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# Soft Drink and Non-Alcoholic Bottled Beverage Supply

**RFP 13-2220**

**Metro Oregon Zoo**  
600 NE Grand Ave.  
Portland, OR 97232  
503-797-1700

**Project Manager**  
Kim Gerlack  
kim.gerlack@oregonzoo.org  
503-220-5749

**Procurement Analyst**  
Karen Slusarenko, CPPB  
Karen.slusarenko@oregonmetro.gov  
503-797-1809

Notice is hereby given that proposals for RFP 13-2220 for Soft Drink and Non-Alcoholic Bottled Beverage Supply shall be received by Metro, 600 NE Grand Avenue, Portland OR 97232 until close of business on November 8, 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 13-2220)

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## I. 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 Soft Drink and Non-Alcoholic Bottled Beverage Supply. Proposals will be due as indicated on the RFP cover page.

## II. 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 expiring, and the Zoo is eager to create a winning relationship with the successful contractor. The successful contractor will be the sole supplier of carbonated beverages, water, and juice to the Zoo and will provide all product, equipment, materials, and maintenance for beverages. Requirements are specified in Section III.

The Zoo has historically sold guests the type of beverages covered by this RFP. Estimated annual quantities based on prior year consumption are listed below for the various beverage types:

### A. POST-MIX SYRUP AND CO<sup>2</sup>

- 1,250 gallons cola
- 900 gallons diet cola
- 130 gallons iced tea
- 480 gallons carbonated "slushie" beverage
- 525 gallons lemonade
- 220 gallons diet lemonade
- 70 gallons fruit punch
- 250 gallons other cola (for example, Mr. Pibb)
- 560 gallons lemon-lime and/or citrus
- 310 gallons orange
- 560 gallons root beer
- 2,300 pounds of CO<sup>2</sup> in 20 pound tanks

### B. CARBONATED BOTTLES AND CANS

- 400 cases of various flavors 20 ounce soda in plastic bottles for vending, packed 24 per case
- 425 cases of various flavors 12 ounce soda in cans for vending, packed 24 cans per case

### C. OTHER BEVERAGES (not including milk or coffee products)

- 85 cases of various flavors non-carbonated fruit beverage individually bottled or canned in 10 to 20 ounce servings, packed 24 cans per case
- 2,600 cases of bottled water in 20 ounce servings, packed 24 per case
- 70 cases natural juice beverage (for example, Odwalla), individually bottled in 12 ounce servings, packed 24 per case
- Other beverages, including individually bottled or canned non-carbonated sports drinks, may be ordered as required. In the event the contractor cannot supply a desired product, the Zoo may seek other purchase agreements

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### D. CUPS RECYCLING RECEPTACLES AND OTHER SUPPLIES

Historically, the soft drink and non-alcoholic bottled beverage contractor has provided the Zoo compostable paper cups in varying sizes and recycling receptacles at no cost. The cups have been branded with the contractor's national brand product. Other beverage supplies, such as table tents, ice bins, displays, umbrellas/umbrella stands and zoo-themed vending machine fronts have been provided at no cost.

### III. PROPOSED SCOPE OF WORK AND SCHEDULE

The term of the contract is anticipated to be five (5) years; commencing January 1, 2013 and ending December 31, 2017. Metro is seeking proposals from qualified contractors to perform the following services and to deliver the products described during this period:

#### A. PRODUCT, EQUIPMENT, DELIVERY AND MAINTENANCE

The contractor will supply and deliver all products and supplies, equipment and materials, and maintenance for soft drink and non-alcoholic bottled equipment and machines, as specified herein. During the term of this contract, contractor will have exclusive pouring rights at the Zoo for carbonated and other non-alcoholic beverages as specified under this contract. However, if a catering client requests a beverage the contractor does not provide, the requested product will be served and the contractor will have no rights to compensation or other remediation.

##### 1. PRODUCT, SUPPLIES AND DELIVERY

The Zoo will order product and supplies based on sales and usage. Purchases shall be made based on appropriateness, pricing, and taste/preference. The Zoo does not guarantee any level of minimum sales. Payment will be made for actual product ordered and received.

Contractor must accept Zoo orders weekly, or more frequently if needed. Contractor must provide a contact phone number(s) that will be immediately answered by a live person for weekend and emergency orders and equipment problem notification.

Contractor will, at a minimum, be able to provide the following product types and supplies:

##### POST-MIX SYRUP AND CO<sup>2</sup>

- Cola
- Diet cola
- Iced tea
- Carbonated "slushie" beverage
- Lemonade
- Diet lemonade
- Fruit punch
- Other cola (for example, Mr. Pibb)
- Lemon-lime and/or citrus
- Orange
- Root beer
- CO<sup>2</sup> in 20 pound tanks

All post-mix syrup is to be provided in 2.5 and/or 5 gallon bag-in-box system.

