



BOARD OF COMMISSIONERS
Agenda Item Summary

Agenda Category: Agreements

Item No:

Date: March 2, 2021

Originating Department: Public Works

Issue: In the matter of PO No 108374 between the Oregon Department of Transportation and Klamath County for noxious weed control.

Background: Klamath County enters into agreements with outside agencies to treat noxious weed infestations on their property. The purpose of this PO is to control the growth and spread of noxious and non-native weeds at Lost River Wetland Mitigation Bank.

Fiscal Impact: Income of 4,999.00 to the Weed Control Budget

Recommended Motion: Board approve and authorize chair to sign PO No 108374 between the Oregon Department of Transportation and Klamath County for noxious weed control. Fiscal Impact is \$4,999.00 income to the Weed Control Budget.

DONE AND DATED this _____ day of _____, 20__.

Chair
Approved
Denied

Vice-Chair
Approved
Denied

Commissioner
Approved
Denied



PURCHASE ORDER

108374

SHIP TO:

PO NUMBER

NAME ODOT		AGENCY CONTACT PERSON NAME Allison Cowie		PO ISSUE DATE 2/11/21		DELIVERY DATE REQUIRED 12/31/21	
STREET ADDRESS 63055 N. Highway 97, Building M		PHONE 541 388-6051		BIENNIUM 20/21 and 21/22		CONFIRMATION NUMBER	
CITY, STATE, ZIP Bend, OR 97703		FAX 541-385-0476		PRICE AGREEMENT NUMBER		BACK ORDER NUMBER	
BILL TO: <input checked="" type="checkbox"/> Same as ship-to		BILLING ADDRESS IF DIFFERENT FROM SHIP-TO ADDRESS		PAYMENT TERMS Net 30 days		FOB Destination	
VENDOR NUMBER - SUFFIX		VENDOR/CONTRACTOR CONTACT PERSON NAME Todd Pfeiffer		INSTRUCTIONS TO CONTRACTOR/VENDOR Show this PO number on invoice and all items pertaining to this order. Prepay all freight charges unless stated otherwise. If freight is billed as a separate item, the receipted freight bill must accompany the invoice. State is not subject to federal excise tax.			
VENDOR/CONTRACTOR NAME Klamath County		PHONE (541) 883-4696					
ADDRESS 305 Main Street		FAX					
CITY, STATE, ZIP Klamath Falls, OR 97601		E-MAIL tpfeiffer@co.klamath.or.us					

DESCRIPTION AND/OR CATALOG NUMBER	AGENCY EXPENDITURE CODING				QUANTITY			UNIT PRICE	ITEM TOTAL	SFO
	CHARGE UNIT	EA SUBJOB	ACT	OBJ DETAIL	ORDERED	UNIT	RECEIVED			
<ul style="list-style-type: none"> Control the growth and spread of noxious and non-native weeds at Lost River Wetland Mitigation Bank by spraying herbicides. Best management practices are to be followed, including use of certified herbicide applicators and adhering to instructions on herbicide labels. 	4620	BNKSTE05/500	J76	222	1.00	1		\$4,999.00	\$4,999.00	
TOTAL									\$4,999.00	

SPECIAL TERMS AND CONDITIONS/INSURANCE REQUIREMENTS
 Work is spread out over a 12 month period and crosses bienniums. Work is not to exceed \$4999.000. Tasks are contingency and are to be commenced only after written notice to proceed (email is acceptable). The attached figure shows locations to be included in the work area.

There are no other understandings, agreements or representations, oral or written, related to the Goods/Services. Select Paragraph A or B below, as applicable:
 A. This Purchase Order and the standard terms and conditions attached to this Purchase Order, any special terms and conditions included with this Purchase Order and any other items incorporated by reference constitute the entire agreement between the parties about the Goods/Services.
 B. This Purchase Order and the terms and conditions of the Price Agreement between Agency and Contractor and any special terms and conditions included with this PO constitute the entire agreement between the parties about the Goods/Services.

