

INSTRUCTIONS TO OFFERORS

Chemeketa Community College
4000 Lancaster Drive NE
P.O. Box 14007
Salem, Oregon 97309-7070

For a disability-related accommodation, please contact Disability Services at 503.399.5192 (TTY/voice), at least five working days in advance.
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1. Definitions

As used in the Contract Documents, unless the context requires otherwise:

- A. **“Addendum” or “Addenda”** means an addition or deletion to, a material change in, or general interest explanation of a Solicitation Document. Addenda shall be labeled as such and distributed to all interested persons in accordance with these rules.
- B. **“Alternates”**: An Alternate Bid (or Alternate), is an amount stated in the Bid to be added to or deducted from the amount of the Base Bid if the corresponding change in the Work, as described in the Bidding Documents is accepted by the Owner. Any or all Alternates may be accepted or rejected in any order, unless otherwise indicated.
- C. **“Award” or “Intent to Award”** means, as the context requires, either the act or occurrence of the College’s identification of the Person with whom the college will enter into a Contract following the resolution of any protest of the College’s selection of that Person, and the completion of all Contract negotiations.
- D. **“Base Bid”**: The Base Bid is the sum stated in the Bid for which the Bidder offers to perform all the Work shown and described in the Bidding Documents as a lump sum bid, to which Work may be added or deducted for sums stated in Alternate Bids, if any.
- E. **“Bid”** means a competitive offer in response to an Invitation to Bid in which price, delivery (or project completion), and conformance to specifications will be the predominant award criteria.
- F. **“Bidder”**: An individual, firm, or corporation who submits a Bid in response to the College’s Invitation to Bid.
- G. **“Bidding Documents”**: Bidding Documents include, but are not limited to, the Advertisement for Bids, Instructions to Bidders, Bid Form, the Form of Bid Bond (if required), and the proposed Contract Documents, including any Addenda issued prior to receipt of bids. All requirements and obligations of the Bidding Documents are hereby incorporated by reference into the Contract Documents and are binding on the Successful Bidder(s) upon award of the Contract.
- H. **“Bidding/Proposing Period”**: means the span of time between the date of the Solicitation Document and the time and date set for receipt of Offers. The time period shall be stated in the Solicitation Document. Generally a period of fourteen (14) calendar days shall be provided, but in no case shall the time provided be less than five (5) calendar days.
- I. **“Business Services Director”**: means Julie Huckestein or her duly appointed successor.

- J. **“Chief Financial Officer”** means Julie Huckestein or her duly appointed successor.
- K. **“Closing”**: The date and time specified in the College’s Solicitation Document as the deadline for submitting Offers.
- L. **“Code”** means the Public Contracting Code, as defined in ORS 279A.010.
- M. **“College”**: See definition of the “Owner” under general conditions of the contract for construction. For non-construction contracts, the term “Owner” shall be synonymous with “College” or “Chemeketa Community College” and shall mean the “Owner” or the “Owner’s authorized representative.”
- N. **“Competitive Range”** means the Offerors with whom the College will conduct discussions or negotiate if the College intends to conduct discussions or negotiations in accordance with its own rules.
- O. **“Competitive Sealed Bidding”** means the issuing of Invitations to Bid, which follow the formal process for advertising, submitting bids, and conducting of public bid openings as required by ORS 279B.055.
- P. **Competitive Sealed Proposals”** means the issuing of Request for Proposals, which follow the formal process for advertising, submitting proposals, and conducting of public openings as required by ORS 279B.060.
- Q. **“Contract”** means a “Public Contract,” as defined in ORS 279A(1)(z), a sale or other disposal, or a purchase, lease, rental or other acquisition, by a contracting agency of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. “Public Contract” does not include grants. The “Contract” includes the College’s Solicitation Document and the accepted portions of a Solicitation Document, whether attached or incorporated by reference, between the College and Contractor describing the work to be done and the obligations of the parties. Depending upon the goods and services being procured, the College may use “Contract” as meaning a purchase order, price agreement, or other contract document in addition to the College’s Solicitation Document and the accepted portions of a Solicitation Document. If the Contract is for a public improvement or public work, the “Contract” may consist of the College’s Solicitation Document, including any addenda, the general and special and/or supplementary conditions or other conditions governing the work, the accepted portions of the Solicitation Document, the performance and payment bond (if required), certificates of insurance, plans, technical specifications, approved shop drawings, Construction Change Directive or written order for a minor change in the Work, Notice of Award, Notice to Proceed, and any contract amendments, including approved change orders.
- R. **“Contract Documents”**: The Contract Documents consist of the Advertisement, Instructions to Offerors, Bureau of Labor and Industries Prevailing Wage Rates, Bid Form, Bid Bond, Performance Bond, Payment Bond, Notice of Award, Notice to Proceed, Agreement between Owner and Contractor (hereinafter the “Agreement”), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract.

- S. **“Contract Price”** means, as the context requires, (i) the maximum monetary obligation that the College will or may incur under a Contract, including bonuses, incentives, approved alternates, fully executed change orders or amendments, and contingency amounts, if the Contractor fully performs under the Contract, (ii) the maximum not-to-exceed amount of payments specified in the Contract, or (iii) the unit prices for Goods or Services set forth in the Contract.
- T. **“Contract Review Authority”** means the College’s Local Contract Review Board as set forth in ORS 279A.060.
- U. **“Contractor”** means the Person with whom the College enters into a Contract and shall be synonymous with “Independent Contractor” (i.e., a person or business that provides services to the College in which the College neither controls nor has the right to control the means or manner by which work is performed). The College may control the results of the services, but not control the means or manner of the Contractor’s performance of the Work.
- V. **“Cost”** means not only the product price but also other items of expense such as the actual or reasonably estimated costs related to quality or conversion, and may include such actual or estimated items as shipping, delivery, setup, installation, and training.
- W. **“Descriptive Literature”** means Written information submitted with the Offer that addresses the Goods and Services included in the Offer.
- X. **“Disadvantaged Business Enterprise (DBE)”** means a small business concern pursuant to ORS 200.005(1), which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any corporation, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- Y. **“Effective Date of Contract”** means the date established in the Contract for the Contractor’s work to begin, or the date the Contract has been fully executed and received all required approvals, whichever date is later.
- Z. **“Electronic Advertisement”** means notice of the College’s request for Offers or request for quotes, available over the internet via (a) The World Wide Web or some other Internet protocol; or (b) the College’s electronic procurement system. An Electronic Advertisement may include a Solicitation Document.
- AA. **“Electronic Offer”** means a response to the College’s request for Offers or request for quotes submitted to the College via email or through the College’s Electronic Procurement System.
- BB. **“Electronic Procurement System”** means an information system that Persons may access through the Internet, using the World Wide Web or some other Internet protocol, or that Persons may otherwise remotely access using a computer, that enables the College to post Electronic Advertisements, receive Electronic offers, and conduct other activities related to a procurement.
- CC. **“Facsimile”** means electronic equipment that communicates and reproduces both printed and handwritten material.

- DD. **“Gift”** means something of economic value given to a public official or the public official’s relative without an exchange of valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, and which is not extended to others who are not public officials or the relatives of public officials on the same terms and conditions; and something of economic value given to a public official or the public official’s relative for valuable consideration less than that required from others who are not public officials.
- EE. **“Goods and Services”** or “Goods or Services” have the meaning set forth in ORS 279A.010(1)(j).
- FF. **“Invitation to Bid” (ITB)** means all documents used for soliciting Offers in accordance with either ORS 279A.010(2)(bb). (See also “Competitive Sealed Bidding.”)
- GG. **“Life Cycle Costing”** means determining the cost of a product for its estimated useful life, including its disposal.
- HH. **“Local Contract Review Board”** means Chemeketa Community College’s Board of Education as established by Resolution No. 83-84-6.
- II. **“Lowest Responsible Bidder”** means: (a) the bidder whose Offer substantially complies with the requirements and criteria set forth in the Invitation to Bid and with all prescribed public procurement procedures and requirements; or (b) When the invitation to bid specifies or authorizes the award of multiple contracts to the responsible bidders, the bidder whose bids substantially comply with the requirements and criteria set forth in the Invitation to Bid and with all prescribed public procurement procedures and requirements and who qualify for the award of a Public Contract under the terms of the Invitation to Bid (ORS 279B.055(10)). Depending upon the requirements of the Solicitation Document, “Lowest Responsible Bidder” may also mean one who, in the determination of the Advocate for Minority, Women and Emerging Small Businesses, has undertaken both a policy and practice of actively pursuing participation by minority and women-owned business in all bids, both public and private, submitted by such bidder, pursuant to ORS 200.025 and 200.045.
- JJ. **“Model Rules”** means the Chemeketa Community College Rules of Procurement (CCRP), adopted in accordance with ORS 279A.065(5)(a) and ORS 279A.070 by the College’s Local Contract Review Board, January 15, 2005, through Resolution No. 04-05-11, as currently amended.
- KK. **“ORS”** means Oregon Revised Statutes.
- LL. **“Offer”** means a response to a Solicitation Document that is binding on the Offeror.
- MM. **“Offeror”** means a Person, who submits an Offer.
- NN. **“Opening”** means the date, time, and place announced in the Solicitation Document for the public opening of Written sealed Offers.
- OO. **“PCC”** means Public Contracting Code as it is defined in ORS 279A.010(z).
- PP. **“Person”** means any of the following with legal capacity to enter into a Contract: individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity.

