

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING METRO) ORDINANCE NO. 87-231
CODE SECTION 2.04 RELATING TO THE)
DISADVANTAGED BUSINESS PROGRAM)

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

That the Metropolitan Service District Disadvantaged Business Program, incorporated in Metro Code Sections 2.04.100 through 2.04.180, is amended as follows:

2.04.100 Disadvantaged Business Program, Purpose and Authority:

(a) It is the purpose of this ordinance to establish and implement a program to encourage the utilization by Metro of disadvantaged and women-owned businesses by creating for such businesses the maximum possible opportunity to compete for and participate in Metro contracting activities.

(b) The portions of this ordinance which relate to federally funded contracts are adopted pursuant to 49 CFR 23 and are intended to comply with all relevant federal regulations. Federal regulation 49 CFR 23 and its amendments implement section (105)(f) of the Surface Transportation Assistance Act of 1982 relating to the participation by Minority Business Enterprises in Department of Transportation programs.

(c) This ordinance shall be known and may be cited as the "Metro Disadvantaged Business Program," hereinafter referred to as the "Program."

(d) This ordinance supersedes the Metro "Minority Business Enterprise (MBE) Program" dated October 1980 and amended December 1982.

(Ordinance No. 83-165, Sec. 1; amended by Ordinance No. 84-181, Sec. 1)

2.04.105 Policy Statement:

(a) Through this Program, Metro:

- (1) expresses its strong commitment to provide maximum opportunity to disadvantaged and women-owned businesses in contracting;
- (2) informs all employees, governmental agencies and the general public of its intent to implement this policy statement; and

(3) assures conformity with applicable federal regulations as they exist or may be amended.

(b) It is the policy of Metro to provide equal opportunity to all persons to access and participate in the projects, programs and services of Metro. Metro and Metro contractors will not discriminate against any person or firm on the basis of race, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status.

(c) The policies, practices and procedures established by this ordinance shall apply to all Metro departments and project areas except as expressly provided in this ordinance.

(d) The objectives of the program shall be:

(1) to assure that provisions of this ordinance are adhered to by all Metro departments, contractors, employees and USDOT subrecipients and contractors.

(2) to initiate and maintain efforts to increase program participation by disadvantaged and women businesses.

(e) Metro accepts and agrees to the statements of 49 CFR §23.43(a)(1) and (2), and said statements shall be included in all USDOT agreements with USDOT subrecipients and in all USDOT assisted contracts between Metro or USDOT subrecipients and any contractor. (Ordinance No. 83-165, Sec. 2)

2.04.110 Definitions: For purposes of this Ordinance, the following definitions shall apply:

- (1) APPLICANT -- one who submits an application, request or plan to be approved by a USDOT official or by Metro as a condition to eligibility for Department of Transportation (USDOT) financial assistance; and "application" means such an application, request or plan.
- (2) CONSTRUCTION CONTRACT -- means a contract for construction of buildings or other facilities, and includes reconstruction, remodeling and all activities which are appropriately associated with a construction project.
- (3) CONTRACT -- means a mutually binding legal relationship or any modification thereof obligating the seller to furnish supplies or services, including construction, and the buyer to pay for them. For purposes of this ordinance a lease or a purchase order of \$500.00 or more is a contract.
- (4) CONTRACTOR -- means the one who participates, through a contract or subcontract, in the Program and includes lessees.

- (5) DEPARTMENT or "USDOT" -- means the United States Department of Transportation, including its operating elements.
- (6) DISADVANTAGED BUSINESS or DBE -- means a small business concern which is certified by an authorized agency and:
 - (a) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
 - (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- (7) EXECUTIVE DEPARTMENT -- means the State of Oregon's Executive Department.
- (8) JOINT VENTURE -- is defined as an association of two or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge. A joint venture of a DBE/WBE and a non-DBE/WBE must receive Metro approval prior to contract award to be counted toward any DBE/WBE contract goals.
- (9) LABOR AND MATERIALS CONTRACT -- is a contract including a combination of service and provision of materials other than construction contracts. Examples may include plumbing repair, computer maintenance or electrical repair, etc.
- (10) LESSEE -- means a business or person that leases, or is negotiating to lease, property from a recipient or the Department on the recipient's or Department's facility for the purpose of operating a transportation-related activity or for the provision of goods or services to the facility or to the public on the facility.
- (11) OREGON DEPARTMENT OF TRANSPORTATION OR "ODOT" -- means the State of Oregon's Department of Transportation.
- (12) PERSONAL SERVICES CONTRACT -- means a contract for services of a personal or professional nature.
- (13) PROCUREMENT CONTRACT -- means a contract for the purchase or sale of supplies, materials, equipment, furnishings or other goods not associated with a construction or other contract.
- (14) RECIPIENT -- means any entity, public or private, to whom USDOT financial assistance is extended, directly or through another recipient for any program.

- (15) **SMALL BUSINESS CONCERN** -- means a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.
- (16) **SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS OR DISADVANTAGED INDIVIDUALS** -- means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans or Asian-Indian Americans and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act. Certifying recipients shall make a rebuttable presumption that individuals in the following groups are socially and economically disadvantaged. Certifying recipients also may determine, on a case-by-case basis, that individuals who are not a member of one of the following groups are socially and economically disadvantaged:
- (a) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - (b) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;
 - (c) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - (d) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas; and
 - (e) "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh.
- (18) **USDOT ASSISTED CONTRACT** -- means any contract or modification of a contract between Metro and a contractor which is paid for in whole or in part with USDOT financial assistance.
- (5) **USDOT FINANCIAL ASSISTANCE** -- means financial aid provided by USDOT or the United States Railroad Association to a recipient, but does not include a direct contract. The financial aid may be provided directly in the form of actual money, or indirectly in the form of guarantees authorized by statute as financial assistance services of Federal personnel, title or other interest in real or personal property transferred for less than fair market value, or any other arrangement through which the recipient benefits financially, including licenses for the construction or operation of a Deep Water Port.

