

METROPOLITAN EXPOSITION RECREATION COMMISSION

Resolution No. 13-12

For the Purpose of Amending the Metropolitan Exposition Recreation Commission Contracting and Purchasing Rules

WHEREAS, on February 23, 2005 the Metropolitan Exposition Recreation Commission (MERC) adopted the Contracting and Purchasing Rules applicable to the MERC venues in accordance with its powers under Chapter 6.01.04 of the Metro Code; and

WHEREAS, the MERC Contracting and Purchasing Rules were amended on September 24, 2008 and October 19, 2011; and

WHEREAS, MERC wants to amend the Contracting and Purchasing Rules in regard to the use of Minority, Women, Emerging Small Business contractors as well as the Appeal Procedures; and

WHEREAS, MERC staff recommend the requested changes.

BE IT THEREFORE RESOLVED AS FOLLOWS:


- The Metropolitan Exposition Recreation Commission hereby amends the MERC Contracting and Purchasing Rules as set forth in attached Exhibit A. (see Exhibit A).

Passed by the Commission on June 4, 2013.

Chair

Secretary/Treasurer

Approved As to Form:
Alison Kean Campbell, Metro Attorney

By: 
Nathan A. Schwartz Sykes
Senior Attorney

MERC Staff Report

Agenda Item/Issue: For the Purpose of Adopting Contracting and Purchasing Rules.

Resolution No.: 13-12

Presented By: Tim Collier

Date: June 4, 2013

Background: The MERC Commission formally adopted resolution 98-24 on April 8, 1998 accepting the report of the MERC Advisory Committee on Development of Economic Opportunities. One of the recommendations of the report was for the MERC commission to continue to focus on investing in ways to improve partnerships with Minority owned, Women owned and Emerging Small Businesses.

The MERC Commission most recently updated the MWESB contracting language with resolution 05-05 in February of 2005.

MERC FOTA liaisons, Karis Stoudamire-Phillips, Elisa Dozono, and Ray Leary have met numerous times with staff to determine how best to increase contracting opportunities within our minority communities. These changes are one of the avenues the group is recommending as a means to improve MERC's outreach to the minority community.

The proposed Contracting and Purchasing Rules revisions recommended here, further strengthen the MERC Commission's commitment to FOTA and the MWESB program and align MERC's procurement rules closer to Metro's more rigorous standards.

The proposed Contracting and Purchasing Rules revisions contain the following significant changes to current provisions:

- Adds a third required MWESB vendor solicitation on all contracts exceeding \$5,000 but less than \$100,000. The current requirements include outreach to one FOTA MBE, WBE, or ESB and outreach to one MBE, WBE, or ESB regardless of location.
- Creates a sheltered market program by requiring all Public Improvement Contracts more than \$5,000 but less than \$50,000 be bid only amongst MBE, ESB and WBE vendors.
- Adjusts timelines and amounts of the appeals process to be consistent with Metro procurement rules.
- Adds definition of Procurement Officer

Fiscal Impact: There is no direct fiscal impact. It is likely that construction project managers will invest more time in either solicitation efforts or time in supporting the selected contractor while on the job. History tells us that the sheltered market program can be successful if enough time is invested in managing and supporting the contractor through the contracting process and through the project.

Recommendation: The staff recommends that the Commission adopt the proposed Contracting and Purchasing Rules.

SECTION 1 - DEFINITIONS

The following terms shall have the following meanings:

- A. **“Commission”** means the Metropolitan Exposition-Recreation Commission.
- B. **“Contract Manager”** means the MERC staff person responsible for a particular procurement.
- C. **“Emergency”** means circumstances that: (a) could not have been reasonably foreseen; (b) create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and (c) require prompt execution of a contract to remedy the condition.
- D. **“Emergency Contract”** means a contract whose purpose is limited to remedying an emergency situation.
- E. **“Emerging Small Business” or “ESB”** means a State of Oregon-certified emerging small business firm.
- F. **“First Opportunity Target Area” or “FOTA”** means the economically distressed area located in the immediate vicinity of the Oregon Convention Center as authorized by Section 2, Chapter 909, Oregon Laws 1989.
- G. **“General Manager”** means the individual appointed by the Commission who is responsible for managing the MERC staff.
- H. **“Labor and Materials Bond”** means a bond for the protection of a person or firm claiming to have supplied labor or materials for the performance of work provided for in a public contract.
- I. **“MERC Facility” or “Facilities”** means the Oregon Convention Center, the Portland Center for the Performing Arts, and the Portland Metropolitan Exposition Center, and any other facilities that are added to MERC’s management responsibilities from time to time.
- J. **“MERC Purchasing Procedures Manual”** means the administrative procedures prepared by the General Manager.
- K. **“Minority Business Enterprise” or “MBE”** means a State of Oregon-certified minority owned business.
- L. **“Performance Bond”** means a bond conditioned on the faithful performance of a contract in accordance with the plans, specifications, and conditions of the contract.

