

BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF EXEMPTING )  
THE HEADQUARTERS RFQ/RFP )  
PROCESS FROM COMPETITIVE BIDDING )  
PROCESS PURSUANT TO METRO )  
CODE 2.04.041 )

RESOLUTION NO.91-1507 - A

Introduced by Rena Cusma  
Executive Office

WHEREAS, in October 1990 the Council of the Metropolitan Service District approved Resolution No. 90-1338 which authorized the execution of a sale agreement for the acquisition of the Sears facility as the site for Metro's administrative offices and authorized an alternative procurement process for selected contracts; and

WHEREAS, Resolution No.90 - 1338 provided for a due diligence period which conditioned the closing of the sale agreement by a determination by Metro of the suitability of the Sears facility as the Metro headquarters facility; and

WHEREAS, upon completion of the extended due diligence efforts, Metro's Relocation Task Force informed the owners of the Sears facility that the study had shown that the Sears facility, including the adjacent garage, was not economically suitable and allowed the initial sale agreement to lapse; and

WHEREAS, an unsolicited proposal indicated the possibility of renovation of the Sears building, excluding the adjacent parking garage, as the new Metro Headquarters Building within an economically acceptable budget; and

WHEREAS, the Executive Officer and the Relocation Task Force have reviewed the proposal and recommend the execution of a sale agreement which provides for the closing of the sale of the Sears facility upon the satisfactory receipt and acceptance by Metro of a proposal to renovate the Sears building into Metro headquarters; and

WHEREAS, Metro staff, at the direction of the Relocation Task Force, commenced the preparation of a two step design/build procurement (RFQ/RFP) process for the renovation of the Sears building; and

WHEREAS, the RFQ phase of such procurement process has been completed with the selection of three highly qualified design/build teams who would compete at the proposed RFP phase of the design/build procurement process; and

WHEREAS, the alternative design/build RFQ/RFP process will enable Metro to procure a renovated Headquarters building of high quality at reduced costs and will not encourage favoritism or

substantially diminish competition; and

WHEREAS, the design/build procurement method has been employed successfully by other governments and is recognized as a modern and innovative contracting method; and


WHEREAS, adequate time for a full "lowest bid" bid process is not available prior to the Sears facility Owners' stated deadline for the closing of the Sale Agreement.

WHEREAS, Resolution No. 91-1505 - C acts simultaneous with this Resolution to authorized the issuance of the design/build RFP and to ratify the previous issuance of the design/build RFQ and the selection of three highly qualified teams to continue in the design/build competition.

BE IT RESOLVED,

1. That the Contract Review Board of the Metropolitan Service District, adopts the findings attached as Exhibit B.
2. That the Contract Review Board hereby exempts the Headquarters project design/build contract from competitive bidding process pursuant to Metro Code 2.04.041, subject to the requirement that the Executive Officer utilize the RFQ/RFP process authorized by the Council by Resolution 91-1505 - C.

ADOPTED by the Council of the Metropolitan Service District this 10<sup>th</sup> day of October, 1991.

  
Tanya Collier  
Presiding Officer

## REGIONAL FACILITIES COMMITTEE REPORT

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RESOLUTION NO. 91-1507A, EXEMPTING THE HEADQUARTERS RFQ/RFP PROCESS FROM COMPETITIVE BIDDING PROCESS PURSUANT TO METRO CODE 2.04.041.

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Date: October 10, 1991

Presented by: Councilor Buchanan

**COMMITTEE RECOMMENDATION:** At its October 8, 1991 meeting the Regional Facilities Committee voted 4-0 to recommend Council approval of Resolution No. 91-1507A. Voting were Councilors Gardner, Bauer, Buchanan, and McFarland. Councilor Knowles was excused.

**COMMITTEE DISCUSSION/ISSUES:** Neil Saling briefly discussed the revised findings to the resolution, which were enhanced to clarify that the process did not discourage competition and did not encourage favoritism. The findings on cost savings showed potential savings of the fast track design/build process of approximately \$1.2 million.

Councilor Buchanan asked Mr. Cooper to explain why we are varying from the usual process of competitive bidding. Mr. Cooper said that Oregon law establishes the rules for competitive bidding and contracting procedures in general. Those laws discourage non-competitive bidding, but allow for exception to low-bid, sealed bid contract award based on contract specifications. Such alternatives are sometimes used by local governments if competition is still provided for; the law calls for objective and clear criteria to be established to discourage favoritism and show cost savings. Oregon law provides for alternative procedures which are occasionally used by local governments, some of which he cited. There is no appellate law on the use of these statutes because no one has questioned the validity of such processes in appellate court.

