

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF APPROVING A) RESOLUTION NO. 92-1709
REQUEST FOR PROPOSALS DOCUMENT FOR)
AGENT OF RECORD AND AUTHORIZING) Introduced by Rena Cusma,
THE EXECUTIVE OFFICER TO EXECUTE) Executive Officer
THE CONTRACT)

WHEREAS, Section 2.04.033(a) of the Metro Code requires the Council of the Metropolitan Service District must approve the proposal document for certain contracts; and

WHEREAS, The contract for an agent of Record for Employee benefits requires Council approval, and the proposal document has been filed with the Council Clerk; now, therefore,

BE IT RESOLVED,

1. That the Council of the Metropolitan Service District approves the Request for Proposals for an Agent of Record for employee benefits attached as Exhibit A hereto and authorizes that it be released for response by vendors or proposers.
2. That the Executive Officer is authorized to execute the contract thereby waiving further Council action pursuant to Section 2.04.033 (b) of the Metro Code.

ADOPTED by the Council of the Metropolitan Service District
this 24th day of November, 1992.



Jim Gardner, Presiding Officer

EXHIBIT "A"

**REQUEST FOR PROPOSALS
AGENT OF RECORD AND CONSULTANT
FOR EMPLOYEE HEALTH AND WELFARE PLANS**

I. INTRODUCTION

The Metropolitan Service District (Metro) is requesting proposals from qualified firms to provide consulting services and act as Metro's Agent of Record for its employee health and welfare plans. The appointment will be for a three-year period commencing January 1, 1993. Proposals will be due by 3:00 p.m., PST _____, 1992 in Metro's Personnel Office, located at 2000 Southwest First Avenue, Portland, Oregon 97201-5398.

II. GENERAL INFORMATION

The Metro-sponsored employee benefit plan consists of medical, dental, vision, prescription, life, dependent life, and long-term disability insurances. Metro employees also participate in the Public Employees Retirement System (PERS). Eligible employees also have the option to participate in the 401(k)/Metro Salary Savings Plan and an IRC 129 pre-tax dependent care reimbursement program.

The Metro-sponsored benefit plan is offered to all regular non-represented employees; and members of the American Federation of State, County, and Municipal Employees (AFSCME) Local 3580; and all full-time members of International Alliance of Theatrical Stage Employees (IATSE) Local 28 (utility workers), and International Union of Operating Engineers (IUOE) local 87; and the Laborers International Union (LIU) Local 483. Members of LIU have the option to participate in the Metro-sponsored plan, or received their health and welfare benefits through the Oregon Laborers Trust.

Through the collective bargaining process, a labor-management benefit committee has been established to review plan costs and administration, potential plan design changes, and may make recommendations regarding the Metro employee benefit plans. The collective bargaining contract year is from July 1 through June 30.

III. 1992 - 1993 PLAN AND PARTICIPANT INFORMATION

Projected employee participation:

Medical:

Kaiser Permanente	180
ODS	350

Dental:

ODS	530
-----	-----

Vision:

Kaiser Permanente	180
Vision Service Plan	350

Life, AD&D, LTD:

Standard Insurance	530
--------------------	-----

III. 1992 - 1993 PLAN AND PARTICIPANT INFORMATION (cont.)

Projected Premiums:

ODS	\$1,171,500
Kaiser Permanente	\$ 563,000
Vision Service Plan	\$ 50,000
Standard Insurance	\$ 147,000

Plan Year:

July 1 through June 30.

IV. MINIMUM QUALIFICATIONS AND EXPERIENCE

- A. Shall be licensed by the Insurance Commission of the State of Oregon.
- B. Shall have had at least five years experience providing employee benefit consulting to public sector clients.
- C. Shall maintain a main or branch office in the Portland metro area.

V. SELECTION CRITERIA

Accepted proposals will be reviewed by a screening committee who will evaluate proposals on the basis of whether they meet the minimum requirements and will rank them based upon the following evaluation criteria:

- A. **TECHNICAL EXPERTISE:** knowledge and skill in the areas of underwriting/actuarial services and products, plan design and financing, IRC 125 and 129 plans, PERS benefits, public sector benefit requirements, benefit law, insurance placement and carrier negotiations.
- B. **CREATIVITY:** ability to design and implement effective, timely, and cost conscious solutions to employee benefit problems.
- C. **COMMUNICATION AND INTERPERSONAL SKILLS:** ability to work and communicate effectively with Metro staff and management, union representatives and committees, insurance carriers, and provide compelling testimony when necessary.

VI. SCOPE OF WORK

- A. Assist in the placement of all employee health and welfare insurance including:
 - o Development of marketing specifications.
 - o Evaluation of proposals.
 - o Identification of market conditions pertinent to successful carrier negotiations.

VI. SCOPE OF WORK (cont.)

- B. Assist in the management of employee benefit insurance including:**
- o Underwriting analyses for annual contract renewal negotiations.
 - o Annual financial projections for Metro's budget decision-making process.
 - o Review, analysis, and costing of proposed plan amendments.
- C. Prepare an annual benefit cost management report including:**
- o Statement of projected financial requirements of all employee benefits for the coming plan year with updated cost history and cost trends
 - o Summary of health and welfare insurance carriers and administrator performance evaluations.
 - o Identification of areas for additional cost savings with estimated projected savings.
 - o Recommendations regarding carrier renewals.
- D. Provide specific information regarding existing, new or impending legal or tax requirements that may effect Metro's health and welfare plans.**
- E. Provide information or perform special studies on an ad hoc basis as requested by the Executive Officer, Personnel Manager, or Benefits Officer.**
- F. Upon request by Metro, the Consultant will provide a written fee estimate, with a guaranteed maximum cost for any special study or project outside this Scope of Work. If approved by Metro, the consultant shall thereafter perform such special studies or projects at the written estimate price or such fee as may be negotiated by the parties.**
- G. On a monthly basis, the Consultant will provide a statement of commissions received from each insurance carrier and a provide a detailed explanation of all billable hours incurred for consulting services or insurance placement.**

VII. COMPENSATION

For services falling within this Scope of Work, the consultant will be compensated by receiving commissions directly from the insurance companies providing employee benefit insurance to Metro. Metro shall not be directly obligated for payment to the consultant.

The annual aggregate commission paid from Metro's health and welfare insurance carriers to the consultant shall not exceed \$36,000 per plan year. If the billable time for service will be less than \$36,000 in any given plan year, the excess commission compensation will be carried forward and applied directly to the following plan year's services.

