



**DEPARTMENT OF
NATURAL RESOURCES**

Aquatic Resources Division

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May 28, 2020

INVITATION – REVISION 1

TO: All Members of the Geoduck Industry and Prospective Bidders

Attached are copies of an Invitation to Bid for the upcoming geoduck auction. Please pay close attention to some important changes and requirements.

The Department of Natural resources (DNR) continues to recognize potential challenges associated with implementing Wildstock Geoduck harvesting agreements during the Novel Coronavirus (COVID-19) outbreak. We are proceeding with the June 3, 2020 auction to provide opportunity for prospective companies with ability to safely harvest.

To restore predictability and typical supply back into the Washington State DNR Wildstock Geoduck Program, DNR will not extend the current process of financial relief during the term of the harvest agreement, July 6 through August 28, 2020. Specifically, an open harvest day will not count as day of lost opportunity. DNR is aware that future events may invoke a force majeure and we will work with industry on a case-by-case basis pursuant to the terms and conditions described in Section 11(h) of the harvest agreement.

NOTICES PERTAINING TO THE JUNE 3, 2020 GEODUCK AUCTION

1. **Twelve (12)** quotas will be auctioned on **June 3, 2020**. These quotas are located in the following harvest regions:
 - Central Sound region at Apple Tree Cove and Manzanita tracts in Kitsap County
2. The areas currently cleared for export to China are listed on DOH's website:
<http://www.doh.wa.gov/CommunityandEnvironment/Shellfish/CommercialShellfish/ChinaBan.aspx>
3. All geoduck sold by DNR are conveyed "as is" without any implied warranties.
4. The quota system to be used for this Harvest Agreement allows for the removal of a designated number of pounds of geoduck clams, not to exceed the Harvest Ceiling, from each harvest area. The geoducks harvested by the Purchaser will be billed at the price per pound listed in the invitation to bid table.
5. The award of a contract will be based upon the highest cash bonus bid received from a responsible bidder. **A single bid deposit of \$30,000.00 will be required in order to place bids for quotas at this auction.** Any remaining bonus bid, less deposit, is due no later than June 12, 2020.
6. The term of these Harvest Agreements is **July 6, 2020 to August 28, 2020**. Operations will be conducted during the following dates:
 - Manzanita (07000) and Apple Tree Cove (06310) – July 6, 2020 to August 28, 2020

7. *NOTE – Tracts in the Hood Canal harvest region at Thorndyke and Coon Bay have been identified as alternative harvest opportunities for Manzanita and Apple Tree Cove quotas respectively. The alternative tracts will be opened only as an additional harvest opportunity in the event that any of the originally auctioned tracts identified above are closed for reasons found in sections 5 and 11 of your contract. The price per pound for harvesting these additional pounds will be reflected in section 4(a) and Exhibit A of the harvest agreement under “Price for Added Pounds”.

DNR reserves the right to change the harvest dates or duration of harvest and the right to increase or decrease the Harvest Ceiling for a Harvest Area at any time.

8. Weigh-out will be conducted on the water unless weather conditions make it impractical, in which case the weigh-out will be conducted at the designated off-load site.
9. A bond of at least **\$30,000.00** shall be in force for each quota.
10. Charges for the removal of geoducks will be billed every two (2) weeks, with payment due within ten (10) business days of the date of the bill. Failure to submit timely payment may result in one or more of the options noted in section 16(a)(1) of the harvest agreement.
11. The hours of operation shall be from 8:00 AM to 4:00 PM for all tracts.
12. Harvesting is not allowed on Saturdays, Sundays, or state holidays, as defined by the Washington State Office of Financial Management.
13. Portions of the harvest area may be closed at any time to protect wildlife and other public resources.
14. Please note that the shallow water boundary for each tract is as follows:

Apple Tree Cove	-20 feet (MLLW)
Coon Bay	-25 feet (MLLW)
Manzanita	-25 feet (MLLW)
Thorndyke	-29 feet (MLLW)

Purchaser shall harvest no geoducks in areas shallower than the depths below mean lower low water as stated above for the respective Harvest Area(s). Regardless of any depth restrictions, vessels conducting operations must remain seaward of a line two hundred yards from and parallel to the ordinary high tide line.

