

Goods and Services Procurement

**Request for Proposals:
Dark Fiber Indefeasible Right of Use (IRU)
and Maintenance Services**

issued jointly by the
City of Condon, Oregon
and
Gilliam County, Oregon

Issue Date:
November 15, 2017

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Section 1. Request for Proposals Overview

1.1 Executive Summary

This request for proposals for dark fiber and related maintenance services (RFP) is issued jointly by the City of Condon, an Oregon municipal corporation (City), and Gilliam County, a political subdivision of the State of Oregon (County) (hereinafter, the City and County are each referred to individually as a “Customer” and collectively as “Customers”). This RFP will be conducted in accordance with the competitive sealed Proposals, also known as Request for Proposals, process governed by Gilliam County Public Contracting Rules (GCPCR) Division 46 and 47, a copy of which is available for download at Customers’ website addresses set forth in Section 1.2.

Customers invite Proposals that meet the requirements set forth in this RFP, including but not limited to the format and content guidelines in Section 5. Customers will review and evaluate Proposals using the single-step, qualifications-based selection process described in Section 6. At the completion of the evaluation process, Customers expect to select a Proposal and negotiate with the selected Respondent for the award of a Dark Fiber Indefeasible Right of Use Agreement (IRU Agreement), Conduit and Fiber Maintenance and Repair Services Agreement (Maintenance Agreement), and related Fiber and Service Orders specific to the Project described in Section 2 below.

This RFP is subject to revision via written Addenda as described in Section 7.6, and each Customer may in its sole discretion reject any or all Proposals or cancel its participation in the RFP at any time pursuant to Section 7.5. In no circumstances will either Customer be liable for any costs incurred by any Respondent or any other party in developing or submitting a Proposal.

1.2 RFP Organization and Information Availability

This RFP consists of seven Sections and three Attachments:

- Section 1: RFP Overview
- Section 2: Project Overview
- Section 3: Scope of Work
- Section 4: Procurement Process
- Section 5: Proposal Submission Requirements
- Section 6: Proposal Evaluation and Selection
- Section 7: Customers’ Authority and Agreed Solicitation Process
- Attachment A: Pricing Matrix
- Attachment B: Proposed IRU Agreement and Project Fiber Order
- Attachment C: Proposed Maintenance Agreement and Project Service Order

Pursuant to GCPCR 137-047-0300, this RFP will be advertised in the Daily Journal of Commerce, East Oregonian, The Dalles Chronicle, and The Times-Journal (Condon, Oregon). In addition, on or after 12 p.m. Wednesday, November 15, 2017, all documents comprising this RFP and selected GCPCR provisions will be available for

download in Adobe PDF format at separate websites maintained by the City (www.cityofcondon.com) and the County (www.co.gilliam.or.us (follow links for “Fiber RFP”)). Pursuant to Section 7.6 of this RFP, any Addenda or other modification of this RFP will likewise be posted to Customers’ respective websites.

1.3 Definitions

Unless the context of a specifically applicable definition in this RFP requires otherwise, capitalized terms used in this RFP will have the meaning set forth in this Section 1.3, GCPCR 137-046-0110, or GCPCR 137-047-0110. In the event of a conflict, the order of precedence shall be as follows: (1) Section 1.3 of this RFP; (2) GCPCR 137-047-0110; and, (3) GCPCR 137-046-0110.

“Addendum” or “Addenda” means an addition to, deletion from, a material change in, or general interest explanation of this RFP.

“Closing” means the date and time specified in Section 4.2 of this RFP as the deadline for submitting Proposals.

“GCPCR” means Gilliam County’s Public Contracting Rules (Resolution 2016-17 (Nov. 2, 2016), as amended).

“Opening” means the date, time and place specified in Section 4.2 of this RFP for the opening of the sealed Proposals.

“Proposal” means a written response to this RFP.

“Respondent” means a Person that submits a Proposal in response to this RFP.

“Responsive Proposal” means a Proposal that substantially complies in all material respects with this RFP and all prescribed procurement procedures and requirements.

Section 2. Project Overview

2.1 Project Scope

The City and County seek to purchase long term dark fiber usage rights and associated maintenance services across an underground fiber optic link between Arlington and Condon (Project). The shared goal of the City and County is to use such fiber to promote the availability of broadband and other advanced telecommunications services to residents and businesses throughout Gilliam County, including those in the City of Condon as well as the geographic sub-region in which the County and City interact.

