



REQUEST FOR PROPOSALS #2017-19

FOR

THICKENING AND DEWATERING POLYMER

BOARD OF COUNTY COMMISSIONERS

Acting as the Governing Body of the

Clackamas County Service District No. 1 and the Tri-City Service District

JIM BERNARD, Chair

SONYA FISCHER, Commissioner

KEN HUMBERSTON, Commissioner

PAUL SAVAS, Commissioner

MARTHA SCHRADER, Commissioner

**Donald Krupp
County Administrator**

**George Marlton
Procurement Division Director**

**Tom Averett
Buyer**

PROPOSAL CLOSING DATE, TIME AND LOCATION

DATE: April 19, 2017

TIME: 2:00 PM, Pacific Time

**PLACE: Clackamas County Procurement
Clackamas County Public Services Building
2051 Kaen Road, Oregon City, OR 97045**

SCHEDULE

Request for Proposals Issued.....	March 15, 2017
Protest of Specifications Deadline.....	March 27, 2017 5:00 PM, Pacific Time
Deadline to Submit Clarifying Questions.....	March 29, 2017, 5:00 PM, Pacific Time
Request for Proposals Closing Date and Time.....	April 19, 2017, 2:00 PM, Pacific Time
Deadline to Submit Protest of Award.....	Seven (7) days from the Intent to Award
Anticipated contract start date.....	May 11, 2017

TABLE OF CONTENTS

	Page
Section 1 – Notice of Request for Proposals	1
Section 2 – Instructions to Proposers.....	2
Section 3 – Scope of Work	7
Section 4 – Evaluation and Selection Criteria	9
Section 5 – Proposal Content (Including Proposal Certification).....	13
Section 6 – Sample Contract.....	15

SECTION 1 NOTICE OF REQUEST FOR PROPOSALS

Notice is hereby given that Clackamas County ("County") on behalf of Clackamas County Service District No. 1 ("CCSD #1"), and the Tri-City Service District ("TCSD"), through their Board of County Commissioners, will receive sealed Proposals per specifications until **April 19, 2017, 2:00 PM, Pacific Time** ("Closing"), to provide: Thickening and Dewatering Polymer. No Proposals will be received or considered after that time.

The resulting contract from this RFP will have a term of five (5) years through June 30, 2022.

Proposal packets are available from 7:00 AM to 6:00 PM Monday through Thursday at Clackamas County Procurement Division, Clackamas County Public Services Building, 2051 Kaen Road, Oregon City, OR 97045, telephone (503) 742-5444 or may be obtained at <http://www.clackamas.us/bids/>. Sealed Proposals are to be sent to Clackamas County Procurement Division at the above Kaen Road address.

Contact Information

Technical Specifications: Greg Eyerly, 503-557-2802, geyerly@clackamas.us

Procurement Process Questions: Tom Averett, 503-742-5449, toma@clackamas.us

The Board of County Commissioners reserves the right to reject any and all Proposals not in compliance with all prescribed public bidding procedures and requirements, and may reject for good cause any and all Proposals upon the finding that it is in the public interest to do so and to waive any and all informalities in the public interest. In the award of the contract, the Board of County Commissioners will consider the element of time, will accept the Proposal or Proposals which in their estimation will best serve the interests of Clackamas County and will reserve the right to award the contract to the contractor whose Proposal shall be best for the public good.

Dated: March 15, 2017



George Marlton, Procurement Division Director

SECTION 2 INSTRUCTIONS TO PROPOSERS

Clackamas County (“County”) reserves the right to reject any and all Proposals received as a result of this RFP. County Local Contract Review Board Rules (“LCRB”) govern the procurement process for the County.

2.1 Modification or Withdrawal of Proposal: Any Proposal may be modified or withdrawn at any time prior to the Closing deadline, provided that a written request is received by the County Procurement Division Director, prior to the Closing. The withdrawal of a Proposal will not prejudice the right of a Proposer to submit a new Proposal.

2.2 Requests for Clarification and Requests for Change: Proposers may submit questions regarding the specifications of the RFP. Questions must be received in writing on or before 5:00 p.m. (Pacific Time), on the date indicated in the Schedule, at the Procurement Division address as listed in Section 1 of this RFP. Requests for changes must include the reason for the change and any proposed changes to the requirements. The purpose of this requirement is to permit County to correct, prior to the opening of Proposals, RFP terms or technical requirements that may be unlawful, improvident or which unjustifiably restrict competition. County will consider all requested changes and, if appropriate, amend the RFP. County will provide reasonable notice of its decision to all Proposers that have provided an address to the Procurement Division for this procurement. No oral or written instructions or information concerning this RFP from County managers, employees or agents to prospective Proposers shall bind County unless included in an Addendum to the RFP.

2.3 Protests of the RFP/Specifications: Protests must be in accordance with LCRB C-047-0730. Protests of Specifications must be received in writing on or before 5:00 p.m. (Pacific Time), on the date indicated in the Schedule, or within three (3) business days of issuance of any addendum, at the Procurement Division address listed in Section 1 of this RFP. Protests may not be faxed. Protests of the RFP specifications must include the reason for the protest and any proposed changes to the requirements.

2.4 Addenda: If any part of this RFP is changed, an addendum will be provided to Proposers that have provided an address to the Procurement Division for this procurement. It shall be Proposers responsibility to regularly check the Bids and Contract Information page at <http://www.clackamas.us/bids/> for any published Addenda or response to clarifying questions.