Maximum Depth Boundary: Purchaser shall harvest no geoducks located deeper than 70 feet below mean lower low water (0.0 ft.).

- Attachment(s):
- (1) Test harvest Invitation information
 - (2) Invitation to Bid
 - (3) RCW 79.140.060 and RCW 79.140.080

May 28, 2020

TO: All Members of the Geoduck Industry and Prospective Bidders

Due to the current restrictions and to align our practices as closely as is possible with the Governor's direction with respect to COVID-19, test harvest for the following tracts is cancelled:

Central Sound region at Apple Tree Cove and Manzanita tracts in Kitsap County

Environmental assessments for each tract (along with prospective alternate harvest opportunity tracts) may be found at the following address:

<https://www.dnr.wa.gov/programs-and-services/aquatics/shellfish/washingtons-wild-geoduck-fishery>

**STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
Hilary S. Franz
Commissioner of Public Lands
Olympia, Washington**

INVITATION TO BID – AUCTION DATE: JUNE 3, 2020

Pursuant to RCW 79.135.210, the Department of Natural Resources (DNR) hereby announces that rights to harvest geoducks from the following beds will be put up for competitive bid on the stated date.

PRICE PER POUND FOR ALL QUOTAS - \$3.00

TRACT(s)	QUOTA	TIME	LBS
Manzanita	1	9:00 AM	27,400
Apple Tree Cove	2	9:15 AM	28,300
Manzanita	3	9:30 AM	27,400
Apple Tree Cove	4	9:45 AM	28,300
Manzanita	5	10:00 AM	27,400
Apple Tree Cove	6	10:15 AM	28,300
Manzanita	7	10:30 AM	27,400
Apple Tree Cove	8	10:45 AM	28,300
Manzanita	9	11:00 AM	27,400
Apple Tree Cove	10	11:15 PM	28,300
Manzanita	11	11:30 PM	27,400
Apple Tree Cove	12	11:45 PM	28,300

The purpose of DNR’s election to put these rights up for competitive bid is to serve the public’s interest by obtaining the highest price from responsible bidders. DNR, therefore, solicits bid proposals from interested parties. Bidders will bid for the non-exclusive right to go onto the stated area and remove geoducks up to the listed Harvest Ceiling limit.

The terms under which successful bidders are to operate are set out in the Harvest Agreement and the laws and regulations of the state of Washington. DNR reserves the right to increase or decrease the Harvest Ceiling at any time during the Harvest Agreement to ensure that total pounds harvested from state-owned aquatic lands for the year meet the state’s target sustained yield, and to ensure that the geoduck industry has an opportunity to harvest the state’s share of the resource.

Purchasers will be notified in writing of any such addition or subtraction of pounds to the Harvest Ceiling. The state reserves the right to auction additional harvest areas during this agreement period in order to utilize all of the resource available to the state. The Harvest agreement outlines the rights and obligations of the parties regarding changes to the Harvest Ceiling. Tribal harvesting could occur before during or after purchasers have harvested their share of resource from the geoduck tracts.

A. HARVEST AGREEMENTS WILL BE OFFERED BY ELECTRONIC BID

1. A link to **SKYPE FOR BUSINESS** will be made available and distributed via email **Monday, June 1, 2020** to connect to the bidding process. Please remember, in order to conduct an orderly auction process, you will be connecting, staying on mute, and listening only. Questions during the auction may be addressed via the Skype chat or sent directly via email to a member of the Wildstock Geoduck team.
2. All bids must be completed on the official bid form, attached, and emailed to the following email address:

DNRREAQGEODUCK@dnr.wa.gov

Each email must also contain in the subject line, the auction date, the quota number, and tract corresponding to the desired bid.

