



METRO

PEOPLE PLACES

OPEN SPACES

RFB 10-1564

**REQUEST FOR BIDS
FOR
THE PROVISION OF DIESEL FUEL**

Metro Parks & Environmental Services

600 N.E. Grand Avenue
PORTLAND, OR 97232
(503) 797-1700

Project Manager:

Chuck Geyer
Principal Planner- Parks & Environmental Services
(503) 797-1691
chuck.geyer@oregonmetro.gov

Procurement Analyst:

Karen Slusarenko, CPPB
Procurement Services
(503) 797-1809
karen.slusarenko@oregonmetro.gov

Notice is hereby given that bids for **RFB 10-1564** for: Provision of Diesel Fuel shall be received by Metro, 600 N.E. Grand Avenue, Portland OR 97232 until 2:00 p.m., May 19, 2010. It is the sole responsibility of the bidder to ensure that Metro receives the Bid by the specified date and time. All late Bids shall be rejected. BIDDERS SHALL REVIEW ALL INSTRUCTIONS AND CONTRACT TERMS AND CONDITIONS.

Request for bids (RFB)

Metro is requesting bids for a non-exclusive contract annually supplying approximately 900,000 gallons of No. 2, ultra low sulfur branded B-5 diesel fuel over a five-year period beginning July 1, 2010 at a commercial cardlock located or within one (1) mile of the travel route used by Metro's solid waste transport services provider.

Potential bidders may obtain bid documents by contacting the Parks and Environmental Services Center at (503) 797-1691 or by visiting "Doing Business" on the Metro website (www.oregonmetro.gov). Sealed bids must be clearly marked "RFB 10-1564" and delivered to the following address no later than 2:00 PM on May 19, 2010 at which time they will be publicly opened and read aloud:

Metro Procurement Services
Attn: Karen Slusarenko, CPPB
600 NE Grand Avenue
Portland, Oregon 97232-2736

All bids must conform to the INSTRUCTIONS TO BIDDERS and be complete including the use of any required forms. Metro may accept or reject any or all bids, in whole or in part, or waive irregularities not affecting substantial rights if such action is deemed in the public interest.

Metro and its contractors will not discriminate against any person(s), employee or applicant for employment based on race, color, religion, sex, national origin, age, marital status, familial status, gender identity, sexual orientation, disability for which a reasonable accommodation can be made, or any other status protected by law. Metro fully complies with Title VI of the Civil Rights Act of 1964 and related statutes and regulations in all programs and activities. For more information, or to obtain a Title VI Complaint Form, see www.oregonmetro.gov. Metro also complies with Section V of the Rehabilitation Act of 1973, the provisions of the Americans with Disabilities Act of 1990 and the provisions of ORS 659A.142, together with all related regulations.

Metro extends equal opportunity to all persons and specifically encourages minority and women-owned businesses to access and participate in this and all Metro projects, programs and services.

Request for bids (RFB)

INSTRUCTIONS TO BIDDERS

REQUEST FOR BIDS

Metro is requesting bids for a non-exclusive contract that will annually supply approximately 900,000 gallons of No. 2, ultra low sulfur branded B-5 diesel fuel over a 60-month period by means of a commercial cardlock operation located within one (1) mile of the travel route used by Metro's solid waste transport service provider. A map of the route used by Metro's solid waste transport service provider is included in the Appendix to this Request for Bids.

Bids must be enclosed in a sealed envelope clearly marked "RFB 10-1564" and mailed or delivered to Metro Procurement Services, 600 NE Grand, Portland, Oregon 97232-2736, Attention, Karen Slusarenko, no later than 2:00 p.m., May 19, 2010, when they will be publicly opened and read aloud. Bids may not be submitted by facsimile or email.

The outside of the envelope shall plainly identify the subject of the Bid, the opening date, and the Bid number.

All bids must be clearly and distinctly typed or written with ink or indelible pencil. All blank spaces must be completed. No erasures are permitted. Mistakes must be crossed out and corrections typewritten or written in ink adjacent thereto, and initialed in ink by the party signing the Bid, or his authorized representative.

Written amounts shall be shown in both words and figures. Words shall govern in cases of discrepancy between the amounts stated in words and the amounts stated in figures.

All bids must be submitted on the Bid Pricing Form furnished by Metro or they may be rejected. The Bid Pricing Form shall be accompanied by sufficient documentation (including, but not limited to photographs, maps, diagrams and digital or digitally produced information) to document and verify that the bidder's proposed fuel site complies with all of the site characteristics required in the Scope of Work attached to this Procurement. Metro shall solely determine whether the proposed site is compliant and reserves the right to reject a bid Metro determines to be non-responsive.

BACKGROUND/HISTORY OF PROJECT

In 1991, Metro began transporting solid waste generated in the region to the Columbia Ridge Landfill located in Gilliam County, Oregon approximately 150 miles east of Portland, Oregon. In 2008, Metro entered into a contract with Walsh Trucking Co., LTD to provide this transport service through 2019. Effective January 1, 2010, the firm is required to utilize fuel with a 5% biodiesel content. The contract also requires that Metro provide fuel in a manner consistent with several parameters which have been incorporated into the scope of work.

Loads of waste to be transported are prepared at Metro transfer stations by compactors. In fiscal year 2008-09, 15,815 loads of waste were transported from the transfer stations to the Columbia Ridge Landfill. Beginning at the start of this fuel contract (July 1, 2010) the transport contractor will have in place the equipment depicted in the attached drawing which should average payloads approximating 34 tons.

Request for bids (RFB)

The typical driver transports two loads per day beginning at the landfill. Several tractors are based in the Metro area, the rest are based at the landfill.

Walsh Trucking utilizes approximately 25 tractors and 110 trailers. A drawing of the tractor and trailer is contained in the Appendix.

The original waste transport contract provided that the waste transport contractor purchase all the fuel to be used in performance of the work. In April 1994, Metro began to purchase the fuel used by the transport contractor for its over-the-road vehicles through a modification of the contract. Metro proposed this modification to realize substantial cost savings. These cost savings are incurred because Metro is a political subdivision of the state of Oregon and as such is exempt from payment of federal fuel excise taxes.

In the fiscal year ending June 2009, Metro purchased 937,220.39 gallons of fuel for use by its transport contractor. About 95% of the fuel was purchased from a cardlock located in Gilliam County, Oregon. The remaining amount was purchased from cardlocks in other Metro area locations.

Because the cardlocks currently in use also supply fuel to customers who must pay the federal excise tax, the cardlock user must pay the excise tax on Metro fuel when purchased from a terminal and request a refund of the tax from the federal government. The vendor must therefore be a "registered ultimate vendor" under IRS rules and comply with all IRS rules.

