

METRO
Planning Department

***System for Managing Contracts
Can Be Improved***

January 2006

A Report by the Office of the Auditor



METRO

PEOPLE PLACES
OPEN SPACES

Alexis Dow, CPA
Metro Auditor



METRO

OFFICE OF THE AUDITOR

January 25, 2006

To the Metro Council and Metro-area citizens:

As part of our scheduled work program, we evaluated the Metro Planning Department's system for managing transportation consulting contracts. In fiscal year 2006, the Planning Department budgeted about \$4.9 million on contracted professional services, mostly for transportation consulting.

Our review of the results of a \$1.2 million consulting contract was favorable. Spending on this contract was less than planned and the US Department of Transportation accepted the work products that the consultant/contractor provided to Metro.

We found, however, the Planning Department should adopt a more structured approach to managing contracts to better assure that the department will consistently achieve favorable contracting outcomes, and to help avoid potential problems. For example, we observed that some contract compensation terms were unclear and the review of billed costs appeared extensive but was incomplete.

We recommend that the Planning Department further define contracting roles and develop more complete procedures. This is needed to ensure that its staff carries out all tasks that necessary to properly manage and mitigate contract-related risks. We also recommend clarifying the purpose of contract reviews that are performed by the Office of Metro Attorney and completing actions needed to implement audit recommendations made in 2000.

The following report describes our work and our findings and recommendations in more detail. The last section of the report presents the written response of Metro Chief Operating Officer Michael Jordan to each of the audit recommendations.

We appreciate the assistance provided by the Planning Department and the Office of Metro Attorney during the course of this review.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Alexis Dow'. The signature is fluid and cursive, written over a light blue horizontal line.

Alexis Dow, CPA
Metro Auditor

Auditor: Douglas U'Ren, CIA

Table of Contents

Executive Summary	1
Summary of Recommendations	2
Introduction	5
Contract results generally favorable	6
Final costs lower than planned	6
Some areas can be improved	7
Recommended actions	12
More structured approach needed for contracts	12
Additional follow-up on URS consulting contract	14
Audit methodology and limitations	15
Response to the Report	
Metro Chief Operating Officer Michael Jordan	

Executive Summary

The purpose of this audit was to evaluate the Metro Planning Department's system for developing and administering consultant contracts. The Department's adopted budget for contracted professional services was about \$3 million in each of the last two fiscal years.

We reviewed a \$1.2 million consulting contract the Planning Department awarded to URS Corporation. URS and other consultants assisted Metro in developing supplemental and final environmental impact statements for the South Corridor Project, which would add 8.3 miles of light rail tracks for public transportation between Clackamas regional center and downtown Portland.

Generally, the outcomes of the URS contract were favorable. URS fulfilled its responsibilities under the contract and the final cost totaled about \$1.0 million, or \$200,000 less than budgeted. We believe that costs were less than planned in part due to two primary factors:

- The contract contained well-written statements of work, which clearly identified the tasks and results the consultant was required to achieve
- Planning Department staff established budgets for each major task and disallowed about \$136,000 of costs that exceeded task budgets

While the contract's overall results were positive, we identified some matters that indicate the need for improvements to the Planning Department's current approach to administering contracts:

- Some of the URS contract's compensation provisions were unclear, which can lead to misunderstandings between the contracting parties and to increased costs for Metro.
- The Planning Department did not perform and document an independent cost analysis before adding \$500,000 in planned work to the contract. Such a cost analysis was required under the terms of a federal grant that provided most of the funding for Metro's contract with URS, and it helps ensure that the cost of additional contracted work is fair and reasonable.
- The Planning Department also did not go far enough to verify that URS actually incurred the costs it billed to Metro.

To avoid these types of issues and risks, Metro should add more structure to its system for managing Planning Department contracts by better defining the roles and responsibilities of staff that are involved in the various aspects of developing and administering contracts. In addition, the Planning Department should verify the contractor's labor and overhead rates as required by the project's funding source.

A summary of our recommendations for improving contracting practices and internal controls is provided in the next section of this report.

Summary of Recommendations

1. Define contract administration roles and responsibilities.

It is important to define the contract administration responsibilities of each staff member involved with contracts. Clear designation of responsibilities and expectations helps ensure that staff will carry out all tasks needed to properly develop and administer contracts and to manage contract risks. Roles and responsibilities for the following areas are suggested:

- Ensuring contracts are clearly written, especially the compensation provisions, and include all terms and conditions required by the grants that funded them.
- Identifying significant contract risks and ensuring that processes are in place to properly manage them.
- Ensuring that contractor invoices comply with contract terms and that services billed were provided.
- Ensuring that contract files contain required records that are well-organized.

2. Develop a more complete set of procedures to guide staff on contracts.

The Planning Department should develop additional contracting procedures and ensure that all employees who assist in managing contracts are aware of them. The procedures should address:

Pre-award activities

- How to select the optimum contract type and document this decision
- How to determine what requirements/provisions to include in contracts.
- What actions to take to identify and manage contract risks
- How to perform a price analysis
- How to document the contractor selection process to comply with Metro, state and federal requirements.

Contract administration

- What steps should be taken to review contractor invoices, and who should carry out those steps.
- What actions to take when amending contracts.
- How and when to perform cost analyses when contract scope is changed.
- How contractor performance should be monitored and reported.
- For cost-reimbursement contracts, how Planning Department staff should ensure that costs and rates charged to Metro accurately reflect contractors' actual costs and comply with federal requirements.
- How adjustments to contractor invoices should be documented, and where this documentation should be retained.