- (19) WOMEN-OWNED BUSINESS ENTERPRISE or WBE -- means a small business concern, as defined pursuant to section 3 of the Small Business Act and implementing regulations which is owned and controlled by one or more women and which is certified by an authorized agency. "Owned and controlled" means a business which is at least 51 percent owned by one or more women or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by one or more women, and whose management and daily business operations are controlled by one or more women.

(Ordinance No. 165, Sec. 3; amended by Ordinance No. 84-181, Sec. 2)

2.04.115 Notice to Contractors, Subcontractors and Subrecipients:

Contractors, subcontractors and subrecipients of Metro accepting contracts or grants under the Program which are USDOT-assisted shall be advised that failure to carry out the requirements set forth in 49 CFR 23.43(a) shall constitute a breach of contract and, after notification by Metro, may result in termination of the agreement or contract by Metro or such remedy as Metro deems appropriate. Likewise, contractors of Metro accepting locally-funded contracts under the Program shall be advised that failure to carry out the applicable provisions of the Program shall constitute a breach of contract and, after notification by Metro, may result in termination or such other remedy as Metro deems appropriate. (Ordinance No. 83-165, Sec. 4)

2.04.120 Liaison Officer:

(a) The Executive Officer shall by executive order, designate a Disadvantaged Business Liaison Officer and, if necessary, other staff adequate to administer the Program. The Liaison Officer shall report directly to the Executive Officer on matters pertaining to the Program. (Ordinance No. 83-165, Sec. 5)

(b) The Liaison Officer shall be responsible for developing, managing and implementing the program, and for disseminating information on available business opportunities so that DBEs and WBEs are provided an equitable opportunity to bid on Metro contracts. In addition to the responsibilities of the Liaison Officer, all department heads and program managers shall have responsibility to assure implementation of the Program.

2.04.125 Directory:

A directory of DBEs and WBEs certified by ODOT or the Executive Department, as applicable shall be maintained by the Liaison Officer to facilitate identifying such businesses with capabilities relevant to general contracting requirements and particular solicitations. The directory shall be available to contract bidders and proposers in their efforts to meet Program requirements. (Ordinance No. 83-165, Sec. 6)

2.04.130 Minority-Owned Banks: Metro will seek to identify minority-owned banks within the policies adopted by the Metro Council and make the greatest feasible use of their services. In addition, Metro will encourage prime contractors, subcontractors and consultants to utilize such services by sending them brochures and service information on certified DBE/WBE banks. (Ordinance No. 83-165, Sec. 7; amended by Ordinance No. 84-181, Sec. 3)

2.04.135 Affirmative Action and Equal Opportunity Procedures:

Metro shall use affirmative action techniques to facilitate DBE and WBE participation in contracting activities. These techniques include:

- (a) Arranging solicitations, time for the presentation of bids, quantities specifications, and delivery schedules so as to facilitate the participation of DBEs and WBEs.
- (b) Referring DBEs and WBEs in need of management assistance to established agencies that provide direct management assistance to such businesses.
- (c) Carrying out information and communications programs on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate.
- (d) Distribution of copies of the program to organizations and individuals concerned with DBE/WBE programs.
- (e) Periodic reviews with department heads to insure that they are aware of the program goals and desired activities on their parts to facilitate reaching the goals. Additionally, departmental efforts toward and success in meeting DBE/WBE goals for department contracts shall be factors considered during annual performance evaluations of the department heads.
- (f) Monitor and insure that Disadvantaged and Women Business Enterprise planning centers and likely DBE/WBE contractors are receiving requests for bids, proposals and quotes.
- (g) Study the feasibility of certain USDOT-assisted contracts and procurements being set aside for DBE/WBE participation. (Ordinance No. 83-165, Sec. 8, amended by Ordinance No. 84-181, Sec. 4)
- (h) Distribution of lists to potential DBE/WBE contractors of the types of goods and services which Metro regularly purchases.
- (i) Advising potential DBE/WBE vendors that Metro does not certify DBE/WBEs, and directing them to ODOT until December 31, 1987, and, thereafter, to the Executive Department.

(j) Specifying purchases by generic title rather than specific brand name whenever feasible.

(k) Establishing an interdepartmental contract management committee which will meet regularly to monitor and discuss, among other issues, potential DBE and WBE participation in contracts. In an effort to become more knowledgeable regarding DBE and WBE resources, the committee shall also invite potential DBE and WBE contractors to attend selected meetings.

(l) Requiring that at least one DBE or WBE vendor or contractor be contacted for all contract awards which are not exempt from Metro's contract selection procedures and which are 1) for more than \$500 but not more than \$15,001 in the case of non-personal services contracts; and 2) for more than \$2,500 but not more than \$10,001 for personal services contracts. The Liaison Officer may waive this requirement if he/she determines that there are no DBEs or WBEs on the certification list capable of providing the service or item. For contracts over the dollar amounts indicated in this section, all known DBEs and WBEs in the business of providing the service or item(s) required shall be mailed bid or proposal information.

(m) The Executive Officer or his/her designee, may establish and implement additional affirmative action techniques which are designed to facilitate participation of DBEs and WBEs in Metro contracting activities.

2.04.140 Certification of Disadvantaged Business Eligibility:

(a) To participate in the Program as a DBE or WBE, contractors, subcontractors and joint ventures must have been certified by an authorized certifying agency as described in subsection (b) of this section.

(b) Metro will not perform certification or recertification of businesses or consider challenges to socially and economically disadvantaged status. Rather Metro will rely upon the certification and recertification processes of ODOT and will utilize ODOT's certification list until December 31, 1987, and, thereafter, the Executive Department's list in determining whether a prospective contractor or subcontractor is certified as a DBE or WBE. A prospective contractor or subcontractor must be certified as a DBE or WBE by one of the above agencies, as applicable, and appear on the respective certification list of said agency, prior to the award of a contract to be considered by Metro to be an eligible DBE or WBE and be counted toward meeting goals. Metro will adhere to the Recertification Rulings resulting from 105(f) or state law, as applicable.