3. Harvest Agreements will be offered by electronic bid auction. A single bid deposit for this auction will be \$30,000.00. **The deposit must be mailed to the NRB and received no later than the Friday preceding the bid opening, May 29, 2020.**
4. Mail is being processed only one day per week on Fridays so please be certain your deposits are in the DNR/NRB the Friday prior to the auction.
5. **In order for you bid to be valid, the following parameters will apply:**
 - a. All bid forms must be complete and accurate. Failure to submit an accurate and complete official bid form will constitute a material defect of the bid. RCW 79.140.160 section 1(b).
 - b. All submitted electronic bids must have the following: email containing auction date, quota number, and tract name in the subject line, and attached official, completed bid form.
 - c. Deposits must be present at the DNR before the auction begins in order for emailed bids to be valid. Failure to forward bid deposit by the date due will exclude bidders from the auction. You may submit by regular postal mail, USPS Priority Mail, Federal Express, or UPS envelopes. Please indicate on the outside of the envelope “**ATTN Wildstock Geoduck Program**”. Please mail to the address provided below:

Aquatic Resources Division, 1111 Washington St SE, MS 47027
Olympia, Washington 98504-7027
6. Prior to the first electronic bid opening, DNR will designate the official clock. This clock will be used as the official time for all bid openings.

B. BID OPENING

Emailed bids will be read on Wednesday, June 3, 2020. See above table for bid opening times.

Staff will be available from 8:30 AM to 8:59 AM to answer questions. Bid opening will begin at 9:00 AM. However, the rights and obligations of any party to a Harvest Agreement are defined solely by the terms of the written Agreement.

ELECTRONIC AUCTION PROCESSES –

1. Each electronic bid for corresponding quotas will be opened and read aloud as normal and recorded on an Excel spreadsheet, which will be available for online viewing.
2. All apparent high bidders will receive an email following the auction detailing the documentation and funds needed to be confirmed for contracts. All documentation and remaining funds must be sent via mail by June 12, 2020.
3. If the highest bonus bid is made by two or more bidders, the tie will be resolved by having the tie bidders submit additional emailed bonus bids, (“Tie Breaking Bids”). Each Tie Breaking Bid must be greater than or equal to the bid amount that resulted in the tie. The Tie Breaking Bids must be submitted before the next bid opening or after the final bid opening.

C. GENERAL INFORMATION

1. The Harvest Agreements will be awarded on the basis of the highest bonus bid from a responsible bidder. In submitting a bonus bid, the bidder is making an offer to enter into a contract with the State for the right to harvest geoduck clams.
2. DNR reserves the right to waive nonmaterial bid irregularities. DNR's right to waive nonmaterial bid irregularities is purely discretionary, and need not be exercised in every case.
3. All awards are subject to confirmation by the Department of Natural Resources.
4. **THE DEPARTMENT OF NATURAL RESOURCES EXPRESSLY RESERVES THE RIGHT TO REJECT ANY OR ALL BIDS.**
5. All corporations and limited partnerships must be registered with the Office of the Secretary of State. Failure to comply will result in an unqualified bid.
6. By no later than **June 12, 2020**, the apparent high bidder must provide DNR with all responsible bidder information described in Part D(4) of this Invitation to Bid, the remaining bonus bid, acceptable security, and proof of required insurance. Failure to provide the required information within this time period will constitute a material defect in the bid under the Responsible Bidder statute, RCW 79.140.060.
7. Within thirty (30) calendar days of the auction, DNR will determine whether to confirm the apparent high bidder as the highest responsible bidder. If DNR, in its sole discretion, determines that the bidder is responsible, and if the other statutory prerequisites to bid confirmation are met, DNR will confirm the bid. Bid confirmation is acceptance of the bidder's offer to enter into a contract.
8. Within five (5) business days of the date the bids are confirmed, the apparent high bidder must provide DNR with the signed and notarized Harvest Agreements. Failure to provide the signed and notarized Harvest Agreements within that time will constitute a breach of contract and bid default. DNR may consider the default in evaluating bidder responsibility for this auction and in future auctions under RCW 79.140.060.
9. DNR has up to five (5) business days to process and sign Harvest Agreements from the time it receives the executed Agreement from the confirmed bidder. No harvesting can take place until the Harvest Agreement has been signed by the Department of Natural Resources' Aquatic Resources Deputy Supervisor or designee.
10. In the event that a bidder is found not to be responsible or defaults on the bid, DNR, at its discretion, may re-auction the quota, or offer the Quota to the apparent second highest bidder. The second highest bidder will be required to supply all bidder information required in Part D(3) below, along with the required bonus bid, security, and proof of insurance within five (5) days of notification by DNR.

