

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING CHAPTER) ORDINANCE NO. 04-1065A
2.04 OF THE METRO CODE RELATING TO)
PUBLIC CONTRACTING (EFFECTIVE MARCH) Introduced by Chief Operating Officer
1, 2005)) Michael J. Jordan, with the concurrence of
) Council President David Bragdon

WHEREAS, the 2003 Oregon Legislature enacted significant, major revisions to the Oregon Public Contracting Code;

WHEREAS, the amendments adopted by the Oregon Legislation require the Metro Council to review and update the provisions of the Metro Contracting Code both to comply with state law and to modernize procurement practices so that they reflect market place and industry standards; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

SECTION 1. Metro Code Section 2.04.010 is amended to read as follows:

2.04.010 Definitions

For the purposes of this chapter unless the context requires otherwise the following terms shall have the meanings indicated:

- (a) "Auditor" means the Metro Auditor provided for in Section 18 of the Metro Charter.
- (b) "Chief Operating Officer" means the person holding the position of Chief Operating Officer established by Section 2.20.010 of the Metro Code.
- (c) "Competitive bidding" means an advertised solicitation of sealed bids.
- (d) "Contract Review Board" or "Board" means the Metro Council, sitting as a local Contract Review Board ~~created~~ pursuant to ~~Section 2.04.050 of this chapter~~ the provisions of ORS 279A.060.

~~(e)~~(d) "Council President" means the Council President provided for in Section 16(4) of the Metro Charter.

~~(f)~~(c) "Emergency" means ~~the occurrence of a specific event or events that could not have been reasonably foreseen and prevented, and which requires the taking of prompt action to remedy the condition and thereby avoid further physical damage or harm to individuals or the occurrence of avoidable costs.~~ circumstances that: (A) could not have been reasonably foreseen; (B) create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and (C) require prompt execution of a contract to remedy the condition.

~~(g)~~(f) "Emergency contract" means a contract whose purpose is limited to remedying an emergency situation.

~~(h)~~(g) “Intergovernmental agreement” means a written agreement with any other unit or units of federal, state or local government providing for the acquisition of goods or services by Metro, for the provision of goods or services by Metro or for the payment or receipt of funds in order to promote or carry out a common purpose.

~~(h)~~(h) “Notice of award” means written communication to a responsive, responsible bidder or proposer stating that their bid or proposal has been conditionally determined to be the lowest, responsive, responsible bid or most responsive proposal and that Metro intends to enter into a contract upon completion by the bidder/proposer of all required conditions.

~~(h)~~(i) “Personal services contract” means any contract by which Metro acquires a professional, artistic, creative, consulting, educational, or management service. Contracts which are predominately for the purpose of obtaining a product, labor or materials, or the services of a construction trade are not a personal services contract.

~~(h)~~(j) “Procurement Officer” means the person designated by the Chief Operating Officer to carry out the functions required of such person by this chapter.

~~(h)~~(k) “Public agency” means any agency of the federal government, State of Oregon, or any political subdivision thereof, authorized by law to enter into public contracts and any public body created by intergovernmental agreement.

~~(m)~~(l) “Public contract” means any purchase, lease or sale by Metro of personal property, public improvement or services, including those transacted by purchase order, other than agreements which are for personal services.

~~(m)~~(m) “Public improvement” means projects for construction, reconstruction or major renovation on real property by or for a ~~public~~ contracting agency. “Public improvement” does not include (i) projects for which no funds of a contracting agency are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection or (ii) emergency work, minor alteration, ordinary repair or maintenance in order to preserve a public improvement.

~~(n)~~(n) “Request for Proposals or RFP” means the issuance of a request for offers that will be evaluated based on factors that are not limited to price alone.

~~(p)~~(o) “Sole source contract” means a contract for which it can be documented there is only one qualified provider of the required service or material, that the goods or services or class of goods or services are available from only one source.

SECTION 2. Metro Code Section 2.04.024 is amended to read as follows:

2.04.024 Metropolitan Exposition-Recreation Commission

The Metropolitan Exposition-Recreation Commission has authority to enter into contracts pursuant to Metro Code Section 6.01.040(j). Notwithstanding any provision of this chapter to the contrary, the Commission may without the prior approval of the Chief Operating Officer enter into contracts in any amount in accordance with contracting rules adopted by the Commission pursuant to the authority contained in Section 6.01.040(j). However, pursuant to ORS 279A.060 the Contract Review Board created pursuant to Section 2.04.050- Metro Council shall be the local contract review board for the Commission.

SECTION 3. Metro Code Section 2.04.026 is amended to read as follows:

2.04.026 Council Approval of Contracts

(a) Notwithstanding any other provisions of this chapter, the Chief Operating Officer, Metro Attorney, or Auditor must obtain authorization by the Council prior to execution of the following types of contracts:

- (1) Any contract which commits the Metro to the expenditure of appropriations not otherwise provided for in the current fiscal year budget at the time the contract is executed and which has a significant impact on Metro. The following types of contracts shall be considered to have significant impacts unless the Council finds that under the circumstances a contract will not have a significant impact:
 - (A) Any public contract for a term greater than 12 months for private operation of all or of a major part of a Metro facility or concessions at a Metro facility.
 - (B) Any public improvement contract for an amount over \$50,000.
 - (C) Any public contract which will potentially result in a material (more than 5 percent of the related fund) loss of revenues or increase in expenditures in more than one year in any Metro fund.
 - (D) Any contract for personal services for a term greater than 12 months and in an amount greater than \$50,000.
 - (E) Any contract for personal services for an amount greater than \$50,000 related to Metro's exercise of its regional planning functions pursuant to Section 5 of the Metro Charter.
 - (F) Any contract for personal services for an amount over \$50,000 related to the study by Metro of exercising authority, pursuant to Section 7 of the Metro Charter, over additional functions.
- (2) Any agreement entered into pursuant to ORS Chapter 190 by which Metro acquires or transfers any interest in real property, assumes any function or duty of another governmental body, or transfers any function or duty of Metro to another governmental unit; or
- (3) Any contract for the purchase, sale, lease or transfer of real property owned by Metro. However, the Chief Operating Officer may execute options to purchase real property.

(b) Prior to adoption of the annual budget, the Chief Operating Officer shall submit a list of proposed contracts over \$50,000 to be entered into during the next fiscal year. The Council shall designate in the annual budget ordinance which contracts have a significant impact on Metro.

Thereafter, if the Chief Operating Officer proposes to enter into a contract that will commit Metro to the expenditure of appropriations not provided for in the current fiscal year budget in an amount greater than \$50,000 that the Council has not considered during the annual budget process, the

Chief Operating Officer shall inform the Council President in writing and shall recommend whether the contract should be classified as a significant impact contract. The Council President shall immediately cause copies of the notice to be furnished to all members of the Council. The Council may determine that the contract has a significant impact on Metro within 10 days of receipt of the notice from the Chief Operating Officer. If the contract is determined by the Council to have a significant impact on Metro, execution by the Chief Operating Officer shall be subject to Council authorization. If the Council does not determine that the contract has a significant impact on Metro, the Chief Operating Officer may execute the contract after transmitting a description of the purpose of the contract, the appropriation to which contract payments will be charged, and a summary of the scope of work to be performed to the Council or a Council committee as deemed appropriate by the Council President.

(c) All contracts which require Council authorization pursuant to subsection (a)(1) or (b) above and which are subject to procedures for competitive sealed bidding, or Request for Proposals procedures for competitive sealed proposals, or for special procurements shall require Council authorization of the request for sealed bids or Request for Proposals prior request for sealed proposals, or requests for special procurements to release of bidding or proposal or special procurement documents to vendors. At the time of Council authorization of the documents seeking competitive bid sealed bids, or Request for Proposal competitive sealed proposals, or special procurements, documents, the Council may waive the requirement of Council authorization of the contract.

SECTION 4. Metro Code Section 2.04.040 is amended to read as follows:

2.04.040 Personal Services Contracts -- General

(a) Disadvantaged Business Program. All contracting for personal services is subject to the Metro Disadvantaged Business Enterprise Program for Federally-Funded Contracts, Metro Women Business Enterprise Program, and the Metro Minority Business Enterprise Program provisions of this chapter.

(b) Substantive Requirements. All Metro personal services contracts shall contain all provisions required of local contracting agencies by ORS Chapter 279 A and ORS Chapter 279B and shall be construed to be consistent with all relevant provisions of ORS Chapter 279 such chapters.

SECTION 5. Metro Code Section 2.04.042 is amended to read as follows:

2.04.042 Procurement of Personal Services Contracts Up to \$50,000

(a) For personal services contracts of less than \$5,000, multiple proposals are not required, but shall be encouraged. Any procurement of personal services not exceeding \$5,000 may be awarded in any manner deemed practical or convenient by the Chief Operating Officer.

(b) For personal services contracts of \$5,000 or more but not more than \$50,000, proposals shall be solicited from a minimum of three (3) potential contractors who are capable and qualified to perform the requested work. Metro shall keep a written record of the source and amount of the quotes received. If three (3) quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes. Any procurement of personal services exceeding \$5,000 but not exceeding \$100,000 shall be awarded in accordance with the provisions of ORS 279B.070. In addition, the contracting department shall notify the procurement officer of the nature of the proposed contract, the estimated cost of the contract, and the name of the contact person.

(c) Any procurement of personal services exceeding \$100,000 shall be awarded in accordance with the provisions of ORS 279B.060

SECTION 6. Metro Code Section 2.04.044 is repealed.