A Respondent selected as a result of this RFP will separately enter into two agreements with each Customer (an IRU Agreement (and associated Project Fiber Order) and a Maintenance Agreement (and associated Project Service order)), subject to consideration and approval of the final terms of such agreements by the governing body of the Customer that will be party to such agreements.

The IRU Agreements and associated Fiber Orders will provide Customers an indefeasible right of use of up to twelve (12) fiber pairs. The Maintenance Agreements and associated Service Orders will provide ongoing maintenance services for the fiber pairs governed by final Fiber Orders executed in connection with IRU Agreements. Both the IRU Agreements and the related Maintenance Agreements should provide for a minimum term of twenty (20) years and provide for renewals as set forth in the proposed IRU Agreement and Fiber Order.

2.2 Project Schedule

The Customers anticipate the RFP procurement schedule will be consistent with the dates set forth in Section 4.2. Pursuant to the terms of the proposed IRU agreement set forth in Appendix B, Customers expect installation and testing of the IRU fibers will be complete within eighteen (18) months of the execution of binding Agreements, and in no event later than twenty-four (24) months unless otherwise permitted under such binding Agreements.

Section 3. Scope of Work

3.1 Dark Fiber IRU and Maintenance

Respondent's Proposal should provide Customers an underground "dark" fiber optic connection between colocation facility connection points located at points described in Section 3.1.1. With respect to construction of such connection, Respondent has discretion with respect to determining the overall route between points described in Section 3.1.1, as well as general construction specifications, so long as the final goods/services purchased by Customers meet the following minimum criteria:

1. All technical specifications set forth in the IRU Agreement and Project-specific Fiber Orders;
2. All construction is consistent with applicable federal, state and local laws, rules and regulations;
3. All dark fiber provided to Customers is located underground at a depth of thirty-six (36) inches or more;
4. At the time of installation and as of the Ready for Service Date specified in a Fiber Order, all dark fiber provided to Customers is contained within a conduit located adjacent to not less than two (2) empty Respondent-owned conduits installed by the selected Respondent for future expansion or maintenance availability;
5. Are scheduled to be available for commercial use within eighteen (18) months of the execution of the IRU Agreement and related Fiber Order, and in no event later than twenty-four (24) months unless excused by force majeure or other mitigating circumstances authorized in the final binding agreement; and,
6. The highest standards prevalent in the telecommunications industry in connection with the provision of dark fiber IRU and maintenance services in rural areas similar to those in which Customers are located.

3.1.1 Route Termination Points

The final end points of the fiber will be at colocation facilities located: (1) adjacent to or near the BPA/Slatt Substation in Arlington, Oregon; and, (2) within the city limits of Condon, Oregon. Respondents may propose to provide such colocation site property and/or related colocation facilities, in which case the Respondent should provide a detailed description of such property and/or facilities and separately itemize any upfront and/or ongoing costs relating thereto. Respondents must state whether their Proposal includes the cost of constructing either or both colocation facilities, or if it assumes Customers will be responsible for constructing either or both facilities.

3.1.2 Fiber Amounts and Usage Rights

The selected Respondent will provide Customers an infeasible right of use of up to a total of twelve (12) fiber pairs. Customers shall be permitted to use the IRU fiber for any lawful purpose, including subleasing one or more fiber pairs to one or more third parties, provided any such sublease requires the sublessee to adhere to all applicable operational requirements in the IRU Agreement.

3.1.3 Contract Documents

The selected Respondent will execute: (1) an IRU Agreement and Fiber Order (in the form provided in Attachment B), and (2) a Maintenance Agreement and Service Order (in the form provided in Attachment C) separately with each Customer and subject to the provisions of Section 5.2.8 of this RFP. Except as provided in GCPCR 137-047-0310, no party will be obligated by the provisions of this RFP, nor shall there be any agreement between a Customer and the selected Respondent until the full execution of the IRU Agreement, Maintenance Agreement and related Project Orders (each of which will require independent approval by the governing body of each Customer).

3.2 Pricing and Payments

Proposals must include a detailed statement of all costs related to all IRU Agreements, Maintenance Agreements and related Project-specific Fiber Orders and Maintenance Service Orders, including, but not limited to, all non-recurring charges and any monthly recurring charges, as well as all related billing and payment terms.