While fuel has been, and still must be in the future, available on a 24 hour, seven day a week basis, most of the fuel purchases occur during the weekday. No. 2 Ultralow sulfur B-5 diesel fuel is used exclusively, except when weather conditions require "winterizing" to achieve the appropriate viscosity of fuel, or if state or federal law (or the Metro Solid Waste Transport Agreement) requires use of a different fuel. Should this occur, the Contractor shall supply the appropriate fuel required and the appropriate index shall be substituted. The change shall be documented in a letter between the parties.

The current agreement for the provision of fuel expires June 30, 2010. This RFB is intended to result in replacement agreements taking effect on July 1, 2010 and continuing until June 30, 2015.

COST OF BID

This invitation to Bid does not commit Metro to pay any costs incurred by any Bidder in the submission of a bid, or in making necessary studies or designs for the preparation thereof, or for procuring or contracting for the items to be furnished under the invitation to bid.

ERRORS / OMISSIONS

Any Bid may be deemed non-responsive by the Procurement Officer if it is: Not on the Bid forms provided; contains errors or omissions, erasures, alterations, or additions of any kind; proposes prices which are unsolicited or obviously unbalanced; or not in complete conformance with any and all conditions of the bidding documents, including but not limited to the requirements of the Scope of Work, as determined at the sole discretion of Metro.

Request for bids (RFB)

ADDENDA TO PLANS OR SPECIFICATIONS

Requests for additional information or interpretation of the contract documents shall be delivered to the Project Manager, in writing, at least five (5) business days prior to the Bid opening date and time. If, in the opinion of the Project Manager, additional information or interpretation is needed by the Bidders, an addendum will be issued to all known specification holders. The provisions of any written addenda issued by the Procurement Officer or Project Manager at least seventy two (72) hours prior to the Bid opening date and time shall be binding upon the Bidders, and failure of a Bidder to obtain such addenda shall not excuse compliance therewith by the successful bidder.

MODIFICATION OF BID

An offer to modify the bid which is received from the successful Bidder after award of contract which makes the terms of the Bid more favorable or advantageous to Metro will be considered, and may thereafter be accepted. To be effective, every modification must be made in writing over the signature of the Bidder.

WITHDRAWAL OF BIDS

A Bidder may withdraw its bid by written request which are received prior to the scheduled closing time for filing Bids. Negligence on the part of the Bidder in preparing his or her bid confers no right to withdraw the bid after the scheduled closing time for filing Bids.

LATE BID

Bids received after the scheduled closing time for filing Bids will be returned to the Bidder unopened, unless such closing time is extended by Metro.

EXECUTION

Each Bid shall give the Bidder's full business address and bear its legal signature.

Bids by partnerships must list the full name of all partners and be signed by a partner or agent authorized to execute the contract on behalf of the partnership and identified by printed name and title.

Bids by corporations must bear the legal name of the corporation, the name of the state of incorporation, and the signature of the officer or agent authorized to legally bind the corporation.

Upon request by Metro, satisfactory evidence of the authority of the partner or officer shall be furnished.

If an agent who is not an officer of the corporation or a member of the partnership signs the Bid, a notarized Power of Attorney must be on file with Metro prior to the opening of Bids or be submitted with the Bid. Without such notice of authority, the Bid shall be considered improperly executed, defective and therefore nonresponsive.

Request for bids (RFB)

A Bid submitted by a joint venture must include a certified copy of the terms and conditions of the agreement creating the joint venture.

EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE OF WORK

It is understood that the Bidder, before submitting a Bid, has made a careful examination of the plans, specifications, and contract; that it has fully informed itself as to the quality and quantity of materials and the character of the work required; and that it has made a careful examination of the location and condition of the work and the sources of supply for materials.

COMPLIANCE

Each Bidder shall inform itself of, and the Bidder awarded a contract shall comply with, federal, state, and local laws, statutes, and ordinances relative to the execution of the work. This requirement includes, but is not limited to, nondiscrimination in the employment of labor, protection of public and employee safety and health, environmental protection, waste reduction and recycling, the protection of natural resources, fire protection, burning and non-burning requirements, permits, fees and similar subjects.

PERMITS AND LICENSES

Each Bidder shall obtain and include in his Bid the cost for all permits and licenses which may be required to perform the contract.

CONFLICT OF INTEREST

A Bidder filing a bid thereby certifies that no officer, agent, or employee of Metro or Metro has a pecuniary interest in this Bid or has participated in contract negotiations on behalf of Metro; that the bid is made in good faith without fraud, collusion, or connection of any kind with any other Bidder for the same call for Bids; the Bidder is competing solely in its own behalf without connection with, or obligation to, any undisclosed person or firm.

IMMATERIAL VARIANCES

Metro reserves the right to determine whether equipment or materials that comply substantially in quality and performance with the specifications are acceptable to Metro, and whether any variance listed by the Bidder in a bid is material or immaterial.

LATEST MODEL

Parts and materials must be new, of latest model, of current date, and meet specifications. This provision excludes all surplus, remanufactured, and used products, unless such material is proposed in lieu of items specified.

Request for bids (RFB)

"OR APPROVED EQUAL" CLAUSE

In order to establish a basis of quality, certain processes, types of machinery and equipment, or kinds of materials may be specified, either by description of process or by designating a manufacturer by name and referring to his brand or product designation, or by specifying a kind of material. It is not the intent of these specifications to exclude other processes, equipment, or materials of equal value, utility or merit.

Whenever a process is designated or a manufacturer's name, brand, or product is described, it shall be understood that the words, "or approved equal" follow such name, designation, or description, whether in fact they do so or not.

If a Bidder proposes to furnish an item, process or material which it claims to be of equal utility to the one designated, then:

1. Bidder shall submit to Metro, in care of the Project Manager, a written statement describing it together with supporting data and details sufficient to permit Metro to evaluate the same, five (5) work days prior to the Bid opening date and time.

If the product contains chemical properties, the relevant Material Safety Data Sheets (MSDS) shall be included to document all health and physical hazards, chemical ingredients, exposure limits, personal protective equipment for handling and use, and emergency procedures in response to unanticipated spills or environmental release.

2. Metro may require demonstration, additional tests, and additional data, all to be supplied at the expense of the Bidder.
3. If Metro determines that the proposed item, material or process is of equal value, utility or merit, the Project Manager shall notify all potential Bidders of record by issuance of an addendum at least seventy two (72) hours prior to the Bid opening date and time.
4. Metro may in its sole discretion determine if an item submitted as an alternate or approved equal is "equal" or "equivalent".

RECYCLABLE PRODUCTS

Vendors shall use recyclable products to the maximum extent economically feasible in the performance of the work set forth in this contract document.