SECTION 7. Metro Code Section 2.04.046 is amended to read as follows:

2.04.046 Personal Services Contract Amendments

(a) Personal services contracts of an initial amount of ~~\$25,000-~~ \$50,000 or less may be amended to increase the amount of the contract to no more than twice the original contract amount. ~~This~~ The limit provided in this subsection is cumulative and includes any and all contract amendments or extensions. Any contract amendment(s) in excess of this ~~ceiling-~~ limit requires approval by the Metro Council. The Metro Council shall determine whether it is appropriate to amend the contract ~~despite the policy that favors competitive procurement of personal services in light of the policies set forth in ORS 279A.015 and ORS 279B.010.~~

(b) Contracts with an initial amount of greater than ~~\$25,000-~~ \$50,000 may be amended provided that any amendment that increases the total amount payable to an amount more than ~~\$50,000~~ \$100,000 greater than the initial contract amount shall be subject to approval by the Metro Council. The Metro Council shall determine whether it is appropriate to amend the contract ~~despite the policy that favors competitive procurement of personal services in light of the policies set forth in ORS 279A.015 and ORS 279B.010.~~

SECTION 8. Metro Code Section 2.04.050 is repealed.

SECTION 9. Metro Code Section 2.04.052 is amended to read as follows:

2.04.052 Public Contracts — ~~General & Public Improvement Contracts~~

(a) ~~State Law Requirements, Procedures.~~ Procedural requirements

- (1) The procedures for sealed competitive bidding, sealed competitive proposals, and all other methods of procurement of ~~of all Metro-~~ public contracts and for the issuance of competitive Request for Proposals when authorized as an exception to competitive bid requirements used by Metro shall comply with all requirements that are generally applicable to local governments as set forth in ORS Chapters 279A and 279B.
- (2) The procedures for competitive bidding of all Metro public improvement contracts shall comply with all requirements that are generally applicable to local governments as set forth in ORS Chapters 279C.
- (3) ~~(2)~~ Notwithstanding the provisions of this subsections (a)(1) and (a)(2), and pursuant to ORS 279A.065(5), the model rules adopted by the Oregon Attorney General shall not apply to Metro.
- (4) ~~(3)~~ The Chief Operating Officer may establish by executive order detailed procedural requirements consistent with this chapter and state law. In so doing, the Chief Operating Officer may adopt in whole or in part the model rules of

procedure established by the Oregon Attorney General pursuant to ORS ~~279.049~~ 279A.065.

(b) Substantive Requirements.

(1) All Metro public contracts shall contain all provisions required of local contracting agencies by ORS Chapters ~~279A & 279B~~ and shall be construed to be consistent with all provisions of ORS Chapters ~~279A & B~~.

~~(2) All Metro public improvement contracts shall contain all provisions required of local contracting agencies by ORS Chapter 279C and shall be construed to be consistent with all provisions of ORS Chapter 279C.~~

(c) Rejection of Bids and Proposals. The Chief Operating Officer may reject any bid, ~~or proposal~~ or response not in compliance with all prescribed procedures and requirements and may, for good cause, reject any or all bids, ~~or proposals~~ or procurement responses for personal service contracts and public contracts upon finding that it is in the public interest to do so in accordance with the provisions of ORS 279B.100 and may reject all bids or proposals for public improvement contracts in accordance with the provisions of ORS 279C.395.

(d) Bonds. Unless the Board shall otherwise provide, bonds and bid security requirements are as follows:

(1) Bid security not exceeding 10 percent of the amount bid for the contract is required unless the contract is for ~~\$25,000~~ \$50,000 or less.

(2) For public improvements, a labor and materials bond and a performance bond, both in an amount equal to 100 percent of the contract price are required for contracts over ~~\$25,000~~ \$50,000.

(3) Bid security, labor and material bond and performance bond may be required even though the contract is of a class not identified above, if the Chief Operating Officer determines it is in the public interest.

(e) Disadvantaged Business Program. All public contracts are subject to the Metro Disadvantaged Business Enterprise Program for Federally-Funded Contracts, Metro Women Business Enterprise Program, and the Metro Minority Business Enterprise Program provisions of this chapter.

SECTION 10. Section 11 is added to and made a part of Metro Code Chapter 2.04.

SECTION 11.

2.04.053 Special Procurements

(a) Pursuant to ORS 279B.085, the following public contracts are approved as classes of special procurements based on the legislative finding by the Metro Contract Review Board that the use of a special procurement will be unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts and will result in substantial cost savings to Metro or the public or will otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with the requirements that are applicable under ORS 279B.055, ORS 279B.060, ORS 279B.065 ORS 279B.070:

- (1) All contracts estimated to be not more than ~~\$50,000~~ \$100,000 provided that the procedures required by Section 13 of this Ordinance are followed.
- (2) Purchase and sale of zoo animals, zoo gift shop retail inventory and resale items; ~~and any sales of food or concession items at Metro facilities.~~
- (3) Contracts for management and operation of food, parking or similar concession services at Metro facilities provided that procedures substantially similar to the procedures required for ~~formal~~ sealed competitive Request for Proposals used by Metro for personal services contracts are followed.
- (4) Emergency contracts provided that the provisions of ORS 279B.080 are followed. An emergency contract must be awarded within 60 days of the declaration of the emergency unless the Board grants an extension.
- (5) Purchase of food items for resale at ~~the Oregon Zoo provided that the provisions of Section 2.04.060 are followed~~ facilities owned or operated by Metro.
- (6) Contracts for warranties, including but not limited to computer software warranties, in which the supplier of the goods or services covered by the warranty has designated ~~a sole~~ an authorized provider for the warranty service.
- (7) Contracts for computer hardware, ~~and software,~~ provided that procedures substantially similar to the procedures required for formal Request for Proposals used by Metro for personal services contracts are followed.
- (8) Contracts under which Metro is to receive revenue by providing a service.
- (9) Contracts for the lease or use of the convention, trade, and spectator buildings and facilities operated by the Metro Exposition-Recreation Commission.
- (10) Public contracts by the Metro Exposition-Recreation Commission in an amount less than ~~\$75,000~~ \$100,000, which amount shall be adjusted each year to reflect any changes in the Portland SMSA CPI, provided that any rules adopted by the commission which provide for substitute selection procedures are followed.
- (11) Contracts for equipment repair or overhaul, but only when the service and/or parts required are unknown before the work begins and the cost cannot be determined without extensive preliminary dismantling or testing.
- (12) Contracts in the nature of grants to further a Metro purpose provided a competitive Request for Proposal process is followed.
- (13) The procurement of utilities or any other services whose price is regulated by any governmental body, including but not limited to telephone service, electric, natural gas, and sanitary services, provided that if competition is available, a Request for Proposal process is followed.
- (14) Contracts for goods or services when the provider of the procured goods or services is required by the federal government or by the state of Oregon.

(15) Contracts for co-operative procurements permitted under ORS 279A.220 to 279A.225.

~~(1416)~~ The procurement of art and art related production and fabrication provided that a Request for Proposal process is followed.

~~(1517)~~ Sponsorships which are identified and approved in the proposed budget and are not designated by Council as having a significant impact as outlined in Section 2.04.026 need not follow a competitive bidding or proposal process. In order to be eligible for this exemption the sponsorship shall provide Metro with event advertising and/or media releases.

~~(1618)~~ Sponsorship contracts, provided that quotes are obtained from at least three potential sponsors or that good faith efforts to obtain such quotes are documented. A sponsorship contract is any contract under which the sponsor's name or logo is used in connection with a facility's goods, buildings, parts of buildings, services, systems, or functions in exchange for the sponsor's agreement to pay consideration, including money, goods, services, labor, credits, property or other consideration.

(19) Contracts for projects that are not public improvements as defined in Metro Code Section 2.04.010(m) in which a contractor provides a material and substantial portion of the funding for such project.

(b) Description of procurement procedures for class special procurements: Procurements for each of the class special procurements described in subsection (a) shall be performed by means of procedures chosen by the Chief Operating Officer as an appropriate method tailored to and in light of the demands, circumstances and market realities associated with obtaining each of the enumerated goods and services. Such procurement procedures may include but shall not be limited to direct negotiations with individual or multiple vendors or suppliers; negotiations with ranked proposers; competitive negotiations; or multiple tiered competitions.

(c) Specific contracts not within the classes described in subsection (a) may be procured by special procurements subject to the requirements of ORS 279B.085.

SECTION 12. Metro Code Section 2.04.054 is amended to read as follows

2.04.054 Competitive Bidding Exemptions for Public Improvements

Subject to the policies and provisions of ORS ~~279.005- 279A.015~~ and ~~279.007 279C.300~~, and the Metro Code, all Metro and Metropolitan Exposition-Recreation Commission public improvement contracts shall be based upon competitive bids except:

(a) State Law. Classes of public improvement contracts specifically exempted from competitive bidding requirements by state law.

(b) Board Rule. The following classes of public improvement contracts ~~are~~ exempt from the competitive bidding process based on the legislative finding by the Metro Council, sitting pursuant to ORS 279A.060 as a local contract review Board, that the exemption will not encourage favoritism or

substantially diminish competition for public contracts and that such exemptions will result in substantial cost savings: contracts for public improvements in which a contractor agrees to provide a material and substantial portion of the funding for such public improvement project.

