

BEFORE THE CONTRACT REVIEW BOARD OF THE  
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AUTHORIZING AN ) RESOLUTION NO. 91-1524  
EXEMPTION FROM THE COMPETITIVE )  
PROCUREMENT PROCEDURES OF METRO ) Introduced by Rena Cusma,  
CODE SECTION 2.04.053 FOR AMENDMENT ) Executive Officer  
NO. 15 TO THE DESIGN SERVICES )  
AGREEMENT WITH SCS ENGINEERS, INC., )

WHEREAS, SCS Engineers, Inc. (SCS) was selected in August 1989 to provide design and construction management services for the modifications to the Metro South Station; and

WHEREAS, Certain construction management services were required and performed that were not anticipated at the time of contract award; and

WHEREAS, The Metropolitan Service District has determined that a claim for compensation for these additional construction management services provided by a subcontractor to SCS is valid and that the contract with SCS should be amended to allow such a payment; and

WHEREAS, The attached exhibit entitled "Amendment No. 15 to the Design Services Agreement for Modifications to Metro South Station," which is incorporated herein by reference, would provide for an additional payment of \$47,211.98 to SCS for construction management services provided by W.R. Gamble, a subcontractor to SCS; and

WHEREAS, Metro Code Section 2.04.054(a)(3) requires that prior to amending a personal services agreement to allow an additional payment in excess of \$10,000, the Contract Review Board must grant an exemption from the Competitive Procurement Procedures of Section 2.04.053; and

WHEREAS, The Contract Review Board finds that an exemption from the Competitive Procurement Procedures of Metro Code Section 2.04.053 is appropriate in this instance; now, therefore,

BE IT RESOLVED,

That the Contract Review Board hereby exempts the attached "Amendment No. 15 to the Design Services Agreement for Modifications to Metro South Station," from the

Competitive Procurement Procedures of Metro Code Section 2.04.053, as required by Metro Code Section 2.04.054(a)(3).

ADOPTED by the Contract Review Board of the Metropolitan Service District this

14th day of Nov., 1991.

  
Tanya Collier, Presiding Officer

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**METRO**

# Memorandum

2000 S.W. First Avenue  
Portland, OR 97201-5398  
503/221-1646

To: Solid Waste Committee Members

From: John Houser, Council Analyst

Date: October 28, 1991

Re: Resolution No. 91-1524, For the Purpose of Authorizing an Exemption From the Competitive Procurement Procedures of Metro Code Section 2.04.053 for Amendment No. 15 to the Design Services Agreement with SCS Engineers, Inc.

Resolution No. 91-1524 is scheduled for consideration by the committee at the November 5 meeting.

## Background

Metro has contracted with SCS Engineers, Inc. to provide design services for construction modifications to the Metro South Station. SCS has contracted with W.R. Gamble Engineering to provide on-site construction management services. A number of delays have occurred during this construction work requiring additional on-site management services, some of which have previously been reimbursed through prior amendments to the SCS agreement.

Metro is currently negotiating with SCS concerning payment of disputed claims for additional compensation under the agreement. Gamble has requested that Metro pay its claim of \$47,211.98 against SCS for the additional management services that the firm has provided. Solid Waste staff has determined that Gamble's claim is valid and that the firm will suffer significant financial harm if it has to wait for payment until all contract disputes between Metro and SCS are resolved.

Staff is recommending immediate payment of Gamble's claim. Such action will require an amendment to the SCS agreement and an exemption from Metro's competitive bidding requirements. The resolution provides for such an amendment and exemption. It is the intent of the agreement amendment that such a payment would be not affect the ongoing negotiations relating to any other claims under the agreement.

## Issues and Questions

The committee may wish to address the following issues and questions relating to the resolution:

- 1) What are the nature of the disputes between Metro and SCS under the agreement and when does staff anticipate that these issues will be resolved? The staff report indicates that SCS has been slow to provide necessary information concerning the resolution of outstanding disputes, will payment of Gamble claim reduce the pressure on SCS to provide this information?
- 2) Are there precedents at Metro for the payment of subcontractors prior to the resolution of contract/agreement disputes between Metro and the prime contractor?
- 3) Does staff believe that payment of the Gamble claim may result in other subcontractors seeking similar types of payment under the SCS agreement or any other current Metro contract or agreement?
- 4) Does SCS have a position concerning the payment of the Gamble claim?
- 5) The staff report notes that "adequate funds exist in the FY 1991-92 budget for payment of an additional \$47,211.98 under the Design Services Agreement with SCS Engineers. What is the source of this funding and will such a payment affect other department work programs?