- QQ. **“Personal Property”** means everything subject to ownership, which is not real property and has exchangeable value; includes all chattels and movables, such as boats and vessels, merchandise and stock in trade, furniture and personal effects, goods, livestock, vehicles, farming implements, movable machinery, movable tools and movable equipment pursuant to ORS 307.020.
- RR. **“Personal Services Competitive Solicitation”** means a documented process providing an equal and open opportunity to qualified parties, which culminates in a selection based on criteria that include, but are not limited to, the Contractor’s availability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance and fees or costs.
- SS. **“Personal Services Contract”** or **“Contract for Personal Services”** means a Contract or member of a class of Contracts, other than a Contract for the services of an Architect, Engineer, Land Surveyor or Provider of Related Services (which are subject to ORS 279C.105, ORS 279C.110 or ORS 279C.120, and which are defined as Personal Contracts pursuant to ORS 279C.100(5)), that the College’s Local Contract Review Board has designated as a Personal Services Contract pursuant to ORS 279A.055, whose primary purpose is to acquire specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, including, without limitation, a Contract for the services of a(n): accountant; physician, dentist or lawyer; educator; consultant(s) for information technology, travel, banking, investing, collections, or other consultant; broadcaster or artist (including a photographer, filmmaker, painter, weaver, or sculptor). (See also Personal Services Contracting Rules section within these Community College Rules for an expanded definition.)
- TT. **“Personal Services Contractor”** means an Independent Contractor that performs a Contract for Personal Service(s) for the College, when the College has no right to and does not control the means and manner of performing the Contract, except as to the delivery schedule, determining compliance with the Statement of Work, and accepting or rejecting the deliverables or results required under the Contract.
- UU. **“Prequalification of Offeror”** means a process followed by the College, in advance of issuance of Solicitation Documents, to determine the qualifications of prospective Offerors to perform Public Contracts.
- VV. **“Product Sample”** means the exact Goods or a representative portion of the Goods offered by the Offeror in response to the Solicitation Document. Unless otherwise provided in the Solicitation Document, the Product Sample shall be the exact products or a representative portion of that product offered by the Offeror.
- WW. **“Proposal”** means an Offer in response to a Request for Proposals.
- XX. **“Public Contract”** means a sale or other disposal, or a purchase, lease, rental or other acquisition, by the College of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. (ORS 279A.010(1)(z)).
- YY. **“Public Notice”** means a public notice of Solicitation Document that is published at least once in at least one newspaper of general circulation in the area where the contract is to be

performed and in as many additional issues and publications as the College determines or is published electronically.

- ZZ. **“Request for Proposals”** or **“RFP”** means all documents used for soliciting Proposals in accordance with either ORS 279B.060 or 279C.110, where proposal evaluation and contract award is based on criteria such as proposer qualifications and experience, product features and characteristics, service quality and efficiency, and conformance with the specifications and requirements of the Solicitation Document. Price may be evaluation criterion for an RFP, but will not necessarily be the predominant basis for contract award.
- aa. **“Request for Qualifications”** means a Written document describing the College’s circumstances and the type of service(s) desired, setting forth all significant evaluation factors and their relative importance, written qualifications, and, if appropriate, price. The Request for Qualifications will not result in a Contract but is intended to establish a list of qualified Contractors from which to seek Offers and select a Contractor.
- bb. **“Request for Quotes”** or **“RFQ”** means the solicitation by the College of Offers from competing vendors in an effort to obtain competitive quotes. The solicitation may be by advertisement or by the College initiating a request to vendors to make an offer in accordance with the provisions of Small Procurements and Intermediate Procurements as these categories are defined in ORS 279B.065 and 279B.070, pursuant to the rules established by the College’s Local Contract Review Board for competitive thresholds. The solicitation may be accomplished by advertisement or by the College initiating a request to vendors to make an Offer. The solicitation and the offer may be electronic, in writing, or oral.
- cc. **“Requirements Contract”** means a price agreement that constitutes a firm Offer by the Contractor, regardless of whether any order or purchase has been made or any performance has been tendered under the price agreement and is enforceable for the period stated in the price agreement and is not revocable by the Contractor. A price agreement does not constitute an exclusive dealing commitment on the part of the College or the Contractor unless the price agreement expressly so provides. (ORS 279B.140)
- dd. **“Responsible Offeror”** (also, **“Responsible Bidder”** or **“Responsible Proposer,”** as applicable), means a Person that has submitted an Offer and meets the standards set forth in ORS 279B.005 and/or ORS 279B.110, and that has not been debarred or disqualified by the College. When used alone, **“Responsible”** means meeting the aforementioned standards.
- ee. **“Responsive Offer”** (also, **“Responsive Bid”** or **“Responsive Proposal,”** as applicable), means an Offer that substantially complies in all material respects with applicable solicitation requirements. When used alone, **“Responsive”** means having the characteristic of substantially complying in all material respects with applicable solicitation requirements.
- ff. **“Service Contract”** means a contract that calls primarily for a contractor’s time and effort rather than for an end product.
- gg. **“Signed”** means, as the context requires, that a Written document contains a Signature or that the act of making a Signature has occurred.
- hh. **“Signature”** means any Written mark, word or symbol that is made or adopted by a Person with the intent to be bound and that is attached to or logically associated with a Written

document to which the Person intends to be bound and executed or adopted by a Person with the intent to be bound.

- ii. **“Solicitation Document”** means an Invitation to Bid, Request for Proposals or other document issued to invite offers from prospective contractors pursuant to ORS Chapter 279B or 279C and includes all documents incorporated by reference.
- jj. **“Specification/Scope of Work”** means any description of the physical or functional characteristics, or of the nature of a supply, service or construction item, including any requirement for inspecting, testing or preparing a supply, service or construction item for delivery and the quantities or qualities of materials to be furnished under a Contract. Specifications generally will state the result to be obtained and may, on occasion, describe the method and manner of doing the Work to be performed. Specifications may be incorporated by reference and/or through attachment to the Contract.
- kk. **“Standard Fee Contract”** means a contract awarded for service to be performed for a standard fee, when the standard fee is established by the College, and a like contract is available to all qualified applicants.
- ll. **“Statement of Work”** means a written statement that specifically describes the phases of work or services, major tasks, or areas of responsibility the Contractor is to perform at a particular site, or within a particular locale during a stated period of time, according to a schedule of delivery. The statement must identify specific objectives that the Contractor is to attain or describe, in detail, and the deliverables that the Contractor is to provide.
- mm. **“Work”** means the furnishing of all materials, equipment, labor and incidentals necessary to successfully complete any individual item in a Contract or the entire Contract, and successful completion of all duties and obligations imposed by the Contract.
- nn. **“Writing”** means letters, characters and symbols inscribed on paper by hand, print, type or other method of impression, intended to represent or convey particular ideas or meanings. “Writing,” when required or permitted by law, or required or permitted in a Solicitation Document, also means letters, characters and symbols made in electronic form and intended to represent or convey particular ideas or meanings.
- oo. **“Written”** means existing in Writing.

2. **Notice to Offerors**

Statutes, regulations, executive orders, and college policies cited in the “Instructions to Offerors” are hereby incorporated by reference and the Offeror represents by submitting its Offer that it will comply with all such provisions.

3. **Compliance with College Policies**

The College retains the right to stop any activity and/or to require dismissal from the job site of any worker whose behavior does not comply, or gives the College reasonable suspicion to believe the worker’s behavior does not comply, with pertinent Chemeketa Community College policy(ies), including but not limited to providing a respectful workplace, a harassment free workplace, and a drug and alcohol free workplace, or the activity is deemed hazardous to members of a user group, the public, or College facilities

4. General Statutory Provisions Concerning Public Contracts

The attention of the Offeror(s) is called to the provisions of all Local, State, and Federal laws, regulations, ordinances, and resolutions applicable to the work, as well as laws, regulations, ordinances, resolutions, and permits relating to obstructing streets, maintaining signals, storing and handling of explosives, preserving safety or affecting the Offeror, or its employees or its work hereunder in its relation to the College or any other person. The Offeror shall obey all such laws, regulations, ordinances, permits or resolutions applicable to the Work or controlling or limiting Contractors while engaged in the prosecution of the Work under this Contract.

The provisions of this Contract shall be interpreted in accordance with the laws of the State of Oregon and in accordance with the laws, ordinances, regulations, permits, and resolutions of Marion County.

Statutory citations within the Solicitation Documents are made for reference purposes only, and are not to be considered all-inclusive. They are meant only as an aid to Offerors for Public Contracts; they are not captured verbatim, may not contain the most recent legislative updates, and all applicable numeric citations are not included within these Instructions to Offerors. Some of the statutory citations included for reference purposes are:

A. *Preferences for Oregon goods and services; nonresident bidders.*

In accordance with the provisions of Oregon Revised Statute (ORS 279A.120), the public contracting agency (College), shall prefer goods or services that have been manufactured or produced in this state if price, fitness, availability, and quality are otherwise equal.

