

STATE OF UTAH



SOLICITATION NO. MJ9042

Japanese Beetle Eradication Project - Orem, Utah

RESPONSES ARE DUE PRIOR TO:

Mar 26, 2009 10:00:00 AM MDT

RESPONSES MAY BE SUBMITTED ELECTRONICALLY TO:

www.bidsync.com

RESPONSES MAY BE MAILED OR DELIVERED TO:

State of Utah
Division of Purchasing
3150 State Office Building, Capitol Hill
Salt Lake City, Utah 84114-1061

Bid MJ9042

Japanese Beetle Eradication Project - Orem, Utah

Bid Number MJ9042
Bid Title Japanese Beetle Eradication Project - Orem, Utah

Bid Start Date Mar 5, 2009 3:58:12 PM MST
Bid End Date Mar 26, 2009 10:00:00 AM MDT
Question & Answer End Date Mar 23, 2009 7:00:00 AM MDT

Bid Contact Matt Jenkins
Submit all questions through BidSync

Contract Duration 1 year
Contract Renewal 1 annual renewal
Prices Good for 1 year
Pre-Bid Conference Mar 16, 2009 10:00:00 AM MDT
Attendance is mandatory
Location: Department of Agriculture and Food
350 North Redwood road
SLC, UT. 84116

Bid Comments Provide pesticide application services for the eradication of the Japanese Beetle in Orem, Utah for The Department of Agriculture and Food Division of Plant Industry.

Be sure to sign-in at the mandatory site visit.

Please submit all questions online through BidSync.

Item Response Form

Item MJ9042-1-01 - Application of Tempo SC Ultra
Quantity 1 gallon
Unit Price
Delivery Location State of Utah
No Location Specified
Qty 1

Description
Price includes all of the service requirements in the bid specification.

Item MJ9042-1-02 - Application of Acelepryn
Quantity 1 gallon
Unit Price
Delivery Location State of Utah
No Location Specified

Qty 1

Description

Price includes all of the service requirements in the bid specification.

Item	MJ9042-1-03 - Arena 0.5G
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Quantity	1 gallon
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Unit Price	
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Delivery Location	State of Utah <u>No Location Specified</u>
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Qty 1

Description

Price includes all of the service requirements in the bid specification.

ATTACHMENT A: STATE OF UTAH STANDARD TERMS AND CONDITIONS

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63G-6, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the State to purchase certain specified services, and other approved purchases for the State.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** The Contractor and any and all supplies, services, equipment, and construction furnished under this contract will comply fully with all applicable Federal and State laws and regulations.
4. **RECORDS ADMINISTRATION:** The Contractor shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records shall be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The Contractor agrees to allow State and Federal auditors, and State Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
5. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.
6. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** The Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the State to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the State, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the Contractor by the State. The Contractor shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the State for these contract services. Persons employed by the State and acting under the direction of the State shall not be deemed to be employees or agents of the Contractor.
7. **INDEMNITY CLAUSE:** The Contractor agrees to indemnify, save harmless, and release the State of Utah, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the acts or negligence of the Contractor's officers, agents, volunteers, or employees, but not for claims arising from the State's sole negligence.
8. **EMPLOYMENT PRACTICES CLAUSE:** The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.
9. **SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.
10. **RENEGOTIATION OR MODIFICATIONS:** This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by authorized persons of the parties hereto, and attached to the original signed copy of the contract. Automatic renewals will not apply to this contract.
11. **DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the State. The Contractor must notify the State Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.
12. **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon sixty (60) days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.
13. **NONAPPROPRIATION OF FUNDS:** The Contractor acknowledges that the State cannot contract for the payment of funds not yet appropriated by the Utah State Legislature. If funding to the State is reduced due to an order by the Legislature or the Governor, or is required by State law, or if federal funding (when applicable) is not provided, the State may terminate this contract or proportionately reduce the services and purchase obligations and the amount due from the State upon 30 days written notice. In the case that funds are not appropriated or are reduced, the State will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the State will not be liable for any future commitments, penalties, or liquidated damages.
14. **SALES TAX EXEMPTION:** The State of Utah's sales and use tax exemption number is 11736850-010-STC. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.

15. **WARRANTY:** The Contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The Contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the Contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the State has relied on the Contractor's skill or judgment to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The Contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the Contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.
16. **PUBLIC INFORMATION:** Contractor agrees that the contract, related Sales Orders, and Invoices will be public documents, and may be available for distribution. Contractor gives the State express permission to make copies of the contract, related Sales Orders, and Invoices in accordance with the State of Utah Government Records Access and Management Act (GRAMA). Except for sections identified in writing and expressly approved by the State Division of Purchasing, Contractor also agrees that the Contractor's response to the solicitation will be a public document, and copies may be given to the public under GRAMA laws. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.
17. **DELIVERY:** Unless otherwise specified in this contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State except as to latent defects, fraud and Contractor's warranty obligations.
18. **ORDERING AND INVOICING:** All orders will be shipped promptly in accordance with the delivery schedule. The Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to the State. The State contract number and/or the agency purchase order number shall be listed on all invoices, freight tickets, and correspondence relating to the contract order. The prices paid by the State will be those prices listed in the contract. The State has the right to adjust or return any invoice reflecting incorrect pricing.
19. **PAYMENT:** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. All payments to the Contractor will be remitted by mail unless paid by the State of Utah's Purchasing Card (major credit card).
20. **PATENTS, COPYRIGHTS, ETC.:** The Contractor will release, indemnify and hold the State, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this contract.
21. **ASSIGNMENT/SUBCONTRACT:** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the State.
22. **DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the State to declare Contractor in default of the contract: 1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this contract. The State will issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the State may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this contract and any related contracts or portions thereof; 3. Impose liquidated damages, if liquidated damages are listed in the contract; 4. Suspend Contractor from receiving future solicitations.
23. **FORCE MAJEURE:** Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The State may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.
24. **PROCUREMENT ETHICS:** The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63G-6-1002, Utah Code Annotated, 1953, as amended).
25. **CONFLICT OF TERMS:** Contractor Terms and Conditions that apply must be in writing and attached to the contract. No other Terms and Conditions will apply to this contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: 1. Atth. A: State of Utah Standard Terms and Conditions; 2. State of Utah Contract Signature Page(s); 3. State Additional

