

BEFORE THE CONTRACT REVIEW BOARD
OF THE METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AUTHORIZING)	RESOLUTION NO. 92-1551
AN EXEMPTION TO METRO CODE)	
CHAPTER 2.04.041(C), AND COMPETITIVE))	INTRODUCED BY RENA CUSMA,
BIDDING PROCEDURES, AND)	EXECUTIVE OFFICER
AUTHORIZING A SOLE-SOURCE)	
CONTRACT WITH FETROW ENGINEERING)	
FOR PERSONAL SERVICES CONTRACT TO)	
OPERATE WATER QUALITY MODEL)	

WHEREAS, Metro stated that it would use DEQ's water quality model named NPSMAP in its grant application to assess pollution contributions from the Fairview Creek watershed into the upper Columbia Slough; and

WHEREAS, Metro was awarded the DEQ grant to conduct the pollution study in the Fairview Creek basin and wants to use the same model as DEQ to ensure consistency and accuracy with on-going DEQ pollutant loading modeling efforts; and

WHEREAS, There is currently only \$8,000 allocated to computer modeling analysis and there is not enough money in the grant to hire someone to develop a new model and carry out the required calibrations and analysis; and

WHEREAS, Jack Smith designed and developed the NPSMAP model for DEQ and is the best qualified and available individual to operate the model and support Metro staff while using the model; and

WHEREAS, It is unlikely that this exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; and

WHEREAS, The awarding of this public contract pursuant to the exemption will result in substantial cost savings to Metro; and

WHEREAS, The contract's one year timeframe precludes developing a new model and carrying out the necessary calculations to determine loadings as required by the DEQ grant; now, therefore,

BE IT RESOLVED

The Contract Review Board hereby exempts the attached purchase order (Exhibit "A" hereto) to Fetrow Engineering for the personal services contract for Jack Smith from the competitive bidding requirement pursuant to Metro Code Chapter 2.04.060.

ADOPTED by the Contract Review Board of the Metropolitan Service District this 23rd day of January, 1992.


Jim Gardner, Presiding Officer

Contract No. 902213

PERSONAL SERVICES AGREEMENT

THIS AGREEMENT dated this _____ day of November, 1991, is between the METROPOLITAN SERVICE DISTRICT, a municipal corporation, hereinafter referred to as "METRO," whose address is 2000 S.W. First Avenue, Portland, OR 97201-5398, and FETROW ENGINEERING, hereinafter referred to as "CONTRACTOR," whose address is 12300 S.E. Mallard Way, Milwaukie, OR 97222, for the period of November 29, 1991, through August 30, 1992, and for any extensions thereafter pursuant to written agreement of both parties.

W I T N E S S E T H :

WHEREAS, This Agreement is exclusively for Personal Services;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

CONTRACTOR AGREES:

1. To perform the services and deliver to METRO the materials described in the Scope of Work attached hereto;
2. To provide all services and materials in a competent and professional manner in accordance with the Scope of Work;
3. 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.

4. To maintain records relating to the Scope of work on a generally recognized accounting basis and to make said records available to METRO at mutually convenient times;

5. To indemnify and hold METRO, its agents and employees harmless 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 Agreement, with any patent infringement arising out of the use of CONTRACTOR'S designs or other materials by METRO and for any claims or disputes involving subcontractors;

6. To comply with any other "Contract Provisions" attached hereto as so labeled; and

7. CONTRACTOR shall be an independent contractor for all purposes, shall be entitled to no compensation other than the compensation provided for in the Agreement. CONTRACTOR hereby certifies that it is the direct responsibility employer as provided in ORS 656.407 or a contributing employer as provided in ORS 656.411. In the event CONTRACTOR is to perform the services described in this Agreement without the assistance of others, CONTRACTOR hereby agrees to file a joint declaration with METRO to

the effect that CONTRACTOR services are those of an independent contractor as provided under Chapter 864 Oregon Laws, 1979.

