



REQUEST FOR PRICE PROPOSALS
Daugherty and North Hall First Floor Covering Replacement
EASTERN OREGON UNIVERSITY
RFP #FP-2021-06

The Owner is seeking Proposals from Prime Contractors to pursuant to this **REQUEST FOR PROPOSALS** ("RFP"). By submitting a Proposal, the Proposer represents that they have carefully read the terms and conditions of this RFP, including all attachments and addenda, and agrees to be bound by them.

OWNER:

*Eastern Oregon University
One University Boulevard
La Grande, OR 97850*

PROJECT:

*Daugherty & North Halls First Floor Covering Replacement
Eastern Oregon University*

OWNER CONTACT PERSON - Proposers shall submit the Proposal to:

Eastern Oregon University
*Attention: Lowann Vanleuven (lvleuven@eou.edu)
Business & Finance Manager
Facilities & Planning Office
One University Blvd.
La Grande, Oregon 97850*

ISSUE DATE, CLOSING DATE & TIME:

The Issue Date for this RFP is Friday July 2, 2021.

All Proposals must be submitted pursuant to the instructions below. The Proposal shall be emailed in a PDF format, to Lowann VanLeuven, lvleuven@eou.edu, (office 541-962-3020) and must be electronically received by **3:00PM Pacific Time, Friday July 16, 2021**.

Proposals delayed or lost by email filtering systems or failures, may be considered at EOU's sole discretion.

SECTION 1 – INFORMATION REGARDING PROPOSAL

INTRODUCTION

Eastern Oregon University (“EOU”) is seeking proposals to select a vendor to remove and replace the 1st floor carpet areas as well as stairways for Daugherty Hall and North Hall on EOU’s campus. This project should fulfill the following objectives:

- Removal and disposal of the existing floor coverings on the first floor and full stairways within local, state, and federal rules and regulations.
- Install new carpet flooring coverings as specified in the Scope of Work.

IMPORTANT NOTICE

It will be the responsibility of potential proposers to refer daily to the Oregon Public Universities Shared Resources website (www.orpu.org) to check for any available addenda, response to clarifying questions, cancellations or other information pertaining to this Request for Proposals (“RFP”).

SCHEDULE OF EVENTS

The timing and sequence of events resulting from this RFP will be ultimately determined by the EOU Facilities & Planning Department. This Schedule is illustrative of optimal timing goals, but may be changed.

RFP Issue Date.....July 2, 2021

Voluntary Walk-Through.....July 8, 2021

Clarifying Questions & Requests for Change Due.....July 12, 2021 (3:00 pm, PT)

Closing Date (Proposals Due).....July 16, 2021 (3:00 pm, PT)

Deadline for Protest of Award7 calendar days after award date

A contract is expected to be fully executed, within 8 days of closing date.

TERM OF CONTRACT

The Contract will begin upon execution and extend through last date submitted in Exhibit B.

Decisions for additional periods of service are to be made by mutual agreement between Contractor and EOU, and will be formalized by written amendment of the original contract. Amendments for additional periods of service are subject to the Contractor’s continued successful performance as determined by EOU.

SCOPE OF WORK

EOU is soliciting proposals to select a vendor who is able to perform the removal and replacement of the floor covering on the first floor of Daugherty and North Halls and the stairways. The scope of work is as follows:

General Items:

- Prime Contractor shall complete all work and not use subcontractors.
- Contractor shall begin work the date provided in the Exhibit B.

Hallway Carpet

- Remove and properly dispose of existing carpet on the first floor as well as stairway landings (middle & bottom).
- Install Scoreboard II 28 by Shaw, style number 54675 broadloom textured loop within SSP Shaw Soil Protection. Including stairway landings (middle & bottom).
- Match Colors from 2nd Floor – narrow hallway color is Mocha, wider hallway color at each doorway alternates Marsh and Marble

Stairways:

- Remove and properly dispose of existing stairway coverings
- Install Flexco 600 series Diamond Design heavy-duty rubber stair treads. Color shall be grey.

The Contractor shall strictly follow and comply with the manufactures detailed instructions, including adhesives, to fulfill the manufactures warranties. The Contractor shall have and provide certification of formal training such as FCICA CIM program, CFI, INSTALL, or manufactures training program for all floor coverings.

