

BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

AWARDING THE CONTRACT FOR THE ) Resolution No. 88-977A  
OREGON CONVENTION CENTER, BID ) Introduced by the  
PACKAGE #3, TO HOFFMAN (OREGON)-) Executive Officer  
MARMOLEJO, JOINT VENTURE )

WHEREAS, Metro has designed and funded the Oregon Convention Center; and

WHEREAS, Metro has let two contracts (Bid Packages 1 and 2) for steel fabrication and erection and site work for the Oregon Convention Center; and

WHEREAS, In compliance with the provisions of Metro Code and Oregon Public Bidding law, Metro has administered a bidding process for the Oregon Convention Center, Bid Package No. 3 (General Contract); and

WHEREAS, Six bids from general contractors were received for Bid Package No. 3; and

WHEREAS, District staff have reviewed the bids and supplemental materials for compliance with provisions of Metro's contracting code (Metro Code chapter 2.04) and have recommended that the bid of Hensel Phelps Construction Co. (Phelps, Inc.) be rejected for failure to comply with the requirements of Metro Code chapter 2.04.100 et. seq.; and

WHEREAS, The Advisory Committee on Design and Construction has reviewed the bid results, and recommended to Metro the election of certain alternates in establishing the contract for Bid Package No. 3; and

WHEREAS, The Council's Convention Center Committee has considered staff recommendations and heard additional testimony from Phelps, Inc., Hoffman (Oregon) - Marmolejo, A

Joint Venture and others and recommends that the bid of Phelps, Inc. be rejected as non-responsive; now therefore

BE IT RESOLVED:

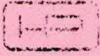
1. That the Council of the Metropolitan Service District will award the contract for Oregon Convention Center Project, Bid Package No. 3, to include the following alternates in addition to the Base Bid: #3A: Addition of Bus Shelters; #4: Addition of Escalators; #9A: Partitions by Modernfold; #10A: Partition by Modernfold; and #11A: Surface Hardener by Master.

2. That the Council of the Metropolitan Service District finds that the apparent low-bidder with the selected list of alternates, Hensel Phelps Construction Co. (Phelps, Inc.) did not comply with the contracting requirements of Metro Code chapter 2.04.100 et. seq., Disadvantaged Business Program, and specifically, did not adequately make good faith efforts as defined in Metro Code chapter 2.04.160 as detailed in the attached Exhibit A entitled "Findings";.

3. That the Council of the Metropolitan Service District awards the contract for Oregon Convention Center Bid Package No. 3 (General Contract) to the lowest responsive, responsible bidder, Hoffman (Oregon) - Marmolejo, a Joint Venture, for the amount of \$46,755,000.

ADOPTED by the Council of the Metropolitan Service District this 8th day of September, 1988.

  
\_\_\_\_\_  
Mike Ragsdale, Presiding Officer



**Hensel Phelps  
Construction Co.**

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P.O. Box 0  
420 Sixth Avenue  
Greeley, Colorado 80632  
(303) 352-6565

August 24, 1988

Metropolitan Service District  
2000 S.W. First Avenue  
Portland, Oregon 97201-5398

425  
Biny

Attention: Ms. Berit Younie  
Subject: Oregon Convention Center

Dear Ms. Younie:

Hensel Phelps Construction is pleased to submit the attached supplement to our bid as required by the contract documents.

Attached you will find our DBE Utilization Form, WBE Utilization Form, Insurance Cost Elimination Form, and our list of proposed subcontractors.

At this time, we also would like to notify Metro that Hensel Phelps Construction has an arithmetic error in their bid. We request time to further evaluate our position on this matter.

We appreciate your cooperation.

Wayne Lindholm  
Hensel Phelps Construction

DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION FORM

1. Name of Metro Project: GENERAL CONTRACT
2. Name of Bidder Phelps, Inc.  
 Address 420 Sixth Avenue, P. O. Box 2440, Greeley, CO 80632
3. The above-named Bidder intends to subcontract        percent of the Base Bid to the following Disadvantaged Business Enterprises (DBEs):

<u>Names, Contact Persons, Addresses and Phone Numbers of DBE Firms Bidder Anticipates Utilizing</u>	<u>Nature of Participation</u>	<u>Dollar Value of Participation</u>
<u>✓ CAPITOL CONCRETE CONSTRUCTION</u> <u>SALON, OR 503/585-7678</u> <u>KEV GARCIA</u>	<u>PLACE &amp; FINISH CONCRETE</u>	<u>\$ 150,000-</u>
<u>✓ NORTHWEST ELECTRICAL</u> <u>WELSHES, OR 503/622-5285</u> <u>TOM ZAVILA</u>	<u>A-V WIRING</u>	<u>\$ 244,000-</u>
<u>✓ THE KASPAC CORP</u> <u>COTTAGE GROVE, OR 503/942</u> <u>RANDE PETERSON</u>	<u>STRIPPING</u>	<u>\$ 5,000-</u>
	Total	<u>399,000-</u>
	Amount of Base Bid	<u>44,137,000-</u>
	DBE Percent of Base Bid	<u>0.9%</u>

Robert A. Ruyle  
 Authorized Signature  
 Robert A. Ruyle, Vice President  
 Date: AUGUST 24, 1988

THIS FORM IS TO BE COMPLETED, SIGNED AND DELIVERED TO METRO  
BY THE CLOSE OF THE NEXT WORKING DAY FOLLOWING BID OPENING



METRO

2000 S.W. First Avenue  
Portland, OR 97201-5398  
503/221-1646

# Memorandum

ATTACHMENT 4

Date: September 7, 1988

To: Councilor David Knowles, Chair  
Council Convention Center Committee

From: Don Carlson, <sup>FC</sup>Council Administrator  
Jessica Marlitz, <sup>JM</sup>Council Analyst

Regarding: CONSIDERATION OF RESOLUTION NO. 88-977 AWARDED A  
CONTRACT FOR THE OREGON CONVENTION CENTER, BID PACKAGE  
NO. 3 TO HOFFMAN (OREGON) - MARMOLEJO, A JOINT VENTURE

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## SUMMARY

Per your request of September 6, 1988, Council staff reviewed the Executive Officer's recommendation to adopt Resolution No. 88-977. Adopting this resolution would do the following:

- 1) Adopt the project alternates recommended by the Advisory Committee on Design and Construction (ACDC), which are:
  - o 3A: Add bus shelters
  - o 4: Add escalators
  - o 9B: Add operable IAC partitions
  - o 10B: Add extra operable IAC partition
  - o 11A: Surface hardener by Masterbuilder \*

\* (Actual type of hardener to be used -- Masterbuilder or Euclid -- will depend on results from on-site tests. ACDC recommended contract amount based on lower priced Masterbuilder with any difference, should Euclid be accepted, added by a future change order);

- 2) Accept the Executive staff's finding that Hensel Phelps Construction did not meet the DBE/WBE requirements of Metro Code Section 2.04.155;
- 3) Award the contract for Bid Package No. 3 to Hoffman (Oregon) - Marmolejo, Joint Venture in the amount of \$46,719,000.

## RECOMMENDATION

Staff agrees with the Executive Officer's recommendation except for one item in the Project Alternates. Based on a review of supporting materials, we recommend that Alternates 9B and 10B -- operable partitions by IAC -- be replaced by Alternates 9A and 10A -- operable partitions by Modernfold. This change, under the proposed award of the General Contract to Hoffman, would result in a \$36,000 addition. Our reasons for recommending the change in operable partitions are outlined below under "Selection of Alternates." Also summarized below are staff review and analysis of the other

General Contract award issues:

- o non-compliance of Hensel Phelps with the DBE/WBE "Good Faith" requirements under Metro Code Section 2.04.155;
- o budget implications of the selected base bid and alternates.

ISSUES

I. Selection of Alternates

Staff reviewed the 13 alternates to the General Contract and ACDC's recommended selections, as outlined above under "Summary". Staff also reviewed Convention Center project staff research on operable partitions and discussed the partitions with Lee Fehrenkamp, General Manager for the Convention Center and Neil Saling, Project Director. Our research revealed the following points:

*① Additional structural steel for installation*

- o According to Mr. Fehrenkamp, who has worked with both IAC and Modernfold partitions, Modernfold have greater ease of operation, less mechanical failure and are better serviced by the manufacturer than IAC.
- o Modernfold has a local installing distributor and service support; IAC does not. IAC's main office and service center are in New York.
- o ACDC assessment of the partitions noted that "both manufacturers appear equal in ... technical specifications," but IAC has better acoustic performance. Modernfold support materials state that Modernfold has an acoustical rating better than IAC's.
- o According to Modernfold support materials, their partitions require substantially less labor to set up and take down than those of IAC.

The above points do not seem to indicate that one partition is technically superior to another. However, because of the importance of dependable, timely servicing, ease of operation and potential labor savings, staff recommends selection of Alternates 9A and 10A, using Modernfold partitions, instead of 9B and 10B, using IAC partitions.

II. Non-Compliance of Hensel Phelps with the DBE/WBE "Good Faith" Requirements under Metro Code Section 2.04.155

Staff reviewed the September 1 memo from Ray Phelps, Metro Director of Finance and Administration, which analyzed the compliance of the two apparent low bidders -- Hensel Phelps Construction and Hoffman (Oregon) - Marmolejo, J.V. -- with Metro's DBE/WBE Code. Mr. Phelps' analysis determines that Hoffman-Marmolejo's joint venture meets Metro's DBE and WBE contracting goals, but that Hensel Phelps does not and, therefore, must show compliance with Metro's "good faith" Code requirements in order to be considered. The analysis concludes that Hensel Phelps does not meet the good

faith efforts specifically identified in Metro Code Section 2.04.160 (b) (6) "Determination of Good Faith Efforts". Staff agree with the Finance Director's conclusion, based on our review of the Code, Hensel Phelps "Statement of 'Good Faith' Effort" and Mr. Phelps' analysis.

### III. Budget Implications of the Selected Base Bid and Alternates

Resolution No. 88-977 awards the General Contract for the Oregon Convention Center to the lowest responsive bidder -- Hoffman (Oregon) - Marmolejo, Joint Venture. Reviewing the Convention Center Capital Budget from July, 1986 to the current revision of August, 1988 reveals the following changes:

- o Total budget has increased from \$85 million to \$85,627,442
- o The Project Management portion of the budget has grown by more than \$5 million -- from \$6,555,551 to \$11,686,630.
- o The Construction budget has increased by \$4.3 million -- from \$47,883,907 to \$52,185,531.
- o Total Contingencies are down from \$12,595,541 -- 26.3% of the total construction budget -- to \$2,444,871 or 4.7%.

As a percent of total budget, these changes do not appear extreme. For example, the increase of \$627,442 in the total budget represents less than 1% budget growth. The notable change, however, is the drop in the contingencies. Total Contingencies, as noted above, is composed of two components: Owner's contingency and Construction contingency. Project Director Neil Saling has cited a 5% minimum contingency for the Construction contingency alone. As of August, the construction contingency was only 2.5%, half of the necessary minimum.

To reach and maintain the 5% construction contingency and fund the base bid plus all of the recommended alternates (including the recommended change to 9A and 10A noted above), the Council will have to draw \$1,786,466 from other sources. This conclusion is illustrated on the next page in the summary chart of Convention Center capital costs from August 1986 to date. The chart summarizes budget information taken from the attached budget charts (Attachment 1) which were included in Neil Saling's August 23 memo to the Executive Officer regarding Convention Center Bid results.

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The budget decision facing the Committee and the Council is two-fold:

- 1) Whether to accept the recommended alternates or to change them in order to achieve savings; and
- 2) If the alternates are accepted as recommended, from what sources to draw funds in order to maintain the desired minimum 5% construction contingency.

SUMMARY OF CONVENTION CENTER CAPITAL COST COMPARISON

<u>CATEGORY</u>	<u>JULY 1986 BUDGET</u>	<u>AUGUST 1988 BUDGET</u>	<u>MODIFIED E.O. RECOMMENDATION</u> *
REAL ESTATE	11,630,000	11,800,610	11,900,610
OFF-SITE CONSTRUCT.	2,335,000	2,046,500 **	2,046,500 **
LEGAL/FINAN., ETC.	0	325,000	325,000
FURNITURE/EQUIPMENT	4,000,000	4,400,000	4,400,000
PROJECT MANAGEMENT	6,555,551	11,686,630	11,686,630
CONSTRUCTION	47,883,907	52,823,832 **	53,261,700 **
CONTINGENCIES ***	<u>12,595,541</u>	<u>2,444,871</u>	<u>2,007,002</u>
TOTAL	\$ 85,000,000	85,627,442	85,627,442

\* This is the Executive Officer's recommendation -- Hoffman-Marmolejo plus alternates -- including the Council Staff recommendation herein to replace Alternates 9B and 10B with 9A and 10A.

\*\* \$638,300 of off-site costs are included in the construction contract (line 8 of the Attachment 1 budget charge).

\*\*\* The Total Contingencies include both Owners Contingency and Construction Contingency. The Executive Officer's Recommendation reduces the Construction Contingency to \$876,619. The desired Construction Contingency is 5% of the \$53,261,700 construction budget, which is \$2,663,085. To bring the Construction Contingency to this level requires \$1,786,466 from other sources (presumably the interest earnings). The Total Contingency at that point would be \$3,793,468.



## ATTACHMENT 1

MODIFIED  
E.O. RECOMMENDATION

	A	B	C	D	E	F	G	H
1	BUDGET COMPARISON	Budget	Budget	Budget	Budget			
2	22-Aug-88	prepared	prepared	prepared	prepared			
3		July, 1986	July, 1987	June, 1988	Aug, 1988			
4								
5	REAL ESTATE	11,630,000	11,800,294	11,900,610	11,900,610		11,900,610	
6								
7	OFF-SITE CONSTRUCTION							
8	Bid Package 3	1,500,000	1,500,000	1,500,000	638,300	-	0	
9	PDOT responsibilities	0	0	0	924,700		924,700	
10	Tri Met		600,000	600,000	600,000		600,000	
11	Other streets	500,000	0	0	521,800		521,800	
12	Utility Relocation	335,000	100,000	100,000	see line 11			
13	Pedestrian Connections	0	207,460	207,460	see line 9			
14								
15	TOTAL	2,335,000	2,407,460	2,407,460	2,684,800		2,046,500	
16								
17								
18	LEGAL/FINANCIAL, ETC							
19	Builder's Risk Insurance	0	250,000	250,000	175,000		175,000	
20	Bond Costs	0	93,500	114,869	150,000		150,000	
21								
22	TOTAL	0	343,500	364,869	325,000		325,000	
23								
24								
25	FURNITURE, EQUIPMENT							
26	Furn, Fix, Equipment	4,000,000	3,400,000	3,400,000	3,400,000		3,400,000	
27	Telecommunications	0	1,000,000	1,000,000	1,000,000		1,000,000	
28								
29	TOTAL	4,000,000	4,400,000	4,400,000	4,400,000		4,400,000	
30								
31								
32	PROJECT MANAGEMENT							
33	Area Plan	0	100,000	100,000	100,000		100,000	
34	Art	472,839	475,000	475,000	475,000		475,000	
35	Construction Management	2,300,000	2,309,000	2,527,867	2,643,929		2,643,929	
36	Design Services	3,309,873	4,000,000	3,811,841	3,832,506		3,832,506	
37	Geotechnical Services	0	139,500	530,294	917,507		917,507	
38	Hook up charges	0	100,000	100,000	100,000		100,000	
39	Metro project admin	0	2,187,500	2,800,603	2,800,603		2,800,603	
40	Permits	0	312,000	350,000	350,000		350,000	
41	Pre-construction surveys		40,000	15,300	15,300		15,300	
42	Printing	472,839	200,000	100,000	100,000		100,000	
43	Testing		200,000	250,000	351,785		351,785	
44	TOTAL	6,555,551	10,063,000	11,060,905	11,686,630		11,686,630	
45								
46	CONSTRUCTION							
47	Steel package			5,349,185	5,349,185		5,349,185	
48	Site package			971,984	1,157,515		1,157,515	
49	General Contract	47,283,907	52,000,000	45,678,831	45,678,831		45,678,831	
50	Demolition	600,000					600,000	
51	TOTAL	47,883,907	52,000,000	52,000,000	52,185,531		52,185,531	
52								
53	CONTINGENCIES							
54	Owner's contingency	8,308,270	2,485,746	1,366,156	1,130,383		1,130,383	
55	Construction contingency	4,287,271	1,500,000	1,500,000	1,314,488		1,314,488	
56								
57	TOTAL	12,595,541	3,985,746	2,866,156	2,444,871		2,444,871	
58								
59	GRAND TOTAL	85,000,000	85,000,000	85,000,000	85,627,442		85,627,442	

