

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING ) ORDINANCE NO 99-822  
METRO CODE CHAPTER 2.04 BY )  
INCREASING PURCHASING ) Introduced by Executive Officer Mike Burton  
THRESHOLDS AND MAKING OTHER )  
REQUIRED CHANGES )

WHEREAS, Metro Chapter 2.04, entitled "Metro Contract Policies," establishes policies for Metro regarding public and personal services contracts; and

WHEREAS, occasional business and economic changes require needed updates in Metro's contracting policies; and

WHEREAS, Metro's Auditor has recommended updating current purchasing thresholds; and

WHEREAS, the Oregon Legislature has required local governments to make certain statements in their own contracting procedures; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

SECTION 1. Metro Code section 2.04.026 is amended to read:

2.04.026 Council Approval of Contracts

(a) Notwithstanding any other provisions of this chapter, executive officer or auditor must obtain authorization by the council prior to execution of the following types of contracts:

- (1) Any contract which commits the district to the expenditure of appropriations not otherwise provided for in the current fiscal year budget at the time the contract is executed and which has a significant impact on Metro. The following types of contracts shall be considered to have significant impacts unless the council finds that under the circumstances a contract will not have a significant impact:

- (A) Any public contract for a term greater than 12 months for private operation of all or of a major part of a Metro facility or concessions at a Metro facility.
  - (B) Any public improvement contract for an amount over \$50,000.
  - (C) Any public contract which will potentially result in a material (more than 5 percent of the related fund) loss of revenues or increase in expenditures in more than one year in any Metro fund.
  - (D) Any contract for personal services for a term greater than 12 months and in an amount greater than \$50,000.
  - (E) Any contract for personal services for an amount greater than \$50,000 related to Metro's exercise of its regional planning functions pursuant to Section 5 of the 1992 Metro Charter.
  - (F) Any contract for personal services for an amount over \$50,000 related to the study by Metro of exercising authority, pursuant to Section 7 of the 1992 Metro Charter, over additional functions.
- (2) Any agreement entered into pursuant to ORS chapter 190 by which Metro acquires or transfers any interest in real property, assumes any function or duty of another governmental body, or transfers any function or duty of Metro to another governmental unit; or
  - (3) Any contract for the purchase, sale, lease or transfer of real property owned by Metro. However, the executive officer may execute options to purchase real property.

(b) Prior to adoption of the annual budget, the executive officer shall submit a list of proposed contracts over \$50,000 to be entered into during the next fiscal year. The council shall designate in the annual budget ordinance which contracts have a significant impact on Metro.

Thereafter, if the executive officer proposes to enter into a contract that will commit the district to the expenditure of appropriations not provided for in the current fiscal year budget in an amount greater than \$50,000 that the council has not considered during the annual budget process the Executive Officer shall inform the council presiding officer in writing and shall recommend whether the contract should be classified as a significant impact contract. The presiding officer shall immediately cause copies of the notice to be furnished to all members of the Council. The Council may

determine that the contract has a significant impact on Metro within 10 days of receipt of the notice from the executive officer. If the contract is determined by the Council to have a significant impact on Metro, execution by the executive officer shall be subject to Council authorization. If the Council does not determine that the contract has a significant impact on Metro, the executive officer may execute the contract after transmitting a description of the purpose of the contract, the appropriation to which contract payments will be charged, and a summary of the scope of work to be performed to the council or a council committee as deemed appropriate by the presiding officer.

(c) All contracts which require council authorization pursuant to subsection (a)(1) or (b) above and which are subject to competitive bidding or request for proposals procedures shall require council authorization of the request for bids or request for proposals prior to release of bidding or proposal documents to vendors. At the time of council authorization of the competitive bid or request for proposal documents, the council may waive the requirement of council authorization of the contract.

SECTION 2. Metro Code section 2.04.032 is repealed.

SECTION 3. Metro Code section 2.04.042 is amended to read:

2.04.042 Personal Services Contracts Up to \$50,000

(a) For personal services contracts of less than \$5,000, multiple proposals are not required, but shall be encouraged.

(b) For personal services contracts of \$5,000 or more but not more than \$50,000, proposals shall be solicited from a minimum of three potential contractors who are capable and qualified to perform the requested work. Metro shall keep a written record of the source and amount of the quotes received. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes. In addition, the contracting department shall notify the procurement officer of the nature of the proposed contract, the estimated cost of the contract, and the name of the contact person.

