

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING ) RESOLUTION NO. 97-2569  
REQUEST FOR PROPOSALS )  
FOR HEARINGS OFFICER SERVICES ) Introduced by Mike Burton, Executive Officer

WHEREAS, Section 2.05.025(a) of the Metro Code requires that contested case hearings on amendments to the regional Urban Growth Boundary (UGB) shall be before a Hearings Officer; and

WHEREAS, Metro also utilizes the services of Hearings Officers in other cases; and

WHEREAS, the Council may from time to time approve and provide to the Executive Officer a list of prospective Hearings Officers from which Hearings Officers may be appointed by the Executive Officer; and

WHEREAS, the last Request for Proposals for Hearings Officers was issued in 1993; and

WHEREAS, until the Council establishes a new list of acceptable Hearings Officers, Section 2.05.025 of the Metro Code requires the Executive Officer to continue to refer hearings to those attorneys who were so designated by the Council, now, therefore,

BE IT RESOLVED,

That the Metro Council approves the Request for Proposals for Hearings Officer Services attached as Exhibit A and authorizes immediate release for response by qualified attorneys.

ADOPTED by the Metro Council this 11<sup>th</sup> day of DECEMBER 1997.

  
\_\_\_\_\_  
Jon Kvistad, Presiding Officer

Approved as to Form:


  
\_\_\_\_\_  
Daniel B. Cooper, General Counsel

EXHIBIT A

REQUEST FOR PROPOSALS  
FOR  
HEARINGS OFFICER SERVICES

I. INTRODUCTION

Metro, a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter, located at 600 NE Grand Avenue, Portland, OR 97232-2736, is requesting proposals for Hearings Officer. Proposals will be due no later than 5:00 p.m., \_\_\_\_\_, 1997 in Metro's business offices at 600 NE Grand Avenue, Portland, OR 97232-2736. Details concerning the project and proposal are contained in this document.

II. BACKGROUND/HISTORY OF PROJECT

Metro has the need for Hearings Officers on an occasional as needed basis. In the past, Hearings Officers have been primarily used for contested case proceedings involving requests to alter the Metro Urban Growth Boundary (UGB) or in solid waste ordinance enforcement proceedings (illegal dumping). Other cases have involved other land use decisions and relocation benefits. Cases could be related to personnel matters, exclusion orders or other issues. All contested cases are conducted pursuant to Chapter 2.05 of the Metro Code (a copy of which is attached). Metro will select as many qualified Hearings Officers as it deems sufficient. The firms selected are subject to approval and designation by the Metro Council. Thereafter, individual cases will be assigned to selected Hearings Officers from time to time on an as needed basis at the discretion of Metro's General Counsel.

III. PROPOSED SCOPE OF WORK/SCHEDULE

Metro is seeking proposals from qualified firms to perform the following services and to deliver the products described in Attachment A, Scope of Work.

IV. QUALIFICATIONS/EXPERIENCE

Proposers shall have the following experience:

1. Be an active member in good standing of the Oregon State Bar.
2. Experience in conducting hearings, as a Hearings Officer, or as chair of a board or commission involved in contested case proceedings, or by demonstrated ability to conduct hearings through other equivalent experience. Experience and ability in presenting complex materials to a lay board of decision-makers.

And either:

3. Experience with land use law, as a Hearings Officer or as an attorney representing a client in land use cases, at least one of which was argued before the Land Use Board of Appeals (LUBA); and familiarity with the standards and procedures for urban growth boundary amendments and goal exceptions;

or:

4. Experience with contested case hearings procedures in at least one other area of the law, including, but not limited to code enforcement proceedings, personnel matters, relocation benefits, or other civil proceedings (broader subject matter experience preferred).

V. PROJECT ADMINISTRATION

Metro staff contact will be General Counsel Daniel B. Cooper. Council staff, Growth Management Services department staff, or other Metro staff will be available to provide information as needed. The Hearings Officer will meet with Metro staff to discuss Metro's experience and expectations regarding cases, but will operate independently of any specific supervision.

