

BEFORE THE CONTRACT REVIEW BOARD OF THE  
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF EXEMPTING ) RESOLUTION NO. 89-1104  
PROPOSALS FOR THE METRO EAST )  
STATION FROM COMPETITIVE ) Introduced by Rena Cusma,  
BIDDING PROCEDURES ) Executive Officer

WHEREAS, On April 13, 1989, the Council of the Metropolitan Service District adopted Resolution No. 89-1061B authorizing issuance of a Request for Proposals to solicit private proposals for a franchise to provide a site and to design, construct, own and operate the Metro East Station; and

WHEREAS, At its meeting of May 25, 1989, the Council reviewed and adopted Addendum No. 1 of the Metro East Station Request for Proposals; and

WHEREAS, Section 2 of Addendum No. 1 requires that two proposals, one each for public and private ownership of the proposed facility, be submitted by entities that submit private ownership proposals; and

WHEREAS, Addition of a requirement that a public ownership option be submitted by proposers in response to the solicitation for franchise proposals may be construed as a request for a public contract proposal; and

WHEREAS, ORS 279.015 authorizes the exemption of certain contracts from the competitive bidding requirement; and

WHEREAS, Metro Code Section 2.04.010 (1) requires that the Council exempt public contracts which utilize a request for

proposal process from competitive bidding pursuant to the standards set forth in Section 2.04.041 of the Metro Code; and

WHEREAS, Section 2.04.041 (c) allows the Council to exempt specific contracts from competitive bidding subject to ORS 279.015, and authorizes the Council to direct the use of alternative contracting and purchasing practices that take account of market realities and modern innovative contracting and purchasing methods, which are consistent with the public policy of encouraging competition; and

WHEREAS, The solicitation process adopted by the Council in Resolution No. 89-1061B, as refined and approved by the Council at its May 25, 1989 meeting is in accordance with the requirements of the Metro Code and the applicable State statutory provisions; now, therefore,

BE IT RESOLVED,

1. That based on the information provided in the Staff Report to Resolution No. 89-1061B, and the information presented to the Council at its May 25, 1989 meeting, the Contract Review Board of the Metropolitan Service District finds that:

- a. It is unlikely that exempting the public option for ownership and operation of the Metro East Station will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts in that the RFP process invites competitive proposals from any applicant who can deliver a completed transfer station in the time period required by the District to provide a replacement facility for the St. Johns Landfill; and
- b. The contract, if awarded pursuant to the exemption, will result in substantial cost

savings to the Metropolitan Service District, considering quality and cost because a replacement facility for the St. Johns Landfill must be found prior to February 1991 or else the District will suffer great additional expense.


2. That based on these findings, the Contract Review Board of the Metropolitan Service District directs that the public option portion of the request for proposals for a franchise to provide a site and to design, construct, own and operate the Metro East Station be exempted from the competitive bid process and that the Executive Officer is authorized to utilize a request for proposal process for the public option.

3. While private proposals for a franchise are not subject to the Metro Code contract provisions of Chapter 2.04 or ORS Chapter 279, the Contract Review Board finds that the factors set forth above in section 1 of these findings are equally applicable and true to franchise proposals and if franchise proposals are subject to the exemption requirements of the Metro Code and ORS Chapter 279, then the Contract Review Board of the Metropolitan Service District finds that:

- a. It is unlikely that exempting franchise proposals for the Metro East Station will encourage favoritism in awarding of public contracts or substantially diminish competition for public contracts, in that the request for franchise proposals invites competitive proposals from any applicant who can deliver a completed transfer station in the time period required by the District to provide a replacement facility for the St. Johns Landfill; and
- b. The franchise, if award pursuant to an exemption from competitive bidding will result in substantial cost savings to the

District, considering quality and cost because a replacement facility for the St. Johns Landfill must be found prior to February 1991 or else the District will suffer great additional expense.

ADOPTED by the Contract Review Board of the Metropolitan Service District this 8th day of June, 1989.

  
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Mike Ragsdale, Presiding Officer

DBC/gl

SOLID WASTE COMMITTEE REPORT

Agenda Item No. 6.1

Meeting Date: June 8, 1989

RESOLUTION NO. 89-1104, FOR THE PURPOSE OF EXEMPTING PROPOSALS FOR THE METRO EAST STATION FROM COMPETITIVE BIDDING PROCEDURES

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Date: June 8, 1989

Presented by: Councilor  
Hansen

Committee Recommendation: The Solid Waste Committee voted 3 to 0 to recommend adoption of Resolution No. 89-1104 by the Contract Review Board. Councilors voting: Hansen, Buchanan and Ragsdale. Councilors absent: Kelley and Wyers. This action taken June 8, 1989.

Committee Discussion/Issues: General Counsel indicated that a private ownership option is not subject to public contract procedures because it involves the solicitation of franchise application proposals. In his opinion, a public ownership option must be granted an exemption of procedures other than competitive bidding are used.

A public hearing was held on June 8, 1989, by the Solid Waste Committee. One individual, Mr. Cropper, asked a question regarding the purpose of the resolution. General Counsel explained that Metro's contract procedures and state statutory provisions require that public agencies make specific findings when public contracts are solicited other than through competitive bidding.

The Solid Waste Committee asked General Counsel why the same findings were in Section 1 and in Section 2 of the resolution. General Counsel stated that the proposed resolution exempts both the public ownership option and the private ownership option from competitive bidding procedures in the event that it is subsequently determined that franchise application proposals are subject to public contracting procedures.

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# METRO

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May 31, 1989

The Honorable Gary Hansen  
Chair, Council Solid Waste Committee  
4216 No. Overlook Boulevard  
Portland, Oregon 97217

Executive Officer  
Rena Cusma

**Metro Council**

Mike Ragsdale  
Presiding Officer  
District 1

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Judy Wyers  
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Tanya Collier  
District 9

Roger Buchanan  
District 10

David Knowles  
District 11

Gary Hansen  
District 12

Dear Councilor Hansen:

Re: Metro East Station

Enclosed for consideration by the Council Solid Waste Committee is a resolution which exempts the Metro East Station from the competitive bidding procedures. Both the Metro Code and State statutory provisions require that public agencies make specific findings when public contracts are solicited other than through competitive bidding.

It is the opinion of the Office of General Counsel that the private ownership option involves the solicitation of franchise application proposals and is not subject to public contract procedures. The public ownership option may be construed as a public contract and thus must be granted an exemption if procedures other than competitive bidding are used.

The proposed resolution exempts the public ownership option from competitive bidding procedures. It also exempts the private ownership option from competitive bidding procedures in the event that it is subsequently determined that franchise application proposals are subject to public contracting procedures.

Sincerely,

Daniel B. Cooper  
General Counsel

DBC/MML/gl

cc: Rena Cusma