

BEFORE THE METROPOLITAN SERVICE DISTRICT
CONTRACT REVIEW BOARD

AN ORDINANCE AMENDING METRO CODE) ORDINANCE NO. 87-230
SECTION 2.04 RELATING TO CONTRACT)
PROCEDURES AND CREATING AN)
EXEMPTION FOR COMPUTER SOFTWARE)
PURCHASES)

WHEREAS, This ordinance exempts a class of contracts (computer software) from the usual competitive bid process and such an exemption requires that the findings detailed in ORS 279.015(2) be adopted by the Council of the Metropolitan Service District; and

WHEREAS, The required findings are 1) that it is unlikely that the exemption will encourage favoritism in the awarding of Public Contracts or substantially diminish competition; and 2) that the exemption will result in substantial cost savings; and

WHEREAS, Such findings are satisfied 1) by the requirement that computer software be purchased through a competitive Request For Proposals process; and 2) because the many unquantifiable factors such as compatibility and quality of the product which are involved in the selection of appropriate software indicate that the purchase of software does not lend itself to the competitive low bid process and that, consequently, the use of a low bid process for these purchases would likely result in greater long-term costs; now, therefore,

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. Section 2.04.041(b)(8) is amended to read as follows:

(8) Contracts for computer hardware and software.

Selection procedures for these contracts, however, must follow the

RFP process outlined in Section 2.04.050, "Personal Services
Contracts."

ADOPTED by the Council of the Metropolitan Service District
this 12th day of November, 1987.


Richard Waker, Presiding Officer

ATTEST:


Clerk of the Council

YS/gl
8273C/517
11/16/87

STAFF REPORT

Agenda Item No. 9.1

Meeting Date Nov. 12, 1987

CONSIDERATION OF ORDINANCE NO. 87-230 FOR THE
PURPOSE OF AMENDING METRO CODE SECTION 2.04
RELATING TO CONTRACT PROCEDURES AND CREATING AN
EXEMPTION FOR COMPUTER SOFTWARE PURCHASES

Date: October 2, 1987

Presented by: Yvonne Sherlock

FACTUAL BACKGROUND AND ANALYSIS

At its September 10, 1987, meeting the Council adopted a resolution which exempted the purchase of certain accounting software from the normal competitive bid process and allowed, instead, for the software to be selected, along with the computer hardware, through an RFP process. At that time the Council indicated that it would make sense to amend Metro's Contract Rules to provide for all software acquisitions be allowed to follow the RFP process rather than requiring staff to come to the Council for an exemption each time software is purchased.

The exemption of a class of contracts -- i.e., all computer software purchases -- requires that the Council find 1) that it is unlikely that the exemption will encourage favoritism in the awarding of Public Contracts or substantially diminish competition and 2) that the exemption will result in substantial cost savings. The first finding is satisfied by the fact that the exemption specifies that an RFP process be used for computer software acquisitions. The finding of substantial cost savings is justified by virtue of the nature of software purchases. The compatibility and quality issues and other unquantifiable factors involved do not lend themselves to the competitive bid process. A low bid requirement may very well result in a higher long-term cost to Metro. The proposed ordinance incorporates the required findings.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends that Ordinance No. 87-230 be approved.

YS/gl
8273C/517
10/12/87

Vote: A vote on the motion resulted in all eleven Councilors present voting aye. Councilor Kirkpatrick was absent.

The motion carried and the Intergovernmental Agreement was approved.

9. ORDINANCES

9.1 Consideration of Ordinance No. 87-230, for the Purpose of Amending Metro Code Chapter 2.04 Relating to Contract Procedures and Creating an Exemption for Computer Software Purchases (Second Reading)

Presiding Officer Waker announced the Council would be considering the ordinance in its capacity as the Metro Contract Review Board and that the ordinance was not subject to the Executive Officer's veto. The Clerk read the ordinance a second time by title only. There was no discussion.

Main Motion: The motion to adopt the ordinance was made by Councilors Cooper and Ragsdale on October 22, 1987, at its first reading.

Vote: A roll call vote on the motion resulted in all eleven Councilors present voting aye. Councilor Kirkpatrick was absent.

The motion carried and Ordinance No. 87-230 was adopted.

9.2 Consideration of Ordinance No. 87-231, for the Purpose of Amending Metro Code Chapter 2.04 Relating to the Disadvantaged Business Program (Second Reading)

The Clerk read the ordinance a second time by title only.

Main Motion: The motion to adopt the ordinance was made by Councilors Kirkpatrick and Knowles on October 22, 1987, at its first reading.

Ray Phelps reported that as a result of public testimony and Councilor questions on October 22, staff met again with the citizen's group who had worked to revise Metro's Disadvantaged Business Enterprise (DBE) Program. He then distributed proposed amendments to the ordinance which were endorsed by that group. Mr. Phelps and Yvonne Sherlock, Contracts Officer, reviewed each amendment and answered questions of Councilors.

Councilor Collier pointed out new Council procedures were needed that took into account the Executive Officer's veto. The Presiding Officer asked Mr. Cooper to recommend changes to the Council's procedures for future consideration. Councilor Ragsdale further suggested parliamentary procedures other than Roberts Rules of Order be adopted for Council use.

There were no questions of Councilors concerning Ordinance No. 87-233.

Motion: Councilor Kirkpatrick moved, seconded by Councilor Ragsdale, to adopt Ordinance No. 87-232.