Terms and Conditions; 4. Contractor Terms and Conditions.

26. **ENTIRE AGREEMENT:** This Agreement, including all Attachments, and documents incorporated hereunder, and the related State Solicitation constitutes the entire agreement between the parties with respect to the subject matter, and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written. The terms of this Agreement shall supersede any additional or conflicting terms or provisions that may be set forth or printed on the Contractor's work plans, cost estimate forms, receiving tickets, invoices, or any other related standard forms or documents of the Contractor that may subsequently be used to implement, record, or invoice services hereunder from time to time, even if such standard forms or documents have been signed or initialed by a representative of the State. The parties agree that the terms of this Agreement shall prevail in any dispute between the terms of this Agreement and the terms printed on any such standard forms or documents, and such standard forms or documents shall not be considered written amendments of this Agreement.

(Revision date: 3 Sept 2008)



State of Utah Invitation to Bid

Legal Company Name (include d/b/a if applicable) 		Federal Tax Identification Number 		State of Utah Sales Tax ID Number 	
Ordering Address 		City 		State 	Zip Code
Remittance Address (if different from ordering address)		City 		State 	Zip Code
Type: ☐ Corporation ☐ Partnership ☐ Proprietorship ☐ Government		Company Contact Person 			
Telephone Number (include area code) 	Fax Number (include area code) 	Email Address 			
Discount Terms (for bid purposes, bid discounts less than 30 days will not be considered) ttt		Days Required for Delivery After Receipt of Order (see attached for any required minimums) ttt			
Brand/Trade Name 		Price Guarantee Period (see attached specifications for any required minimums)			
Minimum Order 		Company's Internet Web Address 			
The undersigned certifies that the goods or services offered are produced, mined, grown, manufactured, or performed in Utah. Yes ☐ No ☐ . If no, enter where produced, etc. 					
Offeror=s Authorized Representative=s Signature 			Date 		
Type or Print Name 			Position or Title 		

INVITATION TO BID - INSTRUCTIONS AND GENERAL PROVISIONS

1. SUBMITTING THE BID: (a) The Utah Division of Purchasing and General Services (DIVISION) prefers that bids be submitted electronically. Electronic bids may be submitted through a secure mailbox at BidSync (formerly RFP Depot, LLC) www.bidsync.com until the date and time as indicated in this document. It is the sole responsibility of the supplier to ensure their bid reaches BidSync before the closing date and time. There is no cost to the supplier to submit Utah's electronic bids via BidSync. (b) Electronic bids may require the uploading of electronic attachments. The submission of attachments containing embedded documents is prohibited. All documents should be attached as separate files. (c) If the supplier chooses to submit the bid directly to the DIVISION in writing: The bid must be signed in ink, sealed in a properly addressed envelope, and delivered to the Division of Purchasing, 3150 State Office Building, Capitol Hill, Salt Lake City, UT 84114-1061 by the "Due Date and Time." The "Bid Number" and "Due Date" must appear on the outside of the envelope. All prices and notations must be in ink or typewritten. Each item must be priced separately. Unit price shall be shown and a total price shall be entered for each item bid. Errors may be crossed out and corrections printed in ink or typewritten adjacent and must be initialed in ink by person signing bid. Unit price will govern, if there is an error in the extension. Written bids will be considered only if it is submitted on the forms provided by the DIVISION. (d) Bids, modifications, or corrections received after the closing time on the "Due Date" will be considered late and handled in accordance with the Utah Procurement Rules, section R33-3-109. (e) Facsimile transmission of bids to DIVISION will not be considered.

2. BID PREPARATION: (a) Delivery time is critical and must be adhered to as specified. (b) Wherever in this document an item is defined by using a trade name of a manufacturer and/or model number, it is intended that the words, "or equivalent" apply. "Or equivalent" means any other brand that is equal in use, quality, economy and performance to the brand listed as determined by the DIVISION. If the supplier lists a trade name and/or catalog number in the bid, the DIVISION will assume the item meets the specifications unless the bid clearly states it is an alternate, and describes specifically how it differs from the item specified. All bids must include complete manufacturer's descriptive literature if quoting an equivalent product. All products are to be of new, unused condition, unless otherwise requested in this solicitation. (c) By submitting the bid the supplier certifies that all of the information provided is accurate, that they are willing and able to furnish the item(s) specified, and that prices quoted are correct. (d) This bid may not be withdrawn for a period of 60 days from bid due date.