METRO AGREES:

1. To pay CONTRACTOR for services performed and materials delivered in the maximum sum of EIGHT THOUSAND AND NO/100THS (\$8,000.00) DOLLARS and in the manner and at the time designated in the Scope of Work; and

2. To provide full information regarding its requirements for the Scope of Work.

BOTH PARTIES AGREE:

1. That METRO may terminate this Agreement upon giving CONTRACTOR five (5) days written notice without waiving any claims or remedies it may have against CONTRACTOR;

2. That, in the event of termination, METRO shall pay CONTRACTOR for services performed and materials delivered prior to the date of termination; but shall not be liable for indirect or consequential damages;

3. That, in the event of any litigation concerning this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs, including fees and costs on appeal to an appellate court;

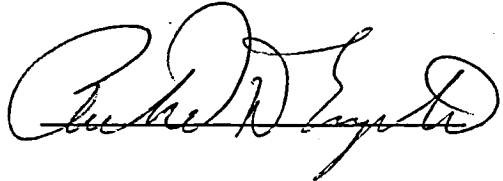
4. That this Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any condition, be assigned or transferred by either party; and

5. That this Agreement may be amended only by the written agreement of both parties.

FETROW ENGINEERING

METROPOLITAN SERVICE DISTRICT

By: _____

By: 

Date: _____

Date: 12-24-91

DB
11/25/91
persserv.cont.

SCOPE OF WORK
Fairview Creek Basin Nonpoint Source Pollutant Loading Study
November, 1991

Metro's Environmental Division in the Planning and Development Department agrees contract with Fetrow Engineering for the personal services of Jack Smith to carry out the following tasks as part of Metro's Fairview Creek Pollutant Loading Study partially funded by the Department of Environmental Quality (DEQ).

The NPSMAP model was developed by Jack Smith under contract with DEQ. The model is now in the public domain and the calculations and modeling results produced under this contract will be used by DEQ in its TMDL setting process in the Columbia Slough. The products described below partially fulfill METRO's grant requirements with DEQ and will be used by DEQ in its regulatory authority to achieve water quality goals in the Columbia Slough.

Task 1 **Conduct a preliminary sensitivity analysis using the SITEMAP model to determine to which parameter values the model is most sensitive and what specific data should be collected for modeling requirements and analysis.**

Product: **Memorandum on sensitivity to land use, hydrology, and soil parameters and identify additional data needs.**

Completion: **January, 1992**

Cost: **Payment not to exceed \$2,000.**

Task 2 **Review literature and assemble available urban, non-urban runoff data for entry into model. Identify GIS data needs.**

Product: **Report on findings of literature search and submit relevant data.**

Completion: **March, 1992**

Cost: **Payment not to exceed \$1,500.**

Task 3 **Configure NPSMAP model to conform to Fairview Creek basin morphometry, hydrology, and water quality.**

Product: **NPSMAP model configured.**

Completion: April, 1992

Cost: Payment not to exceed \$1,500.

Task 4 Enter data acquired by Metro from the local jurisdictions and other sources into model and work with Metro staff on GIS data input and mapping. Calibrate NPSMAP for basin-wide hydrology and water quality. Produce alternative pollutant loading estimates. Identify pollution control strategies.

Product: Pollutant load calculations and modeling results.

Completion: August, 1992

Cost: Payment not to exceed \$3,000.

Payment: Payment will be made upon successful completion of each task. The total personal services contract payments will be approximately \$ 5,000, but not to exceed \$ 8,000.

Payment Schedule: Fetrow Engineering will bill Metro monthly for the percent completion of each task described above.

TRANSPORTATION AND PLANNING COMMITTEE REPORT

RESOLUTION NO. 92-1551, Authorizing an Exemption to Metro Code Chapter 2.03.041(C), and Competitive Bidding Procedures, and Authorizing a Sole-Source Contract with Fetrow Engineering for Personal Services Contract to Operate Water Quality Model

Date: January 15, 1992

Presented by: Councilor McLain

COMMITTEE RECOMMENDATION: At the January 14, 1992 Transportation and Planning Committee meeting, Councilors Buchanan, Devlin, Gardner and myself voted unanimously to recommend Council adopt Resolution No. 92-1551. Councilor Bauer was excused.

COMMITTEE DISCUSSION/ISSUES: Rosemary Furfey, Planning and Development Department staff, presented Resolution No. 92-1551. Ms. Furfey recalled last Summer she previewed the Transportation and Planning Committee on the department's pursuit of a water quality grant which the Oregon Department of Environmental Quality (DEQ) subsequently awarded to Metro. The grant of \$20,400 is to assess the nonpoint source pollutants in the upper Columbia Slough.