B. *Award of contract; bonds.*

Pursuant to ORS 279C.375(2) in determining the lowest responsible Bidder, a public contracting agency shall check the list created by the Construction Contractors Board under ORS 701.227 for bidders who are not qualified to hold a contract for a public improvement and determine whether the prospective bidder has met the standards of responsibility. Pursuant to ORS 279A.120 for the purposes of awarding a Public Contract, a public contracting agency shall add a percent increase on the Bid of a nonresident Bidder equal to the percent, if any, of the preference given to that Bidder in the state in which the Bidder resides. In accordance with ORS 279A.120(4), the Oregon Department of Administrative Services on or before January 1 of each year shall publish a list of states that give preference to in-state Bidders with the percent increase applied in each such state. The College may rely on the names of states and percentages so published in determining the lowest responsible Bidder without incurring any liability to any Bidder.

C. *Discrimination in subcontracting prohibited; remedies.*

Pursuant to ORS 279A.110(1), a bidder or proposer who competes for or is awarded a Public Contract may not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, women, or emerging small business enterprise certified under ORS 200.055 or against a business enterprise that is owned or controlled by or that employs a disabled veteran. Pursuant to ORS 279A.110(4) a bidder or proposer shall certify in the documents accompanying the bidder's or proposer's offer to enter into a Public Contract that the bidder or proposer has not discriminated and will not discriminate, in violation

of subsection (1) of this section, against any minority, women or emerging small business enterprise in obtaining any required subcontract. If the contractor violates the certification made under subsection (4) of this section, the contracting agency may regard the violation as a material breach of contract and terminate the contract.

D. *Conditions concerning payment, contributions, liens, withholding, drug testing.*

In accordance with the provisions of Oregon Revised Statute 279B.220 and 279C.505, it is agreed that the contractor shall: demonstrate that an employee drug testing program is in place; make prompt payment, as due, to all persons supplying to the contractor labor or material for the prosecution of the work provided for herein; pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract; not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished; and pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

(1) Pursuant to ORS 279C.505, the College's performance under this contract is conditioned upon the Contractor's compliance with the following Contractor representations and warranties.

Contractor represents and warrants the following:

(a) That Contractor has at the time of the execution of this contract, and shall maintain during the term of this contract, an employee drug testing program for its employees that includes, at a minimum the following:

- a. A written employee drug-testing policy;
- b. Required drug testing for all new Subject Employees every six months on a random selection basis;
- c. Required testing of a Subject Employee when the Contractor has reasonable cause to believe the Subject Employee is under the influence of drugs; and
- d. Required testing of a Subject Employee when the Subject Employee is involved in:
 1. an incident causing an injury requiring treatment by a physician; or
 2. an incident resulting in damage to property or equipment.

(2) A drug-testing program that meets the above requirements will be deemed a "Qualifying Employee Drug-Testing Program." For the purposes of this section, an employee is a "Subject Employee" only if that employee will be working on the Project job site; and

(a) That Contractor shall require each subcontractor providing labor for the Project to:

- (1) Demonstrate to the Contractor that it has a Qualifying Employee Drug-Testing Program for the subcontractor's Subject Employees, and represent and warrant to the Contractor that the Qualifying Employee Drug-Testing Program is in place at the time of subcontract execution and will continue in full force and effect for the duration of the subcontract; or
- (2) Require the subcontractor's Subject Employees participate in the Contractor's Qualifying Employee Drug-Testing Program for the duration of the subcontract.

E. *Demolition contracts to require material salvage; lawn and landscape maintenance contracts to require composting or mulching.*

Pursuant to ORS 279C.510, Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective; and, if public improvement contract is for lawn and landscape maintenance, Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.

F. *Conditions concerning payment of claims by public officers, payment to persons furnishing labor or materials and complaints.*

Pursuant to ORS 279C.515, it is agreed that if the Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the Public Contract as such claim becomes due, the proper officer or officers representing the College may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of such contract. If contract is for a public improvement and Contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the Public Contract for a public improvement within 30 days after receipt of payment from the public contracting agency or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

G. *Condition concerning hours of labor.*

Pursuant to ORS 279C.520, it is a condition of any Public Contract resulting from this Solicitation Document that no person shall be employed by the Contractor for more than ten hours in any one day, or forty hours in any one week, except in cases of necessity, emergency, or when the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services designated under ORS 279A.055, the employee shall be paid at least time and a half pay:

- (1) For all overtime in excess of eight hours a day in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or
- (2) For all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
- (3) For all work performed on Saturday and on any legal holiday specified in ORS 279C.540.

An employer must give notice, in writing, to employees who work on a Public Contract, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

I. *Condition concerning payment for medical care and providing workers' compensation.*

Pursuant to ORS 279C.530, it is an express condition of this agreement that the contractor shall, promptly, as due, make payment to any person, co-partnership, association, or corporation furnishing medical, surgical, and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of such contractor, of all sums which the contractor agrees to pay for such services and all moneys and sums which the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for such services. All subject employers working under the contract are subject employers that will comply with

ORS 656.017 or employers that are exempt under ORS 656.126.

J. *Extension and compensation when work suspended.*

Pursuant to ORS 279C.655, if a Public Contract is not terminated but work under the Contract is suspended by an order of a contracting agency for any reason considered to be in the public interest other than a labor dispute or any third-party judicial proceeding relating to the work other than a suit or action filed in regards to a labor dispute, the contractor is entitled to a reasonable extension of the contract time and reasonable compensation for all costs resulting from the suspension plus a reasonable allowance for overhead with respect to such costs.

K. *Maximum hours of labor on public contracts; holidays; exceptions; liability to workers; rules.*

Pursuant to ORS 279C.540, except where the contractor is a party to a collective bargaining agreement in effect with any labor organization, in all cases where labor is employed by the College, through a contractor, no person shall be required or permitted to labor more than ten hours in any one day, or 40 hours in any one week, except in cases of necessity, or emergency, or when the public policy absolutely requires it, in which event, the person so employed for excessive hours shall receive at least time and a half pay:

(A) For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or

(B) For all overtime in excess of ten hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and

(C) For all work performed on Saturday and on any legal holiday specified in ORS 279C.540.

An employer shall give notice in writing to employees who perform work on a Public Contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that employees may be required to work.

This section does not apply to contracts for personal services designated under ORS 279A.055, provided that persons employed under such contracts shall receive at least time and a half pay for work performed on the legal holidays specified in subsection (1)(b)(B) to (G) of this section and for all overtime worked in excess of 40 hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C.201 to 209 from receiving overtime.

L. *Time limitation on claim for overtime; posting of circular by contractor.*

Pursuant to ORS 279C.545, it is a condition of this agreement that any worker employed by the contractor shall be foreclosed from the right to collect for any overtime provided in ORS 279C.540 unless a claim for payment is filed with the contractor within 90 days from the completion of the contract in accordance with the provisions of this statute.

M. *Prevailing wage rate*

The hourly rate of wage to be paid by the Contractor and incorporated into Contractor's subcontracts, shall be not less than the specified minimum hourly rate of wage provided in, and in accordance with, ORS 279C.800 to ORS 279C.870, if the project is subject to the state of Oregon's Prevailing Wage Rate law, or the Davis-Bacon Act (40 U.S.C. 3141 to 3148), if the

public works project is subject to federal prevailing wage laws. It shall be the responsibility of the Contractor to comply, when applicable, with prevailing wage rates if the Contract is for a public work subject to Oregon Revised Statutes (ORS) 279C.800 to 279C.870, or the Davis-Bacon Act (40 U.S.C. 3141 to 3148), to pay workers not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838, 279C.840 or 40 U.S.C. 3141 to 3148, and to pay the higher of the applicable state or federal prevailing rate of wage to workers on public works projects, if the public works project is subject to both state and federal prevailing wage laws. Prevailing rates of wage are available electronically on the Internet from the State of Oregon Bureau of Labor and Industries' website @ http://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx and shall be incorporated herein by reference. Hard copies of the applicable Prevailing Wage Rates may also be obtained by calling 503-399-5014 and requesting a copy. Rates shall be those in effect when the Public Contract was first advertised, but if not advertised, then the earliest date appearing on the face of the Contract, Purchase Order, or similar form of agreement. It shall be the responsibility of the Contractor to monitor the prevailing wage rates during the project for any increase in rates and to adjust wage rates accordingly.

N. *Retainage*

In accordance with ORS 279C.550-279C.580 (Progress payments on Public Contracts), the withholding of retainage by a contractor or subcontractor on Public Contracts for public improvements shall be in accordance with ORS 701.420, and ORS 701.430 except when the charter of the public agency contains provisions requiring retainage by the public agency of more than five percent of the contract price of the work completed. A progress payment shall not be considered acceptance or approval of any work or waiver of any defects therein.

O. *Right of action on payment bond of contractor or subcontractor; notice of claim.*

Pursuant to ORS 279C.600, the right of action against bond of contractor or subcontractor; notice of claim and action by claimant on contractor's bond limitations, shall be implemented and prescribed as applicable.

P. *Notice of claim*

Pursuant to ORS 279C.605, the notice of claim required by ORS 279C.600 (action on payment bonds), must be sent by registered or certified mail or hand delivered no later than 120 days after the day the person last provided labor or furnished materials, or 120 days after the worker listed in the notice of claim by the Commissioner of the Bureau of Labor and Industries last provided labor.

Q. *Use of recycled products when economically feasible.*

In accordance with ORS 279B.280, recycled products should be used to the maximum extent economically feasible in the performance of the contract work set forth in this document, if the quality of a recycled product is functionally equal to the same product manufactured with virgin resources, including but not limited to recycled paper, recycled oil and recycled PETE products.

