

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF APPROVING) RESOLUTION NO. 99-2739
SOLE SOURCE AGREEMENT FOR)
AQUANETICS SYSTEMS, INC. AT) Introduction by Mike Burton
OREGON ZOO) Executive Officer

WHEREAS, the Oregon Zoo has successfully received passage of a bond measure which provides funding to design and construct the Oregon Project; and

WHEREAS, the Steller Cove portion of the project includes two exhibits of native marine fish and invertebrates which require access to aerated, chilled, filtered, recirculated artificial sea water; and

WHEREAS, one company, Aquanetics Systems, Inc., has developed a solution to meet aquarium industry quarantine needs by way of a system pack, which includes all necessary components which have been selected and packaged together in the most efficient manner; and


WHEREAS, it would result in a cost savings to the zoo and would not substantially diminish competition to contract with Aquanetics Systems, Inc. to provide the system pack; now, therefore,

BE IT RESOLVED,

That the Metro Contract Review Board hereby accepts the findings in the attached Staff Report and waives the competitive bidding requirement in accordance with Metro Code 2.04.

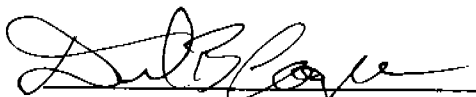
The Executive Officer is authorized to enter into a sole source agreement with Aquanetics Systems, Inc. for provision of aquatic quarantine systems.

ADOPTED by the Metro Contract Review Board this 25th day of February, 1999.



Rod Monroe, Presiding Officer

Approved as to Form:



Daniel B. Cooper, General Counsel

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 98-2739 FOR THE PURPOSE OF APPROVING SOLE SOURCE AGREEMENT FOR AQUANETICS SYSTEMS, INC. AT OREGON ZOO

Date: December 8, 1998

Presented by: Kathy Kiaunis

FACTUAL BACKGROUND AND ANALYSIS

The Steller Cove portion of the Great Northwest exhibit includes two exhibits of native marine fish and invertebrates. Quarantine space has been designed for specimens to stock the kelp and tidepool exhibits. The keeper/filtration building houses a quarantine room; a portion of the tidepool/blowhole mechanical room will also be used for holding tanks. During the start-up phase (May 2000 through opening that summer), most specimens will arrive. The largest fish and invertebrates will be quarantined in the actual kelp exhibit. All other specimens will begin acclimation in separate off-exhibit holding aquaria. Quarantine periods typically last one month, with healthy animals then introduced to existing exhibits. During this holding time animals are observed closely with particular attention paid to disease or other water-borne pathogens they may harbor. Animals are acclimated to new feeding regimens, new, comparatively small quarters, and the presence of potentially disagreeable tank-mates.

Quarantine does not end at opening; it is an ongoing process for the life of the exhibit. Holding tanks provide space to keep injured or sick specimens which might otherwise not survive if left on exhibit. New specimens will continually be added, with those most difficult to keep added at later dates. Holding space also provides options in emergencies, for breeding, and promotes good husbandry practices.

Properly functioning quarantine tanks are an essential component of a successful marine exhibit. One company, Aquanetics Systems, Inc. provides fully integrated systems that meet aquarium quarantine needs. It is for this reason that we request approval for a sole source contract.

FINDINGS

Not Substantially Diminish Competition

Quarantine aquaria for native marine species must include access to aerated, chilled, filtered, recirculated artificial sea water. Bio-loads in small volumes of water are typically heavy and nitrogenous wastes are continually monitored and removed. Several companies provide separate components to build systems. Tanks, filters, filter plates and media, chillers, pumps, and aerators may be purchased and rigged together by in-house technicians. Such piecemeal approach is doable but not very practical given labor cost considerations, time constraints, and the presence of a more viable alternative. The Aquanetics Systems, Inc. fully integrated systems are unique in the industry. No other vendor provides a similar product.

Provides Cost Savings

The Aquanetics system saves money in a number of ways.

Aquanetics' system package is labor-saving by design. Plumbing will be minimal and integrated components of proper size will save energy. Although other companies sell components, they do not have tanks, lights, chillers or pumps in matching sizes, nor are bio-reactors or UV sterilizers a part of a package.

The total cost for the project with the Aquanetics Systems, Inc. system package is \$40,000. Individual pieces purchased separately would be more costly. With the addition of work done by in-house staff, the start-up cost would be substantially more. In addition, pieced together systems require more maintenance and more frequently breakdown, causing loss of productivity, increased labor and materials costs, and possible loss of fish and invertebrates as well.

