

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING CHAPTER 2.04 ) ORDINANCE NO. 02-966A  
METRO CONTRACT POLICIES, OF THE METRO )  
CODE TO CONFORM TO THE METRO CHARTER )  
AMENDMENTS ADOPTED ON NOVEMBER 7, 2000, ) Introduced by the Council Governmental  
AND DECLARING AN EMERGENCY ) Affairs Committee

WHEREAS, on November 7, 2000, the electors of Metro approved Ballot Measure 26-10 amending the Metro Charter; and

WHEREAS, the Metro Charter Amendments, created the Office of Council President and abolished the Office of the Executive Officer; and

WHEREAS, the Metro Council amended Metro Code Chapter 2.01 to reflect the creation of the office of Metro Council President pursuant to Ordinance No. 02-954A on June 27, 2002; and

WHEREAS, the Metro Charter Amendments required the Metro Council to create the Office of the Chief Operating Officer; and

WHEREAS, the Metro Charter Amendments, added Metro Code Chapter 2.20 to create the office of Chief Operating Officer and to define the duties and responsibilities of the Chief Operating Officer, pursuant to Ordinance No. 02-942A on June 27, 2002; and

WHEREAS, the Metro Charter Amendments required the Council to create the Office of the Metro Attorney; and

WHEREAS, the Metro Council amended Chapter 2.08 of the Metro Code to create the office of the Metro Attorney and to define the duties and responsibilities of the Metro Attorney, pursuant to Ordinance No. 02-953A on June 27, 2002; and

WHEREAS, it is necessary to amend Chapter 2.04 of the Metro Code to conform to the Metro Charter Amendments adopted on November 7, 2000; and

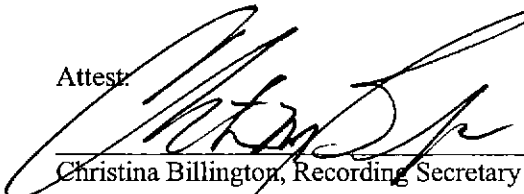
THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The Metro Code Chapter 2.04 Metro Contract Policies is amended as provided for and is attached as Exhibit A.
2. The Metro Charter Amendments to the Metro Code adopted by this ordinance shall take effect on January 6, 2003.
3. Effective January 6, 2003, any reference to the Executive Officer in any existing contract or agreement shall be deemed to be a reference to the Chief Operating Officer and the Chief Operating Officer has the authority to take any action under an existing contract or agreement that can be taken by the Executive Officer.

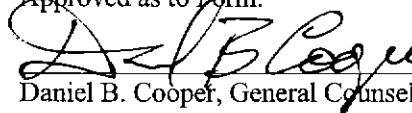
ADOPTED by the Metro Council this 21<sup>st</sup> day of November 2002.

  
\_\_\_\_\_  
Carl Hosticka, Presiding Officer

Attest:

  
\_\_\_\_\_  
Christina Billington, Recording Secretary

Approved as to Form:

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

**Exhibit A**  
**Metro Charter 2003 Amendments to Metro Code**  
**Chapter 2.04, Metro Contract Policies**

CHAPTER 2.04

METRO CONTRACT POLICIES

SECTIONS	TITLE
2.04.010	Definitions*
<b>CONTRACTS IN GENERAL</b>	
2.04.020	Authority to Award and Execute Contracts, Budget Limitations
2.04.022	Federal Law and Rules
2.04.024	Metropolitan Exposition-Recreation Commission
2.04.026	Council Approval of Contracts
2.04.028	Council Information Reports
2.04.030	Regulations
2.04.032	Prohibition Against Doing Business With Certain Former Metro Officials (repealed Ord. 99-822 §2)
<b>PERSONAL SERVICES CONTRACTS</b>	
2.04.040	Personal Services Contracts -- General
2.04.042	Personal Services Contracts Up to \$50,000
2.04.044	Personal Services Contracts of More than \$50,000
2.04.046	Personal Services Contract Amendments
2.04.048	Notice of Award and Appeals of Personal Services Contracts
<b>CONTRACT REVIEW BOARD</b>	
2.04.050	Public Contract Review Board
2.04.052	Public Contracts -- General
2.04.054	Competitive Bidding Exemptions
2.04.056	Public Contracts Up to \$50,000
2.04.058	Public Contract Amendments
2.04.060	Food Products
2.04.062	Sole Source
2.04.064	Sale of Surplus Property
2.04.070	Notice of Award and Appeals
<b>METRO ESB, MBE AND WBE PROGRAM</b>	
2.04.100	Findings
2.04.105	Policy Statement
2.04.110	Definitions
2.04.115	Program Administration
2.04.120	Program Activities
2.04.125	Directory (repealed Ord. 97-692A §10)
2.04.130	Minority-Owned Banks

---

\* Note: Former sections 2.04.010 to 2.04.090 were repealed by Ordinance No. 96-635B, Sec. 3, which created existing sections 2.04.010 to 2.04.070.

- 2.04.135 Affirmative Action and Equal Opportunity Procedures (repealed Ord. 97-692A §11)
- 2.04.140 Certification of Minority Business Eligibility (repealed Ord. 97-692A §11)
- 2.04.145 Annual Minority Business Goals (repealed Ord. 97-692A §11)
- 2.04.150 Good Faith Efforts at Maximizing ESB, MBE and WBE Opportunities
- 2.04.155 Contract Award Criteria (repealed Ord. 97-692A §13)
- 2.04.160 Definition and Determination of Good Faith Efforts (repealed Ord. 97-692A §13)
- 2.04.162 Contractor Work Force Efforts at Maximizing Minority and Women Opportunities
- 2.04.165 Replacement of ESB, MBE or WBE Subcontractors
- 2.04.170 Council Information Reports
- 2.04.180 Compliance (repealed Ord. 97-692A §18)
- 2.04.190 Severability and Intent
- 2.04.200-.290 (repealed Ord. 97-692A §22)

**METRO DISADVANTAGED BUSINESS ENTERPRISE PROGRAM FOR FEDERALLY-FUNDED CONTRACTS**

- 2.04.300 Disadvantaged Business Enterprise Program (DBE Program) for Federally-Funded Contracts, Findings, Purpose and Authority
- 2.04.305 Policy Statement
- 2.04.310 Definitions
- 2.04.315 Notice to Contractors, Subcontractors and Subrecipients
- 2.04.320 DBE Liaison Officer
- 2.04.325 Directory
- 2.04.330 DBE-Owned Banks
- 2.04.335 Affirmative Action and Equal Opportunity Procedures
- 2.04.340 Certification of Disadvantaged Business Eligibility
- 2.04.345 Annual Disadvantaged Business Goals
- 2.04.350 Contract Goals
- 2.04.355 Contract Award Criteria
- 2.04.360 Determination of Good Faith Efforts
- 2.04.365 Replacement of DBE Subcontractors
- 2.04.370 Records and Reports
- 2.04.375 Counting Disadvantaged Business Participation Toward Meeting Goals
- 2.04.380 Compliance and Enforcement

**METRO RECYCLED PRODUCT PROCUREMENT PROGRAM**

- 2.04.500 Policy Statement
- 2.04.510 Definitions
- 2.04.520 Recycled Products (Generally)
- 2.04.530 Recycled Content Paper Products
- 2.04.540 Recycled Oil
- 2.04.550 Compost Products
- 2.04.560 Retread Tires
- 2.04.570 Recycled Paint and Building Materials
- 2.04.580 Promotion and Evaluation of Recycled Content Product Procurement Plan

2.04.010 Definitions

For the purposes of this chapter unless the context requires otherwise the following terms shall have the meanings indicated:

(a) "Auditor" means the Metro Auditor provided for in Section 18 of the ~~1992 Metro~~ Charter.

~~(b)~~ "Chief Operating Officer" means the person holding the position of Chief Operating Officer established by Section 2.20.010 of the Metro Code.

~~(cb)~~ "Competitive bidding" means an advertised solicitation of sealed bids.

~~(de)~~ "Contract Review Board" or "Board" means the Metro Contract Review Board created pursuant to ~~S~~section 2.04.050 of this chapter.

~~(ed)~~ "Council ~~President~~Presiding Officer" means the Council President ~~council Presiding Officer~~ provided for in Section 16(4) of the ~~1992 Metro~~ Charter.

~~(fe)~~ "Emergency" means the occurrence of a specific event or events that could not have been reasonably foreseen and prevented, and which requires the taking of prompt action to remedy the condition and thereby avoid further physical damage or harm to individuals or the occurrence of avoidable costs.

~~(gf)~~ "Emergency contract" means a contract whose purpose is limited to remedying an emergency situation.

~~(g)~~ "Executive Officer" means the Metro Executive Officer provided for in Section 17 of the ~~1992 Metro~~ Charter.

(h) "Intergovernmental agreement" means a written agreement with any other unit or units of federal, state or local government providing for the acquisition of goods or services by Metro, for the provision of goods or services by Metro or for the payment or receipt of funds in order to promote or carry out a common purpose.

(i) "Notice of award" means written communication to a responsive, responsible bidder or proposer stating that their bid or proposal has been conditionally determined to be the lowest, responsive, responsible bid or most responsive proposal and that ~~the district~~ Metro intends to enter into a contract upon completion by the bidder/proposer of all required conditions.

(j) "Personal services contract" means any contract by which Metro acquires a professional, artistic, creative, consulting, educational, or management service. Contracts which are predominately for the purpose of obtaining a product, labor or materials, or the services of a construction trade are not a personal services contract.

(k) "Procurement Officer" means the person designated by the Chief Operating Officer ~~Executive Officer~~ to carry out the functions required of such person by this chapter.

(l) "Public agency" means any agency of the federal government, Sstate of Oregon, or any political subdivision thereof, authorized by law to enter into public contracts and any public body created by intergovernmental agreement.

(m) "Public contract" means any purchase, lease or sale by Metro of personal property, public improvement or services, including those transacted by purchase order, other than agreements which are for personal services.

(n) "Public improvement" means projects for construction, reconstruction or major renovation on real property by or for a public agency. "Public improvement" does not include emergency work, minor alteration, ordinary repair or maintenance in order to preserve a public improvement.

(o) "Request for Proposals or RFP" means the issuance of a request for offers that will be evaluated based on factors that are not limited to price alone.

(p) "Sole source contract" means a contract for which it can be documented there is only one qualified provider of the required service or material.

(Ordinance No. 96-635B, Sec. 3.)

## CONTRACTS IN GENERAL

### 2.04.020 Authority to Award and Execute Contracts, Budget Limitations

~~The Chief Operating Officer and Pursuant to the 1992 Metro Charter, the Executive Officer and Auditor have the authority to award and execute contracts that are necessary to carry out their administrative responsibilities. These two officers may delegate authority to award and execute contracts on their behalf by doing so in writing. The Auditor shall be subject to the same limitations and have the same authority as provided for the Chief Operating Officer by this Code Chapter. The council Presiding Officer is delegated authority to award and execute contracts on behalf of the council. Unless the Council expressly approves a contract containing a requirement to the contrary, no contract may obligate Metro to the payment of funds not appropriated for that purpose by the Council.~~

(Ordinance No. 96-635B, Sec. 3.)

### 2.04.022 Federal Law and Rules

Notwithstanding any provision of this chapter, the applicable federal laws, rules and regulations shall govern in any case where federal funds are involved and the federal laws, rules and regulations conflict with any of the provisions of this chapter or require additional conditions in public or personal services contracts not authorized by this chapter.

(Ordinance No. 96-635B, Sec. 3.)

### 2.04.024 Metropolitan Exposition-Recreation Commission

The Metropolitan Exposition-Recreation Commission has authority to enter into contracts pursuant to Metro Code Section 6.01.040(j). Notwithstanding any provision of this chapter to the contrary, the Commission may without the prior approval of the Chief Operating Officer Executive Officer enter into contracts in any amount in accordance with contracting rules adopted by the Commission pursuant to the authority contained in Section 6.01.040(j). However, the Contract Review Board created pursuant to Section 2.04.050 shall be the contract review board for the Commission.

(Ordinance No. 96-635B, Sec. 3.)

## 2.04.026 Council Approval of Contracts

(a) Notwithstanding any other provisions of this chapter, the Chief Operating Officer, Metro Attorney, Executive Officer or Auditor must obtain authorization by the Council prior to execution of the following types of contracts:

- (1) Any contract which commits the ~~district~~ Metro to the expenditure of appropriations not otherwise provided for in the current fiscal year budget at the time the contract is executed and which has a significant impact on Metro. The following types of contracts shall be considered to have significant impacts unless the Council finds that under the circumstances a contract will not have a significant impact:
  - (A) Any public contract for a term greater than 12 months for private operation of all or of a major part of a Metro facility or concessions at a Metro facility.
  - (B) Any public improvement contract for an amount over \$50,000.
  - (C) Any public contract which will potentially result in a material (more than 5 percent of the related fund) loss of revenues or increase in expenditures in more than one year in any Metro fund.
  - (D) Any contract for personal services for a term greater than 12 months and in an amount greater than \$50,000.
  - (E) Any contract for personal services for an amount greater than \$50,000 related to Metro's exercise of its regional planning functions pursuant to Section 5 of the 1992-Metro Charter.
  - (F) Any contract for personal services for an amount over \$50,000 related to the study by Metro of exercising authority, pursuant to Section 7 of the 1992-Metro Charter, over additional functions.
- (2) Any agreement entered into pursuant to ORS Chapter 190 by which Metro acquires or transfers any interest in real property, assumes any function or duty of another governmental body, or transfers any function or duty of Metro to another governmental unit; or
- (3) Any contract for the purchase, sale, lease or transfer of real property owned by Metro. However, the Chief Operating Officer, Executive Officer may execute options to purchase real property.

(b) Prior to adoption of the annual budget, the Chief Operating Officer, Executive Officer shall submit a list of proposed contracts over \$50,000 to be entered into during the next fiscal year. The Council shall designate in the annual budget ordinance which contracts have a significant impact on Metro.

Thereafter, if the ~~Chief Operating Officer Executive Officer~~ proposes to enter into a contract that will commit ~~the district~~ Metro to the expenditure of appropriations not provided for in the current fiscal year budget in an amount greater than \$50,000 that the Council has not considered during the annual budget process, the ~~Chief Operating Officer Executive Officer~~ shall inform the Council President ~~council Presiding Officer~~ in writing and shall recommend whether the contract should be classified as a significant impact contract. The Council President ~~Presiding Officer~~ shall immediately cause copies of the notice to be furnished to all members of the Council. The Council may determine that the contract has a significant impact on Metro within 10 days of receipt of the notice from the ~~Chief Operating Officer Executive Officer~~. If the contract is determined by the Council to have a significant impact on Metro, execution by the ~~Chief Operating Officer Executive Officer~~ shall be subject to Council authorization. If the Council does not determine that the contract has a significant impact on Metro, the ~~Chief Operating Officer Executive Officer~~ may execute the contract after transmitting a description of the purpose of the contract, the appropriation to which contract payments will be charged, and a summary of the scope of work to be performed to the Council or a Council committee as deemed appropriate by the Council President ~~Presiding Officer~~.

(c) All contracts which require Council authorization pursuant to subsection (a)(1) or (b) above and which are subject to competitive bidding or Request for Proposals procedures shall require Council authorization of the request for bids or Request for Proposals prior to release of bidding or proposal documents to vendors. At the time of Council authorization of the competitive bid or Request for Proposal documents, the Council may waive the requirement of Council authorization of the contract.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 99-822, Sec. 1.)

#### 2.04.028 Council Information Reports

The ~~Chief Operating Officer Executive Officer~~ shall provide a monthly report to Council showing all contracts awarded and amended during the preceding month.

The ~~Chief Operating Officer Executive Officer~~ shall make available to the Council on request information showing the status of all contracts whether listed in the adopted budget or not.

(Ordinance No. 96-635B, Sec. 3.)

#### 2.04.030 Regulations

The ~~Chief Operating Officer Executive Officer~~ may establish by executive order additional regulations consistent with this chapter.

(Ordinance No. 96-635B, Sec. 3.)

### **PERSONAL SERVICES CONTRACTS**

#### 2.04.040 Personal Services Contracts -- General

(a) Disadvantaged Business Program. All contracting for personal services is subject to the Metro Disadvantaged Business Enterprise Program for Federally-Funded Contracts, Metro Women



Business Enterprise Program, and the Metro Minority Business Enterprise Program provisions of this chapter.

(b) Substantive Requirements. All Metro personal services contracts shall contain all provisions required by ORS Chapter 279 and shall be construed to be consistent with all relevant provisions of ORS Chapter 279.

(Ordinance No. 96-635B, Sec. 3.)

#### 2.04.042 Personal Services Contracts Up to \$50,000

(a) For personal services contracts of less than \$5,000, multiple proposals are not required, but shall be encouraged.

(b) For personal services contracts of \$5,000 or more but not more than \$50,000, proposals shall be solicited from a minimum of three (3) potential contractors who are capable and qualified to perform the requested work. Metro shall keep a written record of the source and amount of the quotes received. If three (3) quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes. In addition, the contracting department shall notify the procurement officer of the nature of the proposed contract, the estimated cost of the contract, and the name of the contact person.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 97-692A, Sec. 20; Ordinance No. 99-822, Sec. 3.)

#### 2.04.044 Personal Services Contracts of More than \$50,000

Personal services contracts of \$50,000 shall be subject to the following process:

(a) A Request for Proposal(s) shall be prepared and advertised at least once. Notice shall also be mailed to interested contractors known to Metro.

(b) All requests for proposals shall at a minimum contain a description of the project and a brief summary of the project history, contain a detailed proposed scope of work or other specifications setting forth expected performance by the contractor, include a description of the criteria that will be utilized to evaluate proposals and a broad range of the estimated cost for the project.

(c) Evaluations of proposals and the determination of the most qualified proposer shall be made.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 99-822, Sec. 4.)

#### 2.04.046 Personal Services Contract Amendments

(a) Personal services contracts of an initial amount of \$25,000 or less may be amended to increase the amount of the contract to no more than twice the original contract amount. This limit is cumulative and includes any and all contract amendments or extensions. Any contract amendment(s) in excess of this ceiling requires approval by the Council. The Council shall determine whether it is appropriate to amend the contract despite the policy that favors competitive procurement of personal services.

(b) Contracts with an initial amount of greater than \$25,000 may be amended provided that any amendment that increases the total amount payable to an amount more than \$50,000 greater than the initial contract amount shall be subject to approval by the Council. The Council shall determine whether it is appropriate to amend the contract despite the policy that favors competitive procurement of personal services.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 99-822, Sec. 5.)

2.04.048 Notice of Award and Appeals of Personal Services Contracts

Notice of award and any appeal thereof shall be subject to the rules and procedures established in Section 2.04.070 except that the final determination of any appeal shall be made by the Council and not the Contract Review Board.

(Ordinance No. 96-635B, Sec. 3.)

**CONTRACT REVIEW BOARD**

2.04.050 Public Contract Review Board

(a) Creation of the Public Contract Review Board. Pursuant to ORS 279.055 the Metro Council is designated and created as the Metro Contract Review Board.

(b) Powers of Board. The Metro Contract Review Board shall have all the powers provided to a contract review board by ORS Chapter 279.

(c) Contract Review Board Meetings

- (1) The meetings of the Contract Review Board shall normally, but need not, be conducted at the same time as, and as a part of, the regular meetings of the Metro Council.
- (2) The rules of procedure adopted by the Council for its proceedings shall also govern proceedings of the Contract Review Board unless they conflict with rules adopted by the Board.

(Ordinance No. 96-635B, Sec. 3.)

2.04.052 Public Contracts -- General

(a) State Law Requirements, Procedures.

- (1) The procedures for competitive bidding of all Metro public contracts and for the issuance of competitive Request for Proposals when authorized as an exception to competitive bid requirements shall comply with all requirements that are generally applicable to local governments.

- (2) Notwithstanding the provisions of this subsection (a)(1), the model rules adopted by the Oregon Attorney General shall not apply to Metro.
- (3) The Chief Operating Officer ~~Executive Officer~~ may establish by executive order detailed procedural requirements consistent with this chapter and state law. In so doing, the Chief Operating Officer ~~Executive Officer~~ may adopt in whole or in part the model rules of procedure established by the Oregon Attorney General pursuant to ORS 279.049.

(b) Substantive Requirements. All Metro public contracts shall contain all provisions required by ORS ~~C~~chapter 279 and shall be construed to be consistent with all provisions of ORS ~~C~~chapter 279.

(c) Rejection of Bids. The Chief Operating Officer ~~Executive Officer~~ may reject any bid or proposal not in compliance with all prescribed procedures and requirements and may, for good cause, reject any or all bids or proposals upon finding that it is in the public interest to do so.

(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 \$25,000 or less.
- (2) For public improvements, a labor and materials bond and a performance bond, both in an amount equal to 100 percent of the contract price are required for contracts over \$25,000.
- (3) 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 Chief Operating Officer ~~Executive Officer~~ determines it is in the public interest.

(e) Disadvantaged Business Program. All public contracts are subject to the Metro Disadvantaged Business Enterprise Program for Federally-Funded Contracts, Metro Women Business Enterprise Program, and the Metro Minority Business Enterprise Program provisions of this chapter.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 99-822, Sec. 6.)