- M. “Personal Services Contract”** means any contract by which MERC acquires a professional, artistic, creative, consulting, educational, or management service. Contracts which are predominately for the purpose of obtaining a product, labor, or materials, or the services of a construction trade are not personal services contracts.
- N.** "Procurement Officer" means the person designated by the Chief Operating Officer to carry out the functions required of such person by these rules.
- O. “Public Contract”** means any purchase, lease or sale by MERC of personal property, public improvement or services, including those transacted by purchase order, other than agreements which are for personal services.
- P. “Public Improvement Contract”** means a contract for the construction, reconstruction or major renovation on real property. A public improvement contract does not include emergency work, minor alteration, or ordinary repair or maintenance.
- Q. “Revenue Contract”** means a contract that provides revenue to MERC wherein MERC does not purchase a good or service.
- R. “Woman-Owned Business Enterprise” or “WBE”** means a State of Oregon-certified woman-owned business.

SECTION 2 - GENERAL PROVISIONS

A. Intent.

This document contains the purchasing and contracting rules adopted by the Metropolitan Exposition-Recreation Commission pursuant to ORS 279A.065. The intent of these rules is to permit the most flexible and efficient contracting procedures available under applicable state law and the Metro Code.

B. Exceptions To These Rules.

These policies do not apply to: (1) employment contracts for Commission personnel, (2) contracts for the lease or use of MERC facilities, (3) sponsorship and naming agreements, which are subject to MERC’s Sponsorship and Naming Policies, (4) donations and grants, (5) revenue contracts, to the extent permitted by the Metro Code and state law, and (6) other contracts exempted by the Commission from these policies on a case by case basis.

C. Oregon Attorney General’s Model Rules Inapplicable.

The Oregon Attorney General’s model contracting rules do not apply to the Commission.

D. Conflicts With Oregon Public Contracting Code.

In the event of a conflict between any provision of the Oregon Public Contracting Code and these rules, the provisions of the Oregon Public Contracting Code shall control.

SECTION 3 - AUTHORITY AND DELEGATION

A. Duties And Powers Of The Commission.

In accordance with Section 6.01.040(J) of the Metro Code, the Metropolitan Exposition-Recreation Commission is empowered to enter into contracts as the Commission deems necessary under contracting rules adopted by the Commission. Specifically, the Commission has the authority to enter into contracts of such types and in such amounts, including intergovernmental agreements, as the Commission may deem necessary, appropriate, or convenient for the renovation, equipping, maintenance, repair, operation and marketing of the use of buildings and facilities for which it is responsible, and for professional and other services. Pursuant to Metro Code Section 6.01.040, the Commission is impliedly empowered to amend and terminate contracts to which the Commission is a party, as the Commission may deem necessary, appropriate or convenient.

B. Commission Approval Required.

Procurements of \$100,000 or more require the Commission, by duly adopted resolution, to select the contractor and approve the contract.

C. General Manager's Authority.

The Commission delegates to the General Manager the authority to conduct procurements of less than \$100,000. The General Manager may enter into contracts less than \$100,000 without the approval of the Commission. All contracting by the General Manager shall be conducted in accordance with the Oregon Public Contracting Code, these rules, and the MERC Purchasing Procedures Manual promulgated by the General Manager. The General Manager may delegate his/her authority under these rules. Any such delegation shall be in writing.

D. Facility Authority.

1) Procurement Authority.

Individual MERC facilities shall not contract for amounts above \$5,000 without the prior approval of the General Manager. All contracting by the MERC facilities shall be conducted in accordance with the Oregon Public Contracting Code, these rules, and the policies promulgated by the General Manager.

2) Amendment Authority.

No contract in an amount above \$5,000 may be amended without the General Manager's approval. Any amendment of a contract by individual MERC facilities shall comply with all the requirements of Section 8 of these rules.

E. Purchasing Procedures Manual Required.

The General Manager shall develop a MERC Purchasing Procedures Manual with instructions to implement these rules. The MERC Purchasing Procedures Manual does not require Commission approval and may be revised as deemed necessary by the General Manager.

