

Metropolitan Exposition Recreation Commission

Resolution No. 14-05

For the purpose of selecting Mity-Lite, Inc. as the lowest responsive and responsible bidder in response to a Request for Bids, relating to the Oregon Convention Center (OCC) "Portable Dance Floor" and authorizing the General Manager to execute a contract with Mity-Lite, Inc.

WHEREAS, OCC intends to purchase two 40' x 40' portable dance floors and one 20' x 20' portable dance floor, as the existing dance floors have reached the end of their useful life; are labor intensive to assemble and disassemble; a maintenance issue to properly maintain; and

WHEREAS, OCC has included the purchase of a portable dance floor system in its 2013-2014 capital purchase plan; and

WHEREAS, Section 4(D)(1) of the Metropolitan Exposition Recreation Commission's ("MERC") Contracting and Purchasing Rules, allows for competitive sealed bids in accordance with ORS 279B.055 for public contracts such as this purchase; and

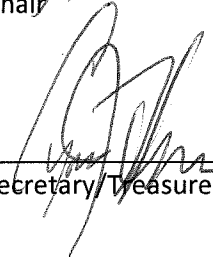
WHEREAS, MERC staff have evaluated the bids and Mity-Lite, Inc. is the lowest responsive and responsible bidder with a bid amount of one hundred, seventeen thousand, three hundred, forty and 05/100ths dollars (\$117,340.05).

BE IT THEREFORE RESOLVED as follows:


1. MERC selects Mity-Lite, Inc. as the lowest responsive and responsible bidder in response to the Request for Bids for the Oregon Convention Center – Portable Dance Floor Purchase.
2. MERC approves the contract with Mity-Lite, Inc. in the form substantially similar to the attached Exhibit A and authorizes the General Manager to execute the contract on behalf of the Commission.

Passed by the Commission on April 2, 2014


Chair


Secretary/Treasurer

Approved As to Form:
Alison R. Kean, Metro Attorney

By: 
Nathan A. S. Sykes
Deputy Metro Attorney

MERC STAFF REPORT

Agenda Item/Issue: For the purpose of selecting Mity-Lite, Inc. as the lowest responsive and responsible bidder in response to a Request for Bids, relating to the Oregon Convention Center (OCC) "Portable Dance Floor" purchase and authorizing the General Manager to execute a contract with Mity-Lite, Inc.

Resolution No: 14-05

Date: April 2, 2014

Presented by: Matt Pizzuti

BACKGROUND: The two 40' x 40' portable dance floors that the Oregon Convention Center owns have been identified for replacement. The floors were purchased in 1990 and 2002 to meet event requirements. At times there is a need to build a dance floors larger than 40' x 40' however these existing dance floors do not work well together to create a larger dance floor option for clients. They are made of 3' x 3' squares with set screws that are used to lock the dance floor panel pieces together in place. The set screws have been an ongoing maintenance issue because they tend to wear out and as a result are in constant need of repair. Dance floors are usually the last thing set and first thing struck during an event, so functionality, durability, assembly and disassembly of them is very important. The existing dance floor system requires significant labor and time allocation to install due to their design.

OCC management staff has been reviewing dance floor options over the past few years in person at industry events and tradeshow and has identified the features that are important when considering a new dance floor purchase. Our RFB requested proposals for dance floors that did not need tools to assemble.

The proposed Mity-Lite dance floor contains a magnetic locking system that locks each panel into place without the use of tools, resolving the maintenance issues we have experienced with the current dance floor system. It is also lighter and due to the magnetic locking system, it is very fast to install and break down. The Mity-Lite Magnattach dance floor is the best dance floor option we have seen because of its design and labor saving features. A 20' x 20' Mity-Lite Magnattach dance floor can be set in seven minutes with two staff. The Mity-Lite Magnattach dance floor also comes with a 12 year warranty.

MERC Staff prepared and issued Bid Documents and a Request for Bids in accordance with MERC's Purchasing and Contracting Rules as well as Metro Policy and any and all state (ORS) requirements. On February 20, 2014, MERC posted the bid on ORPIN. ORPIN is an e-solicitation and e-bidding system managed by the State of Oregon. Metro is using ORPIN to post all contracting opportunities effective January 1, 2014. On March 12, 2014, two bids were received. One did not meet requirements of the bid. The lowest responsive and responsible bidder, Mity-Lite, Inc., with a bid of \$117,340.05 is neither a certified M/W/ESB contractor nor from the FOTA district.