D. IN EVALUATING BIDDER RESPONSIBILITY, DNR will evaluate several factors including, but not limited to:

1. Bidder's legal competency (including licensing); and
2. Bidder's actual competency (including financial resources, equipment, prior performance, and proposed Plan of Operation).
3. In the course of evaluating bidder responsibility, DNR shall be entitled to consider any matters that relate to the factors listed in RCW 79.140.060.

4. To assist DNR in evaluating whether the apparent high bidder is the highest responsible bidder, the apparent high bidder will be required to provide the following information to DNR ("*bidder responsibility information*"), by no later than **June 12, 2020**. **All information must be returned to the DNR, Aquatic Resources Division.**
 - a. **Articles of Incorporation**; by-laws; names of officers and directors; names of shareholders, including percentage of stock owned by each shareholder; names of any entity in which the apparent high bidder has control, the power to control, or substantial financial interest, or which has control over, the power to control, or a substantial financial interest in the apparent high bidder; and the registered agent.
 - b. **Most recent financial statement**, current balance sheet, and banking reference.
 - c. **Acceptable Security**, Savings Account or Certificate of Deposit assignment, Bond, or Letter of Credit.
 - d. **Commercial General Liability Insurance Certificate** naming DNR as additional insured.
 - e. **Copy of your Shellstock Shipper's Certificate issued by the Department of Health.**
 - f. **Copy of your Wholesale Dealer License issued by WDFW.**
 - g. **Copy of your Business License issued by Department of Licensing.**
 - h. **Commercial Liability Insurance Certificate** naming DNR as additional insured for all contractors and sub-contractors.
 - i. **Purchaser's and subcontractor's proof of workers compensation (L&I) insurance**, UBI numbers and account numbers, are required.
 - j. **Proposed Plan of Operation** (form provided by DNR), which shall include:
 - 1) Source and identity of divers, tenders, harvest vessels, and other harvest equipment;
 - 2) Legal relationship between apparent high bidder and divers and vessel operators (i.e. employee/employer or subcontract) and if by subcontract, subcontractor(s) identity;
 - 3) Working relationship between and apparent high bidder and employees/subcontractors. Duties of each employee/subcontractor shall be incorporated into this plan;
 - 4) Harvest, bond, off-load, and vessel moorage information;
 - 5) The identity of all vehicles used to transport harvested geoducks from the approved off load site;
 - 6) Steps Purchaser will take to ensure compliance with this Harvest Agreement, by Purchaser, Purchaser's employees, and subcontractor(s); and
 - 7) Past experience in underwater seafood harvesting, including experience in supervising or managing commercial dive operations.
- E. A packet containing slots for the above information is provided to the apparent successful high bidders by the end of the auction.
- F. **ALL OF THE ABOVE REQUIRED INFORMATION MUST BE SUBMITTED TO DNR IN THIS PACKET AND WILL NOT BE ACCEPTED IF INCOMPLETE.**
- G. FAILURE TO RETURN A COMPLETE PACKET MAY RESULT IN A BIDDER NOT BEING CONFIRMED / DEEMED RESPONSIBLE UNDER RCW 79.140.060. **THE BID SHALL BE REJECTED AND THE BID DEPOSIT FORFEITED.**
- H. DNR's determination regarding the acceptance and confirmation of bids, or of bidder responsibility, shall be a final decision by DNR and the Commissioner of Public Lands, who has delegated such authority pursuant to a formal Designation and Order of Delegation. A bidder's sole remedy shall be to pursue any timely appeals that may be provided by RCW 79.02.030 or RCW 79.105.160. In no case shall DNR, or its agents, be liable for any claim for damages arising from such determinations.