F. Contracts List Required.

The General Manager shall maintain a "current and pending contracts list" that shows items or services to be purchased and, if applicable, due dates and times bids or proposals will be opened.

SECTION 4 - PUBLIC CONTRACTS (GOODS & SERVICES)

A. Applicability.

The rules in this Section 4 apply to all public contracts of the Commission except public improvement contracts. Public improvement contracts are governed by Section 7 of these rules. For purposes of this Section 4, a public contract means any purchase, lease, or sale by MERC of personal property or services, including those transacted by purchase order, other than agreements that are for personal services. Personal services are governed by Section 5 of these rules.

B. Public Contracts Not Exceeding \$5,000.

A public contract not exceeding \$5,000 may be awarded in any manner deemed practical or convenient by the General Manager. The General Manager shall promulgate procedures in the MERC Purchasing Procedures Manual for contracts not exceeding \$5,000.

C. Public Contracts Exceeding \$5,000 But Less Than \$100,000.

Any public contract exceeding \$5,000 but less than \$100,000 shall be awarded in accordance with the provisions of ORS 279B.070, as follows:

- 1) A procurement may not be artificially divided or fragmented so as to fall within this rule.
- 2) When conducting a procurement under this section, the contract manager shall seek at least three informally solicited competitive price quotes or competitive proposals from prospective contractors. The contract manager shall attempt to obtain at least one quote from a state-certified MBE, WBE, or ESB within the FOTA area. The contract manager shall attempt to obtain second and third quotes from any state-certified MBE, WBE, or ESB regardless of location. The program coordinator may waive this requirement if he/she determines that there are no certified ESBs, MBEs and WBEs on the certification list capable of providing the service or item. Any such waivers shall

be in writing, and shall be kept as supporting documentation. The contract manager shall keep a written record of the sources of the quotes or proposals received. If three quotes or proposals are not reasonably available, fewer will suffice, but the contract manager shall make a written record of the effort made to obtain the quotes or proposals. Nothing shall prevent the contract manager from obtaining more than three quotes at any time.

- 3) If a contract is awarded, the contract shall be awarded to the offeror whose quote or proposal will best serve the interests of MERC, taking into account price as well as considerations including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose and contractor responsibility under ORS 279B.110.
- 4) Before the contract is awarded, the contract manager shall notify the General Manager of the nature of the proposed contract, the estimated cost of the contract, the names of the offerors and the amounts of the quotes or proposals, and the name of a contact person for the offeror. The contract may not be awarded without the approval of the General Manager.

D. Public Contracts Of \$100,000 Or More.

Public contracts of \$100,000 or more shall be awarded in accordance with this section, unless the contract is within a class of contracts designated by the Metro Council as a class special procurement. If the Metro Council has designated the procurement as a special procurement, the procurement may be awarded in accordance with Section 6 of these policies. Procurements governed by this Section 4(D) shall be awarded through the issuance of competitive sealed bids in accordance with ORS 279B.055, or through the issuance of competitive sealed proposals in accordance with ORS 279B.060, as follows:

- 1) Public Contracts Procured Through The Issuance Of Requests For Competitive Sealed Bids.
 - a) The Commission delegates authority to the General Manager to prepare and approve request for bid documents and to solicit competitive sealed bids. Commission staff is responsible for determining the exact specifications for the proposed purchase. The Commission delegates authority to the General Manager to prepare and approve requests for information, requests for interest or other preliminary documents to obtain information useful in the preparation of invitations to bid. Every procurement using competitive sealed bids shall comply with all the requirements of ORS 279B.055.
 - b) The procurement may not proceed without the approval of the General Manager.
 - c) The Commission shall evaluate the competitive sealed bids and shall select the successful bidder or bidders in accordance with the criteria

set forth in this section and in ORS 279B.055, as it may be amended from time to time. Completion of the procurement process requires Commission approval of the contract award and approval of the written contract by resolution. If a contract is awarded, the Commission shall award the contract:

- (1) To the lowest responsible bidder whose bid substantially complies with the requirements and criteria set forth in the invitation to bid and with all prescribed public procurement procedures and requirements; or
 - (2) When the invitation to bid specifies or authorizes the award of multiple contracts, to the responsible bidders:
 - (a) Whose bids substantially comply with the requirements and criteria set forth in the invitation to bid and with all prescribed public procurement procedures and requirements; and
 - (b) Who qualify for the award of a public contract under the terms of the invitation to bid.
- d) The Commission may, by duly adopted resolution, waive the requirements for Commission approval of contract award subject to any conditions established by the Commission.
- e) The Commission may reject any or all competitive sealed bids in accordance with the provisions of ORS 279B.100.
- 2) Public Contracts Procured Through The Issuance Of Requests For Competitive Sealed Proposals.