#### 2.04.054 Competitive Bidding Exemptions

Subject to the policies and provisions of ORS 279.005 and 279.007, and the Metro Code, all Metro and Metropolitan Exposition-Recreation Commission public contracts shall be based upon competitive bids except:

(a) State Law. Classes of public contracts specifically exempted from competitive bidding requirements by state law.

(b) Board Rule. The following classes of public contracts are exempt from the competitive bidding process based on the legislative finding by the Board that the exemption will not encourage

favoritism or substantially diminish competition for public contracts and that such exemptions will result in substantial cost savings:

- (1) All contracts estimated to be not more than \$50,000 provided that the procedures required by Section 2.04.056 are followed.
- (2) Purchase and sale of zoo animals, zoo gift shop retail inventory and resale items, and any sales of food or concession items at Metro facilities.
- (3) Contracts for management and operation of food, parking or similar concession services at Metro facilities provided that procedures substantially similar to the procedures required for formal Request for Proposals used by Metro for personal services contracts are followed.
- (4) Emergency contracts provided that written findings are made that document the factual circumstances creating the emergency and establishing why the emergency contract will remedy the emergency. An emergency contract must be awarded within 60 days of the declaration of the emergency unless the Board grants an extension.
- (5) Purchase of food items for resale at the Oregon Zoo provided the provisions of Section 2.04.060 are followed.
- (6) Contracts for warranties in which the supplier of the goods or services covered by the warranty has designated a sole provider for the warranty service.
- (7) Contracts for computer hardware and software provided that procedures substantially similar to the procedures required for formal Request for Proposals used by Metro for personal services contracts are followed.
- (8) Contracts under which Metro is to receive revenue by providing a service.
- (9) Contracts for the lease or use of the convention, trade, and spectator buildings and facilities operated by the Metro Exposition-Recreation Commission.
- (10) Public contracts by the Metro Exposition-Recreation Commission in an amount less than \$75,000, which amount shall be adjusted each year to reflect any changes in the Portland SMSA CPI, provided that any rules adopted by the commission which provide for substitute selection procedures are followed.
- (11) Contracts for equipment repair or overhaul, but only when the service and/or parts required are unknown before the work begins and the cost cannot be determined without extensive preliminary dismantling or testing.
- (12) Contracts in the nature of grants to further a Metro purpose provided a competitive Rrequest for Pproposal process is followed.

- (13) The procurement of utilities, including telephone service, electric, natural gas, and sanitary services, provided that competition is available and a Rrequest for Pproposal process is followed.
- (14) The procurement of art and art related production and fabrication provided that a Rrequest for Pproposal process is followed.
- (15) Sponsorships which are identified and approved in the proposed budget and are not designated by Council as having a significant impact as outlined in Section 2.04.026 need not follow a competitive bidding or proposal process. In order to be eligible for this exemption the sponsorship shall provide Metro with event advertising and/or media releases.

(c) Board Resolution. Specific contracts, not within the classes exempted in subsections (a) and (b) above, may be exempted by the Bboard by resolution subject to the requirements of ORS 279.015(2) and ORS 279.015(5). The Bboard shall, where appropriate, direct the use of alternate contracting and purchasing practices that take account of market realities and modern innovative contracting and purchasing methods, which are consistent with the public policy of encouraging competition.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 97-677B, Sec. 2; Ordinance No. 98-768, Sec. 2; Ordinance No. 99-822, Sec. 7.)

2.04.056 Public Contracts Up to \$50,000

(a) Under \$5,000. For public contracts of less than 5,000, competitive bids are not required but shall be encouraged.

(b) Between \$5,000 and \$50,000. For public contracts of \$5,000 or more but not more than \$50,000, Metro shall obtain a minimum of three (3) competitive quotes. Metro shall keep a written record of the source and amount of the quotes received. If three (3) quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes. In addition, the contracting department shall notify the procurement officer of the nature of the proposed contract, the estimated cost of the contract, and the name of the contact person.

(c) Contracts under \$50,000 should be awarded on the basis of the least cost alternative available that is capable of performing the work required.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 97-692A, Sec. 21; Ordinance No. 99-822, Sec. 8.)

2.04.058 Public Contract Amendments

(a) The Chief Operating Officer ~~Executive Officer~~ may execute amendments to public contracts which were not designated as contracts having a significant impact on Metro, provided that any one of the following conditions are met:

- (1) The original contract was let by a formal competitive procurement process, the amendment is for the purpose of authorizing additional work for which unit prices or alternates were provided that established the cost for the additional

work and the original contract governs the terms and conditions of the additional work; or

- (2) The amendment is a change order that resolves a bona fide dispute with the contractor regarding the terms and conditions of a contract for a public improvement and the amendment does not materially add to or delete from the original scope of work included in the original contract; or
- (3) The amount of the aggregate cost increase resulting from all amendments does not exceed 20 percent of the initial contract if the face amount is less than or equal to \$1,000,000 or 10 percent if the face amount is greater than \$1,000,000; amendments made under subsection (1) or (2) are not included in computing the aggregate amount under this subsection; or
- (4) The Metro Contract Review Board has authorized the extension of the contract amendment.

(b) No contract which was designated as a contract having a significant impact on Metro may be amended without the express approval of the Council evidenced by a duly adopted resolution or ordinance; except as follows:

- (1) The Chief Operating Officer ~~Executive Officer~~ may approve any amendment that is a change order that resolves a bona fide dispute with the contractor regarding the terms and conditions of a contract for a public improvement if the amendment does not materially add to or delete from the original scope of work included in the original contract. Provided, however, the Chief Operating Officer ~~Executive Officer~~ must obtain Council approval for any such change order that results in a total aggregate increase of more than 5 percent of the original contract amount. If the Council approves a change order pursuant to this subsection it may also in the same action authorize additional change orders to resolve future disputes in an amount not to exceed that established by the Council.
- (2) The Chief Operating Officer ~~Executive Officer~~ may approve any contract amendment to a contract for a public improvement that does not increase the contract amount more than \$25,000 if the amount of the aggregate cost resulting from all amendments authorized pursuant to this subsection does not exceed 5 percent of the initial contract. In computing the dollar amount of any amendment for the purpose of this subsection, only the amount of additional work or extra cost shall be considered and may not be offset by the amount of any deletions.
- (3) The Chief Operating Officer ~~Executive Officer~~ may approve a change order for additional work if the original contract was let by a formal competitive procurement, the amendment is for the purpose of authorizing additional work for which unit prices or bid alternates were provided that established the cost for the additional work and the original contract governs the terms and conditions of the additional work.
- (4) The Chief Operating Officer ~~Executive Officer~~ may approve a change order to a public improvement contract in order to meet an emergency.

(c) No public contract may be amended to include additional work or improvements that are not directly related to the scope of work that was described in the competitive process utilized to award the contract.

(d) For the purpose of this section any contract which was subject to specific Council authorization of its execution prior to the effective date of this ordinance shall be considered to be a contract that has a significant impact on Metro.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 99-822, Sec. 9.)

#### 2.04.060 Food Products

(a) All food items and food service contracts will be procured through competitive bidding, except as provided in sections (b) through (d) below.

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

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

- (1) The use of a specific recipe provided and/or developed in conjunction with a Metro department; or
- (2) The use of a proprietary recipe or formula which is the property of a vendor.

(d) Purchases of groceries, meat, poultry, and produce may be limited to vendors who have been prequalified. The Chief Operating Officer ~~Executive Officer~~ shall establish prequalification procedures that ensure competition and fairness.

(Ordinance No. 96-635B, Sec. 3.)

#### 2.04.062 Sole Source

If there is only one qualified provider of the service required, the initiating department need not solicit and document proposals. The initiating department must document that there is only one qualified provider of the service required. Sole source contracts may not exceed \$2,500 unless the Board shall have specifically exempted the contract from the public bidding or applicable alternative procurement procedure.

(Ordinance No. 96-635B, Sec. 3.)

#### 2.04.064 Sale of Surplus Property

Contracts for sale of surplus property may be executed without competitive oral or sealed bids only when the Chief Operating Officer ~~Executive Officer~~ determines in writing that the number, value and nature of the items to be sold make it probable that the cost of conducting a sale by bid will be such that a liquidation sale will result in substantially greater net revenue to Metro.

(Ordinance No. 96-635B, Sec. 3.)

2.04.070 Notice of Award and Appeals

(a) At least five (5) days prior to the execution of any public contract over \$50,000 for which a competitive bid or proposal process is required, Metro shall provide a notice of award to the contractor selected and to all contractors who submitted unsuccessful bids or proposals.

(b) Bid/Request for Proposals Appeal Procedures. The following procedure applies to aggrieved bidders and proposers who wish to appeal an award of a public contract or a personal services contract above \$50,000. The appeal process for bids is the same as for a Request for Proposals. In the case of a Request for Proposal(s), disagreement with the judgment exercised in scoring by evaluators is not a basis for appeal.

- (1) All appeals shall be made in writing and shall be delivered to the procurement officer at Metro's main office within five (5) working days of the postmarked date on the notice of award. The written appeal must describe the specific citation of law, rule, regulation, or procedure upon which the appeal is based.
- (2) The procurement officer shall forthwith notify the appropriate Department Director and the Chief Operating Officer ~~Executive Officer~~ of the appeal. In the case of an appeal of an award by a Commission or the Metro Auditor, the appeal shall be forwarded to the Commission or Metro Auditor. Within 10 working days of the receipt of the notice of appeal, the Chief Operating Officer, Commission or Metro Auditor ~~Executive Officer~~ shall send a notice of rejection of the appeal or a notice of acceptance of the appeal, as applicable, to the appellant. The appellant may appeal the Chief Operating Officer's, Commission's, or Metro Auditor's ~~Executive Officer's~~ decision to reject the appeal in writing to the Board within five (5) working days from the postmarked date on the notice of rejection.
- (3) The Board will review the grounds for appeal, all pertinent information, and the Chief Operating Officer's, Commission's or Metro Auditor's ~~Executive Officer's~~ recommendation, and make a decision. The decision of the Board is final.
- (4) No contract, which is the subject of a pending appeal, may be executed unless the Board shall have given its approval. ~~at the request of the Executive Officer.~~ The Chief Operating Officer, Commission or Metro Auditor ~~Executive Officer~~ may request the Board to determine a matter without waiting for the expiration of the time periods provided for herein.
- (5) In the event Council authorization of execution of the contract is required under Section 2.04.026 of this Code the appeal shall be heard before the Council considers authorization of the contract.

(c) Appeals from Disqualifications

- (1) The Board shall hear all appeals from any person who is disqualified by Metro as a bidder. The basis for the appeal shall be limited to the following grounds:



- (A) Disqualification of bidder pursuant to ORS 279.037.
- (B) Denial of prequalification to bid pursuant to ORS 279.039 and 279.041.
- (2) Any person who wishes to appeal disqualification as a bidder shall, within three (3) business days after receipt of notice of disqualification, notify in writing the ~~Metro Attorney General Counsel~~ that the person appeals the disqualification. ~~The Metro Attorney General Counsel~~ shall promptly notify the Bboard of the appeal by providing notice to the ~~Council President~~ Presiding Officer.
- (3) Promptly upon receipt of notice of appeal, the ~~Council President~~ Presiding Officer shall notify the appellant and the ~~Metro Attorney General Counsel~~ of the time and place of the appeal proceeding.
- (4) The Bboard shall conduct the appeal proceeding and decide the appeal within 10 days after receiving notification of the appeal from the ~~Metro Attorney General Counsel~~. The Bboard shall set forth in writing the reasons for the decision.
- (5) Appeal Proceeding.
  - (A) The ~~Council President~~ Presiding Officer shall preside over the appeal proceeding. The general order shall be as follows:
    - (i) Presentation by Metro of documentation and testimony supporting the disqualification.
    - (ii) Presentation by the appellant of documentation and testimony opposing the disqualification.
  - (B) Members of the Bboard shall have the right to ask both Metro and the appellant questions and to review documentation referred to and presented by the parties.
  - (C) Formal court rules of evidence shall not apply.
  - (D) The Bboard shall consider de novo the notice of disqualification, and record of investigation made by Metro and any evidence provided by Metro and the appellant prior to or at the appeal proceeding. There shall be no continuance or reopening of the appeal proceeding to offer additional evidence unless the appellant can demonstrate to the ~~Council President~~ Presiding Officer that the additional evidence was not known to the appellant at the time of the proceeding or that with reasonable diligence the appellant would not have discovered the evidence prior to the appeal proceeding.
  - (E) A tape recording will be made of the appeal proceeding which shall be made available to the appellant upon payment of costs to Metro of making the tape.

(F) The Board shall render a decision which shall be reviewed only upon petition in the Circuit Court of Multnomah County. The petition must be filed within 15 days after the date of the decision.

(6) Metro may reconsider its determination with regard to the disqualification at any time prior to the appeal proceeding.

(d) Appeals of contract awards and decisions of the Auditor shall be made directly to the Contract Review Board.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 99-822, Sec. 10.)

## **METRO ESB, MBE AND WBE PROGRAM**

### **2.04.100 Findings**

(a) The Metro Council finds:

- (1) The opportunity for full participation in our free enterprise system by emerging small businesses, minorities and women owned businesses is essential;
- (2) Greater economic opportunity for emerging small businesses, minorities and women owned businesses is essential;
- (3) Historical patterns of exclusion and discrimination against racial or ethnic groups and women resulted in unfortunate effects of social, political and economic inequity that still exist;
- (4) It is in the best interest of Metro and the community to do business with emerging small businesses, minority and women owned businesses resulting in increased competition and a stronger local economy;
- (5) In cooperation with the private sector, the affected populations, interested groups and appropriate governmental entities, a program should be established to recommend remedies.

(b) It is the purpose of this policy to establish and implement a program to encourage the utilization by Metro of emerging small businesses, minority and women owned businesses, to the greatest extent permitted by law, by creating for such businesses the maximum possible opportunity to compete for and participate in locally-funded Metro contracting activities. This program does not apply to federally-funded contracts, which are governed by Metro Code 2.04.300, et seq.

(Ordinance No. 83-165, Sec. 1; amended by Ordinance No. 84-181, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; repealed by Ordinance No. 97-692A, Sec. 1; replaced by Ordinance No. 97-692A, Sec. 2)

#### 2.04.105 Policy Statement

(a) Metro expresses its strong commitment to provide maximum opportunity to do business with ESBs, MBEs and WBEs.

(b) It is the policy of Metro to provide equal opportunity to all persons to access and participate in the locally-funded projects, programs and services of Metro. Metro and Metro contractors shall not discriminate against any person or firm on the basis of race, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status.

(Ordinance No. 83-165, Sec. 2; amended by Ordinance No. 84-181, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; amended by Ordinance No. 97-692A, Sec. 3)

#### 2.04.110 Definitions

For purposes of Metro Code Sections 2.04.100 to 2.04.190, unless the context requires otherwise, the following definitions shall apply:

(a) "Department" means the State of Oregon's Department of Consumer and Business Affairs or such state agency, department or entity to which has been delegated the responsibility to certify a Emerging Small Business Enterprise, Minority Business Enterprise, Women Business Enterprise, or a Disadvantaged Business Enterprise and to engage in related activities.

(b) "Emerging Small Business Enterprise" or "ESB" means a small business concern which is certified as such by the Department.

(c) "Minority Business Enterprise" or "MBE" means a business concern which is certified as such by the Department.

(d) "Women Owned Business Enterprise" or "WBE" means a business concern which is certified as such by the Department.

(Ordinance No. 165, Sec. 3; amended by Ordinance No. 84-181, Sec. 2; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; and Ordinance No. 88-252, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; amended by Ordinance No. 96-635B, Sec. 4.; repealed by Ordinance No. 97-692A, Sec. 4; replaced by Ordinance No. 97-692A, Sec. 5)

#### 2.04.115 Program Administration

(a) The ~~Chief Operating Officer Executive Officer~~ shall be responsible for administering this program. The ~~Chief Operating Officer Executive Officer~~ may, by executive order, designate a Program Coordinator and, if necessary, other staff adequate to administer this program on the executive's behalf.

(b) In administering this program, the ~~Chief Operating Officer Executive Officer~~ shall advise potential ESB, MBE and WBE vendors that Metro does not certify ESBs, MBEs and WBEs, and shall direct them to the Department.

(Ordinance No. 83-165, Sec. 4; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; repealed by Ordinance No. 97-692A, Sec. 6; replaced by Ordinance No. 97-692A, Sec. 8)

#### 2.04.120 Program Activities

The ~~Chief Operating Officer~~ ~~Executive Officer~~ shall direct staff to develop procedures in the following areas leading to increased business with ESBs, MBEs, and WBEs:-

- (a) Outreach. Such procedures may include electronic notices, telephone hotlines, annual contract lists, newsletters, regularly-scheduled contractor orientation programs, and participation in regional outreach opportunities.
- (b) Technical Assistance. Provide information on feasible options for management assistance, bonding, insurance, and financial assistance.
- (c) Reduce Contract Size. Examining alternatives for arranging contracts by size and type of work so as to enhance the possibility of participation by ESBs, MBEs and WBEs.
- (d) Education. Periodic training for staff to ensure awareness of program objectives and desired activities on their part.
- (e) Plan Centers. Ensuring ESB, MBE and WBE plan centers and contractors are receiving requests for bids, proposals and quotes.
- (f) Advertising. Advertise formal purchases and contracting opportunities in at a minimum, one newspaper of general circulation and one minority-oriented publication.
- (g) Informal Purchasing Opportunities. Requiring that at least one ESB and one MBE and one WBE vendor or contractor be contacted for all purchases and contracts more than \$2,500 and less than \$25,000. The program coordinator may waive this requirement if he/she determines that there are no certified ESBs, MBEs and WBEs on the certification list capable of providing the service or item. Any such waivers shall be in writing, and shall be kept as supporting documentation.
- (h) Informal Construction Opportunities. Requiring all construction opportunities for contracts more than \$2,500 and less than \$25,000 to be bid only by qualified ESBs, MBEs and WBEs. The ~~Chief Operating Officer~~ ~~Executive Officer~~ may waive this requirement if he/she determines that there are no certified ESBs, MBEs and WBEs on the certification list capable of providing the project needed. Any such waivers shall be in writing, and shall be kept as supporting documentation.
- (i) The program coordinator may establish and implement additional techniques which are consistent with this Program and designed to facilitate participation of ESBs, MBEs and WBEs in Metro purchasing and contracting activities.

(Ordinance No. 83-165, Sec. 5; amended by Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; repealed by Ordinance No. 97-692A, Sec. 7; replaced by Ordinance No. 97-692A, Sec. 9)

#### 2.04.130 Minority-Owned Banks

Metro will seek to identify minority-owned banks and banks utilizing equal opportunity banking practices, including community reinvestment, and, to the greatest extent permitted by law, use their services. In addition, Metro will encourage prime contractors, subcontractors and consultants to utilize such services by sending them brochures and service information on such banks.

(Ordinance No. 83-165, Sec. 7; amended by Ordinance No. 84-181, Sec. 3; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2)

#### 2.04.150 Good Faith Efforts at Maximizing ESB, MBE and WBE Opportunities

The ~~Chief Operating Officer~~ ~~Executive Officer~~ shall establish procedures relating to good faith opportunities for major construction projects. Procedures shall be consistent in nature and scope with those of other local public bodies for ease in understanding for contractors.

(a) Good faith efforts for maximizing ESB, MBE and WBE opportunities shall be required for construction contracts in an amount determined by the ~~Chief Operating Officer~~ ~~Executive Officer~~.

(b) At the discretion of the program coordinator, good faith efforts may be required for any other contract, including architects and engineers. This requirement shall be made in writing prior to the solicitation of bids for such contract.

(c) When construction projects using a proposal process are approved by ~~C~~ouncil, the staff shall consider past ESB, MBE and WBE utilization as part of the selection criteria. The program coordinator shall provide the awarded contractor with ESB, MBE and WBE targets for subcontracting.

(d) Compliance with good faith efforts is required. Contractors failing to comply will be considered in breach of contract.

(Ordinance No. 83-165, Sec. 11; repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; Ordinance No. 88-252, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; amended by Ordinance No. 97-692A, Sec. 12)

#### 2.04.162 Contractor Work Force Efforts at Maximizing Minority and Women Opportunities

(a) Metro contractors shall not discriminate against any person or firm on the basis of race, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status.

(b) Assuring that minorities and women have access to employment opportunities in the construction industry is critical. The ~~Chief Operating Officer~~ ~~Executive Officer~~ shall establish procedures relating to work apprenticeships for minorities and women for Metro major construction projects. Procedures may include participation in a workforce clearing house providing opportunities for minorities and women.

(Ordinance No. 97-692A, Sec. 14-15.)

2.04.165 Replacement of ESB, MBE or WBE Subcontractors

Prime contractors shall not replace an ESB, MBE or WBE subcontractor with another subcontractor, either before contract award or during contract performance, without prior notice to Metro. Prime contractors who replace an ESB, MBE or WBE subcontractor shall make good faith efforts as described in the preceding section in selecting a replacement.

