

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING) RESOLUTION NO. 02-3239
RELEASE OF RFB #03-1032-REM FOR)
THE PROVISION OF DIESEL FUEL AND) Introduced by
AUTHORIZING THE EXECUTIVE OFFICER) Mike Burton, Executive Officer
TO EXECUTE THE RESULTING CONTRACT)

WHEREAS, Metro currently purchases the diesel fuel used by the Waste Transport Services Contractor in order to realize savings due to avoidance of the federal excise tax on the fuel; and,

WHEREAS, the current supply agreement for an eastern Oregon cardlock expires February 22, 2003; and,

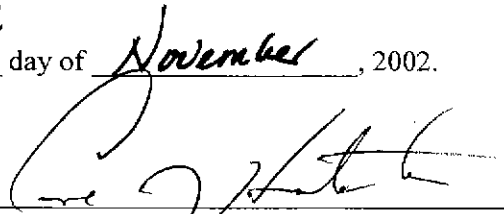
WHEREAS, RFB #03-1032-REM attached as Exhibit "A" will procure a replacement supply agreement so that Metro may continue to realize savings of at least twenty-four cents per gallon; and,

WHEREAS, this resolution was submitted to the Executive Officer for consideration and was forwarded to the Metro Council for approval; now therefore,

BE IT RESOLVED,

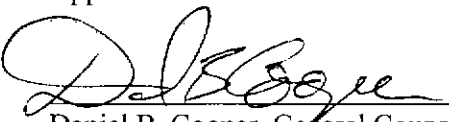
1. That the Metro Council authorizes issuance of RFB #03-1032-REM attached hereto as Exhibit "A".
2. That the Metro Council, pursuant to Section 2.04.026(b) of the Metro Code, authorizes the Executive Officer to execute a contract with the lowest responsible bidder.

ADOPTED by the Metro Contract Review Board this 14th day of November, 2002.



Carl Hosticka, Presiding Officer

Approved as to Form:



Daniel B. Cooper, General Counsel

EXHIBIT A
Resolution No. 02-3239

REQUEST FOR BIDS
FOR
THE PROVISION OF DIESEL FUEL

RFB #03-1032-REM

Metro
Regional Environmental Management Department
600 N.E. Grand Avenue
Portland, OR 97232-2736

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INVITATION TO BID

Metro is requesting bids for supplying approximately 5.3 million gallons of No.2, low sulfur branded diesel fuel over a five year period (RFB #03-1032-REM) at a commercial cardlock located on HWY 19 between the City of Arlington, Oregon and the Columbia Ridge Regional Landfill, 18177 Cedar Springs Lane, Gilliam County, Oregon. Potential bidders may obtain bid documents by contacting the Regional Environmental Management Department of Metro at (503) 797-1650. Sealed bids must be delivered to the Department at Metro, 600 NE Grand, Portland, Oregon 97232-2736; to the attention of Chuck Geyer no later than 3:00 p.m., _____, at which time they will be publicly opened and read in _____.

INSTRUCTIONS TO BIDDERS

BID

Metro is requesting bids for supplying approximately 5.3 million gallons of No.2, low sulfur branded diesel fuel over a 70 month period (RFB #03-1032-REM) at a commercial cardlock located on HWY 19 between the City of Arlington, Oregon and the Columbia Ridge Regional Landfill, 18177 Cedar Springs Lane, Gilliam County, Oregon.

Bids must be enclosed in a sealed envelope and mailed or delivered to the Metro Regional Environmental Management Department (REM), 600 NE Grand, Portland, Oregon 97232-2736, Attention, Chuck Geyer, no later than 3:00 p.m., _____, _____, 20____, when they will be publicly opened in _____. A bid may not be submitted by Facsimile (FAX) transmittal.

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

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

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

All bids must be on the forms furnished by Metro or they may be rejected by Metro. **The forms should be accompanied by technical information, including site plans, demonstrating compliance with the requirements of the Scope of Work.**

COST OF BID

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

ERRORS/OMISSIONS

Any Bid may be deemed non-responsive by the Procurement Officer if it is: not on the Bid forms provided; contains errors or omissions, erasures, alterations, or additions of any kind; proposes prices which are unsolicited or obviously unbalanced; or not in complete conformance with any and all conditions of the bidding documents, including

but not limited to the requirements of the Scope of Work, as determined at the sole discretion of Metro.

ADDENDA TO PLANS OR SPECIFICATIONS

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

MODIFICATION OF BID

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

WITHDRAWAL OF BIDS

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

LATE BID

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

EXECUTION

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

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

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

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

If the Bid 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 Bids or be submitted with the Bid. Without such notice of authority, the Bid shall be considered improperly executed, defective and therefore nonresponsive.

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

EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE OF WORK

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

COMPLIANCE

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

ELIGIBILITY

Prior to submitting a Bid, all Bidders on public works/construction projects are required to be registered with the State of Oregon Construction Contractors Board, pursuant to ORS 701.035.

This project is not considered a public works/construction project.

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

CONFLICT OF INTEREST

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

IMMATERIAL VARIANCES

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

LATEST MODEL

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

RECYCLABLE PRODUCTS

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

RECYCLED PRODUCTS AS BID ITEMS

Oregon Law (ORS 279-570) requires Metro and all public agencies to give preference to materials and supplies manufactured from recycled materials.

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

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

Definitions of "recycled product," "post-consumer" and "secondary" waste material and other explanatory notes are included in Chapter 385 and available from the Metro Contract Management Division at (503) 797-1613.

QUANTITIES

Metro makes no guarantees as to the exact quantities to be purchased. The figures provided are intended merely as guides and Bidders are warned not to construe them as a guarantee to purchase any amount.

Payment will be made only for quantities actually ordered, delivered, and accepted whether greater or less than the stated amounts.

TERMS

A Bid may be rejected if it requires payment in less than the time period specified in the Scope of Work.

PRICES

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

WARRANTY/GUARANTY

Each Bid for the furnishing of materials and equipment shall provide an explanation of both the Bidder's and manufacturer's warranties on materials and workmanship if requested by Metro subsequent to bid opening.

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

Each Bidder on a public works/ construction project shall provide at minimum a one-year's guaranty on all materials and workmanship.

SERVICE

Each Bidder shall furnish detailed information on any service facilities, locations, and procedures as well as information on any maintenance agreements or contracts available to Metro. This includes submission of information sufficient to demonstrate compliance with the requirements of the Scope of Work, at the time of bid opening, to Metro's sole satisfaction. Noncompliance with the requirements of the Scope of Work, in Metro's sole opinion, shall result in rejection of the Bid as nonresponsive.