Any procurement of goods or services of \$100,000 or more may be awarded through the issuance of competitive sealed proposals, in accordance with the provisions of ORS 279B.060, as follows:

- a) The Commission delegates authority to the General Manager to prepare and approve proposal documents and to solicit competitive proposals. Commission staff is responsible for determining the exact needs and evaluation criteria for any proposed purchase. The Commission delegates authority to the General Manager to prepare and approve requests for information, requests for interest, requests for qualifications or other preliminary documents to obtain information useful in the preparation of a request for proposals, in accordance with ORS 279B.060(11). Every procurement using competitive sealed proposals shall comply with all the requirements of ORS 279B.060.

- b) The Commission delegates to the General Manager the authority to determine the evaluation criteria and selection methods to be used. The evaluation criteria and selection methods chosen by the General Manager shall be identified in the request for proposals. When provided for in the request for proposals, the contract manager may employ any combination of methods of evaluation, including but not limited to the methods listed in ORS 279B.060(6)(b).
- c) The procurement may not proceed without the approval of the General Manager.
- d) The Commission shall evaluate the competitive sealed proposals and shall award the contract to the responsible proposer whose proposal the Commission determines, by duly adopted resolution, to be the most advantageous to the Commission based on the evaluation process and evaluation factors described in the request for proposals, any applicable preferences required by Oregon law and, when applicable, the outcome of any negotiations authorized by the request for proposals. Completion of the procurement process requires Commission approval of the contract award and approval of the written contract by resolution.
- e) The Commission may waive the requirements for Commission approval of contract award subject to any conditions established by the Commission.
- f) The Commission may reject any or all competitive sealed proposals in accordance with the provisions of ORS 279B.100.

SECTION 5 - PERSONAL SERVICES CONTRACTS

A. Applicability.

This section establishes the rules for the procurement of personal services. Personal services contracts are those contracts designated by the Metro Council as “personal services contracts.” Section 2.04.010 of the Metro Code defines “personal services contract” as follows:

“Any contract by which Metro acquires a professional, artistic, creative, consulting, educational, or management service. Contracts with are predominately for the purpose of obtaining a product, labor or materials, or the services of a construction trade are not a personal services contract.”

The objective in contracting for personal services is to obtain the highest quality of work for the most reasonable price. The quality of technical services may be more important than cost.

B. Personal Services Contracts Not Exceeding \$5,000.

A personal services contract not exceeding \$5,000 may be awarded in any manner deemed practical or convenient by the General Manager. The General Manager shall promulgate procedures in the MERC Purchasing Procedures Manual for contracts not exceeding \$5,000.

C. Personal Services Contracts Exceeding \$5,000 But Less Than \$100,000.

Any procurement of personal services exceeding \$5,000 but less than \$100,000 shall be awarded in accordance with the provisions of ORS 279B.070, as follows:

- 1) A procurement may not be artificially divided or fragmented so as to fall within this rule.
- 2) When conducting a procurement under this section, the contract manager shall seek at least three informally solicited competitive price quotes or competitive proposals from prospective contractors. The contract manager shall attempt to obtain at least one quote from a state-certified MBE, WBE, or ESB within the FOTA area. The contract manager shall attempt to obtain second and third quotes from any state-certified MBE, WBE, or ESB regardless of location. The program coordinator may waive this requirement if he/she determines that there are no certified ESBs, MBEs and WBEs on the certification list capable of providing the service or item. Any such waivers shall be in writing, and shall be kept as supporting documentation. The contract manager shall keep a written record of the sources of the quotes or proposals received. If three quotes or proposals are not reasonably available, fewer will suffice, but the contract manager shall make a written record of the effort made to obtain the quotes or proposals. Nothing shall prevent the contract manager from obtaining more than three quotes at any time.
- 3) If a contract is awarded, the contract shall be awarded to the offeror whose quote or proposal will best serve the interests of MERC, taking into account price as well as considerations including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose and contractor responsibility under ORS 279B.110.
- 4) Before the contract is awarded, the contract manager shall notify the General Manager of the nature of the proposed contract, the estimated cost of the contract, the names of the offerors and the amounts of the quotes or proposals, and the name of a contact person for the offeror. The contract may not be awarded without the approval of the General Manager.

