

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF APPROVING)
A REQUEST FOR BID DOCUMENT FOR)
CONSTRUCTION OF AFRICAN RAINFOREST)
EXHIBIT AT METRO WASHINGTON PARK ZOO)

RESOLUTION NO. 89-1097A
Introduced by the Executive
Executive Officer

WHEREAS, Section 2.04.033(b) of the Metro Code requires that the Council must approve the proposal document for certain contracts; and

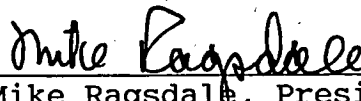
WHEREAS, The contract for constructing this exhibit requires Council approval, and the bid document has been filed with the Council Clerk; now, therefore,

BE IT RESOLVED,

That the Council of the Metropolitan Service District approves the Request for Bids for the African Rainforest Exhibit as amended by the deletion of Article 9 of the General Conditions and authorizes that it be released for response by vendors or proposers.

ADOPTED by the Council of the Metropolitan Service District this

8th day of June, 1989.


Mike Ragsdale, Presiding Officer

A:RES1097.89
6/8/89



METRO

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

Memorandum

Meeting Date: June 6, 1989
Agenda Item: 2

DATE: June 5, 1989

TO: Convention, Zoo and Visitors Facility Committee
Finance Committee

FROM: Donald E. Carlson, ^{DE} Council Administrator

RE: RESOLUTION NO. 89-1097, APPROVAL OF THE RFB DOCUMENT FOR
CONSTRUCTION OF THE AFRICA RAINFOREST EXHIBIT

Resolution No. 89-1097 was referred by the Council on May 25, 1989, to the joint meeting of the Convention, Zoo and Visitors Facility (CZVF) Committee and the Finance Committee. The purpose of the referral is to review the inclusion of language in the General Conditions section of the contract documents (Article 9) which ostensibly makes this contract such that Council approval is not required. This opinion was given verbally by General Counsel Cooper to Councilor Knowles and Council staff on May 25, 1989, just prior to consideration of this matter at the Council meeting agenda.

Background Information

As you know, the Council substantially revised the Metro Contracting procedures by adopting Ordinance No. 89-271. Section 2.04.033 (Council Approval of Contracts) now provides in part that:

"a. Notwithstanding any other provisions of Chapter 2.04 the following contracts shall be approved by the Council prior to execution:

(1) Any contract which commits the District to the expenditure of revenues or appropriations not otherwise provided for in the current fiscal year budget at the time the contract is executed except those contracts or classes of contracts that the Council shall have by ordinance exempted from the requirement;..."

Also, the Code, in Section 2.04.033, requires Council approval of bid documents for such contracts as follows:

"(b) All contracts which require Council approval pursuant to subsection (a)(1) above and which are subject to competitive bidding or Request for Proposals procedures shall require Council approval of the Request for Bids or Request for Proposals prior to release of bidding or proposal documents to vendors."

Since the enactment of Ordinance No. 89-271, Council staff and Administration staff have been at odds about the interpretation of the above-quoted sections. The various memos between staffs are attached as Exhibit A. The main issue revolves around Council approval of "multi-year" contracts (contracts in which appropriations will be required in more than one fiscal year). The Code requires Council approval of multi-year contracts. It should be noted that Council staff memo dated May 4, 1989 (Carlson to Phelps), was reviewed, modified and approved by General Counsel Cooper prior to release. The Administration appears to take the position that there is no such thing as a "multi-year" contract. Neil Saling indicated such opinion at the May 16, 1989, CZVF Committee meeting and inclusion of Article 9 in the General Conditions for the Africa Rainforest Construction contract is purportedly an attempt to suggest that this is a "single year" contract or only a one year commitment to the project.

Article 9 of the General Conditions for the Africa Rainforest Construction contract is attached as Exhibit B. It is described under the heading "Continuing Contract." It appears to limit Metro's commitment to the project to \$2,950,000 (the amount "reserved"). It indicates that Metro may "at any time reserve additional funds" for payment under the contract. Presumably this "reservation" would be as a result of Council's adoption of the FY 1990-91 Budget and Schedule of Appropriations. Regardless of the use of terminology, the Council will have to appropriate money for this project in a further fiscal year because the schedule of the job provides that goods and services (work on the project) will be received in the future fiscal year. Council staff met with Gil Gutjahr of the TSCC to discuss this matter as it relates to Council's authority to adopt the budget and appropriate money for expenditure. Mr. Gutjahr pointed out that all appropriations cease at the end of each fiscal year. For any project (contract or in-house work) which spans the fiscal year, a new appropriation of funds must be made by the Council before money can be spent on the project. This is true whether or not the Council appropriated the full amount or a partial amount for the project in the initial fiscal year. If money is to be spent in a fiscal year, it must be appropriated by the Council. In modified accrual accounting, the expenditure is realized when the liability is incurred, if measurable. A liability is incurred when goods or services are received. If work is performed in an accounting period (fiscal year) or a good or service received, then the expenditure accrues to that accounting period--not to a prior or future accounting period.

Recommendation

The Council staff recommends that Article 9 be deleted from the General Conditions for the Africa Rainforest construction contract. It is our understanding that this Article is a new concept to construction contracts at the Zoo. Such a condition has not been included in any

6/6/89

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

Memorandum

Date: May 12, 1989

To: Don Carlson, Council Administrator

From: Ray Phelps, ^{Ray} Director of Finance and Administration

Regarding: CHAPTER 2.04, METRO CONTRACT CODE

I have reviewed your memo dated May 10, 1989, pertaining to Neil Saling's instructions to department heads for the filing and processing of contracts issued by the Executive Officer. The instructions were issued at the direction of the Executive Officer as the administrative policies she intends to be followed by department heads. The Executive Officer feels that these instructions will assure that she lawfully complies with the revisions to the Contract Code recently enacted by the Council.

You state in your memo that Mr. Saling's instructions fall "short of fully informing the department heads of the contracting process adapted by the Council in Ordinance No. 88-271." I note that your memo of May 10th containing this statement was copied by you to department heads.

Be advised that the memo issued by Mr. Saling to department heads does not fall short, but correctly states the administrative policies of the Executive Officer. There will be no change to the instructions of the Executive Officer regarding the filing and processing of contracts.

With respect to your distribution of the May 10th memo to department heads, this action is regrettable and, in my opinion, an unwarranted intrusion by you in the administrative policies of the Executive Officer. As I have suggested to you in previous conversations, please contact the Executive Officer, Dick Engstrom or me when you have a question or wish to seek clarification regarding an established administrative policy of the Executive Officer. In this way, needless confusion and expenses can be avoided by the administrative staff of Metro.

cc: Rena Cusma
Dick Engstrom
Dan Cooper
Neil Saling
Department Heads



METRO

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

Memorandum

Date: May 10, 1989

To: Ray Phelps, Director of Finance and Administration

From: Donald E. Carlson, ^{DEC} Council Administrator

Regarding: REQUIREMENTS FOR FILING RFB's/RFP's FOR
PROPOSED CONTRACTS WITH THE COUNCIL

This memo is in response to the memo dated May 8, 1989 from Neil Saling to the department heads titled "Filing of RFB/RFP documentation with the Council." (Attachment A) While I generally agree with the described process for filing an RFB or RFP with the Council, the memo falls short of fully informing the department heads of the contracting process adopted by the Council in Ordinance No. 88-271. The major omission in Neil Saling's memo is in regard to the process to be followed in multi-year contracts (contracts for which appropriations will be required in more than one fiscal year). As pointed out in my memo to you of May 4, 1989 as Attachment B, the 35-day Council review period is not applicable for multi-year contracts which have been designated for review by the Council. An RFB or RFP for a designated multi-year contract must be approved by the Council prior to release for response by vendors or proposers.

Other omissions include: 1) the process for "undesigned contracts" (contracts which the Council chooses not to review) which require filing the procurement document and explanatory material with the Council Clerk at the time the document is released for response; and 2) the process for "unanticipated contracts" (contracts not on the original list submitted by the Executive Officer) which require Council review of an RFB or RFP if they are over certain dollar thresholds.

I have attached a copy of my May 4, 1989 memo explaining the code requirements for filing RFB's/RFP's with the Council. I think it is important that all of the requirements be understood so we can get this effort off to a good start.

DEC.vm

cc: Department Heads

RESOLUTION NO. 89-1097

June 5, 1989

Page 3

prior construction contract General Conditions. Such large prior construction contracts in the past were approved by the Council (commitment for specific dollar amounts to cover cost of construction) and then appropriations approved in more than one fiscal year depending on the size and schedule of the project.

It appears that such a condition is not necessary because under Article 16 - Termination or Supervision of Work, the District may terminate the contract when it is in the public interest. If the Council decides it is in the public interest not to appropriate funds for the project in a future fiscal year, the termination clause provides a mechanism to stop the project. It appears unnecessary to "spell this out" with the new language.

One other issue needs to be discussed by the Committees regarding the procedures for determining the lowest bidder. The bid documents include the base bid plus 11 alternates. The question is: What constitutes the low bid--the base only or base bid plus alternates in any combination thereof?

Zoo staff suggests a procedure followed in the Africa Phase I and II project which requires Zoo staff to declare after receipt of the bids but prior to opening of bids the priority ranking of the alternates. Such alternates would be added to the base bid up to the amount of the estimated project budget. The low bid would be based on the total of the base bid plus the alternate bids (predetermined) within the estimated project budget.

Council staff recommends that such a procedure be used because it has worked successfully in the past and it avoids the potential of manipulating the selection of alternates to determine the low bidder.

DEC:pa

A:\MEMCZVF.156



METRO

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

Memorandum

ATTACHMENT A

Date: May 8, 1989
To: Department Heads
From: Neil Saling, Construction Projects Manager
Regarding: Filing of RFB/RFP Documentation with the Council

Ordinance No. 88-271 adopted on March 23, 1989, establishes specific requirements for Council review of contracts. The following summarizes your responsibilities in filing contracts for Council review.

General

During the budget preparation period, the Executive Officer will submit to the Council a list of new as well as continuing contracts. The Council will designate those new contracts which it wishes to review during the coming fiscal year. The RFB/RFP for those contracts so designated must be filed with the Clerk of the Council before the documentation is released to prospective bidders/proposers. Should the Council schedule no hearing on the contract within 14 days, the RFB/RFP may be released to bidders/proposers. If the Council chooses to schedule a hearing on the contract, that hearing must take place before the 35th day after filing of the RFB/RFP. The contract is released for advertisement on the 35th day unless the Council has enacted an ordinance removing contract funding. Bottom line: You must file designated contract RFB/RFP documentation at least 35 days before you intend to advertise.

Documentation

The basic packet of information to be submitted on designated contracts should include the proposed advertisements, the instructions to bidders/proposers, the bid/proposal forms and the proposed contract. Do not submit the detailed specifications or plans in the initial submission. The Council may ask for these latter documents should it choose to hold a hearing on the

contract. The packet will be forwarded under a cover form prepared by the Contracts Division of the Finance and Administration Department. For a contract scheduled for hearing, a Staff Report will be requested by the Council staff. This follow-on Staff Report will contain a statement of the purpose of the proposed contract, a summary of the major terms and conditions of the proposed contract, an estimate of the cost of the proposed contract, a summary of the scope of work proposed and a description of the selection process to include the selection panel and evaluation criteria as appropriate.

Filing

Departments will file their proposed contracts with the Metro Contracts Specialist, not directly with the Clerk of the Council. The Contracts Specialist is the single point of contact with the Clerk of the Council and will monitor contract progress and Council requests for information. Any questions on contract status should be directed to the Contracts Specialist.

Interim Measures

For contracts proposed for advertisement prior to July 1, 1989, modified filing procedures have been adopted. All RFBs for public contracts with an estimated value exceeding \$15,000 and all RFPs for negotiated contracts with an estimated value exceeding \$10,000 will be reviewed by the Council. Documentation and filing procedures for these contracts will be as described above.

A key element of these new procedures is the focal point in the Contracts Division for contract filing and tracking. Please contact Amha Hazen for any of your contracting questions.

cc: Ray Phelps
Amha Hazen
Dan Cooper



METRO

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

Memorandum

ATTACHMENT B

Date: May 4, 1989

To: Ray Phelps, Director of Finance and Administration

From: Donald E. Carlson, ^{DE} Council Administrator

Regarding: REQUIREMENTS FOR FILING RFB'S/RFP'S FOR PROPOSED CONTRACTS WITH THE COUNCIL

Ordinance No. 88-271 adopted by the Council on March 23, 1989, changed the procedures for processing contracts to require, under certain circumstances, Council committee review and comment and/or Council approval of RFB's and RFP's. The purpose of this memo is to clarify the filing requirements for RFB's/RFP's with the Council.

The new procedures require the Executive Officer annually to submit to the Council, during the budget process, a list of proposed contracts to be entered into during the ensuing fiscal year. The Council will designate from this list those contracts it wishes to review during the next fiscal year. The contracts so designated will fall into one of two classes: 1) single-year contracts (contracts for which appropriations will be made within a single fiscal year); and 2) multi-year contracts (contracts for which appropriations will be required in more than one fiscal year). Following are the procedural requirements for filing RFB's/RFPs with the Council:

DESIGNATED SINGLE YEAR CONTRACTS

1. Section 2.04.032(d) of the Code requires RFB's/RFP's for designated single year contracts to be filed with the Council Clerk. Once filed, the matter shall be referred to a committee of the Council and may be scheduled for a hearing within 14 days of the filing. If no hearing is scheduled within 14 days, the RFB/RFP may be released to vendors for response. If the matter is scheduled for a committee hearing, the committee has 35 days from the date of filing to review and comment on the RFB/RFP. The RFB/RFP may be released for response on the 35th day after filing.
2. For an RFB/RFP to be considered properly filed with the Council Clerk, it must include the RFB or RFP proposed to be released for response and the completed cover form, required by the Department of Finance and Administration, which indicates the document has been reviewed and approved by the Contract Office. If the RFB/RFP is scheduled for consideration before the appropriate committee, the initiating

May 4, 1989

Page 2

department shall be required to submit a staff report to the Council Clerk in a timely manner. The staff report should be in the standard format and contain a statement of the purpose of the proposed contract, a summary of the major terms and conditions of the proposed contract, an estimate of the cost of the proposed contract, a summary of the scope of work proposed and a description of the selection process including the selection panel and evaluation criteria.

DESIGNATED MULTI-YEAR CONTRACTS

1. Section 2.04.033(b) of the Code requires RFB's/RFP's for designated multi-year contracts to be approved by the Council prior to release for response by vendors. The time requirements described above for committee consideration of single-year contract proposal documents are not applicable for multi-year contracts. The Code does not specify any time constraints on Council review and approval of designated RFB's/RFP's for multi-year contracts. Departments should take this into consideration in planning a procurement process for a multi-year contract.
2. For a multi-year RFB/RFP to be properly filed with the Council Clerk, it must contain 1) the completed cover form required by the Finance and Administration Department; and 2) a resolution and staff report which must be approved by the Executive Management Department. The resolution should be in the standard format for Council approval (a sample resolution is included as Attachment 1). The staff report should be in the standard format and contain a statement of the purpose of the proposed contract, a summary of the major terms and conditions of the proposed contract, an estimate of the cost of the proposed contract, a summary of the scope of work proposed and a description of the selection process including the selection panel and evaluation criteria.

CONTRACTS NOT DESIGNATED FOR COUNCIL REVIEW

The Code provides RFB/RFP filing requirements for proposed contracts which are on the Executive Officer's list but not designated for review by the Council. Section 2.04.032(e) states:

"Except as provided in subsection (f), all other contracts not so designated by the Council shall be subject to the requirement that copies of bid documents shall be filed with the Clerk of the Council at the time they are released for response by potential bidders. The Executive Officer shall furnish the Council with information at the time bid documents are released stating the purpose and nature of the proposed contract, the appropriation to be charged with the contract, and a statement of the contract's impact on the District in future fiscal years."

Filing requirements for undesignated contracts include 1) a copy of the RFB/RFP to be released for response; 2) the completed cover form

May 4, 1989

Page 3

required by the Finance and Administration Department; and, 3) to the extent not included on the cover form, a brief report which meets the information requirements quoted above.

UNANTICIPATED CONTRACTS

The Code provides requirements for certain contracts which are not on the Executive Officer's proposed list of contracts. Section 2.04.032(f) provides in part that:

"Any public contract \$15,000 or more or personal service contract \$10,000 or more not on the list of proposed contracts submitted by the Executive Officer . . . shall be subject to the filing and Council or committee review requirements in subsection (d) or if appropriate, the provisions of Section 2.04.033."

Accordingly, the RFB's/RFP's for unanticipated contracts should be processed as described above for either a single-year contract or a multi-year contract.

INTERIM PROCEDURES

During the period between now and the start of the next fiscal year, all contracts shall be considered and processed as "Unanticipated Contracts," since there is no official list of contracts from which the Council will make its designations.

If you have any questions, please do not hesitate to contact the Council office.

CC: Metro Council

DEC:gpwb

contpro.mem

attachments

SAMPLE RESOLUTION FOR
COUNCIL APPROVAL OF RFB/RFP FOR MULTI-YEAR CONTRACTS

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF APPROVING A) RESOLUTION NO. 89-
REQUEST FOR PROPOSAL DOCUMENT FOR ZOO)
ADVERTISING SERVICES) Introduced by the
) Executive Officer

WHEREAS, Section 2.04.033(b) of the Metro Code requires
the Council must approve the proposal document for certain
contracts; and

WHEREAS, The contract for Zoo Advertising services
requires Council approval, and the proposal document has been filed
with the Council Clerk; now, therefore,

BE IT RESOLVED,

That the Council of the Metropolitan Service District
approves the Request for Proposal for Zoo Advertising Services
attached as Exhibit A hereto and authorizes that it be released for
response by vendors or proposers.

ADOPTED by the Council of the Metropolitan Service
District this ____ day of _____, 1989.

Mike Ragsdale, Presiding Officer

DEC:gpwb
contpro.mem
4/10/892

ARTICLE 9.

CONTINUING CONTRACT

9.01 General

This is a continuing contract in that payment of some portion of the Contract Price is dependent upon reservation of funds from future appropriations. Funds are not available at the inception of this contract to cover the entire contract price. The responsibility of Metro is limited by this clause notwithstanding any contrary provision of the "Payment to Contractor" clause or any other clause of this contract.

9.02 Funds Reserved

The term "Reservation" means monies that have been set aside and made available for payments under this contract. The sum of \$2,950,000 has been reserved for this contract and is available for payments to the Contractor during the current fiscal year. Metro may at any time reserve additional funds for payments under the contract if there are funds available for such purpose. Metro will promptly notify the Contractor of any additional funds reserved for the contract. Failure to make payments in excess of the amount currently reserved, or that may be reserved from time to time, shall not be considered a breach of this contract, and shall not entitle the contractor to a price adjustment under the terms of this contract except as specifically provided in paragraph 13.03 below.

9.03 Exhaustion of Funds

9.03.01 No payment to the Contractor will be made after exhaustion of funds except to the extent that additional funds are reserved for the contract. If and when sufficient additional funds are reserved, the Contractor shall be entitled to simple interest on any payment that Metro determines was actually earned under the terms of the contract and would have been made except for exhaustion of funds. Interest shall be computed from the time such payment would otherwise have been made until actually or constructively made, and shall be at the rate established by the Secretary of the Treasury pursuant to Public law 92-441, 85 Stat 97, for the Renegotiation Board, as in effect on the first day of the delay in such payment.

9.03.02 If earnings will be such that funds reserved for the contract will be exhausted before the end of any fiscal year, the Contractor shall give written notice to Metro of the

estimated date of exhaustion and the amount of additional funds which will be needed to meet payments due or to become due under the contract during that fiscal year. This notice shall be given not less than 45 nor more than 60 days prior to the estimated date of exhaustion.

9.03.03 If, upon the expiration of sixty (60) days after the beginning of the fiscal year following an exhaustion of funds, Metro has failed to reserve sufficient additional funds to cover payments otherwise due, the contractor, by written notice delivered to the Executive Officer at any time before such additional funds are reserved, may elect to treat his right to proceed with the work as having been terminated. To the extent that additional funds to make payment therefore are allocated to this contract, it may be treated as a termination for the convenience of Metro.