2.5 Submission of Proposals: All Proposals must be submitted in a sealed envelope bearing on the outside, the name and address of the proposer, the project title, and Closing date/time. Deliveries to be sent to:

**Clackamas County
Procurement Division
2051 Kaen Road,
Oregon City, OR 97045**

All Proposals shall be legibly written in ink or typed and comply in all regards with the requirements of this RFP. Proposals that include orders or qualifications may be rejected as irregular. All Proposals shall be signed in ink in the blank spaces provided herein (Section 4). If a Proposal is submitted by a firm or partnership, the name and address of the firm or partnership shall be shown, together with the names and addresses of the members. If the Proposal is submitted by a corporation, it shall be signed in the name of such corporation by an official who is authorized to bind the contractor. The Proposals will be considered by the County to be submitted in confidence and are not subject to public disclosure until the notice of intent to award has been issued.

No late Proposals will be accepted. Proposals submitted after the Closing will be considered late and will be returned unopened. Proposals may not be submitted by telephone or fax.

2.6 Post-Selection Review and Protest of Award: County will name the apparent successful Proposer in a “Notice of Intent to Award” letter. Identification of the apparent successful Proposer is procedural only and creates no right of the named Proposer to award of the contract. Competing Proposers will be notified in writing of the selection of the apparent successful Proposer(s) and shall be given seven (7) calendar days from the date on the “Notice of Intent to Award” letter to review the file at the Procurement Division office and file a written protest of award, pursuant to LCRB C-047-0740. Any award protest must be in writing and must be delivered by hand-delivery or mail to the address for the Procurement Division as listed in Section 1 of this RFP.

Only actual proposers may protest if they believe they have been adversely affected because the proposer would be eligible to be awarded the contract in the event the protest is successful. The basis of the written protest must be in accordance with ORS 279B.410 and shall specify the grounds upon which the protest is based. In order to be an adversely affected proposer with a right to submit a written protest, a proposer must be next in line for award, i.e. the protester must claim that all higher rated proposers are ineligible for award because they are non-responsive or non-responsible.

County will consider any protests received and:

- a. reject all protests and proceed with final evaluation of, and any allowed contract language negotiation with, the apparent successful Proposer and, pending the satisfactory outcome of this final evaluation and negotiation, enter into a contract with the named Proposer; OR
- b. sustain a meritorious protest(s) and reject the apparent successful Proposer as nonresponsive, if such Proposer is unable to demonstrate that its Proposal complied with all material requirements of the solicitation and Oregon public procurement law; thereafter, County may name a new apparent successful Proposer; OR
- c. reject all Proposals and cancel the procurement.

2.7 Acceptance of Contractual Requirements: Failure of the selected Proposer to execute a contract and deliver required insurance certificates within ten (10) calendar days after notification of an award may result in cancellation of the award. This time period may be extended at the option of County.

2.8 Public Records: Proposals are deemed confidential until the “Notice of Intent to Award” letter is issued. This RFP and one copy of each original Proposal received in response to it, together with copies of all documents pertaining to the award of a contract, will be kept and made a part of a file or record which will be open to public inspection. If a Proposal contains any information that is considered a **TRADE SECRET** under ORS 192.501(2), **SUCH INFORMATION MUST BE LISTED ON A SEPARATE SHEET CAPABLE OF SEPARATION FROM THE REMAINING PROPOSAL AND MUST BE CLEARLY MARKED WITH THE FOLLOWING LEGEND:**

“This information constitutes a trade secret under ORS 192.501(2), and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192.”

The Oregon Public Records Law exempts from disclosure only bona fide trade secrets, and the exemption from disclosure applies only “unless the public interest requires disclosure in the particular instance” ORS 192.500(1). Therefore, non-disclosure of documents, or any portion of a document submitted as part of a Proposal, may depend upon official or judicial determinations made pursuant to the Public Records Law.

2.9 Investigation of References: County reserves the right to investigate all references in addition to those supplied references and investigate past performance of any Proposer with respect to its successful

performance of similar services, its compliance with specifications and contractual obligations, its completion or delivery of a project on schedule, its lawful payment of subcontractors and workers, and any other factor relevant to this RFP. County may postpone the award or the execution of the contract after the announcement of the apparent successful Proposer in order to complete its investigation.

2.10 RFP Proposal Preparation Costs and Other Costs: Proposer costs of developing the Proposal, cost of attendance at an interview (if requested by County), or any other costs are entirely the responsibility of the Proposer, and will not be reimbursed in any manner by County.

2.11 Clarification and Clarity: County reserves the right to seek clarification of each Proposal, or to make an award without further discussion of Proposals received. Therefore, it is important that each Proposal be submitted initially in the most complete, clear, and favorable manner possible.

2.12 Right to Reject Proposals: County reserves the right to reject any or all Proposals or to withdraw any item from the award, if such rejection or withdrawal would be in the public interest, as determined by County.

2.13 Cancellation: County reserves the right to cancel or postpone this RFP at any time or to award no contract.

2.14 Proposal Terms: All Proposals, including any price quotations, will be valid and firm through a period of ninety (90) calendar days following the Closing date. County may require an extension of this firm offer period. Proposers will be required to agree to the longer time frame in order to be further considered in the procurement process.