D. Personal Services Contracts of \$100,000 Or More.

Any procurement of personal services of \$100,000 or more shall be awarded through the issuance of competitive sealed proposals, in accordance with the provisions of ORS 279B.060, as follows:

- 1) The Commission delegates authority to the General Manager to prepare and approve proposal documents and to solicit proposals. Commission staff is responsible for determining the exact needs and evaluation criteria for any proposed services requiring competitive sealed proposals. The Commission delegates authority to the General Manager to prepare and approve requests for information, requests for interest, requests for qualifications or other preliminary documents to obtain information useful in the preparation of a request for proposals, in accordance with ORS 279B.060(11). Every procurement using competitive sealed proposals shall comply with all the requirements of ORS 279B.060.
- 2) The Commission delegates to the General Manager the authority to determine the evaluation criteria and selection methods to be used. The evaluation criteria and selection methods chosen by the General Manager shall be identified in the request for proposals. When provided for in the request for proposals, the contract manager may employ any combination of methods of evaluation, including but not limited to the methods listed in ORS 279B.060(6)(b).
- 3) The procurement may not proceed without the approval of the General Manager.
- 4) The Commission shall evaluate the competitive sealed proposals and shall award the contract to the responsible proposer whose proposal the Commission determines, by duly adopted resolution, to be the most advantageous to the Commission based on the evaluation process and evaluation factors described in the request for proposals, any applicable preferences required by Oregon law and, when applicable, the outcome of any negotiations authorized by the request for proposals. Completion of the procurement process requires Commission approval of the contract award and approval of the written contract by resolution.
- 5) The Commission may waive the requirements for Commission approval of contract award subject to any conditions established by the Commission.
- 6) The Commission may reject any or all competitive sealed proposals in accordance with the provisions of ORS 279B.100.

SECTION 6 - SPECIAL PROCUREMENTS

A. Metro Council Designation Of Special Procurements.

A contract may be awarded as a special procurement if (a) the contract is in a class of contracts that has been designated as a special procurement or (b) the specific contract has been approved by Metro Council as a special procurement. A current list of special procurements designated by Metro Council is contained in Attachment "A."

B. Procedures For Special Procurements.

Special procurements shall be procured in accordance with the specific procedure, if any, contained in the Metro Code for that class of procurement. If no procurement is specified by Metro Code for the class of the special procurement, procurement shall be performed by means of procedures chosen by the Chief Executive Officer as an appropriate method tailored to fit and in light of the demands, circumstances and market realities associated with obtaining each of the enumerated goods and services. Such procurement procedures may include but shall not be limited to direct negotiations with individual or multiple vendors or suppliers; negotiations with ranked proposers; competitive negotiations; or multiple tiered competitions.

SECTION 7 - PUBLIC IMPROVEMENT CONTRACTS

A. Competitive Quotes Permitted For Public Improvement Contracts Not To Exceed \$100,000.

Public improvement contracts estimated not to exceed \$100,000 may be let by competitive quote under the following procedures:

- 1) Informal Construction Opportunities. Requiring all public improvement construction opportunities for contracts more than \$5,000.00 and less than \$50,000.00 to be bid only by qualified ESBs, MBEs and WBEs. The Procurement Officer may waive this requirement if he/she determines that there are no certified ESBs, MBEs and WBEs on the certification list capable of providing the project needed. Any such waivers shall be in writing, and shall be kept as supporting documentation.
- 2) When conducting a procurement under this section, the contract manager shall seek at least three informally solicited competitive price quotes from prospective contractors. The contract manager shall attempt to obtain at least one quote from a state-certified MBE, WBE, or ESB within the FOTA area. The contract manager shall attempt to obtain second and third quotes from any state-certified MBE, WBE, or ESB regardless of location. The program coordinator may waive this requirement if he/she determines that there are no certified ESBs, MBEs and WBEs on the certification list capable of providing the service or item. Any such waivers shall be in writing, and shall be kept as supporting documentation. The contract manager shall keep a written record of the sources of the quotes received. If three quotes are not reasonably available, fewer will suffice, but the

contract manager shall make a written record of the effort made to obtain the quotes. Nothing shall prevent the contract manager from obtaining more than three quotes at any time.