Contract close-out

- How to decide which records need to be included in the department's contract files and which ones should be provided to Metro's Contracts/Purchasing unit for archiving.
- How to close out contracts.
- How Planning Department managers should ensure that contracting procedures have been followed.

3. Clearly identify the role of the Metro Attorney in the contracting process.

Metro should more specifically define the role of the Office of Metro Attorney in the contracting process. Metro's contracting guidelines require Metro Attorney "approval" but leave open what aspects of the contract the attorney has considered, or where records containing the Attorney's comments should be retained. The Metro Attorney and Metro's Contracts Manager should address these issues and include these matters in the Metro Contracting Manual. At a minimum, legal review of contracts should include a determination of whether contracts are clearly written and whether they contain all provisions required by the Metro Code, Oregon statutes, and federal grants, if applicable.

4. Consider reviewing the consultant's labor and overhead rates.

The Planning Department should request audit reports of URS's overhead rates for fiscal years 2001 through 2004, if audits were done, and ensure that the 146.5% rate that URS charged during those years approximated its actual, audited overhead rates. Metro Planning should also determine, on a sample basis, whether URS staff assigned to the South Corridor project were actually paid the amounts that Metro was billed for their time.

5. Implement remaining recommendations from Metro Auditor December 2000 report on contracting practices.

As of November 2005, Metro had not implemented three of eight recommendations from the December 2000 report entitled, *Contracting: A Framework for Enhancing Contract Management*.

- Establish a management reporting system to provide contract oversight information to Metro's top managers.
- Establish minimum qualifications for contracting personnel, formally evaluate contracting personnel performance and designate a Contract Coordinator in each department to assure contracts are properly planned and monitored.
- Provide better support to project managers and other contracting personnel by developing procedures, guidelines and training in determining appropriate contract type; establishing scope of work requirements and performance standards; monitoring and evaluating contractor performance; evaluating contractor proposed prices and billings; and conducting risk assessments.

We believe that if Metro carries out this last recommendation, the Planning Department would not need to develop as extensive a set of contracting procedures for itself, and the recommended system for identifying and meeting staff's training needs could perhaps be developed or augmented by the Metro Purchasing/Contracts section.

Introduction

Background The Metro Planning Department's work focuses on implementing the regional planning vision contained within the 2040 Growth Concept and defined within the Regional Framework Plan, the Urban Growth Management Functional Plan, and the Regional Transportation Plan.

Metro is the designated Metropolitan Planning Organization for the Portland area. In this role, it develops the Regional Transportation Plan and works with other local and state agencies to decide how federal transportation funds should be spent.

In FY 2005, the Planning Department's budget was \$15.9 million, with about \$3 million budgeted for contracted professional services. The Department's contracted professional services budget for FY 2006 is \$4.9 million.

A major part of the Planning Department's funding for transportation planning projects derives from grants awarded by the US federal government, either directly or on a "pass-through" basis from other agencies, such as the Oregon Department of Transportation (ODOT) and Tri-Met. An important consequence of receiving this federal funding is that Metro and its Planning Department must comply with a number of specific federal requirements. For example, Metro must provide disadvantaged business enterprises (DBEs) with "maximum opportunity" to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds.

Audit objectives The purpose of this audit work was to assess Metro's system for administering transportation planning consultant contracts. Our objectives were to identify best practices for contract management, gain a general understanding of the federal requirements Metro must comply with when administering contracts that are funded by grants awarded by the Federal Transit Administration (FTA) and other agencies, and evaluate the adequacy of Metro's system for administering contracts in the context of best practices and the federal grant contracting requirements.

To accomplish these objectives, we studied a contract with URS Corporation. This contract was chosen due to its relatively large dollar value and because it had been active for several years but was almost over. This provided an opportunity to readily see how it was managed and make constructive audit recommendations affecting the contract before it closed.

Contract results generally favorable

Final costs lower than planned Final costs paid to URS Corporation under the contract we audited were about \$1.0 million, which was about \$200,000 less than planned. We believe this favorable result was driven by three major factors:

- the consultant contract contained clear statements about the work to be done and the expected deliverables;
- Planning Department staff established budgets for each major task performed by the consultant and monitored task costs; and
- the Planning Department's efforts to identify and hire the most qualified contractors for the South Corridor project generally followed best practices.

Work statements provide basis for controlling costs and evaluating performance Contracts should communicate to contractors what is required of them in clear, measurable statements of expected services. Doing so lowers the risk of misunderstandings between the contracting parties and can lower costs by reducing the amount of uncertainty that the contractor faces.

The URS Corporation contract clearly described the services and deliverables Metro expected to receive. The major expected outputs were various technical reports and completed chapters of environmental impact statements. In addition, the contract provided detailed guidance on the information these reports should contain and how they should be formatted.

Metro staff established and monitored budgets for major tasks Another key action that Planning Department staff took to control costs was establishing budgets for each major task to be carried out by the consultant. Staff subsequently monitored billed costs and made sure most tasks did not exceed their budgets. Task budgets could only be modified by approval of the Programs Manager who coordinated the South Corridor project for the Planning Department.

Of the 22 tasks defined under the contract, 17 cost less or equal to their budget. Five cost more than budgeted, but only three tasks were over budget by more than \$3,000 and 15%.

The consultant billed Metro a total of \$1,139,000. This was about \$117,000 less than planned. In addition, Metro disallowed about \$136,000 of billed costs. The lion's share of disallowed costs represented amounts billed that exceeded task budgets. The employee who managed this consulting contract left Metro in early 2005, and the current Planning Department management team was unable to locate records explaining why the former employee decided to allow some task budgets to be exceeded.