DELIVERY

The successful Bidder shall notify Metro, in writing, within two (2) business days of bid opening if fuel will not be available as required.

Upon receipt of such notice from the successful Bidder, Metro reserves the right to cancel the order and make the purchase from the second lowest, responsible Bidder.

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

BID SECURITY

All Bids in excess of \$25,000 must be accompanied by a Bid deposit in the form of cashier's check or certified check drawn on a bank in good standing, or a Bid bond issued by a surety authorized to conduct such business in the state of Oregon. **The deposit will be \$500.00.** The deposit shall serve as a guarantee that the Bidder will not withdraw the Bid for a period of sixty (60) days after Bid opening, and if awarded the Contract will execute the Metro contract and furnish all bond(s) as required and within the time frame specified herein.

The Attorney-in-Fact (Resident Agent) who executes any bond on behalf of the Surety must attach a notarized copy of his/her Power of Attorney as evidence of his/her authority to bind the Surety on the date of execution of the bond.

Bid security is not required for food products and may be waived by the Metro Council if expressly deleted by the special conditions attached.

RESIDENT/NON-RESIDENT BIDDER

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

BASIS OF AWARD

The award shall be made to the responsible Bidder(s) submitting the most responsive Bid to Metro. Any determination of the responsible Bidder(s) submitting the most advantageous Bid and the award are subject to review and determination by the Metro Legal Counsel as to legal sufficiency of any Bid submitted. Metro reserves the right to reject any and/or all Bids in whole or in part, and to waive irregularities not affecting substantial rights.

Bids will be evaluated for responsiveness using the following criteria:

- Compliance with all instructions specified in the request for bids related to bid preparation and documentation (see in particular "Errors/Omissions");
- Cost (per Schedule of Bid Prices);
- Compliance with the Scope of Work (see in particular "OR APPROVED EQUAL CLAUSE"). Metro will utilize the technical materials submitted with the bid, as well as any additional investigations necessary, in making this determination – at its sole discretion.

GENERAL CONDITIONS

NOTICE OF AWARD

Within 60 calendar days after the opening of Bids, Metro will accept one of the Bids, or combination of Bids, or reject all Bids in accordance with the Basis of Award. The acceptance of the Bid will be by written Notice of Award, mailed or delivered to the office designated in the Bid. The Notice of Award shall not entitle the party to whom it is delivered to any rights whatsoever.

CONTRACT

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

BID SECURITY

Bid securities will be held until the Contract has been finally executed, after which all Bid securities, other than those which have been forfeited, will be returned to the respective Bidders whose Bid they accompanied.

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

(or as indicated in attached contract)

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

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

Insurance coverage shall be a minimum of \$1,000,000 per occurrence. Metro, its councilors, departments, employees, and agents shall be named as an ADDITIONAL INSURED. Notice of any material change or policy cancellation shall be provided to Metro thirty (30) days prior to the change.

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

WORKERS' COMPENSATION

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

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 (503) 797-1615.

DELIVERY TIMES

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

FAILURE TO PERFORM

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

PATENTS

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

INVOICES

Invoices shall be prepared and submitted unless otherwise specified. Invoices shall contain the information as described in the Scope of Work.

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

MINORITY, ESB AND WOMEN-OWNED BUSINESS PROGRAM

In the event that any subcontracts are to be utilized in the performance of this agreement, the Bidder's attention is directed to Metro Code Section 2.04.100.

Copies of that document are available from the Contract Management Division, Metro Regional Center, 600 NE Grand Avenue, Portland, OR 97232 or by calling (503) 797-1816.

SCOPE OF WORK

I. BACKGROUND/HISTORY OF PROJECT

In 1991, Metro began transporting solid waste generated in the region to the Columbia Ridge Landfill located in Gilliam County, Oregon approximately 150 miles east of Portland, Oregon. Transport of the waste is provided through a contract with CSU, Inc..

Loads of waste to be transported are prepared at Metro transfer stations by compactors. One transfer station is located in Oregon City (Metro South Station) and the other in northwest Portland (Metro Central Station). A load of waste is 7 x 7 x 39 feet in size and weighs about 30.6 tons. In calendar year 2001, CSU transported 19,460 loads of waste from the transfer stations to the Columbia Ridge Landfill.

The typical CSU driver transports two loads per day. Beginning at the landfill, a driver takes an empty trailer to a transfer station, picks up a full trailer which is transported to a staging area located in Rufus. At the staging area, an empty trailer is picked up for another trip to a transfer station, where a full trailer is picked up and transported to the landfill. Full trailers left at the staging area in Rufus are shuttled to the landfill. Several tractors are based at the Metro Central Station, the rest are based at the landfill.

From March through October, the tractors are generally fueled at the beginning of a driver's shift at a cardlock located on HWY 19 between the landfill and the city of Arlington. During winter conditions, the landfill-based vehicles are fueled after leaving the staging area so that they are fully fueled during the night at the landfill. This helps prevent fuel system problems due to freezing temperatures.

CSU utilizes approximately 32 tractors and 200 trailers. The tractors are Standard Peterbilt 378 three-axle conventionals with a 262 inch wheel base, plus a drop axle. The trailers are 48 foot Fruehaufs. Engines are a combination of 425 hp Cat 3406C ATAAC mechanical diesels and Cat's new electronic 3406-rated 435 hp with 1,650 pounds per foot of torque. They drive through Fuller Super 10 transmissions and Rockwell 3.90 rearends. Each tractor is equipped with one, 120 gallon fuel tank which is accessed from the driver's side. A drawing of the tractor and trailer is contained in the Appendix.

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

As part of this modification to the waste transport contract, Metro agreed to provide the fuel to waste transport contractor "in a manner ... reasonably consistent with historical service levels.:" In 1993, the waste transport contractor purchased approximately 1.4

million gallons of fuel for use by its over-the-road vehicles. About 95% of the fuel was purchased from a cardlock located in Gilliam County, on HWY 19 between the City of Arlington and the landfill. The remaining amount was purchased from cardlocks in Troutdale and Oregon City, Oregon. Metro has continued to purchase fuel in the same proportions since 1994, and plans to do so under this contract.

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

Detailed information on fuel purchases is located in the Appendix. While fuel has been, and still must be in the future, available on a 24 hour, seven day a week basis, most of the fuel purchases occur during the weekday. No. 2 low sulfur diesel fuel is used exclusively, except when weather conditions" require "blending" to achieve non-gel operation.

The current agreements for the provision of fuel expire February 22, 2003. This RFB is intended to result in replacement agreements taking effect on February 23, 2003.

II. SCOPE OF WORK/SCHEDULE

Metro is seeking bids from qualified firms to perform the following services and to deliver the products described below.