FISCAL IMPACT: The FY 2013-14 adopted budget includes \$126,000 appropriation for the Portable Dance Floor purchase. The total for this contract is \$117,340.05. This project, including shipping and delivery fees is anticipated to be well below the budgeted amount.

RECOMMENDATION: Staff recommends that the Metropolitan Exposition-Recreation Commission, by Resolution No. 14-05, approve the contract award and written contract (attached hereto) with Mity-Lite, Inc. for the amount of One Hundred, Seventeen Thousand, Three Hundred, Forty & 05/100 dollars (\$117,340.05) and authorize the General Manager of Visitor Venues to execute the contract.

EXHIBIT A: Goods and Supply Contract

MERC Contract No. 204047

This Contract is entered into between Metro Exposition Recreation Commission (MERC), an appointed commission of Metro, whose address is 600 NE Grand Avenue, Portland, Oregon 97232-2736, and **Mity-Lite, Inc.** whose address is **1301 West 400 North, Orem, Utah 84057**, hereinafter referred to as the "Contractor".

TERM OF CONTRACT

The term of this Contract shall be for the period commencing **April 2, 2014**, through and including **June 30, 2014**, unless terminated or extended as provided in this Contract.

CONTRACT SUM AND TERMS OF PAYMENT

MERC shall compensate the Contractor for goods supplied as described in Attachment A. MERC shall not be responsible for payment of any materials, expenses or costs other than those which are specifically included in Attachment A in an amount not to exceed **One Hundred, Seventeen Thousand, Three Hundred, Forty and 05/100ths Dollars (\$117,340.05)**.

Payment shall be on a unit price only for those goods received in an acceptable condition to MERC. Contractor's billing invoices shall include the MERC contract number, Contractor name, remittance address, invoice date, invoice number, invoice amount, tax amount (if applicable), and an itemized statement of items purchased. Contractor's billing invoices shall be sent to Metro Accounts Payable, 600 NE Grand Avenue, Portland, OR 97232-2736 or metroaccountspayable@oregonmetro.gov. The MERC contract number shall be referenced in the email subject line. Payment shall be made by MERC on a Net 30 day basis upon approval of Contractor invoice.

ATTACHMENT A - Unit Pricing of Goods

Attachment A shall describe the goods purchased under this agreement. Contractor understands and expressly agrees that not all items in Attachment A will be needed. MERC shall have complete discretion to select only those goods needed at the time.

ATTACHMENT B - Delivery and Service Requirements

Delivery shall be to MERC at the designated point f.o.b. as set forth in Attachment B or at MERC docks if no designated point is expressly listed in Attachment B, which is incorporated by this reference as if set forth in full. MERC shall have the right to reject any and all goods or services upon inspection. All other service requirements, including time and place of delivery shall be in accordance with Attachment B.

Intergovernmental Cooperative Agreement – Pursuant to ORS 279A and the Metro public contract code, MERC participates in an Intergovernmental Cooperative Purchasing program by which other public agencies shall have the ability to purchase the goods and services under the terms and conditions of this awarded contract. Any such purchases shall be between the Contractor and the participating public agency and shall not impact the Contractor's obligation to MERC under this agreement. Any estimated purchase volumes listed herein do not include volumes for other public agencies, and MERC makes no guarantee as to their participation in any purchase. Any Contractor may decline to extend the prices and terms of this solicitation to any or all other public agencies upon execution of this contract. Unless the Contractor specifically declines to participate in the program by marking the box below, the Contractor agrees to participate in the Intergovernmental Cooperative Purchasing program. **Contractor declines to participate in the Intergovernmental Cooperative Purchasing program as indicated by the following initials _____.**

ALL TERMS ON THE REVERSE SIDE OF THIS DOCUMENT AND OTHER PROCUREMENT DOCUMENTS ARE HEREBY INCORPORATED AS A PART OF THIS AGREEMENT.

CONTRACTOR

METRO EXPOSITION RECREATION COMMISSION

By _____

By _____

Print Name _____

Print Name _____

Date _____

Date _____

EXHIBIT A: Goods and Supply Contract

MERC Contract No. 204047

THE PARTIES AGREE AS FOLLOWS:

ARTICLE I: ATTACHMENT A

CONTRACTOR shall deliver to MERC the goods described attached hereto as Attachment A (Unit Pricing of Goods). All goods shall be of excellent quality.