SECTION 4. Metro Code section 2.04.044 is amended to read:

2.04.044 Personal Services Contracts of More than \$50,000

Personal services contracts of \$50,000 shall be subject to the following process:

(a) A request for proposals shall be prepared and advertised at least once. Notice shall also be mailed to interested contractors known to Metro.

(b) All request for proposals shall at a minimum contain a description of the project and a brief summary of the project history, contain a detailed proposed scope of

work or other specifications setting forth expected performance by the contractor, include a description of the criteria that will be utilized to evaluate proposals and a broad range of the estimated cost for the project.

(c) Evaluations of proposals and the determination of the most qualified proposer shall be made.

SECTION 5. Metro Code section 2.04.046 is amended to read:

2.04.046 Personal Services Contract Amendments

(a) Personal services contracts of an initial amount of \$25,000 or less may be amended to increase the amount of the contract to no more than twice the original contract amount. This limit is cumulative and includes any and all contract amendments or extensions. Any contract amendment(s) in excess of this ceiling requires approval by the council. The council shall determine whether it is appropriate to amend the contract despite the policy that favors competitive procurement of personal services.

(b) Contracts with an initial amount of greater than \$25,000 may be amended provided that any amendment that increases the total amount payable to an amount more than \$50,000 greater than the initial contract amount shall be subject to approval by the council. The council shall determine whether it is appropriate to amend the contract despite the policy that favors competitive procurement of personal services.

SECTION 6. Metro Code section 2.04.052 is amended to read as follows:

2.04.052 Public Contracts -- General

(a) State Law Requirements, Procedures.

(1) The procedures for competitive bidding of all Metro public contracts and for the issuance of competitive Request for Proposals when authorized as an exception to competitive bid requirements shall comply with all requirements that are generally applicable to local governments.

(2) Notwithstanding the provisions of this subsection (a)(1), the model rules adopted by the Oregon Attorney General shall not apply to Metro.

(3) The executive officer may establish by executive order detailed procedural requirements consistent with this chapter and state law. In so doing, the executive officer may adopt in whole or in part the model rules of procedure established by the Oregon Attorney General pursuant to ORS 279.049.

(b) Substantive Requirements. All Metro public contracts shall contain all provisions required by ORS chapter 279 and shall be construed to be consistent with all provisions of ORS chapter 279.

(c) Rejection of Bids. The executive officer may reject any bid or proposal not in compliance with all prescribed procedures and requirements and may, for good cause, reject any or all bids or proposals upon finding that it is in the public interest to do so.

(d) Bonds. Unless the board shall otherwise provide, bonds and bid security requirements are as follows:

- (1) Bid security not exceeding 10 percent of the amount bid for the contract is required unless the contract is for \$25,000 or less.
- (2) For public improvements, a labor and materials bond and a performance bond, both in an amount equal to 100 percent of the contract price are required for contracts over \$25,000.
- (3) Bid security, labor and material bond and performance bond may be required even though the contract is of a class not identified above, if the executive officer determines it is in the public interest.

(e) Disadvantaged Business Program. All public contracts are subject to the Metro Disadvantaged Business Enterprise Program for Federally-Funded Contracts, Metro Women Business Enterprise Program, and the Metro Minority Business Enterprise Program provisions of this chapter.

SECTION 7. Metro Code section 2.04.054 is amended to read:

2.04.054 Competitive Bidding Exemptions

Subject to the policies and provisions of ORS 279.005 and 279.007, and the Metro Code, all Metro and Metropolitan Exposition-Recreation Commission public contracts shall be based upon competitive bids except:

(a) State Law. Classes of public contracts specifically exempted from competitive bidding requirements by state law.

(b) Board Rule. The following classes of public contracts are exempt from the competitive bidding process based on the legislative finding by the board that the exemption will not encourage favoritism or substantially diminish competition for public contracts and that such exemptions will result in substantial cost savings:

- (1) All contracts estimated to be not more than \$50,000 provided that the procedures required by section 2.04.056 are followed.