1. Low sulfur, branded No. 2 diesel fuel shall be available 24 hours per day, seven days a week, from a commercial cardlock. The cardlock must be located on HWY 19, between the City of Arlington and Cedar Springs Road.
2. All fuel provided shall be filtered and free from impurities that might cause damage or impairment to vehicle operation. Contractor shall be liable for damages caused by fuel that is contaminated or otherwise does not meet specifications.
3. Fuel shall be winterized during cold weather to ensure 100% non-gel operation by blending with low sulfur heating fuel #1 or use of chemical additives. Contractor shall be liable for damages caused by fuel that is not properly winterized.
4. If the cardlock is disabled, Contractor shall provide fuel through a delivery truck with a meter and issue hand written receipts until the cardlock is operational. The delivery truck shall dispense fuel either at the cardlock or another location acceptable to Metro and CSU. The cost and quality of fuel supplied in this manner shall be the same as if the cardlock was available, except that the Contractor may pass through to Metro any additional, documented costs due to

this alternative fueling method, if the disabling of the cardlock was beyond the control of the Contractor, as determined by Metro in its sole opinion.

5. The site proposed in the Bid must be a commercial cardlock in compliance with all applicable regulations and of sufficient size to accommodate CSU tractor trailer combinations as described in the Appendix. The site must have restrooms, water, and emergency phone services available; be well lit, clean and be in an open area as to provide a safe environment for 24-hour use by CSU drivers.
6. The site shall have a minimum of two high pressure pumps available for fueling on the driver's side of the tractor regardless of the point of entry (i.e. accessing the site from the north or south). These pumps must be accessible for simultaneous fueling by a minimum of two CSU vehicles. Wait times, for these two vehicles, to access pumps should not exceed 10 minutes.
7. Queuing for four CSU vehicles shall be available at all times on property owned or controlled by the Bidder at the proposed site. Two of the four CSU vehicles may be fueling as required under item #6 in satisfaction of this queuing requirement. Queuing, for the four vehicles, must be available at all times at the site to ensure no CSU vehicles are queued on HWY 19 at any time.
8. Fuel shall be accessed through the use of a card assigned to a specific tractor. The system shall be programmable to limit purchases per use and to record the invoice information described below. Contractor shall be able to cancel access to fuel within 24 hours notice from Metro, either system-wide or on an individual card basis. Contractor shall provide cards to Metro (or a designated party at CSU) to access the system within 4 working days of a request.
9. Contractor's invoice shall contain the following information:
 - ◆ For each transaction by card:

Date / time / tractor # / odometer reading / m.p.g. / # of gallons / price per gallon / total price
 - ◆ At the end of the invoice the following summary information for the invoice period shall be included: **Total gallons / total charge**

10. Payment/Bid Assumptions:

- ◆ No excise tax will be charged to Metro (contractor will have to pay excise tax if applicable and obtain a refund from IRS)
- ◆ Metro payment within 10 working days of receipt of an invoice

- ◆ Payment to the Contractor shall be based upon the "base cost" for #2 low sulfur diesel, plus the "markup" as bid on the bid sheet, plus winterization costs
- ◆ For the purposes of payment, the "base cost" for #2 low sulfur diesel during any given week (Thursday through Wednesday) shall be as published in the weekly newsletter of the Oil Price Information Service, for the City of Portland for branded #2 low sulfur diesel¹. The newsletter price is available electronically on Friday, and the published price shall apply to the period beginning with the preceding Thursday. Metro will make this price available to the Contractor.

Example: Metro receives the OPIS newsletter on Friday, July 10th, and the appropriate branded #2 low sulfur diesel average is \$.65/gal. This is the "base cost" to which Metro will add the "markup" bid, to make payment for fuel purchases during the period July 9th through and including July 15th.

- ◆ The "markup" price bid on the bid sheet shall be added to the "base cost" as reimbursement for each gallon of fuel purchased under this contract. The markup price should include all freight, overhead, profit, load fees, any applicable taxes (except federal excise) and lifting fees, the Contractor wishes to be reimbursed for above the base cost of fuel. The markup shall be no more than 3 decimal places. The markup price will not change during the contract period, except for cost changes due to State or Federal fuel taxes or fees (except the federal excise tax) which will increase or decrease the markup price upon implementation.

Example: Contractor has the following costs \$0.048 (freight from Portland) + \$0.030 (profit and overhead) + \$0.010 (applicable taxes and lifting fees). The "markup" bid would be \$.088/gallon. Total reimbursement (except in the case of winterization costs) would be the markup plus the OPIS price for the week. Using the example for the base cost above of \$.650, the Contractor would receive \$.738 per gallon for each gallon supplied to Metro during the example period of July 9th through July 15th.

- ◆ Contractor shall be reimbursed for costs incurred to meet the following winterization specifications. Contractor shall winterize the fuel as appropriate and determine the corresponding "blend" of #1 low sulfur heating oil which would have been required for the period (Thursday through Wednesday). Utilizing the price published in the weekly newsletter of the Oil Price Information Service, for the City of Portland - "Average", Metro will compensate the Contractor for its winterization costs. An example of the OPIS index is contained in the Appendix.

¹ See Appendix for an example of the index.

Example: If a blend of 30% #1 low sulfur heating oil would have been needed (even if chemical additives were substituted), and the published cost of this fuel was \$.12 per gallon more than #2 low sulfur diesel, the Contractor would receive an additional \$.036 per gallon payment for the week.

11. Within 10 business days from the initial provision of fuel to Metro by Contractor under this Contract, Metro shall provide the Contractor with a deposit in the amount of \$25,000. The entire deposit shall be applied as partial payment to the final payment due under this Contract.
12. Price Escalation- No increase in the markup price will be granted during the contract term.
13. Term - The term of this agreement shall be for a period of February 23, 2003 to December 31, 2007.

