

BEFORE THE METROPOLITAN SERVICE DISTRICT
CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING AN)	RESOLUTION NO. 90-1220
EXEMPTION TO METRO CODE CHAPTER)	
2.04.044 COMPETITIVE BIDDING)	INTRODUCED BY EXECUTIVE
PROCEDURES AND AUTHORIZING A SOLE)	OFFICER RENA CUSMA
SOURCE AGREEMENT WITH ESRI SYSTEMS,)	
INC. FOR PURCHASE OF SOFTWARE)	

WHEREAS, On October 27, 1988, the Council of the Metropolitan Service District adopted Resolution No.88-991 which authorized purchase of a Geographic Information System (GIS) for improved services to support economic development, land use, solid waste, and transportation planning activities; and

WHEREAS, the programs being developed in the Planning and Development Department require use of the Regional Land Information System (RLIS) being developed on the GIS; and

WHEREAS, an RLIS workstation is needed in the Planning and Development Department to gain access to the GIS; and

WHEREAS, a fully functional RLIS workstation requires purchase of computer hardware, and software that is compatible with the existing software resident in METRO's GIS; and

WHEREAS, ESRI's software product, ARC/INFO, is the software compatible with RLIS and currently used by METRO; and


WHEREAS, software purchases are a class of contracts exempt from competitive bidding subject only to Request For Proposals procedures under METRO code 2.04.041(b)(8); now therefore,

BE IT RESOLVED,

That the Contract Review Board of the Metropolitan Service

District hereby exempts the attached contract (Exhibit A) with ESRI Systems, Inc. from the Request For Proposal requirements under METRO Code Chapter 2.04.050 et seq. for the purchase of ARC/INFO and TIN software necessary for addition of a complete RLIS workstation based on the findings attached as Exhibit B.

ADOPTED by the Contract Review Board of the Metropolitan Service District this 22nd day of February, 1990.



Tanya Collier, Presiding Officer

PUBLIC CONTRACT

THIS Contract is entered into between the METROPOLITAN SERVICE DISTRICT, a municipal corporation, whose address is 2000 S.W. First Avenue, Portland, Oregon 97201-5398, hereinafter referred to as "METRO," and ESRI Systems, Inc., whose address is 525 N. 2 Columbia St. Olympia, WA 98501, hereinafter referred to as the "CONTRACTOR."

THE PARTIES AGREE AS FOLLOWS:

ARTICLE I

SCOPE OF WORK

CONTRACTOR shall perform the work and/or deliver to METRO the goods described in the Scope of Work attached hereto as Attachment A. All services and goods shall be of good quality and, otherwise, in accordance with the Scope of Work.

ARTICLE II

TERM OF CONTRACT

The term of this Contract shall be for the period commencing February 26, 1990 through and including February 25, 1991.

ARTICLE III

CONTRACT SUM AND TERMS OF PAYMENT

METRO shall compensate the CONTRACTOR for work performed and/or goods supplied as described in Attachment B. Metro shall not

be responsible for payment of any materials, expenses or costs other than those which are specifically included in Attachment B.

ARTICLE IV

LIABILITY AND INDEMNITY

CONTRACTOR is an independent contractor and assumes full responsibility for the content of its work and performance of CONTRACTOR's labor, and assumes full responsibility for all liability for bodily injury or physical damage to person or property arising out of or related to this Contract, and shall indemnify and hold harmless METRO, its agents and employees, from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Contract. CONTRACTOR is solely responsible for paying CONTRACTOR's subcontractors. Nothing in this Contract shall create any contractual relationship between any subcontractor and METRO.

ARTICLE V

TERMINATION

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

ARTICLE VI

INSURANCE

CONTRACTOR shall maintain such insurance as will protect CONTRACTOR from claims under Workers' Compensation Acts and other employee benefits acts covering all of CONTRACTOR's employees engaged in performing the work under this Contract; and from claims for damages because of bodily injury, including death and damages to property, all with coverage limits satisfactory to METRO. Liability insurance shall have minimum coverage limits of at least the dollar amounts listed in ORS 30.270. Additional coverage may be required in the Scope of Work attached hereto. This insurance must cover CONTRACTOR's operations under this Contract, whether such operations be by CONTRACTOR or by any subcontractor or anyone directly or indirectly employed by either of them. CONTRACTOR shall immediately increase the amounts of liability insurance required to reflect any changes in Oregon Law so that the insurance provided shall cover, at a minimum, the maximum liability limits under the Oregon Tort Claims Act.