(Ordinance No. 83-165, Sec. 14; amended by Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; amended by Ordinance No. 97-692A, Sec. 28)

2.04.170 Council Information Reports

The ~~Chief Operating Officer Executive Officer~~ shall provide an annual report to ~~Council~~ showing utilization of ESBs, MBEs and WBEs doing business with Metro.

The ~~Chief Operating Officer Executive Officer~~ shall use utilization when evaluating the performance of this program and ~~Department Directors~~.

(Ordinance No. 83-165, Sec. 15; amended by Ordinance No. 84-181, Sec. 7, and Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; repealed by Ordinance No. 97-692A, Sec. 16; replaced by Ordinance No. 97-692A, Sec. 17)

2.04.190 Severability and Intent

(a) The provisions of Metro Code ~~S~~sections 2.04.100 to 2.04.190 shall be effective in all cases unless otherwise provided for by state or federal law. The provisions of Metro Code ~~S~~sections 2.04.100 to 2.04.190 are separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of Metro Code ~~S~~sections 2.04.100 to 2.04.190 or the invalidity of the application thereof to any person or circumstances shall not affect the validity of the remainder of Metro Code ~~S~~sections 2.04.100 to 2.04.190, or the validity of their application to other persons or circumstances.

(b) Metro Code ~~S~~sections 2.04.100 to 2.04.190 are intended, and should be construed, as establishing and requiring the maximum efforts at assuring ESB, MBE, and WBE participation in Metro contracting activities that is consistent with the United States and Oregon Constitutions and applicable federal and state law.

(Ordinance No. 92-466A, Sec. 2. Amended by Ordinance No. 97-692A, Sec. 19)

**METRO DISADVANTAGED BUSINESS ENTERPRISE PROGRAM FOR FEDERALLY-FUNDED CONTRACTS**

2.04.300 Disadvantaged Business Enterprise Program (DBE Program) For Federally-Funded Contracts, Findings, Purpose and Authority

(a) It is the purpose of Metro Code ~~S~~sections 2.04.300-.390 to establish and implement a program to encourage the utilization by Metro of disadvantaged businesses by creating for such businesses the maximum possible opportunity to compete for and participate in federally-funded Metro

contracting activities. The DBE Program does not apply to locally-funded contracts, which are governed by 2.04.100 to 2.04.190.

(b) Metro Code Sections 2.04.300-.390 are intended to comply with all relevant federal regulations, including those adopted to implement Section (105)(f) of the Surface Transportation Assistance Act of 1982, relating to the participation by Minority Business Enterprises in Department of Transportation programs, and Section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991.

(c) Metro Code Sections 2.04.300-.390 shall be known and may be cited as the "Metro Disadvantaged Business Enterprise Program for Federally-Funded Contracts," hereinafter referred to as the "DBE Program."

(Ordinance No. 92-466A, Sec. 2. Amended by Ordinance No. 97-692A, Sec. 23)

#### 2.04.305 Policy Statement

(a) Through the DBE Program, Metro:

- (1) Expresses its strong commitment to provide maximum opportunity to disadvantaged businesses in contracting;
- (2) Informs all employees, governmental agencies and the general public of its intent to implement this policy statement; and
- (3) Assures conformity with applicable federal regulations as they exist or may be amended.

(b) It is the policy of Metro to provide equal opportunity to all persons to access and participate in the projects, programs and services of Metro, in accordance with Title VI of the Civil Rights Act of 1964. Metro and Metro contractors will not discriminate against any person or firm on the basis of race, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status.

(c) The policies, practices and procedures established by the DBE Program shall apply to all Metro departments and project areas except as expressly provided in the DBE Program.

(d) The objectives of the DBE Program shall be:

- (1) To assure that provisions of the DBE Program are adhered to by all Metro departments, contractors, employees and USDOT subrecipients and contractors; and
- (2) To initiate and maintain efforts to increase DBE Program participation by disadvantaged businesses.

(e) Metro accepts and agrees to the statements of 49 CFR §23.43 (a)(1) and (2), and said statements shall be included in all USDOT agreements with USDOT subrecipients and in all USDOT-assisted contracts between Metro or USDOT subrecipients and any contractor.

(Ordinance No. 92-466A, Sec. 2. Amended by Ordinance No. 97-692A, Sec. 24)

2.04.310 Definitions

For purposes of the DBE Program, the following definitions shall apply:

(a) "Applicant" means one who submits an application, request or plan to be approved by a USDOT official or by Metro as a condition to eligibility for Department of Transportation (USDOT) financial assistance; and "application" means such an application, request or plan.

(b) "Construction contract" means a contract for construction of buildings or other facilities, and includes reconstruction, remodeling and all activities which are appropriately associated with a construction project.

(c) "Contract" means a mutually binding legal relationship or any modification thereof obligating the seller to furnish supplies or services, including construction, and the buyer to pay for them. For purposes of the DBE Program a lease or a purchase order of \$500.00 or more is a contract.

(d) "Contractor" means the one who participates, through a contract or subcontract, in the DBE Program and includes lessees.

(e) "Department or USDOT" means the United States Department of Transportation, including its operating elements.

(f) "Disadvantaged Business Enterprise or DBE" means a small business concern which is so certified by an authorized agency and:

- (1) Which is at least 51 percent owned by one or more socially or economically disadvantaged individuals, or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more socially or economically disadvantaged individuals; and
- (2) Whose management and daily business operations are controlled by one or more of the socially or economically disadvantaged individuals who own it.

(g) "Executive Department" means the State of Oregon's Executive Department or such state agency, department or entity to which has been delegated the responsibility to certify a Minority Business Enterprise, Women Business Enterprise, or a Disadvantaged Business Enterprise and to engage in related activities.

(h) "Joint venture" is defined as an association of two or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge. In a joint venture between a DBE and non-DBE, the DBE must be responsible for a clearly defined portion of the work to be performed and must share in the ownership, control, management responsibilities, risks and profits of the joint venture. A joint venture of a DBE and a non-DBE must receive Metro approval prior to contract award to be counted toward any DBE contract goals.



(i) “Labor and materials contract” is a contract including a combination of service and provision of materials other than construction contracts. Examples may include plumbing repair, computer maintenance or electrical repair, etc.

(j) “Lessee” means a business or person that leases, or is negotiating to lease, property from a recipient or the department on the recipient’s or department’s facility for the purpose of operating a transportation-related activity or for the provision of goods or services to the facility or to the public on the facility.

(k) “Oregon Department of Transportation or ODOT” means the State of Oregon’s Department of Transportation.

(l) “Personal services contract” means a contract for services of a personal or professional nature.

(m) “Procurement contract” means a contract for the purchase or sale of supplies, materials, equipment, furnishings or other goods not associated with a construction or other contract.

(n) “Recipient” means any entity, public or private, to whom USDOT financial assistance is extended, directly or through another recipient for any program.

(o) “Small business concern” means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

(p) “Socially or economically disadvantaged individuals or disadvantaged individuals” has the meaning established by ORS 200.005(2), (9), including the rebuttable presumption established by ORS 200.015(3), and the definitions supplied by ORS 200.005(7), (10).

(q) “USDOT-assisted contract” means any contract or modification of a contract between Metro and a contractor which is paid for in whole or in part with USDOT financial assistance.

(r) “USDOT financial assistance” means financial aid provided by USDOT or the United States Railroad Association to a recipient, but does not include a direct contract. The financial aid may be provided directly in the form of actual money, or indirectly in the form of guarantees authorized by statute as financial assistance services of federal personnel, title or other interest in real or personal property transferred for less than fair market value, or any other arrangement through which the recipient benefits financially, including licenses for the construction or operation of a deep water port.

(Ordinance No. 92-466A, Sec. 2. Amended by Ordinance No. 96-635B, Sec. 4.)

#### 2.04.315 Notice to Contractors, Subcontractors and Subrecipients

Contractors, subcontractors and subrecipients of Metro accepting contracts or grants under the DBE Program which are USDOT-assisted shall be advised that failure to carry out the requirements set forth in 49 CFR 23.43(a) shall constitute a breach of contract and, after notification by Metro, may result in termination of the agreement or contract by Metro or such remedy as Metro deems appropriate.

(Ordinance No. 92-466A, Sec. 2)

2.04.320 DBE Liaison Officer

(a) The ~~Chief Operating Officer Executive Officer~~ shall, by executive order, designate a DBE liaison officer and, if necessary, other staff adequate to administer the DBE Program. The DBE liaison officer shall report directly to the ~~Chief Operating Officer Executive Officer~~ on matters pertaining to the DBE Program.

(b) The DBE liaison officer shall be responsible for developing, managing and implementing the DBE Program, and for disseminating information on available business opportunities so that DBEs are provided an equitable opportunity to bid on Metro contracts. In addition to the responsibilities of the DBE liaison officer, all ~~D~~department ~~D~~irectors and program managers shall have responsibility to assure implementation of the DBE Program.

(Ordinance No. 92-466A, Sec. 2. Amended by Ordinance No. 97-692A, Sec. 25)

2.04.325 Directory

A directory of DBEs as certified by ODOT or the Executive Department, as applicable, shall be maintained by the Liaison Officer to facilitate identifying such businesses with capabilities relevant to general contracting requirements and particular solicitations. The directory shall be available to contract bidders and proposers in their efforts to meet DBE Program requirements.

(Ordinance No. 92-466A, Sec. 2)

2.04.330 DBE-Owned Banks

Metro will seek to identify DBE-owned banks within the policies adopted by the Metro ~~C~~ouncil and make the greatest feasible use of their services. In addition, Metro will encourage prime contractors, subcontractors and consultants to utilize such services by sending them brochures and service information on certified DBE banks.

(Ordinance No. 92-466A, Sec. 2)

2.04.335 Affirmative Action and Equal Opportunity Procedures

Metro shall use affirmative action techniques to facilitate DBE and participation in contracting activities. These techniques include:

(a) Arranging solicitations, time for the presentation of bids, quantities specifications and delivery schedules so as to facilitate the participation of DBEs.

(b) Referring DBEs in need of management assistance to established agencies that provide direct management assistance to such businesses.

(c) Carrying out information and communications programs on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate.

(d) Distribution of copies of the DBE Program to organizations and individuals concerned with DBE programs.

(e) Periodic reviews with Department Directors to ensure that they are aware of the DBE Program goals and desired activities on their parts to facilitate reaching the goals. Additionally, departmental efforts toward and success in meeting DBE goals for department contracts shall be factors considered during annual performance evaluations of the Department Directors.

(f) Monitor and ensure that disadvantaged planning centers and likely DBE contractors are receiving requests for bids, proposals and quotes.

(g) Study the feasibility of certain USDOT-assisted contracts and procurements being set aside for DBE participation.

(h) Distribution of lists to potential DBE contractors of the types of goods and services which Metro regularly purchases.

(i) Advising potential DBE vendors that Metro does not certify DBEs, and directing them to ODOT until December 31, 1987, and, thereafter, to the Executive Department.

(j) Specifying purchases by generic title rather than specific brand name whenever feasible.

(k) Establishing an interdepartmental contract management committee which will meet regularly to monitor and discuss, among other issues, potential DBE participation in contracts. In an effort to become more knowledgeable regarding DBE resources, the committee shall also invite potential DBE contractors to attend selected meetings.

(l) Requiring that at least one DBE vendor or contractor be contacted for all contract awards which are not exempt from Metro's contract selection procedures and which are 1) for more than \$500 but not more than \$25,000 in the case of non-personal services contracts; and 2) for more than \$2,500 but not more than \$25,000 for personal services contracts. The liaison officer may waive this requirement if he/she determines that there are no DBEs on the certification list capable of providing the service or item. For contracts over the dollar amounts indicated in this section, all known DBEs in the business of providing the service(s) or item(s) required shall be mailed bid or proposal information.

(m) The Chief Operating Officer ~~Executive Officer~~ or his/her designee may establish and implement additional affirmative action techniques which are designed to facilitate participation of DBEs in Metro contracting activities.

(Ordinance No. 92-466A, Sec. 2; amended by Ordinance No. 94-554B)

#### 2.04.340 Certification of Disadvantaged Business Eligibility

(a) To participate in the DBE Program as a DBE, contractors, subcontractors and joint ventures must have been certified by an authorized certifying agency as described in subsection (b) of this section.

(b) Metro will not perform certification or recertification of businesses or consider challenges to socially and economically disadvantaged status. Rather Metro will rely upon the certification and recertification processes of ODOT and will utilize ODOT's certification list until December 31, 1987, and, thereafter, the Executive Department's list in determining whether a prospective contractor or

subcontractor is certified as a DBE. A prospective contractor or subcontractor must be certified as a DBE by one of the above agencies, as applicable, and appear on the respective certification list of said agency, prior to the pertinent bid opening or proposal submission date to be considered by Metro to be an eligible DBE and be counted toward meeting goals. Metro will adhere to the recertification rulings resulting from 105(f) or state law, as applicable.

(c) Prospective contractors or subcontractors which have been denied certification by one of the above agencies may appeal such denial to the certifying agency pursuant to applicable law. However, such appeal shall not cause a delay in any contract award by Metro. Decertification procedures for USDOT-assisted contractor or potential contractors will comply with the requirements of Appendix A "Section by Section Analysis" of the July 21, 1983, Federal Register, Vol. 45, No. 130, p. 45287, and will be administered by the agency which granted certification.

(d) Challenges to certification or to any presumption of social or economic disadvantage with regard to the USDOT-assisted portion of the DBE Program, as provided for in 49 CFR 23.69, shall conform to and be processed under the procedures prescribed by each agency indicated in paragraph (b) of this section. That challenge procedure provides that:

- (1) Any third party may challenge the socially and economically disadvantaged status of any individual (except an individual who has a current 8(a) certification from the Small Business Administration) presumed to be socially and economically disadvantaged if that individual is an owner of a firm certified by or seeking certification from the certifying agency as a disadvantaged business. The challenge shall be made in writing to the recipient.
- (2) With its letter, the challenging party shall include all information available to it relevant to a determination of whether the challenged party is in fact socially and economically disadvantaged.
- (3) The recipient shall determine, on the basis of the information provided by the challenging party, whether there is reason to believe that the challenged party is in fact not socially and economically disadvantaged if the recipient determines:
  - (i) ~~if the recipient determines~~ that there is not reason to believe that the challenged party is not socially and economically disadvantaged, the recipient shall so inform the challenging party in writing. This terminates the proceeding.
  - (ii) ~~if the recipient determines~~ that there is reason to believe that the challenged party is not socially and economically disadvantaged, the recipient shall begin a proceeding as provided in paragraphs (b), (4), (5) and (6) of this paragraph.
- (4) The recipient shall notify the challenged party in writing that his or her status as a socially and economically disadvantaged individual has been challenged. The notice shall identify the challenging party and summarize the grounds for the challenge. The notice shall also require the challenged party to provide to the recipient, within a reasonable time, information sufficient to permit the recipient

to evaluate his or her status as a socially and economically disadvantaged individual.

- (5) The recipient shall evaluate the information available to it and make a proposed determination of the social and economic disadvantage of the challenged party. The recipient shall notify both parties of this proposed determination in writing, setting forth the reasons for its proposal. The recipient shall provide an opportunity to the parties for an informal hearing, at which they can respond to this proposed determination in writing and in person.
- (6) Following the informal hearing, the recipient shall make a final determination. The recipient shall inform the parties in writing of the final determination, setting forth the reasons for its decision.
- (7) In making the determinations called for in paragraphs (b)(3)(5) and (6) of this paragraph, the recipient shall use the standards set forth in Appendix C of this subpart.
- (8) During the pendency of a challenge under this section, the presumption that the challenged party is a socially and economically disadvantaged individual shall remain in effect. 49 CFR 23.69.

(Ordinance No. 92-466A, Sec. 2)

#### 2.04.345 Annual Disadvantaged Business Goals

(a) The Metro Council shall, by resolution each August, establish annual DBE goals for the ensuing fiscal year. Such annual goals shall be established separately for construction contracts, labor and materials contracts, personal services contracts, procurement contracts and USDOT-assisted contracts regardless of type.

(b) Annual goals will be established taking into consideration the following factors:

- (1) Projection of the number and types of contracts to be awarded by Metro;
- (2) Projection of the number, expertise and types of DBEs likely to be available to compete for the contracts;
- (3) Past results of Metro's efforts under the DBE Program; and
- (4) Existing goals of other local USDOT recipients and their experience in meeting these goals.

(c) Annual goals for USDOT-assisted contracts must be approved by the United States Department of Transportation. 49 CFR §23.45(g)(3).

(d) Metro will publish notice that the USDOT-assisted contract goals are available for inspection when they are submitted to USDOT or other federal agencies. They will be made available for

30 days following publication of notice. Public comment will be accepted for 45 days following publication of the notice.

(Ordinance No. 92-466A, Sec. 2. Amended by Ordinance No. 97-692A, Sec. 26)

#### 2.04.350 Contract Goals

(a) The annual goals established for construction contracts shall apply as individual contract goals for construction contracts over \$50,000.

(b) The liaison officer may set a contract goal for any contract other than construction contracts over \$25,000. The setting of such contract goal shall be made in writing prior to the solicitation of bids for such contract. Contract goals for contracts other than construction contracts over \$50,000 shall be set at the discretion of the liaison officer and shall not be tied, necessarily, to the annual goal for such contract type.

(c) Even though no DBE goals are established at the time that bid/proposal documents are drafted, the liaison officer may direct the inclusion of a clause in any RFP or bid documents for any contract described in this section which requires that the prime contractor, prior to entering into any subcontracts, make good faith efforts, as that term is defined in Section 2.04.360, to achieve DBE participation in the same goal amount as the current annual goal for that contract type.

(d) Contract goals may be complied with pursuant to Section 2.04.360 or 2.04.375. The extent to which DBE participation will be counted toward contract goals is governed by the latter section.

(Ordinance No. 92-466A, Sec. 2)

#### 2.04.355 Contract Award Criteria

(a) To be eligible for award of contracts containing a DBE goal, prime contractors must either meet or exceed the specific goal for DBE participation, or prove that they have made good faith efforts to meet the goal prior to the time bids are opened or proposal are due. Bidders/Proposers are required to utilize the most current list of DBEs certified by the Executive Department in all of the bidders'/proposers' good faith efforts solicitations. The address where certified lists may be obtained shall be included in all applicable bid/proposal documents.

(b) All invitations to bid or Request for Proposals on contracts for which goals have been established shall require all bidders/proposers to submit with their bids and proposals a statement indicating that they will comply with the contract goal or that they have made good faith efforts as defined in Section 2.04.360 to do so. To document the intent to meet the goals, all bidders and proposers shall complete and endorse a disadvantaged business program compliance form and include said form with bid or proposal documents. The form shall be provided by Metro with bid/proposal solicitations.

(c) Agreements between a bidder/proposer and a DBE in which the DBE promises not to provide subcontracting quotations to other bidders/proposers are prohibited.

(d) Apparent low bidders/proposers shall, by the close of the next working day following bid opening (or proposal submission date when no public opening is had), submit to Metro detailed DBE utilization forms listing names of DBEs who will be utilized and the nature and dollar amount of their participation. This form will be binding upon the bidder/proposer. Within five (5) working days of bid

opening or proposal submission date, such bidders/proposers shall submit to Metro signed letters of agreement between the bidder/proposer and DBE subcontractors and suppliers to be utilized in performance of the contract. A sample letter of agreement will be provided by Metro. The DBE utilization forms shall be provided by Metro with bid/proposal documents.

(e) An apparent low bidder/proposer who states in its bid/proposal that the DBE goals were not met but that good faith efforts were performed shall submit written evidence of such good faith efforts within two (2) working days of bid opening or proposal submission in accordance with Section 2.04.360. Metro reserves the right to determine the sufficiency of such efforts.

(f) Except as provided in paragraph (g) of this section, apparent low bidders or apparent successful proposers who state in their bids/proposals that they will meet the goals or will show good faith efforts to meet the goals, but who fail to comply with paragraph (d) or (e) of this section, shall have their bids or proposals rejected and shall forfeit any required bid security or bid bond. In that event the next lowest bidder or, for personal services contracts, the firm which scores second highest shall, within two (2) days of notice of such ineligibility of the low bidder, submit evidence of goal compliance or good faith effort as provided above. This process shall be repeated until a bidder or proposer is determined to meet the provisions of this section or until Metro determines that the remaining bids are not acceptable because of amount of bid or otherwise.

(g) The liaison officer, at his/her discretion, may waive minor irregularities in a bidder's or proposer's compliance with the requirements of this section provided, however, that the bid or proposal substantially complies with public bidding requirements as required by applicable law.