VIII. GENERAL PROPOSAL/CONTRACT CONDITIONS

- A. **Limitation and Award --** This RFP does not commit Metro to the award of a contract, nor to pay any costs incurred in the preparation and submission of proposals in anticipation of a contract. Metro reserves the right to accept or reject any or all proposals received in whole or in part as the result of this request, to negotiate with all qualified sources, or to cancel all or part of this RFP.
- B. **Contract Type --** Metro intends to award a Personal Services Contract with the firm selected to provide service. A copy of the standard form contract which the successful consultant will be required to execute is attached.
- C. **Billing Procedures --** Proposers are informed that the billing procedures of the selected firm are subject to the review and prior approval of Metro before reimbursement of services can occur. A monthly billing, accompanied by a progress report, will be prepared by the consultant for review and approval.
- D. **Validity Period and Authority --** The proposal shall be considered valid for a period of least ninety (90) days and shall contain the name, title, address and telephone number of an individual or individuals with authority to bind any company contacted during the period of which Metro is evaluating the proposal.

IX. PROPOSAL CONTENTS REQUIREMENTS

All proposals must include the following information:

- A. **Name and address of your organization, the date established, and a brief description of it's historical background.**
- B. **The name, title, address, and phone number of the individual preparing the response and who can be contacted regarding this RFP.**
- C. **Describe the business experience and professional achievements of the principals of your firm who would be assigned to work on Metro's account. Attach resumes or summarized credentials of the account manager and all other staff who would be assigned to Metro's account.**
- D. **Provide a list of other Oregon Public Sector employers for which you provided similar services to those contained within this Scope of work within the past five years. Include the names, titles and phone numbers of appropriate contacts at these organizations who are able to discuss the services your agency provided in detail.**

IX. PROPOSAL CONTENTS REQUIREMENTS (cont.)

- E. Briefly describe your organizations expertise in the following areas (please note those services available through your Portland office):
- o Health plan design and financing
 - o Underwriting and actuarial service
 - o Employee benefit legislation, tax issues and requirement for public sector employers
 - o IRC 125 and 129 Plans
 - o Public Employes Retirement System (PERS)
 - o Flex Spending Arrangements
 - o Collective bargaining
 - o Dependent Care Reimbursement Programs
- F. Provide any other information which you feel would assist Metro in the process of evaluating your proposal.

X. RFP ATTACHMENT

The following attachments are included with this RFP:

- A. A copy of the Personal Service Agreement your organization will be required to sign prior to the award of this contract. You will note that this document includes the required levels and types of insurance the consultant must purchase and maintain during the life of this agreement.
- B. Section 2.04.100 of the Metro Code titled, "Disadvantaged Business Program, Purpose and Authority," whereby Metro extends equal opportunity to all persons and specifically encourages disadvantaged and women-owned businesses to access and participate in this and all Metro projects, programs, and services. The Section also declares that Metro and its contractors shall not discriminate against any person or firm based on race, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status.

XI. PROPOSAL INSTRUCTIONS

- A. **Deadline and Submission of Proposals**

Three copies of the proposal shall be furnished to Metro addressed to:

Sarah Keele
Benefits Officer
Metropolitan Service District
2000 S.W. First Avenue
Portland, Oregon 97201-5398

Proposals will not be considered if received after 3:00 p.m., PST, on _____.
Postmarks are not acceptable.

XI. PROPOSAL INSTRUCTIONS (cont.)

B. Basis for Proposals

This RFP represents the most definitive statement Metro will make concerning the information upon which proposals are to be based. Any verbal information which is not contained in this RFP will not be considered by Metro in evaluating the proposal. All questions relating to the RFP must be submitted in writing to Sarah Keele, Benefits Officer. Any questions which in the opinion of Metro warrant a written reply or RFP amendment will be furnished to all parties receiving a copy of this RFP. Metro will not respond to questions received after _____.

XII. EVALUATION OF PROPOSALS

A. Only proposals prepared in full conformance with these RFP instructions will be evaluated. The evaluation will take place using the evaluation criteria identified in the following section. The evaluation process will result in Metro developing a short list of the firms who, in its opinion, are most qualified. Interviews with these firms will be requested prior to final selection of one firm.

B. Firms responding to the Request for Proposals will be evaluated on the basis of the following:

1. General (5 pts.)

- a. Organization of proposal
- b. Responsiveness to the purpose and scope of services

2. Personnel (10 pts.)

- a. Experience and qualifications of principals assigned to this project.
- b. Availability of personnel assigned.
- c. Additional professional resources available.

3. Organization, Experience and Services of Firm (10 pts.)

- a. Previous history and experience with similar types of government agencies.
- b. Previous history and experience in the appropriate insurance fields.
- c. Structure of services provided and appropriateness to Metro's needs.
- d. Favorable references from similar public sector clients you have provided similar services.

All firms submitting proposals will be notified when a consultant has been selected. Metro reserves the right to reject any or all proposals, to waive irregularities and technicalities and to accept the proposal deemed most advantageous to the District.

Jeff Lange
Gales Creek Insurance
800 NW 6th Ave.
Portland, OR 97209

^E

Les Morton
Standard Insurance
5100 SW Macadam, Suite 200
Portland, OR 97201

^E

Terry Venezia
Mercer, Inc.
900 SW Fifth Ave., Suite 1000
Portland, OR 97204

^E

Parke Blundon
Willis - Caroon
P.O. Box 8699
Portland, Or 97207

^E

Cathy Webb
JBL&K
220 NW 2nd, Suite 800
Portland, OR 97209

^E

Johnson and Higgins
111 SW Fifth Ave.
Portland, OR 97204-3629

^E

Gordon Osaka
111 SW Fifth Ave., Suite 3860
Portland, OR 97204*

^E

Kathleen Sadowski
1395 Liberty Street SE
Salem, OR 97302*

^E

Eddie Yen
Supreme Insurance Agency
220 NW Second Ave., Suite 118
Portland, OR 97209*

^E

Steve Brookshire
Coordinated Resource Group
5440 SW Westgate Drive, Suite 325
Portland, OR 97221

^E

Kim Herron
Northwestern Mutual Life
1221 SW Yamhill, Suite 400
P.O. Box 8709
Portland, OR 97208

^E

Mike Schneider
Alexander & Alexander
111 SW Fifth Ave., Suite 3700
Portland, OR 97204

^E

Bill Lovejoy
Benefit Brokers & Consultants
111 SW Columbia Suite 1280
Portland, OR 97201

^E

Howard Johnson & Co.
888 SW 5th Ave.
Portland, OR 97204

^E

Hartzel Cobb
7160 SW Raleighwood Lane
Portland, OR 97224

^E

*=DBW & MBE's

GOVERNMENTAL AFFAIRS COMMITTEE REPORT

RESOLUTION NO. 92-1709, APPROVING A REQUEST FOR PROPOSALS DOCUMENT FOR AGENT OF RECORD FOR EMPLOYEE BENEFITS AND AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE THE CONTRACT

Date: November 23, 1992

Presented by: Councilor Devlin

COMMITTEE RECOMMENDATION: At its November 19, 1992 meeting the Governmental Affairs Committee voted 4-0 to recommend Council adoption of Resolution No. 92-1709. Voting were Councilors Collier, Devlin, Moore, and Wyers. Councilor Gronke was excused.