- ~~(1) All contracts estimated to be not more than \$50,000 provided that the procedures required by Section 2.04.056 are followed.~~
- ~~(2) Purchase and sale of zoo animals, zoo gift shop retail inventory and resale items, and any sales of food or concession items at Metro facilities.~~
- ~~(3) Contracts for management and operation of food, parking or similar concession services at Metro facilities provided that procedures substantially similar to the procedures required for formal Request for Proposals used by Metro for personal services contracts are followed.~~
- ~~(4) Emergency contracts provided that written findings are made that document the factual circumstances creating the emergency and establishing why the emergency contract will remedy the emergency. An emergency contract must be awarded within 60 days of the declaration of the emergency unless the Board grants an extension.~~
- ~~(5) Purchase of food items for resale at the Oregon Zoo provided the provisions of Section 2.04.060 are followed.~~
- ~~(6) Contracts for warranties in which the supplier of the goods or services covered by the warranty has designated a sole provider for the warranty service.~~
- ~~(7) Contracts for computer hardware and software provided that procedures substantially similar to the procedures required for formal Request for Proposals used by Metro for personal services contracts are followed.~~
- ~~(8) Contracts under which Metro is to receive revenue by providing a service.~~
- ~~(9) Contracts for the lease or use of the convention, trade, and spectator buildings and facilities operated by the Metro Exposition Recreation Commission.~~
- ~~(10) Public contracts by the Metro Exposition Recreation Commission in an amount less than \$75,000, which amount shall be adjusted each year to reflect any changes in the Portland SMSA CPI, provided that any rules adopted by the commission which provide for substitute selection procedures are followed.~~
- ~~(11) Contracts for equipment repair or overhaul, but only when the service and/or parts required are unknown before the work begins and the cost cannot be determined without extensive preliminary dismantling or testing.~~
- ~~(12) Contracts in the nature of grants to further a Metro purpose provided a competitive Request for Proposal process is followed.~~
- ~~(13) The procurement of utilities, including telephone service, electric, natural gas, and sanitary services, provided that if competition is available, a Request for Proposal process is followed.~~

- ~~(14) The procurement of art and art related production and fabrication provided that a Request for Proposal process is followed.~~
- ~~(15) Sponsorships which are identified and approved in the proposed budget and are not designated by Council as having a significant impact as outlined in Section 2.04.026 need not follow a competitive bidding or proposal process. In order to be eligible for this exemption the sponsorship shall provide Metro with event advertising and/or media releases.~~
- ~~(16) Sponsorship contracts, provided that quotes are obtained from at least three potential sponsors or that good faith efforts to obtain such quotes are documented. A sponsorship contract is any contract under which the sponsor's name or logo is used in connection with a facility's goods, buildings, parts of buildings, services, systems, or functions in exchange for the sponsor's agreement to pay consideration, including money, goods, services, labor, credits, property or other consideration.~~

(c) Board Resolution. Specific contracts, not within the classes exempted in subsections (a) and (b) above, may be exempted by the Metro Council, sitting pursuant to ORS 279A.060 as a local contract review Board by resolution subject to the requirements of ORS 279.015(2) and ORS 279.015(6), 279C.355. The Board shall, where appropriate, direct the use of alternate contracting and purchasing practices that take account of market realities and modern innovative contracting and purchasing methods, which are consistent with the public policy of encouraging competition.

SECTION 13. Metro Code Section 2.04.056 is repealed and Section 14 of this Ordinance is enacted in lieu thereof.

SECTION 14.

2.04.056 Procurement of Public Contracts

(a) Any procurement of a public contract not exceeding \$5,000 may be awarded in any manner deemed practical or convenient by the Chief Operating Officer.

(b) Any procurement of a public contract exceeding \$5,000 but not exceeding \$100,000 shall be awarded in accordance with the provisions of ORS 279B.070. In addition, the contracting department shall notify the procurement officer of the nature of the proposed contract, the estimated cost of the contract, and the name of the contact person.

(c) Any procurement of a public contract exceeding \$100,000 shall be awarded in accordance with the provisions of either ORS 279B.055, ORS 279B.060, or ORS 279B.085.

SECTION 15. Metro Code Section 2.04.060 is repealed.

SECTION 16. Metro Code Section 2.04.062 is repealed, and Section 17 of this Ordinance is enacted in lieu thereof.

SECTION 17.

2.04.062 Sole-source Procurements

A contract for goods or services may be awarded without competition when the Metro Council, sitting pursuant to ORS 279A.060 as a local contract review Contract Review Board determines in writing by resolution and in accordance with the provisions of ORS 279B.075 that the goods or services or class of goods or services are available from only one source.

SECTION 18. Metro Code Section 2.04.064 is amended to read as follows:

2.04.064 Sales of Surplus or Personal Property

(a) Contracts for sale of surplus property may be executed without competitive ~~oral or~~ sealed bids or proposals only when the Chief Operating Officer determines in writing that the number, value and nature of the items to be sold make it probable that the cost of conducting a sale by bid will be such that a liquidation sale will result in substantially greater net revenue to Metro.

(b) Contracts for the sale of personal property shall be performed in accordance with ORS 279A.185.

SECTION 19. Metro Code Section 2.04.070 is amended to read as follows:

2.04.070 Notice of Award and Appeals

(a) At least ~~five (5)~~ seven (7) days prior to the execution of any public contract over \$50,000 for which a competitive bid or proposal process is required, Metro shall provide a notice of award to the contractor selected and to all contractors who submitted unsuccessful bids or proposals.

(b) Bid/Request for Proposals Appeal Procedures. The following procedure applies to aggrieved bidders and proposers who wish to appeal an award of a public contract or a personal services contract above \$150,000. The appeal process for bids is the same as for a Request for Proposals. In the case of a Request for Proposal(s), disagreement with the judgment exercised in scoring by evaluators is not a basis for appeal.

- (1) All appeals shall be made in writing and shall be delivered to the procurement officer at Metro's main office within ~~five (5)~~ seven (7) working days of the postmarked date on the notice of award. The written appeal must describe the specific citation of law, rule, regulation, or procedure upon which the appeal is based.
- (2) The procurement officer shall forthwith notify the appropriate Department Director and the Chief Operating Officer of the appeal. In the case of an appeal of an award by a Commission or the Metro Auditor, the appeal shall be forwarded to the Commission or Metro Auditor. Within 10 working days of the receipt of the notice of appeal, the Chief Operating Officer, Commission or Metro Auditor shall send a notice of rejection of the appeal or a notice of acceptance of the appeal, as applicable, to the appellant. The appellant may appeal the Chief Operating Officer's, Commission's, or Metro Auditor's decision to reject the appeal in writing to the Board within five (5) working days from the postmarked date on the notice of rejection.

- (3) The Board will review the grounds for appeal, all pertinent information, and the Chief Operating Officer's, Commission's or Metro Auditor's recommendation, and make a decision. The decision of the Board is final.
- (4) No contract, which is the subject of a pending appeal, may be executed unless the Board shall have given its approval. The Chief Operating Officer, Commission or Metro Auditor may request the Board to determine a matter without waiting for the expiration of the time periods provided for herein.
- (5) In the event Council authorization of execution of the contract is required under Section 2.04.026 of this Code the appeal shall be heard before the Council considers authorization of the contract.

(c) Appeals from ~~Disqualifications Debarment or Denial of Prequalification~~

- (1) The Board shall hear all appeals from any person who is disqualified by Metro as a bidder. The basis for the appeal shall be limited to the following grounds:
 - (A) ~~Disqualification- Debarment~~ of bidders and proposers pursuant to ORS ~~279.037, 279B.130~~
 - (B) Denial of prequalification to bid pursuant to ORS ~~279.039 and 279.041~~ 279B.120 and 279B.125.
- (2) Any person who wishes to appeal ~~disqualification- debarment or denial of prequalification~~ as a bidder shall, within three (3) business days after receipt of notice of disqualification, notify in writing the Metro Attorney that the person appeals the disqualification. The Metro Attorney shall promptly notify the Board of the appeal by providing notice to the Council President.
- (3) Promptly upon receipt of notice of appeal, the Council President shall notify the appellant and the Metro Attorney of the time and place of the appeal proceeding.
- (4) The Board shall conduct the appeal proceeding in accordance with the provisions of ORS 279B.425 and decide the appeal within ~~10~~ 30 -days after receiving notification of the appeal from the Metro Attorney. The Board shall set forth in writing the reasons for the decision.
- (5) Appeal Proceeding.
 - (A) The Council President shall preside over the appeal proceeding. The general order shall be as follows:
 - (i) Presentation by Metro of documentation and testimony supporting the disqualification.
 - (ii) Presentation by the appellant of documentation and testimony opposing the disqualification.

- (B) Members of the Board shall have the right to ask both Metro and the appellant questions and to review documentation referred to and presented by the parties.
 - (C) Formal court rules of evidence shall not apply.
 - (D) The Board shall consider de novo the notice of ~~disqualification~~ debarment or denial of prequalification, and record of investigation made by Metro and any evidence provided by Metro and the appellant prior to or at the appeal proceeding. There shall be no continuance or reopening of the appeal proceeding to offer additional evidence unless the appellant can demonstrate to the Council President that the additional evidence was not known to the appellant at the time of the proceeding or that with reasonable diligence the appellant would not have discovered the evidence prior to the appeal proceeding.
 - (E) A tape recording will be made of the appeal proceeding which shall be made available to the appellant upon payment of costs to Metro of making the tape.
 - (F) The Board shall render a decision which shall be reviewed only upon petition in the Circuit Court of Multnomah County. The petition must be filed within 15 days after the date of the decision in accordance with the provisions of ORS 279B.425.
- (6) Metro may reconsider its determination with regard to the disqualification debarment or denial of prequalification at any time prior to the appeal proceeding.

(d) Appeals of contract awards and decisions of the Auditor shall be made directly to the Contract Review Board.

SECTION 20. Metro Code Section 2.04.500 is amended to read as follows:

2.04.500 Policy Statement

It is the purpose of this ordinance to establish a Recycled Content Product Procurement Program that will achieve the following:

- (a) Increase the procurement of recycled content products and recyclable materials by all Metro departments and facilities and increase the use of recycled content, recyclable and reusable products and ~~recyclable~~ materials by contractors to Metro in the performance of their contract work.
- (b) Comply with ORS Chapters 279A and 279B regarding procurement of recycled content, reusable and recyclable materials and products by public agencies.
- (c) Encourage procurement of products with the greatest post-consumer content, and those that contribute to the use of locally generated and recovered materials for which there are the most significant recycling market development needs.
- (d) Serve as an example for other institutional purchasers, both public and private.

