

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING	)	ORDINANCE NO. 89-271E
METRO CODE CHAPTER 2.04 RELATING)	
TO CONTRACTING PROCEDURES	)	Introduced by the Council
	)	Finance Committee and
	)	Revised by the Internal
	)	Affairs Committee

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

SECTION 1. Metro Code Chapter 2.04 is amended to read as follows:

2.04.010 Definitions:

[~~(a)~~] (a) COMPETITIVE BIDS OR BIDS -- A competitive offer in which price and conformance to specification will be the award criteria.

[~~(a)~~] (b) CONTRACT REVIEW BOARD or BOARD -- The Council is the Contract Review Board for the Metropolitan Service District with the powers described in ORS Chapter 279 and Section 2.04.020 of this Chapter.

(c) EMERGENCY -- An emergency for the purpose of this Chapter means the occurrence of a specific event or events that could not have been reasonably foreseen and prevented and which require the taking of prompt action to remedy the condition and thereby avoid further physical damage or harm to individuals or the occurrence of avoidable costs.

[~~(a)~~] (d) EMERGENCY CONTRACTS -- A contract may be exempt from the competitive bidding process if an emergency requires prompt execution of a contract, but only if the contract is limited to remedying the emergency situation.

(e) EXEMPTIONS FROM COMPETITIVE BIDDING -- Exemptions include any exemption or exception from the regular competitive bidding process for Public Contracts as defined in ORS 279.011 to 279.061, this chapter, and any exemption made by the Board pursuant to Section 2.04.041 of the Code.

(f) NOTICE OF AWARD -- Means written communication to a responsive, responsible bidder or proposer stating that their bid or proposal has been conditionally determined to be the lowest, responsive, responsible bid or most responsive proposal and that the District intends to enter into a contract upon completion by the bidder/proposer of all required conditions.

[~~(e)~~] (g) PERSONAL SERVICES CONTRACT.

(1) The following are Personal Services Contracts:

- (A) Contracts for services performed as an independent contractor in a professional capacity, including but not limited to the services of an accountant; attorney; architectural or land use planning consultant; physician or dentist; registered professional engineer; appraiser or surveyor; passenger aircraft pilot; aerial photographer; timber cruiser; data processing consultant or broadcaster.
- (B) Contracts for services as an artist in the performing or fine arts, including but not limited to persons identified as photographer, filmmaker, painter, weaver, or sculptor.

- (C) Contracts for services of a specialized, creative and research-oriented, noncommercial nature.
- (D) Contracts for services as consultant.
- (E) Contracts for educational and human custodial care services.

(2) The following are not Personal Services Contracts:

- (A) Contracts, even though in a professional capacity, if predominantly for a product, e.g., a contract with a landscape architect to design a garden is for personal services, but a contract to design a garden and supply all the shrubs and trees is predominantly for a tangible product.
- (B) A service contract to supply labor which is of a type that can generally be done by any competent worker, e.g., janitorial, security guard, crop spraying, laundry and landscape maintenance service contracts.
- (C) Contracts for trade-related activities considered to be Labor and Materials Contracts.
- (D) Contracts for services of a trade-related activity, even though a specific license is required to engage in the activity. Examples are repair and/or maintenance of all types of equipment or structures.

[~~(g)~~] (h) PUBLIC AGENCY -- Any agency of the federal government, state of Oregon, or any political subdivision thereof,

authorized by law to enter into Public Contracts and any public body created by intergovernmental agreement.

[~~(b)~~] (i) PUBLIC CONTRACT -- Any purchase, lease or sale by Metro of personal property, public improvement or services, including those transacted by Purchase Order, other than agreements which are for personal services. Public Contracts may be obtained by Purchase Order as determined by the Executive Officer.

[~~(h)~~] (j) PUBLIC IMPROVEMENT -- Projects for construction, reconstruction or major renovation on real property by or for a public agency. "Public improvement" does not include emergency work, minor alteration, ordinary repair or maintenance in order to preserve a public improvement.

[~~(f)~~] (k) PURCHASE ORDER -- A Public Contract for purchase of goods in any amount, or for goods and services \$500 or less, or for services \$500 or less.

[~~(k)~~] (l) REQUESTS FOR PROPOSALS OR RFPs -- A Request for Proposal is the process described in Section 2.04.050, "Personal Services Contracts." This process may be used for Public Contracts only when the Board has granted an exemption for that type of contract or for a particular contract as set out in Section 2.04.041, "Requirement of Competitive Bidding, Exemptions." The Board may adopt a particular RFP process for a particular contract by setting forth the amendments in the exemption approval.

[~~(j)~~] (m) SOLE SOURCE CONTRACTS -- Contracts for which it can be documented there is only one qualified provider of the required service or material.

2.04.020 Public Contract Review Board:

(a) Creation of the Public Contract Review Board: Pursuant to ORS 279.055 the Council is designated and created as the Metropolitan Service District Contract Review Board.

(b) Powers of Board: The Contract Review Board shall have all the powers in the award of District contracts allowed under ORS 279.011 to 279.061.

(c) Contract Review Board Meetings:

(1) The meetings of the Contract Review Board shall normally, but need not, be conducted at the same time as, and as a part of, the regular meetings of the Metropolitan Service District Council.

(2) The rules of procedure adopted by the Council for its proceedings shall also govern proceedings of the Contract Review Board unless they conflict with rules adopted by the Board.

(d) Rules: The Contract Review Board may adopt rules relating to the award of District contracts. Such rules of the Contract Review Board shall be adopted by ordinance.

(e) Regulations: The Executive Officer may establish such other contract regulations, not inconsistent with this chapter as may be necessary and expedient.

2.04.030 Rules and Procedures Governing All Personal Services and Public Contracts:

(a) Applicability: All Personal Services Contracts and Public Contracts are subject to the applicable selection, review and approval procedures of this Chapter.

(b) Initiating a Contract: When a department initiates a contract not in the form of a Purchase Order, it must first notify the Department of Finance & Administration of its intention and request the issuance of a contract number which shall appear on all copies of the contract. The department must complete a Contract Summary form indicating the specifics of the contract. This form must be forwarded to the Department of Finance & Administration either with a fully executed contract (one copy) if the amount is estimated to be \$2,500 or under, or with an unexecuted contract (three copies) for review, approval and signature if the amount is over \$2,500.

(c) Documentation Required for Contract Files: The Department of Finance & Administration will maintain central files for all contracts. An original copy should be given to each contractor. All correspondence relating to a contract which alters conditions or amounts must be included in the central files as should all papers which document the process of obtaining competitive bids, quotes, or proposals. In any case where a low bid, quote, or proposal is not accepted, a detailed justification must be included with the contract file. Other documentation, if applicable, that should be included in the file includes:

- Mailing Lists
- Affidavits of Publication
- Insurance Endorsements and Certificates

- Amendments
- Extensions
- Related Correspondence
- Quotes, Proposals, and Bids
- Bonds
- DBE/WBE Information
- Contract Closure Form
- Personal Services Evaluation Form

(d) Contract Review: Prior to approval by the appropriate person or body, contracts shall be reviewed as follows:

(1) Any contract which deviates from a standard contract form, exceeds \$10,000 for a Personal Services Contract or \$15,000 for a Public Contract, or is with another public agency must be reviewed by the General Counsel.

(2) Contracts involving federal or state grant funds must be reviewed by the Deputy Executive Officer.

(e) Disadvantaged Business Program: All contracting and purchasing is subject to the Metro Disadvantaged Business Enterprise Program. Metro will take affirmative action to do business with Disadvantaged Business Enterprises. The Director of Finance and Administration will maintain a directory of disadvantaged businesses which shall be consulted and used in all contracting and purchasing of goods and services. If a disadvantaged business is included in the directory that appears capable of providing needed goods or services, that business should be contacted and given an opportunity to compete for Metro business.

~~[(f)-Monthly-Contract-Report:--The-Executive-Officer-shall provide-a-monthly-report-to-the-Council-of-all-contracts,-including extensions-and-amendments,-which-have-been-executed-during-the preceeding-month,-provided,-however,-that-such-monthly-report-need-not include-purchase-orders-under-\$500-]~~

(g) Code of Conduct:

(1) No employee, elected official or agent of Metro shall participate in the selection, award or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, elected official or agent, any member of his/her immediate family, his or her partner, or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. No Metro elected official, employee or agent shall solicit or accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.

(2) Violations of this Code of Conduct shall subject an employee to disciplinary action pursuant to the Metro Personnel Rules and may be grounds for other civil or criminal penalties provided by law.

(h) Federal/State Agency Approval: When required by federal or state law or regulations, review and approval of Metro contracts shall include prior concurrence or approval by appropriate federal or state agencies.

(i) No contract or contract amendment may be approved or executed for any amount in excess of the amount authorized in the budget.

~~[(j)-Prior-to-entering-into-(1)-any-public-contract-or-personal services-agreement-pursuant-to-the-authority-granted-in-Section 2-04-060-authorizing-Sole-Source-Contract,-or-(2)-any-public-contract or-personnel-services-agreement-in-an-amount-exceeding-\$15,000-for which-only-one-bid-or-response-to-a-Request-for-Proposal-has-been received,-the-Executive-Officer-shall-file-a-written-report-with-the Council-detailing-the-reasons-why-a-sole-source-contract-was-entered into-or-giving-an-explanation-of-why-only-one-bid-or-response-was received-]~~

2.04.031 Notice of Award and Appeals:

(a) At least five (5) days prior to the execution of any Public Contract over \$15,000 or a Personal Services Contract over \$10,000 the District shall provide a Notice of Award to the contractor selected and to all contractors who submitted unsuccessful bids or proposals. This requirement may be waived by the Executive Officer for any emergency contract entered into pursuant to this Code.

(b) Bid/Request for Proposals Appeal Procedures: The following procedure applies to aggrieved bidders and proposers who wish to appeal an award of a Public Contract above \$15,000 and a Personal Services Contract above \$10,000. The appeal process for bids is the same as for Requests for Proposals. In the case of Requests for Proposals, disagreement with the judgment exercised in scoring by evaluators is not a basis for appeal.

(1) All appeals shall be made in writing and shall be delivered to the Contracts Administrator at Metro's main office within five (5) working days of the postmarked date on the Notice of Award. The written appeal must describe the specific citation of law, rule, regulation, or procedure upon which the appeal is based.

(2) The Contracts Administrator shall forthwith notify the appropriate department head and the Executive Officer of the appeal. Within ten (10) working days of the receipt of notice of appeal, the Executive Officer shall send a notice of rejection of the appeal or a notice of acceptance of the appeal as applicable to the appellant. The appellant may appeal the Executive Officer's decision to reject the appeal in writing to the Contract Review Board within five (5) working days from the postmarked date on the Notice of Rejection.

(3) The Contract Review Board will review the grounds for appeal, all pertinent information, and the Executive Officer's recommendation, and make a decision. The decision of the Contract Review Board is final.

(4) No contract which is the subject of a pending appeal may be executed unless the Contract Review Board shall have given its approval at the request of the Executive Officer. The Executive Officer may request the Contract Review Board to determine a matter without waiting for the expiration of the time periods provided for herein.

2.04.032 Contract Information Reports:

(a) The Executive Officer shall provide a monthly report to the Council showing the status of all contracts in effect at Metro as of the date of the report. The report shall be divided into four sections: (a) Contracts Awarded; (b) Contracts Amended; (c) Open Contracts; and (d) Contracts Closed.

- (1) Contracts Awarded. This section shall report all new contracts awarded since the date of the previous report to the Council of all new contracts. Information contained in this report will be the cost center of the department responsible for the contract, contract number, starting and ending dates of the contract, type of contract, amount of the contract, vendor name, and a brief description of the purpose of the contract.
- (2) Contracts Amended. This section shall report all contracts amended by Change Order since the date of the previous report to the Council of contract amendments. Information contained in this report will be the contract number, vendor name, amendment number, type of amendment, the original amount of the contract, the amount of the contract amendment, the new total contract amount, the percent of the amount of increase in excess of the original amount of the contract, and a brief description of the purpose of the contract.
- (3) Contracts Open. This section shall report all contracts in effect on the last day of the month for

which the report is prepared. Information contained in this report will be the cost center of the department responsible for the contract, contract number, starting and ending dates of the contract, type of contract, amount of the contract, the amount expended to date, vendor name, and a brief description of the purpose of the contract.

- (4) Contracts Closed. This section shall report all contracts closed by the last day of the month for which the report is prepared. Information contained in this report will be contract number, vendor name, type of contract, date contract closed, amount of the contract, final amount expended, and a brief description of the purpose of the contract.

(b) Contract Type. Each contract will be identified by a type code to describe the class of contract entered into by Metro. There shall be six types of contracts at Metro:

- (1) Personal Services;
- (2) Pass-Through Agreements;
- (3) Labor and Materials;
- (4) Intergovernmental Agreements;
- (5) Procurement; and
- (6) Construction.

(c) Prior to entering into (1) any public contract or personal services agreement pursuant to the authority granted in Section 2.04.060 authorizing Sole Source Contract, or (2) any public contract

or personnel services agreement in an amount exceeding \$15,000 for which only one bid or response to a Request for Proposal has been received, the Executive Officer shall file a written report with the Council detailing the reasons why a sole source contract was entered into or giving an explanation of why only one bid or response was received.

(d) The Executive Officer shall provide to the Council during the annual budget process a list of proposed contracts to be entered into during the ensuing fiscal year. For contracts designated by the Council as being subject to this requirement by duly adopted ordinance, which may be the annual budget ordinance, copies of bid or proposal documents shall be filed with the Clerk of the Council and referred to the appropriate Council committee for review and comment. Documents must be filed with the Clerk of the Council at least thirty-five (35) days prior to the date of release for response by potential bidders. If the Council or a committee has not within fourteen (14) days of the date of filing scheduled the matter for a hearing the documents may be released to prospective bidders at any time after the 14th day. In any event, bid documents may be released to prospective bidders on the 35th day after filing with the Council.

(e) Except as provided in subsection (f), all other contracts not so designated by the Council shall be subject to the requirement that copies of bid documents shall be filed with the Clerk of the Council at the time they are released for response by potential bidders. The Executive Officer shall furnish the Council with information at the time bid documents are released stating the purpose

and nature of the proposed contract, the appropriation to be charged with the contract, and a statement of the contract's impact on the District in future fiscal years.

(f) Any public contract \$15,000 or more or Personal Service Contract \$10,000 or more not on the list of proposed contracts submitted by the Executive Officer as required by subsection (d) shall be subject to the filing and Council or committee review requirements in subsection (d) or if appropriate, the provisions of section 2.04.033.

2.04.033 Council Approval of Contracts:

(a) Notwithstanding any other provisions of Chapter 2.04 the following contracts shall be approved by the Council prior to execution:

(1) Any contract which commits the District to the expenditure of revenues or appropriations not otherwise provided for in the current fiscal year budget at the time the contract is executed except those contracts or classes of contracts that the Council shall have by ordinance exempted from this requirement;

(2) Any intergovernmental agreement by which the District acquires or transfers any interest in real property, assumes any function or duty of another governmental body, or transfers any function or duty of Metro to another governmental unit; or

(3) Any contract for the sale, lease or transfer of real property owned by the District.

(b) All contracts which require Council approval pursuant to subsection (a)(1) above and which are subject to competitive bidding or Request for Proposals procedures shall require Council approval of the Request for Bids or Request for Proposals prior to release of bidding or proposal documents to vendors.

2.04.035 Metropolitan Exposition-Recreation Commission:

The Metropolitan Exposition-Recreation Commission shall have authority to enter into contracts pursuant to Metro Code Section 6.01.04(j); provided, however, that prior to the adoption of the contracting rules by the Commission such purchases shall be made pursuant to the procedures and policies set forth in this chapter; and provided further that the Metropolitan Service District Contract Review Board created pursuant to Section 2.04.020 of this code shall be the local Contract Review Board for the Commission for the purpose of granting exemptions from competitive bidding or other requirements of public contract law. The Metropolitan Exposition-Recreation Commission may without the prior approval of the Executive Officer enter into contracts in any amount. No contract or contract amendment may be approved or executed for any amount in excess of the amount authorized in the budget. The Metropolitan Exposition-Recreation Commission shall file copies of all contracts and amendments thereto with the Department of Finance & Administration.

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: Unless the Board shall otherwise provide, bonds and bid security requirements are as follows:

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

(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 not identified above, if the Executive Officer 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.

2.04.041 Requirement of Competitive Bidding, Exemptions:

(a) State Law: The following contracts are exempt from the competitive bidding selection process pursuant to State Statute:

(1) Contracts with other public agencies or the federal government.

(2) Contracts made with qualified nonprofit agencies providing employment opportunities for the handicapped.

(3) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145.

(4) Contracts for supplies estimated to be less than \$500.

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

(1) Purchase and sale of Zoo animals.

(2) Purchase and sale of Zoo gift shop retail inventory and resale items.

(3) All contracts estimated to be less than \$15,000 provided that the selection process described in the appropriate Code sections is followed.

(4) Contracts estimated not to exceed \$25,000 for road, highway or parking lot maintenance provided that at least three (3) competitive quotes are obtained, if available, and a record of said quotes and efforts to obtain them are maintained.

(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.

(6) Purchase of food items pursuant to Section 2.04.090.

(7) Contracts for warranties in which the supplier of the goods or services covered by the warranty has designated a sole provider for the warranty service.

(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."

(9) Contracts under which Metro is to provide a service only and incurs no financial obligation to another party.

(10) Contracts for the lease or use of the Oregon Convention Center or other facilities operated by the Metropolitan Exposition-Recreation Commission.

(11) For the purchases by the Metropolitan Exposition-Recreation Commission, all contracts estimated to be less than \$31,000 provided that any rules adopted by the Commission which provide for substitute selection procedures are followed.

(12) For purchases by the Metropolitan Exposition-Recreation Commission, emergency contracts when the General Manager makes written findings that: 1) immediate procurement is essential to prevent a delay in work or extra expense to the Commission in circumstances which could not have been foreseen and avoided; 2) there is a threat of immediate damage to Commission property; or 3) there is an immediate danger to citizens or employees. The General Manager shall report to the Commission at its next regularly scheduled meeting of any contracts entered into pursuant to this section.

(13) For purchases by the Metropolitan Exposition-Recreation Commission, contracts for equipment repair or overhaul but only when the service and/or parts required are unknown before the work begins and the cost cannot be determined without extensive preliminary dismantling or testing.

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

(d) Limitation: The exemptions in subsections (a)-(c), above, are exemptions to the competitive bid process only; all other procedures, including review and approval, apply to these contracts.

2.04.042 Public Contracts Under \$2,500:

(a) Selection Process:

(1) Under \$500: Unless completely exempt from competitive bidding under Section 2.04.041, competitive bids are not required for public contracts less than \$500. The District should, where feasible, obtain competitive quotes.

(2) Between \$500 and \$2,500: Unless completely exempt from competitive bidding under Section 2.04.041, when the amount of the contract is \$500 or more, but less than \$2,500, the District must obtain a minimum of three (3) competitive quotes. The District shall keep a written record of the source and amount of the quotes received. If three (3) quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes.

(b) Approval Process: For public contracts of an amount of less than \$2,500, the Director of the initiating department, or a designee of the Director approved by the Executive Officer, may sign contracts if the following conditions are met:

- (1) A standard contract form is used;
- (2) Any deviations to the contract form are approved by the General Counsel;
- (3) The expenditure is authorized in the budget;
- (4) The contract does not further obligate the District for \$2,500 or more;
- (5) The appropriate Scope of Work is attached to the contract;
- (6) The contract is for an entire project or purchase; not a portion of a project or purchase which, when complete, will amount to a cost of \$2,500 or more;
- (7) No contract may be approved or executed for any amount in excess of the amount authorized in the budget.

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

(d) Prior to the award of a contract to any bidder other than the apparent low bidder the Executive Officer shall obtain the prior approval of the Contract Review Board.

2.04.043 Public Contracts Between \$2,501 and \$15,000:

(a) Selection Process: Unless completely exempt from competitive bidding under Section 2.04.041, when the amount of the

contract is \$2,500 or more, but less than \$15,000, the District must obtain a minimum of three (3) competitive quotes. The District shall keep a written record of the source and amount of the quotes received. If three (3) quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes.

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

(c) Approval Process: For contracts of \$2,500 or more, either the Executive Officer or Deputy Executive Officer must sign; however, the Director or Assistant Director of the Zoo may sign purchase orders of \$10,000 or less. 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 contracts. No contract may be approved or executed for any amount in excess of the amount authorized in the budget.

(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."

2.04.044 Public Contracts of \$15,000 or More:

(a) Selection Process: Unless exempt from competitive bidding by Code section 2.04.041, the following competitive bidding procedures shall apply to all contracts:

- (1) The initiating department staff will prepare bid specifications and compile a list of potential bidders.

(2) The bid document will be reviewed by the Department of Finance and Administration and by the General Counsel before bids are solicited or advertised, and shall include the contract form to be used.

(3) A request for bids will be advertised in the manner required by law and in a local minority newspaper, and in any appropriate trade magazine. Additional advertisement may be appropriate depending upon the nature of the contract.

(4) The initiating department will receive and open sealed bids at the time and place designated in the request for bids.

(5) The opened bids will be reviewed by the requesting department and a recommendation and contract will be submitted to the Department of Finance and Administration.

(6) After selection and prior to approval, the contract must be reviewed by the Department of Finance and Administration.

(7) The initiating department will notify all bidders in writing of the contract award and obtain any necessary bonds and insurance certificates.

(8) The District shall reserve the right to reject any or all quotes or bids received.

(b) Approval Process: All initial contracts with a contract price of \$15,000 or more shall be approved and executed by 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 & Administration may approve and execute contracts of \$15,000 or more. No contract may be approved or executed for any amount in excess of the amount authorized in the budget.

(c) Within thirty (30) days of award of a construction contract, the Department of Finance and Administration shall provide the notice required by ORS 279.363.

(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."

(e) Prior to the award of a contract to any bidder other than the apparent low bidder the Executive Officer shall obtain the prior approval of the Contract Review Board.

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 the extent any of the following conditions are met:

(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 construction, 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).

(5) In addition to the requirements of this subsection, any contract amendment or extension exceeding the amounts as provided in subsection (2) shall not be approved unless the Contract Review Board shall have specifically exempted the

contract amendment or extension from the public bidding procedure except as provided in subsection (6) below.

(6) In addition to the requirements of this subsection, individual change orders for a public improvement contract may be approved by the Executive Officer if they do not materially add to or delete from the original scope of work included in the original contract.

Change orders exceeding the amounts provided in subsection (2) which materially add to or delete from the original scope of work shall not be approved unless the Contract Review Board has specifically exempted the change order from the public bidding procedure.

(b) Review Process: After selection and prior to approval, the contract must be reviewed by the Department 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 \$2,500 or more (rule 3) shall be approved under the rule for contract prices of \$2,500 or more.

(2) Under \$2,500: All contract amendments and extensions which are less than \$2,500 if the contract was originally for \$2,500 or more or which result in a total contract price of less than \$2,500 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 General 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) No contract amendment or extension may be approved in an amount in excess of the amount authorized in the budget.

(3) \$2,500 or More: All contract amendments and extensions which are for \$2,500 or more or which result in a total contract price of more than \$2,500 if the original contract was for less than \$2,500 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. No contract amendment or extension may be approved in an amount in excess of the amount authorized in the budget.

(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."

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 for personal services 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 such contracts declared to be an emergency at the Council meeting immediately following the adoption of findings declaring an emergency.

2.04.051 Personal Services Contracts Under \$2,500:

(a) Selection Process: For Personal Services contracts of less than \$2,500, the Department Director shall state in writing the need for the contract. This statement shall include a description of the contractor's capabilities in performing the work. Multiple proposals need not be obtained. This statement will be kept in the Department of Finance and Administration contract file.

(b) Approval Process: For Personal Services contracts of less than \$2,500, the Director of the initiating department, or a designee of the Director approved by the Executive Officer, may sign contracts if the following conditions are met:

(1) A standard contract form is used;

- (2) Any deviations to the contract form are approved by the General Counsel;
- (3) The expenditure is authorized in the budget;
- (4) The contract does not further obligate Metro beyond \$2,500;
- (5) The appropriate Scope of Work is attached to the contract;
- (6) The Contract is for an entire project or purchase; not a portion of a project or purchase which, when complete, will amount to a cost of \$2,500 or more; and
- (7) No contract may be approved or executed for any amount in excess of the amount authorized in the budget.

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

2.04.052 Personal Services Contracts Between \$2,500 and \$10,000:

(a) Selection Process: For Personal Services contracts \$2,500 or more but less than \$10,000, the Department Director shall use the following process:

- (1) Proposals shall be solicited from at least three potential contractors who, in the judgment of the Department Director, are capable and qualified to perform the requested work.
 - (2) The initiating Department shall document the fact that at least three (3) proposals have been solicited.
- Preferably, the proposals should be written, but this is not

required. The District reserves the right to reject any or all proposals for any reason.

(3) Evaluation, as determined by the Department Director, may require oral presentations and shall include use of a contractor evaluation form. The objective is the highest quality of work for the most reasonable price. The quality of the proposal may be more important than cost.

(4) Personal Services Evaluation Form: The Personal Services evaluation form shall document the reasons for the selection. Proposals shall be evaluated according to predetermined criteria. The evaluation process may include the evaluators assigning a quantifiable score on how each aspect of a proposal meets the predetermined criteria. The contract may be awarded to the firm receiving the highest average score.

(5) Notification of selection or rejection shall be made in writing after final review by the initiating department.

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

(c) Approval Process: For contracts of \$2,500 or more, either the Executive Officer or Deputy Executive Officer must sign. 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 contracts. No contract may be approved or

executed for any amount in excess of the amount authorized in the budget.

(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."

2.04.053 Personal Services Contracts of \$10,000 or More:

(a) Selection Process: For Personal Services contracts of \$10,000 or more an evaluation of proposals from potential contractors shall be performed as follows:

(1) A request for proposals shall be prepared by the initiating department and shall be reviewed by the General Counsel and the Department of Finance and Administration. Where appropriate, notice of the request shall be published in a newspaper of general circulation or in trade magazines. In addition, Metro shall notify in writing at least three (3) potential contractors, who, in the judgment of the Department Director are capable and qualified to perform the requested work. The initiating department will be responsible for maintaining the file and making the appropriate notification.

(2) All requests for proposals shall at a minimum contain a description of the project and a brief summary of the project history, contain a detailed proposed scope of work or other specifications setting forth expected performance by the contractor, include a description of the criteria that will be utilized to evaluate proposals and the estimated budget for the project.

[(2)] (3) Evaluations of proposals shall include use of a contract evaluation form. The use of an oral interview or an evaluation team is recommended.

[(3)] (4) Personal Services Evaluation Form: The Personal Services evaluation form shall document the reasons for the selection. Proposals shall be evaluated according to predetermined criteria. The evaluation process may include the evaluators assigning a quantifiable score on how each aspect of a proposal meets the predetermined criteria. The contract may be awarded to the firm receiving the highest average score.

[(4)] (5) After evaluation is complete, the Department Director will recommend final selection through the Department of Finance and Administration.

[(5)] (6) Notifications of selection and rejection shall be made in writing by the initiating department.

[(6)] (7) Personal Services contracts with the Scope of Work must be approved by the department head and then forwarded to the Department of Finance and Administration for internal review and execution. General Counsel review is required.

(b) Approval Process: All initial contracts with a contract price of greater than \$10,000 shall be approved and executed by 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 & Administration may approve and execute contracts of \$15,000 or more. No contract may be

approved or executed for any amount in excess of the amount authorized in the budget.

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

2.04.054 Personal Services Contract Extensions and Amendments:

(a) Selection Process:

(1) A Personal Services contract may be renewed without receiving competitive proposals if the contractor is performing a continuing activity for the agency. This applies, but is not limited to contracts for construction observation, public relations consulting, outside legal counsel and annual auditing. Except as provided in subsection (2) below, competitive proposals must be solicited for these services at least once every three (3) years and annually if the contractor proposes a price or rate increase of more than 10 percent over the previous year.

(2) Personal Services contracts may be renewed, extended or renegotiated without soliciting competitive proposals if, at the time of renewal, extension or renegotiation, there are fewer than three (3) potential contractors qualified to provide the quality and type of services required and the initiating department makes detailed findings that the quality and type of services required make it unnecessary or impractical to solicit proposals.

