

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF EXEMPTING FROM) RESOLUTION NO. 02-3154A
COMPETITIVE BIDDING REQUIREMENTS)
AND AUTHORIZING RELEASE OF RFP 02-) Introduced by Mike Burton
1005-ZOO FOR SOFT DRINK AND BOTTLED) Executive Officer
BEVERAGES AT THE OREGON ZOO

WHEREAS, The Oregon Zoo has the highest per capita food and catering sales of comparable zoos; and

WHEREAS, the current contract for soft drinks and related beverages has expired, and

WHEREAS, it is common industry practice to obtain sizeable contributions for pouring rights from soft drink companies, and

WHEREAS, Metro Code section 2.04.054(c) authorizes, subject to ORS 279.015, the use of alternative contracting practices that take into account market realities and innovative contracting methods which are consistent with the public policy of encouraging competition; and

WHEREAS, the Metro Contract Review Board finds that the request for proposal ("RFP") process is unlikely to result in favoritism in the awarding of this public contract and also finds that the RFP process will not substantially diminish competition for this public contract and will provide substantial cost savings to Metro; and

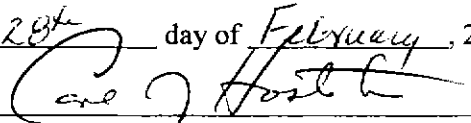
WHEREAS, this resolution is submitted by the Executive Officer for consideration of the Metro Contract Review Board for approval; now, therefore,

BE IT RESOLVED That the Metro Council, acting as the Contract Review Board,

1. Adopts the findings as set forth in Exhibit A, which is incorporated by reference into this Resolution as if set forth in full, and
2. Based upon such findings, exempts from competitive bidding requirements and authorizes the request for proposal competitive process for the Oregon Zoo's contract for soft drink pouring rights, and
3. Authorizes the Executive Officer to negotiate the highest possible contributions from responsive proposers, and

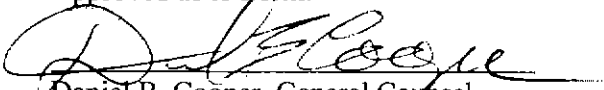
4. Authorizes the issuance of RFP 02-1005-ZOO; attached as Exhibit B. The Executive Officer shall obtain Council authorization prior to executing a contract with the most responsive and responsible proposer.

ADOPTED by the Metro Contract Review Board this 28th day of February, 2002.

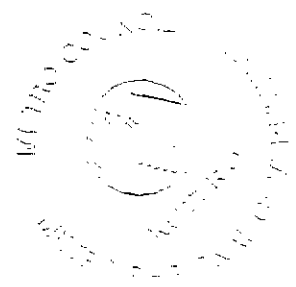


Carl Hosticka, Presiding Officer

Approved as to Form:



Daniel B. Cooper, General Counsel



BEFORE THE METRO CONTRACT REVIEW BOARD

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WHEREAS, the current contract for soft drinks and related beverages has expired, and

WHEREAS, it is common industry practice to obtain sizeable contributions for pouring rights from soft drink companies, and

WHEREAS, Metro Code section 2.04.054(c) authorizes, subject to ORS 279.015, the use of alternative contracting practices that take into account market realities and innovative contracting methods which are consistent with the public policy of encouraging competition; and

WHEREAS, the Metro Contract Review Board finds that the request for proposal ("RFP") process is unlikely to result in favoritism in the awarding of this public contract and also finds that the RFP process will not substantially diminish competition for this public contract and will provide substantial cost savings to Metro; and

WHEREAS, this resolution is submitted by the Executive Officer for consideration of the Metro Contract Review Board for approval; now, therefore,

BE IT RESOLVED:

That the Metro Council, acting as the Contract Review Board,

1. adopts the findings as set forth in Exhibit A, which is incorporated by reference into this Resolution as if set forth in full; and
2. based upon such findings, exempts from competitive bidding requirements and authorizes the request for proposal competitive process for the Oregon Zoo's contract for soft drink pouring rights, and
3. authorizes the Executive Officer to negotiate the best possible contract terms and conditions with responsive proposers, and
4. authorizes the Executive Officer to negotiate the highest possible contributions from responsive proposers, and
5. authorizes the issuance of RFP 02-1005-ZOO; attached as Exhibit B.

ADOPTED by the Metro Contract Review Board this _____ day of _____, 2002.

Carl Hosticka, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel

Resolution No. 02-3154
EXHIBIT A
FINDINGS OF FACT SUPPORTING THE USE OF
COMPETITIVE SELECTION PROCESS FOR
SODA AND BOTTLED BEVERAGE PROCUREMENT

Metro Contract Review Board

ORS 279.015(1) requires, with certain exceptions, that all public contracts be based on competitive bidding and, under ORS 279.029, awarded to the lowest responsive and responsible bidder. ORS 279.015(2) permits the Metro Contract Review Board, Metro's public contract review authority, to grant, under certain conditions, specific exemptions from the requirement for competitive bidding resulting in contract award to the lowest responsive and responsible bidder.

