

## REQUEST FOR SPECIAL PROCUREMENT No. REQ-DASOBO-00072680

**PART A.** Requesting Agency must complete Items 1 through 13.

1. **Requesting Agency Name:** Oregon Parks and Recreation Department (“OPRD”)
2. **Date of Request:** May 28, 2024
3. **Agency Number:** 63400
4. **Agency Contact Name:** Winona Butler
5. **Phone:** 503-779-7834
6. **Type of Request:**  Class Special Procurement       Contract-specific Special Procurement
- 7.a **Procurement Method Time Period Requested:** From: June 1, 2024      To: December 31, 2034
- 7.b **Contract Time Period Requested:** Up to 20 years
8. **Total Estimated Cost:** The current and proposed transactions are concession arrangements under which OPRD engages contractors (the “Contractor”) to operate OPRD facilities or provide customer experience services. OPRD will not pay any funds to Contractor. Rather, OPRD anticipates that Contractors, in exchange to operate the concession, will pay OPRD a certain percentage of Gross Revenue generated by the operation of the concession during the term of the contracts.
9. **Title: Supplies and/or Services to be Acquired:** State Park Concession Services

OPRD will have a need over the Procurement Method Time Period described in Section 7.a to select Contractors to provide Concession Services at State Parks (“Parks”). The “Concession Services” encompass essential services necessary to operate various amenities and offerings available to visitors within the Parks, such as guest rooms, restaurants, space rentals, recreational activities, recreational equipment rentals, grocery and camp supply stores and sales, and other related businesses, during the term of the engagement. Contractors may also act as caretakers of the Parks during additional agreed-upon periods of each calendar year, including during periods when Parks are closed to visitors. The property and operations of the Parks are described in more detail in Section 10(b) below.

Based on advice and counsel provided by Oregon Department of Justice (“DOJ”), OPRD believes that the transactions for the Concession Services will be complex contractual relationships, consisting of one or more agreements, which will address, without limitation, the following issues: the operation and maintenance of the Parks and the specific Concession Services to be offered by Contractors; the lease or other documentation concerning the Contractor’s right to occupy, improve, and use the land, facilities, and fixtures at the Parks; and agreements concerning the Contractor’s use of OPRD’s registered marks and logos to promote the Parks, and to engage in the sale of merchandise incorporating those marks and logos.

### 10. Request, Background, Current Need, and Proposed Contracting Procedure:

#### a. Request:

OPRD’s contracting activities are subject to the Public Contracting Code. However, pursuant to Oregon Revised Statute (“ORS”) 279A.050(6)(d), OPRD has contracting authority, independent of Oregon Department of Administrative Services (“DAS”), “to procure or supervise the procurement of all goods, services, public improvements and personal services related to state parks.” The Concession Services are services, potentially

including personal services, related to the operation of state parks. However, while DAS is not the contracting authority to acquire the Concession Services described in this Request for Special Procurement, ORS 279B.085(2) gives DAS the sole authority<sup>1</sup> to approve special procurements for state contracting agencies subject to the Public Contracting Code, including for agencies that have contracting authority independent of DAS.

Accordingly, OPRD requests DAS’ approval of this Request for Class Special Procurement (“SP”) #REQ-DASOBO-00072680 to authorize OPRD to select Contractors to provide the Concession Services described in Section 9 above according to the alternative process set forth in Section 10(d) below. OPRD intends to use the alternative process to select Contractors for the provision of Concession Services during the ‘Procurement Method Time Period’ described in Section 7.a and to enter into contracts with terms up to 20 years as described in Section 7.b ‘Contract Time Period’.

**b. Background:**

OPRD currently administers contracts for Concession Services at 11 Parks statewide, as listed in the following table 10.b.1.

