



METROPOLITAN SERVICE DISTRICT
527 S.W. HALL ST., PORTLAND OR. 97201, 503/221-1646

A G E N D A --- REGULAR COUNCIL MEETING

Date: FEBRUARY 3, 1983
Day: THURSDAY
Time: 6:30 P.M.
Place: COUNCIL CHAMBER

Approximate
Time

6:30

CALL TO ORDER

ROLL CALL

1. Introductions.
2. Councilor Communications
3. Executive Officer Communications.
4. Written Communications to Council on Non-Agenda Items.
5. Citizen Communications to Council on Non-Agenda Items.
6. Work Session on Legislative Program.

9:00

ADJOURN

1983 METRO COUNCIL COMMITTEE ASSIGNMENTS

(Three (3) committee members constitute a quorum on these committees)

REGIONAL SERVICES COMMITTEE

(Responsible for, but not limited to, Solid Waste Management, including Energy Recovery; Zoo.)

Gary Hansen, Chair
Cindy Banzer
Ernie Bonner
Jack Deines
Corky Kirkpatrick
Bob Oleson

(Recycling Subcommittee members to be appointed by Chairman Hansen)

FRIENDS OF THE ZOO

Bruce Etlinger
Corky Kirkpatrick
Jack Deines, alternate

REGIONAL DEVELOPMENT COMMITTEE

(Responsible for, but not limited to, Transportation, Urban Planning, Land Use, Regional Growth and Development, Energy, Housing, Futures, Drainage.)

Marge Kafoury, Chair
Sharron Kelley, Vice Chair
Bruce Etlinger
George Van Bergen
Dick Waker
Charlie Williamson

JOINT POLICY ADVISORY COMMITTEE
ON TRANSPORTATION

(Responsible for recommendations on transportation improvement and funding)

Charlie Williamson, Chair
Bruce Etlinger, Vice Chair
Dick Waker
Corky Kirkpatrick, alternative

BI-STATE TASK FORCE COMMITTEE

Gary Hansen, Chair
Dick Waker, alternative

COORDINATING COMMITTEE

(Responsible for, but not limited to, Budget, Financial Matters, Personnel, Public Affairs, Legislative Affairs, Criminal Justice, Contract Review.)

Corky Kirkpatrick, Chair
Cindy Banzer, Vice Chair
Ernie Bonner
Gary Hansen
Marge Kafoury
Bob Oleson

CONTRACT REVIEW BOARD

Bruce Etlinger, Chair
Sharron Kelley
Jack Deines

AUDIT/INVESTMENT COMMITTEE*

Charlie Williamson, Chair
Cindy Banzer
George Van Bergen

*The Investment Committee is made up of the Audit Committee plus three citizens expert in financial and investment matters.



METROPOLITAN SERVICE DISTRICT
527 S.W. HALL ST., PORTLAND, OR. 97201, 503/221-1646

MEMORANDUM

Date: January 28, 1983
To: Metro Council
From: Tom O'Connor, ^{Tdc} Legislative Liaison for Zoo and
Solid Waste
Regarding: Legislative Issues and Guidelines

At its January 17 meeting, the Council Coordinating Committee requested additional time be set aside for discussion of Metro's legislative program--particularly in the area of solid waste. That discussion will take place on February 3.

It is essential that the Council develop a clear set of guidelines for proper management of our legislative program. This memo summarizes the major legislative issues for the Zoo and Solid Waste functions that Metro will face in the 1983 session. Included is our analysis of each issue in regard to our current policies, and recommendations for the Council's consideration. As you requested, I have included specific bills when available.

In developing recommendations, the various issues have been analyzed in terms of the following goals:

1. Maintain secure source of funding for the Zoo;
2. Monitor revenue legislation for potential additional sources of funding for the Zoo;
3. Monitor administrative issues such as Workers' Compensation and public contract law to ensure efficient Zoo management;
4. Active involvement in development of recycling programs; and
5. Maintain ability to effectively implement all elements of solid waste system.

SOLID WASTE

I. RECYCLING

Most of the current Metro policies are embodied in the Waste Reduction Plan (WRP) adopted by the Council January 8, 1981. Such a waste reduction plan is a requirement of SB 925 (ORS 459.047 and 459.049) if emergency landfill siting is to be used or DEQ bond funds are used. Metro, having a grant/loan from the state for the St. Johns Landfill expansion is already contractually required to have such a plan.

The WRP policies are:

- Waste generators possess the primary responsibility for waste reduction.
- The resources of private industry and local governments should be utilized to reduce waste volumes.
- The use of incentives for waste reduction is preferred over the use of regulations; if incentives are ineffective in reducing waste volumes, mandatory measures should be adopted.
- The full costs of disposal should be the basis for disposal rates; the basis for incentives for waste reduction should be reduced landfill dependence and a positive economic impact.
- The reduction in the amount of solid waste generated is the highest and best use of resources over other solid waste management options.
- Waste recycling and reuse is the best use of solid wastes over the mechanical processing or landfilling of wastes.
- The mechanical processing of solid wastes for the recovery of energy and materials is a better use than disposal.

Recycling legislative issues can be broken down into the following major areas:

- Source Separation Legislation
- Bottle Bill Legislation
- Packaging Legislation
- Alternative Recycling Finance Legislation

A. Source Separation Legislation

1. Current Metro policies include:

- a. Voluntary systems preferred over mandatory to the householder (WRP);
- b. Encourage local governments to provide for recycling as part of collection franchise (WRP);
- c. Supported WRP as a requirement of SB 925 (plan to provide opportunity; not mandatory) (1981 session); and
- d. Emphasis placed on residential programs.

2. Potential legislation includes:

HB 2244 introduced by DEQ (Attachment A). This bill amends ORS 459.047 and 459.049 (emergency landfill siting) to require that a WRP include "a system for separating recyclable material at the point of generation." Such a system shall include centralized receiving sites or curbside collection. It also defines recyclable material as "any material that can be collected and made available for recycling at a cost equal to or less than the cost of environmentally acceptable collection and disposal of the same material."

This bill as written will cause a problem for Metro because it requires us to implement a system of source separation when we have no authority to do so (Metro has no collection authority). Consequently, it could be used to block either a landfill in EFU or emergency siting. Local governments will most likely oppose this bill as written.

Status: Introduced and assigned to House Energy and Environment. Currently being reviewed by DEQ legislative task force. Will be considered by the Committee along with all other recycling bills after the Committee completes work on LCDC revisions.

Recommendation: Active involvement by Metro working with DEQ and other interest groups to amend language to protect our ability to site facilities and promote voluntary recycling efforts.

Oregon Environmental Council Bill - This bill is currently being drafted by Legislative Counsel. No language is available at this time, but a bill will be introduced. It appears the bill would require that in order for DEQ to grant a landfill permit, the people being served by that landfill must be afforded the opportunity to recycle.

Such a concept is inconsistent with Metro's authority. It would require Metro when requesting a landfill permit to mandate curbside service as part of collection when Metro has no authority in collection.

Status: No language available at this time, but the bill will definitely be introduced and referred to House Energy and Environment.

Recommendation: Active involvement by Metro with the Committee and interest groups. Metro should strongly support increased recycling, but within the bounds of our authority and preserve our ability to site and obtain permits for solid waste facilities.

Collection Franchise Requirements - This concept is being seriously considered by Legislators and will definitely be debated by the Committee at the time they discuss recycling legislation. Under this bill governments would be required to include a recycling program as an integral part of the collection franchise.

Status: No bill at this time, but the Committee will certainly consider the concept seriously.

Recommendation: Active involvement by Metro with the Committee and interest groups.

B. Bottle Bill Legislation

1. Current Metro policy includes:

Economic incentives should be employed to encourage recycling (WRP).

2. Potential legislation includes:

a. Aluminum and Plastic Wine Container Deposit

This type of bill would bring aluminium and plastic wine containers sold as "six-pack" type products under Oregon's container deposit law.

Status: No language yet available, but such a bill will be introduced and seriously considered by House Energy and Environment Committee.

Recommendation: Support this concept and active involvement in development of legislation.