3. FREIGHT COST: (a) Where "Freight Cost" is listed as a separate line item, suppliers are to provide product line item pricing FOB Origin Less Freight. On the line item for "Freight Cost" suppliers are to indicate the total freight cost FOB Destination Freight Prepaid, and complete the "Freight Information" document. The DIVISION will analyze freight charges separately from the item cost and determine how the shipment will be routed (either by the supplier, or by the State's carrier). (b) Where there is not a line item for "Freight Cost", suppliers are to provide line item pricing FOB Destination Freight Prepaid. Unless otherwise indicated on the contract/purchase order, shipping terms will be FOB Destination Freight Prepaid.

4. SOLICITATION AMENDMENTS: All changes to this solicitation will be made through written addendum only. Answers to questions submitted through RFP Depot shall be considered addenda to the solicitation documents. Bidders are cautioned not to consider verbal modifications.

5. PROTECTED INFORMATION: Suppliers are required to mark any specific information contained in their bid which they are claiming as protected and not to be disclosed to the public or used for purposes other than the evaluation of the bid. Each request for non-disclosure must be made by completing the "Confidentiality Claim Form" located at: <http://www.purchasing.utah.gov/contract/documents/confidentialityclaimform.doc> with a specific justification explaining why the information is to be protected. Pricing and service elements of any bid will not be considered proprietary. All material becomes the property of the DIVISION and may be returned only at the DIVISION's option. Bids submitted may to be reviewed and evaluated by any persons at the discretion of the DIVISION.

6. SAMPLES: Samples of item(s) specified in this bid, when required by DIVISION, must to be furnished free of charge to DIVISION. Any item not destroyed by tests may, upon request made at the time the sample is furnished, be returned at the bidder's expense.

7. AWARD OF CONTRACT: (a) The contract will to be awarded with reasonable promptness, by written notice, to the lowest responsible bidder that meets the specifications. Consideration will to be given to the quality of the product(s) to be supplied, conformity to the specifications, the purpose for which required, delivery time required, discount terms and other criteria set forth in this invitation to bid. (b) The bids are opened

publicly. The name of each bidder and the amount of the bid is recorded. Each bid, and the record, is open to public inspection. (c) The DIVISION may accept any item or group of items, or overall low bid. The DIVISION has the right to cancel this invitation to bid at any time prior to the award of contract. (d) The DIVISION can reject any or all bids, and it can waive any informality, or technicality in any bid received, if the DIVISION believes it would serve the best interest of the State. (e) Before, or after, the award of a contract the DIVISION has the right to inspect the bidder's premises and all business records to determine the holder's ability to meet contract requirements. (f) DIVISION does not guarantee to make any purchase under awarded contract (s). Estimated quantities are for bidding purposes only, and not to be interpreted as a guarantee to purchase any amount. (g) Utah has a reciprocal preference law which will to be applied against bidders bidding products or services produced in states which discriminate against Utah products. For details see Section 63G-6-404 and 63G-6-405, Utah Code Annotated. (h) Bid tabulations and awards are posted <http://purchasing.utah.gov/vendor/bidtab.html> (i) Multiple contracts may be awarded if the DIVISION determines it would be in its best interest.

8. DIVISION APPROVAL: Purchase orders placed, or contracts written, with the State of Utah, as a result of this bid, will not be legally binding without the written approval of the director of the DIVISION.

9. DEBARMENT: The CONTRACTOR certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the CONTRACTOR cannot certify this statement, attach a written explanation for review by the DIVISION.

10. ENERGY CONSERVATION AND RECYCLED PRODUCTS: The contractor is encouraged to offer Energy Star certified products or products that meet FEMP (Federal Energy Management Program) standards for energy consumption. The State of Utah also encourages contractors to offer products that are produced with recycled materials, where appropriate, unless otherwise requested in this solicitation.

11. GOVERNING LAWS AND REGULATIONS: All State purchases are subject to the Utah Procurement Code, Title 63 Chapter 56 U.C.A. 1953, as amended, and the Procurement Rules as adopted by the Utah State Procurement Policy Board. These are available on the Internet at www.purchasing.utah.gov.

12. SALES TAX ID NUMBER: Utah Code Annotated (UCA) 59-12-106 requires anyone filing a bid with the state for the sale of tangible personal property or any other taxable transaction under UCA 59-12-103(1) to include their Utah sales tax license number with their bid. For information regarding a Utah sales tax license see the Utah State Tax Commission's website at www.tax.utah.gov/sales. The Tax Commission is located at 210 North 1950 West, Salt Lake City, UT 84134, and can be reached by phone at (801) 297-2200.

(Revision: 22 October 2008 - ITB Instructions)

**State of Utah Department of Agriculture and Food
Division of Plant Industry
Japanese Beetle Eradication Project
Solicitation #MJ9042**

Detail Scope of Work

A. Objective

The Japanese beetle (JB) has been detected in Utah County, specifically in Orem City. The JB feeds year round on over 300 plant species. If this beetle becomes established it could devastate residential landscapes and agriculture, most notably the turf and nursery industries. To prevent the possible establishment of this pest, an eradication program must be undertaken wherever infestations are detected.