- 3) The contract manager shall award the contract to the prospective contractor whose quote will best serve the interests of MERC, taking into account price and other applicable factors, such as experience, specific expertise, availability, project understanding, contractor capacity, and contractor responsibility. If the contract is not awarded on the basis of the lowest price, the contract manager shall make a written record of the basis for the award.
- 4) A procurement may not be artificially divided or fragmented to qualify for the informal contract award procedures provided by this section.
- 5) Nothing in this section may be construed as prohibiting a contract manager from using competitive bidding procedures to conduct a procurement that is \$100,000 or less.
- 6) Before the contract is awarded, the contract manager shall notify the General Manager of the nature of the proposed contract, the estimated cost of the contract, the names of the offerors and the amounts of the quotes, and the name of a contact person for the offeror. The contract may not be awarded without the approval of the General Manager.

B. Competitive Sealed Bids Required For Public Improvement Contracts Exceeding \$100,000.

All public improvement contracts exceeding \$100,000 shall be based upon competitive sealed bids. The procedures for competitive bidding of all MERC public improvement contracts shall comply with all requirements that are generally applicable to local governments as set forth in ORS Chapter 279C.

C. Negotiations With Bidder(s).

If bids are solicited for a public improvement contract, and all bids exceed the budget for the project, the contract manager may, prior to contract award and with the prior approval of the General Manager, negotiate for a price within the project budget under the following procedures:

- 1) Negotiations shall begin with the lowest responsive and responsible bidder. If negotiations are not successful, then the contract manager may begin negotiations with the second lowest responsive, responsible bidder, and so on.
- 2) Negotiations may include the inclusion of value engineering and other options to attempt to bring the project cost within the budgeted amount.

- 3) A contract may not be awarded under this section if the scope of the project is significantly changed from the description in the original bid documents.
- 4) The contract manager shall adhere to the provisions of ORS 279C.340 in applying this section.

D. Bonds.

Bonds and bid security requirements are as follows:

- 1) Bid security not exceeding 10 percent of the amount bid for the contract is required unless the contract is for \$50,000 or less.
- 2) For public improvements, a labor and materials bond and a performance bond, both in an amount equal to 100 percent of the contract price are required for contracts over \$100,000.
- 3) Bid security, labor and material bond and performance bond may be required even though the contract is of a class not identified above, if the General Manager determines it is in the public interest.

E. Adoption Of Metro Good Faith Efforts Requirement For Construction Projects.

For construction contracts of \$100,000 or more, the Commission adopts in principle, policy, and content the “Good Faith Effort” program established by Metro Code § 2.04.100 through 2.04.190 (Metro Minority Business Enterprise, Women Owned Business, and Emerging Small Business Program) as they apply to contracts of the Commission. This adoption includes any and all ordinances subsequently adopted by the Metro Council relating to Metro’s Minority Business Enterprise, Women Owned Business, and Emerging Small Business Program. The General Manager shall designate MERC staff to perform the functions of the Liaison Officer to carry out the MBE/WBE/ESB program as it relates to MERC contracting activities.

SECTION 8 - CONTRACT AMENDMENTS

A. Public Contract Amendments.

- 1) The General Manager may execute amendments to public contracts provided that any one of the following conditions are met:
 - a) The original contract was let by a formal competitive procurement process, the amendment is for the purpose of authorizing additional work for which unit prices or alternates were provided that established the cost for the additional work and the original contract governs the terms and conditions of the additional work; or

- b) The amendment is a change order that resolves a bona fide dispute with the contractor regarding the terms and conditions of a contract for a public improvement and the amendment does not materially add to or delete from the original scope of work included in the original contract; or
 - c) The amount of the aggregate cost increase resulting from all amendments does not exceed 20 percent of the initial contract if the face amount is less than or equal to \$1,000,000 or 10 percent if the face amount is greater than \$1,000,000; amendments made under subsection (a)(i) or (a)(ii) are not included in computing the aggregate amount under this subsection; or
 - d) The Commission, by duly adopted resolution, has authorized the contract amendment.
- 2) No public contract may be amended to include additional work or improvements that are not directly related to the scope of work that was described in the competitive process utilized to award the contract.

B. Personal Services Contract Amendments.

- 1) Personal services contracts of an initial amount of \$50,000 or less may be amended to increase the amount of the contract to no more than twice the original contract amount. The limit provided in this subsection is cumulative and includes any and all contract amendments or extensions. Any contract amendment(s) in excess of this limit must be approved by the Commission.
- 2) Personal services contracts with an initial amount greater than \$50,000 may be amended provided that any amendment that increases the total amount payable to an amount more than \$50,000 greater than the initial contract amount shall be subject to approval by the Commission. The Commission shall determine whether it is appropriate to amend the contract in light of the policies set forth in ORS 279A.015 and ORS 279B.010.

