

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING)
METRO CODE CHAPTER 2.04 TO)
REQUIRE RETENTION OF CONTRACT)
RECORDS BY METRO CONTRACTORS)
AND TO ASSURE THE ABILITY OF)
METRO TO AUDIT CONTRACT RECORDS)

ORDINANCE NO. 04-1035
Introduced by Metro Auditor Alexis Dow

WHEREAS, Metro is required from time to time to contract for the provisions of goods and services and for the construction of public improvements; and

WHEREAS, it is in the public interest to assure that Metro's public contracts, personal services contracts and public improvement contracts are performed in accordance with the terms upon which the parties to those contracts have agreed; and

WHEREAS, an important element of assuring the appropriate performance of Metro's contractors and subcontractors is the ability to inspect, audit and review all of the records related to such contracts; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. Section 2 of this Ordinance is hereby added to and made a part of Metro Code Chapter 2.04, Metro Contract Policies.

Section 2. Contract Provisions Requiring Records Maintenance and Permitting Audits

(a) All Metro contracts of \$50,000 or more shall require contractors and subcontractors to maintain all fiscal records relating to such contracts in accordance with generally accepted accounting principles. In addition, such contracts also shall require contractors and subcontractors to 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) All Metro contracts of \$50,000 or more shall require contractors and subcontractors to maintain records for the longer period of (i) six years from the date of final completion of the contract to which the records relate or (ii) until the conclusion of any audit, controversy or litigation arising out of or related to the contract.

(c) All Metro contracts of \$50,000 or more shall contain provisions requiring contractors and subcontractors to 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. Such contracts shall also provide that 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 or consultants to examine, audit, inspect, and copy those records. Such contracts shall further provide that 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.

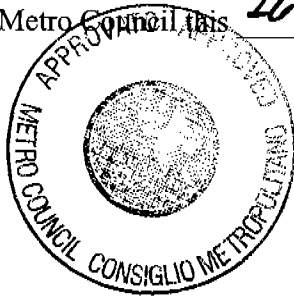
(d) All Metro contracts of \$50,000 or more shall contain provisions by which contractors and subcontractors authorize and permit Metro and its authorized representatives, including but not limited to the staff of any Metro department and the staff of the Metro Auditor, to inspect, examine, copy and audit the books and records of any 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 subsection (e).

(e) All Metro contracts of \$50,000 or more shall contain provisions by which contractors 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) All Metro contracts of \$50,000 or more shall contain provisions by which contractors 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 contracts shall further provide that 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 Ordinance or any solicitation document may result in disqualification as a bidder or proposer for future Metro contracts as provided in ORS 279.037 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 279.029 and Metro Code Section 2.04.052.

ADOPTED by the Metro Council this 26th day of February, 2004.

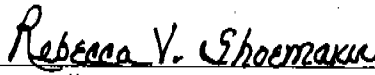




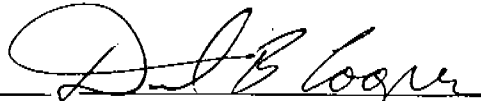
David Bragdon, Council President

Attest:

Approved as to Form:



Acting Recording Secretary



Daniel B. Cooper, Metro Attorney

MDF/kaj
M:\attorney\confidential\R-O\2003-r-o\Ord. 03-XXXX v.2 Records Maint Chap 2.04.doc
12/22/2003

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 04-1035, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 2.04 TO REQUIRE RETENTION OF CONTRACT RECORDS BY METRO CONTRACTORS AND TO ASSURE THE ABILITY OF METRO TO AUDIT CONTRACT RECORDS

Date: January 28, 2004

Prepared by: Metro Auditor
Alexis Dow

BACKGROUND

Metro does not currently have the right to inspect and review contractor records. This ordinance would require contractors to retain all fiscal records relating to such contracts in accordance with generally accepted accounting principles fiscal records and make them available to Metro departments and the Metro Auditor.

ANALYSIS/INFORMATION

1. **Known Opposition**

None

2. **Legal Antecedents**

City of Portland Code section 5.33.410 - See Attachment A

3. **Anticipated Effects**

Adoption of Ordinance 04-1035 will ensure:

- the ability to assure that Metro's public contracts, personal services contracts and public improvement contracts are performed in accordance with the terms upon which the parties to those contracts have agreed
- the ability to inspect, audit and review all of the records related to such contracts.

4. **Budget Impacts**

None

RECOMMENDED ACTION

The Metro Auditor recommends the adoption of Ordinance 04-1035.

Portland City Code

5.33.410 Records Maintenance; Right to Audit Records.

(Amended by Ordinance No. 176675, effective July 3, 2002.)

A. Contractors and subcontractors shall maintain all fiscal records relating to a contract executed with the City in accordance with generally accepted accounting principles. In addition, contractors and subcontractors shall maintain any other records necessary to clearly document:

- 1.** Their performance. Performance includes, but is not limited to, compliance with plans and specifications, compliance with fair contracting and employment programs, compliance with Oregon law on payment of wages and accelerated payment provisions, and any and all requirements imposed on the contractor or subcontractor under the contract or subcontract;
- 2.** Any claims arising from or relating to their performance under a public contract;
- 3.** Any cost and pricing data; and,
- 4.** Payment to suppliers and subcontractors.

B. Such records shall be maintained for a period of six years from the date of final completion of the contract or until the conclusion of any audit, controversy or litigation arising out of or related to a contract, whichever is longer, unless a shorter period of time is authorized in writing by the City.

C. Contractors and subcontractors shall make all their records available to the City within the boundaries of the City of Portland, Oregon, 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 the City, the contractor or subcontractor shall pay all costs for City employees, and any necessary consultants hired by the City, including travel, per diem costs, salary, and any other expenses incurred by City in sending its employees 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 the City for inspection, auditing, examining and copying those records are not recoverable costs in any legal proceeding.

D. The City and its authorized representatives shall be entitled to inspect, examine, copy and audit the books and records of any contractor or subcontractor upon request by the City for any reason, including any documents that may be placed in escrow according to any contract requirements. The records that may be inspected and copied include financial documents of the contractor, including tax returns and financial statements. The City will keep such documents confidential to the extent permitted by Oregon law, subject to Paragraph E below.

E. Contractors and subcontractors agree to disclose the records requested by the City and agree to their admission as evidence in any proceeding between the parties, including, but not limited to a court proceeding, arbitration, mediation or other alternative dispute resolution process.

F. In the event that the records disclose that the City is owed money or establishes that any portion of any claim made against the City is not warranted, the contractor or subcontractor shall pay all costs incurred by the City in conducting the audit and inspection. Such costs may be withheld from any sum due or that becomes due to the contractor by the City.

G. Failure of the contractor or subcontractor to keep or disclose records as required by PCC 5.33.410 or a solicitation document may result in disqualification as a bidder or proposer for future City contracts as provided in PCC 5.33.330 B.4, or may result in a finding that the contractor or subcontractor is not a responsible bidder or proposer as provided in PCC 5.33.300 B.4.