistent with those identified in section 2.02
  - Locations in the state of Oregon you have provided services and the frequency of service
  - CCB license number
  - Authorization letters or other documentation from the manufacturers indicating that the Proposer is authorized to sell and install the manufacturers' full product line
  - Detail of warranty offering for installation work
- Proposal documents detailing how the Proposer meets the preferred Qualifications outlined in Section 4.02 above including, if available, the following:
  - Project management procedures
  - Processes demonstrating quality control techniques
  - Programs promoting MWESB
- Exhibit B, Certifications, fully completed.
- Exhibit C, Floor Covering Discounts, fully completed. Include listing of entire current manufacturers' price list in electronic media – Microsoft Excel.
- Exhibit D, Service Rates, fully completed.
- Exhibit E, References, fully completed.

## **6.0 EVALUATION AND AWARD**

### 6.01 EVALUATION:

The stages of review and evaluation are as follows:

- a. **Determination of Responsiveness:**  
 OSU will first review all Proposals to determine Responsiveness. Proposals that do not comply with the instructions or are incomplete may be deemed non-Responsive. Written notice will be sent to Proposers whose Proposal is deemed non-Responsive identifying the reason. A proposer has the right to appeal the decision pursuant to OAR 580-061-130(5)(a).
- b. **First Stage Evaluation:**  
 Those Proposals determined to be Responsive will be evaluated using the required submittals. Proposals will be scored based on the evaluation criteria listed below in section 6.03. Scores will be used to determine Proposer's within a competitive range. The competitive range will be made of Proposers whose individual scores, when viewed together, form a group of the highest ranked Proposers above a natural break in the scores.  
  
 OSU may award after the first stage evaluation to the highest ranked Proposer without moving on to the second stage evaluation. If this option is selected, Written notice of intent to award the Contract to the highest ranked Proposer will be provided to all Responsive Proposers.
- c. **Second Stage Evaluation:**  
 If award is not made after the first stage evaluation, OSU may choose any of the following methods in which to proceed:

- i. Issue a Written invitation to Proposers within the competitive range requesting an interview, presentation, site visit or any other evaluative method that is relevant to the goods or services solicited in the Request for Proposal. Written invitations will contain the evaluation criteria and scoring that will be used by the evaluation committee.
- ii. Engage in oral or Written discussions with and receive best and final Proposals from all Proposers in the Competitive Range or all Proposers submitting Responsive Proposals. Discussions may be conducted for the following purposes:
  - Informing Proposers of deficiencies in their initial Proposals;
  - Notifying Proposers of parts of their Proposals for which OSU would like additional information; or
  - Otherwise allowing Proposers to develop revised Proposals that will allow OSU to obtain the best Proposal based on the requirements set forth in this Request for Proposal.

The conditions, terms, or price of the Proposal may be altered or otherwise changed during the course of the discussions provided the changes are within the scope of the Request for Proposal. Best and final Proposals will be scored based on the evaluation criteria listed below in section 6.03.

Points awarded in the first stage evaluation will not be carried to the second stage evaluation. Contract will be awarded to the Proposer who in OSU's opinion, best meets the requirements and qualifications of the RFP and OSU's needs.

d. **Additional Stages of Evaluation:**

If after completion of the second stage of evaluation, an award is not made, OSU may add another stage of evaluation using any of the methods outlined in the second stage evaluation above.

**6.02 NEGOTIATIONS:**

OSU may commence serial negotiations with the highest-ranked Proposer or commence simultaneous negotiations with all eligible Proposers. OSU may negotiate:

- a. The statement of work;
- b. The Contract price as it is affected by negotiating the statement of work; and
- c. Any other terms and conditions determined by OSU in its sole discretion to be reasonably related to those expressly authorized for negotiation. Accordingly, Proposers will not submit and OSU will not accept for negotiation, any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation.

Terms and conditions within the sample contract that are unrelated to the statement of work or Contract price may be negotiated after award, but before legal sufficiency review or execution of the Contract.

**6.03 EVALUATION CRITERIA:**

Points will be given in each criteria and a total score will be determined. The maximum points available for each criteria are identified below.