ARTICLE II: ATTACHMENT B

Title to materials purchased hereunder shall pass to MERC f.o.b. at the designated point in Attachment B (Delivery and Service Requirements), or if not provided for, at the designated MERC docks.

ARTICLE III: LIABILITY AND INDEMNITY

CONTRACTOR is an independent contractor and assumes full responsibility for its performance and assumes full responsibility for all liability for bodily injury or physical damage to persons or property arising out of or related to this Contract, and shall indemnify, defend and hold harmless METRO, its elected officials, officers, employees and agents, from any and all claims, demands, damages, actions, losses and expenses arising out of or in any way connected with its performance of this Contract. CONTRACTOR is solely responsible for paying CONTRACTOR's subcontractors and nothing contained herein shall create or be construed to create any contractual relationship between any subcontractor(s) and MERC. CONTRACTOR is responsible for the acts and omissions of its' agents, employees, subcontractors and/or representatives and for all claims.

ARTICLE IV: TERMINATION

MERC may terminate this Contract upon giving CONTRACTOR seven (7) days written notice. In the event of termination, CONTRACTOR shall be entitled to payment for goods received prior to the date of termination. MERC shall not be liable for any indirect or consequential, or any other damages whatsoever. Termination by MERC shall not waive any claim or remedies it may have against CONTRACTOR.

ARTICLE V: INSURANCE

CONTRACTOR shall purchase and maintain at the Contractor's expense, the following types of insurance, covering the Contractor, its employees, and agents: 1) The most recently approved ISO (Insurance Services Office) Commercial General Liability policy, or its equivalent, written on an occurrence basis, with limits not less than \$1,000,000 per occurrence and \$1,000,000 aggregate. The policy will include coverage for bodily injury, property damage, personal injury, contractual liability, premises and products/completed operations. Contractor's coverage will be primary as respects Metro; 2) Automobile insurance with coverage for bodily injury and property damage and with limits not less than minimum of \$1,000,000 per occurrence; 3) Workers' Compensation insurance meeting Oregon statutory requirements including Employer's Liability with limits not less than \$500,000 per accident or disease; and 4) If required by the Scope of Work, Professional Liability Insurance, with limits of not less than \$1,000,000 per occurrence, covering personal injury and property damage arising from errors, omissions or malpractice.

Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSURED on Commercial General Liability and Automobile policies. CONTRACTOR shall provide to MERC 30 days notice of any material change or policy cancellation. CONTRACTOR shall provide MERC with a Certificate of Insurance complying with this article upon return of the CONTRACTOR signed agreement to MERC. Certificate of Insurance shall identify the MERC contract number. CONTRACTOR shall not be required to provide the liability insurance described in this Article only if an express exclusion relieving CONTRACTOR of this requirement is contained in the Scope of Work.

ARTICLE VI: PUBLIC CONTRACTS

All applicable provisions of ORS Chapters 187 and 279A & B, and all other terms and conditions necessary to be inserted into public contracts in the State of Oregon, are hereby incorporated as if such provision were a part of this Agreement, including, but not limited to, ORS 279B.220 to 279B.235.

ARTICLE VII: MODIFICATIONS

MERC may approve changes and modifications to the original contract, including deletions of work, order of additional materials, and additional services reasonably related to the original work scope. Contractor may propose changes in the work that Contractor believes are necessary, will result in higher quality work, improve safety, decrease the amount of the contract, or otherwise result in a better or more efficient work product. If such changes are approved by MERC, they shall be executed by written contract amendment signed by both parties. Such changes shall not relieve Contractor of any obligation or warranty under the contract. No oral statements by either party shall modify or affect the terms of the contract.

ARTICLE VIII: QUALITY OF GOODS

Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of excellent quality. All workers and subcontractors shall be skilled in their trades. CONTRACTOR guarantees all work against defects in material or workmanship for a period of one (1) year from the date of acceptance or final payment by MERC, whichever is later. All guarantees and warranties of goods furnished to CONTRACTOR or subcontractors by any manufacturer or supplier shall be deemed to run to the benefit of MERC.

EXHIBIT A: Goods and Supply Contract

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In addition to any express warranties provided by the CONTRACTOR, all implied warranties covered by ORS Chapter 72 shall apply to any goods provided under this contract, and are hereby expressly not disclaimed.