COMMITTEE DISCUSSION/ISSUES: Benefits Manager Sarah Keele presented the staff report. She summarized the services to be provided by an agent of record for employee benefits, and said the contract would be for three years, at an annual cost of \$36,000.

Councilor Van Bergen said the Finance Committee would be considering a similar resolution, authorizing an RFP for an agent of record for property and casualty insurance. He asked why there was a need to have two agents of record for insurance work. Personnel Director Paula Paris said there are two separate types of insurance, one for employee benefits and one for risk management issues. Councilor-Elect Mike Gates spoke to the issue, saying these are two different fields of insurance expertise, but that some organizations can provide both types of service. He did not know whether it would save any money to contract with one firm for all such services.

Chair Collier suggested to Ms. Paris that she discuss this matter with Risk Manager Scott Moss to see if it would be to Metro's advantage to have one firm do all this work, rather than two firms. (Please see attached memorandum from Ms. Paris and Mr. Moss that addresses this issue.)

Councilor Wyers asked why this resolution called for a Request For Proposals (RFP) rather than a Request For Bids (RFB). Ms. Keele said she discussed this question with the Procurement Officer, who advised the RFP process is more appropriate because it is for professional consulting services rather than for a product.

Councilor Van Bergen suggested that Metro may not need to contract for agent of record services as staff develops more expertise on insurance issues. He views this as a logical development following the decision to become self-insured, which could save the agency money. Ms. Paris said Metro's current agent of record was instrumental in negotiating lower costs with its two health care providers, and assuming those functions in-house would require additional staff. Councilor Van Bergen said staff expertise could be developed.



METRO

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

Memorandum

RESOLUTION NO. 92-1709
Committee Report
Attachment 1

DATE: November 23, 1992

TO: Finance Committee

FROM: Scott Moss, Risk Manager
Paula Paris, Personnel Manager

RE: Combining Agent of Record Services for Property/Casualty Insurance and Employee Benefits

This memo is in response to a question raised by the Finance Committee on Resolution No. 92-1710, Property/Casualty Agent of Record/Broker and/or Loss Control Consultant. It also responds to a question raised by the Governmental Affairs Committee on Resolution No. 92-1709, Agent of Record for Employee Benefits. The question is, "Are there financial savings and other benefits derived from combining these two RFP's and having one agent provide these services?"

Financial Benefits

Five of the six largest brokers in Portland provide property/casualty and employee benefit services. Each of these firms have specialized consultants offering these services. As a matter of practice, property/casualty insurance consultants have little interface with employee benefit consultants.

Of the five firms, one has experience with public entities in both insurance and employee benefits. We informally asked them and one other firm if discounts would be provided if they were chosen to be the consultant in both areas. They both said a discount would be offered, but not more than 5% of the total. This may result in a savings of approximately \$3,500 annually.

We are aware of one medium-size firm that offers both services, but does not have public entity experience. They do not provide loss control services.

Limited Agents

As was mentioned above, combining the two RFP's would significantly limit the number of brokers able to respond. Due to the technical nature and the differences between property/casualty insurance and employee benefits, firms tend to specialize.

MEMO - Finance Committee

November 23, 1992

Page 2

At the request of the Finance Committee, Risk Management's request for proposals for insurance consultants was significantly modified to allow for a wider range of qualified proposers. The request for proposals for employee benefits currently provides for a wide range of proposers. Due to limited competition, combining the two will limit qualified proposers and may increase costs.

Recommendation

Risk Management and Personnel will invite firms known to provide both property/casualty insurance and employee benefits agent of record services to bid separately or jointly on the two RFP's. Any qualified proposers bidding on both RFP's will be jointly interviewed by Risk Management and Personnel and rated in accordance with the established criteria.

RSM:kc

c:\wp51\karen\memos\fincouiqu.sm

cc: Jennifer Sims, Director of Finance and Management Information

STAFF REPORT

RESOLUTION NO. 92-1709, FOR THE PURPOSE OF APPROVING A REQUEST FOR A PROPOSAL DOCUMENT FOR AN AGENT OF RECORD FOR EMPLOYEE BENEFITS AND AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE THE CONTRACT

Date: November 19, 1992

Presented By: Sarah Keele
Paula Paris

BACKGROUND:

Metro secures the services of an Agent of Record for consulting services and assistance in the administration of Metro's employee benefit insurance programs. Examples of the scope of services the Agent of Record/Consultant provides include: health and welfare insurance placement; carrier negotiations; benefit insurance management advice; cost control recommendations; and information on existing or impending legal or tax requirements effecting Metro's employee benefit programs. Metro's current Agent of Record is William Mercer, Incorporated, whose contract will expire December 31, 1992. The firm selected will be appointed for a period between January 1, 1993 and December 31, 1995.

The Agent of Record/Consultant will be selected from respondents to the request for proposals and selected in accordance with Metro contract rules for personal services. Proposals will be evaluated on the basis of organization, responsiveness to purpose and scope of services required, experience of the firm, and the qualifications and abilities of the personnel the firm will be assigning to this project.

COMPENSATION

For services falling within this Scope of Work, the Agent of Record/Consultant will be compensated by receiving commissions directly from the insurance companies providing employee benefit insurance to Metro. Metro shall not be directly obligated for payment to the Agent of Record/Consultant.

However, the annual aggregate commission paid from Metro's health and welfare insurance carriers to the Agent of Record/Consultant shall not exceed \$36,000 per plan year. If the billable time for service will be less than \$36,000 in any given plan year, the excess commission compensation will be carried forward and applied directly to the following plan year's services.