SECTION 9 - APPEAL PROCEDURES

A. Appeal Requirements.

At least seven (7) working days prior to the execution of any public contract over \$100,000.00 for which a competitive bid or proposal process is required, Metro shall provide a notice of award to the contractor selected and to all contractors who submitted unsuccessful bids or proposals.

The following procedure applies to aggrieved bidders and proposers who wish to appeal an award of a public contract or a personal services contract above \$100,000.00. The appeal process for bids is the same as for a Request for Proposals. In the case of a

Request for Proposal(s), disagreement with the judgment exercised in scoring by evaluators is not a basis for appeal.

All appeals shall be made in writing and shall be delivered to the Procurement Officer at Metro's main office within seven (7) working days of the postmarked/electronic delivery date on the notice of award. The protest must describe the specific rule, regulation, statute, or procedure upon which the appeal is based and the specific alleged conduct that violates such authority. Disagreement with the judgment exercised by evaluators in scoring a proposal is not a basis of appeal.

The Procurement Officer shall forthwith notify the appropriate Department Director and the General Manager of the appeal.

B. General Manager Response.

The General Manager shall respond to the protestor within ten (10) working days of receipt of notice of appeal. The response shall reject the protest if the General Manager finds that the protest is lacking in merit or shall uphold the appeal. Acceptance of the protest by the General Manager may cause the rejection of all bids or proposals or the award of the contract to a different bidder or proposer at the General Manager's discretion.

C. Further Appeals.

If the protestor wishes to appeal the decision of the General Manager, the protestor must submit a written appeal to the General Manager within five (5) working days of the postmark date on the General Manager's decision. The appeal shall be presented to the Commission at its next meeting by the General Manager. The Commission may convene a special meeting to consider the appeal. The Commission shall, by resolution, reject the protest due to lack of merit or uphold the protest. Acceptance of the protest by the Commission may cause the rejection of all bids or proposals or may require the contract be awarded to a different bidder at the discretion of the Commission. If the proposer wishes to appeal the decision of the Commission, the protestor shall appeal to the Contract Review Board in writing within five (5) working days of the Commission's decision on the protest.

SECTION 10 - DISPOSITION OF PERSONAL AND SURPLUS PROPERTY

A. Definitions

For purposes of this section, the following terms have the following meaning:

- 1) "Acquiring Facility" means the MERC facility that last used the property prior to declaring it surplus. For purposes of this section, MERC Administration is considered an acquiring facility.
- 2) "Surplus Property" means any MERC asset, whether or not carried as a fixed asset on the general ledger, and deemed to be of no further useful value to the acquiring MERC facility or to MERC as a whole.

- 3) "Property Services Manager" means the MERC official designated by the General Manager to administer the disposal of surplus property.
- 4) "MERC Property" means all personal property purchased with MERC funds, or given to MERC at no cost. Real Property is not included.
- 5) "Useful value" means the functional utility of an item, as determined by the acquiring facility, or the Property Services Manager after consulting with the acquiring department.
- 6) "Market value" means the amount of money that the sale of property could yield as determined by the Property Services Manager after reasonable inquiry.
- 7) "Scrap" means the property has no useful value to MERC and no market value. Surplus property may also be designated scrap if the further storage or cost of disposal exceeds its market value.

B. General Scope.

Property purchased by individual facilities and being used by MERC facilities is under the control of those facilities until it is of no further use to the facility. When property is declared to be of no further use to an individual facility, it is to be turned over to the Property Services Manager to be reused by another facility, sold, discarded or donated. Property cannot be disposed of by the individual facilities. When property is located at a site remote from the Property Services Manager, he/she may delegate the disposal and sale function to the facility director having control over the asset. When this is done, the facility director shall notify the Property Services Manager of intent to dispose of property. The Property Services Manager will make the determination based on the most cost effective disposal method.