REQUESTED BY Allison Cowie	DATE February 11, 2021	APPROVED BY (PRINT NAME) John Raasch	DATE	RECEIVED BY (PRINT NAME)	DATE
ORPIN ENTRY DATE (PO'S OVER \$5,000 ONLY)		APPROVED BY SIGNATURE		RECEIVED BY SIGNATURE	

108374

PURCHASE ORDER (PO) STANDARD TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS/SERVICES

Oregon Department of Transportation (Agency)

1. CONFLICT OF INTEREST (COI): Contractor/Vendor (hereafter referred to as "Contractor") shall be in compliance with the ODOT COI Guidelines (as may be revised from time to time) available at: www.oregon.gov/ODOT/CS/OPO/AE.shtml#Forms. Contractor shall immediately submit to Agency an accurate and complete Conflict of Interest Disclosure Form (available at the above web site) if any disclosures are required per the ODOT COI Guidelines.

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

3. INSPECTIONS: Goods and related services (Goods) furnished under this PO shall be subject to inspection and test by Agency at times and places determined by the Agency. If Agency finds Goods furnished to be incomplete, not in compliance with the solicitation specifications and the PO, or defective in any way, Agency, at its sole discretion, may either reject the goods, require Contractor to correct any defects without charge, or negotiate with Contractor to sell the goods to Agency at a reduced price, whichever Agency deems equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by Agency, Agency may reject the goods and cancel the PO in whole or in part. Nothing in this paragraph shall in any way affect or limit the Agency's rights as Buyer under the Uniform Commercial Code ("UCC"), including but not limited to the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080. Agency's review, approval or acceptance of, or payment for, the goods required under the PO shall not be construed to operate as a waiver of any rights under the PO or of any cause of action arising out of the performance of the PO, and Contractor shall be and shall remain liable to Agency in accordance with applicable law for all damages to Agency caused by Contractor's negligent performance or failure of any of the Goods furnished under the PO.

4. PAYMENT: Payment for completion of Agency contracts is normally made within 30 days following the date the entire order is delivered or the date the invoice is received, whichever is later. After 45 days, Contractor may assess overdue account charges up to a maximum rate of two-thirds of one percent per month (8% per annum) on the outstanding balance (ORS 293.462).

5. STATE PAYMENT OF CONTRACTOR CLAIMS: If Contractor fails, neglects or refuses to pay promptly, as due, any claim for labor or services furnished to the Contractor or any subcontractor by any person in connection with the goods provided under this PO, Agency may, but is not obligated to, pay such claim and charge the amount of the payment against funds due or to become due the Contractor under this PO. The payment of a claim by Agency pursuant to this paragraph shall not relieve the Contractor or its surety, if any, from obligation with respect to any unpaid claims.

6. WARRANTIES: All implied and express warranty provisions of the UCC are hereby incorporated by reference. Further, Contractor represents and warrants that –

– Contractor has the power and authority to enter into and perform the PO,

– the PO, when executed and delivered is a valid and binding obligation of Contractor, enforceable in accordance with its terms;

– all goods delivered under the PO are free and clear of liens and encumbrances;

– Contractor has full legal title to the goods and that no other person has any right, title or interest in the goods, which shall be superior;

– unless otherwise stated in the PO, all goods shall be free and clear of any liens or encumbrances and shall be new (and, if applicable, the current model) and shall carry full manufacturer warranties;

– all goods delivered shall be free from defects in labor, material and manufacture and in compliance with the specifications set out in this PO; and

– if Contractor is comprised of more than one legal entity (for example, a joint-venture or partnership), each such entity shall be jointly and severally liable under the PO.

7. TERMINATION: (i) The parties may terminate this PO by mutual agreement. (ii) Agency may terminate this PO at any time with written notice to Contractor. Upon receipt of the written notice, Contractor shall stop performance, and Agency shall pay Contractor for Goods delivered and accepted. (iii) Agency may terminate this PO at any time if Agency fails to receive funding, appropriations, or other expenditure authority. (iv) If Contractor breaches any PO provision or is declared insolvent, Agency may terminate this PO for cause with written notice to Contractor, and Contractor shall be liable for all incidental and consequential damages resulting from its breach, including all damages as provided in the UCC.