Ms. Furfey summarized the Staff Report, noting the sole source award to Mr. Jack Smith is well justified as Mr. Smith developed the DEQ model which Metro will use and he provides the only qualified support service for the model named NPSMAP (Nonpoint Pollution Source Model for Analysis and Planning). The Committee did not have any concerns or comments about the resolution.

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 92-1551 FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION TO METRO CODE CHAPTER 2.04.041(c), COMPETITIVE BIDDING PROCEDURES, AND AUTHORIZING A SOLE-SOURCE CONTRACT WITH FETROW ENGINEERING FOR THE PERSONAL SERVICES OF JACK SMITH TO CONFIGURE THE WATER QUALITY MODEL BEING USED BY METRO AS PART OF A DEQ GRANT.

Date: December 24, 1991

Presented by: Rosemary Furfey

PROPOSED ACTION

Adoption of Resolution No. 92-1551, authorizing an exemption to competitive bidding procedures and authorizing the execution of a personal services contract with Fetrow Engineering for Jack Smith to configure the water quality model he developed for the Department of Environmental Quality (DEQ) which is being used by Metro as part of a DEQ grant.

FACTUAL BACKGROUND AND ANALYSIS

In October, DEQ awarded Metro a grant for \$20,400 to assess the nonpoint source pollutant contributions into the upper Columbia Slough from the Fairview Creek watershed. This year-long project involves data inventory, monitoring and analysis, and water quality computer modeling to estimate the amount of pollution entering the slough from the Fairview Creek basin. In its proposal to DEQ, Metro stated that it would use DEQ's water quality computer model named NPSMAP (Nonpoint Pollution Source Model for Analysis and Planning). DEQ contracted to have this model developed by Jack Smith for its pollutant load allocation work in the Metro region. DEQ will provide Metro with the NPSMAP model during the project to determine pollutant loading into the upper Slough.

Support services are essential for applying the NPSMAP model to the project area. Jack Smith, the model's author, currently provides the sole qualified support service for NPSMAP. Support service is necessary for Metro's water resources planning staff to proceed in model configuration, calibration, and simulation. Jack Smith will work with Metro staff to calibrate the model, enter data, test different pollutant loading scenarios, and produce the final modeling results.

SOLE-SOURCE JUSTIFICATION

The proposed personal services contract with Jack Smith is considered a sole-source purchase because he designed and developed the model and is best qualified to carry out the support services to the Metro water resources staff in implementing the DEQ grant requirements. In addition, the grant allocation and time frame does not include enough funds or time to pay for the development of

a new model or hiring another individual who is not familiar with the model.

BUDGET IMPACT

A total of \$8,000.00 has been allocated for computer modeling analysis from the DEQ grant. The total DEQ grant is only \$20,400.00 and there is not enough money in the grant to hire someone to develop a new model and carry out the required calibrations and analysis. The proposed purchase costs are summarized below:

-Total cost of water quality modeling:	\$ 8,000.00
-Metro contribution of staff time:	\$ 14,700.00
-In-kind services from local jurisdictions:	\$ 11,500.00
-DEQ grant :	<u>\$ 20,400.00</u>
Total	\$ 46,600.00

EXECUTIVE OFFICER'S RECOMMENDATION

The executive Officer recommends approval of Resolution No. 92-1551.



GRANT/CONTRACT SUMMARY

METROPOLITAN SERVICE DISTRICT

GRANT/CONTRACT NO. 902213 BUDGET CODE NO. 142.13.2300-524190-42643
 FUND: PLANNING + DEVELOPMENT DEPARTMENT: PLANNING + DEVELOPMENT (IF MORE THAN ONE) _____
 SOURCE CODE (IF REVENUE) _____ REGIONAL FACILITIES _____