Consultant selection process generally followed best practices

Contractors should be selected based on three factors: competition; established criteria for assessing their strengths and weaknesses; and past performance. These criteria are based on best practices and are discussed in the December 2000 Metro Auditor's Office report on Metro's contracting practices.

The Planning Department created a competitive environment for the South Corridor work. By developing an RFP that clearly described the work to be performed and by encouraging consultant interest in the RFP, the Department received at least two proposals for each of the four major phases of South Corridor work. It received two proposals bids for one of the phases of work, three bids for two phases, and four bids for the fourth phase.

The Planning Department also established a clear set of criteria for assessing the strengths and weaknesses of each proposal, and the teams that evaluated proposals for each phase of the project applied the criteria when ranking each proposal.

While the selection process was based on competition and on established criteria for assessing the strengths and weaknesses of the consultants, we were unable to determine if past performance was considered. Planning staff told us that it was, but the contract records we reviewed did not yield definitive information about the extent to which past performance was considered in the consultant selection process.

Some areas can be improved

As previously discussed, total costs for the consultant contract were less than planned. In addition, the major product developed by the consultant and Metro, the Final Environmental Impact Statement (FEIS) for the I-205/Portland Light Rail Transit Project was issued by the US Department of Transportation in November 2004. While these are favorable outcomes, some matters were identified which indicate weaknesses exist in the Planning Department's approach to managing contracts.

- The Planning Department performed a price analysis before awarding the URS contract, but it did not perform a required cost analysis before increasing the contract by \$500,000.
- Some contract provisions were unclear.
- The Planning Department's process for reviewing consultant's labor time was extensive but incomplete.
- Verification of labor and overhead rates needs to be more complete.
- Some required contract records may not have been developed or retained.

Price analysis performed but required cost analysis omitted

Performing price or cost analyses for significant procurement actions is both a best practice and a requirement of the federal grants that finance much of Metro's transportation planning program. This should occur both when awarding and amending contracts. Price and cost analyses help ensure that Metro acquires services at reasonable and fair prices. If they are not done, the risk is that contract costs will be higher than necessary and funds will be wasted. In addition, not doing the price/cost analyses as required can cause Metro to be in violation of federal grant requirements.

Price Analysis

Price analysis involves evaluating the cost of a proposal by comparing it with benchmarks of reasonableness. These benchmarks include prices of competitors who responded to a request for proposals or other solicitation; past prices paid for similar services; and market survey data.

Cost Analysis

Cost analysis is the systematic examination of the individual items that form the total cost of a contractor's proposal or cost estimate to help ensure that the contractor's pricing is reasonable. These items consist of direct and indirect costs allocable to the work the consultant/contractor is hired to perform. Cost analysis is normally performed whenever real price competition does not exist, such as when the scope of work needs to be changed after the contract has been awarded.

We found that Planning Department staff performed price comparisons before selecting the consultants that helped it with South Corridor project, including URS, and we were told that this price analysis was provided to the teams that selected the consultants. However, we found no evidence that Metro staff performed an independent cost analysis when the contract was increased by \$500,000 to reflect an expansion of the consultant's work, which was to develop a final environmental impact statement (FEIS) for the South Corridor project. Staff reviewed the consultant's proposed costs for the additional work but there is no documentation that staff independently developed its own cost estimates for the work and compared that result to the consultant's cost proposal.

Some contract provisions unclear

Good business practice requires that contracts clearly identify how the contractor will be compensated. Clear compensation provisions protect both parties to the contract by reducing the risk of misunderstandings that can be costly and time-consuming to resolve. In addition, clear compensation provisions help Metro avoid unexpected costs and fees that can occur when contract language is vague.

The contract stipulated that the consultant would be reimbursed for its actual labor and overhead costs, plus a fee that was based on those costs. We are not aware of any compensation-related disputes occurring between Metro and the URS. However, some of the contract's compensation provisions were vague or indefinite, putting both parties at risk of having misunderstandings over payment terms.

- Planning Department staff told us that the consultant's billed costs could not exceed budgets established for each major task, but the contract did not clearly contain this stipulation. We found that Planning Department staff did disallow a significant amount of costs billed by the consultant that exceeded task budgets, but five task budgets were exceeded and paid for by Metro. Only three tasks were over budget by \$3,000 and 15%.
- The URS contract did not adequately define what types of costs that URS could bill Metro for. Contracts that are the cost-reimbursement type, such as the URS contract, should clearly identify what kinds of costs Metro will pay for and what costs it will not allow. Also, contracts funded by federal grants must follow the principles set forth in federal regulations in determining allowable costs. The URS contract contained a provision that incorporated

some federal requirements by reference, but this provision did not specifically define allowable and non-allowed costs, or cite a particular federal law, regulation or other guidance that did adequately define allowable costs. This put Metro at risk for paying for inappropriate or excessive consultant costs, or for costs that the federal government could disallow if a federal audit were to be conducted.

Review of consultant's time extensive but incomplete

Before invoices are paid, Metro staff should verify that contractors have delivered the services they have listed on their invoices. When handling cost reimbursement contracts, such as the URS contract, staff should also verify that the number of consultant labor hours billed by the contractors and subcontractors is accurate. The verification process can be performed in a number of ways, but in the final analysis it is important to match at least a sample of consultant hours billed to Metro with hours recorded in the consultant's own accounting records. One approach is to match invoiced hours to the original time sheets signed by the consultant's employees and supervisor. Another potential step is to match labor hours and costs to other records from the consultant's accounting system.

