

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING) ORDINANCE NO. 89-314
METRO CODE SECTION 2.04.040)
RELATING TO PUBLIC CONTRACTS,) Introduced by Rena Cusma
GENERAL PROVISIONS) Executive Officer

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

That the following Metro Code Section 2.04.040 is amended to read
as follows:

(a) Competitive Bidding: Metro may enter into an
intergovernmental agreement with the State of Oregon to make
purchases from State Price Agreement established by the State of
Oregon by competitive bids. Metro may purchase directly from
these price agreements that are based on the State's competitive
bids. Unless exempt from public bidding, all other public
contracts shall be awarded to the lowest, responsive, responsible
bidder responding to competitive bids by Metro.

(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 \$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 \$100,000. 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.

Adopted this 12th day of October, 1989.



Gary Hansen, Deputy Presiding Officer

ATTEST:

Dwain Ware-Barrett 10/26/89
Clerk of the Council Date

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

Dwain Ware-Barrett 10/26/89
Clerk of the Council Date

INTERNAL AFFAIRS COMMITTEE
REPORT

ORDINANCE NO. 89-314 AMENDING METRO CONTRACT CODE TO ALLOW
DISTRICT TO PURCHASE GOODS FROM STATE OF OREGON PRICE LIST

Date: October 4, 1989

Presented by: Councilor Hansen

COMMITTEE RECOMMENDATION: At the September 28, 1989 Committee meeting, the Committee voted 5-0 to recommend Council adoption of the Ordinance. Voting yes were Councilors Bauer, Collier, Hansen, Knowles and Ragsdale.

COMMITTEE DISCUSSION/ISSUES: Neil Saling, Construction Projects Manager, explained the Ordinance. He indicated it authorized the District to enter into an agreement with the State of Oregon to purchase goods from the State price list. He stated that competition would be maintained because the State price list is established on a competitive basis and that Departments purchasing goods still have to follow existing District procedures for obtaining price quotes for various goods.

DEC:aeb

A:\IACRPT.104

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING METRO)
CODE SECTION 2.04.040 RELATING TO)
PUBLIC CONTRACTS, GENERAL)
PROVISIONS)

ORDINANCE NO. 89-314
Introduced by Rena Cusma
Executive Officer

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

That the following Metro Code Section 2.04.040 is amended to read
as follows:

(a) Competitive Bidding: [~~Unless exempt from competitive bidding, all public contracts shall be awarded to the lowest responsive, responsible bidder.~~] Metro may enter into an intergovernmental agreement with the State of Oregon to make purchases from State Price Agreement established by the State of Oregon by competitive bids. Metro may purchase directly from these price agreements that are based on the State's competitive bids. Unless exempt from public bidding, all other public contracts shall be awarded to the lowest, responsive, responsible bidder responding to competitive bids by Metro.

(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.

ADOPTED this _____ day of _____, 1989.

~~Mike Ragsdale~~, Presiding Officer

Gary Hansen Deputy

ATTEST:

Clerk of the Council Date

STAFF REPORT

CONSIDERATION OF ORDINANCE NO. 89-314 AMENDING METRO CODE SECTION 2.04.040 RELATING TO PUBLIC CONTACTS, GENERAL PROVISIONS TO ALLOW METRO TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF OREGON TO MAKE PURCHASES FROM STATE PRICE AGREEMENTS.

Date:

Presented by: Ray Phelps

FACTUAL BACKGROUND AND ANALYSIS

The attached Ordinance allows Metro to enter into an intergovernmental agreement with the State of Oregon to make purchases from State Price Agreements established by the State of Oregon.

Metro will realize cost savings by purchasing from State Price Agreements due to the State of Oregon's larger purchasing power and by avoidance of costs associated with bidding.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Ordinance No. 89-314.



METRO

Memorandum

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

RECEIVED

AUG 31 1989

Date: August 31, 1989
To: Amha Hazen, Contracts Specialist
From: Larry Shaw, Legal Counsel
Regarding: STATE PRICE LIST ORDINANCE AMENDMENT

COMMUNICATIONS

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Introduction

As I understand your intent, the draft amendment you propose is a follow up to the conclusion in my earlier memo that the state price list can be an informal "bid," but not a substitute for other Metro Code contract procedures. This draft indicates an intent to authorize direct purchases of any items for any amount through the state price list as an alternative means of competitive bidding. This memo explains how this can be accomplished with some modifications to your draft.

