

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING)	ORDINANCE NO. 89-305A
METRO CODE CHAPTER 2, SECTIONS)	
2.02 AND 2.04 RELATING TO A CODE)	Introduced by the Council
OF ETHICS FOR METRO EMPLOYEES AND)	Internal Affairs
METRO CONTRACTING PROCEDURES)	Committee

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. Council finds that present provisions of the Metro Code provide for a Code of Ethics for Metro employees that is inconsistent with the present ethical requirements for public employees contained in Oregon Law. The Council further finds that it is appropriate that the Metro Code be amended to require Metro employees, officers, elected and appointed officials to conduct themselves in a manner consistent with the current Oregon Law and that Metro employees, officials, elected and appointed officers should be subject to the same restrictions on receiving gifts and gratuities as is presently provided for by Oregon Law.

Section 2. Council finds that present provisions of the Metro Code providing for Contracting Procedures do not adequately address the public bid/request for proposals process and the Council intergovernmental agreement consideration process. The Council further finds that it is necessary to amend current code provisions to clarify and simplify the legislative intent and implementation requirements.

Section 3. A new Section 2.02.280, Ethical Requirements for Employees, Officers, Elected and Appointed Officials, is hereby added to the Metro Code to read as follows:

2.02.280 Ethical Requirements for Employees, Officers, Elected and Appointed Officials:

(a) The purpose of this section is to establish a Code of Ethics for District public officials which is consistent with current public policy established by the Oregon Legislative Assembly. Failure to comply with the provisions of this code shall be grounds for disciplinary action for employees of the District.

(b) "Public Official" means all employees, officers, elected officials and appointed members of boards, commissions and committees of the Metropolitan Service District.

(c) All Public Officials of the Metropolitan Service District shall strictly comply with the following requirements:

- (1) No public official shall use official position or office to obtain financial gain for the public official, other than official salary, honoraria or reimbursement of expenses, or for any member of

the household of the public official, or for any business with which the public official or a member of the household of the public official is associated.

- (2) No public official or candidate for office or a member of the household of the public official or candidate shall solicit or receive, whether directly or indirectly, during any calendar year, any gift or gifts with an aggregate value in excess of \$100 from any single source who could reasonably be known to have a legislative or administrative interest in any governmental agency in which the official has or the candidate if elected would have any official position or over which the official exercises or the candidate, if elected, would exercise any authority.
- (3) No public official shall solicit or receive, either directly or indirectly, and no person shall offer or give to any public official any pledge or promise of future employment, based on any understanding that such public official's vote, official action or judgment would be influenced thereby.
- (4) No public official shall further the personal gain of the public official through the use of confidential information gained in the course of or by reason of the official position or activities of the public official in any way.
- (5) No person shall offer during any calendar year any gifts with an aggregate value in excess of \$100 to any public official or candidate therefor or a member of the household of the public official or candidate if the person has a legislative or administrative interest in a governmental agency in which the official has or the candidate if elected would have any official position or over which the official exercises or the candidate if elected would exercise any authority.

(d) The Executive Officer, and every member of the Council of the Metropolitan Service District and the Portland Metropolitan Area Local Government Boundary Commission shall be required to comply with the reporting requirements established by ORS 244.060, including the filing of a Statement of Economic Interest on an annual basis as required by state law. A copy of the Statement of Economic Interest shall be filed with the Council Clerk at the time of filing with the appropriate State agency.

(e) All members of the Metropolitan Exposition and Recreation Commission and employees filling positions requiring Council confirmation as set forth in Section 2.02.040(e) shall file annually with the Council Clerk a Statement of Economic

Interest which is substantially consistent with that required by ORS 244.060.

(f) Public Officials shall comply with the following requirements regarding the declaration of potential conflicts of interest and recording the notice of a potential conflict:

- (1) If the public official is an elected public official or an appointed public official serving on a board or commission, announce publicly the nature of the potential conflict prior to taking any action thereon in the capacity of a public official.
- (2) If the public official is any other appointed official subject to this chapter, notify in writing the person who appointed the public official to office of the nature of the potential conflict, and request that the appointing authority dispose of the matter giving rise to the potential conflict. Upon receipt of the request, the appointing authority shall designate within a reasonable time an alternate to dispose of the matter, or shall direct the official to dispose of the matter in a manner specified by the appointing authority.
- (3) Nothing in subsection (1) of this section requires any public official to announce a potential conflict of interest more than once on the occasion which the matter out of which the potential conflict arises is discussed or debated.
- (4) Nothing in this section authorizes a public official to vote if the official is otherwise prohibited from doing so.
- (5) When a public official gives notice of a potential conflict of interest, the potential conflict shall be recorded in the official records of the public body, and a notice of the potential conflict and how it was disposed of may in the discretion of the public body be provided the Oregon Government Ethics Commission within a reasonable period of time.

