

BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

AN ORDINANCE AMENDING METRO CODE )  
SECTION 2.04 RELATING TO CONTRACT )  
PROCEDURES )

ORDINANCE NO. 87-223

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. Section 2.04.040(d) is amended to read:

2.04.040 Public Contracts, General Provisions:

(a) Competitive Bidding: Unless exempt from competitive bidding, all public contracts shall be awarded to the lowest responsive, responsible bidder.

(b) Oregon Preference: In all public contracts, the District shall prefer goods or services that have been manufactured or produced in Oregon if price, fitness, availability and quality are otherwise equal. Where a contract in excess of \$10,000 is awarded to a contractor not domiciled or registered to do business in Oregon, the initiating Department shall assure compliance with the provisions of ORS 279.021.

(c) Rejection of Bids: The Executive Officer or the Deputy Executive Officer may reject any bid not in compliance with all prescribed public bidding procedures and requirements and may, for good cause, reject any or all bids upon a finding that it is in the public interest to do so, for example, when all bids exceed the budget or estimate for that project.

(d) Bonds:

(1) Bid security not exceeding 10 percent of the amount bid for the contract is required unless the contract is for [\$10,000] \$15,000 or less.

(2) For public improvements a labor and materials bond in an amount equal to 100 percent of the contract price is required for contracts over \$10,000.

(3) For public improvements a performance bond in an amount equal to 100 percent of the contract price is required for contracts over \$10,000. If the contract is under \$50,000, the performance bond and labor and material bond may be one bond; if the contract is \$50,000 or more, there shall be two bonds.

(4) Bid security, labor and material bond and performance bond may be required even though the contract is of a class [exempted] not identified above, if the department head

of the initiating department determines it is in the public interest.

(5) Bid security and bonds may be provided in the form of a surety bond, cash, cashier's check or certified check.

Section 2. Section 2.04.045(a) and (c) are amended to read:

2.04.045 Public Contract Extensions and Amendments (including Change Orders, Extra Work and Contract Renewals):

(a) Selection Process: Any contract amendment for additional work including contract renewals, change orders, extra work, field orders and other changes in the original specifications which increase the original contract price may be made with the contractor without competitive bidding subject to any of the following conditions:

(1) The original contract was let by competitive bidding, unit prices or bid alternates were provided that established the cost for additional work and a binding obligation exists on the parties covering the terms and conditions of the additional work. However, in the event that the increase in price results solely from extension of the termination date of the contract, the extension shall not be greater than three months; or

(2) 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 are not included in computing the aggregate amount under this section; or

(3) The increase in price is due to unexpected conditions which arise during performance of a maintenance or repair contract and the Executive Officer determines that extension of the scope of work on the current contract is the most economical method of dealing with the unexpected conditions; or

(4) The total cost of the contract, including amendments, does not exceed \$5,000[.], but if the amendment is for more than \$500, three (3) competitive quotes shall be obtained as described in Sections 2.04.042(a)(2) and 2.04.043(a).

(b) Review Process: After selection and prior to approval, the contract must be reviewed by the Director of Finance and Administration.

(c) Approval Process:

(1) In applying the following rules for approval of contract amendments, when an amendment falls under two

different rules, the amendment shall be approved under the rule for the higher dollar amount; e.g., an amendment of under \$2,500 (rule 2) which results in a contract price of more than \$10,000 (rule 3) shall be approved under the rule for contract prices more than \$10,000.

(2) \$2,500 and Under: All contract amendments and extensions which are \$2,500 or less or which result in a total contract price of \$2,500 or less may be approved by the Director of the initiating department or by a designee of the Director approved by the Executive Officer if the following conditions are met:

- (A) A standard contract form is used;
- (B) Any deviations to the contract form are approved by the Legal Counsel;
- (C) The expenditure is authorized in the budget;
- (D) The contract does not further obligate the District beyond \$2,500;
- (E) The appropriate Scope of Work is attached to the contract; and
- (F) The contract is for an entire project or purchase; not a portion of a project which, when complete, will amount to a cost not greater than \$2,500.