The Planning Department staff reviewed each URS invoice closely. As a result, Metro paid URS about \$136,000 less than URS billed to Metro. The primary reason for the disallowed charges was costs exceeding task budgets, but invoices were also reduced for other reasons, such as undocumented direct expenses and labor hours charged by persons who were not listed on established rate tables.

Although staff reviewed the consultant's billings, their efforts were not fully adequate to assure that URS accurately billed the labor hours of its employees and that of its subconsultants. Staff verified that invoiced labor hours matched supporting schedules provided by URS and they compared the cost of each major project task to the corresponding task budget. However, they did not compare consultant-billed hours to the number of hours shown on the consultant's actual timesheets or other internal records of the consultant. Most of the work URS did for Metro took place at this consultant's offices, so it was especially important to have a procedure to verify – at least on a sample basis – that URS employees actually spent the number of hours on the project that URS billed to Metro.

The underlying risk is that a consultant could bill Metro for consultant hours that the employee did not actually spend on the Metro project, or the consultant could bill Metro for hours that it did not actually pay its employees for. If the consultant's labor hours are overstated, the related overhead charges would also be overstated since overhead charges are calculated as a percentage of direct labor costs. Such potential overstatements do not need to have been deliberately caused; they could occur if internal control weaknesses exist.

Verification of labor and overhead needs to be more complete

When reviewing invoices submitted by contractors/consultants, Metro staff should verify that labor and overhead rates have been charged in accordance with the contract. In addition, for cost-reimbursable contracts Metro should have a process in place for ensuring that billed rates accurately reflect the consultant's actual

allowable costs. This verification requires Metro to audit the consultant's rates, or to review the results of an audit performed by an independent and qualified party, such as a certified public accountant.

Metro paid the consultant about \$260,000 for labor costs and about \$367,000 for overhead expenses. Thus, labor and overhead rates were a significant factor in determining the \$1 million cost of this contract.

Planning Department managers told us that Department staff carefully compared rates charged by the consultant to rates listed in rate tables that had been pre-approved as reasonable by the Programs Manager. There was no procedure requiring these rates to be checked or specifying how rate checks should be documented. We reviewed six invoices submitted by URS Corporation, and all rates tested matched those that Metro agreed to pay the consultant and its subcontractors.

However, we found that the Planning Department did not have adequate processes to ensure that the consultant's labor and overhead rates reflected its actual costs and that only allowable costs were included in the overhead rate:

- No work was done to ensure that labor rates charged by the consultant to Metro matched the rates the consultant actually paid its employees.
- The consultant's overhead rate throughout the duration of the contract was 146.5% of labor charges. The consultant gave Metro a report by a certified public accountant indicating that its actual overhead rate for the "combined California operations", using Federal Acquisition Regulations as criteria, was about 156.6% for the consultant's fiscal year ending on October 31, 2000. Although the 146.5% overhead rate charged was less than this audited rate, the contract did not begin until November 2001, and Metro did not obtain the results of any overhead rate audits performed during the years the consultant contract was actually in force. The rates could have varied from year to year and by locations. In addition, it is unclear whether the consultant's staff who worked on the project for Metro was part of the California operations.

When Metro enters into cost reimbursement-type contracts without verifying the accuracy of billed labor and overhead rates, Metro risks being overcharged by the following means:

- Labor and overhead rates charged by contractor may exceed its actual costs.
- Contractors could direct charge for services that Metro is already paying for through overhead rates.

Some required records not developed or retained Metro developed and retained most key records of the URS contract, such as the Request For Proposals (RFP), proposals received, and copies of the contract, amendments, insurance certificates and related schedules. However, some required contract records may not have been developed and retained.

Federal rules¹ require written records evidencing:

- The rationale for the method of procurement
- The rationale for selection of contract type
- Reasons for contractor selection or rejection
- The basis for the contract price

Sound business practice suggests retaining:

- Requests for Proposals (RFPs)
 - Contractor proposals/responses to RFPs
 - Contract agreements, schedules and amendments
 - Notice of contract award
 - Certificates of insurance
-

Areas requiring additional documentation include:

- **Reasons for proposal evaluators' ratings.** With respect to the contractor selection process, staff was able to provide us with rating sheets that were filled out by persons who sat on the teams that selected the consultants for the South Corridor project. However, we noted that Metro did not fully comply with the FTA requirement that, "evaluators must provide a written narrative of the reasons for their ratings." With respect to the Environmental Analysis phase of the South Corridor project, only one evaluator out of the six provided Metro with a written narrative.
- **Ranking of contract proposers.** Staff was unable to produce a document showing that URS was the highest-ranking respondent for the parts of the South Corridor consultant work it was awarded. A Planning Department Program Manager said the selection team calculated the consultant rankings on a "white board" but may not have retained a written summary of the final rankings. The Federal Transit Agency, which funded most of the URS contract through grants, may be concerned about the absence of a record proving that URS was the highest ranked respondent to the RFP if it audits Metro's records.
- **Rationale for procurement method or contract type.** We found no written records documenting Metro's rationale for the procurement method or the contract type. The Planning Department did retain documentation showing how the initial contract price was established.