	A	B	C	D	E	F	G	H
60								
61	REVENUE							
62	CONVENTION CENTER							
63	DATE 8/23/88	Bonds	LID*	State	Other	Hotel/Motel	Interest	Total
64								
65	1986-87					397,442		397,442
66	7/1/87	65,000,000	0	0		593,104		65,593,104
67	10/1/87	0	0	0		694,630		694,630
68	1/1/88	0	0	0		574,873		574,873
69	4/1/88	0	0	0		590,536		590,536
70	7/1/88	0	0	1,875,000		617,500	3,894,320	6,386,820
71	10/1/88	0	0	1,875,000		617,500		2,492,500
72	1/1/89	0	4,700,000	1,875,000		617,500		7,192,500
73	4/1/89	0	0	1,875,000		617,500		2,492,500
74	7/1/89	0	0	1,875,000		617,500	2,999,000	5,491,500
75	10/1/89	0	0	1,875,000	300,000	617,500		2,792,500
76	1/1/90	0	0	1,875,000		617,500		2,492,500
77	4/1/90	0	0	1,875,000		617,500		2,492,500
78	7/1/90	0	0	0		617,500	1,147,000	1,764,500
79	10/1/90	0	0	0	230,000	617,500		847,500
80								
81								FFL
82	TOTAL	65,000,000	4,700,000	15,000,000	530,000	9,025,585	8,040,320	102,295,905
83	*assumes receipt of \$4,550,000 invested six months @ 7.5%							
84	subtotal w/o interest	94,255,585						
85								
86	" Project" resources:							
87	Bonds	65,000,000						
88	Local Improvment	4,700,000						
89	State	15,000,000						
90	Other	530,000						
91	1986-87 Hotel/Motel	397,442						
92	Total	85,627,442						
93								
94								
95	USES							
96								
97	ACQUISITION, CONST			85,627,442				
98								
99	OPERATIONS/MGMNT							
100	MERC:							
101	Marketing	2,452,518						
102	Reserve	1,500,000						
103	MERC operating budgt	1,966,000						
104	MERC transfers, contngncy	1,248,658						
105	MERC subtotal		7,167,176					
106	CCP staff		662,040					
107	Pre-MERC		798,927					
108	Total			8,628,143				
109								
110	Subtotal w/o interest			94,255,585				
111								
112	INTEREST							
113	Total Estimated	8,040,320						
114	Less arbitrage	865,000						
115	Interest available	7,175,320						
116								
117	Debt service paid 1987-88	1,739,121						
118	Interest available		5,436,199					
119								
120								
121	MERC budget	1988-89	1989-90	1990-91	Total			
122	Personal Services	444,480	444,480	222,240	1,111,200			
123	Materials and Services	341,920	341,920	170,960	854,800			
124	Marketing	981,007	981,007	490,504	2,452,518			
125	Transfers	183,756	183,756	91,878	459,390			
126	Con tingency, Unappropriated	315,707	315,707	157,854	789,268			
127	Reserve	1,000,000	500,000	0	1,500,000			
128	Total	3,266,870	2,766,870	1,133,436	7,167,176			



# METRO

2000 SW First Avenue  
Portland, OR 97201-5398  
(503) 221-1646  
Fax 241-7417

Agenda Item No. : 7.1

Meeting Date: September 8, 1988

*Rural #88-977*

## Memorandum

Date August 29, 1988  
 To Metro Council *D.K./gm*  
 From Councilor David Knowles,  
 Chairman, Council Convention Center Committee  
 Subject Consideration of Convention Center General Contract

Executive Officer  
Rena Cusma

Metro Council

Mike Ragsdale  
Presiding Officer  
District 1

Corky Kirkpatrick  
Deputy Presiding  
Officer  
District 4

Richard Waker  
District 2

Jim Gardner  
District 3

Tom DeJardin  
District 5

George Van Bergen  
District 6

Sharron Kelley  
District 7

Mike Bonner  
District 8

Tanya Collier  
District 9

Larry Cooper  
District 10

David Knowles  
District 11

Gary Hansen  
District 12

As noted to you in the Executive Officer's memo of August 24 (attached), Metro received six very competitive bids for construction of the Oregon Convention Center.

Because of the closeness of these bids, the importance of the contract, and the fine points involved in reviewing the bids and supplemental material, additional time is necessary to develop a Council recommendation. Therefore, a recommendation for conditional award is not included in the Agenda packet.

The Advisory Committee on Design and Construction will be meeting at least once more the week of August 29th to consider the technical issues involved in contract award and the selection of contract alternates. Additionally, agency staff will continue their review to ensure compliance with Metro's contracting requirements, including the DBE/WBE contracting portions of our code.

The Council Convention Center Committee has been rescheduled for September 8, 1988, 8:00 a.m., to consider the ACDC recommendation. To keep on schedule, we are still hoping to conditionally award the contract at the September 8 Council Meeting, with a notice to proceed issued by mid-September.

Project staff is available to answer any questions you may have on this prior to the meeting.



# METRO

2000 SW First Avenue  
Portland, OR 97201-5398  
(503) 221-1646  
Fax 241-7417

## Memorandum

Date August 24, 1988  
To Metro Council  
From Rena Cusma *RC*  
Subject Convention Center Project Bid Results

---

I am pleased to announce that the bids received for the general contract for the Convention Center Project (Bid Package #3), which were opened Tuesday, August 23, will permit construction to proceed on schedule and within budget.

A digest of bid results is attached. A low base bid of \$44,137,000 was submitted by Hensel Phelps, Inc. The second low bidder, at \$44,200,000, was Hoffman (Oregon) - Marmolejo, a Joint Venture. As the results attached show, all bidding was competitive with less than 5% separating the six bidders, and only 1% separating the four low bidders. Only the high bidder exceeded the Engineer's estimate of \$46,033,000.

The amount available in the budget for this contract is \$46,317,131. The bidding package was formulated in such a fashion as to permit the bids to conform as closely as possible to this budget figure through addition or deletion of alternates. Analysis is continuing of the various combinations of alternates. In particular:

- The deductive alternate which would delete the towers will not be exercised.
- The deductive alternate which would permit Metro to initiate a "wrap-up" insurance program is under analysis by our insurance agents, JBL&K.
- A package of alternates which adds operable partitions and the required floor hardener results in a total contract price of \$46,003,000, allowing another \$314,131 for other additive alternates or for enhancement of the project's contingency fund.

The Advisory Committee on Design and Construction will be meeting later this week to begin developing a package of alternates to recommend.

You should also be aware that only two bidders, Hoffmann - Marmolejo Joint Venture and Kiewit, met Metro's DBE/WBE goal. A judgement on the extent of the good faith efforts by other bidders will be necessary.

As the analysis of bids progresses, I will keep you informed through our Convention Center Project Office and your Convention Center Committee. We will move as quickly as possible to award the contract and keep the project moving forward on schedule.

cc: Don Rocks, Dan Cooper

Executive Officer  
Rena Cusma  
Metro Council  
Mike Ragsdale  
Presiding Officer  
District 1  
Corky Kirkpatrick  
Deputy Presiding  
Officer  
District 4  
Richard Waker  
District 2  
Jim Gardner  
District 3  
Tom DeJardin  
District 5  
George Van Bergen  
District 6  
Sharron Kelley  
District 7  
Mike Bonner  
District 8  
Tanya Collier  
District 9  
Larry Cooper  
District 10  
David Knowles  
District 11  
Gary Hansen  
District 12

FILE: OCC\_BIDS  
 BY: JLB  
 BIDS RECORDED: AUG. 23, 1988

BID RESULTS

TURNER CONST.CO.

OREGON CONVENTION CENTER

BID PACKAGE #3

DESCRIPTION	ENGINEERS EST	BUDGET	HENSEL PHELPS	HOFFMAN & M.	J.A.JONRS	SWINBERTON	KWITT	CONTINENTAL
			1	2	3	4	5	6
BASE BID	\$46,033,000	\$44,663,130	\$44,137,000	\$44,200,000	\$44,590,000	\$44,600,000	\$45,500,000	\$46,200,000
1 ALT. 1 delete contractor insurance	=====		(1,300,000)	(2,100,000)	(1,260,000)	(1,500,000)	(1,200,000)	(1,800,000)
2 ALT. 2 delete entrance canopies	(238,000)		(390,000)	(174,000)	(3,000)	(290,000)	(163,000)	(283,011)
3 ALT. 3A add bus shelters	127,160		230,000	228,000	225,000	250,000	205,000	246,684
4 ALT. 3B bus shelter unit price	32,000		58,000	60,000	43,000	64,000	50,000	59,317
5 ALT. 4 add escalators	272,440		357,000	388,000	400,000	375,000	425,000	350,112
6 ALT. 5 delete ac. wall panels	(45,000)		(32,000)	(74,000)	(5,000)	(23,000)	(40,000)	(76,996)
7 ALT. 6 add portable kitchen equipt.	382,660		439,000	500,000	450,000	519,000	430,000	502,180
8 ALT. 7 add CPU sound equipt.	178,000		37,000	72,000	40,000	34,000	35,000	60,042
9 ALT. 8 delete modular sound sys.	(67,000)		(12,000)	(5,000)	(12,000)	(12,000)	(10,000)	(23,505)
10 ALT. 9A add operable part: MODERN	1,482,000	1,482,000	1,563,000	1,640,000	1,650,000	1,452,000	1,575,000	1,540,987
11 ALT. 9B add operable part: IAC	1,482,000	1,482,000	1,621,000	1,570,000	1,645,000	1,208,000	1,570,000	1,583,555
12 ALT. 10A add operable part: MODERN	184,300		180,000	174,000	200,000	184,000	182,000	188,410
13 ALT. 10B add operable part: IAC	184,300	184,300	215,000	208,000	220,000	218,000	210,000	215,700
14 ALT. 11A surface hardner: MASTER	172,000	172,000	123,000	125,000	374,000	123,000	180,000	155,000
15 ALT. 11B surface hardner: BUCLID	172,000	172,000	138,000	129,000	390,000	138,000	195,000	174,000
16 ALT. 12 delete glazed towers	(2,311,500)		(2,383,000)	(2,639,000)	(2,275,000)	(2,152,000)	(2,000,000)	(2,608,067)
17 ALT. 13 add Total Door Sys.			56,000	90,000	100,000	22,000	100,000	64,085



# METRO

2000 SW First Avenue  
Portland, OR 97201-5398  
(503) 221-1646  
Fax 241-7417

## Memorandum

Date September 6, 1988  
To Metro Council **Convention Center Committee**  
From Councilor David Knowles, *DK*  
Chairman, Council Convention Center Committee  
Subject September 8 Meeting Agenda Item 1: Convention Center General Contract Award

Executive Officer  
Rena Cusma

Metro Council

Mike Ragsdale  
Presiding Officer  
District 1

Corky Kirkpatrick  
Deputy Presiding  
Officer  
District 4

Richard Waker  
District 2

Jim Gardner  
District 3

Tom DeJardin  
District 5

George Van Bergen  
District 6

Sharron Kelley  
District 7

Mike Bonner  
District 8

Tanya Collier  
District 9

Larry Cooper  
District 10

David Knowles  
District 11

Gary Hansen  
District 12

The Council Convention Center Committee will meet at 8:30 am, September 8, 1988, in the Metro Council chambers, to consider award of the convention center general contract.

The staff report submitted by the Executive Officer is attached. Council staff is currently reviewing this report and will be prepared to report to the Committee on its analysis at the committee meeting.

Through our Presiding Officer, I have asked General Counsel to give us his opinion of the Executive Officer's recommendation. Enclosed also find the memo requesting this opinion.

The Convention Center Committee will be asked for its recommendation to the full Council (September 8 Council Meeting, Agenda Item 7.1) on three key items:

1. Selection of alternates to the base bid, as discussed in the staff report;
2. Compliance of bidders with DBE/WBE code provisions. The Director of Finance and Administration has found that the apparent low bidder, Hensel Phelps Construction, did not meet goals and did not comply with good faith provisions of the Metro code. Exhibit D to the staff report details these findings. Council must either accept or reject the conclusion of staff in awarding the contract to the lowest "responsible" bidder. Consideration of this topic can be expected to generate much testimony and discussion.
3. Awarding the contract to the lowest bidder who meets code and other specified requirements.

Should you have any technical questions on this material, or require any additional information on this subject, please call Neil McFarlane at 220-1179.

### Attachments

cc: Metro Council: September 8 Meeting,  
Item 7.1 Agenda Material attached

Don Carlson  
Jessica Marlitt



**METRO**

2000 S.W. First Avenue  
Portland, OR 97201-5398  
503/221-1646

# Memorandum

Date: September 6, 1988

To: Dan Cooper, Metro General Counsel

From: Councilor Mike Ragsdale *MR/DR*  
Chair, Metro Council

Regarding: REQUEST FOR OPINION REGARDING VALIDITY OF REJECTING  
HENSEL PHELPS CONSTRUCTION'S BID FOR FAILING TO COMPLY  
WITH DBE/WBE "GOOD FAITH" METRO CODE PROVISIONS

---

I would like to request, on the behalf of Councilor David Knowles, Chair of the Council Convention Center Committee, that you provide an opinion on the following question:

"Are there grounds to validly reject the bid of Hensel Phelps Construction as non-responsive for failing to comply with the requirements of Metro Code provisions relating to DBE/WBE participation in public contracts (Metro Code Section 2.04.100 et seq.)?"

The Convention Center Committee will discuss the award of the Convention Center General Contract this Thursday, September 8, 1988 at 8:00 am in the Council Chambers. Your effort in having an opinion available for the Committee at Thursday's meeting will greatly facilitate the Committee's work and will, of course, aid the Council's review of the Committee's recommendation Thursday evening at 5:30.

Please do not hesitate to contact me, David Knowles or Council staff if you desire any further information.

MR/JPM. a: \MRDCOPN

STAFF REPORT

Agenda Item No. \_\_\_\_\_

Meeting Date: September 8, 1988

CONSIDERATION OF RESOLUTION #88-977 AWARDING  
A CONTRACT FOR THE OREGON CONVENTION CENTER,  
BID PACKAGE #3 TO HOFFMAN (OREGON) - MARMOLEJO,  
A JOINT VENTURE

---

Date: September 2, 1988

Presented by: Neil Saling

BACKGROUND AND FACTUAL ANALYSIS

The Metro Service District has awarded three major construction contracts in anticipation of the General Contract of the Oregon Convention Center. Specifically, Notice to Proceed was issued to Frahler Electric to perform the Oregon Street Detour work in March 1988. In May 1988, Notices to Proceed were issued to CanRon Western to perform the Structural Steel Contract work and to Dewitt Construction to perform the Site Preparation work. The contract amounts were \$69,256 for the Oregon Street Detour contract, \$5,195,500 for the Structural Steel contract and \$971,984 for the Site Preparation contract.

On June 23, 1988, the Council authorized the District to solicit bids for the General Contract, Bid Package No. 3, for the Oregon Convention Center via Resolution No. 88-947.

In accordance with the overall construction schedule recommended by Turner Construction Company and adopted by the Advisory Committee on Design and Construction (ACDC), a General Contract bid period commenced July 11, 1988. Public bidding procedures as prescribed by the Metro Code were followed during the course of this bid period.

Bid opening occurred August 23, 1988 in the Metro Council Chambers. Six bids were received, all of which are detailed on the attached schedule, Exhibit A. Five of the six base bids were below the engineer's estimate of \$46,033,000.

Technical compliance of the bids was reviewed by Metro staff, Turner Construction Company and the Zimmer Gunsul Frasca Partnership. Recommendations were forwarded to the Advisory Committee on Design and Construction, which considered the bid results at two meetings, August 26 and September 1, 1988.

Issues related to the review of the bids are discussed in four parts below: (A) Selection of Alternates; (B) Compliance with Metro Contracting Requirements; (C) Award to the Lowest Responsive Bidder; and (D) Budget Implications.



## **(A) Selection of Alternates**

The bids received included a base bid and thirteen alternates. Discussion of each of the alternates, together with the recommendation of the Advisory Committee on Design and Construction (ACDC), are summarized in Exhibit B attached, and are discussed below:

1. Delete Contractor Insurance: This alternate allows bidders to specify the credit granted if Metro should choose to establish a coordinated insurance program (wrap-up insurance) in lieu of contractor provided insurance. Bid results indicate that the credit granted by Contractors in the bidding process is insufficient to cover the cost of Metro purchasing wrap-up insurance; therefore, this alternate was not recommended by ACDC.