VI. PROPOSAL INSTRUCTIONS

A. Submission of Proposals:

Five (5) copies of the proposal shall be furnished to Metro, addressed to:

Daniel B. Cooper, General Counsel  
Metro  
Office of General Counsel  
600 NE Grand Avenue  
Portland, OR 97232-2736

B. Deadline:

Proposals will not be considered if received after 5:00 p.m., \_\_\_\_\_, 1997.

C. RFP as Basis for Proposals:

This Request for Proposals represents the most definitive statement Metro will make concerning the information upon which proposals are to be based. Any verbal information which is not addressed in this RFP will not be considered by Metro in evaluating the proposal. All questions relating to this RFP should be addressed to the Office of General Counsel at (503) 797-1529. Any questions, which in the opinion of Metro, warrant a written reply or RFP amendment will be furnished to all parties receiving this RFP. Metro will not respond to questions received after \_\_\_\_\_.

D. Information Release:

All proposers are hereby advised that Metro may solicit and secure background information based upon the information, including references, provided in response to this RFP. By submission of a proposal all proposers agree to such activity and release Metro from all claims arising from such activity.

E. Minority and Women-Owned Business Program:

In the event that any subcontracts are to be utilized in the performance of this agreement, the proposer's attention is directed to Metro Code provisions 2.04.100 & 200. Copies of that document are available from the Risk and Contracts Management Division of Administrative Services, Metro, Metro Center, 600 NE Grand Avenue, Portland, OR 97232 or call (503) 797-1717.

VII. PROPOSAL CONTENTS

The proposal should contain not more than ten (10) pages of written material (excluding biographies and brochures, which may be included in an appendix), describing the ability of the consultant to perform the work requested, as outlined below. The proposal should be submitted on recyclable, double-sided recycled paper (post consumer content). No waxed page dividers or non-recyclable materials should be included in the proposal.

- A. Transmittal Letter: Indicate attorney's name and name(s) of any legal assistants, and that the proposal will be valid for ninety (90) days.
- B. Approach/Project Work Plan: Provide a statement of general philosophy on the role of the Hearings Officer in Metro's contested case proceedings and, if applicant is interested in conducting land use hearings for Metro, a statement regarding the interpretation and application of Land Conservation and Development Commission (LCDC) Goals for major amendments to the UGB.
- C. Staffing/Project Manager Designation: Identify specific personnel assigned to major project tasks, their roles in relation to the work required, percent of their time on the project, and special qualifications they may bring to the project. Include resumes of individuals proposed for this contract. Proposals must identify a single person as project manager to work with Metro.
- D. Experience: Indicate how your firm meets the experience requirements listed in section IV. of this RFP. List projects conducted over the past five years which involved services similar to the services required here.
- Include either a sample decision or brief you have written on a land use case, preferably one involving the exercise of judgment in the application of broad discretionary standards, ideally on a topic relating to LCDC Goal 14 compliance or any other statewide goal, or a sample decision or brief in a contested case regarding a subject other than a land use matter.
- E. Cost/Budget: List hourly rate for the proposed Hearings Officer. If a legal assistant will be assigned to administer routine case elements, list the hourly rate for that assistant, and identify the types of tasks to be assigned to that assistant. Reimbursable expenses should also be listed. Metro has established a budget not to exceed \$5000 for each hearing. For very complex matters, Metro may approve a higher amount.
- F. Exceptions and Comments: To facilitate evaluation of proposals, all responding firms will adhere to the format outlined within this RFP. Firms wishing to take exception to, or comment on, any specified criteria within this RFP are encouraged to document their concerns in this part of their proposal. Exceptions or comments should be succinct, thorough, and organized.