III. Payment, Billing and Term.

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

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

APPENDIX TO SCOPE OF WORK

- Fuel Consumption History
- Vehicle Drawing
- OPIS Index
- Sample Public Contract
- Bid Forms

M:\rem\od\projects\Legislation\fuelRFB exhibit.doc

Fuel Consumption History

**TOTAL FUEL PAYMENTS AND CONSUMPTION - FY 2000-2001
DEVIN OIL ONLY**

DATE	TOTAL PAYMENTS	GALLONS
Jul-00	\$99,161.21	105,558.67
Aug-00	\$109,117.99	109,320.13
Sep-00	\$125,317.24	96,310.80
Oct-00	\$125,420.22	97,057.84
Nov-00	\$105,325.65	88,437.92
Dec-00	\$109,578.86	84,861.34
Jan-01	\$96,526.19	93,656.30
Feb-01	\$85,166.13	81,055.33
Mar-01	\$81,108.90	85,261.50
Apr-01	\$86,655.03	88,282.00
May-01	\$100,964.92	99,557.40
Jun-01	\$93,391.54	95,355.70
TOTAL	\$1,217,733.88	1,124,714.930

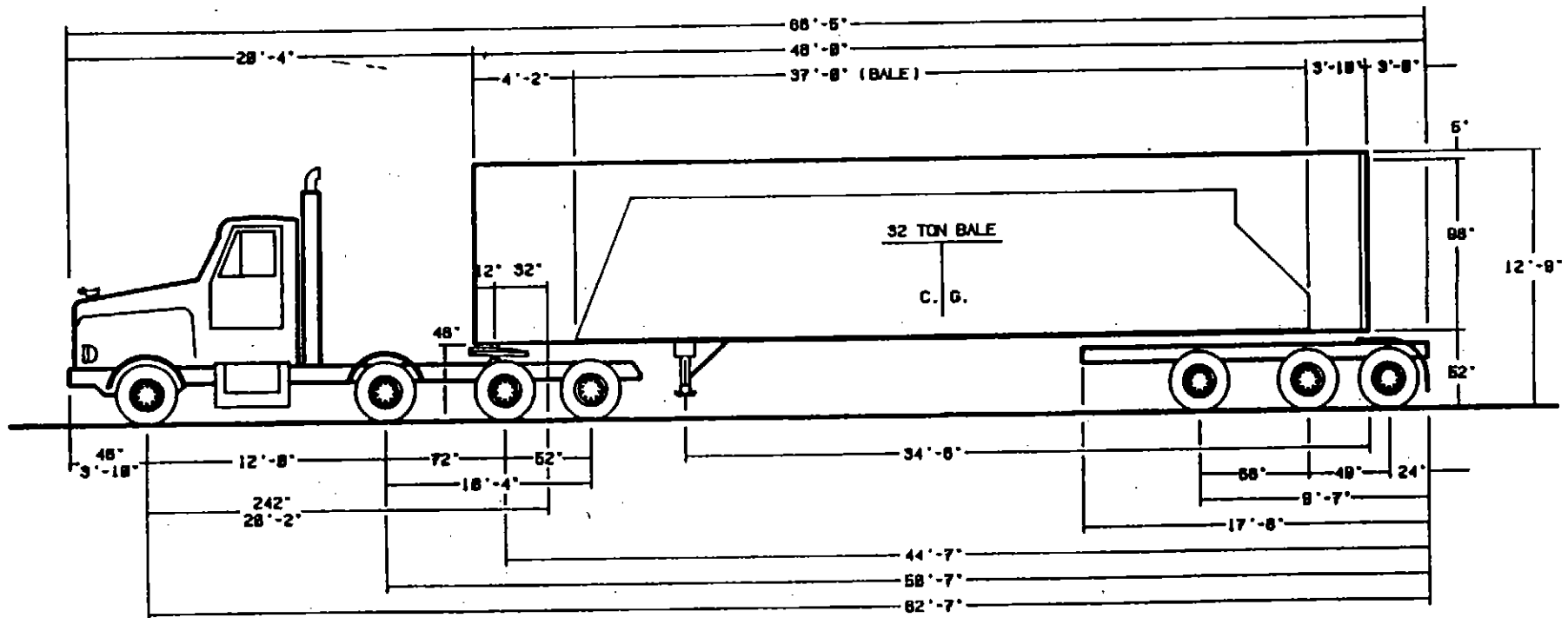
**TOTAL FUEL PAYMENTS AND CONSUMPTION - FY 2001-2002
DEVIN OIL ONLY**

DATE	TOTAL PAYMENTS	GALLONS
Jul-01	\$75,786.30	97,048.10
Aug-01	\$90,237.57	101,917.60
Sep-01	\$82,577.49	87,497.40
Oct-01	\$73,831.74	95,548.90
Nov-01	\$66,091.29	93,561.10
Dec-01	\$54,985.56	84,438.50
Jan-02	\$58,734.93	93,531.10
Feb-02	\$45,816.96	71,517.30
Mar-02	\$61,683.73	79,937.60
Apr-02	\$69,580.96	86,221.40
May-02	\$72,863.57	89,866.60
Jun-02	\$60,519.74	79,769.10
TOTAL	\$812,709.84	1,060,854.700

VEHICLE DRAWING

STS, Inc. (45 ft. semitrailer)

APPROVED BY TOM BRADD FOR OVER-WEIGHT PERMIT ON JUNE 23, 1989



9500	1500	6500	TRACTOR	17500		
300	1000	3700	TRAILER	14500	1500	8000
1700	8000	22000	PAYLOAD	84000	7500	25000
11500	8500	33000	GROSS	96000	9000	34000

OPIS INDEX

(Underlined items are used to calculate “base cost”)

Oil Price Information Service

Vol 22, No.39 OPIS Issue Date: Sep. 30, 2002

OPIS FAX-A-RACK

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Prices confirmed through September 26, 2002

PORTLAND, OR

OPIS CLEAR GROSS GASOLINE PRICES

	Terms	Unl	Reg/Mid	Pre Unl
76	1-10	94.25b	101.25m	109.25
Cenex	N-Rpt	82.00b	88.00m	94.00
Chevron	N-10	93.80b	100.80m	108.80
Duke	N-10	81.00u	84.50m	93.50
New West	N-10	82.00u	88.00m	94.00
Shell	N-10	93.80b	99.60m	107.80
TRAMMO	N-10	83.50u	88.50m	94.50
Tesoro	N-10	92.80b	98.80m	106.80
Tesoro	N-10	83.00u	88.00m	95.00
Texaco	N-10	93.80b	99.60m	107.80
Tosco	N-10	83.00u	87.50m	94.75
Valero	N-10	82.50u	87.50m	92.50
XOM	1-10	93.75b	99.55m	107.75
XOM	1-10	85.70u	90.20m	96.70
RANGE -LOW		81.00	84.50m	92.50
-HIGH		94.25	101.25m	109.25
AVERAGE		87.49	92.99m	100.23
BRND AVG		92.03	98.23m	106.03
UNBRND AVG		82.96	87.74m	94.42
5-DAY AVERAGE		87.99	93.57m	100.72