Staff Report
11-3-92
Page 2

ACTION REQUESTED

Pursuant to section 2.04.033(b) of the Metro Code, upon approval of the Request for Proposal documents, permission is requested to waive the requirement of Council approval of the contract and authorize the Executive Officer to execute the contract upon completion of the RFP process.

In previous years, this particular contract was designated as either a "B" or an "N/A" contract. If the Council does not elect to schedule a hearing on this matter over the course of the next fourteen (14) days, the solicitation may be advertised and released to prospective proposers as attached (Exhibit "A").

EXECUTIVE OFFICERS RECOMMENDATION

The Executive Officer recommends adoption of Resolution No. 92-1709.

NOTICE TO POTENTIAL PROPOSERS:

METRO'S DISADVANTAGED, MINORITY, AND WOMEN-OWNED BUSINESS PROGRAM

In the event that any subcontractors are to be utilized in the performance of this agreement, the proposer's attention is directed to Metro Ordinance No. 92-466A which will be effective December 24, 1992 and thereafter will establish the language of Metro Code provision 2.04.100, 200, & 300 which will replace the existing RFP attachment.

Copies of that document are available from the Procurement and Contracts Division of Regional Facilities, Metropolitan Service District, Room 340 , Metro Center, 2000 S.W. First Avenue, Portland, OR 97201-5398, extension 280.



METRO

2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646
Fax 241-7417

October 22, 1991

Dear Potential Bidder/Proposer:

For the past ten years, the Metropolitan Service District has had a special contracting program to encourage participation in metro contracts by businesses owned by minorities including women. This program has been applied to both federally funded and locally funded projects.

We have now been advised by our General Counsel that the Metro Code provisions relating to participation by minority-owned businesses in locally funded contracts are unconstitutional.

Therefore, I must reluctantly advise you that until the Metro Council acts to correct this defect and/or adopts a new program, I cannot and will not act in probable violation of the law and attempt to enforce the present Metro DBE and WBE Program requirements on locally funded projects.

The economy of the Metro region is comprised of a multitude of emerging and small businesses which mirror the racial diversity within our boundaries. They're our customers and clients. They pay taxes. They hire the local work force. They determine the health of the local economy. Supporting those businesses should not be viewed as just a requirement. Supporting those businesses should be viewed as good business!

I, therefore encourage you to set the legal question aside and voluntarily follow good faith efforts to utilize Disadvantaged, Minority and Women Owned Business Enterprises as your subcontractors and suppliers.

Please consider these issues carefully. Talk to your legal counsel. Reflect upon the larger issue. If you have questions, please contact Rich Wiley at Metro 221-1646.

Respectfully,

Richard D. Engstrom
Deputy Executive Officer

2.04.100 Disadvantaged Business Program, Purpose and Authority:

(a) It is the purpose of this ordinance to establish and implement a program to encourage the utilization by Metro of disadvantaged and women-owned businesses by creating for such

businesses the maximum possible opportunity to compete for and participate in Metro contracting activities.

(b) The portions of this ordinance which relate to federally funded contracts are adopted pursuant to 49 CFR 23 and are intended to comply with all relevant federal regulations. Federal regulation 49 CFR 23 and its amendments implement section (105)(f) of the Surface Transportation Assistance Act of 1982 relating to the participation by Minority Business Enterprises in Department of Transportation programs.

(c) This ordinance shall be known and may be cited as the "Metro Disadvantaged Business Program," hereinafter referred to as the "Program."

(d) This ordinance supersedes the Metro "Minority Business Enterprise (MBE) Program" dated October 1980 and amended December 1982.

(Ordinance No. 83-165, Sec. 1; amended by Ordinance No. 84-181, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1).

2.04.105 Policy Statement:

(a) Through this Program, Metro:

- (1) Expresses its strong commitment to provide maximum opportunity to disadvantaged and women-owned businesses in contracting;
- (2) Informs all employees, governmental agencies and the general public of its intent to implement this policy statement; and
- (3) Assures conformity with applicable federal regulations as they exist or may be amended.

(b) It is the policy of Metro to provide equal opportunity to all persons to access and participate in the projects, programs and services of Metro. Metro and Metro contractors will not discriminate against any person or firm on the basis of race, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status.

(c) The policies, practices and procedures established by this ordinance shall apply to all Metro departments and project areas except as expressly provided in this ordinance.

(d) The objectives of the program shall be:

- (1) To assure that provisions of this ordinance are adhered to by all Metro departments, contractors, employees and USDOT subrecipients and contractors.
- (2) To initiate and maintain efforts to increase program participation by disadvantaged and women businesses.

(e) Metro accepts and agrees to the statements of 49 CFR §23.43(a)(1) and (2), and said statements shall be included in all USDOT agreements with USDOT subrecipients and in all USDOT assisted contracts between Metro or USDOT subrecipients and any contractor.

(Ordinance No. 83-165, Sec. 2; amended by Ordinance No. 84-181, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.110 Definitions: For purposes of this Ordinance, the following definitions shall apply:

(a) "Applicant" means one who submits an application, request or plan to be approved by a USDOT official or by Metro as a condition to eligibility for Department of Transportation (USDOT) financial assistance; and "application" means such an application, request or plan.

(b) "Construction Contract" means a contract for construction of buildings or other facilities, and includes reconstruction, remodeling and all activities which are appropriately associated with a construction project.

(c) "Contract" means a mutually binding legal relationship or any modification thereof obligating the seller to furnish supplies or services, including construction, and the buyer to pay for them. For purposes of this ordinance a lease or a purchase order of \$500.00 or more is a contract.

(d) "Contractor" means the one who participates, through a contract or subcontract, in the Program and includes lessees.

(e) "Department or USDOT" means the United States Department of Transportation, including its operating elements.

(f) "Disadvantage Business Enterprise or DBE" means a small business concern which is certified by an authorized agency and:

- (1) Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

For purposes of USDOT assisted contracts, the term Disadvantaged Business Enterprise shall be deemed to include Women-Owned Business Enterprises.

(g) "Executive Department" means the State of Oregon's Executive Department.

(h) "Joint Venture" is defined as an association of two or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge. In a joint venture between a DBE/WBE and non-DBE/WBE, the DBE/WBE must be responsible for a clearly defined portion of the work to be performed and must share in the ownership, control, management responsibilities, risks and profits of the joint venture. A joint venture of a DBE/WBE and a non-DBE/WBE must receive Metro approval prior to contract award to be counted toward any DBE/WBE contract goals.