3.2.1 Non-Recurring Charges

For any non-recurring charge (NRC), the Proposal shall include the total amount to be paid by both Customers for the term of the IRU Agreement and Project-specific Fiber Orders (including any potential extensions) based on the number of fiber pairs set forth in Section 3.1. In addition, the Proposal shall include payment terms for the NRC, including but not limited to the following alternatives:

- Alternative 1 (Preferred): NRC paid in full within 30 days of Customers' acceptance of fiber pursuant to procedures and requirements contained in the IRU Agreements and related Fiber Orders.
- Alternative 2: Periodic disbursements upon completion of construction milestones detailed in Fiber Orders.

3.2.2 Monthly Recurring Charges

For any monthly recurring charge (MRC) for maintenance services, the Proposal shall state the MRC amount per fiber pair for each billing cycle and for the proposed Project-specific Service Order term. Payment terms should be in accordance with the terms set forth in Attachment C (Proposed Maintenance Agreement and Service Order) or expressly state any proposed variations therefrom. The Proposal shall include the Respondent's payment obligation accrual proposal, including but not limited to the following alternatives:

- Alternative 1 (Preferred): Recurring charge obligation for a fiber pair commences when such pair is capable of data/information transmission (i.e., when the fiber is "lit").
- Alternative 2: Recurring charge obligation begins when the Customer accepts fiber pursuant to a completion notice from the selected Respondent pursuant to the IRU Agreement.

3.3 Future Extensions

Customers recognize the long-term need for an underground fiber backbone extending the entire length of the County, from the County's northern most point (Arlington), through its most populous city (Condon), and south to the County's border with Wheeler County. Respondents should provide information reflecting the availability of, or their intent in the foreseeable future to install and make available for use by Customers, underground fiber along this Countywide route. Customers understand that a Respondent's ultimate ability to complete a fiber build from Condon to the County's southern border may necessarily be contingent on the ability to obtain financing or other commercially reasonable contingencies. Nonetheless, Respondents offering Proposals providing evidence of active efforts and intent to continue to build underground fiber south of Condon will be prioritized during the evaluation process.

Section 4. Procurement Process

4.1 Sole Point of Contact

Customers have designated Joseph Franell, Technical Advisor to Gilliam County, as the Sole Point of Contact (SPC) for this RFP for all communications prior to Closing (December 29, 2017, 4 p.m. PST). All communications from Respondents prior to Closing shall be directed solely to Mr. Franell as SPC, submitted in writing by fax or email only, and specifically reference this RFP. All questions or comments should be directed to the SPC as follows:

SPC Name:	Joseph Franell
Email:	jfranell@eotnet.com
Fax:	(541) 567-7253

The SPC will facilitate any responses on behalf of, and after input from, both Customers. Any questions that in the opinion of either Customer warrant a written reply or RFP Addendum will be posted along with the Customers' answers on the Customers' websites listed in Section 1.2. No oral communications involving the SPC or any other individual connected with either Customer is binding on either Customer, as is no writing that is not contained in an official Addendum to the RFP. With the exception of the SPC, a Respondent or a potential Respondent shall not directly or indirectly contact City or County staff, elected officials, legal/professional advisors or any other public official concerning this RFP or the Project during the procurement process. A violation of this provision may result in disqualification of Respondent. At their sole discretion, Customers may designate a temporary or permanent replacement SPC by posting written notice on Customers' respective websites. Notwithstanding the foregoing, on or after 12 p.m. PST Nov. 15, 2017, RFP documents (including incorporated contract terms, conditions and specifications) may be reviewed at Condon City Hall, 128 S. Main Street, Condon, Oregon 97823.

