

BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING CODE )	ORDINANCE NO. 89-309
SECTIONS 2.04.040 AND 2.04.090 )	
PROVIDING FOR THE PURCHASE OF )	Introduced by Executive
FOOD FOR RESALE )	Officer Cusma

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

2.04.040 Public Contracts, General Provisions:

(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. If the contract is under \$50,000, the performance bond and labor and materials 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 labor and performance bonds will not be required for food products procured pursuant to Chapter 2.04.090.

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

2.04.090 Food Items and Food Service Contracts

(a) Selection Process:

(1) All food items and food service contracts will be procured through competitive bidding, except as provided in sections (2) through (5) below.

(2) Competitive bids or quotes are not required when food items other than those routinely stocked by a Metro department are needed for requested catering services.

(3) Competitive bids or quotes are not required for fully or partially prepared food items which require:

(A) the use of a specific recipe provided and/or developed in conjunction with a Metro department; or

(B) the use of a proprietary recipe or formula which is the property of a vendor.

In the event a procurement is made pursuant to the exception listed in this section (3), the initiating department must document that the food product is within the criteria set out in (3)(A) or (3)(B).

(4) (A) Purchases of the following food products may be limited to vendors who have been pre-qualified according to the procedures set out at section (4)(B) below:

(i) groceries; i.e., food items that are purchased in a preserved state (e.g., canned or frozen);

(ii) meat and poultry;

(iii) produce.

(B) Upon a determination by the Executive Officer that it is in the best interest of Metro to purchase the food products listed in (4)(a) from pre-qualified vendors, the agency may develop a Pre-Qualified Suppliers List. The initiating department shall make reasonable efforts to inform known companies which provide the required food products that a pre-qualification process will be conducted. At a minimum, the initiating department's efforts shall include the publication of an Invitation to Pre-Qualify in at least one newspaper of general circulation, a local minority newspaper and any appropriate trade publications in the area. The Invitation to Pre-Qualify shall specify the deadline for submission of pre-qualification applications;

minimum standards which must be met to pre-qualify as a potential supplier; and shall provide an estimate of the quantity of the product which may be required during a designated time period. All vendors who submit the documentation required in the Invitation to Pre-Qualify shall be listed as pre-qualified suppliers of the food products covered by the solicitation unless the agency disqualifies the prospective vendor upon a finding that:

- (i) the vendor does not have sufficient financial ability to perform the contract;
- (ii) the vendor does not have the equipment available to perform the contract;
- (iii) the vendor does not have key personnel available of sufficient experience to perform the contract; or
- (iv) the vendor has repeatedly breached contractual obligations to public and private contract agencies.

In the event a prospective vendor is disqualified, the agency shall notify the vendor in writing. The notice shall specify the reasons for the disqualifications and shall inform the vendor of its rights to a hearing under ORS 279.043 and 279.045.

Vendors who fail to meet the above criteria during the period covered by the pre-qualified vendor list may be disqualified from the pre-qualified vendor list.

- (C) Monthly firm price quotes shall be required of all pre-qualified suppliers. Once a pre-qualified vendor list has been created, all food products listed in section (4)(A)(i) through (iii) shall be ordered from the pre-qualified supplier whose products meet the minimum product specification and who submits the lowest price quote for the period covered by the required monthly price quote. In the event the supplier that submits the lowest

price quote is unable to provide the ordered products, the food products may be ordered from the supplier whose quote is the next lowest and whose products meet the minimum product specifications.

(D) A pre-qualified supplier may be removed from the Pre-Qualified Suppliers List for any of the reasons listed in section (4)(B) above.

(E) Pre-qualification lists shall be opened annually for prospective suppliers to submit the documentation required for placement on the Pre-Qualified Suppliers List. Placement on the Pre-Qualified Suppliers List will be for a period of three years, unless a supplier is removed for one of the reasons listed in section (4)(B) above.

(5) Competitive bids or quotes are not required for food items which the Executive Officer authorizes 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 one year, 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 and a copy placed in the District's central contract files. If a market test food item is accepted for regular sales, it will be subject to the appropriate competitive purchase procedures described under Section 2.04.090. If a food product identified during a market test fits within one of the product categories identified in subsection (3) above, the food product may be procured without competitive bids or 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:

(1) \$2,500 and Under: All contracts 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) Over \$2,500: All contracts and amendments and extensions which exceed \$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 contracts and amendments and extensions.