R. *Applicant required to be independent contractor to be eligible for license; classes of licenses. (Construction Contractors Board)*

Pursuant to ORS 701.035 to 701.055, a person shall not submit a bid to do work as a "contractor" as defined in ORS 701.055(2) unless that person has a current valid license issued by the Construction Contractors Board. Bids from persons who fail to comply with this requirement shall be deemed non-responsive and be rejected, unless contrary to federal law. By submitting its Bid, the contractor certifies that all subcontractors performing work as

described in ORS 701.005(2) (i.e., construction work) have current valid licenses with the Construction Contractors Board in accordance with ORS 701.035 to 701.055, before the subcontractors commence work under the contract.

S. *Performance within state of public printing, binding, and stationery work; stipulation in request for bids and in contracts; exceptions. (Public Printing)*

Pursuant to ORS 282.210, "(1) except as provided in subsection (2) of this section, all printing, binding and stationery work for the state or any county, city, town, port district, school district, or other political subdivision thereof, shall be performed within the state. All requests for bids and all contracts for such work shall so stipulate. (2) The work referred to in subsection (1) of this section may be performed outside the state if it is established that: (a) The work cannot be performed within the state; (b) The lowest price for which such work can be procured within the state exceeds the charge usually and customarily made to private individuals and corporations for work of similar character and quality; or (c) All bids for the work, or any part thereof, are excessive and not reasonably competitive."

T. *Contractor's relations with subcontractors. (Subcontractor Payment Provisions)*

Pursuant to ORS 279C.580, Contractor shall include in each subcontract: (a) A payment clause that obligates the Contractor to pay the subcontractor for satisfactory performance under its subcontract within ten (10) days out of such amounts as are paid to the Contractor by the College under the contract; and (b) An interest penalty clause that obligates the Contractor to pay to the subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract under paragraph (a) of this subsection. (A) For the period beginning on the day after the required payment date and ending on the date on which the payment of the amount due is made; and (B) computed at the rate specified in ORS 279C.515(2).

Pursuant to ORS 279C.580, Contractor shall include in each of its subcontracts, for the purpose of performance of such contract condition, a provision requiring the subcontractor to include a payment clause and an interest penalty clause in each of its subcontracts and to require each of its subcontractors to include such clauses in their subcontracts with each lower tier subcontractor or supplier. A dispute between a contractor and first-tier subcontractor relating to the amount or entitlement of a first-tier subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract under subsection (3) or (4) of this section (ORS 279C.580), does not constitute a dispute to which the College is a party. The College may not be included as a party in any administrative or judicial proceeding involving such a dispute.

U. *Public works bond; rules*

Subject to ORS 279C.830-279C.836, before starting work on a contract or subcontract for a public works project, a Contractor or subcontractor shall file with the State of Oregon Construction Contractors Board a public works bond with a corporate surety authorized to do business in Oregon in the amount of \$30,000, unless exempt under ORS 279C.836(7) or (8), and Contractor must include in every subcontract a provision requiring the subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836(7) or (8). The bond must provide that the Contractor or subcontractor will pay claims ordered by the Bureau of Labor and Industries to workers performing labor upon public works projects. Before permitting a subcontractor to start work on a public works project, the Contractor shall verify that the subcontractor has filed a public works bond as required.

- V. *Withholding of tax required; elective provisions for agricultural employees; liability of supplier of funds to employer for taxes. (Employee Withholding Payments to Oregon Department of Revenue)*

Each Offeror agrees that if awarded the Contract, it will pay to the Oregon Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

- W. *Employer required to pay compensation and perform other duties; state not authorized to be direct responsibility employer. (Workers Compensation Coverage)*

All Offerors agree that all subject employers working under this Contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

- X. *Material Safety Data Sheet*

Upon request, Contractor shall provide a Material Safety Data Sheet as required by Chapter 437-002-360 (35), 29 CFR 1910.1200, for any item included in this contract which contains hazardous chemicals. This information shall be provided within two (2) days of request (if faxable, within twenty-four (24) hours).

5. Method of Submitting Offers

- A. If required by the Solicitation Document, each Offer shall be accompanied with either a certified or cashiers check, or irrevocable letter of credit issued by an insured institution, payable to Chemeketa Community College, in an amount not less than ten percent of the total bid based upon the estimated quantities of items offered together with all additive alternates, or an Offeror's bond naming Chemeketa Community College as the obligee for not less than ten percent of the total Offer based upon the total amount of the Offer together with all additive alternates.
- B. Each Offer shall be sealed in an opaque (i.e., not transparent) envelope addressed and delivered as follows:

(HAND DELIVERED)
Chemeketa Community College
Attn: Procurement Services/Title of Solicitation Document
4000 Lancaster Drive NE
Building 2, Room 202
Salem, Oregon

(U.S. MAIL DELIVERED)
Chemeketa Community College
Attn: Procurement Services/Title of Solicitation Document
Building 2, Room 202
PO Box 14007
Salem, OR 97309-7070

THE NAME AND ADDRESS OF THE OFFEROR AND TITLE OF THE SOLICITATION DOCUMENT, IDENTICAL IN WORDING TO THAT APPEARING UPON THE COVER OF THE SOLICITATION DOCUMENT, MUST APPEAR ON THE OUTSIDE OF SUCH ENVELOPE.

Offers may be either delivered by hand or sent to the Procurement Services office through U.S. Mail or other available courier services to the address included in the Public Notice and additionally included above in "4.B." of the Instructions to Offerors. The Offeror remains responsible for ensuring that its Offer is received at the time, date, place, and office specified. The College assumes no responsibility for any Offer not so received, regardless of whether the delay is caused by the U.S. Postal Service, the College's postal delivery system (i.e., mail room), or some other act or circumstance. **Offers received after the time specified in the Solicitation Document will not be considered. All Offers received after the specified time will be returned unopened.**

If using an express delivery service, the package must be delivered to the designated building and office and NOT to the College's postal delivery system (i.e., mail room), or Central Receiving facilities. (Packages delivered by express mail services to other locations might not be re-delivered in time to be considered.) Offers are received by the College ONLY between the hours of 8:00 AM and 5:00 PM, Monday through Friday (excluding holidays or college-designated closure days).

- C. Offers shall be submitted on the Offer Response Form contained in the Solicitation Document, attached hereto.
- (1) Unless otherwise indicated, the total amount of the Offer shall be entered in words and figures in the space provided. Where applicable, the unit price of lump sum items, and their extensions, shall be entered in figures in the respective columns provided for each item Offered. All entries shall be typewritten or printed in ink. The signatures of all persons shall be in longhand. Any entry of an amount that appears on the face of the Offer to have involved an erasure, deletion, white-out and/or substitution or other such change or alteration, shall show beside the change of alteration, the initials of the person signing the Offer or his/her authorized designee, and the date of the change of alteration. A failure to comply with this requirement may be cause for disqualification of the Offer.

(2) College reserves the right to reject any and all Offers: to waive any and all informalities not involving price, time, or changes in the Work; to negotiate contract terms with the successful Offeror; and to disregard all nonconforming, nonresponsive, unbalanced, or conditional Offers. College reserves the right to reject the Offer of any Offeror, if College believes that it would not be in the best interest of the project to make an award to that Offeror, whether because the Offer is nonresponsive, or the Offeror is unqualified or of doubtful financial ability, or fails to meet any other pertinent standard or criteria.

- D. The Offer Response Form of the specifications shall be signed with ink or indelible pencil, as follows:
- (1) In the case of an individual Offeror, by such individual Offeror.
- (2) In the case of a partnership, the name of the partnership must appear upon such proposal, and it shall be signed in the name of such partnership by at least one of the partners. In addition to such signatures, the names of all partners shall be stated in such proposal.
- (3) In the case of a corporation, the corporate name shall be subscribed to by the president or other managing officer, and there shall be set forth, under the signature of such officer, the name of the office he/she holds or the capacity in which he/she acts for such corporation.
- E. Offers shall be filed within the time specified in the Solicitation Document. Under no circumstances will an Offer be considered if received after the date and time specified. In determining the exact time, the designated clock will be the date and time-stamp clock located in the Procurement Services office of the Business Services Department, Building 2, Room 202.