Refer to Exhibit A for a floor plan of the 1st Floors of Daugherty and North Halls. *VCT portions of the 1st floor are not part of the Scope of Work.*

SCHEDULE OPTIONS

Daugherty Hall and North Hall are fully occupied during the academic year and mostly occupied during the summer months for camps and summer activities. Based on current scheduled activities, potential options for installation include:

- North Hall
 - July 26 – August 1, 2021
 - August 30 – September 5, 2021
 - Weekend work is possible
 - Christmas Shutdown & Holiday 2021: December 20 to December 31, 2021
- Daugherty Hall
 - August 2 – August 8, 2021
 - Christmas Shutdown & Holiday 2021: December 20 to December 31, 2021
 - Weekend Work is possible

The proposer shall submit in Exhibit B proposed schedules on the replacement of all SOW items for each Hall. If additional space is necessary to explain the Proposer's schedule based on the availability of materials, labor capacity, and approach do so on a separate piece of paper denoting the paper as an extension of Exhibit B.

EVALUATION CRITERIA

Proposals will be evaluated for completeness and compliance with this RFP and other qualifications of the Proposers. Proposals considered complete will be evaluated by a committee to determine if they comply with the administrative, contractual, and technical requirements of the RFP. If the Proposal is unclear, Proposers may be asked to provide written clarification. **Proposals that do not specifically address the scope of work or do not include the complete Proposal Content may be rejected as non-responsive.**

Proposals will be evaluated based on both price and schedule. The Owner is not limited to the lowest bid price and understands that the faster schedule may increase the price. The Director of Residence Life will review all submitted proposer's total price and schedules, the Owner's budget, and make a determination that meets the Residential Hall's best interest, balancing the installation duration, timeframe(s) selected, and Owner's budget.

Upon the Director of Residence Life's selection, the Owner will notify the apparent qualified proposer of the selection and issue an Intent to Award.

EVALUATION TERMS

Under the University purchasing policy, EOU reserves the right to reject any and all Proposals received as a result of this RFP.

1. **Modification or Withdrawal of Proposal:** Any Proposal may be modified or withdrawn at any time prior to the closing deadline, provided that a written request is received by EOU Administrative Coordinator, prior to the Closing date. Withdrawal of a Proposal will not prejudice the right of a Proposer to submit a new Proposal.
2. **Requests for Clarification and Requests for Change:** Proposers may submit questions regarding the RFP. Questions must be received in writing on or before 5:00 p.m. (Pacific Time), on the date indicated in the Schedule of Events, at the Purchasing and Contract Services address or email address as listed in the Contact Information section of the RFP. EOU will provide written response to questions to all Proposers that submit a Notice of Interest.
 - a. Proposers may submit requests for changes under the same conditions as noted above for submitting questions. Requests for changes must include the reason for the change, identify the proposed changes, and why the proposed changes are in the best interests of EOU. The purpose of this requirement is to permit EOU to correct, prior to the opening of Proposals, RFP terms or technical requirements that may be unlawful, improvident or which unjustifiably restrict competition.
 - b. EOU will consider requested changes and, if appropriate, amend the RFP. EOU will provide reasonable notice of its decision to all Proposers that submit a Notice of Interest.
 - c. All clarifications and changes to the RFP shall be by written addendum to the RFP. No

other clarifications or changes shall be binding, including but not limited to oral or written instructions or information concerning this RFP from EOU managers, employees or agents to prospective Proposers.