C. Packaging Legislation

1. Current Metro policies include:

- a. Waste generators possess the primary responsibility for waste reduction (WRP);

- b. Actively support legislation which reduces the volume of packaging wastes in regional language (WRP); and
- c. Incentives are preferred over regulations (WRP).

2. Potential legislation includes:

It is doubtful any actual legislation will be introduced, but the Committee will discuss the subject.

Recommendation: Monitor and provide technical assistance to the Committee.

D. Alternative Recycling Financing Legislation (other than user fee)

1. Current Metro policies include:

- a. The full costs of disposal should be the basis for disposal rates (WRP); and
- b. A recycling program financing system which stresses the use of economic incentives for waste reduction (WRP).

2. Potential legislation includes:

No specific legislation being proposed but recycling financing or incentives will undoubtedly be discussed in Committee. Concepts that could be discussed include:

Breakage Fee - The breakage fee is the amount of bottle bill deposit not recovered by the consumer. A percentage of this could be earmarked for distribution to governments having approved waste reduction plans.

Sales Tax - A percentage of wholesale and retail sales of specific items could be earmarked for distribution to governments having an approved waste reduction plan.

Status: No specific legislation being proposed.

Recommendation: Monitor legislation to determine if practical opportunities arise to earmark monies for recycling.

E. Incentives for Recycling Industries

1. Current Metro policies include:

- a. Incentives are preferred over regulations (WRP);
and
- b. Develop marketing strategies (WRP).

2. Potential legislation includes:

Economic Development legislation will be a major item in this session.

Recommendation: Monitor legislation and work with Legislators and interest groups to determine opportunities to give incentives or preference to recycling industries or recycled materials.

II. SOLID WASTE FACILITY PERMITTING

A. Current Metro policies include:

1. Metro is responsible for planning, siting, operation and franchising of solid waste disposal facilities within its boundaries. (ORS 268.317-8)
2. Metro requires an application fee and an annual fee for franchising disposal facilities. (Metro Franchise Ordinance)
3. Metro requires insurance and a performance bond for operation and closure of disposal facilities. (Metro Franchise Ordinance)
4. Metro maintains a sinking fund for closure and final cover at St. Johns (Metro Budget). Note: A similar sinking fund would be established for Wildwood.

B. Potential legislation includes:

1. HB 2236 introduced by DEQ (Attachment B). This bill allows DEQ to charge an annual disposal site permit fee and one time application fees. The fees would be used to fund DEQ's solid waste division which is currently funded from the State general fund.

Status: Referred to Ways and Means Committee. Currently being reviewed by DEQ legislative task force. Will probably be opposed by local governments.

Recommendation: Neutral if fee authority is granted on a two-year basis only. This would maintain legislative oversight over the program and encourage legislative review of landfill regulations and enforcement. Metro should support effective, standardized, active enforcement of landfill regulations to protect the environment.

2. HB 2241 introduced by DEQ (Attachment C). This bill requires the applicant for a disposal site permit to provide financial assurance to cover the costs of site closure and post-closure monitoring. As written it essentially sets up a State "super fund." This bill is undergoing a substantial redraft. The new bill will probably require insurance and performance bonds or sinking funds such as we have rather than a super fund. Further, DEQ will seek language to allow them to regulate a disposal site after closure and make the landowner as well as operator responsible for the site.

Status: Referred to House Energy and Environment. Undergoing redraft by DEQ and review by DEQ legislative task force.

Recommendation: Support the concept of financial assurance for site closure via performance bonds and sinking funds. Within our boundaries Metro should be responsible for implementing such requirements under its franchising authority.

III. HAZARDOUS WASTE LEGISLATION

A. Current Metro policies include:

1. State law prohibits hazardous waste from entering a general purpose landfill.
2. Metro ordinances prohibit hazardous waste from disposal in any Metro facility.

- #### B. Potential legislation includes HB 2237 introduced by DEQ (Attachment D). This bill requires the hazardous waste generator or transporter to pay an annual fee to be used by DEQ for inspection program. No impact on Metro.

Status: Hearing in House Energy and Environment Committee January 21, 1983.

Recommendation: Neutral. Metro has no authority in hazardous waste, but legislation should be monitored to ensure that efficient operation of Metro facilities is not impacted.

HB 2238 introduced by DEQ (Attachment E). Allows DEQ to investigate complaints about transportation of hazardous waste including authority to monitor and order stop in operation if necessary to protect public health or safety. No impact on Metro.

Status: Hearing in House Energy and Environment Committee January 21, 1983.

Recommendation: Neutral. Metro has no authority in hazardous waste, but legislation should be monitored to ensure efficient operation of Metro facilities.

HB 2242 introduced by DEQ (Attachment F). This bill establishes state policy to provide public notice of potentially hazardous environmental condition or potentially dangerous or unusually costly sewage disposal system. No impact on Metro.

Status: Referred to House Energy and Environment; no hearing scheduled.

Recommendation: Neutral. Monitor to ensure efficient operation of Metro facilities.

IV. POLLUTION CONTROL TAX CREDITS LEGISLATION

A. Current Metro policies include:

1. The mechanical processing of solid wastes for the recovery of energy and materials is a better use than disposal (WRP).
2. Maintain reasonable disposal cost to consumer.
3. Preserve future option for an energy recovery facility as part of solid waste system.

- B. SB 112 introduced by DEQ (Attachment G). This legislation makes a number of changes to the current pollution control tax credits system and continues the program. The key change that impacts Metro is language that places solid waste facilities under ORS 468.190. This would reduce the amount of tax credits available according to a formula

based on return on investment. The affect of this change would be to reduce the tax credits available to help finance an energy recovery facility by four-fifths which would cause a significant rise in the tipping fee to the public accordingly. This change would apply to any solid waste facility that would use a similar public/private financing program as proposed for the Oregon City project. This legislation would seriously hinder Metro's ability to preserve energy recovery as an option for the solid waste program.

Status: Introduced by DEQ and referred to Senate Energy and Environment Committee.

Recommendation: Seek amendments necessary to retain tax credits for an energy recovery facility to preserve it as an option for Metro's solid waste program.

ZOO

I. CURRENT ZOO FUNDING

A. Current Metro policies include:

1. Existing serial levy funds approximately 50 percent of Zoo operations.
2. Existing serial levy funds approximately 80 percent of Zoo capital.

B. Potential legislation includes:

1. Property tax limitation measures.
2. New revenue sources.
3. Changes in allocation or apportionment formulas to local taxing units.
4. Changes in A/B ballot structure.
5. Changes in length of serial levies.
6. Changes in general obligation bonding procedures.

C. Recommendations:

All revenue measures and changes in current state law should be reviewed in terms of the following principles:

1. Maintain a secure source of funding for the Zoo.
2. Maintain equal eligibility for the Zoo with all other local taxing units under any potential allocation or apportionment formulas.
3. Preserve Zoo's ability to seek a tax base or to seek approval of the voters for additional levies.

II. ADDITIONAL SOURCES OF REVENUE FOR THE ZOO

A. Potential legislation

1. Economic Development Funding - A percentage of state revenue may be allocated to economic development including tourism.

Status: No specific language.

Recommendation: Monitor closely to determine potential for Zoo eligibility for tourism promotion.

2. Lottery - A percentage may be allocated to economic development for tourism.

Status: No specific language.

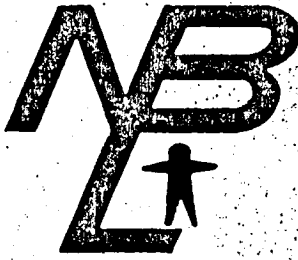
Recommendation: Monitor closely to determine potential for Zoo eligibility for tourism promotion.

III. ZOO ADMINISTRATION

A. Potential legislation includes:

1. Changes in Workers' Compensation law.
2. Changes in Collective Bargaining law.
3. Changes in Pension law.
4. Changes in Bidding and Public Contracting law.

Recommendation: The above areas should be closely monitored. Metro should work with other local governments and interest groups to ensure any amendments in these areas are beneficial to effective Zoo administration.



