



Carbonated Iced Beverages

RFB 14-2432

Metro Oregon Zoo
4001 SW Canyon Rd
Portland OR 97221

Project Manager
Jimmy Patten
Jimmy.Patten@OregonZoo.org
503-220-5749

Department Procurement Staff
Kim Bardes, CPPB
Kim.bardes@oregonzoo.org
503-220-5718

Notice is hereby given that proposals for RFB 14-2432 for Carbonated Iced Beverage shall be received by Oregon Zoo, 4001 SW Canyon Road, Portland OR 97221 until 2:00 p.m. on Friday, August 30, 2013. It is the sole responsibility of the bidder to ensure that Metro receives the Bid by the specified date and time. Bids may be mailed, hand delivered, faxed or emailed. Bidders shall review all instructions and contract terms and condition

Request for bids - Informal (RFB 14-2432)

Metro is requesting bids for Carbonate Iced Beverage for the Metro Oregon Zoo. Bids are due to be received (postmarks not accepted) by the date and time as indicated on the RFB cover page at Oregon Zoo, 4001 SW Canyon Road, Portland OR 97221.

INTRODUCTION

The Oregon Zoo (Zoo), a service 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 Carbonated Iced Beverage Supply and Product. Bids will be due as indicated on the RFB cover page.

BACKGROUND

The Zoo continues to be the number one admission-based attraction in Oregon. The Zoo is well known for its success in protecting threatened and endangered species and providing generations of families with unique hands-on learning and recreational experiences. The Zoo consistently attracts more than 1.6 million visitors per year and has more than 46,000 member households.

The Zoo's soft drink and non-alcoholic bottled beverage contract is in place and the Zoo is happy to be in partnership with Pepsi. With that said, at this time Pepsi is unable to provide a frozen carbonated beverage and the Zoo desires to create a partnership with a vendor for such beverages.

SCOPE OF WORK

Estimated annual quantities based on prior year consumption are listed. The Zoo is interested in receiving bids for frozen carbonated beverage supplies and product. In order to bid company must be able to provide and maintain 6 dispensing units at no cost to the Zoo. If available the Zoo would like to use up to three floor model units as described below, but if unavailable, will use the counter top units as listed:

Floor Model Units

240 volt single phase, 4 wire, 30 AMP

Counter top units

240 volt single phase, 4 wire, 30 AMP

Machines need to have the following characteristics:

- Self contained
- No weekly cleaning needed
- Self filling
- Self mixing

Describe the units you will be providing in attachment B.

The Zoo purchased and received the following product last year:

BIB, 2.5 Gallon Blue Raspberry	121 BIB
BIB, 2.5 Gallon Watermelon	8 BIB
BIB, 2.5 Gallon Cherry Limeade	23 BIB
BIB, 2.5 Gallon Orange Cream	18 BIB
BIB, 2.5 Gallon White Cherry	15 BIB

Metro makes no guarantees as to the exact quantities to be purchased. The figures provided were quantities purchased over the previous year and should be used only as guides. Bidders are warned not to construe them as a guarantee to purchase any amount. Payment will be made only for quantities actually ordered, delivered, and accepted whether greater or less than the stated amounts.

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The term of the contract is anticipated to be September 2013 through August 2016. Metro reserves the right to renew contract for additional terms not to exceed a total of five (5) years.

QUALIFICATIONS

Contractor must have five (5) or more years of successful experience in the area(s) of carbonated iced beverages. Qualifications and references shall be supplied with bid. Metro reserves the right to evaluate, approve or reject firms on the basis of their review

All bids must be delivered, faxed, mailed or emailed and clearly identify the item(s) as stated in the RFB. Bidding documents may be examined and are available at www.oregonmetro.gov under "Doing Business."

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 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.

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INSTRUCTIONS TO BIDDERS

BID

Metro is soliciting Bids for Carbonated Iced Beverages. Bids must be mailed, delivered, faxed or emailed to Metro Oregon Zoo, Attention: Jimmy Patten, RFB 14-2432, 4001 SW Canyon Rd, Portland OR 97221, 503-220-3680 fax, jimmy.patten@oregonzoo.org, no later than the date and time as indicated on the RFB cover page.

If mailed, the outside of the envelope shall plainly identify the subject of the Bid, the due date, and the Bid number.