3. **Protests of the RFP/Specifications:** Protests must be in accordance with OAR 580-061-0145. Protests of Specifications must be received in writing on or before 5:00 p.m. (Pacific Time), on the date indicated in the Schedule of Events, at the Purchasing and Contract Services address or email address as listed in the Contact Information section of the RFP. Protests may not be faxed. Protests of the RFP specifications must include the reason for the protest and any proposed changes to the requirements.
4. **Addenda:** If any part of this RFP is amended, an addendum will be provided on the Oregon Public Universities Shared Resources website (www.orpu.org), along with a copy to all parties who submit the Notice of Interest.
5. **Post-Selection Review and Protest of Award:** EOU will name the apparent successful Proposer in a "Notice of Intent to Award" letter. Identification of the apparent successful Proposer is procedural only and creates no right whatsoever in the named Proposer to award of the contract or other benefit hereunder. Competing Proposers will be notified in writing of the selection of the apparent successful Proposer(s) and shall be given seven (7) calendar days from the date on the "Notice of Intent to Award" letter to review the file and evaluation report at the Purchasing and Contract Services office and file a written protest of award. Any award protest must be in writing and must be delivered by hand delivery, mail, or email to the address for the Purchasing and Contract Services Office as listed in the Contact Information section of the RFP. Protests may not be faxed.
 - a. EOU will consider any protests received and either:
 - i. Reject all protests and proceed with final evaluation and permissible contract negotiation with the apparent successful Proposer. Pending the satisfactory outcome of this final evaluation and negotiation, EOU may subsequently enter into a contract with the named Proposer; OR
 - ii. Sustain a meritorious protest(s) and reject the proposal of the apparent successful Proposer as nonresponsive, provided such Proposer is unable to demonstrate that its Proposal complied with all material requirements of the solicitation and Oregon public procurement law; thereafter, EOU may name a new apparent successful Proposer; OR
 - iii. Reject all Proposals and postpone or cancel the RFP.
 - iv. The EOU Vice President for Finance and Administration or designee will timely respond to the protest after receipt. This protest decision shall be final.
6. **Acceptance of Contractual Requirements:** Failure of the selected Proposer to execute a contract and deliver required insurance certificates within ten (10) calendar days after notification of an award may result in cancellation of the award. This time period may be extended at the option of EOU.
7. **Public Records:** Proposals are deemed confidential until the "Notice of Intent to Award" letter is issued. This RFP and one copy of each original submitted Proposal, together with copies of all documents pertaining to the award of a contract, will be kept and made a part of a file or record

which will be open to public inspection. If a Proposal contains any information that is considered a **TRADE SECRET** under ORS 192.501(2), **SUCH INFORMATION MUST BE LISTED ON A SEPARATE SHEET CAPABLE OF SEPARATION FROM THE REMAINING PROPOSAL AND MUST BE CLEARLY MARKED WITH THE FOLLOWING LEGEND**

- a. *"This information 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."*
 - b. The Oregon Public Records Law exempts from disclosure only bona fide trade secrets, and the exemption from disclosure applies only "unless the public interest requires disclosure in the particular instance." ORS 192.500(1). 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.
8. **Investigation of References:** EOU reserves the right to investigate all references in addition to supplied references and investigate past performance of any Proposer with respect to its successful performance of similar services, compliance with specifications and contractual obligations, completion or delivery of a project on schedule, lawful payment of subcontractors and workers and any other factor EOU deems relevant to this RFP. EOU may postpone the award or the execution of the contract after the announcement of the apparent successful Proposer in order to complete its investigation.
9. **RFP Proposal Preparation Costs and Other Costs:** Proposer costs of developing the Proposal, cost of attendance at an interview (if requested by EOU) and any other costs of any kind or nature whatsoever are entirely the responsibility of the Proposer, and will not be reimbursed in any manner by EOU.
10. **Clarification and Clarity:** EOU reserves the right to seek clarification of each Proposal, or to make an award without further discussion of Proposals received. Therefore, it is important that each Proposal be submitted initially in the most complete, clear and favorable manner possible.
11. **Right to Reject Proposals:** EOU reserves the right to reject any or all Proposals, if such rejection would be in the public interest, as determined by EOU in its discretion.
12. **Cancellation:** EOU reserves the right to cancel or postpone this RFP at any time or to award no contract.
13. **Proposal Terms:** All Proposals, including any price quotations, will be valid and firm through a period of 60 calendar days following the Closing date. EOU may require an extension of this firm offer period. Proposers will be required to agree to the longer time frame in order to be further considered in the procurement process.
14. **Oral Presentations:** At EOU's sole option, Proposers may be required to give an oral presentation of their Proposals to EOU, a process which would provide an opportunity for the Proposer to clarify or elaborate on the Proposal but will in no material way change Proposer's original Proposal. If the evaluating committee requests presentations, the Issuing Office will schedule the time and location for said presentation. Any costs of participating in such presentations will be borne solely by Proposer and will not be reimbursed by EOU. Note: Oral presentations are at the discretion of the evaluating committee and may not be conducted; therefore, written Proposals should be complete.