- (2) Purchase and sale of zoo animals, zoo gift shop retail inventory and resale items, and any sales of food or concession items at Metro facilities.
- (3) Contracts for management and operation of food, parking or similar concession services at Metro facilities provided that procedures substantially similar to the procedures required for formal Request for Proposals used by Metro for personal services contracts are followed.
- (4) Emergency contracts provided that written findings are made that document the factual circumstances creating the emergency and establishing why the emergency contract will remedy the emergency. An emergency contract must be awarded within 60 days of the declaration of the emergency unless the board grants an extension.
- (5) Purchase of food items for resale at the zoo provided the provisions of section 2.04.060 are followed.
- (6) Contracts for warranties in which the supplier of the goods or services covered by the warranty has designated a sole provider for the warranty service.
- (7) Contracts for computer hardware and software provided that procedures substantially similar to the procedures required for formal Request for Proposals used by Metro for personal services contracts are followed.
- (8) Contracts under which Metro is to receive revenue by providing a service.
- (9) Contracts for the lease or use of the convention, trade, and spectator buildings and facilities operated by the Metro Exposition-Recreation Commission.
- (10) Public contracts by the Metro Exposition-Recreation Commission in an amount less than \$75,000, which amount shall be adjusted each year to reflect any changes in the Portland SMSA CPI, provided that any rules adopted by the commission which provide for substitute selection procedures are followed; or
- (11) Contracts for equipment repair or overhaul, but only when the service and/or parts required are unknown before the work begins

and the cost cannot be determined without extensive preliminary dismantling or testing.

- (12) Contracts in the nature of grants to further a Metro purpose provided a competitive request for proposal process is followed.
- (13) The procurement of utilities, including telephone service, electric, natural gas, and sanitary services, provided that competition is available and a request for proposal process is followed.
- (14) The procurement of art and art related production and fabrication provided that a request for proposal process is followed.
- (15) Sponsorships which are identified and approved in the proposed budget and are not designated by Council as having a significant impact as outlined in 2.04.026 need not follow a competitive bidding or proposal process. In order to be eligible for this exemption the sponsorship shall provide Metro with event advertising and/or media releases.

(c) Board Resolution. Specific contracts, not within the classes exempted in subsections (a) and (b) above, may be exempted by the board by resolution subject to the requirements of ORS 279.015(2) and ORS 279.015(5). The board shall, where appropriate, direct the use of alternate contracting and purchasing practices that take account of market realities and modern innovative contracting and purchasing methods, which are consistent with the public policy of encouraging competition.

SECTION 8. Metro Code section 2.04.056 is amended to read:

2.04.056 Public Contracts Up to \$50,000

(a) Under \$5,000. For public contracts of less than 5,000, competitive bids are not required but shall be encouraged.

(b) Between \$5,000 and \$50,000. For public contracts of \$5,000 or more but not more than \$50,000, Metro shall obtain a minimum of three competitive quotes. Metro shall keep a written record of the source and amount of the quotes received. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes. In addition, the contracting department shall notify the procurement officer of the nature of the proposed contract, the estimated cost of the contract, and the name of the contact person.

(c) Contracts under \$50,000 should be awarded on the basis of the least cost alternative available that is capable of performing the work required.

SECTION 9. Metro Code section 2.04.058 is amended to read:

2.04.058 Public Contract Amendments

(a) The executive officer may execute amendments to public contracts which were not designated as contracts having a significant impact on Metro, provided that any one of the following conditions are met:

- (1) The original contract was let by a formal competitive procurement process, the amendment is for the purpose of authorizing additional work for which unit prices or alternates were provided that established the cost for the additional work and the original contract governs the terms and conditions of the additional work; or
- (2) The amendment is a change order that resolves a bona fide dispute with the contractor regarding the terms and conditions of a contract for a public improvement and the amendment does not materially add to or delete from the original scope of work included in the original contract; or
- (3) The amount of the aggregate cost increase resulting from all amendments does not exceed 20 percent of the initial contract if the face amount is less than or equal to \$1,000,000 or 10 percent if the face amount is greater than \$1,000,000; amendments made under subsection (1) or (2) are not included in computing the aggregate amount under this subsection; or
- (4) The Metro contract review board has authorized the extension of the contract amendment.