(c) Prospective contractors or subcontractors which have been denied certification by one of the above agencies may appeal such denial to the certifying agency pursuant to applicable law. However, such appeal shall not cause a delay in any contract award by Metro. Decertification procedures for USDOT-assisted contractor or potential contractors will comply with the requirements of Appendix A "Section by Section Analysis" of the July 21, 1983, Federal Register, Vol. 45, No. 130, p. 45287, and will be administered by the agency which granted certification.

(d) Challenges to certification or to any presumption of social or economic disadvantage with regard to the USDOT-assisted portion of this Program, as provided for in 49 CFR 23.69, shall conform to and be processed under the procedures prescribed by each agency indicated in paragraph (b) of this section. That challenge procedure provides that:

"(1) Any third party may challenge the socially and economically disadvantaged status of any individual (except an individual who has a current 8(a) certification from the Small Business Administration) presumed to be socially and economically disadvantaged if that individual is an owner of a firm certified by or seeking certification from the certifying agency as a disadvantaged business. The challenge shall be made in writing to the recipient.

"(2) With its letter, the challenging party shall include all information available to it relevant to a determination of whether the challenged party is in fact socially and economically disadvantaged.

"(3) The recipient shall determine, on the basis of the information provided by the challenging party, whether there is reason to believe that the challenged party is in fact not socially and economically disadvantaged.

"(i) If the recipient determines that there is not reason to believe that the challenged party is not socially and economically disadvantaged, the recipient shall so inform the challenging party in writing. This terminates the proceeding.

"(ii) If the recipient determines that there is reason to believe that the challenged party is not socially and economically disadvantaged, the recipient shall begin a proceeding as provided in paragraphs (b), (4), (5) and (6) of this paragraph.

"(4) The recipient shall notify the challenged party in writing that his or her status as a socially and economically disadvantaged individual has been challenged. The notice shall identify the challenging party and summarize the grounds for the

challenge. The notice shall also require the challenged party to provide to the recipient, within a reasonable time, information sufficient to permit the recipient to evaluate his or her status as a socially and economically disadvantaged individual.

"(5) The recipient shall evaluate the information available to it and make a proposed determination of the social and economic disadvantage of the challenged party. The recipient shall notify both parties of this proposed determination in writing, setting forth the reasons for its proposal. The recipient shall provide an opportunity to the parties for an informal hearing, at which they can respond to this proposed determination in writing and in person.

"(6) Following the informal hearing, the recipient shall make a final determination. The recipient shall inform the parties in writing of the final determination, setting forth the reasons for its decision.

"(7) In making the determinations called for in paragraphs (b)(3)(5) and (6) of this paragraph, the recipient shall use the standards set forth in Appendix C of this subpart.

"(8) During the pendency of a challenge under this section, the presumption that the challenged party is a socially and economically disadvantaged individual shall remain in effect." 49 CFR 23.69. (Ordinance No. 83-165, Sec. 9; amended by Ordinance No. 84-181, Sec. 5)

2.04.145 Annual Disadvantaged Business Goals:

(a) The Metro Council shall, by resolution each June, establish annual DBE goals, and separate WBE goals, for the ensuing fiscal year. Such annual goals shall be established separately for construction contracts, labor and materials contracts, personal services contracts, procurement contracts, and USDOT assisted contracts regardless of type.

(b) Annual goals will be established taking into consideration the following factors:

- (1) projection of the number and types of contracts to be awarded by Metro;
- (2) projection of the number, expertise and types of DBEs and WBEs likely to be available to compete for the contracts;
- (3) past results of Metro's efforts under the Program; and
- (4) for USDOT-assisted contract goals, existing goals of other local USDOT recipients and their experience in meeting these goals.

- (5) for locally-funded contract goals, existing goals of other Portland metropolitan area contracting agencies, and their experience in meeting these goals.

(c) Annual goals for USDOT-assisted contracts must be approved by the United States Department of Transportation. 49 CFR §23.45(g)(3).

(d) Metro will publish notice that the USDOT-assisted contract goals are available for inspection when they are submitted to USDOT or other federal agencies. They will be made available for 30 days following publication of notice. Public comment will be accepted for 45 days following publication of the notice. (Ordinance No. 83-165, Sec. 10)

(e) Metro will publish notice regarding proposed locally-funded contract goals not later than ten (10) days prior to adoption of the goals.

2.04.150 Contract Goals:

(a) The annual goals established for construction contracts shall apply as individual contract goals for construction contracts over \$50,000 and shall be met pursuant to the following subsections.

(b) Contract goals for construction contracts over \$50,000 may be complied with by prime contractors only by subcontracting a percentage of the contract work, equal to or exceeding the contract goal, to one or more DBE or WBE subcontractors or by a showing of good faith efforts to comply pursuant to Section 2.04.160 of this chapter.

(c) The Liaison Officer may set a contract goal for any contract other than construction contracts over \$25,000. The setting of such contract goal shall be made in writing prior to the solicitation of bids for such contract. Contract goals for contracts other than construction contracts over \$50,000 shall be set at the discretion of the Liaison Officer and shall not be tied, necessarily, to the annual goal for such contract type. Contract goals for such contracts may be complied with pursuant to Section 2.04.175(a)(2) or Section 2.04.160 of this chapter. (Ordinance No. 83-165, Sec. 11)

(d) Even though no DBE/WBE goals are established at the time that bid/proposal documents are drafted, the Liaison Officer shall direct the inclusion of a clause in any RFP or bid documents for any contract described in this section which requires that the prime contractor, prior to entering into any subcontracts, make good faith efforts, as that term is defined in Section 2.04.160, to achieve DBE/WBE participation in the same goal amount as the current annual goal for that contract type.

2.04.155 Contract Award Criteria:

(a) To be eligible for award of contracts containing a DBE/WBE goal, prime contractors must either meet or exceed the specific goal for DBE and WBE participation, or prove that they have made good faith efforts to meet the goal prior to the time bids are opened or proposal are due. Bidders/Proposers are required to utilize the most current list of DBEs and WBEs certified by ODOT until December 31, 1987, and, thereafter, by the Executive Department, in all of the bidders'/proposers' good faith efforts solicitations. The address where certified lists may be obtained shall be included in all applicable bid/proposal documents.