RECYCLED PRODUCTS AS BID ITEMS

Oregon Law (ORS 279A.125) requires Metro and all public agencies to give preference to materials and supplies manufactured from recycled materials.

All Bidders are therefore required to specify the exact or minimum percentage of recycled paper and fiber type in all paper products or recycled content in all other products offered, plus both the post-consumer and secondary waste content of the products offered.

Only Bids submitted with such information shall receive preference consideration and post Bid declaration or discovery shall not be allowed.

Request for bids (RFB)

Definitions of "recycled product," "post-consumer" and "secondary" waste material and other explanatory notes are available from the Metro Procurement Services Division.

QUANTITIES OF FUEL PURCHASED; NON-EXCLUSIVENESS OF FUEL CONTRACT

Metro makes no guarantees as to the exact quantities of fuel to be purchased. The information regarding any potential amounts of fuel sought to be provided in this Request for Bids or on the Bid Pricing Form are for illustrative purposes only, and are intended merely as guides to Bidders. No reasonable reliance should be placed on such illustrative information, and Bidders are warned not to construe such information as any form guarantee whatsoever that Metro will purchase any amount of fuel. Payment will be made only for quantities actually ordered, delivered, and accepted whether greater or less than any stated amounts.

The contract resulting from this procurement shall be for the non-exclusive provision of fuel to Metro's solid waste transport service provider, and nothing in this procurement shall limit the ability of Metro to seek to provide additional fuel for solid waste transport services under any separate agreement.

TERMS

A Bid may be rejected if it requires payment in less than thirty (30) calendar days after invoice date or if it requires payment, in whole or in part, less than fifteen (15) days after invoice approval prior to delivery.

PRICES

All prices submitted for contractor mark ups shall be firm during the contract period. If unit prices are requested, they should be provided for each unit on which there is a Bid. In case of mistake in extension of price, unit prices shall govern. All prices shall be F.O.B. the destination designated by Metro.

WARRANTY / GUARANTY

Each Bid for the furnishing of materials and equipment shall provide an explanation of both the Bidder's and manufacturer's warranties on materials and workmanship.

Every Bid shall indicate any warranty costs to Metro, including but not limited to, all parts, labor, and shipping costs required for compliance with any specific requirement(s) contained in the special conditions.

SERVICE

Each Bidder shall furnish detailed information on any service facilities, locations, and procedures as well as information on any maintenance agreements or contracts available to Metro. Noncompliance with the requirements of the RFB, in Metro's sole opinion, may result in rejection of the Bid as nonresponsive.

Request for bids (RFB)

DELIVERY

The Contractor shall deliver the fuel as described in the Scope of Work.

BID SECURITY

All Bids must be accompanied by a bid security in the form of a cashier's check, certified check, irrevocable letter of credit, or a bid bond issued by a surety authorized to conduct such business in the state of Oregon. Security shall be in the amount of \$10,000. The bid security shall serve as a guarantee that the bidder will not withdraw the bid for a period of sixty (60) days after bid opening, and if awarded the contract, will execute the Metro contract and furnish all required bonds and insurance with the time frame specified.

The Attorney-in-Fact who executes any bond on behalf of the surety must attach a notarized copy of his or her Power of Attorney as evidence of authority to bind the surety on the date of bond execution. Bid securities will be held until the Contract has been finally executed, after which all Bid securities, other than those which have been forfeited, will be returned to the respective Bidders whose Bid they accompanied.

RESIDENT / NON-RESIDENT BIDDER

Oregon law requires Metro, in determining the lowest responsive Bidder, to add a percent increase on the Bid of a non-resident Bidder equal to the percent, if any, of the preference given to that Bidder in the state in which that Bidder resides. Therefore, each Bidder must indicate whether it is a resident or non-resident Bidder. A resident Bidder is a Bidder that has paid unemployment taxes or income taxes in the state of Oregon during the last twelve (12) months immediately preceding submission of this Bid, has a business address in Oregon, and has stated in its Bid that it is a "resident Bidder."

EXPERIENCE AND ABILITY TO PERFORM THE WORK

Upon request, Bidders must present all necessary information indicating that the Bidder has met the standards of responsibility set forth in ORS 279B.110. Metro will make the final determination as to whether or not the Bidder is qualified to perform the work.

BASIS OF AWARD; INFORMATION & INSTRUCTIONS FOR COMPLETION OF BID PRICING FORM

The award shall be made to the responsible Bidder submitting the lowest responsive bid on the attached Bid Pricing Form. Any determination of bidder's responsibility or responsiveness is subject to review and determination by the Office of the Metro Attorney as to legal sufficiency. Metro reserves the right to accept or reject any and all bids in whole or in part and to waive any irregularities in the best interest of Metro. Metro will utilize the photographic materials submitted with the bid, as well as any additional investigations necessary, in making this determination at its sole discretion.

Bidders shall complete the attached Bid Pricing Form on the basis of the following information and in accordance with the subsequent instructions. Failure to complete all sections of the Bid Pricing Form may result in a determination that a Bid is non-responsive.

Request for bids (RFB)

In formulating and providing their Bids on the attached Bid Pricing Form, Bidders are advised that Metro intends that under the contract resulting from this procurement will compensate the successful Bidder the sum of (a) the "base cost" for branded No. 2 Ultralow sulfur diesel with a 5% biodiesel blend as defined herein plus (b) the bidder's "markup amount" as defined herein and set forth on the attached Bid Pricing Form plus, if applicable, (c) the Bidders' per-gallon winterization cost amount as set forth on the attached Bid Pricing Form, all multiplied by the number of gallons purchased for Metro under this agreement during the week ending each Wednesday.

As used herein, the "base cost" for fuel shall be calculated every Thursday during the term of this agreement by first averaging of the prices reported for each of the preceding week (Thursday through Wednesday, excluding Sunday) in the Oil Price Information Service ("OPIS") Daily Biodiesel Rack Report for branded No. 2 Ultralow sulfur diesel with a 5% biodiesel blend ("the computed daily averages"). The average of the six computed daily averages shall be then be calculated, and shall be the base cost to which the markup amount and, if applicable, the winterization cost amount shall be added. Metro will make the OPIS B5 pricing available to Contractor, and in the event the OPIS Daily Biodiesel Rack Report for branded No. 2 Ultralow sulfur diesel is discontinued, the parties will rely on any appropriate substitute index that OPIS provides.

Thereafter the "markup amount" shall be added to the "base cost" as reimbursement for each gallon of fuel purchased under this contract. As used herein, the "markup amount" shall include all applicable freight charges, overhead costs, profits, load fees, lifting fees and any applicable taxes (except federal excise), expressed in a number with no more than three ("3") decimal places. The markup amount shall not change during the contract term, except in circumstances arising as a result of changes due to the imposition of state or Federal fuel taxes or fees (except the federal excise tax) that may increase or decrease the markup amount.