2. Delete Entrance Canopies: This alternate would have allowed deletion of entrance canopies, and was included in case the base bid was over budget. With the base bid within budget, ACDC recommends that this alternate not be elected.

### 3. Bus Shelters:

3A: Add Bus Shelters: Election of this alternate would allow construction of four bus shelters along the Holladay and Union bus turnout zones. The alternate is desirable, in that much of the access to the center is from shuttle buses between the center and hotels. ACDC recommends election of this alternate.

3B: Unit Price Per Shelter: This alternate represents the cost for a single 48 foot long bus shelter component, which would effectively allow additional units to be added to the bus shelters under 3A above, extending the shelters further along the bus turnouts. ACDC did not recommend including additional shelters as a part of the award.

4. Add Escalators: This alternate would include in the contract two escalators, between the entry levels of the convention center, and the Ballroom lobby. The base bid includes escalators between the lobbies and the pre-function areas. ACDC recommends election of this alternate as an operational and competitive enhancement of the center.

5. Delete Acoustical Wall Panels: This alternate would delete acoustical wall panels and substitute wall carpet. This downgrade is not required by the budget, and was not recommended by ACDC.

6. Add Portable Kitchen Equipment: This alternate would add a long list of portable kitchen equipment for provision by the general contractor. The equipment must be provided prior to opening, but may be provided by a concessionaire or purchased by Metro. Because there appeared to be no reason that this purchase would be more

cost-effective now rather than pursuing other options later, ACDC did not recommend election of this alternate.

7. Add Computerized Sound Equipment: This alternate would upgrade the sound system for meeting rooms and the ballroom from modular to computerized controls. The ACDC believes that this technology is changing quickly, and the Center should choose computerized equipment at a date closer to opening, and therefore, recommends that this alternate not be elected at this time.

8. Delete Modular Sound Equipment: This budget rescue alternate would downgrade the center's sound system. ACDC found its election unnecessary.

9. Add Operable Partitions: This alternate was conceived to allow Metro to make the choice of operable partition manufacturer. It is linked with alternate number 10 below. ACDC had lengthy discussions on this issue, causing a great deal of additional research into choice of partitions. ACDC recommended Metro elect operable partitions by IAC. Key points in comparing the alternatives are listed below:

9A: Partitions by Modernfold. Modernfold appears to have advantageous tracking systems, and a better servicing and support organization.

9B: Partitions by IAC. IAC partitions appear to have better acoustic performance, as compared to Modernfold, and heavier duty exterior panels.

Both manufacturers appear equal in review of technical specifications. The ACDC recommendation is based on the view that the key reason for the panels is noise separation of spaces. The design team's acoustic specialist gives IAC better marks for acoustic performance.

10. Add Extra Operable Partition: This alternate would add an extra operable partition between sections of the exhibit hall. The manufacturer is discussed above, and the same manufacturer would be selected for this alternate as selected for alternate 9. ACDC recommends the election of this alternate.

11. Surface Hardener: This alternate allows choice of manufacturer for the cement slab hardener, Master Builder or Euclid. The actual choice will be determined after on-site tests are conducted of the two products. ACDC recommends that the contract amount be based on the price submitted for Master Builder with any difference, should Euclid be selected, added by a future change order.

12. Delete Glazed Towers: An alternate designed to protect the project from budget catastrophe, should the bid have been high. ACDC did not recommend election of this alternate.

13. Add Total Door System: Research after the bid period began indicated that this alternate was not desirable. Based on recommendation of the architects, ACDC did not recommend election of this alternate.

### **(B) Compliance With Metro Contracting Requirements**

Chapter 2.04 of the Metro Code specifies a number of requirements of bidders for Metro contracts. Based on meeting these requirements, the lowest "responsive" bidder is identified.

Staff has reviewed each of the two low bidders submittals (Hensel Phelps Construction Co. (Phelps, Inc.) and Hoffman (Oregon) - Marmolejo, A Joint Venture). Required bid and follow-up submittals have been received from each of these firms.

Among the requirements is compliance with Metro's DBE/WBE contracting code (Metro Code Sections 2.04.155). Hensel Phelps did not meet Metro's goals for DBE (10%) and WBE (3%) subcontracting, and have submitted documentation of their good faith efforts. Hoffman-Marmolejo met the goals through establishing a joint venture with a DBE for 10% of the job, and subcontracting 3% of the work to WBE's. The dollar value of these participations are \$4,420,000 to the DBE and \$1,326,000 to WBE, bringing the respective totals of DBE and WBE participations of all four major Oregon Convention Center construction contracts to \$5,288,401 and \$1,531,983.

Hensel Phelps' good faith documentation, as well as Hoffman-Marmolejo's joint venture and WBE subcontracting are reviewed in the attached memo to the Executive Officer from the Director of Finance and Administration (Exhibit C).

The conclusion of the review is that Hensel Phelps did not meet the good faith criteria required of the Metro Code, and that the Hoffman-Marmolejo bid is in compliance with those code provisions.

### **(C) Award to Lowest Responsive Bidder**

Because Hensel Phelps Construction is not in compliance with DBE/WBE code provisions, the lowest responsive bidder, given the choice of alternates recommended by ACDC is Hoffman-Marmolejo, Joint Venture. Amount of the contract with the alternates recommended by ACDC is \$46,719,000.

### **(D) Budget Implications**

The budget available for bid package #3 is \$46,317,131. Accepting the recommendation of ACDC as to the choice of alternates to the general contract will total \$46,719,000 and require that \$402,000 be allocated from the project's contingency fund. This reduces total contingency funding from approximately \$2.4 million

(4.6% of the \$52 million construction budget) to approximately \$1.9 million (3.6% of construction budget). To compensate for the depletion of the project's contingency fund, the Council may be required to supplement the construction fund in future budget actions. Financial reserves remain for this purpose, as discussed below.

In developing the FY 1988-89 Budget, the Council chose to maintain earnings on bond proceeds in the project's capital fund until major fiscal demands, such as the amount of the general contract bid, were resolved. Allocation of some bond earnings to the construction budget now can be made within the policy framework established for the convention center bond issue.

Recent projections of bond earnings show an increase in the total earnings accruing to Metro. This increase is due to two factors: (1) the draw at this time on bond funds has been slower than anticipated (i.e. we have retained the bond principal longer, resulting in higher earnings); and (2) a more aggressive investment program has been undertaken with higher interest rates, both resulting in greater interest earnings. In Metro's original bond-issue submittals to TSCC (1986), a total of \$6.0 million in bond earnings was projected. Total net interest earnings are now projected at over \$8 million -- about \$900,000 of that total rebated to the IRS -- resulting in a net amount to Metro of \$7.1 million. This net figure of \$7.1 is an increase of \$0.9 million over the second TSCC submittal in 1987. Of these net earnings, \$1.7 million has already been spent for tax levy reduction in FY 1987-88 -- leaving a current balance of earnings available of \$5.4 million. The remaining fiscal commitment to tax stabilization contained in the 1987 submission to TSCC was \$4,517,978. (Note: these figures exclude earnings on the State grant, which by law are to be rebated to the State, and on the LID). With nearly all long-term investments in place, District staff is confident that the \$7.1 million estimate will be met.

In light of these projected increased bond earnings, and recognizing the Rose City remediation costs (as discussed below), the following allocation of bond earnings will be proposed to the Council beginning with the FY 1989-90 Budget:

\$750,000	Repayment to Capital Fund of Rose City Plating Costs
<u>\$948,297</u>	Estimate of additional bond earnings (\$7,175,320 net less \$6,227,023 in 1987 TSCC submittal)*
\$1,698,297	Subtotal to be added to Capital Fund from bond earnings

\* This latter figure is a composite of the \$4,517,978 reported in 1987 to the TSCC as available for tax stabilization and that \$1,709,045 utilized for tax reduction in FY 87-88.

Repayment of unanticipated costs required for remediation of the Rose City Plating site is based on the rationale that the building program should not be reduced as a result of Metro incurring these costs. This recommendation recognizes that the

Rose City costs are the type of unanticipated expenditure which caused the Council to retain interest earnings in the last budget year.

Allocation of additional bond earnings of \$948,297 to the construction budget is consistent with the District's past policy statements to the TSCC. The action is justified because these funds were not included in the TSCC submittal (i.e. it is new money), and was therefore never allocated for tax levy reduction.

Uses of the additional \$1,698,297 within the project's \$85 million budget will be recommended as follows:

\$1,469,617	Raise Construction Contingency up to 5%
\$228,680	Add to Owners Contingency for Non-Construction related expenses (ZGF, Turner contracts, Relocation claims, etc.)
<u>-----</u>	
\$1,698,297	

This would bring total project contingencies to a total of \$3,781,871, \$2,600,000 for construction contingency (5% of \$52 million construction budget), and \$1,360,293 owners contingency.

After allocating \$1.7 million to the project's construction budget, remaining bond earnings are sufficient to reduce the tax levy in a future year as previously planned.

\$5,466,275	Total bond earnings available
<u>-1,698,297</u>	Allocated to construction budget (from above)
3,767,978	Reserve for tax rate reduction in future years and/or emergencies

The District's FY 1988-89 Budget is sufficient to fund anticipated construction draws for the contracted work. In the long-term interest earnings can be prudently split between tax levy reduction and the project's construction budget, while meeting the policy of minimizing costs to the taxpayers.

Because these are long-term issues, budget actions are not required at this time. Budget actions will be reflected in the FY 1989-90 and successive project budgets.

## CONTRACT RECAPITULATION

Prime Contractor	Contract Total	DBE Total	WBE Total
Frahler Electric	\$ 69,256	8,365	20,120
CanRon Western	\$ 5,195,500	748,281	155,863
Dewitt Construction	\$ 971,984	100,000	30,000
Hoffman-Marmolejo	\$ 44,200,000	4,420,000	1,326,000
Total	\$ 50,436,740	5,276,646	1,531,983
Percent	100%	10.46%	3.03%

### EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends adoption of Resolution No. 88-977 which:

1. Adopts the alternates recommended by ACDC;
2. Finds that Hensel Phelps did not meet requirements of chapter 2.04.155 of the Metro Code; and
3. Awards the contract for Bid Package No. 3 to Hoffman (Oregon) - Marmolejo, Joint Venture in the amount of \$46,719,000.

In addition, the following actions will be recommended for subsequent project budgets:

1. Identification of of \$1.7 million in interest earnings for the Construction Fund;
2. Identification of \$3.7 million in interest earnings for tax rate reduction in FY 89-90 and any catastrophic emergency.

BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

AWARDING THE CONTRACT FOR THE ) Resolution No. 88-977  
OREGON CONVENTION CENTER, BID ) Introduced by the  
PACKAGE #3 TO HOFFMAN (OREGON)-) Executive Officer  
MARMOLEJO, JOINT VENTURE )

WHEREAS, Metro has designed and funded the Oregon Convention Center; and

WHEREAS, Metro has let two contracts (Bid Packages 1 and 2) for steel fabrication and erection and site work for the Oregon Convention Center; and

WHEREAS, In compliance with the provisions of Metro Code and Oregon Public Bidding law, Metro has administered a bidding process for the Oregon Convention Center, Bid Package No. 3 (General Contract); and

WHEREAS, Six bids from general contractors were received for Bid Package No. 3; and

WHEREAS, District staff have reviewed the bids and supplemental materials for compliance with provisions of Metro's contracting code (Metro Code chapter 2.04); and

WHEREAS, The Advisory Committee on Design and Construction has reviewed the bid results, and recommended to Metro the election of certain alternates in establishing the contract for Bid Package No. 3; now, therefore,

BE IT RESOLVED:

1. That the Council of the Metropolitan Service District will award the contract for Oregon Convention Center

Project, Bid Package No. 3, to include the following alternates in addition to the Base Bid: #3A: Addition of Bus Shelters; #4: Addition of Escalators; #9B: Partitions by IAC; #10B: Partition by IAC; and #11A: Surface Hardener by Master.

2. That the Council of the Metropolitan Service finds that the apparent low-bidder with the selected list of alternates, Hensel Phelps Construction Co. (Phelps, Inc.) did not comply with the contracting requirements of Metro Code chapter 2.04.100 et. seq., Disadvantaged Business Program, and specifically, did not adequately make good faith efforts as defined in Metro Code chapter 2.04.160.

3. That the Council of the Metropolitan Service District awards the contract for Oregon Convention Center Bid Package No. 3 (General Contract) to the lowest responsive bidder, Hoffman (Oregon) - Marmolejo, a Joint Venture, for the amount of \$46,719,000.

ADOPTED by the Council of the Metropolitan Service District this \_\_\_ day of \_\_\_\_\_, 1987.

---

Mike Ragsdale, Presiding Officer



FILE: OCC\_BIDS

## BID RESULTS

TURNER CONST.CO.

BY: JLB

BIDS RECORDED: AUG. 23, 1988

## OREGON CONVENTION CENTRE

## BID PACKAGE #3

DESCRIPTION	ENGINEERS EST	BUDGET	HENSEL PHELPS	HOFFMAN & M.	J.A.JONES	SWINERTON	KWITT	CONTINENTAL
			1	2	3	4	5	6
BASE BID	\$46,033,000	\$44,663,130	\$44,137,000	\$44,200,000	\$44,590,000	\$44,600,000	\$45,500,000	\$46,200,000
1 ALT. 1 delete contractor insurance	=====		(1,300,000)	(2,100,000)	(1,260,000)	(1,500,000)	(1,200,000)	(1,800,000)
2 ALT. 2 delete entrance canopies	(238,000)		(390,000)	(174,000)	(3,000)	(290,000)	(163,000)	(283,011)
3 ALT. 3A add bus shelters	127,160		230,000	228,000	225,000	250,000	205,000	246,684
4 ALT. 3B bus shelter unit price	32,000		58,000	60,000	43,000	64,000	50,000	59,317
5 ALT. 4 add escalators	272,440		357,000	388,000	400,000	375,000	425,000	350,112
6 ALT. 5 delete ac. wall panels	(45,000)		(32,000)	(74,000)	(5,000)	(23,000)	(40,000)	(76,996)
7 ALT. 6 add portable kitchen equipt.	382,660		439,000	500,000	450,000	519,000	430,000	502,180
8 ALT. 7 add CPU sound equipt.	178,000		37,000	72,000	40,000	34,000	35,000	60,042
9 ALT. 8 delete modular sound sys.	(67,000)		(12,000)	(5,000)	(12,000)	(12,000)	(10,000)	(23,500)
10 ALT. 9A add operable part: MODERN	1,482,000	1,482,000	1,563,000	1,640,000	1,650,000	1,452,000	1,575,000	1,540,987
11 ALT. 9B add operable part: IAC	1,482,000	1,482,000	1,621,000	1,570,000	1,645,000	1,208,000	1,570,000	1,583,555
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14 ALT. 11A surface hardner: HASTER	172,000	172,000	123,000	125,000	374,000	123,000	180,000	155,000
15 ALT. 11B surface hardner: EUCLID	172,000	172,000	138,000	129,000	390,000	138,000	195,000	174,000
16 ALT. 12 delete glazed towers	(2,311,500)		(2,383,000)	(2,639,000)	(2,275,000)	(2,152,000)	(2,000,000)	(2,608,067)
17 ALT. 13 add Total Door Sys.			56,000	90,000	100,000	22,000	100,000	64,085

# ADVISORY COMMITTEE ON DESIGN AND CONSTRUCTION RECOMMENDATION

September 1, 1988  
Engineer's Estimate

	H. PHELPS	HOFFMAN/M. J.V.
	<hr/>	<hr/>
<b>BASE BID</b>	<b>\$44,137,000</b>	<b>\$44,200,000</b>
<b>ALTERNATES:</b>		
<i>--n/a--</i>		
<i>(\$238,000)</i>		
<i>(\$32,000)</i>		
<i>(\$45,000)</i>		
<i>\$382,000</i>		
<i>\$178,000</i>		
<i>(\$67,000 )</i>		
<b>1 Delete contractor insurance</b>		
<b>2 Delete entrance canopies</b>		
<b>3 A: Add bus shelters</b>	<b>\$230,000</b>	<b>\$228,000</b>
<b>B: Unit price per shelter</b>		
<b>4 Add Escalators</b>	<b>\$357,000</b>	<b>\$388,000</b>
<b>5 Delete acoustical wall panels</b>		
<b>6 Add Portable Kitchen Equipment</b>		
<b>7 Add Computerized Sound System</b>		
<b>8 Delete Modular Sound System</b>		
<b>9 Add Operable Partitions by:</b>		
<i>Modernfold</i>		
<b>IAC</b>	<b>\$1,621,000</b>	<b>\$1,570,000</b>
<b>10 Add Extra Operable Partition by:</b>		
<i>Modernfold</i>		
<b>IAC</b>	<b>\$215,000</b>	<b>\$208,000</b>
<b>11 Surface Hardener by:</b>		
<b>Masterbuilder</b>	<b>\$123,000</b>	<b>\$125,000</b>
<i>Euclid</i>		
<i>\$172,000</i>		
<i>(\$2,311,500)</i>		
<i>no engr est</i>		
<b>12 Delete Glazed Towers</b>		
<b>13 Add Total Door System</b>		
<b>TOTAL: BASE + ALTERNATES</b>	<b>\$46,683,000</b>	<b>\$46,719,000</b>
<b>BID PACKAGE 3 BUDGET AVAILABLE:</b>	<b>(\$46,317,000)</b>	<b>(\$46,317,000)</b>
<b>REQUIRED FROM CONTINGENCY</b>	<b>\$366,000</b>	<b>\$ 402,000</b>



# METRO

2000 SW First Avenue  
Portland, OR 97201-5398  
(503) 221-1646  
Fax 241-7417

## Memorandum

Date September 1, 1988  
To Rena Cusma, Executive Officer  
From Ray Phelps, Director of Finance and Administration  
Subject Compliance of Hoffman (Oregon) - Marmolejo, J.V. and Hensel Phelps Construction and With Metro's DBE/WBE Code

Executive Officer  
Rena Cusma

**Metro Council**

Mike Ragsdale  
Presiding Officer  
District 1

Corky Kirkpatrick  
Deputy Presiding  
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Hensel Phelps Construction and Hoffman (Oregon) - Marmolejo, J.V. are the two apparent low bidders for the general contract of the Oregon Convention Center.