Prices confirmed through September 26, 2002

PORTLAND, OR

OPIS GROSS DISTILLATE PRICES

	Terms	Lo Sul No2	Hi Sul No2	Lo Sul Red No2	Lo Sul No1	Hi Sul No1	Lo Sul Red No1
76	b 1-10	83.76	-- --	89.51	93.27	-- --	-- --
BP	u Net	83.50	83.50	83.75	-- --	-- --	-- --
Cenex	b N-Rpt	82.00	-- --	82.35	94.00	-- --	94.35
Chevron	b N-10	81.60	-- --	-- --	-- --	-- --	-- --
Duke	u N-10	82.50	-- --	-- --	-- --	-- --	-- --
New West	u N-10	82.50	-- --	-- --	-- --	-- --	-- --
Shell	u N-10	83.70	82.95	-- --	-- --	-- --	-- --
TRAMMO	u N-10	82.25	-- --	-- --	-- --	-- --	-- --
Tesoro	b N-10	83.50	-- --	-- --	-- --	-- --	-- --
Tesoro	u N-10	83.50	-- --	83.80	94.75	-- --	95.25
Texaco	b N-10	84.70	83.20	-- --	93.20	-- --	-- --
Tosco	u N-10	82.75	83.00	83.00	92.25	-- --	92.75
Valero	u N-10	82.75a	-- --	83.25a	-- --	-- --	-- --
XOM	b 1-10	83.55	-- --	-- --	-- --	-- --	-- --
RANGE -LOW		81.60	82.95	82.35	92.25	-- --	92.75
-HIGH		84.70	83.50	89.51	94.75	-- --	95.25
AVERAGE		83.06	83.16	84.48	93.49	-- --	94.12
BRND AVG		83.19	83.20	85.93	93.49	-- --	94.35
UNBRND AVG		82.96	83.15	83.52	93.50	-- --	94.00
5-DAY AVERAGE		82.74	82.56	84.18	94.27	-- --	94.35

Sample Contract

NOTICE TO ALL BIDDERS

The public contract included herein is a standard agreement approved for use by Metro's General Counsel. This is the contract the successful bidder will enter into with Metro; it is included for your review prior to submitting a bid.

Contract No. _____

PUBLIC CONTRACT

THIS Contract is entered into between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, whose address is 600 N.E. Grand Avenue, Portland, Oregon 97232-2736, and _____ whose address is _____, hereinafter referred to as the "CONTRACTOR."

THE PARTIES AGREE AS FOLLOWS:

ARTICLE I SCOPE OF WORK

CONTRACTOR shall perform the work and/or deliver to METRO the goods described in the Scope of Work attached hereto as Attachment A. All services and goods shall be of good quality and, otherwise, in accordance with the Scope of Work.

ARTICLE II TERM OF CONTRACT

The term of this Contract shall be for the period commencing _____, 20____, through and including _____, 20____.

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 that are specifically included in the Scope of Work.

ARTICLE IV LIABILITY AND INDEMNITY

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

ARTICLE V
TERMINATION

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

ARTICLE VI
INSURANCE

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

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

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

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

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

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

ARTICLE VII
PUBLIC CONTRACTS

All applicable provisions of ORS chapters 187 and 279, and all other terms and conditions necessary to be inserted into public contracts in the State of Oregon, are hereby incorporated as if such provision were a part of this Agreement, including, but not limited to, ORS 279.310 to 279.320. 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 279.348 to 279.365, the Contractor shall pay prevailing wages and shall pay an administrative fee 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 279.314. If the contractor or first-tier subcontractor fails, neglects, or refuses to make payment the person may file a complaint with the Construction Contractors Board unless to a good faith dispute as defined by ORS 297.445. 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 OR 316.167.

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

ARTICLE VIII
ATTORNEY'S FEES

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

ARTICLE IX
QUALITY OF GOODS AND SERVICES

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

CONTRACTOR or subcontractors by any manufacturer or supplier shall be deemed to run to the benefit of METRO.

ARTICLE X OWNERSHIP OF DOCUMENTS

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

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.

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

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

ARTICLE XV
COMPLIANCE

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

ARTICLE XVI
ASSIGNMENT

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

CONTRACTOR NAME

METRO

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

BID FORMS FOR RFB #1032

(To be submitted with Bid)

SCHEDULE OF BID PRICES- For Fuel RFB

1. Per gallon markup bid for cardlock on HWY 19 between Arlington and Columbia Ridge Landfill

a.\$. _____
(figures)

b. _____
(words)

2. Please provide the name and address of the site and contact person:

name of location

address

contact

phone #

3. Please enclose with the bid any materials demonstrating compliance with the Scope of Work requirements. Metro reserves the right to make any additional investigations necessary to demonstrate compliance, including but not limited to site visits. Compliance with the requirements of the Scope of Work will be made by Metro, in its sole discretion.

CHECKLIST

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

(Check or complete all applicable boxes or blocks.)

- 1. **BID SECURITY:** Bidder has complied with Metro's requirements for \$500.00 bid surety and guarantees that this bid is irrevocable for the period specified herein;
- NA 2. **PERFORMANCE BOND:** Cost of the Bond, if required, will be: _____ (\$ _____). This amount will be reimbursed by Metro over and above the contract bid price.
- 3. **CONFLICT OF INTEREST:** Bidder hereby certifies that no officer, agent, or employee of Metro has participated on behalf of Metro in preparation of this bid, that the bid is made in good faith without fraud, collusion, or connection of any kind with any other Bidder for the same work, and the Bidder is competing solely in its own behalf without connection or obligation to any undisclosed person or firm.
- 4. **RESIDENT/NON-RESIDENT:** Undersigned Bidder states that it is a resident or non-resident of the state of Oregon. State in which Bidder resides: _____.
- 5. **TYPE OF BUSINESS ORGANIZATION:** Bidder operates as an individual, a corporation, incorporated under the laws of the state of _____, a non-profit organization, a partnership. (If partnership, list/attach names of the partners)
- 6. **OREGON LICENSE:** If a corporation, it is, or is not, licensed with Oregon Corporation Commission.
- NA 7. **REGISTRATION NO:** _____ with Construction Contractors Board.
- 8. **DOING BUSINESS AS:** Provide any assumed names utilized:

FIRM OR CORPORATION NAME: _____

NAME OF LOCAL REPRESENTATIVE: _____

MAILING ADDRESS: _____

	STREET	CITY	STATE ZIP
TELEPHONE NUMBER:	()		
FAX NUMBER:	()		

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

Bids must be enclosed in a sealed envelope, endorsed on the outside, indicate the bid subject, Request for Bid number and opening date, and delivered to Metro on or before the date and time of the bid opening.
(See Instructions to Bidders)

BIDDER SIGNATURE Print Name of Bidder _____

Signature _____

Print Name and Title _____

BID BOND

BOND NO. _____
AMOUNT: \$ _____

KNOW ALL MEN BY THESE PRESENTS, that _____
hereinafter called the PRINCIPAL, and _____
a corporation duly organized under the laws of the State of _____, having its principal
place of business at _____ in the state of _____
_____, and authorized to do business in the state of Oregon, as SURETY, are held and firmly
bound unto _____ hereinafter called the OBLIGEE, in the penal sum of _____
_____ DOLLARS (\$ _____) for the payment of which we bind ourselves, our heirs,
executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS PRINCIPAL IS SUCH THAT:

WHEREAS the PRINCIPAL is herewith submitting a **BID FOR** _____ said Bid, by
reference thereto, being hereby made a part hereof.