If required in the Scope of Work attached hereto, CONTRACTOR shall provide METRO with a certificate of insurance complying with this article and naming METRO as an insured within fifteen (15) days of execution of this Contract or twenty-four (24) hours before services under this Contract commence, whichever date is earlier.

CONTRACTOR shall not be required to provide the liability insurance described in this Article if an express exclusion relieving CONTRACTOR of this requirement is contained in the Scope of Work.

ARTICLE VII

PUBLIC CONTRACTS

All applicable provisions of ORS chapters 187 and 279, 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 279.310 to 279.320. Specifically, it is a condition of this contract that Contractor and all employers working under this Agreement are subject employers that will comply with ORS 656.017 as required by 1989 Oregon Laws chapter 684.

ARTICLE VIII

ATTORNEY'S FEES

In the event of any litigation concerning this Contract, the prevailing party shall be entitled to reasonable attorney's fees and court costs, including fees and costs on appeal to any appellate courts.

ARTICLE IX

QUALITY OF GOODS AND SERVICES

Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of the highest 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 METRO, 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 METRO.

ARTICLE X

OWNERSHIP OF DOCUMENTS

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.

ARTICLE XI

SUBCONTRACTORS; DISADVANTAGED BUSINESS PROGRAM

CONTRACTOR shall contact METRO prior to negotiating any subcontracts and CONTRACTOR shall obtain approval from METRO before entering into any subcontracts for the performance of any of the services and/or supply of any of the goods covered by this Contract.

METRO reserves the right to reasonably reject any subcontractor or supplier and no increase in the CONTRACTOR's compensation shall result thereby. All subcontracts related to this Contract shall include the terms and conditions of this agreement. CONTRACTOR shall be fully responsible for all of its subcontractors as provided in Article IV.

If required in the Scope of Work, CONTRACTOR agrees to make a good faith effort, as that term is defined in METRO's Disadvantaged Business Program (Section 2.04.160 of the Metro Code) to reach the goals of subcontracting _____ percent of the contract amount to Disadvantaged Business Enterprise and _____ percent of the contract amount to Women-Owned Business Enterprise. METRO reserves the right, at all times during the period of this agreement, to monitor compliance with the terms of this paragraph and METRO's Disadvantaged Business Program.

ARTICLE XII

RIGHT TO WITHHOLD PAYMENTS

METRO shall have the right to withhold from payments due CONTRACTOR such sums as necessary, in METRO's sole opinion, to protect METRO 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.

If a liquidated damages provision is contained in the Scope of Work and if CONTRACTOR has, in METRO's opinion, violated that provision, METRO shall have the right to withhold from payments due CONTRACTOR such sums as shall satisfy that provision. All sums withheld by METRO under this Article shall become the property of METRO and CONTRACTOR shall have no right to such sums to the extent that CONTRACTOR has breached this Contract.

ARTICLE XIII

SAFETY

If services of any nature are to be performed 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.

ARTICLE XIV

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 by reference.

Otherwise, this Contract represents the entire and integrated agreement between METRO and CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by both METRO and CONTRACTOR. The law of the state of Oregon shall govern the construction and interpretation of this Contract.

ARTICLE XV

ASSIGNMENT

CONTRACTOR shall not assign any rights or obligations under or arising from this Contract without prior written consent from METRO.

CONTRACTOR NAME

METROPOLITAN SERVICE DISTRICT

By: _____

By: _____

Date: _____

Date: _____

APPROVED AS TO FORM

By: _____

Date: _____

AMH:jp
CONTRACT.FOR
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EXHIBIT B

The Contract Review Board has considered the staff presentation in consideration of this Resolution and makes the following findings of fact:

1. The Geographic Information System (GIS) developed for METRO's Regional Land Information System (RLIS) utilizes ARC/INFO, ESRI's software product. This product was selected by a competitive Request For Proposal process.
2. RLIS is currently accessed only through workstations in the Data Resource Center. Planning and Development Department needs an independent workstation for access and use of data stored in RLIS. A workstation consists of a central processing unit, monitor, disc storage, and network connections.
3. The hardware for the workstation has been purchased through a competitive Request For Proposal process with an award in January, 1990.
4. Software is needed to make the workstation fully functional. RLIS software is ARC/INFO and the same ARC/INFO software is needed to access RLIS data.
5. The ARC/INFO software needed is a copyrighted product of ERSI. A single-user license must be purchased for authority to use the software. The license and the software are only available from ESRI, the developer and sole distributor of the copyright.
6. Competition for the software selection and price is not diminished and favoritism is not encouraged in this case because current use of the copyrighted software by RLIS requires its use in a functional workstation to access RLIS data.
7. The consideration of cost savings and quality of the software product was completed in the competitive Request For Proposal process in the initial selection of ARC/INFO used by RLIS.

Attachment "A"

SCOPE OF WORK

ARTICLE 1 - STATEMENT OF TASKS

The contractor as an independent contractor and not as an agent of METRO shall give license for use and provide the necessary equipment and instructions to give the Planning and Development Department complete access to ARC and INFO software through their workstation. The contractor shall install TIN software at this workstation and provide complete instruction to its use.

ARTICLE 2 - SOFTWARE INSTALLATION AND COMPENSATION

The contractor shall install and test the TIN software on-site and provide all manuals needed to operate the software. Assess to the ARC and INFO software will be given by the contractor and activated by METRO staff. If access to ARC and INFO software cannot be attained by METRO staff with assistance of the contractor off-site, then the contractor is required on-site to make the software operational.

The contractor shall make completely accessible or install the following software at the given prices within 30 days of execution of this agreement:

<u>Software</u>	<u>Software License Fee Installation, Orienta- tion and 1st Year's Support</u>	<u>Current Annual Software Support Fee For Maintenance and Update</u>
ARC/INFO	\$9,900	\$ 200
TIN	\$1,650	\$ 500

ARTICLE 3 - SOFTWARE MAINTENANCE AND UPDATE SERVICE

The contractor will support/maintain the software for a period of 12 months following installation. Software support and maintenance will apply only to unmodified software and to modifications incorporated and distributed by ESRI in updated versions of the software. Standard software updates provide only for standard devices supported by the contractor. The maintenance and support will include the following:

1. Correction of malfunctions caused by incorrect coding or programming.
2. Correction of functions which fail to perform as specified in

supporting documentation.

During the period of maintenance and update service in the first 12 months, the contractor shall be available to assist in debugging or answering user questions regarding software operation by telephone consultation on weekdays between the hours of 9:00 A.M. and 4:00 P.M. Pacific Time.

The contractor agrees to provide and METRO agrees to accept the above maintenance and update service beyond the 12 months for the annual fee listed in Article 2.

Attachment "B"

BUDGET/COMPENSATION

1. Total contract cost for user license fee of ARC/INFO and TIN software is \$11,550. This fee includes installation, instruction manuals for the TIN software, and technical support for the 12 months after installation. Support includes maintenance and update of the software.
2. Payment will be made to the contractor within 14 business days upon receipt of an invoice by METRO.

ESRI

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Institute

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JAN 17 1990

January 5, 1990

Mr. Jim Morgan
Portland Metropolitan Service District
2000 SW First Ave
Portland, OR 97201

Dear Jim,

It was good talking with you last week at the regional Sun office. I really appreciate your letter requesting the demonstration. Usually, it is not a difficult matter but at times the hardware vendors misunderstand intentions. The cost of the software for a single-user workstation is as follows:

\$ 9,900 for ARC/INFO
\$ 1,650 for NETWORK
\$ 1,650 for TIN.

These prices are already identified in a contract with Metro. You can receive more clarification on this from Dick B. They do cover the first year of maintenance and do not cover installation.

We do recommend you get at least 300 megabytes for disk space, 16 MB of memory and a three-button mouse. If you purchase a 300 HP product you will not have to have a copy of the software on your own disk and you may wish to reduce disk space to 100 MB.

In clarification of my conversation with Dick, I do like to be made aware of hardware purchases from users. In your case we would not bid because of our relationship with HP. However, if I am aware of the selection process I can better answer hardware vendor questions and insure that you get the hardware you need.