2.15 Oral Presentations: At County's sole option, Proposers may be required to give an oral presentation of their Proposals to County, a process which would provide an opportunity for the Proposer to clarify or elaborate on the Proposal but will in no material way change Proposer's original Proposal. If the evaluating committee requests presentations, the Procurement Division will schedule the time and location for said presentation. Any costs of participating in such presentations will be borne solely by Proposer and will not be reimbursed by County. **Note:** Oral presentations are at the discretion of the evaluating committee and may not be conducted; therefore, **written Proposals should be complete.**

2.16 Usage: It is the intention of County to utilize the services of the successful Proposer(s) to provide services as outlined in the below Scope of Work.

2.17 Sample Contract: Submission of a Proposal in response to this RFP indicates Proposer's willingness to enter into a contract containing substantially the same terms listed in Exhibit A – Sample Contract, attached hereto and made a part hereof. No action or response to the sample contract is required under this RFP. Any objections to the sample contract terms should be raised in accordance with Paragraphs 2.2 or 2.3 of the Instructions to Proposers Section of this RFP, pertaining to requests for clarification or change or protest of the RFP/specifications, and as otherwise provided for in this RFP. This RFP and all supplemental information in response to this RFP will be a binding part of the final contract.

2.18 Review for Responsiveness: Upon receipt of all Proposals, the Procurement Division or designee will determine the responsiveness of all Proposals before submitting them to the evaluation committee. If a Proposal is incomplete or non-responsive in significant part or in whole, it will be rejected and will not be submitted to the evaluation committee. County reserves the right to determine if an inadvertent error is solely clerical or is a minor informality which may be waived, and then to determine if an error is grounds for disqualifying a Proposal. The Proposer's contact person identified on the Proposal will be

notified, identifying the reason(s) the Proposal is non-responsive. One copy of the Proposal will be archived and all others discarded.

2.19 RFP Incorporated into Contract: This RFP will become part of the Contract between County and the selected contractor(s). The contractor(s) will be bound to perform according to the terms of this RFP, their Proposal(s), and the terms of the Sample Contract.

2.20 Communication Blackout Period: Except as called for in this RFP, Proposers may not communicate with members of the Evaluation Committee about the RFP until the apparent successful Proposer is selected, and all protests, if any, have been resolved.

2.21 Prohibition on Commissions and Subcontractors: County will contract directly with persons/entities capable of performing the requirements of this RFP. Contractors must be represented directly. Participation by brokers or commissioned agents will not be allowed during the Proposal process. Contractor shall not use subcontractors to perform the Work unless specifically pre-authorized in writing to do so by the County. Contractor represents that any employees assigned to perform the Work, and any authorized subcontractors performing the Work, are fully qualified to perform the tasks assigned to them, and shall perform the Work in a competent and professional manner. Contractor shall not be permitted to add on any fee or charge for subcontractor Work. Contractor shall provide, if requested, any documents relating to subcontractor's qualifications to perform required Work.

2.22 Ownership of Proposals: All Proposals in response to this RFP are the sole property of County, and subject to the provisions of ORS 192.410-192.505 (Public Records Act).

2.23 Clerical Errors in Awards: County reserves the right to correct inaccurate awards resulting from its clerical errors.

2.24 Rejection of Qualified Proposals: Proposals may be rejected in whole or in part if they attempt to limit or modify any of the terms, conditions, or specifications of the RFP or the Sample Contract.

2.25 Collusion: By responding, the Proposer states that the Proposal is not made in connection with any competing Proposer submitting a separate response to the RFP, and is in all aspects fair and without collusion or fraud. Proposer also certifies that no officer, agent, elected official, or employee of County has a pecuniary interest in this Proposal.

2.26 Evaluation Committee: Proposals will be evaluated by a committee consisting of representatives from County and potentially external representatives. County reserves the right to modify the Evaluation Committee make-up in its sole discretion.

2.27 Commencement of Work: The contractor shall commence no work until all insurance requirements have been met, the Protest of Awards deadline has been passed, any protest have been decided, a contract has been fully executed, and a Notice to Proceed has been issued by County.

2.28 Best and Final Offer: County may request best and final offers from those Proposers determined by County to be reasonably viable for contract award. However, County reserves the right to award a contract on the basis of initial Proposal received. Therefore, each Proposal should contain the Proposer's best terms from a price and technical standpoint. Following evaluation of the best and final offers, County may select for final contract negotiations/execution the offers that are most advantageous to County, considering cost and the evaluation criteria in this RFP.

2.29 Nondiscrimination: The successful proposer agrees that, in performing the work called for by this RFP and in securing and supplying materials, contractor will not discriminate against any person on

the basis of race, color, religious creed, political ideas, sex, age, marital status, sexual orientation, gender identity, veteran status, physical or mental handicap, national origin or ancestry, or any other class protected by applicable law.

2.30 Intergovernmental Cooperative Procurement Statement: Pursuant to ORS 279A and LCRB, other public agencies shall have the ability to purchase the awarded goods and services from the awarded contractor(s) under terms and conditions of the resultant contract. Any such purchases shall be between the contractor and the participating public agency and shall not impact the contractor's obligation to County. Any estimated purchase volumes listed herein do not include other public agencies and County makes no guarantee as to their participation. Any proposer, by written notification included with their Proposal, may decline to extend the prices and terms of this solicitation to any and/or all other public agencies. County grants to any and all public serving governmental agencies, authorization to purchase equivalent services or products described herein at the same submitted unit bid price, but only with the consent of the contractor awarded the contract by the County.