¹ FTA Circular 4220 1E

Recommended actions

More structured approach needed for managing contracts

The Planning Department operates in a complicated contracting environment. Much of its work must comply with complex and sometimes unclear requirements of federal grants as well as Metro's own policies. While the Department achieved reasonably favorable outcomes for the consultant contract we reviewed, its system for managing consultant contracts does not have sufficient structure to ensure it can consistently and adequately manage significant contracting risks and requirements. The Department appears to have excellent staff and managers who are conscientious of the need to carefully and wisely spend public dollars.

The reliability of the Department's contracting processes would benefit by taking two major steps:

- Defining the roles and responsibilities of each employee who is involved in Planning contracts
- Developing a more complete set of procedures to help guide staff on how risks can be identified and how they should be managed.

Currently, contracting roles are not defined and written procedures are minimal. We also found that the role of the Metro Attorney's Office in reviewing and approving contracts has not been adequately defined.

Define contract administration roles and responsibilities

The roles and responsibilities of each person involved in Planning Department contracts have not yet been defined. Responsibilities and expectations need to be identified and documented to help ensure that department staff carry out all tasks necessary to properly administer contracts. We recommend that the Planning Department define the minimum contract administration responsibilities of each staff member involved with contracts.

Typical responsibilities for contract management

- Ensuring contracts are clearly written and comply with the requirements of the grants that funded them.
- Ensuring that significant risks of each contract have been identified and procedures are in place to manage them.
- Ensuring that contractor labor rates, labor hours, overhead rates and fees have been accurately billed and contractor overhead rates reflect the contractor's actual costs and allowable costs.
- Ensuring contract files contain all required documents and are well organized.

Develop a more complete set of procedures to guide staff on contracts

Although Metro has contracting guidelines, which are accessible to employees on its internal web site, these guidelines provide general information and do not describe in detail how each department should administer their contracts. The Planning Department has its own administrative procedures, but for contracts they focus on the number of quotes that are required at various contract amounts and do not address other important issues, such as how staff should structure contracts so they comply with federal grants and contain terms and amounts and do not address

other important issues, such as how staff should structure contracts so they comply with federal grants and contain terms and conditions that protect Metro. Besides helping staff understand how to carry out their defined roles and responsibilities, written procedures would provide the Planning Department with other potential benefits. For example, they can be effective tools for training new employees and ensuring consistent performance. They can also include steps that can provide assurance that all required contract administration actions are actually performed.

For these reasons, we recommend that the Planning Department develop additional contracting procedures and make sure that all employees who interface with procurement issues are aware of them.

Typical contracting procedures needed to guide staff

Pre-award activities

- How to select the optimum contract type and document this decision
- How to determine what requirements/provisions to include in contracts
- What actions to take to identify and manage contract risks
- How to perform a price analysis
- How to document the contractor selection process to comply with Metro, state and federal requirements

Contract administration

- What steps should be taken to review contractor invoices, and who should carry out those steps
- What actions to take when amending contracts
- How and when to perform cost analyses when contract scope is changed
- How contractor performance should be monitored and reported
- For cost-reimbursement contracts, how Planning Department staff should ensure that costs and rates charged to Metro accurately reflect contractors' actual costs and comply with federal requirements
- How adjustments to contractor invoices should be documented, and where this documentation should be retained

Contract close-out

- How to decide which records need to be included in the department's contract files and which ones should be provided to Metro's Contracts/ Purchasing unit for archiving
 - How to close out contracts
 - How Planning Department managers should ensure that contracting procedures have been followed
-

Clearly identify the role of the Metro Attorney in the contracting process

During the course of our work, we found that Metro has not adequately defined and communicated the role of the Office of Metro Attorney in the contracting process. Metro's contracting guidelines state that the Office of Metro Attorney:

- Provides legal advice
- Approves contracts over \$25,000
- Reviews contract amendments

These contracting guidelines do not identify the purpose, objectives and potential limitations of contract approvals performed by the Office of Metro Attorney. The contracting guidelines and other sources of Metro contracting procedure also do not define what Metro Attorney "approval" of contracts means, how Attorney approvals and their intended scope should be documented and who they should be

communicated to, or where documents related to attorney contract reviews should be retained. We recommend that the Office of Metro Attorney and Metro's Contract Manager discuss and resolve these issues, and communicate the Attorney Office's defined roles to contracting personnel in other departments. We suggest that, at a minimum, legal review and approval of contracts include determinations of whether contract compensation provisions are clearly written and whether the contracts comply with the requirements of the Metro Code, Oregon state law, and federal grants, if applicable.

Implement remaining recommendations from Metro Auditor December 2000 report on contracting practices

This report focused on improving contracting practices in Metro's Planning Department. Many of the issues in this report were addressed in the December 2000 Metro Auditor report entitled, "Contracting: A Framework for Enhancing Contract Management" which contained eight recommendations for improving Metro-wide contracting practices. Five of those recommendations have been fully implemented, and the three outstanding recommendations are:

- Establish a management reporting system to provide contract oversight information to top management.
- Enhance quality control by:
 - Designating a Contract Coordinator in each department to assure contracts are properly planned and monitored
 - Establishing minimum qualifications for contracting personnel
 - Formally evaluating contracting personnel performance
- Provide better support to project managers and other contracting personnel by developing procedures, guidelines and training in:
 - Determining appropriate contract type
 - Establishing scope of work requirements and performance standards
 - Monitoring and evaluating contractor performance
 - Evaluating contractor proposed prices and billings
 - Conducting risk assessments

If Metro carried out these remaining recommendations, Metro's departments, including the Planning Department, might not need to develop their own contracting procedures that are as extensive as the ones we suggest in recommendation #2.