4.2 Procurement Schedule

The procurement schedule is as follows:

- RFP Issuance (public notice newspaper publication; direct email to potential bidders; post on Customers websites) November 15, 2017
- Mandatory pre-submittal meeting(s) (telephonic or in-person)
 - Primary Mandatory Meeting November 27, 2017 (10 a.m. PST)

• Contingent Alternative Mandatory Meeting (as needed and if noticed 24 hours in advance)	November 30, 2017 (10 a.m. PST)
• Deadline for questions/comments	December 8, 2017
• Last addendum publication	December 15, 2017
• Closing	December 29, 2017 (4 p.m. PST)
• Opening	January 2, 2018 (10 a.m. PST)
• Interviews (if required)	TBD
• Selection Committee evaluation recommendations forwarded to Customers' governing bodies for action	January 19, 2018 ¹

4.3 Mandatory Pre-Submittal Meeting Attendance

Proposals must contain a statement certifying Respondent's attendance (in-person or telephonically) at a pre-submittal meeting as described in this Section 4.3. The purpose of the pre-submittal meeting is to allow Customers to provide details about the Project and RFP procurement process, and to answer questions from potential Respondents. Potential Respondents are **highly** encouraged to attend the Primary Mandatory Meeting described below, since the Contingent Alternative Mandatory Meeting described below may not occur if requisite criteria are not met.

- **Primary Mandatory Meeting.** The Primary Mandatory Meeting will commence on the date and time set forth in Section 4.2. Potential Respondents should contact the SPC (see Section 4.1) no later than 48 hours before the Primary Mandatory Meeting date to provide notice of their attendance and ensure receipt of specific meeting location information and/or call-in information for participation via conference call.
- **Contingent Alternative Mandatory Meeting.** Customers offer the Contingent Alternative Mandatory Meeting option as an effort to accommodate the possibility that, due to exigent circumstances, qualified representatives of a potential Respondent may not be able to attend the Primary Mandatory Meeting. If a potential Respondent contacts the SPC no later than three (3) business days after issuance of this RFP and provides a commercially reasonable (as determined by Customers in their sole discretion) explanation as to why none of its qualified representatives can attend the Primary Mandatory Meeting, Customers may conduct the Contingent Alternative Mandatory Meeting at the date and time set forth in Section 4.2.

Section 5. Proposal Submission Requirements

5.1 Submittal Place and Deadline

To be considered complete, Respondents shall submit Proposals in a manner meeting all of the following requirements: (1) three bound hard copy (paper) sets of all documents comprising Respondent's Proposal; and, (2) one electronic version of all documents contained in Respondent's Proposal (on CD-ROM or USB/thumb drive in Adobe PDF format (and Microsoft Word or Word-compatible if possible)). All Proposal forms/formats set forth in the foregoing sentence must be physically received by Kathryn Greiner, City Administrator, City of Condon, 128 S. Main Street, Condon, Oregon 97823, no later than Closing (December 29, 2017, 4 p.m. PST).

¹ Subject to adjustment at Customers' sole discretion.

Each Respondent assumes full responsibility for timely delivery of its Proposal at the required location. Any Proposal received after Closing will be deemed non-responsive and returned. The packaging containing the Proposal must state “Proposal for Dark Fiber IRU” on its face.

5.2 Submission Content

The Proposal must include the following information in the order listed:

- Transmittal Letter
- Part 1 – Executive Summary
- Part 2 – Respondent Profile
- Part 3 – Experience
- Part 4 – Project Approach
- Part 5 – Future Extensions
- Part 6 – Pricing
- Appendix A –Pricing Matrix
- Appendix B – Proposed IRU Agreement and Fiber Order Markup
- Appendix C – Proposed Maintenance Agreement and Service Order Markup

5.2.1 Transmittal Letter

Respondents must submit a transmittal letter on the Respondent’s letterhead. The transmittal letter must be signed by a representative of the Respondent who is authorized to sign and commit Respondent to the obligations contained in the Proposal. The transmittal letter must include the name, address, phone number and e-mail address for the Respondent’s primary contact and must specify who will be the signatory to any contract documents that may ultimately be executed with Customers.

5.2.2 Part 1 – Executive Summary

The executive summary must include a concise overview of the key elements of the Proposal, and summarize or refer to information in the Proposal satisfying the Minimum Qualifications Requirements described in Section 6.3. The executive summary should not be used to convey information provided elsewhere in the Proposal.

5.2.3 Part 2 – Respondent Profile

Part 2 of the Proposal must contain a detailed and complete description of the Respondent’s organizational structure. Information concerning key personnel and other firms that Respondent may include on the team it intends or may use on the Project, such as subconsultants and subcontractors, should be provided in Part 2 of its Proposal. Respondent’s profile must include at least the following information.