SECTION 3 SCOPE OF WORK

3.1. INTRODUCTION

Clackamas County (“County”) on behalf of Clackamas County Service District No. 1 (“CCSD #1”), and the Tri-City Service District (“TCSD”), collectively referred to as “District”, are] seeking Proposals for a vendor to provide thickening and dewatering polymer.

Please direct all Technical/Specifications or Procurement Process Questions to the indicated representative referenced in the Notice of Request for Proposals.

3.2 BACKGROUND

CCSD #1 and TCSD require a supply of polymer product for gravity belt thickening of approximately 1550 dry tons per year of waste activated sludge prior to digestion and for centrifuge de-watering of approximately 2100 dry tons per year of mixed primary and waste-activated, anaerobically digested biosolids. The use of polymer assists in the efficient treatment of the plant’s solids. These solids are generated by the 11.9-Million Gallons per day (MGD) average dry weather capacity at the Tri-City Water Pollution Control Plant (“WPCP”) which includes primary clarification, conventional and membrane bioreactor (“MBR”) activated sludge secondary treatment and anaerobic digestion of the solids. The purchase of polymer is vital to the District’s wastewater treatment process.

General Treatment Information

Tri-City WPCP facility uses primary and secondary treatment.

LIQUID PROCESS FLOW INFORMATION

Winter

Bar Screens, Grit removal
Primary Clarifiers
Secondary Treatment via Diffused Air
Secondary Clarification
Chlorination/Dechlorination prior to Discharge
Chlorine Current Disinfection

Summer

Bar Screens, Grit removal
Primary Clarifiers
Secondary treatment via Diffused Air
Secondary Clarification
Chlorination/Dechlorination prior to Discharge
Chlorine Current Disinfection

Solids Process Flow Information

Primary solids are thickened in the primary clarifiers and pumped to the anaerobic digesters for processing. Waste Activated solids from the secondary clarifiers and membrane bioreactor is thickened by gravity belts and pumped to the anaerobic digesters for processing. Solids are processed through the anaerobic digesters operating in parallel and are dewatered by a centrifuge.

3.3. SCOPE OF WORK

3.3.1. **Scope:**

Proposers must be able to provide a polymer that is described as an: organic polymer, a synthetic, high molecular weight, polyacrylamide manufactured specifically as a flocculent for application in wastewater treatment.

Mandatory Requirements

- A. The proposer must be the manufacturer or certified representative of the product.
- B. The proposer must be able to supply 1550 pounds amount of Polymer per year.

- C. The proposer must be available for technical support five days per week via telephone and be able to provide on-site support within two days of a request for support.
- D. The proposer's technical support personnel must be knowledgeable in the use of the vendor's product and in the use of centrifuges to dewater municipal sludge.
- E. The proposer must be able to guarantee delivery of the polymer within 15 calendar days of receipt of order.
- F. The product must be in liquid form and delivered in 275 gallon totes.
- G. The estimated identified in the above Background section are general estimates only and is not a guarantee of any actual amount of product needed. Prices shall be firm regardless of actual (increase or decrease) from those estimates.

Throughout the term of a resulting master contract, the District shall submit all orders through the issuance of an official Purchase Order. The purpose of the Purchase Order will be an ordering device and in no way will alter or amend the resulting master contract.

Required Product Specifications

SPECIFICATION	PRODUCT REQUIREMENT
Physical Form	Free flowing, homogenous liquid product
Activity	High Activity (> 30%)
Charge Type	Cationic
Freeze Point	> 0 degrees F
Boiling Point	< 210 degrees F
Flash Point	>200 degrees F
Viscosity	50-20,000 CPS at 25 degrees C
pH	4 – 10 (non-corrosive)
Solubility	water soluble
Shelf Life	3 months (minimum)
Dissolving Rate	High
Order of Toxicity	Low
Packaging	Deliveries in returnable 275 gallon totes. Tote returns to be managed by Vendor.

3.3.2. Sample Testing Process:

Phase 1: Bench Testing

Prior to submitting a Proposal in response to this RFP, Proposers shall be required to conduct a bench test of the product and provide the results of that bench test in their Proposal.

Proposer will bench test their polymer product on anaerobically digested biosolids for the high speed centrifuge dewatering process at the District's Tri-City WPCP. The bench testing will allow the vendor to jar test multiple polymers to select the polymer to performance test. Proposers must submit a request to Greg Eyerly (contact information in the Notice) to schedule a mutually agreeable date and time for the Proposer to conduct the bench test. Proposers are hereby notified that staff resources are limited as to when staff may be available to facilitate the bench test, therefore Proposers should schedule the bench test as soon as possible. Special accommodations will not be made for Proposers that fail to timely schedule the bench test before the RFP closes.

Phase 2: Performance Testing

Included with the Proposal, Proposers must submit a sufficient amount of product for performance testing. **Proposers may only submit one emulsion polymer product for performance testing.** The

purpose of the performance testing will be to confirm that the product meets District's specifications; the amount of the product required to obtain a benchmark level of performance as to cake solids concentration and percent capture; an estimate of the yearly dewatering polymer costs and hauling costs.

The District will conduct performance testing at the Tri-City WPCP. Proposers shall supply enough of the submitted polymer product to run District's centrifuge for 40 hours.

Performance Testing Process:

Samples of polymer that successfully bench test products will be assigned one week at the Tri-City WPCP for performance testing. All trial testing will be performed by District personnel. The test schedule during that week will be as follows:

Day One – Physical set-up full scale test for product and adjustments

Day Two – Start trial testing of product.