8. INDEMNIFICATION/HOLD HARMLESS: Contractor shall indemnify, defend, save, and hold harmless the State of Oregon, the Oregon Transportation Commission and its members, the Department of Transportation, their officers, agents and employees from any and all claims, suits, actions, losses, liabilities, damages, costs and expenses, including attorneys fees, of whatsoever nature, resulting from or arising out of the negligent acts or omissions of Contractor or its subcontractors, or their respective agents, officers or employees, under the PO.

9. GOVERNING LAW, JURISDICTION, VENUE: This PO is governed by Oregon law, without resort to any other jurisdiction's laws. Any claim, action, suit, or proceeding between the State and the Contractor that relates to this PO (Claim) shall be heard exclusively in the Circuit Court of Marion County for the State of Oregon. If the Claim must be brought in a federal forum, then it shall be heard exclusively in the US District Court for the District of Oregon. In no way will this Section or any other provision of this PO be construed as a waiver by the State of any form of defense, sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the US Constitution, or other immunity, from any Claim or from the jurisdiction of any court. Contractor consents to the in personam jurisdiction of these courts.

10. ASSIGNMENT/SUBCONTRACT/SUCCESSORS: Contractor shall not assign, sell, transfer, or subcontract rights, or delegate responsibilities under this PO, in whole or in part, without the prior written approval of Agency. No such written approval shall relieve Contractor of any obligations under this PO, and any transferee or subcontractor shall be considered the agent of Contractor. Contractor shall remain liable to Agency under the PO as if no such transfer or subcontract had occurred. The provisions of this PO shall be binding upon and shall inure to the benefit of the parties to the PO and their respective successors and permitted assigns.

11. TIME IS OF THE ESSENCE: Contractor agrees that time is of the essence under this PO.

12. BREACH OF CONTRACT: Contractor shall be liable for any and all damages suffered by Agency as the result of Contractor's breach of PO, including but not limited to incidental and consequential damages, as provided in ORS 72.7110 to 72.7170.

13. FORCE MAJEURE: No party is responsible for delay or default caused by an event beyond its reasonable control. Agency may terminate this PO without liability to Contractor upon written notice after determining the delay or default reasonably prevents performance of this PO.

Purchase Order Terms and Conditions continued on next page...

Purchase Order Terms and Conditions continued from previous page...

14. COMPLIANCE WITH APPLICABLE LAW: Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as amended (Rules), including, without limitation, the provisions of: (i) Titles VI and VII of Civil Rights Act of 1964; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990; (iv) Executive Order 11246; (v) The Age Discrimination in Employment Act of 1967, and the Age Discrimination Act of 1975; (vi) The Vietnam Era Veterans' Readjustment Assistance Act of 1974; (vii) ORS Chapter 659; (viii) ORS 279B.020 and 279B.270; (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; (x) all federal and state laws governing the handling, processing, packaging, storage, labeling, and delivery of food products; and (xi) all regulations and administrative rules established pursuant to the foregoing laws. Agency's performance is conditioned upon Contractor's compliance with, 279B.220, 279B.225, 279B.230, and 279B.235, as applicable. All applicable Rules are incorporated by reference in this PO.

15. PAYMENTS REQUIRED By ORS 279C.505 AND 279B.220: For all goods provided under this contract, Contractor shall (i) pay promptly, as due, all persons supplying labor or material; (ii) pay all contributions or amounts due the industrial Accident Fund from the contractor or any subcontractor; (iii) not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof; and (iv) pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

16. SAFETY AND HEALTH REQUIREMENTS: Contractor warrants goods and services provided under this PO comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all Oregon safety and health requirements, including those of the State Workers' Compensation Division.

