

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF EXEMPTING ) RESOLUTION NO. 01-3041  
THE CM/GC CONTRACT FOR THE )  
OREGON CONVENTION CENTER ) Introduced by Mike Burton  
EXPANSION PROJECT FROM THE ) Executive Officer  
REQUIREMENT TO HAVE A )  
PERFORMANCE AND PAYMENT )  
BOND )

WHEREAS, ORS 279.033 provides for the contract review board to exempt the requirement in a contract to have a performance and payment bond; and

WHEREAS, Hoffman Construction is a long standing company in the State of Oregon, with an excellent performance record and is in sound financial condition with an excellent credit rating; and

WHEREAS, Hoffman Construction will provide a letter of credit and a corporate guarantee that it will perform and pay sub-contractors and suppliers; with the letter of credit in a form approved by the Office of General Counsel, and

WHEREAS, savings of \$200,000 are gained by exempting the performance bond and accepting the letter or credit.

BE IT RESOLVED:

That the Metro Council, acting as the Contract Review Board, exempts the Hoffman CM/CG contract as adopted by the MERC Commission from the requirement to have a performance and payment bond.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

WITHDRAWN  
David Bragdon, Presiding Officer

Approved as to Form:

\_\_\_\_\_  
Daniel B. Cooper, General Counsel

## REGIONAL FACILITIES & OPERATIONS COMMITTEE REPORT

### CONSIDERATION OF **RESOLUTION NO. 01-3041A**, FOR THE PURPOSE OF EXEMPTING THE CM/GC CONTRACT FOR THE OREGON CONVENTION CENTER EXPANSION PROJECT FROM THE REQUIREMENT TO HAVE A PERFORMANCE AND PAYMENT BOND

---

Date: 20 March 2001

Presented by: Councilor Burkholder

**Committee Recommendation:** At its 15 March 2001, meeting, the Regional Facilities & Operations Committee voted 3-0 to recommend Council adoption of Resolution No. 01-3041, as amended, to Resolution 01-3041A. Voting in favor: Councilors Burkholder, Park, and Hosticka. Voting against: none. Absent: none.

**Background:** Jennifer Sims, ASD Director, presented the staff report. She noted that she was speaking on behalf of Scott Moss, Metro's Risk Manager and the co-project manager for the Oregon Convention Center (OCC) expansion. Ms. Sims reminded the committee that Council serves as Metro's Contract Review Board, and, as such, has the authority to exempt contractors from the requirement to have a performance and payment bond. Hoffman Construction, the contractor for OCC's expansion, was deemed by staff to be in excellent financial condition and to have demonstrated competency and trustworthiness through past experience on other projects with Metro. Allowing Hoffman Construction to substitute a letter of credit for the performance and payment bond would save the project \$200,000. She further states that other protections are in place if needed.

**Committee Issues/Discussion:** Councilor Park asked how staff rated the level of security if the bond is exempted. Mark Williams, MERC General Manager responded that each sub-contractor is required to have a performance bond, and to bond Hoffman on top of that is duplicative. The work is thus secured by each of the sub-contractors, and Hoffman's piece of the project is more than adequately covered by the proposed letter of credit. He further stated that, in the event of default, a letter of credit is easier to collect because it is issued by a bank, and monies are paid upon submission of the letter, as compared to a bond, which is issued by an insurance company, which may have built-in incentives not to pay claims in their entirety. Mr. Williams also explained that many people use performance bonds because of tradition – when original statutes were made, that was the only type of security available.

Councilor Hosticka asked who gets the \$200,000 projected savings, and does the OCC Project pay for the bond? Mr. Williams noted that Metro receives the savings, and that the project does pay for the bond. If Metro had not used CM/GC, the general contractor would have added this price into their bid.

Councilor Burkholder asked if Metro has utilized CM/GC in the past with other projects, and, if so, have we allowed for a letter of credit rather than a performance and payment bond? Ms. Sims responded that Metro used CM/GC for the Great Northwest project at the Zoo, as well as the expansion at Expo, but a letter of credit was not done in the past to her knowledge.

Councilor Hosticka noted that the resolution, as written, only exempts Hoffman Construction from the requirement to have a performance and payment bond, and does not specify that they will need to provide a letter of credit. He proposed amending the resolution to include language regarding the need for a letter of credit in the "Be it Resolved" section. The Committee concurred with his proposal to amend the resolution before it is sent to Council for approval.

**Key Public Testimony:** There was none.

## **STAFF REPORT**

FOR THE PURPOSE OF EXEMPTING THE CM/GC CONTRACT FOR THE OREGON CONVENTION CENTER EXPANSION PROJECT FROM THE REQUIREMENT TO HAVE A PERFORMANCE AND PAYMENT BOND.

---

Date: March 7, 2001

Presented by: Scott Moss

## **PROPOSED ACTION**

Adopt Resolution No. 01-3041 exempting the CM/GC contract with Hoffman Construction for the OCC Expansion project from the requirement to have a performance and payment bond.

## **EXISTING LAW**

ORS 279.033 authorizes the local contract review board to exempt certain contracts or classes of contract 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.

## **FACTUAL BACKGROUND AND ANALYSIS**

Under the CM/GC contract approved by the MERC Commission, Hoffman Construction, can submit for reimbursement the cost of the performance bond. Hoffman Construction reports the \$98.5 million bond to cost \$320,000.

The bond covers the faithful performance of Hoffman to complete the project and pay all subcontractors and suppliers.

Project managers propose waiving the bond and requiring a letter of credit from Hoffman in the amount of \$12 million dollars and a corporate guarantee to faithfully perform and pay all subcontractors and suppliers. The letter of credit cost \$120,000 and must be in a form approved by the Office of General Counsel.

The OCC Expansion Advisory Committee endorses this approach.

Arguments in favor of waiving the bond:

- ◆ Hoffman Construction has been in business in Oregon for 80 years and has successfully completed several large construction projects for Metro.
- ◆ Hoffman Construction is in a strong financial condition according to their confidential financial statements as reviewed by Metro finance staff. Furthermore, Hoffman's credit rating is excellent.

- ◆ Funds are budgeted for sub-contractors to have performance bonds.
- ◆ A \$12 million dollar letter of credit covers the majority of risk associated with Hoffman not being able to complete the project.

Arguments against waiving the bond:

- ◆ An unexpected financial hardship could impact Hoffman Construction to the point they could not complete the project.
- ◆ Through fraud or mismanagement, Hoffman may not pay sub-contractors and suppliers.
- ◆ Metro is obligated to pay sub-contractors and suppliers even if payments have been made for their services to Hoffman.

### **BUDGET IMPACT**

Exempting the performance bond and requiring the letter of credit saves the project \$200,000.

### **EXECUTIVE OFFICER RECOMMENDATION**

The Executive Officer recommends approval of Resolution No. 01-3041.