The Utah Department of Agriculture and Food has developed a contingency plan to apply pesticides by ground to geographical areas where the Japanese beetle is detected in order to eradicate JB. The plan calls for the stand-by availability of an application spray truck with multiple tanks (the ability to spray different pesticides on the same property), application equipment, material, and personnel. The contractor must be able to provide foliar and soil applications of various pesticides throughout several specified locations in Utah County.

B. Scope

A contractor is required for the foliar and soil application of pesticides in Utah. The contractor must provide foliar and soil application of insecticides throughout Utah County. The plan calls for the stand-by availability of application equipment, material, and personnel.

The Contractor shall provide mixing, loading, and application equipment, support, services, and supplies necessary (except those designated as State provided services and supplies) to apply the above foliar and soil treatments using ground-based foliar application equipment and appropriate soil application equipment.

All application equipment used for this contract must be tested and found free from contamination by other pesticides, herbicides, or other chemicals considered containments by UDAF. UDAF may disallow equipment that does not meet this criterion to be used in the performance of this contract. All equipment tested and approved for use must be identified and dedicated solely to the JB program to prevent contamination with other pesticides or unwanted material. The Contractor must replace all equipment that is not free

of contaminants. Following a failed test, all equipment will be retested to insure that is free of any contaminants. All fees incurred due to retesting will be the responsible of the Contractor.

The Contractor must provide personnel necessary for safe and efficient treatment activities.

A minimum of four (4) crewmembers shall be provided by the Contractor to operate each spray truck assigned to the project. Both crew members will need to be licensed to apply pesticides in the State of Utah. "Double Reeling" will be required. Additional spray trucks and crews may be needed to accomplish the work in the time frame set by the UDAF Contract Manager. The UDAF contract manger will indicate to the Contractor the number of required spray trucks and crews. As additional spray trucks or crews become necessary, the contractor must supply them within 5 days of the request.

C. Planned Treatment Actions

The treatment area will be determined by the UDAF contract representative for each find site. As new sites are found, the area will expand as necessary according to protocols established by the UDAF contract representative. UDAF will supply pesticides. All pesticides must applied according to label restrictions. The treatment schedule is an as follows:

1. Foliar Treatment – Treatment of all host plants in the eradication will occur through July 30, 2009. The contract will begin at the onset of a JB detection or when specified by the UDAF. To break the life cycle of this insect and prevent the spread of the adult beetles, a rotating series of treatments will be applied as follows:
 - Tempo SC Ultra a pyrethroid pesticide will be applied [months to be determined] and mixed at a rate of 160mL/100gal. The treatment interval will be 14 days between the first and second treatment. The timing of the treatments will dependent upon the current treatment cycle for the area.
2. Soil treatments will be applied to kill larvae on or near the surface of the soil using the following materials.
 - Acelepryn an anthranilic diamide pesticide treatment will be applied to the soil of all host plants. [months to be determined] at a rate of 16 fluid oz./acre.
 - Arena 0.5G a chloro-nicotinyl pesticide treatment will be applied to the soil of all host plants. [months to be determined] at a rate of 80 lbs /acre.

D. Period of Contract and Treatment Items

Contractor shall perform the treatment actions described in these specifications on a stand-by basis. The treatment location may be at any of the specified locations in Utah County as determined by UDAF. The treatment areas may be in urban or agricultural settings. Treatments will occur in multiple locations daily. Contract is to commence on June 1, 2009 or upon the approval by the Department of Purchasing, Office of Legal Services, which ever is later. There will be no guaranteed minimum hours under this agreement

E. Contracting Officer's Representative (COR)

UDAF will designate a member of its staff as the COR, who will have the authority to secure the orderly administration of this contract. The COR will not have the authority to the basic terms of the contract (unless noted specifically herein).

F. Reporting and Starting Dates

1. The COR will give that Contractor a minimum of 10 calendar days advance notice to report and start, unless a shorter intervals is mutually agreed upon.
2. The actual reporting date will be specified by the COR. The number of days prior to the official starting date may vary, depending on the number trucks involved, time required to brief crews on the program and areas to be sprayed, and the completing of all preliminary arrangements to start at the discretion of the COR. Liquidated damages will be charged for that day and for each day thereafter until Contractor, or in the event of termination, a new contractor report. (See Section IV, Item G, Liquidated Damages)
3. A Contractor who does not fully qualify for acceptance on the official date may, at the discretion of the COR, be charged liquidated damages. At the discretion of COR, the contractor may be terminated for default and be charged liquidated damages. Liquidated damages will be charged that day and each after until all the requirements are met. The amount charged will be the daily liquidated damage rate for each truck specified to report, even though one or more trucks may have been qualified and accepted. (See Section IV, Item G. Liquidated Damages) The Contractor shall have assembled at the reporting location all required trucks, personnel, and facilitating equipment. No payment for spraying will be permitted until all of these requirements are met by the Contractor.

G. Operational Hours

1. The applications shall be made at a time that will optimize the effectiveness of the application. Applications may occur at dawn. The sequence of areas to be treated and all insecticide applications will

begin and end at the discretion of the COR.