Proposed Amendment

The following proposed amendment modifies the Metro Code to allow Metro full authority under state public contracting law:

Metro Code Section 2.04.040(a) is hereby amended to read:

"Competitive Bidding: Metro may enter into an intergovernmental agreement with the State of Oregon to make purchases from state price agreements established by the State of Oregon by competitive bids. Metro may purchase directly from these price agreements that are based on the State's competitive bids. Unless exempt from public bidding, all other public contracts shall be awarded to the lowest, responsible bidder responding to competitive bids by Metro."

This proposed provision uses your draft in the first sentence, an additional clarifying sentence based on the legal analysis below, and the existing Code provision in the third sentence.

Competitive Bids Required by State Law

ORS 279.015(1) requires that "All public contracts shall be based upon competitive bids..." with limited exceptions. That

requirement does not explicitly require each "public agency" to do its own bids for every public contract. This law clearly applies to Metro as a political subdivision of the state. ORS 279.011(5). All Metro purchases, leases, or sales of personal property, public improvements or services other than personal services fit this competitive bid requirement. ORS 279.011(4).

From this general rule the statute provides for exceptions. The most common exception is a public contract exemption. ORS 279.015(2) authorizes local contract review boards, such as the Metro Council, to approve exemptions for "certain public contracts or classes of public contracts" based on findings. The findings must support the conclusion that favoritism or substantially diminished competition are unlikely and that substantial cost savings will result from the exemption.

Purposes of Competitive Bidding

Creative means of reducing cost and increasing competition are not prohibited by this competitive bidding requirement. The primary purpose of all the competitive bidding techniques in state public contracting statutes is the least cost policy stated in ORS 279.023(1) for public improvements contracts:

"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."

The policies in the exemption statutes further demonstrate the purposes of competitive bidding techniques. Avoiding favoritism and encouraging competition and cost savings are the policies stated in the required findings for case-by-case or class-by-class exemptions. Cost-saving for Metro results from utilizing the competitive bids of the State of Oregon, a public agency with much larger purchasing power. Further cost savings are realized by avoiding costs of bidding. The greater the number of public agency purchases through the state list, in turn, further increases the importance of that bid price to potential bidders. That increases competition. The state must follow the same competitive bidding procedures for their price lists as Metro and other public agencies do in their competitive bids. ORS 279.011(5). Therefore, favoritism is avoided.

Memorandum
August 31, 1989
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Limitations on Use of State Price Lists

This amendment to Metro Code 2.04.040(a) authorizes direct purchases from the state price list as an alternative means of competitive bidding by using the state's bid. The Council approval of certain contracts remains in Metro Code 2.04.033(a):

"Notwithstanding any other provisions of Chapter 2.04 the following contracts shall be approved by the Council prior to execution...."

As a practical matter, the state price list often may not be the end of the bid process. Choice of different specifications than those bid by the state for a similar product often occurs, requiring Metro to do the competitive bid. Further, for some products there may be a uniquely competitive market that causes bidders to react to the state price list by cutting their price or offering bonus specifications. Therefore, some review of the current status of the particular price in the local market before direct purchases from the state price list is a good management practice consistent with the purposes of public contract law.

Conclusion

ORS 279.015(1) requires Metro to base its purchases on competitive bids. Metro's intergovernmental agreement with the State of Oregon authorizing Metro to make direct purchases from state price list of the state's competitive bids complies with this statute without exemptions under ORS 279.015(2).

The proposed amendment to Metro Code 2.04.040(a) above is needed for direct purchases from the state price lists to be authorized by the Metro Code. Council approval of certain contracts under Section 2.02.033(a) is still required after this amendment, regardless of whether Metro or state bids are used.

LS/gl



METRO

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

Memorandum

Date: October 13, 1989

To: Rena Cusma, Executive Officer

From: Gwen Ware-Barrett, Clerk of the Council

Regarding: TRANSMITTAL OF ORDINANCE NOS. 303, 310 AND 314 FOR
CONSIDERATION OF VETO

Attached for your consideration are true copies of Ordinance Nos. 89-303, 89-310, and 89-314 adopted by the Council on October 12, 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., Thursday, October 18, 1989. The veto message, if submitted, will become part of the permanent record. If no veto message is received by the time and date stated above, this ordinance will be considered finally adopted.

I, Unette Hooley, received this memo and a true copy of Ordinance Nos. 89-303, 89-310, 89-314 from the Council Clerk on October 13, 1989.

Dated: 10/13/89

GWPB:pa
#2:\MEM.ORD