SECTION 21. Metro Code Section 2.04.520 is amended to read as follows:

2.04.520 Recycled, Reusable and Recyclable Products (Generally)

(a) Metro facilities and contractors to use Recycled, Reusable and Recyclable Materials and Products

- (1) The procurement officer shall review procurement standards and specifications currently utilized in order to eliminate, where economically feasible, discrimination against the procurement of recycled, reusable and recyclable materials and products, and to develop purchasing practices which encourage purchase of materials that are recycled or may be recycled or reused when discarded.
- (2) To the extent practicable, Metro's standards and specifications for recycled products shall be consistent with US EPA Purchasing Guidelines.
- (3) Notices to solicit bids from contractors shall state that Metro gives the price preference described in subsection (b)(1) of this section to recycled products and materials. All invitations to bid or requests for proposals shall include the following language: "Vendors shall use recycled and recyclable materials and products to the maximum extent economically feasible in the performance of contract work set forth in this document."
- (4) At their discretion, Metro and its agents, including contractors, may specify acceptance of only recycled products or materials in bids and solicitations so long as quality and availability of recycled products and materials are equal to nonrecycled products and materials. When a recycled product or material is specified in a bid or solicitation, no price preference shall be given.
- (5) If the price of a recycled product is equal to or less than an otherwise identical non-recycled product, then Metro and its agent, including contractors, shall specify only the recycled product in bids and specifications.
- (6) The procurement officer and waste reduction division shall provided information on US EPA Purchasing Guidelines and on recycled products available in the region to contractors and bidders, and shall provide notice of the availability of such information in procurement solicitations. Metro staff shall contact the procurement officer or the waste reduction division to determine the availability of recycled products prior to the solicitation of quotes, bids or proposals for any contract in an amount greater than \$5,000. This requirement shall not apply to contracts for services only.
- (7) The procurement officer shall investigate and implement, as appropriate, purchasing jointly with other public agencies to potentially reduce the price for recycled products.

(b) Price preference to be given for the purchase of Recycled Products or Materials

- (1) When purchasing products or procuring services, Metro shall give preference to materials and supplies manufactured from recycled materials if the recycled product or material:
 - (A) is available;
 - (B) meets applicable standards;
 - (C) can be substituted for a comparable nonrecycled product; and
 - (D) costs do not exceed the costs of nonrecycled products by more than 10 percent.
- (2) At their discretion, Metro departments and facilities may give a greater than 10 percent price preference to the purchase of recycled products, materials and supplies manufactured from recycled materials or that reduce the amount of waste generated.
- (3) When considering bids/proposals submitted by contractors, Metro shall evaluate the extent to which recycled materials and products have been incorporated.
- (4) Vendors and contractors who incorporate recycled materials and products in their bids/proposals shall provide written certification of the minimum recycled content of these materials and products, including the percent of post-consumer and secondary waste as defined in Section 2.04.510.
- (5) Unless otherwise specified in a bid or proposal request, bidders and proposers shall submit the actual proposed cost of a recycled product or material bid item. It shall be Metro's responsibility to calculate any preferences required. If Metro, in its sole discretion, determines that a product or material offered by a vendor or contractor is a recycled product or material meeting the requirements of this section, Metro shall subtract 10 percent or the preference otherwise offered, from the bid or proposal item, for the purpose of comparing bids or proposals.

SECTION 22. Metro Code Section 2.04.540 is amended to read as follows:

2.04.540 Recycled Oil

(a) As specified in ORS 279B.240~~580 to 279.595~~, Metro specifications for the purchase of lubricating oil and industrial oil shall not exclude recycled oils and shall not require that oils be manufactured from virgin materials. Specifications for the procurement of recycled oil shall be consistent with the re-refined lubricating oil purchasing guideline of the US Environmental Protection Agency. In addition, Metro shall purchase lubricating and industrial oil from the seller whose product contains the greater percentage of recycled oil as long as the recycled oil:

- (1) Is available within a reasonable period of time in quantities necessary for Metro's needs;
- (2) Meets performance standards recommended by the equipment or vehicle manufacturer, including any warranty requirements; and

- (3) Is offered at a price that does not exceed the 10 percent price preference for recycled products over comparable nonrecycled products.

(b) ~~As stipulated in ORS Chapter 279,~~ Metro's affirmative program for procuring recycled oil shall include, but ~~be~~ not be limited to the following:

- (1) Notice of Metro's preference for recycled oil shall be provided in publications used to solicit bids from suppliers;
- (2) Metro shall provide a description of its recycled oil procurement program at bidders' conferences and in procurement solicitations or invitations to bid; and
- (3) Metro shall make a good faith effort to inform industry trade associations about its recycled oil preference program.

(c) Metro shall specify recycled oils in its bids and solicitations for fleet vehicles and transport services and to the extent feasible not enter into agreements for these services with companies that restrict the use of recycled oils.

SECTION 23. Metro Code Section 2.04.550 is amended to read as follows:

2.04.550 Compost Products and Contracts for Lawn and Landscape Maintenance

(a) Metro shall specify and give preference to purchase of organic soil amendments made from yard debris, sewage sludge or other organic waste composts rather than compost made from nonrecycled organic materials if the organic soil amendments:

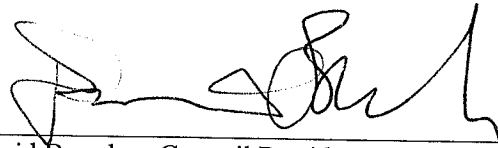
- (1) Are available;
- (2) Meet the functional requirements of the specific application;
- (3) Meet human health and plant safety standards; and
- (4) Do not exceed the 10 percent price preference for recycled products over nonrecycled products.

(b) As specified in ORS 279B.225, every contract for lawn and landscape maintenance shall contain a condition requiring the contractor to salvage, recycle, compost or mulch yard waste material at an approved site, if feasible and cost effective.

SECTION 24. Ordinance Effective Date

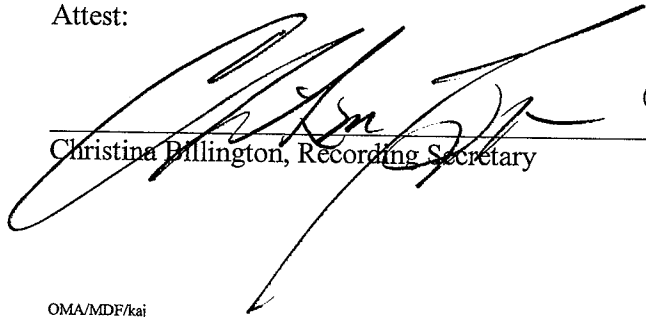
This Ordinance being necessary for the health, safety, and welfare of the Metro area, an emergency is declared to exist, and this Ordinance shall take effect on March 1, 2005, pursuant to Metro Charter Section 39(1).]

ADOPTED by the Metro Council this 9th day of December, 2004.



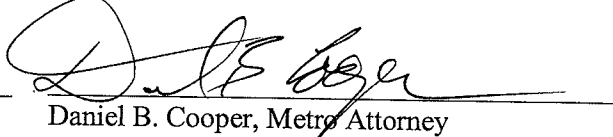
David Bragdon, Council President

Attest:



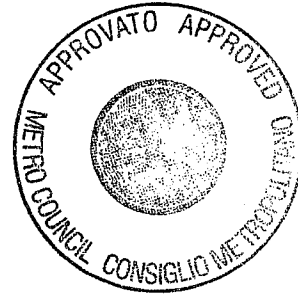
Christina Billington, Recording Secretary

Approved as to Form:



Daniel B. Cooper, Metro Attorney

OMA/MDF/kaj
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12/09/2004



BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING CHAPTER) ORDINANCE NO. 04-1065
2.04 OF THE METRO CODE RELATING TO)
PUBLIC CONTRACTING) Introduced by Chief Operating Officer
) Michael J. Jordan, with the concurrence of
) Council President David Bragdon

WHEREAS, the 2003 Oregon Legislature enacted significant, major revisions to the Oregon Public Contracting Code;

WHEREAS, the amendments adopted by the Oregon Legislation require the Metro Council to review and update the provisions of the Metro Contracting Code both to comply with state law and to modernize procurement practices so that they reflect market place and industry standards; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

SECTION 1. Metro Code Section 2.04.010 is amended to read as follows:

2.04.010 Definitions

For the purposes of this chapter unless the context requires otherwise the following terms shall have the meanings indicated:

- (a) "Auditor" means the Metro Auditor provided for in Section 18 of the Metro Charter.
- (b) "Chief Operating Officer" means the person holding the position of Chief Operating Officer established by Section 2.20.010 of the Metro Code.
- (c) "Competitive bidding" means an advertised solicitation of sealed bids.
- (d) "Contract Review Board" or "Board" means the Metro Council, sitting as a local Contract Review Board ~~created~~ pursuant to ~~Section 2.04.050 of this chapter~~ the provisions of ORS 279A.060.

~~(e)~~(d) "Council President" means the Council President provided for in Section 16(4) of the Metro Charter.

~~(f)~~(c) "Emergency" means ~~the occurrence of a specific event or events that could not have been reasonably foreseen and prevented, and which requires the taking of prompt action to remedy the condition and thereby avoid further physical damage or harm to individuals or the occurrence of avoidable costs.~~ circumstances that: (A) could not have been reasonably foreseen; (B) create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and (C) require prompt execution of a contract to remedy the condition.

~~(g)~~(f) "Emergency contract" means a contract whose purpose is limited to remedying an emergency situation.

~~(h)~~(g) “Intergovernmental agreement” means a written agreement with any other unit or units of federal, state or local government providing for the acquisition of goods or services by Metro, for the provision of goods or services by Metro or for the payment or receipt of funds in order to promote or carry out a common purpose.

