



CLARIFICATION NO. 1

LANDFILL SITING CONSULTANT SERVICES – PHASE 3

DATE: August 9, 2024

To: Bidding Documents Holders

From: Jeff Merwin, Compliance and Infrastructure Manager

In response to inquiries made by Bidding Documents holders, Deschutes County Solid Waste Department (Agency) is providing the following clarification for the above-referenced Project:

Question 1: *Please confirm that the Phase I and Phase II Site Characterization as required by the RFP is only for Phase 1, which is approximately 160 acres.*

Agency Response: No, the Phase 1 and Phase 2 Site Characterization is expected for the entire site.

Question 2: *For the legal property boundary survey, will the county provide the title documents?*

Agency Response: The Legal Boundary Survey is being removed from this scope of work and should not be included in the response to the RFP. The County has moved forward with this work in preparation of our initial work for site acquisition discussions.

Question 3: *Will the County provide a current topographic map or should we include a survey to obtain the current topographic elevations?*

Agency Response: There is a current topographic map and it will be available to the selected proposer.

Question 4: *Is the Archaeological survey required for just Phase 1 or the entire approximate 440-acre Moon Pit property?*

Agency Response: The Archaeological survey will be for the entire Moon Pit site.

Question 5: *Does the 30-page limit include a cover letter, cover page and tab inserts?*

Agency Response: No. Cover letter, cover page and tab inserts are NOT included in the total page count.

Question 6: *The RFP indicates that resumes are not be included as part of the number of pages, is there anything else that should not be included as part of the total page count?*

Agency Response: Only resumes and the items listed in response to Question 5 are NOT included in the total page count.

Question 7: *Please confirm that this phase of the project DOES NOT include detailed design work and permitting associated with obtaining a solid waste permit with the Oregon Department of Environmental Quality.*

Agency Response: The scope of work is intended to secure all necessary permits, authorizations, and land-use entitlements. This DOES include all design work in sufficient detail to secure a solid waste permit with the Oregon DEQ.

Question 8: *What coordination has occurred with ODOT on the proposed BLM access to US 20?*

Agency Response: None. Additional analysis and design may be required to evaluate the need for an acceleration lane that meets ODOT design standards for exiting trucks.

Question 9: *Will some type of ODOT approach permitting process be required to modify the use of the BLM access road?*

Agency Response: Unknown

Question 10: *Have there been any discussion of realigning the intersection with the offset connection south of US 20?*

Agency Response: No

Question 11: *This project is expected to span several years. How much input will we need to provide the County on spending and budget for the project for future years?*

Agency Response: The County is expecting the project to take several years. The County is expecting a budget proposal that anticipates the total costs for this Phase of work described in the RFP.

Question 12: *Are you open to having a site visit for proposers?*

Agency Response: The County has requested permission for a site visit from the property owner and is awaiting response.

Question 13: *As written, the County's indemnity provision is overly broad and subjects the Contractor to uninsurable claims. Contractor's Commercial General Liability insurance covers against property damage and bodily injury, including death, as a result of Contractor's tortious acts not related to professional services. Contractor's Professional Liability insurance covers against*

damages to the extent of the Contractor's negligence, errors, omissions, or willful misconduct; however, this policy does not provide any third-party, upfront defense and will only reimburse indemnitees for those reasonable legal fees and costs incurred as a result of Contractor's negligence as determined by a court of competent jurisdiction. Would the County be amenable to modifying its indemnification language as follows upon any contract award:

