

**REQUEST FOR PROPOSALS**

**RFP # 2023-07-10**

**Campus Vending Services:**

Carbonated, non-Carbonated, Juices, Teas, Sports Drinks, and Water for Vending and Dining Services and the Athletic Department Concessions.

**ISSUE DATE: May 31, 2023**

**CLOSING DATE: June 14, 2023**

**CLOSING TIME: 2:00 pm (PT)**

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SECTION I - INFORMATION REGARDING PROPOSAL

INTRODUCTION

Eastern Oregon University (“EOU”) is seeking proposals to select a contractor to provide Carbonated, non-Carbonated, Juices, Teas, Sports Drinks, and Water for Vending and Dining Services and the Athletic Department Concessions. Products should include fountain soft drink syrup service, vending service, and canned/bottled soft drinks and water products to Eastern Oregon University (EOU).

It is the intent of EOU to offer the successful bidder exclusive branding on campus for athletic concession venues, Mountie Café, Campus Catering (not including student run events) and beverage vending machines when it is within the interests of both parties. Exclusivity would include carbonated soft drinks and non-alcoholic bottled beverages. Exclusions to this offer include but are not limited to alcohol beverages, milk, and coffees. Other exclusions include ASEOU/EOU Student-led Events/Meetings and Macs Grill.

## IMPORTANT NOTICE

It will be the responsibility of potential proposers to refer daily to the Oregon Public Universities Shared Resources website (https://www2.wou.edu/nora/orpu.bid.home) and the State of Oregon Procurement Information Network (ORPIN) website (https://oregonbuys.gov/bso) to check for any available addenda, response to clarifying questions, cancellations or other information pertaining to this Request for Proposals (“RFP”).

## ISSUING OFFICE

The Residence Life Office of Eastern Oregon University is the issuing office and the sole point of contact regarding this specific RFP. All correspondence should be to the contact person below:

***Jeremy Jones***

*Hoke Union Bldg, Room 216*

*Eastern Oregon University*

*One University Blvd | La Grande, OR | 97850 541-962-3177 |* [*jdjones1@eou.edu*](mailto:jdjones1@eou.edu)

## SCHEDULE OF EVENTS

The timing and sequence of events resulting from this RFP will be ultimately determined by EOU. This

Schedule is illustrative of optimal timing goals, but may be changed.

|  |  |
| --- | --- |
| RFP Issue Date | May 31, 2023 |
| All Clarifying Questions Due | June 7, 2023 (10am, PT) |
| Notice of Interest Deadline | June 7, 2023 (5:00 pm, PT) |
| Closing Date (Proposals Due) | June 14, 2023 (2:00 pm, PT) |
| Anticipated Award Notice | June 15, 2023 |
| Anticipated Contract Begin Date | July 1, 2023 |
|  |  |

## GENERAL BACKGROUND

The vendor selected for this contract will provide Carbonated, non-Carbonated, Juices, Teas, Sports Drinks, and Water for Vending and Dining Services and the Athletic Department Concessions. Products should include fountain soft drink syrup service, vending service, and canned/bottled soft drinks and water products for Eastern Oregon University. Vending machines are located in multiple buildings across the EOU campus. In addition, this contract includes bottled, canned, pre and post mix beverage products for sale in athletic concession venues.

|  |  |
| --- | --- |
| Initial EOU Vendor Locations |  |
|  |  |
| Ackerman | 1 |
| Alikut | 1 |
| Badgley | 2 |
| North Hall | 1 |
| Daugherty Hall | 1 |
| Family Service | 1 |
| Hoke | 1 |
| INLOW | 1 |
| Library | 1 |
| Loso | 1 |
| Quinn | 3 |
| Shipping | 1 |
| Zabel | 1 |

Locations of machines will be mutually agreed upon by EOU and the Contractor.