(Ordinance No. 92-466A, Sec. 2)

#### 2.04.360 Determination of Good Faith Efforts

(a) Bidders or Proposers on USDOT-assisted contracts to which DBE goals apply must, to be eligible for contract award, comply with the applicable contract goal or show that good faith efforts have been made to comply with the goal. Good faith efforts should include at least the following standards established in the amendment to 49 CFR §23.45(h), Appendix A, dated Monday, April 27, 1981. A showing of good faith efforts must include written evidence of at least the following:

- (1) Attendance at any pre-solicitation or prebid meetings that were scheduled by Metro to inform disadvantaged business enterprises of contracting and subcontracting or material supply opportunities available on the project.
- (2) Advertisement in trade association, general circulation, disadvantaged and trade-oriented, if any and through a disadvantaged-owned newspaper or disadvantaged-owned trade publication concerning the subcontracting or material supply opportunities at least 10 days before bids or proposals are due.
- (3) Written notification to a reasonable number but no less than five DBE firms that their interest in the contract is solicited. Such efforts should include the segmenting of work to be subcontracted to the extent consistent with the size and capability of DBE firms in order to provide reasonable subcontracting opportunities. Each bidder should send solicitation letters inviting quotes or proposals from DBE firms, segmenting portions of the work and specifically

describing, as accurately as possible, the portions of the work for which quotes or proposals are solicited from DBE firms and encouraging inquiries for further details. Letters that are general and do not describe specifically the portions of work for which quotes or proposals are desired are discouraged, as such letters generally do not bring responses. It is expected that such letters will be sent in a timely manner so as to allow DBE sufficient opportunity to develop quotes or proposals for the work described.

- (4) Evidence of follow-up to initial solicitations of interest, including the following:
  - (A) The names, addresses, telephone numbers of all DBE contacted;
  - (B) A description of the information provided to DBE firms regarding the plans and specifications for portions of the work to be performed; and
  - (C) A statement of the reasons for non-utilization of DBE firms, if needed to meet the goal.
- (5) Negotiation in good faith with DBE firms. The bidder shall not, without justifiable reason, reject as unsatisfactory bids prepared by any DBE firms.
- (6) Where applicable, the bidder must provide advice and assistance to interested DBE firms in obtaining bonding, lines of credit or insurance required by Metro or the bidder.
- (7) Overall, the bidder's efforts to obtain DBE participation must be reasonably expected to produce a level of participation sufficient to meet Metro's goals.
- (8) The bidder must use the services of minority community organizations, minority contractor groups, local, state and federal minority business assistance offices and other organizations identified by the Executive Department's Advocate for Minority and Women and Emerging Small Business that provide assistance in the recruitment and placement of DBEs.

(Ordinance No. 92-466A, Sec. 2)

#### 2.04.365 Replacement of DBE Subcontractors

Prime contractors shall not replace a DBE subcontractor with another subcontractor, either before contract award or during contract performance, without prior Metro approval. Prime contractors who replace a DBE subcontractor shall replace such DBE subcontractor with another certified DBE subcontractor or make good faith efforts as described in the preceding section to do so.

(Ordinance No. 92-466A, Sec. 2)

#### 2.04.370 Records and Reports

(a) Metro shall develop and maintain a record keeping system to identify and assess DBE contract awards, prime contractors' progress in achieving goals and affirmative action efforts. Specifically, the following records will be maintained:



- (1) Awards to DBEs by number, percentage and dollar amount;
- (2) A description of the types of contracts awarded; and
- (3) The extent to which goals were exceeded or not met and reasons therefor.

(b) All DBE records will be separately maintained. Required DBE information will be provided to federal agencies and administrators on request.

(c) The liaison officer shall prepare reports, at least semiannually, on DBE participation to include the following:

- (1) The number of contracts awarded;
- (2) Categories of contracts awarded;
- (3) Dollar value of contracts awarded;
- (4) Percentage of the dollar value of all contracts awarded to DBE firms in the reporting period; and
- (5) The extent to which goals have been met or exceeded.

(Ordinance No. 92-466A, Sec. 2)

2.04.375 Counting Disadvantaged Business Participation Toward Meeting Goals

(a) DBE participation shall be counted toward meeting the goals on each contract as follows:

- (1) Subject to the limitations indicated in paragraphs (2) through (8) below, the total dollar value of a prime contract or subcontract to be performed by DBEs is counted toward the applicable goal for contract award purposes as well as annual goal compliance purposes.
- (2) The total dollar value of a contract to a disadvantaged business owned and controlled by both disadvantaged males and non-disadvantaged females is counted toward the goals for disadvantaged businesses and women, respectively, in proportion to the percentage of ownership and control of each group in the business.

The total dollar value of a contract with a disadvantaged business owned and controlled by disadvantaged women is counted toward either the disadvantaged business goal or the goal for women, but not to both. Metro shall choose the goal to which the contract value is applied.

- (3) Metro shall count toward its goals a portion of the total dollar value of a contract with an eligible joint venture equal to the percentage of the ownership and control of the disadvantaged business partner in the joint venture.

- (4) Metro shall count toward its goals only expenditures to DBEs that perform a commercially useful function in the work of a contract. A DBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether a DBE is performing a commercially useful function, Metro shall evaluate the amount of work subcontracted, industry practices and other relevant factors.
- (5) Consistent with normal industry practices, a DBE may enter into subcontracts. If a DBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the DBE shall be presumed not to be performing a commercially useful function. The DBE may present evidence to Metro to rebut this presumption. Metro's decision on the rebuttal of this presumption is subject to review by USDOT for USDOT-assisted contracts.
- (6) A DBE which provides both labor and materials may count toward its disadvantaged business goals expenditures for materials and supplies obtained from other than DBE suppliers and manufacturers, provided that the DBE contractor assumes the actual and contractual responsibility for the provision of the materials and supplies.
- (7) Metro shall count its entire expenditure to a DBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale).
- (8) When USDOT funds are passed-through by Metro to other agencies, any contracts made with those funds and any DBE participation in those contracts shall only be counted toward Metro's goals. Likewise, any USDOT funds passed-through to Metro from other agencies and then used for contracting shall count only toward that agency's goals. Project managers responsible for administration of pass-through agreements shall include the following language in those agreements:
  - (A) Policy. It is the policy of the Department of Transportation that disadvantaged business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 23 apply to this agreement.
  - (B) DBE Obligation. The recipient or its contractor agrees to ensure that disadvantaged business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part

23 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of USDOT-assisted contracts.

(b) DBE participation shall be counted toward meeting annual goals as follows:

- (1) Except as otherwise provided below, the total dollar value of any contract which is to be performed by a DBE is counted toward meeting annual goals.
- (2) The provisions of paragraphs (a)(2) through (a)(8) of this section, pertaining to contract goals, shall apply equally to annual goals.

(Ordinance No. 92-466A, Sec. 2. Amended by Ordinance No. 97-692A, Sec. 27)

#### 2.04.380 Compliance and Enforcement

(a) Metro shall reserve the right, at all times during the period of any contract, to monitor compliance with the terms of this chapter and the contract and with any representation made by a contractor prior to contract award pertaining to DBE participation in the contract.

(b) The liaison officer may require, at any stage of contract completion, documented proof from the contractor of actual DBE participation.

(Ordinance No. 92-466A, Sec. 2)

### **METRO RECYCLED PRODUCT PROCUREMENT PROGRAM**

#### 2.04.500 Policy Statement

It is the purpose of this ordinance to establish a Recycled Content Product Procurement Program that will achieve the following:

(a) Increase the procurement of recycled content products and recyclable materials by all Metro departments and facilities and increase the use of recycled content products and recyclable materials by contractors to Metro in the performance of their contract work.

(b) Comply with ORS Chapter 279 regarding procurement of recycled content materials and products by public agencies.

(c) Encourage procurement of products with the greatest post-consumer content, and those that contribute to the use of locally generated and recovered materials for which there are the most significant recycling market development needs.

(d) Serve as an example for other institutional purchasers, both public and private.

(Ordinance No. 93-513, Sec. 2)

#### 2.04.510 Definitions

As used in Section 2.04.500 through the end of this chapter:

- (a) "Compost" means the controlled biological decomposition of organic material or the product resulting from such a process.
- (b) "Glass aggregate" means any blend of material at least 15 percent of which is post-consumer container glass, window (or plate) glass, and/or plumbing ceramics, that functions as a construction aggregate substitute. The total mix shall meet the gradation for the designated application.
- (c) "Industrial oil" means any compressor, turbine, or bearing oil, hydraulic oil, metal-working oil or refrigeration oil.
- (d) "Lubricating oil" means any oil intended for use in an internal combustion crankcase, transmission, gearbox or differential or an automobile, bus, truck, vessel, plane, train, heavy equipment or machinery powered by an internal combustion engine.
- (e) "Organic soil amendments" means compost products made from organic waste materials, including yard debris, leaves, sewage sludge, food waste or municipal solid waste. Organic soil amendments may be used in the following applications: soil mix component, propagation, container mixes, field crop amendments, mulch, soil top dressing, substitute for gravel, soil structure improvement, mud control, erosion control, stormwater runoff, landfill cover and weed control.
- (f) "Post-consumer waste" means a finished material which would normally be disposed of as solid waste, having completed its life cycle as a consumer item. Post-consumer waste does not include manufacturing waste.
- (g) "Recycled material" means any material that would otherwise be useless, unwanted or discarded material except for the fact that the material still has useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled.
- (h) "Recycled oil" means used oil that has been prepared for reuse as a petroleum product by refining, re-refining, reclaiming, reprocessing or other means provided that the preparation or use is operationally safe, environmentally sound and complies with all laws and regulations.
- (i) "Recycled paint" means water-based latex paint with a 50 percent post-consumer recycled content that has been processed for reuse as an interior or exterior primer or surface coating on walls and ceilings.
- (j) "Recycled paper" means a paper product with not less than (1) 50 percent of its total weight consisting of secondary waste materials; or (2) 25 percent of its total weight consisting of post-consumer waste.
- (k) "Recycled product" means all materials, goods and supplies, not less than 50 percent of the total weight of which consists of secondary and post-consumer waste with not less than 10 percent of its total weight consisting of post-consumer waste. Recycled product also includes any product that could have been disposed of as solid waste, having completed its life cycle as a consumer item, but otherwise refurbished for reuse without substantial alteration of the product's form.

(l) "Retread tire" means any tire that uses an existing casing for the purpose of vulcanizing new tread to such casing that meets all performance and quality standards specified in the Federal Motor Vehicle Safety Standards determined by the United States Department of Transportation.

(m) "Secondary waste materials" means fragments of products or finished products of a manufacturing process which has converted a virgin resource into a commodity of real economic value, and includes post-consumer waste, but does not include excess virgin resources of the manufacturing process. For paper secondary waste materials does not include fibrous waste generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips, sawdust or other wood residue from a manufacturing process.

(n) "US EPA Purchasing Guidelines" means the product standards of the United States Environmental Protection Agency published in the Code of Federal Regulations, Title 40, Chapters 248 through 253.

(Ordinance No. 93-513, Sec. 2)

#### 2.04.520 Recycled Products (Generally)

(a) Metro facilities and contractors to use Recycled Materials and Products

- (1) The procurement officer shall review procurement standards and specifications currently utilized in order to eliminate, where economically feasible, discrimination against the procurement of recycled materials and products, and to develop purchasing practices which encourage purchase of materials that are recycled or may be recycled or reused when discarded.
- (2) To the extent practicable, Metro's standards and specifications for recycled products shall be consistent with US EPA Purchasing Guidelines.
- (3) Notices to solicit bids from contractors shall state that Metro gives the price preference described in subsection (b)(1) of this section to recycled products and materials. All invitations to bid or requests for proposals shall include the following language: "Vendors shall use recycled and recyclable materials and products to the maximum extent economically feasible in the performance of contract work set forth in this document."
- (4) At their discretion, Metro and its agents, including contractors, may specify acceptance of only recycled products or materials in bids and solicitations so long as quality and availability of recycled products and materials are equal to nonrecycled products and materials. When a recycled product or material is specified in a bid or solicitation, no price preference shall be given.
- (5) If the price of a recycled product is equal to or less than an otherwise identical non-recycled product, then Metro and its agent, including contractors, shall specify only the recycled product in bids and specifications.

- (6) The procurement officer and waste reduction division shall provided information on US EPA Purchasing Guidelines and on recycled products available in the region to contractors and bidders, and shall provide notice of the availability of such information in procurement solicitations. Metro staff shall contact the procurement officer or the waste reduction division to determine the availability of recycled products prior to the solicitation of quotes, bids or proposals for any contract in an amount greater than \$5,000. This requirement shall not apply to contracts for services only.
- (7) The procurement officer shall investigate and implement, as appropriate, purchasing jointly with other public agencies to potentially reduce the price for recycled products.

(Ordinance No. 93-513, Sec. 2)

(b) Price preference to be given for the purchase of Recycled Products or Materials

- (1) When purchasing products or procuring services, Metro shall give preference to materials and supplies manufactured from recycled materials if the recycled product or material:
  - (A) is available;
  - (B) meets applicable standards;
  - (C) can be substituted for a comparable nonrecycled product; and
  - (D) costs do not exceed the costs of nonrecycled products by more than 10 percent.
- (2) At their discretion, Metro departments and facilities may give a greater than 10 percent price preference to the purchase of recycled products, materials and supplies manufactured from recycled materials or that reduce the amount of waste generated.
- (3) When considering bids/proposals submitted by contractors, Metro shall evaluate the extent to which recycled materials and products have been incorporated.
- (4) Vendors and contractors who incorporate recycled materials and products in their bids/proposals shall provide written certification of the minimum recycled content of these materials and products, including the percent of post-consumer and secondary waste as defined in Section 2.04.510.
- (5) Unless otherwise specified in a bid or proposal request, bidders and proposers shall submit the actual proposed cost of a recycled product or material bid item. It shall be Metro's responsibility to calculate any preferences required. If Metro, in its sole discretion, determines that a product or material offered by a vendor or contractor is a recycled product or material meeting the requirements of this

section, Metro shall subtract 10 percent or the preference otherwise offered, from the bid or proposal item, for the purpose of comparing bids or proposals.

(Ordinance No. 93-513, Sec. 2)

#### 2.04.530 Recycled Content Paper Products

(a) Metro shall give up to a 10 percent price preference for the purchase of recycled paper (which includes all paper products), as compared to nonrecycled paper or paper products, if its performance meets applicable specifications, it is available at the specified price preference and within a reasonable period of time. If the price of one recycled paper is equal to or less than another recycled paper which contains a higher percentage of post-consumer waste, Metro shall also give preference to the recycled paper with the highest percentage of post-consumer waste. To the extent feasible, unbleached recycled paper or recycled paper produced without chlorine bleach shall be selected over chlorine-bleached paper.

(b) Metro may purchase jointly with other agencies to reduce the cost of recycled paper. All recycled paper purchases shall require the manufacturer's certification of recycled content, including the percentage of post-consumer waste.

(c) Except where prohibited by existing warranties, service agreements or contracts, the solid waste department shall only specify recycled paper in its solicitations and bids.

(d) All bids for new equipment and services shall include language to ensure that they can use recycled paper.

(e) All contract printing shall include the 10 percent price preference for recycled paper.

(f) Metro shall make every effort to eliminate purchases of paper products that would be a contaminant to the in-house collection program, and to purchase products that may be recycled or reused when discarded.

(g) The use of non-recyclable goldenrod and other very bright, hard-to-bleach colored papers is prohibited.

(h) All Metro documents and correspondence shall be printed on recycled paper, if the recycled paper meets specifications, is available at the 10 percent price preference, and is available within a reasonable period of time. To the extent feasible, the official recycled paper symbol or the words "printed on recycled content paper," followed by the percentage of post-consumer content shall be printed on documents printed at Metro or on contract printing.

(Ordinance No. 93-513, Sec. 2)

#### 2.04.540 Recycled Oil

(a) As specified in ORS 279.580 to 279.595, Metro specifications for the purchase of lubricating oil and industrial oil shall not exclude recycled oils. Specifications for the procurement of recycled oil shall be consistent with the re-refined lubricating oil purchasing guideline of the US Environmental Protection Agency. In addition, Metro shall purchase lubricating and industrial oil from the seller whose product contains the greater percentage of recycled oil as long as the recycled oil:

- (1) Is available within a reasonable period of time in quantities necessary for Metro's needs;
- (2) Meets performance standards recommended by the equipment or vehicle manufacturer, including any warranty requirements; and
- (3) Is offered at a price that does not exceed the 10 percent price preference for recycled products over comparable nonrecycled products.

(b) As stipulated in ORS Chapter 279, Metro's affirmative program for procuring recycled oil shall include, but be not be limited to the following:

- (1) Notice of Metro's preference for recycled oil shall be provided in publications used to solicit bids from suppliers;
- (2) Metro shall provide a description of its recycled oil procurement program at bidders' conferences and in procurement solicitations or invitations to bid; and
- (3) Metro shall make a good faith effort to inform industry trade associations about its recycled oil preference program.

(c) Metro shall specify recycled oils in its bids and solicitations for fleet vehicles and transport services and to the extent feasible not enter into agreements for these services with companies that restrict the use of recycled oils.

(Ordinance No. 93-513, Sec. 2)

2.04.550 Compost Products

(a) Metro shall specify and give preference to purchase of organic soil amendments made from yard debris, sewage sludge or other organic waste composts rather than compost made from nonrecycled organic materials if the organic soil amendments:

- (1) Are available;
- (2) Meet the functional requirements of the specific application;
- (3) Meet human health and plant safety standards; and
- (4) Do not exceed the 10 percent price preference for recycled products over nonrecycled products.

(Ordinance No. 93-513, Sec. 2)

2.04.560 Retread Tires

(a) The procurement officer shall eliminate any specifications that discriminate against procurement of retread tires and shall give preference to the purchase of retread tires over new tires, if the retread tires:



- (1) Are available;
- (2) Meet the performance standards recommended by the equipment or vehicle manufacturer, including warranty requirements;
- (3) Meet the EPA Purchasing Guideline for retread tires; and
- (4) Do not exceed the 10 percent price preference for recycled products over nonrecycled products.

(b) Metro shall procure retreading services for used tire cores to the extent that the retreaded tires can meet the requirements of subsection (a) of this section.

(c) Metro shall specify retread tires in its bids and solicitations for fleet and transport services and to the extent feasible shall not enter into agreements for these services with companies that restrict the use of retread tires.

(Ordinance No. 93-513, Sec. 2)

#### 2.04.570 Recycled Paint and Building Materials

Metro shall utilize recycled paint and other recycled content building materials in construction and remodeling projects if such paint or materials:

- (a) Are available;
- (b) Meet the functional requirements of the particular application;
- (c) Meet building code regulations and design review standards; and
- (d) Do not exceed the cost of nonrecycled paint or building materials by more than 10 percent.

(Ordinance No. 93-513, Sec. 2)

#### 2.04.580 Promotion and Evaluation of Recycled Content Product Procurement Plan

(a) Consistent with Executive Order No. 47A, Metro recycling coordinating committees shall include recycled product procurement strategies as part of their annual recycling plans. These plans shall incorporate the provisions of this ordinance as they apply to purchasing transactions and bid solicitations.

(b) To implement the provisions identified in this ordinance, Metro's waste reduction division and the procurement officer shall provide purchasing assistance to Metro staff. This assistance may include, but not be limited to:

- (1) Providing information about recycled products available in the Metro region;
- (2) Writing procurement specifications and standards for recycled products in bids, solicitations, and contracts;

- (3) Obtaining manufacturers' certification of recycled content;
- (4) Notifying potential bidders about preferences for recycled content products in notices, bidder's conferences or elsewhere, as appropriate; and
- (5) Offering workshops and seminars on recycled products and procurement for Metro departments and facilities.

(c) Notwithstanding the provisions of this ordinance, Metro may identify and purchase new or untested recycled products or materials to help develop markets for materials with low recovery rates and to improve markets for locally-generated materials. These materials and products may include, but are not limited to, plastic products, building and construction materials, and glass aggregate with recycled content.

(d) The waste reduction division shall prepare a report annually to measure the progress of the recycled content product procurement program, and shall present the report to the Chief Operating Officer~~Executive Officer~~ and the Metro Council. At a minimum, this report shall include:

- (1) The amount of recycled products purchased compared to non-recycled products;
- (2) The percentage of total dollar value of Metro purchases of recycled products compared to non-recycled products;
- (3) A summary of the year's activities; and
- (4) Recommendations on program modifications to increase recycled product procurement levels.

(Ordinance No. 93-513, Sec. 2)

\*\*\*\*\*

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING CHAPTER 2.04 ) ORDINANCE NO. 02-966  
METRO CONTRACT POLICIES, OF THE METRO )  
CODE TO CONFORM TO THE METRO CHARTER )  
AMENDMENTS ADOPTED ON NOVEMBER 7, 2000, ) Introduced by the Council Governmental  
AND DECLARING AN EMERGENCY ) Affairs Committee

WHEREAS, on November 7, 2000, the electors of Metro approved Ballot Measure 26-10 amending the Metro Charter; and

WHEREAS, the Metro Charter Amendments, created the Office of Council President and abolished the Office of the Executive Officer; and

WHEREAS, the Metro Council amended Metro Code Chapter 2.01 to reflect the creation of the office of Metro Council President pursuant to Ordinance No. 02-954A on June 27, 2002; and

WHEREAS, the Metro Charter Amendments required the Metro Council to create the Office of the Chief Operating Officer; and

WHEREAS, the Metro Charter Amendments, added Metro Code Chapter 2.20 to create the office of Chief Operating Officer and to define the duties and responsibilities of the Chief Operating Officer, pursuant to Ordinance No. 02-942A on June 27, 2002; and

WHEREAS, the Metro Charter Amendments required the Council to create the Office of the Metro Attorney; and

WHEREAS, the Metro Council amended Chapter 2.08 of the Metro Code to create the office of the Metro Attorney and to define the duties and responsibilities of the Metro Attorney, pursuant to Ordinance No. 02-953A on June 27, 2002; and

WHEREAS, it is necessary to amend Chapter 2.04 of the Metro Code to conform to the Metro Charter Amendments adopted on November 7, 2000; and

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The Metro Code Chapter 2.04 Metro Contract Policies is amended as provided for and is attached as Exhibit A.
2. The Metro Charter Amendments to the Metro Code adopted by this ordinance shall take effect on January 6, 2003.
3. Effective January 6, 2003, any reference to the Executive Officer in any existing contract or agreement shall be deemed to be a reference to the Chief Operating Officer and the Chief Operating Officer has the authority to take any action under an existing contract or agreement that can be taken by the Executive Officer.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_ 2002.