**Table 10.b.1**

| <b>Park Name</b>                       | <b>Concessions Currently Offered</b> | <b>Current Contract End Date</b> |
|--|--------------------------------------|----------------------------------|
| The Cove Palisades State Park          | Marina                               | 12/31/2040                       |
| Frenchglen Hotel State Historical Site | Lodging, Food                        | 10/31/2033                       |
| Fort Stevens State Park                | Firewood Sales                       | 12/31/2024                       |
| Silver Falls State Park                | Lodging, Food, Meeting Rooms         | 10/31/2024                       |
| Nehalem Bay State Park                 | Guided Equestrian Trail Rides        | 11/14/2025                       |
| Butteville Store                       | Food                                 | Ongoing                          |
| Peter Skene Ogden SSV                  | Bungee Jumping                       | 10/31/2027                       |
| Wolf Creek Inn State Historical Site   | Lodging, Food                        | 7/31/2038                        |
| Wallowa Lake State Park                | Marina                               | 10/31/2038                       |
| Milo McIver State Park                 | Water Sports Activities              | 6/30/2027                        |

<sup>1</sup> There are three exceptions to DAS’ role in approving all special procurements for state contracting agencies. The office of the Secretary of State, the office of the State Treasurer, and Oregon Housing and Community Services may approve their own special procurements. See ORS 279B.085(3) and (4), and SB 892 (2023 Session) at Section 16(19)(b).

**c. Current Need:**

During the Procurement Method Time Period, if OPRD has a need to seek a new Contractor to provide Concession Services at any Park, OPRD will seek interested parties to provide Concession Services described in Section 9 above using the process described in Section 10(d) below.

**d. Proposed Contracting Procedure:**

**(i) Special Procurement Public Notice**

1. As required by OAR 125-247-0287, OPRD will issue a public notice (“Notice”) regarding approval of this Special Procurement on the OregonBuys eProcurement system for a period of seven (7) calendar days.
2. The Notice will include provisions that any affected party may protest the approval of this Special Procurement.
3. DAS will respond to and resolve all protest(s), if any.
4. If no protests to this Special Procurement are received and sustained, OPRD will, during the Procurement Term, select Contractors to provide Concession Services as described in the following Section 10(d)(ii).

**(ii) Concession Services Business Opportunity**

**Note:** OPRD intends to use multiple media and sources to advertise each Concession Services Business Opportunity (“Business Opportunity”). However, only OregonBuys and the OPRD website will be used to conduct and document the entire Business Opportunity process. Interested parties are solely responsible for checking OregonBuys or the OPRD website to obtain current information throughout Business Opportunity Phase 1 and Phase 2 set out below.

**Phase 1: Business Opportunity Public Notice**

OPRD will provide public notice of each Business Opportunity for a period not less than 14 calendar days and using the following media or sources:

- OregonBuys, or other system approved or designated by the State’s Chief Procurement Officer (“CPO”) as the State’s eProcurement system of record (when used in the Business Opportunity, “OregonBuys” refers either to OregonBuys or other State CPO-designated system);
- OPRD’s website;
- OPRD’s LinkedIn site; and
- Targeted Email communications to prospective Contractors and affiliated organizations, including the Oregon Restaurant and Lodging Association and Authorized Concessionaires of the National Parks Service.

In addition, OPRD may contract with Media providers to release and provide public notices in various media to ensure broad notice of the Business Opportunity. Finally, OPRD will directly solicit individuals and firms known by OPRD (through market research and other means) to be in the business of providing one or more of the Concession Services that are the subject of the Business Opportunity.

1.1. Each Business Opportunity Notice will include:

- 1.1.1. A general description of the Concession Services to be acquired (i.e., Scope of Services)