Councilor Buchanan asked where is the line we cross that dictates we use alternative procedures. Mr. Cooper said the statute calls for identification and justification of substantial cost savings through the use of the alternative procedure. Staff has estimated savings of over \$1 million; it is Council's call to decide whether that amount is "substantial," which is the statutory requirement.

## **EXHIBIT B**

### **FINDINGS**

#### **METRO HEADQUARTERS DESIGN/BUILD RFQ/RFP PROCESS**

As required by ORS 279.015(2)(a), the Metropolitan Service District Contract Review Board finds that exempting the Metro Headquarters Project Design/Build RFQ/RFP process from the competitive bidding process is unlikely to encourage favoritism or substantially diminish competition because:

1. The RFQ process initiated by the Metro Executive Officer has resulted in the receipt of proposals from nine different teams wishing to participate in the competition. This level of competition is relatively large for a project of this size. The criteria utilized for the selection of three finalists from the nine initial competitors as set forth on page 9 of the RFQ, paragraph V, are objective performance-based criteria. The process utilized to make a selection of three finalists will include an evaluation of the written proposals made by the design/build teams and interviews conducted by Metro professional engineering and contracting staff. The final decisions will be based on the objective criteria cited above and will not result in favoritism. Therefore the process being utilized is unlikely to encourage favoritism or substantially diminish competition.
2. After the RFQ stage is completed, the three selected design/build teams who will submit proposals to Metro will be evaluated pursuant to the criteria contained in Article 5 of the RFP process. These criteria are objective and performance based. The jury that will review and make the final selection will be a neutral, balanced jury consisting of representatives of the Metro Council, the Metro Executive Officer, the Metropolitan Exposition-Recreation Commission, and professionals in the field. The use of the jury and the performance-based criteria which will take into account cost will result in a selection process based on the public interests and is a process that is unlikely to encourage favoritism.
3. The payment of an honorarium in the amount of \$25,000.00 to the three selected design/build teams participating in the RFP process will result in competition that would otherwise not occur by ensuring that competitors receive some reimbursement for their costs of putting together completed

proposals for Metro to consider, thus, encouraging competition consistent with Metro's need for a fast track process in order to result in the substantial cost savings as set forth below. Because of the payment of the honorarium Metro will benefit from an enhanced effort by the competitors. This will result in greater likelihood of competitive proposals because three competitive proposals will definitely be received. The process being utilized will not result in diminished competition.

4. The utilization of the RFQ/RFP process has resulted in nine teams expressing interest in being qualified. The RFP will result in a final round of competition by three finalists. This will be highly competitive for a project of this size and this nature where the public agency has a limited budget and the risks of participation in the renovation of an old building could result in diminished competition due to factors related to the risks of renovating an old building leading to a reluctance on the part of construction teams to bid otherwise. Thus, the process utilized will enhance not diminish competition.
5. The RFP will require the successful design/build team to solicit and receive at least three bids for all elements of the tenant improvement work; to conduct all bid openings with a Metro representative present; to award subcontracts to the bidder whose bid reflects the best value at the lowest cost, thus, maintaining the usual level of competition for the tenant improvement work. In that price will be a significant evaluation criteria, it is expected that each proposer will aggressively solicit and receive subbids from the local contracting community, thereby, maintaining the usual degree of competition at the subcontractor level for other than the tenant improvement work. This will result in enhanced not diminished competition at each level including the competition between the competing teams.