<u>Evaluation Criteria:</u>	<u>Points:</u>
Goods & Services relative to the required Specifications/Statement of Work Section 3.0	15
Proposers qualifications relative to the minimum qualifications Section 4.01	15
Proposers qualifications relative to the preferred qualifications	

Section 4.02	15
Discount offered on goods (Exhibit C)	30
Installation BOLI PWR % markup above PWR (Exhibit D)*	15
Installation Non-BOLI PWR rate (averaged) (Exhibit D)*	<u>10</u>
<b>Total</b>	<b>100</b>

\*Installation markup and rate points will be awarded with the lowest markup or averaged rate earning the maximum points. Proposers whose markup or averaged rate is higher than the lowest will receive a fewer number of price points in a relational manner.

Proposers will be scored separately for each manufacturer they represent.

#### 6.04 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.

<b>7.0 INSTRUCTIONS TO PROPOSERS</b>
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#### 7.01 APPLICABLE STATUTES AND RULES:

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

#### 7.02 REQUEST FOR CLARIFICATION OR CHANGE:

Requests for clarification or change of the Request for Proposal 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 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.

#### 7.03 ADDENDA:

Only documents issued as Written Addenda by PaCS 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. PaCS will notify potential Proposers through publication of the Addenda on the Oregon University System (OUS) procurement website. If you have received a Request for Proposal you should consult the OUS procurement website, prior to Proposal submittal, to assure that you have not missed any Addenda. Proposers are not required to return Addenda with their Proposal. However, Proposers are responsible for obtaining and incorporating any changes made by the Addendum into their Proposal. Failure to do so may, in effect, make the Proposal non-Responsive, which may cause the Proposal to be rejected.

#### 7.04 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 Proposer. Signature certifies that the Proposer has read, fully understands, and agrees to be bound by the Request for Proposal and all Exhibits and Addenda to the Request for Proposal.

#### 7.05 PUBLIC RECORD:

Upon completion of the Request for Proposal process, information in your Proposal 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 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.

#### 7.06 SUBMISSION:

Proposals must be submitted in a sealed envelope and be delivered to the submittal location listed on the Request for Proposal cover sheet no later than the Proposal Due Date and Time. Proposer must specify on the outside of the envelope the Request for Proposal number, the Request for Proposal title and the Proposal Due Date and Time. **E-MAIL OR FACSIMILE PROPOSALS WILL NOT BE ACCEPTED.**

#### 7.07 MODIFICATION:

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

#### 7.08 WITHDRAWALS:

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

#### 7.09 LATE SUBMITTALS:

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

#### 7.10 PROPOSAL OPENING:

Proposals will be opened immediately following the Proposal Due Date and Time at the Submittal Location. Proposer may attend the Proposal opening. Only the names of the Proposers submitting Proposals will be announced. No other information regarding the content of the Proposals will be available.

#### 7.11 PROPOSALS ARE OFFERS:

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

#### 7.12 CONTINGENT PROPOSALS:

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

#### 7.13 RIGHT TO REJECT:

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



submitted a Proposal.

7.14 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.

7.15 LEGAL SUFFICIENCY REVIEW:

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

7.16 PROPOSAL RESULTS:

A notice of intent to award containing the Proposal results will be issued to all Proposers. The Proposal file will be available for Proposer's review during the protest period at the PaCS Department. Proposers must make an appointment with the Administrative Contact to view the Proposal file. After the protest period, the file will be available by making a Public Records Request to OSU.

7.17 PROPOSAL PREPARATION COST:

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

7.18 PROPOSAL CANCELLATION:

If a Request for Proposal is cancelled prior to the Proposal Due Date and Time, all Proposals that may have already been received will be returned to the Proposers. If a Request for Proposal is cancelled after the Proposal Due Date and Time or all Proposals are rejected, the Proposals received will be retained and become part of OSU's permanent Proposal file.

7.19 PROTEST OF CONTRACTOR SELECTION, CONTRACT AWARD:

Any Proposer who feels adversely affected or aggrieved may submit a protest within seven (7) calendar 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 Request for Proposal number and title. The rules governing protests are at OAR 580-061-0145.

**EXHIBIT A**  
**SAMPLE CONTRACT**

This Contract is between the State of Oregon acting by and through the State Board of Higher Education on behalf of Oregon State University ("OSU"), Procurement and Contract Services (PaCS), and [Contractor's name] ("Contractor").