Day Three – Trial testing

Day Four – Trial testing

Day Five-Trial testing and completion

The following conditions will apply to the four-day trial testing process:

- The testing will be performed on an Andritz D7LL centrifuge.
- Minimum four (4) hour per day test period.
- Maximum of four (4) sample sets during each test period, (Sample set to be: feed % Total Solids, Centrate Suspended Solids, and cake % Total Solids.
- The four (4) best acceptable sample sets over the four day trial. These will be selected by the Owner's Evaluation Committee for evaluation.
- District plant personnel will collect and composite samples, analyze samples and terminate the trial if acceptable performance is not being met. Proposers may participate in calculating desired doses and discussing centrifuge adjustments. It will be Proposers sole responsibility to coordinate participation if desired.
- All samples will be discreet with dewatering feed, centrate, and cake samples taken at the appropriate intervals.
- District's laboratory personnel will analyze samples.
- Centrifuge controls will be in manual mode at all times during the test.
- All four day process changes except those needed to meet the minimum dosing requirements will be made by the District personnel conducting the trial.
- Testing will be based on a polymer equal dose for all tests.
- Polymer dosages would be reduced until performance failed on each day of the three day performance test.
- Changes to the settings would be done every hour.
- Samples would be taken every hour with a 1-hour stabilization period.
- Minimum performance requires a minimum of three (3) samples that meet the 95% recovery and minimum % TS requirement.
- Pricing will be calculated based on: Polymer bid Price per Pound x Dosage in pounds of polymer per Dry Tons Centrifuge Cake.

Baseline Cost:

Minimum Dewatering Performance (for the product to be found qualified) :

1) % solids sludge (feed): 1.6% - 3.5%

2) % solids (cake - dewatered product): 21.0% (minimum)

3) % capture: 93.0% (minimum)

For the purpose of this specification, "capture" will be defined as:

$$\% \text{ capture} = \frac{M_c - S_c(S_s - S_r)}{M_s S_s (S_c - S_r)}$$

Where M_c/M_s = fraction of solids removal (solids capture)

S_c = solids concentration in thickened sludge or cake

S_s = solids concentration in feed sludge

S_r = solids in concentration in return flow

The District will use the proposed product price per pound (delivered FOB Destination) to establish a baseline cost factor.

- A. Polymer dosage cost factor:
> Tri-City $[2100 * (X) * (M)]$
- B. Biosolids hauling cost factor:
> For Tri-City $[2100 / (Z/100)] * (H) =$
- C. Total Cost Baseline factor:
> $A+B= C$.

Where:

M= polymer bid price (\$/Neat lb.)

X= polymer dosage (Neat lbs./dry ton)

Z= (%) cake solids in trial product

H= biosolids hauling cost (\$10.45 /wet ton)

3.3.3. Term of Contract:

The term of the contract shall be from the effective date through **June 30, 2022**.

SECTION 4 EVALUATION PROCEDURE

- 4.1** An evaluation committee will review all Proposals that are initially deemed responsive and they shall rank the Proposals in accordance with the below criteria. In addition, the test samples submitted shall be performance tested in accordance with the testing procedures outlined in Section 3. Samples that do not meet the minimum specifications will be rejected as non-responsive.

The evaluation committee may recommend an award based solely on the written responses and sample test results, or may request Proposal interviews/presentations. Interviews/presentations, if deemed beneficial by the evaluation committee, will consist of the highest scoring Proposers. The invited Proposers will be notified of the time, place, and format of the interview/presentation. Based on the interview/presentation, the evaluation committee may revise their scoring.

Written Proposals must be complete and no additions, deletions, or substitutions will be permitted during the interview/presentation (if any). The evaluation committee will recommend award of a contract to the final County decision maker based on the highest scoring Proposal. The County decision maker reserves the right to accept the recommendation, award to a different Proposer, or reject all Proposals and cancel the RFP.

Proposers are not permitted to directly communicate with any member of the evaluation committee during the evaluation process. All communication will be facilitated through the Procurement representative.

4.2 Evaluation Criteria

<u>Category</u>	<u>Points available:</u>
Project Understanding and Approach	0-35
Business Continuation Plan	0-25
Performance Testing Results	0-20
Fees	0-20
Available points	0-100

- 4.3** Once a selection has been made, the County will enter into contract negotiations. During negotiation, the County may require any additional information it deems necessary to clarify the approach and understanding of the requested services. Any changes agreed upon during contract negotiations will become part of the final contract. The negotiations will identify a level of work and associated fee that best represents the efforts required. If the County is unable to come to terms with the highest scoring Proposer, discussions shall be terminated and negotiations will begin with the next highest scoring Proposer. If the resulting contract contemplates multiple phases and the County deems it is in its interest to not authorize any particular phase, it reserves the right to return to this solicitation and commence negotiations with the next highest ranked Proposer to complete the remaining phases.

SECTION 5 PROPOSAL CONTENTS

5.1. Proposers must observe submission instructions and be advised as follows:

5.1.1. An original (clearly indicated) and **six (6)** copies of the Proposal, and an electronic copy (on compact disk or jump drive) of the complete Proposal, **along with the test sample**, must be received by the Closing date and time indicated in Section 1 of the RFP. The sealed envelope or package must have the vendor name, name of the project, and date/time of the Closing clearly indicated on outside of the package.

