



# Specialty Ice Cream for Resale

**RFP 13-2166**

**Metro Oregon Zoo**

600 NE Grand Ave.  
Portland, OR 97232  
503-797-1700

**Project Manager**

Ivan Ratcliff  
Ivan.Ratcliff@oregonzoo.org  
503-525-4232

**Procurement Analyst**

Karen Slusarenko, CPPB  
karen.slusarenko@oregonmetro.gov  
503-797-1809

Notice is hereby given that proposals for RFP 13-2166 for Specialty Ice Cream for Resale shall be received by Metro, 600 NE Grand Avenue, Portland OR 97232 until close of business on August 2, 2012. It is the sole responsibility of the proposer to ensure that Metro receives the Proposal by the specified date and time. All late Proposals shall be rejected. Proposers shall review all instructions and contract terms and condition.

# Request for Proposals (RFP 13-2166)

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## I. INTRODUCTION

The Oregon Zoo Department of Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located at 600 NE Grand Avenue, Portland, OR 97232-2736, is requesting proposals for Specialty Ice Cream for Resale. Proposals will be due as indicated on the RFP cover page.

Details concerning the project and proposal are contained in this document.

## II. BACKGROUND/HISTORY OF PROJECT

The Oregon Zoo has historically provided packaged, single serving, flash frozen ice cream to Zoo visitors in a variety of concession locations and vending machines throughout its property. The current contract for these products and services is approaching the end of its term.

During the annual period from May 2011 through April 2012, approximately 20,000 individual, 3 oz. servings were purchased by Zoo visitors, at 2 vending machine locations. In addition to vending machines the Zoo sold product from a mobile kiosk with two drop in freezers, a mobile rolling cart with one drop in freezer and two counter top units. All freezers, carts, kiosks, vending machines, storage freezers (3 drop in units) and counter top units were provided by the ice cream company.

## III. PROPOSED SCOPE OF WORK/TERM

Metro is seeking proposals from qualified firms to provide and deliver flash frozen ice cream in 3 ounce servings or similar serving size. Metro also requires that Contractor be able to provide and maintain the following equipment at no charge to Metro:

- One 8x10' mobile kiosk that contains a selling window and at least one drop in freezer. Kiosk must be lit, have an outlet for a register and have the ability to be plugged into a 480 volt outlet.
- Two (2) 110 volt vending machines.
- Three (3) 4x6' drop in freezers for excess product.
- Two counter top freezers, 110 volt.
- One (1) mobile cart approximately 8x4' with cover, drop in freezer unit, and the ability to power a register.

Additional equipment may be required as business dictates.

Metro intends to award this contract to a single firm to provide the services required.

The term of the contract is anticipated to be September 1, 2012 through August 31, 2015, with the possibility of two additional one-year extensions, at Metro's discretion.

## IV. QUALIFICATIONS/EXPERIENCE

- (1) A minimum of five (5) years providing similar products and services
- (2) Ability to provide products within a five (5) day turnaround
- (3) Company must be able to provide equipment at no charge to the Zoo as indicated in Section III, Proposed Scope of Work/Schedule.

## V. PROJECT ADMINISTRATION

Ivan Ratcliff, Metro's project manager, will administer the project. Proposer shall indicate one point of contact for the resulting contract.

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### VI. PROPOSAL INSTRUCTIONS

A. Submission of Sealed Proposals

Four (4) paper copies and one (1) electronic version of the proposal shall be furnished to Metro in a sealed envelope, addressed to:

Metro Procurement Services  
Attn: Karen Slusarenko RFP 13-2166  
600 NE Grand Avenue  
Portland, OR 97232-2736

B. Deadline: Proposals will not be considered if received after the date and time indicated on the RFP cover page.

C. RFP as Basis for Proposals

This Request for Proposals represents the most definitive statement Metro will make concerning the information upon which Proposals are to be based. Any verbal information which is not addressed in this RFP will not be considered by Metro in evaluating the Proposal. All questions relating to this RFP should be addressed to [karen.slusarenko@oregonmetro.gov](mailto:karen.slusarenko@oregonmetro.gov). Any questions, which in the opinion of Metro, warrant a written reply or RFP addendum will be furnished to all parties receiving this RFP. Metro will not respond to questions received after 3:00 pm on July 27, 2012.

D. Information Release

All Proposers are hereby advised that Metro may solicit and secure background information based upon the information, including references, provided in response to this RFP. By submission of a proposal all Proposers agree to such activity and release Metro from all claims arising from such activity. In Accordance with Oregon Public Records Law (ORS 192), proposals submitted will be considered part of the public record, except to the extent they are exempted from disclosure.