NATIONAL BUSINESS LEAGUE

Founded in 1900 by Booker T. Washington

OREGON CHAPTER

6939 N.E. Grand Ave., Suite 4
Portland, Oregon 97211

(503) 283-4006

February 3, 1983

Chairman of the Board
NATHANIEL YOUNG

President
CHARLES F. CREWS

1st Vice President
O.B. HILL

Executive Secretary
JAMES BERRY

Treasurer
NATE HARTLEY

Secretary
JAMES A. MAYES

WILLIE J. SMITH

LOVETTA I. HARPOLE

FLOYD BOOKER

MADAME PRESIDENT AND COUNCIL MEMBERS:

One of our goals as set forth by the National-By-Laws, is to contribute to the economic development of the Minority Community within the framework and context of a harmonious relationship with the total community, in spite of historical constraints. With cooperative efforts on the part of government and the larger business community, the inclusion of Minority Business into the mainstream of the Free Enterprise System would bring America to its greatest potential, until this happens commerce, business and growth of our nation will go lacking.

Cooperative efforts, particularly between Blacks, Minorities in business and government can generate economic development activities that lead to sustain growth in our community, more important, the growth and expansion of such an arrangement will result in the rebuilding of our inner cities, creating jobs, revitalizing our center of commerce and help develop new industry for the State. Therefore in order to have this new beginning between the Minority Business Community and Metro, we ask that the following things be done.

- 1). The Executive Order No. 15 enacted December 7th be rescinded, because MBR's and MBE's organizations were not allowed input.
- 2). That the previous MBE program by Metro be re-instated at this time.
- 3). That no Contracts, now or in the future, be awarded until a clear and concise MBE program from Metro be established.
- 4). That Metro set up a contractors input committee made up of Minorities and Non-Minorities and Business Organizations. (Must be only from the business community)
- 5). That a liaison person be hired, carrying out the duties that you outlined in your MBE program to the Department of Transportation.



METROPOLITAN SERVICE DISTRICT
527 SW. HALL ST., PORTLAND, OR. 97201, 503/221-1646

Rick Gustafson
EXECUTIVE OFFICER

February 1, 1983

Metro Council
Cindy Banzer
PRESIDING OFFICER
DISTRICT 9

Bob Oleson
DEPUTY PRESIDING
OFFICER
DISTRICT 1

Charlie Williamson
DISTRICT 2

Craig Berkman
DISTRICT 3

Corky Kirkpatrick
DISTRICT 4

Jack Deines
DISTRICT 5

Jane Rhodes
DISTRICT 6

Betty Schedeen
DISTRICT 7

Ernie Bonner
DISTRICT 8

Bruce Etlinger
DISTRICT 10

Marge Kafoury
DISTRICT 11

Mike Burton
DISTRICT 12

Mr. James Berry
Executive Secretary, Oregon Chapter
National Business League
6939 N.E. Grand Avenue Suite 4
Portland, Oregon 97211

Dear Mr. Berry:

Thank you for your letter and visit with Don Carlson regarding your organization's concern about Metro's Minority Business Enterprise program. I want you to know that I strongly support the encouragement of Minority Business Enterprise. I will do my best to explain to you the events and activities which led to my issuance of the Executive Orders regarding our MBE program and contract procedures. I also extend and offer to you and your colleagues to join with me and others in the near future to further review and refine our MBE program. I have always intended these Executive Orders be temporary because of my concern that more extensive review of the procedures might be received from the construction and minority communities.

The essence of your written request is an explanation of how and why the Orders were issued. Let me respond by giving the history of events and activities which led to the decision. To this end I have attached copies of Council minutes, letters and assorted memoranda in chronological order as follows:

Exhibit A - Minutes of the May 27, 1982, Council meeting at which time Resolution No. 82-334 was adopted awarding the construction contract for the Clackamas Transfer & Recycling Center (CTRC) to Parker Northwest Construction Co.; a copy of Resolution No. 82-334 and a staff memo supporting the award of the contract to Parker Northwest.

Mr. James Berry
February 1, 1983
Page 2

- Exhibit B - Memo from Presiding Officer Banzer to Council member Oleson dated June 9, 1982, requesting the establishment of a task force to study Metro's contract bidding procedures.
- Exhibit C - Memo to the participants in a work session dated July 21, 1982, on contract procedures and the MBE program (people attending the work session are so indicated with a check mark).
- Exhibit D - Letter from U.S. Urban Mass Transit Region X Administration's Aubrey Davis to Rick Gustafson dated November 22, 1982, regarding MBE grantee responsibilities.
- Exhibit E - Memo to Metro Council from Rick Gustafson dated December 6, 1982, transmitting the two Executive Orders regarding revisions to the MBE program (No. 15) and the contract procedures (No. 16).

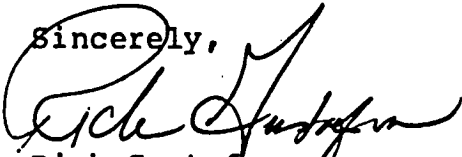
As indicated by reviewing the above material, we became aware of a problem with our contract procedures and MBE policy during the award of the construction contract for the CTRC. The Council, through the Services and Coordinating Committees, conducted several long meetings where parties at interest in the bid including the Associated General Contractors (AGC) gave different interpretations of Metro's procedures and the MBE policy. Following the award of the contract the Presiding Officer requested that a review of our policies and procedures be undertaken. As a result, I arranged for a meeting of contractors, Council members and staff to discuss the problem. Those attending from the construction community were for the most part those persons who were involved in the earlier dispute. Following the meeting staff prepared draft copies of the Executive Orders and circulated them to the participants in the earlier meeting. It was at this point that I instructed staff to send copies of the Orders to interested parties as well as the Urban League and the Skanner newspaper for information and comment. After receiving comments final copies were prepared by staff. Late in this process I received a letter from the UMTA Regional Administrator which appeared to confirm our use of the "good faith effort" procedures in the MBE program. Approximately six months from the onset of this situation I signed the Executive Orders and distributed them.

Mr. James Berry
February 1, 1983
Page 3

You have made an additional verbal request that Metro delay its bid deadline for construction of the Alaskan Exhibit at the Zoo and that the Executive Order regarding the MBE program be rescinded. I responded by phone to you through Jennifer Sims, Manager of Budget & Administrative Services, on January 27, 1983, that I would not delay the bidding and award process for that propose. However, I have delayed the bid process one week to allow for the minority newspaper and trade association newsletter 20-day publication requirement to be met. For your information we intend to open bids on February 9, 1983, and take a recommendation to the Council Coordinating Committee on February 14, 1983. This Committee meets at 5:30 p.m. at the Metro offices. The recommendation of the Coordinating Committee should be presented to the full Council at its regular meeting on February 24, 1983. The Council meeting will be at the Metro office at 7:30 p.m.

Again I am interested in meeting with you and other interested minorities to discuss our MBE program and contract procedures. We are interested in having contract programs and procedures which are clear, fair to all parties and which can be efficiently administered. I apologize if we have not consulted the appropriate people or organizations when we initially reviewed this situation. I hope you will join with me as we try to answer your concerns. If you have any questions or need additional information, please let me know.

Sincerely,



Rick Gustafson
Executive Officer

RG/DC/srb
7676B/D1

Attachments

cc: Cindy Banzer, Presiding Officer
Gary Hansen, Councilor, District #12
Warren Iliff, Zoo Director

YEAS: Etlinger, Rhodes, Williamson, Kafoury, Banzer, Bonner,
Kirkpatrick
NAYS: Deines, Oleson, Burton
ABSENT: Berkman
ABSTAINING: Schedeen

Presiding Officer stated that the staff is directed to prepare a resolution of intent to effect this change in the UGB when the conditions are met.

Resolution No. 82-334, A Resolution Allowing Awarding of the CTRC Construction Contract to Parker Northwest Construction Co. Subject to Conditions.

Coun. Burton stated the Coordinating Committee met prior to the Council meeting and there was some concern regarding the bidding process--namely the requirement for Minority Business Enterprise participation of 10% in each bid. He continued that after hearing testimony from Jack Kalinoski (representing Associated General Contractors), Dan Siefer (representing Parker Northwest), and Pat O'Brien (representing OTKM Construction, one of the bidders), the Committee recommends Council approval of the contract, subject to the conditions listed in Resolution No. 82-334.