After review and discussion with interested parties, Metro staff have determined that the request for proposal process is the best process for supply of carbonated and other beverages and recommends its use. ORS allows use of the request for proposal method if appropriate findings of fact are addressed and supported by the Contract Review Board. ORS 279.011(5) defines findings and includes specific information that should be addressed. A public hearing will be held before these findings are finally adopted, allowing the opportunity for all interested parties to comment.

**I
BACKGROUND**

The Oregon Zoo's soft drink contract has expired and the Zoo is desirous of creating a winning relationship with the successful vendor to supply carbonated and other beverages at the Oregon Zoo over the next five years. The successful vendor will provide all product, equipment, materials, and maintenance for carbonated and other beverages required by the Zoo.

The Zoo desires to negotiate with responsive proposers in a number of areas such as service and delivery requirements, equipment needs, and donations to the Zoo.

**II A
FINDINGS REGARDING FAVORITISM, COMPETITION, AND COST SAVINGS**

ORS 279.015(2) requires that an agency make certain findings as a part of exempting certain public contracts or classes of public contracts from competitive bidding. ORS 279.015(2)(a) requires an agency to find that. *It is unlikely that such exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts.* Metro Contract Review Board finds that exempting the soda Request for Proposals (RFP) from competitive bidding and authorizing a negotiating process will not inhibit competition or encourage favoritism. This finding is supported by the following facts:

- A) Solicitation Advertisement: Pursuant to Metro Code 2.04.044, the soda RFP solicitation will be advertised in at least two newspapers. In addition, solicitation documents will be available through Metro's website page highlighted contracting opportunities, as well as mailed to known soda distributors. This solicitation process is designed to encourage competition and to discourage favoritism.

- B) Full Disclosure: To ensure full disclosure of all project requirements and thereby avoid favoritism, the RFP solicitation package will include:
- 1) Detailed Description of the Project
 - 2) Contractual Terms and Conditions
 - 3) Negotiation Process
 - 3) Selection Process Description
 - 4) Evaluation Criteria
 - 5) Complaint Process and Remedies
- C) Selection Process: The Selection Process will include the following elements to avoid favoritism:
- 1) Proposals will be evaluated for completeness and compliance with the requirements listed in the RFP.
 - 2) Proposals considered complete and responsive will be evaluated under the criteria of the RFP.
 - 3) The responsive proposers will be selected for negotiation.
 - 4) Metro staff will negotiate terms, conditions, donations, equipment, and price with the top ranked firm.

Unsuccessful proposers will be given the opportunity to appeal the award in accordance with Metro Code.

II B FINDINGS REGARDING SUBSTANTIAL COST SAVINGS

ORS 279.015(2) requires that a public agency make certain findings as a part of exempting certain public contracts or classes of public contracts from competitive bidding. ORS 279.015(2) requires an agency to find that: *The awarding of public contracts pursuant to the exemption will result in substantial cost savings to the public contracting agency.* This finding is supported by the following facts:

- A) Negotiation and RFP Process: Early opportunity to negotiate will result in higher quality decisions by the Zoo staff. Cost and pricing options for soda, materials, equipment, and maintenance can be viewed with greater certainty and knowledge. The opportunity to negotiate the donation will promote the most favorable terms possible. The RFP Process will encourage greater competition and participation, and help the Zoo achieve its goals.

II C FINDINGS REGARDING UNIQUE PROJECT

- A) Unique Project: Purchasing soda is a unique project. Special equipment and materials are required. Furthermore, the donation being requested is also unique.
- B) Agency Capacity: Metro staff are experienced in the use of this contracting method. Their experience will ensure that the contract is administered appropriately, and that the potential savings and benefits possible through use of this process will accrue to Metro.

II D
FINDINGS REGARDING INDUSTRY PRACTICES

- A) It is common industry and governmental practice to use request for proposals when seeking soda. Recent public entities to use this competitive approach include the Metropolitan Exposition Recreation Commission (MERC), Portland Public Schools, Beaverton Public Schools, and Portland Community College.

Resolution No. 02-3154
Exhibit B
REQUEST FOR PROPOSAL
OREGON ZOO SOFT DRINK AND BOTTLED BEVERAGE REQUIREMENTS
RFP#02-1005-ZOO

The Oregon Zoo, located in Portland, Oregon, is the leading fee based visitor attraction in the state. The zoo is achieving record breaking attendance, with over 1.3 million people visiting in fiscal year 2000-2001. The Oregon Zoo has the highest per capita food and catering sales of comparable zoos according to The State of the Industry: Zoo and Aquarium Visitor Services in North America, A Survey of Operational Data for 2000.

The zoo's soft drink and bottled beverage contract has expired, and the zoo is desirous of creating a winning relationship with the successful vendor to supply carbonated and other beverages at the Oregon Zoo over the next five years. The successful vendor will provide all product, equipment, materials, and maintenance for carbonated and other beverages required by the zoo, as specified in Attachment "A" – Scope of Work.