15. **Usage:** It is the intention of EOU to utilize the successful Proposer(s) to provide services as outlined in the below Scope of Work.
16. **Sample Contract:** Submission of a Proposal in response to this RFP indicates Proposer's willingness to enter into a management agreement containing terms substantially similar to the terms listed in Exhibit E – Eastern Oregon University Terms and Conditions, attached hereto and made a part hereof. No action or response to the sample contract is required under this RFP. Any objections to the sample contract terms should be raised in accordance with Paragraphs 3 and 4 of the "General Provisions" of this RFP, pertaining to requests for clarification or change or protest of the RFP/specifications, and as otherwise provided for in this RFP.
17. **Review for Responsiveness:** Upon receipt of all Proposals, the Issuing Office or designee will determine the responsiveness of all Proposals before submitting them to the evaluation committee. If EOU determines that a Proposal is incomplete or non-responsive in significant part or in whole, it will be rejected and will not be submitted to the evaluation committee. EOU reserves the right to determine if an inadvertent error is solely clerical or is a minor informality which may be waived, and then to determine if an error is grounds for disqualifying a Proposal. The Proposer's contact person identified on the Proposal will be notified, the Proposal is non-responsive. One copy of the Proposal will be archived and all others discarded.
18. **Rejections and Withdrawals:** EOU reserves the right to reject any or all Proposals or to withdraw any item from the award.
19. **RFP Incorporated into Contract:** This RFP will become part of the Contract between EOU and the selected contractor(s). The contractor(s) will be bound to perform according to the terms of this RFP, their Proposal(s), and the terms of Exhibit E. In addition, the final negotiated contract must reflect a mutual intent of the parties that the management agreement will comply with Internal Revenue Service, Revenue Procedure 97-13 as described in section 5.03(4) thereof (contemplating a fixed fee arrangement.)
20. **Communication Blackout Period:** Except as called for in this RFP, Proposers may not communicate with members of the Evaluation Committee about the RFP until the apparent successful Proposer is selected, and all protests, if any, have been resolved.
21. **Prohibition on Commissions:** EOU will contract directly with persons/entities capable of performing the requirements of this RFP. Contractors must be represented directly. Participation by brokers or commissioned agents will not be allowed during the proposal process.
22. **Ownership of Proposals:** All proposals in response to this RFP are the sole property of EOU, and subject to the provisions of Oregon Revised Statutes ORS 192.410-192.505 (Public Records Act).
23. **Clerical Errors in Awards:** EOU reserves the right to correct inaccurate awards resulting from its clerical errors.
24. **Rejection of Qualified Proposals:** Proposals may be rejected in whole or in part if they attempt to limit or modify any of the terms, conditions or specifications of the RFP or the EOU Sample Contract.
25. **Collusion:** By responding, the Proposer states that the proposal is not made in connection with any competing Proposer submitting a separate response to the RFP, and is in all aspects fair and without collusion or fraud. Proposer also certifies that no officer, agent, or employee of EOU has a

pecuniary interest in this Proposal.

26. **Evaluation Committee:** Proposals will be evaluated by a committee consisting of representatives from EOU. EOU reserves the right to modify the Evaluation Committee make-up at its sole discretion. The committee's recommendations will be forwarded to the Vice President for Finance and Administration, or designee, for final approval
27. **Commencement of Work:** The contractor shall commence no work until all insurance requirements have been met, the Protest of Awards deadline has been passed, any protests have been decided, a contract has been fully executed, and a Notice to Proceed has been issued by EOU.

SECTION 2 – INFORMATION REQUIRED FROM PROPOSERS

PROPOSAL FORM AND CONTENT

Proposals that do not contain all the information requested in this and other sections may be rejected as non-responsive.

Submission Format:

- a. The Proposal shall be in one (1) electronic PDF format. Scanning the filled out Exhibits B, C, & D are acceptable, given the information is legible and merged into one (1) PDF file.