5.1.2. Mailing address including Hand Delivery, UPS and FEDEX:

Clackamas County Procurement Division
Clackamas County Public Services Building
2051 Kaen Road
Oregon City, OR 97045

5.1.3. County reserves the right to solicit additional information or Proposal clarification from the vendors, or any one vendor, should the County deem such information necessary.

Provide the following information in the order in which it appears below:

5.2. Project Understanding and Approach

Provide a narrative description of your understanding of the project, the ability to satisfactorily perform the required work by reasons of experience in performing work of a similar nature, demonstrated competence in the services to be performed, strength and stability of the firm, staffing capability, and record of meeting expectations on similar contracts. Provide a complete company profile including background history, years of experience, location and description of your production facility, description of equipment and technology used to perform the contract and resumes of key personnel that will support the contract.

5.3. Business Continuation Plan

Provide a narrative summary of your firm's business continuation plan and your capability to perform the contract work should your production facility that supplies the District with polymer become inoperable due to an accident, natural disaster, labor action or other incident that would stop production. Include information about the locations and capabilities of alternate facilities, the time required for work to resume at the alternate facilities and how you will ensure that supplies of dewatering polymer will be delivered to the District in the event of the loss of your primary facility.

5.4. Fees – Complete the attached Fee Schedule

Proposers are required to submit the unit price per pound delivered FOB Destination with the Proposal. The District will use that price in conjunction with the Performance Test results to establish a total baseline cost.

5.5. References

Provide three (3) references from clients your firm has served similar to the County in the past three (3) years, including one client that has newly engaged the firm in the past thirty-six (36) months and one (1) long-term client. Provide the name, address, email, and phone number of the references.

5.6. Completed Proposal Response (see the below form)

PROPOSAL RESPONSE
THICKENING AND DEWATERING POLYMER

Submitted by: _____
(Must be entity's full legal name, and State of Formation)

The undersigned, through the formal submittal of this Proposal response, declares that he/she has examined all related documents and read the instruction and conditions, and hereby proposes to provide the services as specified in accordance with the RFP, for the price set forth in the Proposal documents.

Contractor, by signature below, hereby represents as follows:

- (a) That no County elected official, officer, agency or employee of the County is personally interested directly or indirectly in this contract or the compensation to be paid hereunder, and that no representation, statement or statements, oral or in writing, of the County, its elected officials, officers, agents, or employees had induced it to enter into this contract and the papers made a part hereof by its terms;
- (b) The Proposer, and each person signing on behalf of any Proposer certifies, in the case of a joint Proposal, each party thereto, certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:
 - 1. The prices in the Proposal have been arrived at independently, without collusion, consultation, communication, or agreement for the purpose of restraining competition as to any matter relating to such prices with any other proposer or with any competitor;
 - 2. Unless otherwise required by law, the prices which have been quoted in the Proposal have not been knowingly disclosed by the Proposer prior to the Proposal deadline, either directly or indirectly, to any other proposer or competitor;
 - 3. No attempt has been made nor will be made by the proposer to induce any other person, partnership or corporation to submit or not to submit a Proposal for the purpose of restraining trade;
- (c) The proposer fully understands and submits its Proposal with the specific knowledge that:
 - 1. The selected Proposal must be approved by the Board of Commissioners.
 - 2. This offer to provide services will remain in effect at the prices proposed for a period of not less than ninety (90) calendar days from the date that Proposals are due, and that this offer may not be withdrawn or modified during that time.
- (d) That this Proposal is made without connection with any person, firm or corporation making a bid for the same material, and is in all respects, fair and without collusion or fraud.
- (e) That the Proposer shall use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document.
- (f) That the Proposer accepts all terms and conditions contained in this RFP and that the RFP and the Proposal, and any modifications, will be made part of the contract documents. It is understood that all Proposals will become part of the public file on this matter. The County reserves the right to reject any or all Proposals.
- (g) That the Proposer holds current licenses that businesses or services professionals operating in this state must hold in order to undertake or perform the work specified in these contract documents.
- (h) That the Proposer is covered by liability insurance and other insurance in the amount(s) required by the solicitation and in addition that the Proposer qualifies as a carrier insured employer or a self-insured employer under ORS 656.407 or has elected coverage under ORS 656.128.
- (i) That the Proposer is legally qualified to contract with the County.
- (j) That the Proposer has not and will not discriminate in its employment practices with regard to race, creed, age, religious affiliation, sex, disability, sexual orientation, gender identity, national origin, or any other protected class. Nor has Proposer or will Proposer discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emergency small business that is certified under ORS 200.055.

(k) The proposer agrees to accept as full payment for the services specified herein, the amount as shown in the Proposal.

☐ Resident Bidder, as defined in ORS 279A.120

☐ Non-Resident Proposer, Resident State _____

Oregon Business Registry Number _____

Contractor's Authorized Representative

Signature: _____ Date: _____

Name: _____ Title: _____

Firm: _____

Address: _____

City/State/Zip: _____ Phone: () _____

e-mail: _____ Fax: _____

Contract Manager:

Name _____ Title: _____

Phone number: _____

Email Address: _____

Fees Schedule

Proposers Name:_____

Sample	Unit Price/Pound

Identify additional polymer related products available. Identify price or percent off manufacturer's list price:

Product	Price	OR %Off List Price

SECTION 6
SAMPLE CONTRACT FORM
GOODS AND SERVICES CONTRACT

This Goods and Services Contract (this “Contract”) is entered into between _____ (“Contractor”), and Clackamas County Service District No. 1, and the Tri-City Service District, both political subdivisions of the State of Oregon (collectively referred to as “District”) for the purposes of providing thickening and dewatering polymer.