E. Minority, Women and Emerging Small Business Program

In the event that any subcontracts are to be utilized in the performance of this agreement, the Proposer'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. Copies of these MWESB requirements are available from the Metro Procurement Services, 600 NE Grand Avenue Portland, OR 97232, 503-797-1648.

### VII. PROPOSAL CONTENTS

The proposal should contain no more than fifteen (15) pages of written material (excluding biographies, resumes and brochures, which may be included in an appendix), describing the ability of the consultant to perform the work requested, as outlined below. The proposal should be submitted on recyclable, double-sided recycled paper (post consumer content). No waxed page dividers, folders, binders or non-recyclable materials should be included in the proposal.

A. Transmittal Letter: Indicate who will be assigned to the project, who will be project manager, and that the proposal will be valid for ninety (90) days.

B. Product Specification and Service Plan: Provide a description and/or specification of proposed product. Describe how the account will be serviced in regards to equipment maintenance and delivery of product.

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At a time yet to be determined, the Zoo will notify qualified proposers and require that product samples be submitted for a “cutting” or a taste test to determine quality of taste and appearance.

- C. Equipment: Describe the equipment that will be provided and include pictures of the described equipment. Describe maintenance plan and response time for equipment repairs.
- D. Experience: Indicate how your firm meets the experience requirements listed in section IV. of this RFP. List contracts conducted over the past five years which involved services similar to the services required here. For each of these other contracts, include the name of the customer contact person, his/her title, role on the project, and telephone number.
- E. Price Proposal: Complete Attachment 1 - Unit Pricing of Goods for the product(s) which will reflect unit prices on a fully landed basis. Submit Attachment 1 with your proposal. All unit prices shall be firm for initial term of the contract.
- F. Diversity in Employment and Contracting:
- Work Force Diversity – Describe your work force demographics (number of employees, race and gender) and the measurable steps taken to ensure a diverse work force, including company policies and practices that promote the hiring and retention of women and ethnic minorities.
  - Diversity in Contracting – Describe your history of working with diverse firms, including any MWESB-certified firms. Describe a project for which you worked with minorities, women or emerging small businesses. Please provide the project name, method used to achieve participation – for example, joint ventures, subcontracts or purchase of equipment or supplies from a certified firm – and the dollar amount or percentage of the project budget expended on such participation.
  - Diversity of Firm – Describe the ownership of your firm and whether or not your firm is certified by the State of Oregon as an MBE, WBE or ESB. Provide certification number, if applicable.
- G. Sustainable Business Practices
- Environment: Describe your business practices to reduce environmental impacts of your operations. This may include energy efficiency, use of non-toxic products, alternative fuel vehicles, waste prevention and recycling, water conservation, green building practices, etc.
  - Economy: Describe your support of local businesses and markets within the Portland Metro region. Include what steps your company has taken in the past to support local businesses, and what steps would be taken if selected for this project.
  - Community: Describe the employee compensation structure of your organization. Include wage scales for employees, including trainee, probationary, entry level, journey level, and supervisory. Also include policies regarding annual cost of living adjustments (COLA) to employee wages. Details of the healthcare program (including, medical, dental, prescriptions, preventive care, etc.) as well as out of pocket and deductibles, and employee contributions for themselves and family members. All other employee benefits are to be including, such as vacation, sick leave, pension, disability insurance, profit sharing, childcare, health memberships, company vehicle, public transportation, etc.
- H. Exceptions to Standard Agreement and RFP: Carefully review the Standard Agreement attached hereto as Exhibit A and incorporated herein. This is the standard agreement that successful respondents to this RFP will be required to execute. RFP respondents wishing to propose any exceptions or alternative

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clauses to the agreement or to any specified criteria within this RFP must propose those exceptions or alternative clauses in their proposal; Metro shall not be required to consider contract revisions proposed during contract negotiation and award. Proposed exceptions or alternative clauses should be accompanied by explanatory comments that are succinct, thorough and clear.