(i) "Labor and Materials Contract" is a contract including a combination of service and provision of materials other than construction contracts. Examples may include plumbing repair, computer maintenance or electrical repair, etc.

(j) "Lessee" means a business or person that leases, or is negotiating to lease, property from a recipient or the Department on the recipient's or Department's facility for the purpose of operating a transportation-related activity or for the provision of goods or services to the facility or to the public on the facility.

(k) "Oregon Department of Transportation or ODOT" means the State of Oregon's Department of Transportation.

(l) "Personal Services Contract" means a contract for services of a personal or professional nature.

(m) "Procurement Contract" means a contract for the purchase or sale of supplies, materials, equipment, furnishings or other goods not associated with a construction or other contract.

(n) "Recipient" means any entity, public or private, to whom USDOT financial assistance is extended, directly or through another recipient for any program.

(o) "Small Business Concern" means a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

(p) "Socially and Economically Disadvantaged Individuals or Disadvantaged Individuals" means those individuals who are

citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans or Asian-Indian Americans and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act. Certifying recipients shall make a rebuttable presumption that individuals in the following groups are socially and economically disadvantaged. Certifying recipients also may determine, on a case-by-case basis, that individuals who are not a member of one of the following groups are socially and economically disadvantaged:

- (1) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
- (2) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Portuguese-American, Spanish culture or origin, regardless of race;
- (3) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- (4) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas; and
- (5) "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh.

(q) "USDOT Assisted Contract" means any contract or modification of a contract between Metro and a contractor which is paid for in whole or in part with USDOT financial assistance.

(r) "USDOT Financial Assistance" means financial aid provided by USDOT or the United States Railroad Association to a recipient, but does not include a direct contract. The financial aid may be provided directly in the form of actual money, or indirectly in the form of guarantees authorized by statute as financial assistance services of Federal personnel, title or other interest in real or personal property transferred for less than fair market value, or any other arrangement through which the recipient benefits financially, including licenses for the construction or operation of a Deep Water Port.

(s) "Women-Owned Business Enterprise or WBE" means a small business concern, as defined pursuant to section 3 of the Small

Business Act and implementing regulations which is owned and controlled by one or more women and which is certified by an authorized agency. "Owned and controlled" means a business which is at least 51 percent owned by one or more women or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by one or more women, and whose management and daily business operations are controlled by one or more women. For purposes of USDOT assisted contracts, the term Disadvantaged Business Enterprise shall be deemed to include Women-Owned Business Enterprises.

(Ordinance No. 165, Sec. 3; amended by Ordinance No. 84-181, Sec. 2; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; and Ordinance No. 88-252, Sec. 1)

2.04.115 Notice to Contractors, Subcontractors and Subrecipients: Contractors, subcontractors and subrecipients of Metro accepting contracts or grants under the Program which are USDOT-assisted shall be advised that failure to carry out the requirements set forth in 49 CFR 23.43(a) shall constitute a breach of contract and, after notification by Metro, may result in termination of the agreement or contract by Metro or such remedy as Metro deems appropriate. Likewise, contractors of Metro accepting locally-funded contracts under the Program shall be advised that failure to carry out the applicable provisions of the Program shall constitute a breach of contract and, after notification by Metro, may result in termination or such other remedy as Metro deems appropriate.

(Ordinance No. 83-165, Sec. 4; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.120 Liaison Officer:

(a) The Executive Officer shall by executive order, designate a Disadvantaged Business Liaison Officer and, if necessary, other staff adequate to administer the Program. The Liaison Officer shall report directly to the Executive Officer on matters pertaining to the Program.

(b) The Liaison Officer shall be responsible for developing, managing and implementing the program, and for disseminating information on available business opportunities so that DBEs and WBEs are provided an equitable opportunity to bid on Metro contracts. In addition to the responsibilities of the Liaison Officer, all department heads and program managers shall have responsibility to assure implementation of the Program.

(Ordinance No. 83-165, Sec. 5; amended by Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.125 Directory: A directory of DBEs and WBEs certified by ODOT or the Executive Department, as applicable shall be maintained by the Liaison Officer to facilitate identifying such businesses with capabilities relevant to general contracting requirements and particular solicitations. The directory shall be available to contract bidders and proposers in their efforts to meet Program requirements.

(Ordinance No. 83-165, Sec. 6; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.130 Minority-Owned Banks: Metro will seek to identify minority-owned banks within the policies adopted by the Metro Council and make the greatest feasible use of their services. In addition, Metro will encourage prime contractors, subcontractors and consultants to utilize such services by sending them brochures and service information on certified DBE/WBE banks.

(Ordinance No. 83-165, Sec. 7; amended by Ordinance No. 84-181, Sec. 3; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.135 Affirmative Action and Equal Opportunity Procedures: Metro shall use affirmative action techniques to facilitate DBE and WBE participation in contracting activities. These techniques include:

(a) Arranging solicitations, time for the presentation of bids, quantities specifications, and delivery schedules so as to facilitate the participation of DBEs and WBEs.

(b) Referring DBEs and WBEs in need of management assistance to established agencies that provide direct management assistance to such businesses.

(c) Carrying out information and communications programs on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate.

(d) Distribution of copies of the program to organizations and individuals concerned with DBE/WBE programs.

(e) Periodic reviews with department heads to insure that they are aware of the program goals and desired activities on their parts to facilitate reaching the goals. Additionally, departmental efforts toward and success in meeting DBE/WBE goals for department

contracts shall be factors considered during annual performance evaluations of the department heads.

(f) Monitor and insure that Disadvantaged and Women Business Enterprise planning centers and likely DBE/WBE contractors are receiving requests for bids, proposals and quotes.

(g) Study the feasibility of certain USDOT-assisted contracts and procurements being set aside for DBE/WBE participation.

(h) Distribution of lists to potential DBE/WBE contractors of the types of goods and services which Metro regularly purchases.

(i) Advising potential DBE/WBE vendors that Metro does not certify DBE/WBEs, and directing them to ODOT until December 31, 1987, and, thereafter, to the Executive Department.

(j) Specifying purchases by generic title rather than specific brand name whenever feasible.

(k) Establishing an interdepartmental contract management committee which will meet regularly to monitor and discuss, among other issues, potential DBE and WBE participation in contracts. In an effort to become more knowledgeable regarding DBE and WBE resources, the committee shall also invite potential DBE and WBE contractors to attend selected meetings.