2. The Contractor, or the authorized agent, will be at the meeting location at the time designated by the COR. This includes attending public meetings

H. Areas Not to Be Sprayed

No spraying shall occur over specified sensitive areas. Sensitive areas include, but are not limited to, bodies of water, endangered species habitats, specified plants, and specific locations within a property. Such areas will be designated in advance by the COR. Each applicator will be briefed thoroughly regarding such areas, and every effort must be made to avoid spraying such areas. All fines and required clean up will be the responsibility of the contractor.

I. Operating Performance Standards for Responsible Contractor

The Contractor is responsible for:

1. Obtaining required licenses, bonds, and insurance prior to the starting date.
2. Obtaining all necessary permits and certification to legally apply pesticides in the designated areas prior to the starting date.
3. Contractor's personnel must attend UDAF provided training.
4. Abiding by all pesticide label requirements.
5. Attitude of Contractor and Contractor's personnel and their cooperation following instructions.
6. Contractor's personnel reporting to work on time daily, and remaining on the job until officially released. Contractor must adhere to scheduled work hours and days of work.
7. Reporting on the scheduled date as directed and providing all required equipment and personnel.
8. Procuring all necessary equipment and supplies except as specified by the COR. All equipment must meet contract requirements.
9. Avoiding repeated delays caused by malfunction of equipment, or delays in loading between trips which affect the total overall length of time in performing the contract.
10. Performing the work utilizing and promoting good safety habits and good employee attitudes on the job.

11. Contractor employees must be capable of applying pesticide applications as directed by COR.
12. Treating all host plants up to a height where drift is a hazard per the labeling requirements and as directed by the COR.
13. Assuring that Contractor employees avoid treating areas that the COR determines are hazardous or unsafe to treat.
14. Contractor and contractor employees maintaining a professional and courteous attitude with the homeowners and the general public.
15. Reporting to the COR any unusual situation or damage to property while performing the duties of this contract. Incidents of this nature must be reported to the COR within two hours after the incident occurred.
16. Supplying to the COR a written report of all work completed, noting any unusual events. This report is to be submitted daily.
17. Completing and submitting pesticide use reports at the end of each calendar month to the COR.
18. The Contractor will not sub contract pesticide applications services or other related duties for the eradication of the Japanese beetle in the State of Utah.

At the end of the contract program, the COR will submit to the Department a written report on the Contractor based on the Operating Performance Standards. This report and other documentary evidence will be used in considering a Contractors responsibility for future contracts.

J. Treatment Heights / Areas

The height and areas to treat for each property will be specified by the COR.

K. Day / Month Definition

Day / month, as used in this contract, means calendar day / month, based on a 30 day month. To determine pro-rated amounts, one day equals 0.033 month.

Section II

CONTRACTOR RESPONSIBILITY

A. Spray Trucks and Spray Systems

The Contractor shall supply all spray trucks and supporting ground equipment (including insecticide mixing equipment), personnel, fuel, maintenance, and other materials necessary to apply insecticide sprays by ground, in an efficient and professional manner in accordance with all pertinent laws and regulations.

The minimum number of spray trucks will be one plus one stand-by spray trucks, but additional spray trucks may be required. The number of spray trucks shall be determined by the COR. The COR will give the contractor five days notice of the required number of additional spray trucks needed.

The spray trucks used on this project must only be used on this project and may not be used for other pesticide applications outside of this project.

The contractor shall provide the required number of spray trucks equipped as follows:

1. Spray truck(s) with multiple tanks.
2. A pesticide dispersal system that has been thoroughly cleaned and free of any pesticides or other contaminants. The COR will designate a state employee to obtain tank samples for chemical analysis of all equipment used on this project prior to use on this project. All cleaning residue must be completely removed prior to testing.
3. Equipment that does not meet this criterion will not be used on this project.
4. All equipment tested and approved for use on this project must be dedicated solely to this project to prevent contamination with other pesticides or unwanted materials.
5. Following a failed test, all equipment will be retested for contamination. All fees incurred due to retesting will be at the cost of the Contractor.
6. Contractor must equip spray trucks with valves, hoses, nozzles, and other fittings that are in good condition as determined by the COR prior to the initial chemical analysis.
7. Leak proof non-ferrous insecticide tanks with a 200 gallon minimum capacity and a spray system of corrosion resistant materials.
8. The tanks on each truck shall be installed to assure full flow to the pump. Sight gauges shall be provided to determine the quantity in each tank.
9. An on/off system that will prevent dribble from the nozzles.

10. An emergency shut-off valve between the tanks and the pump, as close to the tank as possible.
11. Nozzle type, size, and configuration will be as follows:
 - a. The type and size will be specified by the COR
 - b. Nozzle tips for all insecticides shall be made of stainless steel or other corrosive resistant material.
 - c. Operating pressure will be determined by the COR
12. The Contractor will not solicit for additional business while working in the treatment area.
13. The Contractor will not sub contract pesticide applications services or other related duties for the eradication of the Japanese beetle in the State of Utah.

B. Pesticides

The Contractor is not responsible for the procurement of pesticides used on this project.

C. Calibration of Equipment

To assure proper coverage and uniformity of application, calibration of the equipment will be conducted prior to the start of the program. Plus or minus five percent of the flow rate will be acceptable. The determination by the COR will be conclusive. The COR shall retain the right to check all spray equipment for calibration at any time.

D. Communication with Project Staff

The Contractor shall provide each treatment crew with a cellular telephone or other means of communication with the COR.