## VIII. GENERAL PROPOSAL/CONTRACT CONDITIONS

- A. **Limitation and Award:** This RFP does not commit Metro to the award of a contract, nor to pay any costs incurred in the preparation and submission of proposals in anticipation of a contract. Metro reserves the right to waive minor irregularities, accept or reject any or all proposals received as the result of this request, negotiate with all qualified sources, or to cancel all or part of this RFP. Metro intends to select more than one proposal and allocate the Hearings Officer's workload between contractors.
- B. **Billing Procedures:** Proposers are informed that the billing procedures of the selected firm are subject to the review and prior approval of Metro before reimbursement of services can occur. Contractor's invoices shall include an itemized statement of the work done during the billing period, and will not be submitted more frequently than once a month. Metro shall pay Contractor within 30 days of receipt of an approved invoice.
- C. **Validity Period and Authority:** The proposal shall be considered valid for a period of at least ninety (90) days and shall contain a statement to that effect. The proposal shall contain the name, title, address, and telephone number of an individual or individuals with authority to bind any company contacted during the period in which Metro is evaluating the proposal.
- D. **Conflict of Interest.** A Proposer filing a proposal thereby certifies that no officer, agent, or employee of Metro or Metro has a pecuniary interest in this proposal or has participated in contract negotiations on behalf of Metro; that the proposal is made in good faith without fraud, collusion, or connection of any kind with any other Proposer for the same call for proposals; the Proposer is competing solely in its own behalf without connection with, or obligation to, any undisclosed person or firm.

## IX. EVALUATION OF PROPOSALS

- A. **Evaluation Procedure:** Proposals received that conform to the proposal instructions will be evaluated. The evaluation will take place using the evaluation criteria identified in the following section. Interviews may be requested prior to final selection of qualified firms.
- B. **Evaluation Criteria:** Proposals will be evaluated based on the completeness of proposals and the demonstration of ability to meet the qualifications set forth in this RFP. Cost may be a factor in selecting qualified proposers or in selecting Hearings Officers for individual cases.

## X. NOTICE TO ALL PROPOSERS -- STANDARD AGREEMENT

The attached personal services agreement is a standard agreement approved for use by the Metro Office of General Counsel. This is the contract the successful proposer will enter into with Metro; it is included for your review prior to submitting a proposal.

Attachments: Scope of Work, Attachment A  
Sample Personal Services Agreement  
Metro Code, chapter 2.05

Attachment A

SCOPE OF WORK

1. Description of the Work.

1. The Hearings Officer shall be assigned on a case-by-case basis to conduct contested case proceedings. The number of cases assigned in a year may vary from none to ten or more. A Hearings Officer will be expected to accept all cases assigned to a maximum of six, unless ethical conflicts exist.
2. Hearings Officer shall meet with Metro staff to discuss the applications, case procedures, and to establish hearing dates. Upon assignment of cases to the Hearings Officer, the Hearings Officer shall within three (3) days of assignment determine whether he/she has any conflict of interest, bias, or prehearing contacts, with respect to the case or the parties thereof. If such condition exists, whether apparent or real, the Hearings Officer shall notify Metro within the three day period, whereupon the Hearings Officer may decline the assignment or Metro may withdraw the assignment. Metro will not be charged for the Hearings Officer's time in determining whether these conditions exist, nor will Metro be charged for any time devoted to a case in which one of these conditions is later found to exist.
3. Hearings Officer may visit the site of each land use case prior to preparation of his/her report, but shall not devote more than one (1) hour for each view, exclusive to travel time to and from the site, unless otherwise approved by Metro.
4. After the initial hearing date has been scheduled, Metro will provide notice as required.
5. Hearings shall be held at Metro Offices or in facilities obtained or approved by Metro at Metro expense.
6. The Hearings Officer shall conduct the hearing(s). Hearings Officer shall conduct hearings in a fair yet efficient manner and may establish time limits for hearing participants. Hearings may be continued if necessary, but completion of hearings in a timely manner is of the essence. The Hearings Officer is responsible for ensuring that all applicable rules and guidelines are met. It is anticipated that the Metro staff, in a given case, may certify to the Hearings Officer specific questions related to the case. In that event, Hearings Officer shall specifically respond to each such question in the Findings, Conclusions, and Recommendations. Decisions and recommendations of Hearings officer shall be in accordance with and based upon Oregon law related to the subject of the hearing. Metro's General Counsel shall identify the applicable standards for approval. It shall be Hearings Officer's responsibility to interpret these standards as they apply to the subject of the hearing. In addition, the Hearings Officer shall comply with all contested case procedures adopted by Metro and with any other applicable laws affecting hearing procedures. The Hearings Officer shall be familiar with past Metro cases and consistent with them whenever possible.