In addition, Contractor also shall be reimbursed for costs incurred to meet any winterization specifications so that the fuel purchase retains appropriate viscosity. Metro shall compensate the Contractor for winterization in accordance with the number of gallons so winterized for appropriate viscosity multiplied by the per gallon winterization cost amount contained on the bid sheet.

In Section A.1 of the Bid Pricing Form, Bidders shall provide their bid for the per gallon fuel markup amount they are offering to be compensated and shall multiply that sum by Metro's **estimated** fuel consumption under the agreement that will result from this procurement to provide a total markup amount. In Section B. 2, Bidders shall provide their bid for the per gallon winterization amount they are offering to be compensated and shall multiply that sum by Metro's **estimate** of fuel that will require winterization treatment to provide a total winterization cost amount. All amount bid shall be those offered by the Bidder on the day of bid closing. Bidders should then provide a total of the estimated fuel markup amount and the estimated fuel winterization cost. Bidders should then complete Section B and should provide all information sought in Section C of the Bid Pricing Form.

Request for bids (RFB)

NOTICE OF AWARD

Within thirty (30) calendar days after the opening of Bids, Metro will accept one of the Bids, or combination of Bids, or reject all Bids in accordance with the Basis of Award. The acceptance of the Bid will be by written Notice of Award, mailed or delivered to the office designated in the Bid. The Notice of Award shall not entitle the party to whom it is delivered to any rights whatsoever.

APPEAL OF CONTRACT AWARD

Aggrieved proposers who wish to appeal the award of this contract must do so in writing within seven (7) days of issuance of the notice of intent to award by Metro. Appeals must be submitted to Darin Matthews, Metro Procurement Officer, 600 NE Grand Avenue, Portland, OR 97232 and must state the specific deviation of rule or statute in the contract award. Metro will issue a written response to the appeal in a timely manner and in accordance with Metro Code 2.04.

CONTRACT

Within ten (10) business days of receipt of the contract from Metro, the Successful Bidder shall sign and return the Contract to Metro along with all required bonding and insurance documentation.

FOREIGN CONTRACTOR

A Contractor that is not domiciled in or registered to do business in the State of Oregon shall, upon execution of a contract in excess of \$10,000, promptly report the total contract price, terms of payment, length of contract and all other required information to the Oregon Department of Revenue. Compliance shall be documented and Metro shall be fully satisfied as to complete compliance prior to release of final payment.

INSURANCE

The Contractor shall purchase and maintain at his expense the following types of insurance covering the Contractor, and his employees and agents.

1. Broad form comprehensive general liability insurance covering bodily injury, property damage, and personal injury with automatic coverage for premises and operations and product liability. The policy must be endorsed with contractual liability coverage.
2. Automobile bodily injury and property damage liability insurance.

Insurance coverage shall be a minimum of \$1,000,000 per occurrence.

Metro, its councilors, department, employees, and agents shall be named as an ADDITIONAL INSURED. Notice of any material change or policy cancellation shall be provided to Metro thirty (30) days prior to the change.

The Contractor shall comply with ORS 656.017 for all employees who work in the state of Oregon for more than 10 days. The Contractor shall provide Metro with certification of workers' compensation insurance including employer's liability.

Request for bids (RFB)

WORKERS' COMPENSATION

The Contractor, and all subsequent subcontractors and suppliers performing work pursuant to this contract shall provide Workers' Compensation benefits as required by and in accordance with all applicable state and federal laws.

HAZARD COMMUNICATION

The Contractor shall be required to strictly adhere to, coordinate with Metro and document full compliance with the policies and procedures of the Oregon Administrative Rules, Oregon Occupational Safety and Health Division, OAR 437-002, Subdivision Z-Toxic and Hazardous Substances (1910,1200 Hazard Communication).

Therefore, the Contractor and all subcontractors and suppliers within his control shall notify Metro and all parties to the agreement as to:

- Hazardous materials to which they may be exposed on site;
- Employee measures to lessen the possibility of exposure;
- All contractor measures to reduce the risk;
- Procedures to follow if exposed.

The Contractor shall provide Metro with all Material Safety Data Sheets (MSDS) prior to delivery or introduction of the material on site. For further information or clarification, contact the Metro Risk Management Division at (503) 797-1622.

FAILURE TO PERFORM

Should the Contractor fail to meet the agreed upon delivery schedule, thereby making it necessary for Metro to purchase urgently-needed items from another source, the low Bidder shall pay the difference between the accepted low Bid price and the purchase price or accept an offset against any monies then owed by Metro.

PATENTS

The Contractor agrees to protect, to defend (if Metro requests) and save the agency harmless against any demand for payment for wrongful or unauthorized use of any patented material, process, article, or device that may enter into manufacture, construction, or forms a part of the work covered by this contract.

LAW OF STATE OF OREGON

This contract is entered into within the state of Oregon, and the law of said State, whether substantive or procedural, shall apply and be followed with respect to this contract.

MINORITY, WOMEN AND EMERGING SMALL BUSINESS PROGRAM

In the event that any subcontracts are to be utilized in the performance of this agreement, the Bidder's attention is directed to Metro Code provisions 2.04.100, which encourages the use of minority, women, and emerging small businesses (MWESB) to the maximum extent practical.

Request for bids (RFB)

Copies of these MWESB requirements are available from the Metro Procurement Office, 600 NE Grand Avenue, Portland, OR 97232, (503) 797-1816.

FORM OF CONTRACT

To aid potential proposers in this procurement, Metro has included a form of agreement approved for use by the Office of the Metro Attorney. The form of agreement is included for the review of prospective bidders prior to submitting a bid. Proposers should be aware that such language, terms and provisions are for illustrative purposes only, and that Metro reserves the right, following submission of all bids submitted in response to this procurement, to amend such contract language before making a final determination regarding the issuance of the Notice of Intent to Award the agreement arising from this procurement. By submitting a bid in response to this procurement, bidders acknowledge that they are aware of and do not object to any later, potential amendment and modification of such preliminary, draft contract language and terms. In addition, by responding to this procurement, bidders acknowledge that they are aware of their ability to offer alternatives to any of the preliminary, draft contract language and proposed contract terms set forth herein.