(3) In addition to the requirements of this subsection, any contract amendment or extension exceeding \$10,000 shall not be approved unless the Contract Review Board shall have specifically exempted the contract amendment or extension from the competitive procurement procedures of section 2.04.053.

(b) Approval Process:

(1) Less than \$2,500: All contract amendments and extensions which are less than \$2,500 if the contract was originally for \$2,500 or more or which result in a total contract price of less than \$2,500 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 General Counsel;
- (C) The expenditure is authorized in the budget;
- (D) The contract does not further obligate Metro beyond \$2,500;
- (E) The appropriate Scope of Work is attached to the contract; and
- (F) No contract amendment or extension may be approved in an amount in excess of the amount authorized in the budget.

(2) \$2,500 and Over:

(A) All contract amendments and extension which are for \$2,500 or more or which result in a total contract price of more than \$2,500 shall 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. No contract amendment or extension may be approved for an amount in excess of the amount provided for in the budget.

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

2.04.060 Sole Source Contracts:

(a) Selection Process: If there is only one qualified provider of the service required, the initiating department need not solicit and document proposals. The initiating department must document that there is only one qualified provider of the service required [~~and the Council shall be given notice of the execution and the justification for the contract~~]. Sole Source Contracts may not exceed \$2,500 unless the Contract Review Board shall have specifically exempted the contract from the public bidding or applicable alternative procurement procedure.

(b) Approval Process: The approval process for Sole Source Contracts is the same as described for regular Personal Services or Public Contracts, depending on the nature of the work.

(c) All contracts are subject to the rules and procedures of Code Section 2.04.050, "Rules and Procedures Governing Personal Services and Public Contracts."

2.04.070 Sale of Metro Goods and Services: Approval of agreements for the sale of Metro Goods and Services shall follow the procedures for purchase of goods and services.

2.04.075 Purchase of Recycled Paper Products and Equipment that Uses Paper:

The following criteria and standards shall apply to the purchase of paper products and equipment that uses paper:

(a) In all contracts and subcontracts the District shall prefer the purchase of recycled paper products with a 50 percent (50%) recycled content or the highest percentage of recovered material practicable, when practicable includes 1) performance in accordance with applicable specifications; 2) availability at a reasonable price; 3) availability within a reasonable period of time; and 4) maintenance of a satisfactory level of competition.

(b) The District shall allow a five percent (5%) price preference for the purchase of recycled paper products and attempt to purchase jointly with other agencies to reduce the cost of recycled paper products purchases.

(c) Subject to subsection 8 below, paper product procurements for Solid Waste will specify recycled paper only.

(d) The guidelines in (1), (2) and (3) above will apply in all cases except where specific printing quality requirements can not be met by recycled paper products. Joint purchases may be made with other agencies to reduce the cost of recycled paper product purchases. All recycled paper purchases shall require the manufacturer's certification and verification of recovered material content. The initiating Department shall assure compliance with the provision of ORS 279.739.

(e) All recycled paper products purchases shall require the manufacturer's certification and verification of recovered material content.

(f) All bids for new equipment and services shall include language that will ensure the use of recycled paper and paper products.

(g) Metro shall phase in equipment and paper to facilitate the use of recycled paper products wherever practicable.

(h) In instances where recycled paper and paper products may void existing warranties, service agreements, or contracts, recycled paper and paper products shall not be specified.

(i) All contract printing shall allow a five percent (5%) price preference when using recycled paper.

(j) The use of non-recyclable goldenrod and other very bright, hard-to-bleach colored papers shall be prohibited.

2.04.080 Sale of Surplus Property: Contracts for sale of surplus property may be executed without competitive bidding only when the Executive Officer, or Director or Assistant Director of the Zoo

determines in writing that the number, value and nature of the items to be sold make it probable that the cost of conducting a sale by competitive bid will be such that a liquidation sale will result in substantially greater net revenue to the District.

2.04.090 Food Items and Food Service Contracts

(a) Selection Process:

(1) All food items and food service contracts will be awarded as public contracts, except as provided in sections (2)-(4) below.

(2) Competitive bids or quotes are not required when a specific food item is requested by a purchaser of the District's catering service. If the specific item is supplied by more than one source, competitive quotes shall be obtained from at least three known suppliers. The District shall keep a written record of the source and amount of the quotes received.

(3) Competitive bids or quotes are not required for food items which the Director or Assistant Director of the Zoo authorize for a market test. A market test is used to determine whether a food item should be added to the District's menu or to develop the specifications for a particular food item. The test should clearly define the period of time for the market study, not to exceed six months, and the statistical method used to determine the value of the food item as part of the regular menu. A written report shall be made. Based on this report if the

Director or Assistant Director determines the item shall be added to the regular menu, he/she shall establish specifications for the item. The item shall be selected under either public contract procedures or subsection (4), below. During the time the selection process is carried out, the test market product may continue to be sold by the District.

(4) Competitive bids or quotes are not required when the Director or Assistant Director of the Zoo finds that marketing factors are likely to significantly impact sales, subject to the following conditions:

(A) Prior to the selection of the contractor the department has made reasonable efforts to inform known companies providing the item or service of the subject matter of the contract and to solicit proposals, including public advertising in at least one newspaper of general circulation in the area.

(B) The contractor is selected on the basis of the most competitive offer considering cost, quality of the product, service to be rendered and marketing advantages.

A written record of the selection process shall be made.

(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) \$2,500 and Under: All contract and 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 General 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.

(2) ~~[Between-\$2,501-and-\$10,000]~~ Over \$2,500: All contracts and 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]~~ 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 contracts and amendments and extensions.

~~[(3)-Between-\$10,001-and-\$50,000:--Except-as-provided-in subsection-(5)-of-this-section, all-contracts-and-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-shall-be-approved-by-the-Council-Management Committee-prior-to-execution-]~~

~~[(4)-Over-\$50,000:--Except-as-provided-in-subsection-(5)-of this-section, all-contracts-and-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-]~~

~~[(5)]~~ (3) Exceptions: Emergency contract extensions and amendments may be approved by the Executive Officer or his/her designee.

(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."

ADOPTED by the Council of the Metropolitan Service District this 23rd day of March, 1989.

Mike Ragsdale
Mike Ragsdale, Presiding Officer

ATTEST:

A. Marie Nelson
Clerk of the Council

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

A. Marie Nelson
Clerk of the Council Date

DEC:gpwb\89271E.ord/3/28/89



METRO

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

Memorandum

March 21, 1989

TO: METRO COUNCIL

FROM: DON CARLSON *DC*

RE: Corrected Minority Report on Ordinance No. 88-271D

Please find attached a copy of the corrected Minority Report on this Ordinance. The correction is necessary because a sentence was inadvertently left out of the text at the bottom of page one. The inserted sentence appears at the top of page 2 of the corrected Minority Report. I apologize for the inconvenience.

(March 21, 1989)

INTERNAL AFFAIRS COMMITTEE
MINORITY REPORT

Meeting Date: March 23, 1989
Agenda Item: 8

CONSIDERATION OF ORDINANCE NO. 88-271D AMENDING METRO CODE
CHAPTER 2.04 RELATING TO CONTRACTING PROCEDURES

March 20, 1989

Presented by: Councilor Collier

RECOMMENDATION: I recommend that the Council adopt this minority report which substitutes Ordinance No. 88-271E (a copy of which is attached) for Ordinance No. 88-271D recommended by the Internal Affairs Committee and that the Council consider the question of whether or not to pursue contracting legislation after the minority report or committee recommendation are decided.

DISCUSSION: Ordinance No. 88-271E proposes the following changes to Ordinance No. 88-271D:

1. In section 2.04.032 Contract Information Reports (pages 16-18) language is added in subsection (d) (highlighted in yellow) which requires the Executive Officer to submit a list of potential contracts during the annual budget process for the ensuing fiscal year. The remainder of this subsection and subsection (e) are unchanged from the Internal Affairs Committee's proposed ordinance. They continue to authorize the Council to designate certain contracts for which the RFB or RFP would be filed with the Council for review. The contracts selected would come from the list proposed initially by the Executive Officer or expanded during the budget deliberations by the Council.

A new subsection (f) is added which requires that certain contracts (public contracts \$15,000 or more and personal service contracts \$10,000 or more) proposed during the year that were not on the original list proposed by the Executive Officer will be subject to the RFB/RFP review process outlined in the section. The dollar levels are suggested because they conform to existing Code thresholds for formal bidding or request for proposal requirements.

The purpose of this change is to assure that unanticipated contracts proposed during the fiscal year are subject to the same Council review and/or approval procedures as other contracts considered during the fiscal year.

2. In section 2.04.045 Public Contract Extensions and Amendments (pages 33-34) language is added to require that a public contract extension greater than \$10,000 not be approved unless the Council exempts the contract extension from public bidding procedure. An exception to this requirement is provided for extensions to public improvement contracts (construction contracts) which: 1) do not on a cumulative basis exceed 5 percent of the initial face value of the contract and 2) do not materially change the original scope of work of the contract.

The dollar level is suggested because it is consistent with the threshold level for extensions which required approval by the Internal Affairs Committee under prior Code provisions. The language is consistent with General Counsel's legal opinion (December 18, 1987) and his subsequent advice given on October 20, 1988. The exception language for public improvement contracts is consistent with the provisions of Ordinance No. 88-271 (Finance Committee) which was developed in consultation with the District's Construction Project Manager. The language in this section is a substitute for the proposed public contract extension language on page 35 of Ordinance 88-271D (see highlighted note on page 33 of the "E" draft).

The reason for this change is to clarify and simplify the provisions for contract extensions. The proposed extension language in Ordinance No. 88-271D (page 35) is ambiguous and will lead to inconsistent treatment of contract extensions. The operative language for extensions in the "D" draft is as follows:

[the extension] ". . . shall be subject to Council approval if the . . . extension commits the District to any increase in the District's obligation in a future fiscal year . . ."

Such language will lead to the following results:

- . A contract not approved by the Council (either by exemption or because it is to be completed within a fiscal year) may be extended without Council approval.
- . A contract approved by the Council (multi-year) may be extended in the first year without Council approval as long as the money for the extension is spent during that year. This could require additional accounting requirements to track the expenditure of the extension money to assure that it is spent in the fiscal year.
- . A contract approved by the Council (multi-year) may be extended in the second or any succeeding year as long as the money is spent in the succeeding year.
- . A contract which because of the timing of the award and the timing of the fiscal year would require Council approval of the extension if the money were to be spent in the succeeding fiscal year.

I submit that using a point in time as the reason for requiring Council approval of a contract extension is just as arbitrary, if not more confusing, than using a level of expenditure as a reason for requiring Council approval of a contract extension.

The language proposed in Ordinance No. 88-271E clearly requires that regardless when the contract is awarded or when the new fiscal year occurs the Council must review and approve the need for additional work and money through an exemption to the competitive bidding procedures.

3. In section 2.04.053 Personal Service Contracts of \$10,000 or More (pages 42-44) changes are proposed to correct a drafting error in Ordinance No. 88-271D. The Internal Affairs Committee draft incorrectly shows what is actual Code language particularly in section (a)(1) on page 42. The language in Ordinance No. 88-271E contains the correct Code language for the section. The proposed added language (section (a)(2) on page 43) setting certain information requirements for a RFP is the same as in Ordinance No. 88-271D.

In Ordinance No. 88-271E, the words "notice of" are added in subsection (1) on page 42 to reflect the actual practice of the District to publish notice of the RFP in the paper rather than the RFP document. Other than this change, there are no policy differences between the two drafts.

4. In section 2.04.054 Personal Service Contract Extensions and Amendments (pages 45-46) language is added to require that a personal service contract extension greater than \$10,000 not be approved unless the Council exempts the contract extension from the competitive procurement procedures of the Code.

The reasons for and the effect of this language is the same as discussed in point number 2 above relating to public contract extensions.

5. In section 2.04.075 Purchase of Recycled Paper Products and Equipment that Uses Paper (pages 48-50) the entire section is added to reflect a Code change approved by Ordinance No. 89-280 on February 9, 1989 which has not yet been codified.

Ordinance No. 88-271E is an improvement on the Internal Affairs Committee "D" draft because it corrects several technical errors, "plugs a hole" regarding potential unanticipated contracts which will arise during a fiscal year and strengthens and clarifies the Council role in contract extensions at the same time taking care of the unique needs for construction contract change orders.

I want to discuss the issue of the proposed legislation. First, let me remind you why it is important for the Council to play an active role in the contracting process of this organization. In this year's budget approximately 68 percent of the proposed expenditures of the

District will be made through various contracts. All expenditures in the Materials & Services and Capital Outlay categories are made through the use of a contract. In the aggregate this amounts to \$68.2 million out of a total \$107 million available for expenditure (excludes unappropriated balances totaling \$55 million). The Council has a responsibility to 1) assure that these expenditures are made for the purposes and programs approved in the annual budget and at other times; and 2) assure that they are made in a fair and impartial manner. The primary vehicle for the Council to carry out this responsibility is the Contract Code.

It is clear to me that as this issue has evolved from Dan Cooper's original opinion; to Ordinance No. 88-249; to the Finance Committee; to the Special Task Force; and finally, to the Internal Affairs Committee, the Council has substantial authority to review and approve contracts. We started from the point that the Council has no authority to approve contracts (except certain long-term solid waste contracts) to the point that the Council can approve multi-year contracts and contract extensions through the granting of exemptions to the bidding process. I am convinced, however, that the process we have created as a result of all this effort is more complex, inefficient and less direct than the process previously used for the past seven years by this District or as proposed by the Finance Committee in Ordinance No. 88-271.

For those of you who don't know (because that ordinance was never before the Council for discussion), Ordinance No. 88-271 proposed revising our old procedures not for more control, but rather to expedite the process of contract review and approval. In light of General Counsel's opinion, for that ordinance to be implemented legislation was required giving the Council authority to approve contracts. The Finance Committee in its deliberations rejected the notion that the Council should use its budgetary powers and appropriate money at the level of individual contracts because such action would increase the time required to process contract matters before the Council (must use an ordinance which requires two readings rather than use of a resolution) and it would increase the number of contract items before the Council (based on 1987-88 data, an estimated increase from 55 actual actions to an estimated 192).

There is an ideological dispute in this organization regarding contracting authority. The separation of powers advocates resist the idea of the more direct and simplified contract procedures as embodied in Ordinance No. 88-271. The resistance stems largely from the fact that implementation requires legislation giving the Council direct contract approval authority. Such action is an anathema to the "separatists" because it violates principles of government promulgated over 200 years ago by our forefathers. It's sad, but true, that simplicity and efficiency have been sacrificed in an ideological

Internal Affairs Committee Minority Report
March 17, 1989
Page 5

dispute. The irony of all this is that Ordinance No. 88-271E gives the Council substantial contract "approval" authority (albeit in a less direct way) that we are not supposed to have according to separation of power principles.

I am willing to live with Ordinance No. 88-271E. But, I also believe that the Council should seek legislation to give it direct authority to approve contracts. The reason is simple. If this new process fails or bogs down, we need the ability to fix it in a direct and simple manner.

TC:gpwb
88271E.MR
3/20/89



METRO

2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646
Fax 241-7417

June 14, 1989

Mr. Donald E. Carlson
Council Administrator
Metropolitan Service District
2000 S. W. First Avenue
Portland, OR 97204-5398

Dear Don:

Re: Proper Treatment of Intergovernmental Agreements for
Services and Revenue and Grant Contracts Under New
Contracting Procedures

Executive Officer
Rena Cusma

Metro Council

Mike Ragsdale
Presiding Officer
District 1

Sharron Kelley
Deputy Presiding
Officer
District 7

Lawrence Bauer
District 2

Jim Gardner
District 3

Richard Devlin
District 4

Tom DeJardin
District 5

George Van Bergen
District 6

Judy Wyers
District 8

Tanya Collier
District 9

Roger Buchanan
District 10

David Knowles
District 11

Gary Hansen
District 12

You and I have informally discussed the fact that the amendments to the Contract Code adopted by the Council on March 23, 1989, do not impose the same requirements on intergovernmental agreements as they do on purchase or other agreements for the procurement of services.

As we discussed, the requirement that bid or proposal documents be filed with the Council for contracts so designated by the Council at least thirty-five days prior to the date of release for response by potential bidders is on its face inapplicable to intergovernmental agreements and revenue/grant agreements which pursuant to other provisions of the Contract Code are exempt from the requirement that they be competitively bid.

The Council did not address this issue, and because the Code is silent, intergovernmental agreements are not subject to the requirement that documents be filed with the Council thirty-five days before bid documents are released because bid documents are never released for these types of contracts.

Establishing a procedure which provided for an opportunity for Council review of the scope of work to be included in either an intergovernmental agreement or a revenue or grant contract would be consistent with the spirit in which I understand the Contract Code requirements were prepared.

Yours very truly,

Daniel B. Cooper
General Counsel

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INTERNAL AFFAIRS
COMMITTEE REPORT

Agenda Item: 8
Meeting Date: March 23, 1989

CONSIDERATION OF ORDINANCE NO. 88-271D AMENDING METRO CODE
CHAPTER 2.04 RELATING TO CONTRACTING PROCEDURES

March 15, 1989

Presented by: Councilor Bauer

Committee Recommendation: At the March 9, 1989 meeting, the Internal Affairs Committee voted to recommend that the Council adopt Ordinance No. 88-271D. Committee members supporting the Committee recommendation included Councilors Hansen, Ragsdale and Bauer. Councilor Collier opposed the recommendation and served notice of an intent to file a minority report. Councilor Knowles was absent.

Committee Discussion and Issues: Ordinance No. 88-271D was, for the most part, the result of a special Contracting Task Force appointed by the Presiding Officer on December 22, 1988. Task Force members included Councilors Bauer, DeJardin, Knowles and Ragsdale and Executive Officer Cusma. The Task Force decided to "step back and take a fresh look" at the contracting issue. The Task Force identified three major points that appeared to be of concern to the Council as follows:

1. fiscal oversight
2. whether or not the council needed additional statutory authority over contracting, and
3. policy oversight

These concerns of the Task Force are discussed in a memo from Dan Cooper to the Task Force dated January 9, 1989 attached as Attachment A. The Committee reviewed the work of the Task Force and developed Ordinance No. 88-271D. Ordinance No. 88-271D amends the Metro Contract Code as follows:

1. In Section 2.04.010 Definitions (pages 1-7) the definitions are reorganized in alphabetical order. A definition of "Emergency" is added to spell out more clearly what constitutes an emergency contract which may be approved by the Executive Officer without Council review. A definition of "Notice of Award" is added to clarify when an appeal process might be started by an aggrieved bidder or proposer (the appeal process is added in Section 2.04.031).
2. In Section 2.04.030 Rules and Procedures Governing All Personal Services and Public Contracts (pages 7-11) language relating to "Monthly Contract Report" is deleted. This is replaced with a new section 2.04.032 relating to "Contract Information Reports." Language is also deleted requiring the Executive Officer to file a written report with the Council on sole source contracts or certain contracts for which only one bid was received prior to

signing the contract. This language is replaced in the new Section 2.04.032.

3. A new Section 2.04.031 Notice of Award and Appeals (pages 11-13) is added to provide an appeals procedure for aggrieved bidders or proposers. The procedure is a two-step process commencing with an appeal to the Executive Officer and then, if needed, an appeal to the Contract Review Board (Council).
4. A new Section 2.04.032 Contract Information Reports (pages 13-17) is added. This section does the following:
 - a. Requires the Executive Officer to provide a monthly report to the Council on 1) all new contracts awarded; 2) all contracts amended; 3) all current or open contracts; and 4) all contracts closed.
 - b. Requires the Executive Officer to inform the Council prior to executing a sole source contract or certain other contracts for which only one bid is received of the reasons for the award.
 - c. Authorizes the Council to designate certain contracts by ordinance (possibly the annual budget ordinance) for which the RFB or RFP must be filed with Council. Such documents must be filed at least 35 days prior to their release. If the Council or a committee has not scheduled a hearing within 14 days of the filing, the document may be released. The documents may be released by the Executive Officer on the 35th day after filing with the Council.
 - d. For all other contracts not designated by ordinance, the RFB or RFP must be filed with the Council at the time they are released for response by potential bidders or proposers with information on the contract purpose, appropriation and future fiscal impact.
5. A new Section 2.04.033 Council Approval of Contracts (pages 17-18) is added which requires Council approval of the following contracts:
 - a. any contract which requires expenditure in a future fiscal year except those contracts exempted by ordinance (possibly the budget ordinance);
 - b. any intergovernmental agreement acquiring or transferring real property or assuming or transferring a function or duty; and

c. any contract for the sale, lease or transfer of district property.

In addition, language is added which provides that for all contracts requiring Council approval the RFB or RFP's must be approved by the Council prior to their release.

6. In Section 2.04.045 Public Contract Extensions and Amendments (pages 31-35) new language is added regarding Council approval of public contract amendments or extensions. The language requires Council approval if the extension commits the District to expenditures in a future fiscal year. This provision only applies to contracts which the Council has authority to approve (contracts in two or more fiscal years) according to 2.04.033 and that have not been previously exempted by the Council.
7. In Section 2.04.053 Personal Services Contracts of \$10,000 or More (pages 41-43) new language is added regarding notification to newspapers and potential vendors of RFPs and requirements for including with the RFP information on the proposed project, scope of work and evaluation criteria.
8. In Section 2.04.060 Sole Source Contracts (page 47) new language is added which prohibits the execution of sole source contracts over \$2,500 without an exemption granted by the Contract Review board (Council).
9. In Section 2.04.090 Food Items and Food Service Contracts (pages 48-53) changes are proposed to make the Code conform to provisions previously adopted by the Council in Ordinance No. 88-249 (deletes reference to the Council Management Committee approval of contracts between \$10,000 and \$50,000 and Council approval of contracts over \$50,000).

The Internal Affairs Committee at its March 23, 1989 meeting is considering two possible amendments to Ordinance No. 88-271D which, if approved, will be brought to the Council meeting. The amendments deal with the process for approving change orders for public improvement contracts (construction contracts) and the process for approving amendments or extensions to personal service contracts.

Background Information: Since this is the first time this ordinance is before the Council for actual consideration, background information on its development would be useful. On December 18, 1987, General Counsel Dan Cooper issued an opinion (in response to a question asked by the Executive Officer) which stated that the Council nor any committee of the Council has the authority to approve contracts prior to their execution by the Executive Officer. Mr. Cooper indicated the only exceptions are certain long term solid waste facility contracts

Internal Affairs Committee Report
March 16, 1989
Page 4

which by statute (ORS 268.317 and 268.318) must be approved by the Council. In May, 1988, the Executive Officer introduced Ordinance No. 88-249 to implement Mr. Cooper's opinion. Ordinance No. 88-249 was adopted on July 14, 1988. It did two major things:

1. Deleted the requirement that the Council approve contracts over \$50,000 and the Internal Affairs Committee approve contracts between \$10,000 and \$50,000. It also deleted requirements for Council and committee approval of certain contract amendments.
2. Inserted language in the Code that limits the Executive Officer's authority to execute and amend contracts to an amount not to exceed the dollar amount authorized in the budget adopted by the Council. The operative language in Ordinance no. 88-249 was as follows:

"No contract or contract amendment may be approved or executed for any amount in excess of the amount authorized in the budget."

To give meaning to the budget limitation language, the Council determined that the budget and appropriations ordinance No. 88-247 should be amended to make clear the dollar amounts of the contracts authorized in the budget. Thus a delayed effective date was placed in Ordinance No. 88-249 as follows:

"Section 3. The effective date of this ordinance shall be December 31, 1988, or the date of adoption of an ordinance amending Ordinance No. 88-247 adopting a schedule of contract appropriations which appropriates funds for specified contract purposes whichever date is the sooner."

On September 1, 1988, the Finance Committee started its discussions on preparing a Schedule of Contract Appropriations. It held three other meetings (9/29, 10/6 and 10/20/88) which led to the development and introduction of Ordinance No. 88-271. The ordinance was prepared to implement the following committee objectives regarding contracting:

1. Do not budget and appropriate by specific contracts;
2. Revise the existing contract code to make it more efficient and effective for the purchase of goods, services and public improvements;
3. Prepare and submit legislation to the 1989 Legislature to clarify the Council's authority to approve contracts so the ordinance could be implemented;

4. Extend the effective date of Ordinance No. 88-249 to July 1, 1989 so the legislation could be enacted; and
5. Establish a Council quarterly program and budget review function utilizing appropriate Council committees.

Following the recommendation of the Finance Committee, the Council included in its package of legislation presented to the Interim Task Force on Metropolitan Regional Government a bill which clarifies Council authority to approve contracts. The resolution (No. 88-996) requested that the Task Force introduce the bill in the 1989 legislative session. The Interim Task Force included the Council's contract bill in its package of legislation introduced in the 1989 session.

Ordinance No. 88-271 was before the Council for first reading on October 24, 1988 and referred to the Internal Affairs Committee. On December 1, 1988, General Counsel Dan Cooper informed the Internal Affairs Committee that if the Council adopted Ordinance No. 88-271, he could not "approve the ordinance as to form" because it does not conform to his December 18, 1987 legal opinion. As a result of this notification, Council staff prepared a revised draft of the ordinance (No. 88-271A) for consideration by the Internal Affairs Committee. This draft suggested language to bring the ordinance into compliance with General Counsel's opinion. The Internal Affairs Committee considered Ordinance No. 88-271A at meetings held on December 7 and 12, 1988 and developed a revised ordinance (No. 88-271B). The Committee scheduled a final meeting on the ordinance for December 22, 1988, and in anticipation of a favorable Committee recommendation, the Presiding officer placed Ordinance No. 88-271B on the December 22, 1988 Council agenda. At the December 22, 1988 Committee meeting, the Chair reported that the Executive Officer requested that Ordinance No. 88-271B be removed from the Committee and subsequent Council agenda and that a Task Force be established to review the contracting issue. The ordinance was removed from the Council agenda, and the Presiding Officer appointed a task force which included Councilors Bauer, DeJardin, Knowles and Ragsdale and Executive Officer Cusma.

The Contracting Task Force met on January 3, 9 and 16, 1989. The work of the Task Force resulted in a revised ordinance No. 88-271C. The Internal Affairs Committee met on January 27, February 7 and 21, and March 9, 1989 to review the ordinance and at the end of its deliberations, the current revised Ordinance No. 88-271D was produced and recommended for adoption.



METRO

2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646
Fax 241-7417

ATTACHMENT A

(Internal Affairs Committee Report)
Ord. No. 88-271D

January 9, 1989

The Honorable Mike Ragsdale
Presiding Officer
Metropolitan Service District
2000 S. W. First Avenue
Portland, OR 97201-5398

Executive Officer
Rena Cusma

Metro Council

Mike Ragsdale
Presiding Officer
District 1

Corky Kirkpatrick
Deputy Presiding
Officer
District 4

Richard Waker
District 2

Jim Gardner
District 3

Tom DeJardin
District 5

George Van Bergen
District 6

Sharon Kelley
District 7

Elsa Coleman
District 8

Tanya Collier
District 9

Larry Cooper
District 10

David Knowles
District 11

Gary Hansen
District 12

The Honorable Rena Cusma
Executive Officer
Metropolitan Service District
2000 S. W. First Avenue
Portland, OR 97201-5398

The Honorable David Knowles
3655 N. E. Merges
Portland, OR 97212

The Honorable Tom DeJardin
6267 Belmont Way
West Linn, OR 97068

The Honorable Lawrence Bauer
14225 S. W. 20th
Beaverton, OR 97005

Dear Contracting Task Force Members:

At the Task Force meeting of January 3, 1989, the Task Force discussed in broad terms policy concerns of the Council and the Executive Officer that in the judgment of the Task Force participants were the underlying reasons why contracting procedures at Metro have been a major discussion item for the period of more than one year.

Presiding Officer Ragsdale set forth what he understood to be three major concerns of the Council. He described the first as being the "fiscal oversight" issue. For example, the convention center project is currently furnishing weekly reports to the Council giving financial information regarding the progress of those contracts and the potential for cost overruns. Presiding Officer Ragsdale felt that the concern of the Council in this area was for information and not necessarily contract approval. The concern was that the Council not be "surprised" by overruns due to mismanagement of

projects and that they be well aware of ahead of time where the potential for cost overruns were. While the convention center project is seemingly being managed in a fashion that meets the Council's concerns, the Council has a problem with not knowing whether other projects that the District is operating are not being managed in a similar fashion.