As required by ORS 279.015(2)(a), the Metropolitan Service District Contract Review Board finds that exempting the Metro Headquarters Project Design/Build RFQ/RFP process from the competitive bidding process will result in substantial cost savings because:

1. The design/build process is a "fast track method" which will compress the project schedule for the renovation of the Sears Building by simultaneously selecting design and construction services and by allowing the design/build contractor to commence initial elements of the project (demolition, ordering, fabrication of long-lead items) while the design process of other items is underway. Metro does not currently have a design/architect under contract to prepare the bid specifications for a traditional sealed bid

process for the demolition and renovation work. If Metro were to utilize its normal processes for first obtaining an architect to prepare design specifications and then after the bid specifications were prepared seeking competitive bids for contractors the time line for estimated completion of the Sears Building renovation project would be extended by up to one year. This is because it would take Metro approximately three to four months to enter into a contract with an architect including initial preparation of a Request for Proposals for an architect, Council approval of the Request for Proposals, solicitation of proposals, receipt of proposals, evaluation and selection of an architect, and Council award of the contract for an architect. An architect would then need approximately three to four months to prepare the specifications for bidding purposes. After bid documents were prepared during this time period, it would take another three- to four-month period for the formal process to be completed involving Council approval of bid documents, receive bids back from contractors, and proceed through the process of having Council approval of award of the contract and issuance of a notice to proceed. Construction costs are currently escalating, and have been escalating, at approximately five percent per year. The delay in bidding and awarding this project caused by not utilizing the RFQ/RFP process would result in construction costs increase of an least \$500,000. A minimum of \$500,000 can be saved by using the fast track method. This will result in substantial cost savings to the public agency.

2. The Sears Building Metro Headquarters Project is for the renovation of an existing building. The use of a design/build team for a renovation project will result in substantial cost savings in that the architect and contractor who would be adversaries in a traditional design/bid process will be on the same team. Therefore, the architect and contractor must cooperate as they seek creative solutions to the difficulties normally expected in renovation projects because the contract agreement with Metro will limit their amount of payment to the budgeted amount, therefore, resulting in a disincentive for the architect and contractor to impose extra costs on each other which ultimately would be borne by the public agency as they complete their work dealing with unexpected items typically found in an renovation project. While difficult to quantify prior to actual completion of the project, it is estimated by staff that these savings could amount to as much as \$250,000 on this project. Thus the use of the design/build process will result in substantial cost savings from this area as well.
3. The use of the fast track method will result in manpower cost savings to Metro in that Metro staff time will not need to be expended to supervise and manage a construction project at the same level that would be

required if the standard design/bid process were utilized. Metro staff will not be needed to supervise the project for the additional year that the longer time period method would take. This will result in savings to Metro of at least \$100,000 in staff time. During the project, the use of the design/build team will result in a lesser level of Metro supervision being used than would otherwise be required in that Metro will only need to have contact with one contracting entity and not need to interact with an architect as well as a contractor. In addition the design/build team will be responsible for all permits and necessary governmental approvals resulting in a lessening of Metro staff time. This will also result in an additional savings of approximately \$100,000 to the Metropolitan Service District. As a result of the savings in Metro manpower, substantial cost savings in the amount of \$200,000 will also be realized.

4. Shortening the time frame for the renovation project by the use of a design/build team will also result in substantial cost savings to the Metropolitan Service District in that it will shorten the time period that Metro is obligated to pay debt service for the capitalized interest necessary to maintain a bond issue for the purchase and renovation of the Sears project at the same time that it is paying rent at its existing facility. The savings of one-year's rent on the existing Metro facility will result in savings to the Metropolitan Service District of \$370,000, thus the use of the design/build process will result in substantial cost savings in this amount to the Metropolitan Service District as well.
5. The result of all the separate possible cost savings to the Metropolitan Service District as set forth above by the use of the design/build process in lieu of a standard design/bid process is in cost savings of approximately \$1,220,000. Therefore, the alternative process utilized will result in substantial cost savings to Metro.

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BEFORE THE CONTRACT REVIEW BOARD OF THE  
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF [AUTHORIZING )  
~~THE EXECUTION OF A SALE~~ )  
~~AGREEMENT FOR THE ACQUISITION OF~~ )  
~~THE SEARS FACILITY AND] EXEMPTING )  
THE HEADQUARTERS RFQ/RFP PROCESS )  
FROM COMPETITIVE BIDDING PROCESS )  
PURSUANT TO METRO CODE 2.04.041 )~~

RESOLUTION NO. 91-1507  
Introduced by Rena Cusma,  
Executive Officer

WHEREAS, in October 1990 the Council of the Metropolitan Service District approved Resolution No. 90-1338 which authorized the execution of a sale agreement for the acquisition of the Sears facility as the site for Metro's administrative offices and authorized an alternative procurement process for selected contracts; and

WHEREAS, Resolution No.90 - 1338 provided for a due diligence period which conditioned the closing of the sale agreement by a determination by Metro of the suitability of the Sears facility as the Metro headquarters facility; and

WHEREAS, upon completion of the extended due diligence efforts, Metro's Relocation Task Force informed the owners of the Sears facility that the study had shown that the Sears facility, including the adjacent garage, was not economically suitable and allowed the initial sale agreement to lapse; and

WHEREAS, an unsolicited proposal indicated the possibility of renovation of the Sears building, excluding the adjacent parking garage, as the new Metro Headquarters Building within an economically acceptable budget; and

WHEREAS, the Executive Officer and the Relocation Task Force have reviewed the proposal and recommend the execution of a sale agreement, [~~attached as Exhibit A~~], which provides for the closing of the sale of the Sears facility upon the satisfactory receipt and acceptance by Metro of a proposal to renovate the Sears building into Metro headquarters [~~and for an independent series of options to purchase the adjacent garage facility~~]; and

WHEREAS, Metro staff, at the direction of the Relocation Task Force, commenced the preparation of a two step design/build procurement (RFQ/RFP) process for the renovation of the Sears building; and

WHEREAS, the RFQ phase of such procurement process has been completed with the selection of three highly qualified design/build teams who would compete at the proposed RFP phase of the design/build procurement process; and



WHEREAS, the alternative design/build RFQ/RFP process will enable Metro to procure a renovated Headquarters building of high quality at reduced costs and will not encourage favoritism or substantially diminish competition; and

WHEREAS, the design/build procurement method has been employed successfully by other governments and is recognized as a modern and innovative contracting method;

WHEREAS, adequate time for a full "lowest bid" bid process is not available prior to the Sears facility Owners' stated deadline for the closing of the Sale Agreement.

WHEREAS, Resolution No. 91-1505 acts simultaneous with this Resolution to authorized the issuance of the design/build RFP and to ratify the previous issuance of the design/build RFO and the selection of three highly qualified teams to continue in the design/build competition.

BE IT RESOLVED,

- ~~1. — That the Council renews its selection of the Sears facility as the site for Metro's new Headquarters Building.~~
- ~~2. — That the Council hereby authorizes the Executive Officer to execute the the attached sale agreement and promissory note, Exhibit A, for the acquisition of the Sears facility.~~
- ~~3. — That prior approval of the Council shall be required before the Executive Officer proceeds to closing of the Sale Agreement.~~
- ~~4. — That the Council hereby directs the Executive Officer to undertake a financial analysis of the adjacent parking garage as a basis for a Council decision on the acquisition of that facility.~~

~~BE IT FURTHER RESOLVED],~~

1. That the [~~Council, acting as the~~] Contract Review Board of the Metropolitan Service District, adopts the finds attached as Exhibit B.
  
2. That the Contract Review Board hereby exempts the Headquarters project design/build contract [RFQ/RFP] from competitive bidding process pursuant to Metro Code 2.04.041, subject to the requirement that the Executive Officer utilize the RFO/RFP process authorized by the Council by Resolution 91-1505 - B.

ADOPTED by the Council of the Metropolitan Service District this \_\_\_ day of September, 1991.

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Tanya Collier  
Presiding Officer

BEFORE THE CONTRACT REVIEW BOARD OF THE  
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF EXEMPTING THE )  
HEADQUARTERS RFQ/RFP PROCESS )  
FROM COMPETITIVE BIDDING PROCESS )  
PURSUANT TO METRO CODE 2.04.041 )

RESOLUTION NO. 91-1507

Introduced by Rena Cusma,  
Executive Officer

WHEREAS, in October 1990 the Council of the Metropolitan Service District approved Resolution No. 90-1338 which authorized the execution of a Sale Agreement for the acquisition of the Sears facility as the site for Metro's administrative offices and authorized an alternative procurement process for selected contracts; and

WHEREAS, Resolution No. 90-1338 provided for a due diligence period which conditioned the closing of the Sale Agreement by a determination by Metro of the suitability of the Sears facility as the Metro Headquarters facility; and

WHEREAS, upon completion of the extended due diligence efforts, Metro's Relocation Task Force informed the Owners of the Sears facility that the study had shown that the Sears facility, including the adjacent garage, was not economically suitable and allowed the initial Sale Agreement to lapse; and

WHEREAS, an unsolicited proposal indicated the possibility of renovation of the Sears building, excluding the adjacent parking garage, as the new Metro Headquarters Building within an economically acceptable budget; and

WHEREAS, the Executive Officer and the Relocation Task Force have reviewed the proposal and recommend the execution of a sale agreement which provides for the closing of the sale of the Sears facility upon the satisfactory receipt and acceptance by Metro of a proposal to renovate the Sears building into Metro Headquarters; and

WHEREAS, Metro staff, at the direction of the Relocation Task Force, commenced the preparation of a two step design/build procurement (Request For Qualifications/Request For Proposals (RFQ/RFP)) process for the renovation of the Sears building; and

WHEREAS, the RFQ phase of such procurement process has been completed with the selection of three highly qualified design/build teams who would compete at the proposed RFP phase of the design/build procurement process; and

WHEREAS, the alternative design/build RFQ/RFP process will enable Metro to procure a renovated Headquarters building of high quality at reduced costs and will not encourage favoritism or substantially diminish competition; and

WHEREAS, the design/build procurement method has been employed successfully by other governments and is recognized as a modern and innovative contracting method; and

WHEREAS, adequate time for a full "lowest bid" bid process is not available prior to the Sears facility Owners' stated deadline for the closing of the Sale Agreement; NOW, THEREFORE,

BE IT RESOLVED,

1. That the Contract Review Board of the Metropolitan Service District, adopts the Findings attached as Exhibit B.
2. That the Contract Review Board hereby exempts the Headquarters project design/build contract from competitive bidding process pursuant to Metro Code 2.04.041, subject to the requirement that the Executive Officer utilize the RFQ/RFP process authorized by the Council by Resolution 91-1505-B.

ADOPTED by the Council of the Metropolitan Service District this \_\_\_\_ day of September, 1991.

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Tanya Collier, Presiding Officer

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## REGIONAL FACILITIES COMMITTEE REPORT

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RESOLUTION NO. 91-1507, EXEMPTING THE HEADQUARTERS RFQ/RFP PROCESS FROM COMPETITIVE BIDDING PROCESS PURSUANT TO METRO CODE 2.04.041

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Date: September 12, 1991

Presented by: Councilor Knowles

**COMMITTEE RECOMMENDATION:** At its September 10, 1991 meeting the Regional Facilities Committee voted 5-0 to recommend Contract Review Board approval of Resolution No. 91-1507.

**COMMITTEE DISCUSSION/ISSUES:** General Counsel Dan Cooper summarized the purpose of this resolution. State law and the Metro Code provide that all public contracts be let through competitive bidding unless the Contract Review Board makes findings that an exemption to this process does not encourage favoritism or diminish competition, and that it will result in substantial cost savings. Those findings are contained in Exhibit B to the resolution. The findings and exemption were originally included in Resolution No. 91-1494, but Mr. Cooper recommends the exemption be separated from the authorization to execute the sale agreement, and Resolution 91-1507 be considered by the Contract Review Board.

Neil Saling addressed the advantages of the design/build process proposed for the Sears project. Building renovation generally requires a large contingency, in the range of 25% - 35% of project costs. Design/build helps alleviate that problem because the architect and contractor are part of the same team and work out issues among themselves. Changes requiring change orders are matters of scope rather than technical changes. Design/build allows for a fast-track project because the contractor is brought in at the start of the design phase. It also guarantees a maximum price. He added that there will be competition at the subcontractor level, with consideration of DBE participation.

Councilor Buchanan asked for specifics on time and money savings. Mr. Saling said this process would save 4-6 months; he could not quantify the dollar savings. Councilor Buchanan asked when we could expect completion of the project. Mr. Saling said we could expect completion around the first of December 1992; actual construction should begin next spring. Councilor Buchanan then asked, for clarification, whether a bid process would require another 4-6 months. Mr. Saling said that was correct because the competitive bid process would require issuance of an RFP for design followed by preparation of the design, then issuance of an RFP for a contractor and mobilization of the contractor at the site. Design/build compresses the two bid phases into one; demolition and construction can begin before the design is 100% complete.

Mr. Cooper said he may revise the findings to include more detailed analysis of potential cost savings, which he would ask Council to adopt on Thursday. Councilor Gardner said that while cost savings are important, we shouldn't discount the importance of the competition/favoritism issue. He said he was comfortable with the design/build process, and said it was similar to the process used to build the Metro Central Transfer Station.