ARTICLE IX: SAFETY

If services of any nature are to be performed in connection with the providing goods pursuant to this agreement, CONTRACTOR shall take all necessary precautions for the safety of employees and others in the vicinity of the services being performed and shall comply with all applicable provisions of federal, state and local safety laws and building codes, including the acquisition of any required permits. All applicable MSD sheets shall accompany the goods.

ARTICLE X: RIGHT TO WITHHOLD PAYMENTS

MERC shall have the right to withhold from payments due CONTRACTOR such sums as necessary, in MERC's sole opinion, to protect MERC against any loss, damage or claim which may result from CONTRACTOR's performance or failure to perform under this agreement or the failure of CONTRACTOR to make proper payment to any suppliers or subcontractors.

ARTICLE XI: COMPLIANCE

CONTRACTOR shall comply with federal, state and local laws, statutes and ordinances relative to the execution of the work. This requirement includes, but is not limited to, non-discrimination, safety and health, environmental protection, waste reduction and recycling, fire protection, permits, fees and similar subjects.

ARTICLE XII: INTEGRATION OF CONTRACT DOCUMENTS

All of the provisions of any bidding documents including, but not limited to, the Advertisement for Bids, General and Special Instructions to Bidders, Proposal, Scope of Work, and Specifications which were utilized in conjunction with the bidding of this Contract are hereby expressly incorporated to reference. Otherwise, this Contract represents the entire and integrated agreement between METRO and CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written oral. This Contract may be amended only by written instrument signed by both MERC and CONTRACTOR. The law of the state of Oregon shall govern the construction and interpretation of this Contract.

ARTICLE XIII: SITUS

The situs of this Agreement is Portland, Oregon. Any litigation over this agreement shall be governed by the laws of the State of Oregon and shall be conducted in the Circuit Court of the state of Oregon for Multnomah County, or, if jurisdiction is proper, in the U.S. District Court for the District of Oregon.

ARTICLE XV: ASSIGNMENT

CONTRACTOR shall not assign any rights or obligations under or arising from the Contract without prior written consent from MERC, consent shall not be unreasonably withheld.

ARTICLE XV: OWNERSHIP OF DOCUMENTS AND MAINTENANCE OF RECORDS

All documents of any nature including, but not limited to, reports, drawings, works of art and photographs, produced by CONTRACTOR pursuant to this agreement are the property of Metro and it is agreed by the parties hereto that such documents are works made for hire. CONTRACTOR does hereby convey, transfer and grant to Metro all rights of reproduction and the copyright to all such documents.

- A. Contractor and subcontractors shall maintain all fiscal records relating to such contracts in accordance with generally accepted accounting principles. In addition, Contractor and subcontractors shall maintain any other records necessary to clearly document:
1. The performance of the contractor, including but not limited to the contractor's compliance with contract plans and specifications, compliance with fair contracting and employment programs, compliance with Oregon law on the payment of wages and accelerated payment provisions; and compliance with any and all requirements imposed on the contractor or subcontractor under the terms of the contract or subcontract;
 2. Any claims arising from or relating to the performance of the contractor or subcontractor under a public contract;
 3. Any cost and pricing data relating to the contract; and
 4. Payments made to all suppliers and subcontractors.
- B. Contractor and subcontractors shall maintain records for the longer period of (a.) six years from the date of final completion of the contract to which the records relate or (b.) until the conclusion of any audit, controversy or litigation arising out of or related to the contract.
- C. Contractor and subcontractors shall make records available to Metro and its authorized representatives, including but not limited to the staff of any Metro department and the staff of the Metro Auditor, within the boundaries of the Metro region, at reasonable times and places regardless of whether litigation has been filed on any claims. If the records are not made available within the boundaries of Metro, the Contractor or subcontractor agrees to bear all of the costs for Metro employees, and any necessary consultants hired by Metro, including but not limited to the costs of travel, per diem sums, salary, and any other expenses that Metro incurs, in sending its employees

EXHIBIT A: Goods and Supply Contract

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or consultants to examine, audit, inspect, and copy those records. If the Contractor elects to have such records outside these boundaries, the costs paid by the Contractor to Metro for inspection, auditing, examining and copying those records shall not be recoverable costs in any legal proceeding.