17. WORKERS' COMPENSATION: Contractor shall comply with ORS 656.017 and provide the required workers' compensation coverage, unless exempt under ORS 656.126(2). Contractor shall ensure that its Subcontractors, if any, comply with these requirements.

18. MATERIAL SAFETY DATA SHEET: Contractor shall provide Agency with a Material Safety Data Sheet as defined by the Occupational Safety and Health Administration (OSHA) for any goods provided under this PO which may release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use. In addition, Contractor must label, tag or mark such goods.

19. RECYCLABLE PRODUCTS: Unless otherwise required, Contractor shall use recycled and recyclable products to the maximum extent economically feasible in the performance of the PO. These products shall include recycled paper, recycled PETE products, other recycled products (ORS 279A.010(1)(gg),(hh),(ii)), and other recycled plastic resin products.

20. FOREIGN CONTRACTOR/BUSINESS REGISTRATION: If Contractor is not domiciled in or registered for doing business in the State of Oregon ("doing business" is defined in OAR 150-317.010(4)), Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to the Contract.

21. ACCESS TO RECORDS: Contractor shall maintain all fiscal records relating to this PO in accordance with generally accepted accounting principles and shall maintain any other records relating to this PO in such a manner as to clearly document Contractor's performance hereunder. Agency, the Secretary of State Audits Division and their duly authorized representatives shall have access to such fiscal records and to all other books, documents, papers, plans and writings of Contractor which relate to this PO to perform examination and audits and make excerpts and transcripts. To the extent provided by law, the federal

government shall be entitled to the same access as Agency. Contractor shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of 6 years, or such longer period as may be required by applicable law following final payment and termination of this PO, or until the conclusion of any audit, controversy or litigation arising out of or related to this PO, whichever date is later.

22. SEVERABILITY: If any provision of this PO 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 PO did not contain the particular provision held to be invalid.

23. WAIVER: No waiver, consent, modification or change of terms of this PO shall bind either party unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of Agency to enforce any provision of this PO shall not constitute a waiver by Agency of that or any other provision.

24. AMENDMENTS: All amendments to this PO must be in writing and signed by Agency.

25. TAX CERTIFICATION: By entering this PO, Contractor hereby certifies under penalty of perjury: (a) the number provided to Agency is the correct Federal Employer Identification Number; (b) it is not subject to backup withholding because (i) it is exempt from backup withholding, (ii) it has not been notified by the IRS that it is subject to

backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that it is no longer subject to backup withholding; and (c) it is not in violation of any Oregon tax laws.

26. PERFORMANCE STANDARDS: Contractor shall meet the highest standards prevalent in the industry or business most closely involved in providing the Goods and Services required under the Contract.

27. FAILURE TO PERFORM: The consequences for Contractor's failure to perform the scope of work identified in the Contract, meet the delivery schedule requirements, meet established performance standards, or to cure deficiencies within the stated deadline, may include, but are not limited to:

(i) Reducing or withholding payment;

(ii) Requiring Contractor to perform, at Contractor's expense, additional work necessary to perform the identified scope of work or meet the established performance standards; or

(iii) Declaring a default, terminating the Contract and seeking damages and other relief available under the terms of the Contract or other applicable law.

28. ORDER OF PRECEDENCE: The terms and conditions set forth in sections 1 through 25 are the Standard Terms and Conditions applicable to this PO. Agency may also provide "special terms and conditions" elsewhere in the invitation to bid, request for proposals, or PO which apply only to this PO. In the event of a conflict between the standard and "special terms and conditions", the "special terms and conditions" take precedence, unless the standard term(s) in question is/are required by law. In the event of any other conflict, 1) the special terms and conditions, 2) these Standard Terms and Conditions, 3) the Invitation to Bid or Request for Proposal, and 4) the proposal or response thereto shall be interpreted in the foregoing order of precedence. Contractor agrees that, in the event of a conflict, all the terms and conditions of this PO supersede all preprinted terms and conditions on any forms used by the Contractor. The rights and remedies of Agency provided for under the PO are in addition to any other rights and remedies provided by law.