I. TERM

This Contract shall become effective upon signature of both parties and shall remain in effect until June 30, 2022. This Contract and any amendments to this Contract will not be effective until approved in writing by an authorized representative of the Board of County Commissioners of Clackamas County acting as the Governing Body for the District. This Contract supersedes and cancels any prior contracts between the parties hereto for similar services.

II. SCOPE OF WORK

This Contract covers the Scope of Work as described in RFP #2017-10 Thickening and Dewatering Polymer issued March 15, 2017, attached and hereby incorporated by reference as Attachment “A.” This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Attachment “A”, and the Contractor’s Proposal attached and hereby incorporated by reference as Attachment “B.” Work shall be performed in accordance with a schedule approved by the District. The Contractor shall meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services. The District Representative for this contract is: _____.

III. COMPENSATION

- 1. PAYMENT.** The District agrees to compensate the Contractor on a [fixed fee or time and material] basis as detailed in this Contract. The maximum annual compensation authorized under this Contract shall not exceed \$ _____ and the total Contract compensation shall not exceed \$ _____
- 2. TRAVEL EXPENSE REIMBURSEMENT.** Authorized: ☐ Yes ☒ No
If travel expense reimbursement is authorized in this Contract, such expenses shall only be reimbursed at the rates in the Clackamas County Contractor Travel Reimbursement Policy, hereby incorporated by reference, in effect at the time of the expense is incurred.
- 3. INVOICES.** Invoices submitted for payment in connection with this Contract shall be properly documented and shall indicate pertinent District contract and/or purchase order numbers. All charges shall be billed monthly (unless a different payment period is outlined in Attachment A) and will be paid net thirty (30) days from receipt of invoice and shall be subject to Oregon Revised Statute (“ORS”) 293.462. Invoices shall be submitted to the District’s Representative at: 15941 S. Agnes Avenue, Oregon City OR, 97045

IV. CONTRACT PROVISIONS

- 1. ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed

to have been incurred and anticipated to be incurred in the performance of this Contract. District and its duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

2. AVAILABILITY OF FUNDS. District certify that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the District's reasonable administrative discretion, to continue to make payments under this Contract.

3. CAPTIONS. The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.

4. COMPLIANCE WITH APPLICABLE LAW. Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the District on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate District official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.

5. EXECUTION AND COUNTERPARTS. This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

6. GOVERNING LAW. This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between District and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

7. HAZARD COMMUNICATION. Contractor shall notify District prior to using products containing hazardous chemicals to which District employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon District's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this

provision.

8. INDEMNITY, RESPONSIBILITY FOR DAMAGES. Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of work, or from any act, omission, or neglect of Contractor, its subcontractors, or employees. The Contractor agrees to indemnify, hold harmless and defend the District and Clackamas County, and their officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees or agents.

9. INDEPENDENT CONTRACTOR STATUS. The service(s) to be rendered under this Contract are those of an independent contractor. Although the District reserve the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, District cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the work. Contractor is not to be considered an agent or employee of District for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to the District employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the Contractor is presently a member of the Oregon Public Employees Retirement System); and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under Oregon Revised Statutes ("ORS") Chapter 656.

At present, the Contractor certifies that he or she, if an individual is not a program, Clackamas County, District or Federal employee. The Contractor, if an individual, certifies that he or she is not a member of the Oregon Public Employees Retirement System.

10. INSURANCE. Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon. Contractor shall provide insurance as indicated below:

A. COMMERCIAL GENERAL LIABILITY

The Contractor agrees to furnish the District evidence of commercial general liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence/\$2,000,000 general annual aggregate for personal injury and property damage for the protection of the District and Clackamas County, and their officers, elected officials, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Contract. The general aggregate shall apply separately to this project / location. The District, at its option, may require a complete copy of the above policy.

B. AUTOMOBILE LIABILITY

The Contractor agrees to furnish the District evidence of business automobile liability insurance in the amount of not less than \$1,000,000 combined single limit for bodily injury and property damage for the protection of the District and Clackamas County, and their officers, elected officials, agents, and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Contract. The District, at its option, may require a complete copy of the above policy.

C. Contractor shall provide District a certificate of insurance naming the District and Clackamas County, and their officers, elected officials, agents, and employees additional insureds. If Contractor's insurance policy does not include a blanket endorsement for additional insured status when/where required by written contract (as required in this Contract), the insurance, shall include the District and Clackamas County and their agents, officers, and employees as expressly scheduled additional insured. Use CG 20 10 or its equivalent. Such insurance shall provide sixty (60) days written notice to the District in the event of a cancellation or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the District under this insurance. This policy(s) shall be primary insurance with respect to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it.

D. If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor agrees to qualify and remain qualified for the term of this Contract as an insured employer under ORS 656. The Contractor shall maintain employer's liability insurance with limits of \$100,000 for each accident, \$100,000 per disease for each employee, and \$500,000 each minimum policy limit.

E. If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of thirty-six (36) months or the maximum time period the Contractor's insurer will provide "tail" coverage as subscribed, whichever is greater, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided it's retroactive date is on or before the effective date of this Contract.

F. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice by the Contractor to the District. This policy(s) shall be primary insurance with respect to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it.

G. Contractor shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the Contractor under this Contract, unless this requirement is expressly modified or waived by the District.