Additional follow-up on URS consulting contract

Consider reviewing the consultant's labor and overhead rates

Metro's Planning Department compensated the URS Corporation using a cost reimbursement type of contract and has not yet conducted an adequate review of the labor and overhead rates to ensure they accurately reflect URS's actual costs and are allowable under the terms of the federal grants that funded the South Corridor project. We recommend that Metro's Planning Department request audit reports of URS's overhead rates for fiscal years 2001 through 2004, and ensure that the 146.5% rate URS charged during those years approximated its actual, audited overhead rates. Metro's Planning Department should also determine, on a sample basis, whether URS staff assigned to the South Corridor project were actually paid the amounts that Metro was billed for their time.

Audit methodology and limitations

Audit methodology

We carried out the following procedures to complete this audit:

- We identified procurement best practices by searching the Internet and reading past audit reports performed by the Metro Auditor and other government audit departments. One key source of information was an audit report produced by the Metro Auditor's Office in December 2000 entitled, "Contracting: A Framework for Enhancing Contract Management."
- We identified federal requirements applicable to Metro's transportation planning contracts by reviewing the FTA's "Master Agreement," which provides a compilation of all the general requirements imposed for all FTA grants. A new version of the Master Agreement is issued at the beginning of each federal fiscal year (October 1) and applies to all FTA grants awarded to Metro during that year. In addition, we read the "certifications and assurances" document provided by Metro's Chief Operating Officer (COO) to the FTA each year. In signing the "certifications and assurances" document, Metro's Chief Operating Officer represents that Metro will comply with all federal statutes, regulations, executive orders, and other requirements applicable to FTA grants received in the upcoming fiscal year. We also reviewed FTA Circular 4220.1E, which is cited in section 1F of the certifications and assurances document. This Circular contains a number of specific requirements that Metro must comply with when administering contracts that are funded by FTA grants.
- We interviewed staff in Metro's Planning Department. We asked staff about policies, procedures and practices they follow in carrying out their administration of transportation planning contracts. We also sought advice about several audit issues from the Office of Metro Attorney.
- We selected a single contract to audit to ensure that we understand how Metro staff actually handles transportation planning contracts. The contract we reviewed, contract #923312 with URS Corporation, began in November 2001 and ended in June 2005. This contract started at an amount of \$756,000 and totaled \$1,256,000 after \$500,000 in additional work was added to it in March 2004. Through early June 2005, Metro had paid URS about \$1.03 million under this contract. URS was one of four consultants that helped Metro staff develop supplemental and final environmental impact statements for the South Corridor project. This project would add 8.3 miles of light rail tracks to the region's transit system and provides a link from the Clackamas regional center to Portland State University in downtown Portland.

Our audit was conducted in accordance with generally accepted government auditing standards. These standards require that we review internal controls and report significant deficiencies that are relevant to audit objectives. Significant internal control deficiencies found during the course of the audit are described in the report.

Audit limitations We evaluated the Planning Department's compliance with some, but not all, requirements connected with the federal grant that funded the URS Corporation contract. We selected the requirements most relevant to the scope of the audit. For example, we evaluated its compliance with a provision in FTA Circular 4220.1E that mandates performing a price or cost analysis in connection with every procurement action. However, we did not evaluate whether Metro's written standards of conduct meet federal requirements or if Metro is adequately enforcing the standards.

We relied on records that were available from Metro managers and staff. We did not contact any contractors, nor did we audit the overhead rate charged in connection with the contract we audited as part of this review.

Some Metro transportation consultant contracts must be managed in compliance with certain intergovernmental agreements (IGAs). Metro's compliance with those IGAs was outside the scope of this audit. Some of Metro's transportation contracts are subject to provisions in both federal grants and IGAs.

Response to the Report

Metro Chief Operating Officer Michael Jordan

Audit: System for Managing Contracts Can Be Improved

Date: January 2006

AUDIT RESPONSE

Recommendation 1

Define contract administration roles and responsibilities to:

- Ensure contracts are clearly written, especially the compensation provisions, and include all terms and conditions required by the grants that funded them.
- Identify significant contract risks and ensure that processes are in place to properly manage them.
- Ensure that contractor invoices comply with contract terms and that services billed were provided.
- Ensure that contract files contain required records that are well-organized.

Agree

Yes

No (specify reasons for disagreement)

What action will be taken (if any)?

Metro had recently organized a Business Design Team to review our contracting procedures throughout the entire agency and this group has published its final recommendations on 9/7/05. These recommendations include developing a centralized contracting department that will bring uniformity in contracting practices, provide greater accountability for contracting matters and decisions, and will lead to a more focused set of responsibilities that will result in greater expertise in our staff. At this time, however, key individuals needed to further develop and implement these recommendations have yet to be identified or hired. Recruitment and selection of the new Contracts Manager is anticipated to begin in January 2006.

Steps have already been undertaken to define contracting roles for all personnel involved in contracts; these roles have been published on Metro's intranet, but may undergo further revisions once Metro establishes a centralized contracting department.

Who will take action?

Central Services

When will action be accomplished?

Upon hiring the new Contracts Administrator, Metro will be able to continue moving forward with this recommendation. It is estimated that a new Contracts Administrator will be hired by April 2006.

Follow-up necessary to correct or prevent reoccurrence.

Audit: System for Managing Contracts Can Be Improved

Date: January 2006

AUDIT RESPONSE

Recommendation 2

Develop a more complete set of procedures to guide staff on contracts.