C. Procedures.

Surplus property turned over to the Property Services Manager by MERC facilities will be processed as follows:

- 1) When a determination is made by the Property Services Manager that surplus property has further value to MERC, and the cost of storage does not exceed its value, it may be stored for future use. An inventory of property available for use by other MERC facilities will be maintained in the office of the Property Services Manager.
- 2) When surplus property is determined by the Property Services Manager to have no useful value to MERC and the market value exceeds \$100,000 after cost of advertising and sale, Commission approval for the sale is required. The property may be sold by one of the following methods:

- a) Advertise the sale in a newspaper of general circulation. Receive bids for the purchase and sale of the property to the highest bidder.
 - b) Hold a public auction with a licensed auctioneer, or auction the property in accordance with auction procedures of an auctioneer under contract with the State of Oregon. Auction sales may be conducted entirely on the internet. Sale shall be for cash to the highest bidder.
 - c) In the case of specialty property where the market is narrow, the property may be consigned to a broker to sell. The broker must be approved by the Commission.
 - d) The property may be sold or donated to another governmental entity or non-profit agency serving the region. The sale or donation under this provision shall be approved by the Commission.
- 3) When surplus property is determined by the Property Services Manager to have no useful value to MERC and the market value exceeds \$10,000 but does not exceed \$100,000 after the cost of advertising and sale, the Property Services Manager shall sell the property by one of the following methods:
- a) Advertise the sale in a newspaper of general circulation. Receive bids for the purchase and sale of the property to the highest bidder.
 - b) Hold a public auction with a licensed auctioneer, or auction the property in accordance with auction procedures of an auctioneer under contract with the State of Oregon. Auction sales may be conducted entirely on the internet. Sale shall be for cash to the highest bidder.
 - c) In the case of specialty property where the market is narrow, the property may be consigned to a broker to sell. The broker is to be selected by the Property Services Manager in consultation with the facility director after reasonable inquiry to insure the best marketing effort and commission rate is received.
 - d) The property may be sold or donated to another governmental entity or non-profit agency serving the region. The sale or donation under this provision shall be approved by the General Manager.
- 4) When surplus property is determined by the Property Services Manager to have no useful value to MERC and a market value of greater than \$0 and less than \$10,000 after deducting the cost of advertising and sale, the Property Services Manager shall sell the property by one of the following methods:

- a) Solicit bids from at least three liquidators or brokers (if there are three interested). The property will be sold to the highest bidder.
 - b) Hold a public auction with a licensed auctioneer, or auction the property in accordance with auction procedures of an auctioneer under contract with the State of Oregon. Auction sales may be conducted entirely on the internet. Sale shall be for cash to the highest bidder.
 - c) Conduct a public sale with marked prices reflecting the estimated quick sale value as determined by the Property Services Manager.
 - d) In the case of specialty property where the market is narrow, the property may be consigned to a broker to sell. The broker is to be selected by the Property Services Manager, in consultation with the facility director, after reasonable inquiry to insure the best marketing effort and commission rate is received.
 - e) The property may be sold or donated to another governmental entity or non-profit agency serving the region. The sale or donation under this provision shall be approved by the General Manager or his/her designee.
- 5) When surplus property has no useful value and no market value as determined by the Property Services Manager, it is declared “scrap” and may be disposed of by any of the following methods:
- a) Discard or recycle the property in any method prescribed by the Property Services Manager.
 - b) Donate the property to another governmental entity or nonprofit organization for reuse or sale.
 - c) As a last resort (to avoid discarding the property into the solid waste stream) the property may be given to any interested party agreeing to reuse or recycle it in exchange for the timely removal of the property from the premises.
- 6) A record of all property disposals shall be maintained in the office of the Property Services Manager. All surplus property disposals will be recorded in the property disposal files and maintained in accordance with proper archiving practices.
- 7) All personal property sold pursuant to this section shall be sold as-is without any warranty, either express or implied, of any kind, including but not limited to warranties of title or fitness for any purpose. Upon receiving payment for the personal property from the successful bidder, the person or company

conducting the auction shall execute an appropriate bill of sale, which shall recite that the sale is without warranty, as provided in this subsection.

D. Accounting Requirements.

- 1) When the property is sold, proceeds from the sale shall be turned over to MERC Accounting and credited to the originating fund when the fund is identifiable. If the originating fund cannot be identified, the proceeds will be credited to the MERC Operating Fund as miscellaneous revenue.
- 2) When surplus property is a fixed asset carried on the general ledger, the disposal or transfer of the property to another facility shall be reported to MERC Accounting. The asset will be transferred to the receiving facility if the property has sufficient value to be considered a fixed asset on the general ledger.

E. Exceptions.

- 1) Expendable materials and supplies that are normally recycled or disposed of after use are not considered property for the purpose of this rule.
- 2) Real Property is not included in this rule.