NOW, THEREFORE, if the Bid submitted by the PRINCIPAL is accepted, and the Contract
awarded to the PRINCIPAL, and if the PRINCIPAL shall execute the proposed Contract and
shall furnish any bond(s) required by the Contract Documents within the time fixed by the
Documents, then this obligation shall be void; if the PRINCIPAL shall fail to execute the
proposed Contract and furnish the bond(s), the SURETY hereby agrees to pay to the OBLIGEE
the penal sum as liquidated damages, within ten (10) days of such failure.

Signed and sealed this _____ of _____, 20____.

PRINCIPAL

By _____

SURETY

By _____
Attorney-in-Fact

SOLID WASTE AND RECYCLING COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 02-3239, FOR THE PURPOSE OF AUTHORIZING RELEASE OF RFB #03-1032-REM FOR THE PROVISION OF DIESEL FUEL AND AUTHORIZED THE EXECUTIVE OFFICER TO EXECUTE THE RESULTING CONTRACT

Date: November 6, 2002

Presented by: Councilor Atherton

Committee Recommendation: At its November 6 meeting, the Solid Waste and Recycling Committee voted 3-0 to recommend Council adoption of Resolution No. 02-3239. Voting in favor: Councilors McLain, Monroe and Chair Atherton. Voting against: None. Absent: Councilors Bragdon and Park.

Background: Since 1994, Metro has purchased the fuel used by its solid waste transport contractor, CSU Transport. Metro purchases the fuel to take advantage of a provision of federal law that exempts governmental fuel purchases from the federal gas tax. This tax currently totals \$.244/gallon. As a result, the contractor is currently saving about \$244,000 annually, which is passed back to Metro in the form of lower transportation costs.

The terms of the CSU contract provide that "Metro shall make fuel available in a manner reasonably acceptable to the Contractor and reasonably consistent with historical service levels obtained by Contractor." Metro has sought to implement this provision by requiring that the fuel be available from a facility located on State Highway 19 between Arlington and the Columbia Ridge Landfill.

The current fuel purchase contract with Devin Oil Company expires in February 2003.

Committee Issues/Discussion: Chuck Geyer, Senior Solid Waste Planner, presented the staff report. Geyer explained that the purpose of the resolution was to release a request for bids for a new fuel purchase contract. The term of the new contract would be through December 2007, with an extension option through December 2009. The current transport contract with CSU also expires in December 2009.

Geyer explained that, in addition to the locational requirement along Hwy. 19, the bid document requires the dispensing facility to have two high-pressure pumps and room for the queuing of trucks. The bid document also requires the use of branded, low sulfur fuel. Geyer noted that a draft of the bid documents had been provided to interested parties and potential bidders and that their comments have been attached to the staff report.

Councilor McLain asked about the potential seven-year length of the contract. Geyer responded that a longer contract could actually encourage competition by allowing potential vendors to spread the cost of any facility improvements required by the bid documents to be spread of a longer contract term.

Key Public Testimony: Mark Fitz, Star Oil Company, urged the committee to include language in the bid documents that would allow alternative fuels, such as biodiesel to be used. He indicated that several local businesses are exploring the potential for establishing a biodiesel production facility in Washington.

Geyer noted that REM staff had examined the potential for using biodiesel, but that at the present time there was no local source for such fuel. Both REM and legal staff noted that if a local biodiesel source became available, the contract could be amended to include the use of biodiesel.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 02-3239 FOR THE PURPOSE OF AUTHORIZING RELEASE OF RFB #03-1032-REM FOR THE PROVISION OF DIESEL FUEL AND AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE THE RESULTING CONTRACT

October 1, 2002

Drafted by: Chuck Geyer

BACKGROUND

In April 1994, Metro began purchasing the diesel fuel required to transport waste from the Metro South and Metro Central transfer stations to the Columbia Ridge Landfill per Change Order No. 15 to the Waste Transport Services Contract with CSU Transport, Inc. Prior to execution of the change order, beginning with the start of transport operations in January 1990, CSU was responsible for purchasing fuel for its operations.

Metro wished to purchase the fuel for transport operations because it is exempt from paying the federal excise tax on fuel. The tax is \$.244 per gallon. Fuel consumption over the last two fiscal years has averaged approximately 1 million gallons. The annual savings have therefore averaged about \$244,000. A private contractor such as CSU cannot obtain this exemption even if it is performing work for the government.

CSU was willing to enter into the change order for two main reasons. First, because it lowered its risk due to large increases in fuel prices. Secondly, CSU required that "Metro shall make fuel available in a manner reasonably acceptable to Contractor (CSU) and reasonably consistent with historical service levels obtained by Contractor." Historically, CSU had purchased the majority of fuel from a commercial cardlock on HWY 19 between the city of Arlington and the Columbia Ridge Landfill, with smaller amounts (less than 1%) purchased in Oregon City. Metro currently provides this level of service through a contract with a commercial cardlock on HWY 19 and a cardlock in Oregon City.

The original contract was procured through a request for proposals process and had an initial term of two years. The structure of the contract paid the contractor a fixed markup ("base cost") over the average published price of fuel, and the latter was then paid as a passthrough by Metro. This method was retained in the subsequent contract and in the proposed RFB.

A proposal process was used because Metro had little experience in purchasing large quantities of fuel and this process provided the ability to negotiate with prospective vendors. The contract was subsequently extended for three years.

The current contract with the Devin Oil Co., Inc., to provide fuel at its cardlock on HWY 19 expires February 22, 2003, and a replacement agreement is needed. This contract was procured through a request for bids process. The initial term was for two years and it was subsequently extended for an additional two years. Adoption of Resolution No. 02-3239 would authorize release of RFB #03-1032-REM (attached to the resolution as Exhibit A) and authorize execution of a contract with the low, responsive, responsible bidder to replace the existing contract upon its expiration.

The RFB is essentially the same as that used in 1998, except that the initial term of February 23, 2003, to December 31, 2007, (four years 10 months) is longer. The December 31st termination date was selected

to coincide with the termination date in the Waste Transport Contract. The RFB also includes a two-year extension at Metro's option.