##### CARBONATED BOTTLES AND CANS

- Various flavors 20 ounce soda in plastic bottles for vending, packed 24 per case
- Various flavors 12 ounce soda in cans for vending, packed 24 cans per case

##### OTHER BEVERAGES (not including milk or coffee products)

- Various flavors non-carbonated fruit beverage individually bottled or canned in 10 to 20 ounce servings, packed 24 cans per case
- Bottled water in 20 ounce servings, packed 24 per case
- Natural juice beverage (for example, "Odwalla"), individually bottled in 12 ounce servings, packed 24 per case

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- Other beverages, including individually bottled or canned non-carbonated sports drinks, may be ordered as required. In the event the contractor cannot supply a desired product at a wholesale market competitive price, the Zoo retains the right to purchase the product from other sources.

### **CUPS, RECYCLING RECEPTACLES AND OTHER SUPPLIES**

The Zoo expects the contractor to provide compostable paper cups in varying sizes and recycling receptacles at no cost. Additionally, the zoo expects the contractor to provide other beverage supplies, such as table tents, ice bins, displays, umbrellas/umbrella stands and zoo-themed vending machine fronts, at no cost.

Contractor will deliver year-round seven days a week, including holidays, between the hours of 6:00 a.m. and 9:00 a.m. PST. Contractor will make product deliveries at least once weekly, and more frequently as required to meet zoo customer needs. Delivery will be made to Zoo locations specified by the Zoo.

### **OREGON RETURN DEPOSIT**

The contractor is expected to pick up all consumed bottles and cans with a return deposit at each delivery and to credit the value to the Zoo via invoice.

## **2. EQUIPMENT AND MATERIALS**

Contractor shall furnish, install and maintain in good operating condition and appearance, machines and equipment to be located at the Oregon Zoo, 4001 S. W. Canyon Road, Portland, Oregon 97221. Contractor will ensure that all equipment and products comply with all federal, state, and local laws, Metro and Zoo policies, fire and life safety codes, and regulations, including USDA regulations, as applicable. The following machines and equipment must be provided under this contract:

- i. Up to five (5) portable bag-in-box system (BIB) carts with a minimum of five-head dispensing units and ice bins. Carts must be capable of holding five (5) BIBs and one CO<sup>2</sup>. Carts will contain an equal number of heads to BIBs. Cart design to be agreed upon by both Zoo and contractor.
- ii. Up to twelve (12) self-serve fountain fast flow pour head dispensing units with top mounted ice cube makers. All post-mix units must have the capability of dispensing soda water and water.
- iii. Up to twelve (12) vending machines which will dispense fruit juices, sport drinks, bottled water and 20 ounce plastic bottled beverages. Machines should have "Zoo Themed" vend fronts. At least four (4) of these machines must be glass fronted. These machines will be stocked by Zoo staff unless otherwise requested or mutually agreed upon. All revenue generated by these machines will belong to the Zoo. Pricing shall be the sole decision of the Zoo.
- iv. Varying sized beverage coolers, both upright and counter-top models, to support beverage sales.
- v. A minimum of two (2) push carts and six (6) ice caddies with wheels, to support beverage sales.
- vi. Any additional equipment reasonably called for by the addition of new facilities and/or the upgrading of existing Zoo facilities.
- vii. Dispensing equipment for up to four (4) employee break rooms. Each break room is different and the intent is for the Zoo and contractor to mutually agree on the machines to service each.
- viii. Up to six (6) carbonated iced beverage machines (i.e. Icee, Slurpee, or Slushie).
- ix. Up to four (4) natural juices (i.e. Naked/Odwalla) vending machines.

Contractor will supply specifications and images of the equipment as part of their proposal. All machines and equipment provided must be no more than five (5) years old and/or be acceptable to the Zoo in appearance and functionality. The Zoo will have sole discretion in accepting contractor supplied machines and equipment.

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### 3. INITIAL DELIVERY OF SYSTEMS

Time is of the essence in this contract. Machines and equipment specified must be delivered and installed within 14 days after execution of the contract unless the zoo authorizes time extension for one or more machines or equipment. Installation and service of the machines listed shall include all necessary pressure tanks, lines, and miscellaneous parts to make the machines and equipment operational.

**Failure to deliver the proper dispensers and/or service system and/or failure to deliver them within the time specified herein will cause the Zoo to forgo revenue. The contractor will pay the Zoo liquidated damages of \$1,000 per day if the contractor fails to meet any of the stated specifications, conditions and deadlines.**

### 4. REPAIR AND MAINTENANCE

Contractor will provide 24-hour, 7-day a week repair service at no charge to the Zoo for all equipment and machines provided by the contractor. In order to maintain a quality product, seasonal and as-needed maintenance and cleaning on all machines shall be provided by the contractor at no cost to the Zoo.