~~(h)~~(h) “Notice of award” means written communication to a responsive, responsible bidder or proposer stating that their bid or proposal has been conditionally determined to be the lowest, responsive, responsible bid or most responsive proposal and that Metro intends to enter into a contract upon completion by the bidder/proposer of all required conditions.

~~(h)~~(i) “Personal services contract” means any contract by which Metro acquires a professional, artistic, creative, consulting, educational, or management service. Contracts which are predominately for the purpose of obtaining a product, labor or materials, or the services of a construction trade are not a personal services contract.

~~(h)~~(j) “Procurement Officer” means the person designated by the Chief Operating Officer to carry out the functions required of such person by this chapter.

~~(h)~~(k) “Public agency” means any agency of the federal government, State of Oregon, or any political subdivision thereof, authorized by law to enter into public contracts and any public body created by intergovernmental agreement.

~~(m)~~(l) “Public contract” means any purchase, lease or sale by Metro of personal property, public improvement or services, including those transacted by purchase order, other than agreements which are for personal services.

~~(m)~~(m) “Public improvement” means projects for construction, reconstruction or major renovation on real property by or for a ~~public~~ contracting agency. “Public improvement” does not include (i) projects for which no funds of a contracting agency are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection or (ii) emergency work, minor alteration, ordinary repair or maintenance in order to preserve a public improvement.

~~(n)~~(n) “Request for Proposals or RFP” means the issuance of a request for offers that will be evaluated based on factors that are not limited to price alone.

~~(p)~~(o) “Sole source contract” means a contract for which it can be documented there is only one qualified provider of the required service or material, that the goods or services or class of goods or services are available from only one source.

SECTION 2. Metro Code Section 2.04.024 is amended to read as follows:

2.04.024 Metropolitan Exposition-Recreation Commission

The Metropolitan Exposition-Recreation Commission has authority to enter into contracts pursuant to Metro Code Section 6.01.040(j). Notwithstanding any provision of this chapter to the contrary, the Commission may without the prior approval of the Chief Operating Officer enter into contracts in any amount in accordance with contracting rules adopted by the Commission pursuant to the authority contained in Section 6.01.040(j). However, pursuant to ORS 279A.060 the Contract Review Board created pursuant to Section 2.04.050- Metro Council shall be the local contract review board for the Commission.

SECTION 3. Metro Code Section 2.04.026 is amended to read as follows:

2.04.026 Council Approval of Contracts

(a) Notwithstanding any other provisions of this chapter, the Chief Operating Officer, Metro Attorney, or Auditor must obtain authorization by the Council prior to execution of the following types of contracts:

- (1) Any contract which commits the Metro to the expenditure of appropriations not otherwise provided for in the current fiscal year budget at the time the contract is executed and which has a significant impact on Metro. The following types of contracts shall be considered to have significant impacts unless the Council finds that under the circumstances a contract will not have a significant impact:
 - (A) Any public contract for a term greater than 12 months for private operation of all or of a major part of a Metro facility or concessions at a Metro facility.
 - (B) Any public improvement contract for an amount over \$50,000.
 - (C) Any public contract which will potentially result in a material (more than 5 percent of the related fund) loss of revenues or increase in expenditures in more than one year in any Metro fund.
 - (D) Any contract for personal services for a term greater than 12 months and in an amount greater than \$50,000.
 - (E) Any contract for personal services for an amount greater than \$50,000 related to Metro's exercise of its regional planning functions pursuant to Section 5 of the Metro Charter.
 - (F) Any contract for personal services for an amount over \$50,000 related to the study by Metro of exercising authority, pursuant to Section 7 of the Metro Charter, over additional functions.
- (2) Any agreement entered into pursuant to ORS Chapter 190 by which Metro acquires or transfers any interest in real property, assumes any function or duty of another governmental body, or transfers any function or duty of Metro to another governmental unit; or
- (3) Any contract for the purchase, sale, lease or transfer of real property owned by Metro. However, the Chief Operating Officer may execute options to purchase real property.

(b) Prior to adoption of the annual budget, the Chief Operating Officer shall submit a list of proposed contracts over \$50,000 to be entered into during the next fiscal year. The Council shall designate in the annual budget ordinance which contracts have a significant impact on Metro.

Thereafter, if the Chief Operating Officer proposes to enter into a contract that will commit Metro to the expenditure of appropriations not provided for in the current fiscal year budget in an amount greater than \$50,000 that the Council has not considered during the annual budget process, the

Chief Operating Officer shall inform the Council President in writing and shall recommend whether the contract should be classified as a significant impact contract. The Council President shall immediately cause copies of the notice to be furnished to all members of the Council. The Council may determine that the contract has a significant impact on Metro within 10 days of receipt of the notice from the Chief Operating Officer. If the contract is determined by the Council to have a significant impact on Metro, execution by the Chief Operating Officer shall be subject to Council authorization. If the Council does not determine that the contract has a significant impact on Metro, the Chief Operating Officer may execute the contract after transmitting a description of the purpose of the contract, the appropriation to which contract payments will be charged, and a summary of the scope of work to be performed to the Council or a Council committee as deemed appropriate by the Council President.

(c) All contracts which require Council authorization pursuant to subsection (a)(1) or (b) above and which are subject to procedures for competitive sealed bidding, or Request for Proposals procedures for competitive sealed proposals, or for special procurements shall require Council authorization of the request for sealed bids or Request for Proposals prior request for sealed proposals, or requests for special procurements to release of bidding or proposal or special procurement documents to vendors. At the time of Council authorization of the documents seeking competitive bid sealed bids, or Request for Proposal competitive sealed proposals, or special procurements, documents, the Council may waive the requirement of Council authorization of the contract.

SECTION 4. Metro Code Section 2.04.040 is amended to read as follows:

2.04.040 Personal Services Contracts -- General

(a) Disadvantaged Business Program. All contracting for personal services is subject to the Metro Disadvantaged Business Enterprise Program for Federally-Funded Contracts, Metro Women Business Enterprise Program, and the Metro Minority Business Enterprise Program provisions of this chapter.

(b) Substantive Requirements. All Metro personal services contracts shall contain all provisions required of local contracting agencies by ORS Chapter 279 A and ORS Chapter 279B and shall be construed to be consistent with all relevant provisions of ORS Chapter 279 such chapters.

SECTION 5. Metro Code Section 2.04.042 is amended to read as follows:

2.04.042 Procurement of Personal Services Contracts Up to \$50,000

(a) For personal services contracts of less than \$5,000, multiple proposals are not required, but shall be encouraged. Any procurement of personal services not exceeding \$5,000 may be awarded in any manner deemed practical or convenient by the Chief Operating Officer.

(b) For personal services contracts of \$5,000 or more but not more than \$50,000, proposals shall be solicited from a minimum of three (3) potential contractors who are capable and qualified to perform the requested work. Metro shall keep a written record of the source and amount of the quotes received. If three (3) quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes. Any procurement of personal services exceeding \$5,000 but not exceeding \$100,000 shall be awarded in accordance with the provisions of ORS 279B.070. In addition, the contracting department shall notify the procurement officer of the nature of the proposed contract, the estimated cost of the contract, and the name of the contact person.

(c) Any procurement of personal services exceeding \$100,000 shall be awarded in accordance with the provisions of ORS 279B.060

SECTION 6. Metro Code Section 2.04.044 is repealed.

SECTION 7. Metro Code Section 2.04.046 is amended to read as follows:

2.04.046 Personal Services Contract Amendments

(a) Personal services contracts of an initial amount of ~~\$25,000-~~ \$50,000 or less may be amended to increase the amount of the contract to no more than twice the original contract amount. ~~This~~ The limit provided in this subsection is cumulative and includes any and all contract amendments or extensions. Any contract amendment(s) in excess of this ~~ceiling-~~ limit requires approval by the Metro Council. The Metro Council shall determine whether it is appropriate to amend the contract ~~despite the policy that favors competitive procurement of personal services in light of the policies set forth in ORS 279A.015 and ORS 279B.010.~~

(b) Contracts with an initial amount of greater than ~~\$25,000-~~ \$50,000 may be amended provided that any amendment that increases the total amount payable to an amount more than ~~\$50,000~~ \$100,000 greater than the initial contract amount shall be subject to approval by the Metro Council. The Metro Council shall determine whether it is appropriate to amend the contract ~~despite the policy that favors competitive procurement of personal services in light of the policies set forth in ORS 279A.015 and ORS 279B.010.~~

SECTION 8. Metro Code Section 2.04.050 is repealed.

SECTION 9. Metro Code Section 2.04.052 is amended to read as follows:

2.04.052 Public Contracts — ~~General & Public Improvement Contracts~~

(a) ~~State Law Requirements, Procedures.~~ Procedural requirements

- (1) The procedures for sealed competitive bidding, sealed competitive proposals, and all other methods of procurement of ~~of all Metro-~~ public contracts and for the issuance of competitive Request for Proposals when authorized as an exception to competitive bid requirements used by Metro shall comply with all requirements that are generally applicable to local governments as set forth in ORS Chapters 279A and 279B.
- (2) The procedures for competitive bidding of all Metro public improvement contracts shall comply with all requirements that are generally applicable to local governments as set forth in ORS Chapters 279C.
- (3) ~~(2)~~ Notwithstanding the provisions of this subsections (a)(1) and (a)(2), and pursuant to ORS 279A.065(5), the model rules adopted by the Oregon Attorney General shall not apply to Metro.
- (4) ~~(3)~~ The Chief Operating Officer may establish by executive order detailed procedural requirements consistent with this chapter and state law. In so doing, the Chief Operating Officer may adopt in whole or in part the model rules of

procedure established by the Oregon Attorney General pursuant to ORS ~~279.049~~ 279A.065.

(b) Substantive Requirements.