Request for bids (RFB)

BID PRICING FORM

A. SCHEDULE OF BID PRICES

1. Bid amount, expressed in no more than three decimal places, as the per gallon markup amount for cardlock purchases made within one mile of the travel route used by Metro's solid waste transport services provider. (Prices bid shall be those offered by bidder on the day of bid closing.
 - a. \$ _____ x **estimated** 4,500,000 gallons = \$ _____
(per gallon markup amount) (total estimated markup amount payment)
 - b. _____
(words for per gallon markup amount)
2. Bid amount expressed as Per gallon amount for cost for winterizing fuel
 - a. \$ _____ x **estimated** 1,125,000 gallons = \$ _____
(per gallon winterization cost amount) (total estimated winterizing cost)
 - b. _____
(words for per gallon winterization cost amount)

TOTAL BID (sum of total estimated markup payment amount and total estimated winterization cost amount)

\$ _____
(NUMBERS)

B. EXTENSION OF PRICING

Extension of Pricing to Other Jurisdictions

(Requires competitive solicitation) – Pursuant to ORS 279A and the Metro public contract code, Metro participates in an Intergovernmental Cooperative Purchasing program by which other public agencies shall have the ability to purchase the goods and services under the terms and conditions of this awarded contract. Any such purchases shall be between the Contractor and the participating public agency and shall not impact the Contractor's obligation to Metro under this agreement. Any estimated purchase volumes listed herein do not include volumes for other public agencies, and Metro makes no guarantee as to their participation in any purchase. Any bidder may decline to extend the prices and terms of this solicitation to any or all other public agencies upon execution of this contract. Unless the bidder specifically declines to participate in the program by marking the box below, the bidder agrees to participate in the Intergovernmental Cooperative Purchasing program. **Bidder declines to participate in Intergovernmental Cooperative Purchasing.**

C. EVIDENCE OF SITE COMPLIANCE

Enclose documentation verifying that all proposed fueling sites comply with all provisions of the attached Scope of Work.

Bidder signature

Print Name of Bidder _____

Print Name of Company _____

Signature _____ Print Name and Title _____

Request for bids (RFB)

SAMPLE CONTRACT

THIS Contract is entered into between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, whose address is 600 NE Grand Avenue, Portland, Oregon 97232-2736, and _____, whose address is _____

_____, hereinafter referred to as the "CONTRACTOR."

THE PARTIES AGREE AS FOLLOWS:

ARTICLE I SCOPE OF WORK

CONTRACTOR shall perform the work and/or deliver to METRO the goods described in the Scope of Work attached hereto as Attachment A. All services and goods shall be of good quality and, otherwise, in accordance with the Scope of Work. Notwithstanding any other provision Metro makes no guarantee as to the exact quantities of fuel to be purchased under this agreement. This contract shall be for the non-exclusive provision of fuel for Metro's solid waste transport service provider, and nothing in this contract shall limit the ability of Metro to seek to provide additional fuel for solid waste transport services under any separate agreement.

ARTICLE II TERM OF CONTRACT

The term of this Contract shall be for the period commencing July 1, 2010 through and including June 20, 2015.

ARTICLE III CONTRACT SUM AND TERMS OF PAYMENT

METRO shall compensate the CONTRACTOR for work performed and/or goods supplied as described in the Scope of Work. METRO shall not be responsible for payment of any materials, expenses or costs other than those which are specifically included in the Scope of Work.

ARTICLE IV LIABILITY AND INDEMNITY

CONTRACTOR is an independent contractor and assumes full responsibility for the content of its work and performance of CONTRACTOR'S labor, and assumes full responsibility for all liability for bodily injury or physical damage to person or property arising out of or related to this Contract, and shall indemnify, defend and hold harmless METRO, its agents and employees, from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Contract. CONTRACTOR is solely responsible for paying CONTRACTOR'S subcontractors and nothing contained herein shall create or be construed to create any contractual relationship between any subcontractor(s) and METRO.

ARTICLE V TERMINATION

METRO may terminate this Contract upon giving CONTRACTOR seven (7) days written notice. In the event of termination, CONTRACTOR shall be entitled to payment for work performed to the date of termination. METRO shall not be liable for indirect, consequential damages or any other damages. Termination by METRO will not waive any claim or remedies it may have against CONTRACTOR.

Request for bids (RFB)

ARTICLE VI INSURANCE & BONDS

CONTRACTOR shall purchase and maintain at CONTRACTOR'S expense, the following types of insurance covering the CONTRACTOR, its employees and agents.

A. Broad form comprehensive general liability insurance covering personal injury, property damage, and bodily injury with automatic coverage for premises and operation and product liability shall be a minimum of \$1,000,000 per occurrence. The policy must be endorsed with contractual liability coverage. Metro, its elected officials, departments, employees and agents shall be named as an ADDITIONAL INSURED.

B. Automobile bodily injury and property damage liability insurance. Insurance coverage shall be a minimum of \$1,000,000 per occurrence. METRO, its elected officials, departments, employees, and agents shall be named as an ADDITIONAL INSURED. Notice of any material change or policy cancellation shall be provided to METRO thirty (30) days prior to the change.

This insurance as well as all workers' compensation coverage for compliance with ORS 656.017 must cover CONTRACTOR'S operations under this Contract, whether such operations be by CONTRACTOR or by any subcontractor or anyone directly or indirectly employed by either of them.

CONTRACTOR shall provide METRO with a certificate of insurance complying with this article and naming METRO as an additional insured within fifteen (15) days of execution of this Contract or twenty-four (24) hours before services under this Contract commence, whichever date is earlier.

CONTRACTOR shall not be required to provide the liability insurance described in this Article only if an express exclusion relieving CONTRACTOR of this requirement is contained in the Scope of Work

In addition, for public works subject to ORS 279C.800 to 279C.870, CONTRACTOR and every subcontractor shall have a public works bond required by 2005 Oregon Laws Chapter 360 filed with the Construction Contractors Board before starting work on the project, unless exempt under Section 2 of 2005 Oregon Laws Chapter 360.

ARTICLE VII PUBLIC CONTRACTS

All applicable provisions of ORS chapters 187 and 279A, 279B, and 279C and all other terms and conditions necessary to be inserted into public contracts in the State of Oregon, are hereby incorporated as if such provision were a part of this Agreement. Specifically, it is a condition of this contract that Contractor and all employers working under this Agreement are subject employers that will comply with ORS 656.017 as required by 1989 Oregon Laws, Chapter 684.

For public work subject to ORS 279C.800 to 279C.870, the Contractor shall pay prevailing wages. If such public work is subject both to ORS 279C.800 to 279C.870 and to 40 U.S.C. 276a, the Contractor and every subcontractor on such public work shall pay at least the higher prevailing wage. The Contractor and each subcontractor shall pay workers not less than the specified minimum hourly rate of wage in accordance with Section 7 of 2005 Oregon Laws Chapter 360. In addition, the Contractor shall pay an administrative fee as provided in ORS 279C.825(1) to the Bureau of Labor and Industries pursuant to the administrative rules established by the Commissioner of Labor and Industries. Contractors must promptly pay, as due, all persons supplying to such contractor labor or material used in this contract. If the contractor or 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

Request for bids (RFB)

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 shall pay interest in accordance with ORS 279C.515. If the contractor or first-tier subcontractor fails, neglects, or refuses to make payment, to a person furnishing labor or materials in connection with the public contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. Contractor must pay any and all contributions and amounts due to the Industrial Accident Fund from contractor or subcontractor and incurred in the performance of the contract. No liens or claims are permitted to be filed against Metro on account of any labor or material furnished. Contractors are required to pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

For public improvement work all contractors must demonstrate that an employee drug-testing program is in place.