- I. The specific rights and obligations of an apparent high bidder that is confirmed as a responsible bidder/harvester are contained in the Harvest Agreement (Agreement). The information herein is a summary of information relating to this auction, and is provided as a matter of convenience. The obligations of the Department of Natural Resources, any bidders, and any person or entity that executes an Agreement are defined by the Agreement and the statutes, regulations, and laws of the State of Washington. Nothing in the Invitation to Bid, in any other written materials, or in any oral statements that might be made, shall supersede the Agreement. Sample copies of the Agreement will be available at the auction or may be requested in advance by contacting DNR's Aquatic Resources Division, PO Box 47027, Olympia, WA 98504-7027. In the case of any discrepancy, the Agreement will control, and each bidder should review its content in advance of any submission of bids.

Any oral statement by any representative of the state, modifying or changing any conditions of this Invitation to Bid, is an expression of opinion only and confers no rights on to any bidder. In the event of any discrepancies between the Invitation to Bid and the Harvest Agreement, the Harvest Agreement will control. A sample Harvest Agreement will be available at the time of the auction or may be obtained in advance by contacting DNR's Aquatic Resources Division, PO Box 47027, Olympia, WA 98504-7027.

RCW 79.140.060

Determination of highest responsible bidder.

- 1) To determine the "highest responsible bidder" under RCW [79.140.050](#), the department shall be entitled to consider, in addition to price, the following:
 - (a) The financial and technical ability of the bidder to perform the contract;
 - (b) Whether the bid contains material defects;
 - (c) Whether the bidder has previously or is currently complying with terms and conditions of any other contracts with the state or relevant contracts with entities other than the state;
 - (d) Whether the bidder was the "highest responsible bidder" for a sale within the previous five years but failed to complete the sale, such as by not entering into a resulting contract or by not paying the difference between the deposit and the total amount due. However, sales that were bid prior to January 1, 2003, may not be considered for the purposes of this subsection (1)(d);
 - (e) Whether the bidder has been convicted of a crime relating to the public lands or natural resources of the state of Washington, the United States, or any other state, tribe, or country, where "conviction" includes a guilty plea, or unvacated forfeiture of bail;
 - (f) Whether the bidder is owned, controlled, or managed by any person, partnership, or corporation that is not responsible under this statute; and
 - (g) Whether the subcontractors of the bidder, if any, are responsible under this statute.
- 2) Whenever the department has reason to believe that the apparent high bidder is not a responsible bidder, the department may award the sale to the next responsible bidder or the department may reject all bids pursuant to RCW [79.140.080](#).

RCW 79.140.080

Confirmation of sale.

- 1) A sale of valuable materials shall be confirmed if:
 - (a) No affidavit showing that the interest of the state in such a sale was injuriously affected by fraud or collusion, is filed with the department's Olympia office within ten days from the receipt of the report of the auctioneer conducting the sale;
 - (b) It appears from the report that the sale was fairly conducted, that the purchaser was the highest responsible bidder at the sale, and that the sale price is not less than the appraised value of the property sold;
 - (c) The department is satisfied that the material sold would not, upon being readvertised and offered for sale, sell for a substantially higher price; and
 - (d) The payment required by law to be made at the time of making the sale has been made, and that the best interests of the state are being served.
- 2) Upon confirming a sale, the department shall enter upon its records the confirmation of sale and issue to the purchaser a contract of sale or bill of sale as the case may be, as is provided for in this chapter.