REQUIRED FORM AND CONTENT

1. You must complete the **Bidder/Proposer Tax Laws and Non-discrimination Certification** sheet, signed by an authorized company official.
2. The Proposal must include the following, in one (1) PDF file:
 - a. **Title Page or Cover Letter.** The title page or cover letter should indicate the date, subject, name of the Proposer, address, telephone number, e-mail address, name and title of the Proposer's contact person as well as a signature of an authorized official with the authority to negotiate and contractually bind the Proposer.
 - b. **Exhibit B:** Fully fill out the Bid Schedule and the Project Schedule.
 - c. **Exhibit C:** Non-Discrimination Certification fully completed.
 - d. **Exhibit D:** References fully completed. Three references of similar types of installations are required.

SUBMITTAL INFORMATION

All proposal must be submitted pursuant to the instructions below. The Proposal shall be emailed in PDF format to Lowann VanLeuven, lvleuven@eou.edu (office 541-962-3020) and must be electronically received by **3:00PM Pacific Time, Friday July 16, 2021**. The email subject line must include **"Daugherty & North Hall Floor Covering Price Proposal."**

Proposers should telephone and confirm electronic receipt of the email document before the time and date above. Proposals delayed or lost by email filtering systems or failures may be considered at EOU's sole discretion.

EXHIBIT A

Daugherty & North Hall VCT & Carpet Location

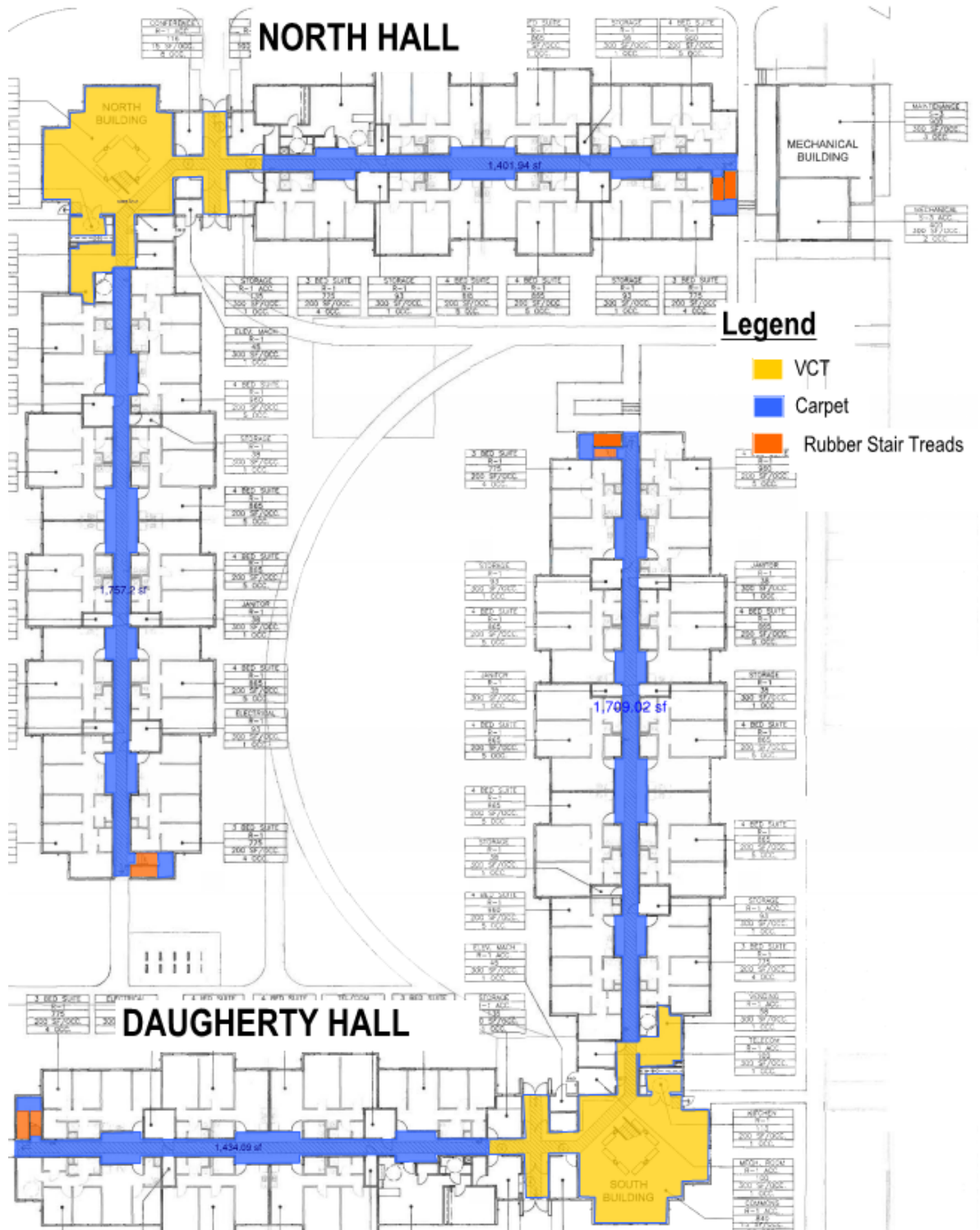


EXHIBIT B
BID SCHEDULE

The work is offered in one bid schedule on a unit price basis. Each item is to be bid. If an item is not filled in, the bid may be considered non-responsive. No substitutions, alternate bids or partial bids are allowed, except as provided by written addenda from the Owner. The Proposer shall fill out showing bid amounts and properly signed

<u>Item No.</u>	<u>Description</u>	<u>Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Total Cost</u>
1	North Hall Carpet removal & replacement, installed complete	3,320	SF		
2	Daugherty Hall Carpet removal & replacement, installed complete	3,320	SF		
5	North Hall Stairway flooring removal & stair tread replacement, installed complete	2	EA		
6	Daugherty Hall Stairway flooring removal & stair tread replacement, installed complete	2	EA		
TOTAL BID PRICE =					

Total Bid in Words: _____