(1) All Metro public contracts shall contain all provisions required of local contracting agencies by ORS Chapters ~~279A & 279B~~ and shall be construed to be consistent with all provisions of ORS Chapters ~~279A & B~~.

~~(2) All Metro public improvement contracts shall contain all provisions required of local contracting agencies by ORS Chapter 279C and shall be construed to be consistent with all provisions of ORS Chapter 279C.~~

(c) Rejection of Bids and Proposals. The Chief Operating Officer may reject any bid, ~~or proposal~~ or response not in compliance with all prescribed procedures and requirements and may, for good cause, reject any or all bids, ~~or proposals~~ or procurement responses for personal service contracts and public contracts upon finding that it is in the public interest to do so in accordance with the provisions of ORS 279B.100 and may reject all bids or proposals for public improvement contracts in accordance with the provisions of ORS 279C.395.

(d) Bonds. Unless the Board shall otherwise provide, bonds and bid security requirements are as follows:

(1) Bid security not exceeding 10 percent of the amount bid for the contract is required unless the contract is for ~~\$25,000-~~ \$50,000 or less.

(2) For public improvements, a labor and materials bond and a performance bond, both in an amount equal to 100 percent of the contract price are required for contracts over ~~\$25,000~~ \$50,000.

(3) Bid security, labor and material bond and performance bond may be required even though the contract is of a class not identified above, if the Chief Operating Officer determines it is in the public interest.

(e) Disadvantaged Business Program. All public contracts are subject to the Metro Disadvantaged Business Enterprise Program for Federally-Funded Contracts, Metro Women Business Enterprise Program, and the Metro Minority Business Enterprise Program provisions of this chapter.

SECTION 10. Section 11 is added to and made a part of Metro Code Chapter 2.04.

SECTION 11.

2.04.053 Special Procurements

(a) Pursuant to ORS 279B.085, the following public contracts are approved as classes of special procurements based on the legislative finding by the Metro Contract Review Board that the use of a special procurement will be unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts and will result in substantial cost savings to Metro or the public or will otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with the requirements that are applicable under ORS 279B.055, ORS 279B.060, ORS 279B.065 ORS 279B.070:

- (1) All contracts estimated to be not more than ~~\$50,000~~ \$100,000 provided that the procedures required by Section 13 of this Ordinance are followed.
- (2) Purchase and sale of zoo animals, zoo gift shop retail inventory and resale items; ~~and any sales of food or concession items at Metro facilities.~~
- (3) Contracts for management and operation of food, parking or similar concession services at Metro facilities provided that procedures substantially similar to the procedures required for ~~formal~~ sealed competitive Request for Proposals used by Metro for personal services contracts are followed.
- (4) Emergency contracts provided that the provisions of ORS 279B.080 are followed. An emergency contract must be awarded within 60 days of the declaration of the emergency unless the Board grants an extension.
- (5) Purchase of food items for resale at ~~the Oregon Zoo provided that the provisions of Section 2.04.060 are followed~~ facilities owned or operated by Metro.
- (6) Contracts for warranties, including but not limited to computer software warranties, in which the supplier of the goods or services covered by the warranty has designated ~~a sole~~ an authorized provider for the warranty service.
- (7) Contracts for computer hardware, ~~and software,~~ provided that procedures substantially similar to the procedures required for formal Request for Proposals used by Metro for personal services contracts are followed.
- (8) Contracts under which Metro is to receive revenue by providing a service.
- (9) Contracts for the lease or use of the convention, trade, and spectator buildings and facilities operated by the Metro Exposition-Recreation Commission.
- (10) Public contracts by the Metro Exposition-Recreation Commission in an amount less than ~~\$75,000~~ \$100,000, which amount shall be adjusted each year to reflect any changes in the Portland SMSA CPI, provided that any rules adopted by the commission which provide for substitute selection procedures are followed.
- (11) Contracts for equipment repair or overhaul, but only when the service and/or parts required are unknown before the work begins and the cost cannot be determined without extensive preliminary dismantling or testing.
- (12) Contracts in the nature of grants to further a Metro purpose provided a competitive Request for Proposal process is followed.
- (13) The procurement of utilities or any other services whose price is regulated by any governmental body, including but not limited to telephone service, electric, natural gas, and sanitary services, provided that if competition is available, a Request for Proposal process is followed.
- (14) Contracts for goods or services when the provider of the procured goods or services is required by the federal government or by the state of Oregon.

(15) Contracts for co-operative procurements permitted under ORS 279A.220 to 279A.225.

~~(1416)~~ The procurement of art and art related production and fabrication provided that a Request for Proposal process is followed.

~~(1517)~~ Sponsorships which are identified and approved in the proposed budget and are not designated by Council as having a significant impact as outlined in Section 2.04.026 need not follow a competitive bidding or proposal process. In order to be eligible for this exemption the sponsorship shall provide Metro with event advertising and/or media releases.

~~(1618)~~ Sponsorship contracts, provided that quotes are obtained from at least three potential sponsors or that good faith efforts to obtain such quotes are documented. A sponsorship contract is any contract under which the sponsor's name or logo is used in connection with a facility's goods, buildings, parts of buildings, services, systems, or functions in exchange for the sponsor's agreement to pay consideration, including money, goods, services, labor, credits, property or other consideration.

(19) Contracts for projects that are not public improvements as defined in Metro Code Section 2.04.010(m) in which a contractor provides a material and substantial portion of the funding for such project.

(b) Description of procurement procedures for class special procurements: Procurements for each of the class special procurements described in subsection (a) shall be performed by means of procedures chosen by the Chief Operating Officer as an appropriate method tailored to and in light of the demands, circumstances and market realities associated with obtaining each of the enumerated goods and services. Such procurement procedures may include but shall not be limited to direct negotiations with individual or multiple vendors or suppliers; negotiations with ranked proposers; competitive negotiations; or multiple tiered competitions.

(c) Specific contracts not within the classes described in subsection (a) may be procured by special procurements subject to the requirements of ORS 279B.085.

SECTION 12. Metro Code Section 2.04.054 is amended to read as follows

2.04.054 Competitive Bidding Exemptions for Public Improvements

Subject to the policies and provisions of ORS ~~279.005- 279A.015~~ and ~~279.007 279C.300~~, and the Metro Code, all Metro and Metropolitan Exposition-Recreation Commission public improvement contracts shall be based upon competitive bids except:

(a) State Law. Classes of public improvement contracts specifically exempted from competitive bidding requirements by state law.

(b) Board Rule. The following classes of public improvement contracts ~~are~~ exempt from the competitive bidding process based on the legislative finding by the Metro Council, sitting pursuant to ORS 279A.060 as a local contract review Board, that the exemption will not encourage favoritism or

substantially diminish competition for public contracts and that such exemptions will result in substantial cost savings: contracts for public improvements in which a contractor agrees to provide a material and substantial portion of the funding for such public improvement project.

- ~~(1) All contracts estimated to be not more than \$50,000 provided that the procedures required by Section 2.04.056 are followed.~~
- ~~(2) Purchase and sale of zoo animals, zoo gift shop retail inventory and resale items, and any sales of food or concession items at Metro facilities.~~
- ~~(3) Contracts for management and operation of food, parking or similar concession services at Metro facilities provided that procedures substantially similar to the procedures required for formal Request for Proposals used by Metro for personal services contracts are followed.~~
- ~~(4) Emergency contracts provided that written findings are made that document the factual circumstances creating the emergency and establishing why the emergency contract will remedy the emergency. An emergency contract must be awarded within 60 days of the declaration of the emergency unless the Board grants an extension.~~
- ~~(5) Purchase of food items for resale at the Oregon Zoo provided the provisions of Section 2.04.060 are followed.~~
- ~~(6) Contracts for warranties in which the supplier of the goods or services covered by the warranty has designated a sole provider for the warranty service.~~
- ~~(7) Contracts for computer hardware and software provided that procedures substantially similar to the procedures required for formal Request for Proposals used by Metro for personal services contracts are followed.~~
- ~~(8) Contracts under which Metro is to receive revenue by providing a service.~~
- ~~(9) Contracts for the lease or use of the convention, trade, and spectator buildings and facilities operated by the Metro Exposition Recreation Commission.~~
- ~~(10) Public contracts by the Metro Exposition Recreation Commission in an amount less than \$75,000, which amount shall be adjusted each year to reflect any changes in the Portland SMSA CPI, provided that any rules adopted by the commission which provide for substitute selection procedures are followed.~~
- ~~(11) Contracts for equipment repair or overhaul, but only when the service and/or parts required are unknown before the work begins and the cost cannot be determined without extensive preliminary dismantling or testing.~~
- ~~(12) Contracts in the nature of grants to further a Metro purpose provided a competitive Request for Proposal process is followed.~~
- ~~(13) The procurement of utilities, including telephone service, electric, natural gas, and sanitary services, provided that if competition is available, a Request for Proposal process is followed.~~

- ~~(14) The procurement of art and art related production and fabrication provided that a Request for Proposal process is followed.~~
- ~~(15) Sponsorships which are identified and approved in the proposed budget and are not designated by Council as having a significant impact as outlined in Section 2.04.026 need not follow a competitive bidding or proposal process. In order to be eligible for this exemption the sponsorship shall provide Metro with event advertising and/or media releases.~~
- ~~(16) Sponsorship contracts, provided that quotes are obtained from at least three potential sponsors or that good faith efforts to obtain such quotes are documented. A sponsorship contract is any contract under which the sponsor's name or logo is used in connection with a facility's goods, buildings, parts of buildings, services, systems, or functions in exchange for the sponsor's agreement to pay consideration, including money, goods, services, labor, credits, property or other consideration.~~

(c) Board Resolution. Specific contracts, not within the classes exempted in subsections (a) and (b) above, may be exempted by the Metro Council, sitting pursuant to ORS 279A.060 as a local contract review Board by resolution subject to the requirements of ORS 279.015(2) and ORS 279.015(6), 279C.355. The Board shall, where appropriate, direct the use of alternate contracting and purchasing practices that take account of market realities and modern innovative contracting and purchasing methods, which are consistent with the public policy of encouraging competition.