E. Department Furnished Equipment

All Department furnished equipment will be returned immediately upon the completion of the contract.

F. Certification

The Contractor must obtain all certifications, approvals, and licenses required by applicable regulations of the State of Utah.

1. Immediately upon award of a contract, the Contractor shall contact the appropriate office to identify all State requirements for the necessary certifications. Insurance and other requirements, including pesticide applicator certifications that apply, must be in effect prior to starting operations.
2. The Contractor (including equipment, if required) shall register in any county where engaged in business, and shall be responsible for knowing

and following all permit conditions.

3. It is the Contractor's responsibility that all safety rules and procedures are followed.

G. Personnel

The Contractor shall provide the following:

1. The Contractor, or his/her representative (CR), shall be present at each treatment location. The CR shall have full authority to make decisions for the Contractor and direct the Contractor's operations. The CR shall be present at the treatment location for the duration of the treatment, and shall be available for consultation at all times as requested by the COR.
2. Each spray truck must have two trained pesticide applicators.
3. Personnel and the appropriate equipment to load and service the spray truck.

H. Stand-by Spray Truck

The Department shall require the Contractor to make available, one stand-by spray trucks, with tanks that are free of any contamination (already tested by UDAF), which are not committed to any other work for the duration of the program. This spray truck shall be available for use upon 24 hours notice to the Contractor or his/her representative. Once placed into service, the standby spray truck must be replaced with another stand-by spray truck within 24 hours. All replacement spray trucks must meet all contract requirements.

I. Additional Spray Truck and Applicators

Should additional spray trucks and personnel be required for the project, the number of spray trucks shall be determined by the COR. The COR will provide the Contractor five days notice of the required number of spray trucks needed. All additional spray trucks must meet all contract requirements.

J. Withdrawal or Substitution of Spray Trucks or Personnel

The Contractor shall notify the COR promptly in writing of any withdrawal or substitution of spray trucks or personnel. Substitute spray trucks must meet all contract requirements.

K. Mixing/Loading Facilities and Equipment

Contractor shall provide sufficient personnel and equipment to load all spray trucks efficiently. All mixing and loading operations and equipment shall conform to all laws and regulations pertaining to the category of insecticides used.

1. The Contractor shall provide complete mixing/loading equipment that

meets the following:

- a. All hoses shall be in good condition as determined by the COR throughout the duration of the project. All hoses shall be resistant to all agricultural chemicals.
- b. All necessary mixing/loading equipment.
- c. Required pesticide posting will be the Contractor's responsibility.

L. Pesticide Spills

1. The Contractor shall provide tools and materials necessary to clean up all pesticide spills.
2. The Contractor shall be responsible for the cleanup and disposal of any pesticide spills caused by the Contractor that occur while assigned to this project.
3. The Contractor will be liable for all damages and costs incurred as a result of any such pesticide spill.

M. Hazardous Waste Disposal

Contractor is responsible for the disposal of all hazardous waste generated as a result of the routine operations under this contract.

N. Medical and First-Aid Requirements

Pesticide safety training of the Contractor's employees shall be provided by the Contractor as required by the category of the pesticide used. Contractor shall provide at each site such equipment, materials, and medical facilities as are necessary to supply first-aid service to employees who may be injured in connection with the work.

Section III

STATE RESPONSIBILITY

A. Maps and Briefing Information

The COR shall provide maps and briefing information of the areas to be sprayed.

B. Pesticides

The Department assumes all responsibility and liability for the selection of the pesticides used.

C. Environmental Monitoring

1. COR will make arrangements with the Contractor for the testing of all equipment for contaminants prior to the initial use of the equipment.

2. COR will submit all tank samples for chemical analysis.
3. COR will inform the Contractor of the tank sample results. Any contaminants detected will require that the Contractor clean and/or replace the contaminated equipment at the discretion of the COR.
4. UDAF will provide environmental monitoring activities as prescribed by State regulation.
5. COR will notify the Contractor of any environment concerns prior to each treatment.
6. COR will notify the Contractor of any negative environmental monitoring results.
7. COR will inform the Contractor of any changes necessary to mitigate any negative impacts on the environment.

D. Treatment Activities

1. COR will provide training on treatment requirements before treatment activities commence.
2. COR will determine the work schedule (work hours and days of work).
3. COR will provide field supervision in each treatment location. A UDAF representative will be available prior to and during treatment activities to oversee all aspects of the program.
4. COR will provide on-the-job for a two day period upon initiation of the program.
5. COR will notify property owners of treatment dates at least 48 hours before each scheduled treatment. COR will also provide pesticide fact sheets with the pre-treatment notice.
6. UDAF will leave post treatment notices with property owners following each treatment.
7. UDAF will notify all property owners upon arrival for treatment activities.
8. UDAF will assess each property to identify hazards, areas to avoid, and items that must be covered with a protective tarp prior to each treatment. The Contractor may not begin treatment on any property without approval from the COR.
9. COR will tarp all necessary objects.