- F. Prices entered upon proposal sheets, attached, and submitted, shall represent the Offeror's net price per unit, after all trade, donation, and cash discounts have been deducted.
- (1) No charges will be allowed for handling which includes, but is not limited to, packing, wrapping, bags, containers or reels, etc., unless specifically stated hereon.
- G. For lump sum Offers, in the event of a discrepancy between the Offered amount in writing and that in figures, the written value shall govern.
- H. The Offeror shall assume full responsibility for timely delivery at the location designated for receipt of Offers. While the College shall attempt to make reasonable accommodations (e.g., perform limited crowd control at the time/place for submission of Offers), under no circumstances shall the College be held liable for Offeror's failure to submit its Offer by Closing. Offerors are encouraged to allow additional time for waiting in line(s), obtaining parking passes from Public Safety, finding parking spaces, and familiarizing themselves with the time on the designated clock (i.e., date and time-stamp clock located in the Procurement Services office of the Business Services Department, Building 2, Room 202).
- I. Offers shall not contain any restatement or qualifications of work to be done. No oral, telegraphic, telephonic, electronic, or facsimile bids or modifications will be considered.
- J. In accordance with ORS 279A.055 and 279C.365, Offers will be received by Chemeketa Community College, and will be opened and read at the time and place set forth in the Public Notice. Offerors, or their representative, and other interested persons may be present at the Opening.
- K. No responsibility will be attached to any person or persons for premature opening of an Offer not properly identified. In the event of such accidental opening, the Offer shall be resealed and stored for opening at the correct time, and documentation of the resealing shall be placed in the solicitation file.
- L. Offerors shall use complete sets of Solicitation Documents in preparing their Offers; neither the College, its employees, officers, nor agents shall assume any responsibility for errors, omissions, misinterpretations resulting from the use of incomplete sets of Solicitation Documents.
- M. Offerors shall include applicable federal, state, and local taxes in their Offers and pay for all applicable taxes.
- N. At the conclusion of the selection process, the contents of all Offers will be placed in the public domain and be open to inspection by interested parties (ORS 192.410 to 192.505). Trade secrets or proprietary information that are recognized as such and are protected by law (ORS 646.461 to 646.475, Uniform Trade Secrets Act), may be withheld, if clearly identified as such in the Offer. Pricing information and discounts offered cannot be considered proprietary information.
- O. All opened Offers become the property of the College and will not be returned to the Offeror.
- P. The College will not pay any costs incurred in the preparation and/or submission of Offers, or costs incurred in making necessary studies for the preparation of Offers.

Q. *Price Reductions*

By submitting an Offer in response to this Solicitation Document, Offeror agrees to guarantee that Chemeketa Community College is receiving the lowest price offered by Offeror to any of its other customers for similar services at comparable volumes in a similar geographic area. If at any time during the contract period Offeror offers a lower price to another customer, similar prices must be extended to Chemeketa Community College. If a notification is not made to the College of said price reductions, upon discovery the College shall reserve the right to take any or all of the following actions:

1. Cancel the contract, if it is currently in effect;
2. Determine the amount for which the College was overcharged and submit a request-for-payment from the Offeror/Contractor awarded the Contract to the College, for that amount;
3. Subtract the amount due from Contractor's outstanding invoice(s);
4. Take the necessary steps to collect any performance surety provided on the applicable contract.

R. *Access to Records*

The College, the Secretary of State's Office of the state of Oregon and their duly authorized representatives shall have access to the books, documents, papers, and records of the Contractor, which are directly pertinent to this specific contract for the purpose of making audit, examination, excerpts, and transcripts for a period not less than ten (10) years.

Contractor agrees to maintain books of account and records related to receipt and expenditure of the funds received through this Contract in accordance with Generally Accepted Accounting Principles. The books of account and records must be maintained in sufficient detail to permit College to verify how the Contract funds were expended or utilized. The books of account and records shall include receipts and invoices, as appropriate. Contractor shall retain and keep accessible the books of account and records it is required to maintain under this Contract for a minimum of ten (10) years, or such longer period as may be required by other provisions of this Contract or applicable law, following the later of completion of the Project, the final disbursement of Contract funds hereunder, or termination of this Contract; provided, however, that if there is any audit issue, dispute, claim, or litigation relating to this Contract or the Contract funds, the Contractor shall retain and keep accessible the books of account and records until the audit issue, dispute, claim, or litigation has been finally concluded or resolved. If the Contractor is unable to maintain the books of account and records for this ten-year period, it must notify College immediately.

6. Obtaining Solicitation Documents

- a. Potential Offerors may obtain complete sets of the Solicitation Documents from the issuing office designated in the Public Notice, in the number and for the price, if any, stated therein.
 - (1) The College, in making copies of the Solicitation Documents available on the above terms, does so only for the purpose of obtaining Offers on the work and does not confer a license or grant for any other use.
 - (2) When boring data is provided by Solicitation Documents for construction projects, the Offeror shall assume responsibility for any conclusions Offeror may draw from such data. Offeror may employ its own consultants to analyze available information and to conduct

additional tests and examinations of site conditions and shall be responsible for any conclusions drawn from such information, tests, and examinations. The College does not warrant and specifically disclaims any responsibility for the interpretation by any Offeror of any such data or information.

7. Qualifications of Offerors

- A. Before the Offer is considered for award, the College reserves the right to request the Offeror to complete a Responsible Bidder Determination Form; the College reserves the right to reject the Offer of any Offeror who fails to furnish this information when requested by the College. Offeror's qualifications to be listed upon the Responsible Bidder Determination Form will include as a minimum:
1. A listing of Offeror's previous contracts of similar technical complexity, operations and size to that being currently offered to College;
 2. A listing of Offeror's key staff, including any superintendent, principal in charge, project management and technical employees, and a summary of their relevant experience and length of employment with Offeror;
 3. A summary of Offeror's equipment available for use in the execution of the Contract;
 4. A listing of the projects to which Offeror is currently obligated or anticipates being obligated during this work;
 5. A listing of any projects for which there was an actual or alleged breach of contract on the part of the Offeror;
 6. A listing of any contracts, which were awarded to the Offeror but not completed, including an explanation for lack of completion.
- B. College may make such other investigation as is necessary to determine Offeror's qualifications, including consulting Offeror's references. Any determination that an Offeror is unqualified will be made by the College. A letter will be sent to the Offeror deemed unqualified, stating the reasons for such determination, and the Offeror's right to request a review of this determination by appeal pursuant to ORS 279C.445.
- C. Offeror's representations concerning its qualifications will be construed as a covenant under the Contract. Should it appear the Offeror has made a material misrepresentation, the College shall have the right to terminate the Contract for Contractor's breach, and the College may then pursue such remedies as exist elsewhere under this Contract, or as otherwise provided in law or equity.
- D. *Financial Status*
All Offerors shall make available upon request a current audited financial statement, a current audited financial report, or a copy of a current federal income tax return. Failure or refusal to provide this information within five (5) business days after communication of this request by the College shall be sufficient grounds for the College to reject an Offer, and/or to declare an Offeror as nonresponsive and/or nonresponsible.

If an Offeror is currently involved in an ongoing bankruptcy as a debtor, or in a reorganization, liquidation, or dissolution proceeding, or if a trustee or receiver has been appointed over all or a substantial portion of the property of the Offeror under federal bankruptcy law or any state insolvency law, the Offeror must provide the College with that information as part of its Offer. The College may consider that information during evaluation of the Offer. The College reserves the right to take any action available to it if it discovers a failure to provide such

information to the College in an Offer, including, but not limited to, determination that the Offeror should be declared nonresponsible and/or nonresponsive, and suspension or debarment of the Offeror.

By submitting an Offer in response to this Solicitation Document, the Offeror agrees that, if during the term of any contract it has with the College it becomes involved as a debtor in a bankruptcy proceeding or becomes involved in a reorganization, dissolution or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Offeror under federal bankruptcy law or any state insolvency law, the Offeror will immediately provide the College with a written notice to that effect, and will provide the College with any relevant information it requests to determine whether the Offeror will meet its obligations to the College.

8. Duration, Modification, or Withdrawal of Offer

- A. Each Offer shall be irrevocable for a period of 60 days from date of Opening, unless otherwise indicated.
- B. Award of a contract to any Offeror shall not constitute a rejection of any other Offer.
- C. An Offeror may withdraw its Offer from consideration, if the price Offered was substantially lower than the other Offers due solely to a mistake therein, provided: (1) the Offer was submitted in good faith; and (2) the mistake was a clerical mistake as opposed to a judgment mistake, and; (3) the mistake was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor, or material made directly in the compilation of an Offer, which unintentional error or omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents, and materials used in the preparation of the Offer sought to be withdrawn. The Offeror shall give notice in writing of its claim of right to withdraw its Offer within two (2) business days after the conclusion of the Opening procedure.
- D. Prior to the time and date designated for receipt of Offers, any Offer submitted may be modified or withdrawn by notice to the party receiving Offers, at the place designated for receipt of Offers. Such notice shall be in writing over the signature of the Offeror and shall be received on or before the date and time set for receipt of Offers, and it shall be so worded as not to reveal the amount of the original Offer.
- E. Withdrawn Offers may be resubmitted, up to the time designated for the receipt of the Offers, provided that they are then fully in conformance with these Instructions to Offerors.
- F. Bid security, if required, shall be expressly indicated in the Solicitation Document, and shall be in an amount sufficient for the Offer, as modified or resubmitted.
- G. A decision denying withdrawal of Offer shall be final and conclusive, unless the Offeror appeals the decision to College's Procurement Services office within ten (10) days after receipt of the decision.
- H. If, upon appeal, it is determined that the decision refusing withdrawal of the Offer was arbitrary or capricious, the sole relief shall be withdrawal of the Offer and return of the Bid security.

9. Detailed Offer Breakdown

Upon notification from the College to the successful Offeror, who submitted the apparent lowest responsive Offer, the Offeror shall, within forty-eight (48) hours, provide a detailed breakdown of its Offer in a form acceptable to the College.