Zoo officials will negotiate with all responsive proposers for an annual financial contribution. The vendor selected will be awarded a five year contract. The Proposal expectations for the soft drink contract include a financial contribution of at least \$200,000 annually for each year of the five-year contract. This financial contribution to the Oregon Zoo will be used toward the final phase of The Great Northwest Project. The zoo will award the successful vendor significant recognition opportunities for the financial contribution, which are listed below.

- Your financial contribution will be prominently acknowledged in the new exhibit area.
- The Oregon Zoo will arrange for a suitable public announcement of this financial contribution.
- Mutually agreeable arrangements will be made for one "VENDOR day at the Oregon Zoo".
- Mutually agreeable arrangements will be made for one "VENDOR family day at the Oregon Zoo". This will include up to 1,000 complimentary admission tickets, up to 1,000 complimentary railroad tickets, up to 1,000 picnic fare meals at a 50% discount, and a full waiver of the site fee for the picnic.
- Mutually agreeable vendor name recognition at food and beverage outlets throughout the Oregon Zoo.
- Oregon Zoo Foundation Corporate Partner Benefits will be extended to VENDOR. These benefits include one complimentary Patron level membership, a 20% discount on new Zoo memberships for employees of VENDOR, invitation to attend special Zoo events, invitation to Corporate Partner luncheons, complimentary subscription to Oregon Zoo Tracks (quarterly newsletter), and recognition in Oregon Zoo Tracks (mailed to 35,000 member households).

Those interested in submitting a Proposal must complete the enclosed Proposal Form and return it no later than 3:00 p.m. on Friday, February 1, 2002 to Oregon Zoo, 4001 S. W. Canyon Road, Portland, OR 97221, Attention: Judy Case, Contracts Consultant, FAX 503-220-3680.

Any requests for information and/or relevant questions should be directed to the Project Manager, Carmen Hannold, Food & Beverage Manager, at 503-525-4252, or FAX 503-220-5732.

Vendors must meet the following requirements in order to submit a Proposal on this contract with the Oregon Zoo. Stated quantities are based on last year's usage and are for estimating purposes only. The

Oregon Zoo does not guarantee any level of minimum sales. Payment will be made for actual product ordered and received, based on the Oregon Zoo's current needs.

In order to be considered for a contract, all vendors must meet the following specifications:

- 1. Must be able to supply necessary dispensing equipment as outlined in the scope of work.**
- 2. Must be able to provide repair and maintenance response as outlined in the scope of work.**
- 3. Must supply a "will call" phone number for weekends and emergencies.**
- 4. Ability to delivery to two (2) different locations.**
- 5. Ability to deliver twice a week, delivery times subject to change based upon agreement between Vendor and Oregon Zoo.**

All proposals must be clearly and distinctly typed or written with ink or indelible pencil. All blank spaces must be completed. No erasures are permitted. Mistakes must be crossed out and corrections typewritten or written in ink adjacent thereto, and initialed in ink by the party signing the Proposal, or his¹ authorized representative. All proposals must be on the form furnished by the Oregon Zoo or they may be rejected by the Zoo.

FINANCIAL CONTRIBUTION NEGOTIATIONS

The expected financial contribution to the Oregon Zoo for the Great Northwest Project will be determined by negotiation with all qualified responders after proposals are received.

COST OF PROPOSAL

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

ERRORS/OMISSIONS

Any Proposal may be deemed non-responsive by the Contracts Consultant if it is not on the Proposal 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 Proposing documents.

ADDENDA TO PLANS OR SPECIFICATIONS

Requests for additional information or interpretation of the contract documents shall be delivered to the Project Manager, in writing, at least five (5) business days prior to the Proposal due date and time. If, in the opinion of the Project Manager, additional information or interpretation is needed by the Proposers, an addendum will be issued to all known specification holders.

The provisions of any written addenda issued by the Contracts Consultant or Project Manager at least seventy two (72) hours prior to the Proposal opening date and time shall be binding upon the Proposers, and failure of a Proposer to obtain such addenda shall not excuse compliance therewith by the successful Proposer.

¹ All references to "he" in this document shall include the feminine reference of "she."

MODIFICATION OF PROPOSAL

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

WITHDRAWAL OF PROPOSALS

A Proposer may withdraw its Proposal in person, or by written or telegraphic request which is received prior to the scheduled 3:00 p.m. closing time for filing Proposals. A Proposal may not be withdrawn by FAX. Negligence on the part of the Proposer in preparing his Proposal confers no right to withdraw the Proposal after the scheduled closing time for filing Proposals.

LATE PROPOSAL

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

EXECUTION

Each Proposal shall give the Proposer's full business address and bear its legal signature.

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

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

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

If the Proposal is signed by an agent who is not an officer of the corporation or a member of the partnership, a notarized Power of Attorney must be on file with Metro prior to the opening of Proposals or be submitted with the Proposal. Without such notice of authority, the Proposal shall be considered improperly executed, defective and therefore non-responsive.

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

EXAMINATION OF SPECIFICATIONS AND SITE OF WORK

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

COMPLIANCE

Each Proposer shall inform itself of, and the Proposer 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.

EQUAL EMPLOYMENT OPPORTUNITY

During the performance of the contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin.