(l) Requiring that at least one DBE or WBE vendor or contractor be contacted for all contract awards which are not exempt from Metro's contract selection procedures and which are 1) for more than \$500 but not more than \$15,001 in the case of non-personal services contracts; and 2) for more than \$2,500 but not more than \$10,001 for personal services contracts. The Liaison Officer may waive this requirement if he/she determines that there are no DBEs or WBEs on the certification list capable of providing the service or item. For contracts over the dollar amounts indicated in this section, all known DBEs and WBEs in the business of providing the service or item(s) required shall be mailed bid or proposal information.

(m) The Executive Officer or his/her designee, may establish and implement additional affirmative action techniques which are designed to facilitate participation of DBEs and WBEs in Metro contracting activities.

(Ordinance No. 83-165, Sec. 8; amended by Ordinance No. 84-181, Sec. 4; Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.140 Certification of Disadvantaged Business Eligibility:

(a) To participate in the Program as a DBE or WBE, contractors, subcontractors and joint ventures must have been certified by an authorized certifying agency as described in subsection (b) of this section.

(b) Metro will not perform certification or recertification of businesses or consider challenges to socially and economically disadvantaged status. Rather Metro will rely upon the certification and recertification processes of ODOT and will utilize ODOT's certification list until December 31, 1987, and, thereafter, the Executive Department's list in determining whether a prospective contractor or subcontractor is certified as a DBE or WBE. A prospective contractor or subcontractor must be certified as a DBE or WBE by one of the above agencies, as applicable, and appear on the respective certification list of said agency, prior to the pertinent bid opening or proposal submission date to be considered by Metro to be an eligible DBE or WBE and be counted toward meeting goals. Metro will adhere to the Recertification Rulings resulting from 105(f) or state law, as applicable.

(c) Prospective contractors or subcontractors which have been denied certification by one of the above agencies may appeal such denial to the certifying agency pursuant to applicable law. However, such appeal shall not cause a delay in any contract award by Metro. Decertification procedures for USDOT-assisted contractor or potential contractors will comply with the requirements of Appendix A "Section by Section Analysis" of the July 21, 1983, Federal Register, Vol. 45, No. 130, p. 45287, and will be administered by the agency which granted certification.

(d) Challenges to certification or to any presumption of social or economic disadvantage with regard to the USDOT-assisted portion of this Program, as provided for in 49 CFR 23.69, shall conform to and be processed under the procedures prescribed by each agency indicated in paragraph (b) of this section. That challenge procedure provides that:

(1) Any third party may challenge the socially and economically disadvantaged status of any individual (except an individual who has a current 8(a) certification from the Small Business Administration) presumed to be socially and economically disadvantaged if that individual is an owner of a firm certified by or seeking certification from the certifying agency as a disadvantaged business. The challenge shall be made in writing to the recipient.

(2) With its letter, the challenging party shall include all information available to it relevant to

a determination of whether the challenged party is in fact socially and economically disadvantaged.

- (3) The recipient shall determine, on the basis of the information provided by the challenging party, whether there is reason to believe that the challenged party is in fact not socially and economically disadvantaged.

- (i) if the recipient determines that there is not reason to believe that the challenged party is not socially and economically disadvantaged, the recipient shall so inform the challenging party in writing. This terminates the proceeding.

- (ii) if the recipient determines that there is reason to believe that the challenged party is not socially and economically disadvantaged, the recipient shall begin a proceeding as provided in paragraphs (b), (4), (5) and (6) of this paragraph.

- (4) The recipient shall notify the challenged party in writing that his or her status as a socially and economically disadvantaged individual has been challenged. The notice shall identify the challenging party and summarize the grounds for the challenge. The notice shall also require the challenged party to provide to the recipient, within a reasonable time, information sufficient to permit the recipient to evaluate his or her status as a socially and economically disadvantaged individual.

- (5) The recipient shall evaluate the information available to it and make a proposed determination of the social and economic disadvantage of the challenged party. The recipient shall notify both parties of this proposed determination in writing, setting forth the reasons for its proposal. The recipient shall provide an opportunity to the parties for an informal hearing, at which they can respond to this proposed determination in writing and in person.

- (6) Following the informal hearing, the recipient shall make a final determination. The recipient shall inform the parties in writing of the final determination, setting forth the reasons for its decision.

- (7) In making the determinations called for in paragraphs (b)(3)(5) and (6) of this paragraph, the recipient shall use the standards set forth in Appendix C of this subpart.
- (8) During the pendency of a challenge under this section, the presumption that the challenged party is a socially and economically disadvantaged individual shall remain in effect." 49 CFR 23.69.

(Ordinance No. 83-165, Sec. 9; amended by Ordinance No. 84-181, Sec. 5; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; and Ordinance No. 88-252, Sec. 1)

2.04.145 Annual Disadvantaged Business Goals:

(a) The Metro Council shall, by resolution each June, establish annual DBE goals and for locally-funded contracts, separate WBE goals for the ensuing fiscal year. Such annual goals shall be established separately for construction contracts, labor and materials contracts, personal services contracts, procurement contracts, and USDOT assisted contracts regardless of type.

(b) Annual goals will be established taking into consideration the following factors:

- (1) Projection of the number and types of contracts to be awarded by Metro;
- (2) Projection of the number, expertise and types of DBEs and WBEs likely to be available to compete for the contracts;
- (3) Past results of Metro's efforts under the Program;
- (4) For USDOT-assisted contract goals, existing goals of other local USDOT recipients and their experience in meeting these goals; and
- (5) For locally-funded contract goals, existing goals of other Portland metropolitan area contracting agencies, and their experience in meeting these goals.

(c) Annual goals for USDOT-assisted contracts must be approved by the United States Department of Transportation. 49 CFR §23.45(g)(3).

(d) Metro will publish notice that the USDOT-assisted contract goals are available for inspection when they are submitted to USDOT or other federal agencies. They will be made available

for 30 days following publication of notice. Public comment will be accepted for 45 days following publication of the notice.

(e) Metro will publish notice regarding proposed locally-funded contract goals not later than ten (10) days prior to adoption of the goals.

(Ordinance No. 83-165, Sec. 10; amended by Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216; amended by Ordinance No. 87-231, Sec. 1; and Ordinance No. 88-252, Sec. 1)

2.04.150 Contract Goals:

(a) The annual goals established for construction contracts shall apply as individual contract goals for construction contracts over \$50,000.