10. Contract and Bond

- A. Unless otherwise indicated by the College, within ten days after receipt of notice of award, any Offeror to whom a contract is awarded shall execute a formal written contract and shall furnish a corporate surety bond (if required), in form and with a surety satisfactory to the College, in an amount equal to the full contract sum, for the faithful performance of said contract and all provisions thereof; provided, the formation of said contract shall not be complete and the College shall not be liable thereon until said formal written contract has been executed both by the successful Offeror and by the College, and said performance/payment bonds, properly executed, have been delivered to and accepted by the College.
- B. The certified check, cashiers check, Bid bond or irrevocable letter of credit of the Offeror will be returned, when the contract has been properly executed by the Offeror and the College and the surety bond, properly executed, has been delivered to and accepted by the College. The certified check or Bid bond of each Offeror who was not awarded a contract will be returned immediately after the properly executed contract and bond of the successful Offeror has been delivered to and accepted by the College. The surety bond shall be written by a bonding company authorized and licensed by the Oregon Insurance Commissioner. The bonding company must be listed on the most current U.S. Government Treasury list, Department Circular 570, or approved prior to edition, or the edition which is included in the project manual. The attorney-in-fact who executes the bond on behalf of the surety shall affix to the bond a certified copy of the power of attorney.
- C. Any Offeror or Offerors to whom a contract is awarded and who shall default in executing said formal written contract or in furnishing a satisfactory surety bond within the time and in the manner required by these Instructions to Offerors shall forfeit its bid security as liquidated damages and not as a penalty pursuant to ORS 279C.385, for failure to execute the contract and bond, and shall also be liable to the College for the College's expenses and attorney's fees incidental thereto, and also for whatever expenses and attorney's fees may be incurred by the College in recovering the same. The subsequent re-awarding of the contract to another Offeror or Offerors, whether by a single action or by successive actions, shall not operate to release any defaulting Offeror from said liability.
- D. *Performance/Payment Bonds*
If required by the College, prior to the issuance of a Notice to Proceed, the Contractor shall provide the College with Bonds covering the faithful performance/payment of the contract, including payments of all obligations under the contract. The premium shall be paid by the Contractor. The bonding must be listed on the most current US Government Treasury list, Department Circular 570 or approved PRIOR TO BID SUBMISSION by the College. The amount of the bond shall be equal to 100 percent of the contract sum. Failure to adhere to these requirements may be grounds for rejection of the bid.
- E. *Award of Contract*
The successful Offeror shall enter into a Contract as it is defined in the Solicitation Document. After the College determines that a Contract is to be awarded, it will award the Contract to

either: 1) the Lowest Responsible Bidder, whose Bid is determined by the aggregate amount of the Base Bid, plus or minus any alternatives selected by the College; or 2) the Responsible Proposer whose Proposal has been determined, in writing, to be the most advantageous to the College based on the evaluation process and evaluation factors described in the Request for Proposals (ORS 279B.060).

- (1) No exception to delivery dates shall be allowed unless prior written approval is first obtained from the Procurement Services office. The College reserves the right to cancel any undelivered portion of this order.
- (2) Time of delivery is of the essence, and the College reserves the right to cancel any undelivered portion of this order for failure by the Contractor to deliver on time. Contractor assumes responsibility of delay notwithstanding the cause.
- (3) All payments to the contract shall be remitted by mail. The College shall not honor drafts, nor accept goods on sight draft basis. Furthermore, the provisions or monies due under this contract shall not be assignable.
 - (a) The College's payment terms are Net 30, unless otherwise specified.
- (4) Unless otherwise specified hereon, all goods are to be shipped *prepaid, FOB destination, freight prepaid*. Where specific authorization is granted to ship goods *FOB shipping point*, Contractor agrees to prepay all shipping charges, route cheapest common carrier, insure goods for the entire value of replacement cost, and to bill the College as a separate item on the invoice for said charges. Each invoice for shipping shall include the original or a copy of the bill indicating that the payment for shipping has been made.
- (5) All goods or materials purchased herein are subject to the approval of the College. Any rejections of goods or materials, whether held by the College or returned, will be at the Contractor's risk and expense.
- (6) All invoices, packing lists, packages, shipping notices and any other written document affecting this contract shall contain the applicable purchase order number, contract number, or number of a similar acquisition instrument; packing list(s) shall show the applicable number.
- (7) The Contractor agrees to protect the College against all claims, suits, or proceedings for patent, trademark, copyright, or franchise infringement arising from the purchase, installation or use of the goods, materials, and/or intellectual property rights purchased herein. The Contractor further agrees to assume all expenses and damages arising from such claims, suits, or proceedings.
- (8) Contractor agrees that the waiver, acceptance, or failure by the College to enforce any provisions, terms, or conditions of this contract shall not operate or be construed as a waiver of prior or subsequent breaches or the right of the College thereafter to enforce such provisions.
- (9) The Contractor warrants all articles supplied under this Contract to conform to specifications herein, to be fit and sufficient for the purposes manufactured, merchantable, of good material and workmanship, and free from defects.

- (10) In the event that the College is entitled to a cash discount, the period for computation shall commence on the date of delivery, or receipt of correctly completed invoices, whichever is *later*. If an adjustment in payment is necessary due to damage, the cash discount period shall commence on the date final approval for payment is authorized.
- (11) Contractor warrants and represents that all the goods and materials contained herein are free and clear of all liens, claims, or encumbrances of any kind whatsoever.
- (12) Contractor agrees to bear all risks of loss, injury, or destruction of goods and materials ordered hereon which occur prior to delivery and such loss, injury or destruction shall not release Contractor from any obligation hereunder.
- (13) In the event of a breach by the Contractor of any of the provisions of the Contract, the College reserves the right to cancel and to terminate this contract forthwith upon giving oral or written notice to the Contractor.
- (14) Contractor agrees to accept for credit, repair, or replacement, at no charge, any items received defective by the College or proven defective during the agreed warranty period and to be responsible for ALL transportation costs for return to the Contractor, and when repaired or replaced, returned to the College.
- (15) If the Contractor is performing work or services on behalf of the College, the Contractor shall provide and maintain the following insurance coverages for the duration of the project and for the applicable statute of limitation and statute of repose.

A.) **Worker's Compensation Coverage** (per ORS Statute), for its employees, officers, agents or partners, or to any subject worker.

B.) **General Liability Insurance** – An occurrence policy with minimum limits of:

\$1,000,000 General Aggregate
\$1,000,000 Products Completed Operations Aggregate
\$1,000,000 Personal Injury and Advertising Injury
\$1,000,000 per Occurrence

C.) **Automobile Liability** – combined single limits not less than \$1,000,000, applying to “any auto.”

D.) **Pollution Liability** (Applies if work involves hazardous materials) – an Occurrence policy with minimum limits of \$1,000,000 per Occurrence and \$1,000,000 policy aggregate.

Additional Insured – except for Worker's Compensation, the above mentioned policies shall be endorsed to name the College as a primary additional insured, with any insurance or retention held by the College shall be excess and non-contributory. The General Liability additional insurance must apply to ongoing and completed operations. The additional insured endorsement must be attached to the insurance certificate.

Waiver of Subrogation – Contract must provide a waiver of subrogation in favor of the College for all policies listed above. The waiver of subrogations must be attached to the insurance certificate.

Evidence of Insurance

Evidence of the above coverage issued by a company satisfactory to the College shall be approved by the College by way of Certificate of Insurance before any work or services commence. A 30-day written Notice of Cancellation or material change of coverage clause shall be included. Failure to maintain the proper insurance shall be grounds for immediate termination of this Contract.

However, in the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following descending order of precedence:

1. Contract amendments and Change Orders, with those of later date having precedence over those of an earlier date;
2. The Supplemental General Conditions;
3. The Chemeketa Community College Public Improvement Agreement Form, or Chemeketa Community College Public Works Improvement Agreement Form;
4. The General Conditions;
5. The Plans and Specifications;
6. The Solicitation Document and any addenda thereto;
7. The accepted Offer.

(16) Termination for Convenience

Unless otherwise expressly indicated by the College, this agreement may be terminated by the College upon 10-day's notice, in writing, and delivered by mail or in person. Any such termination of this agreement shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

(17) Pursuant to Oregon Revised Statute, Chapter 279A.205 and ORS 279A.215, governing permissive cooperative procurements, any agency of the State of Oregon or any political subdivision thereof (city, county, district, agency or similar entity), shall have the authority to purchase the herein specified goods/services directly from the contractor(s) awarded contract(s) from this solicitation at the same discount as identified on the Offeror's Response form. Any ordering and billing shall take place directly between contractor(s) and such public agencies.

(18) The Contractor shall have the option of declining participation in any such agreement; that is, Contractor participation in provision of goods/services resulting from intergovernmental agreements shall be voluntary. If the Contractor chooses to participate in such agreements, all agency relationships, including those for contract administration, ordering, deliveries, approvals, billing and collections shall be between the Participating Agency and the Contractor; the College, except for its enabling agreement, shall not participate in any aspects of commercial activity or contract administration between the Contractor and the Participating Agency.

(19) If Contractor agrees to participate, all such participation shall be on the basis of this solicitation and the resulting award except that reasonable changes in pricing and terms may be negotiated directly between the Participating Agency and the Contractor to accommodate differences in delivery distances and local conditions. All such changes shall be solely between the Contractor and the Participating Agency.

F. The Lowest Responsible Offeror is determined by the aggregate amount of the Base Bid or Proposal, plus or minus any Alternatives selected by the College or Project Manager.