WHEREAS, OSU competitively solicited for the goods and services outlined in this Contract under Request for Proposal number JF155566P entitled Floor Coverings and was selected as the Proposer best able to provide Floor Coverings from [insert manufacturer(s)]; and

WHEREAS, Contractor understands the requirements for the goods and services outlined in this Contract, and is willing and able to provide, in accordance with the terms of this Contract, the goods and services;

NOW, THEREFORE, OSU and Contractor agree as follows:

**1. CONTRACT TERM AND TERMINATION:**

**A. CONTRACT TERM.**

This Contract is effective on the date of last signature and expires on *(insert date)*. This Contract may be renewed, upon mutual agreement of the parties through written amendment, for eleven (11) additional one (1) year terms based on the current terms and conditions.

**B. 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.

**C. 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.

## **2. REQUIRED GOODS, SERVICES, PRICING AND DELIVERY SCHEDULE.**

Contractor shall deliver to OSU the following goods and services for the prices specified in Attachment A and Attachment B.

### **A. GOODS.**

- a. Upon OSU's authorized requestor(s) or approver(s), defined as "Department(s)", request(s) or purchase order(s), Contractor shall quote, provide and install all categories of floor coverings from [insert manufacturer name] at any of the OSU statewide facilities.
- b. Requesting Department(s) will contact the Contractor as needs arise and request price quotations for specific projects. Contractor will provide quotes based upon the terms and conditions contained in this Contract.
- c. PaCS or Department will issue a purchase order authorizing work defined as the furnishing of all materials, equipment, labor, transportation, services and incidentals necessary to successfully complete the tasks in support of the purchase order ("Work"), to begin based on the Departments acceptance of Contractors quote. Work shall not begin until a purchase order has been issued.
- d. All products must be free of all asbestos and hazardous materials.
- e. Departments or PaCS may cancel an order without penalty prior to shipment from the manufacturer, except for made to order items.

### **B. SERVICES INCIDENTAL TO GOODS.**

#### **a. GENERAL.**

- i. Contractor shall provide labor, equipment, materials and expertise required for removal of existing materials, all necessary preparation and installation of new materials, at the flooring covering discounts included in Attachment A, and the service rates included in Attachment B.
- ii. Contractor shall provide, upon request of Departments, professional recommendations, area schematics, and layouts on products that will meet the project specifications at no additional charge to OSU.
- iii. (OPTIONAL CLAUSE: To be included if Contractor has a reclamation service) Contractor shall utilize all reclamation services and opportunities available for recycling of flooring materials removed from OSU.
- iv. Contractor shall provide written instruction and on-site training in the maintenance of the carpet and flooring for custodial staff, if required by OSU.
- v. Returns of floor covering products must be accepted by Contractor if in resalable condition and if notified by Department within thirty (30) days of original shipment. Returns must be picked up by Contractor within three (3) business days after notification from Departments.
- vi. For items discovered to have been ordered in error by the Contractor, and/or have quality defects, replacements shall be expedited and supplied in the shortest time frame possible at no additional charge to OSU.
- vii. Contractor shall post work schedules onsite to inform OSU staff and students of upcoming tasks to be performed. Schedule shall include location of work, time work is to be performed and an indication of anticipated noise levels and/or strong odors.

b. WORKMANSHIP/INSTALLATION.

- i. Contractor shall be responsible for field measurements, the accuracy of the measurements, the fit of the Work and be required to provide cost estimating services at no additional charge to OSU.
- ii. Contractor shall take all steps necessary to prevent damage to walls, doors and OSU owned equipment. The Contractor shall be responsible for damage, due to the Contractors negligence, resulting from Contractors' performance under this Contract.
- iii. Contractor shall provide dust control and protection during any preparation or installation processes which creates dust.
- iv. Contractor shall protect carpet and flooring materials against damage and soiling during the course of installation, and if applicable, during the course of larger construction operations. This shall include, but not be limited to, providing caution tape and barriers to keep normal traffic off of floors during installation until the area is turned over to OSU. This does not include permanent barriers.
- v. Contractor shall provide legal disposal of all items removed.
- vi. Repairs of existing flooring shall be done with same or like materials. OSU understands that variances exist between lots and colors may not exactly match. All repairs will be done using industry best practices and be in accordance with the manufacturer's instructions.
- vii. All installation Work shall be performed in a professional like manner. Flooring shall be installed in accordance with manufacturers' written instructions or ASTM Standards, whichever standard is higher. Contractor shall keep the worksite and adjacent premises free from debris, rubbish and trash generated by Contractors' Work under this Contract, and shall remove same from the premises daily. Contractor shall not use OSU trash or recycling receptacles and must haul debris, rubbish and trash off OSU campus.
- viii. Contractor is required to report to Departments, prior or during any Work, any conditions that may represent or present a hazardous condition.
- ix. Final acceptance shall occur when all products have been ordered, shipped, and installed to the complete satisfaction of Departments. Final acceptance shall not relieve Contractor of its responsibility for hidden product damage caused prior to final acceptance or warranty support.

c. SAFETY.