## TERM OF CONTRACT

The Contract is expected to begin on or about July 1, 2023 and extend to June 30, 2028, with an option for 1, one-year extensions, subject to the Contractor’s continued successful performance as determined by EOU. EOU intends to reserve the right upon 30 days’ notice to the Contractor to terminate the Contract.

## SCOPE OF WORK

1. Contractor will install and manage beverage vending machines at various EOU campus locations and facilities. In addition, the Contractor shall install and maintain fountain beverage services in athletic concession venues and provide bottled, canned, pre and post mix beverage products for use in athletic concession venues. It shall be the Contractor’s responsibility to operate a vending machine and concession business at optimum professional and food safety standards and provide high quality goods at all times. Contractor shall ensure that machines are in good operating conditions at all times, which includes maintenance, servicing, temperature monitoring, and the replenishment of items dispensed by the machines.
2. Contractor will provide a machine implementation schedule to be operational by 7/1/23 at all locations.
3. Contractor may propose new, innovative vending ideas to EOU for placement at EOU locations.
4. One hundred percent of the vending machines shall be capable of handling $1.00 bills (validator/bill acceptor).
5. Contractor shall provide machine maintenance and repair services. Service technician shall arrive promptly at the site of any machine reported as malfunctioning within twenty-four (24) business hours of malfunction notification.
6. All vending equipment to be installed is to be of such construction as to meet all pertinent electrical codes. Successful bidder must comply with all State of Oregon, Union County, and City of La Grande licensing and business permits and to pay all required licensing fees. Equipment must be compatible with 110-volt electrical service.
7. EOU shall provide to the Contractor, at no expense, necessary utilities of the type and amount required for normal operation of vending and fountain machines. All connections thereto and associated costs of connection shall be the responsibility of the contractor.
8. With cooperation from EOU, Contractor shall be responsible for handling cash refunds. A label on each machine, or sign prominently displayed at each machine location, containing clear and concise instructions as to the procedure for obtaining cash refunds shall be provided by the Contractor. The Contractor shall reimburse the University for cash refunds EOU has paid to customers due to circumstances where payment was made but no product was received.
9. EOU shall take normal precautions to prevent abuse of vending machines however, all losses incurred to vending machines from vandalism, theft, fire, accident, breakage, or other causes while on EOU property, or in travel to or from EOU, shall be at the expense of the Contractor except for clearly defined negligence on the part of EOU, its officers, employees, or agents. Liability for EOU shall not exceed the amount permitted by Article XI, section 7 of the Oregon Constitution and the Oregon Tort Claims Act.
10. The equipment shall be maintained by the Contractor throughout the contract period in a condition satisfactory to EOU. The interiors of each machine and the areas behind, on top of, and around the base of each machine shall be maintained in a clean and orderly manner by the Contractor.
11. The remittance of commissions due to EOU shall be made on a quarterly basis, defined as once every three months with a 7-day grace period. Financial records related to the fulfillment of this contract are subject to audit by EOU. Gross sales figures for the vending machines should be included with each commission check. Commission checks should be sent to: Residence Life and Housing Operations Office, HUB 216, Eastern Oregon University, One University Blvd., La Grande, OR 97850.
12. TRAVEL AND OTHER EXPENSES will not be reimbursed. This is a fixed fee Contract.

## GENERAL EOU PROCUREMENT PROVISIONS

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 an emailed request is received by the Issuing Office, 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 10:00 a.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 responses to questions to all Proposers that submit a Notice of Interest (Exhibit B).

Proposers may submit requests for changes to the RFP 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.

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 (Exhibit B).

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. 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 (Exhibit B).

**4. 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 and file a written protest of award. Any award protest must be emailed to LeeAnn Case, AVP Finance and Administration at lcase@eou.edu. Protests may not be faxed.

EOU will consider any protests received and either:

1. 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
2. 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
3. Reject all Proposals and postpone or cancel the RFP.

The EOU Associate Vice President for Finance and Administration or designee will timely respond to the protest after receipt. This protest decision shall be final.