Hoffman-Marmolejo's bids indicate that their joint venture has met Metro's DBE and WBE contracting goals through a joint venture with a DBE (Marmolejo) and subcontracting with WBE's. Hensel Phelps did not meet the goals, and has submitted documentation of their good faith efforts.

My analysis concludes that Metro cannot continue consideration of the bid submitted by Hensel Phelps Construction, Inc. on August 23, 1988 for the general contract of the Oregon Convention Center. Accordingly, consideration at this point must be directed toward the apparent second low bidder, which is Hoffman (Oregon) - Marmolejo, J.V..

I have asked convention center project and contracts administration staff to review each of the two bidder's submissions. They have shared their analysis with me, and my findings regarding the compliance of each firm with Metro's DBE/WBE code provisions is reviewed below:

**A. Hoffman (Oregon) - Marmolejo, Joint Venture:**

Submitted with the bid was the joint venture agreement between Hoffman Construction and Marmolejo Construction, which vests in Marmolejo 10% of the contract value. Marmolejo will share in the profits as well as the risks in proportion to its participation in the joint venture. Based upon the agreement, and supplemental information submitted, I conclude that this joint venture meets the tests included in Metro's DBE/WBE code provisions, and is therefore recommended for approval.

WBE subcontracting goals (3%) were met by the joint venture -- and letters of intent have been submitted. Checking has confirmed that the firms used are certified by the State of Oregon and represent 3% of the subcontracted work. I conclude that WBE goals have been met.

B. Hensel Phelps Construction, Inc. (Phelps, Inc.)

Because the goals for DBE and WBE participation in the contract were not met by Hensel Phelps Construction, Inc., the basis for compliance rests with the good faith documentation submitted 48 hours after bid opening.

Metro's code requires that contractors provide good faith documentation in response to seven criteria, and for many criteria, specific performance standards are listed. My assessment of the Phelps, Inc. good faith documentation is listed below in response to each of the Metro Code good faith criteria (Metro Code section 2.04.160 (b)):

1. Criteria: *Attendance at any presolicitation or prebid meetings that were scheduled by Metro to inform DBEs and WBEs of contracting and subcontracting or material supply opportunities available on the project (Metro Code 2.04.160 (b)(1)). Documentation, signature on meeting attendance sheet.*

Criteria met: the pre-bid meeting attendance sheet is signed by Dan Ryan of Hensel Phelps.

2. Criteria: *Identifying and selecting specific economically feasible units of the project to be performed by DBEs or WBEs to increase the likelihood of participation by such enterprises (Metro Code 2.04.160(b)(2)). Documentation -- tied to criteria 4 below.*

Criteria Met: Metro asked Turner Construction Co. to review the subdivisions of work which Hensel Phelps used for solicitation of DBE/WBE participation. In a letter dated August 30, 1988 Turner concluded "...that Hensel Phelps identified and solicited bids in which the greatest opportunity existed for the participation of DBE/WBE firms." Hensel Phelps identified 24 subcontracting opportunities, and appeared flexible in dealing within these categories.

3. Criteria: *Advertising in, at a minimum, a newspaper of general circulation, and trade association, minority and trade oriented, women-focused publications, if any, concerning the subcontracting or material supply opportunities on the project at least ten (10) days before bids or proposals are due (Metro Code 2.04.160 (b) (3)). Documentation: Copies of ads.*

Criteria Met: Hensel Phelps submitted documentation of ads placed in the Oregonian, The Skanner, The Portland Observer, and the Daily Journal of Commerce within the required time limitations.

4. Criteria: *Providing written notice soliciting sub-bids/proposals to not less than five (5) DBEs or WBEs (if less than five firms exist, notice must be to the number of firms on the State list) for each subcontracting or material supply work item selected pursuant to (2) above and not less than ten (10) days before bids/proposals are due (Metro Code 2.04.160(b)(4)). Documentation: Copies of letters.*

Criteria not met: Hensel Phelps good faith submittal shows that letters were sent to 116 different DBE/WBE firms within the ten day requirement. Most of the 24 categories of work broken out by Hensel Phelps properly dealt with this criteria, and the overall pattern of actions was in conformance with the criteria. However, the following shortcomings were noted:

- **Masonry:** Hensel Phelps' good faith documentation indicates that three letters were sent to DBE/WBE firms in this category. Letters were not sent to two state certified DBEs even though the threshold of five DBE/WBE firms had not been reached. These firms are: (1) J&S Masonry; and (2) Reverend Scott's Masonry. J &S Masonry later initiated contact himself, and a sub-bid was submitted.
- **Insulation:** Hensel Phelps' good faith documentation shows that one letter was sent to a firm in this category. The documentation submitted does not contain letters to two other state certified firms: (1) Interstate Insulations; and (2) 3-A Industries, and the threshold of five firms had not been met. Follow-up phone calls indicate that some contact with these firms may have been made, though there is no documentation of such contact contained in the good faith submittal.
- **Fire Protection:** Documentation shows that two letters were sent to firms in this category. Good faith documentation does not contain letters to three state certified firms even though the threshold of five firms had not been reached. The firms are: (1) Adams Mechanical; (2) Instant Fire Protection Co.; (3) Carbon Dioxide, Inc. Phone logs and bids do indicate some follow-up contact with Carbon Dioxide, Inc. Adams Mechanical had requests from general contractors, but Hensel Phelps was not specifically identified.
- **Ceramic Tile:** Good Faith documentation indicates that letters were sent to only four DBE/WBE firms. Three others were on the State Certified list: (1) Anne Sacks Tileworks; (2) Mendo Floor Covering; (3) Gleneden Brick and Tileworks, Inc. It appears from phone logs that one of these, Anne Sacks Tileworks, was later contacted.

5. *Criteria: Making, not later than five days before bids/proposals are due, follow-up phone calls to all DBEs/WBEs who have not responded to the solicitation letters to determine if they would be submitting bids and/or to encourage them to do so (Metro Code 2.04.160 (b)(5)). Documentation: Phone logs.*

Criteria not met: Hensel Phelps submitted phone logs which indicated most follow-up phone calls, as required by the ordinance were made. However, as with criteria number 4, exceptions were noted. While we have had some trouble interpreting the phone log, it does appear that some DBEs and WBEs who did not respond to the letter solicitation, and did not receive a follow-up phone call.

6. *Criteria: Using 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 Business that provide assistance in the recruitment and placement of DBEs and WBEs; where applicable, advising and assisting DBEs and WBEs in obtaining lines of credit or insurance required by Metro or the bidder/proposer; and, otherwise, making efforts to encourage participation by DBEs and WBEs which could reasonably be expected to produce a level of participation sufficient to meet the goals (Metro Code 2.04.160 (b)(6)). Documentation Required: Letter from bidder indicating all special efforts made to facilitate attainment of contract goals, the dates such actions were taken and results realized.*

Criteria not met: In satisfaction of this criteria Hensel Phelps efforts were pro forma, and were not in compliance with the letter or the intent of Metro's contracting code.

Lack of response to this criteria is analyzed below:

1. The company sent form letters to eight organizations, none of which could reasonably be expected to contribute to DBE/WBE subcontracting. Specifically:

- **Apprenticeship & Training Division:** This is a division of the State Bureau of Labor and Industries. Staff contacted the administration, Mr. Quint Rahberger, and he recalls receiving the letter from Hensel Phelps. According to him, the purpose of his organization is to administer a volunteer program for apprenticeship training under ORS chapter 660. Services are employment -- not DBE/WBE subcontracting.

- **Human Resources Development Institute:** The copy of the letter in the good faith effort by Hensel Phelps indicated that the address of this organization was 201 SW Arthur, Room 213, Portland, Oregon. Staff checked the Portland telephone directory and directory assistance and found no telephone numbers listed for this organization. Staff drove to the above listed address and found the address to be non-existent.

- **Economic Opportunity/Office of Metro. Steering Committee:** The copy of the letter in the good faith effort submitted by Hensel Phelps listed the organizations address as 1110 SW Alder, Portland, Oregon. Staff checked the Portland telephone directory and directory assistance and found no telephone number listed for this organization. Staff drove to the above listed address and found it non-existent.

- **Japanese American Citizens League:** Staff contacted Joe Wohl, the League's president. He does not recall receiving a letter from Hensel Phelps. According to him, his organization is primarily involved with civil rights of Americans of Japanese ancestry. The organization does not deal with DBE/WBE subcontracting.

- **United Indian Action Center:** Hensel Phelps good faith documentation listed the address of this association as 435 NW 22nd, Portland, Oregon. Staff checked the Portland telephone directory and directory assistance and found no telephone number listed. Staff drove to the above address and talked to Ms. Peggy Crowe, a resident. Ms. Crowe indicated she has been a resident since 1972 and does not know of United Indian Action Center having offices at that address.

- **NAACP:** Staff talked to the president, George Hendrix. He does not recall receiving a letter from Hensel Phelps. According to him, his organization is a civil rights organization, and is not involved DBE/WBE contracting.

- **Apprenticeship Outreach Program:** This program is under the State of Oregon Department of Human Services, Employment Division. Staff talked to the Assistant Manager, Jerry Fugere. Services do not involve DBE/WBE contracting.

- **Apprenticeship Information Center:** Staff talked to Ms. Helen Anderson, Administrator. The purpose of this organization is to coordinate and assist employees with apprenticeship programs. Services are employment related, and not related to DBE/WBE contracting.

2. The Metro code directs bidders to use the services of minority community organizations, minority contractor groups, local, state and federal minority business assistance offices and other organizations. Metro staff has contacted the following organizations and agencies:

- Executive Department's Advocate for Minority and Women Business. The good faith documentation submitted by Hensel Phelps contains no record or notation that the State office was contacted. Further, Director of the Office, Lina Garcia - Seabold, has indicated by phone that no representative of Hensel Phelps contacted her office (letter attached).
- Federal Highways Administration: Carolyn Robertson, Civil Rights specialists, recalled no contact with Hensel Phelps.
- Oregon Department of Transportation: Ronault Catalani, EEO/MBE Compliance Manager, was contacted by Metro staff, and recalled no contact with Hensel Phelps.
- National Association of Minority Contractors: Staff contacted Bruce Broussard, affiliated with this organization, who reported that Hensel Phelps had not contacted them.

During the review period, staff has also attempted to contact Tri Met's DBE/WBE liaison, Julius Evans, and FHWA's Willie Harris, each of which were unavailable this week.

4. Hensel Phelps' good faith documentation did not give any positive indication that prior to bidding, they had attempted to assist DBE and WBE businesses with insurance and/or lines of credit requirements, as is required by Criteria No. 7.

For the above reasons, I conclude that Metro should consider the bid submitted by Hoffman (Oregon) - Marmolejo, J.V..

NEIL GOLDSCHMIDT  
GOVERNOR



RECEIVED

SEP 1 1988

CONTRACT DIV

OFFICE OF THE GOVERNOR  
STATE CAPITOL  
SALEM, OREGON 97310-1347

September 1, 1988

Amha Hazen  
METRO  
2000 SW First Avenue  
Portland, OR 97201-5398

RE: Convention Center Bid

Dear Mr. Hazen:

This is to advise you that the apparent low bidder, Hensel Phelps Construction, never contacted me in my capacity as Advocate for Minority and Women-owned businesses for the State of Oregon, for assistance in attempting to meet the 10% DBE and 3% WBE goals on this project.

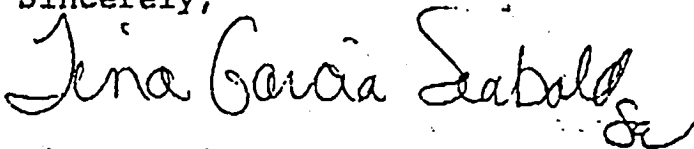
An unsolicited letter (copy attached) was sent by the Office of Minority and Women Business (OMWB) to all prime contractors on the METRO list of planholders, advising them about RUSH certification procedures. To our knowledge no response or inquiries were made by Hensel Phelps Construction. As you are aware, ORS Chapter 200.045, which speaks to good faith efforts, stipulates that the Advocate for Minority (MBE) and Women-owned (WBE) businesses be contacted for assistance in locating minority and women-owned firms. In addition, the 1987 legislature created this position in order to facilitate the promotion and development of small, disadvantaged minority and women-owned businesses in public contracts and to aid prime contractors in finding and working with those businesses. As Advocate for Minority and Women-owned Businesses in the State of Oregon, I know for a fact that there are numerous qualified MBEs and WBEs who should have an opportunity to participate. Further, in my assessment, the goals on this project were entirely realistic and could have easily been met. I hope that this information assists you in your good faith efforts review, should it become necessary.



Amha Hazen  
9/1/88  
Page 2

Again, I want to make sure that every possible consideration be given to qualified minority and women-owned businesses on this important project; it is important to Oregon's economic future.

Sincerely,

A handwritten signature in cursive script that reads "Lina Garcia Seabold". The signature is written in dark ink and includes a decorative flourish at the end.

Lina Garcia Seabold  
Advocate for Minority/Women Business



## Executive Department

155 COTTAGE STREET NE, SALEM, OREGON 97310-0310

RECEIVED

SEP 1 1988

CONST/CONT DIV

August 1, 1988

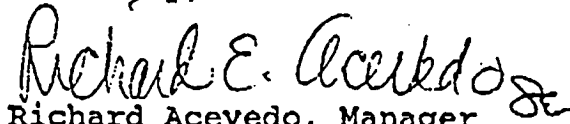
Hensel Phelps Construction Co.  
Attn: Roger Naranjo  
420 Sixth Avenue  
P.O. Box 0  
Greeley, CO 80632

Attached is the State of Oregon's procedure for expedited certifications for disadvantaged (DBE), minority (MBE) and women (WBE) business enterprises.

In preparing your bid for the METRO Convention Center (bid date: 8/23/88), we recommend that you pay particular attention to the certification status of the minority and women-owned firms interested in subcontracting opportunities with your company. Out-of-state firms will require additional time, so the sooner their application is received by the Office Of Minority and Women Business (OMWB), the faster it can be expedited.

All RUSH Requests must be submitted no later than August 9, 1988.

Sincerely,

  
Richard Acevedo, Manager  
Office of Minority & Women Business



## Executive Department

155 COTTAGE STREET NE, SALEM, OREGON 97310-0310

RECEIVED

SEP 1 1988

### OFFICE OF MINORITY AND WOMEN BUSINESS POLICY ON EXPEDITING CERTIFICATION APPLICATIONS

#### GENERAL

Generally, applications for certification are processed on a "first-in, first-out" basis. However, certain situations justify the need for an exception to this procedure. The exception is expeditious processing of one or more applications for certification when necessary, to assist state agencies in achieving their MWBE goals.

The Office policy is to expedite applications by type of business (even when the request includes the name of only one applicant business) when the Criteria for Expediting Certification Applications and Criteria for Submitting "Requests to Expedite" have been satisfied.