(b) The Liaison Officer may set a contract goal for any contract other than construction contracts over \$25,000. The setting of such contract goal shall be made in writing prior to the solicitation of bids for such contract. Contract goals for contracts other than construction contracts over \$50,000 shall be set at the discretion of the Liaison Officer and shall not be tied, necessarily, to the annual goal for such contract type.

(c) Even though no DBE/WBE goals are established at the time that bid/proposal documents are drafted, the Liaison Officer may direct the inclusion of a clause in any RFP or bid documents for any contract described in this section which requires that the prime contractor, prior to entering into any subcontracts, make good faith efforts, as that term is defined in Section 2.04.160, to achieve DBE/WBE participation in the same goal amount as the current annual goal for that contract type.

(d) Contract goals may be complied with pursuant to Section 2.04.160 and/or 2.04.175. The extent to which DBE/WBE participation will be counted toward contract goals is governed by the latter section.

(Ordinance No. 83-165, Sec. 11; repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; and Ordinance No. 88-252, Sec. 1)

2.04.155 Contract Award Criteria:

(a) To be eligible for award of contracts containing a DBE/WBE goal, prime contractors must either meet or exceed the specific goal for DBE and WBE participation, or prove that they have made good faith efforts to meet the goal prior to the time bids are opened or proposal are due. Bidders/Proposers are required to utilize the most current list of DBEs and WBEs

certified by ODOT until December 31, 1987, and, thereafter, by the Executive Department, in all of the bidders'/proposers' good faith efforts solicitations. The address where certified lists may be obtained shall be included in all applicable bid/proposal documents.

(b) All invitations to bid or request for proposals on contracts for which goals have been established shall require all bidders/proposers to submit with their bids and proposals a statement indicating that they will comply with the contract goal or that they have made good faith efforts as defined in Section 2.04.160 to do so. To document the intent to meet the goals, all bidders and proposers shall complete and endorse a Disadvantaged Business Program Compliance form and include said form with bid or proposal documents. The form shall be provided by Metro with bid/proposal solicitations.

(c) Agreements between a bidder/proposer and a DBE/WBE in which the DBE/WBE promises not to provide subcontracting quotations to other bidders/proposers are prohibited.

(d) Apparent low bidders/proposers shall, by the close of the next working day following bid opening (or proposal submission date when no public opening is had), submit to Metro detailed DBE and WBE Utilization Forms listing names of DBEs and WBEs who will be utilized and the nature and dollar amount of their participation. This form will be binding upon the bidder/proposer. Within five working days of bid opening or proposal submission date, such bidders/proposers shall submit to Metro signed Letters of Agreement between the bidder/proposer and DBE/WBE subcontractors and suppliers to be utilized in performance of the contract. A sample Letter of Agreement will be provided by Metro. The DBE and WBE Utilization Forms shall be provided by Metro with bid/proposal documents.

(e) An apparent low bidder/proposer who states in its bid/proposal that the DBE/WBE goals were not met but that good faith efforts were performed shall submit written evidence of such good faith efforts within two working days of bid opening or proposal submission in accordance with Section 2.04.160. Metro reserves the right to determine the sufficiency of such efforts.

(f) Except as provided in paragraph (g) of this section, apparent low bidders or apparent successful proposers who state in their bids/proposals that they will meet the goals or will show good faith efforts to meet the goals, but who fail to comply with paragraph (d) or (e) of this section, shall have their bids or proposals rejected and shall forfeit any required bid security or bid bond. In that event the next lowest bidder or, for personal services contracts, the firm which scores second highest shall, within two days of notice of such ineligibility of the low bidder, submit evidence of goal compliance or good faith effort as provided

above. This process shall be repeated until a bidder or proposer is determined to meet the provisions of this section or until Metro determines that the remaining bids are not acceptable because of amount of bid or otherwise.

(g) The Liaison Officer, at his or her discretion, may waive minor irregularities in a bidder's or proposer's compliance with the requirements of this section provided, however, that the bid or proposal substantially complies with public bidding requirements as required by applicable law.

(Ordinance No. 83-165, Sec. 12; amended by Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.160 Determination of Good Faith Efforts:

(a) Bidders or Proposers on USDOT-assisted contracts to which DBE goals apply must, to be eligible for contract award, comply with the applicable contract goal or show that good faith efforts have been made to comply with the goal. Good faith efforts should include at least the following standards established in the amendment to 49 CFR §23.45(h), Appendix A, dated Monday, April 27, 1981. A showing of good faith efforts must include written evidence of at least the following:

- (1) Attendance at any presolicitation or prebid meetings that were scheduled by Metro to inform disadvantaged and women business enterprises of contracting and subcontracting or material supply opportunities available on the project;
- (2) Advertisement in trade association, general circulation, minority and trade-oriented, women-focus publications, if any and through a minority-owned newspaper or minority-owned trade publication concerning the sub-contracting or material supply opportunities at least 10 days before bids or proposals are due.
- (3) Written notification to a reasonable number but no less than five (5) DBE firms that their interest in the contract is solicited. Such efforts should include the segmenting of work to be subcontracted to the extent consistent with the size and capability of DBE firms in order to provide reasonable subcontracting opportunities. Each bidder should send solicitation letters inviting quotes or proposals from DBE firms, segmenting portions of the work and specifically describing, as accurately as possible, the portions of the work for which quotes or proposals are solicited from

DBE firms and encouraging inquiries for further details. Letters that are general and do not describe specifically the portions of work for which quotes or proposals are desired are discouraged, as such letters generally do not bring responses. It is expected that such letters will be sent in a timely manner so as to allow DBE sufficient opportunity to develop quotes or proposals for the work described.

- (4) Evidence of follow-up to initial solicitations of interest, including the following:
 - (A) The names, addresses, telephone numbers of all DBE contacted;
 - (B) A description of the information provided to DBE firms regarding the plans and specifications for portions of the work to be performed; and
 - (C) A statement of the reasons for non-utilization of DBE firms, if needed to meet the goal.
- (5) Negotiation in good faith with DBE firms. The bidder shall not, without justifiable reason, reject as unsatisfactory bids prepared by any DBE firms;
- (6) Where applicable, the bidder must provide advice and assistance to interested DBE firms in obtaining bonding, lines of credit or insurance required by Metro or the bidder;
- (7) Overall, the bidder's efforts to obtain DBE participation must be reasonably expected to produce a level of participation sufficient to meet Metro's goals; and
- (8) The bidder must use the services of minority community organizations, minority contractor groups, local, state and federal minority business assistance offices and other organizations identified by the Executive Department's Advocate for Minority and Women Business that provide assistance in the recruitment and placement of DBEs and WBEs.