- i. Contractor shall take all necessary precautions for the safety of and shall provide all necessary protection to prevent damage, injury or loss to:
  1. All employees associated with the Work and all other persons who may be affected thereby;
  2. All OSU staff and students;
  3. All materials whether in storage, on or off the site, under the care, custody or control of Contractor or any of the Subcontractors; and
  4. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavement, roadways, structures and utilities.

C. DELIVERY.

- a. Contractor shall deliver goods F.O.B. Destination, Prepaid and Allowed. 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.
- b. Contractor is requested to support quick shipping request for standard product whenever possible. Quick shipping orders are generally shipped within 24 – 48 hours.

- c. Standard product delivery will be within thirty (30) calendar days of receipt of order by Contractor unless otherwise negotiated at time of order.
- d. Contractor shall coordinate with Departments for the delivery, staging and storage of flooring in accordance with a mutually agreed upon schedule.
- e. Contractor shall make all effort to meet agreed upon schedule. If Contractor is unable to meet the agreed upon delivery schedule, the Contractor shall immediately provide written notification to Departments and Departments shall have the right to cancel the order and make the purchase of like items from another supplier. Contractor shall reimburse OSU for any difference between Contract pricing and actual price paid.

#### D. PRICING.

- a. Flooring Products: Flooring product price structure is the percent discount indicated in Attachment A off Manufacturers' List Price and includes any shipping and handling charges to any OSU location. Shipping charges associated with quick ship request shall be paid by Department. Contractor may negotiate increased percentage discounts after the initial Term for subsequent renewal periods. Contractor shall submit any proposed increases in percent discount in writing to OSU for consideration at least ninety (90) days before the annual renewal period.
  - i. "Manufacturer's List Price (MLP)" means the current manufacturers' list price published by the manufacturer. Contractor shall provide PaCS with an electronic copy (in a software, format and electronic medium approved by OSU) of the current published Manufacturers' List Price on which the Contract or Contract amendments are based including the following information:
    - 1. Manufacturer part number
    - 2. Contractor part number, if applicable
    - 3. Product description
    - 4. Manufacturers' List Price
  - ii. OSU pricing shall be calculated as:  
$$\text{MLP} - (\text{MLP} \times \text{Discount } \%) = \text{OSU price}$$
- b. Other Materials: Materials used for flooring preparation (e.g. underlayment requirements, floor leveling compound, sealant...), shall be billed at Contractors' actual cost.
- c. Service Rates: Preparation and installation, for projects not subject to the Bureau of Labor and Industries ("BOLI") Prevailing Wage Rates ("PWR") are at service rates per hour as specified in Attachment B. Projects subject to BOLI PWR are the PWR, at the time of initial request by Department, plus the percentage markup for PWR specified in Attachment B.
  - i. BOLI PWR Service Rates – Contractor shall keep the percentage markup specified in Attachment B the same throughout the Initial Term of the Contract. Contractor may negotiate increased percentage after the initial Term for subsequent renewals. Contractor shall submit any proposed increase in the percentage markup in writing to PaCS for consideration at least ninety (90) days before the renewal period. Accepted increases, by PaCS, in the percentage markup will remain the same for the full term of the renewal period.
  - ii. Non BOLI PWR Service Rates – Contractor shall keep the service rates specified in Attachment B the same throughout the Initial Term of the Contract. Contractor may negotiate increased service rates after the Initial Term for subsequent renewals. Contractor shall submit any proposed increase in service rate at least ninety (90) days before the renewal period. Accepted increases, by PaCS, in the service rates will remain the same for the full term of the renewal period.
  - iii. Adjustment Documentation:  
Supporting documentation for proposed PWR percentage markup or service rates

adjustments must be included with all requests. If Contractor is unable to provide sufficient supporting documentation for any proposed percentage markup or service rate adjustment, the request will be rejected and the percentage markup or service rate will stay the same as the last Contract or Contract amendment.