PERMITS AND LICENSES

Each Proposer shall obtain and include in his Proposal the cost for all permits and licenses that may be required to perform the contract.

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.

IMMATERIAL VARIANCES

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

LATEST MODEL

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

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

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

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

2. Metro may require demonstration, additional tests, and additional data, all to be supplied at the expense of the Proposer.
3. If Metro determines that the proposed item, material or process is of equal value, utility or merit, the Project Manager shall notify all potential Proposers of record by issuance of an addendum at least seventy two (72) hours prior to the Proposal opening date and time.

TERMS

A Proposal may be rejected if it requires payment in less than thirty (30) calendar days after delivery or if it requires payment, in whole or in part, prior to delivery.

WARRANTY/GUARANTY

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

Every Proposal 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 Proposer 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

The Contractor shall deliver seven days a week 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 Oregon Zoo. Refer to Scope of Work for specific product delivery requirements. Contractor shall assume all risk of deliveries made during hours beyond those listed above. The successful Proposer shall notify Oregon Zoo, 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 Proposer, Oregon Zoo reserves the right to cancel the order and make the purchase from the second lowest, responsible Proposer.

If the zoo does not elect to cancel the contract initially, subsequent failure to meet the then current delivery requirement does not foreclose Oregon Zoo's option for later cancellation.

FAILURE TO PERFORM

Should the Contractor fail to meet the agreed upon delivery schedule, thereby making it necessary for the Oregon Zoo to purchase urgently-needed items from another source, the original Proposer and Contractor shall pay the difference between the accepted Proposal price and the purchase price or accept an offset

against any moneys then owed by the Oregon Zoo. Poor performance as to Specifications may cause the vendor's contract to terminate.

RESIDENT/NON-RESIDENT PROPOSER

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

GENERAL CONDITIONS

NOTICE OF AWARD

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

CONTRACT

Within 10 business days of receipt of the contract from Metro, the Successful Proposer shall sign and deliver the Contract to Metro.

FOREIGN CONTRACTOR

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

INSURANCE

Vendor shall purchase and maintain at VENDOR's expense, insurance covering the VENDOR, its employees and agents, including: general liability insurance covering personal injury, property damage, and bodily injury with automatic coverage for premises and operation and product liability; automobile bodily injury and property damage liability insurance, in amounts no less than the Oregon Torts Claims Act (ORS Chapter 30), and workers' compensation coverage in compliance with ORS 656.017.

For Vendors making delivery to the Oregon Zoo, Metro shall be named as an additional insured on the Vendor's general liability and auto liability policy.

NOTICE OF ASSIGNMENT

Metro will not recognize any assignment or transfer of any interest in this contract without written notice to the Procurement Officer by the new vendor.

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 Occupational Health and Safety Code, OAR Chapter 437, Division 155, Hazard Communication.

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

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

The Contractor shall provide Metro with all Material Safety Data Sheets (MSDS) prior to delivery or introduction of the material on site. For further information or clarification, contact the Metro Risk Management Division at 797-1615.

PATENTS

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

INVOICES

Invoices shall be prepared and submitted unless otherwise specified. Invoices shall contain the following information: 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.

LAW OF STATE OF OREGON

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

SPECIAL CONDITIONS

These special conditions are unique and additive to the terms and conditions for this project. As such, they take precedence over and are intended to further refine or expand the requirements of the "Instructions to Proposers," "General Conditions," and "Supplemental Conditions."

BASIS OF AWARD

Award of this five-year contract shall be based on the following criteria:

Minimum Vendor Qualifications must be met including:

1. **Must be able to supply necessary dispensing equipment as outlined in the scope of work.**
2. **Must be able to provide repair and maintenance response as outlined in the scope of work.**
3. **Must supply a "will call" phone number for weekends and emergencies.**
4. **Ability to delivery to two (2) different locations.**
5. **Ability to deliver twice a week, delivery times subject to change based upon agreement between Vendor and Oregon Zoo.**

If minimum vendor qualifications are met, evaluation of remaining categories will be rated as follows:

- Total Financial Impact to Zoo – including price of product, marketing & promotion package advantages for the zoo, and the negotiated financial contribution to the Oregon Zoo for the Great Northwest Project - 80%
- Marketability of product based on local market share of product and variety of product selection 20%

The Oregon Zoo reserves the right to reject any and/or all Proposals in whole or in part, and to waive irregularities not affecting substantial rights on the basis of taste, marketing advantages, or price. Metro's decision as to these factors shall be final. Metro reserves the right to adjust the product mix as necessary to ensure product sales and customer satisfaction; adjust to changes in product pricing, packaging and availability; cover emergencies and participate in special promotional opportunities.

PRICES

This RFP is intended to characterize the potential needs by the Oregon Zoo during a fiscal year, July 1 to June 30. As such, each transaction is independent over time, the prices are "firm" and "binding" only to the extent permitted by law. In case of mistake in extension of price, unit prices shall govern. All prices shall be F.O.B. the destination designated by Metro.