(b) No contract which was designated as a contract having a significant impact on Metro may be amended without the express approval of the council evidenced by a duly adopted resolution or ordinance; except as follows:

- (1) The executive officer may approve any amendment that is a change order than resolves a bona fide dispute with the contractor regarding the terms and conditions of a contract for a public improvement if the amendment does not materially add to or delete from the original scope of work included in the original contract. Provided, however, the executive officer must obtain council approval for any such change order that results in a total aggregate increase of more than 5 percent of the original contract amount. If the council approves a change order pursuant to this subsection it may also in the same action authorize additional change orders to resolve future disputes in an amount not to exceed that established by the council.



- (2) The executive officer may approve any contract amendment to a contract for a public improvement that does not increase the contract amount more than \$25,000 if the amount of the aggregate cost resulting from all amendments authorized pursuant to this subsection does not exceed 5 percent of the initial contract. In computing the dollar amount of any amendment for the purpose of this subsection, only the amount of additional work or extra cost shall be considered and may not be offset by the amount of any deletions.
- (3) The executive officer may approve a change order for additional work if the original contract was let by a formal competitive procurement, the amendment is for the purpose of authorizing additional work for which unit prices or bid alternates were provided that established the cost for the additional work and the original contract governs the terms and conditions of the additional work.
- (4) The executive officer may approve a change order to a public improvement contract in order to meet an emergency.

(c) No public contract may be amended to include additional work or improvements that are not directly related to the scope of work that was described in the competitive process utilized to award the contract.

(d) For the purpose of this section any contract which was subject to specific council authorization of its execution prior to the effective date of this ordinance shall be considered to be a contract that has a significant impact on Metro.

SECTION 10. Metro Code section 2.04.070 is amended to read:

2.04.070 Notice of Award and Appeals

(a) At least five days prior to the execution of any public contract over \$50,000 for which a competitive bid or proposal process is required, Metro shall provide a notice of award to the contractor selected and to all contractors who submitted unsuccessful bids or proposals.

(b) Bid/Request for Proposals Appeal Procedures. The following procedure applies to aggrieved bidders and proposers who wish to appeal an award of a public contract or a personal services contract above \$50,000. The appeal process for bids is the same as for a request for proposals. In the case of a request for proposals, disagreement with the judgment exercised in scoring by evaluators is not a basis for appeal.

- (1) All appeals shall be made in writing and shall be delivered to the procurement officer at Metro's main office within five working days of the postmarked date on the notice of award. The written appeal must describe the specific citation of law, rule, regulation, or procedure upon which the appeal is based.
- (2) The procurement officer shall forthwith notify the appropriate department director and the executive officer of the appeal. Within 10 working days of the receipt of the notice of appeal, the executive officer shall send a notice of rejection of the appeal or a notice of acceptance of the appeal, as applicable, to the appellant. The appellant may appeal the executive officer's decision to reject the appeal in writing to the board within five working days from the postmarked date on the notice of rejection.
- (3) The board will review the grounds for appeal, all pertinent information, and the executive officer's recommendation, and make a decision. The decision of the board is final.
- (4) No contract which is the subject of a pending appeal may be executed unless the board shall have given its approval at the request of the executive officer. The executive officer may request the board to determine a matter without waiting for the expiration of the time periods provided for herein.
- (5) In the event council authorization of execution of the contract is required under section 2.04.026 of this Code the appeal shall be heard before the council considers authorization of the contract.

(c) Appeals from Disqualifications

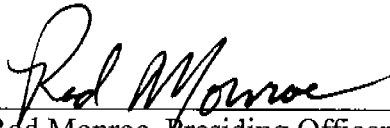
- (1) The board shall hear all appeals from any person who is disqualified by Metro as a bidder. The basis for the appeal shall be limited to the following grounds:
  - (A) Disqualification of bidder pursuant to ORS 279.037.
  - (B) Denial of prequalification to bid pursuant to ORS 279.039 and 279.041.
- (2) Any person who wishes to appeal disqualification as a bidder shall, within three business days after receipt of notice of disqualification, notify in writing the general counsel that the person appeals the disqualification. The general counsel shall promptly notify the board of the appeal by providing notice to the presiding officer.