#### CRITERIA FOR EXPEDITING CERTIFICATION APPLICATIONS

Certification applications will be expedited if one or more of the following conditions exist:

1. **Large Contract:** A contract is significant in dollar value and has a major impact on the agencies' achievement of their overall MWBE goals.
2. **Master Contract:** A master or term contract is let for one or more years. Expediting certification applications would provide long term opportunities for MWBEs and assist agencies with achievement of their overall MWBE goals.
3. **Geographical Location:** A geographical region of the state has few or no certified MWBEs in a particular product or service area. In this case, expediting certification applications would respond to the need of state agencies in that locale and provide opportunities for MWBEs.

#### CRITERIA FOR SUBMITTING "RUSH REQUESTS" TO OMWB

1. Application must be received by the OMWB 30 days prior to the request to rush the application.

2. Requests are accepted from STATE AGENCIES AND OTHER LOCAL JURISDICTIONS.
3. Requests must be in WRITING.
4. Requests must include justification encompassing the above "Criteria for Expediting Certification Applications."
5. Requests must include:
  - a. Name of applicant business project.
  - b. Name of project.
  - c. Time and date of bid/proposal date (as applicable).
  - d. Amount of MWBE participation.
  - e. Name and telephone number of agency contact person.
6. The RUSH letter must be received in the OMWB at least 15 days prior to the bid opening. RUSH letters received less than 15 days prior to the scheduled bid opening may be processed at the discretion of the OMWB.

6.2 Consideration of Ordinance No. 88-258, for the Purpose of Amending Ordinance No. 88-247, Revising the FY 1988-89 Budget and Appropriations Schedule for Implementation of the Collective Bargaining Unit (Local No. 483), Incorporation of Pay and Class Study Appeals and Payment for the Jefferson Street Rail Line (Second Reading)

The Clerk read the ordinance a second time by title only. The Presiding Officer announced the ordinance received a first reading before the Council on July 28. It was then referred to the Finance Committee for a public hearing and recommendation. The Committee hearing took place on August 18.

Councilor Collier, Chair of the Finance Committee, presented the committee's report and recommendation, summarizing her written report to the Council dated August 28, 1988. She explained the ordinance had originally included provisions for implementing new contract procedures under Ordinance No. 88-249. The Committee, however, had voted to delete that provision from the ordinance. The contract procedures issue was discussed separately at a committee work session on September 1. One or two additional work sessions would be scheduled for more discussion, she said. The Councilor also reported that at the committee's request, future budget amendment ordinances would be restricted to one item per ordinance.

Motion: Councilor Collier moved, seconded by Councilor Gardner, to adopt Ordinance No. 88-258 as recommended by the Finance Committee.

Vote: A roll call vote on the motion resulted in all nine Councilors present voting aye. Councilors Coleman, Kirkpatrick and Knowles were absent.

The motion carried and the ordinance was adopted.

7. RESOLUTIONS

7.1 Consideration of Resolution No. 88-977, for the Purpose of Awarding a Contract for Construction of the Oregon Convention Center, Bid Package No. 3, to Hoffman (Oregon) - Marmolejo, a Joint Venture

Executive Session

Presiding Officer Ragsdale called the meeting into executive session at 5:40 p.m. under the authority of ORS Chapter 192.660(1)(h) for the purpose of discussing with General Counsel potential litigation related to the Convention Center Project. All Councilors were present at the executive session except Councilors Coleman and

Kirkpatrick who were absent. Executive Officer Cusma, Dan Cooper, Don Carlson, Jessica Marlitt, and Harry Bodine were also present at the executive session. The Presiding Officer called the meeting back into regular session at 5:55 p.m.

Regular Session

Councilor Knowles, Chair of the Council Convention Center Committee, reviewed the written committee report and recommendation, dated September 8, 1988, with the Council. At its September 8 morning meeting, the Committee had unanimously recommended the Council adopt Resolution No. 88-977. The resolution included an attachment which detailed findings of the rejection of Hensel Phelps Construction's bid based on non-compliance with Metro's DBE/WBE "good faith effort" requirements as outlined in Section 2.04.155 of the Metro Code and changed selection of Alternates 9B and 10B (IAC operable partitions) to 9A and 10A (Modernfold operable partitions). A summary of the committee's actions was included in the written report. Councilor Knowles explained that the No. 88-977A version of the resolution reflected the committee's actions plus additional amendments expressed by the committee's consensus later in the day.

Motion: Councilor Knowles moved, seconded by Councilor Waker, to adopt Resolution No. 88-977A to include Exhibit A, "Findings."

Testimony from Hensel Phelps Construction, Inc.

Doug Ragen, 111 S.W. 5th Avenue, Portland, Oregon, attorney for Hensel Phelps, introduced Jerry Meyer and Larry Gonda, 420 Sixth Avenue, Greeley, Colorado, representatives of Hensel Phelps, the apparent low bidder on the project.

Mr. Ragen testified regarding the Convention Center Committee's decision to disqualify Hensel Phelps' bid based on non-compliance with Metro's DBE/WBE requirements. He was concerned that Metro staff had not discussed its concerns with Hensel Phelps in advance of making its recommendation to the committee. He referred Councilors to a letter dated September 7, 1988, from himself to Councilors which responded to staff's specific concerns. He asked the Council to postpone making a decision until it had taken adequate time to review and investigate Hensel Phelps' concerns.

Mr. Gonda then testified in response to staff's claim that Hensel Phelps had not complied with Criterion No. 6 established by Metro relating to compliance with Disadvantaged and Women owned Business Enterprise (D/WBE) contracting goals. He asserted that Hensel Phelps had satisfied Metro's D/WBE program requirements and asked Metro to re-examine the level of D/WBE participation in the bid. He

suggested Hoffman-Marmolejo had overstated its level of D/WBE participation to Metro (10 percent).

Mr. Meyers discussed Hensel Phelps' excellent reputation and history of D/WBE participation in other communities. He asked Metro to offer his company an equitable chance to build the project.

Councilor Hansen asked questions of Mr. Ragen related to Hensel Phelps' process for soliciting D/WBEs for the contract. Mr. Ragen said his company had followed the procedures. Other companies, he stated, had accepted higher bids from minority and women-owned subcontractors in order to increase the level of participation.

#### Testimony of Hoffman (Oregon)-Marmolejo, a Joint Venture

Cecil Drinkward, Chief Executive Officer of Hoffman Construction, reviewed his company's history of meeting or exceeding D/WBE program goals for past projects including the Justice Center and Pacwest Building. He acknowledged that sometimes the owner paid more for high program participation, but owners were clear in their intent to take D/WBE program goals seriously. He reviewed Metro's bid instructions for the Convention Center Project which he said were very clear to all bidders. Mr. Drinkward thought Hensel Phelps became serious about program participation only after they knew their bid could be rejected because of low D/WBE program participation. He then explained how Hoffman had conducted its search for qualified D/WBE subcontractors in order to meet Metro's goals. He stated this type of search and level of activity had become standard in the industry. Mr. Drinkward discussed Hoffman's excellent business reputation and stated his company would not ask Metro to pay for Hoffman's errors. He noted that Hensel Phelps, however, was asking Metro for pay for its errors. In summary, Mr. Drinkward said the formula for success was "effort equals results." Because Hensel Phelps had not put out sufficient effort, they had not show any results, he explained.

Jim Olney, an employee of Associated Builders & Contractors, 4815 S.W. Macadam, Portland, testified in support of the Convention Center Committee's recommendation to award the contract to Hoffman-Marmolejo. He explained that because the D/WBE program was now the law, his agency supported the program. The program was set up to guarantee equal treatment for true effort and he thought there were enough qualified contractors in the community to meet the project goals. He also explained that Hensel Phelps could have gotten updated lists of qualified D/WBE subcontractors from his office.

Lina Garcia Siebold, 10420 S.W. 130th, Beaverton, State of Oregon Advocate for Minority/Women Business, testified her office's directory of qualified D/WBE subcontractors should be sufficient to meet

goals for any contract. Her staff sent letters to all plan holders advising them of the State's services and procedures. None of her staff heard from Helsel Phelps in response to that letter, she said. Ms. Siebold thought Metro staff's recommendation showed commitment to its D/WBE program.

Harold Williams, 132 N.E. Ainsworth, Portland, Vice-President of Penn-Nor, Inc., supported awarding the construction contract to Hoffman-Marmolejo which he termed a "rainbow coalition." He regretted, however, that more black owned subcontractors had not participated in the project. He thought Hoffman and Marmolejo represented an excellent example of how the D/WBE program should work. "Anyone who says they can't meet the goals is a misnomer," he said.

#### Council Discussion

Councilor Knowles reported that most Councilors had attended the morning session of the Council Convention Center Committee and had heard staff's report and oral arguments. He summarized that demonstration of good faith efforts was not a passive requirement. He thought the project would have a significant impact on Northeast Portland and hoped the successful contractor would show commitment to providing jobs for the minority community.

Vote: A vote on the motion to adopt Resolution No. 88-977A as revised resulted in all nine Councilors present voting aye. Councilors Coleman, Collier and Kirkpatrick were absent.

The motion carried and Resolution No. 88-977A was adopted as revised.

The Presiding Officer called a recess at 7:05 p.m. The meeting was reconvened at 7:15 p.m. Immediately following the recess, the Executive Officer presented her report which is listed under Item No. 3 at the beginning of the minutes.

#### 8. ORDERS

##### 8.1 Consideration of Order No. 88-19, in the Matter of Contested Case No. 87-3, a Petition for Locational Adjustment of the Urban Growth Boundary by Blazer Homes

Dan Cooper, General Counsel, explained the Council that it would consider the case for locational adjustment according to procedures outlined in Metro Code Chapter 3.01. State land use goals would not apply in this case. He further explained the Hearings Officer would be given 10 minutes to present an overview of his recommendation; the petitioner and opponent would each be given 40 minutes to present their cases; and the petitioner would be given an additional





**METRO**

2000 S.W. First Avenue  
Portland, OR 97201-5398  
503/221-1646

# Memorandum

Date: September 7, 1988

To: Councilor David Knowles, Chair  
Council Convention Center Committee

From: Don Carlson, <sup>DC</sup> Council Administrator  
Jessica Marlitt, <sup>JM</sup> Council Analyst

Regarding: CONSIDERATION OF RESOLUTION NO. 88-977 AWARDDING A  
CONTRACT FOR THE OREGON CONVENTION CENTER, BID PACKAGE  
NO. 3 TO HOFFMAN (OREGON) - MARMOLEJO, A JOINT VENTURE

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## SUMMARY

Per your request of September 6, 1988, Council staff reviewed the Executive Officer's recommendation to adopt Resolution No. 88-977. Adopting this resolution would do the following:

- 1) Adopt the project alternates recommended by the Advisory Committee on Design and Construction (ACDC), which are:
  - o 3A: Add bus shelters
  - o 4: Add escalators
  - o 9B: Add operable IAC partitions
  - o 10B: Add extra operable IAC partition
  - o 11A: Surface hardener by Masterbuilder \*
- 2) Accept the Executive staff's finding that Hensel Phelps Construction did not meet the DBE/WBE requirements of Metro Code Section 2.04.155;
- 3) Award the contract for Bid Package No. 3 to Hoffman (Oregon) - Marmolejo, Joint Venture in the amount of \$46,719,000.

\* (Actual type of hardener to be used -- Masterbuilder or Euclid -- will depend on results from on-site tests. ACDC recommended contract amount based on lower priced Masterbuilder with any difference, should Euclid be accepted, added by a future change order);

## RECOMMENDATION

Staff agrees with the Executive Officer's recommendation except for one item in the Project Alternates. Based on a review of supporting materials, we recommend that Alternates 9B and 10B -- operable partitions by IAC -- be replaced by Alternates 9A and 10A -- operable partitions by Modernfold. This change, under the proposed award of the General Contract to Hoffman, would result in a \$36,000 addition. Our reasons for recommending the change in operable partitions are outlined below under "Selection of Alternates." Also summarized below are staff review and analysis of the other

General Contract award issues:

- o non-compliance of Hensel Phelps with the DBE/WBE "Good Faith" requirements under Metro Code Section 2.04.155;
- o budget implications of the selected base bid and alternates.

ISSUES

I. Selection of Alternates

Staff reviewed the 13 alternates to the General Contract and ACDC's recommended selections, as outlined above under "Summary". Staff also reviewed Convention Center project staff research on operable partitions and discussed the partitions with Lee Fehrenkamp, General Manager for the Convention Center and Neil Saling, Project Director. Our research revealed the following points:

- o According to Mr. Fehrenkamp, who has worked with both IAC and Modernfold partitions, Modernfold have greater ease of operation, less mechanical failure and are better serviced by the manufacturer than IAC.
- o Modernfold has a local installing distributor and service support; IAC does not. IAC's main office and service center are in New York.
- o ACDC assessment of the partitions noted that "both manufacturers appear equal in ... technical specifications," but IAC has better acoustic performance. Modernfold support materials state that Modernfold has an acoustical rating better than IAC's.
- o According to Modernfold support materials, their partitions require substantially less labor to set up and take down than those of IAC.

The above points do not seem to indicate that one partition is technically superior to another. However, because of the importance of dependable, timely servicing, ease of operation and potential labor savings, staff recommends selection of Alternates 9A and 10A, using Modernfold partitions, instead of 9B and 10B, using IAC partitions.

II. Non-Compliance of Hensel Phelps with the DBE/WBE "Good Faith" Requirements under Metro Code Section 2.04.155

Staff reviewed the September 1 memo from Ray Phelps, Metro Director of Finance and Administration, which analyzed the compliance of the two apparent low bidders -- Hensel Phelps Construction and Hoffman (Oregon) - Marmolejo, J.V. -- with Metro's DBE/WBE Code. Mr. Phelps's analysis determines that Hoffman-Marmolejo's joint venture meets Metro's DBE and WBE contracting goals, but that Hensel Phelps does not and, therefore, must show compliance with Metro's "good faith" Code requirements in order to be considered. The analysis concludes that Hensel Phelps does not meet the good

faith efforts specifically identified in Metro Code Section 2.04.160 (b) (6) "Determination of Good Faith Efforts". Staff agree with the Finance Director's conclusion, based on our review of the Code, Hensel Phelps "Statement of 'Good Faith' Effort" and Mr. Phelps' analysis.

### III. Budget Implications of the Selected Base Bid and Alternates

Resolution No. 88-977 awards the General Contract for the Oregon Convention Center to the lowest responsive bidder -- Hoffman (Oregon) - Marmolejo, Joint Venture. Reviewing the Convention Center Capital Budget from July, 1986 to the current revision of August, 1988 reveals the following changes:

- o Total budget has increased from \$85 million to \$85,627,442
- o The Project Management portion of the budget has grown by more than \$5 million -- from \$6,555,551 to \$11,686,630.
- o The Construction budget has increased by \$4.3 million -- from \$47,883,907 to \$52,185,531.
- o Total Contingencies are down from \$12,595,541 -- 26.3% of the total construction budget -- to \$2,444,871 or 4.7%.

As a percent of total budget, these changes do not appear extreme. For example, the increase of \$627,442 in the total budget represents less than 1% budget growth. The notable change, however, is the drop in the contingencies. Total Contingencies, as noted above, is composed of two components: Owner's contingency and Construction contingency. Project Director Neil Saling has cited a 5% minimum contingency for the Construction contingency alone. As of August, the construction contingency was only 2.5%, half of the necessary minimum.

To reach and maintain the 5% construction contingency and fund the base bid plus all of the recommended alternates (including the recommended change to 9A and 10A noted above), the Council will have to draw \$1,786,466 from other sources. This conclusion is illustrated on the next page in the summary chart of Convention Center capital costs from August 1986 to date. The chart summarizes budget information taken from the attached budget charts (Attachment 1) which were included in Neil Saling's August 23 memo to the Executive Officer regarding Convention Center Bid results.

-----

The budget decision facing the Committee and the Council is two-fold:

- 1) Whether to accept the recommended alternates or to change them in order to achieve savings; and
- 2) If the alternates are accepted as recommended, from what sources to draw funds in order to maintain the desired minimum 5% construction contingency.

SUMMARY OF CONVENTION CENTER CAPITAL COST COMPARISON

<u>CATEGORY</u>	<u>JULY 1986 BUDGET</u>	<u>AUGUST 1988 BUDGET</u>	<u>MODIFIED E.O. RECOMMENDATION</u> *
REAL ESTATE	11,630,000	11,800,610	11,900,610
OFF-SITE CONSTRUCT.	2,335,000	2,046,500 **	2,046,500 **
LEGAL/FINAN., ETC.	0	325,000	325,000
FURNITURE/EQUIPMENT	4,000,000	4,400,000	4,400,000
PROJECT MANAGEMENT	6,555,551	11,686,630	11,686,630
CONSTRUCTION	47,883,907	52,823,832 **	53,261,700 ** <sup>437,868</sup>
CONTINGENCIES ***	<u>12,595,541</u>	<u>2,444,871</u>	<u>2,007,002</u>
TOTAL	\$ 85,000,000	85,627,442	85,627,442

\* This is the Executive Officer's recommendation -- Hoffman-Marmolejo plus alternates -- including the Council Staff recommendation herein to replace Alternates 9B and 10B with 9A and 10A.