After the discussion, the Task Force concluded that the computerized contract information system currently under development might well provide much information for the Council in the future and that a further briefing of the Task Force in this area might go a long way toward solving this concern.

Further, General Counsel provided an opinion that this is an area where the Council has clear authority to legislatively require whatever management reports it deems appropriate be furnished to it by the Executive Officer. The Executive Officer was in concurrence that as a general matter she had no objection to timely reporting mechanisms. Consensus was apparently reached that this was an area that could be solved rather readily and General Counsel was directed to prepare a brief report to the Task Force as to how this might be accomplished.

General Counsel's report at this time is that Ray Phelps will brief the Task Force at its next meeting on Monday, January 9, 1989, at 4:00 p.m. to explain the computerized contract information system and at that time the Task Force could give further direction as to whether the information that would be made available through the system was sufficient to solve its concern and to decide whether it would recommend that the Council legislatively require that this information be furnished.

A second area of concern identified by Presiding Officer Ragsdale was the potential for abuse in contract approvals. He described this as the so-called "in-law treatment" issue. The question he raised was whether contract approval authority by the Council was necessary in order to answer this concern.

General Counsel discussed with the Task Force the fact that the procedural requirements could be established by the Council that created considerable protection for preventing abuses in this area through both fairly tight control of the exceptions to the general rule that all contracts must be let through sealed, competitive bids with price being the sole determining factor, and an appeals process to deal with any deviations. The Task Force reached a consensus that this area

Contracting Task Force
January 9, 1989
Page 3

was one where it would defer further action pending resolution of other issues, but would revisit the matter in the future.

General Counsel recommends that the Task Force review a memorandum dated September 26, 1988, to Presiding Officer Ragsdale from General Counsel regarding the purpose and powers of a Contract Review Board, and examine those areas where the Task Force feels it is appropriate to adopt contract procedures that go beyond those presently in force. Areas that might be addressed by the Task Force include the area of sole source contracts, exemptions to competitive bidding, an appeal process for reviewing challenges by bidders to determinations regarding disqualifying bidders or rejecting bids, and criteria to be utilized in considering RFPs.

The third issue identified by the Presiding Officer is the policy oversight issue. Contracting is viewed by the Council as a policy implementation tool and the Council is concerned that policies legitimately adopted by the Council would be affected by contracting issues. Certain contracting decisions might amount to de facto policy making without Council involvement. The Executive Officer indicated an interest in coming to an agreement with the Council members of the Task Force that they in fact had a legitimate legislative policy-setting role in certain contract areas, while asserting that many contracts were, in fact, purely administrative matters that had little or no legislative policy implications.

The Task Force agreed to discuss this matter further, but felt that it would be quite possible to reach consensus in this area as well.

At this time General Counsel was asked to prepare a short memorandum to the Task Force outlining the two policy areas that had been identified where the Task Force felt it could move on rapidly. This memorandum is an attempt to do so and General Counsel awaits further direction from the Task Force as to the specific drafting of language to accomplish the Task Force goals.

Yours very truly,

Daniel B. Cooper
General Counsel

gl
cc: Ray Phelps
Jessica Marlitt

NOTE: Due to the length of the document, Ordinance No. 89-271D has not been printed in this agenda packet. The ordinance has been distributed to all Councilors. Other parties wanting a copy of the document may contact Marie Nelson, Council Clerk, 221-1646, extension 206.



METRO

2000 SW First Avenue
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September 26, 1988

The Honorable Mike Ragsdale
Presiding Officer
Metropolitan Service District
2000 S. W. First Avenue
Portland, OR 97201-5398

Dear Presiding Officer Ragsdale:

Re: Purpose and Powers of the Contract Review Board

This letter is in response to your request of September 16, 1988, regarding what is the purpose of a Contract Review Board and what are its powers. Attached to this letter is a copy of the provisions of ORS 279.011-279.067. These statutes delineate the requirements for public purchasing. They establish the general rules for public agencies to follow in entering into contracts.

What follows is a section by section review of the provisions of ORS 279.011 to 279.067 with discussion of specific powers granted to "boards," "the director", or "the department." In those cases where the statute does not specifically refer to the board or director I have summarized the substance of the statute and not mentioned the board or director.

ORS 279.011 defines the terms utilized in this section of the statute.

"Board" means a local contract review board created pursuant to ORS 279.055. "Department" means the Department of General Services for the state of Oregon. "Director" means the Director of the Department of General Services. ORS 279.015 provides the general rule that all public contracts shall be based upon competitive bids except for certain exceptions. ORS 279.015(2) allows "the director or board" to exempt certain public contracts or classes of public contracts from the requirements of public bidding upon the making of certain findings. ORS 279.015(4) allows "the director or board" to adopt rules governing when "emergency" contracts may be executed. ORS 279.015(5) authorizes "the director or board" to direct the use of alternate contracting

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The Honorable Mike Ragsdale
September 26, 1988
Page 2

procedures when competitive bidding exemptions have been granted by "the director or board" pursuant to ORS 279.015(2).

ORS 279.017 establishes the general rule that specifications for public contracts shall not expressly or implicitly require any product by any brand name or mark, and further allows "the director or board" to exempt certain products or classes of products from the general rule upon the making of certain findings.

ORS 279.019 provides procedures for appeal of decisions of the director or a contract review board. Decisions of the director are reviewable by the Circuit Court of Marion County. Decisions of a public contract review board may be reviewed pursuant to the Writ of Review provisions of ORS chapter 34.

ORS 279.021 establishes a preference for goods or services that have been manufactured or produced in this state and requires foreign contractors to be registered with the Department of Revenue. ORS 279.023 provides a least cost policy for public improvements.

ORS 279.025 provides the general rules that all contracts must be advertised for bids at least once and authorizes "the director or board" by rule to require an advertisement for bids to be published more than once or in one or more additional publications.

ORS 279.027 requires that all bids be in writing and be opened publicly. ORS 279.029 governs the requirements for awarding contracts by a public contracting agency. ORS 279.031 deals with the return or retention of bid security.

ORS 279.033 authorizes "the director or board" to exempt certain contracts or classes of contracts from the requirements of bid security and performance bonds and further provides that a public agency may require such a bond even if an exemption exists. ORS 279.035 provides that a public contracting agency may reject any bid upon a finding that it is in the public interest to do so. ORS 279.037, 279.039, 279.041 all deal with disqualifications of bidders and the requirement that a public contracting agency may require bidders to be prequalified.

ORS 279.043 provides that the appeal by a bidder who has been disqualified either after bid opening or in a prequalification proceeding is to either "the director" in

The Honorable Mike Ragsdale
September 26, 1988
Page 3

the case where the public contracting agency is an agency of the state of Oregon or to the appropriate "contract review board." ORS 279.045 provides for the procedure for hearing the appeal by "the director or board" and for judicial review of the decision.

ORS 279.047 sets forth the rule that any contractor who is prequalified by the Department of Transportation or General Services is presumed to be qualified on other contracts. ORS 279.049 provides for the Attorney General to prepare and maintain model rules of procedure.

ORS 279.051 relates to personal services contracts. As a general rule it sets forth the fact that personal services contracts may be entered into by public agencies and authorizes "the director or board" to designate certain contracts or classes of service contracts as personal services contracts. Public agencies are authorized to create procedures for the screening and selection of persons to perform personal services contracts.

ORS 279.053 authorizes affirmative action programs in contracting.

ORS 279.055 provides for the creation of local contract review boards. The statute provides that counties by ordinance may create a local contract review board for the county consisting of the county's governing body or at least three persons appointed by the governing body. ORS 279.055(1). Any other local public agency having a governing body may also create its governing body as a local contract review board for that public agency. ORS 279.055(2). If a local public agency does not create a local contract review board the board created by the county in which the local public agency has its principal administrative office serves as the local contract review board for that agency. ORS 279.055(3). In general the powers of contract review boards are the same as the powers granted the department and director under ORS 279.011-279.063. ORS 279.055(4). A local public agency may by intergovernmental agreement provide for the governing body of another public agency to serve as its local contract review board. ORS 279.055(7). ORS 279.056 enunciates principles determining when federal law and rules prevail over the provisions of state law.

ORS 279.059 relates to subcontracting requirements for disadvantaged, minority or women business enterprise. ORS 279.061 sets limitations on public agencies constructing

The Honorable Mike Ragsdale
September 26, 1988
Page 4

public improvements. ORS 279.063 states that it is against public policy for a public agency to require contractors to waive certain damage claims against the public entity.

ORS 279.067 provides for judicial remedies for any bidder adversely affected and sets forth the rule that a decision of a local contract review board or a local government agency shall not be voided if other equitable relief is available.

The above brief summary sets forth the powers granted to contract review boards. In the context of the previous opinion I have given to the Council regarding the division of powers between the Metro Council and the Metro Executive Officer in contracting, it is important to note that ORS 279.027 and 279.029 specifically provide that the public contracting agency is the body that receives the bids and awards contracts not the contract review board. The public contracting agency is defined by ORS 279.011 to be the political subdivision authorized by law to enter into public contracts.

The specific provisions of ORS 279 relating to public contract review boards especially when considered in light of the provisions of ORS 279.055 which provide that an entity other than the governing body of the local government may be the contract review board for that government sets forth clearly that the propose and power of a local contract review board is to deal with the specifics of exemptions from general requirements, procedural rules for adopting contracts, and to review decisions regarding disqualification of bidders. The powers of a "board" are substantively the same as the powers of "the director." The director does not contract on behalf of other state agencies, rather he establishes procedures and reviews contested actions. Likewise, "boards" are not empowered to award contracts or make decisions regarding which bidders should or should not be rejected except in its limited role as the body empowered to review the decisions of a public contracting agency.

At the request of Councilor Collier, I have previously committee myself to attend the Finance Committee's scheduled

The Honorable Mike Ragsdale
September 26, 1988
Page 5

meeting on September 29, 1988. I will be available to
discuss this matter in further detail at that time.

Yours very truly,

A handwritten signature in dark ink, appearing to read "D. Cooper", written over a horizontal line.

Daniel B. Cooper
General Counsel

gl

Attachment

cc: Council Finance Committee Members
Rena Cusma
Ray Phelps
Don Carlson

PURCHASING AND BIDS AND BIDDING IN GENERAL

279.008 [Repealed by 1975 c.771 §33]

279.010 [Repealed by 1975 c.771 §33]

279.011 Definitions for ORS 279.011 to 279.063. As used in ORS 279.011 to 279.063:

(1) "Board" means a local contract review board created pursuant to ORS 279.055.

(2) "Department" means the Department of General Services.

(3) "Director" means the Director of the Department of General Services.

(4) "Public contract" means any purchase, lease or sale by a public agency of personal property, public improvements or services other than agreements which are for personal service.

(5) "Public agency" or "public contracting agency" means any agency of the State of Oregon or any political subdivision thereof authorized by law to enter into public contracts and any public body created by intergovernmental agreement.

(6) "Public improvement" means projects for construction, reconstruction or major renovation on real property by or for a public agency. "Public improvement" does not include emergency work, minor alteration, ordinary repair or maintenance necessary in order to preserve a public improvement. [1975 c.771 §1; 1979 c.196 §1; 1979 c.869 §1a; 1981 c.54 §1; 1983 c.690 §2]

279.012 [Repealed by 1975 c.771 §33]

279.013 [1975 c.771 §2; 1977 c.456 §1; 1979 c.195 §1; 1981 c.466 §1; 1981 c.528 §5; 1981 c.712 §1; repealed by 1983 c.690 §28]

279.014 [Amended by 1967 c.202 §1; 1973 c.42 §1; repealed by 1975 c.771 §33]

279.015 Competitive bidding; exemptions. (1) All public contracts shall be based upon competitive bids except:

(a) Contracts made with other public agencies or the Federal Government;

(b) Contracts made with qualified nonprofit agencies providing employment opportunities for the handicapped;

(c) A public contract exempt under subsection (2) of this section;

(d) A contract for supplies, at the option of the contracting agency, may be excluded from the competitive bidding requirement if the value of the contract is less than \$2,500;

(e) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145; and

(f) Contracts for repair, maintenance, improvement or protection of property obtained by the Director of Veterans' Affairs under ORS 407.135 and 407.145 (1).

(2) The director or board may exempt certain public contracts or classes of public contracts from the requirements of subsection (1) of this section upon the following findings:

(a) It is unlikely that such exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; and

(b) The awarding of public contracts pursuant to the exemption will result in substantial cost savings to the public contracting agency. In making such finding, the director or board may consider the type, cost, amount of the contract, number of persons available to bid and such other factors as may be deemed appropriate.

(3) A public contract also may be exempted from the requirements of subsection (1) of this section if:

(a) Emergency conditions require prompt execution of the contract; or

(b) In case of sale of surplus property by a public agency, the number, value and nature of the items to be sold make it probable that the cost of conducting a sale by competitive bid will be such that a liquidation sale will result in substantially greater net revenue to the public agency.

(4) The director or board shall adopt rules allowing the governing body of a public agency and the officer of a public agency for contracts under \$25,000 to declare that an emergency exists and establishing procedures for determining when the conditions in paragraph (b) of subsection (3) of this section are present. The rules shall prescribe that if an emergency is declared, any contract awarded under this subsection and paragraph (a) of subsection (3) of this section must be awarded within 60 days following declaration of the emergency, unless the director or board grants an extension.

(5) In granting exemptions pursuant to paragraphs (a) and (b) of subsection (2) of this section, the director or board shall, where appropriate, direct the use of alternate contracting and purchasing practices that take account of market realities and modern or innovative contracting and purchasing methods, which are also consistent with the public policy of encouraging competition. [1975 c.771 §3; 1977 c.304 §6; 1983 c.244 §1; 1983 c.590 §10; 1983 c.690 §3a; 1987 c.538 §1; 1987 c.777 §1]

279.016 [Amended by 1971 c.481 §1; repealed by 1975 c.771 §33]

279.017 Specifications for contracts; exemptions. (1) Specifications for public contracts shall not expressly or implicitly require any product by any brand name or mark, nor the product of any particular manufacturer or seller unless the product is exempt under subsection (2) of this section.

(2) The director or board may exempt certain products or classes of products from subsection (1) of this section upon any of the following findings:

(a) It is unlikely that such exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts;

(b) The specification of a product by brand name or mark, or the product of a particular manufacturer or seller, would result in substantial cost savings to the public agency;

(c) There is only one manufacturer or seller of the product of the quality required; or

(d) Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies. [1975 c.771 §4; 1983 c.690 §4]

279.018 [Repealed by 1975 c.771 §33]

279.019 Exemption procedure; appeal.

(1) Exemptions granted by the director pursuant to ORS 279.015 (2) or 279.017 (2) constitute rulemaking and not contested cases under ORS 183.310 to 183.550. However, an exemption granted with regard to a specific contract shall be granted by order of the director, which order shall set forth findings supporting the decision of the director to grant or deny the request for exemption. Such order shall be reviewable pursuant to ORS 183.484 and shall not constitute a contested case order. Jurisdiction for review of the order shall be with the Circuit Court of Marion County. The court may award costs and attorney fees to the prevailing party.

(2) Any person except the public contracting agency or anyone representing it may bring a petition for a declaratory judgment to test the validity of any rule adopted by the director under ORS 279.015 and 279.017 in the manner provided in ORS 183.400.

(3) Any person except the public contracting agency or anyone representing it may bring an action for writ of review pursuant to ORS chapter 34 to test the validity of any exemption granted pursuant to ORS 279.015, 279.017 and 279.055 by a board. [1975 c.771 §6; 1983 c.690 §5]

279.020 [Repealed by 1975 c.771 §33]

279.021 Preferences; foreign contractor. (1) In all public contracts, the public contracting agency shall prefer goods or services that have been manufactured or produced in this state if price, fitness, availability and quality are otherwise equal.

(2)(a) Where a public contract is awarded to a foreign contractor and the contract price exceeds \$10,000, the contractor shall promptly report to the Department of Revenue on forms to be provided by the Department of Revenue the total contract price, terms of payment, length of contract and such other information as the Department of Revenue may require before final payment can be received on the public contract. The public contracting agency shall satisfy itself that the requirement of this subsection has been complied with before it issues a final payment on a public contract.

(b) For purposes of this subsection, a foreign contractor is one who is not domiciled in or registered to do business in the State of Oregon. [1975 c.771 §5]

279.022 [Repealed by 1975 c.771 §33]

279.023 Least cost policy for public improvements; costs estimates in budget process; record of costs. (1) It is the policy of the State of Oregon that public agencies shall make every effort to construct public improvements at the least cost to the public agency.

(2) Not less than 30 days prior to adoption of its budget for the subsequent budget period, each public agency shall prepare and file with the Commissioner of the Bureau of Labor and Industries a list of every public improvement known to the agency that the agency plans to fund in the budget period, identifying each improvement by name and estimating the total onsite construction costs. The list shall also contain a statement as to whether the agency intends to perform the construction by a private contractor. If the agency intends to perform construction work using the agency's own equipment and personnel on a project estimated to cost more than \$50,000, then the agency shall also show that its decision conforms to the policy stated in subsection (1) of this section. The list is a public record and may be revised periodically by the agency.

(3) Before a public agency constructs a public improvement with its own equipment or personnel:

(a) If the estimated cost exceeds \$50,000, the public agency shall prepare adequate plans and specifications and the estimated unit cost of each classification of work. The estimated cost of the

work shall include a reasonable allowance for the cost, including investment cost, of any equipment used. As used in this paragraph, "adequate" means sufficient to control the performance of the work and to assure satisfactory quality of construction by the public agency personnel.

(b) The public agency shall cause to be kept and preserved a full, true and accurate account of the costs of performing the work, including all engineering and administrative expenses and the cost, including investment costs, of any equipment used. The final account of the costs shall be a public record.

(4) Subsections (2) and (3) of this section do not apply to any public agency when the public improvement is to be used for the distribution or transmission of electric power.

(5) For purposes of this section, resurfacing of highways, roads or streets at a depth of two or more inches and at an estimated cost that exceeds \$50,000 is a public improvement. [1975 c.771 §7; 1979 c.869 §2; 1981 c.281 §1; 1987 c.776 §2]

279.024 [Repealed by 1975 c.771 §33]

279.025 Requirements for advertisement for bids. (1) An advertisement for bids shall be published at least once in at least one newspaper of general circulation in the area where the contract is to be performed and in as many additional issues and publications as the public contracting agency may determine. If the contract is for a public improvement with an estimated cost in excess of \$50,000, the advertisement for bids shall be published in at least one trade newspaper of general state-wide circulation. The director or board may, by rule, require an advertisement for bids to be published more than once or in one or more additional publications.

(2) All advertisements for bids shall state:

(a) If the contract is for a public work subject to ORS 279.348 to 279.363 or the Davis-Bacon Act (40 U.S.C. 276a), that no bid will be received or considered by the public contracting agency unless the bid contains a statement by the bidder as a part of its bid that the provisions of ORS 279.350 or 40 U.S.C. 276a are to be complied with;

(b) The date after which bids will not be received, which date shall be not less than five days after the date of the last publication of the advertisement;

(c) The date that prequalification applications must be filed under ORS 279.039 (1) and the class or classes of work for which bidders must be prequalified if prequalification is a requirement:

(d) The character of the work to be done or the material or things to be purchased;

(e) The office where the specifications for the work, material or things may be seen;

(f) The name and title of the person designated for receipt of bids;

(g) The date, time and place that the public contracting agency will publicly open the bids;

(h) That each bid must contain a statement as to whether the bidder is a resident bidder, as defined in ORS 279.029;

(i) That the public contracting agency may reject any bid not in compliance with all prescribed public bidding procedures and requirements, and may reject for good cause any or all bids upon a finding of the agency it is in the public interest to do so; and

(j) Whether or not a contractor or subcontractor must be licensed under ORS 468.883. [Formerly 279.065; 1977 c.289 §1; 1979 c.282 §1; 1983 c.690 §6; 1985 c.724 §1; 1987 c.741 §18; 1987 c.776 §1; 1987 c.865 §2]

279.026 [Repealed by 1975 c.771 §33]

279.027 Requirements for bids. (1) All bids made to the public contracting agency pursuant to ORS 279.015 and 279.025 shall be:

(a) In writing.

(b) Filed with the person designated for receipt of bids by the public contracting agency.

(c) Opened publicly by the public contracting agency at the time designated in the advertisement.

(2) After having been opened the bids shall be filed for public inspection.

(3) A surety bond, cashier's check, or certified check of the bidder shall be attached to all bids as bid security unless the contract for which the bid is submitted has been exempted from this requirement pursuant to ORS 279.033. Such security shall not exceed 10 percent of the amount bid for the contract. [Formerly 279.070]

279.028 [Repealed by 1975 c.771 §33]

279.029 Award of contract; bond; waiver of bond in case of emergency. (1) After the bids are opened as required by ORS 279.027, and after a determination is made that a contract is to be awarded, the public contracting agency shall award the contract to the lowest responsible bidder.

(2) In determining the lowest responsible bidder, a public contracting agency shall, for the purpose of awarding the contract, add a percent increase on the bid of a nonresident bidder equal to the percent, if any, of the preference given to

that bidder in the state in which the bidder resides.

(3) The Department of General Services on or before January 1 of each year shall publish a list of states that give preference to in-state bidders with the percent increase applied in each such state. The public contracting agency may rely on the names of states and percentages so published in determining the lowest responsible bidder without incurring any liability to any bidder.

(4) The successful bidder shall:

(a) Promptly execute a formal contract.

(b) If the contract is for a public improvement, execute and deliver to the public contracting agency a good and sufficient bond, to be approved by the public contracting agency, in a sum equal to the contract price for the faithful performance of the contract. In lieu of a surety bond, the public contracting agency may permit the successful bidder to submit a cashier's check or certified check in an amount equal to 100 percent of the contract price.

(5) In cases of emergency, or where the interest or property of the public contracting agency probably would suffer material injury by delay or other cause, the requirement of furnishing a good and sufficient bond for the faithful performance of any public contract may be excused, if a declaration of such emergency is made and concurred in by all members of the governing board of the public contracting agency.

(6) As used in this section:

(a) "Lowest responsible bidder" means the lowest bidder who has substantially complied with all prescribed public bidding procedures and requirements and who has not been disqualified by the public contracting agency under ORS 279.037.

(b) "Resident bidder" means a bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid, has a business address in this state and has stated in the bid whether the bidder is a "resident bidder" pursuant to this subsection.

(c) "Nonresident bidder" means a bidder who is not a "resident bidder" as defined by paragraph (b) of this subsection. [Formerly 279.075; 1981 c.466 §2; 1987 c.865 §1]

279.030 [Amended by 1971 c.659 §1; repealed by 1975 c.771 §33]

279.031 Return or retention of bid security. Upon the execution of the contract and

bond by the successful bidder, the bid security of the successful bidder shall be returned to the bidder. The bidder who is awarded a contract and who fails promptly and properly to execute the contract or bond shall forfeit the bid security that accompanied the successful bid. The bid security shall be taken and considered as liquidated damages and not as a penalty for failure of the bidder to execute the contract and bond. The bid security of unsuccessful bidders may be returned to them when the bids have been opened and the contract has been awarded, and shall not be retained by the public body after the contract has been duly signed. [Formerly 279.080; 1981 c.712 §2]

279.032 [Repealed by 1975 c.771 §33]

279.033 Exemption of contracts from bid security and bond. The director or board may exempt certain contracts or classes of contracts from the requirement for bid security and from the requirement that a good and sufficient bond be furnished to assure performance of the contract and payment of obligations incurred in the performance; provided, however, the public contracting agency may require bid security and a good and sufficient performance and payment bond even though the contract is of a class exempted by the director or board. [1975 c.771 §11; 1983 c.690 §7]

279.034 [Repealed by 1975 c.771 §33]

279.035 Rejection of bids. The public contracting agency 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 of the agency it is in the public interest to do so. In any case where competitive bids are required and all bids are rejected, and the proposed contract is not abandoned, new bids may be called for as in the first instance. [1975 c.771 §12; 1985 c.724 §2]

279.036 [Amended by 1969 c.607 §1; repealed by 1975 c.771 §33]

279.037 Disqualification of bidder. (1) A public contracting agency may disqualify any person as a bidder on a public contract if the agency finds:

(a) The person does not have sufficient financial ability to perform the contract. If a bond is required to insure performance of a contract, evidence that the person can acquire a surety bond in the amount and type required shall be sufficient to establish financial ability;

(b) The person does not have equipment available to perform the contract;

(c) The person does not have key personnel available of sufficient experience to perform the contract; or

(d) The person has repeatedly breached contractual obligations to public and private contracting agencies.

(2) The public contracting agency may make such investigation as is necessary to determine whether a person is qualified. If a bidder or prospective bidder fails to supply promptly information as requested by the public contracting agency pursuant to such investigation, such failure is grounds for disqualification.

(3) Any information voluntarily submitted by a bidder or prospective bidder pursuant to an investigation under subsection (2) of this section or in a prequalification statement required by ORS 279.039 or in a prequalification request submitted pursuant to ORS 279.041 shall be deemed a trade secret pursuant to ORS 192.501 to 192.505 if requested by the person submitting the information. [1975 c.771 §13; 1977 c.289 §7]

279.038 [Repealed by 1975 c.771 §33]

279.039 Prequalification of bidders; notification. (1) Any public contracting agency may adopt a rule, resolution, ordinance or other regulation requiring mandatory prequalification for all persons desiring to bid for public contracts that are to be let by the agency. The rule, resolution, ordinance or other regulation authorized by this section shall include the time for submitting prequalification applications and a general description of the type and nature of the contracts that may be let. The prequalification application shall be in writing on a standard form prescribed by the director.

(2) The public contracting agency shall within 30 days of the receipt of the prequalification application submitted pursuant to subsection (1) of this section, notify the prospective bidder if the prospective bidder is qualified or not, the nature and type of contracts that the prospective bidder is qualified to bid on and the time period for which the prequalification is valid. If the public contracting agency disqualifies the prospective bidder as to any contracts covered by the rule, resolution, ordinance or other regulation, the notice shall specify which subsections of ORS 279.037 the prospective bidder failed to comply with. Unless the reasons are specified, the bidder shall be deemed to have been prequalified in accordance with the application.

(3) If a public contracting agency subsequently discovers that a person heretofore prequalified under subsections (1) and (2) of this section is no longer qualified, the agency may revoke the prequalification upon reasonable notice to the prospective bidder; provided, however, that such revocation shall be invalid as to

any contract for which an advertisement for bids has already been made under ORS 279.025. [1975 c.771 §14; 1977 c.289 §2; 1981 c.712 §3; 1983 c.690 §8]

279.040 [Repealed by 1975 c.771 §33]

279.041 Application for prequalification; notification; investigation, revocation or revision. (1) When a public contracting agency permits or requires prequalification of bidders, a person who wishes to prequalify shall submit a prequalification application to the director. Within 30 days after receipt of a prequalification application, the public contracting officer shall investigate the prospective bidder as necessary to determine if the prospective bidder is qualified. The determination shall be made in less than 30 days, if practical, if the prospective bidder requests an early decision to allow the bidder as much time as possible to prepare a bid on a contract that has been advertised. In making its determination, the agency shall only disqualify a person in accordance with ORS 279.037. It shall promptly notify the person whether or not that person is qualified.

(2) If the agency finds that a prospective bidder is qualified, the notice shall state the nature and type of contracts that the person is qualified to bid on and the period of time for which the qualification is valid under the rule, resolution, ordinance or other regulation. If the agency disqualifies a prospective bidder as to any contracts covered by the rule, resolution, ordinance or other regulation, the notice shall specify the reasons found under ORS 279.037 for the disqualification and inform the person of the right to a hearing under ORS 279.043 and 279.045.