### VIII. GENERAL PROPOSAL/CONTRACT CONDITIONS

- A. Limitation and Award: This RFP does not commit Metro to the award of a contract, nor to pay any costs incurred in the preparation and submission of proposals in anticipation of a contract. Metro reserves the right to waive minor irregularities, accept or reject any or all proposals received as the result of this request, negotiate with all qualified sources, or to cancel all or part of this RFP.
- B. Billing Procedures: Proposers are informed that the billing procedures of the selected firm are subject to the review and prior approval of Metro before reimbursement of services can occur. Contractor's invoices shall include the Metro contract number, an itemized statement of the work done during the billing period, and will not be submitted more frequently than once a month. Payment shall be made by Metro on a Net 30 day basis upon approval of Contractor invoice.
- C. Validity Period and Authority: The proposal shall be considered valid for a period of at least ninety (90) days and shall contain a statement to that effect. The proposal shall contain the name, title, address, and telephone number of an individual or individuals with authority to bind any company contacted during the period in which Metro is evaluating the proposal.
- D. Conflict of Interest. A Proposer filing a proposal thereby certifies that no officer, agent, or employee of Metro or Metro has a pecuniary interest in this proposal or has participated in contract negotiations on behalf of Metro; that the proposal is made in good faith without fraud, collusion, or connection of any kind with any other Proposer for the same call for proposals; the Proposer is competing solely in its own behalf without connection with, or obligation to, any undisclosed person or firm.
- E. Equal Employment and Nondiscrimination Clause 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](http://www.oregonmetro.gov).
- F. 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 proposer 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 proposer specifically declines to participate in the program by indicating this in their transmittal letter, the proposer agrees to participate in the Intergovernmental Cooperative Purchasing program.

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### IX. EVALUATION OF PROPOSALS

- A. Evaluation Procedure: Proposals received that conform to the proposal instructions will be evaluated. The evaluation will take place using the evaluation criteria identified in the following section. Interviews may be requested prior to final selection of firm(s). Award will be made to the highest ranked Proposer according to the evaluation criteria. If contract negotiations are unsuccessful with the highest ranked firm, Metro reserves the right to enter into negotiations with the next highest ranked Proposer.
- B. Evaluation Criteria: This section provides a description of the criteria which will be used in the evaluation of the proposals submitted to accomplish the work defined in the RFP.

#### Percentage of Total Score

Product Specification/Service Plan	30
Experience	10
Equipment	20
Price Proposal	20
Diversity (Work Force Diversity, Diversity in Contracting, Diversity of Firm)	10
Sustainable Business Practices	10
	100%

### X. 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 Metro Procurement Officer, 600 NE Grand, Portland, Oregon 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.

### XI. NOTICE TO ALL PROPOSERS -- STANDARD AGREEMENT

The attached agreement included herein reflects preliminary, draft contract language and selected, proposed contract terms for this procurement. Proposers should be aware that such language terms and provisions are for illustrative purposes only and that Metro reserves the right, following submission and ranking of all proposals submitted in response to this procurement, to amend, modify or negotiate over any and all such contract language, terms and provisions before making a final determination regarding the issuance of the Notice of Intent to Award the agreement arising from this procurement. By submitting a proposal in response to this procurement, proposers acknowledge that they are aware of and do not object to any later, potential amendment and modification of such preliminary, draft language and terms. In addition, by responding to this procurement, proposers 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.



600 NE Grand Ave.  
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## Attachment 1 - Unit Pricing of Goods

Proposers shall fill in a unit price and estimated annual contract amount, based on the estimated quantities provided for each of the first three years of the contract (the base term). Actual annual quantities may differ and any such differences shall not be the basis for equitable adjustments to contract compensation.

Contract Year	Product Description	Estimated Quantity	Unit Price	Estimated Annual Contract Amount
1	3 oz or similar serving size of _____ oz	13,000		
2	3 oz or similar serving size of _____ oz	13,500		
3	3 oz or similar serving size of _____ oz	14,000		

Total Estimated Contract Total (Base Term of Contract) \_\_\_\_\_

### Price Adjustments

Prices set forth on this Pricing Form shall be firm for the initial term of the contract. In the event that option years (years four and five) under this contract are exercised, the contract prices for the previous contract year may be increased or decreased as a result of documented changes in Contractor's direct material or labor costs. Contractor shall notify Metro of price adjustments no later than forty five (45) days prior to the end of the current contract year. Notices shall include all data necessary to demonstrate to Metro's satisfaction the actual changes in Contractor's cost of obtaining, manufacturing, or installing each item since time of original price submission. If necessary, Metro and Contractor shall negotiate a price adjustment in the contract unit prices prior to end of current contract year.

Price adjustments shall take place at the time the option is exercised.



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## Sample Goods and Supply Contracts over \$50,000

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 Company Name whose address is Street, City State Zip, hereinafter referred to as the "Contractor".

### TERM OF CONTRACT

The term of this Contract shall be for the period commencing Month XX, 201X, through and including Month XX, 201X, unless terminated or extended as provided in this Contract. This agreement may be renewed or extended for two additional one-year periods at Metro's sole discretion.