**5. 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.

**6. 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:**

**“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.”**

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.

**7. 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.

**8. 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.

**9. 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.

**10. Right to Reject Proposals**: EOU reserves the right to reject any or all Proposals or to withdraw any item from the award if such rejection would be in the public interest, as determined by EOU in its discretion. EOU may conduct consumer surveys on each vendor’s product line. These surveys may be used to accept or reject any vendor’s proposal. If a survey evaluation is conducted, vendors must have at least a 33% preference to remain in the bid pool. A product line preference scores below 33% will be cause for rejection.

**11. Cancellation**: EOU reserves the right to cancel or postpone this RFP at any time or to award no contract.

**12. 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.

**13. 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.

**14. Terms and Conditions:** 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 A – Eastern Oregon University Terms and Conditions, attached hereto and made a part hereof. It is the proposer’s responsibility to review the provisions and terms & conditions before providing a response. Eastern Oregon University will only consider minor modifications of the standard terms and conditions, if those modifications are included in the proposal.

**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**.**

**15. Rejections and Withdrawals.** EOU reserves the right to reject any or all

**16. 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 A.

**17. 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.

**18. 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**.**

**19.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).

**20.Clerical Errors in Awards.** EOU reserves the right to correct inaccurate awards resulting from its clerical errors.

**21. 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.

**22**. **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.

**23. 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 protest has been decided, and a contract has been fully executed.

# SECTION II – 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. It is expected that all qualified firms responding are thoroughly conversant with, and that work will be performed in conformance with, all applicable federal and state regulatory requirements.

### Submission Format

1. The Proposal should be written on standard size (8½" x 11") paper, using generally accessible word processing and document formats conducive to cut-and-paste transfer of information to contracts or other summary documents. MSOffice Suite or PDF documents are preferred.
2. Proposers should structure responses as outlined in this RFP. Proposals should be prepared so that responses are specifically addressed in the same order as the requested information identified below and on the Questionnaire. Pages should be numbered consecutively and tabs inserted between sections.
3. The Proposal must be signed by an authorized official. The Proposal must also provide the name, title, address, phone number and email address for individuals with authority to negotiate and contractually bind the contractor, and for those who may be contacted for the purpose of clarifying the information provided.

## REQUIRED PROPOSAL CONTENT

1. You must complete the **Bidder/Proposer Tax Laws and Non-discrimination Certification** sheet

(Exhibit C), signed by an authorized company official.

1. The Proposal must also include the following:
   1. **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.
   2. **Offices and Representatives.** A description of the office(s) that will provide support, including its geographic location, staffing level, the background, experience, and qualifications of personnel. *This information must be listed in a specifically identified section of the Proposal.*
   3. **Questionnaire.** Complete specific answers to the Questionnaire for Proposers. Please respond by restating each question and thereafter providing your answer in order beginning with question 1.
2. **Summary Statement**. The Proposer may, but is not required, to provide a summary statement as to its qualifications, as well as briefly describe (no more than 500 words) any special considerations EOU should consider.

## DELIVERY OF PROPOSALS

**All proposals must be received on or before** 2:00 p.m. Pacific Time on June 14, 2023.

The original Proposal must be signed by an authorized representative of the Proposer empowered to bind the Proposer to a final contract with EOU. Alterations or erasures shall be initialed in ink by the person signing the Proposal. Proposals will only be accepted by email.

It is the responsibility of the Proposer to ensure that Proposals arrive by the closing date and time. NO LATE PROPOSALS WILL BE ACCEPTED, except as set out in the proposal submission instructions below.

Proposals will be publicly opened in the Office of Residence Life on the closing date.