\_\_\_\_\_  
Carl Hosticka, Presiding Officer

Attest:

Approved as to Form:

\_\_\_\_\_  
Christina Billington, Recording Secretary

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

**Exhibit A**  
**Metro Charter 2003 Amendments to Metro Code**  
**Chapter 2.04, Metro Contract Policies**

CHAPTER 2.04

METRO CONTRACT POLICIES

SECTIONS	TITLE
2.04.010	Definitions*
<b>CONTRACTS IN GENERAL</b>	
2.04.020	Authority to Award and Execute Contracts, Budget Limitations
2.04.022	Federal Law and Rules
2.04.024	Metropolitan Exposition-Recreation Commission
2.04.026	Council Approval of Contracts
2.04.028	Council Information Reports
2.04.030	Regulations
2.04.032	Prohibition Against Doing Business With Certain Former Metro Officials (repealed Ord. 99-822 §2)
<b>PERSONAL SERVICES CONTRACTS</b>	
2.04.040	Personal Services Contracts -- General
2.04.042	Personal Services Contracts Up to \$50,000
2.04.044	Personal Services Contracts of More than \$50,000
2.04.046	Personal Services Contract Amendments
2.04.048	Notice of Award and Appeals of Personal Services Contracts
<b>CONTRACT REVIEW BOARD</b>	
2.04.050	Public Contract Review Board
2.04.052	Public Contracts -- General
2.04.054	Competitive Bidding Exemptions
2.04.056	Public Contracts Up to \$50,000
2.04.058	Public Contract Amendments
2.04.060	Food Products
2.04.062	Sole Source
2.04.064	Sale of Surplus Property
2.04.070	Notice of Award and Appeals
<b>METRO ESB, MBE AND WBE PROGRAM</b>	
2.04.100	Findings
2.04.105	Policy Statement
2.04.110	Definitions
2.04.115	Program Administration
2.04.120	Program Activities
2.04.125	Directory (repealed Ord. 97-692A §10)
2.04.130	Minority-Owned Banks

---

\* Note: Former sections 2.04.010 to 2.04.090 were repealed by Ordinance No. 96-635B, Sec. 3, which created existing sections 2.04.010 to 2.04.070.

- 2.04.135 Affirmative Action and Equal Opportunity Procedures (repealed Ord. 97-692A §11)
- 2.04.140 Certification of Minority Business Eligibility (repealed Ord. 97-692A §11)
- 2.04.145 Annual Minority Business Goals (repealed Ord. 97-692A §11)
- 2.04.150 Good Faith Efforts at Maximizing ESB, MBE and WBE Opportunities
- 2.04.155 Contract Award Criteria (repealed Ord. 97-692A §13)
- 2.04.160 Definition and Determination of Good Faith Efforts (repealed Ord. 97-692A §13)
- 2.04.162 Contractor Work Force Efforts at Maximizing Minority and Women Opportunities
- 2.04.165 Replacement of ESB, MBE or WBE Subcontractors
- 2.04.170 Council Information Reports
- 2.04.180 Compliance (repealed Ord. 97-692A §18)
- 2.04.190 Severability and Intent
- 2.04.200-.290 (repealed Ord. 97-692A §22)

**METRO DISADVANTAGED BUSINESS ENTERPRISE PROGRAM FOR FEDERALLY-FUNDED CONTRACTS**

- 2.04.300 Disadvantaged Business Enterprise Program (DBE Program) for Federally-Funded Contracts, Findings, Purpose and Authority
- 2.04.305 Policy Statement
- 2.04.310 Definitions
- 2.04.315 Notice to Contractors, Subcontractors and Subrecipients
- 2.04.320 DBE Liaison Officer
- 2.04.325 Directory
- 2.04.330 DBE-Owned Banks
- 2.04.335 Affirmative Action and Equal Opportunity Procedures
- 2.04.340 Certification of Disadvantaged Business Eligibility
- 2.04.345 Annual Disadvantaged Business Goals
- 2.04.350 Contract Goals
- 2.04.355 Contract Award Criteria
- 2.04.360 Determination of Good Faith Efforts
- 2.04.365 Replacement of DBE Subcontractors
- 2.04.370 Records and Reports
- 2.04.375 Counting Disadvantaged Business Participation Toward Meeting Goals
- 2.04.380 Compliance and Enforcement

**METRO RECYCLED PRODUCT PROCUREMENT PROGRAM**

- 2.04.500 Policy Statement
- 2.04.510 Definitions
- 2.04.520 Recycled Products (Generally)
- 2.04.530 Recycled Content Paper Products
- 2.04.540 Recycled Oil
- 2.04.550 Compost Products
- 2.04.560 Retread Tires
- 2.04.570 Recycled Paint and Building Materials
- 2.04.580 Promotion and Evaluation of Recycled Content Product Procurement Plan

2.04.010 Definitions

For the purposes of this chapter unless the context requires otherwise the following terms shall have the meanings indicated:

(a) "Auditor" means the Metro Auditor provided for in Section 18 of the 1992-Metro Charter.

~~(b) "Chief Operating Officer" means the person holding the position of Chief Operating Officer established by Section 2.20.010 of the Metro Code.~~

~~(cb) "Competitive bidding" means an advertised solicitation of sealed bids.~~

~~(de) "Contract Review Board" or "Board" means the Metro Contract Review Board created pursuant to Section 2.04.050 of this chapter.~~

~~(ed) "Council President/Presiding Officer" means the Council President council Presiding Officer provided for in Section 16(4) of the 1992-Metro Charter.~~

(fe) "Emergency" means the occurrence of a specific event or events that could not have been reasonably foreseen and prevented, and which requires the taking of prompt action to remedy the condition and thereby avoid further physical damage or harm to individuals or the occurrence of avoidable costs.

(gf) "Emergency contract" means a contract whose purpose is limited to remedying an emergency situation.

~~(g) "Executive Officer" means the Metro Executive Officer provided for in Section 17 of the 1992 Metro Charter.~~

(h) "Intergovernmental agreement" means a written agreement with any other unit or units of federal, state or local government providing for the acquisition of goods or services by Metro, for the provision of goods or services by Metro or for the payment or receipt of funds in order to promote or carry out a common purpose.

(i) "Notice of award" means written communication to a responsive, responsible bidder or proposer stating that their bid or proposal has been conditionally determined to be the lowest, responsive, responsible bid or most responsive proposal and that ~~the district~~ Metro intends to enter into a contract upon completion by the bidder/proposer of all required conditions.

(j) "Personal services contract" means any contract by which Metro acquires a professional, artistic, creative, consulting, educational, or management service. Contracts which are predominately for the purpose of obtaining a product, labor or materials, or the services of a construction trade are not a personal services contract.

(k) "Procurement Officer" means the person designated by the Chief Operating Officer ~~Executive Officer~~ to carry out the functions required of such person by this chapter.

(l) "Public agency" means any agency of the federal government, State of Oregon, or any political subdivision thereof, authorized by law to enter into public contracts and any public body created by intergovernmental agreement.

(m) "Public contract" means any purchase, lease or sale by Metro of personal property, public improvement or services, including those transacted by purchase order, other than agreements which are for personal services.

(n) "Public improvement" means projects for construction, reconstruction or major renovation on real property by or for a public agency. "Public improvement" does not include emergency work, minor alteration, ordinary repair or maintenance in order to preserve a public improvement.

(o) "Request for Proposals or RFP" means the issuance of a request for offers that will be evaluated based on factors that are not limited to price alone.

(p) "Sole source contract" means a contract for which it can be documented there is only one qualified provider of the required service or material.

(Ordinance No. 96-635B, Sec. 3.)

## CONTRACTS IN GENERAL

### 2.04.020 Authority to Award and Execute Contracts, Budget Limitations

~~The Chief Operating Officer and Pursuant to the 1992 Metro Charter, the Executive Officer and Auditor~~ have the authority to award and execute contracts that are necessary to carry out their administrative responsibilities. These ~~two~~ officers may delegate authority to award and execute contracts on their behalf by doing so in writing. The Auditor shall be subject to the same limitations and have the same authority as provided for the Chief Operating Officer by this Code Chapter. ~~The council Presiding Officer is delegated authority to award and execute contracts on behalf of the council.~~ Unless the Council expressly approves a contract containing a requirement to the contrary, no contract may obligate Metro to the payment of funds not appropriated for that purpose by the Council.

(Ordinance No. 96-635B, Sec. 3.)

### 2.04.022 Federal Law and Rules

Notwithstanding any provision of this chapter, the applicable federal laws, rules and regulations shall govern in any case where federal funds are involved and the federal laws, rules and regulations conflict with any of the provisions of this chapter or require additional conditions in public or personal services contracts not authorized by this chapter.

(Ordinance No. 96-635B, Sec. 3.)

### 2.04.024 Metropolitan Exposition-Recreation Commission

The Metropolitan Exposition-Recreation Commission has authority to enter into contracts pursuant to Metro Code Section 6.01.040(j). Notwithstanding any provision of this chapter to the contrary, the Commission may without the prior approval of the Chief Operating Officer ~~Executive Officer~~ enter into contracts in any amount in accordance with contracting rules adopted by the Commission pursuant to the authority contained in Section 6.01.040(j). However, the Contract Review Board created pursuant to Section 2.04.050 shall be the contract review board for the Commission.

(Ordinance No. 96-635B, Sec. 3.)



## 2.04.026 Council Approval of Contracts

(a) Notwithstanding any other provisions of this chapter, the Chief Operating Officer, Metro Attorney, Executive Officer or Auditor must obtain authorization by the Council prior to execution of the following types of contracts:

- (1) Any contract which commits the ~~district~~ Metro to the expenditure of appropriations not otherwise provided for in the current fiscal year budget at the time the contract is executed and which has a significant impact on Metro. The following types of contracts shall be considered to have significant impacts unless the Council finds that under the circumstances a contract will not have a significant impact:
  - (A) Any public contract for a term greater than 12 months for private operation of all or of a major part of a Metro facility or concessions at a Metro facility.
  - (B) Any public improvement contract for an amount over \$50,000.
  - (C) Any public contract which will potentially result in a material (more than 5 percent of the related fund) loss of revenues or increase in expenditures in more than one year in any Metro fund.
  - (D) Any contract for personal services for a term greater than 12 months and in an amount greater than \$50,000.
  - (E) Any contract for personal services for an amount greater than \$50,000 related to Metro's exercise of its regional planning functions pursuant to Section 5 of the 1992-Metro Charter.
  - (F) Any contract for personal services for an amount over \$50,000 related to the study by Metro of exercising authority, pursuant to Section 7 of the ~~1992~~ Metro Charter, over additional functions.
- (2) Any agreement entered into pursuant to ORS Chapter 190 by which Metro acquires or transfers any interest in real property, assumes any function or duty of another governmental body, or transfers any function or duty of Metro to another governmental unit; or
- (3) Any contract for the purchase, sale, lease or transfer of real property owned by Metro. However, the Chief Operating Officer ~~Executive Officer~~ may execute options to purchase real property.

(b) Prior to adoption of the annual budget, the Chief Operating Officer ~~Executive Officer~~ shall submit a list of proposed contracts over \$50,000 to be entered into during the next fiscal year. The Council shall designate in the annual budget ordinance which contracts have a significant impact on Metro.

Thereafter, if the Chief Operating Officer Executive Officer proposes to enter into a contract that will commit ~~the district~~ Metro to the expenditure of appropriations not provided for in the current fiscal year budget in an amount greater than \$50,000 that the Council has not considered during the annual budget process, the Chief Operating Officer Executive Officer shall inform the Council President ~~council Presiding Officer~~ in writing and shall recommend whether the contract should be classified as a significant impact contract. The Council President ~~Presiding Officer~~ shall immediately cause copies of the notice to be furnished to all members of the Council. The Council may determine that the contract has a significant impact on Metro within 10 days of receipt of the notice from the Chief Operating Officer Executive Officer. If the contract is determined by the Council to have a significant impact on Metro, execution by the Chief Operating Officer Executive Officer shall be subject to Council authorization. If the Council does not determine that the contract has a significant impact on Metro, the Chief Operating Officer Executive Officer may execute the contract after transmitting a description of the purpose of the contract, the appropriation to which contract payments will be charged, and a summary of the scope of work to be performed to the Council or a Council committee as deemed appropriate by the Council President ~~Presiding Officer~~.

(c) All contracts which require Council authorization pursuant to subsection (a)(1) or (b) above and which are subject to competitive bidding or Request for Proposals procedures shall require Council authorization of the request for bids or Request for Proposals prior to release of bidding or proposal documents to vendors. At the time of Council authorization of the competitive bid or Request for Proposal documents, the Council may waive the requirement of Council authorization of the contract.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 99-822, Sec. 1.)

#### 2.04.028 Council Information Reports

The Chief Operating Officer Executive Officer shall provide a monthly report to Council showing all contracts awarded and amended during the preceding month.

The Chief Operating Officer Executive Officer shall make available to the Council on request information showing the status of all contracts whether listed in the adopted budget or not.

(Ordinance No. 96-635B, Sec. 3.)

#### 2.04.030 Regulations

The Chief Operating Officer Executive Officer may establish by executive order additional regulations consistent with this chapter.

(Ordinance No. 96-635B, Sec. 3.)

### **PERSONAL SERVICES CONTRACTS**

#### 2.04.040 Personal Services Contracts -- General

(a) Disadvantaged Business Program. All contracting for personal services is subject to the Metro Disadvantaged Business Enterprise Program for Federally-Funded Contracts, Metro Women

Business Enterprise Program, and the Metro Minority Business Enterprise Program provisions of this chapter.

(b) Substantive Requirements. All Metro personal services contracts shall contain all provisions required by ORS Chapter 279 and shall be construed to be consistent with all relevant provisions of ORS Chapter 279.

(Ordinance No. 96-635B, Sec. 3.)

#### 2.04.042 Personal Services Contracts Up to \$50,000

(a) For personal services contracts of less than \$5,000, multiple proposals are not required, but shall be encouraged.

(b) For personal services contracts of \$5,000 or more but not more than \$50,000, proposals shall be solicited from a minimum of three (3) potential contractors who are capable and qualified to perform the requested work. Metro shall keep a written record of the source and amount of the quotes received. If three (3) quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes. In addition, the contracting department shall notify the procurement officer of the nature of the proposed contract, the estimated cost of the contract, and the name of the contact person.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 97-692A, Sec. 20; Ordinance No. 99-822, Sec. 3.)

#### 2.04.044 Personal Services Contracts of More than \$50,000

Personal services contracts of \$50,000 shall be subject to the following process:

(a) A Request for Proposal(s) shall be prepared and advertised at least once. Notice shall also be mailed to interested contractors known to Metro.

(b) All requests for proposals shall at a minimum contain a description of the project and a brief summary of the project history, contain a detailed proposed scope of work or other specifications setting forth expected performance by the contractor, include a description of the criteria that will be utilized to evaluate proposals and a broad range of the estimated cost for the project.

(c) Evaluations of proposals and the determination of the most qualified proposer shall be made.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 99-822, Sec. 4.)

#### 2.04.046 Personal Services Contract Amendments

(a) Personal services contracts of an initial amount of \$25,000 or less may be amended to increase the amount of the contract to no more than twice the original contract amount. This limit is cumulative and includes any and all contract amendments or extensions. Any contract amendment(s) in excess of this ceiling requires approval by the Council. The Council shall determine whether it is appropriate to amend the contract despite the policy that favors competitive procurement of personal services.

(b) Contracts with an initial amount of greater than \$25,000 may be amended provided that any amendment that increases the total amount payable to an amount more than \$50,000 greater than the initial contract amount shall be subject to approval by the Council. The Council shall determine whether it is appropriate to amend the contract despite the policy that favors competitive procurement of personal services.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 99-822, Sec. 5.)

#### 2.04.048 Notice of Award and Appeals of Personal Services Contracts

Notice of award and any appeal thereof shall be subject to the rules and procedures established in Section 2.04.070 except that the final determination of any appeal shall be made by the Council and not the Contract Review Board.

(Ordinance No. 96-635B, Sec. 3.)

### **CONTRACT REVIEW BOARD**

#### 2.04.050 Public Contract Review Board

(a) Creation of the Public Contract Review Board. Pursuant to ORS 279.055 the Metro Council is designated and created as the Metro Contract Review Board.

(b) Powers of Board. The Metro Contract Review Board shall have all the powers provided to a contract review board by ORS Chapter 279.

(c) Contract Review Board Meetings

- (1) The meetings of the Contract Review Board shall normally, but need not, be conducted at the same time as, and as a part of, the regular meetings of the Metro Council.
- (2) The rules of procedure adopted by the Council for its proceedings shall also govern proceedings of the Contract Review Board unless they conflict with rules adopted by the Board.

(Ordinance No. 96-635B, Sec. 3.)

#### 2.04.052 Public Contracts -- General

(a) State Law Requirements, Procedures.

- (1) The procedures for competitive bidding of all Metro public contracts and for the issuance of competitive Request for Proposals when authorized as an exception to competitive bid requirements shall comply with all requirements that are generally applicable to local governments.

(2) Notwithstanding the provisions of this subsection (a)(1), the model rules adopted by the Oregon Attorney General shall not apply to Metro.

(3) The Chief Operating Officer ~~Executive Officer~~ may establish by executive order detailed procedural requirements consistent with this chapter and state law. In so doing, the Chief Operating Officer ~~Executive Officer~~ may adopt in whole or in part the model rules of procedure established by the Oregon Attorney General pursuant to ORS 279.049.

(b) Substantive Requirements. All Metro public contracts shall contain all provisions required by ORS ~~C~~chapter 279 and shall be construed to be consistent with all provisions of ORS ~~C~~chapter 279.

(c) Rejection of Bids. The Chief Operating Officer ~~Executive Officer~~ may reject any bid or proposal not in compliance with all prescribed procedures and requirements and may, for good cause, reject any or all bids or proposals upon finding that it is in the public interest to do so.

(d) Bonds. Unless the Bboard 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 \$25,000 or less.
- (2) For public improvements, a labor and materials bond and a performance bond, both in an amount equal to 100 percent of the contract price are required for contracts over \$25,000.
- (3) 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 Chief Operating Officer ~~Executive Officer~~ determines it is in the public interest.

(e) Disadvantaged Business Program. All public contracts are subject to the Metro Disadvantaged Business Enterprise Program for Federally-Funded Contracts, Metro Women Business Enterprise Program, and the Metro Minority Business Enterprise Program provisions of this chapter.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 99-822, Sec. 6.)

#### 2.04.054 Competitive Bidding Exemptions

Subject to the policies and provisions of ORS 279.005 and 279.007, and the Metro Code, all Metro and Metropolitan Exposition-Recreation Commission public contracts shall be based upon competitive bids except:

(a) State Law. Classes of public contracts specifically exempted from competitive bidding requirements by state law.

(b) Board Rule. The following classes of public contracts are exempt from the competitive bidding process based on the legislative finding by the Bboard that the exemption will not encourage

favoritism or substantially diminish competition for public contracts and that such exemptions will result in substantial cost savings:

- (1) All contracts estimated to be not more than \$50,000 provided that the procedures required by Section 2.04.056 are followed.
- (2) Purchase and sale of zoo animals, zoo gift shop retail inventory and resale items, and any sales of food or concession items at Metro facilities.
- (3) Contracts for management and operation of food, parking or similar concession services at Metro facilities provided that procedures substantially similar to the procedures required for formal Request for Proposals used by Metro for personal services contracts are followed.
- (4) Emergency contracts provided that written findings are made that document the factual circumstances creating the emergency and establishing why the emergency contract will remedy the emergency. An emergency contract must be awarded within 60 days of the declaration of the emergency unless the Board grants an extension.
- (5) Purchase of food items for resale at the Oregon Zoo provided the provisions of Section 2.04.060 are followed.
- (6) Contracts for warranties in which the supplier of the goods or services covered by the warranty has designated a sole provider for the warranty service.
- (7) Contracts for computer hardware and software provided that procedures substantially similar to the procedures required for formal Request for Proposals used by Metro for personal services contracts are followed.
- (8) Contracts under which Metro is to receive revenue by providing a service.
- (9) Contracts for the lease or use of the convention, trade, and spectator buildings and facilities operated by the Metro Exposition-Recreation Commission.
- (10) Public contracts by the Metro Exposition-Recreation Commission in an amount less than \$75,000, which amount shall be adjusted each year to reflect any changes in the Portland SMSA CPI, provided that any rules adopted by the commission which provide for substitute selection procedures are followed.
- (11) Contracts for equipment repair or overhaul, but only when the service and/or parts required are unknown before the work begins and the cost cannot be determined without extensive preliminary dismantling or testing.
- (12) Contracts in the nature of grants to further a Metro purpose provided a competitive Rrequest for Pproposal process is followed.