### CONTRACT SUM AND TERMS OF PAYMENT

Metro shall compensate the Contractor for goods supplied as described in Attachment A. Metro shall not be responsible for payment of any materials, expenses or costs other than those which are specifically included in Attachment A in an amount not to exceed XXXXXXXXXX and XX/100ths Dollars (\$XXXXXXX.XX). Payment shall be on a unit price only for those goods received in an acceptable condition to Metro. Contractor's billing invoices shall include the Metro contract number, Contractor name, remittance address, invoice date, invoice number, invoice amount, tax amount (if applicable), and an itemized statement of items purchased. Contractor's billing invoices shall be sent to Metro Accounts Payable, 600 NE Grand Avenue, Portland, OR 97232-2736 or metroaccountspayable@oregonmetro.gov. The Metro contract number shall be referenced in the email subject line. Contractor's billing invoices for goods supplied through June 30 shall be submitted to Metro by July 15. Payment shall be made by Metro on a Net 30 day basis upon approval of Contractor invoice.

### ATTACHMENT A - Unit Pricing of Goods

Attachment A shall describe the goods purchased under this agreement. Contractor understands and expressly agrees that not all items in Attachment A will be needed. Metro shall have complete discretion to select only those goods needed at the time.

### ATTACHMENT B - Delivery and Service Requirements

Delivery shall be to Metro at the designated point f.o.b. as set forth in Attachment B or at Metro docks if no designated point is expressly listed in Attachment B, which is incorporated by this reference as if set forth in full. Metro shall have the right to reject any and all goods or services upon inspection. All other service requirements, including time and place of delivery shall be in accordance with Attachment B.

**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 Contractor 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 Contractor specifically declines to participate in the program by marking the box below, the Contractor agrees to participate in the Intergovernmental Cooperative Purchasing program. **Contractor declines to participate in the Intergovernmental Cooperative Purchasing program as indicated by the following initials \_\_\_\_\_.**

**ALL TERMS ON THE REVERSE SIDE OF THIS DOCUMENT AND OTHER PROCUREMENT DOCUMENTS ARE HEREBY INCORPORATED AS A PART OF THIS AGREEMENT.**

CONTRACTOR

METRO

By \_\_\_\_\_

By \_\_\_\_\_

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

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

Date \_\_\_\_\_

Date \_\_\_\_\_

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## THE PARTIES AGREE AS FOLLOWS:

### ARTICLE I: ATTACHMENT A

CONTRACTOR shall deliver to METRO the goods described attached hereto as Attachment A (Unit Pricing of Goods). All goods shall be of excellent quality.

### ARTICLE II: ATTACHMENT B

Title to materials purchased hereunder shall pass to Metro f.o.b. at the designated point in Attachment B (Delivery and Service Requirements), or if not provided for, at the designated Metro docks.

### ARTICLE III: LIABILITY AND INDEMNITY

CONTRACTOR is an independent contractor and assumes full responsibility for its performance and assumes full responsibility for all liability for bodily injury or physical damage to persons or property arising out of or related to this Contract, and shall indemnify, defend and hold harmless METRO, its elected officials, officers, employees and agents, from any and all claims, demands, damages, actions, losses and expenses 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. CONTRACTOR is responsible for the acts and omissions of its' agents, employees, subcontractors and/or representatives and for all claims.

### ARTICLE IV: 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 goods received prior to the date of termination. METRO shall not be liable for any indirect or consequential, or any other damages whatsoever. Termination by METRO shall not waive any claim or remedies it may have against CONTRACTOR.

### ARTICLE V: INSURANCE

CONTRACTOR shall purchase and maintain at the Contractor's expense, the following types of insurance, covering the Contractor, its employees, and agents: 1) The most recently approved ISO (Insurance Services Office) Commercial General Liability policy, or its equivalent, written on an occurrence basis, with limits not less than \$1,000,000 per occurrence and \$1,000,000 aggregate. The policy will include coverage for bodily injury, property damage, personal injury, contractual liability, premises and products/completed operations. Contractor's coverage will be primary as respects Metro; 2) Automobile insurance with coverage for bodily injury and property damage and with limits not less than minimum of \$1,000,000 per occurrence; 3) Workers' Compensation insurance meeting Oregon statutory requirements including Employer's Liability with limits not less than \$500,000 per accident or disease; and 4) If required by the Scope of Work, Professional Liability Insurance, with limits of not less than \$1,000,000 per occurrence, covering personal injury and property damage arising from errors, omissions or malpractice.

Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSUREDs on Commercial General Liability and Automobile policies. CONTRACTOR shall provide to Metro 30 days notice of any material change or policy cancellation. CONTRACTOR shall provide Metro with a Certificate of Insurance complying with this article upon return of the CONTRACTOR signed agreement to Metro. Certificate of Insurance shall identify the Metro contract number. 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.