- (3) Promptly upon receipt of notice of appeal, the presiding officer shall notify the appellant and the general counsel of the time and place of the appeal proceeding.
- (4) The board shall conduct the appeal proceeding and decide the appeal within 10 days after receiving notification of the appeal from the general counsel. The board shall set forth in writing the reasons for the decision.
- (5) Appeal Proceeding.
  - (A) The presiding officer shall preside over the appeal proceeding. The general order shall be as follows:
    - (i) Presentation by Metro of documentation and testimony supporting the disqualification.
    - (ii) Presentation by the appellant of documentation and testimony opposing the disqualification.
  - (B) Members of the board shall have the right to ask both Metro and the appellant questions and to review documentation referred to and presented by the parties.
  - (C) Formal court rules of evidence shall not apply.
  - (D) The board shall consider de novo the notice of disqualification, and record of investigation made by Metro and any evidence provided by Metro and the appellant prior to or at the appeal proceeding. There shall be no continuance or reopening of the appeal proceeding to offer additional evidence unless the appellant can demonstrate to the presiding officer that the additional evidence was not known to the appellant at the time of the proceeding or that with reasonable diligence the appellant would not have discovered the evidence prior to the appeal proceeding.
  - (E) A tape recording will be made of the appeal proceeding which shall be made available to the appellant upon payment of costs to Metro of making the tape.
  - (F) The board shall render a decision which shall be reviewed only upon petition in the Circuit Court of Multnomah County. The petition must be filed within 15 days after the date of the decision.

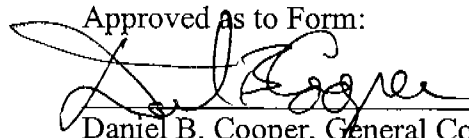
(6) Metro may reconsider its determination with regard to the disqualification at any time prior to the appeal proceeding.

(d) Appeals of contract awards and decisions of the auditor shall be made directly to the contract review board.

ADOPTED by the Metro Council this 18<sup>th</sup> day of NOVEMBER 1999.

  
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Rod Monroe, Presiding Officer

ATTEST:  
  
\_\_\_\_\_  
Recording Secretary

Approved as to Form:  
  
\_\_\_\_\_  
Daniel B. Cooper, General Counsel

**METRO OPERATIONS COMMITTEE REPORT**

**CONSIDERATION OF ORDINANCE NO. 99-822, FOR THE PURPOSE OF  
AMENDING METRO CODE 2.04 BY INCREASING PURCHASING THRESHOLDS  
AND MAKING OTHER REQUIRED CHANGES**

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Date: November 16, 1999

Presented by: Councilor Atherton

**Committee Action:** At its November 3, 1999 meeting, the Metro Operations Committee voted 2-0 to recommend Council adoption of Ordinance 99-822. Voting in favor: Councilors Atherton and Washington.

**Committee Issues/Discussion:** Ordinance 99-812 responds to May, 1999 recommendations made by the Metro Auditor, recommending increases in bid/proposal limits, and amending Metro code. These recommended increases would bring Metro more in line with other jurisdictions, the Auditor stated. Based on staff consideration of Auditor and Councilor recommendations, the actual limits in ordinance 99-812 are somewhat less than Auditor recommendations, however.

Councilor McLain was concerned that the effect of this resolution would have had the Council reviewing 47 less contracts in the current fiscal year, and was uncomfortable with the Council losing that much review capability, especially in light of Council recommended changes to the contracting process just a few years ago. She also felt that relations with the Executive Office were improved with a greater level of contract oversight by the Council. Chair Washington directed Mr. Moss to make the list of those 47 contracts available to the Council prior to Council consideration of this ordinance.

## STAFF REPORT

FOR THE PURPOSE OF AUTHORIZING ORDINANCE NUMBER 99-822 AMENDING METRO CODE 2.04 BY INCREASING PURCHASING THRESHOLDS AND MAKING OTHER REQUIRED CHANGES

Date: October 14, 1999

Presented by: Scott Moss, ASD, Assistant Director

## PROPOSED ACTION

Adopt Ordinance No. 99-822 authorizing amending Metro Code 2.04 by increasing the purchasing thresholds, and by making other statutorily required changes.