(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 on the 26th day of October, 1989.

  
\_\_\_\_\_  
Mike Ragsdale, Presiding

Officer  
ATTEST:

  
\_\_\_\_\_  
Clerk of the Council

JPM:aeb  
A:\89-309.ORD

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(a) Selection Process:

(1) All food items and food service contracts will be ~~[awarded-as-public-contracts]~~ procured through competitive bidding, except as provided in sections [2-4] (2) through (5) below.

(2) Competitive bids or quotes are not required when ~~[a-specific]~~ food items ~~[is-requested-by-a-purchaser-of the-District's]~~ other than those routinely stocked by a Metro department are needed for requested catering services. ~~[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 fully or partially prepared food items which require:

(A) the use of a specific recipe provided and/or developed in conjunction with a Metro department; or

(B) the use of a proprietary recipe or formula which is the property of a vendor.

In the event a procurement is made pursuant to the exception listed in this section (3), the initiating department must document that the food product is within the criteria set out in (3)(A) or (3)(B).

(4) (A) Purchases of the following food products may be limited to vendors who have been pre-qualified according to the procedures set out at section (4)(B) below:

(i) groceries; i.e., food items that are purchased in a preserved state (e.g., canned or frozen);

(ii) meat and poultry;

(iii) produce.

(B) Upon a determination by the Executive Officer that it is in the best interest of Metro to purchase the food products listed in (4)(a) from pre-qualified vendors, the agency may develop a Pre-Qualified Suppliers List. The initiating department shall make reasonable efforts to inform known companies which



provide the required food products that a pre-qualification process will be conducted. At a minimum, the initiating department's efforts shall include the publication of an Invitation to Pre-Qualify in at least one newspaper of general circulation, a local minority newspaper and any appropriate trade publications in the area. The Invitation to Pre-Qualify shall specify the deadline for submission of pre-qualification applications; minimum standards which must be met to pre-qualify as a potential supplier; and shall provide an estimate of the quantity of the product which may be required during a designated time period. All vendors who submit the documentation required in the Invitation to Pre-Qualify shall be listed as pre-qualified suppliers of the food products covered by the solicitation unless the agency disqualifies the prospective vendor upon a finding that:

- (i) the vendor does not have sufficient financial ability to perform the contract;

(ii) the vendor does not have the equipment available to perform the contract;

(iii) the vendor does not have key personnel available of sufficient experience to perform the contract; or

(iv) the vendor has repeatedly breached contractual obligations to public and private contract agencies.

In the event a prospective vendor is disqualified, the agency shall notify the vendor in writing. The notice shall specify the reasons for the disqualifications and shall inform the vendor of its rights to a hearing under ORS 279.043 and 279.045.

Vendors who fail to meet the above criteria during the period covered by the pre-qualified vendor list may be disqualified from the pre-qualified vendor list.

(C) Monthly firm price quotes shall be required of all pre-qualified suppliers. Once a pre-qualified vendor list has been created, all food products listed in section (4)(A)(i) through (iii) shall be ordered from the pre-qualified supplier whose products meet the minimum product specification and who submits the lowest price quote for the period covered by the required monthly price quote. In the event the supplier that submits the lowest price quote is unable to provide the ordered products, the food products may be ordered from the supplier whose quote is the next lowest and whose products meet the minimum product specifications.

(D) A pre-qualified supplier may be removed from the Pre-Qualified Suppliers List for any of the reasons listed in section (4)(B) above.

(E) Pre-qualification lists shall be opened annually for prospective suppliers to submit the documentation required for placement on the Pre-Qualified Suppliers List. Placement on the Pre-Qualified Suppliers List will be for a period of three years, unless a

supplier is removed for one of the reasons listed in section (4)(B) above.

[~~(3)~~] (5) Competitive bids or quotes are not required for food items which the [~~Director or Assistant Director of the Zoo~~] Executive Officer authorizes 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~~] one year, 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 and a copy placed in the District's central contract files. If a market test food item is accepted for regular sales, it will be subject to the appropriate competitive purchase procedures described under Section 2.04.090. [~~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.~~] If a food

product identified during a market test fits within one of the product categories identified in subsection (3) above, the food product may be procured without competitive bids or quotes.

~~[(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 Department of Finance and Administration.