Motion to approve Resolution No. 82-334. (Burton/Williamson)

Motion to amend the third paragraph of the resolution to read "as required" instead of "as indicated"; failed to pass, with 3 votes "yes", 6 votes "no". (Bonner/Etlinger)

Motion to amend the third paragraph of the resolution to read as follows:

"WHEREAS, thirteen (13) of the fourteen (14) bidders neglected to submit Minority Business Enterprise (MBE) information as required in the request for proposals and in the Metro MBE Program and the remaining bidder submitted insufficient MBE information; however all bidders agreed to comply with all Metro MBE requirements; and"

passed, with 7 votes "yes", 3 votes "no". (Williamson/Kirkpatrick)

A vote on the main motion (to approve Resolution No. 82-334, as amended) indicated the motion passed by the following roll call vote:

YEAS: Rhodes, Williamson, Deines, Oleson, Schedeen, Kirkpatrick,
Burton
NAYS: Etlinger, Banzer, Bonner
ABSENT: Berkman, Kafoury.

Award of Contract to Richard T. Robertson, Inc. for the Construction of the Clackamas Transfer and Recycling Center (CTRC) (Section II).

Coun. Deines stated the Coordinating Committee also considered award of this contract this evening (which includes the construction of the water and sewer pipelines for the site) and recommends Council approval.

Motion to award a contract to Richard T. Robertson, Inc., for construction

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

A RESOLUTION ALLOWING AWARDING OF
THE CTRC CONSTRUCTION CONTRACT TO
PARKER NORTHWEST CONSTRUCTION CO.
SUBJECT TO CONDITIONS.

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)

RESOLUTION NO. 82-334
Submitted by the
Council Coordinating Committee

WHEREAS, Metro sought and received contract bids for construction of the
Clackamas Transfer and Recycling Center (CTRC); and

WHEREAS, Parker Northwest Construction Company was the lowest responsible
bidder at \$2,789,677.00; and

WHEREAS, thirteen (13) of the fourteen (14) bidders neglected to submit
Minority Business Enterprise (MBE) information as indicated in the request for
proposals and in the Metro MBE Program and the remaining bidder submitted
insufficient MBE information; however, all bidders agreed to comply with all
Metro MBE requirements; and

WHEREAS, the Council finds it to be in the best interest of the public and
within the spirit of the MBE program to waive the formal requirement of submission
of MBE information with the bids but to nevertheless require compliance with the
MBE program; now, therefore

BE IT RESOLVED,

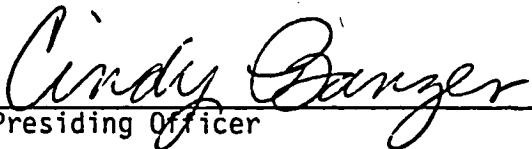
1. That the Council waives the formal requirement of submission of MBE
information on the CTRC construction contract with the bids.

2. That the Council authorizes the Executive Officer to accept the bid of
Parker Northwest Construction Co. and to award the CTRC construction contract
thereto upon the company's demonstration of compliance with the Metro MBE
Program within five (5) days) of the date of this resolution, such compliance to
be determined by the Executive Officer.

3. That should Parker Northwest Construction Company fail to show MBE compliance within five (5) days, the company's bid shall not be accepted and the Executive Officer shall proceed to award the CTRC contract to the next lowest responsible bidder pursuant to the same conditions indicated in paragraph 2 of this resolution.

4. That the justification for the bid award approach taken herein is documented in the memo from the Executive Officer, dated May 27, 1982, and attached hereto as Exhibit "A", and is accepted.

ADOPTED by the Council of the Metropolitan Service District this 27th day of May, 1982.



Presiding Officer



METROPOLITAN SERVICE DISTRICT
527 S.W. HALL ST., PORTLAND, OR. 97201, 503/221-1646

MEMORANDUM

Date: May 27, 1982
To: Council Coordinating Committee
From: Executive Officer
Regarding: Selection of a Contractor to Build the
Clackamas Transfer & Recycling Center (CTRC)

The purpose of this memo is to recommend to the Committee that the Council award the Section I contract for construction of the CTRC to Parker-Northwest. In making the award, staff further recommends that the Council waive the requirements that MBE information be submitted at the time of the bid and that Parker-Northwest be given a specific period of time (five days) to meet the MBE requirements. If Parker does not supply the necessary information within the period of time allowed, then we recommend moving to the second lowest bidder. The background on this issue is discussed below.

On March 5, 1982, the Metro Solid Waste Department issued an Invitation to Bid (see Attachment A) for the construction of the CTRC in Oregon City. The construction was divided into two sections:

Section I includes construction of a complete transfer station including modifications to Highway 213.

Section II includes the construction of approximately 4,900 feet of 10-inch water line and approximately 3,400 feet of 4-inch force main sewer pipe.

All bidders were required to submit their bids on forms that were prepared for Metro by Black and Veatch Consulting Engineers.

On April 2, 1982, a pre-bid conference was held at the Metro offices to discuss the project with prospective bidders and to answer questions raised by potential bidders. On April 20, 1982, at 2:00 p.m., we received and opened 14 bids. They included 10 bids for Section I, 4 bids for Section II and 4 bids for both sections combined. At the time the bids are opened, several items that are required to be submitted with the bid proposal are verified and read aloud. These include the bid price, bid bond, required signatures, experience questionnaire and Minority Business Enterprise (MBE) information.

Memorandum
May 27, 1982
Page 2

Following the bid opening, the three apparent low bids were examined in much greater detail by Metro solid waste staff, legal counsel and Black and Veatch. The details of those evaluations are included as Attachment B. It was determined that none of the proposals contained all of the information required to be submitted with the bid. For example, Parker-Northwest Construction Company, the apparent low bidder, omitted the MBE information required under Section B-12, Instructions to Bidders (Attachment C).

Christal, Grady and Harper, Inc., the apparent second low bidder, submitted extra prices on their bid form as well as not submitting the MBE information required under Section B-12, Instructions to Bidders.

OTKM Construction Company, Inc., the apparent third low bidder, submitted extra prices on their bid form as well as omitting sections of the Experience and Equipment Certification form as required under Section B-1, Instructions to Bidders. Additionally, OTKM submitted incomplete MBE information as required under Section B-12, Instructions to Bidders.

It is the staff's opinion, and that of Black and Veatch, that because 13 of the 14 bidders failed to submit the MBE information (for which there was no form in the bid package) that there was sufficient room for misinterpretation as to the requirements of the Metro MBE policy.

Therefore, we feel that there are two options which are available in awarding this contract. One option is to reject all bids and rebid the entire project. The second option is to award the contract to the lowest bidder. In considering the options, we looked at all of the bids, the time frame for the closure of Rossman's Landfill, the extra expense to all parties involved in rebidding and the "intent" of the Metro MBE policy.

In the interest of meeting the Metro Council's intent to employ MBE's and to assure that the ratepayers benefit by receiving the lowest responsible bid, we recommend that Parker Northeast be awarded the contract with the requirement that they submit their MBE information within five days after the Metro Council's approval. Black and Veatch has recommended Parker-Northeast as the lowest responsible bid assuming that the MBE goals are satisfied.

The firm of OTKM Construction Company, Inc., which was the only company which submitted any MBE information, has taken the position that we are offering Parker Northwest an unfair advantage in being able to select their MBE contractors after

Memorandum
May 27, 1982
Page 3

the bid opening. They suggest a third option of awarding the contract to their firm based on a strict interpretation of our MBE policy statement and disregard the discrepancies in their bid proposal.

We feel that if the lowest bidder is required to meet the MBE goals that, in fact, no competitive edge exists.

NW/gl
6049B/D5

Attachments: A. Invitation to Bid
 B. Bid Evaluation Details
 C. Instructions to Bidders



METROPOLITAN SERVICE DISTRICT
527 S.W. HALL ST., PORTLAND, OR. 97201, 503/221-1646

MEMORANDUM

Date: 9 June 1982
To: Councilor Bob Oleson
From: Presiding Officer Cindy Banzer
Regarding: Review of Contract Bidding Procedures

The recent discussions on awarding construction contracts for the Clackamas Transfer and Recycling Center has raised several issues concerning Metro's bidding procedures.