(3) If a public contracting agency has reasonable cause to believe that there has been a substantial change in the conditions of a prequalified person and that the person is no longer qualified or is less qualified, the agency may revoke or may revise and reissue the prequalification after reasonable notice to the prequalified person. The notice shall state the reasons found under ORS 279.037 for revocation or revision of the prequalification of the person and inform the person of the right to a hearing under ORS 279.043 and 279.045. A revocation or revision does not apply to any contract for which publication of advertisement for bids, in accordance with ORS 279.025, commenced prior to the date the notice of revocation or revision was received by the prequalified person. [1975 c.771 §15; 1977 c.289 §3; 1981 c.712 §4; 1983 c.690 §9]

279.042 [Repealed by 1975 c.771 §33]

279.049 Model rules. The Attorney General shall prepare and maintain model rules of procedure appropriate for use by all public contracting agencies governing bid procedures, advertisements, the awarding of bids, retainage, claims, liens, bid security, payment and performance bonds and other matters involving public contracts, and may devise and publish forms for use therewith. Before adopting or amending any such rule, the Attorney General shall consult with the director, the Director of Transportation, representatives of county governments, representatives of city governments, representatives of school boards and other knowledgeable persons. [1975 c.771 §26; 1983 c.690 §12]

279.050 [Amended by 1969 c.349 §1; 1971 c.180 §1; repealed by 1975 c.771 §33]

279.051 Personal services contracts; procedures. (1) Public agencies may enter into contracts for personal services. The provisions of this section do not relieve the agency of the duty to comply with ORS 291.021 or applicable city or county charter provisions. Each public agency shall create procedures for the screening and selection of persons to perform personal services.

(2) The director or board by ordinance, resolution, administrative rule or other regulation may designate certain service contracts or classes of service contracts as personal service contracts. [1975 c.771 §27; 1979 c.196 §2; 1981 c.766 §1; 1983 c.690 §13]

279.052 [Repealed by 1975 c.771 §33]

279.053 Laws not to prohibit participation in affirmative action projects; authority to limit bidding for affirmative action purposes. (1) No provision contained in chapter 771, Oregon Laws 1975, shall be construed to prohibit any public contracting body from engaging in bidding and contracting practices designed to accomplish affirmative action goals for disadvantaged or minority groups.

(2) In carrying out the policy of affirmative action, by appropriate ordinance, resolution or administrative rule, a public contracting body may limit competitive bidding on any public contract for procurement of goods and services or on any other public contract estimated to cost \$50,000 or less to contracting entities owned or controlled by persons described in subsection (3) of this section.

(3) As used in this section "affirmative action" is a program designed to insure equal opportunity in employment and business for persons otherwise disadvantaged by reason of race, color, religion, sex, national origin, age or physical or mental handicap. [1975 c.771 §32; 1981 c.325 §4; 1985 c.724 §3]

279.054 [Repealed by 1975 c.771 §33]

279.055 Local contract review board; creation; power. (1) Every county by ordinance may create a local contract review board for the county. The board so created may consist of the governing body of the county or at least three persons appointed by and serving at the pleasure of that governing body.

(2) Any other local public agency having a governing body may adopt a resolution or ordinance creating its governing body as a local contract review board for that public agency. The local public agency shall file a copy of the resolution or ordinance with the county governing body. The board created by the local public agency shall not exercise its powers under subsection (4) of this section until the resolution or ordinance has been filed pursuant to this subsection.

(3) A county board created pursuant to subsection (1) of this section shall serve as the local contract review board for local public agencies that do not create their own boards pursuant to subsection (2) of this section, and that have their principal administrative offices within the county. The county board may impose fees on local public agencies that it serves under this subsection if the ordinance creating the county board authorized such fees. The fees shall be prescribed by rule adopted under subsection (5) of this section and shall be calculated to reimburse the county for its costs in serving the local public agencies.

(4) Except as provided in ORS 279.019 (1) and (2) and the authority to prescribe the standard prequalification application forms in ORS 279.039 (1), boards created under this section shall have all the powers granted the department and director under ORS 279.011 to 279.063. The board shall exercise such powers only after it has adopted rules pursuant to the requirements of subsection (5) of this section.

(5) Each board created under this section shall have rulemaking authority to carry out the powers and duties of the board under ORS 279.011 to 279.063. The rules shall be adopted in the manner prescribed in the resolution or ordinance creating the board.

(6) A local public agency, other than a county, by resolution or ordinance may rescind its action to create a local contract review board. The rescission shall take effect on the date a copy of the resolution or ordinance is filed with the county governing body or on the date stated therein, whichever is the later date. After the date of filing or the date specified, the county board,

DEC. 22, 1988

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING	)	ORDINANCE NO. 88-271B
METRO CODE CHAPTER 2.04 RELATING)	
TO CONTRACTING PROCEDURES	)	Introduced by the
	)	Council Finance Committee

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. Metro Code Section 2.04.010 is amended to read as follows:

2.04.010 Definitions

[(d)] (a) COMPETITIVE BIDS OR BIDS -- A competitive offer in which price and conformance to specification will be the award criteria.

[(a)] (b) CONTRACT REVIEW BOARD or BOARD -- The Council is the Contract Review Board for the Metropolitan Service District with the powers described in ORS Chapter 279 and Section 2.04.020 of this Chapter.

(c) EMERGENCY -- An emergency for the purpose of this Chapter means the occurrence of a specific event or events that could not have been reasonably foreseen and which require the taking of prompt action to remedy the condition and thereby avoid further physical damage or harm to individuals or the occurrence of avoidable costs. Administrative delay in and by itself shall not constitute grounds for an "emergency."

[(i)] (d) EMERGENCY CONTRACTS -- A contract may be exempt from the competitive bidding process if an emergency requires prompt execution of a contract.

(e) EXEMPTIONS FROM COMPETITIVE BIDDING -- Exemptions include any exemption or exception from the regular competitive bidding process for public contracts as defined in ORS 279.011 to 279.061, this chapter, and any exemption made by the Board pursuant to Section 2.04.041 of the Code.

(f) NOTICE OF AWARD -- Means written communication to a responsive, responsible bidder or proposer stating that their bid or proposal has been conditionally determined to be the lowest, responsive, responsible bid or most responsive proposal and that the District intends to enter into a contract upon completion by the bidder/proposer of all required conditions.

[(c)] (g) PERSONAL SERVICES CONTRACT --

(1) The following are personal services contracts:

(a) Contracts for services performed as an independent contractor in a professional capacity, including but not limited to the services of an accountant; attorney; architectural or land use planning consultant; physician or dentist; registered professional engineer; appraiser or surveyor; passenger aircraft pilot; aerial photographer; timber cruiser; data processing consultant or broadcaster.

(b) Contracts for services as an artist in the performing or fine arts, including but not limited to persons identified as photographer, filmmaker, painter, weaver, or sculptor.

(c) Contracts for services of a specialized, creative and research-oriented, noncommercial nature.

(d) Contracts for services as consultant.

(e) Contracts for educational and human custodial care services.

(2) The following are not personal services contracts:

(a) Contracts, even though in a professional capacity, if predominantly for a product, e.g., a contract with a landscape architect to design a garden is for personal services, but a contract to design a garden and supply all the shrubs and trees is predominantly for a tangible product.

(b) A service contract to supply labor which is of a type that can generally be done by any competent worker, e.g., janitorial, security guard, crop spraying, laundry and landscape maintenance service contracts.

(c) Contracts for trade-related activities considered to be labor and material contracts.

(d) Contracts for services of a trade-related activity, even though a specific license is required to engage in the activity. Examples are repair and/or maintenance of all types of equipment or structures.

[(g)] (h) PUBLIC AGENCY -- Any agency of the federal government, state of Oregon, or any political subdivision thereof, authorized by law to enter into public contracts and any public body created by intergovernmental agreement.

[(b)] (i) PUBLIC CONTRACT -- Any purchase, lease or sale by Metro of personal property, public improvement or services, including those transacted by purchase order, other than agreements which are for personal services. Public Contracts may be obtained by purchase order as determined by the Executive Officer.

[(h)] (j) PUBLIC IMPROVEMENT -- Projects for construction, reconstruction or major renovation on real property by or for a public agency. "Public improvement" does not include emergency work, minor alteration, ordinary repair or maintenance in order to preserve a public improvement.

[(f)] (k) PURCHASE ORDER -- A public contract for purchase of goods in any amount, or for goods and services \$500 or less, or for services \$500 or less.

[(k)] (l) REQUESTS FOR PROPOSALS OR RFP's -- A request for proposal is the process described in Section 2.04.050, "Personal Services Contracts." This process may be used for public contracts only when the Board has granted an exemption for that type of contract or for a particular contract as set out in Section 2.04.041, "Requirement of Competitive Bidding, Exemptions." The Board may adopt a particular RFP process for a particular contract by setting forth the amendments in the exemption approval. (Ordinance No. 87-216, Sec. 2)

[(j)] (m) SOLE SOURCE CONTRACTS -- Contracts for which it can be documented there is only one qualified provider of the required service or material.

Section 2. Metro Code Section 2.04.030 is amended to read as follows:

2.04.030 Rules and Procedures Governing All Personal Services and Public Contracts:

(a) Applicability: All personal services and public contracts are subject to the applicable selection, review and approval procedures of this Chapter.

(b) Initiating a Contract: When a department initiates a contract not in the form of a purchase order, it must first notify the Department of Finance and Administration of its intention and request the issuance of a contract number which shall appear on all copies of the contract. The department must complete a Contract Summary form indicating the specifics of the contract. This form must be forwarded to the Department of Finance and Administration either with a fully executed contract (one copy) if the amount is estimated to be \$2,500 or under, or with an unexecuted contract (three copies) for review, approval and signature if the amount is over \$2,500.

(c) Documentation Required for Contract Files: The Department of Finance and Administration will maintain central files for all contracts. An original copy should be given to each contractor. All correspondence relating to a contract which alters conditions or amounts must be included in the central files as should all papers which document the process of obtaining competitive bids, quotes, or proposals. In any case where a low bid, quote, or proposal is not

accepted, a detailed justification must be included with the contract file. Other documentation, if applicable, that should be included in the file includes:

- Mailing lists
- Affidavits of Publication
- Insurance endorsements and certificates
- Amendments
- Extensions
- Related Correspondence
- Quotes, Proposals, and Bids
- Bonds
- WBE/DBE information
- Contract closure form
- Personal Services Evaluation form

(d) Contract Review: Prior to approval by the appropriate person or body, contracts shall be reviewed as follows:

(1) Any contract which deviates from a standard contract form, exceeds \$10,000 for a personal services contract or \$15,000 for a public contract, or is with another public agency must be reviewed by [legal counsel] the General Counsel.

(2) Contracts involving federal or state grant funds must be reviewed by the Deputy Executive Officer.

(e) At least five (5) days prior to the execution of any public contract over \$15,000 or a personal services contract over \$10,000 the District shall provide a Notice of Award to the contractor selected and to all contractors who submitted unsuccessful bids or proposals. This requirement may be waived by the Executive officer for any emergency contract entered into pursuant to this Code.

[(e)] (f) Disadvantaged Business Program: All contracting and purchasing is subject to the Metro Disadvantaged Business Enterprise Program. Metro will take affirmative action to do business with Disadvantaged Business Enterprises. The Director of Finance and Administration will maintain a directory of disadvantaged businesses as provided in Section 2.04.125 of this Chapter which shall be consulted and used in all contracting and purchasing of goods and services. If a disadvantaged business is included in the directory that appears capable of providing needed goods or services, that business should be contacted and given an opportunity to compete for Metro business. [Contracts awarded subject to the program may be exempted from the competitive bidding process by resolution of the Contract Review Board.]

[(f)] (g) Monthly Contract Report: The Executive Officer shall provide a monthly report to the Council of all contracts, including extensions and amendments, which have been executed during the preceding month; provided, however, that such monthly report need not include purchase orders under \$500. For each current personal services contract over \$10,000 or public contract over \$15,000, the report shall include the amount of the contract and the total expenditures made to date against the original contract.

[(g)] (h) Special Reporting Requirements: The Executive Officer shall file a written report with the Council, via the Council Clerk, at least five (5) working days prior to the execution of a public contract over \$15,000 and a personal service contract over \$10,000. The report shall indicate the name of the contractor; the amount and length of the contract; a brief description of the goods or services to be provided; a brief description of the selection process used in making the award including the criteria used in making the selection, the persons involved in the selection and summary of the results of the evaluation; the applicability and results of the DBE/WBE program on the contract; and a signed certification by the department head that the appropriate contract Code procedures have been followed.

[(g)](i) Code of Conduct:

(1) No employee, elected official or agent of Metro shall participate in the selection, award or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, elected official or agent, any member of his/her immediate family, his or her partner, or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. No Metro elected official, employee or agent shall solicit or accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.

(2) Violations of this Code of Conduct shall subject an employee to disciplinary action pursuant to the Metro Personnel Rules and may be grounds for other civil or criminal penalties provided by law.

[(h)](j) Federal/State Agency Approval: When required by federal or state law or regulations, review and approval of Metro contracts shall include prior concurrence or approval by appropriate federal or state agencies.

(k) Council Approval: Notwithstanding any other provisions of Chapter 2.04, the following contracts, with the exception of emergency contracts, contracts for the purpose of inventory and gift items for resale at the Zoo Gift Shop and, Metro Exposition-Recreation Commission contracts, shall be approved by the Council prior to execution:

(1) Any contract with an initial term greater than one (1) year unless the Council shall have otherwise provided appropriation authority for such a contract;

(2) Any intergovernmental agreement by which the District acquires or transfers any interest in real property, assumes any function or duty of another governmental body or transfers any function or duty of Metro to another governmental unit; or

(3) Any contract for the sale, lease or transfer of real property owned by the District.

(1) Bid/Request for Proposal Protest Procedure: The following procedure applies to aggrieved bidders and proposers who wish to appeal an award of a public contract above \$15,000 and a personal service contract above \$10,000. The appeal process for bids is the same as for requests for proposals. In the case of requests for proposals, disagreement with the judgment exercised in scoring by evaluators is not a basis for appeal.

(1) All appeals shall be made in writing and shall be delivered to the Contracts Administrator at Metro's main office within five (5) working days of the postmarked date on the Notice of Award. The written appeal must describe the specific citation of law, rule, regulation, or procedure upon which the appeal is based.

(2) The Contracts Administrator shall forthwith notify the appropriate department head and the Executive Officer of the appeal. Within ten (10) working days of the receipt of notice of the appeal, the Executive Officer shall send a Notice of Rejection of the appeal or a Notice of Acceptance of the appeal as applicable to the appellant. The appellant may appeal the Executive Officer's decision to reject the appeal in writing to the Metro Contract Review Board within five (5) working days from the postmarked date on the Notice of Rejection.

(3) The Metro Contract Review Board will review the grounds for appeal, all pertinent information and the Executive Officer's recommendation and make a decision. The decision of the Contract Review Board is final.

(4) No contract which is the subject of a pending appeal may be executed unless the Metro Contract Review Board shall have given its approval at the request of the Executive Officer. The Executive Officer may request the Metro Contract Review Board to determine a matter without waiting for the expiration of the time periods provided for herein.

(m) Annual Contract Schedule: The Executive Officer shall annually submit with the Proposed Budget a list of all existing and proposed public contracts of \$15,000 or more and personal services contracts of \$10,000 or more. The list shall include the name of the vendor for existing contracts, a brief description of the contract's purpose and the proposed expenditures for the fiscal year.

(n) Individual projects or procurements may not be divided into separate projects or procurements if the result is that a portion of the project or procurement will be exempt from competitive bidding unless the Contract Review Board shall specifically approve the division.

(o) No contractor may be awarded in the aggregate, within a fiscal year, contracts exempt from competitive bidding pursuant to Section 2.04.041(b)(3) that total \$15,000 or more unless the Contract Review Board shall have given its prior approval.

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 8 & 10, Ordinance No. 84-176, Sec. 4, Ordinance No. 84-179, Sec. 2; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2)

Section 3. Metro Code Section 2.04.040 is amended to read as follows:

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: Unless the Board shall otherwise provide, bonds and bid security requirements are as follows:

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

(2) Labor and Materials bond in an amount equal to 100 percent of the contract price is required for contracts over \$15,000.

(3) Performance bond in an amount equal to 100 percent of the contract price is required for contracts over [\$10,000] \$15,000. 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 not identified above, if the [department head of the initiating department] Executive Officer 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.

(e) Prior to the award of a contract to any bidder other than the apparent low bidder, the Executive Officer shall obtain the prior approval of the Contract Review Board. The Executive Officer shall request the Contract Review Board to approve the award pursuant to Section 2.04.030(1)(4).

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-174, Sec. 16; Ordinance No. 84-176, Sec. 4; Ordinance No. 84-179, Sec. 2; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2, amended by Ordinance No. 87-223, Sec. 1)

Section 4. Metro Code Section 2.04.043 is amended to read as follows:

2.04.043 Public Contracts Between \$2,500 and \$15,000

(a) Selection Process: Unless completely exempt from competitive bidding under Section 2.04.041, when the amount of the contract is [more than] \$2,500, or more but less than \$15,000, the District must obtain a minimum of three (3) competitive quotes. The District shall keep a written record of the source and amount of the quotes received. If three (3) quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes. [No contractor may be awarded in the aggregate, within the fiscal year, contracts in excess of \$30,000 without competitive bidding. In computing the aggregate under this subsection, awards under \$500 shall not be included.]

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

(c) Approval Process:

(1) [Between \$2,501 and \$10,000 \$15,000.] For contracts of [more than] \$2,500, or more either the Executive Officer or Deputy Executive Officer must sign; however, the Director or Assistant Director of the Zoo may sign purchase orders of [\$10,000] \$15,000 or less. 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 contracts. No contract may be approved or executed for any amount in excess of the amount authorized in the budget.

[(2) Between \$10,001 and \$15,000: Except as provided in subsection (3) of this section, all initial contracts with a contract price of greater than \$10,000 but \$15,000 or less shall be approved by the Council Management Committee prior to execution by the Executive Officer or Deputy Executive Officer.]

[(3) Exceptions: The following types of contracts may be approved by the Executive Officer or his/her designee:]

[(A) Contracts which merely pass through funds from a state or federal agency.]

[(B) Purchases of inventory and gift items for resale at the Zoo Gift Shop.]

[(C) Emergency contracts.]

(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."

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 10 & 16; Ordinance No. 84-176, Sec. 4; Ordinance No. 84-179, Sec. 2; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2)

Section 5. Metro Code Section 2.04.044 is amended to read as follows:

2.04.044 Public Contracts [Over] of \$15,000 or More

(a) Selection Process:

Unless exempt from competitive bidding by Code section 2.04.041, the following competitive bidding procedures shall apply to all contracts:

(1) The initiating department staff will prepare or have prepared bid specifications and compile a list of potential bidders.

(2) The bid document will be reviewed by the Department of Finance and Administration and by legal counsel before bids are solicited or advertised, and shall include the contract form to be used.

(3) Copies of all bid documents shall be filed with the Clerk of the Council and referred to the appropriate Council committee for review and comment. Documents must be filed with the Clerk at least thirty-five (35) days prior to the date of release for response by potential bidders. However, the Council or a committee has not within four (4) days of the date of filing scheduled the matter for a hearing, then the documents may be released at any time after the 14th day.

[(3)][4] A request for bids will be advertised in Portland Business Today, a local minority newspaper, and when feasible, in an appropriate trade magazine. Additional advertisement may be appropriate depending upon the nature of the contract.

[(4)][5] The initiating department will receive and open sealed bids at the time and place designated in the request for bids.

[(5)][6] The opened bids will be reviewed by the requesting department and a recommendation and contract will be submitted to the Department of Finance and Administration.

[(6)][7] After selection and prior to approval, the contract must be reviewed by the [Director] Department of Finance and Administration.

[(7)][8] The initiating department will notify all bidders in writing of the contract award and obtain any necessary bonds and insurance certificates.

[(8)][9] The District shall reserve the right to reject any or all quotes or bids received.

(10) No contract shall be executed if the Council shall by ordinance prohibit the execution of the contract.

(b) Approval Process:

[(1) Between \$15,001 and \$50,000: Except as provided in subsection (3) of this section,] All initial contracts with a contract price of [greater than] \$15,000 or more [but \$50,000 or less] shall be approved and executed by [the Council Management Committee prior to execution by] 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 & Administration may approve and execute contracts of \$15,000 or more. No contract may be approved or executed for any amount in excess of the amount authorized in the budget.

[(2) Over \$50,000: Except as provided in subsection (3) of this section, all contracts with a contract price of more than \$50,000 shall be approved by the Council prior to execution by the Executive Officer or the Deputy Executive Officer.]

[(3) Exceptions: The following types of contracts may be approved by the Executive Officer or his/her designee:]

[(A) Contracts which merely pass through funds from a state or federal agency.]

[(B) Purchases of inventory and gift items for resale at the Zoo Gift Shop.]

[(C) Emergency contracts.]

(c) Within thirty (30) days of award of a construction contract, the Department of Finance and Administration shall provide the notice required by ORS 279.363.

(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."

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 10 & 16; Ordinance No. 84-176, Sec. 4; Ordinance No. 84-179, Sec. 2; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2)

Section 6. Metro Code Section 2.04.045 is amended to read as follows:

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

[THIS SECTION IS BEING REVIEWED BY A TASK FORCE OF THE COUNCIL INTERNAL AFFAIRS COMMITTEE. NEW LANGUAGE WILL BE FORWARDED TO THE COUNCIL AS SOON AS IT IS PREPARED.]

Section 7. Metro Code Section 5.04.053 is amended to read as follows:

2.04.053 Personal Services Contracts [Over] of \$10,000 or More

(a) Selection Process: For Personal Services contracts of \$10,000 or more an evaluation of proposals from potential contractors shall be performed as follows:

(1) A request for proposals shall be prepared by the initiating department and shall be reviewed by [legal] the General Counsel and the Department of Finance and Administration. [Where appropriate, the request shall be published in a newspaper of general circulation or in trade magazines. In addition, Metro shall notify in writing at least three (3) potential contractors, who, in the judgment of the Department Director are capable and qualified to perform the requested work. The initiating department will be responsible for maintaining the file and making the appropriate notification.] Copies of all proposal documents shall be filed with the Clerk of the Council and referred to the appropriate Council committee for review and comment. Documents must be filed with the Clerk at least thirty-five (35) days prior to the date of release for response by potential contractors. However, if the Council or a committee has not within fourteen (14) days of the date of filing scheduled the matter for a hearing, then the documents may be released at any time after the 14th day.

(2) Where appropriate, the request for proposal shall be published in a newspaper of general circulation or in trade magazines. In addition, Metro shall notify in writing at least three (3) potential contractors, who, in the judgment of the Department Director, are capable and qualified to perform the requested work. The initiating department shall be responsible for maintaining the file and making the appropriate notification.

[(2)](3) Evaluations of proposals shall include use of a contract evaluation form. The use of an oral interview or an evaluation team is recommended.

~~[(3)]~~ (4) Personal Services Evaluation Form: The Personal Services evaluation form shall document the reasons for the selection. Proposals shall be evaluated according to predetermined criteria. The evaluation process may include the evaluators assigning a quantifiable score on how each aspect of a proposal meets the predetermined criteria. The contract may be awarded to the firm receiving the highest average score.

~~[(4)]~~ (5) After evaluation is complete, the Department Director will recommend final selection through the Department of Finance and Administration.

~~[(5)]~~ (6) Notifications of selection and rejection shall be made in writing by the initiating department.

~~[(6)]~~ (7) Personal Services contracts with the Scope of Work must be approved by the department head and then forwarded to the [Director] Department of Finance and Administration for internal review and execution. [Legal] General Counsel review is required.

(8) No contract shall be executed if the Council shall by ordinance prohibit the execution of the contract.

(b) Approval Process:

[(1) Between \$10,001 and \$50,000: Except as provided in subsection (3) of this section,] All initial contracts with a contract price of greater than \$10,000 [but \$50,000 or less] shall be approved and executed by the [Council Management Committee] Executive Officer [prior to execution] 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 & Administration may approve and execute contracts of \$15,000 or more. No contract may be approved or executed for any amount in excess of the amount authorized in the budget.

[(2) Over \$50,000: Except as provided in subsection (3) of this section, all contracts with a contract price of more than \$50,000 shall be approved by the Council prior to execution.]

[(3) Exceptions: The following types of contracts may be approved by the Executive Officer or his/her designee.]

[(A) Contracts which merely pass through funds from a state or federal agency.]

[(B) Grant award contracts.]

[(C) Emergency contracts.]

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

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 11; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2)

Section 8. Metro Code Section 2.04.054 is amended to read:

2.04.054 Personal Services Contract Extensions and Amendments:

(a) Selection Process:

(1) A Personal Services contract may be renewed without receiving competitive proposals if the contractor is performing a continuing activity for the agency. This applies, but is not limited to contracts for construction observation, public relations consulting, outside legal counsel and annual auditing. Except as provided in subsection (2) below, competitive proposals must be solicited for these services at least once every three (3) years and annually if the contractor proposes a price or rate increase of more than 10 percent over the previous year.

(2) Personal Services contracts may be renewed, extended or renegotiated without soliciting competitive proposals if, at the time of renewal, extension or renegotiation, there are fewer than three (3) potential contractors qualified to provide the quality and type of services required and the initiating department makes detailed findings that the quality and type of services required make it unnecessary or impractical to solicit proposals.

(b) Approval Process:

(1) Less than \$2,500 [and Under]: All contract amendments and extensions which are less than \$2,500 [or less] if the contract was originally for \$2,500 or more or which result in a total contract price of less than \$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 Metro 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.

(2) [Between \$2,501 and \$10,000] \$2,500 and Over:

- (A) All contract amendments and extension which [exceed] are for \$2,500 or more or which result in a total contract price of more than \$2,500 [but less than \$10,000 may] shall 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. No contract amendment or extension may be approved for an amount in excess of the amount provided for in the budget.

- [(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 based on the amount last approved by the Council Management Committee or Council.]

[(3) 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 shall be approved by the Council Management Committee prior to execution.]

[(4) 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.]

[(5) 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.]

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

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 11; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2)

Section 9. Metro Code Section 2.04.060 is amended to read as follows:

2.04.060 Sole Source Contracts:

(a) Selection Process: If there is only one qualified provider of the service required, the initiating department need not solicit and document proposals. The initiating department must document that there is only one qualified provider of the service required, and the [Council] Contract Review Board shall be given notice of the execution and the justification for the contract at the time of notice of intended award. Sole Source Contracts may not exceed \$2,500 unless the Metro Contract Review Board shall have specifically exempted the contract from the public bidding or applicable alternative procurement procedure.

(b) Approval Process: The approval process for sole source contracts is the same as described for regular personal services or public contracts, depending on the nature of the work.

(c) All contracts are subject to the rules and procedures of Code Section 2.04.050, "Rules and Procedures Governing Personal Services and Public Contracts."

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 11; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2)

Section 10. Metro Code Section 2.04.090 is amended to read as follows:

2.04.090 Food Items and Food Service Contracts

(a) Selection Process: (1) All food items and food service contracts and extensions will be processed and awarded as public contracts, except as provided in sections (2)-(4) below.

(2) Competitive bids or quotes are not required when a specific food item is requested by a purchaser of the District's catering service. If the specific item is supplied by more than one source, competitive quotes shall be obtained from at least three known suppliers. The District shall keep a written record of the source and amount of the quotes received.

(3) Competitive bids or quotes are not required for food items which the Director or Assistant Director of the Zoo authorize for a market test. A market test is used to determine whether a food item should be added to the District's menu or to develop the specifications for a particular food item. The test should clearly define the period of time for the market study, not to exceed six months, and the statistical method used to determine the value of the food item as part of the regular menu. A written report shall be made. Based on this report if the Director or Assistant Director determines the item shall be added to the regular menu, he/she shall establish specifications for the item. The item shall be selected under either public contract procedures or subsection (4), below. During the time the selection process is carried out, the test market product may continue to be sold by the District.

(4) Competitive bids or quotes are not required when the Director or Assistant Director of the Zoo finds that marketing factors are likely to significantly impact sales, subject to the following conditions:

(A) Prior to the selection of the contractor the department has made reasonable efforts to inform known companies providing the item or service of the subject matter of the contract and to solicit proposals, including public advertising in at least one newspaper of general circulation in the area.

- (B) The contractor is selected on the basis of the most competitive offer considering cost, quality of the product, service to be rendered and marketing advantages.

A written record of the selection process shall be made.