10. Upon completion of the treatment, the COR will assure that the property is returned to its pretreatment condition.
11. COR will investigate all homeowner complaints, concerns, and/or property damage. The results of the investigation will be discussed with the Contractor to prevent future complaints of the same nature. To the extent of the Contractor's negligence or wrongful intentional act, the Contractor will be liable for all damages as a result of property damage caused by the Contractor's employees.
12. COR shall review the quality and quantity of the Contractor's work performed. This report will state accomplishments and any problems encountered, resolution of problems, and problems to be resolved.
13. All public information and media questions and/or events will be directed to the UDAF Public Information Officer.
14. UDAF will arrange for a mixing and loading site for the Contractors use in Utah County.

E. Addition, Substitution, or Deletion of Pesticides

1. The Department reserves the right to add, delete, or substitute pesticides as the COR deems advisable for the success of the program. In such event, the Contractor may, within 10 days of notification of such a change, request the Program office to make an equitable price adjustment for such a change and for unused pesticides that cannot be returned to the vendor/supplier.
2. The COR will thereafter make such an equitable price adjustment or deny said request. The decision of the COR shall be conclusive unless the Contractor presents sufficient evidence to the contrary.
3. If price adjustments are approved, adjustment will be retroactive to time of application rate change.

F. Daily Record Keeping

1. The COR will provide and maintain an accurate daily treatment log.
2. At the end of each work day, it is mandatory that the Contractor or CR meet with the COR to review the treatment log for that day.
3. The Contractor or CR, after reviewing the treatment log and agreeing to the same, shall sign the treatment log.
4. The Contractor or CR shall receive a copy of the treatment log.

G. Basis for Payment

1. Payment will be on the basis of the contract rate for units acceptably sprayed under the direction of the COR and the amount of pesticide used (purchased). Payment will be in accordance with gallons sprayed as shown on the daily treatment logs and/or signed work order.
2. Payment will be made based on the contract rate for the daily rate per spray truck/crew when ordered to report to the reporting location, and for each operational day until released by the Department.
3. Payment under the contract will be made monthly, in arrears, after receipt of the satisfactory itemized invoices.
4. Submitted invoices must be approved by the COR.

H. Tank Samples

1. The need and frequency of pesticide tank samples shall be determined by the COR.
2. The COR shall provide all personnel and equipment necessary to take pesticide tank samples.

I. Emergency Response Plan

The Department with the assistance of the Contractor will develop an emergency response plan prior to any treatment.

Section IV**CONTRACT ADMINISTRATION****A. Rejection of Spray Equipment**

1. The Department may reject at any time any spray equipment deemed to be unsafe or equipment that does not comply with all contract specifications. The Contractor shall immediately repair or replace defective or inoperable equipment, and conform to all inspection requirements.
2. Qualifying tests of the spray equipment may be conducted by the Department to assure that contract requirements are met.

B. Rejection of Personnel

The Department may reject, at any time, the CR or any applicator found unqualified or incompetent who operates equipment in a negligent manner, or fails to perform satisfactorily. Should any personnel not perform his/her assignment in a manner satisfactory to the Department, the Department shall have the right to require his/her replacement within the time specified by the

COR, which may be within 12 hours. Such a determination by the COR shall be final.

C. Suspending of Operations

1. The COR in charge of the spraying operation shall have authority to suspend spraying operations on all or any part of the project areas at any time when, in the opinion of the COR, conditions are not favorable for carrying on such spraying operations.
2. The COR shall have the right to remove any equipment operator or applicator when, in his/her opinion, the conduct or condition in question violates contract provisions and shall have such right when equipment or operation is believed by the COR to be unsafe or otherwise unsatisfactory.
3. The Contractor shall not restore any equipment or personnel to an active status until such time as he/she has demonstrated to the COR that the equipment or personnel in question is capable of performing satisfactorily.
4. The removal of the equipment or personnel shall not relieve the Contractor from performing this contract. The removal of equipment or personnel shall not be a basis for imposing any contractual or other liability upon the Department. Failure to remove equipment or personnel for any reason does not make the Department negligent or liable.

D. Re-spraying Requirements

The COR may require the re-spraying of any area which has not been adequately sprayed. Where such spraying is due to unsatisfactory performance by the Contractor, the Department will not pay for the application of the same. The decision of the COR shall be conclusive unless the Contractor presents sufficient evidence to the contrary.

The Contractor will not be liable for delays or failures caused by the Department or reasons beyond the control of the Contractor.

E. Sequence of Spraying

The COR will determine the time and sequence of spraying individual areas, and the time to start and stop spraying each day. In addition, if the COR is not in the treatment area and is unaware of deteriorating weather conditions, the Contractor or CR is responsible to voluntarily stop spraying to avoid possible violations an/or fines levied by regulating agencies.

F. Program Progress - Additional Spray Equipment

The COR will determine whether program progress is satisfactory. If the Contractor has not completed spraying 40 percent of the pesticide to be applied within 40 percent of the operational hours allowed, he will be required to furnish additional spray trucks within two calendar days when notified by

the COR. Such spray trucks shall be of the same category as those specified in the Scope description; shall meet all contract requirements, including qualified applicators to operate the equipment; and shall be fully operational within one day after reporting to the treatment location. No adjustment will be made in the contract price for furnishing such additional spray truck.

G. Liquidated Damages

All charges in the following subparagraphs shall be paid to the Department as fixed and agreed upon liquidated damages, not as a penalty.

1. Should the Contractor delay the program for any reason, a deduction of \$1,000 per day for each spray truck will be deducted from the amount due the Contractor.