11. Conflict of Interest

- A. No officer, agent, or employee of the College shall be permitted any interest in the contract. The College may, by written notice to the Contractor, cancel the contract if it is found by the College that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer, agent or otherwise (irrespective of whether the person is compensated for services by the College), or employee of Chemeketa Community College with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract.
- B. At the discretion of the Chief Financial Officer or her/his designee, employees declaring a conflict of interest—perceived or otherwise, may be ineligible to participate in the bidding and contracting process; the Chief Financial Officer or her/his designee, shall review the facts and render a written decision. Alternatively, Offerors having knowledge of a conflict of interest—apparent or otherwise—of the College’s employee(s), shall be required to submit this information prior to the Closing of the Solicitation Document’s protest period. Failure to do so will nullify Offeror’s right to protest the award of the contract or intent-to-award the contract on the basis of a conflict of interest.

12. Prohibited Conduct

- A. Officials not to benefit. No person submitting an Offer and no person on behalf of an Offeror shall give or promise anything of value to any person who is a public official, an employee of the College, a member of its governing body, or a member of any evaluation committee to obtain information or to influence or attempt to influence the decision of that person on anything pertaining to this Solicitation Document or any subsequent Contract or subcontract. “Thing of value” includes not only direct gifts or payment but the conferring of a benefit on any such person, person’s relative or other person or entity for purpose of influencing the public official.
- B. Kickbacks prohibited. No person being an Offeror under this Solicitation Document or a bidder or proposer on any subsequent Contract or an officer, employee or agent of either shall require any kickback, fee, rebate, deduction or payment from any person to be considered as an employee, subcontractor, supplier, service provider or consultant unless the requirement be authorized by law and the amount duly recorded and paid over to the College or the person or entity entitled to receive it.
- C. Contingent fees prohibited. No Offeror shall pay or give to any person or entity anything of value for work done on or in connection with the response to this Solicitation Document contingent upon the Offeror being selected to proceed to the second step of this procurement. This prohibition does not prohibit the payment of a bonus to an employee of the Offeror under

a preexisting bonus plan and formula nor does it prohibit the Offeror from engaging services to be performed in the future on a bid or proposal or a contract awarded the performance of which services are contingent upon the Offeror's success.

Submission of an Offer is a representation by the Offeror that the Offeror has not and will not engage in the conduct prohibited.

13. Reservations

The Board of Education of Chemeketa Community College expressly reserves the following rights:

- A. To reject any or all Offers for good cause upon finding that it is in the public interest to do so, or to waive any minor informalities or irregularities of the Offer.
- B. To reject any Offer or Offers not in compliance with all prescribed public contracting procedures and requirements.
- C. To consider the competency and responsibility of Offerors in making any award.
- D. In the event two or more Offers are for the same amount and for the same work, to award the contract by lot.
- E. In the event any Offeror or Offerors to whom a contract is awarded shall default in executing said formal Contract or in furnishing a satisfactory performance and payment bond within the time and in the manner specified, to re-award the contract to another Offeror or Offerors.

14. Acceptance of Conditions

Each Offeror, by the submission of its Offer, assents to each and every term and condition set forth anywhere in the Contract documents and agrees to be bound thereby.

- A. Each Offeror must acquaint itself thoroughly as to the character and nature of the Work to be done and the conditions under which the Work will be performed. Each Offeror, furthermore, must make a careful examination of the site of the Work and inform itself fully as to the difficulties to be encountered in the performance of the Work, the facilities for delivering, storing and placing materials and equipment, existing and available services and utilities, environmental and access constraints, permit requirements and other conditions as relating to construction and labor.
- B. No plea of ignorance of conditions that exist or may hereafter exist on the site of the Work, or difficulties that may be encountered in the execution of the Work, as a result of failures to make necessary investigations and examinations, will be accepted as an excuse for any failure or omission on the part of the successful Offeror to fulfill in every detail all the requirements of the Contract documents and to complete the Work for the consideration set forth herein, or as a basis for any claim whatsoever.
- C. Insofar as possible, the successful Offeror, in carrying out its work, must employ such methods or means as will not cause interruption of or interference with the Work of the College or any separate Contractor.

- D. If the Contract includes excavation on an unclassified basis, the cost of all excavation and backfill required under this Contract is a part of the Base Bid/Offer. No distinction will be made insofar as payment is concerned between earth and rock.
- E. The apparent silence of the Solicitation Document's specifications and/or supplemental specifications as to any detail, or the apparent omission of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and that only materials and workmanship of first quality are to be used.
 - 1. However, if any omitted specification results in ambiguity as to material characteristics of the item being solicited by the College, and clarification is necessary to enable a reasonable Offeror in the particular industry to properly identify such characteristics, Offeror shall seek a formal request for clarification as set forth in section marked "Protest Process." Failure to make such a request is at Offeror's risk, and the Offeror awarded the resultant contract shall be required to provide goods meeting the College's needs with regard to any omitted specification for which clarification was not sought.
 - 2. The Offeror awarded the contract shall provide all components, hardware, and parts necessary for proper assembly, installation, and operation, even though certain items may not be specifically described in the Solicitation Document's specifications. This includes all fittings, couplers, brackets, adapters, etcetera. Offeror shall include the cost of such components, hardware, and parts in the Offer.

15. Bid Results

After Solicitation Documents have been opened and Offers have been evaluated, information regarding Contract award or intent-to-award may be obtained by telephoning the Procurement Services office or by accessing the College's Procurement Services website at <http://www.chemeketa.edu/busprofession/procurementservices/bidresults/>.

16. Protest Process

A. *Protest of Solicitation Document Specifications or Contract Terms (i.e., Request for Clarification or Change)*

- 1. Time for Submission of Protest: Unless otherwise indicated herein, any objections to or comments about the Solicitation Document's specifications, contract terms, and/or conditions must be submitted, in writing, to the Chemeketa Community College Procurement Services office no later than ten (10) calendar days prior to Closing of the Solicitation Document.

Such protest or request for change shall include the reasons for protest or request, and any proposed changes to specifications or terms. No protest against award because of the content of Solicitation Document specifications, contract terms, and/or conditions shall be considered after the deadline established for submitting such protest.

- 2. Extension of Opening Date: If any Solicitation Document specification protest is received in accordance with section (1) above, the Solicitation Document Opening date may be extended, if the College finds an extension is necessary to allow consideration of the protest and issuance of any addenda to the Solicitation Document.

3. Identification of Protest: Envelopes containing protests of Solicitation Document specifications, contract terms, and/or conditions shall be marked as follows:

“Contract Provision Request for Change.”

Name of Solicitation Document

B. *Protest of Award*

1. Right to Protest: Any actual Offeror who is adversely affected or aggrieved by the College’s “Notice of Award,” “Recommendation for Award” or “Intent to Award” of the Contract to another Offeror on the same solicitation, shall have five (5) working days or seven (7) calendar days, whichever is later, after the date appearing on the “Notice of Award,” “Recommendation for Award,” or “Notice of Intent to Award” to submit to the College a written protest. The written protest shall specify the grounds upon which the protest is based, including the specific citation of law, rule, regulation, or procedure upon which the protest is based. In order to be an adversely affected or aggrieved Offeror with a right to submit a written protest, an Offeror must itself claim to be next in line for award, i.e. the protester must claim that *all* lower Offerors are ineligible for award because they are non-responsive or non-responsible. The College shall not entertain a protest submitted after the time period established by this Article.

The person to whom Offers are submitted on behalf of the Chemeketa Community College Procurement Services office and is named in the Public Notice (if applicable), will review any written protest received and make the Initial Determination and Findings, which will be communicated to the protester in writing within three (3) working days of the College’s receipt of the protest. Failure to protest the College’s “Notice of Award,” “Recommendation for Award” or “Intent to Award” the Contract shall be considered the Offeror’s failure to pursue an administrative remedy made available to the Offeror by the College.

The Initial Determination and Findings shall constitute the College’s Final Decision and Order, unless the protester, within five (5) calendar days of the Initial Determination and Findings files an appeal with the College’s Board of Education, through the Chief Financial Officer, unless otherwise designated in the solicitation document (Request for Quotation, Request for Proposal, or similar method of competitive solicitation).

2. Notice to Proceed: The written Notice to Proceed of the contract, shall constitute a Final Decision and Order of the College to award the contract if no written protest after the “Notice of Award,” “Recommendation for Award,” or “Intent to Award” is filed with the College’s Procurement Services office within five (5) working days or seven (7) calendar days, whichever is later, of the “Notice of Award,” “Recommendation for Award,” or “Intent to Award.”
3. Authority to Resolve Protests: The College’s Board of Education shall have the authority to settle or resolve a written protest submitted, in accordance with the requirements of this Section.
4. Decision: If appeal of the Initial Determination and Findings is timely filed, the College’s Board of Education shall review the Protest, and the Board’s determination shall constitute the College’s Final Decision and Order on the protest.

C. *Protest Process Period/Calendar Days*

If a period in this protest process ends in a Saturday, Sunday, other Legal holiday, or College designated closure day, it shall be deemed extended through the next following business day.