BIDDERS PROPOSED PROJECT SCHEDULE

Proposers shall read the proposed schedule options and provide a start date and completion date the proposer can meet for the Scope of Work:

<u>Description</u>	<u>Date(Month/Day/Year)</u>	
	<u>Start Date</u>	<u>End Date</u>
North Hall Start & Completion of all SOW Items		
Daugherty Hall Start & Completion of all SOW Items		

EXHIBIT C**BIDDER/PROPOSER TAX LAWS AND NON-DISCRIMINATION CERTIFICATION****RFP #FP-2021-06**

I, the undersigned, have read all of the terms and conditions of this Request for Proposals, and I understand that if awarded the contract, I and the firm represented herein shall be bound by its terms and conditions and representations made in this response. I certify that Proposer has not discriminated against minority, women or emerging small business enterprises in obtaining any required subcontracts.

Certified Minority, Women, and Emerging Small Business

For statistical purposes only, please indicate if your firm is an Oregon certified minority, women, or emerging small business: ☐ **DBE** ☐ **MBE** ☐ **WBE** ☐ **ESB**

Certificate of Compliance with Tax Laws

I, the undersigned, (Check one)

_____ hereby certify under penalty of perjury that I am not in violation of any Oregon Tax laws,

_____ hereby certify under penalty of perjury that I am authorized to act on behalf of Contractor and, to the best of my knowledge, Contractor is 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

Business Designation (check one): ☐ **Corporation** ☐ **Partnership** ☐ **Sole Proprietorship**
☐ **Governmental/Non-Profit** ☐ **Limited Partnership** ☐ **Limited Liability Partnership**
☐ **Limited Liability Company**

Signature:

Date:

Name:

Title:

Email:

Phone:

Firm:

Address:

City, State, Zip Code:

EXHIBIT D**REFERENCES****REFERENCE 1**

COMPANY:	<input type="text"/>	CONTACT NAME:	<input type="text"/>
ADDRESS:	<input type="text"/>	PHONE NUMBER:	<input type="text"/>
CITY, STATE ZIP:	<input type="text"/>	FAX NUMBER:	<input type="text"/>
WEBSITE:	<input type="text"/>	E-MAIL:	<input type="text"/>

GOODS OR SERVICES PROVIDED:

REFERENCE 2

COMPANY:	<input type="text"/>	CONTACT NAME:	<input type="text"/>
ADDRESS:	<input type="text"/>	PHONE NUMBER:	<input type="text"/>
CITY, STATE ZIP:	<input type="text"/>	FAX NUMBER:	<input type="text"/>
WEBSITE:	<input type="text"/>	E-MAIL:	<input type="text"/>