If you have any further comments or questions regarding ARC/INFO, please do not hesitate to call.

Sincerely,



Dean R. Anderson

INTERGOVERNMENTAL RELATIONS
COMMITTEE REPORT

RESOLUTION NO. 90-1220, AUTHORIZING AN EXEMPTION TO METRO CODE
CHAPTER 2.04.044 COMPETITIVE BIDDING PROCEDURES AND
AUTHORIZING A SOLE SOURCE AGREEMENT WITH ESRI SYSTEMS, INC.
FOR PURCHASE OF SOFTWARE

Date: February 14, 1990

Presented By: Councilor Devlin

COMMITTEE RECOMMENDATION: At the February 13, 1990, Intergovernmental Relations Committee meeting, Councilors Gardner, McFarland, Ragsdale and myself were present and voted unanimously to recommend Council adopt Resolution No. 90-1220. Councilor Bauer was excused.

COMMITTEE DISCUSSION/ISSUES: Planning and Development Department Director Richard Carson and Transportation Department Director Andy Cotugno presented the resolution which provides for a sole source contract with ESRI Systems, Inc. to purchase ARC/INFO software for Planning and Development. ARC/INFO software is the program for Metro's Regional Land Information System, RLIS, which the Transportation Department has been developing. Staff explained the software's cost was tied to the size of the hardware and how many users would have access to it. Transportation's original ARC/INFO purchase was for the central Transportation system and was licensed for up to four users. Metro has to buy a separate license for the Planning and Development software because it is for a new workstation above Transportation's license for four. Mr. Carson clarified the department is buying only the ARC/INFO software and none of the NETWORK package, which is used to access street addresses and specific service information. Mr. Cotugno and Mr. Carson concurred Planning and Development could access Transportation's NETWORK database as needed but Planning's work on RLIS will generally not require accessing NETWORK. The Committee discussed potential growth and demands for RLIS. No further issues or questions were raised regarding the contract.

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STAFF REPORT

FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION TO METRO CODE CHAPTER 2.04.050 REQUEST FOR PROPOSALS PROCEDURES AND A SOLE SOURCE AGREEMENT WITH ESRI SYSTEMS, INC. FOR PURCHASE OF SOFTWARE.

Date: February 13, 1990

Presented by: Rich Carson

FACTUAL BACKGROUND AND ANALYSIS

Resolution 90-1220 approves a sole source contract with ESRI Systems, Inc. to provide METRO with a single-user's license for ARC/INFO and TIN software. This software provides Geographic Information System (GIS) software functions required for development of a Regional Land Information System (RLIS) for the METRO region.

In METRO's Data Resources Center, the RLIS is being developed to significantly expand METRO's services capability through the integration of land based data from multiple sources.

The RLIS is currently accessed through workstations within the Data Resources Center. Due to the high demand for data management and applications through the existing workstations, an additional workstation is needed for programs in the Planning and Development Department. These programs include solid waste, water resources, and land use planning and development. Specific applications that are possible are inventory of natural areas, non-point source pollution assessment, optimum facilities siting, vehicle routing, designation of districts, and development of a regional mapping center.

Concurrent with this sole source contract submittal for the software, the Planning and Development Department has purchased a computer hardware package that includes a independent workstation with storage disk. In order to make this workstation fully functional, the rights to the software must also be purchased.

ARC/INFO is the software used to make the RLIS operational at METRO. The software integrates the cartographic and descriptive components of geographic data into a single system. In general, the system is used for (1) geographic data base generation and management, (2) geographic analysis, (3) data base query, and (4) graphic display and report generation. For the Planning and Development Department to interact with the existing data base in the RLIS system, purchase of the single-user's license for ARC/INFO software is essential. TIN is the software module that integrates and analyzes topographic data.

ESRI Systems, Inc. is the developer and sole distributor of ARC/INFO and TIN. The regional ESRI office offers the same purchase price for its software as all ESRI offices. Competition for software selection is not diminished in this case since the current use of ESRI software in METRO's RLIS precludes use of other GIS software.

BUDGET IMPACTS

Funds were specifically approved in the FY89-90 budget and Ordinance No. 90-327 for the purpose of establishing a RLIS workstation. The contract was given a "B" designation by Council.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Resolution No. 90-1220.