All bids must be clearly and distinctly typed or written. All blank spaces must be completed. No erasures are permitted. Mistakes must be crossed out and corrections made, and initialed in ink by the party signing the Bid, or his or her authorized representative. Bidder shall complete and submit the following Metro forms:

- Bid Checklist
- Schedule of Bid Prices
- References

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 on the forms furnished by Metro or they may be rejected by Metro.

COST OF BID

This Request for 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 Request for 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.

ADDENDA TO PLANS OR SPECIFICATIONS

Requests for additional information or interpretation of the contract documents shall be delivered to Jimmy Patten, jimmy.patten@oregonzoo.org 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.

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, unless such closing time is extended in writing by Metro.

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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.

"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 deliver to Jimmy Patten, jimmy.patten@oregonzoo.org, referencing the RFB number, at least five (5) business days prior to the Bid opening date and time, a written statement describing it together with supporting data and details sufficient to permit Metro to evaluate the same. 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. Metro shall in its sole discretion determine if an item submitted as an alternate or approved equal is "equal" or "equivalent".

RECYCLABLE PRODUCTS

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

QUANTITIES

Metro makes no guarantees as to the exact quantities to be purchased. The figures provided are intended merely as guides and Bidders are warned not to construe them as a guarantee to purchase any amount. Payment will be made only for quantities actually ordered, delivered, and accepted whether greater or less than the stated amounts.

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PRICES

All prices submitted 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.

DELIVERY

Each Bidder shall provide a delivery schedule for each item offered. The successful Bidder shall notify Metro, in writing, within five (5) business days of order if delivery cannot be completed as proposed and required. Upon receipt of such notice from the successful Bidder, Metro reserves the right to cancel the order and make the purchase from the second lowest, responsible Bidder. If Metro does not elect to cancel the contract initially, subsequent failure to meet the then current delivery requirement does not foreclose Metro's option for later cancellation.

BASIS OF AWARD

The award shall be made to the responsible Bidder submitting the lowest responsive bid submitting the lowest total BASE BID. Metro reserves the right to consider any and all alternates offered by the selected Bidder.

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.

GENERAL CONDITIONS

NOTICE OF AWARD

Within twenty (20) 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, emailed 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.

INSURANCE AND WORKER COMPENSATION

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, 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.

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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, 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). 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.

DELIVERY TIMES

The Contractor shall deliver on business days between the hours of 8:00 a.m. and 5:00 p.m. Unloading must be completed by 5:00 p.m. unless approved in advance by Metro. Requests for such approval must be received by Metro at least three (3) days prior to delivery. Contractor shall assume all risk of deliveries made during hours beyond those listed above.

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.

INVOICES

Invoices shall be prepared and submitted unless otherwise specified. Invoices shall contain the following information: Metro contract number, item numbers, description of supplies or services, sizes, quantities, unit prices and extended totals. Invoice should also state name of the unit or department to which the merchandise was shipped or delivered. Payment shall be made by Metro on a Net 30 day basis upon approval of Contractor invoice.

SPECIAL CONDITIONS

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. Metro Code provision 2.04.100 is available at

http://library.oregonmetro.gov/files//chap2.04_clean_eff.042111_revised_version_081711.pdf

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NOTICE TO ALL BIDDERS

The attached agreement included herein reflects preliminary, draft contract language and selected, proposed contract terms for this procurement. Bidders 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 bids submitted in response to this procurement, to amend, modify or negotiate over any and all such contract language, terms and provisions regarding 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 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.

Exceptions to Standard Agreement and RFB: Carefully review the Standard Agreement attached hereto as Exhibit A and incorporated herein. This is the standard agreement that successful respondents to this RFB will be required to execute. RFB respondents wishing to propose any exceptions or alternative clauses to the agreement or to any specified criteria within this RFB must propose those exceptions or alternative clauses in their bid; 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.