Proposals must be submitted using the following method(s):

### 1. Electronic Copy Submission - Copy of the proposal response (via email)

* Email subject line must be “Response to RFP #2023-7-10.”
* Proposer ***must*** confirm electronic receipt of the complete emailed document(s) before the above time and date deadline. Proposals delayed or lost by email system filtering or failures may be considered at EOU’s sole discretion.
* Email confirmation request to Jeremy Jones, jdjones1@eou.edu

## 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 to determine if they comply with the administrative, contractual, and goal 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.**

### 1 Criteria

Proposals will be evaluated based on the following criteria and questions outlined in the Questionnaire for Proposers:

1. Background Information 5 points
2. Scope of Work 30 points
3. Pricing per Cycle 30 points

4. Commission to EOU 20 points

5. Maintenance Plan 5 points

6. Reference Review 5 points

7. Responsiveness and Quality of Proposal 5 points Total Possible

100 points

### 2. Oral Presentations

EOU may require an oral presentation by the highest-scoring Proposers, including an interview with key personnel. Any costs of participating in such presentations will be borne solely by Proposer and will not be reimbursed by EOU. Points may be adjusted or additional points added based on oral presentations. Oral presentations may be conducted telephonically.

3. References Review

Acceptance of a Proposal may be contingent on reference review findings, described in GENERAL PROVISIONS (7). Information provided by references submitted by a Proposer, as well as other references identified by EOU, may prevail in final selection, regardless of preliminary scoring results.

### 4. Evaluation Committee

Proposals will be evaluated by a committee consisting of representatives from EOU’s Residence Life.

Department and other University Personnel. The committee’s recommendations will be forwarded to the EOU

Associate Vice President for Finance & Administration for final decision.

# SECTION III – QUESTIONNAIRE FOR PROPOSERS

**Proposers must submit all of the following information requested in the 5 subsections below. Beginning with Background Information, please provide a clear response for each requested item in all subsections below. Use additional sheets as necessary.**

## BACKGROUND INFORMATION

Description of past experience in the successful completion of similar services for higher education. Proposer should provide evidence of the successful performance of services for at least two other clients similar to EOU. Please provide name, address, and telephone numbers of contact person for such projects.

Identify specific person(s) who would be responsible for the proposed work and include a brief resume for each. Please list references for each person identified including name, address and phone number of an appropriate reference contact person.

## . SCOPE OF WORK

Using the Scope of Work as a guide, outline an installation time and company’s ability to meet the necessary specifications. The scope of work should identify the proposed number of installed vending machines for each of the campus locations.

## COST SUMMARY

*Part 1 -VENDING SERVICES*

ITEM & DESCRIPTION EST.ANNUA VEND PRICE June 1, 2023 COMMISSION

USAGE (2022) PER UNIT Price per unit REQUIRED

1. 20 oz sodas 7959 units $1.50 $2.00 XX%

2. 20 oz water 1560 units $1.50 $2.00 XX%

3. 20 oz sports drinks 2121 units $1.50 $2.25 XX%

4. 450 ml Juice & Teas 960 units $1.75 $2.25 XX%

5. 8.3 oz-16 oz Energy Drinks 4392 units $2.00 $2.25 XX%

Prices will be subject to review after one year of opening and at one-year intervals thereafter. Prices will be changed when there is mutual agreement between the vendor and the Vending Committee of EOU. Pricing at athletic concession venues will be in accordance with practices and policies set forth by EOU and the EOU’s contract food service provider. Annual price changes may be negotiated based on changes to the Consumer Price Index, shipping costs, labor cost increases, etc.

Please attach a separate page indicating potential product list, size, and brand.

*Part 2 -BOTTLED, CANNED, PRE AND POST MIX BEVERAGE PRODUCTS (Worth 5 Points)*

Provide wholesale pricing to EOU for bottled, canned, pre and post mix beverage products. Indicate brand, size, type of container, (e.g. metal, glass, plastic, bag in box), wholesale price and recommended retail price on a separate page. Pricing should be listed through June 30, 2028. Part 2 will be determined on best value to EOU. This pricing must be at or below any existing or future price agreements local or national between the contract food service provider at Eastern Oregon University (currently Sodexo) and the bidder.