(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) Under \$2,500 [and Under]: All contract and amendments and extensions which are less than \$2,500 [or less] if the contract was originally for \$2,500 or more or which result in a total contract price of less than \$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] General 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) No contract amendment or extension may be approved in an amount in excess of the amount authorized in the budget.

(2) [Between \$2,501 and \$10,000 Over] \$15,000 or More:

(A) [Except as provided in (B) below,] All contract amendments and extensions which [exceed] are for \$2,500 or more or which result in a total contract price of more than \$2,500 [but \$10,000 or less] if the original contract was for less than \$2,500 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. No contract amendment or extension may be approved in an amount in excess of the amount authorized in the budget.

(3) Except as provided in Subsections (1), (2) and (4) of this section, all contracts and amendments shall be approved as provided by Sections 2.04.044 and 2.04.045 respectively.

[(5)] (4) Exceptions: Emergency contract extensions and amendments may be approved by the Executive Officer or his/her designee.

(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."

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 10 & 16; Ordinance No. 84-176, Sec. 4; Ordinance No. 84-179, Sec. 2; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2)

Section 10. Notwithstanding Section (3) of Ordinance No. 88-249, the effective date of Ordinance No. 88-249 shall be July 1, 1989.

ADOPTED By the Council of the Metropolitan Service District
this _____ day of _____, 1988.

Mike Ragsdale, Presiding Officer

ATTEST:

Clerk of the Council

DEC/amn
0257D/554-5
10/21/88

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING	)	ORDINANCE NO. 88-271A
METRO CODE CHAPTER 2.04 RELATING)	
TO CONTRACTING PROCEDURES	)	Introduced by the
	)	Council Finance Committee

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. Metro Code Section 2.04.030 is amended to read as follows:

2.04.030 Rules and Procedures Governing All Personal Services and Public Contracts:

(a) Applicability: All personal services and public contracts are subject to the applicable selection, review and approval procedures of this Chapter.

(b) Initiating a Contract: When a department initiates a contract not in the form of a purchase order, it must first notify the Department of Finance and Administration of its intention and request the issuance of a contract number which shall appear on all copies of the contract. The department must complete a Contract Summary form indicating the specifics of the contract. This form must be forwarded to the Department of Finance and Administration either with a fully executed contract (one copy) if the amount is estimated to be \$2,500 or under, or with an unexecuted contract (three copies) for review, approval and signature if the amount is over \$2,500.

(c) Documentation Required for Contract Files: The Department of Finance and Administration will maintain central files for all contracts. An original copy should be given to each contractor. All correspondence relating to a contract which alters conditions or amounts must be included in the central files as should all papers which document the process of obtaining competitive bids, quotes, or proposals. In any case where a low bid, quote, or proposal is not accepted, a detailed justification must be included with the contract file. Other documentation, if applicable, that should be included in the file includes:

- Mailing lists
- Affidavits of Publication
- Insurance endorsements and certificates
- Amendments
- Extensions
- Related Correspondence
- Quotes, Proposals, and Bids
- Bonds
- WBE/DBE information

- Contract closure form
- Personal Services Evaluation form

(d) Contract Review: Prior to approval by the appropriate person or body, contracts shall be reviewed as follows:

(1) Any contract which deviates from a standard contract form, exceeds \$10,000 for a personal services contract or \$15,000 for a public contract, or is with another public agency must be reviewed by ~~[legal counsel]~~ the General Counsel.

(2) Contracts involving federal or state grant funds must be reviewed by the Deputy Executive Officer.

(e) Disadvantaged Business Program: All contracting and purchasing is subject to the Metro Disadvantaged Business Enterprise Program. Metro will take affirmative action to do business with Disadvantaged Business Enterprises. The Director of Finance and Administration will maintain a directory of disadvantaged businesses as provided in Section 2.04.125 of this Chapter which shall be consulted and used in all contracting and purchasing of goods and services. If a disadvantaged business is included in the directory that appears capable of providing needed goods or services, that business should be contacted and given an opportunity to compete for Metro business. ~~[Contracts awarded subject to the program may be exempted from the competitive bidding process by resolution of the Contract Review Board.]~~

(f) Monthly Contract Report: The Executive Officer shall provide a monthly report to the Council of all contracts, including extensions and amendments, which have been executed during the preceding month; provided, however, that such monthly report need not include purchase orders under \$500. For each current personal services contract over \$10,000 or public contract over \$15,000, the report shall include the amount of the contract and the total expenditures made to date against the original contract.

(g) Special Reporting Requirements: The Executive Officer shall file a written report with the Council, via the Council Clerk, at least five (5) working days prior to the execution of a public contract over \$15,000 and a personal service contract over \$10,000. The report shall indicate the name of the contractor; the amount and length of the contract; a brief description of the goods or services to be provided; a brief description of the selection process used in making the award including the criteria used in making the selection, the persons involved in the selection and summary of the results of the evaluation; the applicability and results of the DBE/WBE program on the contract; and a signed certification by the department head that the appropriate contract Code procedures have been followed.

~~[-(g)]~~ (h) Code of Conduct:

(1) No employee, elected official or agent of Metro shall participate in the selection, award or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, elected official or agent, any member of his/her immediate family, his or her partner, or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. No Metro elected official, employee or agent shall solicit or accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.

(2) Violations of this Code of Conduct shall subject an employee to disciplinary action pursuant to the Metro Personnel Rules and may be grounds for other civil or criminal penalties provided by law.

~~[-(h)]~~ (i) Federal/State Agency Approval: When required by federal or state law or regulations, review and approval of Metro contracts shall include prior concurrence or approval by appropriate federal or state agencies.

(j) Council Approval: Notwithstanding any other provisions of Chapter 2.04, the following contracts, with the exception of emergency contracts, contracts for the purpose of inventory and gift items for resale at the Zoo Gift Shop and, Metro Exposition-Recreation Commission contracts, shall be approved by the Council prior to execution:

(1) Any contract with an initial term greater than one (1) year unless the Council shall have otherwise provided appropriation authority for such a contract;

(2) Any intergovernmental agreement by which the District acquires or transfers any interest in real property, assumes any function or duty of another governmental body or transfers any function or duty of Metro to another governmental unit; or

(3) Any contract for the sale, lease or transfer of real property owned by the District.

(k) Bid/Request for Proposal Protest Procedure: The following procedure applies to aggrieved bidders and proposers who wish to appeal an award of a public contract above \$15,000 and a personal service contract above \$10,000. The appeal process for bids is the same as for requests for proposals. In the case of requests for proposals, disagreement with the judgment exercised in scoring by evaluators is not a basis for appeal.

(1) All appeals shall be made in writing and shall be delivered to the Contracts Administrator at Metro's main office within five (5) working days of the postmarked date on the Notice of Award. The written appeal must describe the specific citation of law, rule, regulation, or procedure upon which the appeal is based.

(2) The Contracts Administrator shall forthwith notify the appropriate department head and the Executive Officer of the appeal. Within ten (10) working days of the receipt of notice of the appeal, the Executive Officer shall send a Notice of Rejection of the appeal or a Notice of Acceptance of the appeal as applicable to the appellant. The appellant may appeal the Executive Officer's decision to reject the appeal in writing to the Metro Contract Review Board within five (5) working days from the postmarked date on the Notice of Rejection.

(3) The Metro Contract Review Board will review the grounds for appeal, the record and the Executive Officer's recommendation and make a decision. The decision of the Metro Council is final.

(1) Annual Contract Schedule: The Executive Officer shall annually submit with the Proposed Budget a list of all existing and proposed public contracts of \$15,000 or more and personal services contracts of \$10,000 or more. The list shall include the name of the vendor for existing contracts, a brief description of the contract's purpose and the proposed expenditures for the fiscal year.

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 8 & 10, Ordinance No. 84-176, Sec. 4, Ordinance No. 84-179, Sec. 2; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2)

Section 2. Metro Code Section 2.04.040 is amended to read as follows:

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: Unless the Board shall otherwise provide, bonds and bid security requirements are as follows:

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

(2) Labor and Materials bond in an amount equal to 100 percent of the contract price is required for contracts over \$15,000.

(3) Performance bond in an amount equal to 100 percent of the contract price is required for contracts over ~~[\$10,000]~~ \$15,000. 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 not identified above, if the ~~[department head of the initiating department]~~ Executive Officer 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.

(3) Prior to the award of a contract to any bidder other than the apparent low bidder, the Executive Officer shall obtain the prior approval of the Contract Review Board.

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-174, Sec. 16; Ordinance No. 84-176, Sec. 4; Ordinance No. 84-179, Sec. 2; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2, amended by Ordinance No. 87-223, Sec. 1)

Section 3. Metro Code Section 2.04.043 is amended to read as follows:

2.04.043 Public Contracts Between \$2,500 and \$15,000

(a) Selection Process: Unless completely exempt from competitive bidding under Section 2.04.041, when the amount of the contract is ~~[more than]~~ \$2,500, or more but less than \$15,000, the District must obtain a minimum of three (3) competitive quotes. The District shall keep a written record of the source and amount of the quotes received. If three (3) quotes are not available, a lesser

number will suffice provided that a written record is made of the effort to obtain the quotes. No contractor may be awarded in the aggregate, within the fiscal year, contracts in excess of \$30,000 without competitive bidding. In computing the aggregate under this subsection, awards under \$500 shall not be included.

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

(c) Approval Process:

(1) ~~[Between \$2,501 and \$10,000-\$15,000.]~~ For contracts of ~~[more than]~~ \$2,500, or more either the Executive Officer or Deputy Executive Officer must sign; however, the Director or Assistant Director of the Zoo may sign purchase orders of ~~[\$10,000]~~ \$15,000 or less. 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 contracts. No contract may be approved or executed for any amount in excess of the amount authorized in the budget.

~~[(2)-Between \$10,001 and \$15,000:--Except as provided in subsection (3) of this section, all initial contracts with a contract price of greater than \$10,000 but \$15,000 or less shall be approved by the Council Management Committee prior to execution by the Executive Officer or Deputy Executive Officer.]~~

~~[(3)-Exceptions:--The following types of contracts may be approved by the Executive Officer or his/her designee:]~~

~~[(A)-Contracts which merely pass through funds from a state or federal agency.]~~

~~[(B)-Purchases of inventory and gift items for resale at the Zoo Gift Shop.]~~

~~[(C)-Emergency contracts-]~~

(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."

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 10 & 16; Ordinance No. 84-176, Sec. 4; Ordinance No. 84-179, Sec. 2; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2)

Section 4. Metro Code Section 2.04.044 is amended to read as follows:

2.04.044 Public Contracts ~~{Over}~~ of \$15,000 or More

(a) Selection Process:

Unless exempt from competitive bidding by Code section 2.04.041, the following competitive bidding procedures shall apply to all contracts:

(1) The initiating department staff will prepare or have prepared bid specifications and compile a list of potential bidders.

(2) The bid document will be reviewed by the Department of Finance and Administration and by legal counsel before bids are solicited or advertised, and shall include the contract form to be used.

(3) The bid document shall be reviewed by an appropriate Council Committee or on recommendation of the Committee by the Council prior to release for response by potential contractors. The Committee or Council may specify the date of release of the bid document and introduce an ordinance prohibiting expenditure of funds pursuant to the proposed contract.

~~[-3-]~~ (4) A request for bids will be advertised in at least one (1) business oriented newspaper, a local minority newspaper, and when feasible, in an appropriate trade magazine. Additional advertisement may be appropriate depending upon the nature of the contract.

~~[-4-]~~ (5) The initiating department will receive and open sealed bids at the time and place designated in the request for bids.

~~[-5-]~~ (6) The opened bids will be reviewed by the requesting department and a recommendation and contract will be submitted to the Department of Finance and Administration.

~~[-6-]~~ (7) After selection and prior to approval, the contract must be reviewed by the ~~[Director]~~ Department of Finance and Administration.

~~[-7-]~~ (8) The initiating department will notify all bidders in writing of the contract award and obtain any necessary bonds and insurance certificates.

~~[-8-]~~ (9) The District shall reserve the right to reject any or all quotes or bids received.

(b) Approval Process:

~~[(1) Between \$15,001 and \$50,000:--Except as provided in subsection (3) of this section,]~~ All initial contracts with a contract price of ~~[greater than]~~ \$15,000 or more ~~[but \$50,000 or less]~~ shall be approved and executed by ~~[the Council Management Committee prior to execution by]~~ 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 & Administration may approve and execute contracts of \$15,000 or more. No contract may be approved or executed for any amount in excess of the amount authorized in the budget.

~~[(2) Over \$50,000:--Except as provided in subsection (3) of this section, all contracts with a contract price of more than \$50,000 shall be approved by the Council prior to execution by the Executive Officer or the Deputy Executive Officer.]~~

~~[(3) Exceptions:--The following types of contracts may be approved by the Executive Officer or his/her designee:]~~

~~[(A) Contracts which merely pass through funds from a state or federal agency:]~~

~~[(B) Purchases of inventory and gift items for resale at the Zoo Gift Shop.]~~

~~[(C) Emergency contracts.]~~

(c) Within thirty (30) days of award of a construction contract, the Department of Finance and Administration shall provide the notice required by ORS 279.363.

(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."

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 10 & 16; Ordinance No. 84-176, Sec. 4; Ordinance No. 84-179, Sec. 2; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2)

Section 5. Metro Code Section 2.04.045 is amended to read as follows:

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 the extent any of the following conditions are met:

(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}~~ Department 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]~~ \$2,500 or more (rule 3) shall be approved under the rule for contract prices ~~[more than \$10,000]~~ of \$2,500 or more.

(2) Under \$2,500 ~~[and Under]~~: All contract amendments and extensions which are less than \$2,500 ~~[or less]~~ if the contract was originally for \$2,500 or more or which result in a total contract price of less than \$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) No contract amendment or extension may be approved in an amount in excess of the amount authorized in the budget.

(3) ~~[Between \$2,501 and \$10,000 Over]~~ \$15,000 or More:

(A) ~~[Except as provided in (B) below,]~~ All contract amendments and extensions which ~~[exceed]~~ are for \$2,500 or more or which result in a total contract price of more than \$2,500 ~~[but \$10,000 or less]~~ if the original contract was for less than \$2,500 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. No contract amendment or extension may be approved in an amount in excess of the amount authorized in the budget.

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

~~[(1) The initial contract has been approved by the Council Management Committee or the Council, and]~~

~~[(2) 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.]~~

~~[(3) 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 \$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.}~~

(4) The Executive Officer may approve individual change orders of a technical nature for public improvement contracts which do not materially add or delete from the original scope of work called for in the bid specifications of the contract within the following limits:

(A) Change orders approved by the Executive Officer under this section shall not exceed, on a cumulative basis, more than five (5) percent of the initial face value of the contract;

(B) Non-technical change orders which do materially add to or delete from the original scope of work shall be reviewed by the Council prior to execution. Change orders under this subsection are not a part of the five (5) percent limit of subsection (1) above. The Council may specify the date of enactment of the change order and introduce an ordinance prohibiting expenditure of funds pursuant to the original contract.

(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."

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 10 & 16; Ordinance No. 84-176, Sec. 4; Ordinance No. 84-179, Sec. 2; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2; amended by Ordinance No. 87-223, Sec. 1)

Section 6. Metro Code Section 5.04.053 is amended to read as follows:

2.04.053 Personal Services Contracts ~~[Over]~~ of \$10,000 or More

(a) Selection Process: For Personal Services contracts of \$10,000 or more an evaluation of proposals from potential contractors shall be performed as follows:

(1) A request for proposals shall be prepared by the initiating department and shall be reviewed by ~~[legal]~~ the General Counsel and the Department of Finance and Administration. ~~[Where appropriate, the request shall be published in a newspaper of general circulation or in trade magazines. In addition, Metro shall notify in writing at least three (3) potential contractors, who, in the judgment of the Department Director are capable and qualified to perform the requested work. The initiating department will be responsible for maintaining the file and making the appropriate notification.]~~ The request for proposals shall be reviewed by an appropriate Council Committee or, on recommendation of the Committee, by the Council prior to release for response by potential contractors. The Committee or Council may specify the date of release of the request for proposals and introduce an ordinance prohibiting expenditure of funds pursuant to the proposed contract.

(2) Where appropriate, the request for proposal shall be published in a newspaper of general circulation or in trade magazines. In addition, Metro shall notify in writing at least three (3) potential contractors, who, in the judgment of the Department Director, are capable and qualified to perform the requested work. The initiating department shall be responsible for maintaining the file and making the appropriate notification.

~~[-(2)-]~~ (3) Evaluations of proposals shall include use of a contract evaluation form. The use of an oral interview or an evaluation team is recommended.

~~[-(3)-]~~ (4) Personal Services Evaluation Form: The Personal Services evaluation form shall document the reasons for the selection. Proposals shall be evaluated according to predetermined criteria. The evaluation process may include the evaluators assigning a quantifiable score on how each aspect of a proposal meets the predetermined criteria. The contract may be awarded to the firm receiving the highest average score.

~~[-(4)-]~~ (5) After evaluation is complete, the Department Director will recommend final selection through the Department of Finance and Administration.

~~[(5)]~~ (6) Notifications of selection and rejection shall be made in writing by the initiating department.

~~[(6)]~~ (7) Personal Services contracts with the Scope of Work must be approved by the department head and then forwarded to the ~~[Director]~~ Department of Finance and Administration for internal review and execution. ~~[Legal]~~ General Counsel review is required.

(b) Approval Process:

~~[(1) Between \$10,001 and \$50,000:-- Except as provided in subsection (3) of this section,]~~ All initial contracts with a contract price of greater than \$10,000 ~~[but \$50,000 or less]~~ shall be approved and executed by the ~~[Council Management Committee]~~ Executive Officer ~~[prior to execution]~~ 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 & Administration may approve and execute contracts of \$15,000 or more. No contract may be approved or executed for any amount in excess of the amount authorized in the budget.

~~[(2) Over \$50,000:-- Except as provided in subsection (3) of this section, all contracts with a contract price of more than \$50,000 shall be approved by the Council prior to execution.]~~

~~[(3) Exceptions:-- The following types of contracts may be approved by the Executive Officer or his/her designee.]~~

~~[(A) Contracts which merely pass through funds from a state or federal agency.]~~

~~[(B) Grant-award contracts.]~~

~~[(C) Emergency contracts.]~~

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

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 11; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2)

Section 7. Metro Code Section 2.04.054 is amended to read:

2.04.054 Personal Services Contract Extensions and Amendments:

(a) Selection Process:

(1) A Personal Services contract may be renewed without receiving competitive proposals if the contractor is

performing a continuing activity for the agency. This applies, but is not limited to contracts for construction observation, public relations consulting, outside legal counsel and annual auditing. Except as provided in subsection (2) below, competitive proposals must be solicited for these services at least once every three (3) years and annually if the contractor proposes a price or rate increase of more than 10 percent over the previous year.

(2) Personal Services contracts may be renewed, extended or renegotiated without soliciting competitive proposals if, at the time of renewal, extension or renegotiation, there are fewer than three (3) potential contractors qualified to provide the quality and type of services required and the initiating department makes detailed findings that the quality and type of services required make it unnecessary or impractical to solicit proposals.

(b) Approval Process:

(1) Less than \$2,500 [~~and Under~~]: All contract amendments and extensions which are less than \$2,500 [~~or less~~] if the contract was originally for \$2,500 or more or which result in a total contract price of less than \$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 Metro 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.

(2) [~~Between \$2,501 and \$10,000~~] \$2,500 and Over:

- (A) All contract amendments and extension which [~~exceed~~] are for \$2,500 or more or which result in a total contract price of more than \$2,500

~~[but less than \$10,000 may]~~ shall 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. No contract amendment or extension may be approved for an amount in excess of the amount provided for in the budget.

~~[(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 based on the amount last approved by the Council Management Committee or Council.]~~

~~[(3) 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 shall be approved by the Council Management Committee prior to execution.]~~

~~[(4) 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.]~~

~~[(5) 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.]~~

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

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 11; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2)

Section 8. Metro Code Section 2.04.060 is amended to read as follows:

2.04.060 Sole Source Contracts:

(a) Selection Process: If there is only one qualified provider of the service required, the initiating department need not solicit and document proposals. The initiating department must document that there is only one qualified provider of the service required, and the ~~[Council]~~ Contract Review Board shall be given notice of the execution and the justification for the contract.

(b) Approval Process: The approval process for sole source contracts under \$2,500 is the same as described for regular personal services or public contracts, depending on the nature of the work. For sole source contracts of \$2,500 or more, the Contract Review Board must by resolution grant a specific exemption from competitive bidding or alternative procurement processes authorized by this Code.

(c) All contracts are subject to the rules and procedures of Code Section 2.04.050, "Rules and Procedures Governing Personal Services and Public Contracts."

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 11; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2)

Section 9. Metro Code Section 2.04.090 is amended to read as follows:

2.04.090 Food Items and Food Service Contracts

(a) Selection Process: (1) All food items and food service contracts and extensions will be processed and awarded as public contracts, except as provided in sections (2)-(4) below.

(2) Competitive bids or quotes are not required when a specific food item is requested by a purchaser of the District's catering service. If the specific item is supplied by more than one source, competitive quotes shall be obtained from at least three known suppliers. The District shall keep a written record of the source and amount of the quotes received.

(3) Competitive bids or quotes are not required for food items which the Director or Assistant Director of the Zoo authorize for a market test. A market test is used to determine whether a food item should be added to the District's menu or to develop the specifications for a particular food item. The test should clearly define the period of time for the market study, not to exceed six months, and the statistical method used to determine the value of the food item as part of the regular menu. A written report shall be made. Based on this report if the Director or Assistant Director determines the item shall be added to the regular menu, he/she shall establish specifications for the item. The item shall be selected under either public contract procedures or subsection (4), below. During the time the selection process is carried out, the test market product may continue to be sold by the District.

(4) Competitive bids or quotes are not required when the Director or Assistant Director of the Zoo finds that marketing factors are likely to significantly impact sales, subject to the following conditions:

- (A) Prior to the selection of the contractor the department has made reasonable efforts to inform known companies providing the item or service of the subject matter of the contract and to solicit proposals, including public advertising in at least one newspaper of general circulation in the area.
- (B) The contractor is selected on the basis of the most competitive offer considering cost, quality of the product, service to be rendered and marketing advantages.

A written record of the selection process shall be made.

(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) Under \$2,500 [and Under]: All contract and amendments and extensions which are less than \$2,500 [or less] if the contract was originally for \$2,500 or more or which result in a total contract price of less than \$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]~~ General 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) No contract amendment or extension may be approved in an amount in excess of the amount authorized in the budget.

(2) ~~[Between \$2,501 and \$10,000 Over]~~ \$15,000 or More:

(A) ~~[Except as provided in (B) below,]~~ All contract amendments and extensions which ~~[exceed]~~ are for \$2,500 or more or which result in a total contract price of more than \$2,500 ~~[but \$10,000 or less]~~ if the original contract was for less than \$2,500 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. No contract amendment or extension may be approved in an amount in excess of the amount authorized in the budget.

~~[(3) Between \$10,001 and \$50,000:--Except as provided in subsection (5) of this section, all contracts and 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 shall be approved by the Council Management Committee prior to execution.]~~

~~[(4) Over \$50,000:--Except as provided in subsection (5) of this section, all contracts and 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.]~~

~~[(5) Exceptions:--Emergency contract extensions and amendments may be approved by the Executive Officer or his/her designee.]~~

(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."

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 10 & 16; Ordinance No. 84-176, Sec. 4; Ordinance No. 84-179, Sec. 2; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2)

Section 10. Ordinance No. 88-247 is amended to include a Schedule of Contract Appropriations as shown on Exhibit D attached hereto. Notwithstanding the appropriations set forth in Exhibit B to Ordinance No. 88-247 (Schedule of Appropriations) the Executive Officer shall not enter into or expend any monies on personal service contracts of \$10,000 or more or public contracts of \$15,000 or more that are not included in the Schedule of Contract Appropriations. Further, the Executive Officer shall not authorize expenditures which exceed the appropriated amount shown on the Schedule of Contract Appropriations.

ADOPTED By the Council of the Metropolitan Service District
this _____ day of _____, 1988.

Mike Ragsdale, Presiding Officer

ATTEST:

Clerk of the Council

DEC/amn-0257D/554-6-12/08/88

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING METRO)	ORDINANCE NO. 88-271C
CODE CHAPTER 2.04 RELATING TO)	
CONTRACTING PROCEDURES)	Introduced by the Council Finance Committee (Incorporating the Internal Affairs Committee Task Force Amendments)

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

SECTION 1. Metro Code Section 2.04.010 is amended to read as follows:

2.04.010 Definitions:

~~[(d)]~~ (a) COMPETITIVE BID OR BIDS -- a competitive offer in which price and conformance to specification will be the award criteria.

~~[(a)]~~ (b) CONTRACT REVIEW BOARD -- The Council is the Contract Review Board for the Metropolitan Service District with the powers described in ORS Chapter 279 and Section 2.04.020 of this Chapter.

(c) EMERGENCY -- An emergency for the purpose of this Chapter means the occurrence of a specific event or events that could not have been reasonably foreseen and prevented and which require the taking of prompt action to remedy the condition and thereby avoid further physical damage or harm to individuals or the occurrence of avoidable costs.

~~[(i)]~~ (d) EMERGENCY CONTRACTS -- A contract may be exempt from the competitive bidding process if an emergency requires prompt execution of a contract, but only if the contract is limited to remedying the emergency situation.

(e) EXEMPTIONS FROM COMPETITIVE BIDDING -- Exemptions include any exemption or exception from the regular competitive bidding process for public contracts as defined in ORS 279.011 to 279.061, this chapter, and any exemption made by the Board pursuant to Section 2.04.041 of the Code.

(f) NOTICE OF AWARD -- Means written communication to a responsive, responsible bidder or proposer stating that their bid or proposal has been conditionally determined to be the lowest, responsive, responsible bid or most responsive proposal and that the District intends to enter into a contract upon completion by the bidder/proposer of all required conditions.

[c] (g) PERSONAL SERVICES CONTRACT --

contracts: (1) The following are personal services

- (A) Contracts for services performed as an independent contractor in a professional capacity, including but not limited to the services of an accountant; attorney; architectural or land use planning consultant; physician or dentist; registered professional engineer; appraiser or surveyor; passenger aircraft pilot; aerial photographer; timber cruiser; data processing consultant or broadcaster.
- (B) Contracts for services as an artist in the performing or fine arts, including but not limited to persons identified as photographer, film maker, painter, weaver, or sculptor.
- (C) Contracts for services of a specialized, creative and research-oriented, noncommercial nature.
- (D) Contracts for services as consultant.
- (E) Contracts for educational and human custodial care services.

contracts: (2) The following are not personal services

- (A) Contracts, even though in a professional capacity, if predominantly for a product, e.g., a contract with a landscape architect to design a garden is for personal services, but a contract to design a garden and supply all the shrubs and trees is predominantly for a tangible product.
- (B) A service contract to supply labor which is of a type that can generally be done by any competent worker, e.g., janitorial, security guard, crop spraying, laundry and landscape maintenance service contracts.

(C) Contracts for trade-related activities considered to be labor and material contracts.

(D) Contracts for services of a trade-related activity, even though a specific license is required to engage in the activity. Examples are repair and/or maintenance of all types of equipment or structures.

[(g)] (h) PUBLIC AGENCY -- Any agency of the federal government, state of Oregon, or any political subdivision thereof, authorized by law to enter into public contracts and any public body created by intergovernmental agreement.

[(b)] (i) PUBLIC CONTRACT -- Any purchase, lease or sale by metro of personal property, public improvement or services, including those transacted by Purchase Order, other than agreements which are for personal services. Public Contracts may be obtained by Purchase Order as determined by the Executive Officer.

[(h)] (j) PUBLIC IMPROVEMENT -- Projects for construction, reconstruction or major renovation on real property by or for a public agency. "Public improvement" does not include emergency work, minor alteration, ordinary repair or maintenance in order to preserve a public improvement.

[(f)] (k) PURCHASE ORDER -- A public contract for purchase of goods in any amount, or for goods and services \$500 or less, or for services \$500 or less.

[(k)] (l) REQUESTS FOR PROPOSALS OR RFP's -- A request for proposal is the process described in Section 2.04.050, "Personal Services Contracts." This process may be used for public contracts only when the Board has granted an exemption for that type of contract or for a particular contract as set out in Section 2.04.041, "Requirement of Competitive Bidding, Exemptions." The Board may adopt a particular RFP process for a particular contract by setting forth the amendments in the exemption approval.