7. The Hearings Officer shall prepare and submit to Metro the original and one copy of each Proposed Order including Findings, Conclusions, and Recommendations. The Proposed Order shall include a list of parties, rulings on motions, and on the admissibility of evidence, Findings of Fact, Conclusions of Law, a recommended decision, and a statement of reasons for decision. The proposed Order shall be due and filed with Metro on or before the thirtieth (30) day following conclusion of the hearing of each case. The Proposed Order, Findings, Conclusions, and Recommendations shall be prepared consistent with the standards of good practice of the legal profession.
8. The Hearings Officer shall make an oral presentation to the Metro Council of the Findings, Conclusions, and Recommendations.
9. In certain cases the Metro Council may require rehearing or modification of parts of all of a Proposed Order. In that event, Hearings Officer shall carry out the direction of the Council in a timely manner. Hearings Officer shall provide a modified report within ten (10) days of such Council direction to modify, or within ten (10) days of the rehearing, whichever is applicable.
10. The Hearings Officer shall keep accurate and detailed records for the purpose of computing compensable time and shall submit said records to Metro no later than the end of the next succeeding month in which the services were completed. Such records shall include the following information: description of service performed, to whom service should be charged, date of service, time spent for each charge and each direct expense. The level of detail of this information shall be such that each charge is clearly understandable to Metro staff and the applicant.
11. Payment through the first consideration by the Council shall be made in lump sum within forty-five (45) days of the hearings Officer's oral presentation of his/her Proposed Order to the Council. If additional work is required after that time, payment shall be made monthly within thirty (30) days of receipt of a record of compensable time for such work. If the Hearings Officer is not required to make an oral presentation to the Council, payment shall be made in lump sum within forty-five (45) days of receipt of the Proposed Order.
12. Except as provided below, the Hearings Officer agrees to perform all services and deliver to Metro all materials outlined in the Scope of Work at a rate of \$ \_\_\_\_\_ per hour for a total not to exceed \$5000 per case without written permission from the Metro General Counsel.

## **2. Payment and Billing.**

Contractor shall perform the above work for a maximum price not to exceed FIVE THOUSAND DOLLARS (\$5000.00) per case.

The maximum price includes all fees, costs and expenses of whatever nature. Contractor's billing statements will include an itemized statement of work done and expenses incurred during the billing period, will not be submitted more frequently than once a month, and will be sent to Metro. Metro will pay Contractor within 30 days of receipt of an approved billing statement and subject to the payment schedule set forth in paragraph II above.

**Advertisements for RFP to be placed in the following journals:**

State Bar Association Magazine  
Multnomah County Bar Association Newsletter  
Clackamas County Bar Association Newsletter  
Washington County Bar Association Newsletter  
The Oregonian  
The Skanner  
The Portland Observer  
Portland Business Today



## STAFF REPORT

### RESOLUTION NO. 97-2569 FOR THE PURPOSE OF APPROVING REQUEST FOR PROPOSALS FOR HEARINGS OFFICER SERVICES

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October 24, 1997

Presented by: Daniel B. Cooper

#### Background

Metro has the need for hearings officers in Urban Growth Boundary amendment proceedings, as well as for other contested case proceedings required to be conducted by Metro.

Pursuant to Metro Code Chapter 2.05, the Executive Officer is required to appoint hearings officers from a list of hearings officers approved by the Metro Council. Metro has periodically issued Requests for Proposals for interested attorneys to generate a list of qualified hearings officers for use by the Executive Officer. The last time a request for proposals was submitted was in 1993. It is appropriate at this time to generate another opportunity for interested attorneys to submit their qualifications to Metro in order for Metro to have a sufficient number of well qualified hearings officers.

Hearings officers typically are used for Urban Growth Boundary hearings, as well as solid waste illegal dumping enforcement proceedings. In addition, hearings officers could be utilized in other contested case proceedings resulting from the enforcement of Metro ordinances.

The Request for Proposals attached to Resolution 97-2569 is in a standard format, similar to the Request for Proposals previously used by the Council. After proposals are received, they will need to be evaluated and a recommendation made to the Council as to which attorneys should be formally designated as Metro hearings officers for future use. This designation will be the subject of a subsequent Council resolution. The Office of General Counsel recommends that this selection be conducted by an internal working group consisting of the General Counsel, a representative of the Metro Council and a representative of the executive branch of the agency.

#### Recommendation

The Executive Officer recommends Council approval of Resolution 97-2569.