- **General.** Provide general information about Respondent, such as lines of business and service offerings, locations of home and other offices, number of employees and years in business. Respondent’s profile should state with specificity Respondent’s existing or planned resources that will maintain the ongoing presence required to fulfill its obligations under the proposed Maintenance Agreements, and detail its resources physically located in Oregon.

- **Legal structure.** Identify whether the Respondent is organized as a corporation, limited liability company (LLC), general partnership, joint venture, limited partnership, or other form of legal entity. As applicable, identify all owners (*e.g.*, shareholders, members, partners, and the like who hold an interest of ten percent or more).

The Proposal must provide the following additional information pertaining to factors or events that have the potential to adversely impact the Respondent's ability to perform its contractual commitments.

- **Material adverse changes in financial position.** Describe any material historical, existing or anticipated changes in financial position, including mergers, acquisitions, takeovers, joint ventures, bankruptcies, divestitures, or any material changes in the mode of conducting business.
- **Legal proceedings and judgments.** List and briefly describe any pending or past legal proceedings and judgments, or any contingent liability that could adversely affect the financial position of Respondent or affect Respondent's ability to perform contractual commitments to Customer. If no such proceedings or judgments are listed, provide a sworn statement to that effect.
- **Completion of contracts.** Has the Respondent failed to complete any contract, or has any contract been terminated due to alleged poor performance or default within the past 10 years? If so, describe the circumstances.
- **Violation of laws.** Has the Respondent been convicted of any criminal conduct or been found in violation of any federal, state, or local statute, regulation, or court order concerning antitrust, public contracting, employment discrimination or prevailing wages within the past 10 years? If so, describe the circumstances. Responsive Proposals shall include Respondent's certification of compliance with the Oregon tax laws in accordance with ORS 305.385, as applicable and ORS 279B.110(2)(e) (see, GCLCR 137-047-0640(1)(c)(F)(v)).
- **Debarred from bidding.** With respect to public contracts in any state or federal jurisdiction, has the Respondent been disqualified or debarred within the past 10 years, or investigated for same, or is it currently under investigation or the subject of a complaint for disqualification or debarment concerning any public contract? If so, describe the relevant facts, the outcome of complaint or investigation and the Respondent's response.

If any of the above questions are answered in a manner that indicates that any of these unfavorable factors or events are present, it is the Respondent's responsibility to: (1) describe in detail the unfavorable factor or event; and (2) provide sufficient information to demonstrate that the unfavorable factor or event will not adversely impact the Respondent's ability to perform its contractual commitments.

- **Insurance.** A letter or Certificate of Insurance from the Respondent's insurance company must be provided stating its ability to acquire and provide the minimum limits for the required insurance as set forth in the attached IRU Agreement and Maintenance Agreement.

5.2.4 Part 3 – Experience

The Proposal must describe the performance history and experience of the Respondent on similar projects.

Reference Projects

The Respondent shall submit descriptions of at least three relevant reference projects to demonstrate relevant experience.

Project References

From the projects listed above, provide client references, with name, title, phone and email.

5.2.5 Part 4 – Project Approach

Provide a description of the Respondent's approach for providing the IRU fiber and managing and performing maintenance services for the term of the IRU, as described in the Scope of Work. The following items should be addressed:

- Describe in detail how the Respondent will provide the IRU fiber, which shall be underground in all locations along the route, including a description of access points at the ends.
- Describe in detail how the Respondent will provide maintenance services in the manner required in the IRU and Maintenance Agreement, including any subcontractors or third parties that will be used to provide such services.
- Describe the empty, venter-owned conduit that will be located adjacent to the conduit for the IRU fiber as a contingency for maintenance of the IRU fiber or for future expansion as described in Section 3.1.
- Describe any existing facilities that may be used to provide the IRU fiber, including but not limited to existing fiber networks, colocation facilities or other property and facilities. Include the location of such networks and facilities, a statement of ownership or other property/use rights to such network and facilities, and all key terms for use of any networks or facilities that are not otherwise included in the pricing proposal or the IRU Agreement, Maintenance Agreement or any Markups.
- List and describe in detail the pricing for the IRU and for maintenance services as described in Section 3.2 of this RFP.
- Provide a detailed timeline for providing the IRU fiber. In the event of new fiber construction, provide a construction timeline and any potential delays to such timeline, including a description of any preliminary review of site conditions along the anticipated route of the IRU fiber.
- Describe Respondent's inspection process to ensure that any necessary construction of IRU fiber meets applicable specifications.
- Certify that the Respondent has not discriminated and will not discriminate, in violation of ORS 279A.110(1), against a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business in awarding a subcontract.