GOODS OR SERVICES PROVIDED:

REFERENCE 3

COMPANY:	<input type="text"/>	CONTACT NAME:	<input type="text"/>
ADDRESS:	<input type="text"/>	PHONE NUMBER:	<input type="text"/>
CITY, STATE ZIP:	<input type="text"/>	FAX NUMBER:	<input type="text"/>
WEBSITE:	<input type="text"/>	E-MAIL:	<input type="text"/>

GOODS OR SERVICES PROVIDED:

EXHIBIT E

EASTERN OREGON UNIVERSITY
TERMS AND CONDITIONS

STANDARD CONTRACT PROVISIONS

1. **ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. Eastern Oregon University, 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. Such books and records shall be maintained by Contractor for a minimum of seven years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
2. **AVAILABILITY OF FUNDS.** EOU certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current biennial appropriation or expenditure limitation, provided, however, that continuation of this contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the EOU's reasonable administrative discretion, to continue to make payments under this Contract.
3. **CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
4. **COMPLIANCE WITH APPLICABLE 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 of 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 659A.142, 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 work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities 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 EOU 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.
5. **DISCLOSURE OF SOCIAL SECURITY NUMBER.** Contractor must provide Contractor's Social Security number unless Contractor provides a federal tax ID number. The number is requested pursuant to ORS 305.385 and OAR 150-305-100. Social Security numbers provided pursuant to this authority will be used for the administration of state, federal and local tax laws.

6. **EXECUTION AND COUNTERPARTS.** This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.
7. **GOVERNING LAW.** 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 EOU 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 Union 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.
8. **HAZARD COMMUNICATION.** Contractor shall notify EOU prior to using products containing hazardous chemicals to which EOU employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon EOU's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.
9. **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 Board, EOU, 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, and provided that EOU 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, not 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.
10. **INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the EOU 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, EOU 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 EOU for any purpose, and neither Contractor nor any of Contractor's agents or employees are entitled to any of the benefits that EOU 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. If Contractor is providing personal services as an individual, Contractor: (1) Is engaged as an independent contractor and will be responsible for any Federal or State taxes applicable to this payment, (2) Will not be eligible for any Federal Social Security, State Workers Compensation, unemployment insurance, or Public Employees Retirement System benefits from this Contract payment; (3) Is not an officer, employee, or agent of the State as these terms are used in ORS 30.265 and will not be under the direction and control of EOU; (4) Is not currently employed by the Federal Government and the amount charged does not exceed the normal charge for the type of service provided if payment is to be charged against Federal funds and; (5) Must furnish Form 8233 in duplicate with this Contract if Contractor is a non-resident alien and claims exemption from

Federal Withholding tax. The EOU 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 regulation.

11. **INSURANCE.** Contractor shall provide insurance as identified below. Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon. The State of Oregon, acting by and through EOU and their officers and employees shall be included as an additional insured in said insurance policy. If any of the liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of 24 months.
- a. Workers' Compensation Insurance: As required by ORS 656.027, Contractor, its subcontractors, if any, and any all employers providing work, labor, or materials under this Contract are subject to 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. General Liability Insurance: Contractor must maintain general liability insurance with a combined single limit, or the equivalent, of not less than \$5,000,000 for each occurrence for Bodily Injury and Property Damage. It shall include the contractual liability coverage for the indemnity provided under this Contract.
 - c. Automobile Liability Insurance: Contractor must maintain automobile liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each accident for Bodily Injury and Property Damage, including coverage for owned, hired, or non-owned vehicles, as applicable.
 - d. Certificates of Insurance: As evidence of the General Liability and Automobile Liability 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 EOU, its officers and employees as additional insureds with respect to the work of this Contract. Insuring companies or entities are subject to State acceptance. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the State. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.
 - e. 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 days written notice from the Contractor or its insurer(s) to EOU at the following address: Cora Beach, Eastern Oregon University, Inlow Hall 202, One University Blvd, La Grande, OR, 97850.
12. **LIMITATION OF LIABILITIES.** Except for liability arising under or related to sections 15(A) or 23(B), neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms.
13. **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 EOU at the address or number set forth on the signature page of this Contract, or to such other addresses or numbers as either party may hereafter indicate. 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 EOU, such facsimile transmission must be confirmed by telephone notice to EOU's supervising representative. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