Could you please have your Contract Review Committee sit as a short-lived Task Force on Public Contracting Procedures?

The issues that you need to address include:

1. identification of purposes and clarification of requirements for public contracting,
2. elimination of redundancy in requirements,
3. development of procedures to ensure maximum equity/fairness to all bidders.

I suggest you ask the Associated General Contractors to assign three contractors to join with your Council members to serve on this "task force." You may want to consider a representative of another public agency or city.

I would hope your deliberations would take no more than one or possibly two meetings and that you would have specific policy recommendations for the Council to address.

Thank you for your prompt attention to this request.

cc: Rick Gustafson
Jack Kalinoski



METROPOLITAN SERVICE DISTRICT
527 SW. HALL ST., PORTLAND, OR. 97201, 503/221-1646

MEMORANDUM

Date: July 21, 1982
To: MBE Advisory Group
From: Rick Gustafson, Executive Officer *RIG*
Regarding: Lunch Meeting of July 28th

I appreciate your willingness to participate in a review of Metro's construction contract procedures and Minority Business Enterprise (MBE) Program.

A small roundtable discussion is planned during the lunch hour on July 28, 1982 in Room A1-A2 at Metro. The enclosed materials are provided as background information and will serve as a starting point for discussion.

We look forward to sharing concerns and exploring ideas on ways to improve our contract procedures and MBE Program.



METROPOLITAN SERVICE DISTRICT
527 S.W. HALL ST., PORTLAND, OR. 97201, 503/221-1646

MEMORANDUM

Date: July 22, 1982
To: MBE Advisory Group
From: Rick Gustafson, Executive Officer
Regarding: Materials for Luncheon Meeting (Existing Contract Procedures and MBE Policies and Their Affect on Construction Contracts Over \$10,000)

I. EXISTING CONTRACT PROCEDURES:

Construction contracts over \$10,000 are subject to a formal sealed bid process. This process (adopted 3/4/82) includes the following steps:

A. Initiating department writes bid specifications and prepares list of potential bidders;

B. Bid document is reviewed by the legal counsel before bids are solicited;

C. Request for bids is advertised;

D. Initiating department receives and opens sealed bids;

E. Bids are reviewed and the initiating Department makes a recommendation to the Department of Management Services;

F. The Department of Management Services makes recommendation to the Executive Officer. (If the contract is over \$10,000 and under \$50,000 the Council Contract Review Board must approve prior to signature. If the contract is over \$50,000 the Metro Council must approve prior to signature.)

G. The initiating department provides notification of contract award.

II. EXISTING MINORITY BUSINESS ENTERPRISE (MBE) POLICIES

The existing MBE policies (revised February, 1981) apply to all Metro contracts. The specific goal for construction contracts is 10 percent MBE participation.

The policies call for:

A. All bidders to submit with their bids the names, addresses, telephone numbers, scope of work and the dollar values of each proposed MBE subcontractor and joint venture;

B. "If any competitor offering a reasonable price meets the MBE contract goal, Metro shall presume conclusively that all competitors that failed to meet the goal have failed to exert sufficient reasonable efforts and consequently, ineligible to be awarded the contract;"

C. The bidder who offers the lowest reasonable price and meets the MBE goals shall be awarded the contract. (If the price is determined to not be reasonable, Metro shall consider next the price offered by the competitor with the highest percentage of MBE participation of those firms that failed to meet the goals.)

III. PROCEDURAL COMPARISON WITH OTHER JURISDICTIONS

Attachment "A" indicates a comparison of procedures with four major jurisdictions which implement similar MBE and contract policies. The major contract/MBE policies which differ include:

A. Must the bidder submit with its bid and information concerning MBE goal attainment?

Alternatives:

1. Submit with bid information on % of contract which will be MBE;
2. Submit with bid information as in (1) above and provide documentation on MBE contracts after bid opening; or
3. After bid opening, firms wishing to remain competitive have five (5) days to present information on MBE goal attainment.

B. When must the MBE be certified?

Alternatives:

1. Prior to submission of bid; or
2. Prior to contract award.

- C. Is attainment of the MBE goal required and/or may a bidder show a "best effort" in lieu of actual goal attainment?

Alternatives:

1. Require goal attainment for contract award (assume that if one bidder meets the goal all other who do not are non-responsive);
2. Allow the low bidder to prove "best effort"; and/or
3. Require MBE goals on only federally assisted projects.

IV. COMMENTS/RECOMMENDATIONS

Although Metro's MBE program contract procedures do not appear dissimilar from the other jurisdictions reviewed, there do exist specific problem areas which could be improved. Briefly, areas which are recommended for action are as follows:

A. Staffing --

1. Comment: Jurisdictions with a process similar to Metro's indicate that they have many staff people devoting all or part of their time to the MBE/contract area. Metro's current staffing level does not allow for intense review of contract specifications, requests for certification, etc. Currently, Metro's MBE goals have not been updated and there does not exist historical data on MBE participation as required by existing policies.

2. Recommendation: Maintain current staffing level at less than .25 FTE, but allow for a work program which calls for an updated, simplified MBE program during FY 1982-83. This recommendation assumes implementation of items B and D below.

B. Certification Process --

1. Comment: In the past, the City of Portland agreed to provide certification assistance to Metro. Currently, there exists no such agreement. Given item (A) above, requests for certification may be difficult to review.

2. Recommendation: Rewrite Metro's program to indicate acceptance of only those MBEs which have been previously certified by the City of Portland.

C. Presumptive Conclusion --

1. Comment: Metro's program is unclear on this point. In one section, the program states that if one bidder meets the MBE goals, it is assumed that those bids which do not are non-responsive. This conclusion was included in the original DOT regulations but was later revised (April 27, 1981). In another section, the program allows for the bidder to show a "best effort" at including MBEs. Currently, DOT allows the mandatory award system to be used at the discretion of the jurisdiction.

2. Recommendation: Metro's program should be rewritten to be clear and consistent with the latest regulations allowing the low bidder to receive the contract if they meet the MBE goals or if the bid documents satisfied the recipient that the bidder had made good faith efforts to do so.

D. Application to All Contracts --

1. Comment: The current Metro MBE policies apply to all contracts. The mandatory process is only required for federally assisted programs. One method of dealing with the question of staffing needs, etc., may be to apply the MBE goals to only federally assisted construction and/or consulting contracts.

2. Recommendation: Metro's program should be rewritten to be mandatory for only those contracts which involve federal funds. Metro may retain general goals for non-federally funded contracts.

EXISTING PROGRAMS

<u>Jurisdiction</u>	<u>MBE Info. Submitted WITH Bid</u>	<u>Certification Required Prior to Bid Opening</u>	<u>Certification Required Prior to Award</u>	<u>Presumptive Conclusion Clause</u>	<u>Use of Portland Certification Process</u>
Port of Portland	No (Within 5 working days after opening)	No (Required MBE list submittal)	Yes	Yes (For federal assisted contracts)	Yes
City of Portland	Yes (Names, & etc.)	Yes	---	No (Best effort Clause)	---
ODOT	No (Goal only, 5 days after opening to provide names, etc.)	Yes	---	No (Best effort Clause)	No
Multnomah County	Yes (Names, & etc.)	Yes (Proof of Ptld. certification received 10 days prior to opening)	---	No (Best effort Clause)	Yes
Metro	Yes (Names, & etc.)	No	Yes	Yes	No

RECOMMENDED PROGRAM

Metro	Yes (Names, & etc.)	Yes (Proof of Ptld. certification received with bid)	---	No (Best effort Clause)	Yes
-------	------------------------	---	-----	----------------------------	-----

I. CONTRACT BROWN BAG - JULY 28, 1982 12:00 A-1 and A-1

1. Associated General Contractors:

- * ✓ Jack Kalinoski - 682-3633, AGC, 9450 SW Commerce Circle, Wilsonville 97070
* Jim Jühr - Jühr Construction Inc. PO Box 42229, Pt1. OR 97242
* John Brokamp Brokamp Jaeger Inc., 15796 S. Boardwalk
* ✓ Paul Johnson Copenhagen Utility & Const. Inc. PO Box 429, Clackamas OR 97015
* =recommended and contacted by Kalinoski and bringing their own lunches.