ARTICLE VIII ATTORNEY'S FEES

In the event of any litigation concerning this Contract, the prevailing party shall be entitled to reasonable attorney's fees and court costs, including fees and costs on appeal to any appellate courts.

ARTICLE IX QUALITY OF GOODS AND SERVICES

Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of the highest quality. All workers and subcontractors shall be skilled in their trades. CONTRACTOR guarantees all work against defects in material or workmanship for a period of one (1) year from the date of acceptance or final payment by METRO, whichever is later. All guarantees and warranties of goods furnished to CONTRACTOR or subcontractors by any manufacturer or supplier shall be deemed to run to the benefit of METRO.

ARTICLE X OWNERSHIP OF DOCUMENTS

Unless otherwise provided herein, all documents, instruments and media of any nature produced by Contractor pursuant to this agreement are Work Products and are the property of Metro, including but not limited to: drawings, specifications, reports, scientific or theoretical modeling, electronic media, computer software created or altered specifically for the purpose of completing the Scope of Work, works of art and photographs. Unless otherwise provided herein, upon Metro request, Contractor shall promptly provide Metro with an electronic version of all Work Products that have been produced or recorded in electronic media. Metro and Contractor agree that all work Products are works made for hire and Contractor hereby conveys, transfers, and grants to Metro all rights of reproduction and the copyright to all such Work Products.

A. Contractor and subcontractors shall maintain all fiscal records relating to such contracts in accordance with generally accepted accounting principles. In addition, Contractor and subcontractors shall maintain any other records necessary to clearly document:

1. The performance of the contractor, including but not limited to the contractor's compliance with contract plans and specifications, compliance with fair contracting and employment programs, compliance with Oregon law on the payment of wages and accelerated payment provisions; and compliance with any and all requirements imposed on the contractor or subcontractor under the terms of the contract or subcontract;
2. Any claims arising from or relating to the performance of the contractor or subcontractor under a public contract;
3. Any cost and pricing data relating to the contract; and
4. Payments made to all suppliers and subcontractors.

Request for bids (RFB)

B. Contractor and subcontractors shall maintain records for the longer period of (a.) six years from the date of final completion of the contract to which the records relate or (b.) until the conclusion of any audit, controversy or litigation arising out of or related to the contract.

C. Contractor and subcontractors shall make records available to Metro and its authorized representatives, including but not limited to the staff of any Metro department and the staff of the Metro Auditor, within the boundaries of the Metro region, at reasonable times and places regardless of whether litigation has been filed on any claims. If the records are not made available within the boundaries of Metro, the Contractor or subcontractor agrees to bear all of the costs for Metro employees, and any necessary consultants hired by Metro, including but not limited to the costs of travel, per diem sums, salary, and any other expenses that Metro incurs, in sending its employees or consultants to examine, audit, inspect, and copy those records. If the Contractor elects to have such records outside these boundaries, the costs paid by the Contractor to Metro for inspection, auditing, examining and copying those records shall not be recoverable costs in any legal proceeding.

D. Contractor and subcontractors authorize and permit Metro and its authorized representatives, including but not limited to the staff of any Metro department and the staff of the Metro Auditor, to inspect, examine, copy and audit the books and records of Contractor or subcontractor, including tax returns, financial statements, other financial documents and any documents that may be placed in escrow according to any contract requirements. Metro shall keep any such documents confidential to the extent permitted by Oregon law, subject to the provisions of section E.

E. Contractor and subcontractors agree to disclose the records requested by Metro and agree to the admission of such records as evidence in any proceeding between Metro and the Contractor or subcontractor, including, but not limited to, a court proceeding, arbitration, mediation or other alternative dispute resolution process.

F. Contractor and subcontractors agree that in the event such records disclose that Metro is owed any sum of money or establish that any portion of any claim made against Metro is not warranted, the Contractor or subcontractor shall pay all costs incurred by Metro in conducting the audit and inspection. Such costs may be withheld from any sum that is due or that becomes due from Metro.

G. Failure of the Contractor or subcontractor to keep or disclose records as required by this document or any solicitation document may result in disqualification as a bidder or proposer for future Metro contracts as provided in ORS 279B.130 and Metro Code Section 2.04.070(c), or may result in a finding that the Contractor or subcontractor is not a responsible bidder or proposer as provided in ORS 279B.110 and Metro Code Section 2.04.052.

ARTICLE XI SUBCONTRACTORS

CONTRACTOR shall contact METRO prior to negotiating any subcontracts and CONTRACTOR shall obtain approval from METRO before entering into any subcontracts for the performance of any of the services and/or supply of any of the goods covered by this Contract.

METRO reserves the right to reasonably reject any subcontractor or supplier and no increase in the CONTRACTOR'S compensation shall result thereby. All subcontracts related to this Contract shall include the terms and conditions of this agreement. CONTRACTOR shall be fully responsible for all of its subcontractors as provided in Article IV.

Request for bids (RFB)

ARTICLE XII PAYMENTS

Contractor shall provide fuel for a maximum price not to exceed _____ AND NO/100 DOLLARS (\$_____). The maximum price includes all fees, costs and expenses of whatever nature. Each of Metro's payments to Contractor shall equal the percentage of the work Contractor accomplished during the billing period. Contractor's billing statements will include an itemized statement as specified in the Scope of Work and will be sent to Metro, Parks and Environmental Services. Metro will pay Contractor within 10 working days of receipt of an approved invoice.

In the event Metro wishes for Contractor to provide fuel after the maximum contract price has been reached, Contractor shall provide such services or materials pursuant to amendment at the same unit prices that Contractor utilized as of the date of this Agreement, and which Contractor utilizes to submit requests for payment pursuant to this Scope of Work. Metro may, in its sole discretion and upon written notice to Contractor, extend the term of this contract for a period not to exceed 24 months through one or more amendments. During such extended term all terms and conditions of this contract shall continue in full force and effect.

No federal excise tax shall be charged to Metro, and Contractor shall pay such excise tax if applicable and thereafter obtain any applicable refund from the United States Government, acting by through the Internal Revenue Service.