(3) Between \$2,501 and \$10,000: (A) Except as provided in (B) below, all contract amendments and extension which exceed \$2,500 or which result in a total contract price of more than \$2,500 but [less than] \$10,000 or less may be approved by either the Executive Officer or Deputy Executive Officer. When designated in writing to serve in the absence of the Executive Officer or Deputy Executive Officer, the Director of Finance and Administration may sign contract amendments and extensions.

(B) The Council Management Committee shall approve contract amendments when:

i The initial contract has been approved by the Council Management Committee or the Council; and

ii The amount of the aggregate cost increase resulting from all contract amendments exceeds 100 percent of a contract between \$10,000 and \$50,000 or 20 percent of the contract over \$100,000; the amount of the contract is the amount last approved by the Council Management Committee or Council.

(4) Between \$10,001 and \$50,000: Except as provided in subsection 5 of this section, all contract amendments and extensions which exceed \$10,000 or which result in a total

contract price of more than \$10,000 but [less than] \$50,000 or less shall be approved by the Council Management Committee prior to execution.

(5) Over \$50,000: Except as provided in subsection 5 of this section, all contract amendments and extensions which exceed \$50,000 or which result in a total contract price of more than \$50,000 shall be approved by the Council prior to execution.

(6) Exceptions: The following types of contract amendments and extensions may be approved by the Executive Officer or his/her designee:

(A) Extensions and amendments to contracts which merely pass through funds from a state or federal agency.

(B) Contract extensions and amendments for purchases of inventory and gift items for resale at the Zoo Gift Shop.

(C) Emergency contract extensions and amendments.

(d) All contracts are subject to the rules and procedures of Code Section 2.04.030, "Rules and Procedures Governing Personal Services and Public Contracts."

Section 3. Section 2.04.050 is amended to read:

2.04.050 Personal Services Contracts, General Provisions:

(a) Distinguishing Between Employees and Independent Contractors: Employees shall not be hired under the guise of a Personal Services Contract. To determine whether a particular worker is to be an employee or an independent contractor, the most important factor to consider is the employer's right to control. If the employer is to retain the right to control the manner and means of accomplishing a desired result, the worker is generally considered an employee; if, however, the employer has the right to control only the results of the work, the worker is considered an independent contractor. This test of control does not require actual exercise of control, but rather the employer's right to control. The following factors shall be considered in determining a worker's status:

(1) Whether the worker is to be engaged in a distinct occupation or business. Independent contractor status is often accorded those who are engaged for their special skills. Thus, the hiring of an architect, broker, doctor, painter or attorney may indicate that an independent contractor relationship is being contemplated.

(2) Whether the employer or the worker is to supply the instrumentalities, tools and the place of work.

(3) Whether the worker or the employer is to have the power to dictate the particular manner in which the instrumentalities or tools shall be used and the way the workers shall do their work.

(4) Whether the worker employs, pays and has full power of control over assistants.

(5) Whether the work is part of the regular business of the employer.

(b) An emergency contract may be let without obtaining quotes in writing when the Executive Officer makes written findings that an emergency exists because of circumstances which could not have been reasonably foreseen and requires the prompt execution of a contract to remedy that condition. The Executive Officer shall inform the Council of all contracts declared to be an emergency at the Council meeting immediately following the adoption of findings declaring an emergency.

Section 4. Section 2.04.041(b) (5) is amended to read:

(5) Emergency contracts when the Executive Officer makes written findings that an emergency exists and that the emergency consists of circumstances that could not have been reasonably foreseen and requires prompt execution of a contract to remedy that condition. An emergency contract must be awarded within sixty (60) days of the declaration of the emergency unless the Board grants an extension. The Executive Officer shall inform the Council of all contracts declared to be an emergency at the Council meeting immediately following the adoption of findings declaring an emergency.

ADOPTED by the Council of the Metropolitan Service District

this 11th day of June, 1987.