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- (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.

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ADOPTED by the Council of the Metropolitan Service District on the \_\_\_\_ day of \_\_\_\_\_, 1989.

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Mike Ragsdale, Presiding

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

ADOPTED by the Council of the Metropolitan Service District

on the \_\_\_\_\_ day of \_\_\_\_\_, 1989.

\_\_\_\_\_  
Mike Ragsdale, Presiding Officer

ATTEST

\_\_\_\_\_  
Clerk of the Council

STAFF REPORT

CONSIDERATION OF ORDINANCE NO. 89-309 FOR  
THE PURPOSE OF AMENDING THE METRO CODE  
SECTIONS 2.04.040 and 2.04.090  
REVISING FOOD SERVICE PURCHASING PROCEDURES

Date: Aug. 3, 1989

Presented by: Rena Cusma

FACTUAL BACKGROUND AND ANALYSIS

Several years ago Metro Washington Park Zoo (MWPZ) made a commitment to improve the quality of its food and service. The primary goals were threefold:

- Enhance the overall experience of a zoo visit
- Increase revenue to support zoo operations
- Assist the zoo in increasing public attendance at the zoo during inclement weather

Towards that end, a substantial capital investment has been made in the facilities including the Bearwalk and AfriCafe. The basement space in the AfriCafe is being renovated and the Food Service Coordinator position has been upgraded to provide for adequate supervision of catering and the cafe. Most of the elements are now in place to assure a premier Food Service Section at the MWPZ. It is imperative that the operating procedures permit the department to meet its primary goals.

In effect, the MWPZ food service section has grown from a small concessions operation to a multi-faceted food service business. Like all businesses, it must meet the demands of the patrons if it is to succeed. Zoo patrons have the option of buying on the Zoo grounds, bringing their own or eating off premises before or after a zoo visit.

The food services program at the zoo does not fit the typical "mold" with respect to other Metro purchasing. The food service program at the zoo functions as a retail rather than an institutional food business. As a result, it is essential that MWPZ be able to purchase good quality food and supplies in a timely fashion at the best possible market prices. In addition, flexibility and quick response times are essential keys to a food service operation.

To summarize, 1) Metro Washington Park Zoo needs to operate like an entrepreneurial business which permits flexibility, efficiency and fast response to patrons; 2) The patrons want the same service they would get at other restaurant and catering

facilities; 3) The purveyor needs to make a reasonable profit; and 4) Metro needs a clear audit trail to assure that the purchasing was done in an honest manner and that clear cut guidelines were used to make decisions with respect to what is purchased and where.

The proposed changes in the Metro contracting procedures will assist us in meeting these goals.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Ordinance No. 89-309.

AMR:can  
ORD.06

CONVENTION, ZOO & VISITORS  
FACILITIES COMMITTEE REPORT

ORDINANCE NO. 89-309, AMENDING CODE SECTIONS 2.04.040 AND  
2.04.090 PROVIDING FOR THE PURCHASE OF FOOD FOR RESALE

Date: October 13, 1989

Presented By: Councilor Knowles

COMMITTEE RECOMMENDATION: At the October 10, 1989 Convention, Zoo & Visitors Facilities Committee meeting, Councilors Buchanan, McFarland, Van Bergen and I voted unanimously to recommend Council adoption of Ordinance No. 89-309 as amended. Councilor DeJardin was absent.

COMMITTEE DISCUSSION/ISSUES: Council staff reviewed the October 3 staff report analyzing Ordinance No. 89-309 and Zoo staff responded to recommended changes and identified policy issues. Ordinance No. 89-309 amends two sections of the Metro Code regarding Zoo food services contracts and the Committee reviewed each with the following recommendations and, where appropriate, amendments:

1. Section 2.04.040, Public Contracts, General Provisions: Maintain the Zoo's recommended changes to remove bid security, labor and performance bond requirements for purchases of food items not routinely stocked by the Zoo. The Committee agreed with Zoo staff these bond requirements were inappropriate and not beneficial to the Zoo or Metro. It was noted if a selected bidder fell through on their proposal, the realistic practice is to go to the next selected bidder; not resort to a bid security bond for redress.
2. Section 2.04.090, Food Items and Food Service Contracts, Subsections (a)(1) through (a)(4)(A): Maintain the Zoo's recommended changes to exempt certain "fully or partially prepared" food items from competitive bid requirements and to adopt a competitive "Request for Qualifications" (RFQ) process, instead of annual competitive bids, to purchase certain food items. Council staff had not recommended any changes to the Zoo's proposed procedures, but had requested clarification on language under Subsection (a)(3) regarding "the use of a specific recipe provided and/or developed in conjunction with a Metro department". Zoo staff explained the intent of the subsection was to permit the development of new food concepts and recipes in conjunction with vendors. The new language safeguards Zoo/Metro proprietary recipes and logos and gives Zoo staff flexibility to develop new food ideas with contracted food service providers.
3. Section 2.04.090, Food Items and Food Service Contracts, Subsection (a)(4)(B): Maintain the Zoo's recommended RFQ procedures but add language to the RFQ public notice requirement to make it consistent with current Metro Code provisions for public notice. Amend the second line to remove "or the Executive Officer's designee." No problems were identified with the proposed RFQ procedures which are

consistent with State ORS 279 language on pre-qualified vendors lists. Council staff recommended the above two technical changes for consistency in Code language. It was noted specifically identifying the "the Executive Officer's designee" regarding administrative decisions was unnecessary; the Executive Officer has the authority to delegate administrative functions as needed.

4. Section 2.04.090, Food Items and Food Service Contracts, Subsection (a)(4)(C): Maintain the Zoo's recommended RFQ monthly price quote procedures. The Committee reviewed Council staff's recommendation to add language to ensure a written record is maintained of any verbal quotes. Zoo staff stressed they would not accept any verbal quotes for monthly price bids; their administrative procedures would require written price quotes. There was concern if a statement was added speaking to verbal quotes it would open that option to vendors. It was agreed the verbal quote language was not necessary and could muddy the Zoo's procedural intent if added.
5. Section 2.04.090, Food Items and Food Service Contracts, Subsection (a)(4)(D): Maintain the Zoo's language which provides for removal of a vendor from the Pre-Qualified list consistent with State statute requirements and criteria.
6. Section 2.04.090, Food Items and Food Service Contracts, Subsection (a)(4)(E): Reduce the Pre-Qualification List placement period from the proposed 5 years to 3 years, consistent with Council staff recommendation. This subsection provides an annual period when the RFQ/Pre-Qualification list will be opened to add vendors who meet selection criteria. Once selected and listed, a vendor under the original proposed language would remain on the list 5 years before having to requalify. The Zoo staff had no objections to reducing the placement period to 3 years to ensure a more frequent formal review of vendors meeting contracting standards, such as affirmative action efforts.
7. Section 2.04.090, Food Items and Food Service Contracts, Subsection (a)(5): Amend the section to remove the language "... or the Executive Officer's designee"; provide for a copy of the market test results report to be filed in Metro's central contracts files; and add language clarifying that market test items, if accepted for regular sales, will be subject to the appropriate competitive procedures -- competitive bid or RFQ with competitive monthly price quotes. The three amendments represent technical changes for consistency in language and procedures. The change in "Executive Officer's designee" is the same as the amendment noted in number 3

above. The filing requirement is to maintain the integrity of central contracts files as the repository for complete information on all contracts. It was agreed a statement was needed to clarify market test items approved for regular Zoo sale would be purchased under the applicable Code procedures.

The Committee also discussed the issue of contracting out for food services versus the Zoo's current in-house operations. Zoo staff testified it would be less economically beneficial to contract out Zoo food services. Food prices would have to be increased to meet the revenue requirements of both the vendor and the Zoo; quality assurances would be diminished; and there would not necessarily be a substantial reduction in staff because of oversight and on-site coordination requirements. The Committee concluded Ordinance No. 89-309 was consistent with Metro purchasing goals while providing the Zoo with opportunities to increase purchasing efficiency and competition.

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ORDINANCE NO. 89-309, FOR THE PURPOSE OF AMENDING METRO CODE  
SECTIONS 2.04.040 AND 2.04.090 REVISING FOOD SERVICE  
PURCHASING PROCEDURES

Date: October 3, 1989

Presented by: Marlitt

BACKGROUND

At the September 26, 1989 Convention, Zoo & Visitors Facilities meeting, Committee members received Ordinance No. 89-309 to amend Metro Code purchasing procedures for Zoo food services. The Committee deferred action on the ordinance until the scheduled October 10 meeting and requested Council staff review and analyze Ordinance No. 89-309 to identify any policy issues for Committee/Council consideration.