9.03.04 Any suspension, delay, or interruption of work arising from exhaustion or anticipated exhaustion of funds shall not constitute a breach of this contract and shall not entitle the Contractor to any price adjustment under a "Suspension of Work" or similar clause or in any other manner under this contract. An equitable adjustment in performance time shall be made for any increase in the time required for performance of any part of the work arising from exhaustion of funds or the reasonable anticipation of exhaustion of funds.

9.04 Excess Funds

If at any time it becomes apparent that the funds reserved for any fiscal year are in excess of the funds required to meet all payments due or to become due the Contractor because of work performed and to be performed under the contract during the fiscal year, Metro reserves the right, after notice to the Contractor, to reduce said reservation by the amount of such excess.

ARTICLE 10.

PAYMENTS AND COMPLETION

10.01. Scope of Payment

Payment to the Contractor of the Contract Amount for performing all Work required under the Contract, as adjusted for any Change Orders approved as hereinbefore specified, shall be full compensation for furnishing all labor, materials, equipment and tools necessary to the Work, and for performing and completing, in accordance with these Contract Documents, all Work required under the Contract, and for all expenses incurred by the Contractor for any purpose in connection with the performance and completion of said Work.



METRO

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

Memorandum

Date: June 8, 1989

To: Mike Ragsdale, Council Presiding Officer
Councilor David Knowles
Chair, Council Convention, Zoo & Visitor
Facilities Committee

From: Rena Cusma, Executive Officer *Rena Cusma*

Regarding: AFRICAN RAIN FOREST BID DOCUMENTS/CONTRACTING
PROCEDURES

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On March 23, 1989, the Council adopted amendments to the Metro Code affecting contracting procedures. I concurred then in both the letter and the spirit of the compromise that was reached between the Council and the Executive Officer on the contracting issue. I did so because it is far more important for this agency to operate effectively to carry out the public's business and do the things we need to do than it is for us to argue and battle over who has what specific rights or powers.

I believe it is important to carry out the spirit of that compromise without splitting hairs over the words used to describe it. I understand and believe that we agreed that:

1. The Council would review a list of proposed contracts presented by the administration on an annual basis and determine which contracts the Council felt had policy implications.
2. For those contracts identified by the Council as policy contracts, special procedures would apply. If the "policy" contract would extend into future fiscal years then formal Council approval of the bid or proposal documents as well as the execution of the contract is appropriate.

If the "policy" contract would not require a commitment to a future appropriation then bid or proposal documents would be filed with the Council thirty-five days in advance of their release.

3. For non-policy contracts these procedures would not apply. Instead, the Council would receive copies of

Memorandum
June 8, 1989
Page 2

all relevant documents as well as extensive monthly reports on all contract information.

There were other details to the compromise as well that I don't think are at issue now, but may become issues in the future. My understanding and expectation of the agreement we reached was that we had reached a conclusion we would all try to live with and to see how it would work in practice. If the agreement we reached develops real, identifiable problems for either the administration or the Council we can revisit the matter to try and solve whatever problems actually exist. Until problems develop there is no need to worry about hypothetical issues.

The African Rain Forest contract clearly is that type of contract that has policy concerns and extends over more than one year and will need future appropriations by the Council. I have directed my staff to remove any language from the bid documents that would suggest otherwise.

I want the Council to approve the African Rain Forest bid documents now. I will bring the Council a resolution to approve the actual award of the contract at the appropriate time.

I continue to believe that we have no differences between us regarding the goal -- that is to act responsibly on both sides of the aisle to protect the public interest and to handle the public's business expeditiously and efficiently. While our agreement certainly begs the question regarding a true legislative/administrative model, it is in my view workable -- and allows us to stay focused on our primary purpose which is to go on with the Africa project in a responsible manner and deliver a first-rate zoo exhibit to our community.

RC/gl

cc: Metro Councilors

ADVERTISEMENT FOR BIDS
FOR THE
AFRICAN RAINFOREST

METRO WASHINGTON PARK ZOO

The Metro Service District (Metro) is soliciting bids for the African Rainforest Exhibit for the Metro Washington Park Zoo. Sealed bids must be delivered to the Metro Washington Park Zoo, 4001 SW Canyon Road, Portland, OR 97221, to the attention of A. M. Rich, Assistant Zoo Director, no later than 2:00 p.m. PDT, on Friday, June 30, 1989, at which time they will be publicly opened in the Meeting Center (enter through Gate G). Bid envelopes must be clearly marked as BID: AFRICAN RAINFOREST, METRO WASHINGTON PARK ZOO, ATTENTION: A. M. RICH.

Subcontracting goals on this Contract for participation of Disadvantaged and Women Owned Business Enterprises have been set at 10 percent and 3 percent respectively. Bidders must meet these goals or demonstrate good faith efforts to do so.

Bidding documents, including Drawings and Specifications depicting the Work, may be examined after Monday, June 5, 1989, at the offices of Guthrie, Slusarenko & Associates, 320 SW Sixth Avenue, Portland, Oregon 97204, Monday through Friday between the hours of 9:00 a.m. to 4:30 p.m. Documents will also be available at plan centers. Copies of the Bidding Documents can be obtained from the same office at the refundable cost of \$200.00 per set. Checks or money orders must be made payable to the Metropolitan Service District. If mailing of the material is desired, the prospective Bidder must provide a street address and a telephone number in addition to a Post Office box number, if any, and must include a non-refundable first class mail fee of \$20.00. Potential Bidders may contact Bob Porter, Metro Washington Park Zoo, at 226-1561 for additional information.

No bid will be received or considered by Metro unless the bid contains a statement by the Bidder that the provisions of ORS 279.350, regarding prevailing wage rates, are to be complied with.

Each bid must contain a statement as to whether the bidder is a resident bidder, as defined in ORS 279.029.

Bidders and Subcontractors may need to be licensed under ORS 468.883 (regarding licensing of contractors on projects involving asbestos abatement).

Metro may reject any bid not in compliance with all prescribed public bidding procedures and requirements and may reject for good cause any or all bids upon a finding of Metro that it is in the public interest to do so. A Pre-Bid Conference will be conducted Wednesday, June 14, 1989, at 10:00 a.m. PDT at the Metro Washington Park Zoo in the Meeting Center (enter through Gate G), Portland, Oregon.

INVITATION TO BID
FOR THE
AFRICAN RAINFOREST

METRO WASHINGTON PARK ZOO

Sealed bids for the African Rainforest Exhibit for the Metro Washington Park Zoo, located within the boundaries of the Metro Washington Park Zoo grounds, within the City of Portland, Oregon, will be received at the offices of the Metro Washington Park Zoo, 4001 SW Canyon, Portland, Oregon 97221, until 2:00 p.m. PDT, Friday, June 30, 1989, at which time they will be publicly opened and read.

The work contemplated consists of the construction of the African Rainforest Exhibit at Metro Washington Park Zoo, 4001 SW Canyon Road, Portland, Oregon 97221.

Metro will issue a Notice to Proceed on this Contract within ninety (90) days of the date of the Bid opening. The Contract shall be brought to substantial completion within four hundred and seventy (470) days of the date of issuance of the Notice to Proceed.

Bidding documents, including Drawings and Specifications depicting the Work, may be examined after Monday, June 5, 1989, at the offices of Guthrie, Slusarenko & Associates, 320 SW Sixth Avenue, Portland, Oregon 97204, Monday through Friday, from 9:00 a.m. to 4:30 p.m. Documents will also be available at plan centers. Copies of the Bidding Documents can be obtained from the same office at the refundable cost of \$200.00 per set. Checks or money orders must be made payable to the Metropolitan Service District. If mailing of the material is desired, the prospective Bidder must provide a street address and a telephone number in addition to a Post Office box number, if any, and must include a non-refundable first class mail fee of \$20.00

Each bid must be submitted on the prescribed form and accompanied by a certified or cashier's check, or a bid bond, payable to the Metropolitan Service District of Portland, Oregon, in an amount not less than 10 percent of the total Base Bid amount.

The successful Bidder will be required to furnish the necessary Performance Bond and Labor and Materials Payment Bond, as prescribed in the Bidding Documents.

As authorized in ORS Chapter 279, before a Contract will be awarded for the Work contemplated herein, Metro will conduct such investigation as is necessary to determine the Bidder's qualifications including the performance record and ability of the apparent low Bidder to perform the size and type of work specified under this Contract. Upon request, the apparent low Bidder shall

Section 00030 Page 1
Invitation to Bid

submit such information as deemed necessary by Metro to evaluate the Bidder's qualifications to do the work.

Metro has adopted a Disadvantaged Business Program for its contracting expenditures. Bidders are required to comply with Metro's Program, copies of which are included in the Bidding Documents. The specific requirements of the Program are detailed in the Bidding Documents. The goals for this Contract are that 10 percent of the Contract Amount be subcontracted to Disadvantaged Business Enterprises, and that 3 percent of the Contract Amount be subcontracted to Women-Owned Business Enterprises. Bidders must either meet these goals or demonstrate their good faith efforts as defined in the Program to meet the goals or their Bids will be deemed nonresponsive.

Metro reserves the right to reject all Bids or any Bid not conforming to the intent and purpose of the Contract Documents, to waive any informality or irregularity in any Bid or Bids, to reject any Bid not in compliance with all prescribed public bidding procedures and requirements, and to, for good cause, reject any or all Bids upon a finding by Metro that it is in the public interest to do so.

No Bid shall be received or considered by Metro unless the Bid contains a statement by the Bidder as a part of its Bid that the provisions of ORS 279.350, regarding prevailing wage rates, are to be complied with.

A Pre-Bid Conference for Bidders will be held on Pre-Bid Conference will be conducted Wednesday, June 14, 1989 at 10:00 a.m. PST at the Metro Washington Park Zoo Meeting Center, 4001 S.W. Canyon Road, Portland, Oregon. A portion of the Pre-Bid Conference will address subcontracting opportunities for Disadvantaged and Women-Owned Business Enterprises. Bidder's attendance at this portion of the Pre-Bid Conference is one of the actions required to demonstrate good faith efforts under Metro's Disadvantaged Business Program, a copy of which is included in the Appendix to these Bidding Documents.

INSTRUCTIONS TO BIDDERS
FOR THE
AFRICAN RAINFOREST
METRO WASHINGTON PARK ZOO

OUTLINE

1. DESCRIPTION OF WORK
2. DEFINITIONS
3. DOCUMENT INTERPRETATION (PRE-BID COMMUNICATIONS AND ADDENDA)
4. EXAMINATION OF CONTRACT DOCUMENTS AND SITE AND COMPLIANCE WITH LAWS
5. DISADVANTAGED BUSINESS PROGRAM
6. PREPARATION OF BIDS
7. SUBMISSION OF BIDS
8. MODIFICATION OR WITHDRAWAL OF BID
9. BID SECURITY
10. EXPERIENCE AND ABILITY TO PERFORM THE WORK
11. REJECTION OF BIDS
12. BASIS OF AWARD
13. ALTERNATES
14. LIST OF PROPOSED SUBCONTRACTORS
15. AWARD AND EXECUTION OF CONTRACT
16. PERFORMANCE BOND AND LABOR AND MATERIALS PAYMENT BOND
17. FAILURE TO EXECUTE CONTRACT AND FURNISH BONDS
18. BID BACK-UP (Bid Preparation Documents)

1. DESCRIPTION OF WORK

The work contemplated consists of construction of an African Tropical Rainforest Exhibit, Hay Storage Barn, and Support Facilities and Services for Metro Washington Park Zoo at 4001 S.W. Canyon Road, Portland, Oregon. The work contemplated consists of sitework, landscape (including tropical/indoor and unique ornamentals), concrete, gunite, concrete masonry units, miscellaneous metals, pool mechanical systems, glazing, carpentry, waterproofing, roof systems, hardware, painting, interpretive elements, heating and ventilation, plumbing, electrical and such additional and incidental work as is indicated in the Drawings and Specifications.

2. DEFINITIONS

Except as otherwise specifically provided herein, all words and phrases defined in the General Conditions shall have the same meaning and intent in these Instructions to Bidders. Bidders should refer to those definitions as they read these Instructions.

3. DOCUMENT INTERPRETATION

The Contract Documents are intended to be complementary and to provide all details reasonably required for the execution of the proposed Work. Any person contemplating the submission of a Bid shall have thoroughly examined all of the various parts of these Contract Documents. Should there be any doubt as to the meaning or the intent of said Contract Documents or should any inconsistency or discrepancy be found within such Contract Documents, the Bidder shall request of Metro, in writing at least ten (10) days prior to Bid opening, an interpretation thereof. Likewise, the Bidder may request substitutions for materials, processes or equipment as described in the Contract Documents. Such requests for interpretation or substitution shall be mailed or delivered to Metro in care of Guthrie Slusarenko & Associates, 320 SW Sixth Avenue, Portland, Oregon 97204. Any interpretations or changes in the Contract Documents or approved substitutions will be made only in writing, in the form of Addenda to the Contract Documents which will be furnished to all Bidders receiving a set of the Bidding Documents and which shall be binding upon all Bidders as if set forth in the original Contract Documents. Bidders shall indicate receipt of all Addenda on their Bids. Metro will not be responsible for any other explanation or interpretation of the Bidding Documents. Bidders shall have no right to rely on any oral interpretation or instructions made by Metro or the

Architect, unless the same is also committed to writing and issued as an Addendum.

In the absence of any pre-bid request for clarification, as outlined above, or any interpretation of the Contract Documents, any subsequent interpretation shall be made by Metro and such interpretation shall be final and binding on the successful Bidder and Metro shall pay no extra costs or expenses to such Bidder resulting from such interpretation.

4. EXAMINATION OF CONTRACT DOCUMENTS AND SITE AND COMPLIANCE WITH LAWS

Before submitting a Bid, Bidders shall fully examine and read the Contract Documents. They shall visit the Site of the proposed Work, examine the Site and the surrounding areas. They shall fully inform themselves of all conditions on, in, at and around the Site, the surrounding areas, and any work that may have been done thereon. The Bidder acknowledges by the submission of its Bid that it has satisfied itself as to the nature and location of the Work, the general and local conditions, conditions of the Site, availability of labor, electric power, water, and the kind of surface materials on the Site, the kind of equipment needed, and all other matters which may in any way affect the Work or the cost, including utilities not identified in the Contract Documents.

Information derived from inspection of the Contract Documents and any specific sections thereof showing location of utilities and structures will not in any way relieve the Contractor from any risk, or from properly examining the Site and making such additional investigations as it may elect, or from properly fulfilling all the terms of the Contract Documents. Investigation of Site and soil conditions have been conducted for Metro.

Bidders may inspect the records of such investigations at locations specified in Section 00220. However, Metro does not in any way warrant the accuracy of any information in such investigations and Bidders shall have no right to rely on the information contained in such records or investigations. Furthermore, should the Bidder determine that additional investigations of Site and/or soil conditions are necessary or desirable, Bidder shall cause such additional investigations to be made prior to submitting a Bid at Bidder's expense, and subject to coordination with Metro.

Any failure of a Bidder to acquaint itself with all of the available information concerning conditions or having such additional investigations of Site and soil conditions

conducted, as may be necessary, will not relieve it from responsibility for estimating properly the difficulties or cost of the Work and the Bidder shall, regardless of such failure, be bound to its Bid. Each Bidder shall inform itself of, and the Bidder awarded a Contract shall comply with, federal, state, and local laws, codes, statutes, ordinances, and regulations, as amended, relative to the execution of the Work. Each Bidder shall prepare its Bid in accordance with and all Bid prices shall assume compliance with such laws, codes, statutes, ordinances and regulations. This requirement includes, but is not limited to, applicable regulations concerning minimum wage rates, nondiscrimination in the employment of labor, protection of public and employee safety and health, environmental protection, the protection of natural resources, fire protection, burning and nonburning requirements, permits, fees, and similar subjects.

If any portion of the Contract Documents does not conform to such laws, codes, statutes, ordinances or regulations as amended, the Bidder shall so advise Metro in writing at least ten (10) days before Bids are due. If it is shown that the Contractor, as Bidder, knew or should have known that any portion of the Contract Documents does not conform to such laws, codes, statutes, ordinances or regulations and had failed to so advise Metro, it shall be liable for costs of making any deviation(s) required for compliance with such laws, codes, statutes, ordinances and regulations.

Each Bidder, in submitting its Bid, certifies that the Bidder is not ineligible to receive a contract for a public work, as set forth in ORS 279.361 and agrees, if awarded the Contract, that each of its Subcontractors will be required to certify such compliance, and certification will be filed with Metro prior to such Subcontractor commencing any work under the Contract.

5. DISADVANTAGED BUSINESS PROGRAM COMPLIANCE

Metro has made a strong commitment to provide maximum opportunities to Disadvantaged and Women-Owned Businesses in contracting. The successful Bidder will be required to meet Metro's Disadvantaged Business Program goals or clearly demonstrate that a good faith effort has been made to meet the goals. The goals for this Contract are: Disadvantaged Business Enterprises (DBEs) -- 10 percent, and Women-Owned Business Enterprises (WBEs) -- 3 percent of the Base Bid Amount. DBEs and WBEs must be certified by the state of Oregon as DBEs/WBEs to be counted toward the Contract goals.

The Bid submitted must contain a fully completed Disadvantaged Business Program Compliance form contained

herein. Metro may require any or all Bidders to submit completed DBE and WBE Utilization forms (also contained herein) either by the close of the next working day following Bid opening or within twenty-four (24) hours of Metro's request. Detailed procedures for completing the forms and for demonstrating good faith efforts are contained in Ordinance No. 87-231 (Metro's Disadvantaged Business Program) contained in the Appendix. Bidder's special attention is directed to Section 2.04.155 (Contract Award Criteria), and Section 2.04.160 (Determination of Good Faith Efforts). Bidders should note the following requirement of the latter section:

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.

The following are minority-oriented newspapers published in the Portland metropolitan area:

The Skanner, 2337 N. Williams Avenue, Portland, OR
97211
(503) 287-3562.

The Portland Observer, P. O. Box 3137, Portland, OR
97208
(503) 283-2486

The American Contractor, P. O. Box 11233, Portland, OR
97217 (503) 285-9000

The requirement to advertise is but one of the actions necessary to demonstrate good faith efforts under this program.

Failure of the Bidder to comply with all of the requirements of the Disadvantaged Business Program will result in the Bid being deemed nonresponsive.

6. PREPARATION OF BIDS

All blank spaces in the Bid Forms must be completed either by typing or in ink. Amounts shall be shown in both words and figures. Any Bids which do not include Bids on the Alternates and any Unit Prices may be considered nonresponsive and may be rejected. No changes shall be made in the phraseology of the forms.

Any Bid may be deemed nonresponsive which contains omissions, erasures, alterations, or additions of any kind, or prices uncalled for, or in which any of the prices are obviously unbalanced, or which in any manner shall fail to conform to the conditions of the Contract Documents.

Each Bid shall give the full business address of the Bidder and be signed by it with its legal signature.

- a. Bids by partnerships must furnish the full name of all partners and must be signed in the partnership name by one of the members of the partnership authorized to sign contracts on behalf of the partnership, or by an authorized representative, followed by the printed name and title of the person signing.
- b. Bids by corporations must be signed with the legal name of the corporation, followed by the name of the state of incorporation and by the signature and designation of the president, secretary or other person authorized to bind it in the matter. When requested by Metro, satisfactory evidence of the authority of the officer signing in behalf of the corporation shall be furnished.
- c. In the event that a Bid is submitted by a joint venture, then a certified copy of the legal agreement constituting such joint venture shall be attached to the Bid.

The name of each person signing shall also be typed or printed below the signature. Signatures of all individuals must be in longhand.

Failure to fulfill any of the above requirements may render the Bid nonresponsive.

7. SUBMISSION OF BIDS

All Bids must be submitted not later than the time prescribed, at the place, and in the manner set forth in the INVITATION TO BID. Bids must be made on the forms for the Bid provided herein. Each Bid and all other documentation required to be submitted with the Bid must be submitted in a sealed envelope, so marked as to indicate its contents without being opened, and addressed in conformance with the instructions in the INVITATION TO BID and the ADVERTISEMENT FOR BIDS.