14. **OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of EOU. EOU and Contractor intend that such Work Product be deemed "work made for hire" of which EOU shall be deemed the author. If for any reason the Work Product is not deemed "work for hire", Contractor hereby irrevocably assigns to EOU all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as EOU may reasonably request in order to fully vest such rights in EOU. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
15. **REPRESENTATIONS AND WARRANTIES.** (A) Contractor's Representations and Warranties. Contractor represents and warrants to EOU 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 Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards, (4) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work, (5) all computer hardware and software delivered under this Contract will, individually and in combination, correctly process, sequence, calculate all date and date-related data for all dates prior to, through and after January 1, 2000, and (6) any software products delivered under this Contract that process date or date related data shall recognize, store and transmit date data in a format which explicitly and unambiguously specifies the correct century. (B) Contractor's Limitation of Liability. Contractor's liability with respect to items (5) and (6) above shall not exceed: (1) twice the total Contract amount (including any amendments) or (2) \$100,000, whichever is greater. (C) Warranties Cumulative. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
16. **SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in the Section titled "Effective Date and Duration", and Sections 1, 7, 9, 12, 14, 15, 16, and 23.
17. **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.
18. **SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the work required by this Contract, or assign or transfer any of its interest in this Contract, without obtaining prior written approval from the EOU. In addition to any provisions the EOU may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this section and Sections 1, 9, 14, and 27 as if the subcontractor were the Contractor. EOU's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
19. **SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

20. **TAX COMPLIANCE CERTIFICATION.** Contractor hereby affirms, under penalty of perjury, as provided in ORS 305.385(6) that to the best of Contractor's knowledge Contractor is not in violation of any of the tax laws described in ORS 305.380(4).
21. **TERMINATIONS.** (A) This Contract may be terminated at any time by mutual consent of the parties, or by EOU for convenience upon thirty (30) days' notice to the Contractor. (B) In addition, the EOU may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the EOU, if (i) Federal or state laws, rules, regulations or guidelines are modified, changed, or interpreted in such a way that either the work under this Contract is prohibited or EOU is prohibited from paying for such work from the planned funding source; or (ii) 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. (C) This Contract may also be immediately terminated by EOU 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, and after receipt of notice from EOU, fails to correct such failure within ten business days.
22. **TERMINATION DUE TO NON APPROPRIATION OF FUNDS.** If sufficient funds are not provided in future legislatively approved budgets of EOU (or from applicable Federal, state, or other) to permit EOU in the exercise of its reasonable administrative discretion to continue this Contract, or if EOU or the program for which this Contract was executed is abolished, EOU 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, EOU may use the budget adopted for it by the Joint Ways and Means Committee of the Oregon Legislative Assembly.
23. **REMEDIES.** (A) In the event of termination pursuant to Sections 21(A) and (B)(i) and 22, Contractor's sole remedy shall be a claim for the sum designated for accomplishing the work multiplied by the percentage of work completed and accepted by EOU, less previous amounts paid and any claim(s) which the EOU has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this subsection, Contractor shall pay any excess to EOU on demand. (B) In the event of termination pursuant to Sections 21(B)(ii) or (C), EOU shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under these subsections, the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 21(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless EOU expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to EOU all documents, information, works-in-progress and other property that are or would be deliverables had the Contract work been completed. Upon EOU's request, Contractor shall surrender to anyone EOU designates, all documents, research or objects or other tangible things needed to complete the work.
24. **NO THIRD PARTY BENEFICIARIES.** EOU 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 persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
25. **TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence under this Contract.
26. **FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of

Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

27. **FORCE MAJEURE.** Neither EOU nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, or war where such cause was beyond, respectively, EOU's or Contractor's reasonable control. Contractor 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.
28. **WAIVER.** The failure of EOU to enforce any provision of this Contract shall not constitute a waiver by EOU of that or any other provision.
29. **RECYCLING.** In the performance of this Contract the Contractor shall use, to the maximum extent economically feasible, recycled paper.
30. **PAYMENTS.** Payments for all work performed under this Contract shall be subject to the provisions of ORS 293.462.