

BEFORE THE METRO CONTRACT REVIEW BOARD

IN CONSIDERATION OF RESOLUTION NO. 03-3281, FOR THE PURPOSE OF FINDING RACC A SOLE SOURCE PROVIDER, EXEMPTING COMPETITIVE BIDDING, AND AUTHORIZING EXECUTION OF A CONTRACT) RESOLUTION NO. 03-3281
Introduced by: Mark Williams, with the concurrence of the David Bragdon, Council President

WHEREAS, the Regional Arts and Culture Council (RACC), through its community grants programs, seeks opportunities for cultural and arts programs and services that impact a variety of citizens by helping to provide a greater sense of community and place; and,

WHEREAS, Metro has historically supported the work of the RACC which serves and enriches the Metro region; and,

WHEREAS, Metro has used theater and art successfully in the past to further its waste reduction and environmental goals; and,

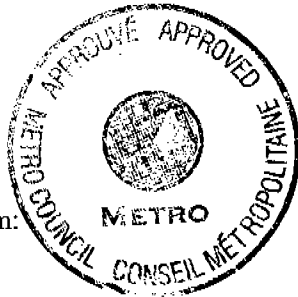
WHEREAS, RACC agrees to award these grant funds to projects which support Metro's solid waste, recycling and environmental goals; and,

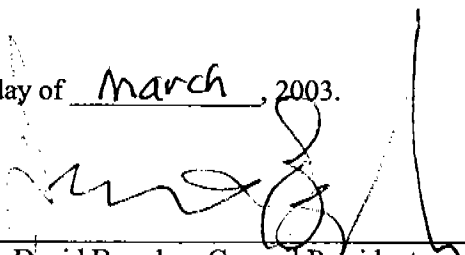
WHEREAS, past Metro and MERC projects which have included successful Percent for Art Programs are the original Oregon Convention Center, Metro Headquarters and the Expo Hall E, all of which utilized the services of RACC to assist with the selection and implementation of the program; now therefore,

BE IT RESOLVED that the Metro Contract Review Board

1. Adopts the findings in Exhibit A, and
2. Exempts the contract with Regional Arts and Cultural Council (RACC) from competitive bidding, and
3. Authorizes the Chief Operating Officer to enter in a contract with Regional Arts and Culture Council as set forth in Exhibit B.

ADOPTED by the Metro Council this 20 day of March, 2003.




David Bragdon, Council President

Approved as to Form:


Daniel B. Cooper, Metro Attorney

**EXHIBIT A
Resolution No. 03-3281**

**FINDINGS OF FACT SUPPORTING A SOLE SOURCE
PROCUREMENT IN THE CONTRACT WITH
THE REGIONAL ARTS AND CULTURE COUNCIL (RACC)**

Metro Contract Review Board

ORS 279.015(1) requires, with certain exceptions, that all public contracts be based on competitive bidding and, under ORS 279.029, awarded to the lowest responsive and responsible bidder. ORS 279.017(2) permits the Metro Contract Review Board, Metro's public contract review authority, to grant, under certain conditions, specific exemptions from the requirement for competitive bidding for contract with only one manufacturer or seller of the product required.

After review and discussion with interested parties, Metro staff has determined that the sole source contract is the best-suited procurement method for the contract with the Regional Arts and Culture Council. ORS allows use of the sole sourcing if appropriate findings of fact are addressed and supported by the Contract Review Board.

BACKGROUND

The Regional Arts and Culture Council seeks financial support from Metro for its community grant programs. These programs seek opportunities for cultural and arts programs and services that impact a variety of citizens by helping to provide a greater sense of community and place.

FINDINGS REGARDING SOLE SOURCE

ORS 279.017(2)(c) requires an agency to find there is only one manufacturer or seller of the product required.

Metro Contract Review Board finds that RACC is the only provider of cultural and arts programs and services that impact a variety of citizens by helping to provide a greater sense of community and place. The Contract Review Board exempts this contract from public bidding and other alternative procurement methods.

EXHIBIT B
Resolution No. 03-3281

SCOPE OF WORK
REGIONAL ARTS AND CULTURE COUNCIL

THIS AGREEMENT, dated as of March 20, 2003, is by and between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located at 600 NE Grand Avenue, Portland, OR 97232-2736, and the Regional Arts and Culture Council, (RACC), a nonprofit entity legally chartered under applicable federal law and state statute, whose address is 620 SW Main #420, Portland, Oregon 97205.