Presiding Officer Waker opened the public hearing. There was no testimony and the hearing was closed. He announced the second reading of the ordinance was scheduled for November 12, 1987.

7.3 Consideration of Ordinance No. 87-229, for the Purpose of Amending Metro Code Chapter 3.02, Amending the Regional Waste Treatment Management Plan, and Submitting it for Recertification (Second Reading)

The Clerk read the ordinance by title only a second time.

Presiding Officer Waker announced that a first reading and public hearing had been conducted on October 8 and at that meeting, Councilor DeJardin and Kirkpatrick had moved for adoption of the ordinance.

There was no discussion.

Vote: A roll call vote on the motion to adopt the ordinance (made by Councilors DeJardin and Kirkpatrick on October 8, 1987) resulted in all twelve Councilors voting aye.

The motion carried and Ordinance No. 87-229 was unanimously adopted.

7.4 Consideration of Ordinance No. 87-230, for the Purpose of Amending Metro Code Chapter 2.04 Relating to Contract Procedures and Creating an Exemption for Computer Software Purchases (First Reading and Public Hearing)

The Clerk read the ordinance a first time by title only. Presiding Officer Waker announced the ordinance would be considered by the Council in their capacity as the Metro Contract Review Board.

Ray Phelps, Finance & Administration Manager, reported Metro's Code already granted exemptions for computer hardware. By adoption of

this ordinance, software could be acquired by a request for proposals process, rather than a low bid process.

Councilor Van Bergen asked if the exemption would result in increased staff time to analyze proposals. Mr. Phelps said he would return on November 12 with an answer to the question.

Motion: Councilor Cooper moved to adopt Ordinance No. 87-230 and Councilor Ragsdale seconded the motion.

Presiding Officer Waker opened the public hearing. There was no testimony and the hearing was closed. He announced the second reading of the ordinance was scheduled for November 12, 1987.

7.5 Consideration of Ordinance No. 87-231, for the Purpose of Amending Metro Code Chapter 2.04 Relating to the Disadvantaged Business Program (First Reading and Public Hearing)

Ray Phelps reviewed staff's written report. He explained that two events had occurred this year which required revisions in Metro's Disadvantaged Business Program: 1) the 1987 Oregon Legislature adopted a bill which transferred certification authority for disadvantaged and women businesses (DBE's and WBE's) from the Oregon Department of Transportation (ODOT) to the Executive Department; and 2) the Ninth Circuit Court of Appeals rendered a decision which clarified the constitutional limits of disadvantaged business programs. Staff had also determined it would be practical for the program's goal year to run concurrently with the budget year rather than the federal fiscal year.

Mr. Phelps reported that as a result of public concerns, an informal "task force" of DBE's, WBE's, prime contractors and local government representatives had been meeting to review Metro's DBE program and to make recommendations for improvement. Those in attendance at the final October 5 session of the review group concurred with the revisions to the program embodied in Ordinance No. 87-230, he said. A list of the group's participants was distributed to Councilors.

Mr. Phelps then reviewed recommended changes to the DBE program. Referring to page 11, subsection (d), Councilor Ragsdale suggested the language be changed to read: "Even though no DBE/WBE subcontracting opportunities appear likely at the time of contract award, the Liaison Officer [may] shall direct the inclusion of a clause in any contract described in this section . . ." He thought the change consistent with staff's stated intent.

Councilor Kelley requested staff indicate which changes were in compliance with state law and which changes were in response to the



METRO

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

November 20, 1987

Mr. John Kauffman
County Clerk
Clackamas County Courthouse
8th and Main
Oregon City, OR 97045

Dear Mr. Kauffman:

Enclosed are true copies of the following Ordinances of adopted by the Metro Council. Please file these Ordinances in the Metro files maintained by your county.

Ordinance No. 87-230 for the Purpose of Amending Metro Code Chapter 2.04 Relating to Contract Procedures and Creating an Exemption for Computer Software Purchases.

Ordinance No. 87-231 for the Purpose of Amending Metro Code Chapter 2.04 Relating to the Disadvantaged Business Program.
Ordinance No. 87-232 for the Purpose of Amending Section 2.02.010 and Adding a New Section 2.04.035 to the Code of Metropolitan Service District Relating to Personnel and Contracting Rules for the Metropolitan Exposition-Recreation Commission.

Ordinance No. 87-233 for the Purpose of Amending Metro Code Section 2.04.041 Creating an Exemption for Agreements for the Lease or Use of the Oregon Convention Center from Public Bidding Requirements.

Sincerely,

A. Marie Nelson
Clerk of the Council

AMN:pea

Enclosures

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



METRO

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

November 20, 1987

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

Dear Mr. Cameron:

Enclosed are true copies of the following Ordinances of adopted by the Metro Council. Please file these Ordinances in the Metro files maintained by your county.

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Sincerely,

A. Marie Nelson
Clerk of the Council

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Gary Hansen
District 12

Executive Officer
Rena Cusma



METRO

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

November 20, 1987

Ms. Jane McGarvin
Clerk of the Board
Multnomah County Courthouse
1021 S. W. Fourth Avenue
Portland, OR 97204

Dear Jane:

Enclosed are true copies of the following Ordinances of adopted by the Metro Council. Please file these Ordinances in the Metro files maintained by your county.

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Sincerely,

A. Marie Nelson
Clerk of the Council

AMN:pea

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