[(j)] (m) SOLE SOURCE CONTRACTS -- Contracts which it can be documented there is only one qualified provider of the required service or material. (Ordinance No. 87-216, Sec. 2)

SECTION 2. Metro Code Section 2.04.030 is amended to read as follows:

2.04.030 Rules and Procedures Governing All Personal Services and Public Contracts:

(a) Applicability: All personal services and public contracts are subject to the applicable selection, review and approval procedures of this Chapter.

(b) Initiating a Contract: When a department initiates a contract not in the form of a purchase order, it must first notify the Department of Finance and Administration of its intention and request the issuance of a contract number which shall appear on all copies of the contract. The department must complete a Contract Summary form indicating the specifics of the contract. This form must be forwarded to the Department of Finance and Administration either with a fully executed contract (one copy) if the amount is estimated to be \$2,500 or under, or with an unexecuted contract (three copies) for review, approval and signature if the amount is over \$2,500.

(c) Documentation Required for Contract Files: The Department of Finance and Administration will maintain central files for all contracts. An original copy should be given to each contractor. All correspondence relating to a contract which alters conditions or amounts must be included in the central files as should all papers which document the process of obtaining competitive bids, quotes, or proposals. In any case where a low bid, quote, or proposal is not accepted, a detailed justification must be included with the contract file. Other documentation, if applicable, that should be included in the file includes:

- Mailing lists
- Affidavits of Publication
- Insurance endorsements and certificates
- Amendments
- Extensions
- Related Correspondence
- Quotes, Proposals, and Bids
- Bonds
- WBE/DBE information
- Contract closure form
- Personal Services Evaluation form

(d) Contract Review: Prior to approval by the appropriate person or body, contracts shall be reviewed as follows:

(1) Any contract which deviates from a standard contract form, exceeds \$10,000, or is with another public agency must be reviewed by the General Counsel.

(2) Contracts involving federal or state grant funds must be reviewed by the Deputy Executive Officer.

(e) At least five (5) days prior to the execution of any Public Contract over \$15,000 or a Personal Services Contract over \$10,000 the District shall provide a Notice of Award to the contractor selected and to all contractors who submitted unsuccessful bids or proposals. This requirement may be waived by the Executive Officer for any emergency contract entered into pursuant to this Code.

[e] (f) Disadvantaged Business Program: All contracting and purchasing is subject to the Metro Disadvantaged Business Enterprise Program. Metro will take affirmative action to do business with Disadvantaged Business Enterprises. The Director of Finance and Administration will maintain a directory of disadvantaged businesses which shall be consulted and used in all contracting and purchasing of goods and services. If a disadvantaged business is included in the directory that appears capable of providing needed goods or services, that business should be contacted and given an opportunity to compete for Metro business.

[(f) Monthly Contract Report: The Executive Officer shall provide a monthly report to the Council of all contracts, including extensions and amendments, which have been executed during the proceeding month; provided, however, that such monthly report need not include purchase orders under \$500.]

(g) Contracting Information Report:

(1) The Executive Officer shall provide a monthly report to the Council showing the status of all contracts in effect at Metro as of the date of the report. The report shall be divided into four sections: (a) Contracts Awarded; (b) Contracts Amended; (c) Open Contracts; and (d) Contracts Closed.

(A) Contracts Awarded. This section shall report all new contracts awarded since the date of the previous report to the Council of all new contracts. Information contained in this report will be the cost center of the department responsible for the contract.

contract number, starting and ending dates of the contract, type of contract, amount of the contract, vendor name, and a brief description of the purpose of the contract.

(B) Contracts Amended. This section shall report all contracts amended by Change Order since the date of the previous report to the Council of contract amendments. Information contained in this report will be the contract number, vendor name, amendment number, type of amendment, the original amount of the contract, the amount of the contract amendment, the new total contract amount, the percent of the amount of increase in excess of the original amount of the contract, and a brief description of the purpose of the contract.

(C) Contracts Open. This section shall report all contracts in effect on the last day of the month for which the report is prepared. Information contained in this report will be the cost center of the department responsible for the contract, contract number, starting and ending dates of the contract, type of contract, amount of the contract, vendor name, and a brief description of the purpose of the contract.

(D) Contracts Closed. This section shall report all contracts closed by the last day of the month for which the report is prepared. Information contained in this report will be contract number, vendor name, ;type of contract, date contract closed, amount of the contract, final amount expended, and a brief description of the purpose of the contract.

(2) Contract Type. Each contract will be identified by a type code to describe the class of contract entered into by Metro. There shall be six types of contracts at Metro:

(A) Personal Services;

- (B) Pass-Through Agreements;
- (C) Labor and Materials;
- (D) Intergovernmental Agreements;
- (E) Procurement; and
- (F) Construction.

[(f) Monthly Contract Report: The Executive Officer shall provide a monthly report to the Council of all contracts, including extensions and amendments, which have been executed during the proceeding month; provided, however, that such monthly report need not include purchase orders under \$500.]

[(g)] (h) Code of Conduct:

(1) No employee, elected official or agent of Metro shall participate in the selection, award or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, elected official or agent, any member of his/her immediate family, his or her partner, or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. No Metro elected official, employee or agent shall solicit or accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.

(2) Violations of this Code of Conduct shall subject an employee to disciplinary action pursuant to the Metro Personnel Rules and may be grounds for other civil or criminal penalties provided by law.

[(h)] (i) Federal/State Agency Approval: When required by federal or state law or regulations, review and approval of Metro contracts shall include prior concurrence or approval by appropriate federal or state agencies.

[(i)] (j) No contract or contract amendment may be approved or executed for any amount in excess of the amount authorized in the budget.

[(k)] (j) Notwithstanding any other provisions of Chapter 2.04 the following contracts shall be approved by the Council prior to execution:

(1) any contract which commits the District to the expenditure of revenues or appropriation not otherwise provided for in the current fiscal year budget at the time the contract is executed;

(2) any intergovernmental agreement by which the District acquires or transfers any interest in real property, assumes any function or duty of another governmental body, or transfers any function or duty of Metro to another governmental unit; or

(3) any contract for the sale, lease or transfer of real property owned by the District.

(1) All contracts which require Council approval pursuant to subsection (j) above and which are subject to competitive bidding or Request for Proposals procedures shall require Council approval of the Request for Bids or Request for Proposals prior to release of bidding or proposal documents to vendors.

(m) Bid/Request for Proposals Appeal Procedures: The following procedure applies to aggrieved bidders and proposers who wish to appeal an award of a Public Contract above \$15,000 and a Personal Services Contract above \$10,000. The appeal process for bids is the same as for requests for Proposals. In the case of Requests for Proposals, disagreement with the judgment exercised in scoring by evaluators is not a basis for appeal.

(1) All appeals shall be made in writing and shall be delivered to the Contracts Administrator at Metro's main office within five (5) working days of the postmarked date on the Notice of Award. The written appeal must describe the specific citation of law, rule, regulation, or procedure upon which the appeal is based.

(2) The Contracts Administrator shall forthwith notify the appropriate department head and the Executive Officer of the appeal. Within ten (10) working days of the receipt of notice of appeal, the Executive Officer shall send a notice of rejection of the appeal or a notice of acceptance of the appeal as applicable to the appellant. The appellant may appeal the Executive Officer's decision to reject the appeal in writing to the Contract Review Board within five (5) working days from the postmarked date on the Notice of Rejection.

(3) The Contract Review Board will review the grounds for appeal, all pertinent information, and the Executive Officer's recommendation, and make a decision. The decision of the Contract Review Board is final.

(4) No contract which is the subject of a pending appeal may be executed unless the Contract Review Board shall have given its approval at the request of the Executive Officer. The Executive Officer may request the Contract Review Board to determine a matter without waiting for the expiration of the time periods provided for herein.

[(j)] (n) Prior to entering into (1) any public contract or personal services agreement pursuant to the authority granted in Section 2.04.060 authorizing Sole Source Contract, or (2) any public contract or [personnel] personal services agreement in an amount exceeding \$15,000 for which only one bid or response to a Request for Proposal has been received, the Executive Officer shall file a written report with the Council detailing the reasons why a sole source contract was entered into or giving an explanation of why only one bid or response was received.

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 8 & 10, Ordinance No. 84-176, Sec. 4, Ordinance No. 84-179, Sec. 2; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2, amended by Ordinance No. 88-249, Sec. 2)

SECTION 3. Metro Code Section 2.04.044 is amended to read as follows:

2.04.044 Public Contracts of \$15,000 or More:

(a) Selection Process: Unless exempt from competitive bidding by Code section 2.04.041, the following competitive bidding procedures shall apply to all contracts:

(1) The initiating department staff will prepare bid specifications and compile a list of potential bidders.

(2) The bid document will be reviewed by the Department of Finance and Administration and by the General Counsel before bids are solicited or advertised, and shall include the contract form to be used.

(3) For contracts determined by the Council to have an impact on the long term operations of the

District affecting future fiscal years and so designated by the Council as being subject to this requirement by duly adopted ordinance, which may be the annual budget ordinance, copies of bid documents shall be filed with appropriate Council committee for review and comment. Documents must be filed with the Clerk of the Council at least thirty-five (35) days prior to the date of release for response by potential bidders. If the Council or a committee has not within fourteen (14) days of the date of filing scheduled the matter for a hearing the documents may be released to prospective bidders at any time after the 14th day. In any event, bid documents may be released to prospective bidders on the 35th day after filing with the Council.

All other contracts not so designated by the Council shall be subject to the requirement that copies of bid documents shall be filed with the Clerk of the Council at the time they are released for response by potential bidders. The Executive Officer shall furnish the Council with information at the time bid documents are released stating the purpose and nature of the proposed contract, the appropriation to be charged with the contract, and a statement of the contract's impact on the District in future fiscal years.

[(3)] (4) A request for bids will be advertised in the manner required by law and in a local minority newspaper, and in any appropriate trade magazine. Additional advertisement may be appropriate depending upon the nature of the contract.

[(4)] (5) The initiating department will receive and open sealed bids at the time and place designated in the request for bids.

[(5)] (6) The opened bids will be reviewed by the requesting department and a recommendation and contract will be submitted to the Department of Finance and Administration.

[(6)] (7) After selection and prior to approval, the contract must be reviewed by the Department of Finance and Administration.

[(7)] (8) The initiating department will notify all bidders in writing of the contract award and

obtain any necessary bonds and insurance certificates.

[(8)] (9) The District shall reserve the right to reject any or all quotes or bids received.

(b) Approval Process: All initial contracts with a contract price of \$15,000 or more shall be approved and executed by 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 & Administration may approve and execute contracts of \$15,000 or more. No contract may be approved or executed for any amount in excess of the amount authorized in the budget.

(c) Within thirty (30) days of award of a construction contract, the Department of Finance and Administration shall provide the notice required by ORS 279.363.

(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."

(e) Prior to the award of a contract to any bidder other than the apparent low bidder the Executive Officer shall obtain the prior approval of the Contract Review Board.

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 10 & 16; Ordinance No. 84-176, Sec. 4; Ordinance No. 84-179, Sec. 2; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2; amended by Ordinance No. 88-249)

SECTION 4: Metro Code Section 2.04.045 is amended to read as follows:

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 the extent any of the following conditions are met:

(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 construction, 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 Department 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 \$2,500 or more (rule 3) shall be approved under the rule for contract prices of \$2,500 or more.

(2) Under \$2,500: All contract amendments and extensions which are less than \$2,500 if the contract was originally for \$2,500 or more or which result in a total contract price of less than \$2,500 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 General 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;
- (F) No contract amendment or extension may be approved in an amount in excess of the amount authorized in the budget.

(3) \$2,500 or More: All contract amendments and extensions which are for \$2,500 or more or which result in a total contract price of more than \$2,500 if the original contract was for less than \$2,500 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. No contract amendment or extension may be approved in an amount in excess of the amount authorized in the budget.

(4) In addition to the approval procedures set forth above, any contract amendment or extension of any contract which is subject to Council approval pursuant to Section 2.04.030(j)(1) shall be subject to Council approval if the amendment or extension commits the District to any increase in the District's obligation in a future fiscal year.

(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."

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 10 & 16; Ordinance No. 84-176, Sec. 4; Ordinance No. 84-179, Sec. 2; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2; amended by Ordinance No. 87-223, Sec. 1; amended by Ordinance No. 88-249, Sec. 2)

SECTION 5: Metro Code Section 2.04.053 is amended to read as follows:

2.04.053 Personal Services Contracts of \$10,000 or More:

(a) Selection Process: For Personal Services contracts of \$10,000 or more an evaluation of proposals from potential contractors shall be performed as follows:

(1) A request for proposals shall be prepared by the initiating department and shall be reviewed by the General Counsel and the Department of Finance and Administration. For contracts determined by the council to have an impact on the long-term operations of the District affecting future fiscal years and so designated by the Council as being subject to this requirement by duly adopted ordinance which may be the annual budget ordinance, copies of proposal documents shall be filed with the Clerk of the Council and referred to the appropriate Council committee for review and comment. Documents must be filed with the Clerk of the Council at least thirty-five (35) days prior to the date of release for response by potential contractors. If the Council or a committee has not scheduled the matter for a hearing the documents may be released to prospective contractors at any time after the 14th day. In any event, proposal documents may be released to prospective contractors on the 35th day after filing with the Council.

All other contracts not so designated by the Council shall be subject to the requirement that copies of all proposal documents shall be filed with the Clerk of the Council at the time they are released for response by potential contractors. In addition, the Executive Officer shall furnish the Council with information at the time proposal documents are released stating the purpose and nature of the proposed contract, the appropriation to be charged with the contract, and a statement of the contract's impact on the District in future fiscal years.

[(2) Evaluations of proposals shall include use of a contract evaluation form. The use of an oral interview or an evaluation team is recommended.]

(2) Where appropriate, the request for proposals shall be published in a newspaper of general circulation or in trade magazines. In addition,

Metro shall notify in writing at least three (3) potential contractors, who, in the judgment of the Department Director are capable and qualified to perform the requested work. The initiating department will be responsible for maintaining the file and making the appropriate notification.

[(3) Personal Services Evaluation Form: The Personal Services evaluation form shall document the reasons for the selection. Proposals shall be evaluated according to predetermined criteria. The evaluation process may include the evaluators assigning a quantifiable score on how each aspect of the proposals meets the predetermined criteria. The contract may be awarded to the firm receiving the highest average score.]

(3) All Requests for Proposals shall at a minimum contain a description of the project and a brief summary of the project history, contain a detailed proposed Scope of Work or other specifications setting for the expected performance by the contractor, include a description of the criteria that will be utilized to evaluate proposals and the estimated budget for the project.

(4) Evaluation of proposals shall be made through use of an evaluation form and the criteria published in the Request for Proposals. For contracts where the estimated contract amount is greater than \$50,000 the evaluation process must include the use of an evaluation team of at least three (3) members, and at least one team member shall not be a Metro employee. In all evaluations at least the top two (2) proposals as determined by a preliminary evaluation shall be interviewed and allowed to make a presentation before the final evaluation is determined.

(5) The Executive Officer shall approve a standard form that shall be used for evaluations. The form may allow for the use of multiple criteria as appropriate. The form shall provide that the cost of any proposal shall receive at least a weight of 50 percent in determining the successful proposal with the lowest cost proposal receiving 50 points and others receiving a proportionate number of points based on the percentage difference between their price and the lowest price. The Executive Officer or Deputy Executive Officer may approve in writing proposal criteria prior to release of the RFP on a case-by-

case basis providing for a lower percentage weight for price but in no event may price be assigned a weight of less than 30 percent.

(6) For proposals where the estimated amount is greater than \$50,000 proposals shall be received with all information regarding price contained in a separate sealed envelope. Information regarding price shall not be revealed or evaluated until evaluation of all other factors and the oral interview process has been completed.

[(4)] (7) After evaluation is complete, the Department Director will recommend final selection through the Department of Finance and Administration.

[(5)] (8) Notifications of selection and rejection shall be made in writing by the initiating department.

[(6)] (9) Personal Services contracts with the Scope of Work must be approved by the department head and then forwarded to the Department of Finance and Administration for internal review and execution. General Counsel review is required.

(b) Approval Process: All initial contracts with a contract price of greater than \$10,000 be approved and executed by 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 & Administration may approve and execute contracts of \$15,000 or more. No contract may be approved or executed for any amount in excess of the amount authorized in the budget.

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

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 11; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2; amended by Ordinance No. 88-249, Sec. 2)

SECTION 6: Metro Code Section 2.04.060 is amended to read as follows:

2.04.060 Sole Source Contracts:

(a) Selection Process: If there is only one qualified provider of the service required, the initiating department need not solicit and document proposals. The initiating department must document that there is only one qualified provider of the service required [and the Council shall be given notice of the execution and the justification for the contract]. Sole Source Contracts may not exceed \$2,500 unless the Contract Review Board shall have specifically exempted the contract from the public bidding or applicable alternative procurement procedure.

(b) Approval Process: The approval process for sole source contracts is the same as described for regular personal services or public contracts, depending on the nature of the work.

(c) All contracts are subject to the rules and procedures of Code Section 2.04.050, "Rules and Procedures Governing Personal Services and Public Contracts."

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 11; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2)

ADOPTED by the Council of the Metropolitan Service District this _____ day of _____, 1989.

Mike Ragsdale, Presiding Officer

ATTEST:

Clerk of the Council

amn
Ord271C.new
2/17/89



METRO

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

Memorandum

Ord. 88-271

DATE: September 26, 1988

TO: Finance Committee

FROM: Donald E. Carlson, Council Administrator
Jessica Marlitt, Council Analyst

RE: FOLLOW-UP TO FINANCE COMMITTEE'S SEPTEMBER 1 WORK SESSION
ON CONTRACTING POLICIES & PROCEDURES

BACKGROUND

The purpose of this memo is to follow up on the Committee's September 1, 1988, work session on contracting policies and procedures. This is the third memo to the Committee on this subject. The first memo dated August 15, 1988, and titled "STAFF REVIEW OF ORDINANCE NO. 88-258" dealt with proposed changes to the budget and appropriations ordinance. In that memo staff provided background information including General Counsel's opinion that the Council has no authority to approve contracts, but that contracts could be "approved" through the budget and appropriations system.

The second memo dated August 31, 1988, and titled "CONTRACT APPROPRIATIONS" provided information on a definition of contracts (any expenditures in the materials and Services and Capital Outlay categories); an analysis of the District's current appropriation system; and an estimate of possible budget and appropriation changes should the Council choose to appropriate at the line item level in the Materials and Services and Capital Outlay categories. [Based on 1987-88 information, staff estimated the Council would process approximately 192 ordinance changes under such a system as compared to approximately 55 contract approval actions (resolutions) under the current system.]

Based on the September 1 work session, the Committee requested that staff produce draft system approaches and descriptions to address the following issues:

- 1) A budgeting system that would ensure funds were spent on programs/contracts approved by the Council and that programs with major policy implications were carried out -- e.g. appropriating by contract as an option;
- 2) A system to ensure that Metro's contract rules were being followed;
- 3) Provisions for the Council to approve RFP/RFB documents in advance of release;
- 4) A program evaluation/budget review system that would include periodic progress reports to the Council.

RECOMMENDATIONS

In an attempt to bring closure to the contracting issue and address the Committee's policy and program concerns, Council staff makes the following recommendations for Committee consideration. These recommendations, if accepted, will be the basis for the introduction of several actions including:

- o an ordinance revising the Metro Contract Code;
- o a legislative act clarifying the Council's contract approval authority; and
- o a Council program evaluation system to monitor progress of Department programs.

Council staff recommendations are as follows:

1. Do not budget and appropriate by specific contracts.

Based on the August 31 memo and further review with accounting and budget staff, it is not prudent or necessarily productive to attempt to specifically list contracts in the appropriation ordinance. Implementing such a system will potentially require the expenditure of more time and energy by the Council and various departmental staff than is currently required under the existing system. In many respects the purchasing system (Metro Contract Code) and the budget and appropriation system are two different systems which have different and distinct purposes. The budget and appropriation system is designed to authorize expenditure levels for broad functional purposes (Zoo, Solid Waste, Convention Center, Transportation, etc.). Within these functional areas expenditures are authorized for program purposes (i.e., Solid Waste System Planning and Engineering, Operations, Waste Reduction and Administrative, etc.) and certain object classifications (Personal Services, Materials and Services and Capital Outlay). Appropriating by specific contract would add a fourth level of appropriations which substantially increases the complexity of the system. Changes in these appropriations requires the adoption of an ordinance, a more time-consuming process for the Council and staff alike.

The purchasing system is a set of policies and procedures which will result in the lowest cost or most effective procurement of various goods and services in a fair and impartial (to potential vendors) manner. It includes special policies and procedures for certain programs such as the DBE/WBE program. The Council's role in such a system is to assure that the policies and procedures are carried out and, in the case of major procurements, to agree to the terms and conditions of the contracts. A recent example of the Council's role in the purchasing system was the award of the Convention Center construction contract. While that was a low bid contract there was a substantial amount of discretion involved in the award (base bid and 13 alternates and interpretation of the DBE/WBE criteria). Because of the ramifications of such a decision, it was entirely appropriate for the Council to approve the contract.

In addition to the above reasons, there are technical problems which will inhibit the District to appropriate by specific contract. Accounting staff have indicated that there are limitations to the existing accounting software package which make it very difficult to put a contract appropriation system on the computer. If we were to attempt it this fiscal year, additional programming would need to be done. Such an effort would be imprudent since the accounting system is being changed to a new computer and software package. Accounting staff also indicated concern about the ability of the new system to efficiently and effectively handle appropriations at the level of detail of specific contracts.

2. Revise the existing contract code to make it more efficient and effective for the purchase of goods and services and public improvements.

There are several changes which could be made to expedite the contract approval process and assure Council oversight of the procurement process. In addition, there is a need to make changes to expedite the change order approval process for major construction contracts such as the convention center. Suggested changes are as follows:

- a. Eliminate the approval requirement for contracts between \$10,000 and \$50,000 by the Internal Affairs Committee.
- b. Retain the approval requirement for all contracts of \$50,000 and over by the Council. Require Council approval for all contract amendments or extensions (except construction contracts) which exceed \$10,000 or result in a contract price of over \$10,000 (current provisions for the Internal Affairs Committee).
- c. For construction contracts, authorize the Executive Officer to approve change orders within the following limits:
 - up to \$25,000 for contracts initially \$1,000,000 or less;
 - up to \$50,000 for contracts initially between \$1,000,000 and \$5,000,000;
 - up to \$75,000 for contracts initially between \$5,000,000 and \$10,000,000; and
 - up to \$100,000 for contracts which initially exceed \$10,000,000.
- d. Require approval by the appropriate Council committee of the RFP/RFB's for all contracts exceeding \$10,000 prior to the

release of the RFP/RFB for response by vendors. The committees considering and approving RFP/RFB's would be as follows:

Zoo Committee--Zoo-related RFP/RFB's

Solid Waste Committee--Solid Waste-related RFP/RFB's

Intergovernmental Relations Committee--Planning and Development, Data Services and Transportation RFP/RFB's

Convention Center Committee--Convention Center-related RFP/RFB's

Internal Affairs Committee--all other RFP/RFB's

- e. Require approval by the Council of all sole source contracts over \$10,000.
- f. Require filing of a report with the Council at least two weeks prior to the execution of any contract between \$10,000 and \$50,000. The report, among other things, should explain the basis of the award of the contract, including a description of the selection process used to make the award; for a personal services contract, the criteria used in making the selection as well as the persons involved in the selection and the results of the evaluations; and for all contracts, the applicability and results of the DBE/WBE program on the contract.

In summary, the changes described above should expedite the process by eliminating Internal Affairs Committee approval of contracts between \$10,000 and \$50,000. Committee approval of RFP/RFB's ahead of the procurement plus the required administrative report on \$10,000 to \$50,000 contracts prior to actual execution would replace the current role of the Internal Affairs Committee. These changes would also expedite the processing of change orders within the limits described under "c." above.

- 3. Prepare and submit legislation to the 1989 Legislature which clarifies the Council's authority to approve contracts.

Attached as Exhibit A is proposed legislation which provides that the Council by ordinance may require Council or committee approval of contracts. General Counsel has indicated that such legislation would give the Council authority to implement the current contract code or one changed as suggested above. The legislation contains an emergency clause so it would be effective on passage by the legislature. Such authority granted to the Council as the governing body of the District

is consistent with authority given to most, if not all, other local government governing bodies in the State of Oregon.

4. Extend the Effective Date of Ordinance No. 88-249.

Ordinance No. 88-249 essentially does two things. It removes the Code language which requires Council or Internal Affairs Committee approval of contracts of certain dollar values and it inserts throughout the Code language which limits the Executive Officer from executing contracts for any amount in excess of the amount authorized in the budget. Ordinance No. 88-249 is not currently in effect since it contained a delayed effective date of December 31, 1988, or the date of adoption of an ordinance providing a schedule of contract appropriations, whichever happens first. Extending the ordinance's effective date from December 31, 1987 until July 1, 1988 is appropriate if Recommendations 1 through 3 listed above are followed.

The extension would maintain Council approval of contracts, but under the streamlined process resulting from Recommendations 1 and 2 above. Extending the effective date would also recognize the Metro Counsel's opinion on contracting authority, while preserving Council contract oversight until the State Legislature clarifies the Council's authority. If contracting legislation does not reaffirm Council authority, the Council can develop contract appropriations options during Metro's FY89-90 budget process this Spring.

5. Establish a Council quarterly program and budget review function utilizing appropriate Council committees.

A quarterly program and budget review system would provide Council with a regular process to oversee policy implementation. During the Committee's work session, emphasis was placed on the need for a comprehensive approach (of which contract review was a piece) for monitoring Council policies. To this end, staff proposes the following schedule and plan:

- A) Begin quarterly program and budget reporting in October through Committee work sessions: Using the Program Overviews and their stated objectives developed in the FY88-89 Budget Work Book (See Example 1 attached for Transportation), Departments would report to their appropriate Council Committees on the first quarter's progress in achieving the objectives. Departments would need to relate their budget status, from the Financial Report, to their programs' status. Prior to each Committee's work session, Council staff would develop a summary report combining each Department's Program objectives with their budget status. Councilors could use this summary "program picture" to guide them in their review tracking.

Quarterly reporting for the rest of this fiscal year could be scheduled as follows:

- o 2nd Quarter (October - December) by the week of January 16
- o 3rd Quarter (January - March) by the week of April 17
- o 4th Quarter (April - June) by the week of July 17

- B) To facilitate Fiscal 1989-90 budget preparations, conduct Committee work sessions in November and December to develop policy goals and objectives for Metro's functional areas: To provide a clearly defined policy framework for Metro's budget process, Council Committees would conduct work sessions to develop policy statements for Fiscal 1989-90 and perhaps the next 2 years beyond. Through this process, the Committees could indicate their visions for Metro generally as well as in each of the functional areas. For example, regarding the Zoo, the Council would need to address the next phases in the Zoo's on-going development and the issue of a new levy. Each Committee's policy goals would be incorporated in a resolution for Council adoption. The next step outlined under 'C' below would incorporate these policy directives into budget planning and development.
- C) In January, the Council would pull together the Committee policy goals with a restatement of the Council's general visions for the next 1 to 3 years: Staff proposes that the Council convene in a special session to group the Committee's policy statements with an overall vision for the District over the next 3 years. Council may also want to specifically invite the Citizen Budget Advisory Committee (CBAC) members to this session to familiarize them with the policy base that the Council develops. Adopted policy resolutions would provide clear starting points for the Administration's program planning and the District's subsequent budget allocations for Fiscal 1989-90.

This three pronged approach -- quarterly program reviews related to specific budgeted programs; development of policy statements for Metro's functional areas; and the incorporation of the functional policy statements plus overall Council goals for the District into the budget program planning and allocation process -- should provide an on-going system for policy implementation and oversight.

EXHIBIT A

A BILL FOR AN ACT

Relating to metropolitan service districts; amending ORS 268.180 and declaring an emergency.

Be it Enacted by the People of the State of Oregon.

Section 1. ORS 268.180 is amended to read:

(1) District business shall be administered, and district rules and ordinances shall be enforced, by an executive officer.