- d. Bonds: Contractor shall maintain, at all times, a current Public Works Bond on file with the State of Oregon. Payment and performance bonds, if required on specific projects, shall be billed at Contractors' actual cost.
- e. Departments reserve the right to conduct separate solicitations for selected items, or utilize other contracts, in order to secure best pricing available for OSU.
- f. No charges will allowed for storage and handling which includes, but is not limited to: storage, packing, wrapping, bags, containers, reels, or packaging disposal.
- g. Purchases may be subject to Federal Grants and Contracts and in the event that orders are placed that are subject to Federal terms and conditions, Federal terms and conditions may take priority over all other Contract terms and conditions. Contractor shall agree to Federal terms and conditions without prior notification of specific purchases subject to these documents.
- h. Contractor shall not establish or charge any surcharge unless expressly permitted by this Contract.

#### E. NECESSARY COMPONENTS.

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

#### F. NEW AND UNUSED GOODS.

Unless specified otherwise, 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 catalog for goods and carry full manufacturer warranties.

#### G. WARRANTIES.

Contractor warrants all goods delivered to be free from defects in labor, material, and manufacture for a period of one year for labor, and minimum of one year for materials/manufacture. 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.

Contractor shall pass through all applicable manufacturers' warranties, specifying OSU as owner of record with the manufacturer.

Contractor shall be expected to perform all warranty Work in a timely manner at no additional cost to OSU, working directly with our various Departments.

#### H. 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.

**I. REPORTING REQUIREMENTS.**

Contractor shall provide the following reports.

- i. Annual report of sales made to OSU between January 1<sup>st</sup> and December 31<sup>st</sup> indicating the manufacturer's part number, description, amount of product sold, location of installation or delivery and price charged to OSU, categorized by month.
- ii. Annual calendar year report of sales of environmental / green products sold to OSU.
- iii. Other reports as reasonably requested by OSU during the term of the Contract.

Failure to provide sales reports, by February 1<sup>st</sup> of each calendar year may result in OSU's termination of the Contract. Annual submissions of the Contract reports shall be the responsibility of the Contractor without prompting or notification by the OSU Contract Administrator. The Contractor shall submit the completed reports and send by email to the OSU Contract Administrator.

**3. PAYMENT:**

**A. GENERAL PAYMENT PROVISIONS.**

Contractor shall send invoices to OSU for goods and services delivered and accepted by OSU. Contractor shall include in each invoice:

- a. The purchase order number;
- b. The Contract number;
- c. The quantity of goods ordered, the quantity of goods delivered, the date goods were delivered, the price per unit;
- d. 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
- e. The total amount due and the payment remittance address.

Contractor shall send all invoices to OSU's Department Administrator or to the Department to which the goods or services were delivered if a Department Administrator is not specified.

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).

**B. ADMINISTRATIVE FEE.**

Contractor shall pay OSU Procurement and Contract Services an administrative fee of 2 % of the total gross revenue from the Contract. Total gross revenue includes any business generated from OSU or other public agencies using this under a permissive cooperative procurement. Administrative fee payments shall be made quarterly in arrears no later than 45 days after the end of each quarter, made payable to "OSU PaCS" and mailed to 644 SW 13<sup>th</sup> Street, Corvallis OR 97333. Payment shall include a report indicating Contractor's calculation of the gross revenue and the administrative fee. This administrative fee is designed to be invisible to the end users in that they will not see it as a separate, additional charge.

**4. INSURANCE AND INDEMNIFICATION:**

**A. LIABILITY INSURANCE.**

During the term of this Contract, Contractor shall maintain in force at its own expense the following insurances, if marked, to cover injury, death, errors, omissions or negligent acts related to the goods or services provided under this Contract in the amounts listed below.

- X Commercial General Liability
- X Automobile Liability

Contractor shall ensure that insurance policies are issued by an insurance carrier authorized to do business in the State of Oregon with an A.M. Best rating of at least A-VII, or such other insurance carrier approved in writing, in advance, by OSU. Contractor shall ensure that OSU's employees and agents are included as additional insureds in said insurance policy.

Limit for any single claimant per occurrence:

From commencement of the Contract term to June 30, 2012: \$1,700,000.

July 1, 2012 to June 30, 2013: \$1,800,000.

July 1, 2013 to June 30, 2014: \$1,900,000.

July 1, 2014 to June 30, 2015: \$2,000,000.

July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, paragraph 3 (Senate Bill 311).

Limit for all claimants per occurrence:

From commencement of the Contract term to June 30, 2012: \$3,400,000.

July 1, 2012 to June 30, 2013: \$3,600,000.