2. Others:

- * ✓ Walt Gamble 242-3841, Gamble Construction, 0324 SW Abernethy, 97201
* ✓ Pat O'Brien 241-2875, OTKM, 5805 SW Hood, Portland, OR 9720L
Tom Walsh 222-4375, Walsh Construction Co. 3015 SW First, Portland 97201

3. STAFF: Don Carlson*

COUNCIL: Cindy Banzer

Sue Klobertanz*

Bob Oleson*

Jennifer Sims *

Jack Deines (not attending)

Norm Weitting *

Jane Rhodes (not attending)

Kay Rich *

PURPOSE:

1. To review the general construction bidding procedures
2. To review MBE policies and procedures

The participants will be sent a memo from Jennifer and the current MBE policy a week beforehand.

A letter will be sent to Bugge advising him of this ^{meeting} (at RG's request)

900 -

* indicates those who attended



U.S. Department
of Transportation

Urban Mass
Transportation
Administration

Region X
Alaska, Idaho,
Oregon, Washington

915 Second Avenue
Suite 3142
Seattle, WA 98174

EXHIBIT D
cc Tug...

November 22, 1982

Mr. Rick Gustafson
Executive Officer
Metropolitan Service District
University Center Bldg.
527 S.W. Hall St.
Portland, OR 97201

Re: MBE Responsibilities of
Grantees

Dear Mr. Gustafson:

We are writing to you on several grantee related matters pertaining to Minority Business Enterprises and Minority Business Enterprise Programs. We are requesting your agency's response as appropriate on the following points.

1) "Good Faith Efforts" - On April 27, 1981, the Department of Transportation revised its MBE regulation, 49 CFR Part 23 from that originally published March 31, 1980. This revision calls for grantees to determine the "good faith efforts" of their contractors to involve Minority Business Enterprise in the award of UMTA funded contracts. The revision to the regulation requires that if a grantee wishes to use any procedure other than "good faith efforts" in the award of these contracts it must receive approval from the DOT office concerned. Prior to this change the "conclusive presumption" in the regulation provided that if one bidder met the contract goals and offered a reasonable price, bidders that did not meet the goal were ineligible to receive the contract. The "good faith efforts" approach allows the low bidder to be awarded the contract if it meets the MBE goals or if it has satisfied the grantee that it has made good faith efforts to do so.

Because there has been a substantial amount of litigation in the MBE area, UMTA is requesting that its grantees review their currently adopted programs and revise them to conform to the "good faith efforts" spelled out in the revised regulation unless it is your agency's intention to continue with your previously adopted contract award approach set out in your MBE program. If it is your intent to continue with your previously adopted program, you must notify UMTA according to the procedures set out in the revised regulations (23.45 (h) (2) (i)). Please write UMTA within 90 days of your decision on this matter.

2) Periodic Goal Revision - Those agencies which have a DOT approved MBE program are required to review their goals annually and submit any new overall goals to UMTA for approval. These goals should be submitted in conformance with the process outlined in the regulation (23.45(g)(6)) and should be accompanied by a description of their basis, documentation as to how they were developed, and include a statement of who was consulted in their development.

3) Reports of MBE Activities - For those agencies which have received UMTA grants and which have a DOT approved Minority Business Enterprise program, the regulations call for regular MBE progress reports, (Section 23.49 (d)). These reports should be made, at a minimum, on a quarterly basis. They may be submitted with Quarterly Progress Reports but will be considered delinquent if they are received by this office more than 30 days after the end of the reporting period.

4) Other Matters - It has come to our attention that there are presently several misunderstandings about the MBE regulations which may be causing confusion to grantees or to contractors. Following are several points which you should review for the purposes of compliance with the regulation.

a) The definition of "minority" used in Subpart A, section 23.5 of the MBE Regulation is not accurately reflected in many Grantee Solicitations for Bid and MBE Programs. Please correct your definition for Minority as appropriate to reflect Section 23.5. Please also note the definitions for "Hispanic" and "Portuguese" which are now the officially accepted definitions. They were published in Amendment #2 to the MBE Regulation dated 12/10/81 (enclosed). Your revision to the "minority" definition should reflect these changes also.

b) The definition of "Minority Business Enterprise" still being used by several grantees is in error. This definition must be revised to conform to that in Subpart A, section 23.5. You should note that in the DOT regulation only minority business enterprises which are "small" businesses as defined by Section 7 of the Small Business Act are eligible MBE's. Related to this, the definitions of ownership and control as defined in Subparts A, 23.5 and C, 23.53 are to be used by all grantees. In some instances these will differ from those definitions developed by grantees. Erroneous certification of firms which do not conform to the regulation's definitions leads to confusion among minority owned firms, prime and sub contractors and grantees and may result in UMTA not participating in contracts.

c) Counting of the dollar level of minority participation in UMTA funded contracts has been found to be in error. The DOT regulation (Subpart C, Section 23.47) provides that only 20% of the value of purchases from certified MBE firms in the supply business may be counted toward meeting the grantee's annual and contract goals and this may be counted only if the supplier is performing a "commercially useful function". This 20% rule should be applied by the contractors in their computation of MBE participation in any UMTA funded contract they are bidding. Grantees should advise:

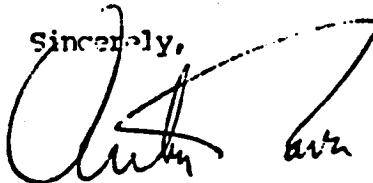
bidders of this in their Bid Documents so that there is no confusion as to the MBE participation factor contained in the contractor's bid.

d) The March 30, 1990 regulation requires that certain statements in section 23.43 of the regulation be included verbatim in all subsequent agreements with contractors and that both contractors and subcontractors be advised that failure to carry out the requirements shall constitute breach of contract. All IFB's and RFP's should advise bidders or contractors and subcontractors of these requirements.

e) The April 27, 1991 revision to the regulation (23.45(h)) requires that the IFB or RFP shall inform competitors that the apparent successful bidder will be required to submit MBE participation information to the grantee and that award of the contract will be conditioned upon satisfaction of the MBE requirements established by the grantee. IFB's and RFP's should be revised accordingly. In addition, the April 27, 1991, revision states that while the grantee may select the time at which the MBE participation information may be submitted, it must be submitted before award of the contract. Bidders should be aware of these timeframes through the IFB Package.

Thank you for your attention to the issues raised in this letter. We are looking forward to your responses. For information purposes, we enclose copies of the two revisions to the original regulation published during 1991. Should you have any questions, do not hesitate to contact Bill Fort, UMTA Region X Civil Rights Officer at (205)442-4210.

Sincerely,



Aubrey Davis
Regional Administrator

Enclosures



METROPOLITAN SERVICE DISTRICT
527 S.W. HALL ST., PORTLAND, OR. 97201, 503/221-1646

MEMORANDUM

Date: December 6, 1982

To: Council

From: Rick Gustafson, Executive Officer

Regarding: Administrative Revisions to Contract Procedures and the Minority Business Enterprise (MBE) Program

Earlier this year, local contractors expressed concern that the Metro MBE Program and contracting procedures unduly constrained the award of major construction contracts by Metro. In an effort to address possible problems Metro staff met with members of the construction community to discuss possible changes to the existing procedures.

Participants in the meeting were primarily concerned with standardization of bid documents and procedures; and revision of the MBE Program to allow for a "best effort" clause consistent with federal recommendations.

Several recommendations on both areas of concern were derived from the discussion. These were evaluated by staff and determined to be such that they could be implemented through Executive Orders.

Regarding the MBE program, only the policy statement and goals were adopted by the Council. The Council directed the Executive Officer to prepare a program to meet the policy. Therefore, as long as program revisions meet the Council's intent, administrative changes can be made. The same interpretation has been applied to revisions to the contract procedures. The ordinance adopting the procedures allows the Executive Officer to establish regulations not inconsistent with the adopted procedures.