  
Richard Waker, Presiding Officer

ATTEST:

  
Clerk of the Council

ESB/gl  
7524C/506-3  
06/09/87

CONSIDERATION OF ORDINANCE NO. 87-223 AMENDING  
METRO CODE SECTION 2.04 RELATING TO CONTRACT  
PROCEDURES

---

Date: May 18, 1987

Presented by: Evyonne Sherlock

FACTUAL BACKGROUND AND ANALYSIS

In January 1987, the Metro contract code was amended. Subsequent use has shown the need for modifications which are proposed as follows:

1. In January provisions were added to the Metro Contract Code regarding bid bonds, labor and material bonds and performance bonds for non-personal services contracts. Two amendments are proposed:
  - a. Bid bonds should only be required for contracts of \$15,000 or more because Metro just raised the requirement for bids to contracts of \$15,000 or more.
  - b. Labor and Material Bonds and Performance Bonds should only be required for public improvements (defined in the Code) and remain optional for other contracts.
2. Contract amendments for under \$5,000 are currently exempt from competitive bidding (sealed bid), but the Code does not say how they are to be solicited. To be consistent with the regular procedures for soliciting contracts, the section should refer to the three competitive quotes requirement.
3. The process for approving amendments is proposed to be clarified for those situations where a small change puts the total contract into a different approval category, e.g., an amendment of \$2,000 (normally approved internally) causes a contract to exceed \$10,000 (contracts above \$10,000 are approved by Council Management Committee) or an amendment of \$15,000 (normally approved by Council Management Committee) causes a contract to exceed \$50,000 (contracts over \$50,000 are approved by Council). The intent was to have the contract approved under the process for the higher amount.

Also, the greater than, less than provisions needed to be clarified to avoid a gap.

4. There are no procedures for emergency Personal Services contracts. Since large Personal Services contracts are required by Code to go through a written solicitation process, this could create a problem in a time emergency. The new wording mimics the current process for emergency exemptions for public contracts: The Executive Officer must find there is an emergency. Three quotes are still required, but not in writing.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Ordinance No. 87-223.

ESB/gl  
7408C/496  
05/18/87



METRO

2000 S.W. First Avenue  
Portland, OR 97201-5398  
503/221-1646

# Memorandum

Date: June 3, 1987

To: Metro Councilors

From: Donald E. Carlson, Council Administrator

Regarding: PROPOSED AMENDMENT TO ORDINANCE NO. 87-223 WHICH AMENDS METRO CODE SECTION 2.04 RELATING TO CONTRACT PROCEDURES (AGENDA ITEM NO. 7.1, JUNE 11, 1987, COUNCIL MEETING)

Councilor Van Bergen has expressed concern that the Executive Officer can enter into emergency contracts and there is no requirement to notify the Council of such action. To remedy this potential situation, the following amendment to Ordinance No. 87-223 is proposed for Council consideration:

On page 5 of the Ordinance after the underlined word "condition," add the following:

"The Executive Officer shall inform the Council of all contracts declared to be an emergency at the Council meeting immediately following the adoption of findings declaring an emergency."

Add a new Section 4 as follows:

"Section 4. Section 2.04.041(b)(5) is amended to read:

(5) Emergency contracts when the Executive Officer makes written findings that an emergency exists and that the emergency consists of circumstances that could not have been reasonably foreseen and requires prompt execution of a contract to remedy that condition. An emergency contract must be awarded within sixty (60) days of the declaration of the emergency unless the Board grants an extension. The Executive Officer shall inform the Council of all contracts declared to be an emergency at the Council meeting immediately following the adoption of findings declaring an emergency."

General Counsel has reviewed this proposed amendment to ensure it accomplishes the objective intended.

DEC/amn  
7613C/D1-1



7. ORDINANCES

7.1 Consideration of Ordinance No. 87-223, for the Purpose of Amending Metro Code Section 2.04 Relating to Contract Procedures

The Clerk read the Ordinance a second time by title only. Presiding Officer Waker announced the first reading and public hearing had been held on May 28, 1987.

Yvonne Sherlock, Grants/Contracts Specialist, briefly reviewed staff's report. The Presiding Officer noted a memo from the Council Administrator had been included in the agenda packet which discussed an amendment proposed by Councilor Van Bergen.

Main Motion: The motion to adopt Ordinance No. 87-223 was made by Councilors DeJardin and Kirkpatrick on May 28, 1987.

Motion to Amend: Councilor Van Bergen, seconded by Councilor DeJardin, to amend the Ordinance as follows (proposed new language is underlined):

Add the following sentence at the end of Section 2.04.050(b): "The Executive Officer shall inform the Council of all contracts declared to be an emergency at the Council meeting immediately following the adoption of findings declaring an emergency."