ORDINANCE NO. 89-309 SUMMARY & ANALYSIS

Ordinance No. 89-309 proposes amendments to two sections of Metro Code Chapter 2.04 contracting procedures: Section 2.04.040 - Public Contracts, General Provisions and Section 2.04.090 - Food Items and Food Service Contracts. Proposed new language under Section 2.04.040 would remove bid security, labor and material bond requirements for procurements of food items not routinely stocked at the Zoo. Amendments to Section 2.04.090 remove competitive bid requirements for proprietary recipe items and client-requested catered items (e.g. a specific request for Hartung steaks); replace the annual public bid process with a Request for Qualifications (RFQ) process, with monthly price quotes, for grocery and perishable items; and amend market test provisions for potential new Zoo menu items.

On October 2, 1989 Council staff met with Dee Wright, Zoo Food Services Manager (Visitor Services Division) to review the intent of the proposed code revisions; discuss the research and data supporting the revisions; and to identify potential Council concerns. Staff also spoke with Joyce Fasano, the representative with John Cornyn Associates, who worked with the Zoo staff over the last 11 months analyzing food services and developing the proposed code revisions. On October 3, 1989, Council staff met with Metro Legal Counsel Monica Little who had provided the legal assistance and developed language, consistent with State purchasing guidelines, to meet the Zoo's needs. Outlined below is staff's analysis of Ordinance No. 89-309 with issues and any recommended changes highlighted for each section.

1. Section 2.04.040 Public Contracts, General Provisions: New language is added under subsection (d)(5); as noted above, the amendment would remove bid security, labor and performance bond requirements for purchases of food items not routinely stocked by the Zoo.

Issues: Zoo staff and Metro Legal Counsel noted labor and performance bonds are requirements for construction, labor and

materials, and other service-oriented contracts but are not appropriate for food product contracts. Food purchases are not a "labor" contract for which labor and performance bonds would apply. Zoo staff clarified that "routinely stocked" refers to the Zoo's standard menu items and condiments. Council staff discussed with Legal Counsel the need to clarify that bid security bond provisions would be required for all routinely stocked, competitively bid food purchases. The bid security bond protects Metro against a selected vendor renegeing on a bid and potentially causing the contract to be rebid. Metro Legal Counsel will develop language to address this issue.

Recommendation: Add language clarifying that bid security bonds will be required for all routinely stocked Zoo food items which are purchased annually on a competitive bid basis.

2. Section 2.04.090 Food Items and Food Service Contracts

A. Subsection (a) Selection Process (1): Replaces "awarded as public contracts" with "procured through competitive bidding".  
Issues: None. "Competitive bid" and "Public contract" both require conformance to contract specifications with price being the primary selection criterion. Per Chapter 2.04.010 Definitions, Zoo food purchases would be most appropriately described in terms of "competitive bid" -- "A competitive offer in which price and conformance to specification will be the award criteria."

Recommendation: No changes.

B. Subsection (a) Selection Process (2): Expands competitive bid exemptions from specifically requested food items for catering to "food items other than those routinely stocked by a Metro department...for requested catering services."

Issues: Zoo staff said the intent was to respond quickly to specific catering requests and requests for items that are not featured on standard Zoo menus. Staff noted the practice is to telephone for prices on requested catering items, such as croissants, unless there is only one known provider (e.g., Hartung Company for Hartung steaks). After reviewing the proposed language with Legal Counsel, it does not appear there would be a real expansion from current practice in items which are not competitively bid. It was also noted, under current Metro Code competitive bid procedures, Section 2.04.042, competitive quotes are not required for purchases under \$500.

Recommendation: No changes.