5.2.6 Part 5 - Future Extensions

The Proposal must include information described in Section 3.3.

5.2.7 Part 6 and Appendix A – Pricing

The Proposal must include a detailed narrative of the pricing and payment terms as described in Section 3.2. The Proposal must include in Appendix A a completed Pricing Matrix in the form set forth in Attachment A of this RFP.

5.2.8 Appendix B – IRU and Maintenance Agreement Markups

The Proposal must include in Appendix B detailed markups of the draft IRU Agreement, Maintenance Agreement, and related Project Fiber and Service Orders (collectively, “Markups”), setting forth any and all revisions to such documents requested by the Respondent. Respondent’s Proposal Appendix B must separately describe any significant revisions included in the Markups and provide the rationale behind such revisions. The Markups may be treated as *de facto* offers that Customers may accept as is, resulting in a binding contract between the selected Respondent and Customer without further negotiations or revision. The City and County may, in their sole discretion, engage in negotiations with the selected Respondent to reach agreement on all or any of the requested revisions contained in the Markups.

Customers are not obligated to accept any of the requested revisions submitted by the Respondent in the Markups when negotiating and finalizing the IRU Agreement, Maintenance Agreement, and/or related Project Fiber and Service Orders. Furthermore, Customers may request additional revisions during negotiations and before finalizing the Agreements.

Respondents are encouraged to carefully review RFP Attachment B (Draft IRU Agreement and Project Fiber Order) and RFP Attachment C (Draft Maintenance Agreement and Project Service Order) and submit written questions/comments by the deadline specified in Section 4.2. Based on its assessment of the questions/comments submitted, Customers (at their sole discretion) may modify the draft Agreements/Orders via Addenda. Customers expect that this review and comment process will substantially reduce the need for extensive post-selection contract negotiation.

Section 6. Proposal Evaluation and Selection

6.1 General

6.1.1 Proposal Opening

Proposals will be opened on the Opening date/time specified in Section 4.2 at City of Condon, 128 S. Main Street, Condon, Oregon 97823. Only the Respondents’ names will be read at the Opening. Respondents’ attendance at the Opening is completely optional. Award decisions will not be made at the Opening.

6.1.2 Proposal Review and Evaluation

The Proposals will be reviewed and evaluated by the Customers’ selection committee according to the requirements and criteria outlined in this Section 6 and Section 7.1. The selection committee shall consist of an equal number of representatives from the City and from the County, which will include outside consultants with expertise in dark fiber networks, in consultation with City and County legal counsel.

During the Proposal evaluation process, written questions or requests for clarifications may be submitted to one or more Respondents regarding its Proposal or related matters. Failure to respond in a timely manner to any

such questions or requests may be grounds for elimination of the Respondent from further consideration. In addition, the Customers in their sole discretion may require that all or a limited number of Respondents participate in interviews.

6.2 Responsiveness

Each Proposal will be reviewed to determine whether it is responsive to the RFP. Failure to comply with the requirements of this RFP may result in rejection of the Proposal as non-responsive. At their sole discretion, however, Customers may waive any such failure to meet a requirement of this RFP and may request clarification or additional information to remedy a failure.

6.3 Minimum Qualification Requirements

Each Responsive Proposal will be reviewed to determine whether it meets the Minimum Qualification Requirements outlined in this subsection. At their sole discretion, Customers may waive any failure to satisfy such requirements and may request clarification or additional information to address any questions that may arise in this regard. Any Proposal that does not satisfy all of the following Minimum Qualification Requirements may be rejected.

- **Insurance.** A letter or Certificate of Insurance from the Respondent's insurance company must be provided stating its ability to acquire and provide the minimum limits for the required insurance as set forth in the attached IRU Agreement and Maintenance Agreement.
- **Material adverse condition.** The Respondent must not be subject to a material adverse condition, such as insufficient liquidity, weak operating net income or cash flow, or excessive leverage, that gives rise to reasonable doubt concerning its ability to continue to operate as an ongoing concern, to provide insurance, or to maintain sufficient financial strength to undertake and successfully complete the Project and to mitigate/absorb Project risks.
- **Licensing and registration.** The Respondent and each of its subcontractors must be licensed in Oregon for the type of services or work to be performed.
- **Service experience.** The Respondent must have successfully provided the services contemplated in this IRU, including construction of a fiber network of equal or greater distance to the extent construction will be necessary to provide the IRU fiber, and ongoing maintenance services.