*Part 3- ADDITIONAL CONSIDERATION (Worth 50 Points)*

Please indicate what additional consideration you would be willing to offer Eastern Oregon University. The EOU reserves the right to select the option, which in its discretion, best meets the University’s needs. Payment shall be made to Eastern Oregon University Foundation on behalf of the EOU Mountaineer Booster Club on or about July 15 of each year indicated.

OPTION 1- LUMP SUM – July 15, 2023 $

OPTION 2- FIVE ANNUAL PAYMENTS - July 15, 2023 $

July 15, 2024 $

July 15, 2025 $

July 15, 2026 $

July 15, 2027 $

*Part 4- OTHER SUPPORT (Worth 20 Points)*

In addition to the financial contribution to the University Foundation on behalf of the EOU Mountaineer Booster Club, please describe in detail any additional support that will become a part of this contract and the monetary value of any stated support. This support could include, but is not limited to, the following suggestions:

a. Title event opportunities for various events across campus

b. Complementary products at University-sponsored events

c. Support to publish media guides

d. Purchase of radio ads during broadcast games

Additional consideration will be given to those bidders who propose broad-based support for a variety of venues and events throughout the campus.

## MAINTENANCE PLAN

Provide a written Maintenance Plan that addresses the regular preventative maintenance that will be performed as well as a plan to address the replacement of worn, damaged, or malfunctioning vending machines.

## REFERENCES

Provide at least two references from clients your firm has served in the past three years, including one client that has newly engaged the firm in the past 36 months and one long-term client. Please complete Exhibit D when providing the reference information.

# EXHIBIT A

**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, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that Contractor is prohibited from defending the State of Oregon, is not adequately defending its interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.
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 Worker’s 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 regulations.
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.
    1. **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.
    2. **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.
    3. **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.
    4. **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.
    5. **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 Contact 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.

# EXHIBIT B

**Campus Vending Services; Carbonated, non-Carbonated, Juices, Teas, Sports Drinks, and Water**

**RFP #2023-07-10**

**Notice of Interest**

Name of Consultant/Firm: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Check One:

\_\_\_\_\_\_\_\_\_ Yes, this firm will submit a proposal in response to this RFP. Please forward any addenda to the RFP to my attention.

\_\_\_\_\_\_\_\_\_ No, this firm does not anticipate submitting a proposal in response to this request.

Comments:

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

Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email address for contact: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Please return this form no later than March 1, 2023 to Jeremy Jones at EOU, Hoke Union Bldg – Room**

**216, One University Blvd., La Grande, OR, 97850 or to jdjones1@eou.edu.**

C

# EXHIBIT C

**BIDDER/PROPOSER TAX LAWS AND NON-DISCRIMINATION CERTIFICATION**

**RFP #2023-7-10**

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: |  |
| Firm: |  | |  |
| Address: |  | |  |
| City/State/Zip: |  | Phone: | ( ) |
| e-mail: |  | Fax: |  |

# EXHIBIT D

**REFERENCE 1**

COMPANY:

CONTACT NAME:

ADDRESS:

PHONE NUMBER:

CITY, STATE ZIP:

FAX NUMBER:

WEBSITE:

E-MAIL:

GOODS OR SERVICES PROVIDED:

**REFERENCE 2**

COMPANY:

CONTACT NAME:

ADDRESS:

PHONE NUMBER:

CITY, STATE ZIP:

FAX NUMBER:

WEBSITE:

E-MAIL:

GOODS OR SERVICES PROVIDED:

**REFERENCE 3**

COMPANY:

CONTACT NAME:

ADDRESS:

PHONE NUMBER:

CITY, STATE ZIP:

FAX NUMBER:

WEBSITE:

E-MAIL:

GOODS OR SERVICES PROVIDED: