

BEFORE THE CONTRACT REVIEW BOARD  
OF THE METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AUTHORIZING ) RESOLUTION NO. 91-1504  
EXEMPTION TO THE REQUIREMENT OF )  
COMPETITIVE BIDDING PURSUANT TO ) Introduced by the  
METRO CODE 2.04.041 (c) AND ) Executive Officer  
APPROVING PORTLAND GENERAL ELECTRIC )  
AS A SOLE SOURCE CONTRACTOR )  
PURSUANT TO METRO CODE 2.04.060 )

WHEREAS, Utility costs amount to approximately 50% of the operating portion of the Zoo Facilities Management Division Materials and Services budget and;

WHEREAS, Portland General Electric provides a service to commercial customers that audits electrical and natural gas usage and determines the energy efficiency of those uses and;

WHEREAS, Portland General Electric has proposed a two-year program and has committed \$84,000 to pay for the audit and;

WHEREAS, \$42,000 has been budgeted this fiscal year to implement energy conservation measures equal to year one costs of the audit; and

WHEREAS, the selection of Portland General Electric to perform the energy audit will result in substantial long-term cost savings and will not encourage favoritism or substantially diminish competition; now, therefore,

BE IT RESOLVED,

1. That the Contract Review Board of the Metropolitan Service District adopts the findings in EXHIBIT A,
2. That the Contract Review Board authorizes exemption to the competitive bidding requirements of Metro Code Section 20.04.041 (c) and approves entering into a two year sole source agreement with Portland General Electric in substantially the form as shown in EXHIBIT B.

ADOPTED by the Contract Review Board of the Metropolitan Service District this 26th day of September, 1991.

  
\_\_\_\_\_  
Tanya Collier, Presiding Officer

EXHIBIT A

FINDINGS

AS REQUIRED BY ORS 279.015(2)(a), the Metropolitan Service District Contract Review Board finds that exempting the Metro Washington Park Zoo, Portland General Electric sole source agreement process from the competitive bidding process is unlikely to encourage favoritism or substantially diminish competition because:

1. Portland General Electric is a legal monopoly, and, as such, competition is not available for this process in their customer areas.

AS REQUIRED BY ORS 279.015(2)(a), the Metropolitan Service District Contract Review Board finds that exempting Portland General Electric from the competitive bidding process will result in substantial cost savings because:

1. The time, expense and effort to develop detailed contract documents required for competitive bidding will be saved, thus allowing Metro Washington Park Zoo to preserve valuable staff time and meet the project deadline.

JM:lmm:PGE/3

# Portland General Electric

EXHIBIT B

## COMMERCIAL RETROFIT AGREEMENT (LEVEL II ENERGY ANALYSIS)

THIS is an AGREEMENT between Portland General Electric Company ("PGE") and Metro Washington Park Zoo ("Participant") with regard to the commercial building or buildings located at 4001 SW Canyon Rd., Portland ("Facility").

WHEREAS PGE is offering an energy efficiency program to commercial property owners and managers within its service territory, which program makes available to owners and managers a Level II analysis of energy usage in their Facility and recommendations for cost effective Energy Conservation Measures ("ECMs") for that Facility; and

WHEREAS Participant is a commercial property owner or manager who wishes to have PGE perform or obtain such an analysis of the Facility on its behalf to obtain information about Energy Conservation Measures;

In consideration of the mutual promises contained herein, the parties hereby agree as follows:

### PGE's Obligations:

1. PGE shall provide an analysis of the Facility's energy use ("Energy Analysis"). The Energy Analysis shall be presented to the Participant in the form of a report that contains a list of building systems affected, a list of proposed ECMs, and an analysis of the cost of the ECMs relative to the estimated energy savings. PGE shall provide this Energy Analysis at no cost to Participant if the Energy Analysis contains no ECMs with a simple payback of three years or less, or if: (1) Participant actually implements one or more of the ECMs in the Facility as described below, and (2) the cost of implementation meets or exceeds the cost of the Energy Analysis. If Participant fails to implement one or more of the ECMs within the time allowed or if the cost of implementation does not meet or exceed the cost of the Energy Analysis, the Energy Analysis shall be provided at the cost described below.
2. Upon receipt of an Installation Verification Form completed by the Participant that indicates one or more ECMs have been installed in the Facility, PGE shall visit the Facility to verify that the ECMs have been installed. PGE shall provide confirmation of its findings to Participant in writing.

### Participant's Obligations:

1. As long as the Energy Analysis contains one or more ECMs with a simple payback of three years or less, if Participant fails to begin installation of one or more ECMs ~~within 30 days of receipt of the Energy Analysis~~ <sup>see attachment (A)</sup>, or if the cost of the Energy Analysis exceeds the cost of the ECMs implemented by Participant, Participant agrees to reimburse PGE for the cost of such Energy Analysis less the cost of the ECMs actually implemented by Participant less \$300. Such reimbursement shall be paid within 30 days of invoice from PGE. ~~Notwithstanding the foregoing, the maximum amount which the Participant will be required to reimburse is \$XXXXXXXXXX.~~
2. If Participant installs one or more ECMs in the Facility, Participant shall provide PGE with a completed Installation Verification Form that indicates which ECMs have been installed and the date of installation. <sup>See attachment (B)</sup>
3. Participant agrees to install and service such ECMs in accordance with manufacturers' specifications and recommended practices.

### Additional Terms and Conditions:

1. Within two years following installation of the ECMs, and upon reasonable notice, Participant agrees to give PGE access to Facility for the purpose of observing and monitoring, at PGE's expense, the operation of the ECMs at the Facility. PGE may use the information obtained from the observation and monitoring in its own promotional and informational publications. PGE shall inform Participant how the information will be used prior to its publication.

2. Upon request, Participant agrees to provide to PGE or allow PGE access to monthly electrical usage information from the Facility for use in developing case studies for promotional purposes.

3. PGE's liability under this Agreement is expressly limited to the amounts expended by PGE to obtain the Energy Analysis for the Facility. PGE shall not be liable to Participant for any cost, damage, claim or expense, whether in tort, including negligence, or otherwise, including, but not limited to, any special, consequential or incidental damages, arising out of the Commercial Retrofit Program, this Agreement, or any activities associated with or arising from this Agreement.

4. Participant shall defend, indemnify and hold PGE and its employees, agents and assigns harmless from any and all liability for injury or damages to persons or property arising wholly or in part from any act or omission of Participant, its subcontractors, agents or employees in the design, operation or use of the Facility.

5. PGE, its employees, and its consultants do not warrant that the installation of any ECM complies with applicable laws, regulations, codes or industry standards, nor that installation of any of the ECMs will necessarily result in any energy savings or in any measurable energy-related benefit. PGE, its employees, and its consultants make no warranties of any kind regarding installation of the ECMs.

6. Participant agrees to hold harmless, indemnify and defend PGE from any claims, cost, damage or expense arising from misrepresentations of energy savings or benefits by Participant to third parties.

7. This Agreement may not be assigned, in whole or in part, by Participant without the express written consent of PGE.

8. This Agreement is the entire agreement between the parties and supersedes all other communications and representations, whether oral or written.

9. This Agreement may only be modified in writing and the modification must be signed by both parties.

10. In the event that either party initiates any action or suit to enforce the terms of this Agreement, the prevailing party shall be entitled to its costs, expenses, and attorney fees incurred prior to, or at, trial and on any appeal.

**I HAVE READ AND AGREE TO THE TERMS AND CONDITIONS CONTAINED AND DESCRIBED HEREIN.**

**PARTICIPANT:**

By \_\_\_\_\_  
Please Print

By \_\_\_\_\_  
Signature

Date \_\_\_\_\_

**PORTLAND GENERAL ELECTRIC COMPANY**

By \_\_\_\_\_  
Please Print

By \_\_\_\_\_  
Signature

Date \_\_\_\_\_

ATTACHMENT (A):

Within one fiscal year of receipt

ATTACHMENT (B):

"Notwithstanding the foregoing, the maximum amount which the participant will be required to reimburse is \$42,000 for fiscal year 91/92 and \$42,000 for fiscal year 92/93, and in no event must the participant reimburse PGE for energy analysis costs if the participant implements all of the ECM's that have a simple payback of 3 years or less. If however, the ECM's with a simple payback of 3 years or less, exceed the amount budgeted in each of the fiscal years, PGE will extend the terms to allow for completion of installation in the following fiscal year without penalty.

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 91-1504 FOR THE PURPOSE OF AUTHORIZING EXEMPTION TO THE REQUIREMENT OF COMPETITIVE BIDDING PURSUANT TO METRO CODE 2.04.041(c) AND APPROVING A SOLE SOURCE AGREEMENT WITH PORTLAND GENERAL ELECTRIC PURSUANT TO METRO CODE 2.04.060.

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Date: August 30, 1991 Presented by: Judy Munro

PROPOSED ACTION:

Exemption from competitive bidding of a two year sole source agreement with Portland General Electric to provide energy audit services for all buildings at Metro Washington Park Zoo. Portland General Electric provides a service to commercial customers that audits electrical and natural gas usage and determines the energy efficiency of those uses.

FACTUAL BACKGROUND AND ANALYSIS:

The Metro Washington Park Zoo recognizes that utility costs amount to approximately 50% of the operating portion of the Facilities Management Division Materials and Services budget and have been taking independent measures to decrease those costs. Portland General Electric provides a service to commercial customers that will assess all electrical and natural gas usages within the site and determine the energy efficiency of those uses.

They have proposed a two year program and have committed a total of \$84,000 to pay for the audit. This audit, which is completed by an independent engineering firm specializing in such measurements, will then recommend capital improvements which will provide a payback based on energy conservation within three years or less. If the audit reveals no energy conservation measures, with a three year payback, Metro Washington Park Zoo is not responsible for any portion of the cost of the energy audit.

Forty-two thousand dollars has been budgeted this fiscal year to implement energy conservation measures equal to Year One costs of the audit. Engineering estimates, based on similar audits in other commercial facilities, have yielded savings of up to 20% per year once all measures are implemented. Based on projected expenditures for fiscal year 91/92 and, after Phase II of the implementation in fiscal year 92/93 is completed, we could experience savings of between \$90,000 and \$125,000 per year.

Staff recommends approval of the exemption to sign a two year sole source agreement (EXHIBIT B) with Portland General Electric.

EXECUTIVE OFFICER'S RECOMMENDATION:

The Executive Officer recommends approval of Resolution No. 91-1504.

JEM:PGE/1

REGIONAL FACILITIES COMMITTEE REPORT

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RESOLUTION NO. 91-1504, AUTHORIZING EXEMPTION TO THE REQUIREMENT OF COMPETITIVE BIDDING PURSUANT TO METRO CODE 2.04.041(c) AND APPROVING PORTLAND GENERAL ELECTRIC AS A SOLE SOURCE CONTRACTOR PURSUANT TO METRO CODE 2.04.060

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Date: September 25, 1991                      Presented by: Councilor Buchanan

**COMMITTEE RECOMMENDATION:** At its September 24, 1991 meeting the Regional Facilities Committee voted 3-0 to recommend Contract Review Board approval of Resolution No. 91-1504. Voting were Councilors Gardner, Bauer, and Buchanan. Councilors Knowles and McFarland were excused.

**COMMITTEE DISCUSSION/ISSUES:** Zoo Project Coordinator Jim Moeller presented the staff report. He said the resolution would authorize a sole source contract with PGE for an energy audit of the Zoo. Mr. Moeller said the audit would examine equipment and programs at the Zoo to determine where significant energy savings could be realized. He summarized the justification for the sole source agreement, saying that PGE has a legal monopoly for electric service and is therefore the only qualified provider of the audit services.

Councilor Bauer asked whether we had any choice in this matter. Mr. Moeller replied that the choice is to contract with PGE or not do the audit. He added that the Zoo does not pay PGE for the audit: our commitment is to implement recommended energy conservation measures that have a payback period of three years or less, up to the \$84,000 contract total.