D. Contractor and subcontractors authorize and permit Metro and its authorized representatives, including but not limited to the staff of any Metro department and the staff of the Metro Auditor, to inspect, examine, copy and audit the books and records of Contractor or subcontractor, including tax returns, financial statements, other financial documents and any documents that may be placed in escrow according to any contract requirements. Metro shall keep any such documents confidential to the extent permitted by Oregon law, subject to the provisions of section E.

E. Contractor and subcontractors agree to disclose the records requested by Metro and agree to the admission of such records as evidence in any proceeding between Metro and the Contractor or subcontractor, including, but not limited to, a court proceeding, arbitration, mediation or other alternative dispute resolution process.

F. Contractor and subcontractors agree that in the event such records disclose that Metro is owed any sum of money or establish that any portion of any claim made against Metro is not warranted, the Contractor or subcontractor shall pay all costs incurred by Metro in conducting the audit and inspection. Such costs may be withheld from any sum that is due or that becomes due from Metro.

G. Failure of the Contractor or subcontractor to keep or disclose records as required by this document or any solicitation document may result in disqualification as a bidder or proposer for future Metro contracts as provided in ORS 279B.130 and Metro Code Section 2.04.070(c), or may result in a finding that the Contractor or subcontractor is not a responsible bidder or proposer as provided in ORS 27B9.110 and Metro Code Section 2.04.052.

ARTICLE XVII: SEVERABILITY

The parties agree that any provision of this Contract that is held to be illegal, invalid, or unenforceable under present or future laws shall be fully severable. The parties further agree that this Contract shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never been a part of them and the remaining provisions of the Contract shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Contract. Furthermore, a provision as similar to the illegal, invalid, or unenforceable provision as is possible and legal, valid and enforceable shall be automatically added to this Contract in lieu of the illegal, invalid, or unenforceable provision. Any failure by MERC to enforce a provision of the Contract is not to be construed as a waiver by MERC of this right to do so.

ARTICLE XVII: COUNTERPARTS

This Contract may be executed in counterparts or multiples, any one of which will have the full force of an original.

ARTICLE XVIII: DELIVERY OF NOTICES

Any notice, request, demand, instruction, or any other communications to be given to any party hereunder shall be in writing, sent by registered or certified mail or fax as follows:

To Contractor: John Erickson
Mity-Lite, Inc.
1301 West North 400
Orem, Utah 84057
801-224-6191 fax

To Metro: Metro Procurement Services
600 NE Grand Ave
Portland, Oregon 97232
503-797-1791 fax

With Copy to: Matt Uchtman
Oregon Convention Center
777 NE Martin Luther King Jr. Blvd.
Portland, Oregon 97232
503-731-7806

EXHIBIT A: Goods and Supply Contract

MERC Contract No. 204047

ATTACHMENT A Unit Pricing of Goods

Attachment A described the goods purchased under this agreement.

| Item | Measurement | Amount | Comments |
|--|-------------|--------------|-------------------|
| 20' x 20' Dance Floor <ul style="list-style-type: none"> • Transport carts for floor pieces and edge ramps • Self-locking panels and edge ramps - no tools required to secure panels and edge ramps together • Edge ramp: Tempered aluminum with silver anodized finish • Surface: .031" thick Wilsonart laminate – Wild Cherry 7054-60 • 133 PSI crush resistance • 12 year warranty | 1 | \$14,452.00 | |
| 40' x 40' Dance Floor <ul style="list-style-type: none"> • Transport carts for floor pieces and edge ramps • Self-locking panels and edge ramps – no tools required to secure panels and edge ramps together • Edge ramp: Tempered aluminum with silver anodized finish • Surface: .031" thick Wilsonart laminate – Wild Cherry 7054-60 • 12 year warranty | 2 | \$100,836.00 | |
| 12 Year Warranty | | Included | Per John Erickson |
| Shipping/Delivery | | \$2,052.05 | |

Unit pricing: Unit pricing may increase with the express written approval of MERC.

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ATTACHMENT B Delivery and Service Requirements

Delivery Dates: Prior to June 30, 2014

Delivery Time: TBD

Delivery Location: Oregon Convention Center
777 NE Martin Luther King Jr. Blvd.
Portland, Oregon 97232

Requirements include: Please notify Oregon Convention Center Operations Department to schedule delivery at 503-235-7578.