- (13) The procurement of utilities, including telephone service, electric, natural gas, and sanitary services, provided that competition is available and a Rrequest for Pproposal process is followed.
- (14) The procurement of art and art related production and fabrication provided that a Rrequest for Pproposal process is followed.
- (15) Sponsorships which are identified and approved in the proposed budget and are not designated by Council as having a significant impact as outlined in Section 2.04.026 need not follow a competitive bidding or proposal process. In order to be eligible for this exemption the sponsorship shall provide Metro with event advertising and/or media releases.

(c) Board Resolution. Specific contracts, not within the classes exempted in subsections (a) and (b) above, may be exempted by the Bboard by resolution subject to the requirements of ORS 279.015(2) and ORS 279.015(5). The Bboard shall, where appropriate, direct the use of alternate contracting and purchasing practices that take account of market realities and modern innovative contracting and purchasing methods, which are consistent with the public policy of encouraging competition.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 97-677B, Sec. 2; Ordinance No. 98-768, Sec. 2; Ordinance No. 99-822, Sec. 7.)

#### 2.04.056 Public Contracts Up to \$50,000

(a) Under \$5,000. For public contracts of less than 5,000, competitive bids are not required but shall be encouraged.

(b) Between \$5,000 and \$50,000. For public contracts of \$5,000 or more but not more than \$50,000, Metro shall obtain a minimum of three (3) competitive quotes. Metro shall keep a written record of the source and amount of the quotes received. If three (3) quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes. In addition, the contracting department shall notify the procurement officer of the nature of the proposed contract, the estimated cost of the contract, and the name of the contact person.

(c) Contracts under \$50,000 should be awarded on the basis of the least cost alternative available that is capable of performing the work required.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 97-692A, Sec. 21; Ordinance No. 99-822, Sec. 8.)

#### 2.04.058 Public Contract Amendments

(a) The Chief Operating Officer ~~Executive Officer~~ may execute amendments to public contracts which were not designated as contracts having a significant impact on Metro, provided that any one of the following conditions are met:

- (1) The original contract was let by a formal competitive procurement process, the amendment is for the purpose of authorizing additional work for which unit prices or alternates were provided that established the cost for the additional

work and the original contract governs the terms and conditions of the additional work; or

- (2) The amendment is a change order that resolves a bona fide dispute with the contractor regarding the terms and conditions of a contract for a public improvement and the amendment does not materially add to or delete from the original scope of work included in the original contract; or
- (3) The amount of the aggregate cost increase resulting from all amendments does not exceed 20 percent of the initial contract if the face amount is less than or equal to \$1,000,000 or 10 percent if the face amount is greater than \$1,000,000; amendments made under subsection (1) or (2) are not included in computing the aggregate amount under this subsection; or
- (4) The Metro Contract Review Board has authorized the extension of the contract amendment.

(b) No contract which was designated as a contract having a significant impact on Metro may be amended without the express approval of the Council evidenced by a duly adopted resolution or ordinance; except as follows:

- (1) The Chief Operating Officer ~~Executive Officer~~ may approve any amendment that is a change order that resolves a bona fide dispute with the contractor regarding the terms and conditions of a contract for a public improvement if the amendment does not materially add to or delete from the original scope of work included in the original contract. Provided, however, the Chief Operating Officer ~~Executive Officer~~ must obtain Council approval for any such change order that results in a total aggregate increase of more than 5 percent of the original contract amount. If the Council approves a change order pursuant to this subsection it may also in the same action authorize additional change orders to resolve future disputes in an amount not to exceed that established by the Council.
- (2) The Chief Operating Officer ~~Executive Officer~~ may approve any contract amendment to a contract for a public improvement that does not increase the contract amount more than \$25,000 if the amount of the aggregate cost resulting from all amendments authorized pursuant to this subsection does not exceed 5 percent of the initial contract. In computing the dollar amount of any amendment for the purpose of this subsection, only the amount of additional work or extra cost shall be considered and may not be offset by the amount of any deletions.
- (3) The Chief Operating Officer ~~Executive Officer~~ may approve a change order for additional work if the original contract was let by a formal competitive procurement, the amendment is for the purpose of authorizing additional work for which unit prices or bid alternates were provided that established the cost for the additional work and the original contract governs the terms and conditions of the additional work.
- (4) The Chief Operating Officer ~~Executive Officer~~ may approve a change order to a public improvement contract in order to meet an emergency.



(c) No public contract may be amended to include additional work or improvements that are not directly related to the scope of work that was described in the competitive process utilized to award the contract.

(d) For the purpose of this section any contract which was subject to specific Council authorization of its execution prior to the effective date of this ordinance shall be considered to be a contract that has a significant impact on Metro.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 99-822, Sec. 9.)

#### 2.04.060 Food Products

(a) All food items and food service contracts will be procured through competitive bidding, except as provided in sections (b) through (d) below.

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

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

- (1) The use of a specific recipe provided and/or developed in conjunction with a Metro department; or
- (2) The use of a proprietary recipe or formula which is the property of a vendor.

(d) Purchases of groceries, meat, poultry, and produce may be limited to vendors who have been prequalified. The Chief Operating Officer ~~Executive Officer~~ shall establish prequalification procedures that ensure competition and fairness.

(Ordinance No. 96-635B, Sec. 3.)

#### 2.04.062 Sole Source

If there is only one qualified provider of the service required, the initiating department need not solicit and document proposals. The initiating department must document that there is only one qualified provider of the service required. Sole source contracts may not exceed \$2,500 unless the Board shall have specifically exempted the contract from the public bidding or applicable alternative procurement procedure.

(Ordinance No. 96-635B, Sec. 3.)

#### 2.04.064 Sale of Surplus Property

Contracts for sale of surplus property may be executed without competitive oral or sealed bids only when the Chief Operating Officer ~~Executive Officer~~ determines in writing that the number, value and nature of the items to be sold make it probable that the cost of conducting a sale by bid will be such that a liquidation sale will result in substantially greater net revenue to Metro.

(Ordinance No. 96-635B, Sec. 3.)

2.04.070 Notice of Award and Appeals

**[POLICY NOTE: Clarify appeals process for appeals from MERC and Auditor. DBC]**

(a) At least five (5) days prior to the execution of any public contract over \$50,000 for which a competitive bid or proposal process is required, Metro shall provide a notice of award to the contractor selected and to all contractors who submitted unsuccessful bids or proposals.

(b) Bid/Request for Proposals Appeal Procedures. The following procedure applies to aggrieved bidders and proposers who wish to appeal an award of a public contract or a personal services contract above \$50,000. The appeal process for bids is the same as for a Rrequest for Pproposals. In the case of a Rrequest for Pproposal(s), disagreement with the judgment exercised in scoring by evaluators is not a basis for appeal.

- (1) All appeals shall be made in writing and shall be delivered to the procurement officer at Metro's main office within five (5) working days of the postmarked date on the notice of award. The written appeal must describe the specific citation of law, rule, regulation, or procedure upon which the appeal is based.
- (2) The procurement officer shall forthwith notify the appropriate Ddepartment Director and the Chief Operating Officer ~~Executive Officer~~ of the appeal. Within 10 working days of the receipt of the notice of appeal, the Chief Operating Officer ~~Executive Officer~~ shall send a notice of rejection of the appeal or a notice of acceptance of the appeal, as applicable, to the appellant. The appellant may appeal the Chief Operating Officer's ~~Executive Officer's~~ decision to reject the appeal in writing to the Board within five (5) working days from the postmarked date on the notice of rejection.
- (3) The Board will review the grounds for appeal, all pertinent information, and the Chief Operating Officer's ~~Executive Officer's~~ recommendation, and make a decision. The decision of the Board is final.
- (4) No contract which is the subject of a pending appeal may be executed unless the Board shall have given its approval at the request of the Chief Operating Officer ~~Executive Officer~~. The Chief Operating Officer ~~Executive Officer~~ may request the Board to determine a matter without waiting for the expiration of the time periods provided for herein.
- (5) In the event Council authorization of execution of the contract is required under Section 2.04.026 of this Code the appeal shall be heard before the Council considers authorization of the contract.

(c) Appeals from Disqualifications

- (1) The Board shall hear all appeals from any person who is disqualified by Metro as a bidder. The basis for the appeal shall be limited to the following grounds:

- (A) Disqualification of bidder pursuant to ORS 279.037.
  - (B) Denial of prequalification to bid pursuant to ORS 279.039 and 279.041.
- (2) Any person who wishes to appeal disqualification as a bidder shall, within three (3) business days after receipt of notice of disqualification, notify in writing the ~~Metro Attorney General Counsel~~ that the person appeals the disqualification. ~~The Metro Attorney General Counsel~~ shall promptly notify the ~~B~~board of the appeal by providing notice to the ~~Council President~~~~Presiding Officer~~.
  - (3) Promptly upon receipt of notice of appeal, the ~~Council President~~ ~~Presiding Officer~~ shall notify the appellant and the ~~Metro Attorney General Counsel~~ of the time and place of the appeal proceeding.
  - (4) The ~~B~~board shall conduct the appeal proceeding and decide the appeal within 10 days after receiving notification of the appeal from the ~~Metro Attorney General Counsel~~. The ~~B~~board shall set forth in writing the reasons for the decision.
  - (5) Appeal Proceeding.
    - (A) The ~~Council President~~ ~~Presiding Officer~~ shall preside over the appeal proceeding. The general order shall be as follows:
      - (i) Presentation by Metro of documentation and testimony supporting the disqualification.
      - (ii) Presentation by the appellant of documentation and testimony opposing the disqualification.
    - (B) Members of the ~~B~~board shall have the right to ask both Metro and the appellant questions and to review documentation referred to and presented by the parties.
    - (C) Formal court rules of evidence shall not apply.
    - (D) The ~~B~~board shall consider de novo the notice of disqualification, and record of investigation made by Metro and any evidence provided by Metro and the appellant prior to or at the appeal proceeding. There shall be no continuance or reopening of the appeal proceeding to offer additional evidence unless the appellant can demonstrate to the ~~Council President~~ ~~Presiding Officer~~ that the additional evidence was not known to the appellant at the time of the proceeding or that with reasonable diligence the appellant would not have discovered the evidence prior to the appeal proceeding.
    - (E) A tape recording will be made of the appeal proceeding which shall be made available to the appellant upon payment of costs to Metro of making the tape.

(F) The Board shall render a decision which shall be reviewed only upon petition in the Circuit Court of Multnomah County. The petition must be filed within 15 days after the date of the decision.

(6) Metro may reconsider its determination with regard to the disqualification at any time prior to the appeal proceeding.

(d) Appeals of contract awards and decisions of the Auditor shall be made directly to the Contract Review Board.

(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 99-822, Sec. 10.)

## **METRO ESB, MBE AND WBE PROGRAM**

### 2.04.100 Findings

(a) The Metro Council finds:

- (1) The opportunity for full participation in our free enterprise system by emerging small businesses, minorities and women owned businesses is essential;
- (2) Greater economic opportunity for emerging small businesses, minorities and women owned businesses is essential;
- (3) Historical patterns of exclusion and discrimination against racial or ethnic groups and women resulted in unfortunate effects of social, political and economic inequity that still exist;
- (4) It is in the best interest of Metro and the community to do business with emerging small businesses, minority and women owned businesses resulting in increased competition and a stronger local economy;
- (5) In cooperation with the private sector, the affected populations, interested groups and appropriate governmental entities, a program should be established to recommend remedies.

(b) It is the purpose of this policy to establish and implement a program to encourage the utilization by Metro of emerging small businesses, minority and women owned businesses, to the greatest extent permitted by law, by creating for such businesses the maximum possible opportunity to compete for and participate in locally-funded Metro contracting activities. This program does not apply to federally-funded contracts, which are governed by Metro Code 2.04.300, et seq.

(Ordinance No. 83-165, Sec. 1; amended by Ordinance No. 84-181, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; repealed by Ordinance No. 97-692A, Sec. 1; replaced by Ordinance No. 97-692A, Sec. 2)

#### 2.04.105 Policy Statement

(a) Metro expresses its strong commitment to provide maximum opportunity to do business with ESBs, MBEs and WBEs.

(b) It is the policy of Metro to provide equal opportunity to all persons to access and participate in the locally-funded projects, programs and services of Metro. Metro and Metro contractors shall not discriminate against any person or firm on the basis of race, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status.

(Ordinance No. 83-165, Sec. 2; amended by Ordinance No. 84-181, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; amended by Ordinance No. 97-692A, Sec. 3)

#### 2.04.110 Definitions

For purposes of Metro Code Sections 2.04.100 to 2.04.190, unless the context requires otherwise, the following definitions shall apply:

(a) "Department" means the State of Oregon's Department of Consumer and Business Affairs or such state agency, department or entity to which has been delegated the responsibility to certify a Emerging Small Business Enterprise, Minority Business Enterprise, Women Business Enterprise, or a Disadvantaged Business Enterprise and to engage in related activities.

(b) "Emerging Small Business Enterprise" or "ESB" means a small business concern which is certified as such by the Department.

(c) "Minority Business Enterprise" or "MBE" means a business concern which is certified as such by the Department.

(d) "Women Owned Business Enterprise" or "WBE" means a business concern which is certified as such by the Department.

(Ordinance No. 165, Sec. 3; amended by Ordinance No. 84-181, Sec. 2; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; and Ordinance No. 88-252, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; amended by Ordinance No. 96-635B, Sec. 4.; repealed by Ordinance No. 97-692A, Sec. 4; replaced by Ordinance No. 97-692A, Sec. 5)

#### 2.04.115 Program Administration

(a) The Chief Operating Officer ~~Executive Officer~~ shall be responsible for administering this program. The Chief Operating Officer ~~Executive Officer~~ may, by executive order, designate a Program Coordinator and, if necessary, other staff adequate to administer this program on the executive's behalf.

(b) In administering this program, the Chief Operating Officer ~~Executive Officer~~ shall advise potential ESB, MBE and WBE vendors that Metro does not certify ESBs, MBEs and WBEs, and shall direct them to the Department.

(Ordinance No. 83-165, Sec. 4; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; repealed by Ordinance No. 97-692A, Sec. 6; replaced by Ordinance No. 97-692A, Sec. 8)

#### 2.04.120 Program Activities

The Chief Operating Officer ~~Executive Officer~~ shall direct staff to develop procedures in the following areas leading to increased business with ESBs, MBEs, and WBEs:

(a) Outreach. Such procedures may include electronic notices, telephone hotlines, annual contract lists, newsletters, regularly-scheduled contractor orientation programs, and participation in regional outreach opportunities.

(b) Technical Assistance. Provide information on feasible options for management assistance, bonding, insurance, and financial assistance.

(c) Reduce Contract Size. Examining alternatives for arranging contracts by size and type of work so as to enhance the possibility of participation by ESBs, MBEs and WBEs.

(d) Education. Periodic training for staff to ensure awareness of program objectives and desired activities on their part.

(e) Plan Centers. Ensuring ESB, MBE and WBE plan centers and contractors are receiving requests for bids, proposals and quotes.

(f) Advertising. Advertise formal purchases and contracting opportunities in at a minimum, one newspaper of general circulation and one minority-oriented publication.

(g) Informal Purchasing Opportunities. Requiring that at least one ESB and one MBE and one WBE vendor or contractor be contacted for all purchases and contracts more than \$2,500 and less than \$25,000. The program coordinator may waive this requirement if he/she determines that there are no certified ESBs, MBEs and WBEs on the certification list capable of providing the service or item. Any such waivers shall be in writing, and shall be kept as supporting documentation.

(h) Informal Construction Opportunities. Requiring all construction opportunities for contracts more than \$2,500 and less than \$25,000 to be bid only by qualified ESBs, MBEs and WBEs. The Chief Operating Officer ~~Executive Officer~~ may waive this requirement if he/she determines that there are no certified ESBs, MBEs and WBEs on the certification list capable of providing the project needed. Any such waivers shall be in writing, and shall be kept as supporting documentation.

(i) The program coordinator may establish and implement additional techniques which are consistent with this Program and designed to facilitate participation of ESBs, MBEs and WBEs in Metro purchasing and contracting activities.

(Ordinance No. 83-165, Sec. 5; amended by Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; repealed by Ordinance No. 97-692A, Sec. 7; replaced by Ordinance No. 97-692A, Sec. 9)

#### 2.04.130 Minority-Owned Banks

Metro will seek to identify minority-owned banks and banks utilizing equal opportunity banking practices, including community reinvestment, and, to the greatest extent permitted by law, use their services. In addition, Metro will encourage prime contractors, subcontractors and consultants to utilize such services by sending them brochures and service information on such banks.

(Ordinance No. 83-165, Sec. 7; amended by Ordinance No. 84-181, Sec. 3; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2)

#### 2.04.150 Good Faith Efforts at Maximizing ESB, MBE and WBE Opportunities

The ~~Chief Operating Officer~~ ~~Executive Officer~~ shall establish procedures relating to good faith opportunities for major construction projects. Procedures shall be consistent in nature and scope with those of other local public bodies for ease in understanding for contractors.

(a) Good faith efforts for maximizing ESB, MBE and WBE opportunities shall be required for construction contracts in an amount determined by the ~~Chief Operating Officer~~ ~~Executive Officer~~.

(b) At the discretion of the program coordinator, good faith efforts may be required for any other contract, including architects and engineers. This requirement shall be made in writing prior to the solicitation of bids for such contract.

(c) When construction projects using a proposal process are approved by Council, the staff shall consider past ESB, MBE and WBE utilization as part of the selection criteria. The program coordinator shall provide the awarded contractor with ESB, MBE and WBE targets for subcontracting.

(d) Compliance with good faith efforts is required. Contractors failing to comply will be considered in breach of contract.

(Ordinance No. 83-165, Sec. 11; repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; Ordinance No. 88-252, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; amended by Ordinance No. 97-692A, Sec. 12)

#### 2.04.162 Contractor Work Force Efforts at Maximizing Minority and Women Opportunities

(a) Metro contractors shall not discriminate against any person or firm on the basis of race, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status.

(b) Assuring that minorities and women have access to employment opportunities in the construction industry is critical. The ~~Chief Operating Officer~~ ~~Executive Officer~~ shall establish procedures relating to work apprenticeships for minorities and women for Metro major construction projects. Procedures may include participation in a workforce clearing house providing opportunities for minorities and women.

(Ordinance No. 97-692A, Sec. 14-15.)

2.04.165 Replacement of ESB, MBE or WBE Subcontractors

Prime contractors shall not replace an ESB, MBE or WBE subcontractor with another subcontractor, either before contract award or during contract performance, without prior notice to Metro. Prime contractors who replace an ESB, MBE or WBE subcontractor shall make good faith efforts as described in the preceding section in selecting a replacement.

(Ordinance No. 83-165, Sec. 14; amended by Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; amended by Ordinance No. 97-692A, Sec. 28)

2.04.170 Council Information Reports

The ~~Chief Operating Officer Executive Officer~~ shall provide an annual report to ~~Council~~ showing utilization of ESBs, MBEs and WBEs doing business with Metro.

The ~~Chief Operating Officer Executive Officer~~ shall use utilization when evaluating the performance of this program and ~~Department Directors~~.

(Ordinance No. 83-165, Sec. 15; amended by Ordinance No. 84-181, Sec. 7, and Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; repealed by Ordinance No. 97-692A, Sec. 16; replaced by Ordinance No. 97-692A, Sec. 17)

2.04.190 Severability and Intent

(a) The provisions of Metro Code ~~Sections~~ 2.04.100 to 2.04.190 shall be effective in all cases unless otherwise provided for by state or federal law. The provisions of Metro Code ~~Sections~~ 2.04.100 to 2.04.190 are separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of Metro Code ~~Sections~~ 2.04.100 to 2.04.190 or the invalidity of the application thereof to any person or circumstances shall not affect the validity of the remainder of Metro Code ~~Sections~~ 2.04.100 to 2.04.190, or the validity of their application to other persons or circumstances.

(b) Metro Code ~~Sections~~ 2.04.100 to 2.04.190 are intended, and should be construed, as establishing and requiring the maximum efforts at assuring ESB, MBE, and WBE participation in Metro contracting activities that is consistent with the United States and Oregon Constitutions and applicable federal and state law.

(Ordinance No. 92-466A, Sec. 2. Amended by Ordinance No. 97-692A, Sec. 19)

**METRO DISADVANTAGED BUSINESS ENTERPRISE PROGRAM FOR FEDERALLY-FUNDED CONTRACTS**

2.04.300 Disadvantaged Business Enterprise Program (DBE Program) For Federally-Funded Contracts, Findings, Purpose and Authority

(a) It is the purpose of Metro Code ~~Sections~~ 2.04.300-.390 to establish and implement a program to encourage the utilization by Metro of disadvantaged businesses by creating for such businesses the maximum possible opportunity to compete for and participate in federally-funded Metro



contracting activities. The DBE Program does not apply to locally-funded contracts, which are governed by 2.04.100 to 2.04.190.