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BID CHECKLIST

FIRM _____
 NAME _____
 MAILING ADDRESS _____
 PHONE _____ FAX _____ EMAIL _____

BIDDER REPRESENTS/CERTIFIES/ACKNOWLEDGES AS PART OF THIS OFFER THAT:

Contractor shall check or complete all applicable boxes
To be Submitted by the day and time of the as indicated on the RFB cover page
BID WILL BE CONSIDERED NON-RESPONSIVE WITHOUT THE FOLLOWING DOCUMENTS AND INFORMATION

1. **BIDDER'S CHECKLIST**
2. **SCHEDULE OF BID PRICES**
3. **REFERENCES**
4. **CONFLICT OF INTEREST:** Bidder hereby certifies that no officer, agent, or employee of METRO has participated on behalf of METRO in preparation of this bid, that the bid is made in good faith without fraud, collusion, or connection of any kind with any other Bidder for the same work, and the Bidder is competing solely in its own behalf without connection or obligation to any undisclosed person or firm.
5. **RESIDENT/NON-RESIDENT:** Undersigned Bidder states that it is a resident or non-resident of the state of Oregon. State in which Bidder resides:

6. **TYPE OF BUSINESS ORGANIZATION*:** Bidder operates as an individual, a corporation, incorporated under the laws of the state of _____, a non-profit organization, a partnership. (If partnership, attach names of the partners)
7. **OREGON LICENSE:** If a corporation, it is, or is not, licensed with Oregon Corporation Commission
8. **DOING BUSINESS AS:** Provide any assumed names utilized.

 NAME AND TITLE OF PERSON AUTHORIZED TO CONTRACT/SIGN OFFER (TYPE OR PRINT)

 SIGNATURE OF PERSON AUTHORIZED TO CONTRACT/SIGN OFFER

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Note: If any of the items listed on the Bid Schedule contain recycled product, the bidder shall specify the amounts of such product in an attachment to the Bid Form. If no attachment is included, the amount of recycled product in the items listed will be considered to be zero for the purpose of this bid. Metro reserves the right to reject any or all bids.

Equipment Description

	<u>Equipment Name, Manufacturer, Model, Description</u>	Counter top Model (Yes/No)	Floor Model (Yes/No)	Power Description
1				
2				
3				
4				
5				
6				

STANDARD AGREEMENT

Bidder has reviewed the Standard Agreement, Exhibit A, and understands that proposed exceptions and alternative clauses per the Notice to All Bidders, must be provided at time of bid submission, as indicated by the following initials _____. Attach additional pages, if needed.

Bidder signature _____

Print Name of Company _____

Print Name of Authorized Signor/Title _____

Signature _____

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REFERENCES

List 3 projects/contracts awarded to your firm in the last 3 years.

Project /Contract	Owner	Amount	% Complete	Contact Name	Contact Phone #

List 3 subcontractors Metro can contact for a reference.

Company Name	Specialty	Contact Name	Contact Phone #

List 3 suppliers Metro can contact for a reference.

Company Name	Specialty	Contact Name	Contact Phone #

Bank Reference

Name: _____

Address: _____

Contact Name: _____

Phone number: _____

Bidder signature

This information provided is true and complete.

Print Name of Company _____

Signature _____ Date: _____

Print Name of Bidder _____



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

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SAMPLE CONTRACT: For 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. IF CONTRACT IS SUBJECT TO RENEWAL OR EXTENSION, INCLUDE SUCH LANGUAGE i.e. This agreement may be renewed or extended for XX 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 XXXXXXXXXXXX and XX/100ths Dollars (\$XXXXXXXX.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 (REMOVE THIS SECTION IF SOLICITATION WAS INFORMAL) – 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 INSURED 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: Metro Procurement Services
600 NE Grand Ave
Portland, Oregon 97232
503-797-1791 fax

With Copy to: Project Manager
Address
City State Zip
503.XXX-XXXX fax

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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: XXXXXXXXX IF PRICE IS SUBJECT TO CHANGE IN THE FUTURE, PLEASE CONTACT PROCUREMENT SERVICES FOR ASSISTANCE ON LANGUAGE ON PRICE ADJUSTMENTS – THIS SHOULD HAVE BEEN REQUESTED IN SOLICITATION

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

Recycled Content: Please specify the exact or minimum percentage of recycled content in all products, plus the post consumer and secondary waste content of the products. DELETE THIS SECTION IS NOT APPLICABLE

Item	Percentage of Recycled Content	Post Consumer	Secondary



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ATTACHMENT B Delivery and Service Requirements

Delivery Dates: XXXXXXXXXXXXX

Delivery Time: XXXXXXXXXXXXX

Delivery Location: XXXXXXXXXXXXXXXXXXXX

Requirements include:

XXXXXXXXXXXXXXXXXXXXXXXXXX