8. MODIFICATION OR WITHDRAWAL OF BIDS

Any Bid may be modified after delivery to the location specified in the Invitation to Bid by delivering to the same location before the time fixed for the Bid opening, a written sealed supplement to the original Bid, marked "Supplement to Bid of (Name of Bidder) for African Rainforest at Metro Washington Park Zoo". Such supplement shall clearly identify the Bid item(s) which are changed by setting forth the original Bid item(s), and the modified item(s). Metro may reject any supplemental Bid which, in its opinion, does not set forth the proposed modifications clearly enough to determine the definiteness and certainty of the item(s) offered by the Bidder. No Bidder shall be allowed to submit more than one (1) Bid for this Contract.

Bids may be withdrawn by the Bidder prior to the time fixed for the receipt of Bids by having an authorized representative of the Bidder with sufficient identification personally pick up the Bid. Bids may not be withdrawn for a period of ninety (90) days from and after the opening of Bids and on or prior to the last date of any extension of such time as may be agreed upon between Metro and the Bidder.

9. BID SECURITY

Bids must be accompanied by a certified check or cashier's check drawn on a bank in good standing, or a bid bond on the form bound herewith issued by a surety authorized to issue such bonds in Oregon and named on the current list of approved surety companies acceptable on federal bonds and conforming with the underwriting limitations as published in the Federal Register by the audit staff of the Bureau of Accounts and the U. S. Treasury Department, in the amount of not less than 10 percent of the total amount of the Base Bid. This bid security shall be given as a guarantee that the Bidder will not withdraw its Bid for a period of ninety (90) days after Bid opening, and that if awarded the Contract, the successful Bidder will execute the attached Construction Agreement and furnish a properly executed Performance Bond and a properly executed Labor and Materials Payment Bond in the full amount of the Base Bid within the time specified. Bid security deposited in the form of a certified or cashier's check shall be subject to the same requirements as a bid bond.

The Attorney-in-Fact (Resident Agent) who executes these bonds on behalf of the surety must attach a notarized copy of his/her Power of Attorney as evidence of his/her authority to bind the surety on the date of execution of the bond.

10. EXPERIENCE AND ABILITY TO PERFORM THE WORK

Within twenty-four (24) hours following request by Metro, any Bidder may be required to present to the Construction Coordinator information verifying that the Bidder has the necessary experience and qualifications in the class of Work to be performed, and the ability, equipment, key personnel and financial resources to perform the Work satisfactorily within the time specified. In determining the award of this Contract, such information will be considered, and the Bidder is cautioned to make complete and comprehensive presentation of its abilities and resources. Failure of any Bidder to comply fully and timely with a request for information under this section shall be grounds for rejection of that Bid.

No Bidder will be considered for contract award unless such Bidder is authorized by law to execute the Contract or perform the Work for which such Bid is received. Should it appear, at any time, that any Bidder is not or might not be authorized by law to execute the Contract or perform such Work, then such Bidder may at any time be rejected and Metro may refuse to execute any contract with such Bidder regardless of whether or not the contract had been previously awarded by the Metro Council and without any liability whatever on the part of the Metropolitan Service District, its Council, or any member of its Council, or Metro's officer, employees, or its agents, either as individuals or in official capacities.

11. REJECTION OF BIDS

Metro reserves the right to reject all Bids or any Bid not conforming to the intent and purpose of the Contract Documents, to waive any informality or irregularity in any Bid or Bids, to reject any Bid not in compliance with all prescribed public bidding procedures and requirements, and to, for good cause, reject any or all Bids upon a finding by Metro that it is in the public interest to do so.

12. BASIS OF AWARD

Metro reserves the right to make Award of this Contract to the lowest responsive, responsible Bidder, based on either the lowest Base Bid Amount or the lowest total of the Base Bid Amount plus or minus, as applicable, any combination of Alternate price(s), whichever basis Metro at its sole discretion may select. Any Bid not listing the Alternates or Unit Prices may be considered non-responsive and may therefore be rejected. Metro also reserves the right to reject bids in which the Alternate Price(s) are obviously unbalanced and to waive any or all technical deficiencies.

In determining the lowest responsive, responsible Bidder, Metro shall, for the purpose of awarding the Contract, add a percent increase on the Bid of a nonresident Bidder, as that term is defined in ORS 279.029(6)(c); equal to the percent, if any, of the preference given to that nonresident Bidder in the state in which that Bidder resides. For purposes of determining the percent increases to be applied pursuant to this section, Metro shall rely on the list published by the Oregon Department of General Services pursuant to ORS 279.029(3); and Metro shall not incur any liability to any Bidder by relying on such list.

13. ALTERNATES

The Bidder is required to bid on all designated Alternates, stipulating the amount to be added to or deducted from the Base Bid Amount for the work specified (including overhead and profit as defined in these Contract Documents). Alternates are to conform exactly to all appropriate terms, conditions and requirements of the Contract Documents.

Failure to bid on any Alternate is grounds for Metro to reject a Bid; however, Metro reserves the right to accept a Bid if it elects not to utilize any particular Alternate for which the bidder has not submitted an Alternate Price.

No time extension will be granted to the General Contractor due to Alternate work as selected by Metro. Therefore, all work including any Alternate(s) selected by Metro must be brought to Substantial Completion on or before the number of calendar days specified.

14. LIST OF PROPOSED SUBCONTRACTORS

Metro may require any or all Bidders to furnish in writing to Metro the names of all Subcontractors and Suppliers which Bidder proposes to use in completing the Work along with a brief description of the subcontract or supply work involved

and the subcontract or supply work dollar amount, either by the close of the next working day following Bid opening or within twenty-four (24) hours of Metro's request. Metro will notify the Bidder in writing within ten (10) days following receipt from Bidder of the above-described information if Metro has any reasonable objection to any such proposed Subcontractor or Supplier. The Bidder shall not subcontract with any proposed Subcontractor or Supplier to whom Metro has made a reasonable objection. In the event of such objection, Bidder shall propose another entity to whom Metro has no reasonable objection. No amounts or

prices bid by the Bidder shall be increased by any difference in cost occasioned by such substitution. Failure of Metro to reply within the above-described time period shall be construed to mean that Metro has no objection at that time. Failure of the Bidder to comply with this section shall be cause for rejection of Bidder's bid and, in such event, the bid security submitted by Bidder shall be taken by Metro and considered as liquidated damages.

15. AWARD AND EXECUTION OF CONTRACT

Within thirty (30) days after the opening of bids, Metro will accept one of the Bids or will act in accordance with BASIS OF AWARD, above. The acceptance of the Bid will be by written Notice of Conditional Award, mailed or delivered to the office designated in the Bid. The award, if made, will be made within ninety (90) days after the opening of Bids. The Notice of Conditional Award shall not entitle the party to whom it is delivered to any rights whatsoever.

The successful Bidder shall within ten (10) days after receiving Notice of Conditional Award, sign and deliver to Metro the Construction Agreement attached hereto together with acceptable Performance and Labor and Materials Payment Bonds and certificates of insurance and certified copies of insurance policies as required in these Contract Documents.

Upon receipt of the signed Construction Agreement and all other documents required to be submitted by the successful Bidder, as prescribed herein, Metro shall sign the Construction Agreement and issue a written Notice to Proceed to Contractor. Contractor shall commence work within ten (10) days of issuance of the Notice to Proceed.

In the event of failure of the lowest responsive, responsible Bidder to sign and return the Construction Agreement and all other documents required to be submitted, as prescribed herein, Metro may award the Contract to the next lowest responsive, responsible Bidder.

16. PERFORMANCE BOND AND LABOR AND MATERIALS PAYMENT BOND

The successful Bidder shall file with Metro a Performance Bond on the form bound herewith and in the amount described below, as security for the faithful performance of this Contract and to cover all guarantees against defective workmanship or materials, or both, for a period of one (1) year after the date of Final Completion and Acceptance of the Work by Metro. The successful Bidder shall additionally file a Labor and Materials Payment Bond on the form bound herewith and in the amount described below as security for the payment of all persons supplying labor and materials for

the construction of the Work. The surety furnishing these bonds shall have a sound financial standing and a record of service satisfactory to Metro, shall be authorized to do business in the state of Oregon, and shall be named on the current list of approved surety companies acceptable on federal bonds and conforming with the underwriting limitations as published in the Federal Register by the audit staff of the Bureau of Accounts and U.S. Treasury Department. If more than one surety is on a bond, then each surety must agree that it is jointly and severally liable on the bond for all obligations on the bond.

The amount of each bond described above shall be a sum not less than 100 percent of the Contract Amount.

The Attorney-in-Fact (Resident Agent) who executes the Performance Bond and the Labor and Materials Payment Bond in behalf of the surety must attach a notarized copy of his/her Power of Attorney as evidence of his/her authority to bind the surety on the date of execution of the bond.

17. FAILURE TO EXECUTE CONTRACT AND FURNISH BONDS

The Bidder which has a Contract awarded to it and which fails to promptly and properly execute this Contract and furnish the required bonds, certificates of insurance and certified copies of insurance policies shall forfeit the bid security that accompanied its Bid, and the bid security shall be retained as liquidated damages by Metro it is agreed that this sum is a fair estimate of the amount of damages Metro will sustain in case the Bidder fails to enter into a Contract and furnish the bonds, certificates of insurance and certified copies of insurance policies as hereinbefore provided.

18. BID BACK-UP (Bid Preparation Documents)

Within six (6) days after Metro's request and as a condition precedent to the award of the Contract, the three (3) apparent low responsive and responsible Bidders shall submit to Metro in a sealed envelope their complete bid summary, along with corresponding back-up including, but not limited to: quantity take-off sheets, pricing sheets and information/data substantiating the Base Bid Amount. The back-up data provided will include that of all Subcontractors listed in the Bid, as well as all lower-tier Subcontractors. This bid summary and back-up data will be held in strict confidence by Metro in its original sealed envelop and will not be opened except in the event of dispute between Metro and Contractor. Bid Back-Up shall be delivered to the Metro Washington Park Zoo, c/o Metropolitan Service District, 2000 S. W. First Avenue, Portland, OR

97201-5398, enclosed in a double envelope to prevent accidental opening.

BID FORMS
FOR THE
AFRICAN RAINFOREST
METRO WASHINGTON PARK ZOO

TABLE OF CONTENTS

I. BID

- A. Schedule of Bid Prices
- B. Disadvantaged Business Program Compliance Form
- C. Resident/Non-Resident Bidder Status
- D. Signature Page

II. NON-COLLUSION AFFIDAVIT

III. BID BOND

IV. DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION FORM

V. WOMEN BUSINESS ENTERPRISE UTILIZATION FORM

BID
FOR THE
AFRICAN RAINFOREST
METRO WASHINGTON PARK ZOO

NOTE TO BIDDER: Bidders must provide all of the information requested in this Bid. Bidder should preferably type or use BLACK ink for completing this Bid.

To: METRO WASHINGTON PARK ZOO
Address: 4001 S. W. Canyon Road, Portland, OR 97221
Contract: African Rainforest

Bidder:

Address:

Date:

Bidder's Person to Contact for Additional Information on this Bid:

Name:

Telephone:

BIDDER'S DECLARATION AND UNDERSTANDING

The undersigned, hereinafter called the Bidder, declares that the only persons or parties interested in this Bid are those named herein, that this Bid is, in all respects, fair and without fraud, that it is made without collusion with any official of Metro, and that the Bid is made without any connection or collusion with any person submitting another Bid on this Contract.

The Bidder further declares that it has carefully examined the Contract Documents for the completion of the work, that it has personally inspected the Site, that it has satisfied itself as to the work involved, and that this Bid is made in accordance with the provisions and under the terms of the Contract Documents which are hereby made a part of this Bid.

Any printed matter on any letter or paper enclosed herewith which is not part of the Bidding Documents or which was not requested by Metro is not to be considered a part of this Bid, and the undersigned agrees that such printed matter shall be entirely disregarded and, notwithstanding such printed matter, that the Bid is a bid to do the work and furnish the labor and materials and all other things required by the Contract Documents strictly within the time and in accordance with such Specifications.

This Bid is irrevocable for ninety (90) days following the date of the opening of Bids.

BID SECURITY

Bid security in the form of a certified check, cashier's check or bid bond as further described in the Instructions to Bidders is enclosed herewith and is subject to all the conditions stated in the Instructions to Bidders.

CONTRACT EXECUTION, BONDS AND INSURANCE

The Bidder agrees that if this Bid is accepted, it will, within ten (10) days after Notice of Conditional Award, sign the Construction Agreement in the form annexed hereto, and will at that time, deliver to Metro the Performance Bond and the Labor and Materials Payment Bond required herein and in the form annexed hereto, along with all certificates of insurance and certified copies of insurance policies specified and required in these Contract Documents, and will, to the extent of its Bid, furnish all machinery, tools, apparatus, and other means of operation and construction and do the Work and furnish all the materials necessary to complete all Work as specified or indicated in the Contract Documents.

COMMENCEMENT OF WORK AND CONTRACT COMPLETION TIME

The time frame for the award and execution of this Contract shall be as described in the Instructions to Bidders and in the Supplementary Conditions. The successful Bidder further agrees to commence the Work within ten (10) days of issuance of the Notice to Proceed and to diligently prosecute the Work to its final completion in accordance with the Contract Documents.

LIQUIDATED DAMAGES

In the event the Bidder is awarded the Contract and shall fail to complete the Work in compliance with the time required by the Contract Documents, including all Drawings and Specifications, liquidated damages shall be paid to Metro as described in the General and Supplementary Conditions.

SALES AND USE TAXES

The Bidder agrees that all applicable federal, state and local sales and use taxes are included in the stated bid prices for the Work.

LUMP SUM AND UNIT PRICE WORK

The Bidder further proposes to accept as full payment for the Work proposed herein the amounts computed under the provisions of

the Contract Documents and based on the listed lump sum and unit price amounts. The amounts shall be shown in both words and figures. In case of a discrepancy, the amount shown in words shall govern.

PREVAILING WAGES FOR PUBLIC WORK

Bidder hereby certifies that the provisions of ORS 279.350, regarding prevailing wages, shall be complied with on this Project.

SCHEDULE OF BID PRICES
FOR THE
AFRICAN RAINFOREST
METRO WASHINGTON PARK ZOO

The Bidder, whose legal signature binding the Bidder to the bid prices indicated on these pages is found on the signature page, hereby bids as follows:

A. BASE BID

(The base bid price does not include the cost of any Alternates set forth on the following pages. Bidders are required to submit separate bids on all Alternates and Unit Prices.)

To complete the Work as described in the Contract Documents for the lump sum amount of _____ and _____/100TH DOLLARS (\$_____).

B. ALTERNATE

Each Bidder is required to bid on the following Alternate, stipulating the amount to be added to from the Base Bid Amount for the work specified or deleted.

No time extension will be granted to the Contractor due to Alternate work as selected by Metro. Therefore, all work including any Alternates selected by Metro must be brought to substantial completion on or before the number of days stated in the Supplementary Conditions.

Bid Prices on Alternate

To complete the Alternate work as described in the Supplementary Conditions (Section 01030) for the following lump sum/unit prices:

Alternate.

Alternate Lump Sum: ADD
Lump Sum Bid _____

and _____/100TH DOLLARS (\$_____).

ADDENDA

The Bidder hereby acknowledges receipt and acceptance of
Addenda Numbers _____

(Insert No. of each Addendum Received)

SURETY

If the Bidder is awarded a Contract on this Bid, the surety or sureties who provide(s) the Performance Bond and Labor and Materials Payment Bond will be:

SURETY

ADDRESS

1.

2.

DISADVANTAGED BUSINESS PROGRAM COMPLIANCE FORM

(To be submitted with Bid)

Name of Metro Project: AMERICAN RAINFOREST.

Name of Bidder: _____

Address: _____

Phone: _____

In accordance with Metro's Disadvantaged Business Program, the above-named Bidder has accomplished the following:

- ___ 1. Has fully met the contract goals and will subcontract ___ percent of the Base Bid Amount to DBEs and ___ percent to WBEs.
- ___ 2. Has partially met the contract goals and will subcontract ___ percent of the Base Bid Amount to DBEs and ___ percent to WBEs. Bidder has made good faith efforts prior to bid opening, to meet the full goals and will submit documentation of the same to Metro within twenty-four (24) hours of Metro's request.
- ___ 3. Will not subcontract any of the Base Bid Amount to DBEs or WBEs but has made good faith efforts prior to bid opening to meet the contract goals and will submit documentation of such good faith efforts to Metro within twenty-four (24) hours of Metro's request.

RESIDENT/NON-RESIDENT BIDDER STATUS

Oregon law requires that Metro, in determining the lowest responsive Bidder, must add a percent increase on the Bid of a non-resident Bidder equal to the percent, if any, of the preference given to that Bidder in the state in which that Bidder resides. Consequently, each Bidder must indicate whether it is a resident or non-resident Bidder. A resident Bidder is a Bidder that has paid unemployment taxes or income taxes in the state of Oregon during the twelve (12) calendar months immediately preceding submission of this Bid, has a business address in Oregon, and has stated in its Bid whether the Bidder is a "resident Bidder." A "non-resident Bidder" is a Bidder who is not a resident Bidder.

The undersigned Bidder states that it is: (check one)

1. A resident Bidder _____

2. A non-resident Bidder _____

Indicate state in which Bidder resides: _____

SIGNATURE PAGE

The name of the Bidder submitting this Bid is _____
business at _____ doing _____

Street City State Zip

which is the full business address to which all communications
concerned with this Bid and with the Contract shall be sent.

The names of the principal officers of the corporation submitting
this Bid, or of all of the partners, if the Bidder is a
partnership or joint venture, or of all persons interested in
this Bid as individuals are as follows:

If Individual

IN WITNESS hereto the undersigned has set his/her hand this _____
day of _____, 1989.

Signature of Bidder

Printed Name of Bidder

Title

If Partnership or Joint Venture

IN WITNESS hereto the undersigned has set his/her hand this _____
day of _____, 1989.

Name of Partnership or
Joint Venture

By: _____

Printed Name of Person Signing
Title: _____

SIGNATURE PAGE (continued)

If Corporation

IN WITNESS WHEREOF the undersigned corporation has caused this instrument to be executed and its seal affixed by its duly authorized officers this _____ day of _____, 1989.

Name of Corporation

State of Incorporation

By: _____

Printed Name of Person Signing

Title: _____

NON-COLLUSION AFFIDAVIT
FOR THE
AFRICAN RAINFOREST

METRO WASHINGTON PARK ZOO

STATE OF _____)
County of _____) ss.

I state that I am _____ (Title) of _____ (Name of Bidder) and that I am authorized to make this Affidavit on behalf of the Bidder. I am the person authorized by the Bidder and responsible for the price(s) and the amount of this Bid.

I state that:

(1) The price(s) and amount of this Bid have been arrived at independently and without consultation, communication or agreement with any other contractor, Bidder or potential Bidder, except as disclosed in the attached appendix.

(2) Neither the price(s) nor the amount of this Bid, and neither the approximate price(s) nor approximate amount of this Bid, have been disclosed to any other person who is a Bidder or potential Bidder, and they will not be disclosed before bid opening.

(3) No attempt has been made or will be made to induce any person to refrain from bidding on this contract, or to submit a Bid higher than this Bid, or to submit any intentionally high or non-competitive bid or other form of complementary Bid.

(4) This Bid is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any person to submit a complementary or other noncompetitive Bid.

(5) _____ (Name of Bidder), its affiliates, subsidiaries, officers, directors and employees (as applicable) are not currently under investigation by any governmental agency and have not in the last four years been convicted of or found liable for any act prohibited by state or federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as listed and described in the attached appendix.

I state that I and _____ (Name of Bidder) understand and acknowledge that the above representations are material and important, and will be relied on by Metro in awarding the Contract for which this Bid is submitted. Any misstatement in this Affidavit will be treated as fraudulent concealment

from Metro of the true facts relating to the submission of Bids
for this Contract.

Signature of Affiant

Printed Name of Affiant

Sworn to and subscribed before me this _____ day of _____,
1989.