(b) All invitations to bid or request for proposals on contracts for which goals have been established shall require all bidders/proposers to submit with their bids and proposals a statement indicating that they will comply with the contract goal or that they have made good faith efforts as defined in Section 2.04.160 to do so. To document the intent to meet the goals, all bidders and proposers shall complete and endorse a Disadvantaged Business Program Compliance form and include said form with bid or proposal documents. The form shall be provided by Metro with bid/proposal solicitations.

(c) Agreements between a bidder/proposer and a DBE/WBE in which the DBE/WBE promises not to provide subcontracting quotations to other bidders/proposers are prohibited.

(d) Apparent low bidders/proposers shall by the close of the next working day following bid opening, (or proposal submission date when no public opening is had), submit to Metro detailed DBE and WBE Utilization Forms listing names of DBEs and WBEs who will be utilized and the nature and dollar amount of their participation. This form will be binding upon the bidder/proposer. Within five working days of bid opening or proposal submission date, such bidders/proposers shall submit to Metro signed Letters of Agreement between the bidder/proposer and DBE/WBE subcontractors and suppliers to be utilized in performance of the contract. A sample Letter of Agreement will be provided by Metro. The DBE and WBE Utilization Forms shall be provided by Metro with bid/proposal documents.

(e) An apparent low bidder/proposer who states in its bid/proposal that the DBE/WBE goals were not met but that good faith efforts were performed shall submit written evidence of such good faith efforts within two working days of bid opening or proposal submission in accordance with Section 2.04.160. Metro reserves the right determine the sufficiency of such efforts.

(f) Except as provided in paragraph (g) of this section, apparent low bidders or apparent successful proposers who state in their bids/proposals that they will meet the goals or will show good faith efforts to meet the goals, but who fail to comply with paragraph (d) or (e) of this section, shall have their bids or proposals rejected and shall forfeit any required bid security or bid bond. In that

event the next lowest bidder or, for personal services contracts, the firm which scores second highest shall, within two days of notice of such ineligibility of the low bidder, submit evidence of goal compliance or good faith effort as provided above. This process shall be repeated until a bidder or proposer is determined to meet the provisions of this section or until Metro determines that the remaining bids are not acceptable because of amount of bid or otherwise.

(g) The Liaison Officer, at his or her discretion, may waive minor irregularities in a bidder's or proposer's compliance with the requirements of this section provided, however, that the bid or proposal substantially complies with public bidding requirements as required by applicable law. (Ordinance No. 83-165, Sec. 12)

2.04.160 Determination of Good Faith Efforts:

(a) Bidders or Proposers on USDOT-assisted contracts to which DBE/WBE goals apply must, to be eligible for contract award, comply with the applicable contract goal or show that good faith efforts have been made to comply with the goal. Good faith efforts should include at least the following standards established in the amendment to 49 CFR §23.45(h), Appendix A, dated Monday, April 27, 1981. A showing of good faith efforts must include written evidence of at least the following:

- (1) Attendance at any presolicitation or prebid meetings that were scheduled by Metro to inform disadvantaged and women business enterprises of contracting and subcontracting or material supply opportunities available on the project;
- (2) Advertisement in trade association, general circulation, minority and trade-oriented, women-focus publications, if any and through a minority-owned newspaper or minority-owned trade publication concerning the subcontracting or material supply opportunities at least 10 days before bids or proposals are due.
- (3) Written notification to a reasonable number but no less than five (5) DBE/WBE firms that their interest in the contract is solicited. Such efforts should include the segmenting of work to be subcontracted to the extent consistent with the size and capability of DBE/WBE firms in order to provide reasonable subcontracting opportunities. Each bidder should send solicitation letters inviting quotes or proposals from DBE/WBE firms, segmenting portions of the work and specifically describing, as accurately as possible, the portions of the work for which quotes or proposals are solicited from DBE/WBE firms and encouraging inquiries for further details. Letters that are general and do not

describe specifically the portions of work for which quotes or proposals are desired are discouraged, as such letters generally do not bring responses. It is expected that such letters will be sent in a timely manner so as to allow DBE/WBE sufficient opportunity to develop quotes or proposals for the work described.

- (4) Evidence of follow-up to initial solicitations of interest, including the following:
 - A. the names, addresses, telephone numbers of all DBE/WBE contacted;
 - B. a description of the information provided to DBE/WBE firms regarding the plans and specifications for portions of the work to be performed; and
 - C. a statement of the reasons for non-utilization of DBE/WBE firms, if needed to meet the goal.
- (5) Negotiation in good faith with DBE/WBE firms. The bidder shall not, without justifiable reason, reject as unsatisfactory bids prepared by any DBE/WBE firms;
- (6) Where applicable, the bidder must provide advice and assistance to interested DBE/WBE firms in obtaining bonding, lines of credit or insurance required by Metro or the bidder;
- (7) Overall, the bidder's efforts to obtain DBE/WBE participation must be reasonably expected to produce a level of participation sufficient to meet Metro's goals; and
- (8) The bidder must use the services of minority community organizations, minority contractor groups, local, state and federal minority business assistance offices and other organizations identified by the Executive Department's Advocate for Minority and Women Business that provide assistance in the recruitment and placement of DBEs and WBEs.

(b) Bidders or proposers on locally-funded contracts to which DBE/WBE goals apply shall achieve the applicable contract goal or demonstrate that they have made good faith efforts to achieve the goals. Good faith efforts shall include written documentation of at least the following actions by bidders:

- (1) Attendance at any presolicitation or prebid meetings that were scheduled by Metro to inform DBEs and WBEs of contracting and subcontracting or material supply opportunities available on the project;

Documentation required: Signature of representative of bidder or proposer on prebid meeting attendance sheet.