Section 4. Metro Code Section 2.02.255 is hereby repealed.

Section 5. Metro Code Section 2.04.010 is amended to read as follows:

2.04.010 Definitions:

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

(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.

(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) INTERGOVERNMENTAL AGREEMENT -- A written agreement with any other unit or units of federal, state or local government for the performance of any or all functions and activities that a party to the agreement, its officers or agencies, have authority to perform. "Unit of local government" includes a county, city, district or other public corporation, commission, authority or entity organized and existing under statute or city or county charter. (ORS 190.003 Definitions for ORS 190.003 to 190.110) As outlined in ORS 190.010, the agreement may provide for the performance of a function or activity:

- (1) By a consolidated department;
- (2) By jointly providing for administrative officers;
- (3) By means of facilities or equipment jointly constructed, owned, leased or operated;
- (4) By one of the parties for any other party; or
- (5) By a combination of the methods described in numbers (1) through (4) above.

(g) 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.

(h) 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, film-maker, painter, weaver, or sculptor.
- (C) Contracts for services of a specialized, creative and research-oriented, noncommercial nature, including, but not limited to, contracts funded by specially designated Metro revenue sources such as the "One Percent Well Spent" program to fund innovative recycling projects.
- (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.

(i) 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.

(j) 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.

(k) 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.

(l) 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.

(m) 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.

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

(Ordinance No. 79-76, Sec. 1 & 2; amended by Ordinance No. 81-125, Sec. 2 & 4, Ordinance No. 82-130, Sec. 2, Ordinance No. 84-175, Sec. 1, 2, 3, 4 & 8; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2; amended by Ordinance No. 89-271, Sec. 1)

Section 6. Metro Code Section 2.04.030 is amended to read as follows:

Section 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 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 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 Contracting Review Board.

(f) Monthly Contract Report: The Executive Officer shall provide a monthly report to the Council, pursuant to Section 2.04.032, 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) Federal/State Agency Approval: When required by federal or state law or regulations, review and approval of Metro contracts shall include prior concurrence of approval by appropriate federal or state agencies.

Section 7. Metro Code Section 2.04.032 is amended to read as follows:

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 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.

(d) The Executive Officer shall provide to the Council during the annual budget process a list of proposed contracts and Intergovernmental Agreements to be entered into during the ensuing fiscal year. The Council shall designate all listed contracts and Intergovernmental Agreements as either "A" or "B". For contracts designated by the Council as "A" contracts and 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 fourteenth (14th) day. In any event, bid documents may be released to prospective bidders on the thirty-fifth (35th) day after filing with the Council. For Intergovernmental Agreements designated by the Council as "A" contracts and being subject to this requirement by duly adopted ordinance, copies of the proposed agreement and scope of work or similar project description shall be filed with the Clerk of the Council and referred to the appropriate Council committee for review and comment. Documents shall be filed with the Clerk of the Council at least fourteen (14) days prior to execution of the agreement.

(e) Between the time of release of competitive bid or Request For Proposal documents for "A" contracts, as defined in subsection (d), and the designated due date for responses, all

technical addenda which do not materially alter the bid document, the basis of award for the bid or proposal, or the proposed services or product to be contracted, shall be filed with the Metro General Counsel and the Clerk of the Council at the time of their release. All non-technical addenda to the bid documents shall be filed, with a staff report explaining the purpose and nature of the addendum, with the Metro General Counsel and the Clerk of the Council at least seven (7) days prior to their release. The Metro General Counsel shall determine if the addendum materially adds to or deletes from the original scope of work included in the bid documents or the basis of award for the bid or proposal. If the General Counsel finds that an addendum materially alters a bid document as described herein, for a contract subject to Council approval under Section 2.04.033, the General Counsel shall prepare an appropriate resolution for Council approval of the addendum. Council may act to approve an addendum per the Council's authority to approve the competitive bid or Request For Proposal document under subsection 2.04.033(a)(1). Such resolution shall be filed with the Clerk of the Council and placed on the agenda for the next scheduled Metro Council meeting. Any addendum filed by General Counsel for Council approval shall not be issued by the Metro Executive Officer or designated department until the Council acts on the resolution. Any addendum approved by the Council must be issued by the Metro Executive Officer or designated department not less than fourteen (14) days prior to the bid or proposal opening date unless the original opening date is extended at least fourteen (14) days. In any event, Council approval of the contract will act to cure any claim that any addendum to the contract bid or proposal document was material as described herein and was not approved by Council.