C. Subsection (a) Selection Process (3): This new provision removes from competitive bid requirements two food categories for "fully or partially prepared" items:

1. items which require the use of a Metro proprietary recipe;



2. items which use a vendor's proprietary recipe or formula.  
Issues: Based on discussions with Zoo staff, the intent of this new subsection is to reflect market realities. For example, if the Zoo wishes to purchase "Deborah's Donuts" (imaginary item) for which Deborah has a secret recipe; competitive bids would not be required since there is only one "Deborah's Donuts." Deborah's specifications for the donuts would not be available to other vendors to compete for producing them for the Zoo. However, the intent of the proposed language regarding "the use of a specific recipe provided and/or developed in conjunction with a Metro department;" for "fully or partially prepared" food items is unclear. As it reads, what partially prepared or fully prepared food items, based on a Metro recipe, could not be competitively bid or bid under the proposed Request For Qualifications (RFQ) process? (See "D." below)

Recommendation: Review the subsection's intent with Zoo and Legal Counsel staff. Council staff requested clarification of this subsection and will have any proposed changes in writing for consideration October 10.

- D. Subsection (a) Selection Process (4)(A): This subsection would allow the Zoo to purchase certain food items -- "groceries", meat and poultry, produce -- through a Request for Qualifications (RFQ) process instead of the current annual competitive bid procedure. [Subsection (4)(B) following outlines the specific RFQ requirements and award criteria.]  
Issues: Zoo staff and consultant Joyce Fasano emphasized one year price quotes for food items, under the annual competitive bid process, do not allow the Zoo to realize savings from monthly market price fluctuations. Food vendors, especially for dairy products and produce, are unwilling to give quotes for time periods greater than one month. The process for formal competitive bids requires at least a month to 6 weeks for release of bid specifications; proposal review and selection; and final award of the contract. The proposed RFQ purchasing process would maintain the competitive selection criteria and product specifications, but would replace the single annual price bid for a product with monthly competitive quotes. As noted with Legal Counsel, the RFQ process does not reduce vendor competition but it does enhance Metro's ability to purchase food products at lowest possible market prices. The proposed RFQ process, as described in the following section, mirrors Oregon State statutes.  
Recommendation: No changes.

- E. Subsection (a) Selection Process (4)(B): This subsection outlines an RFQ process which may be used, at the determination of the Executive Officer or her designee, for

purchasing "groceries", meat and poultry, and produce. It specifies requirements for notifying potential vendors about the pre-qualification process; describes the "Invitation to Pre-Qualify"; identifies four findings for which a vendor could be disqualified; and notes disqualified vendors' rights to a hearing, under State law.

Issues: Oregon State public purchasing procedures, under ORS Chapter 279, include specific RFQ/Pre-qualification guidelines allowing public agencies to establish pre-qualified vendor lists. The language proposed for subsection 2.04.090(a)(4)(B) is identical to ORS language -- Legal Counsel used the State disqualification criteria for points (i) through (iv) on page 4. As noted above, the RFQ process is an open, competitive purchasing process. The RFQ differs from a "competitive bid" procurement in one primary way: the RFQ process allows for monthly competitive price quotes while the competitive bid establishes only one price for the annual/ year-long purchasing period. The vendor standards would be the same and selection would still be based on fulfillment of product specifications and price.

Council staff noted only two technical points: 1) language referring to "Upon a determination by the Executive Officer or the Executive Officer's designee"; and 2) language regarding public notice for the Invitation to Pre-Qualify. For the first point, specifying "...or the Executive Officer's designee" would appear unnecessary as the Executive Officer, by her administrative authority, could delegate a program responsibility to her managers. The second point refers to the public notice requirement which proposes ...."At a minimum, ... efforts shall include the publication of an Invitation to Pre-Qualify in at least one newspaper of general circulation in the area." This requirement is less than Metro formal public contracting standards which call for advertising in a "manner required by law and in a local minority newspaper, and in any appropriate trade magazine." [Metro Code Section 2.04.044(a)(3)]

Recommendation: Amend the second line of subsection (B) to remove "or the Executive Officer's designee". Add additional language to the RFQ public notice requirement to change it from "... publication of an Invitation to Pre-Qualify in at least one newspaper of general circulation in the area. ..." to "... publication of an Invitation to Pre-Qualify in at least one newspaper of general circulation in the area, a local minority newspaper, and any appropriate trade publications."

- F. Subsection (a) Selection Process (4)(C): This subsection describes the RFQ monthly price quote process.

Issues: Per Legal Counsel, the subsection's language and intent, as noted above, is consistent with State statutes. The Zoo's proposed purchase of products from vendors meeting minimum specifications and submitting the lowest prices is consistent with Metro competitive purchasing policies. To ensure a complete written record and audit trail, language should be added requiring staff to keep a written record of all verbal price quotes.