6.4 Comparative Evaluation Criteria

The selection committee will evaluate and rank Responsive Proposals that meet the Minimum Qualification Requirements, and make an award recommendation to the City Council and the County Court. Evaluation and ranking will apply the weighted comparative evaluation criteria set forth below.

- | | |
|--------------------------------------|--------------|
| • Experience and capabilities | [10%] |
| • Organization and management | [10%] |
| • Project approach | [25%] |
| • Future extensions | [15%] |
| • Project cost | [40%] |

If interviews are deemed necessary, the score for the interview will be 100% and will be independent of the

initial ranking of the Proposals.

6.5 Selection

Customers will notify each Respondent when the evaluation and ranking process is complete. Customers may establish a short list of highly-ranked Respondents for further discussions, requests for information or interviews in a form and manner determined by Customers. Alternatively, Customers may select the top-ranked Respondent for contract award on the basis of that Respondent's Markup or Customers may offer the top-ranked Respondent the opportunity to negotiate the final terms of the IRU Agreement, Maintenance Agreement, and/or related Project Fiber and Service Orders. If Customers determine in their sole discretion that they will not reach an agreement with the top-ranked Respondent, Customers may choose to either select or negotiate with the next-ranked Respondent, may choose to establish or reestablish a short list of remaining highly-ranked Respondents or may choose to cancel the RFP.

Section 7. Customers' Authority and Agreed Solicitation Process

7.1 Customers' Procurement Authority & Method

Customers are conducting this RFP pursuant to their independently held authority under ORS 279A.050. Customers have agreed to use the competitive sealed Proposal process, also known as Request for Proposals process, governed by GCPCR Division 46 and 47. A copy of these GCPCR provisions is available for download from the Customers' respective websites (see Section 1.2). Respondents are solely responsible for review and consideration of all applicable or potentially applicable GCPCR provisions. Customers will apply applicable contract preferences as set forth in the GCPCR (e.g., 137-046-0300 (preference for Oregon Goods and Services) and 137-046-0320 (preference for recycled materials)).

The Gilliam County Court is the County's Local Contract Review Board and will act accordingly solely on behalf of the County. The City Council is the City's Local Contract Review Board and will act accordingly solely on behalf of the City.

7.2 Ineligible Firms and Individuals

The following firms and individuals are serving in an advisory capacity to a specific Customer for this Project and are therefore not eligible to in any way assist or advise any Respondent in connection with a Proposal for the Project:

- Joseph Franell, Eastern Oregon Telecom (Technical Advisor to Gilliam County)
- Adam Haas, Converge Communications, Incorporated (Technical Advisor to the City of Condon)
- Nancy L. Werner, Esq., Beery, Elsner & Hammond LLP (Special Counsel, City of Condon)
- Wyatt Baum, Esq., Baum Smith LLC (City Attorney, City of Condon)
- Will Carey, Esq., Annala, Carey, et. al. (General Counsel, Gilliam County)
- James Deason, Esq. (Special Counsel, Gilliam County)

7.3 Conflict of Interest

Laws mandate the public disclosure of certain information concerning persons doing business or seeking to do business with each Customer, including affiliations and business and financial relationships such persons may have with each Customer's public officials. Public contracts are awarded in accordance with certain processes and

procedures, all of which are defined by rules designed to prevent fraud, collusion, or unjust favoritism in the award of public contracts. Respondents must identify in their Proposal any potential or actual conflicts of interest relative to either Customer or their respective public officials. Examples include a business or financial relationship with either Customer or one or more of their respective public officials.

7.4 Public Records

As a general rule, Oregon's Public Records Law requires that after the notice of intent to award, all information submitted in response to the RFP be considered a public record open to inspection by the general public. This general rule, however, will not apply if the information is exempt from disclosure because it qualifies for one of the exemptions found in ORS 192.501 (conditional exemptions to public records disclosure requirements) or ORS 192.502 (categorical exemptions to public records disclosure requirements). Several of these statutory exemptions could potentially apply to the types of information a Respondent may wish to submit with its response to the RFP. For example, ORS 192.501(2) conditionally exempts from public disclosure information that constitutes a "trade secret" and ORS 192.502(4) categorically exempts from disclosure information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.