(f) Except as provided in subsection (f), all other contracts designated by the Council as "B" contracts 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. For Intergovernmental Agreements designated as "B" contracts, copies of the contract and scope of work or similar project description shall be filed with the Clerk of the Council at the time they are to be executed. At the time any of the above documents are filed, the Executive Officer shall furnish the Council with information 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.

(g) Any public contract \$15,000 or more or Personal Service Contract \$10,000 or more or any Intergovernmental Agreement 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.

(Ordinance No. 89-271, Sec. 1)

Section 8. Metro Code Section 2.04.033 is amended to read as follows:

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 by designating them as "B" contracts in the annual contract list provided by the Executive Officer under subsection 2.04.032(d);

(2) Any intergovernmental agreement as defined herein under Section 2.04.010(f) 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;

(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. At the time of Council approval of the competitive bid or Request For Proposal documents, the Council may waive the requirement of Council approval of the contract and authorize the Executive Officer to execute the contract subject to any conditions, consistent with Council contracting authorities as described herein, specified by the Council at the time of the waiver.

(Ordinance No. 89-271, Sec. 1)

ADOPTED by the Council of the Metropolitan Service District this 9th day of November, 1989.

Mike Ragsdale
Mike Ragsdale Presiding Officer

ATTEST:

Deven Ware-Barrett 11/12/89
Clerk of the Council Date

jpm/gpwb
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KNOWLES AMENDMENT TO ORDINANCE NO. 89-305A

On page 3 of the ordinance, Section 3. -- 2.02.280 (f), delete language in subsection (5), line 4, through the end of subsection (6) as follows in the brackets:

- (5) When a public official gives notice of a potential conflict of interest, the potential conflict shall be recorded in the official records of the public body. [~~and a notice of the potential conflict and how it was disposed of may in the discretion of the public body be provided the Oregon Government Ethics Commission within a reasonable period of time. The commission may by rule establish criteria for cases in which such information shall, shall not, or may be provided to it.~~
- (6) --~~No decision or action of any public official or any board or commission on which the public official serves or agency by which the public official is employed shall be voided by any court solely by reason of the failure of the public official to disclose a conflict of interest.]~~



METRO

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

Memorandum

Date: October 19, 1989
To: Council Internal Affairs Committee
From: Jessica *JPM* Marlitt, Council Analyst
Regarding: COMMITTEE REVISIONS PROPOSED FOR ORDINANCE NO. 89-305

At the October 12, 1989, Internal Affairs Committee meeting, members present identified revisions for staff to incorporate in Ordinance No. 89-305. The revised ordinance is attached as Ordinance No. 89-305A and summarized below are the changes:

1. Page 1 -- Section 2.02.280 (b) and (c): In (b), the second line, "elected officials or appointed members" was changed to "elected officials and appointed members". Subsection (c) was amended to read "All Public Officials of the Metropolitan...", replacing the lengthy description of this term which was defined in subsection (b).
2. Page 2 -- Section 2.02.280 (d): In the second line, following "the Metropolitan Service District", "and the Portland Metropolitan Area Local Government Boundary Commission" was added.
3. Page 3 -- Section 2.02.280 (f): The first three lines through "...commissions, and committees" was replaced by "Public Officials". In the fourth line, references to ORS 244.120 and 244.130 were eliminated and the actual statute text was incorporated into the section as subsections (1) through (6).
4. Page 11 -- Section 2.04.032 (e): In the first 10 lines of this subsection, language addressing administrative/technical addenda was added to ensure these "non-substantive" changes to bid documents could be issued quickly. The requirement proposed is for technical addenda to be filed at the time of release with the Metro General Counsel and the Clerk of the Council.

Regarding State ethics language incorporated into the ordinance, Council staff has copies available of ORS Chapter 244 for reference.

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