Recommendation: After subsection (4)(C)'s second sentence, ending "... by the required monthly price quote." add a new sentence: "If quotes are submitted verbally, the department shall keep a written record of the source and the amount of the quotes received."

- G. Subsection (a) Selection Process (4)(D): Subsection (4)(D) provides for the removal of a vendor from the Pre-Qualified list consistent with subsection (4)(B) standards (i) through (iv): the vendor does not have sufficient financial ability to perform the contract; the vendor does not have the equipment available to perform the contract; the vendor does not have key personnel available to sufficient experience to perform the contract; or the vendor has repeatedly breached contractual obligations to public and private contract agencies. As noted previously, this language is the same as State Statute requirements.

Issues: None.

Recommendation: No changes.

- H. Subsection (a) Selection Process (4)(E): This subsection provides an annual period when the Pre-Qualification list will be opened for additional vendors who meet selection criteria and specifies placement on the list is for five years unless a vendor is disqualified, as described in (4)(B).

Issues: Providing for an annual opportunity for vendors to get on the Pre-Qualification list appears consistent with an annual bid process and should not diminish competition. Legal Counsel did note Metro Executive Management felt strongly about reducing list placement from five years to one year. A shorter placement period would ensure vendors' qualifications and compliance with RFQ standards continue to meet Metro's minimum requirements. Discussions with Zoo staff pointed out that a one year placement may discourage potential vendors from going through the Pre-Qualification process if they do not realize any overall reduction in bid preparation time and costs. A middle time period of three years should prevent the RFQ process from discouraging smaller vendors' participation while ensuring all vendors' qualifications (i.e. EEO practices, financial stability, contractual compliance) are re-subjected to the selection process in a timely fashion.

Recommendation: Amend the subsection to reduce the Pre-Qualification list placement period from five to three years.

- I. Subsection (a) Selection Process (5): The proposed amendments under this renumbered subsection identify the Executive Officer or her designee as the authority to allow a market test of an item; increase the market study maximum time period from six months to one year; and provide that any market test product, which meets the product categories under subsection (3), is exempt from the competitive bid process.

Issues: As noted previously, the language specifying "the Executive Officer's designee" as an alternate authority (in this case for permitting a market test) seems unnecessary, given the Executive's administrative authority to delegate program responsibilities. Zoo staff noted increasing the market test period from six months to one year more accurately reflects standard practices. Regarding the written report to be made on the market test results, a copy should be filed with Metro's central contract office to ensure a complete audit trail. The biggest change under this subsection's proposed amendments is the elimination of procedures for market test items to be competitively bid or purchased through the RFQ process. The proposed language would appear to eliminate market test items from any competitive purchasing process.

Recommendation: Remove the language "... or the Executive Officer's designee"; add "and a copy placed in the District's central contract files" to the end of the fourth sentence, "A written report shall be made." Council staff asked Legal Counsel to prepare possible language clarifying that market test items, if accepted for regular sales, will be subject to the appropriate competitive purchase procedures -- competitive bid or RFQ with competitive monthly price quotes.

#### CONCLUSION

Based on discussions with Zoo staff and Metro Legal Counsel, the intent of Ordinance No. 89-309 seems consistent with Metro purchasing policies to meet minimum product specifications; maximize cost savings; and facilitate competitive, equitable purchasing practices consistent with State law and Metro standards. With clarifications to proposed subsections 2.04.090 (a)(3) and (5), the Code amendments appear to be in the best interest of Metro, Zoo Food Services, and potential vendors.

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METRO

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

# Memorandum

DATE: October 30, 1989

TO: Rena Cusma, Executive Officer

FROM: <sup>gpwb</sup>Gwen Ware-Barrett, Clerk of the Council

RE: TRANSMITTAL OF ORDINANCE NO. 89-309 FOR CONSIDERATION OF VETO

Attached for your consideration is a true copy of Ordinance No. 89-309, For the Purpose of Amending Code Sections 2.04.040 and 2.04.090 Providing for the Purchase of Food for Resale.

If you wish to veto this ordinance, I must receive a signed and dated written veto message from you no later than 5:00 p.m., Thursday, November 2, 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.

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I, Kathleen Dwyer, received this memo and a true copy of Ordinance No. 89-309 from the Council Clerk on October 30, 1989.

Dated: Oct 30, 1989

GPWB:pa  
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