Pre-award activities

- How to select the optimum contract type and document this decision
- How to determine what requirements/provisions to include in contracts.
- What actions to take to identify and manage contract risks
- How to perform a price analysis
- How to document the contractor selection process to comply with Metro, state and federal requirements.

Contract administration

- What steps should be taken to review contractor invoices, and who should carry out those steps.
- What actions to take when amending contracts.
- How and when to perform cost analyses when contract scope is changed.
- How contractor performance should be monitored and reported.
- For cost-reimbursement contracts, how Planning Department staff should ensure that costs and rates charged to Metro accurately reflect contractors' actual costs and comply with federal requirements.
- How adjustments to contractor invoices should be documented, and where this documentation should be retained.

Contract close-out

- How to decide which records need to be included in the department's contract files and which ones should be provided to Metro's Contracts/ Purchasing unit for archiving.
- How to close out contracts.
- How Planning Department managers should ensure that contracting procedures have been followed.

Agree

Yes

No (specify reasons for disagreement)

What action will be taken (if any)?

Staff has paid strict attention to all federal regulations concerning contracting procedures. We have taken steps to identify the appropriate contract type, developed sufficient cost analysis to ensure Metro was receiving the fair price, and clearly communicated, in measurable terms, what the scope of work was. Staff has also demonstrated they are reviewing invoices against the terms in the contract and have consistently disallowed costs that were not eligible for reimbursement.

We concur that there should be more attention paid to documentation of some procedures. To improve upon our written procedures, individuals and/or small task groups will research and document best practices for all aspects of contracts. To ensure uniformity throughout the agency, this recommendation will be assigned the centralized contracting department once it is operational.

Who will take action?

The new, centralized contracts department once it is in force. In the meantime, Planning will research best practices as the need arises and develop checklists to ensure contracts currently being managed by Planning are in accordance with the governing federal requirements, and will document the steps that are taken.

When will action be accomplished?

Planning will start immediately on items that pertain to them, but will defer the final product to new centralized contracts dept and Contract Manager once they are established.

Follow-up necessary to correct or prevent reoccurrence.

Audit: System for Managing Contracts Can Be Improved

Date: January 2006

AUDIT RESPONSE

Recommendation 3

Clearly identify the role of the Metro Attorney in the contracting process. At a minimum, legal review of contracts should include a determination of whether contracts are clearly written and whether they contain all provisions required by the Metro Code, Oregon statutes, and federal grants, if applicable.

Agree

Yes

No (specify reasons for disagreement)

What action will be taken (if any)?

The role of the Metro Attorney in reviewing contracts is a continuing topic of discussion. To reduce that role, Purchasing and Contracts worked with the Attorney to develop pre-approved formats and language that do not require Attorney review unless a change in the pre-approved standard terms is required. Training was done for all Metro staff over a year ago, in how to access both procedures and forms on the Metro Intranet. Procedures and forms are in continual revision as changes occur due to state and Metro legislation and standard practice, such as the Bureau of Labor and Industry updates that took effect January 1, 2006.

The method to ensure appropriate Metro Attorney involvement in the processes that do not have standard formats is the next step. To that end, we have the State of Oregon's administrative procedures on attorney contract review as a model upon which to build the appropriate Metro process.

In addition, Metro's Business Design Team had also recognized the need to have this role better defined in their findings and recommendations on Metro's contracting process, and this will be addressed once the centralized contracts department is established.

Who will take action?

Contracts Manager once hired.

When will action be accomplished?

After recruitment and selection of a full-time Contracts Manager is completed by the Chief Financial Officer, which is anticipated to happen by April 2006.

Follow-up necessary to correct or prevent reoccurrence.

Audit: System for Managing Contracts Can Be Improved

Date: January 2006

AUDIT RESPONSE

Recommendation 4

Consider reviewing the consultant's labor and overhead rates.

Agree

Yes

No (specify reasons for disagreement)

URS's overhead rates were developed by an outside auditing firm and were reviewed by Metro at the start of the contract. However, we did not receive subsequent audited rates, so we will request a copy of their audited overhead rates for the rest of the years the contract was in effect. We have also given consideration to requesting URS timesheets, but because this contract has ended, we feel it is not constructive at this point to do so.

Reasonable costs and time commitments were established up-front and incorporated into the individual task budgets, allowing staff to efficiently assess whether effort charged was excessive or not. Planning staff diligently reviewed invoices submitted for payment to the approved rates and list of personnel authorized to work on each task in the contract, and project managers reviewed the hours billed for reasonableness as well. This attention to details resulted in staff disallowing \$136,000 of costs invoiced to Metro. In addition, the careful management of the overall projected resulted in final costs being \$200,000 less than planned.

What action will be taken (if any)?

Overhead rates for the years the contract was in effect will be requested from URS.

For future contracts, Planning staff will continue to be diligent about checking rates and will document this process better.

Who will take action?

Efforts will be coordinated by Karen Anderson.

When will action be accomplished?

Immediately.

Follow-up necessary to correct or prevent reoccurrence.

Audit: System for Managing Contracts Can Be Improved

Date: January 2006

AUDIT RESPONSE

Recommendation 5

Implement remaining recommendations from Metro Auditor December 2000 report on contracting practices (*Contracting: A Framework for Enhancing Contract Management*).

- Establish a management reporting system to provide contract oversight information to Metro's top managers.
- Establish minimum qualifications for contracting personnel, formally evaluate contracting personnel performance and designate a Contract Coordinator in each department to assure contracts are properly planned and monitored.
- Provide better support to project managers and other contracting personnel by developing procedures, guidelines and training in determining appropriate contract type; establishing scope of work requirements and performance standards; monitoring and evaluating contractor performance; evaluating contractor proposed prices and billings; and conducting risk assessments.