Unique Characteristics and Technical Complexities

Aquanetics Systems, Inc. has developed a system pack in which all necessary components are selected and packaged together in the most efficient manner. These system packs include magnetic drive pumps (safe for saltwater use), filters, undergravel filter plates, bio-reactors (biological filter towers) UV sterilizers with quartz sleeves (for cold water), chillers, lights and viewing windows. High flow rates are possible because all components are sized together.

BUDGET IMPACT

Purchase of the system pack developed by Aquanetics Systems, Inc. would provide a substantial cost savings. In addition, savings of in-house labor hours would be substantial. Total cost for the system is \$40,000.

EXECUTIVE OFFICE RECOMMENDATIONS

The Executive Officer recommends adoption of Resolution No. 99-2739.

RECEIVED

Contract No.

JAN 25 1999

PUBLIC CONTRACT

THIS Contract is entered into between Metro, a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter, whose address is 600 N.E. Grand Avenue, Portland, Oregon 97232-2736, and AQUANETICS SYSTEMS, 5252 Lovelock Street, San Diego, California, 92110, hereinafter referred to as the "CONTRACTOR."

RISK & CONTRACT
MANAGEMENT DIVISION

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 January 30, 1999 through and including June 30, 1999.

ARTICLE III
CONTRACT SUM AND TERMS OF PAYMENT

METRO shall compensate the CONTRACTOR for work performed and/or goods supplied as described in the Scope of Work. METRO shall not be responsible for payment of any materials, expenses or costs other than those which are specifically included in the Scope of Work.

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. The policy must be endorsed with contractual liability coverage.

B. Automobile bodily injury and property damage liability insurance.

Insurance coverage shall be a minimum of \$500,000 per occurrence. If coverage is written with an aggregate limit, the aggregate limit shall not be less than \$1,000,000.

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 the Bureau of Labor and Industries.

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.

AQUANETICS SYSTEMS

METRO

By: _____

By: _____

Date: _____

Date: _____

ATTACHMENT A SCOPE OF WORK

Contractor shall provide all labor, materials, and equipment to provide system pack for aerated, chilled, filtered, recirculated artificial sea water, including:

- Three insulated aquariums with window 24x18x18" (28 gallons)
- lighting for above tanks
- Two sets of two metal halide light system and one fluorescent set built in
- Three insulated aquariums with window 48x24x18" (61 gallons)
- lighting for above tanks
- Two sets of two lamp metal halide light system and one fluorescent set built in
- Two insulated aquariums with window 72x24x24" (130 gallons)
- lighting for above tanks
- Two sets of three metal halide light system and one fluorescent built in
- One epoxy fuse coated aluminum stand hold above tanks and lighting
- One fluid chiller, Aquanetics #AFC 9 (2 HP)

Filtration package for six of above aquariums to include insulated sump 48x24x24" with pre-filters; system pak #173 with 2500 GPH capacity (pump, filter cartridge, carbon filter, U/V sterilizer); bioreactor #B114 with drive pump; TF 500 protein skimmer (6" D x67" height) with drive pump. Two remaining rectangular aquariums will be isolation systems with separate filtration.

Additions equipment includes:

- Two round fiberglass tanks, 60x30" with fittings for filter hook up
- Two filtration systems to include 150 GPH pump, cartridge and carbon filter with U/V sterilizer bio reactor #B112 with aluminum rack to prop up tank rim
- Two fluid chiller #AFC 6 (3/4 HP) to provide a 30 degree pull down in temperature.

Contractor will plumb system and wet test.

All Aquanetics products have a one year warranty, except U.V. bulbs, which have a 90 day warranty.

Shipping costs not to exceed \$2,000.

TERMS OF PAYMENT

1. The maximum amount payable under this contract is \$40,000.
2. Upon completion of the Scope of Work, Contractor is to deliver a duplicate invoice to the Animal Management division, Oregon Zoo, 4001 SW Canyon Road, Portland, Oregon 97221-2799, with the original invoice being sent to Metro Accounts Payable, 600 NE. Grand Avenue, Portland, Oregon 97232-2736.
3. The invoice for Oregon Zoo shall be approved in writing by the Assistant Director prior to payment by Metro.
4. Contractor shall receive payment for the approved invoice within 30 days after receipt of same from Contractor.