Two Executive Orders were drafted for review and comment by the interested contractors, the Director of the Urban League and the editor of the Skanner. Their comments were incorporated into the final versions which are attached. Future discussions may result in additional changes or amendments.

Order No. 16 requires a standard format which assists bidders by providing some consistency and limits duplication of staff work. This order also specifies conditions under which a bid

Memorandum
December 6, 1982
Page Two

will be excluded from consideration. Contractors feel this insures fairness and avoids manipulation of the rules.

Order No. 15 replaces a mandatory MBE requirement with a "good faith best effort" clause. This approach is now required by the federal government due to the extensive litigation that has resulted from the mandatory requirement. In addition, this order allows MBE information to be submitted up to five days after bid opening.

These actions allow us to immediately address most of the concerns brought to our attention and to reflect changes in the federal regulations while we continue with a more comprehensive MBE program review.

RG/JS/srb
7148B/D2

EXECUTIVE ORDER NO. 15

Effective Date: December 7, 1982

Subject: Minority Business Enterprise Amendments

Legislative Authority: Ordinance No. 80-195

This Order amends Metro's Minority Business Enterprise (MBE) program as follows:

1. Metro will not perform MBE/WBE certifications. Metro will recognize any certification awarded by a jurisdiction or agency maintaining a federally approved MBE program.
2. The presumptive conclusion clause and procedure as described on pages 17, 28, 29 and 30 of Metro's MBE program as revised February 1981 are deleted.

The following language is substituted: "Prime contractors must demonstrate good faith best efforts in achieving MBE participation as listed under prime contractor responsibilities, page 18, Section 4. This "best effort" information and/or the following MBE information must be submitted to Metro by the apparent low responsible bidder within five (5) days after bid opening:

- a. name of firms
- b. principals
- c. address and telephone number
- d. scope of MBE/WBE work
- e. dollar value of subcontract; and
- f. MBE/WBE percentage of the contract and dollar value.

3. Best or good-faith efforts must include, but are not limited to:

- a. Advertisement in a trade association newsletter and through a minority-owned newspaper for at least 20 days before bids or proposals are due.
- b. Written notification to MBES that their interest in the contract is solicited.
- c. Effort to negotiate with MBES for specific sub-bids including the following:

- (1) the names, addresses, telephone numbers of all MBES contacted;
- (2) a description of the information provided to MBES regarding the plans and specifications for portions of the work to be performed; and
- (3) a statement of the reasons why additional prospective agreements with MBES if needed to meet the goal were not reached.

Metro will not award the contract until this information is provided."

The definitions for Minority, MBE and WBE are as follows:

MINORITY -- According to Title 49 Code of Federal Regulations Part 23.5 (amended December 10, 1981), a minority means a person who is a citizen or lawful permanent resident of the United States and who is: a) Black (a person having origins in any of the black racial groups of Africa); b) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race); c) Portuguese (a person of Portuguese, Brazilian, or other Portuguese culture or origin, regardless of race); d) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands); e) American Indian and Alaskan Native (a person having origins in any of the original people of North America); f) members of other groups, or other individuals, found to be economically and socially disadvantaged by the Small Business Administration under 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).

MINORITY BUSINESS ENTERPRISE (MBE) -- According to Title 49 Code of Federal Regulations Part 23 effective April 30, 1980, a "Minority Business Enterprise" or "MBE" signifies a small business concern, as defined pursuant to Section 3 of the Small Business Act and implementing regulations, which is owned and controlled by one or more minorities. For purposes of Metro's MBE Program, owned and controlled means a business:

- (a) Which is at least 51 percent owned by one or more minorities, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by one or more minorities; and
- (b) Whose management and daily business operations are controlled by one or more such individuals; more specifically one or more such minorities must also possess and exercise proprietary management control over the financial, planning, marketing, policy-making and operational matters of the business.

WOMEN-OWNED BUSINESS ENTERPRISE (WBE) -- For purposes of Metro's MBE Program, a WBE means a business:

- (a) Which is least 51 percent owned by one or more women or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
- (b) Whose management and daily business operations are controlled by one or more such individuals; more specifically one or more women must also possess and exercise proprietary management control over the financial, planning, marketing, policy-making and operational matters of the business.

A business owned and controlled by minority women is counted toward either the minority goal or the goal for women, but not to both.

To qualify as an MBE/WBE, a firm must be certified prior to bid opening.

Terms of this Order supersede any previous programs or policies on this matter.

Ordered by the Executive Officer this 7th day
of December, 1982.


Executive Officer

RG/JS/srb
6997B/D3
12/07/82

EXECUTIVE ORDER NO. 16

Effective Date: December 7, 1982

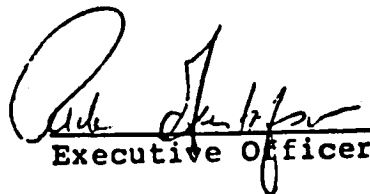
Subject: Clarification of Contract Procedures

Legislative Authority: Ordinance No. 82-130, Section 2(c)

Pursuant to Ordinance No. 82-130, Section 2(c), the following additions to the Metro contract procedures, Section IV(3), March 4, 1982, are hereby established:

1. All Metro bid documents will conform to a standard format as established by the Department of Finance and Administration;
2. Bid forms will be issued separately from bid documents;
3. A bid shall be excluded from consideration if:
 - a. the bid is not properly signed by the bidder;
 - b. the required and properly executed bid security is not attached to the bid;
 - c. the bid is not submitted on specified forms or the bid forms are altered by the bidder;
 - d. the bidder alters the bidding form regarding the time for commencement of the work or completion of the project;
 - e. the bidder refuses to comply with requirements for the submission of post-bid information that is a prerequisite for award of a contract;
 - f. the bid is submitted after the time advertised for submittal; or
 - g. the bidder was not prequalified though prequalification was required.
4. A bid may be excluded from consideration if:
 - a. a bid or any part of a bid is conditioned contrary to requirements specified in the bidding documents unless the bidder can prove impossibility;
 - b. items in the bid proposal are ignored by the bidder; or
 - c. the bidder has a provable major mistake in the bid requiring modification of the offer;
5. Where most or all bids contain similar violations of Section 3 above, the Executive Officer may award a contract to the lowest responsible bidder, notwithstanding the violation, if the violation can be corrected immediately following the bid opening and without increasing the amount of the bid. The purpose of this provision is to preclude the necessity of readvertising and rebidding a project due to similar technical bid violations by most or all bidders.

Ordered by the Executive Officer this 7th day
of December, 1982.


Executive Officer



METROPOLITAN SERVICE DISTRICT
527 S.W. HALL ST., PORTLAND, OR. 97201, 503/221-1646

MEMORANDUM

Date: February 3, 1983
To: Metro Council
From: Tom O'Connor, Legislative Liaison *T.O.*
Regarding: Public Contracting Legislation

The House Intergovernmental Relations Committee has moved forward two bills on public contracting for hearing Monday February 7th. These bills affect all local governments including Metro.

Under ORS 279.055 local governments including Metro are authorized to constitute themselves as a local contract review board. Such a board, may among other things, allow exemptions from competitive bidding on certain public contracts where such bidding would be inappropriate or would not result in the lowest cost.

HB 2062 sponsored by the House Interim Intergovernmental Relations Committee continues to allow local contract review boards, but states that the local board must be separate from the governing body. The local board may adopt rules based on local conditions, but such rules must be approved by the State Public Contract Review Board.

HB 2061 sponsored by the House Interim Intergovernmental Relations Committees funds the State Public Contract Review Board by requiring the successful bidder to pay one-half of one-tenth of one percent to the amount of the contract.

Note: The Governor has a bill (SB 190) which would abolish the State Public Contract Review Board, require local contract review boards, and have the Department of General Services assume the functions of the State Public Contract Review Board with respect to State agencies. The local contract review board could be the same as the governing body.

The League of Cities and Associated Oregon Counties have taken the position of opposing the new fees (HB 2061) and any reduction of local control (HB 2062).