INSTRUCTIONS

- OBTAIN GRANT/CONTRACT NUMBER FROM CONTRACTS MANAGER. CONTRACT NUMBER SHOULD APPEAR ON THE SUMMARY FORM AND ALL COPIES OF THE CONTRACT.
- COMPLETE SUMMARY FORM.
- IF CONTRACT IS --
 - A. SOLE SOURCE, ATTACH MEMO DETAILING JUSTIFICATION.
 - B. UNDER \$2,500, ATTACH MEMO DETAILING NEED FOR CONTRACT AND CONTRACTOR'S CAPABILITIES, BIDS, ETC.
 - C. OVER \$2,500, ATTACH QUOTES, EVAL. FORM, NOTIFICATION OF REJECTION, ETC.
 - D. OVER \$50,000, ATTACH AGENDA MANAGEMENT SUMMARY FROM COUNCIL PACKET, BIDS, ETC.
- PROVIDE PACKET TO CONTRACTS MANAGER FOR PROCESSING

DEC 05 '91

- R. F. Director
- Admin. Sect.
- Procurement Dir.
- Contract Admin.
- Construction Mgr.
- Labor Manager.
- Building Mgr.
- Fac. Plan. Mgr.

1. PURPOSE OF GRANT/CONTRACT SUPPORT SERVICE DEQ NPSMAP MODEL
Nonpoint Pollution Source Model for Analysis & Planning -

2. TYPE OF EXPENSE
- PERSONAL SERVICES
 - LABOR AND MATERIALS
 - PROCUREMENT
 - PASS THROUGH AGREEMENT
 - INTER-GOVERNMENTAL AGREEMENT.
 - CONSTRUCTION
 - OTHER

OR

- TYPE OF REVENUE GRANT CONTRACT OTHER
3. TYPE OF ACTION CHANGE IN COST CHANGE IN WORK SCOPE
 CHANGE IN TIMING NEW CONTRACT

4. PARTIES METRO AND FETROW ENGINEERING

5. EFFECTIVE DATE 11-29-91 TERMINATION DATE 8-30-92
 (THIS IS A CHANGE FROM _____)

6. EXTENT OF TOTAL COMMITMENT: ORIGINAL/NEW NOT EXCEED 8,000.00
 PREV. AMEND 0
 THIS AMEND 0
 TOTAL \$ 8,000.00

7. BUDGET INFORMATION

A. AMOUNT OF GRANT/CONTRACT TO BE SPENT IN FISCAL YEAR 1991 92 \$ 7,000.00

B. BUDGET LINE ITEM NAME MISC PROF SUS AMOUNT APPROPRIATED FOR CONTRACT \$ 10,000.00

C. ESTIMATED TOTAL LINE ITEM APPROPRIATION REMAINING AS OF 11-25 1991 \$ 742,500.80

8. SUMMARY OF BIDS OR QUOTES (PLEASE INDICATE IF A MINORITY BUSINESS ENTERPRISE)

SUBMITTED BY _____ \$ _____ MBE

SUBMITTED BY _____ \$ _____ MBE

SUBMITTED BY _____ \$ _____ MBE

*SOLE SOURCE
 SOURCE REACHED
 ATTACHED LETTER*

9. NUMBER AND LOCATION OF ORIGINALS A METRO CONTRACTS, PJD, CONTRACTOR

10. A. APPROVED BY STATE/FEDERAL AGENCIES? YES NO NOT APPLICABLE
 B. IS THIS A DOT/UMTA/FHWA ASSISTED CONTRACT YES NO
11. IS CONTRACT OR SUBCONTRACT WITH A MINORITY BUSINESS? YES NO
 IF YES, WHICH JURISDICTION HAS AWARDED CERTIFICATION _____
12. WILL INSURANCE CERTIFICATE BE REQUIRED? YES NO
13. WERE BID AND PERFORMANCE BONDS SUBMITTED? YES NOT APPLICABLE
 TYPE OF BOND _____ AMOUNT \$ _____
 TYPE OF BOND _____ AMOUNT \$ _____
14. LIST OF KNOWN SUBCONTRACTORS (IF APPLICABLE)
- | | | |
|------------|---------------|------------------------------|
| NAME _____ | SERVICE _____ | <input type="checkbox"/> MBE |
| NAME _____ | SERVICE _____ | <input type="checkbox"/> MBE |
| NAME _____ | SERVICE _____ | <input type="checkbox"/> MBE |
| NAME _____ | SERVICE _____ | <input type="checkbox"/> MBE |
15. IF THE CONTRACT IS OVER \$10,000
 A. IS THE CONTRACTOR DOMICILED IN OR REGISTERED TO DO BUSINESS IN THE STATE OF OREGON?
 YES NO
 B. IF NO, HAS AN APPLICATION FOR FINAL PAYMENT RELEASE BEEN FORWARDED TO THE CONTRACTOR?
 YES DATE _____ INITIAL _____