Notary Public for _____
My Commission Expires: / /

BID BOND
FOR THE
AFRICAN RAINFOREST
METRO WASHINGTON PARK ZOO

(NOTE: BIDDERS MUST USE THIS FORM, NOT A SURETY COMPANY FORM)

KNOW ALL MEN BY THESE PRESENTS:

We the undersigned, _____

_____, as PRINCIPAL, and _____

_____, a corporation organized and existing under and by virtue of the laws of the state of _____ and duly authorized to do surety business in the state of Oregon and named on the current list of approved surety companies acceptable on federal bonds and conforming with the underwriting limitations as published in the Federal Register by the audit staff of the Bureau of Accounts and the U.S. Treasury Department and is of the appropriate class for the bond amount as determined by Best's Rating System, as SURETY, hereby hold and firmly bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, unto the METROPOLITAN SERVICE DISTRICT, as OBLIGEE, in the sum of _____ Dollars (\$ _____) which is at least ten (10) percent of the Base Bid Amount in lawful money of the United States of America, for the payment of which sum well and truly to be made as agreed and liquidated damages.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT whereas the PRINCIPAL has submitted to the Metropolitan Service District a certain bid for work required for the project described below: African Rainforest at Metro Washington Park Zoo, which work is specifically described in the accompanying bid;

NOW, THEREFORE, if the Metropolitan Service District does not award a contract to the PRINCIPAL within the time specified in the Instructions to Bidders for the work described in said bid, or in the alternate, if said bid shall be accepted and the PRINCIPAL, within the time and in the manner described under the Contract Documents, enters into a written contract in accordance with the bid, files the two bonds, one guarantying faithful performance of the work to be done and the other guaranteeing payment for labor and materials as required by law, and files the required certified copies of insurance policies and certificates of insurance, then the obligation shall be null and void; otherwise, the same shall remain in full force and effect.

The SURETY, for value received, hereby stipulates and agrees, that the obligation of said SURETY and this bond shall be

in no way impaired or affected by any extension of the time within which the Metropolitan Service District may accept such bid; and said SURETY does hereby waive notice of any such extension.

If more than one surety is on this bond, each surety hereby agrees that it is jointly and severally liable for all obligation on this bond.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 1989.

SURETY

PRINCIPAL

By: _____

By: _____

Title: _____

Title: _____

DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION FORM

- 1. Name of Metro Project: African Rainforest
- 2. Name of Bidder _____
Address _____
- 3. The above-named Bidder intends to subcontract _____ percent of the Base Bid to the following Disadvantaged Business Enterprises (DBEs):

| Names, Contact Persons, Addresses and Phone Numbers of DBE Firms Bidder Anticipates Utilizing _____ | Nature of Participation | Dollar Value of Participation |
|--|----------------------------|-------------------------------------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

Total
Amount of Base Bid _____
DBE Percent of Base Bid _____

Authorized Signature

Date: _____

THIS FORM IS TO BE COMPLETED, SIGNED AND SUBMITTED
BY THE CLOSE OF THE NEXT WORKING DAY FOLLOWING
BID OPENING OR WITHIN 24 HOURS OF REQUEST BY METRO

WOMEN BUSINESS ENTERPRISES UTILIZATION FORM

1. Name of Metro Project: African Rainforest
2. Name of Bidder: _____
Address: _____

3. The above-named Bidder intends to subcontract ____ percent of the Base Bid to the following Women Business Enterprises (WBEs):

Names, Contact Persons, Addresses and Phone Numbers of WBE Firms Bidder Anticipates Utilizing

Nature of Participation

Dollar Value of Participation

| | | |
|--|--|--|
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| | | |
| | | |
| | | |

Total _____

Amount of Base Bid _____

WBE Percent of Base Bid _____

Authorized Signature

Date: _____

THIS FORM IS TO BE COMPLETED, SIGNED AND SUBMITTED
BY THE CLOSE OF THE NEXT WORKING DAY FOLLOWING
BID OPENING OR WITHIN 24 HOURS OF REQUEST BY METRO

PERFORMANCE BOND
FOR THE
AFRICAN RAINFOREST
METRO WASHINGTON PARK ZOO

(NOTE: CONTRACTORS MUST USE THIS FORM, NOT A SURETY COMPANY FORM)

KNOW ALL MEN BY THESE PRESENTS:

We the undersigned _____, as PRINCIPAL (hereinafter called CONTRACTOR), and _____, a corporation organized and existing under and by virtue of the laws of the state of _____, duly authorized to do surety business in the state of Oregon and named on the current list of approved surety companies acceptable on federal bonds and conforming with the underwriting limitations as published in the Federal Register by the audit staff of the Bureau of Accounts and the U.S. Treasury Department and is of the appropriate class for the bond amount as determined by Best's Rating System, as SURETY, hereby hold and firmly bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, to pay to the Metropolitan Service District, as OBLIGEE (hereinafter called Metro), the amount of _____ Dollars (\$ _____), in lawful money of the United States of America.

WHEREAS, the CONTRACTOR entered into a contract with Metro dated _____, 1989, which contract is hereunto annexed and made a part hereof, for accomplishment of the project described as follows: African Rainforest, Metro Washington Park Zoo.

NOW, THEREFORE, the condition of this obligation is such that if the CONTRACTOR shall promptly, truly and faithfully perform all the undertakings, covenants, terms, conditions, and agreements of the aforesaid African Rainforest, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Whenever CONTRACTOR shall be declared by Metro to be in default under the African Rainforest, Metro having performed their obligations thereunder, the SURETY may promptly remedy the default, or shall promptly complete the African Rainforest in accordance with its terms and conditions.

PROVIDED, FURTHER, that the said SURETY, for value received, hereby stipulates and agrees that all changes, extensions of time, alternations or additions to the terms of the African Rainforest or to work to be performed thereunder or the specifications accompanying the same shall be within the scope of

the SURETY's undertaking on this bond, and said SURETY does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Africa Rainforest or to the work or to the specifications. Any such change, extension of time, alteration or addition to the terms of the Africa Rainforest or to the Work or to the Specifications shall automatically increase the obligation of the SURETY hereunder in a like amount, provided that such increase shall not exceed twenty-five (25) percent of the original amount of the obligation without the consent of the SURETY.

This obligation shall continue to bind the PRINCIPAL and SURETY, notwithstanding successive payments made hereunder, until the full amount of the obligation is exhausted.

No right of action shall accrue on this bond to or for the use of any person or corporation other than Metro or its heirs, executors, administrators, successors or assigns.

If more than one surety is on this bond, each surety hereby agrees that it is jointly and severally liable for all obligations on this bond.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 1989.

| | |
|--------------|--------------|
| _____ | _____ |
| SURETY | CONTRACTOR |
| By: _____ | By: _____ |
| Title: _____ | Title: _____ |

LABOR AND MATERIALS PAYMENT BOND
FOR THE
AFRICAN RAINFOREST
METRO WASHINGTON PARK ZOO

(NOTE: BIDDERS MUST USE THIS FORM, NOT A SURETY COMPANY FORM)

KNOW ALL MEN BY THESE PRESENTS:

We the undersigned _____, as
PRINCIPAL, and _____, a
corporation organized and existing under and by virtue of the
laws of the state of _____, and duly authorized
to do surety business in the state of Oregon and named on the
current list of approved surety companies acceptable on federal
bonds and conforming with the underwriting limitations as
published in the Federal Register by the audit staff of the
Bureau of Accounts and the U.S. Treasury Department and which
carries an "A" rating and is of the appropriate class for the
bond amount as determined by Best's Rating System, as SURETY,
hereby hold and firmly bind ourselves, our heirs, executors,
administrators, successors and assigns, jointly and severally,
unto the Metropolitan Service District, as OBLIGEE, in the sum of
_____ Dollars (\$ _____)
in lawful money of the United State of America, for the payment
of that sum for the use and benefit of claimants as defined
below.

The condition of this obligation is such that whereas
the PRINCIPAL entered into a Contract with the said Metropolitan
Service District dated _____, 1989, which
Contract is hereunto annexed and made a part hereof, for
accomplishment of the project described as follows: African
Rainforest at Metro Washington Park Zoo.

NOW, THEREFORE, if the PRINCIPAL shall promptly make
payments to all persons, firms, subcontractors, corporations
and/or others furnishing materials for or performing labor in the
prosecution of the work provided for in the aforesaid African
Rainforest, and any authorized extension or modification
thereof, including all amounts due for materials, equipment,
mechanical repairs, transportation, tools and services consumed
or used in connection with the performance of such work, and for
all labor performed in connection with such work whether by
subcontractor or otherwise, and all other requirements imposed by
law, then this obligation shall become null and void; otherwise
this obligation shall remain in full force and effect, subject,
however, to the following conditions:

1. A claimant is defined in ORS 279.526.
2. The above-named PRINCIPAL and SURETY hereby jointly and severally agree with the OBLIGEE and its assigns that every claimant as above-defined, who has not been paid in full may sue on this bond for the use of such claimant, prosecute the suit to final judgment in accordance with ORS 279.526 through 279.542 for such sum or sums as may be justly due claimant, and have execution thereon. The OBLIGEE shall not be liable for the payment of any judgment, costs, expenses or attorney's fees of any such suit.

PROVIDED, FURTHER, that the said SURETY for the value received, hereby stipulates and agrees that all changes, extensions of time, alternations or additions to the terms of the Africa Rainforest or to work to be performed thereunder or the specifications accompanying the same shall be within the scope of the SURETY's undertaking on this bond, and said SURETY does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the African Rainforest or to the work or to the specifications. Any such change, extension of time, alteration or addition to the terms of the Contract or to the Work or to the Specifications shall automatically increase the obligation of the SURETY hereunder in a like amount, provided that the total of such increases shall not exceed twenty-five (25) percent of the original amount of the obligation without the consent of the SURETY.

This obligation shall continue to bind the PRINCIPAL and SURETY, notwithstanding successive payments made hereunder, until the full amount of the obligation is exhausted.

If more than one surety is on this bond, each surety hereby agrees that it is jointly and severally liable for all obligations on this bond.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 1989.

SURETY

PRINCIPAL

By: _____

By: _____

Title: _____

Title: _____

CONSTRUCTION AGREEMENT
FOR THE
AFRICAN RAINFOREST
METRO WASHINGTON PARK ZOO

This Construction Agreement is made by and between _____

hereinafter called Contractor, and the Metropolitan Service District, a political subdivision of the State of Oregon, hereinafter called Metro.

Contractor and Metro agree as follows:

1. Contract Documents

The Contract Documents consist of this Construction Agreement, the Advertisement for Bids, the Invitation to Bid, the Instructions to Bidders, the Bid Forms, including Bid Schedules, bid security and Disadvantaged Business Program forms, the Performance and the Labor and Materials Payment Bonds, the General Conditions, the Supplementary Conditions, the Specifications, the Drawings, the approved and updated Construction Schedule, and other information and data as listed in the Supplementary Conditions, and any modifications of any of the foregoing in the form of Addenda, Clarifications, or Change Orders in accordance with the terms of the Contract. Where applicable, reference to this Construction Agreement herein shall be deemed to refer to all of the Contract Documents.

These documents form the Contract and are, by this reference, expressly incorporated herein. All are as fully a part of the Contract as if attached to this Construction Agreement and repeated fully herein. No amendment made to this Contract nor Change Order issued shall be construed to release either party from any obligation contained in the Contract Documents except as specifically provided in any such amendment or Change Order.

2. Scope of Work

Contractor agrees to provide all labor, tools, equipment, machinery, supervision, transportation, permits and every other item and service necessary to perform the Work described in the Contract Documents. Contractor agrees to fully comply with each and every term, condition and provision of the Contract Documents.

3. Contract Amount

As consideration for Contractor's performance hereunder, Metro agrees to pay Contractor the Contract Amount as adjusted by

approved Change Orders issued pursuant to the Contract Documents and subject to the availability of monies in the Construction Fund. Contractor agrees to accept the Contract Amount as full payment for Contractor's performance of the above-described Work.

The Contract Amount is _____ and _____/100TH DOLLARS (\$_____).

Metro shall make payments to Contractor in the manner and at the times provided in the Contract Documents.

4. Additional or Deleted Work

Contractor shall, when so instructed by Metro under the procedures of the Contract Documents, perform additional Work or delete Work in accordance with the Contract Documents. When applicable, the Unit Prices included in the Contractor's Bid shall determine the value of additional or deleted work. When the listed Unit Prices are not applicable, the increase or decrease in the Contract Amount shall be determined pursuant to the applicable provisions of the Contract Documents.

5. Time of Completion; Liquidated Damages

Time is of the essence of this Construction Agreement. Contractor shall bring the work to substantial completion within the Contract Time as set forth in of the Supplementary Conditions of the Contract Documents. The Contract Time shall commence upon issuance of the Notice to Proceed. By executing this Construction Agreement, Contractor confirms and accepts that the Contract Time is a reasonable period for performance of all of the Work.

Should the Contractor fail to substantially complete the Work, as determined by Metro in accordance with the Contract Documents, within the Contract Time, Contractor shall be liable for liquidated damages to Metro as described in the Contract Documents.

6. Bonds

Contractor submits herewith a Performance Bond and a separate Labor and Materials Payment Bond, both in a form acceptable to Metro and otherwise in accordance with the Contract Documents and each in the Contract Amount to ensure full compliance, execution and performance of this Contract by Contractor and payment by Contractor of labor and material Suppliers as more fully described in the Contract Documents. The Performance Bond shall stay in force for a period of one (1) year after written acceptance of the Work by Metro as a guarantee of repair or

replacement of any item(s) of Work found to be defective by reason of faulty workmanship or defective materials. The Labor and Materials Payment Bond shall remain in force for the time required for actions against the bond to be filed in accordance with ORS 279.536.

7. Laws of Oregon Apply

The law of Oregon shall govern the interpretation and construction of this Construction Agreement and all of the Contract Documents.

8. Entire Agreement

THIS CONSTRUCTION AGREEMENT SIGNED BY BOTH PARTIES AND SO INITIALED BY BOTH PARTIES IN THE MARGIN OPPOSITE THIS PARAGRAPH CONSTITUTES A FINAL WRITTEN EXPRESSION OF ALL OF THE TERMS OF THIS CONSTRUCTION AGREEMENT AND IS A COMPLETE AND EXCLUSIVE STATEMENT OF THOSE TERMS. ANY AND ALL REPRESENTATIONS, PROMISES, WARRANTIES, OR STATEMENTS BY CONTRACTOR OR CONTRACTOR'S AGENTS THAT DIFFER IN ANY WAY FROM THE TERMS OF THIS WRITTEN AGREEMENT SHALL BE GIVEN NO FORCE AND EFFECT. THIS CONTRACT SHALL BE CHANGED, AMENDED, OR MODIFIED ONLY BY WRITTEN

Metro

Contractor

INSTRUMENT SIGNED BY BOTH METRO AND CONTRACTOR. THIS CONTRACT SHALL NOT BE MODIFIED OR ALTERED BY ANY COURSE OF PERFORMANCE BY EITHER PARTY.

Contractor:

Metropolitan Service District:

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

1. DESCRIPTION OF WORK

The work contemplated consists of construction of an African Tropical Rainforest Exhibit, Hay Storage Barn, and Support Facilities and Services for Metro Washington Park Zoo at 4001 S.W. Canyon Road, Portland, Oregon. The work contemplated consists of sitework, landscape (including tropical/indoor and unique ornamentals), concrete, gunite, concrete masonry units, miscellaneous metals, pool mechanical systems, glazing, carpentry, waterproofing, roof systems, hardware, painting, interpretive elements, heating and ventilation, plumbing, electrical and such additional and incidental work as is indicated in the Drawings and Specifications.

2. DEFINITIONS

Except as otherwise specifically provided herein, all words and phrases defined in the General Conditions shall have the same meaning and intent in these Instructions to Bidders. Bidders should refer to those definitions as they read these Instructions.

3. DOCUMENT INTERPRETATION

The Contract Documents are intended to be complementary and to provide all details reasonably required for the execution of the proposed work. Any person contemplating the submission of a Bid shall have thoroughly examined all of the various parts of these Contract Documents. Should there be any doubt as to the meaning or the intent of said Contract Documents or should any inconsistency or discrepancy be found within such Contract Documents, the Bidder shall request of Metro, in writing at least ten (10) days prior to Bid opening, an interpretation thereof. Likewise, the Bidder may request substitutions for materials, processes or equipment as described in the Contract Documents. Such requests for interpretation or substitution shall be mailed or delivered to Metro in care of Guthrie Slusarenko & Associates, 320 SW Sixth Avenue, Portland, Oregon 97204. Any interpretations or changes in the Contract Documents or approved substitutions will be made only in writing, in the form of Addenda to the Contract Documents which will be furnished to all Bidders receiving a set of the Bidding Documents and which shall be binding upon all Bidders as if set forth in the original Contract Documents. Bidders shall indicate receipt of all Addenda on their Bids. Metro will not be responsible for any other explanation or interpretation of the Bidding Documents. Bidders shall have no right to rely on any oral interpretation or instructions made by Metro or the

Architect, unless the same is also committed to writing and issued as an Addendum.

In the absence of any pre-bid request for clarification, as outlined above, or any interpretation of the Contract Documents, any subsequent interpretation shall be made by Metro and such interpretation shall be final and binding on the successful Bidder and Metro shall pay no extra costs or expenses to such Bidder resulting from such interpretation.

4. EXAMINATION OF CONTRACT DOCUMENTS AND SITE AND COMPLIANCE WITH LAWS

Before submitting a Bid, Bidders shall fully examine and read the Contract Documents. They shall visit the Site of the proposed Work, examine the Site and the surrounding areas. They shall fully inform themselves of all conditions on, in, at and around the Site, the surrounding areas, and any work that may have been done thereon. The Bidder acknowledges by the submission of its Bid that it has satisfied itself as to the nature and location of the Work, the general and local conditions, conditions of the Site, availability of labor, electric power, water, and the kind of surface materials on the Site, the kind of equipment needed, and all other matters which may in any way affect the Work or the cost, including utilities not identified in the Contract Documents.

Information derived from inspection of the Contract Documents and any specific sections thereof showing location of utilities and structures will not in any way relieve the Contractor from any risk, or from properly examining the Site and making such additional investigations as it may elect, or from properly fulfilling all the terms of the Contract Documents. Investigation of Site and soil conditions have been conducted for Metro.

Bidders may inspect the records of such investigations at locations specified in Section 00220. However, Metro does not in any way warrant the accuracy of any information in such investigations and Bidders shall have no right to rely on the information contained in such records or investigations. Furthermore, should the Bidder determine that additional investigations of Site and/or soil conditions are necessary or desirable, Bidder shall cause such additional investigations to be made prior to submitting a Bid at Bidder's expense, and subject to coordination with Metro.

Any failure of a Bidder to acquaint itself with all of the available information concerning conditions or having such additional investigations of Site and soil conditions

conducted, as may be necessary, will not relieve it from responsibility for estimating properly the difficulties or cost of the Work and the Bidder shall, regardless of such failure, be bound to its Bid. Each Bidder shall inform itself of, and the Bidder awarded a Contract shall comply with, federal, state, and local laws, codes, statutes, ordinances, and regulations, as amended, relative to the execution of the Work. Each Bidder shall prepare its Bid in accordance with and all Bid prices shall assume compliance with such laws, codes, statutes, ordinances and regulations. This requirement includes, but is not limited to, applicable regulations concerning minimum wage rates, nondiscrimination in the employment of labor, protection of public and employee safety and health, environmental protection, the protection of natural resources, fire protection, burning and nonburning requirements, permits, fees, and similar subjects.

If any portion of the Contract Documents does not conform to such laws, codes, statutes, ordinances or regulations as amended, the Bidder shall so advise Metro in writing at least ten (10) days before Bids are due. If it is shown that the Contractor, as Bidder, knew or should have known that any portion of the Contract Documents does not conform to such laws, codes, statutes, ordinances or regulations and had failed to so advise Metro, it shall be liable for costs of making any deviation(s) required for compliance with such laws, codes, statutes, ordinances and regulations.

Each Bidder, in submitting its Bid, certifies that the Bidder is not ineligible to receive a contract for a public work, as set forth in ORS 279.361 and agrees, if awarded the Contract, that each of its Subcontractors will be required to certify such compliance, and certification will be filed with Metro prior to such Subcontractor commencing any work under the Contract.