July 1, 2013 to June 30, 2014: \$3,800,000.

July 1, 2014 to June 30, 2015: \$4,000,000.

July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, paragraph 3 (Senate Bill 311).

Property Damage:

Limit for any single claimant per occurrence: \$101,400.

Limits for all claimants per occurrence: \$506,900.

This amount is effective on July 1, 2011 – June 30, 2012 and will be adjusted every year thereafter as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, paragraph 5 (Senate Bill 311).

#### B. 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.

#### C. PRIMARY COVERAGE.

Insurance carried by Contractor under this Contract shall be the primary coverage and OSU's insurance is excess and solely for damages or losses for which OSU is responsible.

#### D. CERTIFICATES OF INSURANCE.

As evidence of the insurance coverages required by this Contract, the Contractor shall furnish Certificate(s) of Insurance to the OSU Contract Administrator, upon request. In such case, Contractor shall ensure that the Certificate(s) specifies all additional insureds (or loss payees). Contractor shall be financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder. Insurance certificates and applicable endorsements will be required for individual purchases subject to Bureau of Labor and Industries, Prevailing Wage Rates.

#### E. NOTICE OF CANCELLATION OR CHANGE.

Contractor shall not cause or permit any cancellation, material change, potential exhaustion of aggregate limits or notice of intent not to renew insurance coverage(s) without 30 days' written notice from the Contractor or its insurer(s) to OSU's Contract Administrator.



**F. INDEMNITY AND RESPONSIBILITY FOR DAMAGES.**

- a. 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.
- 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 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.

**5. GENERAL TERMS AND CONDITIONS:**

**A. ACCESS TO RECORDS AND AUDIT.**

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.

OSU shall have the right to an independent third-party audit of the Contractor's records associated with or related to the goods or services provided for under this Contract. OSU may request an independent third-party audit no more than one time per calendar year. OSU will determine the time-period that will be the subject of the audit. However, the entire term of the Contract, including the original term and any subsequent renewals or extensions, may be the subject of the independent third-party audit at anytime. Contractor shall bear the full cost of such independent third-party audit.

**B. 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.

**C. APPLICABLE LAW; JURISDICTION AND VENUE.**

- a. 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.
- b. 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.
- c. 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.

**D. COMPLIANCE WITH APPLICABLE LAW.**

The parties 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) Paragraphs 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.

**E. CONFIDENTIALITY.**

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

**F. EXECUTION AND COUNTERPARTS.**

This Contract may be executed by facsimile or PDF and in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

G. 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.

H. 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.

I. GOVERNMENT EMPLOYMENT STATUS:

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

J. 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.

K. MWESB REPORTING LANGUAGE PROVISION.

Upon request by OSU, Contractor is required to provide a report on the dollar volume of products provided under the Contract which are purchased by the Contractor from firms which are defined as follows:

**Disabled Veteran Enterprise** means a business that is at least 51% owned by one or more disabled veterans. A disabled veteran is a veteran of the military, naval, or air service of the United States with a service connected disability who is a resident of the State of Oregon. To qualify as a veteran with a service connected disability, the person must be currently declared by the United States Veterans Administration to be 10% or more disabled as a result of service in the armed forces. The business must be licensed and registered in the state of Oregon.

**Disadvantaged Business Enterprise (DBE)** is a small business with average annual gross receipts less than \$17,420,000. The business must be owned and controlled by one or more socially and economically disadvantaged individual(s). The one or more socially and economically disadvantaged individual(s) must have made a contribution of capital to the business, which is commensurate with their ownership interest. Socially and economically disadvantaged individual(s) are people who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as members of a group without regard to their individual qualities. The business must be independent. The business must be licensed and registered in the state of Oregon.

**Emerging Small Business**, (defined in ORS 200.005), is a licensed and registered business located in Oregon for which the average annual gross receipts for the three previous tax years do not exceed \$3,266,219 for construction and \$1,088,740 for non-construction businesses. The business must have fewer than 29 employees.

**Minority Business Enterprise**, (defined in ORS 200.005), is a business which is at least 51% owned by one or more minority individuals or, in the case of any publicly owned business, at least 51% of the stock of which is owned by minority individuals. Minority individuals are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and Asian-Indian Americans. The business must be licensed and registered in the state of Oregon.