16. COMMENTS:
 SEE ATTACHED MEMO ON SOLE SOURCE

GRANT/CONTRACT APPROVAL

<p>INTERNAL REVIEW</p> <p><i>[Signature]</i> DEPARTMENT HEAD</p> <hr/> <p>FISCAL REVIEW</p> <hr/> <p>BUDGET REVIEW</p>	<p>CONTRACT REVIEW BOARD (IF REQUIRED) DATE _____</p> <p>1. _____ COUNCILOR</p> <p>2. _____ COUNCILOR</p> <p>3. _____ COUNCILOR</p>	<p>COUNCIL REVIEW (IF REQUIRED)</p> <p>DATE _____</p>
--	--	---

- LEGAL COUNSEL REVIEW AS NEEDED:
- A. DEVIATION TO CONTRACT FORM _____
- B. CONTRACTS OVER \$10,000 _____
- C. CONTRACTS BETWEEN GOVERNMENT AGENCIES _____

METRO

Memorandum

Planning and Development
2000 S.W. First Avenue
Portland, OR 97201-5398
(503) 221-1646

DATE: November 25, 1991

TO: Fairview Creek Project File

FROM: Rosemary Furfey, Project Manager *RF*
Water Resource Planning

SUB: Justification for Sole Source Contract on Fairview Creek Project

The Oregon Department of Environmental Quality (DEQ) has awarded Metro a grant for \$20,400 to determine nonpoint source pollutant loading into the upper Columbia Slough from the Fairview Creek watershed. The Columbia Slough is a water quality limited stream. In order to address this pollution problem, DEQ is establishing total maximum daily load (TMDL's) allocations for selected pollutants in the slough.

This year-long project involves two components. The first component includes data inventory, monitoring and analysis, and modeling to estimate the nonpoint source pollution contributions from the Fairview Creek basin into the upper slough down to its intersection with 185th Street. The second part of the Metro work plan includes a public involvement component. Metro will form a technical work group with individuals representing each of the jurisdictions in the project area, including citizen's groups. The technical work group will be involved in all stages of data collection and analysis.

In its proposal to DEQ, Metro stated that it would use DEQ's water quality computer model named NPSMAP (Nonpoint Pollution Source Model for Analysis and Planning). DEQ contracted to have this model developed for its pollutant load allocation work in the Metro region. DEQ will provide Metro with the NPSMAP model during the project to determine pollutant loading into the upper Slough. Support services are essential for applying the NPSMAP model to the project area. Jack Smith, the model's author, currently provides the sole qualified support service for NPSMAP. Support service is necessary for METRO's water resources planning staff to proceed in model configuration, calibration, and simulation. This individual will work with Metro staff to calibrate the model, enter data, test different pollutant loading scenarios, and produce the final modeling results.

A sole source contract is required for the following reasons:

1. The NPSMAP model is being used by DEQ and Metro wants to use the same model to ensure consistency and accuracy with on-going DEQ pollutant loading modeling efforts. Metro's proposal specifically stated that DEQ's NPSMAP model will be used to carry out pollutant loading calculations.
2. There is currently only \$ 8,000 allocated to computer modeling analysis and there is not enough money in the grant to hire someone to develop a new model and carry out the required calibrations and analysis.
3. The NPSMAP computer model software is readily available from DEQ and Metro only needs to hire the developer of the model to assist in running the model and working with staff to determine pollutant loading.
4. The designer of the NPSMAP model, Jack Smith, is most familiar with the model and is available to work with Metro staff to carry out the modeling required in the project.
5. The contract's one year timeframe precludes developing a new model and carrying out the necessary calculations to determine pollutant loadings as required by the DEQ grant.

Based on the reasons listed above, I request that a sole source contract be approved to hire Jack Smith according to the scope of work described on the attached page. The sole source contract will be for approximately \$ 5,000 as budgeted in the grant proposal, but not to exceed \$ 8,000.