Therefore, the prices of products outlined in this RFP merely reflect the posted prices at time of original purchase; each purchase represents a separate transaction, and no credit or discount is intended or solicited from vendor.

Vendor may apply for a price review annually during the contract period. The review shall be conducted on an item-by-item basis. If the review calls for a price increase, Oregon Zoo may explore other alternate products or suppliers.

Oregon Zoo expects that any price decreases will be passed along immediately. At all times, the Zoo shall receive the most favorable pricing on scheduled items given to other governmental clients.

QUANTITY

Approximate quantities are based on last year's usage, are for estimating purposes only, and are not to be construed as a guarantee to purchase any amount. Payment will be made only for quantities actually ordered, delivered, and accepted whether greater than or less than the stated amounts.

TERM OF CONTRACT

This contract shall be for a period of five (5) years, beginning February 15, 2002. As this contract extends beyond the current fiscal year, it is subject to future appropriations by Metro Council to fund its provisions and may be canceled by Metro upon a 30 calendar day written notice to the Contractor of any such failure.

ATTACHMENT "A"
OREGON ZOO BEVERAGE REQUIREMENTS
SCOPE OF WORK

Contractor to supply all product, equipment, materials, and maintenance for carbonated and other beverages required by the Oregon Zoo, as specified herein:

A. EQUIPMENT

Contractor shall furnish, install and maintain in good operating condition and appearance, the following machines to be located at the Oregon Zoo, 4001 S. W. Canyon Road, Portland, Oregon 97221. Installation and service of the machines listed shall include all necessary pressure tanks and lines and shall be delivered/installed within 14 days of the contract execution.

1. Six (6) four-head (minimum) dispenser ice-cooled drop-in units.
2. Five (5) portable BIB carts with four-head (minimum) dispensing units and ice bins. Carts capable of holding five BIBs and one CO². Carts shall contain an equal number of heads to BIBs. Cart design to be agreed upon by both Oregon Zoo and Contractor.
3. Nine (9) eight-head (minimum) self-serve fountain dispensing units with ice cubers.
4. All post-mix units must have the capability of dispensing soda water.
5. No more than six (6) vending machines which will dispense fruit juices, sport drinks, bottled water and 20 ounce plastic bottled sodas. Both Oregon Zoo and Contractor shall mutually agree upon the location of vending machines on Zoo grounds. Price of product in vending machines shall not exceed \$2.00. Contractor shall submit a monthly check to the Oregon Zoo for 25% of monthly sales. Successful proposer shall provide a monthly statement of:
 - (a) Gross sales & commissions showing calculations used.
 - (b) Beginning & ending meter readings, and explanation of any discrepancies
 - (c) Total unit sales
6. To accommodate non-carbonated beverages, four (4) floor-model upright display coolers, Bev-Air Model MT-27 or equal; one (1) counter-top cooler, Superior Model 2-R-469 or equal, and push cart/ice bins as needed.
7. Any additional equipment reasonably called for by the addition of new facilities and/or the upgrading of existing facilities.
8. Machines listed shall be no more than five years old and acceptable to the Zoo's Food & Beverage Manager. Bidder shall supply pictures and/or brochures of the equipment.

INITIAL DELIVERY OF SYSTEMS

Time is of the essence in this agreement. Equipment specified must be delivered and installed within 14 days after execution of the contract. Failure to deliver the proper dispensers and/or service system and/or failure to deliver them within the time specified herein will cause Metro to lose business. Liquidated damages in the amount of \$500 per day will be required from the Contractor if the Contractor fails to meet any of the stated specifications, conditions and deadlines.

REPAIR/MAINTENANCE

Contractor shall provide 24-hour, 7-day a week repair service at no charge to Metro for all soft drink dispensing and vending equipment provided by the Contractor, as well as equipment currently owned by the Zoo or purchased by the Zoo during the period of this contract.

Failure to repair soft drink dispensing equipment within 24 hours will cause the Zoo to lose sales. Liquidated damages in the amount of \$500 per day per location will be required from the Contractor if the Contractor fails to repair equipment within said 24-hour time frame.

B. PRODUCT SPECIFICATIONS

Items listed are major items used by the Oregon Zoo; quantities listed are for estimated annual usage. Additional items will be purchased as needed. Purchases shall be made based on appropriateness, pricing, and taste.

1. CARBONATED - FOUNTAIN

2,100 gallons cola soft drink post-mix
1,500 gallons diet cola soft drink post-mix
1,500 gallons lemon-lime &/or citrus soft drink post-mix
800 gallons orange soft drink post-mix
1,250 gallons root beer soft drink post-mix
6,000 pounds CO² in both 20 lb. and/or 50 lb. tanks

All post-mix syrup is to be provided in the 5 gallon bag-in-box system as opposed to the five gallon canister system. Bag-in-box system must be available beginning with the initial delivery which must be within 14 days of the contract approval by Metro.

2. CARBONATED - BOTTLES & CANS

1000 cases various flavors vending canned soda in 12 oz. cans, packed 24 cans/case.
1000 cases plastic soda bottles (vending) 20 oz bottles, packed 24 bottles/case.