11. LIMITATION OF LIABILITIES. Except for liability arising under or related to Section 14 or 21(B), neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

12. NOTICES. Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or District at the address or number set forth on the signature page of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any such communication or notice delivered by facsimile shall be deemed to be given when receipt of transmission is generated by the transmitting machine. To be effective against District, such facsimile transmission must be confirmed by telephone notice to District's supervising representative. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

13. OWNERSHIP OF WORK PRODUCT. All work product of Contractor that results from this Contract (the “Work Product”) is the exclusive property of District. District and Contractor intend that such Work Product be deemed “work made for hire” of which District shall be deemed the author. If for any reason the Work Product is not deemed “work for hire,” Contractor hereby irrevocably assigns to District all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as District may reasonably request in order to fully vest such rights in the District. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

14. REPRESENTATIONS AND WARRANTIES. Contractor represents and warrants to District that (1) Contractor has the power and authority to enter into and perform this Contract; (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (3) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (4) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

A. Performance Warranty. Contractor warrants that the goods provided to the District shall consistently perform according to the performance characteristics described in the Scope of Work.

B. Service Warranty. Contractor warrants that the services provided herein to the District, if any, will be performed in a workmanlike manner and in accordance with the highest professional standards. Contractor’s liability and District’s remedy under this services warranty are limited to Contractor’s prompt correction of such services, provided that written notice of such alleged defective services shall have been given by the District to Contractor. The District agree to provide Contractor reasonable access to the goods for purposes of repair or replacement under this services warranty. Failure of Contractor to promptly correct problems pursuant to this Service Warrant shall be deemed a material breach of this Contract.

15. SURVIVAL. All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in the following Sections of Section IV: 1, 6, 8, 11, 13, 14, 15, and 21.

16. SEVERABILITY. If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

17. SUBCONTRACTS AND ASSIGNMENTS. Contractor shall not enter into any subcontracts for any of the work required by this Contract, or assign or transfer any of its interest in this Contract, without obtaining prior written approval from the District. In addition to any provisions the District may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this section and Sections 1, 8, 13, and 27 as if the subcontractor were the Contractor. District’s consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract. District may assign all or part of this Contract at any time without further permission required to the Contractor. District may assign all or part of this Contract at any time without further permission required to the Contractor.

18. SUCCESSORS IN INTEREST. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

19. TAX COMPLIANCE CERTIFICATION. Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle District to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to District's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. District shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and District may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

20. TERMINATION. This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the District for convenience upon thirty (30) days' written notice to the Contractor; (B) District may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the District, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the work under this Contract is prohibited or the District are prohibited from paying for such work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the District for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the District, fails to correct such failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the District (or from applicable federal, state, or other sources) to permit the District in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, District may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.

21. REMEDIES. (A) In the event of termination pursuant to Section 20(A), (B)(i), or (D), Contractor's

sole remedy shall be a claim for the sum designated for accomplishing the work multiplied by the percentage of work completed and accepted by the District, less previous amounts paid and any claim(s) which the District has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under Section 21(A), Contractor shall pay any excess to District on demand. (B) In the event of termination pursuant to Sections 20(B)(ii) or 20(C), the District shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless District expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to District all documents, information, works-in-progress and other property that are or would be deliverables had the Contract work been completed. Upon District's request, Contractor shall surrender to anyone District designates, all documents, research or objects or other tangible things needed to complete the work.

22. NO THIRD PARTY BENEFICIARIES. District and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

23. TIME IS OF THE ESSENCE. Contractor agrees that time is of the essence under this Contract.

24. FOREIGN CONTRACTOR. If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

25. FORCE MAJEURE. Neither District nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, District's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

26. WAIVER. The failure of District to enforce any provision of this Contract shall not constitute a waiver by District of that or any other provision.

27. COMPLIANCE. Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract: (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the District on account of any labor or material furnished. (B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the District may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of this Contract. (C) The Contractor shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference. All subject employers working under the

contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

(D) The Contractor shall promptly, as due, make payment to any person or copartnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention incident to sickness and injury to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

28. DELIVERY. All deliveries shall be F.O.B. destination with all transportation and handing charges paid by the Contractor, unless specified otherwise in this Contract. Responsibility and liability for loss or damage shall remain with the Contractor until final inspection and acceptance, when responsibility shall pass to the District except as to latent defects, fraud and Contractor's warranty obligations.

29. INSPECTIONS. Goods and services furnished under this Contract will be subject to inspection and test by the District at times and places determined by the District. If the District finds goods and services furnished to be incomplete or not in compliance with the District, the District, at its sole discretion, may either reject the goods and services, require Contractor to correct any defects without charge, or negotiate with Contractor to sell the goods and services to the District at a reduced price, whichever the District deems equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by the District, the District may reject the goods and services and cancel the Contract in whole or in part. Nothing in this paragraph shall in any way affect or limit the District's rights as a Buyer, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.

30. MERGER. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES AND ALL NECESSARY STATE APPROVALS HAVING BEEN OBTAINED. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

SIGNATURE PAGE FOLLOWS

By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

XXXX

Clackamas County Service District No. 1

Authorized Signature Date

Gregory L. Geist, Director Date

Name / Title (Printed)

Tri-City Service District

Telephone Number

Gregory L. Geist, Director Date

Oregon Business Registry #

Approved as to Form:

Entity Type / State of Formation

County Counsel Date

ATTACHMENT A
[RFP]

ATTACHMENT B
[PROPOSAL]