\*\* \$638,300 of off-site costs are included in the construction contract (line 8 of the Attachment 1 budget charge).

\*\*\* The Total Contingencies include both Owners Contingency and Construction Contingency. The Executive Officer's Recommendation reduces the Construction Contingency to \$876,619. The desired Construction Contingency is 5% of the \$53,261,700 construction budget, which is \$2,663,085. To bring the Construction Contingency to this level requires \$1,786,466 from other sources (presumably the interest earnings). The Total Contingency at that point would be \$3,793,468.

## ATTACHMENT 1

MODIFIED  
E.O. RECOMMENDATION

	A	B	C	D	E	F	G	H
1	BUDGET COMPARISON	Budget	Budget	Budget	Budget			
2	22-Aug-88	prepared	prepared	prepared	prepared			
3		July, 1988	July, 1987	June, 1988	Aug, 1988			
4								
5	REAL ESTATE	11,630,000	11,800,294	11,900,610	11,900,610		11,900,410	
6								
7	OFF-SITE CONSTRUCTION							
8	Bid Package 3	1,500,000	1,500,000	1,500,000	638,300	-	0	
9	PDOT responsibilities	0	0	0	924,700		924,700	
10	Tri Met		600,000	600,000	600,000		600,000	
11	Other streets	500,000	0	0	521,800		521,800	
12	Utility Relocation	335,000	100,000	100,000	see line 11			
13	Pedestrian Connections	0	207,460	207,460	see line 9			
14								
15	TOTAL	2,335,000	2,407,460	2,407,460	2,684,800		2,046,500	
16								
17								
18	LEGAL/FINANCIAL, ETC							
19	Builder's Risk Insurance	0	250,000	250,000	175,000		175,000	
20	Bond Costs	0	93,500	114,869	150,000		150,000	
21								
22	TOTAL	0	343,500	364,869	325,000		325,000	
23								
24								
25	FURNITURE, EQUIPMENT							
26	Furn, Fix, Equipment	4,000,000	3,400,000	3,400,000	3,400,000		3,400,000	
27	Telecommunications	0	1,000,000	1,000,000	1,000,000		1,000,000	
28								
29	TOTAL	4,000,000	4,400,000	4,400,000	4,400,000		4,400,000	
30								
31								
32	PROJECT MANAGEMENT							
33	Area Plan	0	100,000	100,000	100,000		100,000	
34	Art	472,839	475,000	475,000	475,000		475,000	
35	Construction Management	2,300,000	2,309,000	2,527,867	2,643,929		2,643,929	
36	Design Services	3,309,873	4,000,000	3,811,841	3,832,506		3,832,506	
37	Geotechnical Services	0	139,500	530,294	917,507		917,507	
38	Hook up charges	0	100,000	100,000	100,000		100,000	
39	Metro project admin	0	2,187,500	2,800,603	2,800,603		2,800,603	
40	Permits	0	312,000	350,000	350,000		350,000	
41	Pre-construction surveys		40,000	15,300	15,300		15,300	
42	Printing	472,839	200,000	100,000	100,000		100,000	
43	Testing		200,000	250,000	351,785		351,785	
44	TOTAL	6,555,551	10,063,000	11,060,905	11,686,630		11,686,630	
45								
46	CONSTRUCTION							
47	Steel package			5,349,185	5,349,185		5,349,185	
48	Site package			971,984	1,157,515		1,157,515	
49	General Contract	47,283,907	52,000,000	45,678,831	45,678,831		46,755,000	
50	Demolition	600,000						
51	TOTAL	47,883,907	52,000,000	52,000,000	52,185,531		53,261,700	
52								
53	CONTINGENCIES							
54	Owner's contingency	8,308,270	2,485,746	1,366,156	1,130,383		1,130,383	
55	Construction contingency	4,287,271	1,500,000	1,500,000	1,314,488		1,314,488	
56								
57	TOTAL	12,595,541	3,985,746	2,866,156	2,444,871		2,444,871	
58								
59	GRAND TOTAL	85,000,000	85,000,000	85,000,000	85,627,442		85,627,442	

	A	B	C	D	E	F	G	H
60								
61	REVENUE							
62	CONVENTION CENTER							
63	DATE 8/23/88	Bonds	LID*	State	Other	Hotel/Motel	Interest	Total
64								
65	1986-87					397,442		397,442
66	7/1/87	65,000,000	0	0	0	593,104		65,593,104
67	10/1/87	0	0	0	0	694,630		694,630
68	1/1/88	0	0	0	0	574,873		574,873
69	4/1/88	0	0	0	0	590,536		590,536
70	7/1/88	0	0	1,875,000		617,500	3,894,320	6,386,820
71	10/1/88	0	0	1,875,000		617,500		2,492,500
72	1/1/89	0	4,700,000	1,875,000		617,500		7,192,500
73	4/1/89	0	0	1,875,000		617,500		2,492,500
74	7/1/89	0	0	1,875,000		617,500	2,999,000	5,491,500
75	10/1/89	0	0	1,875,000	300,000	617,500		2,792,500
76	1/1/90	0	0	1,875,000		617,500		2,492,500
77	4/1/90	0	0	1,875,000		617,500		2,492,500
78	7/1/90	0	0	0		617,500	1,147,000	1,764,500
79	10/1/90	0	0	0	230,000	617,500		847,500
80								
81								
82	TOTAL	65,000,000	4,700,000	15,000,000	530,000	9,025,585	8,040,320	102,295,905
83	*assumes receipt of \$4,550,000 invested six months @ 7.5%							
84	subtotal w/o interest	94,255,585						
85								
86	"Project" resources:							
87	Bonds	65,000,000						
88	Local Improvement	4,700,000						
89	State	15,000,000						
90	Other	530,000						
91	1986-87 Hotel/Motel	397,442						
92	Total	85,627,442						
93								
94								
95	USES							
96								
97	ACQUISITION, CONST			85,627,442				
98								
99	OPERATIONS/MGMNT							
100	MERC:							
101	Marketing	2,452,518						
102	Reserve	1,500,000						
103	MERC operating budgt	1,966,000						
104	MERC transfers, contngncy	1,248,658						
105	MERC subtotal		7,167,176					
106	CCP staff		662,040					
107	Pre-MERC		798,927					
108	Total			8,628,143				
109								
110	Subtotal w/o interest			94,255,585				
111								
112	INTEREST							
113	Total Estimated	8,040,320						
114	Less arbitrage	865,000						
115	Interest available	7,175,320						
116								
117	Debt service paid 1987-88	1,739,121						
118	Interest available		5,436,199					
119								
120								
121	MERC budget	1988-89	1989-90	1990-91	Total			
122	Personal Services	444,480	444,480	222,240	1,111,200			
123	Materials and Services	341,920	341,920	170,960	854,800			
124	Marketing	981,007	981,007	490,504	2,452,518			
125	Transfers	183,756	183,756	91,878	459,390			
126	Con tingency, Unappropriated	315,707	315,707	157,854	789,268			
127	Reserve	1,000,000	500,000	0	1,500,000			
128	Total	3,266,870	2,766,870	1,133,436	7,167,176			



**METRO**

2000 S.W. First Avenue  
Portland, OR 97201-5398  
503/221-1646

# Memorandum

Agenda Item No. 7.1

Meeting Date September 8, 1988

Date: September 8, 1988

To: Metro Council

From: Councilor David <sup>Dk/lam</sup> Knowles, Chair  
Council Convention Center Committee

Regarding: COMMITTEE REPORT ON THE SEPTEMBER 8, 1988 COUNCIL MEETING  
AGENDA ITEM NO. 7.1, RESOLUTION NO. 88-977 AWARDED A  
CONTRACT FOR THE OREGON CONVENTION CENTER, BID PACKAGE  
NO. 3 TO HOFFMAN (OREGON)-MARMOLEJO, A JOINT VENTURE

Committee Recommendation: The Committee unanimously recommends Council adoption of Resolution No. 88-977 amended to detail findings of the rejection of Hensel Phelps Construction's bid and to change selection of Alternates 9B and 10B -- IAC operable partitions -- to 9A and 10A -- Modernfold operable partitions. Councilors Waker, Van Bergen, Kelley and myself attended this morning's special meeting. Councilor Cooper was absent.

Background & Discussion Summary: The attached Executive staff report from Neil Saling (Attachment 3 following the resolution) summarizes the contract process to date and the primary issues relating to the bid award -- selection of alternates, compliance with Metro contracting requirements, award to the lowest responsive bidder, and budget implications. Also attached is Council staff's September 7 report which presents the recommendation adopted by the Committee (See Attachment 4 following the resolution). Because these 2 staff reports thoroughly cover the background and analysis leading to Resolution 88-977, this report simply summarizes below the actions taken at this morning's meeting.

### Summary of Convention Center Committee 9/8/88 Meeting Actions

1. The Committee reviewed staff reports and received testimony on the Selection of Alternates recommended by ACDC. The Committee unanimously approved the motion to amend the ACDC recommendation to replace Alternates 9B and 10B with Alternates 9A and 10A.
2. The Committee reviewed staff reports on the budget issues (no public testimony was offered) and Committee members noted that they would like a separate review of future financing issues to be presented at the next meeting, for further policy discussion.
3. The Committee reviewed the staff reports' DBE/WBE discussions with Ray Phelps and Dan Cooper. Doug Ragen of Mayor Nash, representing

Hensel Phelps, presented a rebuttal in response to Mr. Phelps analysis. Testimony was also received from Mr. Drinkward and Mr. Marmolejo of Hoffman-Marmolejo, J.V., Mr. Broussard, Mr. Mearnes of the Columbia Building Association. As noted above, the Committee amended the resolution to specify the findings made by the Executive staff and Counsel supporting the decision to reject the Hensel Phelps bid for non-compliance with Metro's DBE/WBE "Good Faith" Code requirements, Section 2.04.155.

a:\bid3rprt



BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

AWARDING THE CONTRACT FOR THE ) Resolution No. 88-977A  
OREGON CONVENTION CENTER, BID ) Introduced by the  
PACKAGE #3, TO HOFFMAN (OREGON)-) Executive Officer  
MARMOLEJO, JOINT VENTURE )

WHEREAS, Metro has designed and funded the Oregon Convention Center; and

WHEREAS, Metro has let two contracts (Bid Packages 1 and 2) for steel fabrication and erection and site work for the Oregon Convention Center; and

WHEREAS, In compliance with the provisions of Metro Code and Oregon Public Bidding law, Metro has administered a bidding process for the Oregon Convention Center, Bid Package No. 3 (General Contract); and

WHEREAS, Six bids from general contractors were received for Bid Package No. 3; and

WHEREAS, District staff have reviewed the bids and supplemental materials for compliance with provisions of Metro's contracting code (Metro Code chapter 2.04) and have recommended that the bid of Hensel Phelps Construction Co. (Phelps, Inc.) be rejected for failure to comply with the requirements of Metro Code chapter 2.04.100 et. seq.; and

WHEREAS, The Advisory Committee on Design and Construction has reviewed the bid results, and recommended to Metro the election of certain alternates in establishing the contract for Bid Package No. 3; and [; now, therefore,]

WHEREAS, The Council's Convention Center Committee has considered staff recommendations and heard additional testimony from Phelps, Inc., Hoffman (Oregon) - Marmolejo, A

Joint Venture and others and recommends that the bid of Phelps, Inc. be rejected as non-responsive; now therefore

BE IT RESOLVED:

1. That the Council of the Metropolitan Service District will award the contract for Oregon Convention Center Project, Bid Package No. 3, to include the following alternates in addition to the Base Bid: #3A: Addition of Bus Shelters; #4: Addition of Escalators; #9[B]A: Partitions by [IAC] Modernfold; #10[B]A: Partition by [IAC] Modernfold; and #11A: Surface Hardener by Master.

2. That the Council of the Metropolitan Service District finds that the apparent low-bidder with the selected list of alternates, Hensel Phelps Construction Co. (Phelps, Inc.) did not comply with the contracting requirements of Metro Code chapter 2.04.100 et. seq., Disadvantaged Business Program, and specifically, did not adequately make good faith efforts as defined in Metro Code chapter 2.04.160 as detailed in the attached Exhibit A entitled "Findings";

3. That the Council of the Metropolitan Service District awards the contract for Oregon Convention Center Bid Package No. 3 (General Contract) to the lowest responsive, responsible bidder, Hoffman (Oregon) - Marmolejo, a Joint Venture, for the amount of [\$46,719,000] \$46,755,000.

ADOPTED by the Council of the Metropolitan Service District this \_\_\_ day of \_\_\_\_\_, 1988.

\_\_\_\_\_  
Mike Ragsdale, Presiding Officer

Findings

The Council of the Metropolitan Service District finds that Hensel Phelps Construction Co. (Phelps, Inc.) has submitted a non-responsive bid for the General Contract for the construction of the Oregon Convention Center in that:

(1) Phelps, Inc. has failed to demonstrate compliance with the requirements of Metro Code Section 2.04.160 (b) within two (2) working days of bid opening as required by Metro Code Section 2.04.155 (e) as found by Metro's Director of the Department of Finance and Administration in his report to the Executive Officer attached hereto as ATTACHMENT 1.

(2) Phelps, Inc. has failed to demonstrate to the Council that it has complied with the requirements of Metro Code Section 2.04.160 (b) (6). In particular, Phelps, Inc. has conceded that it made no special efforts in addition to those required by Metro Code Section 2.04.160 (b) (1) through (5) except to send letters to certain organizations. Such organizations that were contacted were not appropriate organizations as found in ATTACHMENT 1. Phelps, Inc. did not contact the Executive Department's Advocate for Minority and Women's Businesses to obtain information regarding organizations that provide assistance in the recruitment and placement of DBE's and WBE's, nor did Phelps, Inc. engage in any follow-up effort with the organizations it did attempt to contact. Phelps, Inc. did not in its solicitation letter sent to DBE's and WBE's inform such entities of its policies regarding assistance in bonding or joint checking agreements. Nor did Phelps, Inc. document the results if any of the special efforts it attempted.

(3) Phelps, Inc. when it submitted its bid, indicated that it would obtain 3 percent DBE participation. In its submission required by Metro Code Section 2.04.155 (d), Phelps, Inc. failed to list the names of DBE's that would furnish 3 percent of the contract amount. Rather Phelps, Inc. only established that it would obtain .9 percent DBE participation. See ATTACHMENT 2. Metro Code Section 2.04.155 (d) and 2.04.155 (f) require that failure to comply with these bid requirements is mandatory grounds for bid rejection unless the waiver requirements of Subsection 2.04.155 (g) are met.

(4) The Phelps, Inc.'s deviation from the requirements of Metro Code Section 2.04.155 (d) and (f) are not minor irregularities and no grounds for waiving the defect pursuant to Section 2.04.155 (g) exist.



# METRO

2000 SW First Avenue  
Portland, OR 97201-5398  
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ATTACHMENT 1

## Memorandum

Date September 1, 1988  
To Rena Cusma, Executive Officer  
From Ray Phelps, Director of Finance and Administration  
Subject Compliance of Hoffman (Oregon) - Marmolejo, J.V. and Hensel Phelps Construction and With Metro's DBE/WBE Code

Executive Officer  
Rena Cusma

### Metro Council

Mike Ragsdale  
Presiding Officer  
District 1

Corky Kirkpatrick  
Deputy Presiding  
Officer  
District 4

Richard Waker  
District 2

Jim Gardner  
District 3

Tom DeJardin  
District 5

George Van Bergen  
District 6

Sharron Kelley  
District 7

Mike Bonner  
District 8

Tanya Collier  
District 9

Larry Cooper  
District 10

David Knowles  
District 11

Gary Hansen  
District 12

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Hensel Phelps Construction and Hoffman (Oregon) - Marmolejo, J.V. are the two apparent low bidders for the general contract of the Oregon Convention Center.

Hoffman-Marmolejo's bids indicate that their joint venture has met Metro's DBE and WBE contracting goals through a joint venture with a DBE (Marmolejo) and subcontracting with WBE's. Hensel Phelps did not meet the goals, and has submitted documentation of their good faith efforts.