5. DISADVANTAGED BUSINESS PROGRAM COMPLIANCE

Metro has made a strong commitment to provide maximum opportunities to Disadvantaged and Women-Owned Businesses in contracting. The successful Bidder will be required to meet Metro's Disadvantaged Business Program goals or clearly demonstrate that a good faith effort has been made to meet the goals. The goals for this Contract are: Disadvantaged Business Enterprises (DBEs) -- 10 percent, and Women-Owned Business Enterprises (WBEs) -- 3 percent of the Base Bid Amount. DBEs and WBEs must be certified by the state of Oregon as DBEs/WBEs to be counted toward the Contract goals.

The Bid submitted must contain a fully completed Disadvantaged Business Program Compliance form contained

herein. Metro may require any or all Bidders to submit completed DBE and WBE Utilization forms (also contained herein) either by the close of the next working day following Bid opening or within twenty-four (24) hours of Metro's request. Detailed procedures for completing the forms and for demonstrating good faith efforts are contained in Ordinance No. 87-231 (Metro's Disadvantaged Business Program) contained in the Appendix. Bidder's special attention is directed to Section 2.04.155 (Contract Award Criteria), and Section 2.04.160 (Determination of Good Faith Efforts). Bidders should note the following requirement of the latter section:

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.

The following are minority-oriented newspapers published in the Portland metropolitan area:

The Skanner, 2337 N. Williams Avenue, Portland, OR
97211
(503) 287-3562.

The Portland Observer, P. O. Box 3137, Portland, OR
97208
(503) 283-2486

The American Contractor, P. O. Box 11233, Portland, OR
97217 (503) 285-9000

The requirement to advertise is but one of the actions necessary to demonstrate good faith efforts under this program.

Failure of the Bidder to comply with all of the requirements of the Disadvantaged Business Program will result in the Bid being deemed nonresponsive.

6. PREPARATION OF BIDS

All blank spaces in the Bid Forms must be completed either by typing or in ink. Amounts shall be shown in both words and figures. Any Bids which do not include Bids on the Alternates and any Unit Prices may be considered nonresponsive and may be rejected. No changes shall be made in the phraseology of the forms.

Any Bid may be deemed nonresponsive which contains omissions, erasures, alterations, or additions of any kind, or prices uncalled for, or in which any of the prices are obviously unbalanced, or which in any manner shall fail to conform to the conditions of the Contract Documents.

Each Bid shall give the full business address of the Bidder and be signed by it with its legal signature.

- a. Bids by partnerships must furnish the full name of all partners and must be signed in the partnership name by one of the members of the partnership authorized to sign contracts on behalf of the partnership, or by an authorized representative, followed by the printed name and title of the person signing.
- b. Bids by corporations must be signed with the legal name of the corporation, followed by the name of the state of incorporation and by the signature and designation of the president, secretary or other person authorized to bind it in the matter. When requested by Metro, satisfactory evidence of the authority of the officer signing in behalf of the corporation shall be furnished.
- c. In the event that a Bid is submitted by a joint venture, then a certified copy of the legal agreement constituting such joint venture shall be attached to the Bid.

The name of each person signing shall also be typed or printed below the signature. Signatures of all individuals must be in longhand.

Failure to fulfill any of the above requirements may render the Bid nonresponsive.

7. SUBMISSION OF BIDS

All Bids must be submitted not later than the time prescribed, at the place, and in the manner set forth in the INVITATION TO BID. Bids must be made on the forms for the Bid provided herein. Each Bid and all other documentation required to be submitted with the Bid must be submitted in a sealed envelope, so marked as to indicate its contents without being opened, and addressed in conformance with the instructions in the INVITATION TO BID and the ADVERTISEMENT FOR BIDS.

8. MODIFICATION OR WITHDRAWAL OF BIDS

Any Bid may be modified after delivery to the location specified in the Invitation to Bid by delivering to the same location before the time fixed for the Bid opening, a written sealed supplement to the original Bid, marked "Supplement to Bid of (Name of Bidder) for African Rainforest at Metro Washington Park Zoo". Such supplement shall clearly identify the Bid item(s) which are changed by setting forth the original Bid item(s), and the modified item(s). Metro may reject any supplemental Bid which, in its opinion, does not set forth the proposed modifications clearly enough to determine the definiteness and certainty of the item(s) offered by the Bidder. No Bidder shall be allowed to submit more than one (1) Bid for this Contract.

Bids may be withdrawn by the Bidder prior to the time fixed for the receipt of Bids by having an authorized representative of the Bidder with sufficient identification personally pick up the Bid. Bids may not be withdrawn for a period of ninety (90) days from and after the opening of Bids and on or prior to the last date of any extension of such time as may be agreed upon between Metro and the Bidder.

9. BID SECURITY

Bids must be accompanied by a certified check or cashier's check drawn on a bank in good standing, or a bid bond on the form bound herewith issued by a surety authorized to issue such bonds in Oregon and named on the current list of approved surety companies acceptable on federal bonds and conforming with the underwriting limitations as published in the Federal Register by the audit staff of the Bureau of Accounts and the U. S. Treasury Department, in the amount of not less than 10 percent of the total amount of the Base Bid. This bid security shall be given as a guarantee that the Bidder will not withdraw its Bid for a period of ninety (90) days after Bid opening, and that if awarded the Contract, the successful Bidder will execute the attached Construction Agreement and furnish a properly executed Performance Bond and a properly executed Labor and Materials Payment Bond in the full amount of the Base Bid within the time specified. Bid security deposited in the form of a certified or cashier's check shall be subject to the same requirements as a bid bond.

The Attorney-in-Fact (Resident Agent) who executes these bonds on behalf of the surety must attach a notarized copy of his/her Power of Attorney as evidence of his/her authority to bind the surety on the date of execution of the bond.

10. EXPERIENCE AND ABILITY TO PERFORM THE WORK

Within twenty-four (24) hours following request by Metro, any Bidder may be required to present to the Construction Coordinator information verifying that the Bidder has the necessary experience and qualifications in the class of Work to be performed, and the ability, equipment, key personnel and financial resources to perform the Work satisfactorily within the time specified. In determining the award of this Contract, such information will be considered, and the Bidder is cautioned to make complete and comprehensive presentation of its abilities and resources. Failure of any Bidder to comply fully and timely with a request for information under this section shall be grounds for rejection of that Bid.

No Bidder will be considered for contract award unless such Bidder is authorized by law to execute the Contract or perform the Work for which such Bid is received. Should it appear, at any time, that any Bidder is not or might not be authorized by law to execute the Contract or perform such Work, then such Bidder may at any time be rejected and Metro may refuse to execute any contract with such Bidder regardless of whether or not the contract had been previously awarded by the Metro Council and without any liability whatever on the part of the Metropolitan Service District, its Council, or any member of its Council, or Metro's officer, employees, or its agents, either as individuals or in official capacities.

11. REJECTION OF BIDS

Metro reserves the right to reject all Bids or any Bid not conforming to the intent and purpose of the Contract Documents, to waive any informality or irregularity in any Bid or Bids, to reject any Bid not in compliance with all prescribed public bidding procedures and requirements, and to, for good cause, reject any or all Bids upon a finding by Metro that it is in the public interest to do so.

12. BASIS OF AWARD

Metro reserves the right to make Award of this Contract to the lowest responsive, responsible Bidder, based on either the lowest Base Bid Amount or the lowest total of the Base Bid Amount plus or minus, as applicable, any combination of Alternate price(s), whichever basis Metro at its sole discretion may select. Any Bid not listing the Alternates or Unit Prices may be considered non-responsive and may therefore be rejected. Metro also reserves the right to reject bids in which the Alternate Price(s) are obviously unbalanced and to waive any or all technical deficiencies.

In determining the lowest responsive, responsible Bidder, Metro shall, for the purpose of awarding the Contract, add a percent increase on the Bid of a nonresident Bidder, as that term is defined in ORS 279.029(6)(c), equal to the percent, if any, of the preference given to that nonresident Bidder in the state in which that Bidder resides. For purposes of determining the percent increases to be applied pursuant to this section, Metro shall rely on the list published by the Oregon Department of General Services pursuant to ORS 279.029(3), and Metro shall not incur any liability to any Bidder by relying on such list.

13. ALTERNATES

The Bidder is required to bid on all designated Alternates, stipulating the amount to be added to or deducted from the Base Bid Amount for the work specified (including overhead and profit as defined in these Contract Documents). Alternates are to conform exactly to all appropriate terms, conditions and requirements of the Contract Documents.

Failure to bid on any Alternate is grounds for Metro to reject a Bid, however, Metro reserves the right to accept a Bid if it elects not to utilize any particular Alternate for which the bidder has not submitted an Alternate Price.

No time extension will be granted to the General Contractor due to Alternate work as selected by Metro. Therefore, all work including any Alternate(s) selected by Metro must be brought to Substantial Completion on or before the number of calendar days specified.

14. LIST OF PROPOSED SUBCONTRACTORS

Metro may require any or all Bidders to furnish in writing to Metro the names of all Subcontractors and Suppliers which Bidder proposes to use in completing the Work along with a brief description of the subcontract or supply work involved

and the subcontract or supply work dollar amount, either by the close of the next working day following Bid opening or within twenty-four (24) hours of Metro's request. Metro will notify the Bidder in writing within ten (10) days following receipt from Bidder of the above-described information if Metro has any reasonable objection to any such proposed Subcontractor or Supplier. The Bidder shall not subcontract with any proposed Subcontractor or Supplier to whom Metro has made a reasonable objection. In the event of such objection, Bidder shall propose another entity to whom Metro has no reasonable objection. No amounts or

prices bid by the Bidder shall be increased by any difference in cost occasioned by such substitution. Failure of Metro to reply within the above-described time period shall be construed to mean that Metro has no objection at that time. Failure of the Bidder to comply with this section shall be cause for rejection of Bidder's bid and, in such event, the bid security submitted by Bidder shall be taken by Metro and considered as liquidated damages.

15. AWARD AND EXECUTION OF CONTRACT

Within thirty (30) days after the opening of bids, Metro will accept one of the Bids or will act in accordance with BASIS OF AWARD, above. The acceptance of the Bid will be by written Notice of Conditional Award, mailed or delivered to the office designated in the Bid. The award, if made, will be made within ninety (90) days after the opening of Bids. The Notice of Conditional Award shall not entitle the party to whom it is delivered to any rights whatsoever.

The successful Bidder shall within ten (10) days after receiving Notice of Conditional Award, sign and deliver to Metro the Construction Agreement attached hereto together with acceptable Performance and Labor and Materials Payment Bonds and certificates of insurance and certified copies of insurance policies as required in these Contract Documents.

Upon receipt of the signed Construction Agreement and all other documents required to be submitted by the successful Bidder, as prescribed herein, Metro shall sign the Construction Agreement and issue a written Notice to Proceed to Contractor. Contractor shall commence work within ten (10) days of issuance of the Notice to Proceed.

In the event of failure of the lowest responsive, responsible Bidder to sign and return the Construction Agreement and all other documents required to be submitted, as prescribed herein, Metro may award the Contract to the next lowest responsive, responsible Bidder.

16. PERFORMANCE BOND AND LABOR AND MATERIALS PAYMENT BOND

The successful Bidder shall file with Metro a Performance Bond on the form bound herewith and in the amount described below, as security for the faithful performance of this Contract and to cover all guarantees against defective workmanship or materials, or both, for a period of one (1) year after the date of Final Completion and Acceptance of the Work by Metro. The successful Bidder shall additionally file a Labor and Materials Payment Bond on the form bound herewith and in the amount described below as security for the payment of all persons supplying labor and materials for

the construction of the Work. The surety furnishing these bonds shall have a sound financial standing and a record of service satisfactory to Metro, shall be authorized to do business in the state of Oregon, and shall be named on the current list of approved surety companies acceptable on federal bonds and conforming with the underwriting limitations as published in the Federal Register by the audit staff of the Bureau of Accounts and U.S. Treasury Department. If more than one surety is on a bond, then each surety must agree that it is jointly and severally liable on the bond for all obligations on the bond.

The amount of each bond described above shall be a sum not less than 100 percent of the Contract Amount.

The Attorney-in-Fact (Resident Agent) who executes the Performance Bond and the Labor and Materials Payment Bond in behalf of the surety must attach a notarized copy of his/her Power of Attorney as evidence of his/her authority to bind the surety on the date of execution of the bond.

17. FAILURE TO EXECUTE CONTRACT AND FURNISH BONDS

The Bidder which has a Contract awarded to it and which fails to promptly and properly execute this Contract and furnish the required bonds, certificates of insurance and certified copies of insurance policies shall forfeit the bid security that accompanied its Bid, and the bid security shall be retained as liquidated damages by Metro it is agreed that this sum is a fair estimate of the amount of damages Metro will sustain in case the Bidder fails to enter into a Contract and furnish the bonds, certificates of insurance and certified copies of insurance policies as hereinbefore provided.

18. BID BACK-UP (Bid Preparation Documents)

Within six (6) days after Metro's request and as a condition precedent to the award of the Contract, the three (3) apparent low responsive and responsible Bidders shall submit to Metro in a sealed envelope their complete bid summary, along with corresponding back-up including, but not limited to: quantity take-off sheets, pricing sheets and information/data substantiating the Base Bid Amount. The back-up data provided will include that of all Subcontractors listed in the Bid, as well as all lower-tier Subcontractors. This bid summary and back-up data will be held in strict confidence by Metro in its original sealed envelop and will not be opened except in the event of dispute between Metro and Contractor. Bid Back-Up shall be delivered to the Metro Washington Park Zoo, c/o Metropolitan Service District, 2000 S. W. First Avenue, Portland, OR

97201-5398, enclosed in a double envelope to prevent
accidental opening.

BID FORMS
FOR THE
AFRICAN RAINFOREST
METRO WASHINGTON PARK ZOO

TABLE OF CONTENTS

- I. BID
 - A. Schedule of Bid Prices
 - B. Disadvantaged Business Program Compliance Form
 - C. Resident/Non-Resident Bidder Status
 - D. Signature Page
- II. NON-COLLUSION AFFIDAVIT
- III. BID BOND
- IV. DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION FORM
- V. WOMEN BUSINESS ENTERPRISE UTILIZATION FORM

BID
FOR THE
AFRICAN RAINFOREST
METRO WASHINGTON PARK ZOO

NOTE TO BIDDER: Bidders must provide all of the information requested in this Bid. Bidder should preferably type or use BLACK ink for completing this Bid.

To: METRO WASHINGTON PARK ZOO
Address: 4001 S. W. Canyon Road, Portland, OR 97221
Contract: African Rainforest

Bidder:

Address:

Date:

Bidder's Person to Contact for Additional Information on this Bid:

Name:

Telephone:

BIDDER'S DECLARATION AND UNDERSTANDING

The undersigned, hereinafter called the Bidder, declares that the only persons or parties interested in this Bid are those named herein, that this Bid is, in all respects, fair and without fraud, that it is made without collusion with any official of Metro, and that the Bid is made without any connection or collusion with any person submitting another Bid on this Contract.

The Bidder further declares that it has carefully examined the Contract Documents for the completion of the Work, that it has personally inspected the Site, that it has satisfied itself as to the Work involved, and that this Bid is made in accordance with the provisions and under the terms of the Contract Documents which are hereby made a part of this Bid.

Any printed matter on any letter or paper enclosed herewith which is not part of the Bidding Documents or which was not requested by Metro is not to be considered a part of this Bid, and the undersigned agrees that such printed matter shall be entirely disregarded and, notwithstanding such printed matter, that the Bid is a bid to do the Work and furnish the labor and materials and all other things required by the Contract Documents strictly within the time and in accordance with such Specifications.

This Bid is irrevocable for ninety (90) days following the date of the opening of Bids.

BID SECURITY

Bid security in the form of a certified check, cashier's check or bid bond as further described in the Instructions to Bidders is enclosed herewith and is subject to all the conditions stated in the Instructions to Bidders.

CONTRACT EXECUTION, BONDS AND INSURANCE

The Bidder agrees that if this Bid is accepted, it will, within ten (10) days after Notice of Conditional Award, sign the Construction Agreement in the form annexed hereto, and will at that time, deliver to Metro the Performance Bond and the Labor and Materials Payment Bond required herein and in the form annexed hereto, along with all certificates of insurance and certified copies of insurance policies specified and required in these Contract Documents, and will, to the extent of its Bid, furnish all machinery, tools, apparatus, and other means of operation and construction and do the Work and furnish all the materials necessary to complete all Work as specified or indicated in the Contract Documents.

COMMENCEMENT OF WORK AND CONTRACT COMPLETION TIME

The time frame for the award and execution of this Contract shall be as described in the Instructions to Bidders and in the Supplementary Conditions. The successful Bidder further agrees to commence the Work within ten (10) days of issuance of the Notice to Proceed and to diligently prosecute the Work to its final completion in accordance with the Contract Documents.

LIQUIDATED DAMAGES

In the event the Bidder is awarded the Contract and shall fail to complete the Work in compliance with the time required by the Contract Documents, including all Drawings and Specifications, liquidated damages shall be paid to Metro as described in the General and Supplementary Conditions.

SALES AND USE TAXES

The Bidder agrees that all applicable federal, state and local sales and use taxes are included in the stated bid prices for the Work.

LUMP SUM AND UNIT PRICE WORK

The Bidder further proposes to accept as full payment for the Work proposed herein the amounts computed under the provisions of

the Contract Documents and based on the listed lump sum and unit price amounts. The amounts shall be shown in both words and figures. In case of a discrepancy, the amount shown in words shall govern.

PREVAILING WAGES FOR PUBLIC WORK

Bidder hereby certifies that the provisions of ORS 279.350, regarding prevailing wages, shall be complied with on this Project.

SCHEDULE OF BID PRICES
FOR THE
AFRICAN RAINFOREST
METRO WASHINGTON PARK ZOO

The Bidder, whose legal signature binding the Bidder to the bid prices indicated on these pages is found on the signature page, hereby bids as follows:

A. BASE BID

(The base bid price does not include the cost of any Alternates set forth on the following pages. Bidders are required to submit separate bids on all Alternates and Unit Prices.)

To complete the Work as described in the Contract Documents for the lump sum amount of _____

and _____/100TH DOLLARS (\$_____).

B. ALTERNATE

Each Bidder is required to bid on the following Alternate, stipulating the amount to be added to from the Base Bid Amount for the work specified or deleted.

No time extension will be granted to the Contractor due to Alternate work as selected by Metro. Therefore, all work including any Alternates selected by Metro must be brought to substantial completion on or before the number of days stated in the Supplementary Conditions.

Bid Prices on Alternate

To complete the Alternate work as described in the Supplementary Conditions (Section 01030) for the following lump sum/unit prices:

Alternate.

Alternate Lump Sum: ADD
Lump Sum Bid _____

and _____/100TH DOLLARS (\$_____).

ADDENDA

The Bidder hereby acknowledges receipt and acceptance of
Addenda Numbers _____

(Insert No. of each Addendum Received)

SURETY

If the Bidder is awarded a Contract on this Bid, the surety or sureties who provide(s) the Performance Bond and Labor and Materials Payment Bond will be:

SURETY

ADDRESS

1.

2.

DISADVANTAGED BUSINESS PROGRAM COMPLIANCE FORM

(To be submitted with Bid)

Name of Metro Project: AFRICAN RAINFOREST.

Name of Bidder: _____

Address: _____

Phone: _____

In accordance with Metro's Disadvantaged Business Program, the above-named Bidder has accomplished the following:

1. Has fully met the contract goals and will subcontract _____ percent of the Base Bid Amount to DBEs and _____ percent to WBEs.

2. Has partially met the contract goals and will subcontract _____ percent of the Base Bid Amount to DBEs and _____ present to WBEs. Bidder has made good faith efforts prior to bid opening, to meet the full goals and will submit documentation of the same to Metro within twenty-four (24) hours of Metro's request.

3. Will not subcontract any of the Base Bid Amount to DBEs or WBEs but has made good faith efforts prior to bid opening to meet the contract goals and will submit documentation of such good faith efforts to Metro within twenty-four (24) hours of Metro's request.

RESIDENT/NON-RESIDENT BIDDER STATUS

Oregon law requires that Metro, in determining the lowest responsive Bidder, must add a percent increase on the Bid of a non-resident Bidder equal to the percent, if any, of the preference given to that Bidder in the state in which that Bidder resides. Consequently, each Bidder must indicate whether it is a resident or non-resident Bidder. A resident Bidder is a Bidder that has paid unemployment taxes or income taxes in the state of Oregon during the twelve (12) calendar months immediately preceding submission of this Bid, has a business address in Oregon, and has stated in its Bid whether the Bidder is a "resident Bidder." A "non-resident Bidder" is a Bidder who is not a resident Bidder.