## FACTUAL BACKGROUND AND ANALYSIS

In July 1997, the Metro Council made significant changes to Metro Code 2.04 on contracting. These changes helped streamline the contracting process while adding additional controls. Significant changes included the following:

Action	Prior to July 1997	July 1997 Changes
Threshold for informal quotes	\$500	\$2,500
Threshold for formal bids/proposals	\$10,000	\$25,000
Council Action Threshold	\$10,000 Had A and B contracts with no criteria established	\$25,000 Established criteria for contracts with significant impact on Metro
Personal Service Amendment	Unlimited number if each under \$10,000	Only once - double the contract not to exceed \$25,000

### **Current Contract Rules**

The current threshold rules are as follows:

- No quotes are needed if a contract/purchase is under \$2,500.
- Three informal quotes are needed if a contract/purchase is between \$2,500 and \$25,000, one from each of the following: MBE, WBE, ESB.
- A formal bid or proposal is required and the Council must approve if a contract/purchase is over \$25,000.

The Council approves contracts over \$25,000 in one of the following ways:

1. "pre-approves" them by reviewing the annual contract list and not designating the contract as having significant impact on Metro, or

FOR THE PURPOSE OF AUTHORIZING ORDINANCE NUMBER 99-822 AMENDING METRO CODE 2.04 BY INCREASING PURCHASING THRESHOLDS AND MAKING OTHER REQUIRED CHANGES

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2. does not declare a contract as having significant impact after receiving the "10 day notice" letter from the Executive Officer, or
3. authorizes the request for bids/proposals and contract by resolution if identified as having significant impact on Metro and multi-year.

**Increase in Threshold Limits Recommendation**

In May 1999, the Auditor performed a benchmark audit on Purchasing and recommends that Metro Code 2.04 be changed to increase the informal quote limit and the formal bid/proposal. Also the Auditor recommended increasing the significant impact criteria. The Auditor noted that Metro's limits are outdated and recommended revising the Metro Code limits. Listed below are comparable jurisdictions.

Jurisdiction	Informal Limit	Formal Bid/Proposal Limit
MERC	\$5,000	\$75,000
State of Oregon	\$5,000	\$50,000
Multnomah County	\$5,000	\$50,000
City of Portland	\$5,000	\$49,000 approx.
Federal	\$2,500	\$100,000
Auditors Recommendation	\$7,500	\$75,000

In discussion with members of Council, staff is forwarding Ordinance 99-822 which increases the informal limit to \$5,000 and the formal limit to \$50,000. These limits are less than those recommended by the Auditor, and staff recommends reviewing these limits periodically. This would allow the Council and Executive Officer to consider raising the limits further based on one or two years experience with these new thresholds.

If the Council had made this change for FY2000, the affect would have been as follows:

	Prior to Change	After Change	Difference
Contracts reviewed by Council	208	161	47
Number of significant impact contracts	33	33	0
Number of "10 day" letters	11	9	2

**Other Actions**

In order to be consistent with the \$50,000 threshold, section 2.04.026 Council Approval of Contracts is also proposed to increase from \$25,000 to \$50,000. As noted above, in FY 2000 there were 47 contracts between \$25,000 and \$50,000, non-of which were

FOR THE PURPOSE OF AUTHORIZING ORDINANCE NUMBER 99-822 AMENDING METRO CODE 2.04 BY INCREASING PURCHASING THRESHOLDS AND MAKING OTHER REQUIRED CHANGES

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identified as having significant impact on Metro. Sub-section (F) of this section would also increase to \$50,000. This sub-section addresses contracts to study Metro taking over additional functions allowed under the Metro Charter.

Section 2.04.052 is also proposed to clarify that the Oregon Attorney General Rules do not apply to Metro. This is in response to House Bill 2024 which requires public entities to either use the AG's model rules or adopt alternative rules. Metro Contract Code serves as the alternative rules to the AG's model rules.

Section 2.04.058 (a)(3) is also corrected from a typo error on the last code amendment. This section addresses the Executive Officers authority to execute contract amendments. It is proposed that this error be corrected.

## **Advantages**

### Streamlines Purchasing Process

The primary advantage to higher limits is reducing the resources spent on obtaining goods and services.

- If under \$5,000 staff would be allowed to negotiate for the best product at the lowest price.
- If under \$50,000 staff would not be required to prepare formal bids and proposals which are time consuming and technical.

### Improves Vendor Relations

Staff and vendors would be given more opportunity to develop partnerships for lower cost goods and services.

## **EXECUTIVE OFFICER RECOMMENDATION**

The Executive Officer recommends approval of Ordinance No. 99-822.