- 1.1.2. Instructions on how to submit questions and clarification requests.
  - 1.1.2.1. OPRD does not intend to establish a firm deadline for submittal of questions and clarification requests. Rather, interested parties may submit questions and clarification requests up to the date and time set out in the Business Opportunity Closing Notice (item 1.2 below).
  - 1.1.2.2. A running list of submitted questions and clarification requests along with the state’s official answers (“Q&A”) will be posted on OregonBuys and the OPRD website until the opportunity closes.
- 1.1.3. Notice of Interest Submission Requirements. OPRD does not intend to establish a firm deadline for submittal of a Notice of Interest in its initial Business Opportunity Notice. Rather, OPRD will establish the Business Opportunity Closing Date and Time as set forth in item 1.2 below.
- 1.2. Q&A Closing and Business Opportunity Closing Date and Time: Given the breadth of the notice provisions and the potential diversity of interested parties, OPRD does not intend to establish a firm Q&A Closing Date and Time or Business Opportunity Closing Date and Time in the initial Business Opportunity Notice.
  - 1.2.1. When OPRD determines that it has received sufficient Notice of Interest submissions to objectively compare the experience, capabilities and qualifications of interested parties, OPRD will establish:
    - 1.2.1.1. A firm Q&A Closing Date and Time, which will not occur fewer than 3 business days prior to the Business Opportunity Closing Date and Time.
    - 1.2.1.2. A firm Business Opportunity Closing Date and Time after which OPRD will no longer accept a Notice of Interest.
- 1.3. OPRD will advertise a Notice of Business Opportunity Closing Date and Time on OregonBuys and OPRD’s website, announcing the Closing Dates and Times for Q&A and the Business Opportunity. The Notice will be advertised for a period not less than 5 business days prior to the established Business Opportunity Closing Date and Time.
- 1.4. OPRD will evaluate Contractors that submit a Notice of Interest by the date established as described in Section 1.3. OPRD’s evaluation of potential Contractors in Phase 1 may include any of the following activities, as determined necessary by OPRD to effectively evaluate interested parties’ ability to provide the Concession Services:
  - 1.4.1. Interviews with potential Contractors.
  - 1.4.2. Consideration of written material requested by OPRD.
  - 1.4.3. Site visits to other similar businesses operated by potential Contractors.
  - 1.4.4. Reference checks with business associates or customers of potential Contractors.
  - 1.4.5. Examination of books and records of potential Contractors to ensure financial and operational capabilities to operate the Park and provide the Concession Services.
  - 1.4.6. Other activities determined by OPRD to be necessary or helpful to allow OPRD to evaluate interested parties’ ability to provide the Concession Services.

## **Phase 2: Selection and Negotiation**

- 2.1. For determining which potential Contractor will offer OPRD the best value, OPRD may engage in preliminary or detailed discussions or negotiations with one or multiple potential Contractors in Phase

2. These discussions and negotiations will include potential contracting or business issues and each potential Contractor's approach to handling them, exploration of viable business alternatives available to provide the Concession Services, the optimum term duration of the Concession Services Contracts, and the rate of return presented to OPRD by various alternatives, all considering the entirety of OPRD's policy and business goals related to the Park for which OPRD is seeking Concession Services. In addition, OPRD may engage in one or more of the activities described in Section 1.4 above during Phase 2 of the Selection and Negotiation process.

2.2. OPRD may select a Contractor to provide the Concession Services to fulfill a Business Opportunity at any time during Phase 2 of the selection process. OPRD intends to select a Contractor who, through its submitted material and Phase 2 discussions as described in Section 2.1, demonstrates the experience, capabilities, and personnel that provides OPRD the best value for the Concession Services. This selection process will take into consideration OPRD's determination of its business and policy goals related to the Park for which Concession Services are sought.

2.2.1. When OPRD selects a Contractor, OPRD will post a notice of Intent-to-Award on OregonBuys and OPRD's website.

2.2.2. OPRD will accept and resolve protests (if any) in accordance with the principles set forth at OAR 137-047-0740, before continuing negotiations with the selected Contractor.

2.3. OPRD will prepare written notes and other documentation throughout the selection process to document its decision-making process, will make such notes and other documentation part of its procurement file, and will retain that material consistent with applicable law.

2.4. Pursuant to ORS 291.047 and related administrative rules, OPRD will work with DOJ and obtain legal sufficiency approval prior to executing any contracts for Concession Services, if required.

**11. Justification for use of Special Procurement:** Describe the circumstances that justify the use of a Special Procurement. Attach relevant documentation.

The nature of the Concession Services to be provided by Contractors are unique as compared to the typical goods and services acquired by State agencies under procedures established by ORS 279B.055 (Competitive Sealed Bidding), or ORS 279B.060 (Competitive Sealed Proposals). For example, the Concession Services Contractor will pay the State for the opportunity to operate the Park or provide Services to Park visitors. Typically, the State is paying Contractors to provide services. The Concession Services will require a complex, interacting set of contracts (See Section 9 above), which requires more flexibility in negotiating contracts than afforded by the procurement process otherwise required by the Public Contracting Code. Finally, the long term and personal nature of services requires a flexible selection process that allows OPRD to consider factors that arise during discussions in determining who will provide the Concession Services. The procurement processes otherwise required under the Public Contracting Code do not allow that flexibility.