If a Respondent submits information in connection with its Proposal that it believes is confidential or otherwise exempt from public disclosure, the Respondent must describe in detail and with specificity the information it wants exempted and the basis upon which it should be protected (i.e., the statutory exemption for which the information qualifies). In addition, the Respondent must mark each sheet of such information with the following legend:

“THIS MATERIAL IS TO BE HELD CONFIDENTIAL!”

Failure to mark a specific page with the legend set forth in this paragraph will result in the information on that page being subject to public disclosure. Proposals in which the entire document is marked or otherwise identified in its entirety as "confidential" or a "trade secret" will be rejected.

When deciding what information to submit, please bear in mind that information relating to costs or pricing of services will generally be open to disclosure. In addition, many of the exemptions to the Oregon Public Records law, including that applicable to trade secrets, do not apply if "the public interest requires disclosure in the particular instance." ORS 192.501(2). Therefore, non-disclosure of documents or any portion of a document submitted as part of a proposal may depend upon official or judicial determinations made pursuant to the Public Records Law. Nevertheless, the Customers will, to the extent provided by law, endeavor to protect from disclosure information marked as confidential. In all instances, the Customers will make the final decision as to what information must be disclosed.

7.5 Customers' Rights

In connection with this procurement process, including the receipt and evaluation of Proposals and development of a short list, the Customers reserve to themselves (at their sole discretion) all rights available to each under applicable law, including without limitation, with or without cause and with or without notice, the right to:

- Cancel, withdraw, postpone, or extend this RFP, in whole or in part, at any time, without incurring any

obligations or liabilities.

- Modify the procurement schedule.
- Waive deficiencies, informalities and irregularities in a Proposal and accept and review a non-conforming Proposal.
- Suspend and terminate the procurement process or terminate evaluations of Proposals received.
- Permit corrections to any Proposal.
- Hold meetings and interviews, and conduct discussions and correspondence, with one or more of the Respondents to seek an improved understanding of any information contained in a Proposal.
- Seek or obtain, from any source, data that has the potential to improve the understanding and evaluation of the Proposals.
- Seek clarification from any Respondent to fully understand information provided in the Proposal and to help evaluate and rank the Respondents.
- Reject a Proposal containing exceptions, additions, qualifications or conditions not called for in the RFP or otherwise not acceptable to the Customer.
- Conduct an independent investigation of any information, including prior experience, whether or not identified in a Proposal by contacting project references, accessing public information, contacting independent parties, or any other means.
- Request additional information from a Respondent during the evaluation of its Proposal.
- Consider unsolicited supplemental information (“Supplemental Technical Information”) and/or information supplied in response to a separate request for information (“RFI”) concerning technical and other options that may reduce the cost of and/or improve the performance of the Project.
- Require Respondents selected for a short list to evaluate and comment on any Supplemental Technical Information.

7.6 Addenda

If any revisions to the RFP or procurement process become necessary or desirable (at Customers’ sole discretion), Customers may issue written Addenda. The Customers will post notice of all Addenda on the City’s and the County’s websites identified in Section 1.2. It is Respondent’s responsibility to obtain all Addenda prior to submitting its Proposal.

7.7 Protests

Any protest to the Customers’ action in connection with this procurement must be filed in writing no later than **seven** days following such action and must be in strict accordance with the Customers’ applicable procedures and with applicable law. For any solicitation protest, Respondents must follow ORS 279B.405(2). For any protest of contract award, Respondents must follow OAR 137-047-0740.

Attachment A: Pricing Matrix

<u>Goods/Service</u>	<u>Fee</u>	<u>Payment Terms</u>
IRU for <i>[insert total no.]</i> Fiber Pairs		
MRC – Maintenance Services (per fiber pair)	Monthly: Term of Agreement:	[To the extent different from the proposed Maintenance Agreement]
Other (describe in detail)		

Attachment B

Proposed IRU Agreement and Project Fiber Order

Attachment C

Proposed Maintenance Agreement and Project Service Order