As noted above, the previous procurements resulted in contracts with an initial term of two years. Staff feels a longer initial contract period (together with a two-year extension at Metro option) is justified for the following reasons:

- The previous contracts have always been extended, resulting in four years terms without causing any significant contractual or operational problems
- The only increase in price paid to the contractor (base cost) has occurred when the contract has been rebid. Past contracts, and the one proposed in this RFB, have no escalator clauses. This provides Metro price stability whereas rebidding appears to lead to incremental price increases (the price increase was \$.008/gal the last time or about \$8,000 annually.)
- Rebidding contracts costs Metro time and money to conduct the procurement. Metro has expended significant resources in the past to procure fuel without significant benefits.
- There is little risk to Metro in entering into a longer-term contract. Metro would retain the ability to cancel the contract within seven days, at its discretion.
- The term of the contract, together with exercise of the extension, would make the contract coincidental with the Waste Transport Contract.

Staff forwarded a draft RFB to interested parties identified from the previous procurement. Comments are attached as Attachment No. 1 to this report and summarized below.

Devin Oil Co., Inc.- This firm is the current supplier of fuel. The firm contacted staff by phone and indicated that the draft RFB was acceptable to their firm without changes. They subsequently emailed an offer to extend their existing contract with Metro at no increase in price (see attachment 1).

CSU Transport, Inc.- CSU indicated it was satisfied with the current arrangement and level of service, and stated its views regarding the safety of fueling operations (see attachment 2). It also tested and rejected an alternative fueling location as too costly (see attachment 3).

Hattenhauer Distributing Co.- The firm made three main points (see attachment 4). First, it requested that Metro permit fueling at locations other than on HWY 19 and offered information on sites to which the firm has access. Secondly the firm requested that the queuing requirement for the fueling site be lessened from the requirement of room for four CSU vehicles to queue at any one time. Thirdly it requested that the requirement for separation between commercial and noncommercial traffic be deleted. Below are staff's responses to these requests.

- RFP #03-1032-REM still requires that fuel be provided on HWY 19. CSU has indicated that the provision of fuel on HWY 19 is necessary to comply with the historical levels of service required by Change Order 15. In addition, Metro has made a commitment to Gilliam County to "make best efforts to purchase supplies ...from local vendors." (SOURCE: Waste Transport Agreement). None of the additional sites off HWY 19 mentioned by Mr. Hattenhauer are in Gilliam County.
- RFP #03-1032-REM still requires room to queue four CSU vehicles (two of which can be assumed to be fueling at pumps). This is a safety requirement. If onsite queuing is not available at the cardlock, vehicles (68 feet in length) will be forced to stop on HWY 19 -a state highway with a posted speed limit of 55mph. This is not acceptable.

- RFP #03-1032-REM has been modified to remove the separation requirement between commercial and noncommercial customers.

ANALYSIS/INFORMATION

1. Known Opposition

Hattenhauer Distributing Co. has indicated opposition to several of the provisions of the RFB, although it does favor some form of procurement. Devin Oil Co., Inc. would prefer an extension to the existing contract, but has no opposition to the provisions of RFB #03-1032-REM.

2. Legal Antecedents

Metro Code section 2.04.026(b) requires Council authorization of request for bids of the magnitude of RFB #03-1032-REM.

3. Anticipated Effects

By adopting this resolution, the Council authorizes release of a RFB for a new agreement for the provision of diesel fuel.

4. Budget Impacts

Metro would continue to save the avoided federal excise tax.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends adoption of Resolution No. 02-3239.

M:\rem\od\projects\Legislation\FuelRFB staff report.doc

ATTACHMENT 1
RESOLUTION 02-3239

From: "Phillips Family" <dankelly@centurytel.net>
To: <geyer@metro.dst.or.us>
Date: 9/6/02 1:50PM
Subject: Devin Oil Company

Dear Chuck,

09/06/02

Per our phone conversation, we would welcome the opportunity to extend the project for five years. We have enjoyed working with you and look forward to serving you in the future.

Sincerely,

Dick Devin

September 6, 2002

ATTACHMENT 2
RESOLUTION 02-3239

Chuck Geyer, Principal Planner
Metro
600 N. E. Grand Avenue
Portland, Oregon 97232

Dear Chuck:

Thanks for giving me an opportunity to comment on the RFB.

There are two items that are important to CSU Transport, Inc. The first is the level of service and the second is safety.

For the last several years, the service received has been as good as anyone could possibly want. If our drivers had a problem with their card when fueling, or the card lock facility had a mechanical failure, problems were always taken care of immediately.

The other item is safety. As you and I have discussed previously, it is very important that at any given time we are able to get three to four trucks off Highway 19 when stopping for fuel. The current card lock facility we are using is the only one in the area that allows us to do that when it is necessary.

Thank you again for this opportunity to comment. If you have any questions, please call me.

Sincerely,



Dennis Gronquist
Terminal Manager

02 SEP -9 AM 10:19
METRO
R.E.M. DEPT.

October 22, 2002

ATTACHMENT 3
RESOLUTION NO. 02-3239
Page 1 of 2

Chuck Geyer
Metro
600 N. E Grand Avenue
Portland, Oregon 97232

Dear Chuck:

In an attempt to fairly judge the assessability of the Pacific Pride Card Lock in Biggs Junction, I recently asked several of our senior drivers to exit Interstate 84 at Biggs Junction and proceed to the card lock. After reaching the Card Lock they returned to Interstate 84. In response to my request to time these trips, the drivers involved reported that these trips took approximately five minutes each. As the trucks did not actual fuel, the time spent was only for travel.

In case you are not familiar with the exits from Interstate 84 into Biggs Junction, there is a great deal of truck and passenger car traffic. In addition to traffic from the Interstate, there is also traffic from the bridge there that connects with Washington as well as traffic to and from Highway 97. With the heavy amount of daily truck traffic in Biggs Junction, we can certainly expect the fueling time to increase significantly. We will also use more fuel traveling to and from the Card Lock and while waiting in line to refuel.

It takes no more than 15 seconds for CSU trucks to exit from Highway 19 into the Devin Card Lock south of Arlington and then to reenter Highway 19. Fueling can be done quickly as there is rarely a wait on other trucks to fuel. Using the Devin Card Lock does not necessitate any additional mileage or fuel usage as it is on the same route as that used to travel to and from Columbia Ridge Landfill.

Page 2.

Perhaps it would be advantageous for you to travel to Biggs Junction and see for yourself exactly what the fueling conditions would be for CSU trucks. After continuing east to Arlington and seeing our current procedures I am certain you would agree that CSU trucks can more safely and efficiently fuel in Arlington at the Devin Card Lock, and that this procedure should continue in the future.