**AMENDMENT NO. 15**

Contract No. 900971

**To the Design Services Agreement  
for  
Modifications to Metro South Station**

This Agreement amends the above-titled Design Services Contract between the Metropolitan Service District, referred to herein as "Metro," and SCS Engineers, Inc., referred to herein as the "Contractor." This Amendment is an expansion of the Contractor's original Scope of Work.

It is acknowledged by Metro and Contractor that the services provided herein are additional services that could not have been anticipated at the time of contract award.

The parties set forth below agree to the following additions to the Contract as specifically provided for herein.

This Amendment includes work performed and services provided for resident construction management, as was provided during construction between October 1990 through September 1991 by R.W. Gamble Engineering.

Metro agrees to pay to Contractor additional consideration not to exceed \$47,211.98 for such services as specified herein. No payment beyond this sum shall be authorized by Metro without a specific written amendment to the original Contract.

The Contractor shall maintain its records in such a manner as to provide a clear distinction between the direct costs of work paid for in the performance of this work and the costs of other operations.

Nothing in this Amendment shall be construed to be an admission by either party as to the validity of any claims that may be asserted by either party in settlement of the original Agreement.

All terms of the original Agreement and previous Amendments, except as modified herein, shall remain in full force and effect.

SCS Engineers, Inc.

Metropolitan Service District

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**SOLID WASTE COMMITTEE REPORT**

CONSIDERATION OF RESOLUTION 91-1524, FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION FROM THE COMPETITIVE PROCUREMENT PROCEDURES OF METRO CODE SECTION 2.04.053 FOR AMENDMENT NO. 15 TO THE DESIGN SERVICES AGREEMENT WITH SCS ENGINEERS, INC.

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Date: November 6, 1991

Presented by: Councilor Wyers

**Committee Recommendation:** At the November 5 meeting, the Committee voted unanimously to recommend Council adoption of Resolution No. 91-1524. Voting in favor: Councilors Gardner, McFarland, McLain and Wyers.

**Committee Issues/Discussion:** Jim Watkins, Solid Waste Department, reviewed the staff report. He noted that Metro had contracted with SCS Engineers in 1989 to provide design services related to the remodeling of the Metro South Station. SCS Engineers subcontracted with W.R. Gamble Engineering to provide on-site construction management services for the project.

A number of delays have occurred in completing this project. The amount of the original design services agreement was \$198,000. As a result of the delays in completion, SCS Engineers has recently submitted additional compensation claims under the agreement totalling approximately \$230,000. These claims include an additional payment to Gamble Engineering of approximately \$47,000. Metro will be entering into discussions with SCS Engineers to resolve disputed items in the claim for additional compensation.

Watkins noted that Gamble Engineering has contacted Metro and expressed concern that the financial future of the company could be in jeopardy if it is not paid the amount owed to it by the end of November. SCS Engineers has indicated that it will not pay any of the amount due until all disputed claims for compensation have been resolved.

Watkins explained that Metro staff has reviewed Gamble's claim and found that the company has clearly provided all of services for which it has requested payment in a professional manner. In addition, Watkins noted that Gamble had provided the additional management services for which it is seeking payment at Metro's request. Therefore, because negotiations with SCS Engineers to resolve various other payment disputes may be quite lengthy, staff is requesting that the agreement with SCS Engineers be amended to permit a direct payment to Gamble of \$47,211.98. The amendment also would provide that its language would not affect the resolution of remaining disputed claims under the agreement.

Because the amount of the amendment exceeds \$10,000, the Metro Code requires that the services be competitively procured. Watkins

noted that clearly the intent of the amendment is not to procure additional services but the pay for services already provided and therefore an exemption to the Code requirements is warranted.

Councilor McFarland asked if the payment to Gamble would set a precedent that would encourage other subcontractors to approach Metro for the direct payment of claims. Watkins and Bob Martin, both indicated that it is not their intent to set such a precedent. They noted that the Gamble situation involves special circumstances and that any future claims by other subcontractors would have to be evaluated on a case-by-case basis.