(2) The executive officer shall be elected in the same manner provided under ORS 268.150, but the officer shall be elected from the district-at-large on a nonpartisan basis. The number of signatures within the district required for nomination is that required under ORS 249.072(2), but the requirement that the petition contain signatures of persons residing in a number of precincts shall not apply. The executive officer shall be a resident and elector of the district and shall not be an elected official of any other public body. The executive officer shall be a resident in the district for not less than one year before taking office. The term of office for an executive officer shall be four years beginning on the first Monday in January on the next year following the election. A vacancy in office shall be filled by appointment by a majority of the council. The executive officer, before taking office, shall take an oath to support the Constitution of the United States and the Constitution and laws of this state.

(3) The executive officer shall serve full time and shall not be employed by any other person or governmental body while serving the district. The executive officer shall not serve as a member of the council.

(4) The salary and employment benefits of the executive officer shall be set by the council upon the recommendation of a salary commission to be appointed by the council, but shall not be less than that of a district court judge of this state.

(5) The executive officer may employ or dismiss any personnel and contract with any

person or governmental agency to assist in carrying out the duties and powers of the executive officer, subject to the personnel and contract ordinances adopted by the council. The council may by ordinance require that any contract or class of contracts be subject to prior approval by the council or a committee of the council.

Section 2. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect on its passage.

DB/gl
268.180.amd



Program Overview

1-22-88
Transportation/Data
40-20

Fiscal Year 1988-89

* EXAMPLE 1*

PROGRAM TITLE: Data Resource Center

PROGRAM NARRATIVE: Maintain and update existing, short-range and long-range estimates of population, employment and land use for use in Metro's transportation and other planning functions and for use by ODOT, Tri-Met, the cities and the counties. Maintain Metro's map center.

SPECIFIC QUANTIFIABLE OBJECTIVES TO BE ATTAINED:

1. Update to 1987, 1993 and 2010 estimates of population, employment and building permit activity.
2. Publish three editions of the Regional Development Trends Report, the annual Regional Data Book and the annual edition of long-range population and employment forecasts.
3. Initiate a comprehensive update of land use and vacant land starting with vacant industrial and commercial lands (other land uses will extend in FY 90).
4. Begin implementation of a "geographic Information System" (GIS) to allow publication of computer-generated maps of regional population, employment and land use data (to extend into FY 90).
5. Assume responsibility for Metro's map center; implement computer-assisted cartography and update key maps to 1988.
6. Coordinate regional review of pre-1990 census maps, survey forms and employer addresses.
7. Provide technical assistance to ODOT, Tri-Met, the cities and the counties in using Metro database.

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING	)	ORDINANCE NO. 88-271
METRO CODE CHAPTER 2.04 RELATING)	
TO CONTRACTING PROCEDURES	)	Introduced by the
	)	Council Finance Committee

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. Metro Code Section 2.04.030 is amended to read as follows:

2.04.030 Rules and Procedures Governing All Personal Services and Public Contracts:

(a) Applicability: All personal services and public contracts are subject to the applicable selection, review and approval procedures of this Chapter.

(b) Initiating a Contract: When a department initiates a contract not in the form of a purchase order, it must first notify the Department of Finance and Administration of its intention and request the issuance of a contract number which shall appear on all copies of the contract. The department must complete a Contract Summary form indicating the specifics of the contract. This form must be forwarded to the Department of Finance and Administration either with a fully executed contract (one copy) if the amount is estimated to be \$2,500 or under, or with an unexecuted contract (three copies) for review, approval and signature if the amount is over \$2,500.

(c) Documentation Required for Contract Files: The Department of Finance and Administration will maintain central files for all contracts. An original copy should be given to each contractor. All correspondence relating to a contract which alters conditions or amounts must be included in the central files as should all papers which document the process of obtaining competitive bids, quotes, or proposals. In any case where a low bid, quote, or proposal is not accepted, a detailed justification must be included with the contract file. Other documentation, if applicable, that should be included in the file includes:

- Mailing lists
- Affidavits of Publication
- Insurance endorsements and certificates
- Amendments
- Extensions
- Related Correspondence
- Quotes, Proposals, and Bids
- Bonds
- WBE/DBE information

- Contract closure form
- Personal Services Evaluation form

(d) Contract Review: Prior to approval by the appropriate person or body, contracts shall be reviewed as follows:

(1) Any contract which deviates from a standard contract form, exceeds \$10,000 for a personal services contract or \$15,000 for a public contract, or is with another public agency must be reviewed by legal counsel.

(2) Contracts involving federal or state grant funds must be reviewed by the Deputy Executive Officer.

(e) Disadvantaged Business Program: All contracting and purchasing is subject to the Metro Disadvantaged Business Enterprise Program. Metro will take affirmative action to do business with Disadvantaged Business Enterprises. The Director of Finance and Administration will maintain a directory of disadvantaged businesses as provided in Section 2.04.125 of this Chapter which shall be consulted and used in all contracting and purchasing of goods and services. If a disadvantaged business is included in the directory that appears capable of providing needed goods or services, that business should be contacted and given an opportunity to compete for Metro business. Contracts awarded subject to the program may be exempted from the competitive bidding process by resolution of the Contract Review Board.

(f) Monthly Contract Report: The Executive Officer shall provide a monthly report to the Council of all contracts, including extensions and amendments, which have been executed during the preceding month; provided, however, that such monthly report need not include purchase orders under \$500.

(g) Special Reporting Requirements: The Executive Officer shall file a written report with the Council, via the Council Clerk, at least five (5) working days prior to the execution of a public contract over \$15,000 and a personal service contract over \$10,000 which has not already been approved by the Council. The report shall indicate the name of the contractor; the amount and length of the contract; a brief description of the goods or services to be provided; a brief description of the selection process used in making the award including the criteria used in making the selection, the persons involved in the selection and summary of the results of the evaluation; the applicability and results of the DBE/WBE program on the contract; and a signed certification by the department head that the appropriate contract Code procedures have been followed.

[(g)](h) Code of Conduct:

(1) No employee, elected official or agent of Metro shall participate in the selection, award or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, elected official or agent, any member of his/her immediate family, his or her partner, or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. No Metro elected official, employee or agent shall solicit or accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.

(2) Violations of this Code of Conduct shall subject an employee to disciplinary action pursuant to the Metro Personnel Rules and may be grounds for other civil or criminal penalties provided by law.

[(h)](i) Federal/State Agency Approval: When required by federal or state law or regulations, review and approval of Metro contracts shall include prior concurrence or approval by appropriate federal or state agencies.

(j) Council Approval: Notwithstanding any other provisions of Chapter 2.04, the following contracts, with the exception of emergency contracts, contracts for the purpose of inventory and gift items for resale at the Zoo Gift Shop and, Metro Exposition-Recreation Commission contracts, shall be approved by the Council prior to execution:

- (1) Any contract with an initial term greater than three
(3) years;
- (2) Any sole source contract which exceeds \$10,000;
- (3) Any contract which exceeds \$100,000; or
- (4) Any intergovernmental agreement, except contracts
which merely pass through funds from a state or
federal agency or grant award contracts.

(k) Bid/Request for Proposal Protest Procedure: The following procedure applies to aggrieved bidders and proposers who wish to appeal an award of a public contract above \$15,000 and a personal service contract above \$10,000 which have not been approved by the Council. The appeal process for bids is the same as for requests for proposals. In the case of requests for proposals, disagreement with the judgment exercised in scoring by evaluators is not a basis for appeal.

(1) All appeals shall be made in writing and shall be delivered to the Contracts Administrator at Metro's main office within five (5) working days of the postmarked date on the Notice of Award. The written appeal must describe the specific citation of law, rule, regulation, or procedure upon which the appeal is based.

(2) The Contracts Administrator shall forthwith notify the appropriate department head and the Executive Officer of the appeal. Within ten (10) working days of the receipt of notice of the appeal, the Executive Officer shall send a Notice of Rejection of the appeal or a Notice of Acceptance of the appeal as applicable to the appellant. The appellant may appeal the Executive Officer's decision to reject the appeal in writing to the Metro Contract Review Board within five (5) working days from the postmarked date on the Notice of Rejection.

(3) The Metro Contract Review Board will review the grounds for appeal, the record and the Executive Officer's recommendation and make a decision. The decision of the Metro Council is final.

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 8 & 10, Ordinance No. 84-176, Sec. 4, Ordinance No. 84-179, Sec. 2; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2)

Section 2. Metro Code Section 2.04.043 is amended to read as follows:

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 \$15,000 or less.

(2) Labor and Materials bond in an amount equal to 100 percent of the contract price is required for contracts over \$15,000.

(3) Performance bond in an amount equal to 100 percent of the contract price is required for contracts over [\$10,000] \$15,000. 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 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.

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-174, Sec. 16; Ordinance No. 84-176, Sec. 4; Ordinance No. 84-179, Sec. 2; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2, amended by Ordinance No. 87-223, Sec. 1)

Section 3. Metro Code Section 2.04.043 is amended to read as follows:

2.04.043 Public Contracts Between \$2,501 and \$15,000

(a) Selection Process: Unless completely exempt from competitive bidding under Section 2.04.041, when the amount of the contract is more than \$2,500, but less than \$15,000, the District must obtain a minimum of three (3) competitive quotes. The District shall keep a written record of the source and amount of the quotes received. If three (3) quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes. No contractor may be awarded in the aggregate, within the fiscal year, contracts in excess of \$30,000 without competitive bidding. In computing the aggregate under this subsection, awards under \$500 shall not be included.

(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) Between \$2,501 and [\$10,000] \$15,000. For contracts of more than \$2,500, either the Executive Officer or Deputy Executive Officer must sign; however, the Director or Assistant Director of the Zoo may sign purchase orders of [\$10,000] \$15,000 or less. 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 contracts.

[(2) Between \$10,001 and \$15,000: Except as provided in subsection (3) of this section, all initial contracts with a contract price of greater than \$10,000 but \$15,000 or less shall be approved by the Council Management Committee prior to execution by the Executive Officer or Deputy Executive Officer.]

[(3)](2) Exceptions: The following types of contracts may be approved by the Executive Officer or his/her designee:

- (A) Contracts which merely pass through funds from a state or federal agency.
- (B) Purchases of inventory and gift items for resale at the Zoo Gift Shop.
- (C) Emergency contracts.

(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."

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 10 & 16; Ordinance No. 84-176, Sec. 4; Ordinance No. 84-179, Sec. 2; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2)

Section 4. Metro Code Section 2.04.044 is amended to read as follows:

2.04.044 Public Contracts Over \$15,000

(a) Selection Process:

Unless exempt from competitive bidding by Code section 2.04.041, the following competitive bidding procedures shall apply to all contracts:

(1) The initiating department staff will prepare or have prepared bid specifications and compile a list of potential bidders.

(2) The bid document will be reviewed by the Department of Finance and Administration and by legal counsel before bids are solicited or advertised, and shall include the contract form to be used.

(3) The bid document shall be reviewed and approved by an appropriate Council Committee or on recommendation of the Committee by the Council prior to release for response by potential contractors. At the time of consideration the Committee or Council shall determine whether such contract must be approved by the Council prior to execution by the Executive Officer.

[(3)](4) A request for bids will be advertised in at least one (1) business oriented newspaper, a local minority newspaper, and when feasible, in an appropriate trade magazine. Additional advertisement may be appropriate depending upon the nature of the contract.

[(4)](5) The initiating department will receive and open sealed bids at the time and place designated in the request for bids.

[(5)](6) The opened bids will be reviewed by the requesting department and a recommendation and contract will be submitted to the Department of Finance and Administration.

[(6)](7) After selection and prior to approval, the contract must be reviewed by the Director of Finance and Administration.

[(7)](8) The initiating department will notify all bidders in writing of the contract award and obtain any necessary bonds and insurance certificates.

[(8)](9) The District shall reserve the right to reject any or all quotes or bids received.

(b) Approval Process:

[(1) Between \$15,001 and \$50,000: Except as provided in subsection (3) of this section, all initial contracts with a contract price of greater than \$15,000 but \$50,000 or less shall be approved by the Council Management Committee prior to execution by the Executive Officer or Deputy Executive Officer.]

[(2) Over \$50,000: Except as provided in subsection (3) of this section, all contracts with a contract price of more than \$50,000 shall be approved by the Council prior to execution by the Executive Officer or the Deputy Executive Officer.]

(1) Except as provided in subsection (2) of this section, all public contracts designated to be approved by the Council in subsection (3) of section (a) above shall be approved by the Council prior to execution by the Executive Officer.

[(3)](2) Exceptions: The following types of contracts may be approved by the Executive Officer or his/her designee:

- (A) Contracts which merely pass through funds from a state or federal agency.
- (B) Purchases of inventory and gift items for resale at the Zoo Gift Shop.
- (C) Emergency contracts.

(c) Within thirty (30) days of award of a construction contract, the Department of Finance and Administration shall provide the notice required by ORS 279.363.

(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."

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 10 & 16; Ordinance No. 84-176, Sec. 4; Ordinance No. 84-179, Sec. 2; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2)

Section 5. Metro Code Section 2.04.045 is amended to read as follows:

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] \$15,000: [(A) Except as provided in (B) below, all] All contract amendments and extensions [which exceed \$2,500] between \$2,501 and \$10,000 or which result in a total contract price of [more than \$2,500 but \$10,000 or less] between \$2,501 and \$15,000 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:

(1) The initial contract has been approved by the Council Management Committee or the Council; and

(2) 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.

(3) 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 \$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.]

(4) Council Committee Approval: Except as provided in subsection (6) of this section, all contract amendments and extensions between \$10,001 and \$50,000 or which result in a total contract price between \$15,001 and \$100,000 shall be approved by the appropriate Council committee prior to execution.

(5) Council Approval: Except as provided in subsection (6) of this section, all contract amendments and extensions which exceed \$50,000 or result in a contract price of over \$100,000 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) Individual change orders of a technical nature for public improvement contracts which do not materially add or delete from the original scope of work called for in the bid specifications of the contract within the following limits:
 - (1) Change orders approved by the Executive Officer under this section shall not exceed, on a cumulative basis, more than five (5) percent of the initial face value of the contract;
 - (2) Non-technical change orders which do materially add to or delete from the original scope of work shall be approved by the Council prior to execution. Change orders under this subsection are not a part of the five (5) percent limit of subsection (1) above.

The Executive Officer shall report to the Council, via the Clerk of the Council, on each change order approved under this subsection at the next scheduled Council meeting. The written report shall indicate the amount and purpose of each change order and its impact on the project as originally approved and the project budget.

[(d)](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."

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 10 & 16; Ordinance No. 84-176, Sec. 4; Ordinance No. 84-179, Sec. 2; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2; amended by Ordinance No. 87-223, Sec. 1)

Section 6. Metro Code Section 5.04.053 is amended to read as follows:

2.04.053 Personal Services Contracts Over \$10,000

(a) Selection Process: For Personal Services contracts of \$10,000 or more an evaluation of proposals from potential contractors shall be performed as follows:

(1) A request for proposals shall be prepared by the initiating department and shall be reviewed by legal counsel and the Department of Finance and Administration. [Where appropriate, the request shall be published in a newspaper of general circulation or in trade magazines. In addition, Metro shall notify in writing at least three (3) potential contractors, who, in the judgment of the Department Director are capable and qualified to perform the requested work. The initiating department will be responsible for maintaining the file and making the appropriate notification. The request for proposals shall be reviewed and approved by an appropriate Council Committee or, at the recommendation of the Committee, by the Council prior to release for response by potential contractors. At the time of consideration, the Committee or Council shall determine whether or not such contract must be approved by the Council prior to execution by the Executive Officer.

(2) Where appropriate, the request for proposal shall be published in a newspaper of general circulation or in trade magazines. In addition, Metro shall notify in writing at least three (3) potential contractors, who, in the judgment of the Department Director, are capable and qualified to perform the requested work. The initiating department shall be responsible for maintaining the file and making the appropriate notification.

[(2)](3) Evaluations of proposals shall include use of a contract evaluation form. The use of an oral interview or an evaluation team is recommended.

[(3)](4) Personal Services Evaluation Form: The Personal Services evaluation form shall document the reasons for the selection. Proposals shall be evaluated according to predetermined criteria. The evaluation process may include the evaluators assigning a quantifiable score on how each aspect of a proposal meets the predetermined criteria. The contract may be awarded to the firm receiving the highest average score.

[(4)](5) After evaluation is complete, the Department Director will recommend final selection through the Department of Finance and Administration.

[(5)](6) Notifications of selection and rejection shall be made in writing by the initiating department.

[(6)](7) Personal Services contracts with the Scope of Work must be approved by the department head and then forwarded to the Director of Finance and Administration for internal review and execution. Legal counsel review is required.

(b) Approval Process:

[(1) Between \$10,001 and \$50,000: Except as provided in subsection (3) of this section, all initial contracts with a contract price of greater than \$10,000 but \$50,000 or less shall be approved by the Council Management Committee prior to execution.

(2) Over \$50,000: Except as provided in subsection (3) of this section, all contracts with a contract price of more than \$50,000 shall be approved by the Council prior to execution.]

[(1) Except as provided in subsection (2) of this section, all personal service contracts designated to be approved by the Council in subsection (1) of section (a) above shall be approved by the Council prior to execution by the Executive Officer.]

[(3)](2) Exceptions: The following types of contracts may be approved by the Executive Officer or his/her designee.

- (A) Contracts which merely pass through funds from a state or federal agency.
- (B) Grant award contracts.
- (C) Emergency contracts.

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

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 11; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2)

Section 7. Metro Code Section 2.04.054 is amended to read:

2.04.054 Personal Services Contract Extensions and Amendments:

(a) Selection Process:

(1) A Personal Services contract may be renewed without receiving competitive proposals if the contractor is performing a continuing activity for the agency. This applies, but is not limited to contracts for construction observation, public relations consulting, outside legal counsel and annual auditing. Except as provided in subsection (2) below, competitive proposals must be solicited for these services at least once every three (3) years and annually if the contractor proposes a price or rate increase of more than 10 percent over the previous year.

(2) Personal Services contracts may be renewed, extended or renegotiated without soliciting competitive proposals if, at the time of renewal, extension or renegotiation, there are fewer than three (3) potential contractors qualified to provide the quality and type of services required and the initiating department makes detailed findings that the quality and type of services required make it unnecessary or impractical to solicit proposals.

(b) Approval Process:

(1) \$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 Metro 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.

(2) Between \$2,501 and \$10,000:

(A) 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 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 based on the amount last approved by the Council Management Committee or Council.

(3) 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 shall be approved by the Council Management Committee prior to execution.

(4) 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.]

(3) Council Committee Approval: Except as provided in subsection (5) of this section, all contract amendments and extensions between \$10,000 and \$50,000 or which result in a total contract price of more than \$10,000 shall be approved by the appropriate Council committee prior to execution.

(4) Council Approval: Except as provided in subsection (5) of this section, all contract amendments and extensions which exceed \$50,000 or result in a contract price of over \$100,000 shall be approved by the Council prior to execution.

(5) 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.

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

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 11; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2)

Section 8. Metro Code Section 2.04.060 is amended to read as follows:

2.04.060 Sole Source Contracts:

(a) Selection Process: If there is only one qualified provider of the service required, the initiating department need not solicit and document proposals. The initiating department must document that there is only one qualified provider of the service required, and the Council shall be given notice of the execution and the justification for the contract.

(b) Approval Process: The approval process for sole source contracts is the same as described for regular personal services or public contracts, depending on the nature of the work, except that all sole source contracts for \$10,000 or above shall be approved by the Council prior to execution.

(c) All contracts are subject to the rules and procedures of Code Section 2.04.050, "Rules and Procedures Governing Personal Services and Public Contracts."

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 11; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2)

Section 9. Metro Code Section 2.04.090 is amended to read as follows:

2.04.090 Food Items and Food Service Contracts

(a) Selection Process: (1) All food items and food service contracts and extensions will be processed and awarded as public contracts, except as provided in sections (2)-(4) below.

(2) Competitive bids or quotes are not required when a specific food item is requested by a purchaser of the District's catering service. If the specific item is supplied by more than one source, competitive quotes shall be obtained from at least three known suppliers. The District shall keep a written record of the source and amount of the quotes received.

(3) Competitive bids or quotes are not required for food items which the Director or Assistant Director of the Zoo authorize for a market test. A market test is used to determine whether a food item should be added to the District's menu or to develop the specifications for a particular food item. The test should clearly define the period of time for the market study, not to exceed six months, and the statistical method used to determine the value of the food item as part of the regular menu. A written report shall be made. Based on this report if the Director or Assistant Director determines the item shall be added to the regular menu, he/she shall establish specifications for the item. The item shall be selected under either public contract procedures or subsection (4), below. During the time the selection process is carried out, the test market product may continue to be sold by the District.

(4) Competitive bids or quotes are not required when the Director or Assistant Director of the Zoo finds that marketing factors are likely to significantly impact sales, subject to the following conditions:

(A) Prior to the selection of the contractor the department has made reasonable efforts to inform known companies providing the item or service of the subject matter of the contract and to solicit proposals, including public advertising in at least one newspaper of general circulation in the area.

(B) The contractor is selected on the basis of the most competitive offer considering cost, quality of the product, service to be rendered and marketing advantages.

A written record of the selection process shall be made.

(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) \$2,500 and Under: All contract and 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.

(2) Between \$2,501 and [\$10,000] \$15,000: All contracts and amendments and extensions which exceed \$2,500 [or] and which result in a total contract price of more than \$2,500 but less than [\$10,000] \$15,000 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 contracts and amendments and extensions.

[(3) Between \$10,001 and \$50,000: Except as provided in subsection (5) of this section, all contracts and 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 shall be approved by the Council Management Committee prior to execution.]

[(4) Over \$50,000: Except as provided in subsection (5) of this section, all contracts and 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.]

[(3) Between \$10,001 and \$50,000: Except as provided in subsection (5) of this section, all contracts and 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 shall be approved by the Council Management Committee prior to execution.]

[(4) Over \$50,000: Except as provided in subsection (5) of this section, all contracts and 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.]

[(5) Exceptions: Emergency contract extensions and amendments may be approved by the Executive Officer or his/her designee.]

(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."

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 10 & 16; Ordinance No. 84-176, Sec. 4; Ordinance No. 84-179, Sec. 2; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2)

Section 11. Ordinance No. 88-247 is amended to include a Schedule of Contract Appropriations as shown on Exhibit E attached hereto. Notwithstanding the appropriations set forth in Exhibit B to Ordinance No. 88-247 (Schedule of Appropriations) the Executive Officer shall not enter into or expend any monies on personal service contracts of \$10,000 or more or public contracts of \$15,000 or more that are not included in the Schedule of Contract Appropriations. Further, the Executive Officer shall not authorize expenditures which exceed the appropriated amount shown on the Schedule of Contract Appropriations.

ADOPTED By the Council of the Metropolitan Service District
this _____ day of _____, 1988.

Mike Ragsdale, Presiding Officer

ATTEST:

Clerk of the Council

DEC/amn/0395D/554-2/12/22/88



METRO

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

Memorandum

Date: December 8, 1988

To: Ray Phelps, Finance & Administration Director
Dan Cooper, General Counsel

From: Donald E. Carlson *DE*
Council Administrator

Regarding: REVISED COPY OF ORDINANCE NO. 88-271A

Please find attached the revised copy of Ordinance No. 88-271A (Revisions to Metro Contract Code). The Internal Affairs Committee is tentatively scheduled to consider this ordinance on December 13, 1988. We will notify you of the meeting time and date as soon as it is arranged.

DEC:gpwb

cc: Internal Affairs Committee
Metro Department Heads *
Lee Fehrenkamp

** Distributed to:*
Neil Saling
Rich Carson
Bob Martin
Vickie Locker
Andy Cotugno
Amha Hazen
Neil M. Furlane

Contracts List

PURPOSE OF CONTRACT	ACCOUNT CODE	FY 1988-89 BUDGETED AMOUNT
Pacific Fishery Management Council sublease	5070	27,953
Tri-County Youth Services Cons. sublease	5070	8,064
Pacific Marine Fishery Comm. sublease	5070	22,020
Total Estimated Contracts This Account Code		164,776
Natural gas	7220	23,940
Total Estimated Contracts This Account Code		23,940
Building maintenance retainer	7310	1,500
Drop box service	7310	1,800
Electrical retainer	7310	3,050
Elevator maintenance	7310	4,400
HVAC maintenance	7310	19,800
Janitorial service	7310	14,131
Landscaping service	7310	2,518
Parking lot sweeping service	7310	750
Plumbing retainer	7310	2,500
Total Estimated Contracts This Account Code		50,449
Alarm system maintenance	7330	680
Fire extinguisher maintenance	7330	125
Fire sprinkler maintenance	7330	300
Total Estimated Contracts This Account Code		1,105
Custodial supplies	7430	10,100
Total Estimated Contracts This Account Code		10,100
Security service	7500	2,520
Towing service	7500	125
Temporary services	7500	800
Total Estimated Contracts This Account Code		3,445
D.O.E. - Repayment of Capital	7510	6,000
Energy audit	7510	2,500
Total Estimated Contracts This Account Code		8,500

PURPOSE OF CONTRACT	ACCOUNT CODE	FY 1988-89 BUDGETED AMOUNT
Lease of Metro Center	7750	234,388
Total Estimated Contracts This Account Code		234,388
Architectural services	8600	4,000
Conference room/Turner remodel	8600	2,000
Energy improvements/remodel	8600	2,000
General Contract-Elevator refurbishing	8600	3,500
Misc. electrical/HVAC installation	8600	1,500
Other misc. remodel	8600	457
RIC remodel	8600	850
Transportation/Conference room remodel	8600	3,500
Total Estimated Contracts This Account Code		17,807
INSURANCE FUND		
Property appraisal	7500	15,000
Total Estimated Contracts This Account Code		15,000
ZOO OPERATIONS FUND		
Administration:		
Pagers	7230	3,480
Phone system maintenance	7230	3,600
Total Estimated Contracts This Account Code		7,080
Coin sorter & currency handler maint.	7330	800
Typewriter repair	7330	500
Word processor maint.	7330	1,720
Total Estimated Contracts This Account Code		3,020
Misc. architectural projects	7500	6,000
Operations management plan	7500	10,000
Property survey	7500	1,000
Telephone system study	7500	5,000
Total Estimated Contracts This Account Code		22,000

Contracts List

EXHIBIT C

PURPOSE OF CONTRACT	ACCOUNT CODE	FY 1988-89 BUDGETED AMOUNT
GENERAL FUND		
Council:		
Workshops, special projects	7500	5,000
Total Estimated Contracts This Account Code		5,000
Performance Audit	7540	12,000
Total Estimated Contracts This Account Code		12,000
Office Furniture	8570	3,000
Total Estimated Contracts This Account Code		3,000
Office of General Counsel:		
Office Furniture	8570	2,500
Computer purchase with software	8570	3,100
Typewriter	8570	750
Total Estimated Contracts This Account Code		6,350
Executive Management:		
Furniture rental for Salem office	7360	760
Total Estimated Contracts This Account Code		760
Lease payment-Salem office	7750	1,500
Total Estimated Contracts This Account Code		1,500
State Legislative Assembly	7510	20,702
Total Estimated Contracts This Account Code		20,702
Office Furniture	8570	4,980
Total Estimated Contracts This Account Code		4,980

PURPOSE OF CONTRACT	ACCOUNT CODE	FY 1988-89 BUDGETED AMOUNT
Finance & Administration:		
Great West Medical Insurance	6700	251,859
Kaiser Medical Insurance	6700	119,481
Great West Dental Insurance	6700	104,505
Great West Life Insurance	6700	20,348
Mutual Benefit Life (long term disability)	6700	21,024
Oregon Laborers Trust	6700	175,414
SAIF	6700	152,996
Unemployment Insurance	6700	285,000
Western Retirement Trust	6700	410,980
Principal Mutual Trust	6700	342,483
FICA	6700	505,731
Total Estimated Contracts This Account Code		2,389,821
DBE/WBE outreach (American Contractor)	7140	15,000
Minority Recruitment Ads	7140	1,000
Total Estimated Contracts This Account Code		16,000
Long distance services	7230	16,632
Yellow page ads	7230	5,200
Total Estimated Contracts This Account Code		21,832
Fuel/motor pool maintenance	7250	3,600
Total Estimated Contracts This Account Code		3,600
Canon copier maintenance	7330	1,560
Center accounting laser printer maint.	7330	5,916
DEC hardware maintenance	7330	8,880
EMME-2 software maintenance	7330	1,800
Facsimile machine maintenance	7330	300
Kodak maintenance	7330	8,400
Kodak #2 maintenance	7330	4,440
Maintenance on Transportation printers	7330	291
Masscomp computer maintenance	7330	8,748
Misc. maintenance on terminals, pc's etc.	7330	4,000
Offset duplicator maintenance	7330	4,700
PC dot matrix printer maintenance	7330	1,936
PC laser printer maintenance	7330	2,160
Pericom terminal maintenance	7330	300
Personal computer maintenance	7330	10,000
Pixel Application software	7330	150