21. Indemnity and Hold Harmless.

a. To the fullest extent authorized by law Contractor shall defend, save, hold harmless and indemnify the County and its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities costs and expenses of any nature resulting from or arising out of, or relating to the **negligent or tortious** activities of Contractor or its officers, employees, contractors, or agents under this Contract, including without limitation any claims that the work, the work product or any other tangible or intangible items delivered to County by Contractor that may be the subject of protection under any state or federal intellectual property law or doctrine, or the County's use thereof, infringes any patent, copyright, trade secret, trademark, trade dress, mask work utility design or other proprietary right of any third party. **Relative to claims of professional liability, Contractor's duty to defend is limited to reimbursement of the County's reasonable legal costs and fees incurred as a result of Contractor's liability as determined by a court of competent jurisdiction.**

o **EXHIBIT 2**

Contractor's Professional Liability insurance is claim based. Contractor's Commercial General Liability (CGL) insurance will only provide an endorsement for contractual liability assumed under an insured contract. Additionally, while Contractor's CGL carrier will defend the County, if the County chooses its own counsel, there is no guarantee the CGL carrier will reimburse the full amounts incurred – the carrier has set amounts it will pay panel counsel. Accordingly, would the County be amendable to modifying its insurance requirements as stated in Exhibit 2 of its County Services Contract as follows upon any contract award:

| | |
|---|--|
| Professional Liability insurance with a claim based on occurrence combined single limit | |
| of not less than: Per Claim limit | Annual Aggregate limit |
| <input checked="" type="checkbox"/> \$1,000,000 | <input checked="" type="checkbox"/> \$2,000,000 |
| <input type="checkbox"/> \$2,000,000 | <input type="checkbox"/> \$3,000,000 |
| <input type="checkbox"/> \$3,000,000 | <input type="checkbox"/> \$5,000,000 |
| Professional Liability insurance covers damages caused by error, omission, or negligent acts related to professional services provided under this Contract. The policy must provide extended reporting period coverage, sometimes referred to as "tail coverage" for claims made within two years after the contract work is completed. | |
| <input checked="" type="checkbox"/> Required by County | <input type="checkbox"/> <u>Not</u> required by County (one box must be checked) |

| | |
|--|---|
| Commercial General Liability insurance with a combined single limit of not less than: | |
| <u>Per Single Claimant and Incident</u> | <u>All Claimants Arising from Single Incident</u> |
| <input checked="" type="checkbox"/> \$1,000,000 | <input checked="" type="checkbox"/> \$2,000,000 |
| <input type="checkbox"/> \$2,000,000 | <input type="checkbox"/> \$3,000,000 |
| <input type="checkbox"/> \$3,000,000 | <input type="checkbox"/> \$5,000,000 |
| <p>Commercial General Liability insurance includes coverage for personal injury, bodily injury, advertising injury, property damage, premises, operations, products, completed operations and contractual liability assumed under an insured contract. The insurance coverages provided for herein must be endorsed as primary and non-contributory to any insurance of County, its officers, employees or agents. Each such policy obtained by Contractor shall provide that the insurer shall defend any suit against the named insured and the additional insureds, their officers, agents, or employees, even if such suit is frivolous or fraudulent. Such insurance shall provide County with the right, but not the obligation, to engage its own attorney for the purpose of defending any legal action against County, its officers, agents, or employees, and that Contractor shall indemnify County for costs and expenses, including reasonable attorneys' fees, incurred or arising out of the defense of such action.</p> <p>The policy shall be endorsed to name Deschutes County, its officers, agents, employees and volunteers as an additional insured. The additional insured endorsement shall not include declarations that reduce any per occurrence or aggregate insurance limit. The contractor shall provide additional coverage based on any outstanding claim(s) made against policy limits to ensure that minimum insurance limits required by the County are maintained. Construction contracts may include aggregate limits that apply on a "per location" or "per project" basis. The additional insurance protection shall extend equal protection to County as to Contractor or subcontractors and shall not be limited to vicarious liability only or any similar limitation. To the extent any aspect of this Paragraph shall be deemed unenforceable, then the additional insurance protection to County shall be narrowed to the maximum amount of protection allowed by law.</p> | |
| <input checked="" type="checkbox"/> Required by County <input type="checkbox"/> Not required by County (One box must be checked) | |

Agency Response: The County may consider modifying indemnification language upon contract award.