**12. Findings to Satisfy the Required Standards:** This proposed special procurement:

X (a) will be unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts because:

The proposed procurement method will not lead to favoritism because:

- (i) As of the date of request set forth above, OPRD has not identified or pre-qualified any Contractors, or collected any proposals, bids or business information from prospective Contractors for future opportunities.
- (ii) OPRD is not limiting the opportunity to individuals or organizations that have particular characteristics. OPRD's selection process is intended to proactively seek interested parties, in contrast to typical solicitation procedures that require proposers to respond to generally directed public notices advertised through one medium (i.e., OregonBuys).
- (iii) OPRD's final selection will be based on its assessment of factors it determines are relevant with the goal of selecting among interested parties a provider that will operate the Concession in a manner to achieve OPRD's desired outcome. OPRD will conduct the selection process in an open and fair manner, and will document its decision and decision making process in writing.

The proposed procurement method will not substantially diminish competition because:

- (i) OPRD will conduct more substantial and varied public notice of the Business Opportunities than DAS currently provides potential Contractors for procurements conducted under ORS 279B.055 or 279B.060. In addition to providing notice through OregonBuys, OPRD will provide additional notice and marketing of the opportunity as described in Section 10(d) above. Rather than diminishing competition, OPRD's notice of the opportunity and invitation to submit a Notice of Interest to OPRD will reach a broader audience than if OPRD conducted the procurement under ORS 279B.055 or 279B.060. For example, the recent Frenchglen special procurement (#DASOBO-00035796) conducted by OPRD, which employed notice and marketing methods similar to those described in Section 10(d) above, led to a substantial increase in web traffic and interactions on both OPRD's website and LinkedIn page regarding the procurement opportunity. Further, additional public notices through media providers, such as local radio channels, generated an unprecedented level of interest from potential service providers and ultimately resulted in a significantly high number of high-quality proposal submissions. By deploying the notice and marketing procedures described in Section 10(d) above, OPRD anticipates similarly positive outcomes, including increased and broader competition.
- (ii) OPRD will not base its selection on a specified set of criteria, but rather will allow each interested party to describe to OPRD why its particular combination of capabilities and experience is best suited to operate the Parks. In other words, OPRD will not limit competition by asking interested parties to meet and respond to a defined and closed set of evaluation criteria determined without full understanding of the capabilities of potential service providers. Rather, OPRD will select a Contractor based on consideration of each interested party's proposed solution to constructing the Concession Services for the Business Opportunity, allowing OPRD to consider a variety of disparate solutions.

**and**

X (b)(i) will result in substantial cost savings to the contracting agency or to the public because:

OPRD will receive fee payments from the Contractor. OPRD will not pay the Contractor to conduct this body of work, so the cost of the Concession Services to OPRD is not a factor.

**or**

X (b)(ii) will otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with the requirements of ORS 279B.055, 279B.060, 279B.065, or 279B.070, or any rules adopted thereunder because:

Using the alternative procurement method described above will substantially promote the public interest in the following ways:

- i. The public interest will be served by providing notice to the most qualified parties, who most likely would not otherwise be aware of the opportunity if it were conducted according to the Competitive Sealed Bid or Competitive Sealed Proposal processes under the Public Contracting Code. The required Concession Services are unique, and not the type of services normally provided by state contractors. Consequently, it is important to provide notice of the opportunity to parties that would not normally seek state contracting opportunities and would therefore not monitor OregonBuys for notice of new opportunities. The notice provisions of the proposed alternative procurement method (described in Section 10(d) above) are designed to reach those individuals and firms that are best suited to provide the Concession Services required for each Business Opportunity. It is in the public interest that selected vendors are the best qualified to provide needed Concession Services, and the proposed alternative procurement method achieves that goal, in this situation, better than existing processes.
- ii. In addition to engaging potential vendors who would not otherwise be aware of a state contracting opportunity, the proposed notice provisions are also intended to increase awareness of the opportunity to individuals and firms located in the region in which the Park is located, serving the public interest of those areas by both creating local opportunities, and increasing the likelihood that the Park is operated in a manner that considers local interest in the Park and the surrounding environment.
- iii. The public interest would be served because the alternative procurement method allows OPRD more flexibility in determining the factors it uses to determine best value in a manner not otherwise provided by existing procurement processes. The Competitive Sealed Bid or Competitive Sealed Proposal processes under the Public Contracting Code require contracting agencies to essentially make apples-to-apples comparisons of potential contractors. OPRD's proposed alternative process is solution-based, which allows OPRD to compare disparate approaches to providing the Concession Services to determine best value from among a variety of proposed solutions, which current processes do not allow.
- iv. Longer-term contracts will encourage capital investments and improvements to Parks, funded by the Contractors without any cost to OPRD. For potential service providers to be incentivized to fund improvements, such as constructing additional facilities and expanding existing ones, the Contract Time Period needs to be sufficiently long to allow them to amortize the cost of these significant capital investments and improvements over the term of their engagement. Upon the conclusion of the service provider's contract term, all capital investments and improvements will become the property of OPRD, which substantially promotes the public interest in a manner that could not practicably be realized otherwise.

13. **Signature:** The actual signature of the Agency Head or designee (e.g., Designated Procurement Officer) is not required on the Request if it is submitted through OregonBuys. Agency may elect to attach a signed Request.

Signature: e.g. *Electronically in OregonBuys* \_\_\_\_\_

Type Name:

\_\_\_\_\_ Date:



**PART B.** The Department of Administrative Services completes Part B.

**STATUTORY AND RULE AUTHORITY:**

ORS 279B.085(2) states the Director of the Department of Administrative Services may approve a special procurement if the Director finds that a written request submitted under ORS 279B.085(4) demonstrates that the use of a special procurement as described in the request, or an alternative procedure prescribed by the Director will:

- (a) Be unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts; and
- (b)(A) Result in substantial cost savings to the contracting agency or to the public; or
- (B) Otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065 or 279B.070 or under any rules adopted thereunder.

OAR 125-246-0170 delegates the authority of the Director of the Department of Administrative Services to approve special procurements to the State Chief Procurement Officer. OAR 125-247-0285 through 125-247-0288 implement ORS 279B.085.

OAR 125-247-0700(2) Protests and Judicial Review of Special Procurements designates the State Chief Procurement Officer as the Contract Review Authority.

**FINDINGS:** The findings are accepted, adopted, and incorporated by reference herein.

**CONDITIONS OF APPROVAL:**

1. **Notice Period.** The Authorized Agency shall post the Public Notice on OregonBuys. The Special Procurement may not be used until after the completion of the seven (7) day notice period required pursuant to OAR 125-247-0287(4), and either:
  - a. No Written protests are received by the Contract Review Authority, State Chief Procurement Officer, from an Affected Person in response to the notice, or
  - b. If any protest is received during the notice period, then not until:
    - i. the State Chief Procurement Officer or delegate issues a written disposition of the protest in accordance with ORS 279B.400 and OAR 125-247-0700 and OAR 137-047-0700, and
    - ii. confirms in writing the first possible date of use of the Special Procurement.
2. **ORS 279A.165 Requirements.** Agency shall comply with the requirements of ORS 279A.165 and OAR 125-247-0287(12) regarding a report about this Special Procurement. Agency shall use a form and follow the instructions provided by the State Chief Procurement Officer or delegate.
3. **Reports.** Upon the request of DAS, the Agency shall provide an Excel report to the State Chief Procurement Officer (“CPO”) or delegate that includes but is not limited to:
  - a. All Opportunity Notice numbers assigned by the Electronic Procurement System approved by the State DPO, currently OregonBuys.
  - b. All Contract number(s) assigned by the Electronic Procurement System approved by the State CPO, currently OregonBuys, in connection with each Opportunity Notice.
  - c. Contractor Name for each issued Contract.
  - d. Type of Concession Services required under each Contract.

- e. Contract Start and End Dates (“Contract Term”), as may be amended through issued Contract amendments.
- f. Contract Value, including any amendments.

**APPROVED:**

*Jay JACKSON*

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Jay Jackson, Procurement Policy Officer  
Department of Administrative Services

06/10/2024

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Date