Agree

Yes

No (specify reasons for disagreement)

What action will be taken (if any)?

Actions have been taken to implement these remaining recommendations from the 2000 audit. The Purchasing and Contracts department has developed and sends out monthly reports to department heads for all contracts over \$10,000 processed during the previous month. However, additional efforts on this and the other recommendations are still in progress. Department contract coordinators were established and began to meet on a regular basis but they were later canceled when the Business Design Team found the concept was not meeting the expected need. We recognize this need still exists and will defer to the new Contracts Manager for developing and implementing a new plan to address these recommendations.

Who will take action?

Contracts Manager.

When will action be accomplished?

After recruitment and selection of a full-time Contracts Manager is completed by the Chief Financial Officer, which is anticipated to happen by April 2006.

Follow-up necessary to correct or prevent reoccurrence.



METRO

Metro Auditor Report Evaluation Form

Fax... Write... Call... Help Us Serve Metro Better

Our mission at the Office of the Metro Auditor is to assist and advise Metro in achieving honest, efficient management and full accountability to the public. We strive to provide Metro with accurate information, unbiased analysis and objective recommendations on how best to use public resources in support of the region's well-being.

Your feedback helps us do a better job. If you would please take a few minutes to fill out the following information for us, it will help us assess and improve our work.



Name of Audit Report: Outsourced Retail Operations – Some Benefits Realized;
Better Zoo Oversight Needed, January 2006

Please rate the following elements of this report by checking the appropriate box.

	Too Little	Just Right	Too Much
Background Information	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Details	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Length of Report	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Clarity of Writing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Potential Impact	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Suggestions for our report format: _____

Suggestions for future studies: _____

Other comments, ideas, thoughts: _____

Name (optional): _____

Thanks for taking the time to help us.

Fax: 503.797.1831
Mail: Metro Auditor, 600 NE Grand Avenue, Portland, OR 97232-2736
Call: Alexis Dow, CPA, Metro Auditor, 503.797.1891
Email: dowa@metro.dst.or.us

Suggestion Hotline: 503.230.0600, MetroAuditor@metro.dst.or.us

Metro

People places • open spaces

Clean air and clean water do not stop at city limits or county lines. Neither does the need for jobs, a thriving economy and good transportation choices for people and businesses in our region. Voters have asked Metro to help with the challenges that cross those lines and affect the 25 cities and three counties in the Portland metropolitan area.

A regional approach simply makes sense when it comes to protecting open space, caring for parks, planning for the best use of land, managing garbage disposal and increasing recycling. Metro oversees world-class facilities such as the Oregon Zoo, which contributes to conservation and education, and the Oregon Convention Center, which benefits the region's economy.

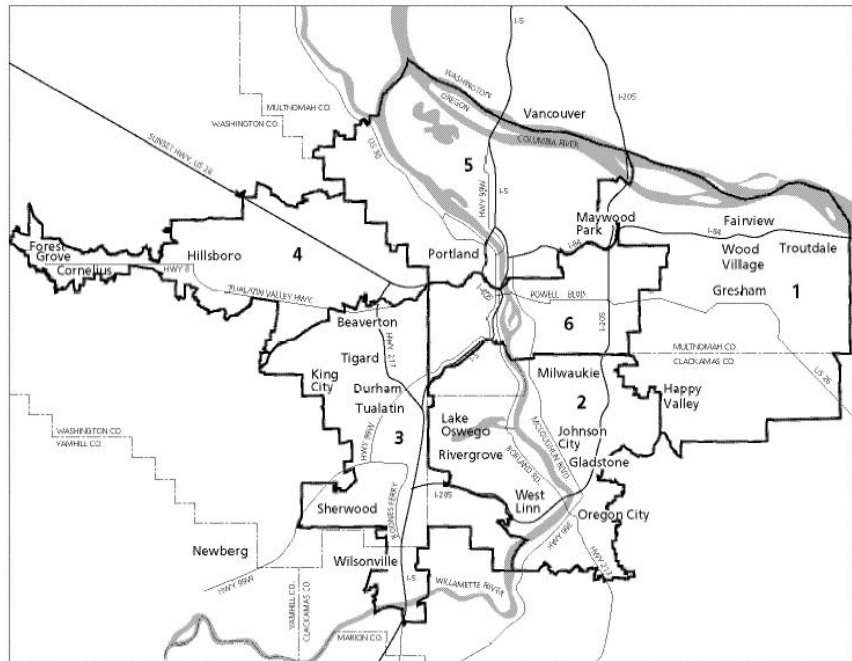
Your Metro representatives

Metro Council President – David Bragdon

Metro Councilors – Rod Park, District 1; Brian Newman, District 2; Carl Hosticka, deputy council president, District 3; Susan McLain, District 4; Rex Burkholder, District 5; Robert Liberty, District 6.

Auditor – Alexis Dow, CPA

Web site: www.metro-region.org



Council districts

You are welcome to keep this copy if it is useful to you.
If you no longer need this copy, you are encouraged to return it to:

Metro Auditor

Metro Regional Center
600 NE Grand Avenue
Portland, OR 97232-2736

If you would like more information about the Office of the Auditor
or copies of past reports, please call

Metro Auditor Alexis Dow, CPA
(503) 797-1891

Metro Auditor Suggestion Hotline:
(503) 230-0600 ♦ MetroAuditor@metro-region.org