- (2) Identifying and selecting specific economically feasible units of the project to be performed by DBEs or WBEs to increase the likelihood of participation by such enterprises;

Minimum documentation required: At least the documentation required under subsection (4) below.

- (3) Advertising in, at a minimum, a newspaper of general circulation, and trade association, minority and trade-oriented, women-focused publications, if any, concerning the subcontracting or material supply opportunities on the project at least ten (10) days before bids or proposals are due;

Documentation required: copies of ads published.

- (4) Providing written notice soliciting sub-bids/proposals to not less than five (5) DBEs or WBEs for each subcontracting or material supply work item selected pursuant to (2) above not less than ten (10) days before bids/proposals are due.

If there are less than five certified DBEs/WBEs listed for that work or supply specialty then the solicitation must be mailed to at least the number of DBEs/WBEs listed for that specialty. The solicitation shall include a description of the work for which subcontract bids/proposals are requested and complete information on bid/proposal deadlines along with details regarding where project specifications may be reviewed.

Documentation required: Copies of all solicitation letters sent to DBE/WBE along with a written statement from the bidder/proposer that all of the letters were sent by regular or certified mail not less than 10 days before bids/proposals were due.

- (5) Making, not later than five days before bids/proposals are due, follow-up phone calls to all DBEs/WBEs who have not responded to the solicitation letters to determine if they would be submitting bids and/or to encourage them to do so.

Minimum documentation required: Log showing a) dates and times of follow-up calls along with names of individuals contacted and individuals

placing the calls; and b) results attained from each DBE/WBE to whom a solicitation letter was sent (e.g., bid submitted, declined, no response). In instances where DBE/WBE bids were rejected, the dollar amount of the bid rejected from the DBE/WBE must be indicated along with the reason for rejection and the dollar amount of the bid which was accepted for that subcontract or material supply item.

- (6) Using the services of minority community organizations, minority contractor groups, local, state and federal minority business assistance offices and other organizations identified by the Executive Department's Advocate for Minority and Women Business that provide assistance in the recruitment and placement of DBEs and WBEs; where applicable, advising and assisting DBEs and WBEs in obtaining lines of credit or insurance required by Metro or the bidder/proposer; and, otherwise, making efforts to encourage participation by DBEs and WBEs which could reasonably be expected to produce a level of participation sufficient to meet the goals.

Minimum documentation required: Letter from bidder/proposer indicating all special efforts made to facilitate attainment of contract goals, the dates such actions were taken and results realized.

- (7) Notwithstanding any other provision of this section, bidders and proposers on locally-funded contracts to which DBE/WBE goals apply need not accept the bid of a DBE or WBE on any particular subcontract or material supply item if the bidder/proposer demonstrates that none of the DBEs or WBEs submitting bids were the lowest responsible, responsive and qualified bidders/proposers on that particular subcontract item and that the subcontract item was awarded to the lowest responsible, responsive bidder/proposer.

Metro reserves the right to require additional written documentation of good faith efforts and bidders and proposers shall comply with all such requirements by Metro. It shall be a rebuttable presumption that a bidder or proposer has made a good faith effort to comply with the contract goals if the bidder has performed and submits written documentation of all of the above actions. It shall be a rebuttable presumption that the bidder has not made a good faith effort if the bidder has not performed or has not submitted documentation of all of the above actions.

2.04.165 Replacement of DBE or WBE Subcontractors:

Prime contractors shall not replace a DBE/WBE subcontractor with another subcontractor, either before contract award or during contract performance, without prior Metro approval. Prime contractors who replace a DBE or WBE subcontractor shall replace such DBE/WBE subcontractor with another certified DBE/WBE subcontractor or make good faith efforts as described in the preceding section to do so. (Ordinance No. 83-165, Sec. 14; amended by Ordinance No. 86-197, Sec. 1)

2.04.170 Records and Reports:

(a) Metro shall develop and maintain a recordkeeping system to identify and assess DBE and WBE contract awards, prime contractors' progress in achieving goals and affirmative action efforts. Specifically, the following records will be maintained:

- (1) Awards to DBEs and WBEs by number, percentage and dollar amount.
- (2) A description of the types of contracts awarded.
- (3) The extent to which goals were exceeded or not met and reasons therefor.

(b) All DBE and WBE records will be separately maintained. Required DBE and WBE information will be provided to federal agencies and administrators on request.

(c) The Liaison Officer shall prepare reports, at least semiannually, on DBE and WBE participation to include the following:

- (1) the number of contracts awarded;
- (2) categories of contracts awarded;
- (3) dollar value of contracts awarded;
- (4) percentage of the dollar value of all contracts awarded to DBE/WBE firms in the reporting period; and
- (5) the extent to which goals have been met or exceeded.

(Ordinance No. 83-165, Sec. 15; amended by Ordinance No. 84-181, Sec. 7, and Ordinance No. 86-197, Sec. 1)

2.04.175 Counting Disadvantaged Business Participation Toward Meeting Goals:

(a) DBE/WBE participation shall be counted toward meeting the goals on each contract as follows:

- (1) Subject to the limitations indicated in paragraphs (2) through (8) below, the total dollar value of a contract to be performed by DBEs or WBEs is counted toward the applicable goal for contract award purposes as well as annual goal compliance purposes.
- (2) The total dollar value of a contract to a disadvantaged business owned and controlled by both disadvantaged males and non-disadvantaged females is counted toward the goals for disadvantaged businesses and women, respectively, in proportion to the percentage of ownership and control of each group in the business.

The total dollar value of a contract with a disadvantaged business owned and controlled by disadvantaged women is counted toward either the disadvantaged business goal or the goal for women, but not to both. Metro shall choose the goal to which the contract value is applied.