(b) Metro Code Sections 2.04.300-390 are intended to comply with all relevant federal regulations, including those adopted to implement Section (105)(f) of the Surface Transportation Assistance Act of 1982, relating to the participation by Minority Business Enterprises in Department of Transportation programs, and Section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991.

(c) Metro Code Sections 2.04.300-390 shall be known and may be cited as the "Metro Disadvantaged Business Enterprise Program for Federally-Funded Contracts," hereinafter referred to as the "DBE Program."

(Ordinance No. 92-466A, Sec. 2. Amended by Ordinance No. 97-692A, Sec. 23)

#### 2.04.305 Policy Statement

(a) Through the DBE Program, Metro:

- (1) Expresses its strong commitment to provide maximum opportunity to disadvantaged businesses in contracting;
- (2) Informs all employees, governmental agencies and the general public of its intent to implement this policy statement; and
- (3) Assures conformity with applicable federal regulations as they exist or may be amended.

(b) It is the policy of Metro to provide equal opportunity to all persons to access and participate in the projects, programs and services of Metro, in accordance with Title VI of the Civil Rights Act of 1964. Metro and Metro contractors will not discriminate against any person or firm on the basis of race, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status.

(c) The policies, practices and procedures established by the DBE Program shall apply to all Metro departments and project areas except as expressly provided in the DBE Program.

(d) The objectives of the DBE Program shall be:

- (1) To assure that provisions of the DBE Program are adhered to by all Metro departments, contractors, employees and USDOT subrecipients and contractors; and
- (2) To initiate and maintain efforts to increase DBE Program participation by disadvantaged businesses.

(e) Metro accepts and agrees to the statements of 49 CFR §23.43 (a)(1) and (2), and said statements shall be included in all USDOT agreements with USDOT subrecipients and in all USDOT-assisted contracts between Metro or USDOT subrecipients and any contractor.

(Ordinance No. 92-466A, Sec. 2. Amended by Ordinance No. 97-692A, Sec. 24)

#### 2.04.310 Definitions

For purposes of the DBE Program, the following definitions shall apply:

(a) "Applicant" means one who submits an application, request or plan to be approved by a USDOT official or by Metro as a condition to eligibility for Department of Transportation (USDOT) financial assistance; and "application" means such an application, request or plan.

(b) "Construction contract" means a contract for construction of buildings or other facilities, and includes reconstruction, remodeling and all activities which are appropriately associated with a construction project.

(c) "Contract" means a mutually binding legal relationship or any modification thereof obligating the seller to furnish supplies or services, including construction, and the buyer to pay for them. For purposes of the DBE Program a lease or a purchase order of \$500.00 or more is a contract.

(d) "Contractor" means the one who participates, through a contract or subcontract, in the DBE Program and includes lessees.

(e) "Department or USDOT" means the United States Department of Transportation, including its operating elements.

(f) "Disadvantaged Business Enterprise or DBE" means a small business concern which is so certified by an authorized agency and:

- (1) Which is at least 51 percent owned by one or more socially or economically disadvantaged individuals, or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more socially or economically disadvantaged individuals; and
- (2) Whose management and daily business operations are controlled by one or more of the socially or economically disadvantaged individuals who own it.

(g) "Executive Department" means the State of Oregon's Executive Department or such state agency, department or entity to which has been delegated the responsibility to certify a Minority Business Enterprise, Women Business Enterprise, or a Disadvantaged Business Enterprise and to engage in related activities.

(h) "Joint venture" is defined as an association of two or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge. In a joint venture between a DBE and non-DBE, the DBE must be responsible for a clearly defined portion of the work to be performed and must share in the ownership, control, management responsibilities, risks and profits of the joint venture. A joint venture of a DBE and a non-DBE must receive Metro approval prior to contract award to be counted toward any DBE contract goals.

(i) "Labor and materials contract" is a contract including a combination of service and provision of materials other than construction contracts. Examples may include plumbing repair, computer maintenance or electrical repair, etc.

(j) "Lessee" means a business or person that leases, or is negotiating to lease, property from a recipient or the department on the recipient's or department's facility for the purpose of operating a transportation-related activity or for the provision of goods or services to the facility or to the public on the facility.

(k) "Oregon Department of Transportation or ODOT" means the State of Oregon's Department of Transportation.

(l) "Personal services contract" means a contract for services of a personal or professional nature.

(m) "Procurement contract" means a contract for the purchase or sale of supplies, materials, equipment, furnishings or other goods not associated with a construction or other contract.

(n) "Recipient" means any entity, public or private, to whom USDOT financial assistance is extended, directly or through another recipient for any program.

(o) "Small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

(p) "Socially or economically disadvantaged individuals or disadvantaged individuals" has the meaning established by ORS 200.005(2), (9), including the rebuttable presumption established by ORS 200.015(3), and the definitions supplied by ORS 200.005(7), (10).

(q) "USDOT-assisted contract" means any contract or modification of a contract between Metro and a contractor which is paid for in whole or in part with USDOT financial assistance.

(r) "USDOT financial assistance" means financial aid provided by USDOT or the United States Railroad Association to a recipient, but does not include a direct contract. The financial aid may be provided directly in the form of actual money, or indirectly in the form of guarantees authorized by statute as financial assistance services of federal personnel, title or other interest in real or personal property transferred for less than fair market value, or any other arrangement through which the recipient benefits financially, including licenses for the construction or operation of a deep water port.

(Ordinance No. 92-466A, Sec. 2. Amended by Ordinance No. 96-635B, Sec. 4.)

#### 2.04.315 Notice to Contractors, Subcontractors and Subrecipients

Contractors, subcontractors and subrecipients of Metro accepting contracts or grants under the DBE Program which are USDOT-assisted shall be advised that failure to carry out the requirements set forth in 49 CFR 23.43(a) shall constitute a breach of contract and, after notification by Metro, may result in termination of the agreement or contract by Metro or such remedy as Metro deems appropriate.

(Ordinance No. 92-466A, Sec. 2)

#### 2.04.320 DBE Liaison Officer

(a) The Chief Operating Officer ~~Executive Officer~~ shall, by executive order, designate a DBE liaison officer and, if necessary, other staff adequate to administer the DBE Program. The DBE liaison officer shall report directly to the Chief Operating Officer ~~Executive Officer~~ on matters pertaining to the DBE Program.

(b) The DBE liaison officer shall be responsible for developing, managing and implementing the DBE Program, and for disseminating information on available business opportunities so that DBEs are provided an equitable opportunity to bid on Metro contracts. In addition to the responsibilities of the DBE liaison officer, all ~~D~~e~~p~~a~~r~~t~~m~~e~~n~~t ~~D~~i~~r~~e~~c~~t~~o~~r~~s~~ and program managers shall have responsibility to assure implementation of the DBE Program.

(Ordinance No. 92-466A, Sec. 2. Amended by Ordinance No. 97-692A, Sec. 25)

#### 2.04.325 Directory

A directory of DBEs as certified by ODOT or the Executive Department, as applicable, shall be maintained by the Liaison Officer to facilitate identifying such businesses with capabilities relevant to general contracting requirements and particular solicitations. The directory shall be available to contract bidders and proposers in their efforts to meet DBE Program requirements.

(Ordinance No. 92-466A, Sec. 2)

#### 2.04.330 DBE-Owned Banks

Metro will seek to identify DBE-owned banks within the policies adopted by the Metro Council and make the greatest feasible use of their services. In addition, Metro will encourage prime contractors, subcontractors and consultants to utilize such services by sending them brochures and service information on certified DBE banks.

(Ordinance No. 92-466A, Sec. 2)

#### 2.04.335 Affirmative Action and Equal Opportunity Procedures

Metro shall use affirmative action techniques to facilitate DBE and participation in contracting activities. These techniques include:

(a) Arranging solicitations, time for the presentation of bids, quantities specifications and delivery schedules so as to facilitate the participation of DBEs.

(b) Referring DBEs in need of management assistance to established agencies that provide direct management assistance to such businesses.

(c) Carrying out information and communications programs on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate.

(d) Distribution of copies of the DBE Program to organizations and individuals concerned with DBE programs.

(e) Periodic reviews with Ddepartment Directors to ensure that they are aware of the DBE Program goals and desired activities on their parts to facilitate reaching the goals. Additionally, departmental efforts toward and success in meeting DBE goals for department contracts shall be factors considered during annual performance evaluations of the Ddepartment Directors.

(f) Monitor and ensure that disadvantaged planning centers and likely DBE contractors are receiving requests for bids, proposals and quotes.

(g) Study the feasibility of certain USDOT-assisted contracts and procurements being set aside for DBE participation.

(h) Distribution of lists to potential DBE contractors of the types of goods and services which Metro regularly purchases.

(i) Advising potential DBE vendors that Metro does not certify DBEs, and directing them to ODOT until December 31, 1987, and, thereafter, to the Executive Department.

(j) Specifying purchases by generic title rather than specific brand name whenever feasible.

(k) Establishing an interdepartmental contract management committee which will meet regularly to monitor and discuss, among other issues, potential DBE participation in contracts. In an effort to become more knowledgeable regarding DBE resources, the committee shall also invite potential DBE contractors to attend selected meetings.

(l) Requiring that at least one DBE vendor or contractor be contacted for all contract awards which are not exempt from Metro's contract selection procedures and which are 1) for more than \$500 but not more than \$25,000 in the case of non-personal services contracts; and 2) for more than \$2,500 but not more than \$25,000 for personal services contracts. The liaison officer may waive this requirement if he/she determines that there are no DBEs on the certification list capable of providing the service or item. For contracts over the dollar amounts indicated in this section, all known DBEs in the business of providing the service(s) or item(s) required shall be mailed bid or proposal information.

(m) The Chief Operating Officer ~~Executive Officer~~ or his/her designee may establish and implement additional affirmative action techniques which are designed to facilitate participation of DBEs in Metro contracting activities.

(Ordinance No. 92-466A, Sec. 2; amended by Ordinance No. 94-554B)

#### 2.04.340 Certification of Disadvantaged Business Eligibility

(a) To participate in the DBE Program as a DBE, contractors, subcontractors and joint ventures must have been certified by an authorized certifying agency as described in subsection (b) of this section.

(b) Metro will not perform certification or recertification of businesses or consider challenges to socially and economically disadvantaged status. Rather Metro will rely upon the certification and recertification processes of ODOT and will utilize ODOT's certification list until December 31, 1987, and, thereafter, the Executive Department's list in determining whether a prospective contractor or

subcontractor is certified as a DBE. A prospective contractor or subcontractor must be certified as a DBE by one of the above agencies, as applicable, and appear on the respective certification list of said agency, prior to the pertinent bid opening or proposal submission date to be considered by Metro to be an eligible DBE and be counted toward meeting goals. Metro will adhere to the recertification rulings resulting from 105(f) or state law, as applicable.

(c) Prospective contractors or subcontractors which have been denied certification by one of the above agencies may appeal such denial to the certifying agency pursuant to applicable law. However, such appeal shall not cause a delay in any contract award by Metro. Decertification procedures for USDOT-assisted contractor or potential contractors will comply with the requirements of Appendix A "Section by Section Analysis" of the July 21, 1983, Federal Register, Vol. 45, No. 130, p. 45287, and will be administered by the agency which granted certification.

(d) Challenges to certification or to any presumption of social or economic disadvantage with regard to the USDOT-assisted portion of the DBE Program, as provided for in 49 CFR 23.69, shall conform to and be processed under the procedures prescribed by each agency indicated in paragraph (b) of this section. That challenge procedure provides that:

- (1) Any third party may challenge the socially and economically disadvantaged status of any individual (except an individual who has a current 8(a) certification from the Small Business Administration) presumed to be socially and economically disadvantaged if that individual is an owner of a firm certified by or seeking certification from the certifying agency as a disadvantaged business. The challenge shall be made in writing to the recipient.
- (2) With its letter, the challenging party shall include all information available to it relevant to a determination of whether the challenged party is in fact socially and economically disadvantaged.
- (3) The recipient shall determine, on the basis of the information provided by the challenging party, whether there is reason to believe that the challenged party is in fact not socially and economically disadvantaged if the recipient determines:-
  - (i) ~~if the recipient determines T~~that there is not reason to believe that the challenged party is not socially and economically disadvantaged, the recipient shall so inform the challenging party in writing. This terminates the proceeding.
  - (ii) ~~if the recipient determines T~~that there is reason to believe that the challenged party is not socially and economically disadvantaged, the recipient shall begin a proceeding as provided in paragraphs (b), (4), (5) and (6) of this paragraph.
- (4) The recipient shall notify the challenged party in writing that his or her status as a socially and economically disadvantaged individual has been challenged. The notice shall identify the challenging party and summarize the grounds for the challenge. The notice shall also require the challenged party to provide to the recipient, within a reasonable time, information sufficient to permit the recipient

to evaluate his or her status as a socially and economically disadvantaged individual.

- (5) The recipient shall evaluate the information available to it and make a proposed determination of the social and economic disadvantage of the challenged party. The recipient shall notify both parties of this proposed determination in writing, setting forth the reasons for its proposal. The recipient shall provide an opportunity to the parties for an informal hearing, at which they can respond to this proposed determination in writing and in person.
- (6) Following the informal hearing, the recipient shall make a final determination. The recipient shall inform the parties in writing of the final determination, setting forth the reasons for its decision.
- (7) In making the determinations called for in paragraphs (b)(3)(5) and (6) of this paragraph, the recipient shall use the standards set forth in Appendix C of this subpart.
- (8) During the pendency of a challenge under this section, the presumption that the challenged party is a socially and economically disadvantaged individual shall remain in effect. 49 CFR 23.69.

(Ordinance No. 92-466A, Sec. 2)

#### 2.04.345 Annual Disadvantaged Business Goals

(a) The Metro Council shall, by resolution each August, establish annual DBE goals for the ensuing fiscal year. Such annual goals shall be established separately for construction contracts, labor and materials contracts, personal services contracts, procurement contracts and USDOT-assisted contracts regardless of type.

(b) Annual goals will be established taking into consideration the following factors:

- (1) Projection of the number and types of contracts to be awarded by Metro;
- (2) Projection of the number, expertise and types of DBEs likely to be available to compete for the contracts;
- (3) Past results of Metro's efforts under the DBE Program; and
- (4) Existing goals of other local USDOT recipients and their experience in meeting these goals.

(c) Annual goals for USDOT-assisted contracts must be approved by the United States Department of Transportation. 49 CFR §23.45(g)(3).

(d) Metro will publish notice that the USDOT-assisted contract goals are available for inspection when they are submitted to USDOT or other federal agencies. They will be made available for

30 days following publication of notice. Public comment will be accepted for 45 days following publication of the notice.

(Ordinance No. 92-466A, Sec. 2. Amended by Ordinance No. 97-692A, Sec. 26)

#### 2.04.350 Contract Goals

(a) The annual goals established for construction contracts shall apply as individual contract goals for construction contracts over \$50,000.

(b) The liaison officer may set a contract goal for any contract other than construction contracts over \$25,000. The setting of such contract goal shall be made in writing prior to the solicitation of bids for such contract. Contract goals for contracts other than construction contracts over \$50,000 shall be set at the discretion of the liaison officer and shall not be tied, necessarily, to the annual goal for such contract type.

(c) Even though no DBE goals are established at the time that bid/proposal documents are drafted, the liaison officer may direct the inclusion of a clause in any RFP or bid documents for any contract described in this section which requires that the prime contractor, prior to entering into any subcontracts, make good faith efforts, as that term is defined in Section 2.04.360, to achieve DBE participation in the same goal amount as the current annual goal for that contract type.

(d) Contract goals may be complied with pursuant to Section 2.04.360 or 2.04.375. The extent to which DBE participation will be counted toward contract goals is governed by the latter section.

(Ordinance No. 92-466A, Sec. 2)

#### 2.04.355 Contract Award Criteria

(a) To be eligible for award of contracts containing a DBE goal, prime contractors must either meet or exceed the specific goal for DBE participation, or prove that they have made good faith efforts to meet the goal prior to the time bids are opened or proposal are due. Bidders/Proposers are required to utilize the most current list of DBEs certified by the Executive Department in all of the bidders/proposers' good faith efforts solicitations. The address where certified lists may be obtained shall be included in all applicable bid/proposal documents.

(b) All invitations to bid or Request for Proposals on contracts for which goals have been established shall require all bidders/proposers to submit with their bids and proposals a statement indicating that they will comply with the contract goal or that they have made good faith efforts as defined in Section 2.04.360 to do so. To document the intent to meet the goals, all bidders and proposers shall complete and endorse a disadvantaged business program compliance form and include said form with bid or proposal documents. The form shall be provided by Metro with bid/proposal solicitations.

(c) Agreements between a bidder/proposer and a DBE in which the DBE promises not to provide subcontracting quotations to other bidders/proposers are prohibited.

(d) Apparent low bidders/proposers shall, by the close of the next working day following bid opening (or proposal submission date when no public opening is had), submit to Metro detailed DBE utilization forms listing names of DBEs who will be utilized and the nature and dollar amount of their participation. This form will be binding upon the bidder/proposer. Within five (5) working days of bid



opening or proposal submission date, such bidders/proposers shall submit to Metro signed letters of agreement between the bidder/proposer and DBE subcontractors and suppliers to be utilized in performance of the contract. A sample letter of agreement will be provided by Metro. The DBE utilization forms shall be provided by Metro with bid/proposal documents.

(e) An apparent low bidder/proposer who states in its bid/proposal that the DBE goals were not met but that good faith efforts were performed shall submit written evidence of such good faith efforts within two (2) working days of bid opening or proposal submission in accordance with Section 2.04.360. Metro reserves the right to determine the sufficiency of such efforts.

(f) Except as provided in paragraph (g) of this section, apparent low bidders or apparent successful proposers who state in their bids/proposals that they will meet the goals or will show good faith efforts to meet the goals, but who fail to comply with paragraph (d) or (e) of this section, shall have their bids or proposals rejected and shall forfeit any required bid security or bid bond. In that event the next lowest bidder or, for personal services contracts, the firm which scores second highest shall, within two (2) days of notice of such ineligibility of the low bidder, submit evidence of goal compliance or good faith effort as provided above. This process shall be repeated until a bidder or proposer is determined to meet the provisions of this section or until Metro determines that the remaining bids are not acceptable because of amount of bid or otherwise.

(g) The liaison officer, at his/her discretion, may waive minor irregularities in a bidder's or proposer's compliance with the requirements of this section provided, however, that the bid or proposal substantially complies with public bidding requirements as required by applicable law.

(Ordinance No. 92-466A, Sec. 2)

#### 2.04.360 Determination of Good Faith Efforts

(a) Bidders or Proposers on USDOT-assisted contracts to which DBE goals apply must, to be eligible for contract award, comply with the applicable contract goal or show that good faith efforts have been made to comply with the goal. Good faith efforts should include at least the following standards established in the amendment to 49 CFR §23.45(h), Appendix A, dated Monday, April 27, 1981. A showing of good faith efforts must include written evidence of at least the following:

- (1) Attendance at any pre-solicitation or prebid meetings that were scheduled by Metro to inform disadvantaged business enterprises of contracting and subcontracting or material supply opportunities available on the project.
- (2) Advertisement in trade association, general circulation, disadvantaged and trade-oriented, if any and through a disadvantaged-owned newspaper or disadvantaged-owned trade publication concerning the subcontracting or material supply opportunities at least 10 days before bids or proposals are due.
- (3) Written notification to a reasonable number but no less than five DBE firms that their interest in the contract is solicited. Such efforts should include the segmenting of work to be subcontracted to the extent consistent with the size and capability of DBE firms in order to provide reasonable subcontracting opportunities. Each bidder should send solicitation letters inviting quotes or proposals from DBE firms, segmenting portions of the work and specifically

describing, as accurately as possible, the portions of the work for which quotes or proposals are solicited from DBE firms and encouraging inquiries for further details. Letters that are general and do not describe specifically the portions of work for which quotes or proposals are desired are discouraged, as such letters generally do not bring responses. It is expected that such letters will be sent in a timely manner so as to allow DBE sufficient opportunity to develop quotes or proposals for the work described.

- (4) Evidence of follow-up to initial solicitations of interest, including the following:
  - (A) The names, addresses, telephone numbers of all DBE contacted;
  - (B) A description of the information provided to DBE firms regarding the plans and specifications for portions of the work to be performed; and
  - (C) A statement of the reasons for non-utilization of DBE firms, if needed to meet the goal.
- (5) Negotiation in good faith with DBE firms. The bidder shall not, without justifiable reason, reject as unsatisfactory bids prepared by any DBE firms.
- (6) Where applicable, the bidder must provide advice and assistance to interested DBE firms in obtaining bonding, lines of credit or insurance required by Metro or the bidder.
- (7) Overall, the bidder's efforts to obtain DBE participation must be reasonably expected to produce a level of participation sufficient to meet Metro's goals.
- (8) The bidder must use the services of minority community organizations, minority contractor groups, local, state and federal minority business assistance offices and other organizations identified by the Executive Department's Advocate for Minority and Women and Emerging Small Business that provide assistance in the recruitment and placement of DBEs.