Payment to the Contractor shall be the sum of (a) the "base cost" for branded No. 2 Ultralow sulfur diesel with a 5% biodiesel blend as defined herein plus (b) the "markup amount" as defined herein and set forth on the attached bid sheet plus, if applicable, the (c) per-gallon winterization cost amount set forth on the attached bid sheet, all multiplied by the number of gallons purchased for Metro under this agreement during the week ending each Wednesday.

As used herein, the "base cost" for fuel shall be calculated every Thursday during the term of this agreement by first averaging of the prices reported for the preceding week (Thursday through Wednesday, excluding Sunday), in the Oil Price Information Service ("OPIS") Daily Biodiesel Rack Report for branded No. 2 Ultralow sulfur diesel with a 5% biodiesel blend ("the computed daily averages"). The average of the six computed daily averages shall be then be calculated, and shall be the base cost to which the markup amount and, if applicable, the winterization cost amount shall be added.

Metro will make the OPIS B5 pricing available to Contractor. In the event the OPIS Daily Biodiesel Rack Report for branded No. 2 Ultralow sulfur diesel with a 5% biodiesel blend is discontinued, the parties will rely on any substitute index that OPIS provides.

Thereafter "markup amount" set forth on the attached Bid Pricing Form shall be added to the "base cost" as reimbursement for each gallon of fuel purchased under this contract. As used herein, the "markup amount" shall include all applicable freight charges, overhead costs, profits, load fees, lifting fees and any applicable taxes (except federal excise), expressed in a number with no more than three ("3") decimal places. The markup amount shall not change during the contract term, except in circumstances arising as a result of changes due to the imposition of state or Federal fuel taxes or fees (except the federal excise tax) that may increase or decrease the markup amount.

In addition, Contractor also shall be reimbursed for costs incurred to meet any winterization specifications so that the fuel purchase retains appropriate viscosity. Metro shall compensate the Contractor for winterization in accordance with the number of gallons so winterized for appropriate viscosity multiplied by the per gallon winterization cost amount contained on the attached Bid Pricing Form.

METRO shall have the right to withhold from payments due CONTRACTOR such sums as necessary, in METRO's sole opinion, to protect METRO against any loss, damage or claim which may

Request for bids (RFB)

result from CONTRACTOR'S performance or failure to perform under this agreement or the failure of CONTRACTOR to make proper payment to any suppliers or subcontractors.

If CONTRACTOR has, in METRO's opinion, violated any provision of this contract, METRO shall have the right to withhold from payments due CONTRACTOR such sums as are necessary to protect Metro from any potential loss or damages. All sums withheld by METRO under this Article shall become the property of METRO and CONTRACTOR shall have no right to such sums to the extent that CONTRACTOR has breached this Contract.

ARTICLE XIII SAFETY

If services of any nature are to be performed pursuant to this agreement, CONTRACTOR shall take all necessary precautions for the safety of employees and others in the vicinity of the services being performed and shall comply with all applicable provisions of federal, state and local safety laws and building codes, including the acquisition of any required permits.

ARTICLE XIV INTEGRATION OF CONTRACT DOCUMENTS

All of the provisions of any procurement documents including, but not limited to, the Advertisement for Bids, Proposals or responses, General and Special Instructions to Bidders, Proposal, Scope of Work, and Specifications which were utilized in conjunction with the bidding of this Contract are hereby expressly incorporated by reference. Otherwise, this Contract represents the entire and integrated agreement between METRO and CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by both METRO and CONTRACTOR. The law of the state of Oregon shall govern the construction and interpretation of this Contract.

ARTICLE XV COMPLIANCE

CONTRACTOR shall comply with federal, state, and local laws, statutes, and ordinances relative to the execution of the work. This requirement includes, but is not limited to, non-discrimination, safety and health, environmental protection, waste reduction and recycling, fire protection, permits, fees and similar subjects.

ARTICLE XVI INTERGOVERNMENTAL COOPERATIVE AGREEMENT

Pursuant to ORS 279A and the Metro public contract code, Metro participates in an Intergovernmental Cooperative Purchasing program by which other public agencies shall have the ability to purchase the goods and services under the terms and conditions of this awarded contract. Any such purchases shall be between the Contractor and the participating public agency and shall not impact the Contractor's obligation to Metro under this agreement. Any estimated purchase volumes listed herein do not include volumes for other public agencies, and Metro makes no guarantee as to their participation in any purchase. Any bidder may decline to extend the prices and terms of this solicitation to any or all other public agencies upon execution of this contract. Unless the bidder specifically declines to participate in the program by marking the box below, the bidder agrees to participate in the Intergovernmental Cooperative Purchasing program. **Contractor declines to participate in Intergovernmental Cooperative Purchasing.**

Request for bids (RFB)

**ARTICLE XVII
ASSIGNMENT**

CONTRACTOR shall not assign any rights or obligations under or arising from this Contract without prior written consent from METRO.

CONTRACTOR

By _____

Date _____

METRO

By _____

Date _____

Request for bids (RFB)

Attachment A SCOPE OF WORK

SCOPE OF WORK/SCHEDULE

Contractor shall provide the following services and products:

1. Ultralow sulfur, branded No. 2 diesel fuel with a 5% biodiesel content shall be available 24 hours per day, seven days a week, from a commercial cardlock. All cardlock sites must be located on within 1 mile of the travel route used by Metro's solid waste transportation services operator, and Contractor shall provide a main fueling location in Gilliam County, Oregon.
2. All fuel provided shall be filtered and free from impurities that might cause damage or impairment to vehicle operation. Contractor shall be liable for damages caused by fuel that is contaminated or otherwise does not meet specifications.
3. Fuel shall be winterized during any cold weather to guarantee the correct viscosity of such fuel Contractor shall be liable for damages caused by fuel that is not properly winterized.
4. If the cardlock is disabled, Contractor shall provide fuel through a delivery truck with a meter and issue hand written receipts until the cardlock is operational. The delivery truck shall dispense fuel either at the cardlock or another location acceptable to Metro and Walsh Trucking. The cost and quality of fuel supplied in this manner shall be the same as if the cardlock was available, except that the Contractor may pass through to Metro any additional, documented costs due to this alternative fueling method, if the disabling of the cardlock was beyond the control of the Contractor, as determined by Metro in its sole opinion.
5. The site proposed in the Bid must be a commercial cardlock in compliance with all applicable regulations and of sufficient size to accommodate Walsh Trucking tractor trailer combinations as described in the Appendix. The site must have the following characteristics:
 - a. Location is capable of fueling up to four (4) trucks at once;
 - b. Fuel islands at the locations have proper lighting for driver safety and
 - c. Protection during inclement weather;
 - d. Locations shall have twenty-four (24) hour access;
 - e. Locations shall have ample room for safe maneuvering of equipment;
 - f. Restrooms, water, and emergency phone services available.
6. The site shall have a minimum of two high pressure pumps available for fueling on the driver's side of the tractor regardless of the point of entry (i.e. accessing the site from the north or south). These pumps must be accessible for simultaneous fueling by a minimum of two Walsh Trucking vehicles. Wait times, for these two vehicles, to access pumps should not exceed 10 minutes.