Contracts List

PURPOSE OF CONTRACT	ACCOUNT CODE	FY 1988-89 BUDGETED AMOUNT
Pixel Hardware maintenance	7330	3,000
Pixel software maintenance	7330	1,245
Postage machine maintenance	7330	320
Production copier maintenance	7330	1,700
Sony dictating machine maintenance	7330	521
Sony dictating machine maintenance	7330	520
Tektronix printer/terminal maintenance	7330	3,842
Telephone maintenance	7330	5,800
Typewriter maintenance	7330	1,100
Unisys hardware maintenance	7330	19,020
Unisys operating system maint	7330	4,908
Visual 550 maintenance	7330	141
Wang word processing maintenance	7330	5,544
Word processing maintenance	7330	5,550

Total Estimated Contracts This Account Code 116,682

Envelopes and stationary	7410	5,000
Total Estimated Contracts This Account Code		5,000

Affirmative Action Recruitment	7500	2,500
Archives	7500	2,000
Bank Service Charges	7500	10,000
Benefits Review & Assistance	7500	6,000
Disk Conversion	7500	7,500
Furniture planner	7500	2,000
Movers	7500	1,200
Professional Tax Services	7500	2,500
Software development/conversion	7500	7,000
Temporary services	7500	1,720
Temporary employee services	7500	500
Temporary services, etc	7500	3,000

Total Estimated Contracts This Account Code 45,920

Annual Audit Services	7540	35,000
Total Estimated Contracts This Account Code		35,000

Vehicle leases	7760	13,680
Total Estimated Contracts This Account Code		13,680

PURPOSE OF CONTRACT	ACCOUNT CODE	FY 1988-89 BUDGETED AMOUNT
Accounting software lease (MGSI)	7770	66,852
Furniture lease (Peoples Bank)	7770	39,662
Lease of Central Accounting laser printer	7770	7,500
Unisys hardware/operating system lease	7770	64,760
Lease of New Furniture & Equipment	7700	27,470
Word processing system acquisition		
Folder/Cutter lease		
New furniture/panels		
Production Copier Lease		
Telephone lease		

Total Estimated Contracts This Account Code 206,244

Interoffice delivery service	7900	2,000
Total Estimated Contracts This Account Code		2,000

Kodak key system	8570	1,650
Purchase of support hardware/software	8570	8,000
Purchase of support laser printer	8570	2,800
Telephone adds/move changes	8570	9,000

Total Estimated Contracts This Account Code 21,450

Public Affairs:		
Printing of annual report	7150	5,000
Printing of Metro News (fall issue)	7150	1,300
Printing of Metro News (spring issue)	7150	1,300
Printing of Metro News (summer issue)	7150	1,300
Printing of Metro News (winter issue)	7150	1,300

Total Estimated Contracts This Account Code 10,200

Photographic/illustration services	7500	2,900
Technical writing services	7500	2,900
Temporary secretarial services	7500	400

Total Estimated Contracts This Account Code 6,200

BUILDING MANAGEMENT FUND

Thomas/Klein sublease	5070	23,939
Eves/Wade sublease	5070	22,233
Babicky, Venne, Bunce & Parker sublease	5070	60,567

Contracts List

PURPOSE OF CONTRACT	ACCOUNT CODE	FY 1988-89 BUDGETED AMOUNT
Animal Management:		
Smelt for penguins	7470	3,500
Carnivore feed	7470	9,000
Primate feed	7470	4,000
Timothy hay	7470	28,000
Herring for bears	7470	3,000
Total Estimated Contracts This Account Code		47,500
Window cleaning services	7500	3,500
Pest Control services	7500	4,500
Back-up veterinary services	7500	3,500
Uniform & laundry services	7500	13,500
Total Estimated Contracts This Account Code		25,000
Facilities Management:		
Diesel & unleaded fuels	7250	16,550
Grease/oil products	7250	2,500
Welding gas/propane	7250	2,100
Total Estimated Contracts This Account Code		21,150
Electrical Contractor, retainage	7310	7,000
Fire alarm service	7310	900
Fire extinguisher service	7310	1,000
General Contractor, retainage	7310	8,000
HVAC retainage contractor	7310	2,000
Paint and painting products	7310	3,000
Painting Contractor, retainage	7310	5,000
Paving Contractor, retainage	7310	7,000
Plumbing Contractor, retainage	7310	5,850
Plumbing supplies	7310	6,500
Roofing Contractor, retainage	7310	5,000
Specialty products	7310	2,000
Total Estimated Contracts This Account Code		53,250
Landscape service	7315	3,500
Parking lot sweeping	7315	1,700
Solid Waste hauling	7315	19,200
Yellow-jacket control	7315	3,500
Zoo sweeping	7315	4,000
Total Estimated Contracts This Account Code		31,900

PURPOSE OF CONTRACT	ACCOUNT CODE	FY 1988-89 BUDGETED AMOUNT
Auto parts	7320	3,000
Body work/paint	7320	2,000
Tires	7320	3,000
Total Estimated Contracts This Account Code		13,000
Equipment rental	7360	5,000
Total Estimated Contracts This Account Code		5,000
Drain Block Solution	7430	1,100
Liners	7430	14,000
Paper products	7430	20,000
Soap and cleaners	7430	3,000
Total Estimated Contracts This Account Code		38,100
De-icer product	7450	1,500
Maintenance equipment	7450	2,000
Total Estimated Contracts This Account Code		3,500
Landscape equipment	7460	2,000
Total Estimated Contracts This Account Code		2,000
HVAC/Solar study-Research	7500	2,300
Laundry of Uniforms	7500	8,000
Misc Architect/Engineering	7500	7,000
Total Estimated Contracts This Account Code		17,300
Gearwalk terrace canopy extension	8510	8,000
Custodial loft rehab (elevator)	8510	10,000
Landscape shop loft	8510	11,000
Penguinarium HVAC rehab	8510	10,000
Plant amend storage area	8510	18,000
Primate building reroofing	8510	21,000
Recycle storage area	8510	8,000

Contracts List

PURPOSE OF CONTRACT	ACCOUNT CODE	FY 1988-89 BUDGETED AMOUNT
Research building reroof	8510	18,000
Research Phase 1 remodel	8510	20,000
Train station/entrance canopies	8510	15,000
Total Estimated Contracts This Account Code		139,000
Alaska game room remodel	8530	10,000
Bearwalk terrace lighting	8530	2,500
Improve bear grotto filtration	8530	10,000
Railroad crossing gates	8530	6,000
Zoo perimeter fence addition	8530	15,000
Total Estimated Contracts This Account Code		43,500
Equipment/vehicles	8550	72,800
Total Estimated Contracts This Account Code		72,800
Office furniture/equipment	8570	5,710
Total Estimated Contracts This Account Code		5,710
Railroad equipment	8590	39,400
Replace railroad car wheels	8590	7,000
Total Estimated Contracts This Account Code		46,400
Education Services:		
Rental hall for volunteer banquet	7110	800
Total Estimated Contracts This Account Code		800
Retainer for sign company	7440	4,000
Total Estimated Contracts This Account Code		4,000
Instructors to teach classes	7500	2,500
Curriculum development	7500	4,000
College Work Study Program	7500	2,000
Temporary clerical help	7500	2,000
Total Estimated Contracts This Account Code		10,500

PURPOSE OF CONTRACT	ACCOUNT CODE	FY 1988-89 BUDGETED AMOUNT
Marketing:		
Copy writing, production	7500	26,900
Brochure distribution	7500	1,600
Concert sound	7500	9,000
Poster distribution	7500	1,000
Posting billboards	7500	3,000
Posting bus banners	7500	4,000
Concert coordination	7500	32,500
Co-op marketing	7500	3,500
Marketing research	7500	13,250
Total Estimated Contracts This Account Code		94,750
Visitor Services:		
Fire extinguisher maintenance	7330	500
NCR registers maintenance	7330	500
Refrig. & ice machine maintenance	7330	2,500
Timekeeping system maintenance	7330	2,500
Typewriter maintenance	7330	800
Total Estimated Contracts This Account Code		6,800
Vending machine rental	7360	12,000
Total Estimated Contracts This Account Code		12,000
Bakery items	7390	94,470
Chocolate chip cookies	7390	40,200
Dairy items	7390	17,755
Grocery & meat items	7390	14,405
Hotdogs and bacon	7390	9,380
Ice cream	7390	7,370
Popcorn & slushie supplies	7390	6,700
Soft drink supplies	7390	32,154
Waffle cone mix	7390	3,700
Total Estimated Contracts This Account Code		226,134
Paper goods	7445	1,350
Total Estimated Contracts This Account Code		1,350
Armored car services	7500	26,264
Check guarantee company	7500	11,000

Contracts List

PURPOSE OF CONTRACT	ACCOUNT CODE	FY 1988-89 BUDGETED AMOUNT
Citrus supplies	7500	500
Shopping service	7500	800
Shuttle service for zoo visitors	7500	10,000
Total Estimated Contracts This Account Code		48,564
ZOO CAPITAL FUND		
Africa Phase I & II construction	8620	1,464,697
Construction of Africa Ph. III	8620	1,520,000
Miscellaneous improvements - constr.	8620	60,000
Research & Propagation Center - constr.	8620	105,000
Total Estimated Contracts This Account Code		3,149,697
Africa Phase I & II design	8630	33,000
Aquarium study	8630	25,000
Architect for design of Africa Ph. III	8630	380,000
Concrete testing for Africa Ph. I & II	8630	1,000
Legal services - Alaska exhibit	8630	5,000
Miscellaneous improvements - design	8630	15,000
Research & Propagation Center - design	8630	20,000
Soils testing for Africa Ph. I & II	8630	5,000
Total Estimated Contracts This Account Code		484,000
SOLID WASTE OPERATIONS FUND		
Administration:		
Office Furniture & Equipment	8570	1,800
Total Estimated Contracts This Account Code		1,800
Operations:		
Gatehouse painting	7310	1,000
Gatehouse painting	7310	1,000
Misc. repairs	7310	4,000
Post mobilization repairs	7310	15,000
Roof repair	7310	500
Scalehouse repairs	7310	8,000
Tree removal	7310	3,000
Window & door replacement for dog box	7310	1,200
Total Estimated Contracts This Account Code		33,700

PURPOSE OF CONTRACT	ACCOUNT CODE	FY 1988-89 BUDGETED AMOUNT
Drainage-north field	7315	21,000
Landscape improvement	7315	6,500
Mowing north field	7315	1,000
Repairs for wetlands	7315	5,000
Total Estimated Contracts This Account Code		33,500
Air conditioner	7320	1,700
Izusu-services	7320	500
Total Estimated Contracts This Account Code		2,200
Computer maintenance	7330	2,400
Computer maintenance	7330	1,900
Leachate pumps maintenance	7330	4,200
Portable scales maintenance	7330	500
Scales maintenance	7330	1,000
Scales maintenance	7330	1,000
Total Estimated Contracts This Account Code		11,000
Rental of construction equipment	7360	1,000
Rental of portable pumps	7360	600
Total Estimated Contracts This Account Code		1,600
Uniforms	7410	650
Total Estimated Contracts This Account Code		650
Uniforms	7450	1,000
Total Estimated Contracts This Account Code		1,000
Armored car	7500	5,200
Computer consulting	7500	2,000
Credit checks	7500	3,250
Engineering consultant for sewer chgs	7500	8,000
Landfill inspection/flyover	7500	68,000
Leachate testing system	7500	49,000
Litter patrol	7500	15,000
Materials testing	7500	4,000
Tire disposal	7500	12,000

Contracts List

PURPOSE OF CONTRACT	ACCOUNT CODE	FY 1988-89 BUDGETED AMOUNT
Tire hauling	7500	13,750
Yard debris	7500	98,220
Total Estimated Contracts This Account Code		278,500
 BFI Operations Contract	7505	3,795,000
CTRC operations contract (re-bid)	7505	1,000,000
Wastech operations contract	7505	1,600,000
Total Estimated Contracts This Account Code		6,395,000
 City of Port. land use plan	7510	314,000
City of Port. landfill lease	7510	339,960
DEQ annual compliance fee	7510	120,000
DEQ application fee	7510	2,000
DEQ Recycling fee	7510	50,000
DEQ Water quality	7510	6,500
Marion County Transfer	7510	663,090
Oregon City mitigation fee	7510	150,000
Sewer system re-work	7510	1,200
Yamhill County Transfer	7510	75,000
Total Estimated Contracts This Account Code		1,721,750
 Gatehouse/dept computer integration	7520	4,000
Gatehouse/Metro computer integration	7520	4,000
ISI system modification	7520	2,000
Software modifications	7520	1,000
Total Estimated Contracts This Account Code		11,000
 Security camera and intrusion alert installation	7750	20,000
Lease of storage space	7750	800
Total Estimated Contracts This Account Code		20,800
 Lease of security camera	7770	6,000
Misc. lease	7770	5,000
Total Estimated Contracts This Account Code		11,000

PURPOSE OF CONTRACT	ACCOUNT CODE	FY 1988-89 BUDGETED AMOUNT
AMFAB compactor installations	8510	350,000
Bentonite seal for ponds	8510	25,000
Compactor change modifications	8510	20,000
Dog Box modification for gatehouse	8510	8,000
Hot water heater for gatehouse	8510	1,000
North end drainage	8510	10,000
Payment for high grade operations	8510	40,000
Repair pit floor	8510	150,000
Repair truck access floor	8510	50,000
Sewer connection modifications	8510	50,000
Total Estimated Contracts This Account Code		704,000
 New telephone recording & answering system	8550	5,000
Replacement/rewiring for communication system for St. Johns site	8550	3,000
Chair & table for CTRC main building	8550	2,000
Computer equipment	8550	12,000
New clamshell	8550	93,000
Telephone recording & Answering system	8550	5,000
Watwall pump station	8550	16,000
Total Estimated Contracts This Account Code		136,000
 Computer furniture	8570	2,000
Misc. office furniture	8570	2,500
Purchase of computer printer	8570	1,000
Total Estimated Contracts This Account Code		5,500
 Systems Planning & Engineering: Engineering & design specs for special waste handling and transfer station	7500	50,000
Alternative Tech. consulting engineers	7500	90,000
Bond counsel services	7500	65,000
Engineering feasibility study	7500	50,000
ETRC site selection	7500	45,000
Financial consulting services	7500	20,000
Household Haz. Waste collection days	7500	400,000
Special waste auditing lab tests	7500	6,000
Technical consulting services	7500	25,000
Total Estimated Contracts This Account Code		751,000

ANALYSIS OF PUBLIC OWNED
LEAST TRANSFER STATION

60,000

STEP

Contracts List

PURPOSE OF CONTRACT	ACCOUNT CODE	FY 1988-89 BUDGETED AMOUNT
Equipment for water level monitoring and sample collection	8550	850
Total Estimated Contracts This Account Code		850
Waste Reduction:		
Computer-maintenance	7330	1,800
Total Estimated Contracts This Account Code		1,800
Compost samples	7500	79,800
Demonstration plot testing	7500	8,500
Display and computer development	7500	1,200
One Percent for Recycling	7500	300,000
Quarterly lab tests for herbicides	7500	6,000
Waste reduction promotion advertising	7500	186,000
Waste stream composition analysis	7500	30,000
Total Estimated Contracts This Account Code		611,500
SOLID WASTE CAPITAL FUND		
3% financial charge on bond sale	7500	347,000
Bond Counsel	7500	50,000
Financial services	7500	100,000
Total Estimated Contracts This Account Code		497,000
ETRC Consulting/construct. mgmt	8630	900,000
Total Estimated Contracts This Account Code		900,000
Changes to comply with City of Port.		
End Use Plan	8640	50,000
Additional Leachate system	8640	14,840
Blind slough	8640	100,000
Final cover & improvements	8640	1,400,000
Final roads	8640	108,500
Leachate monitoring & collection	8640	323,000
Yard debris area improvements	8640	45,000
Yard debris for final cover	8640	60,000
Total Estimated Contracts This Account Code		2,101,340

PURPOSE OF CONTRACT	ACCOUNT CODE	FY 1988-89 BUDGETED AMOUNT
DEBT SERVICE FUND		
ETRC - principle payment	7700	225,957
St. Johns & SWMP - principle payment	7700	384,000
Total Estimated Contracts This Account Code		609,957
ETRC - interest payment	7710	1,040,400
St. Johns & SWMP - interest payment	7710	299,919
Total Estimated Contracts This Account Code		1,340,319
REHABILITATION & ENHANCEMENT FUND		
Four vendors carried over from FY 87-88	7500	14,000
One or more contracts for the North Portland Enhancement Committee	7500	54,400
Total Estimated Contracts This Account Code		68,400
PLANNING FUND		
Planning & Development:		
Intern Assistance to Jurisdiction #1	7510	500
Intern Assistance to Jurisdiction #2	7510	500
Intern Assistance to Jurisdiction #3	7510	500
Intern Assistance to Jurisdiction #4	7510	500
Intern Assistance to Jurisdiction #5	7510	500
Intern Assistance to Jurisdiction #6	7510	500
Intern Assistance to Jurisdiction #7	7510	500
Intern Assistance to Jurisdiction #8	7510	500
Intern Assistance to Jurisdiction #9	7510	500
Intern Assistance to Jurisdiction #10	7510	500
Intern Assistance to Jurisdiction #11	7510	5,000
Butler Business License:		
City of Beaverton	7510	11,045
City of Cornelius	7510	129
City of Durham	7510	15
City of Grehsam	7510	9,509
City of Hillsboro	7510	4,686
City of Lake Oswego	7510	20,442
City of Oregon City	7510	637
City of Tigard	7510	15,991
City of West Linn	7510	9,856
City of Wilsonville	7510	4,044
City of Sherwood	7510	258

Contracts List

PURPOSE OF CONTRACT	ACCOUNT CODE	FY 1988-89 BUDGETED AMOUNT
City of Troutdale	7510	955
City of Fairview	7510	58
City of Gladstone	7510	404
City of Milwaukie	7510	1,361
City of Forest Grove	7510	1,687
City of Tualatin	7510	6,484
Total Estimated Contracts This Account Code		97,561
 Parks Consultant	7500	13,000
Urban Growth Boundary Hearings Officer	7500	10,000
Total Estimated Contracts This Account Code		23,000
 Transportation:		
City of Portland	7500	17,349
EIP - Summer Intern	7500	5,500
HisCo - Building Permits	7500	7,200
PPTF Consultants	7500	75,151
Public/Private Financial Consultant	7500	30,000
Public/Private Project Coordinator	7500	12,000
Total Estimated Contracts This Account Code		147,200
 GIS Software	7520	31,500
Multnomah County IDS	7520	4,500
Secretarial Word Processing	7520	1,500
Total Estimated Contracts This Account Code		37,500
 Audit Services	7540	6,500
Total Estimated Contracts This Account Code		6,500
 GIS Hardware	8570	28,500
Masscomp ports, terminals	8570	8,008
Office Furniture (chairs, bookcases)	8570	3,200
Secretarial Computer	8570	3,500
Total Estimated Contracts This Account Code		43,208

PURPOSE OF CONTRACT	ACCOUNT CODE	FY 1988-89 BUDGETED AMOUNT
CONVENTION CENTER PROJECT MANAGEMENT FUND		
IACP Convention	7500	35,000
Total Estimated Contracts This Account Code		70,000
LOBBYING SERVICES		25,000
CONVENTION CENTER PROJECT CAPITAL FUND		
Bond-Trustee	7500	9,000
Total Estimated Contracts This Account Code		9,000
 Portland Development commission	8500	750,000
Total Estimated Contracts This Account Code		750,000
 Art Contracts	8510	425,000
Metropolitan Arts Commission	8510	50,000
Total Estimated Contracts This Account Code		475,000
 Turner Construction Company	8610	1,195,000
Total Estimated Contracts This Account Code		1,195,000
 Builders Risk Insurance	8620	200,000
Canron Western-Steel Fabrication	8620	5,549,140
Dewitt Construction	8620	1,071,900
General Contractor	8620	22,627,220
Northwest Testing Laboratories	8620	200,000
Portland Department of Trans.	8620	414,700
Portland Water Bureau	8620	100,000
Tri-Met	8620	50,000
Safety Consultant:		
If Wrap-Up used	8620	40,500
If traditional program	8620	18,500
Total Estimated Contracts This Account Code		30,271,960
 Con-Tech/TCG	8630	65,000
Dames & Moore	8630	300,000
Northwest Geological Services	8630	1,600
Rittenhouse-Zeman & Assoc.	8630	70,000

Contracts List

PURPOSE OF CONTRACT	ACCOUNT CODE	FY 1988-89 BUDGETED AMOUNT
Rose City Remediation	8630	200,000
Zimmer Gunsul Frasca	8630	1,300,000
Total Estimated Contracts This Account Code		1,936,600
 METROPOLITAN EXPOSITION RECREATION COMMISSION		
Greater Portland Convention & Visitor Association	7500	899,207
Total Estimated Contracts This Account Code		899,207



METRO

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

Memorandum

Date: March 27, 1989

To: Rena Cusma, Executive Officer

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

Regarding: TRANSMITTAL OF ORDINANCE NOS. 89-271 AND 89-290 FOR
CONSIDERATION OF VETO

Attached for your consideration are true copies of Ordinance Nos. 89-271 and 89-290 adopted by the Council on March 23, 1989.

If you wish to veto these ordinances, I must receive a signed and dated written veto message from you no later than 5:00 p.m., Friday, March 31, 1989. The veto message, if submitted, will become part of the permanent record. If no veto message is received by the time stated above, this ordinance will be considered finally adopted.

I, Unette Harley, received this memo and a true copy of Ordinance Nos. 88-271 and 89-290 from the Council Clerk on March 27, 1989.

Dated: March 27, 1989

amn:gpwb
mem.ord



METRO

2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646
Fax 241-7417

June 19, 1989

John Kauffman, County Clerk
Clackamas County Courthouse
807 Main St.
Oregon City, OR 97045

Dear Mr. Kauffman:

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

Executive Officer
Rena Cusma

Metro Council

Mike Ragsdale
Presiding Officer
District 1

Sharron Kelley
Deputy Presiding
Officer
District 7

Lawrence Bauer
District 2

Jim Gardner
District 3

Richard Devlin
District 4

Tom DeJardin
District 5

George Van Bergen
District 6

Judy Wyers
District 8

Tanya Collier
District 9

Roger Buchanan
District 10

David Knowles
District 11

Gary Hansen
District 12

- * ORDINANCE NO. 88-249, AN ORDINANCE AMENDING CHAPTER 2.04 METRO CONTRACT PROCEDURES OF THE METRO CODE IN ORDER TO CLARIFY THE DIVISION OF POWERS BETWEEN THE COUNCIL AND THE EXECUTIVE OFFICER AND MAKING OTHER CHANGES
- * ORDINANCE NO. 88-250B, AN ORDINANCE ADDING CHAPTER 5.04 TO THE METRO CODE TO PROVIDE FOR A ONE PERCENT FOR RECYCLING PROGRAM
- * ORDINANCE NO. 88-251, AN ORDINANCE FOR THE PURPOSE OF AMENDING SECTION 4.01.030 OF THE METRO CODE TO PROHIBIT ILLEGAL PARKING IN THE ZOO PARKING LOT AND OTHER AREAS ADJACENT TO THE WASHINGTON PARK ZOO, AND PROVIDING FOR THE ISSUANCE OF CITATIONS BY METRO PERSONNEL
- * ORDINANCE NO. 88-267, FOR THE PURPOSE OF REVISING METRO CODE SECTION 5.04.040 RELATING TO THE MEMBERSHIP ON THE RECYCLING ADVISORY COMMITTEE
- * ORDINANCE NO. 89-269, FOR THE PURPOSE OF AMENDING CHAPTERS 2.02, 4.01 AND 5.02 OF THE METRO CODE RELATING TO THE NAMES OF METRO FACILITIES
- * ORDINANCE NO. 89-271E, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 2.04 RELATING TO CONTRACTING PROCEDURES
- * ORDINANCE 88-275, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 3.02, AMENDING THE REGIONAL WASTE TREATMENT MANAGEMENT PLAN AND SUBMITTING IT FOR RECERTIFICATION

- * ORDINANCE NO. 89-280, FOR THE PURPOSE OF ADOPTING A POLICY GIVING PREFERENCE TO THE PURCHASE OF RECYCLED PAPER AND PAPER PRODUCTS
- * ORDINANCE NO. 89-282, FOR THE PURPOSE OF UPDATING THE REGIONAL TRANSPORTATION PLAN (RTP)
- * ORDINANCE NO. 89-283A, AN ORDINANCE AMENDING ORDINANCE NO. 88-247 REVISING THE FY 1988-89 BUDGET AND APPROPRIATIONS SCHEDULE TO PROVIDE FUNDING FOR THE PURPOSE OF IMPLEMENTING THE DEPARTMENT OF ENVIRONMENTAL QUALITY SOLID WASTE REQUIREMENTS AND RESTRUCTURING THE SOLID WASTE PROGRAMS
- * ORDINANCE NO. 89-284, AN ORDINANCE ADOPTING A FINAL ORDER AND AMENDING THE METRO URBAN GROWTH BOUNDARY FOR CONTESTED CASE NO. 88-1: ZURCHER PROPERTY
- * ORDINANCE NO. 89-285A, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 2.02 BY ADDING SECTION 2.02.28 ESTABLISHING A SMOKING POLICY FOR METRO FACILITIES
- * ORDINANCE NO. 89-286, AN ORDINANCE ADOPTING A FINAL ORDER AND AMENDING THE METRO URBAN GROWTH BOUNDARY FOR CONTESTED CASE NO. 88-4: BEAN PROPERTY
- * ORDINANCE NO. 89-287A, AN ORDINANCE AMENDING ORDINANCE NO. 88-247 REVISING THE FY 1988-89 BUDGET AND APPROPRIATIONS SCHEDULE TO PROVIDE FUNDING FOR MENDING A CONTRACT WITH GOVERNMENT FINANCE ASSOCIATES TO STAFF THE WORK PROGRAM OF THE METROPOLITAN GOVERNMENT FINANCE COMMITTEE AND APPROVING A CONTRACT EXTENSION
- * ORDINANCE NO. 89-288, FOR THE PURPOSE OF AMENDING CODE SECTION 2.02.090 PROVIDING A PROCEDURE FOR COUNCIL VOTING
- * ORDINANCE NO. 89-290, FOR THE PURPOSE OF AMENDING THE 1986 WASTE REDUCTION PROGRAM AND THE REGIONAL SOLID WASTE MANAGEMENT PLAN

June 19, 1989
Page 3

- * ORDINANCE NO. 89-291A, AN ORDINANCE AMENDING ORDINANCE NO. 88-247 REVISING THE FY 1988-89 BUDGET AND APPROPRIATIONS SCHEDULE FOR COMPUTER PURCHASES, SYSTEM RECONFIGURATION FOR THE PUBLIC AFFAIRS DEPARTMENT AND WAGE AND SALARY ADJUSTMENT FOR AFSCME REPRESENTED AND CERTAIN NON-REPRESENTED EMPLOYEES
- * ORDINANCE NO. 89-292, AN ORDINANCE AMENDING ORDINANCE NO. 88-247 REVISING THE FY 1988-89 BUDGET AND APPROPRIATIONS SCHEDULE FOR ZOO OPERATIONS AND AFRICAFAE BASEMENT IMPROVEMENTS

Sincerely,

Gwen Ware-Barrett
Gwen Ware-Barrett
Clerk of the Council

GWB:bfg:lc
Enclosures