The undersigned Bidder states that it is: (check one)

1. A resident Bidder _____
2. A non-resident Bidder _____

Indicate state in which Bidder resides: _____

SIGNATURE PAGE

The name of the Bidder submitting this Bid is _____

business at _____ doing

_____ Street _____ City _____ State _____ Zip

which is the full business address to which all communications concerned with this Bid and with the Contract shall be sent.

The names of the principal officers of the corporation submitting this Bid, or of all of the partners, if the Bidder is a partnership or joint venture, or of all persons interested in this Bid as individuals are as follows:

If Individual

IN WITNESS hereto the undersigned has set his/her hand this _____ day of _____, 1989.

Signature of Bidder

Printed Name of Bidder

Title

If Partnership or Joint Venture

IN WITNESS hereto the undersigned has set his/her hand this _____ day of _____, 1989.

Name of Partnership or
Joint Venture

By: _____

Printed Name of Person Signing
Title: _____

SIGNATURE PAGE (continued)

If Corporation

IN WITNESS WHEREOF the undersigned corporation has caused this instrument to be executed and its seal affixed by its duly authorized officers this _____ day of _____, 1989.

Name of Corporation

State of Incorporation

By: _____

Printed Name of Person Signing

Title: _____

NON-COLLUSION AFFIDAVIT
FOR THE
AFRICAN RAINFOREST

METRO WASHINGTON PARK ZOO

STATE OF _____)
County of _____) ss.

I state that I am _____ (Title) of _____ (Name of Bidder) and that I am authorized to make this Affidavit on behalf of the Bidder. I am the person authorized by the Bidder and responsible for the price(s) and the amount of this Bid.

I state that:

(1) The price(s) and amount of this Bid have been arrived at independently and without consultation, communication or agreement with any other contractor, Bidder or potential Bidder, except as disclosed in the attached appendix.

(2) Neither the price(s) nor the amount of this Bid, and neither the approximate price(s) nor approximate amount of this Bid, have been disclosed to any other person who is a Bidder or potential Bidder, and they will not be disclosed before bid opening.

(3) No attempt has been made or will be made to induce any person to refrain from bidding on this contract, or to submit a Bid higher than this Bid, or to submit any intentionally high or non-competitive bid or other form of complementary Bid.

(4) This Bid is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any person to submit a complementary or other noncompetitive Bid.

(5) _____ (Name of Bidder), its affiliates, subsidiaries, officers, directors and employees (as applicable) are not currently under investigation by any governmental agency and have not in the last four years been convicted of or found liable for any act prohibited by state or federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as listed and described in the attached appendix.

I state that I and _____ (Name of Bidder) understand and acknowledge that the above representations are material and important, and will be relied on by Metro in awarding the Contract for which this Bid is submitted. Any misstatement in this Affidavit will be treated as fraudulent concealment

from Metro of the true facts relating to the submission of Bids
for this Contract.

Signature of Affiant

Printed Name of Affiant

Sworn to and subscribed before me this _____ day of _____,
1989.

Notary Public for _____
My Commission Expires: / /

BID BOND
FOR THE
AFRICAN RAINFOREST

METRO WASHINGTON PARK ZOO

(NOTE: BIDDERS MUST USE THIS FORM, NOT A SURETY COMPANY FORM)

KNOW ALL MEN BY THESE PRESENTS:

We the undersigned, _____

_____, as PRINCIPAL, and _____

_____, a corporation organized and existing under and by virtue of the laws of the state of _____ and duly authorized to do surety business in the state of Oregon and named on the current list of approved surety companies acceptable on federal bonds and conforming with the underwriting limitations as published in the Federal Register by the audit staff of the Bureau of Accounts and the U.S. Treasury Department and is of the appropriate class for the bond amount as determined by Best's Rating System, as SURETY, hereby hold and firmly bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, unto the METROPOLITAN SERVICE DISTRICT, as OBLIGEE, in the sum of _____ Dollars (\$_____) which is at least ten (10) percent of the Base Bid Amount in lawful money of the United States of America, for the payment of which sum well and truly to be made as agreed and liquidated damages.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT whereas the PRINCIPAL has submitted to the Metropolitan Service District a certain bid for work required for the project described below: African Rainforest at Metro Washington Park Zoo, which work is specifically described in the accompanying bid;

NOW, THEREFORE, if the Metropolitan Service District does not award a contract to the PRINCIPAL within the time specified in the Instructions to Bidders for the work described in said bid, or in the alternate, if said bid shall be accepted and the PRINCIPAL, within the time and in the manner described under the Contract Documents, enters into a written contract in accordance with the bid, files the two bonds, one guarantying faithful performance of the work to be done and the other guaranteeing payment for labor and materials as required by law, and files the required certified copies of insurance policies and certificates of insurance, then the obligation shall be null and void; otherwise, the same shall remain in full force and effect.

The SURETY, for value received, hereby stipulates and agrees, that the obligation of said SURETY and this bond shall be

in no way impaired or affected by any extension of the time within which the Metropolitan Service District may accept such bid; and said SURETY does hereby waive notice of any such extension.

If more than one surety is on this bond, each surety hereby agrees that it is jointly and severally liable for all obligation on this bond.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 1989.

SURETY

PRINCIPAL

By: _____

By: _____

Title: _____

Title: _____

DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION FORM

1. Name of Metro Project: African Rainforest
2. Name of Bidder _____
 Address _____
3. The above-named Bidder intends to subcontract _____ percent of the Base Bid to the following Disadvantaged Business Enterprises (DBEs):

| Names, Contact Persons, Addresses and Phone Numbers of DBE Firms Bidder Anticipates Utilizing | Nature of Participation | Dollar Value of Participation |
|--|----------------------------|-------------------------------------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

| | | |
|-------------------------|-------|--|
| | Total | |
| Amount of Base Bid | | |
| DBE Percent of Base Bid | | |

 Authorized Signature

Date: _____

THIS FORM IS TO BE COMPLETED, SIGNED AND SUBMITTED
BY THE CLOSE OF THE NEXT WORKING DAY FOLLOWING
BID OPENING OR WITHIN 24 HOURS OF REQUEST BY METRO

WOMEN BUSINESS ENTERPRISES UTILIZATION FORM

1. Name of Metro Project: African Rainforest
2. Name of Bidder _____
Address _____

3. The above-named Bidder intends to subcontract _____ percent of the Base Bid to the following Women Business Enterprises (WBEs):

| <u>Names, Contact Persons, Addresses and Phone Numbers of WBE Firms Bidder Anticipates Utilizing</u> | <u>Nature of Participation</u> | <u>Dollar Value of Participation</u> |
|--|--------------------------------|--------------------------------------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| | Total | _____ |
| | Amount of Base Bid | _____ |
| | WBE Percent of Base Bid | _____ |

Authorized Signature
Date: _____

THIS FORM IS TO BE COMPLETED, SIGNED AND SUBMITTED BY THE CLOSE OF THE NEXT WORKING DAY FOLLOWING BID OPENING OR WITHIN 24 HOURS OF REQUEST BY METRO

PERFORMANCE BOND
FOR THE
AFRICAN RAINFOREST
METRO WASHINGTON PARK ZOO

(NOTE: CONTRACTORS MUST USE THIS FORM, NOT A SURETY COMPANY FORM)

KNOW ALL MEN BY THESE PRESENTS:

We the undersigned _____,
as PRINCIPAL (hereinafter called CONTRACTOR), and _____,
_____, a corporation organized
and existing under and by virtue of the laws of the state of
_____, duly authorized to do surety business in the state of
Oregon and named on the current list of approved surety companies
acceptable on federal bonds and conforming with the underwriting
limitations as published in the Federal Register by the audit
staff of the Bureau of Accounts and the U.S. Treasury Department
and is of the appropriate class for the bond amount as determined
by Best's Rating System, as SURETY, hereby hold and firmly bind
ourselves, our heirs, executors, administrators, successors and
assigns, jointly and severally, to pay to the Metropolitan
Service District, as OBLIGEE (hereinafter called Metro), the
amount of _____ Dollars (\$ _____),
in lawful money of the United States of America.

WHEREAS, the CONTRACTOR entered into a contract with
Metro dated _____, 1989, which contract is
hereunto annexed and made a part hereof, for accomplishment of
the project described as follows: African Rainforest; Metro
Washington Park Zoo.

NOW, THEREFORE, the condition of this obligation is such
that if the CONTRACTOR shall promptly, truly and faithfully
perform all the undertakings, covenants, terms, conditions, and
agreements of the aforesaid African Rainforest, then this
obligation shall be null and void; otherwise it shall remain in
full force and effect.

Whenever CONTRACTOR shall be declared by Metro to be in
default under the African Rainforest, Metro having performed
their obligations thereunder, the SURETY may promptly remedy the
default, or shall promptly complete the African Rainforest in
accordance with its terms and conditions.

PROVIDED, FURTHER, that the said SURETY, for value received,
hereby stipulates and agrees that all changes, extensions of
time, alternations or additions to the terms of the African
Rainforest or to work to be performed thereunder or the
specifications accompanying the same shall be within the scope of

the SURETY's undertaking on this bond, and said SURETY does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Africa Rainforest or to the work or to the specifications. Any such change, extension of time, alteration or addition to the terms of the Africa Rainforest or to the Work or to the Specifications shall automatically increase the obligation of the SURETY hereunder in a like amount, provided that such increase shall not exceed twenty-five (25) percent of the original amount of the obligation without the consent of the SURETY.

This obligation shall continue to bind the PRINCIPAL and SURETY, notwithstanding successive payments made hereunder, until the full amount of the obligation is exhausted.

No right of action shall accrue on this bond to or for the use of any person or corporation other than Metro or its heirs, executors, administrators, successors or assigns.

If more than one surety is on this bond, each surety hereby agrees that it is jointly and severally liable for all obligations on this bond.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 1989.

SURETY
By: _____
Title: _____

CONTRACTOR
By: _____
Title: _____

LABOR AND MATERIALS PAYMENT BOND
FOR THE
AFRICAN RAINFOREST
METRO WASHINGTON PARK ZOO

(NOTE: BIDDERS MUST USE THIS FORM, NOT A SURETY COMPANY FORM)

KNOW ALL MEN BY THESE PRESENTS:

We the undersigned _____, as
PRINCIPAL, and _____, a
corporation organized and existing under and by virtue of the
laws of the state of _____, and duly authorized
to do surety business in the state of Oregon and named on the
current list of approved surety companies acceptable on federal
bonds and conforming with the underwriting limitations as
published in the Federal Register by the audit staff of the
Bureau of Accounts and the U.S. Treasury Department and which
carries an "A" rating and is of the appropriate class for the
bond amount as determined by Best's Rating System, as SURETY,
hereby hold and firmly bind ourselves, our heirs, executors,
administrators, successors and assigns, jointly and severally,
unto the Metropolitan Service District, as OBLIGEE, in the sum of
_____ Dollars (\$ _____)
in lawful money of the United State of America, for the payment
of that sum for the use and benefit of claimants as defined
below.

The condition of this obligation is such that whereas
the PRINCIPAL entered into a Contract with the said Metropolitan
Service District dated _____, 1989, which
Contract is hereunto annexed and made a part hereof, for
accomplishment of the project described as follows: African
Rainforest at Metro Washington Park Zoo.

NOW, THEREFORE, if the PRINCIPAL shall promptly make
payments to all persons, firms, subcontractors, corporations
and/or others furnishing materials for or performing labor in the
prosecution of the work provided for in the aforesaid African
Rainforest, and any authorized extension or modification
thereof, including all amounts due for materials, equipment,
mechanical repairs, transportation, tools and services consumed
or used in connection with the performance of such work, and for
all labor performed in connection with such work whether by
subcontractor or otherwise, and all other requirements imposed by
law, then this obligation shall become null and void; otherwise
this obligation shall remain in full force and effect, subject,
however, to the following conditions:

1. A claimant is defined in ORS 279.526.
2. The above-named PRINCIPAL and SURETY hereby jointly and severally agree with the OBLIGEE and its assigns that every claimant as above-defined, who has not been paid in full may sue on this bond for the use of such claimant, prosecute the suit to final judgment in accordance with ORS 279.526 through 279.542 for such sum or sums as may be justly due claimant, and have execution thereon. The OBLIGEE shall not be liable for the payment of any judgment, costs, expenses or attorney's fees of any such suit.

PROVIDED, FURTHER, that the said SURETY for the value received, hereby stipulates and agrees that all changes, extensions of time, alternations or additions to the terms of the Africa Rainforest or to work to be performed thereunder or the specifications accompanying the same shall be within the scope of the SURETY's undertaking on this bond, and said SURETY does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the African Rainforest or to the work or to the specifications. Any such change, extension of time, alteration or addition to the terms of the Contract or to the Work or to the Specifications shall automatically increase the obligation of the SURETY hereunder in a like amount, provided that the total of such increases shall not exceed twenty-five (25) percent of the original amount of the obligation without the consent of the SURETY.

This obligation shall continue to bind the PRINCIPAL and SURETY, notwithstanding successive payments made hereunder, until the full amount of the obligation is exhausted.

If more than one surety is on this bond, each surety hereby agrees that it is jointly and severally liable for all obligations on this bond.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 1989.

SURETY

PRINCIPAL

By: _____

By: _____

Title: _____

Title: _____

CONSTRUCTION AGREEMENT
FOR THE
AFRICAN RAINFOREST
METRO WASHINGTON PARK ZOO

This Construction Agreement is made by and between _____

hereinafter called Contractor, and the Metropolitan Service District, a political subdivision of the State of Oregon, hereinafter called Metro.

Contractor and Metro agree as follows:

1. Contract Documents

The Contract Documents consist of this Construction Agreement, the Advertisement for Bids, the Invitation to Bid, the Instructions to Bidders, the Bid Forms, including Bid Schedules, bid security and Disadvantaged Business Program forms, the Performance and the Labor and Materials Payment Bonds, the General Conditions, the Supplementary Conditions, the Specifications, the Drawings, the approved and updated Construction Schedule, and other information and data as listed in the Supplementary Conditions, and any modifications of any of the foregoing in the form of Addenda, Clarifications, or Change Orders in accordance with the terms of the Contract. Where applicable, reference to this Construction Agreement herein shall be deemed to refer to all of the Contract Documents.

These documents form the Contract and are, by this reference, expressly incorporated herein. All are as fully a part of the Contract as if attached to this Construction Agreement and repeated fully herein. No amendment made to this Contract nor Change Order issued shall be construed to release either party from any obligation contained in the Contract Documents except as specifically provided in any such amendment or Change Order.

2. Scope of Work

Contractor agrees to provide all labor, tools, equipment, machinery, supervision, transportation, permits and every other item and service necessary to perform the Work described in the Contract Documents. Contractor agrees to fully comply with each and every term, condition and provision of the Contract Documents.

3. Contract Amount

As consideration for Contractor's performance hereunder, Metro agrees to pay Contractor the Contract Amount as adjusted by

approved Change Orders issued pursuant to the Contract Documents and subject to the availability of monies in the Construction Fund. Contractor agrees to accept the Contract Amount as full payment for Contractor's performance of the above-described Work.

The Contract Amount is _____ and _____/100TH
DOLLARS (\$_____).

Metro shall make payments to Contractor in the manner and at the times provided in the Contract Documents.

4. Additional or Deleted Work

Contractor shall, when so instructed by Metro under the procedures of the Contract Documents, perform additional Work or delete Work in accordance with the Contract Documents. When applicable, the Unit Prices included in the Contractor's Bid shall determine the value of additional or deleted work. When the listed Unit Prices are not applicable, the increase or decrease in the Contract Amount shall be determined pursuant to the applicable provisions of the Contract Documents.

5. Time of Completion; Liquidated Damages

Time is of the essence of this Construction Agreement. Contractor shall bring the work to substantial completion within the Contract Time as set forth in of the Supplementary Conditions of the Contract Documents. The Contract Time shall commence upon issuance of the Notice to Proceed. By executing this Construction Agreement, Contractor confirms and accepts that the Contract Time is a reasonable period for performance of all of the Work.

Should the Contractor fail to substantially complete the Work, as determined by Metro in accordance with the Contract Documents, within the Contract Time, Contractor shall be liable for liquidated damages to Metro as described in the Contract Documents.

6. Bonds

Contractor submits herewith a Performance Bond and a separate Labor and Materials Payment Bond, both in a form acceptable to Metro and otherwise in accordance with the Contract Documents and each in the Contract Amount to ensure full compliance, execution and performance of this Contract by Contractor and payment by Contractor of labor and material Suppliers as more fully described in the Contract Documents. The Performance Bond shall stay in force for a period of one (1) year after written acceptance of the Work by Metro as a guarantee of repair or

replacement of any item(s) of Work found to be defective by reason of faulty workmanship or defective materials. The Labor and Materials Payment Bond shall remain in force for the time required for actions against the bond to be filed in accordance with ORS 279.536.

7. Laws of Oregon Apply

The law of Oregon shall govern the interpretation and construction of this Construction Agreement and all of the Contract Documents.

8. Entire Agreement

THIS CONSTRUCTION AGREEMENT SIGNED BY BOTH PARTIES AND SO INITIALED BY BOTH PARTIES IN THE MARGIN OPPOSITE THIS PARAGRAPH CONSTITUTES A FINAL WRITTEN EXPRESSION OF ALL OF THE TERMS OF THIS CONSTRUCTION AGREEMENT AND IS A COMPLETE AND EXCLUSIVE STATEMENT OF THOSE TERMS. ANY AND ALL REPRESENTATIONS, PROMISES, WARRANTIES, OR STATEMENTS BY CONTRACTOR OR CONTRACTOR'S AGENTS THAT DIFFER IN ANY WAY FROM THE TERMS OF THIS WRITTEN AGREEMENT SHALL BE GIVEN NO FORCE AND EFFECT. THIS CONTRACT SHALL BE CHANGED, AMENDED, OR MODIFIED ONLY BY WRITTEN INSTRUMENT SIGNED BY BOTH METRO AND CONTRACTOR. THIS CONTRACT SHALL NOT BE MODIFIED OR ALTERED BY ANY COURSE OF PERFORMANCE BY EITHER PARTY.

Contractor:

Metropolitan Service District:

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

CONVENTION, ZOO & VISITOR FACILITIES
COMMITTEE REPORT

Agenda Item No. 6.3

Meeting Date May 25, 1989

RESOLUTION NO. 89-1097, FOR THE PURPOSE OF APPROVING A REQUEST FOR BID DOCUMENT FOR CONSTRUCTION OF THE AFRICAN RAINFOREST EXHIBIT AT THE METRO WASHINGTON PARK ZOO

Date: May 16, 1989

Presented by: Councilor DeJardin

COMMITTEE RECOMMENDATION: At the May 16, 1989 Convention, Zoo & Visitor Facilities Committee meeting, members present -- Councilors Buchanan, Van Bergen and myself -- voted unanimously to recommend Council adoption of Resolution No. 89-1097. Councilors Knowles and Kelley were absent.

COMMITTEE DISCUSSION/ISSUES: Zoo Director Sherry Sheng and Zoo Assistant Director Kay Rich presented the resolution and staff report and handed out an updated bid package for Committee review (attached). Mr. Rich summarized the construction project costs at just over \$3 million and noted specific cost estimates had not been included in the staff report to prevent influencing potential bids. He noted the most recent design estimates (received this morning by Zoo management) were slightly over the targeted construction budget and may require fine-tuning of the bid documents.

Staff reviewed the alternates to the project, noting incorporating any of the options would depend on the main project bids and any remaining budget allowance. The alternates are: 1) construction of an employee parking lot, approximately \$173,000; 2) use of a wire mesh roof system for the Spoonbill/Ibis aviary, approximately \$11,000; 3) addition of a fog system along parts of the exhibit path, approximately \$29,000; and 4) providing for a "forest litter" texture to the concrete path, approximately \$11,500. It was noted exhibit enhancements would take priority over the employee parking lot.