3. OTHER BEVERAGES, not including milk or coffee

600 cases (24 cans/case) Non-carbonated fruit beverage, individually bottled or canned in 8oz – 12 oz. servings, in assorted flavors. 100% pure fruit juice to include apple, orange and grape, and other mixed varieties.

400 cases (24cans/case) Non-carbonated sports drink, individually bottled or canned in 16 oz – 20 oz. servings.

200 gallons Lemonade Post-mix syrup

200 gallons Ice Tea Post-mix syrup

2,500 cases (24 bottles/case) Water, individually bottled in 16 oz – 20 oz. servings.

Juice drinks and other beverages may be ordered as required.

QUANTITIES

Stated quantities are based on last year's usage and are for estimating purposes only. The Oregon Zoo does not guarantee any level of minimum sales. Payment will be made for actual product ordered and received, based on the Oregon Zoo's current need.

DELIVERY

The Contractor shall deliver seven days a week 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 Oregon Zoo. Contractor shall make deliveries of above-listed product at least once weekly and as required for emergencies. Contractor must provide deliveries as required by the Zoo, 24 hours per day, year around, including weekends and holidays.

C. MARKETING & PROMOTION

The Oregon Zoo recognizes that there are many mutually advantageous promotion and marketing opportunities with a long-term partner, some through established means, and other methods which have yet to be developed. Additional promotions, sponsorships and marketing that are mutually agreeable would be considered. Such ideas could include traditional advertising and tie-ins, custom cups, signage, etc.

Contractor will assist the Zoo with sponsorship and promotions. 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 by the Zoo and the Contractor. Marketing/promotional suggestions include, but are not limited to:

- 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
- Vendor-sponsored kids day
- Signage/menu boards
- Picnic table umbrellas
- Zoo maps
- Partnership coupons on admission tickets
- Major sponsor for event and/or exhibit
- Cash contribution

During the term of this contract, Contractor will have exclusive pouring rights at the Oregon Zoo for carbonated and other beverages as specified under this contract. Contractor is authorized to reference this exclusive soft drink contract with the Oregon Zoo for promotional purposes.

For all catered events held at the Oregon Zoo, the Zoo will promote the Contractor's product. However, if a catering client requests something other than the Contractor's product, the requested product will be served.

D. IN RETURN

The Zoo will offer the following opportunities to the successful soft drink company:

- Your financial contribution will be prominently acknowledged in the new exhibit area.
- The Oregon Zoo will arrange for a suitable public announcement of this financial contribution.
- Mutually agreeable arrangements will be made for one "VENDOR day at the Oregon Zoo".

- Mutually agreeable arrangements will be made for one “VENDOR family day at the Oregon Zoo”. This will include up to 1,000 complimentary admission tickets, up to 1,000 complimentary railroad tickets, up to 1,000 picnic fare meals at a 50% discount, and a full waiver of the site fee for the picnic.
- Mutually agreeable vendor name recognition at food and beverage outlets throughout the Oregon Zoo.
- Oregon Zoo Foundation Corporate Partner Benefits will be extended to VENDOR. These benefits include one complimentary Patron level membership, a 20% discount on new Zoo memberships for employees of VENDOR, invitation to attend special Zoo events, invitation to Corporate Partner luncheons, complimentary subscription to Oregon Zoo Tracks (quarterly newsletter, and recognition in Oregon Zoo Tracks (mailed to 35,000 member households).

Some or all of the following additional mutually agreeable opportunities may be considered.

- Oregon Zoo to distribute promo coupons to visitors
- Allow vendor to use Oregon Zoo as test market for new products
- Waive site fees for a specified number of vendor’s catered events per year
- Provide mutually agreeable recognition for major sponsorships and/or capital improvements

NOTICE TO ALL PROPOSERS

The public contract included herein is a standard agreement approved for use by Metro's General Counsel. This is similar to the actual contract the successful Proposer will enter into with Metro; it is included for your review prior to submitting a Proposal. The actual contract entered into will spell out the specific financial contribution, marketing support, etc., the vendor will provide in exchange for pourage rights at the zoo.

OREGON ZOO CARBONATED & OTHER BEVERAGES PROPOSAL FORM

Due 3:00 p.m., January 25, 2002

TO: Oregon Zoo
4001 S.W. Canyon Road
Portland, OR 97221

ATTN: Judy Case, Contracts Consultant

FROM: _____
VENDOR

Now, therefore, based upon acts, intentions and certifications stated herein, and in full and complete compliance with all terms and conditions of the attached specifications, and all applicable local, state and federal requirements, I declare my BASE PROPOSAL to be:

In order to be considered a responsible/responsive Proposer, you must be able to meet the following requirements:

1. Yes No Agree to enter into long-term, mutually beneficial relationship with the Oregon Zoo.
2. Yes No "Will call" phone number for weekends and emergencies.
3. Yes No Able to deliver to two (2) different loading docks?
4. Yes No Able to have orders placed on Monday for Tuesday delivery and on Thursday for Friday delivery?
5. Yes No VENDOR declares it will furnish, install, maintain and repair the equipment as indicated in Section A of the Scope of Work.
6. Yes No VENDOR declares it will comply with initial delivery requirements as indicated in Section A of the Scope of Work.