My analysis concludes that Metro cannot continue consideration of the bid submitted by Hensel Phelps Construction, Inc. on August 23, 1988 for the general contract of the Oregon Convention Center. Accordingly, consideration at this point must be directed toward the apparent second low bidder, which is Hoffman (Oregon) - Marmolejo, J.V..

I have asked convention center project and contracts administration staff to review each of the two bidder's submissions. They have shared their analysis with me, and my findings regarding the compliance of each firm with Metro's DBE/WBE code provisions is reviewed below:

### A. Hoffman (Oregon) - Marmolejo, Joint Venture:

Submitted with the bid was the joint venture agreement between Hoffman Construction and Marmolejo Construction, which vests in Marmolejo 10% of the contract value. Marmolejo will share in the profits as well as the risks in proportion to its participation in the joint venture. Based upon the agreement, and supplemental information submitted, I conclude that this joint venture meets the tests included in Metro's DBE/WBE code provisions, and is therefore recommended for approval.

WBE subcontracting goals (3%) were met by the joint venture -- and letters of intent have been submitted. Checking has confirmed that the firms used are certified by the State of Oregon and represent 3% of the subcontracted work. I conclude that WBE goals have been met.

**B. Hensel Phelps Construction, Inc. (Phelps, Inc.)**

Because the goals for DBE and WBE participation in the contract were not met by Hensel Phelps Construction, Inc., the basis for compliance rests with the good faith documentation submitted 48 hours after bid opening.

Metro's code requires that contractors provide good faith documentation in response to seven criteria, and for many criteria, specific performance standards are listed. My assessment of the Phelps, Inc. good faith documentation is listed below in response to each of the Metro Code good faith criteria (Metro Code section 2.04.160 (b)):

1. *Criteria: Attendance at any presolicitation or prebid meetings that were scheduled by Metro to inform DBEs and WBEs of contracting and subcontracting or material supply opportunities available on the project (Metro Code 2.04.160 (b)(1)). Documentation, signature on meeting attendance sheet.*

Criteria met: the pre-bid meeting attendance sheet is signed by Dan Ryan of Hensel Phelps.

2. *Criteria: Identifying and selecting specific economically feasible units of the project to be performed by DBEs or WBEs to increase the likelihood of participation by such enterprises (Metro Code 2.04.160(b)(2)). Documentation -- tied to criteria 4 below.*

Criteria Met: Metro asked Turner Construction Co. to review the subdivisions of work which Hensel Phelps used for solicitation of DBE/WBE participation. In a letter dated August 30, 1988 Turner concluded "...that Hensel Phelps identified and solicited bids in which the greatest opportunity existed for the participation of DBE/WBE firms." Hensel Phelps identified 24 subcontracting opportunities, and appeared flexible in dealing within these categories.

3. *Criteria: Advertising in, at a minimum, a newspaper of general circulation, and trade association, minority and trade oriented, women-focused publications, if any, concerning the subcontracting or material supply opportunities on the project at least ten (10) days before bids or proposals are due (Metro Code 2.04.160 (b) (3)). Documentation: Copies of ads.*

Criteria Met: Hensel Phelps submitted documentation of ads placed in the Oregonian, The Skanner, The Portland Observer, and the Daily Journal of Commerce within the required time limitations.

4. *Criteria: Providing written notice soliciting sub-bids/proposals to not less than five (5) DBEs or WBEs (if less than five firms exist, notice must be to the number of firms on the State list) for each subcontracting or material supply work item selected pursuant to (2) above and not less than ten (10) days before bids/proposals are due (Metro Code 2.04.160(b)(4)). Documentation: Copies of letters.*

Criteria not met: Hensel Phelps good faith submittal shows that letters were sent to 116 different DBE/WBE firms within the ten day requirement. Most of the 24 categories of work broken out by Hensel Phelps properly dealt with this criteria, and the overall pattern of actions was in conformance with the criteria. However, the following shortcomings were noted:

- **Masonry:** Hensel Phelps' good faith documentation indicates that three letters were sent to DBE/WBE firms in this category. Letters were not sent to two state certified DBEs even though the threshold of five DBE/WBE firms had not been reached. These firms are: (1) J&S Masonry; and (2) Reverend Scott's Masonry. J &S Masonry later initiated contact himself, and a sub-bid was submitted.

- **Insulation:** Hensel Phelps' good faith documentation shows that one letter was sent to a firm in this category. The documentation submitted does not contain letters to two other state certified firms: (1) Interstate Insulations; and (2) 3-A Industries, and the threshold of five firms had not been met. Follow-up phone calls indicate that some contact with these firms may have been made, though there is no documentation of such contact contained in the good faith submittal.

- **Fire Protection:** Documentation shows that two letters were sent to firms in this category. Good faith documentation does not contain letters to three state certified firms even though the threshold of five firms had not been reached. The firms are: (1) Adams Mechanical; (2) Instant Fire Protection Co.; (3) Carbon Dioxide, Inc. Phone logs and bids do indicate some follow-up contact with Carbon Dioxide, Inc. Adams Mechanical had requests from general contractors, but Hensel Phelps was not specifically identified.

- **Ceramic Tile:** Good Faith documentation indicates that letters were sent to only four DBE/WBE firms. Three others were on the State Certified list: (1) Anne Sacks Tileworks; (2) Mendo Floor Covering; (3) Gleneden Brick and Tileworks, Inc. It appears from phone logs that one of these, Anne Sacks Tileworks, was later contacted.

5. *Criteria: Making, not later than five days before bids/proposals are due, follow-up phone calls to all DBEs/WBEs who have not responded to the solicitation letters to determine if they would be submitting bids and/or to encourage them to do so (Metro Code 2.04.160 (b)(5)). Documentation: Phone logs.*

Criteria not met: Hensel Phelps submitted phone logs which indicated most follow-up phone calls, as required by the ordinance were made. However, as with criteria number 4, exceptions were noted. While we have had some trouble interpreting the phone log, it does appear that some DBEs and WBEs who did not respond to the letter solicitation, and did not receive a follow-up phone call.

6. *Criteria: Using 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 Business that provide assistance in the recruitment and placement of DBEs and WBEs; where applicable, advising and assisting DBEs and WBEs in obtaining lines of credit or insurance required by Metro or the bidder/proposer; and, otherwise, making efforts to encourage participation by DBEs and WBEs which could reasonably be expected to produce a level of participation sufficient to meet the goals (Metro Code 2.04.160 (b)(6)). Documentation Required: Letter from bidder indicating all special efforts made to facilitate attainment of contract goals, the dates such actions were taken and results realized.*

Criteria not met: In satisfaction of this criteria Hensel Phelps efforts were pro forma, and were not in compliance with the letter or the intent of Metro's contracting code.

Lack of response to this criteria is analyzed below:

1. The company sent form letters to eight organizations, none of which could reasonably be expected to contribute to DBE/WBE subcontracting. Specifically:

- **Apprenticeship & Training Division:** This is a division of the State Bureau of Labor and Industries. Staff contacted the administration, Mr. Quint Rahberger, and he recalls receiving the letter from Hensel Phelps. According to him, the purpose of his organization is to administer a volunteer program for apprenticeship training under ORS chapter 660. Services are employment -- not DBE/WBE subcontracting.

- **Human Resources Development Institute:** The copy of the letter in the good faith effort by Hensel Phelps indicated that the address of this organization was 201 SW Arthur, Room 213, Portland, Oregon. Staff checked the Portland telephone directory and directory assistance and found no telephone numbers listed for this organization. Staff drove to the above listed address and found the address to be non-existent.

- **Economic Opportunity/Office of Metro. Steering Committee:** The copy of the letter in the good faith effort submitted by Hensel Phelps listed the organizations address as 1110 SW Alder, Portland, Oregon. Staff checked the Portland telephone directory and directory assistance and found no telephone number listed for this organization. Staff drove to the above listed address and found it non-existent.

- **Japanese American Citizens League:** Staff contacted Joe Wohl, the League's president. He does not recall receiving a letter from Hensel Phelps. According to him, his organization is primarily involved with civil rights of Americans of Japanese ancestry. The organization does not deal with DBE/WBE subcontracting.

- **United Indian Action Center:** Hensel Phelps good faith documentation listed the address of this association as 435 NW 22nd, Portland, Oregon. Staff checked the Portland telephone directory and directory assistance and found no telephone number listed. Staff drove to the above address and talked to Ms. Peggy Crowe, a resident. Ms. Crowe indicated she has been a resident since 1972 and does not know of United Indian Action Center having offices at that address.

- **NAACP:** Staff talked to the president, George Hendrix. He does not recall receiving a letter from Hensel Phelps. According to him, his organization is a civil rights organization, and is not involved DBE/WBE contracting.

- **Apprenticeship Outreach Program:** This program is under the State of Oregon Department of Human Services, Employment Division. Staff talked to the Assistant Manager, Jerry Fugere. Services do not involve DBE/WBE contracting.

- **Apprenticeship Information Center:** Staff talked to Ms. Helen Anderson, Administrator. The purpose of this organization is to coordinate and assist employees with apprenticeship programs. Services are employment related, and not related to DBE/WBE contracting.

2. The Metro code directs bidders to use the services of minority community organizations, minority contractor groups, local, state and federal minority business assistance offices and other organizations. Metro staff has contacted the following organizations and agencies:

- Executive Department's Advocate for Minority and Women Business. The good faith documentation submitted by Hensel Phelps contains no record or notation that the State office was contacted. Further, Director of the Office, Lina Garcia - Seabold, has indicated by phone that no representative of Hensel Phelps contacted her office (letter attached).
- Federal Highways Administration: Carolyn Robertson, Civil Rights specialists, recalled no contact with Hensel Phelps.
- Oregon Department of Transportation: Ronault Catalani, EEO/MBE Compliance Manager, was contacted by Metro staff, and recalled no contact with Hensel Phelps.
- National Association of Minority Contractors: Staff contacted Bruce Broussard, affiliated with this organization, who reported that Hensel Phelps had not contacted them.

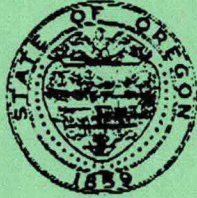
During the review period, staff has also attempted to contact Tri Met's DBE/WBE liaison, Julius Evans, and FHWA's Willie Harris, each of which were unavailable this week.

4. Hensel Phelps' good faith documentation did not give any positive indication that prior to bidding, they had attempted to assist DBE and WBE businesses with insurance and/or lines of credit requirements, as is required by Criteria No. 7.

For the above reasons, I conclude that Metro should consider the bid submitted by Hoffman (Oregon) - Marmolejo, J.V..



NEIL GOLDSCHMIDT  
GOVERNOR



RECEIVED

SEP 1 1988

CONSTRUCTION DIV

OFFICE OF THE GOVERNOR  
STATE CAPITOL  
SALEM, OREGON 97310-1347

September 1, 1988

Amha Hazen  
METRO  
2000 SW First Avenue  
Portland, OR 97201-5398

RE: Convention Center Bid

Dear Mr. Hazen:

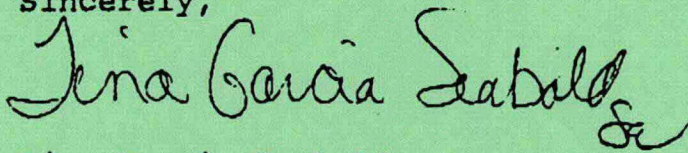
This is to advise you that the apparent low bidder, Hensel Phelps Construction, never contacted me in my capacity as Advocate for Minority and Women-owned businesses for the State of Oregon, for assistance in attempting to meet the 10% DBE and 3% WBE goals on this project.

An unsolicited letter (copy attached) was sent by the Office of Minority and Women Business (OMWB) to all prime contractors on the METRO list of planholders, advising them about RUSH certification procedures. To our knowledge no response or inquiries were made by Hensel Phelps Construction. As you are aware, ORS Chapter 200.045, which speaks to good faith efforts, stipulates that the Advocate for Minority (MBE) and Women-owned (WBE) businesses be contacted for assistance in locating minority and women-owned firms. In addition, the 1987 legislature created this position in order to facilitate the promotion and development of small, disadvantaged minority and women-owned businesses in public contracts and to aid prime contractors in finding and working with those businesses. As Advocate for Minority and Women-owned Businesses in the State of Oregon, I know for a fact that there are numerous qualified MBEs and WBEs who should have an opportunity to participate. Further, in my assessment, the goals on this project were entirely realistic and could have easily been met. I hope that this information assists you in your good faith efforts review, should it become necessary.

Amha Hazen  
9/1/88  
Page 2

Again, I want to make sure that every possible consideration be given to qualified minority and women-owned businesses on this important project; it is important to Oregon's economic future.

Sincerely,

A handwritten signature in cursive script that reads "Lina Garcia Seabold". The signature is written in dark ink and includes a small flourish at the end.

Lina Garcia Seabold  
Advocate for Minority/Women Business



## Executive Department

155 COTTAGE STREET NE, SALEM, OREGON 97310-0310

RECEIVED

SEP 1 1988

CONSTRUCTION DIV

August 1, 1988

Hensel Phelps Construction Co.  
Attn: Roger Naranjo  
420 Sixth Avenue  
P.O. Box 0  
Greeley, CO 80632

Attached is the State of Oregon's procedure for expedited certifications for disadvantaged (DBE), minority (MBE) and women (WBE) business enterprises.

In preparing your bid for the METRO Convention Center (bid date: 8/23/88), we recommend that you pay particular attention to the certification status of the minority and women-owned firms interested in subcontracting opportunities with your company. Out-of-state firms will require additional time, so the sooner their application is received by the Office Of Minority and Women Business (OMWB), the faster it can be expedited.

All RUSH Requests must be submitted no later than August 9, 1988.

Sincerely,

Richard Acevedo, Manager  
Office of Minority & Women Business



## Executive Department

155 COTTAGE STREET NE, SALEM, OREGON 97310-0310

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### OFFICE OF MINORITY AND WOMEN BUSINESS POLICY ON EXPEDITING CERTIFICATION APPLICATIONS

#### GENERAL

Generally, applications for certification are processed on a "first-in, first-out" basis. However, certain situations justify the need for an exception to this procedure. The exception is expeditious processing of one or more applications for certification when necessary, to assist state agencies in achieving their MWBE goals.

The Office policy is to expedite applications by type of business (even when the request includes the name of only one applicant business) when the Criteria for Expediting Certification Applications and Criteria for Submitting "Requests to Expedite" have been satisfied.

#### CRITERIA FOR EXPEDITING CERTIFICATION APPLICATIONS

Certification applications will be expedited if one or more of the following conditions exist:

1. **Large Contract:** A contract is significant in dollar value and has a major impact on the agencies' achievement of their overall MWBE goals.
2. **Master Contract:** A master or term contract is let for one or more years. Expediting certification applications would provide long term opportunities for MWBEs and assist agencies with achievement of their overall MWBE goals.
3. **Geographical Location:** A geographical region of the state has few or no certified MWBEs in a particular product or service area. In this case, expediting certification applications would respond to the need of state agencies in that locale and provide opportunities for MWBEs.

#### CRITERIA FOR SUBMITTING "RUSH REQUESTS" TO OMWB

1. Application must be received by the OMWB 30 days prior to the request to rush the application.

2. Requests are accepted from STATE AGENCIES AND OTHER LOCAL JURISDICTIONS.
3. Requests must be in WRITING.
4. Requests must include justification encompassing the above "Criteria for Expediting Certification Applications."
5. Requests must include:
  - a. Name of applicant business project.
  - b. Name of project.
  - c. Time and date of bid/proposal date (as applicable).
  - d. Amount of MWBE participation.
  - e. Name and telephone number of agency contact person.
6. The RUSH letter must be received in the OMWB at least 15 days prior to the bid opening. RUSH letters received less than 15 days prior to the scheduled bid opening may be processed at the discretion of the OMWB.



**Hensel Phelps  
Construction Co.**

P.O. Box 0  
420 Sixth Avenue  
Greeley, Colorado 80632  
(303) 352-6565

August 24, 1988

Metropolitan Service District  
2000 S.W. First Avenue  
Portland, Oregon 97201-5398

4 25  
Biny

Attention: Ms. Berit Younie  
Subject: Oregon Convention Center

Dear Ms. Younie:

Hensel Phelps Construction is pleased to submit the attached supplement to our bid as required by the contract documents.

Attached you will find our DBE Utilization Form, WBE Utilization Form, Insurance Cost Elimination Form, and our list of proposed subcontractors.

At this time, we also would like to notify Metro that Hensel Phelps Construction has an arithmetic error in their bid. We request time to further evaluate our position on this matter.

We appreciate your cooperation.