SECTION 13. Metro Code Section 2.04.056 is repealed and Section 14 of this Ordinance is enacted in lieu thereof.

SECTION 14.

2.04.056 Procurement of Public Contracts

(a) Any procurement of a public contract not exceeding \$5,000 may be awarded in any manner deemed practical or convenient by the Chief Operating Officer.

(b) Any procurement of a public contract exceeding \$5,000 but not exceeding \$100,000 shall be awarded in accordance with the provisions of ORS 279B.070. In addition, the contracting department shall notify the procurement officer of the nature of the proposed contract, the estimated cost of the contract, and the name of the contact person.

(c) Any procurement of a public contract exceeding \$100,000 shall be awarded in accordance with the provisions of either ORS 279B.055, ORS 279B.060, or ORS 279B.085.

SECTION 15. Metro Code Section 2.04.060 is repealed.

SECTION 16. Metro Code Section 2.04.062 is repealed, and Section 17 of this Ordinance is enacted in lieu thereof.

SECTION 17.

2.04.062 Sole-source Procurements

A contract for goods or services may be awarded without competition when the Metro Council, sitting pursuant to ORS 279A.060 as a local contract review Contract Review Board determines in writing by resolution and in accordance with the provisions of ORS 279B.075 that the goods or services or class of goods or services are available from only one source.

SECTION 18. Metro Code Section 2.04.064 is amended to read as follows:

2.04.064 Sales of Surplus or Personal Property

(a) Contracts for sale of surplus property may be executed without competitive ~~oral or~~ sealed bids or proposals only when the Chief Operating Officer determines in writing that the number, value and nature of the items to be sold make it probable that the cost of conducting a sale by bid will be such that a liquidation sale will result in substantially greater net revenue to Metro.

(b) Contracts for the sale of personal property shall be performed in accordance with ORS 279A.185.

SECTION 19. Metro Code Section 2.04.070 is amended to read as follows:

2.04.070 Notice of Award and Appeals

(a) At least ~~five (5)~~ seven (7) days prior to the execution of any public contract over \$50,000 for which a competitive bid or proposal process is required, Metro shall provide a notice of award to the contractor selected and to all contractors who submitted unsuccessful bids or proposals.

(b) Bid/Request for Proposals Appeal Procedures. The following procedure applies to aggrieved bidders and proposers who wish to appeal an award of a public contract or a personal services contract above \$150,000. The appeal process for bids is the same as for a Request for Proposals. In the case of a Request for Proposal(s), disagreement with the judgment exercised in scoring by evaluators is not a basis for appeal.

- (1) All appeals shall be made in writing and shall be delivered to the procurement officer at Metro's main office within ~~five (5)~~ seven (7) working days of the postmarked date on the notice of award. The written appeal must describe the specific citation of law, rule, regulation, or procedure upon which the appeal is based.
- (2) The procurement officer shall forthwith notify the appropriate Department Director and the Chief Operating Officer of the appeal. In the case of an appeal of an award by a Commission or the Metro Auditor, the appeal shall be forwarded to the Commission or Metro Auditor. Within 10 working days of the receipt of the notice of appeal, the Chief Operating Officer, Commission or Metro Auditor shall send a notice of rejection of the appeal or a notice of acceptance of the appeal, as applicable, to the appellant. The appellant may appeal the Chief Operating Officer's, Commission's, or Metro Auditor's decision to reject the appeal in writing to the Board within five (5) working days from the postmarked date on the notice of rejection.

- (3) The Board will review the grounds for appeal, all pertinent information, and the Chief Operating Officer's, Commission's or Metro Auditor's recommendation, and make a decision. The decision of the Board is final.
- (4) No contract, which is the subject of a pending appeal, may be executed unless the Board shall have given its approval. The Chief Operating Officer, Commission or Metro Auditor may request the Board to determine a matter without waiting for the expiration of the time periods provided for herein.
- (5) In the event Council authorization of execution of the contract is required under Section 2.04.026 of this Code the appeal shall be heard before the Council considers authorization of the contract.

(c) Appeals from ~~Disqualifications Debarment or Denial of Prequalification~~

- (1) The Board shall hear all appeals from any person who is disqualified by Metro as a bidder. The basis for the appeal shall be limited to the following grounds:
 - (A) ~~Disqualification- Debarment~~ of bidders and proposers pursuant to ORS ~~279.037, 279B.130~~
 - (B) Denial of prequalification to bid pursuant to ORS ~~279.039 and 279.041~~ 279B.120 and 279B.125.
- (2) Any person who wishes to appeal ~~disqualification- debarment or denial of prequalification~~ as a bidder shall, within three (3) business days after receipt of notice of disqualification, notify in writing the Metro Attorney that the person appeals the disqualification. The Metro Attorney shall promptly notify the Board of the appeal by providing notice to the Council President.
- (3) Promptly upon receipt of notice of appeal, the Council President shall notify the appellant and the Metro Attorney of the time and place of the appeal proceeding.
- (4) The Board shall conduct the appeal proceeding in accordance with the provisions of ORS 279B.425 and decide the appeal within ~~10~~ 30 -days after receiving notification of the appeal from the Metro Attorney. The Board shall set forth in writing the reasons for the decision.
- (5) Appeal Proceeding.
 - (A) The Council President shall preside over the appeal proceeding. The general order shall be as follows:
 - (i) Presentation by Metro of documentation and testimony supporting the disqualification.
 - (ii) Presentation by the appellant of documentation and testimony opposing the disqualification.

- (B) Members of the Board shall have the right to ask both Metro and the appellant questions and to review documentation referred to and presented by the parties.
 - (C) Formal court rules of evidence shall not apply.
 - (D) The Board shall consider de novo the notice of ~~disqualification~~ debarment or denial of prequalification, and record of investigation made by Metro and any evidence provided by Metro and the appellant prior to or at the appeal proceeding. There shall be no continuance or reopening of the appeal proceeding to offer additional evidence unless the appellant can demonstrate to the Council President that the additional evidence was not known to the appellant at the time of the proceeding or that with reasonable diligence the appellant would not have discovered the evidence prior to the appeal proceeding.
 - (E) A tape recording will be made of the appeal proceeding which shall be made available to the appellant upon payment of costs to Metro of making the tape.
 - (F) The Board shall render a decision which shall be reviewed only upon petition in the Circuit Court of Multnomah County. The petition must be filed within 15 days after the date of the decision in accordance with the provisions of ORS 279B.425.
- (6) Metro may reconsider its determination with regard to the disqualification debarment or denial of prequalification at any time prior to the appeal proceeding.

(d) Appeals of contract awards and decisions of the Auditor shall be made directly to the Contract Review Board.

SECTION 20. Metro Code Section 2.04.500 is amended to read as follows:

2.04.500 Policy Statement

It is the purpose of this ordinance to establish a Recycled Content Product Procurement Program that will achieve the following:

- (a) Increase the procurement of recycled content products and recyclable materials by all Metro departments and facilities and increase the use of recycled content, recyclable and reusable products and ~~recyclable~~ materials by contractors to Metro in the performance of their contract work.
- (b) Comply with ORS Chapters 279A and 279B regarding procurement of recycled content, reusable and recyclable materials and products by public agencies.
- (c) Encourage procurement of products with the greatest post-consumer content, and those that contribute to the use of locally generated and recovered materials for which there are the most significant recycling market development needs.
- (d) Serve as an example for other institutional purchasers, both public and private.

SECTION 21. Metro Code Section 2.04.520 is amended to read as follows:

2.04.520 Recycled, Reusable and Recyclable Products (Generally)

(a) Metro facilities and contractors to use Recycled, Reusable and Recyclable Materials and Products

- (1) The procurement officer shall review procurement standards and specifications currently utilized in order to eliminate, where economically feasible, discrimination against the procurement of recycled, reusable and recyclable materials and products, and to develop purchasing practices which encourage purchase of materials that are recycled or may be recycled or reused when discarded.
- (2) To the extent practicable, Metro's standards and specifications for recycled products shall be consistent with US EPA Purchasing Guidelines.
- (3) Notices to solicit bids from contractors shall state that Metro gives the price preference described in subsection (b)(1) of this section to recycled products and materials. All invitations to bid or requests for proposals shall include the following language: "Vendors shall use recycled and recyclable materials and products to the maximum extent economically feasible in the performance of contract work set forth in this document."
- (4) At their discretion, Metro and its agents, including contractors, may specify acceptance of only recycled products or materials in bids and solicitations so long as quality and availability of recycled products and materials are equal to nonrecycled products and materials. When a recycled product or material is specified in a bid or solicitation, no price preference shall be given.
- (5) If the price of a recycled product is equal to or less than an otherwise identical non-recycled product, then Metro and its agent, including contractors, shall specify only the recycled product in bids and specifications.
- (6) The procurement officer and waste reduction division shall provided information on US EPA Purchasing Guidelines and on recycled products available in the region to contractors and bidders, and shall provide notice of the availability of such information in procurement solicitations. Metro staff shall contact the procurement officer or the waste reduction division to determine the availability of recycled products prior to the solicitation of quotes, bids or proposals for any contract in an amount greater than \$5,000. This requirement shall not apply to contracts for services only.
- (7) The procurement officer shall investigate and implement, as appropriate, purchasing jointly with other public agencies to potentially reduce the price for recycled products.