If you have answered "NO" to any question above, please stop here. If all questions have been answered "YES", please continue with the proposal form on the following pages.

UNIT PRICE		NAME OF PRODUCT	EST. ANNUAL USAGE	EXTENDED TOTAL
FINANCIAL CONTRIBUTION TO OREGON ZOO TO BE NEGOTIATED WITH QUALIFIED RESPONDERS				
GROUP B-1 – CARBONATED BEVERAGES				
\$		per gallon of cola soft drink post-mix syrup	2,100 gal	\$
\$		per gallon of diet cola soft drink post-mix syrup	1,500 gal	\$
\$		per gallon of lemon-lime &/or citrus soft drink post-mix syrup	1,500 gal	\$
\$		per gallon of orange soft drink post-mix syrup	800 gal	\$
\$		per gallon of root beer soft drink post-mix syrup	1,250 gal	\$
\$		per gallon of lemonade post-mix syrup	200 gal	\$
\$		per gallon of ice tea post-mix syrup	200 gal	\$
\$		per 20# of CO2	6,000#	\$
		- or -		- OR -
\$		per 50# of CO2		\$
		TOTAL ANNUAL PRODUCT BID GROUP B-1		\$

The undersigned recognizes that yield is an important part of the evaluation of bid prices. The undersigned states that the following yields are accurate for his/her products:

_____	parts cola post-mix to	_____	parts water
_____	parts diet cola post-mix to	_____	parts water
_____	parts lemon-lime post-mix to	_____	parts water
_____	parts orange post-mix to	_____	parts water
_____	parts root beer post-mix to	_____	parts water

B-2. BOTTLES/CANS CARBONATED – PACKED 24 CANS/CASE			
\$	various flavors vending canned soda in 12 oz cans	1000 cases	\$
\$	various flavors vending soft drinks in 20 oz bottles	1000 cases	\$
	TOTAL ANNUAL PRODUCT BID GROUP B-2		\$

B-3. OTHER BEVERAGES – Packed 24 cans/bottles per case			
\$	Non-carbonated fruit beverage, individually bottled or canned in 8-12 oz servings, assorted flavors	600 cases	\$
\$	Non-carbonated sports drink, individually bottled or canned in 16-20 oz. servings	400 cases	\$
\$	Water, individually bottled in 16-20 oz servings	2,500 cases	\$
	TOTAL ANNUAL PRODUCT BID GROUP B-3		\$

	TOTAL ANNUAL PRODUCT BID GROUP B1 + B2 + B3		\$
			X 5 YEARS
	TOTAL PRODUCT BID		\$

Name and telephone number of person to be contacted regarding:

	Monday-Friday	Sat/Sun/evenings/holidays
Product Supply		
Equipment Maintenance/Repair		

C. MARKETING & PROMOTION

In accordance with Section C in the Scope of Work, VENDOR agrees that marketing/ promotional contributions (in addition to the negotiated financial contribution to the Oregon Zoo) shall include those checked below:

X if applicable	Type of Contribution	Quantity
_____	Billboards	_____
_____	Truck backs	_____
_____	Radio/TV advertising	_____
_____	Tie-in with local retailer	_____
_____	Custom or collector cup thru fast-food restaurant chain	_____
_____	Use of neck-ringers to publicize/promote key events	_____
_____	Label with zoo offer on back	_____
_____	Vendor-sponsored kids day	_____
_____	Signage/menu boards	_____
_____	Picnic table umbrellas	_____
_____	Partnership coupons on admission tickets	_____
_____	Major sponsor for event and/or exhibit	_____
_____	OTHERS	_____
_____		_____
_____		_____
_____		_____
_____		_____

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

It has:

- ❖ No knowledge of any undeclared bidding interests, fraud or collusion in administration of this proposal;
- ❖ Carefully examined the contract documents for the enclosed proposal;
- ❖ Secured and considered all addenda issued to date;

It intends:

- ❖ This proposal to be irrevocable for ninety (90) days after proposal opening;
- ❖ To submit a fair and independent proposal without collusion with any official, agent or employee of Metro or any other Proposer;
- ❖ To execute a contract and provide all insurance certificates without delay or modification to the documents herein.
- ❖ This document to be the full and complete proposal without any unsolicited additions, deletions or conditions made or attached.

It certifies that:

- ❖ It ___ is or ___ is not an Oregon Resident Proposer (ORS 279.029)²
- ❖ All federal, state and local sales and use taxes are included in the stated proposal price(s).
- ❖ It has / will comply with the Oregon tax laws (ORS 305.385).
- ❖ It has not / will not discriminate against minorities, women, or emerging small business enterprises in obtaining any required subcontracts for goods or services (ORS 279.111).
- ❖ That no officer, agent, or employee of Metro has participated on behalf of Metro in preparation of this Proposal, that the Proposal is made in good faith without fraud, collusion, or connection of any kind with any other Proposer, and the Proposer is competing solely in its own behalf without connection or obligation to any undisclosed person or firm.