**Women Business Enterprise**, (defined in ORS 200.005), is a business which is at least 51% owned by one or more women. The woman or women must have managerial and operational control over all aspects of the business. The one or more women owner(s) must have made a real and substantial contribution of capital or expertise to the business, which is commensurate with their ownership interest. The business must be licensed and registered in the state of Oregon.

This report shall be in consolidated form showing all such purchases under the Contract. This report will be provided on an annual basis to OSU. This report will provide a cumulative figure that shows year to date amounts for each supplier ownership category.

L. NOTICE.

All notices or other communications under this Contract must be in writing and, unless otherwise expressly set forth in this Contract, shall be delivered in person, by email (and confirmed by mail), first class mail, fax (and confirmed by mail), registered or certified mail, or overnight delivery service to the other party at its respective address, email address, or fax number set forth below. All notices are effective upon receipt by the party to be notified.

<u>OSU Contract Administrator</u>	and:	<u>OSU Construction Officer</u>
James Figgins		Heather Cooney
Purchasing Analyst III		Construction Contract Officer
644 SW 13 <sup>th</sup> Street		644 SW 13 <sup>th</sup> Street
Corvallis, Oregon 97333		Corvallis, Oregon 97333
541-737-6995		541-737-9635
541-737-2170		541-737-2170
James.figgins@oregonstate.edu		heather.cooney@oregonstate.edu

CONTRACTOR Contract Administrator

[Name]  
[Title]  
[Address]  
[City, State, Zip]  
[Phone Number]  
[Fax Number]  
[E-Mail Address]

M. ORDER OF PRECEDENCE.

In the event of a conflict, all the terms and conditions of this Contract, its exhibits, and any amendments thereto supersede all terms and conditions on any forms used by the Contractor.

N. OSU NAME AND TRADEMARK.

Contractor's 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.

O. PARKING.

All Contractors, vendors and commercial vehicles on the OSU campus are required to have a permit to park, whether utilizing designated street parking or parking in the parking lots. Permits are available for purchase at Transit & Parking Services, located in Adams Hall, 606 SW 15th Street.

P. *(OPTIONAL CLAUSE: Include the following only if Contractor agrees in Attachment B - Certifications, Section IV. Permissive Cooperative Procurements.)* PERMISSIVE COOPERATIVE PROCUREMENTS.

Contractor agrees to make prices offered under this Contract available to other Oregon public agencies upon the same terms and conditions set forth in this Contract. The prices offered to other public agencies shall be at the same rate as offered to OSU. OSU does not guarantee purchases from any other public agencies. Any purchases pursuant to this Contract by a public agency other than OSU are directly between the Contractor and the public agency and the obligations and rights of OSU under this Contract, except for the Administrative Fee (which shall be paid to OSU and not to the other public agency), are that of the other public agency. Contractor shall provide written notification to OSU when a new public agency begins utilizing this Contract. The total expenditures of other public entities shall be included in the volumes reported to OSU and included in the calculation of the Contract Administrative Fee. Should the total purchases by OSU and other public entities collectively trigger any volume discounts, Contractor shall apply such discounts to fees charged to OSU.

Q. RECYCLABLE PRODUCTS.

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

R. SAFETY AND HEALTH REQUIREMENTS/HAZARD COMMUNICATION:

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.

S. SALES AND USE TAXES.

OSU shall pay all applicable sales, excise, or use taxes in connection with this Contract. Invoices shall separately identify all such taxes and shall include either Contractor's sales tax or use tax permit number. Contractor shall be responsible for all other taxes, including taxes based upon Contractor's income. Contractor shall indemnify, defend, and hold harmless OSU from and against any interest, penalties, or other charges resulting from the non-payment or late payment of taxes or other charges for which Contractor failed to invoice OSU or which Contractor otherwise failed to pay in a timely manner.

T. 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.

U. 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.

V. 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.

W. NO 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

X. WAIVER.

The waiver by either party of any breach of this Contract by the other party shall not waive subsequent breaches of the same or different kind. The failure of either party to enforce any rights under this Contract in a particular instance shall not operate as a waiver of said party's right to enforce the same or different rights in subsequent instances.

Y. ENTIRE CONTRACT.

This Contract, including all documents referred to herein and attached hereto, constitutes the entire agreement between the parties and supersedes all prior representations, understanding and agreements between the parties. No amendment, consent, or waiver of terms of this Contract shall bind either party unless in writing and signed by authorized representatives of each of the parties. Any such amendment, consent, or waiver is effective only in the specific instance and for the specific purpose given.