If you have any questions, please call me.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis Gronquist". The signature is fluid and cursive, with a large loop at the end.

Dennis Gronquist
Terminal Manager

cc: Jim Watkins, Metro

9/10/02 via fax

ATTACHMENT 4
RESOLUTION NO. 02-3239
Page 1 of 2

MR. CHUCK GEYER
PRINCIPAL PLANNER-METRO
600 NORTHEAST GRAND AVENUE
PORTLAND, OREGON 97232

DEAR MR. GEYER:

THANK YOU IN ADVANCE FOR THE OPPORTUNITY TO RESPOND AND COMMENT AS TO YOUR REQUEST FOR BIDS FOR YOUR CONTRACTOR THAT HAULS SOLID WASTE TO THE COLUMBIA RIDGE LANDFILL.

THE PROPOSAL TO CHANGE TO FIVE YEARS SEEMS TOO LONG OF A DURATION BUT POSSIBLY ALLOWABLE UNDER YOUR BIDDING REQUIREMENTS. MY RECOMMENDATION IS EVERY TWO YEARS.

AS TO THE ULTRA LOW SULFUR REQUIREMENT IT MAY BE REQUIRED SOMETIME DURING THE LIFE OF THE CONTRACT BUT MAY NOT BE AVAILABLE AT THE BEGINNING OF THE CONTRACT PERIOD. IF IT BECOMES A REQUIREMENT THEN IT WOULD BE AVAILABLE. YOUR BID MAY HAVE TO HAVE FLEXIBILITY TO ACCOMMODATE THE REQUIREMENTS OF LOW SULFUR DIESEL AND FUTURE REQUIREMENTS OF ULTRA LOW SULFUR DIESEL.

AS YOU ARE AWARE THE CLOSER FUEL IS PURCHASED TO PORTLAND THE CHEAPER THE FUEL WOULD BE. THE REQUIREMENT THAT FUEL ONLY BE PURCHASED BETWEEN CITY OF ARLINGTON AND CEDAR SPRINGS ROAD LIMITS YOUR PURCHASING OPPORTUNITIES. AS YOU ARE AWARE THERE ARE PRESENTLY ONLY TWO CARDLOCKS IN THIS AREA. OUR SITE HAS BEEN ELIMINATED AS YOUR CRITERIA IS TOO RESTRICTIVE AND EVEN THOUGH WE HAVE BEEN LOW BIDDER OUR SITE IS RULED NON-COMPLIANCE BY YOUR SCOPE OF WORK/SCHEDULE.

WHEN JACK GRAY WAS AWARDED THE BID THEY FUELED AT THE LANDFILL SITE BEFORE YOU TOOK OVER THE PURCHASING OF FUEL. THEY ALSO FUELED AT A COMPETITORS CARDLOCK. FUELING ALSO TOOK PLACE AT CARDLOCKS IN TROUTDALE AND OREGON CITY. THERE IS A HISTORY OF FUELING AT OTHER LOCATIONS THAN HWY 19 AND CEDAR SPRINGS ROAD. THERE WAS ALSO FUELING OF VEHICLES IN RUFUS, OREGON AT A CARDLOCK THERE. THE SITES IN OREGON CITY, TROUTDALE, AND RUFUS WERE FUELED AT PACIFIC PRIDE SITES.

FOR YOUR INFORMATION THERE IS A NEW PACIFIC PRIDE SITE AT BIGGS JUNCTION IN SHERMAN COUNTY THAT WOULD MEET YOUR FUELING REQUIREMENTS.

02 SEP 12 AM 11:02
METRO
R.E.H. DEPT.

AS YOU ARE AWARE THE CONTRACTOR CURRENTLY HAULING FUEL IS A COUPLE OF TIMES REMOVED FROM THE ORIGINAL CONTRACTOR. THERE HAVE BEEN MANY CHANGE ORDERS AS TO THE ORIGINAL CONTRACT.

THE REQUIREMENT THAT IF THE CARDLOCK IS DISABLED NEEDS TO BE ADDRESSED AS THE ONLY OPTION IS TO HAVE A TRUCK BE ON STANDBY WHEN THERE ARE OTHER OPTIONS SUCH AS OTHER CARDLOCK USAGE NEARBY WOULD BE A BETTER SOLUTION. CURRENTLY BOTH CFN AND PACIFIC PRIDE IS AVAILABLE AS FUELING SITES.

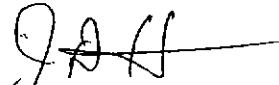
PACIFIC PRIDE HAS SITES IN ARLINGTON, BIGGS JUNCTION, THE DALLES, HOOD RIVER, AND OREGON CITY THAT WOULD BE ALTERNATE OR PRIMARY FUELING SITES. THE SITES ARE ALL CONVENIENTLY LOCATED ON YOUR CONTRACTOR HAULING ROUTES. ALL SITES ARE OPEN 24 HOURS.

THERE HAS NEVER BEEN ANY FACTS AS TO THE QUEUING REQUIREMENT. IF THIS HAPPENS IT WOULD BE VERY RARE AND SHOULD NOT BE A REQUIREMENT. THERE IS NO WRITTEN REQUIREMENT FOUND THAT I AM AWARE WHERE QUEUING IS REQUIRED IN THE CONTRACT. THERE NEEDS TO BE WRITTEN DOCUMENTATION OF WHEN THIS OCCURS AND HOW OFTEN AS THIS REQUIREMENT IS RESTRICTIVE TO THE CURRENT BID REQUIREMENTS.

THE REQUIREMENT THAT NONCOMMERCIAL CUSTOMERS UTILIZE THE SITE IS DISCRIMINATORY. YOUR CURRENT SUPPLIER HAS NONCOMMERCIAL CUSTOMERS USING THE SITE WHERE YOU CURRENTLY FUEL YOUR VEHICLES BUT HAS NEVER BEEN ADDRESSED. OUR SITE WOULD PROVIDE AN ATTENDANT TO FUEL YOUR VEHICLES DURING OUR NONCOMMERCIAL CUSTOMER FUELING TIMES. THIS WOULD BE SAFER AND A SERVICE THAT IS NOT CURRENTLY OFFERED BY YOUR PRESENT SUPPLIER. THIS CRITERIA NEEDS TO BE ELIMINATED.

IF YOU HAVE ANY QUESTIONS PLEASE FEEL FREE TO CALL AND THANK YOU IN ADVANCE FOR THIS OPPORTUNITY.

REGARDS,



J. D. HATTENHAUER PRESIDENT
HATTENHAUER DISTRIBUTING CO.
P. O. BOX 1397
THE DALLES, OREGON 97058