- (3) Metro shall count toward its goals a portion of the total dollar value of a contract with an eligible joint venture equal to the percentage of the ownership and control of the disadvantaged or female business partner in the joint venture.
- (4) Metro shall count toward its goals only expenditures to DBEs and WBEs that perform a commercially useful function in the work of a contract. A DBE or WBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether a DBE or WBE is performing a commercially useful function, Metro shall evaluate the amount of work subcontracted, industry practices and other relevant factors.
- (5) Consistent with normal industry practices, a DBE or WBE may enter into subcontracts. If a DBE or WBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the DBE or WBE shall be presumed not to be performing a commercially useful function. The DBE or WBE may present evidence to Metro to rebut this presumption. Metro's decision on the rebuttal of this presumption is subject to review by USDOT for USDOT-assisted contracts.
- (6) A DBE or WBE which provides both labor and materials may count toward its disadvantaged business goals

expenditures for materials and supplies obtained from other than DBE or WBE suppliers and manufacturers, provided that the DBE or WBE contractor assumes the actual and contractual responsibility for the provision of the materials and supplies.

- (7) Metro shall count its entire expenditure to a DBE or WBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale).
- (8) Metro shall count against the goals 20 percent of its expenditures to DBE or WBE suppliers that are not manufacturers, provided that the DBE or WBE supplier performs a commercially useful function in the supply process.

(9) When USDOT funds are passed-through by Metro to other agencies, any contracts made with those funds and any DBE or WBE participation in those contracts shall only be counted toward Metro's goals. Likewise, any USDOT funds passed-through to Metro from other agencies and then used for contracting shall count only toward that agency's goals. Project managers responsible for administration of pass-through agreements shall include the following language in those agreements:

"(a) Policy. It is the policy of the Department of Transportation that minority business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this agreement. Consequently, the MBE requirements of 49 CFR Part 23 apply to this agreement.

"(b) MBE Obligation. The recipient or its contractor agrees to ensure that minority business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of USDOT-assisted contracts."

(b) DBE or WBE participation shall be counted toward meeting annual goals as follows:

- (1) Except as otherwise provided below, the total dollar value of any contract which is to be performed by a DBE or WBE is counted toward meeting annual goals.
- (2) The provisions of paragraphs (a)(2) through (a)(8) of this section, pertaining to contract goals, shall apply equally to annual goals.

(Ordinance No. 83-165, Sec. 16; amended by Ordinance No. 84-181, Sec. 8; and Ordinance No. 86-197, Sec. 1)

2.04.180 Compliance and Enforcement:

(a) Metro shall reserve the right, at all times during the period of any contract, to monitor compliance with the terms of this chapter and the contract and with any representation made by a contractor prior to contract award pertaining to DBE and WBE participation in the contract.

(b) The Liaison Officer may require, at any stage of contract completion, documented proof from the contractor of actual DBE and WBE participation. (Ordinance No. 83-165, Sec. 17)

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

Richard Waker
Richard Waker, Presiding Officer

ATTEST:

A. Marie Wilson
Clerk of the Council

YS/gl/8206C/514
11/17/87

I certify this ordinance was not vetoed by the Executive Officer.

A. Marie Wilson
Clerk of the Council

11/20/87
Date



METRO

Memorandum

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

Date: November 18, 1987

To: Rena Cusma, Executive Officer

From: Marie Nelson, Clerk of the Council *AMN*

Regarding: TRANSMITTAL OF ORDINANCE NO. 87-231 FOR CONSIDERATION
OF VETO

Attached for your consideration is a certified true copy of Ordinance No. 87-231, adopted by the Council on November 12, 1987.

If you wish to veto this ordinance, I must receive a signed and dated written veto message from you no later than 5:00 p.m., Thursday, November 19, 1987. The veto message, if submitted, will become part of the permanent record. If no veto message is received by the time stated above, the ordinance will be considered finally approved.

pa

"I, *Unette Worley*, received this memo and a certified true copy of Ordinance No. 87-231 from the Clerk of the Council on November 18, 1987.

Signed: *Unette Worley*

Date: *11/18/87*

STAFF REPORT

*version before
amendments
made.*

Agenda Item No. 9.2

Meeting Date Nov. 12, 1987

CONSIDERATION OF ORDINANCE NO. 87-231 FOR THE
PURPOSE OF AMENDING THE DISADVANTAGED BUSINESS
PROGRAM

Date: September 25, 1987

Presented by: Raymond Phelps
Yvonne Sherlock

FACTUAL BACKGROUND AND ANALYSIS

Metro adopted a Disadvantaged Business Program in 1985 which is designed to encourage the participation of minorities and women in Metro contracting activities. This year two events occurred which warrant revisions to the program: 1) the 1987 Oregon Legislature adopted a bill which transfers certification authority for disadvantaged and women businesses (DBEs and WBEs) from ODOT to the Executive Department, and 2) the Ninth Circuit Court of Appeals rendered a decision which clarified the constitutional limits of these types of programs. It was also determined that it would be more practical for the program's goal year to run concurrently with our budget year rather than the federal fiscal year (October through September). UMTA has approved this change.

Another facet of the revision process has involved listening to the concerns and comments of the public on the effectiveness of our program. Several months ago, members of the Disadvantaged and Women Business communities, as well as interested prime contractors and local government representatives, were invited to participate in a review of Metro's program. A series of meetings of this informal "task force" of reviewers has resulted in a number of new affirmative action techniques being recommended for addition to the program. Those in attendance at the final (October 5) session of the review group concurred with the revisions made to the program.

Ordinance No. 87-231 incorporates the changes needed to bring the program into conformance with Oregon law, to change the goal year to our fiscal year, and makes certain other changes which staff believes will strengthen the program while, at the same time, will ensure its constitutionality.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends that Ordinance No. 87-231 be approved.

YMS/srs
0016.yms



METRO

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

Memorandum

Item 9.2
November 12, 1987

Date: November 2, 1987

To: Metro Councilor Sharron Kelley

From: Yvonne Sherlock, ^{Yms} Contracts Officer

Regarding: QUESTIONS RAISED REGARDING PROPOSED REVISIONS TO METRO'S
DISADVANTAGED BUSINESS PROGRAM

I understand that you had a couple of questions about the Disadvantaged Business Program ordinance which was on the Council's October 22, 1987, agenda. I will attempt to address these concerns in this memorandum.