**Failure to repair machines or equipment, or to replace, within 24 hours of notification will cause the Zoo to forgo revenue. The contractor will pay the Zoo liquidated damages in the amount of \$500 per day per location if the contractor fails to repair or replace a machine or equipment within the 24-hour time frame.**

## B. MARKETING AND PROMOTION

Contractor is authorized to reference its exclusive soft drink and non-alcoholic bottled beverage contract with the Zoo for promotional purposes. For all catering and private events held at the Zoo, the Zoo will promote the contractor's product to catering clients.

The Zoo recognizes that there are many mutually advantageous marketing and promotional opportunities with a long-term partner, some through established means, and other methods which have yet to be developed. The Zoo is seeking additional marketing, promotional, and sponsorship opportunities that are mutually agreeable. Such marketing and promotional opportunities include traditional advertising and tie-ins, custom cups, signage, etc. Opportunities include, but are not limited to:

- Souvenir cups
- Staff uniforms
- Billboards
- Truck backs
- Radio/TV advertising
- Tie-in with local retailer
- Custom or collector cup distributed through local fast-food restaurant chain
- Use of neck-ringers to publicize/promote key events
- Label with Zoo offer on back
- Contractor-sponsored kids day
- Signage/menu boards
- Zoo maps
- Partnership coupons on admission tickets
- Major sponsor for event and/or exhibit

Contractor will assist the Zoo with promotional and marketing opportunities. Mutually acceptable recognition for major support will be provided. Examples of assistance include underwriting events, capital outlay, and in-kind services to be mutually agreed upon.

## IV. FINANCIAL PROPOSAL

- A. The Zoo expects the contractor to provide product pricing for the products identified in Section III, A, 1. Attachment B will be the format used to provide pricing. Annual review of product costs may occur in January. Any price changes during the term of the contract must be negotiated, but cannot exceed three percent per year.

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- B. The Zoo expects that the contractor will make a substantial annual sponsorship payment to the Zoo each year of the contract, in return for exclusive pouring rights and the exclusive marketing and promotional opportunities afforded thereby. Zoo officials, at the Zoo's sole discretion, will negotiate the amount and nature of the annual sponsorship payment with the top ranked proposers. The zoo's outreach to other zoos in the United States shows that institutions of similar annual attendance receive such sponsorship payments in excess of \$100,000, annually. The Zoo may offer the following opportunities to the successful contractor, in addition to ideas the contractor proposes:
- The contractor sponsorship will be publicly acknowledged.
  - The Zoo will arrange for a suitable media announcement of the contractor sponsorship.
  - Mutually agreeable arrangements will be made for one or more "Contractor day at the Oregon Zoo" for contractor to showcase product.
  - Depending on the amount and nature of the sponsorship, mutually agreeable arrangements will be made for one or more "Contractor family day at the Oregon Zoo". This could include complimentary admission tickets, complimentary railroad tickets, picnic fare meals at a 50 percent discount, and a full waiver of the picnic site fee.
  - Mutually agreeable contractor name recognition at food and beverage outlets throughout the Zoo.

### V. QUALIFICATIONS, EXPERIENCE AND PRODUCT BRAND RECOGNITION

#### A. QUALIFICATIONS AND EXPERIENCE

Contractors must meet the following qualifications and experience:

1. Have at least five (5) years distribution experience for non-alcoholic beverages in the Portland Metropolitan area.
2. Have at least five (5) years experience supplying the necessary dispensing equipment identified in Section III.
3. Have at least five (5) years experience repairing and maintaining machines and equipment identified in Section III.
4. Provide a named account representative with the requisite experience to support the product, equipment and machines, order and delivery, and maintenance requirements under this contract.

#### B. PRODUCT BRAND RECOGNITION

The Zoo believes offering guests and clients nationally recognized soft drinks and non-alcoholic bottled beverages will result in greater enterprise revenue opportunities and greater guest satisfaction. Enterprise revenue is important to enable the Zoo to support its mission. Therefore, the Zoo is seeking a contractor that can provide a line of products with national brand recognition.

### VI. CONTRACT ADMINISTRATION

Kim Gerlack, Metro's Project Manager, will administer this project. The proposer will provide a single point of contact for administering the resulting contract.

### VII. PROPOSAL INSTRUCTIONS

#### A. Submission of Sealed Proposals

Five (5) 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 13-2220  
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.

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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. 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 1:00 pm on October 25, 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.

F. Pre-Proposal Conference

A voluntary pre-proposal conference will be held in the Sunset Room at the Oregon Zoo, 4001 SW Canyon Road, Portland, Oregon 97221 on Thursday, October 18, 2012, 8:30 am. Interested proposers are encouraged to attend the conference in order to gain information about the RFP requirements.