Recommendation: Metro should support the position of the League of Cities and Associated Oregon Counties and seek to maintain local control over contracting as currently in State law.

House Bill 2061

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Intergovernmental, State and Federal Affairs)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Requires successful bidder on public contract to pay one-half of one-tenth of one percent of the amount of public contract to Public Contract Review Board Account. Establishes and appropriates account to board to meet operating expenses. Applies to all contracts awarded on and after effective date.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to public contracts; appropriating money; and declaring an emergency.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** Sections 2 and 3 of this Act are added to and made a part of ORS 279.011 to 279.061.

5 **SECTION 2.** Within 60 days after award of a public contract, the successful bidder shall pay over to the
6 Public Contract Review Board an amount equal to one-half of one-tenth of one percent of the contract price.

7 **SECTION 3.** The Public Contract Review Board Account is established in the General Fund of the State
8 Treasury. Amounts received by the Public Contract Review Board under section 2 of this 1983 Act shall be
9 paid into the State Treasury and credited to the account. All moneys in the account are appropriated
10 continuously and shall be used by the board for administrative expenses.

11 **SECTION 4.** The provisions of section 2 of this Act apply to all public contracts on which the bidding
12 process commences on and after the effective date of this Act.

13 **SECTION 5.** This Act being necessary for the immediate preservation of the public peace, health and
14 safety, an emergency is declared to exist, and this Act takes effect on its passage.

House Bill 2062

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Intergovernmental, State and Federal Affairs)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Authorizes all political subdivisions to establish local contract review boards. Requires local boards to use state rules unless local conditions justify otherwise. Authorizes public agencies within county to form joint local board. Authorizes Public Contract Review Board to impose civil penalties against public agencies that do not comply with law. Abolishes former city and county boards.

Declares emergency, effective July 1, 1983.

A BILL FOR AN ACT

1
2 Relating to public contracts; creating new provisions; amending ORS 279.011 and 279.055; and declaring an
3 emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 SECTION 1. ORS 279.011 is amended to read:

6 279.011. As used in ORS 279.011 to 279.061:

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

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17 SECTION 2. ORS 279.055 is amended to read:

18 279.055. [*Any city, any county and any metropolitan service district organized under ORS chapter 268 may*
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20 *any utility authorized under ORS chapter 225 may adopt a resolution creating its governing body as a local*
21 *contract review board for that city, county, district or utility. The local contract review board shall have all the*
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23 by ordinance or resolution, may create a local contract review board for that public agency. The local board shall
24 consist of a number of persons to be determined by the governing body of the public agency. The local board is
25 subject to ORS 192.610 to 192.690 as an entity separate from the public agency by which it is created. The local
26 board shall have all the powers of the Public Contract Review Board.

NOTE: Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

1 (2) Public agencies in a county may join together to form a joint local contract review board having
2 jurisdiction over contracts of all the public agencies which agree to join. The local budget committee without its
3 public members but with one public member appointed by the committee after it is authorized to act as the local
4 contract review board shall constitute the joint local board.

5 (3) When a public agency or agencies create a local contract review board, the agency or agencies shall cause a
6 copy of the ordinance or resolution under which the board is created to be filed with the Public Contract Review
7 Board.

8 (4) The local contract review board shall adopt rules consistent with the rules of the Public Contract Review
9 Board except where the Public Contract Review Board by rule authorizes variation based on local conditions. If a
10 local board seeks to adopt a local rule, it shall cause a copy of the rules to be filed with the Public Contract Review
11 Board and shall only implement the local rule after approval by the Public Contract Review Board.

12 SECTION 3. Any local contract review board formed by a public agency pursuant to ORS 279.055 before
13 the effective date of this Act shall terminate and cease to exist July 1, 1983.

14 SECTION 4. Sections 5 to 11 of this Act are added to and made a part of ORS 279.011 to 279.061.

15 SECTION 5. In addition to any other liability or penalty provided by law, the Public Contract Review
16 Board may impose a civil penalty on a public agency for any of the following:

17 (1) Violation of ORS 279.011 to 279.061.

18 (2) Violation of any rule or general order of the Public Contract Review Board that pertains to a public
19 contract.

20 SECTION 6. (1) Any civil penalty imposed under section 5 of this 1983 Act shall become due and payable
21 when the public agency incurring the penalty receives a notice in writing from the Public Contract Review
22 Board. The notice referred to in this section shall be sent by registered or certified mail and shall include:

23 (a) A reference to the particular sections of the statute, rule or order involved;

24 (b) A short and plain statement of the matters asserted or charged;

25 (c) A statement of the amount of the penalty or penalties imposed; and

26 (d) A statement of the public agency's right to request a hearing.

27 (2) The public agency to whom the notice is addressed shall have 10 days from the date of mailing of the
28 notice in which to make written application for a hearing before the Public Contract Review Board.

29 (3) All hearings shall be conducted pursuant to the applicable provisions of ORS 183.310 to 183.550.

30 SECTION 7. (1) After public hearing, the Public Contract Review Board by rule shall adopt a schedule
31 establishing the civil penalty that may be imposed under section 5 of this 1983 Act. However, the civil penalty
32 may not exceed \$_____ for each violation.

33 (2) The penalties assessed under subsection (1) of this section shall not exceed \$_____ in the aggregate
34 with respect to a single public agency within any 90-day period.

35 (3) A civil penalty imposed under this section may be remitted or reduced upon such terms and conditions
36 as the Public Contract Review Board considers proper and consistent with the public health and safety.

37 SECTION 8. In imposing a penalty pursuant to the schedule adopted pursuant to section 7 of this 1983 Act,
38 the Public Contract Review Board shall consider the following factors:

39 (1) The past history of the public agency incurring a penalty in taking all feasible steps or procedures
40 necessary or appropriate to correct any violation.

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House Bill 2062

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Intergovernmental, State and Federal Affairs)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Authorizes all political subdivisions to establish local contract review boards. Requires local boards to use state rules unless local conditions justify otherwise. Authorizes public agencies within county to form joint local board. Authorizes Public Contract Review Board to impose civil penalties against public agencies that do not comply with law. Abolishes former city and county boards.

Declares emergency, effective July 1, 1983.

A BILL FOR AN ACT

1
2 Relating to public contracts; creating new provisions; amending ORS 279.011 and 279.055; and declaring an
3 emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 279.011 is amended to read:

6 279.011. As used in ORS 279.011 to 279.061:

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NOTE: Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

- 1 (2) Any prior violations of statutes or rules by the public agency.
2 (3) The economic and financial conditions of the public agency incurring the penalty.
3 (4) The immediacy and extent to which the violation threatens the health, safety and well-being of the
4 public.

5 **SECTION 9.** (1) If the public agency notified fails to request a hearing within the time specified in section 6
6 of this 1983 Act, or if after a hearing the person is found to be in violation of a rule or order listed in section 5 of
7 this 1983 Act, an order may be entered by the Public Contract Review Board assessing a civil penalty.

8 (2) If the order is not appealed, the amount of the penalty is payable within 10 days after the order is
9 entered. If the order is appealed and is sustained, the amount of the penalty is payable within 10 days after the
10 court decision. The order, if not appealed or sustained on appeal, shall constitute a judgment and may be filed
11 in accordance with the provisions of ORS 18.320 to 18.370. Execution may be issued upon the order in the same
12 manner as execution upon a judgment of a court of record.

13 **SECTION 10.** Judicial review of civil penalties imposed under section 5 of this 1983 Act, shall be as
14 provided under ORS 183.480, except that the court may reduce the amount of the penalty.

15 **SECTION 11.** All penalties recovered under sections 5 to 10 of this 1983 Act shall be paid into the State
16 Treasury and credited to the General Fund.

17 **SECTION 12.** This Act being necessary for the immediate preservation of the public peace, health and
18 safety, an emergency is declared to exist, and this Act takes effect July 1, 1983.

PLEASE SIGN BELOW IF YOU PLAN TO TESTIFY AT THIS MEETING.

Date February 3, 1983 Meeting Title council

Name

Affiliation/Address

Ruth Bunnell, Audrey
Waykew, Sharon Carnish

E. E. O. # 312
Hillsboro Or 97123