Wayne Lindholm  
Hensel Phelps Construction

DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION FORM

1. Name of Metro Project: GENERAL CONTRACT
2. Name of Bidder Phelps, Inc.  
 Address 420 Sixth Avenue, P. O. Box 2440, Greeley, CO 80632
3. The above-named Bidder intends to subcontract        percent of the Base Bid to the following Disadvantaged Business Enterprises (DBEs):

<u>Names, Contact Persons, Addresses and Phone Numbers of DBE Firms Bidder Anticipates Utilizing</u>	<u>Nature of Participation</u>	<u>Dollar Value of Participation</u>
<u>✓ CAPITOL CONCRETE CONSTRUCTION</u> <u>SALON, OR 503/585-7678</u> <u>KEN GARCIA</u>	<u>PLACE &amp; FINISH CONCRETE</u>	<u>\$ 150,000-</u>
<u>✓ NORTHWEST ELECTRICAL</u> <u>WELSHES, OR 503/622-5285</u> <u>TOM ZAVILA</u>	<u>A-V WIRING</u>	<u>\$ 244,000-</u>
<u>✓ THE KASPAC CORP</u> <u>COTTAGE GROVE, OR 503/942</u> <u>RANDE PETERSON</u>	<u>STRIPING</u>	<u>\$ 5,000-</u>
	Total	<u>399,000-</u>
	Amount of Base Bid	<u>44,137,000-</u>
	DBE Percent of Base Bid	<u>0.9%</u>

Robert A. Ruyle  
 Authorized Signature  
 Robert A. Ruyle, Vice President  
 Date: AUGUST 24, 1988

THIS FORM IS TO BE COMPLETED, SIGNED AND DELIVERED TO METRO BY THE CLOSE OF THE NEXT WORKING DAY FOLLOWING BID OPENING

STAFF REPORTAgenda Item No. 7.1

Meeting Date: September 8, 1988

CONSIDERATION OF RESOLUTION #88-977 AWARDING  
A CONTRACT FOR THE OREGON CONVENTION CENTER,  
BID PACKAGE #3 TO HOFFMAN (OREGON) - MARMOLEJO,  
A JOINT VENTURE

Date: September 2, 1988

Presented by: Neil Saling

BACKGROUND AND FACTUAL ANALYSIS

The Metro Service District has awarded three major construction contracts in anticipation of the General Contract of the Oregon Convention Center. Specifically, Notice to Proceed was issued to Frahler Electric to perform the Oregon Street Detour work in March 1988. In May 1988, Notices to Proceed were issued to CanRon Western to perform the Structural Steel Contract work and to Dewitt Construction to perform the Site Preparation work. The contract amounts were \$69,256 for the Oregon Street Detour contract, \$5,195,500 for the Structural Steel contract and \$971,984 for the Site Preparation contract.

On June 23, 1988, the Council authorized the District to solicit bids for the General Contract, Bid Package No. 3, for the Oregon Convention Center via Resolution No. 88-947.

In accordance with the overall construction schedule recommended by Turner Construction Company and adopted by the Advisory Committee on Design and Construction (ACDC), a General Contract bid period commenced July 11, 1988. Public bidding procedures as prescribed by the Metro Code were followed during the course of this bid period.

Bid opening occurred August 23, 1988 in the Metro Council Chambers. Six bids were received, all of which are detailed on the attached schedule, Exhibit A. Five of the six base bids were below the engineer's estimate of \$46,033,000.

Technical compliance of the bids was reviewed by Metro staff, Turner Construction Company and the Zimmer Gunsul Frasca Partnership. Recommendations were forwarded to the Advisory Committee on Design and Construction, which considered the bid results at two meetings, August 26 and September 1, 1988.

Issues related to the review of the bids are discussed in four parts below: (A) Selection of Alternates; (B) Compliance with Metro Contracting Requirements; (C) Award to the Lowest Responsive Bidder; and (D) Budget Implications.



## **(A) Selection of Alternates**

The bids received included a base bid and thirteen alternates. Discussion of each of the alternates, together with the recommendation of the Advisory Committee on Design and Construction (ACDC), are summarized in Exhibit B attached, and are discussed below:

1. Delete Contractor Insurance: This alternate allows bidders to specify the credit granted if Metro should choose to establish a coordinated insurance program (wrap-up insurance) in lieu of contractor provided insurance. Bid results indicate that the credit granted by Contractors in the bidding process is insufficient to cover the cost of Metro purchasing wrap-up insurance; therefore, this alternate was not recommended by ACDC.

2. Delete Entrance Canopies: This alternate would have allowed deletion of entrance canopies, and was included in case the base bid was over budget. With the base bid within budget, ACDC recommends that this alternate not be elected.

### 3. Bus Shelters:

3A: Add Bus Shelters: Election of this alternate would allow construction of four bus shelters along the Holladay and Union bus turnout zones. The alternate is desirable, in that much of the access to the center is from shuttle buses between the center and hotels. ACDC recommends election of this alternate.

3B: Unit Price Per Shelter: This alternate represents the cost for a single 48 foot long bus shelter component, which would effectively allow additional units to be added to the bus shelters under 3A above, extending the shelters further along the bus turnouts. ACDC did not recommend including additional shelters as a part of the award.

4. Add Escalators: This alternate would include in the contract two escalators, between the entry levels of the convention center, and the Ballroom lobby. The base bid includes escalators between the lobbies and the pre-function areas. ACDC recommends election of this alternate as an operational and competitive enhancement of the center.

5. Delete Acoustical Wall Panels: This alternate would delete acoustical wall panels and substitute wall carpet. This downgrade is not required by the budget, and was not recommended by ACDC.

6. Add Portable Kitchen Equipment: This alternate would add a long list of portable kitchen equipment for provision by the general contractor. The equipment must be provided prior to opening, but may be provided by a concessionaire or purchased by Metro. Because there appeared to be no reason that this purchase would be more

cost-effective now rather than pursuing other options later, ACDC did not recommend election of this alternate.

**7. Add Computerized Sound Equipment:** This alternate would upgrade the sound system for meeting rooms and the ballroom from modular to computerized controls. The ACDC believes that this technology is changing quickly, and the Center should choose computerized equipment at a date closer to opening, and therefore, recommends that this alternate not be elected at this time.

**8. Delete Modular Sound Equipment:** This budget rescue alternate would downgrade the center's sound system. ACDC found its election unnecessary.

**9. Add Operable Partitions:** This alternate was conceived to allow Metro to make the choice of operable partition manufacturer. It is linked with alternate number 10 below. ACDC had lengthy discussions on this issue, causing a great deal of additional research into choice of partitions. ACDC recommended Metro elect operable partitions by IAC. Key points in comparing the alternatives are listed below:

**9A:** Partitions by Modernfold. Modernfold appears to have advantageous tracking systems, and a better servicing and support organization.

**9B:** Partitions by IAC. IAC partitions appear to have better acoustic performance, as compared to Modernfold, and heavier duty exterior panels.

Both manufacturers appear equal in review of technical specifications. The ACDC recommendation is based on the view that the key reason for the panels is noise separation of spaces. The design team's acoustic specialist gives IAC better marks for acoustic performance.

**10. Add Extra Operable Partition:** This alternate would add an extra operable partition between sections of the exhibit hall. The manufacturer is discussed above, and the same manufacturer would be selected for this alternate as selected for alternate 9. ACDC recommends the election of this alternate.

**11. Surface Hardener:** This alternate allows choice of manufacturer for the cement slab hardener, Master Builder or Euclid. The actual choice will be determined after on-site tests are conducted of the two products. ACDC recommends that the contract amount be based on the price submitted for Master Builder with any difference, should Euclid be selected, added by a future change order.

**12. Delete Glazed Towers:** An alternate designed to protect the project from budget catastrophe, should the bid have been high. ACDC did not recommend election of this alternate.

**13. Add Total Door System:** Research after the bid period began indicated that this alternate was not desirable. Based on recommendation of the architects, ACDC did not recommend election of this alternate.

**(B) Compliance With Metro Contracting Requirements**

Chapter 2.04 of the Metro Code specifies a number of requirements of bidders for Metro contracts. Based on meeting these requirements, the lowest "responsive" bidder is identified.

Staff has reviewed each of the two low bidders submittals (Hensel Phelps Construction Co. (Phelps, Inc.) and Hoffman (Oregon) - Marmolejo, A Joint Venture). Required bid and follow-up submittals have been received from each of these firms.

Among the requirements is compliance with Metro's DBE/WBE contracting code (Metro Code Sections 2.04.155). Hensel Phelps did not meet Metro's goals for DBE (10%) and WBE (3%) subcontracting, and have submitted documentation of their good faith efforts. Hoffman-Marmolejo met the goals through establishing a joint venture with a DBE for 10% of the job, and subcontracting 3% of the work to WBE's. The dollar value of these participations are \$4,420,000 to the DBE and \$1,326,000 to WBE, bringing the respective totals of DBE and WBE participations of all four major Oregon Convention Center construction contracts to \$5,288,401 and \$1,531,983.

Hensel Phelps' good faith documentation, as well as Hoffman-Marmolejo's joint venture and WBE subcontracting are reviewed in the attached memo to the Executive Officer from the Director of Finance and Administration (Exhibit C).

The conclusion of the review is that Hensel Phelps did not meet the good faith criteria required of the Metro Code, and that the Hoffman-Marmolejo bid is in compliance with those code provisions.

**(C) Award to Lowest Responsive Bidder**

Because Hensel Phelps Construction is not in compliance with DBE/WBE code provisions, the lowest responsive bidder, given the choice of alternates recommended by ACDC is Hoffman-Marmolejo, Joint Venture. Amount of the contract with the alternates recommended by ACDC is \$46,719,000.

**(D) Budget Implications**

Accepting the recommendation of ACDC as to the choice of alternates to the general contract requires that \$402,000 be allocated from the project's contingency fund. This

reduces total contingency funding from approximately \$2.4 million (4.6% of the \$52 million construction budget) to approximately \$1.9 million (3.6% of construction budget). To compensate for the depletion of the project's contingency fund, the Council may be required to supplement the construction fund in future budget actions. Financial reserves remain for this purpose, as discussed below.

In developing the FY 1988-89 Budget, the Council chose to maintain earnings on bond proceeds in the project's capital fund until major fiscal demands, such as the amount of the general contract bid, were resolved. Allocation of some bond earnings to the construction budget now can be made within the policy framework established for the convention center bond issue.

Recent projections of bond earnings show an increase in the total earnings accruing to Metro. This increase is due to two factors: (1) the draw at this time on bond funds has been slower than anticipated (i.e. we have retained the bond principal longer, resulting in higher earnings); and (2) a more aggressive investment program has been undertaken with higher interest rates, both resulting in greater interest earnings. In Metro's original bond issue submittals to TSCC (1986), a total of \$6.0 million in bond earnings was projected. Total net interest earnings are now projected at over \$8 million -- about \$900,000 of that total rebated to the IRS -- resulting in a net amount to Metro of (\$7.1) million. This net figure of \$7.1 is an increase of \$0.9 million over the second TSCC submittal in 1987. Of these net earnings, \$1.7 million has already been spent for tax levy reduction in FY 1987-88 -- leaving a current balance of earnings available of \$5.4 million. The remaining fiscal commitment to tax stabilization contained in the 1987 submission to TSCC was \$4,517,978. (Note: these figures exclude earnings on the State grant, which by law are to be rebated to the State, and on the LID). With nearly all long-term investments in place, District staff is confident that the \$7.1 million estimate will be met.

In light of these projected increased bond earnings, and recognizing the Rose City remediation costs (as discussed below), the following allocation of bond earnings will be proposed to the Council beginning with the FY 1989-90 Budget:

\$750,000	Repayment to Capital Fund of Rose City Plating Costs
<u>\$948,297</u>	Estimate of additional bond earnings (\$7,175,320 net less \$6,227,023 in 1987 TSCC submittal)*
\$1,698,297	Subtotal to be added to Capital Fund from bond earnings

\* This latter figure is a composite of the \$4,517,978 reported in 1987 to the TSCC as available for tax stabilization and that \$1,709,045 utilized for tax reduction in FY 87-88.

Repayment of unanticipated costs required for remediation of the Rose City Plating site is based on the rationale that the building program should not be reduced as a result of Metro incurring these costs. This recommendation recognizes that the Rose City costs are the type of unanticipated expenditure which caused the Council to retain interest earnings in the last budget year.

Allocation of additional bond earnings of \$943,297 to the construction budget is consistent with the District's past policy statements to the TSCC. The action is justified because these funds were not included in the TSCC submittal (i.e. it is new money), and was therefore never allocated for tax levy reduction.

Uses of the additional \$1,907,320 within the project's \$85 million budget will be recommended as follows:

\$1,469,617	Raise Construction Contingency up to 5%
\$228,680	Add to Owners Contingency for Non-Construction related expenses (ZGF, Turner contracts, Relocation claims, etc.)
-----	
\$1,698,297	

This would bring total project contingencies to a total of \$3,781,871, \$2,600,000 for construction contingency (5% of \$52 million construction budget), and \$1,360,293 owners contingency.

After allocating \$1.7 million to the project's construction budget, remaining bond earnings are sufficient to reduce the tax levy in a future year as previously planned.

\$5,466,275	Total bond earnings available
-1,698,297	Allocated to construction budget (from above)
3,767,978	Reserve for tax rate reduction in future years and/or emergencies

The District's FY 1988-89 Budget is sufficient to fund anticipated construction draws for the contracted work. In the long-term interest earnings can be prudently split between tax levy reduction and the project's construction budget, while meeting the policy of minimizing costs to the taxpayers.

Because these are long-term issues, budget actions are not required at this time. Budget actions will be reflected in the FY 1989-90 and successive project budgets.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends adoption of Resolution No. 88-977 which:

1. Adopts the alternates recommended by ACDC;
2. Finds that Hensel Phelps did not meet requirements of chapter 2.04.155 of the Metro Code; and
3. Awards the contract for Bid Package No. 3 to Hoffman (Oregon) - Marmolejo, Joint Venture in the amount of \$46,719,000;
4. Identifies \$1.7 million in interest earnings for allocation to the Construction Fund;
5. Identifies \$3.7 million in interest earnings as an emergency reserve for potential tax rate reduction in future years.

BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

AWARDING THE CONTRACT FOR THE ) Resolution No. 88-977  
OREGON CONVENTION CENTER, BID ) Introduced by the  
PACKAGE #3 TO HOFFMAN (OREGON)-) Executive Officer  
MARMOLEJO, JOINT VENTURE )

WHEREAS, Metro has designed and funded the Oregon Convention Center; and

WHEREAS, Metro has let two contracts (Bid Packages 1 and 2) for steel fabrication and erection and site work for the Oregon Convention Center; and

WHEREAS, In compliance with the provisions of Metro Code and Oregon Public Bidding law, Metro has administered a bidding process for the Oregon Convention Center, Bid Package No. 3 (General Contract); and

WHEREAS, Six bids from general contractors were received for Bid Package No. 3; and

WHEREAS, District staff have reviewed the bids and supplemental materials for compliance with provisions of Metro's contracting code (Metro Code chapter 2.04); and

WHEREAS, The Advisory Committee on Design and Construction has reviewed the bid results, and recommended to Metro the election of certain alternates in establishing the contract for Bid Package No. 3; now, therefore,

BE IT RESOLVED:

1. That the Council of the Metropolitan Service District will award the contract for Oregon Convention Center

Project, Bid Package No. 3, to include the following alternates in addition to the Base Bid: #3A: Addition of Bus Shelters; #4: Addition of Escalators; #9<sup>A</sup>~~B~~: Partitions by ~~IAC~~ <sup>MODERNFOLD</sup>; #10<sup>A</sup>~~B~~: Partition by ~~IAC~~ <sup>MODERNFOLD</sup>; and #11A: Surface Hardener by Master.

2. That the Council of the Metropolitan Service finds that the apparent low-bidder with the selected list of alternates, Hensel Phelps Construction Co. (Phelps, Inc.) did not comply with the contracting requirements of Metro Code chapter 2.04.100 et. seq., Disadvantaged Business Program, and specifically, did not adequately make good faith efforts as defined in Metro Code chapter 2.04.160.

3. That the Council of the Metropolitan Service District awards the contract for Oregon Convention Center Bid Package No. 3 (General Contract) to the lowest responsive bidder, Hoffman (Oregon) - Marmolejo, a Joint Venture, for the amount of \$~~46,719,000~~.

ADOPTED by the Council of the Metropolitan Service District this \_\_\_ day of \_\_\_\_\_, 1987.

\_\_\_\_\_  
Mike Ragsdale, Presiding Officer