You asked where in the ordinance the recommendations of the contract review "task force" were addressed. Several of the task force's suggestions are found in the additions to Section 2.04.135 (pp. 6-8) which section describes the affirmative action techniques Metro will employ to encourage DBE and WBE participation in contracts. Those additions include using DBE/WBE goal attainment as a criteria for department head's salary reviews; establishing an interdepartmental contract management committee which will address DBE/WBE issues; and requiring that at least one DBE/WBE be contacted for all quotes for goods or services and that all known and qualified DBE/WBEs be contacted for larger contracts. Additionally, subsection (m) was added to that section to allow additional recommendations of the committee to be implemented on an ad hoc basis.

You were also concerned as to exactly how we had addressed the Ninth Circuit Opinion in AGC v. San Francisco in the proposed revised program. The primary impact of that decision was the addition of several affirmative action techniques to be performed by Metro in Section 2.04.135 and the addition of subsection (7) to Section 2.04.160(b) (see pp. 7, 8 and 17, respectively). These additions make it clear that Metro's Program has a goal-oriented approach and does not mandate unconstitutional set asides or quotas. What is required by the program of both Metro staff and prime contractors are affirmative action efforts aimed at maximizing the number of bids received from DBEs and WBEs. Neither Metro nor any bidder on Metro contracts is required to discriminate in favor of a DBE/WBE. This is in keeping with the AGC v. San Francisco opinion and other related Supreme Court cases interpreting the equal protection clause of the Constitution.

Memorandum
November 2, 1987
Page 2

If you have any additional questions about the proposed ordinance,
feel free to contact me.

YS/sm
8409/D5

cc: Rena Cusma
Ray Phelps
Don Carlson ✓

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.

Motion to Amend: Councilor Gardner moved, seconded by Councilor Hansen, to amend Ordinance No. 87-231 as follows:

- 1) All references to DOT shall be changed to USDOT to avoid confusing the U.S. Department of Transportation with Oregon's Department of Transportation (ODOT).
- 2) Section 2.04.150(d) shall be changed to read: "Even though no DBE/WBE goals are established at the time that bid/proposal documents are drafted, the Liaison Officer may direct the inclusion of a clause in any RFP or bid documents for any contract described in this section which requires that the prime contractor, prior to entering into any subcontracts, make good faith efforts, as that term is defined in Section 2.04.160, to achieve DBE/WBE participation in the same goal amount as the current annual goal for that contract type."
- 3) Section 2.04.155(a) shall be changed to read: "To be eligible for award of contracts containing a DBE/WBE goal, prime contractors must either meet or exceed the specific goal for DBE and WBE participation, or prove that they have made good faith efforts to meet the goal prior to the time bids are opened or proposals are due. Bidders/Proposers are required to utilize the most current list of DBEs and WBEs certified by ODOT until December 31, 1987, and thereafter, by the Executive Department, in all of the bidders'/proposers' good faith efforts solicitations. The address where certified lists may be obtained shall be included in all applicable bid proposal documents."
- 4) Section 2.04.155(b) shall be changed to read: "All invitations to bids or requests for proposals on contracts for which goals have been established shall require all bidders/proposers to submit with their bids and proposals a statement indicating that they will comply with the contract goal or that they have made good faith efforts as defined in Section 2.04.160 to do so. To document the intent to meet the goals, all bidders and proposers shall complete and endorse a Disadvantaged Business Program Compliance form and include said form with bid or proposal documents. The form shall be provided by Metro with bid/proposal solicitation."
- 5) Section 2.04.155(d) shall be changed to read: "Apparent low bidders/proposers shall, by the close of the next working day following bid opening (or proposal submission date when no public opening is had), submit to Metro detailed DBE and WBE Utilization Forms listing names of DBEs and WBEs who will be utilized and the nature and dollar amount of their participation. This form will be binding upon the bidder/proposer."

Within five working days of bid opening or proposal submission date, such bidders/proposers shall submit to Metro signed Letters of Agreement between the bidder/proposer and DBE/WBE subcontractors and suppliers to be utilized in performance of the contract. A sample Letter of Agreement will be provided by Metro. The DBE and WBE Utilization Forms shall be provided by Metro with bid/proposal documents."

6) Section 2.04.155(e) shall be changed to read: "An apparent low bidder/proposer who states in its bid/proposal that the DBE/WBE goals were not met but that good faith efforts were performed shall submit written evidence of such good faith efforts within two working days of bid opening or proposal submission in accordance with Section 2.04.160. Metro reserves the right to determine the sufficiency of such efforts."

7) Section 2.04.155(f) shall be deleted.

Mr. Phelps referred the Council to a letter dated November 12, 1987, from Jack R. Kalinowski, Public Affairs Manager of the Associated General Contractors of America, Inc., thanking Councilors for considering the amendments suggested by the AGC on October 22, 1987.

Vote on Motion to Amend: A roll call vote on the motion to amend Ordinance No. 87-231 resulted in all eleven Councilors present voting aye. Councilor Kirkpatrick was absent.

The motion carried.

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

The motion carried and Ordinance No. 87-231 was adopted as amended.

Councilor Knowles commended staff on their successful inclusion of the business community in revising Metro's Disadvantaged Business Program.

9.3 Consideration of Ordinance No. 87-232, for the Purpose of Amending Metro Code Section 1.02.010 and Adding a Code Section 2.04.035 Relating to Personnel and Contracting Rules for the Metropolitan Exposition-Recreation Commission (Second Reading)

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

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 Council
October 22, 1987
Page 10

task force's recommendations. Mr. Phelps said he would supply that information at the November 12 meeting.

Councilor Collier asked if all the review task force participants had agreed with the ordinance changes. Mr. Phelps responded that those attending the October 5 task force meeting had agreed to the changes.

Mr. Phelps continued to review proposed changes to the DBE program. The Presiding Officer requested Councilors submit all questions in writing to Mr. Phelps so he could respond to them at the November 12 meeting.