**6. SPECIAL CONTRACT TERMS AND CONDITIONS:**

A. PREVAILING WAGE RATES

The Contractor will review all installation projects with the OSU Construction Contracts Officer ("K" above) to determine if the project is subject to Bureau of Labor and Industries (BOLI) Prevailing Wage Rates (PWR).

If the project is to subject to BOLI PWR, the Contractor will comply with the provisions of Oregon Revised Statute (ORS) 279C.800 through 279C.870, i through viii below, and the applicable BOLI PWR. These BOLI PWR are available online at:

[http://www.boli.state.or.us/BOLI/WHD/PWR/pwr\\_state.shtml](http://www.boli.state.or.us/BOLI/WHD/PWR/pwr_state.shtml).

- i. If Contractor fails to pay for labor and services, OSU may pay for them and withhold these amounts from payments to the Contractor. ORS 279C.515; OAR 839-025-0020 (2) (a).
- ii. Contractor must pay daily, weekly, weekend and holiday overtime as required. ORS 279C.540; OAR 839-025-0020 (2)(b).
- iii. Contractor must give written notice to the workers of the number of hours per day and days per week they may be required to work. OAR 839-025-0020(2)(c).
- iv. Contractor must make prompt payment for all medical services for which the Contractor has agreed to pay, and for all amounts for which the Contractor collects or deducts from the worker's wages. ORS 279C.530; OAR 839-025-0020(2)(d).
- v. Workers must be paid not less than the applicable state or federal prevailing wage rate, whichever is higher. ORS 279C.830(1)(c); OAR 839-025-0020(3)
- vi. Contractor must have a public works bond filed with the Construction Contractors Board before starting Work in the project, unless exempt. ORS 279C-830(3)(a).
- vii. Contractor must include in every subcontract a provision requiring the subcontractor to have a public works bond filed with the Construction Contractors Board before starting Work on the project, unless exempt. ORS 279C.830(3)(b).

Purchase Orders processed under this Contract shall state "The Work performed is subject to the (insert applicable date of the publication) Prevailing Wage Rates for Public Works Contracts in Oregon, State Apprenticeship Rates and Definitions of Covered Occupations for Public Works Contracts in Oregon which may be obtained at

[http://egov.oregon.gov/boli/WHD/PWR/pwr\\_book.shtml](http://egov.oregon.gov/boli/WHD/PWR/pwr_book.shtml)".

**7. CERTIFICATIONS AND SIGNATURES:**

This Contract must be signed in ink by an authorized representative of Contractor. The person signing on behalf of Contractor certifies under penalty of perjury both individually and on behalf of Contractor that:

- A. The undersigned is a duly authorized representative of Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Contract and to execute this Contract on behalf of Contractor and that this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms;
- B. 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.
- C. 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;
- D. 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 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.

Each of the parties has caused its duly authorized representative to execute this Contract on the date set forth in its respective signature block below.

**CONTRACTOR:**

Signature: \_\_\_\_\_

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

By: \_\_\_\_\_

Title: \_\_\_\_\_

**OSU:**

Signature: \_\_\_\_\_

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

By: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTACHMENT A**

**FLOORING COVERING DISCOUNTS**

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**ATTACHMENT B**

**SERVICE RATES**

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|

**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 undersigned is authorized to act on behalf of Proposer and that Proposer 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 Request for Proposal and all Attachments 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 the 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

Minority, Women & Emerging Small Business (MWESB) Certified Firm: Yes No

If yes, Minority, Women & Emerging Small Business (MWESB) Certification Number: \_\_\_\_\_

**EXHIBIT C**  
**FLOOR COVERING DISCOUNTS**

1. Proposer to list below the Proposer's percentage discount offered as a discount from the manufacturers' list price for all of the manufacturers that the Proposer wants to be considered for contract award. The percentage discount offered for the manufacturer listed below will be the discount used for all categories of product offered by that manufacturer.

<b>MANUFACTURER</b>	<b>% DISCOUNT FROM LIST</b>
Interface	_____
Shaw	_____
Networx	_____
Milliken	_____
Armstrong	_____
American Biltrite	_____
Forbo/Marmoleum	_____
Tarkett	_____
Azrock	_____
Altro	_____
Belzona	_____
Carlilse	_____
New Dimensions	_____



**EXHIBIT E  
REFERENCES**

**REFERENCE 1**

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

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**REFERENCE 2**

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

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**REFERENCE 3**

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

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