### ARTICLE VI: PUBLIC CONTRACTS

All applicable provisions of ORS Chapters 187 and 279A &B, 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, including, but not limited to, ORS 279B.220 to 279B.235.

### ARTICLE VII: MODIFICATIONS

Metro may approve changes and modifications to the original contract, including deletions of work, order of additional materials, and additional services reasonably related to the original work scope. Contractor may propose changes in the work that Contractor believes are necessary, will result in higher quality work, improve safety, decrease the amount of the contract, or otherwise result in a better or more efficient work product. If such changes are approved by Metro, they shall be executed by written contract amendment signed by both parties. Such changes shall not relieve Contractor of any obligation or warranty under the contract. No oral statements by either party shall modify or affect the terms of the contract.

### ARTICLE VIII: QUALITY OF GOODS

Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of excellent 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.

In addition to any express warranties provided by the CONTRACTOR, all implied warranties covered by ORS Chapter 72 shall apply to any goods provided under this contract, and are hereby expressly not disclaimed.

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## ARTICLE IX: SAFETY

If services of any nature are to be performed in connection with the providing goods 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. All applicable MSD sheets shall accompany the goods.

## ARTICLE X: RIGHT TO WITHHOLD PAYMENTS

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 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.

## ARTICLE XI: 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 XII: INTEGRATION OF CONTRACT DOCUMENTS

All of the provisions of any bidding documents including, but not limited to, the Advertisement for Bids, 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 to reference. Otherwise, this Contract represents the entire and integrated agreement between METRO and CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written 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 XIII: SITUS

The situs of this Agreement is Portland, Oregon. Any litigation over this agreement shall be governed by the laws of the State of Oregon and shall be conducted in the Circuit Court of the state of Oregon for Multnomah County, or, if jurisdiction is proper, in the U.S. District Court for the District of Oregon.

## ARTICLE XV: ASSIGNMENT

CONTRACTOR shall not assign any rights or obligations under or arising from the Contract without prior written consent from METRO, consent shall not be unreasonably withheld.

## ARTICLE XV: OWNERSHIP OF DOCUMENTS AND MAINTENANCE OF RECORDS

All documents of any nature including, but not limited to, reports, drawings, works of art and photographs, produced by CONTRACTOR pursuant to this agreement are the property of METRO and it is agreed by the parties hereto that such documents are works made for hire. CONTRACTOR does hereby convey, transfer and grant to METRO all rights of reproduction and the copyright to all such documents.

- 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.
- 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.

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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 27B9.110 and Metro Code Section 2.04.052.

### ARTICLE XV: SEVERABILITY

The parties agree that any provision of this Contract that is held to be illegal, invalid, or unenforceable under present or future laws shall be fully severable. The parties further agree that this Contract shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never been a part of them and the remaining provisions of the Contract shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Contract. Furthermore, a provision as similar to the illegal, invalid, or unenforceable provision as is possible and legal, valid and enforceable shall be automatically added to this Contract in lieu of the illegal, invalid, or unenforceable provision. Any failure by METRO to enforce a provision of the Contract is not to be construed as a waiver by METRO of this right to do so.

### ARTICLE XVI: COUNTERPARTS

This Contract may be executed in counterparts or multiples, any one of which will have the full force of an original.

### ARTICLE XVII: DELIVERY OF NOTICES

Any notice, request, demand, instruction, or any other communications to be given to any party hereunder shall be in writing, sent by registered or certified mail or fax as follows:

To Contractor: Contractor Contact  
Firm Name  
Address  
City State Zip  
XXX-XXX-XXXX fax

To Metro: Project Manager Name  
Metro  
600 NE Grand Ave  
Portland, Oregon 97232  
503-XXX-XXXX fax



600 NE Grand Ave.  
 Portland, OR 97232-2736  
 503-797-1700

# Request for Proposals (RFP 13-2166)

## ATTACHMENT A Unit Pricing of Goods

Attachment A described the goods purchased under this agreement. It is expressly understood that not all items in Schedule A will be needed. Metro shall have complete discretion to select only those goods and amounts needed at the time.

Item	Measurement	Amount	Comments

Escalation Clause, if applicable:

Unit pricing: Unit pricing may increase with the express written approval of Metro.

## ATTACHMENT B Delivery and Service Requirements

Delivery Dates: XXXXXXXXXXXXXXXX

Delivery Time: XXXXXXXXXXXXXXXX

Delivery Location: XXXXXXXXXXXXXXXXXXXX

Requirements include:



**Metro**

600 NE Grand Ave.  
Portland, OR 97232-2736  
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# Request for Proposals (RFP 13-2166)

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