(b) Price preference to be given for the purchase of Recycled Products or Materials

- (1) When purchasing products or procuring services, Metro shall give preference to materials and supplies manufactured from recycled materials if the recycled product or material:
 - (A) is available;
 - (B) meets applicable standards;
 - (C) can be substituted for a comparable nonrecycled product; and
 - (D) costs do not exceed the costs of nonrecycled products by more than 10 percent.
- (2) At their discretion, Metro departments and facilities may give a greater than 10 percent price preference to the purchase of recycled products, materials and supplies manufactured from recycled materials or that reduce the amount of waste generated.
- (3) When considering bids/proposals submitted by contractors, Metro shall evaluate the extent to which recycled materials and products have been incorporated.
- (4) Vendors and contractors who incorporate recycled materials and products in their bids/proposals shall provide written certification of the minimum recycled content of these materials and products, including the percent of post-consumer and secondary waste as defined in Section 2.04.510.
- (5) Unless otherwise specified in a bid or proposal request, bidders and proposers shall submit the actual proposed cost of a recycled product or material bid item. It shall be Metro's responsibility to calculate any preferences required. If Metro, in its sole discretion, determines that a product or material offered by a vendor or contractor is a recycled product or material meeting the requirements of this section, Metro shall subtract 10 percent or the preference otherwise offered, from the bid or proposal item, for the purpose of comparing bids or proposals.

SECTION 22. Metro Code Section 2.04.540 is amended to read as follows:

2.04.540 Recycled Oil

(a) As specified in ORS 279B.240~~580 to 279.595~~, Metro specifications for the purchase of lubricating oil and industrial oil shall not exclude recycled oils and shall not require that oils be manufactured from virgin materials. Specifications for the procurement of recycled oil shall be consistent with the re-refined lubricating oil purchasing guideline of the US Environmental Protection Agency. In addition, Metro shall purchase lubricating and industrial oil from the seller whose product contains the greater percentage of recycled oil as long as the recycled oil:

- (1) Is available within a reasonable period of time in quantities necessary for Metro's needs;
- (2) Meets performance standards recommended by the equipment or vehicle manufacturer, including any warranty requirements; and

- (3) Is offered at a price that does not exceed the 10 percent price preference for recycled products over comparable nonrecycled products.

(b) ~~As stipulated in ORS Chapter 279,~~ Metro's affirmative program for procuring recycled oil shall include, but ~~be~~ not be limited to the following:

- (1) Notice of Metro's preference for recycled oil shall be provided in publications used to solicit bids from suppliers;
- (2) Metro shall provide a description of its recycled oil procurement program at bidders' conferences and in procurement solicitations or invitations to bid; and
- (3) Metro shall make a good faith effort to inform industry trade associations about its recycled oil preference program.

(c) Metro shall specify recycled oils in its bids and solicitations for fleet vehicles and transport services and to the extent feasible not enter into agreements for these services with companies that restrict the use of recycled oils.

SECTION 23. Metro Code Section 2.04.550 is amended to read as follows:

2.04.550 Compost Products and Contracts for Lawn and Landscape Maintenance

(a) Metro shall specify and give preference to purchase of organic soil amendments made from yard debris, sewage sludge or other organic waste composts rather than compost made from nonrecycled organic materials if the organic soil amendments:

- (1) Are available;
- (2) Meet the functional requirements of the specific application;
- (3) Meet human health and plant safety standards; and
- (4) Do not exceed the 10 percent price preference for recycled products over nonrecycled products.

(b) As specified in ORS 279B.225, every contract for lawn and landscape maintenance shall contain a condition requiring the contractor to salvage, recycle, compost or mulch yard waste material at an approved site, if feasible and cost effective.

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ADOPTED by the Metro Council this _____ day of _____, 2004.

David Bragdon, Council President

Attest:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

OMA/MDF/kaj
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11/17/2004

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 04-1065, FOR THE PURPOSE OF AMENDING CHAPTER 2.04 OF THE METRO CODE RELATING TO PUBLIC CONTRACTING

Date: November 18, 2004

Prepared by: David Biedermann

BACKGROUND

The 2003 Oregon Legislature enacted a major revision to public contracting law, Oregon Revised Statutes Chapter 279. The legislative work is comprehensive, and deals with a variety of issues affecting Metro.

As a result, the Office of Metro Attorney and the Metro Contracts Manager reviewed the agency's Contract Code for both consistencies with the State law changes and to bring the Code up-to-date with changed circumstances within Metro. The result is a significant amendment of the Metro code (the last was done in 1996) to bring it into legal symmetry with the State law and to adapt to Metro business changes in the last nine years.

The State law takes effect March 1 2005; this ordinance is before you more than 90 days prior to the date of effect to avoid the need and use of an emergency clause.

The major changes in the legislation are in five areas.

1. Current law requires a local government to affirmatively name itself as its local contract review board. According, the Metro Council is currently designated as the Metro Public Contract Review Board. The new 2003 law now provides that if a local government does not act to the contrary, it serves as its own contract review board without having to name itself. Additionally, the new Oregon public contracting law allows local governments to use their own contracting rules, rather than following the State Attorney General's Model Rules. To do so, governments must affirmatively opt out of the state rules. The proposal before the Council continues the current policy choice of opting out of the state contracting rules.
2. The new State law substantially changed the dollar thresholds for informal quotations and formal bids. The current levels are:
 - a. Under \$5,000 no quotes are necessary,
 - b. Between \$5,000 and \$50,000 a minimum of 3 quotes are required and
 - c. Over \$50,000 formal bids must be submitted.

The change occurs in “b” and “c”; quotations will be required between \$5,000 and **\$150,000**, and the formal bid threshold will be **\$150,000**.

Note: The November 16th Council work session indicated an informal consensus to set the Metro level at \$100,000. MERC would also then move to that level with no annual inflationary adjustment, as has been the case in the past. MERC management supports this change.

3. If an agency uses prequalification in its bidding process, the Contract Review Board can hear appeals from vendors that are disqualified. That process is now called “debarment”. (Metro does not use prequalification process.)
4. The proposed changes to the Metro code include updates to incorporate state law purchasing changes related to procurement of recycled goods, such as oil manufacturing and reuse of lawn maintenance debris.
5. The Metro Contract Review Board has the power to grant “exemptions” for specific procurements that are not required to be procured through competitive bids or competitive proposals. Examples are regulated products and services, repair services where the cost cannot be determined without extensive dismantling, and contracts where Metro receives a revenue for providing a service, etc.

The guiding principle is that such exemptions: (a) will be unlikely to encourage favoritism in the awarding of public contracts or will substantially diminish competition for public contracts and, (b) will result in substantial cost savings to Metro or the public or will otherwise substantially promote the public interest in a manner that compliance with other new, expanded procurement methods will not. The state law now refers to these exemptions as “special procurements”.

The review by the Office of the Metro Attorney and the Contracts Officer identified a few contractual circumstances that can benefit from being “special procurements.”

- The exemption for the purchase of food is changed to include all Metro facilities, not just the Oregon Zoo. We propose the following change.
 - Purchase of food items for resale at facilities owned or operated by Metro.
- The existing exemption for exclusion of warranties from competitive bidding has historically been interpreted to include software warranties, which includes support agreements with the manufacturer. To clarify the purpose, software and hardware acquisition, warranty and support are now separated from other warranty procurements (such as compactors at the Transfer Stations). We propose the following changes as special procurements.

- Contracts for warranties other than computer software warranties described in subsection 7, in which the supplier of the goods or services covered by the warranty has designated an authorized provider for the warranty service.
- Contracts for computer hardware, software and associated warranties.
- Metro has some limited situations where it requires a service that, while generally available in the marketplace, is nonetheless restricted to a sole source by another government. In that case, we have no choice but to use the prescribed vendor. Our Code, however, requires a competitive process. We propose the following addition to the Metro list of special procurements:
 - Contracts for goods or services when the provider of the procured goods or services is required by the federal government or by the state of Oregon.
- The state law clarifies the use of cooperative procurements among governments. We propose to specifically include this as a special procurement to allow another governments to conduct the process on behalf of Metro. We propose the following addition to the Metro list.
 - Contracts for co-operative procurements permitted under ORS 279A.220 to 279A.225.
- There are increased efforts by both for-profit and non-profit private organizations willing to both raise funds and do work Metro sees necessary to meet its goals (wildlife habitat remediation, donation of in-kind services to build a public improvement, preservation of wetlands, etc.)

When acceptable to our goals, it would be both cumbersome, potentially embarrassing to the potential donor and likely unsuccessful for Metro to then advertise to seek others willing to donate the same amount of funds and time to accomplish the same goal. We propose the following additions to the Metro list of special procurements that are exempt from competitive processes:

- Contracts for projects that are not public improvements as defined in Metro Code Section 2.04.010(m) in which a contractor provides a material and substantial portion of the funding for such project. [for minor alterations, ordinary repairs or maintenance necessary to preserve a public improvement in which a contractor provides the funding for such project.]
- Contracts for public improvements in which a contractor agrees to provide provides a material and substantial portion of the funding for such public improvement project.

Note: The November 16th Council work session indicated an informal consensus supporting the update to the list of exemptions granted by the Metro Public Contract Review Board.

ANALYSIS/INFORMATION

1. **Known Opposition:** None.
2. **Legal Antecedents:** Metro Code 2.04, State of Oregon Revised Statutes (ORS) 279 (current), and prospective chapters 279A, 279B and 279C (effective March 2005).
3. **Anticipated Effects:** Metro Code 2.04 will be in compliance with ORS 279A, B and C.
4. **Budget Impacts:** Depending on the actions taken by the Metro Council, adoption of the ordinance could result in annual budgetary savings of up to \$35,000 by eliminating staff time and processing costs for procurements less than \$100,000. These are largely advertising costs and staff costs to prepare and release more formal documents required by formal bidding.

At the same time, the work to maintain a strong competitive market for Metro business will continue. Multiple written quotations from a variety of qualified sources will be solicited for every Metro contract and purchase.

RECOMMENDED ACTION

Chief Operating Officer recommends passage of Ordinance 04-1065.