17. Offeror's Questions, Addenda, Unforeseen Closures, Substitutions

- A. Offerors and/or sub-Offerors shall promptly notify the College, through the design professional identified in the Public Notice, or the Purchasing Management Analyst if a design professional is not identified in the Public Notice, of any ambiguity, inconsistency or error which they may discover upon examination of the Solicitation Documents or of the site and local conditions. No interpretation of the meaning of the drawings, specifications, or portions of the Solicitation Documents will be made to any Offeror orally. Neither the College nor the design professional will be responsible for any other explanations or interpretations of the proposed documents.
- B. Any necessary corrections will be made in the form of formal addenda; if such corrections/changes are issued, an acknowledgement of receipt of addenda must be noted either with submission of the Offer or separately prior to the opening of the Offer(s). All addenda, with the exception of addenda to the Closing date and time, will be issued not less than 72 hours before the specified Closing date and time. Addenda specifically related to the Closing date and time may be issued with less than 72 hours notice. Failure of any Offeror to receive any such addenda or interpretation shall not relieve the Offeror from any obligation under its Offer as submitted.
- C. If the Offeror (or any person submitting an Offer to the Offeror and/or subsequently in contact with the Offeror, relating to the subject project) knows, or should have known, that an ambiguity, discrepancy, error, omission or conflicting statement exists in the Solicitation Document, said Offeror has an obligation to seek a clarification thereof from the Architect/Engineer, or the Purchasing Management Analyst if a design professional is not identified in the Public Notice, prior to the Closing of the Solicitation. The College will welcome such a clarification request, and, if deemed necessary by the College, the design professional or Purchasing Management Analyst will issue a written addendum on behalf of the College's Procurement Services office clarifying the matter in question.
- D. In the event the College is closed due to unforeseen circumstances such as, but not limited to, inclement weather, power outages, and/or acts of God, all prospective Offerors known to have obtained the Solicitation Document will be notified by telephone as soon as possible of a revised Closing date and time, followed by a written addendum.

18. Affirmative Employment Practices

- A. Pursuant to the equal opportunity and affirmative action provisions of Section 202 of Executive Order 11246, Section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964, the Age Discrimination Act, and the Americans with Disabilities Act of 1990, the Americans with Disability Act Amendment of 2008, and amendments thereto, to the extent the same are applicable to the manufacture and/or sale of the goods purchased hereunder, or the contracting and/or subcontracting of services or work hereunder, the Offeror agrees not to discriminate against or harrass any client, employee, or applicant for employment or for services, because of race, religion, color, sex, age, national origin, ethnic origin, sexual orientation, gender identity, marital status, citizenship status, pregnancy and related conditions, family relationship, veteran's status, disabilities, tobacco usage during work hours, whistle blowing, victim of domestic violence and genetic information in any educational

programs, activities or employment with regard to, but not limited to, the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; selection for training; rendition of services. It is further understood that any Offeror who is in violation of this clause may be barred forthwith from receiving awards of any purchase order, purchase agreement, Contract, or similar acquisition instrument, from the College unless a satisfactory showing is made that discriminatory practices have terminated and that a recurrence of such acts is unlikely.

Persons having questions about equal opportunity/affirmative action should contact the Affirmative Action Officer at 4000 Lancaster Drive NE, Salem, Oregon 97309-7070, or call 503.399.4784. To request this publication in an alternative format, please call 503.399.5192.

19. Subcontractors

- A. All Subcontractors proposed for the Work must be acceptable to the College.
- B. Contractor shall comply with ORS 279C.580.
- C. The College reserves the right to request the proposed Subcontractor(s) to complete an Offeror Qualification Form. This form will be similar to those required of an Offeror under these Instructions to Offerors.
- D. The Contractor shall require all Subcontractors to provide and maintain general liability, automobile liability, professional liability (if applicable), and workers' compensation insurance for the coverage equivalent to those required of the general contractor. The Contractor shall require Certificates of Insurance from all subcontractors as evidence of coverage.

20. Prevailing Wage Rates

When Prevailing Wage Rates for public works established by the State of Oregon, Bureau of Labor and Industries are cited or contained herein, they are required to be incorporated as a portion of the Offer provided in response to this Solicitation Document.

21. Nonassignability

Once a Contract has been entered into between the successful Offeror and the College, the contract shall not be transferable to another contractor or subcontractor without the full and written consent of the College. The original Contractor's responsibility for the performance of the Contract shall remain, even if the College should agree to the assignment of a subcontractor.

22. Noninterference with College Operations

The entire work shall be executed in such a manner as to not interfere with the continued free and comfortable use of existing structures, walks, and/or grounds for College purposes.

- A. At the time of completion of the Work, the Contractor shall remove all rubbish in and about the building, and all his/her tools, scaffolding, and surplus materials and shall leave his/her work "broom clean." In case of failure to do so, the College may remove the rubbish and charge the cost to the Contractor.

23. Use of College Facilities/Resources

To ensure equitability and fairness to all Offerors, the use of College facilities and/or resources for preparation of Offer(s) is limited to those facilities and/or resources available and accessible to the general public (e.g. pay telephones, restrooms, public access/meeting areas).

24. Gratuities/Gifts

The College may, by written notice to the Contractor, cancel this Contract if it is found by the College that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer, agent or otherwise (irrespective of whether the person is compensated for services by the College), or employee or agent of Chemeketa Community College. In the event this contract is canceled by the College pursuant to this provision, the College shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of this cost incurred by the Contractor in providing such gratuities/gifts.

25. Cancellation for Lack of Funding

The Contract awarded as a result of this Solicitation Document may be cancelled without any further obligation on the part of Chemeketa Community College, its officers, directors, and employees in the event that sufficient appropriated funding is unavailable to assure full performance of its terms. The successful Offeror shall be notified in writing of such non-appropriation at the earliest opportunity.

26. Independent Contractor Status

The service or services to be rendered under this Contract are those of an independent contractor. Contractor is not an officer, employee, or agent of Chemeketa Community College as those terms are used in ORS 30.265.

Successful Offeror agrees that it is an independent contractor as defined by ORS 701.025 and not an agent or employee of the College. Successful Offeror agrees to defend, indemnify, and hold the College harmless from and against any and all claims, demands, and causes of action of any kind or character arising in favor of any person, on account of personal injuries, or death, or damage to property occurring, growing out of, incident to, or resulting directly or individually from, the operations or activities of the successful Offeror, its employees, or sub-contractors and to pay all claims, damages, legal costs or other expense or liability related thereto.

27. Equipment and Materials (Construction)

Successful Offeror shall be responsible for any loss, damage or destruction of its own property, equipment, and/or materials used in conjunction with the Work.

28. Professional Services (Lawyers, Design Professionals, Physicians, etc.)

If this Contract is deemed to be a "Professional Services Contract," the Contractor shall maintain professional liability insurance for errors and omissions including personal injury. If coverage is written on a Claims Made Form, the successful Offeror shall: maintain insurance policy for a duration of three (3) years for projects valued \$1 million or less, and five (5) years for projects valued over \$1 million or the maximum time period available to the Contractor in the marketplace,

if this is less than the required time period based on project size. Any deductible shall not exceed \$50,000 per claim.

29. Hold Harmless and Indemnification Clause

Successful Offeror shall indemnify, defend and hold harmless Chemeketa Community College, its officers, agents, board members, volunteers, and employees from any claims, actions, liability or cost, including attorneys' fees and/or cost of defense arising out of or in any way relating to the Work performed under this agreement, and arising from the sole or joint negligence of the successful Offeror, except to the extent otherwise void under ORS 30.140.

30. Waivers or Exceptions

Any exceptions or waivers to these requirements shall be subject to review and approval by the College, in writing.

31. Official Notice

All official notices shall be mailed to the Chief Financial Officer, Chemeketa Community College, PO Box 14007, Salem, Oregon 97309.

32. Insurance Carrier

The College shall have the right to approve all insurers under this Contract. The College reserves the right to reject any or all insurance companies with an unacceptable financial rating.

33. Laws Governing

Contract(s) and/or disputes arising out of the Solicitation Document and/or Contract Documents shall be governed by and construed according to the laws of the State of Oregon. Venue for any action related to this agreement shall be in the Circuit Court for the County of Marion, Oregon; provided, however, if the claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. Contractor hereby consents to the *in personam* jurisdiction of said courts.

Chemeketa Community College prohibits unlawful discrimination based on race, color, religion, national origin, sex, marital status, disability, protected veteran status, age, gender, gender identity, sexual orientation, pregnancy, whistleblowing, genetic information, domestic abuse victim, or any other status protected by federal, state, or local law in any area, activity or operation of the College. The College also prohibits retaliation against an individual for engaging in activity protected under this policy, and interfering with rights or privileges granted under federal, state or local laws.

Under College policies, equal opportunity for employment, admission, and participation in the College's programs, services, and activities will be extended to all persons, and the College will promote equal opportunity and treatment through application of its policies and other College efforts designed for that purpose.

Persons having questions or concerns about Title IX, which includes gender based discrimination, sexual harassment, sexual violence, interpersonal violence, and stalking, contact the Title IX coordinator at 503.365.4723, 4000 Lancaster Dr. NE, Salem, OR 97305, or <http://go.chemeketa.edu/titleix>. Individuals may also contact the U.S. Department of Education, Office for Civil Rights (OCR), 810 3rd Avenue #750, Seattle, WA 98104, 206.607.1600. Equal Employment Opportunity or Affirmative Action should contact the Affirmative Action Officer at 503.399.2537, 4000 Lancaster Dr NE, Salem OR 97305.

To request this publication in an alternative format, please call 503.399.5192.