(Ordinance No. 92-466A, Sec. 2)

#### 2.04.365 Replacement of DBE Subcontractors

Prime contractors shall not replace a DBE subcontractor with another subcontractor, either before contract award or during contract performance, without prior Metro approval. Prime contractors who replace a DBE subcontractor shall replace such DBE subcontractor with another certified DBE subcontractor or make good faith efforts as described in the preceding section to do so.

(Ordinance No. 92-466A, Sec. 2)

#### 2.04.370 Records and Reports

(a) Metro shall develop and maintain a record keeping system to identify and assess DBE contract awards, prime contractors' progress in achieving goals and affirmative action efforts. Specifically, the following records will be maintained:

- (1) Awards to DBEs by number, percentage and dollar amount;
- (2) A description of the types of contracts awarded; and
- (3) The extent to which goals were exceeded or not met and reasons therefor.

(b) All DBE records will be separately maintained. Required DBE information will be provided to federal agencies and administrators on request.

(c) The liaison officer shall prepare reports, at least semiannually, on DBE participation to include the following:

- (1) The number of contracts awarded;
- (2) Categories of contracts awarded;
- (3) Dollar value of contracts awarded;
- (4) Percentage of the dollar value of all contracts awarded to DBE firms in the reporting period; and
- (5) The extent to which goals have been met or exceeded.

(Ordinance No. 92-466A, Sec. 2)

#### 2.04.375 Counting Disadvantaged Business Participation Toward Meeting Goals

(a) DBE participation shall be counted toward meeting the goals on each contract as follows:

- (1) Subject to the limitations indicated in paragraphs (2) through (8) below, the total dollar value of a prime contract or subcontract to be performed by DBEs is counted toward the applicable goal for contract award purposes as well as annual goal compliance purposes.
- (2) The total dollar value of a contract to a disadvantaged business owned and controlled by both disadvantaged males and non-disadvantaged females is counted toward the goals for disadvantaged businesses and women, respectively, in proportion to the percentage of ownership and control of each group in the business.

The total dollar value of a contract with a disadvantaged business owned and controlled by disadvantaged women is counted toward either the disadvantaged business goal or the goal for women, but not to both. Metro shall choose the goal to which the contract value is applied.

- (3) Metro shall count toward its goals a portion of the total dollar value of a contract with an eligible joint venture equal to the percentage of the ownership and control of the disadvantaged business partner in the joint venture.

- (4) Metro shall count toward its goals only expenditures to DBEs that perform a commercially useful function in the work of a contract. A DBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether a DBE is performing a commercially useful function, Metro shall evaluate the amount of work subcontracted, industry practices and other relevant factors.
- (5) Consistent with normal industry practices, a DBE may enter into subcontracts. If a DBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the DBE shall be presumed not to be performing a commercially useful function. The DBE may present evidence to Metro to rebut this presumption. Metro's decision on the rebuttal of this presumption is subject to review by USDOT for USDOT-assisted contracts.
- (6) A DBE which provides both labor and materials may count toward its disadvantaged business goals expenditures for materials and supplies obtained from other than DBE suppliers and manufacturers, provided that the DBE contractor assumes the actual and contractual responsibility for the provision of the materials and supplies.
- (7) Metro shall count its entire expenditure to a DBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale).
- (8) When USDOT funds are passed-through by Metro to other agencies, any contracts made with those funds and any DBE participation in those contracts shall only be counted toward Metro's goals. Likewise, any USDOT funds passed-through to Metro from other agencies and then used for contracting shall count only toward that agency's goals. Project managers responsible for administration of pass-through agreements shall include the following language in those agreements:
  - (A) Policy. It is the policy of the Department of Transportation that disadvantaged business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 23 apply to this agreement.
  - (B) DBE Obligation. The recipient or its contractor agrees to ensure that disadvantaged business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part

23 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of USDOT-assisted contracts.

(b) DBE participation shall be counted toward meeting annual goals as follows:

- (1) Except as otherwise provided below, the total dollar value of any contract which is to be performed by a DBE is counted toward meeting annual goals.
- (2) The provisions of paragraphs (a)(2) through (a)(8) of this section, pertaining to contract goals, shall apply equally to annual goals.

(Ordinance No. 92-466A, Sec. 2. Amended by Ordinance No. 97-692A, Sec. 27)

#### 2.04.380 Compliance and Enforcement

(a) Metro shall reserve the right, at all times during the period of any contract, to monitor compliance with the terms of this chapter and the contract and with any representation made by a contractor prior to contract award pertaining to DBE participation in the contract.

(b) The liaison officer may require, at any stage of contract completion, documented proof from the contractor of actual DBE participation.

(Ordinance No. 92-466A, Sec. 2)

### **METRO RECYCLED PRODUCT PROCUREMENT PROGRAM**

#### 2.04.500 Policy Statement

It is the purpose of this ordinance to establish a Recycled Content Product Procurement Program that will achieve the following:

(a) Increase the procurement of recycled content products and recyclable materials by all Metro departments and facilities and increase the use of recycled content products and recyclable materials by contractors to Metro in the performance of their contract work.

(b) Comply with ORS Chapter 279 regarding procurement of recycled content materials and products by public agencies.

(c) Encourage procurement of products with the greatest post-consumer content, and those that contribute to the use of locally generated and recovered materials for which there are the most significant recycling market development needs.

(d) Serve as an example for other institutional purchasers, both public and private.

(Ordinance No. 93-513, Sec. 2)

## 2.04.510 Definitions

As used in Section 2.04.500 through the end of this chapter:

- (a) "Compost" means the controlled biological decomposition of organic material or the product resulting from such a process.
- (b) "Glass aggregate" means any blend of material at least 15 percent of which is post-consumer container glass, window (or plate) glass, and/or plumbing ceramics, that functions as a construction aggregate substitute. The total mix shall meet the gradation for the designated application.
- (c) "Industrial oil" means any compressor, turbine, or bearing oil, hydraulic oil, metal-working oil or refrigeration oil.
- (d) "Lubricating oil" means any oil intended for use in an internal combustion crankcase, transmission, gearbox or differential or an automobile, bus, truck, vessel, plane, train, heavy equipment or machinery powered by an internal combustion engine.
- (e) "Organic soil amendments" means compost products made from organic waste materials, including yard debris, leaves, sewage sludge, food waste or municipal solid waste. Organic soil amendments may be used in the following applications: soil mix component, propagation, container mixes, field crop amendments, mulch, soil top dressing, substitute for gravel, soil structure improvement, mud control, erosion control, stormwater runoff, landfill cover and weed control.
- (f) "Post-consumer waste" means a finished material which would normally be disposed of as solid waste, having completed its life cycle as a consumer item. Post-consumer waste does not include manufacturing waste.
- (g) "Recycled material" means any material that would otherwise be useless, unwanted or discarded material except for the fact that the material still has useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled.
- (h) "Recycled oil" means used oil that has been prepared for reuse as a petroleum product by refining, re-refining, reclaiming, reprocessing or other means provided that the preparation or use is operationally safe, environmentally sound and complies with all laws and regulations.
- (i) "Recycled paint" means water-based latex paint with a 50 percent post-consumer recycled content that has been processed for reuse as an interior or exterior primer or surface coating on walls and ceilings.
- (j) "Recycled paper" means a paper product with not less than (1) 50 percent of its total weight consisting of secondary waste materials; or (2) 25 percent of its total weight consisting of post-consumer waste.
- (k) "Recycled product" means all materials, goods and supplies, not less than 50 percent of the total weight of which consists of secondary and post-consumer waste with not less than 10 percent of its total weight consisting of post-consumer waste. Recycled product also includes any product that could have been disposed of as solid waste, having completed its life cycle as a consumer item, but otherwise refurbished for reuse without substantial alteration of the product's form.

(l) "Retread tire" means any tire that uses an existing casing for the purpose of vulcanizing new tread to such casing that meets all performance and quality standards specified in the Federal Motor Vehicle Safety Standards determined by the United States Department of Transportation.

(m) "Secondary waste materials" means fragments of products or finished products of a manufacturing process which has converted a virgin resource into a commodity of real economic value, and includes post-consumer waste, but does not include excess virgin resources of the manufacturing process. For paper secondary waste materials does not include fibrous waste generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips, sawdust or other wood residue from a manufacturing process.

(n) "US EPA Purchasing Guidelines" means the product standards of the United States Environmental Protection Agency published in the Code of Federal Regulations, Title 40, Chapters 248 through 253.

(Ordinance No. 93-513, Sec. 2)

#### 2.04.520 Recycled Products (Generally)

(a) Metro facilities and contractors to use Recycled Materials and Products

- (1) The procurement officer shall review procurement standards and specifications currently utilized in order to eliminate, where economically feasible, discrimination against the procurement of recycled materials and products, and to develop purchasing practices which encourage purchase of materials that are recycled or may be recycled or reused when discarded.
- (2) To the extent practicable, Metro's standards and specifications for recycled products shall be consistent with US EPA Purchasing Guidelines.
- (3) Notices to solicit bids from contractors shall state that Metro gives the price preference described in subsection (b)(1) of this section to recycled products and materials. All invitations to bid or requests for proposals shall include the following language: "Vendors shall use recycled and recyclable materials and products to the maximum extent economically feasible in the performance of contract work set forth in this document."
- (4) At their discretion, Metro and its agents, including contractors, may specify acceptance of only recycled products or materials in bids and solicitations so long as quality and availability of recycled products and materials are equal to nonrecycled products and materials. When a recycled product or material is specified in a bid or solicitation, no price preference shall be given.
- (5) If the price of a recycled product is equal to or less than an otherwise identical non-recycled product, then Metro and its agent, including contractors, shall specify only the recycled product in bids and specifications.

- (6) The procurement officer and waste reduction division shall provide information on US EPA Purchasing Guidelines and on recycled products available in the region to contractors and bidders, and shall provide notice of the availability of such information in procurement solicitations. Metro staff shall contact the procurement officer or the waste reduction division to determine the availability of recycled products prior to the solicitation of quotes, bids or proposals for any contract in an amount greater than \$5,000. This requirement shall not apply to contracts for services only.
- (7) The procurement officer shall investigate and implement, as appropriate, purchasing jointly with other public agencies to potentially reduce the price for recycled products.

(Ordinance No. 93-513, Sec. 2)

(b) Price preference to be given for the purchase of Recycled Products or Materials

- (1) When purchasing products or procuring services, Metro shall give preference to materials and supplies manufactured from recycled materials if the recycled product or material:
  - (A) is available;
  - (B) meets applicable standards;
  - (C) can be substituted for a comparable nonrecycled product; and
  - (D) costs do not exceed the costs of nonrecycled products by more than 10 percent.
- (2) At their discretion, Metro departments and facilities may give a greater than 10 percent price preference to the purchase of recycled products, materials and supplies manufactured from recycled materials or that reduce the amount of waste generated.
- (3) When considering bids/proposals submitted by contractors, Metro shall evaluate the extent to which recycled materials and products have been incorporated.
- (4) Vendors and contractors who incorporate recycled materials and products in their bids/proposals shall provide written certification of the minimum recycled content of these materials and products, including the percent of post-consumer and secondary waste as defined in §section 2.04.510.
- (5) Unless otherwise specified in a bid or proposal request, bidders and proposers shall submit the actual proposed cost of a recycled product or material bid item. It shall be Metro's responsibility to calculate any preferences required. If Metro, in its sole discretion, determines that a product or material offered by a vendor or contractor is a recycled product or material meeting the requirements of this



section, Metro shall subtract 10 percent or the preference otherwise offered, from the bid or proposal item, for the purpose of comparing bids or proposals.

(Ordinance No. 93-513, Sec. 2)

#### 2.04.530 Recycled Content Paper Products

(a) Metro shall give up to a 10 percent price preference for the purchase of recycled paper (which includes all paper products), as compared to nonrecycled paper or paper products, if its performance meets applicable specifications, it is available at the specified price preference and within a reasonable period of time. If the price of one recycled paper is equal to or less than another recycled paper which contains a higher percentage of post-consumer waste, Metro shall also give preference to the recycled paper with the highest percentage of post-consumer waste. To the extent feasible, unbleached recycled paper or recycled paper produced without chlorine bleach shall be selected over chlorine-bleached paper.

(b) Metro may purchase jointly with other agencies to reduce the cost of recycled paper. All recycled paper purchases shall require the manufacturer's certification of recycled content, including the percentage of post-consumer waste.

(c) Except where prohibited by existing warranties, service agreements or contracts, the solid waste department shall only specify recycled paper in its solicitations and bids.

(d) All bids for new equipment and services shall include language to ensure that they can use recycled paper.

(e) All contract printing shall include the 10 percent price preference for recycled paper.

(f) Metro shall make every effort to eliminate purchases of paper products that would be a contaminant to the in-house collection program, and to purchase products that may be recycled or reused when discarded.

(g) The use of non-recyclable goldenrod and other very bright, hard-to-bleach colored papers is prohibited.

(h) All Metro documents and correspondence shall be printed on recycled paper, if the recycled paper meets specifications, is available at the 10 percent price preference, and is available within a reasonable period of time. To the extent feasible, the official recycled paper symbol or the words "printed on recycled content paper," followed by the percentage of post-consumer content shall be printed on documents printed at Metro or on contract printing.

(Ordinance No. 93-513, Sec. 2)

#### 2.04.540 Recycled Oil

(a) As specified in ORS 279.580 to 279.595, Metro specifications for the purchase of lubricating oil and industrial oil shall not exclude recycled oils. Specifications for the procurement of recycled oil shall be consistent with the re-refined lubricating oil purchasing guideline of the US Environmental Protection Agency. In addition, Metro shall purchase lubricating and industrial oil from the seller whose product contains the greater percentage of recycled oil as long as the recycled oil:

- (1) Is available within a reasonable period of time in quantities necessary for Metro's needs;
- (2) Meets performance standards recommended by the equipment or vehicle manufacturer, including any warranty requirements; and
- (3) Is offered at a price that does not exceed the 10 percent price preference for recycled products over comparable nonrecycled products.

(b) As stipulated in ORS Chapter 279, Metro's affirmative program for procuring recycled oil shall include, but be not be limited to the following:

- (1) Notice of Metro's preference for recycled oil shall be provided in publications used to solicit bids from suppliers;
- (2) Metro shall provide a description of its recycled oil procurement program at bidders' conferences and in procurement solicitations or invitations to bid; and
- (3) Metro shall make a good faith effort to inform industry trade associations about its recycled oil preference program.

(c) Metro shall specify recycled oils in its bids and solicitations for fleet vehicles and transport services and to the extent feasible not enter into agreements for these services with companies that restrict the use of recycled oils.

(Ordinance No. 93-513, Sec. 2)

#### 2.04.550 Compost Products

(a) Metro shall specify and give preference to purchase of organic soil amendments made from yard debris, sewage sludge or other organic waste composts rather than compost made from nonrecycled organic materials if the organic soil amendments:

- (1) Are available;
- (2) Meet the functional requirements of the specific application;
- (3) Meet human health and plant safety standards; and
- (4) Do not exceed the 10 percent price preference for recycled products over nonrecycled products.

(Ordinance No. 93-513, Sec. 2)

#### 2.04.560 Retread Tires

(a) The procurement officer shall eliminate any specifications that discriminate against procurement of retread tires and shall give preference to the purchase of retread tires over new tires, if the retread tires:

- (1) Are available;
- (2) Meet the performance standards recommended by the equipment or vehicle manufacturer, including warranty requirements;
- (3) Meet the EPA Purchasing Guideline for retread tires; and
- (4) Do not exceed the 10 percent price preference for recycled products over nonrecycled products.

(b) Metro shall procure retreading services for used tire cores to the extent that the retreaded tires can meet the requirements of subsection (a) of this section.

(c) Metro shall specify retread tires in its bids and solicitations for fleet and transport services and to the extent feasible shall not enter into agreements for these services with companies that restrict the use of retread tires.

(Ordinance No. 93-513, Sec. 2)

#### 2.04.570 Recycled Paint and Building Materials

Metro shall utilize recycled paint and other recycled content building materials in construction and remodeling projects if such paint or materials:

- (a) Are available;
- (b) Meet the functional requirements of the particular application;
- (c) Meet building code regulations and design review standards; and
- (d) Do not exceed the cost of nonrecycled paint or building materials by more than 10 percent.

(Ordinance No. 93-513, Sec. 2)

#### 2.04.580 Promotion and Evaluation of Recycled Content Product Procurement Plan

(a) Consistent with Executive Order No. 47A, Metro recycling coordinating committees shall include recycled product procurement strategies as part of their annual recycling plans. These plans shall incorporate the provisions of this ordinance as they apply to purchasing transactions and bid solicitations.

(b) To implement the provisions identified in this ordinance, Metro's waste reduction division and the procurement officer shall provide purchasing assistance to Metro staff. This assistance may include, but not be limited to:

- (1) Providing information about recycled products available in the Metro region;
- (2) Writing procurement specifications and standards for recycled products in bids, solicitations, and contracts;

- (3) Obtaining manufacturers' certification of recycled content;
- (4) Notifying potential bidders about preferences for recycled content products in notices, bidder's conferences or elsewhere, as appropriate; and
- (5) Offering workshops and seminars on recycled products and procurement for Metro departments and facilities.

(c) Notwithstanding the provisions of this ordinance, Metro may identify and purchase new or untested recycled products or materials to help develop markets for materials with low recovery rates and to improve markets for locally-generated materials. These materials and products may include, but are not limited to, plastic products, building and construction materials, and glass aggregate with recycled content.

(d) The waste reduction division shall prepare a report annually to measure the progress of the recycled content product procurement program, and shall present the report to the Chief Operating Officer~~Executive Officer~~ and the Metro Council. At a minimum, this report shall include:

- (1) The amount of recycled products purchased compared to non-recycled products;
- (2) The percentage of total dollar value of Metro purchases of recycled products compared to non-recycled products;
- (3) A summary of the year's activities; and
- (4) Recommendations on program modifications to increase recycled product procurement levels.

(Ordinance No. 93-513, Sec. 2)

\*\*\*\*\*

## STAFF REPORT

### IN CONSIDERATION OF

- ORDINANCE NO. 02-966 FOR THE PURPOSE OF AMENDING CHAPTER 2.04 METRO CONTRACT POLICIES, OF THE METRO CODE TO CONFORM TO THE METRO CHARTER AMENDMENTS ADOPTED ON NOVEMBER 7, 2000, AND DECLARING AN EMERGENCY
- ORDINANCE 02-974 FOR THE PURPOSE OF AMENDING TITLE V SOLID WASTE, OF THE METRO CODE (CHAPTER 5.01 THROUGH CHAPTER .09), TO CONFORM TO THE METRO CHARTER AMENDMENTS ADOPTED ON NOVEMBER 7, 2000, AND DECLARING AN EMERGENCY
- ORDINANCE 02-976, FOR THE PURPOSE OF AMENDING TITLE VII EXCISE TAXES, TITLE VIII FINANCING POWERS AND CHAPTER 2.06 INVESTMENT POLICIES OF THE METRO CODE, TO CONFORM TO THE METRO CHARTER AMENDMENTS ADOPTED ON NOVEMBER 7, 2000, AND DECLARING AN EMERGENCY

---

Date: October 29, 2002

Prepared by: John Houser

### BACKGROUND

As a result of the passage by the voters of Ballot Measure 26-10 on November 7, 2000, various changes to Metro's existing code are in order to conform to the approved amendments to Metro's charter. The changes proposed in these ordinances to primarily remove references to the Executive Officer and Presiding Officer, whose offices will be abolished effective January 6, 2003; and create references to the Council President and the Chief Operating Officer, consistent with code amendments adopted by Council earlier this year (see "Legal Antecedents" below), along with minor grammatical and formatting corrections. The proposed ordinances make changes to the following code sections:

- Chapter 2.04 (Metro Contract Policies) and Chapter 2.06 (Investment Policy)
- Title V Solid Waste(Chapters 5.01 through 5.09)
- Title IV Excise Taxes (Chapter 7.01)
- Title VIII Financing Powers (Chapter 8.01)

### ANALYSIS/INFORMATION

1. **Known Opposition** None
2. **Legal Antecedents** Resolution 00-2929A "For the Purpose of Submitting to the Voters an Amendment to the Metro Charter Abolishing the Office of Executive Officer, Creating the Office of Council President, and Making Related Changes"; Ordinance 02-942A "For the Purpose of Adding a New Chapter 2.20 to the Metro Code Creating the Office of Chief Operating Officer"; Ordinance 02-953A "For the Purpose of Creating the Office of Metro Attorney"; Ordinance 02-954A "For the Purpose of Reflecting the Creation of the Office of Metro Council President"; and Ordinance 02-

955A "For the Purpose of Amending Chapter 2.19 of the Metro Code to Conform to Charter Amendments Adopted on November 7, 2000".

3. **Anticipated Effects** These ordinances will amend Chapters 2.04, 2.06, 5.01 through 5.09, 7.01, and 8.01 of the Metro Code to conform to approved Charter amendments.
4. **Budget Impacts** None

#### **RECOMMENDED ACTION**

That Council approve adoption of Ordinances 02-966, 02-974 and 02-976.