Add the following sentence at the end of Section 2.04.041(b)(5): "The Executive Officer shall inform the Council of all contracts declared to be an emergency at the Council meeting immediately following the adoption of findings declaring an emergency."

Councilor Van Bergen said the Executive Officer agreed with the proposed amendment and that prompt notification of emergency contracts was good procedure.

Vote on Motion to Amend: A vote on the motion resulted in all eleven Councilors present voting aye. Councilor Kirkpatrick was absent. The motion carried unanimously.

Vote on Main Motion, as Amended: A roll call vote on the motion resulted in all eleven Councilors present voting aye. Councilor Kirkpatrick was absent. The motion carried unanimously.

Ordinance No. 87-223 was adopted as amended.



# METRO

2000 S.W. First Avenue  
Portland, OR 97201-5398  
503/221-1646

June 12, 1987

County Clerk  
Clackamas County Courthouse  
8th and Main  
Oregon City, Oregon 97045

Dear Clerk:

Enclosed is a true copy of an ordinance adopted by the Metro Council. Please file this ordinance in the Metro file maintained by your County.

Ordinance No. 87-223, Amending Metro Code Section 2.04  
Relating to Contract Procedures.

Sincerely,

A. Marie Nelson  
Clerk of the Council

**Metro Council**

Richard Waker  
Presiding Officer  
District 2

Jim Gardner  
Deputy Presiding  
Officer  
District 3

Mike Ragsdale  
District 1

Corky Kirkpatrick  
District 4

Tom DeJardin  
District 5

George Van Bergen  
District 6

Sharron Kelley  
District 7

Mike Bonner  
District 8

Tanya Collier  
District 9

Larry Cooper  
District 10

David Knowles  
District 11

Gary Hansen  
District 12

Executive Officer  
Rena Cusma

AMN:ch  
Enclosure (1)



# METRO

2000 S.W. First Avenue  
Portland, OR 97201-5398  
503/221-1646

June 12, 1987

Ms. Jane McGarvin  
Clerk of the Board  
Multnomah County Court House, Room 606  
1021 S.W. Fourth Avenue  
Portland, Oregon 97204

Dear Jane:

Enclosed is a true copy of an ordinance adopted by the Metro Council. Please file this ordinance in the Metro file maintained by your County.

Ordinance No. 87-223, Amending Metro Code Section 2.04  
Relating to Contract Procedures.

Sincerely,

A. Marie Nelson  
Clerk of the Council

**Metro Council**

Richard Waker  
Presiding Officer  
District 2

Jim Gardner  
Deputy Presiding  
Officer  
District 3

Mike Ragsdale  
District 1

Corky Kirkpatrick  
District 4

Tom DeJardin  
District 5

George Van Bergen  
District 6

Sharron Kelley  
District 7

Mike Bonner  
District 8

Tanya Collier  
District 9

Larry Cooper  
District 10

David Knowles  
District 11

Gary Hansen  
District 12

**Executive Officer**  
Rena Cusma

AMN: ch  
Enclosure (1)



# METRO

2000 S.W. First Avenue  
Portland, OR 97201-5398  
503/221-1646

June 12, 1987

Mr. Charles D. Cameron  
County Administrator  
Washington County Courthouse  
150 North First Avenue  
Hillsboro, Oregon 97123

#### Metro Council

Richard Waker  
Presiding Officer  
District 2

Jim Gardner  
Deputy Presiding  
Officer  
District 3

Mike Ragsdale  
District 1

Corky Kirkpatrick  
District 4

Tom DeJardin  
District 5

George Van Bergen  
District 6

Sharron Kelley  
District 7

Mike Bonner  
District 8

Tanya Collier  
District 9

Larry Cooper  
District 10

David Knowles  
District 11

Gary Hansen  
District 12

Executive Officer  
Rena Cusma

Dear Mr. Cameron:

Enclosed is a true copy of an ordinance adopted by the Metro Council. Please file this ordinance in the Metro file maintained by your County.

Ordinance No. 87-223, Amending Metro Code Section 2.04  
Relating to Contract Procedures.

Sincerely,

A. Marie Nelson  
Clerk of the Council

AMN:ch  
Enclosure (1)