### VIII. PROPOSAL CONTENTS

The proposal should contain no more than thirty (30) pages of written material (excluding biographies, resumes, catalogs 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 the account representative, and that the proposal will be valid for ninety (90) days.

B. Work Plan/Approach: Describe how your firm will meet the proposed scope of work and schedule requirements specified in section III. Describe how your firm intends to address the product, equipment, delivery and maintenance requirements. Describe how your firm will meet the marketing and promotion elements. Describe any Zoo appropriate promotional items that will be provided to the Zoo at no cost and include a catalog or explanation of the items.

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C. Financial Proposals: Describe how your firm will meet the requirements specified in section IV and document your proposed product line and unit prices for each product requested. Presentation format must follow the format shown in Attachment B. Describe your annual product pricing review and recommended adjustment process. In addition, describe and propose your firm's proposed annual sponsorship payment, as discussed in section IV. Explain how your proposal supports the zoo's interests and supports a successful contract and partnership.

D. Qualifications, Experience and Brand Recognition: Describe how your firm meets the experience requirements listed in section V. Describe similar contracts over the past five years which involved services similar to the services required under this RFP. For each of these similar contracts, include the name of the primary customer contact, title, and telephone number.

In addition, describe your product line brand recognition and market share within Oregon and the United States for each of the following categories. Explain the attributes and metrics that indicate the proposed products have national brand recognition for, at a minimum, the following primary beverage types:

Cola	Diet Cola
Lemon/Lime and/or citrus	Iced Tea
Fruit Punch	Orange
Lemonade	Root Beer
Natural Juice	Carbonated "slushie" beverage

Metro intends to award this contract to a single firm to provide the services required. Identify a single person as project manager. Identify specific personnel to be assigned to the Zoo account, their roles in relation to the work required, and special qualifications they may bring to servicing the Zoo account. The contractor must assure responsibility for any sub-contractor work and shall be responsible for the day-to-day direction and internal management of the contracting effort.

E. 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.

F. 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.

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- **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. Include other employee benefits, such as vacation, sick leave, pension, disability insurance, profit sharing, childcare, health memberships, company vehicle, public transportation, etc.
- G. **Exceptions to Standard Agreement and RFP:** Carefully review the Standard Agreement attached hereto as Attachment 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 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.

### IX. 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

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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.

## X. 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
<b>Work Plan/Approach</b>	
1. Understanding of and proposal related to equipment	5
2. Understanding of and proposal related to marketing and promotion	10
<b>Financial Proposals</b>	
1. Proposed unit pricing of product line and projected annual profitability	30
2. Annual Sponsorship Payment	20
<b>Qualifications, Experience and Brand Recognition</b>	
1. Experience of firm distribution experience in Portland Metropolitan area and proposed account representative in local market	5
2. Product line brand recognition	20
<b>Diversity</b>	
1. Work Force Diversity, Diversity in Contracting, Diversity of Firm	5
<b>Sustainable Business Practices</b>	
1. Environment, Economy, Community	5
<b>Total</b>	<b>100%</b>

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### **XI. 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.

### **XII. 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.  
Portland, OR 97232-2736  
503-797-1700

# Request for Proposals (RFP 13-2220)

Metro Contract No. XXXXXX

## **Attachment A Sample Standard Public Contract For Contracts \$50,000 & Above**

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 address, City, State Zip, 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.

### **ARTICLE II TERM OF CONTRACT**

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

### **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. Payment shall be made by METRO on a Net 30 day basis upon approval of CONTRACTOR invoice.

### **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 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.

### **ARTICLE VI INSURANCE & BONDS**

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



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

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- A. 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;
- B. Automobile insurance with coverage for bodily injury and property damage and with limits not less than minimum of \$1,000,000 per occurrence;
- C. Workers' Compensation insurance meeting Oregon statutory requirements including Employer's Liability with limits not less than \$500,000 per accident or disease; and

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.

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. METRO 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 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.

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## ARTICLE VIII 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 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.
- 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

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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.

### ARTICLE XII 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. In addition for public improvement work, if a CONTRACTOR is required to file certified statements under ORS 279C.845, METRO shall retain 25 percent of any amount earned by the CONTRACTOR on the public works until the contractor has filed all required certified statements with METRO.

If a liquidated damages provision is contained in the Scope of Work and if CONTRACTOR has, in METRO's opinion, violated that provision, METRO shall have the right to withhold from payments due CONTRACTOR such sums as shall satisfy that provision. 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

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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 laws 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 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 or is not applicable to this Contract as indicated by the following initials \_\_\_\_\_.**

### ARTICLE XVI 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 XVII ASSIGNMENT

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

### ARTICLE XVIII 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



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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 XIX COUNTERPARTS

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

## ARTICLE XX 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

CONTRACTOR

METRO

By \_\_\_\_\_

By \_\_\_\_\_

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

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

Date \_\_\_\_\_

Date \_\_\_\_\_