The rate above will be charged for:

- a. Each spray truck that fails to report on the official reporting date.
- b. Each spray truck that fails to spray on the designated treatment date provided it is an operational day thereafter, until it begins spraying operations. However, when a spray truck fails to spray for more than one reason on a day for which liquidated damages are charged, no more than the daily liquidated damage rate for the spray truck will be charged for the day.
- c. Each additional spray truck (from paragraph F above) that fails to report within five calendar days, when requested, and qualify within one day after reporting, such charges will begin after the sixth day and continue until its operational.

H. Delays beyond the Control of the Contractor

The Contractor will not be liable for delays or failures caused by the Department or reasons beyond the control of the Contractor.

I. Cost of Lost, Jettisoned, Spilled, or Improperly Dispensed Pesticide

An estimate of the amount of pesticide that is jettisoned for any reason or improperly applied, will be made by the COR, and the cost thereof may be deducted from any amounts due the Contractor. A report will be prepared by the COR identifying the amount of pesticide lost due to negligence (spillage, overflowing tanks, leakage of tanks, etc.) on behalf of the Contractor's personnel. The cost thereof may be deducted from the amounts due the Contractor under this contract.

The Utah Department of Agriculture and Food will make payment upon receipt of an approved invoice not more often than monthly in arrears.

The term of this agreement is for May 1, 2009 through May 1, 2010 or upon approval of the Utah Department of Agriculture and Food, Department of Legal Services, and Department of Purchasing.

ADDITIONAL PROVISIONS

GENERAL INSURANCE LIABILITY REQUIREMENTS

Contractor shall furnish to the State, upon award of an agreement, a Certificate of Insurance and Additional Insured Endorsement, stating that there is liability Insurance presently in effect for the Contractor of not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined.

The certificate of insurance shall include the following provisions in their entirety:

- a. The insurer will not cancel the insured's coverage without 30 days prior written notice to the State.
- b. The State of Utah, its officers, agents, employees, and servants are included as additional insured, but only insofar as the operations under this agreement are concerned.
- c. The State will not be responsible for any premiums or assessment on the policy.
- d. The dates of inception and expiration of coverage shall be specified.
- e. The insurance coverage shall be on an occurrence basis only.

Contractor agrees that the bodily injury liability insurance herein provided for shall be in effect at all times during the term of this agreement. In the event said insurance coverage expires at any time or times during the term of this agreement, Contractor agrees to provide at least 30 days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the insurance are subject to the approval of the Department of Administrative Services, and Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event the Contractor fails to keep in effect at all times insurance coverage as herein provided, the State may, in addition to any other remedies it may have, terminate this agreement upon occurrence of such event.

AUTOMOBILE LIABILITY

Contractor shall maintain motor vehicle liability with limits of not less than \$1,000,000 per accident. Such insurance shall cover liability arising out a motor vehicle, owned, hired, and non-owned motor vehicles.

POLLUTION LIABILITY

Contractor shall maintain Pollution Liability covering the contractor's liability for bodily injury, property damage, and environmental damage resulting from pollution related cleanup costs incurred, all arising out of the work or services to be performed under this contract. Coverage shall be provided for both work performed on-site, as well as during the transport of hazardous materials. Limits of not less than \$1,000,000 shall be provided.

WORKERS' COMPENSATION

By signing this Agreement, the Contractor hereby warrants that it carries Workers'

Compensation Insurance on all of its employees who will be engaged in the performance of this Agreement. If staff provided by the Contractor is defined as independent contractors, this clause does not apply.

LICENSES AND PERMITS

The Contractor shall be an individual or firm licensed to do business in Utah and shall obtain at his/her expense all license(s) and permit(s) require by law for accomplishing any work required in connection with this agreement.

If you are a Contractor located within the State of Utah, a business license from the city/county in which you are headquartered is necessary. If you are a corporation, a copy of your incorporation documents/letter from the Secretary of State's Office must also be submitted. If you are a Contractor outside the State of Utah, you will need to submit to the UDAF a copy of your business license or incorporation papers for your respective state showing that your company is in good standing in that state.

In the event, any license(s) and/or permit(s) expire at any time during the term of this agreement, Contractor agrees to provide agency a copy of the renewed license(s) and/or permit(s) within 30 days following the expiration date. In the event the Contractor fails to keep in effect at all times all required license(s) and permit(s), the State may, in addition to any other remedies it may have, terminate this agreement upon occurrence of such event.

PROJECT DELAY PROVISIONS

The State agrees to pay the Contractor a flat fee of \$7,000 per day after full deployment for a delay in the project caused by a court ruling. The first phase of the project is to begin on or around June 1, 2009, and the second phase of the project (full deployment) shall begin on or around June 15, 2009.

The State reserves the right to release the Contractor resources at any time after the four (4) days which would in effect end the daily fee of \$7,000.

The Contractor would need 48 hours from notification to redeploy resources and continue with the project.

A court ruling against this project would effectively result in the cancellation of this project. The Contractor would then invoice for work completed on a daily rate.

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p. 26

Question and Answers for Bid #MJ9042 - Japanese Beetle Eradication Project - Orem, Utah

OVERALL BID QUESTIONS

There are no questions associated with this bid. If you would like to submit a question, please click on the "Create New Question" button below.

Question Deadline: Mar 23, 2009 7:00:00 AM MDT