Councilor Gardner asked to whom would the payment be made, SCS or Gamble? Watkins and Martin noted that it is the intent to make a direct payment to Gamble. Councilor DeJardin supported such a direct payment, noting that SCS should not be able to use such a payment as compensation for its own claims.

Councilor Van Bergen asked for and received assurances from legal counsel that state law would permit a direct payment by Metro to Gamble. Van Bergen also noted that several "construction manager" positions at Metro had been funded for the current year and asked why these persons could not provide the construction management services provided by Gamble. Watkins noted that Metro staff is generally responsible for overall contract management and the resolution of disputed claims. He noted that Metro staff would not have the specialized technical expertise to provide the type of management services provided by Gamble. Van Bergen and Councilor Wyers noted that the role of Metro staff and on-site management service providers may need to be reviewed.

Gardner noted that he supported the principal and need to make payment to Gamble, but expressed concern that Metro may be setting a precedent for future payments of this type. The committee briefly reviewed the potential cost of the design services agreement and staff agreed to provide additional written materials.

## STAFF REPORT

### CONSIDERATION OF RESOLUTION NO. 91-1524, FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION FROM THE COMPETITIVE PROCUREMENT PROCEDURES OF METRO CODE SECTION 2.04.053 FOR AMENDMENT NO. 15 TO THE DESIGN SERVICES AGREEMENT WITH SCS ENGINEERS, INC.

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Date: October 25, 1991

Presented by: Jim Watkins  
Rob Smoot

#### PROPOSED ACTION

Approve Resolution No. 91-1524, exempting Amendment No. 15 of the Contract between Metro and SCS Engineers (#900971) from the Competitive Procurement Procedures of the Metro Code for personal services contract amendments exceeding \$10,000.

#### BACKGROUND AND ANALYSIS

In August 1989, Metro contracted with SCS Engineers, Inc. (SCS) for design services to modify Metro South Station. In part, the Contract required SCS to provide on-site construction management services during construction of the modifications. SCS subcontracted these construction management services to W.R. Gamble Engineering (Gamble), a firm specializing in this field.

During construction, a number of problems were encountered that extended the construction time for the modifications. Since the construction period exceeded the original estimate, additional construction management services were required. Some of these additional services have been reimbursed through previous amendments.

SCS has indicated that it intends to make a claim for additional compensation under the design services agreement. Metro has requested that SCS document any claims that it intends to make, so that discussions can be held to resolve all remaining contract disputes.

SCS has been slow to provide the information Metro needs to resolve outstanding contract disputes. In the meantime, Metro has been approached by Walt Gamble of W.C. Gamble Engineering with a request that we pay his claim against SCS for construction management services. SCS has been reluctant to settle its account with Gamble pending a resolution of its disputes with Metro.

It is the opinion of Solid Waste Department staff that Gamble has a valid and documented claim for compensation against SCS for \$47,211.98. It is clear that Gamble has provided all of the construction management services for which it has requested payment and has done so in a professional manner, to the satisfaction of Metro staff.

Under normal circumstances, payment for Gamble's services would be settled as part of a conference with SCS in which all outstanding contract disputes would be discussed. However, it appears that Gamble is likely to suffer significant damage if not compensated within the month of November.

Solid Waste Department staff believes that it is equitable to handle Gamble's claim directly. (State law, as incorporated into the SCS Contract, also allows direct payment by a contracting agency to satisfy a subcontractor's claim against the prime contractor.) To make such a payment, it is necessary to amend the SCS Contract to provide for an additional payment to SCS. Since the proposed amendment is in excess of \$10,000, Metro Code Section 2.04.054(a)(3) requires that the Contract Review Board exempt the amendment from the Competitive Procurement Procedures of Section 2.04.053. Section 2.04.053, which requires issuance of a Request for Proposals, seems clearly to be an inappropriate solution to settling claims under an existing personal services agreement, and an exemption is warranted.

In addition to providing for a payment to SCS sufficient to cover the Gamble claim, the proposed amendment states that it is not to be construed as an admission by either party as to the validity of any claims that may be asserted by either party under the original Agreement.

#### BUDGET IMPACT

Adequate funds exist in the FY 1991-92 budget for payment of an additional \$47,211.98 under the Design Services Agreement with SCS Engineers.

#### EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Resolution No. 91-1524.

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