Metro Construction Manager Neil Saling spoke to the RFB/RFP and contract approval process referenced in the May 15 Council staff memo to the Committee. Metro Administration does not agree with Council staff's interpretation of the process and contends that legally, no contract can extend beyond a single fiscal year, i.e. there are no "multi-year" contracts. Council staff noted the interpretation was based on correspondence with Metro General Counsel. Staff will request an opinion from General Counsel to clarify formally the new Metro Code contracting procedures.

jpm\5-16-89
a:\res1097.cr



METRO

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

Memorandum

Date: May 15, 1989

To: Convention, Zoo & Visitor Facilities Committee

From: Jessica ^{gpm} P. Marlitt, Council Analyst

Regarding: RESOLUTION NO. 89-1097, FOR THE PURPOSE OF APPROVING A REQUEST FOR BID DOCUMENT FOR CONSTRUCTION OF THE AFRICAN RAINFOREST EXHIBIT AT THE METRO WASHINGTON PARK ZOO

At the May 16, 1989 Convention, Zoo & Visitor Facilities Committee meeting, the Committee will consider Resolution No. 89-1097. This resolution authorizes the release for response of a request for bid (RFB) document for construction of the Zoo's African Rainforest exhibit. Upon Committee review and recommendation, the Council is scheduled tentatively to consider Resolution No. 89-1097 at its meeting May 25, 1989.

RFB/RFP REVIEW & APPROVAL PROCESS

Committee review of the African Rainforest construction RFB results from the Council's new contracting procedures adopted March 23, 1989. Under Ordinance No. 89-271, the Council is required to approve any contract which extends beyond the current fiscal year [Section 2.04.033 (a)(1)] and, for each of these contracts, the Council must also approve the RFB/RFP prior to release of the documents for vendor response. Ordinance No. 89-271 does not set a time limit for Committee and Council approval of these RFB/RFP documents and their subsequent contracts. For the Africa Rainforest RFB, Zoo staff hope to release the bid documents by June 5, 1989, with proposals due back to the Zoo by June 30, 1989. Kay Rich, Zoo Assistant Director, will update the Committee on this targeted timeline at the May 16 meeting.

AFRICAN RAINFOREST EXHIBIT RFB

The Committee's May 16 Agenda packet does not include a full description of the actual construction project, cost estimates or construction alternates. Zoo staff will provide a project summary and list of construction alternates at the meeting, including final design specifications negotiated with the project architect. Staff will also provide a verbal summary of the architect's cost estimates. As noted in the staff report, construction costs are estimated to exceed three million dollars.

In reviewing the African Rainforest bid documents, Council staff noted a few technical errors which Zoo staff confirmed and will correct in the final documents (i.e., on the Invitation to Bid, page 1, paragraph 3, time for construction to be substantially completed is 120 days -- this was the time for the Africafe basement completion; the correct time for the Rainforest exhibit will be much longer).

Because the final project summary documents were not available, staff could not evaluate the construction specifications against the original design criteria and the general vision of the exhibit outlined in the Zoo Master Plan. In reviewing the construction project summary to be distributed at the meeting, the Committee might consider the following general questions and comments:

- 1) What design options were explored by the architect and what criteria were most important in determining the final design?
- 2) If a list of construction options/alternates is included with the bid documents, how were the alternates determined? What will be the short- and long-range impacts of including/excluding different alternates? How will the alternates be weighed in determining the low bid, if at all?
- 3) The African Rainforest design contract provided for updates to the Council: . . . "7. In all phases Architect shall provide briefings for Metro Council and Friends of the Zoo and other citizen groups as appropriate." (Scope of Architect's Services, page 2). This briefing criteria should be included and utilized -- i.e. briefings scheduled at standard completion intervals -- in all major design and construction contracts to ensure appropriate Council oversight. Council staff needs to coordinate with the appropriate Metro department staff to ensure briefings are scheduled before Committees and the Council as necessary. Particular with design contracts, the Council should be updated on any changes to design concepts which were the original basis for Council project approval.

jpm
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5-16-89

STAFF REPORT

Agenda Item No. 6.3

Meeting Date: May 25, 1989

CONSIDERATION OF RESOLUTION NO. 89-1097 AUTHORIZING A REQUEST FOR BID DOCUMENT FOR CONSTRUCTION OF AFRICAN RAINFOREST EXHIBIT AT METRO WASHINGTON PARK ZOO

Date: May 3, 1989

Presented by: A. McKay Rich

BACKGROUND AND FACTUAL ANALYSIS

The Council approved a contract with Guthrie Slusarenko Associates last spring to design the third phase of the African Exhibit. That design, which was reviewed by the previous Zoo Committee, provides for the construction of an African rainforest exhibit which completes the exhibitry planned for the lower south side of the Zoo.

Animals to be exhibited will include: bats, monkeys, otters, pygmy hippos, spoonbills, Ibis, crocodiles, Nile monitors and cusimanse. There will be lush landscaping and other unique features.

It is anticipated that the project will be advertised for bid on June 5, 1989 with bids due on June 30. Timing will allow us to take advantage of good construction weather. Construction costs are estimated to exceed three million dollars.

Staff requests approval to proceed with the request for bids.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 1097.

SR:af
5/3/89



METRO

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

Memorandum

Meeting Date: June 6, 1989
Agenda Item: 2

DATE: June 5, 1989

TO: Convention, Zoo and Visitors Facility Committee
Finance Committee

FROM: Donald E. Carlson, ^{*DE*} Council Administrator

RE: RESOLUTION NO. 89-1097, APPROVAL OF THE RFB DOCUMENT FOR
CONSTRUCTION OF THE AFRICA RAINFOREST EXHIBIT

Resolution No. 89-1097 was referred by the Council on May 25, 1989, to the joint meeting of the Convention, Zoo and Visitors Facility (CZVF) Committee and the Finance Committee. The purpose of the referral is to review the inclusion of language in the General Conditions section of the contract documents (Article 9) which ostensibly makes this contract such that Council approval is not required. This opinion was given verbally by General Counsel Cooper to Councilor Knowles and Council staff on May 25, 1989, just prior to consideration of this matter at the Council meeting agenda.

Background Information

As you know, the Council substantially revised the Metro Contracting procedures by adopting Ordinance No. 89-271. Section 2.04.033 (Council Approval of Contracts) now provides in part that:

"a. Notwithstanding any other provisions of Chapter 2.04 the following contracts shall be approved by the Council prior to execution:

(1) Any contract which commits the District to the expenditure of revenues or appropriations not otherwise provided for in the current fiscal year budget at the time the contract is executed except those contracts or classes of contracts that the Council shall have by ordinance exempted from the requirement;..."

Also, the Code, in Section 2.04.033, requires Council approval of bid documents for such contracts as follows:

"(b) All contracts which require Council approval pursuant to subsection (a)(1) above and which are subject to competitive bidding or Request for Proposals procedures shall require Council approval of the Request for Bids or Request for Proposals prior to release of bidding or proposal documents to vendors."

Since the enactment of Ordinance No. 89-271, Council staff and Administration staff have been at odds about the interpretation of the above-quoted sections. The various memos between staffs are attached as Exhibit A. The main issue revolves around Council approval of "multi-year" contracts (contracts in which appropriations will be required in more than one fiscal year). The Code requires Council approval of multi-year contracts. It should be noted that Council staff memo dated May 4, 1989 (Carlson to Phelps), was reviewed, modified and approved by General Counsel Cooper prior to release. The Administration appears to take the position that there is no such thing as a "multi-year" contract. Neil Saling indicated such opinion at the May 16, 1989, CZVF Committee meeting and inclusion of Article 9 in the General Conditions for the Africa Rainforest Construction contract is purportedly an attempt to suggest that this is a "single year" contract or only a one year commitment to the project.

Article 9 of the General Conditions for the Africa Rainforest Construction contract is attached as Exhibit B. It is described under the heading "Continuing Contract." It appears to limit Metro's commitment to the project to \$2,950,000 (the amount "reserved"). It indicates that Metro may "at any time reserve additional funds" for payment under the contract. Presumably this "reservation" would be as a result of Council's adoption of the FY 1990-91 Budget and Schedule of Appropriations. Regardless of the use of terminology, the Council will have to appropriate money for this project in a further fiscal year because the schedule of the job provides that goods and services (work on the project) will be received in the future fiscal year. Council staff met with Gil Gutjahr of the TSCC to discuss this matter as it relates to Council's authority to adopt the budget and appropriate money for expenditure. Mr. Gutjahr pointed out that all appropriations cease at the end of each fiscal year. For any project (contract or in-house work) which spans the fiscal year, a new appropriation of funds must be made by the Council before money can be spent on the project. This is true whether or not the Council appropriated the full amount or a partial amount for the project in the initial fiscal year. If money is to be spent in a fiscal year, it must be appropriated by the Council. In modified accrual accounting, the expenditure is realized when the liability is incurred, if measurable. A liability is incurred when goods or services are received. If work is performed in an accounting period (fiscal year) or a good or service received, then the expenditure accrues to that accounting period--not to a prior or future accounting period.

Recommendation

The Council staff recommends that Article 9 be deleted from the General Conditions for the Africa Rainforest construction contract. It is our understanding that this Article is a new concept to construction contracts at the Zoo. Such a condition has not been included in any

RESOLUTION NO. 89-1097

June 5, 1989

Page 3

prior construction contract General Conditions. Such large prior construction contracts in the past were approved by the Council (commitment for specific dollar amounts to cover cost of construction) and then appropriations approved in more than one fiscal year depending on the size and schedule of the project.

It appears that such a condition is not necessary because under Article 16 - Termination or Supervision of Work, the District may terminate the contract when it is in the public interest. If the Council decides it is in the public interest not to appropriate funds for the project in a future fiscal year, the termination clause provides a mechanism to stop the project. It appears unnecessary to "spell this out" with the new language.

One other issue needs to be discussed by the Committees regarding the procedures for determining the lowest bidder. The bid documents include the base bid plus 11 alternates. The question is: What constitutes the low bid--the base only or base bid plus alternates in any combination thereof?

Zoo staff suggests a procedure followed in the Africa Phase I and II project which requires Zoo staff to declare after receipt of the bids but prior to opening of bids the priority ranking of the alternates. Such alternates would be added to the base bid up to the amount of the estimated project budget. The low bid would be based on the total of the base bid plus the alternate bids (predetermined) within the estimated project budget.

Council staff recommends that such a procedure be used because it has worked successfully in the past and it avoids the potential of manipulating the selection of alternates to determine the low bidder.

DEC:pa

A:\MEMCZVF.156



METRO

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

Memorandum

Date: May 12, 1989

To: Don Carlson, Council Administrator

From: Ray Phelps, ^{Ray} Director of Finance and Administration

Regarding: CHAPTER 2.04, METRO CONTRACT CODE

I have reviewed your memo dated May 10, 1989, pertaining to Neil Saling's instructions to department heads for the filing and processing of contracts issued by the Executive Officer. The instructions were issued at the direction of the Executive Officer as the administrative policies she intends to be followed by department heads. The Executive Officer feels that these instructions will assure that she lawfully complies with the revisions to the Contract Code recently enacted by the Council.

You state in your memo that Mr. Saling's instructions fall "short of fully informing the department heads of the contracting process adapted by the Council in Ordinance No. 88-271." I note that your memo of May 10th containing this statement was copied by you to department heads.

Be advised that the memo issued by Mr. Saling to department heads does not fall short, but correctly states the administrative policies of the Executive Officer. There will be no change to the instructions of the Executive Officer regarding the filing and processing of contracts.

With respect to your distribution of the May 10th memo to department heads, this action is regrettable and, in my opinion, an unwarranted intrusion by you in the administrative policies of the Executive Officer. As I have suggested to you in previous conversations, please contact the Executive Officer, Dick Engstrom or me when you have a question or wish to seek clarification regarding an established administrative policy of the Executive Officer. In this way, needless confusion and expenses can be avoided by the administrative staff of Metro.

cc: Rena Cusma
Dick Engstrom
Dan Cooper
Neil Saling
Department Heads



METRO

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

Memorandum

Date: May 10, 1989

To: Ray Phelps, Director of Finance and Administration

From: Donald E. Carlson, ^{DEC} Council Administrator

Regarding: REQUIREMENTS FOR FILING RFB's/RFP's FOR
PROPOSED CONTRACTS WITH THE COUNCIL

This memo is in response to the memo dated May 8, 1989 from Neil Saling to the department heads titled "Filing of RFB/RFP documentation with the Council." (Attachment A) While I generally agree with the described process for filing an RFB or RFP with the Council, the memo falls short of fully informing the department heads of the contracting process adopted by the Council in Ordinance No. 88-271. The major omission in Neil Saling's memo is in regard to the process to be followed in multi-year contracts (contracts for which appropriations will be required in more than one fiscal year). As pointed out in my memo to you of May 4, 1989 as Attachment B, the 35-day Council review period is not applicable for multi-year contracts which have been designated for review by the Council. An RFB or RFP for a designated multi-year contract must be approved by the Council prior to release for response by vendors or proposers.

Other omissions include: 1) the process for "undesigned contracts" (contracts which the Council chooses not to review) which require filing the procurement document and explanatory material with the Council Clerk at the time the document is released for response; and 2) the process for "unanticipated contracts" (contracts not on the original list submitted by the Executive Officer) which require Council review of an RFB or RFP if they are over certain dollar thresholds.

I have attached a copy of my May 4, 1989 memo explaining the code requirements for filing RFB's/RFP's with the Council. I think it is important that all of the requirements be understood so we can get this effort off to a good start.

DEC.vm

cc: Department Heads



METRO

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

Memorandum

ATTACHMENT A

Date: May 8, 1989

To: Department Heads

From: Neil Saling, Construction Projects Manager

Regarding: Filing of RFB/RFP Documentation with the Council

Ordinance No. 88-271 adopted on March 23, 1989, establishes specific requirements for Council review of contracts. The following summarizes your responsibilities in filing contracts for Council review.

General

During the budget preparation period, the Executive Officer will submit to the Council a list of new as well as continuing contracts. The Council will designate those new contracts which it wishes to review during the coming fiscal year. The RFB/RFP for those contracts so designated must be filed with the Clerk of the Council before the documentation is released to prospective bidders/proposers. Should the Council schedule no hearing on the contract within 14 days, the RFB/RFP may be released to bidders/proposers. If the Council chooses to schedule a hearing on the contract, that hearing must take place before the 35th day after filing of the RFB/RFP. The contract is released for advertisement on the 35th day unless the Council has enacted an ordinance removing contract funding. Bottom line: You must file designated contract RFB/RFP documentation at least 35 days before you intend to advertise.

Documentation

The basic packet of information to be submitted on designated contracts should include the proposed advertisements, the instructions to bidders/proposers, the bid/proposal forms and the proposed contract. Do not submit the detailed specifications or plans in the initial submission. The Council may ask for these latter documents should it choose to hold a hearing on the

contract. The packet will be forwarded under a cover form prepared by the Contracts Division of the Finance and Administration Department. For a contract scheduled for hearing, a Staff Report will be requested by the Council staff. This follow-on Staff Report will contain a statement of the purpose of the proposed contract, a summary of the major terms and conditions of the proposed contract, an estimate of the cost of the proposed contract, a summary of the scope of work proposed and a description of the selection process to include the selection panel and evaluation criteria as appropriate.

Filing

Departments will file their proposed contracts with the Metro Contracts Specialist, not directly with the Clerk of the Council. The Contracts Specialist is the single point of contact with the Clerk of the Council and will monitor contract progress and Council requests for information. Any questions on contract status should be directed to the Contracts Specialist.

Interim Measures

For contracts proposed for advertisement prior to July 1, 1989, modified filing procedures have been adopted. All RFBs for public contracts with an estimated value exceeding \$15,000 and all RFPs for negotiated contracts with an estimated value exceeding \$10,000 will be reviewed by the Council. Documentation and filing procedures for these contracts will be as described above.

A key element of these new procedures is the focal point in the Contracts Division for contract filing and tracking. Please contact Amha Hazen for any of your contracting questions.

cc: Ray Phelps
Amha Hazen
Dan Cooper



METRO

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

Memorandum

ATTACHMENT B

Date: May 4, 1989

To: Ray Phelps, Director of Finance and Administration

From: Donald E. Carlson, ^{DE} Council Administrator

Regarding: REQUIREMENTS FOR FILING RFB'S/RFP'S FOR PROPOSED CONTRACTS WITH THE COUNCIL

Ordinance No. 88-271 adopted by the Council on March 23, 1989, changed the procedures for processing contracts to require, under certain circumstances, Council committee review and comment and/or Council approval of RFB's and RFP's. The purpose of this memo is to clarify the filing requirements for RFB's/RFP's with the Council.

The new procedures require the Executive Officer annually to submit to the Council, during the budget process, a list of proposed contracts to be entered into during the ensuing fiscal year. The Council will designate from this list those contracts it wishes to review during the next fiscal year. The contracts so designated will fall into one of two classes: 1) single-year contracts (contracts for which appropriations will be made within a single fiscal year); and 2) multi-year contracts (contracts for which appropriations will be required in more than one fiscal year). Following are the procedural requirements for filing RFB's/RFPs with the Council:

DESIGNATED SINGLE YEAR CONTRACTS

1. Section 2.04.032(d) of the Code requires RFB's/RFP's for designated single year contracts to be filed with the Council Clerk. Once filed, the matter shall be referred to a committee of the Council and may be scheduled for a hearing within 14 days of the filing. If no hearing is scheduled within 14 days, the RFB/RFP may be released to vendors for response. If the matter is scheduled for a committee hearing, the committee has 35 days from the date of filing to review and comment on the RFB/RFP. The RFB/RFP may be released for response on the 35th day after filing.
2. For an RFB/RFP to be considered properly filed with the Council Clerk, it must include the RFB or RFP proposed to be released for response and the completed cover form, required by the Department of Finance and Administration, which indicates the document has been reviewed and approved by the Contract Office. If the RFB/RFP is scheduled for consideration before the appropriate committee, the initiating

department shall be required to submit a staff report to the Council Clerk in a timely manner. The staff report should be in the standard format and contain a statement of the purpose of the proposed contract, a summary of the major terms and conditions of the proposed contract, an estimate of the cost of the proposed contract, a summary of the scope of work proposed and a description of the selection process including the selection panel and evaluation criteria.

DESIGNATED MULTI-YEAR CONTRACTS

1. Section 2.04.033(b) of the Code requires RFB's/RFP's for designated multi-year contracts to be approved by the Council prior to release for response by vendors. The time requirements described above for committee consideration of single-year contract proposal documents are not applicable for multi-year contracts. The Code does not specify any time constraints on Council review and approval of designated RFB's/RFP's for multi-year contracts. Departments should take this into consideration in planning a procurement process for a multi-year contract.
2. For a multi-year RFB/RFP to be properly filed with the Council Clerk, it must contain 1) the completed cover form required by the Finance and Administration Department; and 2) a resolution and staff report which must be approved by the Executive Management Department. The resolution should be in the standard format for Council approval (a sample resolution is included as Attachment 1). The staff report should be in the standard format and contain a statement of the purpose of the proposed contract, a summary of the major terms and conditions of the proposed contract, an estimate of the cost of the proposed contract, a summary of the scope of work proposed and a description of the selection process including the selection panel and evaluation criteria.

CONTRACTS NOT DESIGNATED FOR COUNCIL REVIEW

The Code provides RFB/RFP filing requirements for proposed contracts which are on the Executive Officer's list but not designated for review by the Council. Section 2.04.032(e) states:

"Except as provided in subsection (f), all other contracts not so designated by the Council shall be subject to the requirement that copies of bid documents shall be filed with the Clerk of the Council at the time they are released for response by potential bidders. The Executive Officer shall furnish the Council with information at the time bid documents are released stating the purpose and nature of the proposed contract, the appropriation to be charged with the contract, and a statement of the contract's impact on the District in future fiscal years."

Filing requirements for undesignated contracts include 1) a copy of the RFB/RFP to be released for response; 2) the completed cover form

May 4, 1989

Page 3

required by the Finance and Administration Department; and, 3) to the extent not included on the cover form, a brief report which meets the information requirements quoted above.

UNANTICIPATED CONTRACTS

The Code provides requirements for certain contracts which are not on the Executive Officer's proposed list of contracts. Section 2.04.032(f) provides in part that:

"Any public contract \$15,000 or more or personal service contract \$10,000 or more not on the list of proposed contracts submitted by the Executive Officer . . . shall be subject to the filing and Council or committee review requirements in subsection (d) or if appropriate, the provisions of Section 2.04.033."