Request for bids (RFB)

7. Queuing for four Walsh Trucking vehicles shall be available at all times on property owned or controlled by the Bidder at the proposed site. Two of the four Walsh Trucking vehicles may be fueling as required under item #6 in satisfaction of this queuing requirement. Queuing, for the four vehicles, must be available at all times at the site to ensure no Walsh Trucking vehicles are queued on any highway at any time.
8. Fuel shall be accessed through the use of a card assigned to a specific tractor. The system shall be programmable to limit purchases per use and to record the invoice information described below. Contractor shall be able to cancel access to fuel within 24 hours notice from Metro, either system-wide or on an individual card basis. Contractor shall provide cards to Metro (or a designated party at Walsh Trucking) to access the system within 4 working days of a request. Cards shall be provided to access both the CFN and Pacific Pride cardlock networks.
9. Contractor shall work with Metro staff to develop electronic reporting options as needed by Metro at no additional charge.

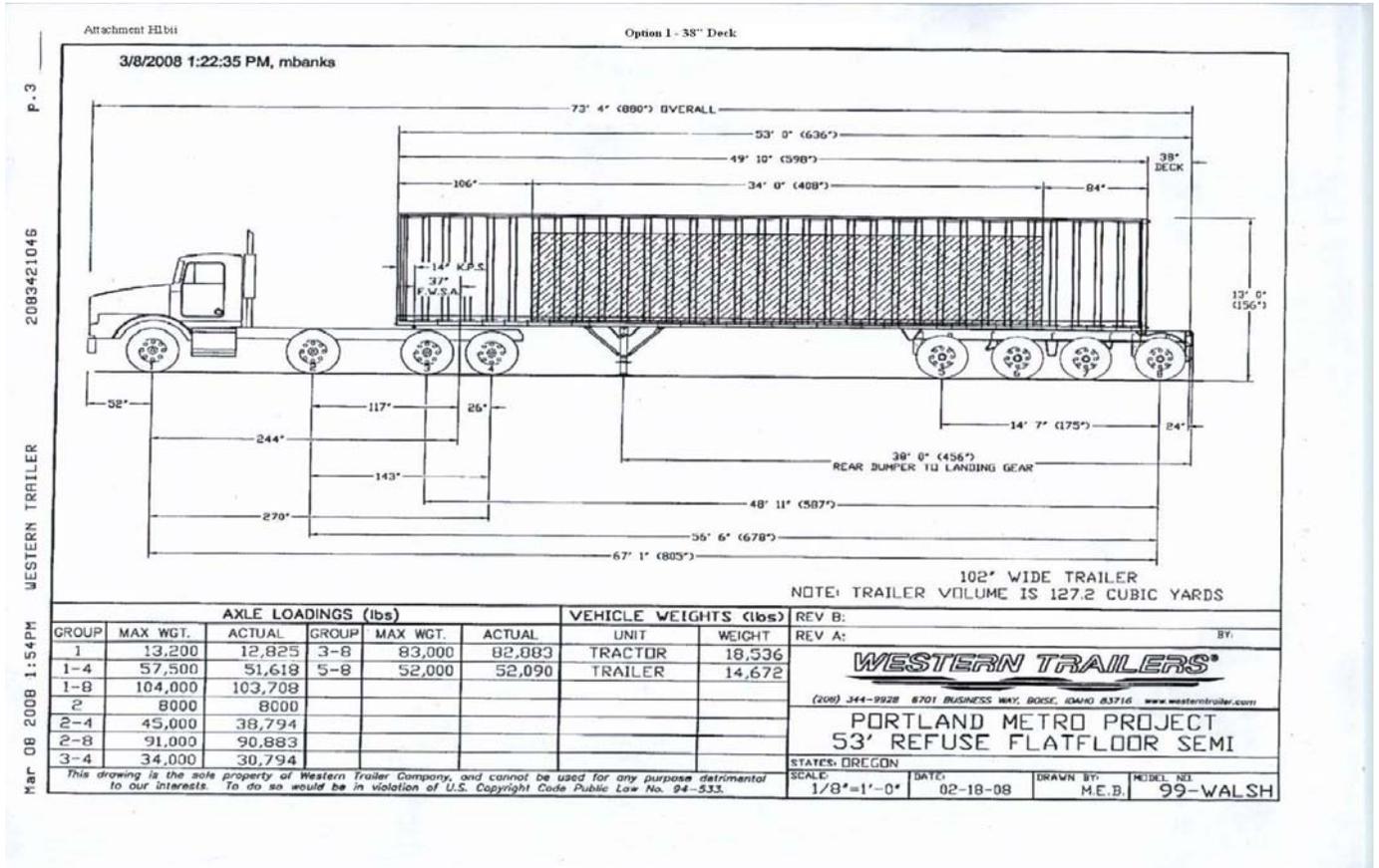
Request for bids (RFB)

APPENDIX TO SCOPE OF WORK

- Vehicle Drawing (Walsh Trucking)
- OPIS Index
- Metro's Solid Waste Transport Service Provider Map

Request for bids (RFB)

- Vehicle Drawing



Request for bids (RFB)

- OPIS Index- Red is branded (also labeled “b”) used to compute payment

Ty

PORTLAND, OR		1/28/2010			
	Terms	**OPIS LSN2 ULTRA	GROSS LSN2D	WHOLESALE LSN2D ULTRA	B5 SME BIODIESEL PRICES** Move
Apex	u N-10	199.00	-----	199.50	26-Jan
BP	u N-10	194.30	-----	194.80	28-Jan
Carson	u N-10	194.69	-----	195.19	27-Jan
Chevron	b N-10	195.40	-----	202.40	27-Jan
COP	b N-10	194.50	-----	195.00	27-Jan
COP	u N-10	193.50	-----	194.00	27-Jan
McCall	u N-15	194.00	198.03	200.40	27-Jan
Tesoro	u N-10	197.50	-----	198.00	27-Jan
Texaco	b N-10	195.40	-----	202.40	27-Jan
LOW RACK		193.50	198.03	194.00	
HIGH RACK		199.00	198.03	202.40	
AVG RACK		195.37	198.03	197.97	
CONT AVG		195.25	198.03	197.85	
CONT LOW		193.30	198.03	193.80	
CONT HIGH		199.00	198.03	202.40	

Directions to 18177 Cedar Springs Ln, Arlington, OR 97812-6512



Total Time: 2 hours 15 mins, Total Distance: 138.8 mi