A discussion followed about the impact of the Ninth Circuit Court's decision on the DBE program. Mr. Phelps explained the new ordinance had been prepared with the assumption the Court of Appeal's decisions was the current law. Staff had consulted with other jurisdictions before drafting the ordinance to determine how other programs were being adjusted to reflect the decision. Metro's program was more ambitious than the City of Portland's and Multnomah County's because of staff's desire to improve the program.

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

Presiding Officer Waker opened the public hearing.

Jack Kalinoski, 9450 S.W. Commerce Circle, Wilsonville, Oregon 97070, representing the Oregon-Columbia Chapter of the Associated General Contractors (AGC), submitted written testimony to the Council which he read. He said the AGC was of the opinion that Metro, except for federally-aided projects, did not have the authority to require any of its contractors to subcontract portions of work to subcontractors in order to achieve DBE participation. The Ninth Circuit Court had clearly decided states and local governments had this authority only after a specific finding of government-imposed discrimination, and the Court had clearly stated only Congress could impose those requirements.

Mr. Kalinoski then reviewed specific concerns he had with Ordinance No. 87-231 as detailed in his written testimony: 1) that "USDOT" and "ODOT" be used to clearly differentiate between the U.S. Department of Transportation and the Oregon Department of Transportation; 2) the ordinance conform to Oregon State laws with regard to subcontracting when funds from the USDOT were utilized and not utilized; 3) the definitions for Disadvantaged Business Enterprise (DBE), Women-owned Business Enterprise (WBE) and Minority Business Enterprise (MBE) be clearly defined and used consistent with Oregon State law; 4) new section 2.04.115 be amended to eliminate duplication of

wording or if duplication was not intended, the language be clarified; 5) new section 2.04.135(a) should be eliminated since ODOT, not Metro, had the authority to certify for DBE eligibility; 6) new section 2.04.150(d) should be amended since it would give Metro's liaison officer authority to change a contract after it had been awarded, a practice contrary to Oregon State law; 7) new section 2.04.155 be amended to allow the bidder to attest on the bid form that a good faith effort was made prior to bid opening to achieve the goals required but that goals could not be attained; 8) new section 2.04.155(d) be amended to allow five days for the apparent low bidder to submit documents to Metro; 9) new section 2.04.155(e) be amended to not violate the integrity of the competitive bidding system; 10) new section 2.04.155(f) be amended to be in compliance with Oregon State law; and 11) section 2.04.155(g), on the third line of the paragraph, the second "will" be deleted and in the fifth line after (d), the word "made" inserted.

Councilor Knowles discussed the intent of Oregon State law with Mr. Kalinoski as it related to the ordinance. At the Presiding Officer's request, the Councilor agreed to submit questions and concerns in writing to staff. Mr. Kalinoski was willing to meet with staff to discuss his concerns.

Carolyn Brown, 1717 S.W. Park Avenue, Apartment 1102, Portland, Oregon 97201, thanked the Council for its good faith effort to improve the DBE program. She thought the AGC would use Metro as a model government contracting program and was surprised the AGC had claimed it was not informed of Metro's review process.

Bruce Broussard, 1863 North Jantzen, Portland, Oregon 97217, publisher of The American Contractor trade journal, commended Yvonne Sherlock, Metro's Contract Officer, and Mr. Phelps for their work with individuals participating in the DBE program review meetings. Referring to a distributed list of participants or those notified of the meetings, he noted the list reflected a very broad range of interests and was surprised Mr. Kalinoski was unaware of Metro's process. Mr. Broussard said Metro's staff had always been available to receive comments about the DBE program. Regarding the Circuit Court decision, he said the group had discussed that situation and the consensus of those participating at the final meeting was reflected in Ordinance No. 87-230. Finally, Mr. Broussard suggested the review group reconvene to consider the amendments suggested by Mr. Kalinoski, that the AGC be invited to participate at the meeting by certified mail and for the sake of continued fairness in process, the majority consensus of the group be reflected in any amendments proposed to the ordinance.

In response to Councilor Collier's question, Mr. Broussard said he was basically happy with Ordinance No. 87-230 and acknowledged the

proposed legislation had been written after input of many parties and special interests.

Councilor Ragsdale noted that Mr. Broussard's compliments of staff's work and the resulting ordinance reflected a significant change in Metro's DBE program efforts.

Kevin Spellman, 435 N.E. Mirimar Place, Portland, President of Emerick Construction Company, testified that although he was a member of the AGC, he had not represented the AGC when participating in the review group activities. He thought the ordinance was an improvement to Metro's current DBE program and that the group's intent was for the program to be consistent with Oregon State law. He also commended Ray Phelps and Yvonne Sherlock for their patience and outstanding work on the project.

Presiding Officer Waker again urged Councilors to submit any questions or comments about the ordinance to staff in writing in time for a response at the November 12 Council meeting and second reading of the ordinance.

8. RESOLUTIONS

8.6 Consideration of Resolution No. 87-819, for the Purpose of Approving Recommendations of the North Portland Enhancement Committee for the Expenditure of \$40,000 from the Rehabilitation and Enhancement Fund

Councilor Hansen, Chair of the North Portland Enhancement Committee (NPEC) reported that the FY 1987-88 Council Budget Committee had required staff to return to the Council for approval of expenditures for enhancement projects. The NPEC was pleased to announce the recommendation of nine projects for funding. The Councilor then reviewed the process for soliciting and screening proposals. He also introduced three NPEC members in attendance: John Fisher, Pamela Arden and Steve Roso. Finally, he thanked Metro staff members Judith Mandt and Marilyn Smalls for their assistance to the Committee.

Presiding Officer Waker acknowledged the NPEC had been a successful joint venture between the community and the Council.

During discussion of agenda item 8.7, Councilor Gardner reported the Council Solid Waste Committee had unanimously recommended adoption of Resolution No. 87-819.

Motion: Councilor Hansen moved, seconded by Councilor Collier, to adopt Resolution No. 87-819.



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.

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

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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

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.

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

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District 12

Executive Officer
Rena Cusma