Accordingly, the RFB's/RFP's for unanticipated contracts should be processed as described above for either a single-year contract or a multi-year contract.

INTERIM PROCEDURES

During the period between now and the start of the next fiscal year, all contracts shall be considered and processed as "Unanticipated Contracts," since there is no official list of contracts from which the Council will make its designations.

If you have any questions, please do not hesitate to contact the Council office.

CC: Metro Council
DEC:gpwb
contpro.mem
attachments

SAMPLE RESOLUTION FOR
COUNCIL APPROVAL OF RFB/RFP FOR MULTI-YEAR CONTRACTS

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF APPROVING A) RESOLUTION NO. 89-
REQUEST FOR PROPOSAL DOCUMENT FOR ZOO)
ADVERTISING SERVICES) Introduced by the
Executive Officer

WHEREAS, Section 2.04.033(b) of the Metro Code requires
the Council must approve the proposal document for certain
contracts; and

WHEREAS, The contract for Zoo Advertising services
requires Council approval, and the proposal document has been filed
with the Council Clerk; now, therefore, .

BE IT RESOLVED,

That the Council of the Metropolitan Service District
approves the Request for Proposal for Zoo Advertising Services
attached as Exhibit A hereto and authorizes that it be released for
response by vendors or proposers.

ADOPTED by the Council of the Metropolitan Service
District this ____ day of _____, 1989.

Mike Ragsdale, Presiding Officer

DEC:gpwb
contpro.mem
4/10/892

ARTICLE 9.

- CONTINUING CONTRACT

9.01 General

This is a continuing contract in that payment of some portion of the Contract Price is dependent upon reservation of funds from future appropriations. Funds are not available at the inception of this contract to cover the entire contract price. The responsibility of Metro is limited by this clause notwithstanding any contrary provision of the "Payment to Contractor" clause or any other clause of this contract.

9.02 Funds Reserved

The term "Reservation" means monies that have been set aside and made available for payments under this contract. The sum of \$2,950,000 has been reserved for this contract and is available for payments to the Contractor during the current fiscal year. Metro may at any time reserve additional funds for payments under the contract if there are funds available for such purpose. Metro will promptly notify the Contractor of any additional funds reserved for the contract. Failure to make payments in excess of the amount currently reserved, or that may be reserved from time to time, shall not be considered a breach of this contract, and shall not entitle the contractor to a price adjustment under the terms of this contract except as specifically provided in paragraph 13.03 below.

9.03 Exhaustion of Funds

9.03.01 No payment to the Contractor will be made after exhaustion of funds except to the extent that additional funds are reserved for the contract. If and when sufficient additional funds are reserved, the Contractor shall be entitled to simple interest on any payment that Metro determines was actually earned under the terms of the contract and would have been made except for exhaustion of funds. Interest shall be computed from the time such payment would otherwise have been made until actually or constructively made, and shall be at the rate established by the Secretary of the Treasury pursuant to Public law 92-441, 85 Stat 97, for the Renegotiation Board, as in effect on the first day of the delay in such payment.

9.03.02 If earnings will be such that funds reserved for the contract will be exhausted before the end of any fiscal year, the Contractor shall give written notice to Metro of the

estimated date of exhaustion and the amount of additional funds which will be needed to meet payments due or to become due under the contract during that fiscal year. This notice shall be given not less than 45 nor more than 60 days prior to the estimated date of exhaustion.

9.03.03 If, upon the expiration of sixty (60) days after the beginning of the fiscal year following an exhaustion of funds, Metro has failed to reserve sufficient additional funds to cover payments otherwise due, the contractor, by written notice delivered to the Executive Officer at any time before such additional funds are reserved, may elect to treat his right to proceed with the work as having been terminated. To the extent that additional funds to make payment therefore are allocated to this contract, it may be treated as a termination for the convenience of Metro.

9.03.04 Any suspension, delay, or interruption of work arising from exhaustion or anticipated exhaustion of funds shall not constitute a breach of this contract and shall not entitle the Contractor to any price adjustment under a "Suspension of Work" or similar clause or in any other manner under this contract. An equitable adjustment in performance time shall be made for any increase in the time required for performance of any part of the work arising from exhaustion of funds or the reasonable anticipation of exhaustion of funds.

9.04 Excess Funds

If at any time it becomes apparent that the funds reserved for any fiscal year are in excess of the funds required to meet all payments due or to become due the Contractor because of work performed and to be performed under the contract during the fiscal year, Metro reserves the right, after notice to the Contractor, to reduce said reservation by the amount of such excess.

ARTICLE 10.

PAYMENTS AND COMPLETION

10.01 Scope of Payment

Payment to the Contractor of the Contract Amount for performing all Work required under the Contract, as adjusted for any Change Orders approved as hereinbefore specified, shall be full compensation for furnishing all labor, materials, equipment and tools necessary to the Work, and for performing and completing, in accordance with these Contract Documents, all Work required under the Contract, and for all expenses incurred by the Contractor for any purpose in connection with the performance and completion of said Work.

CONVENTION, ZOO & VISITOR FACILITIES
COMMITTEE REPORT

Agenda Item No. 6.3

Meeting Date May 25, 1989

RESOLUTION NO. 89-1097, FOR THE PURPOSE OF APPROVING A REQUEST FOR BID DOCUMENT FOR CONSTRUCTION OF THE AFRICAN RAINFOREST EXHIBIT AT THE METRO WASHINGTON PARK ZOO

Date: May 16, 1989

Presented by: Councilor DeJardin

COMMITTEE RECOMMENDATION: At the May 16, 1989 Convention, Zoo & Visitor Facilities Committee meeting, members present -- Councilors Buchanan, Van Bergen and myself -- voted unanimously to recommend Council adoption of Resolution No. 89-1097. Councilors Knowles and Kelley were absent.

COMMITTEE DISCUSSION/ISSUES: Zoo Director Sherry Sheng and Zoo Assistant Director Kay Rich presented the resolution and staff report and handed out an updated bid package for Committee review (attached). Mr. Rich summarized the construction project costs at just over \$3 million and noted specific cost estimates had not been included in the staff report to prevent influencing potential bids. He noted the most recent design estimates (received this morning by Zoo management) were slightly over the targeted construction budget and may require fine-tuning of the bid documents.

Staff reviewed the alternates to the project, noting incorporating any of the options would depend on the main project bids and any remaining budget allowance. The alternates are: 1) construction of an employee parking lot, approximately \$173,000; 2) use of a wire mesh roof system for the Spoonbill/Ibis aviary, approximately \$11,000; 3) addition of a fog system along parts of the exhibit path, approximately \$29,000; and 4) providing for a "forest litter" texture to the concrete path, approximately \$11,500. It was noted exhibit enhancements would take priority over the employee parking lot.

Metro Construction Manager Neil Saling spoke to the RFB/RFP and contract approval process referenced in the May 15 Council staff memo to the Committee. Metro Administration does not agree with Council staff's interpretation of the process and contends that legally, no contract can extend beyond a single fiscal year, i.e. there are no "multi-year" contracts. Council staff noted the interpretation was based on correspondence with Metro General Counsel. Staff will request an opinion from General Counsel to clarify formally the new Metro Code contracting procedures.

jpm\5-16-89
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METRO

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

Memorandum

Date: May 15, 1989

To: Convention, Zoo & Visitor Facilities Committee

From: Jessica ^{gpm} P. Marlitt, Council Analyst

Regarding: RESOLUTION NO. 89-1097, FOR THE PURPOSE OF APPROVING A REQUEST FOR BID DOCUMENT FOR CONSTRUCTION OF THE AFRICAN RAINFOREST EXHIBIT AT THE METRO WASHINGTON PARK ZOO

At the May 16, 1989 Convention, Zoo & Visitor Facilities Committee meeting, the Committee will consider Resolution No. 89-1097. This resolution authorizes the release for response of a request for bid (RFB) document for construction of the Zoo's African Rainforest exhibit. Upon Committee review and recommendation, the Council is scheduled tentatively to consider Resolution No. 89-1097 at its meeting May 25, 1989.

RFB/RFP REVIEW & APPROVAL PROCESS

Committee review of the African Rainforest construction RFB results from the Council's new contracting procedures adopted March 23, 1989. Under Ordinance No. 89-271, the Council is required to approve any contract which extends beyond the current fiscal year [Section 2.04.033 (a)(1)] and, for each of these contracts, the Council must also approve the RFB/RFP prior to release of the documents for vendor response. Ordinance No. 89-271 does not set a time limit for Committee and Council approval of these RFB/RFP documents and their subsequent contracts. For the Africa Rainforest RFB, Zoo staff hope to release the bid documents by June 5, 1989, with proposals due back to the Zoo by June 30, 1989. Kay Rich, Zoo Assistant Director, will update the Committee on this targeted timeline at the May 16 meeting.

AFRICAN RAINFOREST EXHIBIT RFB

The Committee's May 16 Agenda packet does not include a full description of the actual construction project, cost estimates or construction alternates. Zoo staff will provide a project summary and list of construction alternates at the meeting, including final design specifications negotiated with the project architect. Staff will also provide a verbal summary of the architect's cost estimates. As noted in the staff report, construction costs are estimated to exceed three million dollars.

In reviewing the African Rainforest bid documents, Council staff noted a few technical errors which Zoo staff confirmed and will correct in the final documents (i.e., on the Invitation to Bid, page 1, paragraph 3, time for construction to be substantially completed is 120 days -- this was the time for the Africafe basement completion; the correct time for the Rainforest exhibit will be much longer).

Because the final project summary documents were not available, staff could not evaluate the construction specifications against the original design criteria and the general vision of the exhibit outlined in the Zoo Master Plan. In reviewing the construction project summary to be distributed at the meeting, the Committee might consider the following general questions and comments:

- 1) What design options were explored by the architect and what criteria were most important in determining the final design?
- 2) If a list of construction options/alternates is included with the bid documents, how were the alternates determined? What will be the short- and long-range impacts of including/excluding different alternates? How will the alternates be weighed in determining the low bid, if at all?
- 3) The African Rainforest design contract provided for updates to the Council: . . . "7. In all phases Architect shall provide briefings for Metro Council and Friends of the Zoo and other citizen groups as appropriate." (Scope of Architect's Services, page 2). This briefing criteria should be included and utilized -- i.e. briefings scheduled at standard completion intervals -- in all major design and construction contracts to ensure appropriate Council oversight. Council staff needs to coordinate with the appropriate Metro department staff to ensure briefings are scheduled before Committees and the Council as necessary. Particularly with design contracts, the Council should be updated on any changes to design concepts which were the original basis for Council project approval.

jpm

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5-16-89

STAFF REPORT

Agenda Item No. 6.3

Meeting Date: May 25, 1989

CONSIDERATION OF RESOLUTION NO. 89-1097 AUTHORIZING A REQUEST FOR BID DOCUMENT FOR CONSTRUCTION OF AFRICAN RAINFOREST EXHIBIT AT METRO WASHINGTON PARK ZOO

Date: May 3, 1989

Presented by: A. McKay Rich

BACKGROUND AND FACTUAL ANALYSIS

The Council approved a contract with Guthrie Slusarenko Associates last spring to design the third phase of the African Exhibit. That design, which was reviewed by the previous Zoo Committee, provides for the construction of an African rainforest exhibit which completes the exhibitry planned for the lower south side of the Zoo.

Animals to be exhibited will include: bats, monkeys, otters, pygmy hippos, spoonbills, Ibis, crocodiles, Nile monitors and cusimanse. There will be lush landscaping and other unique features.

It is anticipated that the project will be advertised for bid on June 5, 1989 with bids due on June 30. Timing will allow us to take advantage of good construction weather. Construction costs are estimated to exceed three million dollars.

Staff requests approval to proceed with the request for bids.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 1097.

SR:af
5/3/89

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF APPROVING) RESOLUTION NO. 89-1097
A REQUEST FOR BID DOCUMENT FOR)
CONSTRUCTION OF AFRICAN RAINFOREST) Introduced by the
EXHIBIT AT METRO WASHINGTON PARK ZOO) Executive Officer

WHEREAS, Section 2.04.033 (b) of the Metro Code requires that the Council must approve the proposal document for certain contracts; and

WHEREAS; The contract for constructing this exhibit requires Council approval, and the bid document has been filed with the Council Clerk; now therefore,

BE IT RESOLVED,

That the Council of the Metropolitan Service District approves the Request for Bids for the African Rainforest exhibit and authorizes that it be released for response by vendors or proposers.

ADOPTED by the Council of the Metropolitan Service District
this _____ day of _____, 1989.

NOT ADOPTED

Mike Ragsdale, Presiding Officer

See 89-1097A

AFRFB/RES
5/3/89

ADVERTISEMENT FOR BIDS
FOR THE
AFRICAN RAINFOREST

METRO WASHINGTON PARK ZOO

The Metro Service District (Metro) is soliciting bids for the African Rainforest Exhibit for the Metro Washington Park Zoo. Sealed bids must be delivered to the Metro Washington Park Zoo, 4001 SW Canyon Road, Portland, OR 97221, to the attention of A. M. Rich, Assistant Zoo Director, no later than 2:00 p.m. PDT, on Friday, June 30, 1989, at which time they will be publicly opened in the Meeting Center (enter through Gate G). Bid envelopes must be clearly marked as BID: AFRICAN RAINFOREST, METRO WASHINGTON PARK ZOO, ATTENTION: A. M. RICH.

Subcontracting goals on this Contract for participation of Disadvantaged and Women Owned Business Enterprises have been set at 10 percent and 3 percent respectively. Bidders must meet these goals or demonstrate good faith efforts to do so.

Bidding documents, including Drawings and Specifications depicting the Work, may be examined after Monday, June 5, 1989, at the offices of Guthrie, Slusarenko & Associates, 320 SW Sixth Avenue, Portland, Oregon 97204, Monday through Friday between the hours of 9:00 a.m. to 4:30 p.m. Documents will also be available at plan centers. Copies of the Bidding Documents can be obtained from the same office at the refundable cost of \$200.00 per set. Checks or money orders must be made payable to the Metropolitan Service District. If mailing of the material is desired, the prospective Bidder must provide a street address and a telephone number in addition to a Post Office box number, if any, and must include a non-refundable first class mail fee of \$20.00. Potential Bidders may contact Bob Porter, Metro Washington Park Zoo, at 226-1561 for additional information.

No bid will be received or considered by Metro unless the bid contains a statement by the Bidder that the provisions of ORS 279.350, regarding prevailing wage rates, are to be complied with.

Each bid must contain a statement as to whether the bidder is a resident bidder, as defined in ORS 279.029.

Bidders and Subcontractors may need to be licensed under ORS 468.883 (regarding licensing of contractors on projects involving asbestos abatement).

Metro may reject any bid not in compliance with all prescribed public bidding procedures and requirements and may reject for good cause any or all bids upon a finding of Metro that it is in the public interest to do so. A Pre-Bid Conference will be conducted Wednesday, June 14, 1989, at 10:00 a.m. PDT at the Metro Washington Park Zoo in the Meeting Center (enter through Gate G), Portland, Oregon.

INVITATION TO BID
FOR THE
AFRICAN RAINFOREST

METRO WASHINGTON PARK ZOO

Sealed bids for the African Rainforest Exhibit for the Metro Washington Park Zoo, located within the boundaries of the Metro Washington Park Zoo grounds, within the City of Portland, Oregon, will be received at the offices of the Metro Washington Park Zoo, 4001 SW Canyon, Portland, Oregon 97221, until 2:00 p.m. PDT, Friday, June 30, 1989, at which time they will be publicly opened and read.

The work contemplated consists of the construction of the African Rainforest Exhibit at Metro Washington Park Zoo, 4001 SW Canyon Road, Portland, Oregon 97221.

Metro will issue a Notice to Proceed on this Contract within ninety (90) days of the date of the Bid opening. The Contract shall be brought to substantial completion within four hundred and seventy (470) days of the date of issuance of the Notice to Proceed.

Bidding documents, including Drawings and Specifications depicting the Work, may be examined after Monday, June 5, 1989, at the offices of Guthrie, Slusarenko & Associates, 320 SW Sixth Avenue, Portland, Oregon 97204, Monday through Friday, from 9:00 a.m. to 4:30 p.m. Documents will also be available at plan centers. Copies of the Bidding Documents can be obtained from the same office at the refundable cost of \$200.00 per set. Checks or money orders must be made payable to the Metropolitan Service District. If mailing of the material is desired, the prospective Bidder must provide a street address and a telephone number in addition to a Post Office box number, if any, and must include a non-refundable first class mail fee of \$20.00

Each bid must be submitted on the prescribed form and accompanied by a certified or cashier's check, or a bid bond, payable to the Metropolitan Service District of Portland, Oregon, in an amount not less than 10 percent of the total Base Bid amount.

The successful Bidder will be required to furnish the necessary Performance Bond and Labor and Materials Payment Bond, as prescribed in the Bidding Documents.

As authorized in ORS Chapter 279, before a Contract will be awarded for the Work contemplated herein, Metro will conduct such investigation as is necessary to determine the Bidder's qualifications including the performance record and ability of the apparent low Bidder to perform the size and type of work specified under this Contract. Upon request, the apparent low Bidder shall

Section 00030 Page 1
Invitation to Bid

submit such information as deemed necessary by Metro to evaluate the Bidder's qualifications to do the work.

Metro has adopted a Disadvantaged Business Program for its contracting expenditures. Bidders are required to comply with Metro's Program, copies of which are included in the Bidding Documents. The specific requirements of the Program are detailed in the Bidding Documents. The goals for this Contract are that 10 percent of the Contract Amount be subcontracted to Disadvantaged Business Enterprises, and that 3 percent of the Contract Amount be subcontracted to Women-Owned Business Enterprises. Bidders must either meet these goals or demonstrate their good faith efforts as defined in the Program to meet the goals or their Bids will be deemed nonresponsive.

Metro reserves the right to reject all Bids or any Bid not conforming to the intent and purpose of the Contract Documents, to waive any informality or irregularity in any Bid or Bids, to reject any Bid not in compliance with all prescribed public bidding procedures and requirements, and to, for good cause, reject any or all Bids upon a finding by Metro that it is in the public interest to do so.

No Bid shall be received or considered by Metro unless the Bid contains a statement by the Bidder as a part of its Bid that the provisions of ORS 279.350, regarding prevailing wage rates, are to be complied with.

A Pre-Bid Conference for Bidders will be held on Pre-Bid Conference will be conducted Wednesday, June 14, 1989 at 10:00 a.m. PST at the Metro Washington Park Zoo Meeting Center, 4001 S.W. Canyon Road, Portland, Oregon. A portion of the Pre-Bid Conference will address subcontracting opportunities for Disadvantaged and Women-Owned Business Enterprises. Bidder's attendance at this portion of the Pre-Bid Conference is one of the actions required to demonstrate good faith efforts under Metro's Disadvantaged Business Program, a copy of which is included in the Appendix to these Bidding Documents.

INSTRUCTIONS TO BIDDERS
FOR THE
AFRICAN RAINFOREST
METRO WASHINGTON PARK ZOO

OUTLINE

1. DESCRIPTION OF WORK
2. DEFINITIONS
3. DOCUMENT INTERPRETATION (PRE-BID COMMUNICATIONS AND ADDENDA)
4. EXAMINATION OF CONTRACT DOCUMENTS AND SITE AND COMPLIANCE WITH LAWS
5. DISADVANTAGED BUSINESS PROGRAM
6. PREPARATION OF BIDS
7. SUBMISSION OF BIDS
8. MODIFICATION OR WITHDRAWAL OF BID
9. BID SECURITY
10. EXPERIENCE AND ABILITY TO PERFORM THE WORK
11. REJECTION OF BIDS
12. BASIS OF AWARD
13. ALTERNATES
14. LIST OF PROPOSED SUBCONTRACTORS
15. AWARD AND EXECUTION OF CONTRACT
16. PERFORMANCE BOND AND LABOR AND MATERIALS PAYMENT BOND
17. FAILURE TO EXECUTE CONTRACT AND FURNISH BONDS
18. BID BACK-UP (Bid Preparation Documents)