(Check or complete all applicable boxes or blocks.)

___ 1.	TYPE OF BUSINESS ORGANIZATION: Proposer operates as ___ an individual, ___ a corporation, incorporated under the laws of the state of _____, ___ a non-profit organization, ___ a partnership. (If partnership, list/attach names of the partners)
___ 2.	OREGON LICENSE: If a corporation, ___ it is, or ___ is not, licensed with Oregon Corporation Commission.
3.	DOING BUSINESS AS: Provide any assumed names utilized:
4.	This pricing shall be extended to other governmental jurisdictions within Metro boundaries.
___ 5.	This pricing is exclusively for Metro use and will not necessarily be extended to other governmental jurisdictions within Metro boundaries.

² For information concerning exact language of ORS 279 and Metro Code, please contact the Risk & Contract Management Division at (503) 797-1717.

FIRM OR CORPORATION NAME _____ _____	
NAME OF LOCAL REPRESENTATIVE _____ _____	
MAILING ADDRESS: _____	
STREET	CITY STATE ZIP
FED. SOCIAL SECURITY IDENTIFICATION NO. _____	
TELEPHONE NUMBER: AREA CODE () ()	FAX NUMBER: AREA CODE
NAME AND TITLE OF PERSON AUTHORIZED TO CONTRACT/SIGN OFFER (TYPE OR PRINT)	SIGNATURE OF AUTHORIZED PERSON:

GOVERNMENTAL AFFAIRS COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 01-3154, FOR THE PURPOSE OF EXEMPTING FROM COMPETITIVE BIDDING REQUIREMENTS AND AUTHORIZING THE RELEASE OF RFP# 01-55-ZOO FOR SOFT DRINK AND BOTTLED BEVERAGES AT THE OREGON ZOO

Date: February 19, 2002

Presented by: Councilor Monroe

Committee Recommendation: At its February 14 meeting, the committee considered Resolution No. 01-3154 and voted unanimously to send the resolution, to the Council for adoption. Voting in favor: Councilors Burkholder and Monroe, and Chair Bragdon.

Background: Metro Code section 2.04.054 authorizes the use of a request for proposals contracting process provided that findings are made that the use of such an approach does not discourage competition. The zoo's current contract for the provision of soft drinks is expiring and the management would like to explore a new contract that would provide certain advertising and other benefits to the vendor in exchange for a monetary contribution to the zoo.

Committee Discussion:

Kathy Kiaunis, Deputy Zoo Director, presented the staff report. She noted that the intent of the resolution is to initiate the process by which the zoo would obtain a soft drink vendor. She explained that a request for proposals contracting process will give the zoo needed flexibility to negotiate terms with a new vendor that could include a monetary contribution to the zoo. A request for bid process would not provide such flexibility.

Chair Bragdon and Councilor Burkholder expressed concern about the nature of advertising opportunities and other benefits that might be offered to a vendor to procure a zoo donation. They noted that the zoo is a family outing experience in a park-like setting. They did not want to see this jeopardized by overcommercialization. Ms. Kiaunis responded that they enhanced advertising opportunities would be low-key and generally at the food service sites. She indicated that the benefit opportunities could include items such as a free admission day for the vendor's employees.

The committee had no other questions.

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 02-3154 FOR THE PURPOSE OF EXEMPTING FROM COMPETITIVE BIDDING REQUIREMENTS AND AUTHORIZING RELEASE OF RFP 02-1005-ZOO (EXHIBIT B OF RESOLUTION) FOR SOFT DRINK AND BOTTLED BEVERAGES AT THE OREGON ZOO

Date:

Presented by: Kathy Kianus

PROPOSED ACTION

Adopt Resolution No. 02-3154 exempting the competitive bidding requirements and authorizing the release of RFP# 02-1005-ZOO for soft drink and bottled beverages at the Oregon Zoo. Authorizes zoo staff to negotiate with responsive proposers the best terms and conditions and a donation.

EXISTING LAW

Metro Code section 2.04.054(c) authorizes, subject to ORS 279.015, the use of alternative contracting practices that take into account market realities and innovative contracting methods which are consistent with the public policy of encouraging competition.

FACTUAL BACKGROUND AND ANALYSIS

The Oregon Zoo has the highest per capita food and catering sales of comparable zoos according to The State of the Industry: Zoo and Aquarium Visitor Services in North America, A Survey of Operational Data for 2000.

The zoo's soft drink contract has expired and the zoo is desirous of creating a winning partnership with the successful vendor to supply carbonated and other beverages at the Oregon Zoo over the next five years. The successful vendor will provide all product, equipment, materials, and maintenance for carbonated and other beverages.

Zoo staff seeks the opportunity to negotiate with successful proposers for a contribution in combination with winning contract. Staff will recommend a minimum gift of \$1,000,000 over the five-year contract.

BUDGET IMPACT

The annual cost of the contract is expected to be approximalety \$100,000. Staff will negotiate with successful proposers for annual contributions to the zoo.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 02-3154.