WITNESSETH:

WHEREAS, the Regional Arts and Culture Council (RACC) seeks opportunities for cultural and arts programs and services that impact a variety of citizens by helping to provide a greater sense of community and place; and,

WHEREAS, Metro has historically supported the work of the RACC which serves and enriches the Metro region; and,

WHEREAS, Metro has used theater and art successfully in the past to further its waste reduction and environmental goals; and,

WHEREAS, RACC agrees to award these grant funds to projects which support Metro's solid waste, recycling and environmental goals; and,

NOW, THEREFORE, in recognition of their mutual interests, the parties agree to the following terms and conditions.

SCOPE OF WORK

PROJECT: Support of Regional Arts and Culture
community grant programs in FY 2002-03

CONTRACTOR: Regional Arts and Culture Council (RACC)
620 SW Main St.
Portland, Ore 97205

David Hudson, Executive Director

PROJECT TERM: January 1, 2003 through June 30, 2003

PROJECT TOTAL: \$50,000

CONTRACTOR'S RESPONSIBILITIES:

Contractor shall be responsible for coordinating a grants program for arts projects that support Metro's solid waste, recycling and environmental goals. This includes:

1. Publicizing grant opportunities and screening applicants:

RACC will publicize the Metro-funded community grant programs. RACC also will screen applications to ensure grant funds are awarded only to projects that support Metro's stated goals in the area of waste management and recycling.

2. Awarding funds:

RACC is responsible for all procedures related to awarding grant funds. This includes notifying grants applicants of the status of their applications, issuing checks, and ensuring that grant-funded projects are completed according to RACC's grant criteria.

3. Reporting:

The Contractor's Project Manager will provide Metro with summary information on or before September 30, 2003, including a report containing detail about each grant awarded using Metro funds. The report should include:

- a. How each project supports Metro's solid waste and recycling goals;
- b. numbers of people attending special events related to grant projects, or how many people are projected to view or participate in the grant-funded project;
- c. geographic distribution of grant projects receiving Metro funds;
- d. comments from project participants.

METRO'S RESPONSIBILITIES:

Metro will provide funding for up to \$50,000 for applicable grants approved by RACC.

PAYMENT:

Metro will make payments to RACC as invoiced. Any expenses which exceed Metro's total cash contribution of \$50,000.00 shall be borne by the Contractor.

INDEMNIFICATION:

The parties hereby agree that RACC is an independent organization, and that the activities of RACC, their officers, agents and employees shall not constitute actions of Metro for any purpose. Therefore, RACC hereby agrees to indemnify, hold harmless and defend Metro, and their respective officers, commissioners, agents and employees, from and against all liabilities, damages, actions, costs, losses, claims and expenses (including attorneys' fees) arising out of activities of RACC, its officers, agents, employees, contractors and invitees.

TERMINATION:

Metro may terminate this Agreement upon giving RACC seven (7) days' written notice. In the event of termination, RACC shall be entitled to payment for work performed to the date of termination. Metro shall not be liable for indirect or consequential damages. Termination by Metro will not waive any claim or remedies it may have against RACC.

SITUS:

The situs of this Agreement is Portland, Oregon, and any litigation related hereto shall be governed by the laws of the state of Oregon and conducted in the state circuit court for Multnomah County.

NONTRANSFERABILITY:

This Agreement is binding on each party, its successors, assigns and legal representative and may not, under any circumstances, be assigned or transferred by either party.

ENTIRE AGREEMENT:

Notwithstanding and succeeding any and all prior agreements or practices, this Agreement constitutes the entire Agreement between the parties, and may only be expressly modified in writing signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates hereinafter indicated and as follows:

Regional Arts and Culture Council

Metro

By _____

By _____

Print Name _____

Print Name _____

Title _____

Title _____

Date _____

Date _____

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 03-3281, FOR THE PURPOSE OF FINDING RACC A SOLE SOURCE PROVIDER, EXEMPTING COMPETITIVE BIDDING, AND AUTHORIZING EXECUTION OF A CONTRACT

Date: January 6, 2003

Prepared by: Jan O'Dell

BACKGROUND

The Regional Arts and Culture Council seeks financial support from Metro for its community grant programs. This program seeks opportunities for cultural and arts programs and services that impact a variety of citizens by helping to provide a greater sense of community and place. Metro funds would be used to support grants for projects that support Metro's waste reduction and environmental goals.

ANALYSIS/INFORMATION

1. Known Opposition

None.

2. Legal Antecedents

Metro Code section 2.04.062 requires Metro Contract Review Board to exempt sole source contracts from public bidding.

ORS Chapter 279.015 requires public bidding and allows certain exemptions.

ORS Chapter 279.017(2)(c) allows the Metro Contract Review Board to exempt from public contracting when there is only one manufacturer or seller of the product required.

3. Anticipated Effects

Metro funds will allow community-based organizations to support cultural and arts programs in their neighborhoods that help support Metro's solid waste, recycling and environmental program goals.

4. Budget Impacts

\$50,000.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Resolution No. 03-3281.