(b) Bidders or proposers on locally-funded contracts to which DBE/WBE goals apply shall achieve the applicable contract goal or demonstrate that they have made good faith efforts to achieve the

goals. Good faith efforts shall include written documentation of at least the following actions by bidders:

- (1) Attendance at any presolicitation or prebid meetings that were scheduled by Metro to inform DBEs and WBEs of contracting and subcontracting or material supply opportunities available on the project;

Documentation required: Signature of representative of bidder or proposer on prebid meeting attendance sheet.

- (2) Identifying and selecting specific economically feasible units of the project to be performed by DBEs or WBEs to increase the likelihood of participation by such enterprises;

Minimum documentation required: At least the documentation required under subsection (4) below.

- (3) Advertising in, at a minimum, a newspaper of general circulation, and trade association, minority and trade oriented, women-focused publications, if any, concerning the subcontracting or material supply opportunities on the project at least ten (10) days before bids or proposals are due;

Documentation required: copies of ads published.

- (4) Providing written notice soliciting sub-bids/proposals to not less than five (5) DBEs or WBEs for each subcontracting or material supply work item selected pursuant to (2) above not less than ten (10) days before bids/proposals are due.

If there are less than five certified DBEs/WBEs listed for that work or supply specialty then the solicitation must be mailed to at least the number of DBEs/WBEs listed for that specialty. The solicitation shall include a description of the work for which subcontract bids/proposals are requested and complete information on bid/proposal deadlines along with details regarding where project specifications may be reviewed.

Documentation required: Copies of all solicitation letters sent to DBE/WBE along with a written statement from the bidder/proposer that all the letters were sent by regular or certified mail not less than 10 days before bids/proposals were due.

- (5) Making, not later than five days before bids/proposals are due, follow-up phone calls to all DBEs/WBEs who have not responded to the solicitation letters to determine if they would be submitting bids and/or to encourage them to do so.

Minimum documentation required: Log showing a) dates and times of follow-up calls along with names of individuals contacted and individuals placing the calls; and b) results attained from each DBE/WBE to whom a solicitation letter was sent (e.g., bid submitted, declined, no response). In instances where DBE/WBE bids were rejected, the dollar amount of the bid rejected from the DBE/WBE must be indicated along with the reason for rejection and the dollar amount of the bid which was accepted for that subcontract or material supply item.

- (6) Using the services of minority community organizations, minority contractor groups, local, state and federal minority business assistance offices and other organizations identified by the Executive Department's Advocate for Minority and Women Business that provide assistance in the recruitment and placement of DBEs and WBEs; where applicable, advising and assisting DBEs and WBEs in obtaining lines of credit or insurance required by Metro or the bidder/proposer; and, otherwise, making efforts to encourage participation by DBEs and WBEs which could reasonably be expected to produce a level of participation sufficient to meet the goals.

Minimum documentation required: Letter from bidder/proposer indicating all special efforts made to facilitate attainment of contract goals, the dates such actions were taken and results realized.

- (7) Notwithstanding any other provision of this section, bidders and proposers on locally-funded contracts to which DBE/WBE goals apply need not accept the bid of a DBE or WBE on any particular subcontract or material supply item if the bidder/proposer demonstrates that none of the DBEs or WBEs submitting bids were the lowest responsible, responsive and qualified bidders/proposers on that particular subcontract item and that the subcontract item was awarded to the lowest responsible, responsive bidder/proposer.

Metro reserves the right to require additional written documentation of good faith efforts and bidders and proposers shall comply with all such requirements by Metro. It shall be a rebuttable presumption that a bidder or proposer has made a good faith effort to comply with the contract goals if the bidder has performed and submits written documentation of all of the above actions. It shall be a rebuttable presumption that the bidder has not made a good faith effort if the bidder has not performed or has not submitted documentation of all of the above actions.

(Ordinance No. 83-165, Sec. 13; amended by Ordinance No. 84-181, Sec. 6 and Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; and Ordinance No. 88-252, Sec. 1)

2.04.165 Replacement of DBE or WBE Subcontractors: Prime contractors shall not replace a DBE/WBE subcontractor with another subcontractor, either before contract award or during contract performance, without prior Metro approval. Prime contractors who replace a DBE or WBE subcontractor shall replace such DBE/WBE subcontractor with another certified DBE/WBE subcontractor or make good faith efforts as described in the preceding section to do so.

(Ordinance No. 83-165, Sec. 14; amended by Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.170 Records and Reports:

(a) Metro shall develop and maintain a recordkeeping system to identify and assess DBE and WBE contract awards, prime contractors' progress in achieving goals and affirmative action efforts. Specifically, the following records will be maintained:

- (1) Awards to DBEs and WBEs by number, percentage and dollar amount.
- (2) A description of the types of contracts awarded.
- (3) The extent to which goals were exceeded or not met and reasons therefor.

(b) All DBE and WBE records will be separately maintained. Required DBE and WBE information will be provided to federal agencies and administrators on request.

(c) The Liaison Officer shall prepare reports, at least semiannually, on DBE and WBE participation to include the following:

- (1) The number of contracts awarded;
- (2) Categories of contracts awarded;
- (3) Dollar value of contracts awarded;
- (4) Percentage of the dollar value of all contracts awarded to DBE/WBE firms in the reporting period; and
- (5) The extent to which goals have been met or exceeded.

(Ordinance No. 83-165, Sec. 15; amended by Ordinance No. 84-181, Sec. 7, and Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.175 Counting Disadvantaged Business Participation Toward Meeting Goals:

(a) DBE/WBE participation shall be counted toward meeting the goals on each contract as follows:

- (1) Subject to the limitations indicated in paragraphs (2) through (8) below, the total dollar value of a prime contract or subcontract to be performed by DBEs or WBEs is counted toward the applicable goal for contract award purposes as well as annual goal compliance purposes.
- (2) The total dollar value of a contract to a disadvantaged business owned and controlled by both disadvantaged males and non-disadvantaged females is counted toward the goals for disadvantaged businesses and women, respectively, in proportion to the percentage of ownership and control of each group in the business.

The total dollar value of a contract with a disadvantaged business owned and controlled by disadvantaged women is counted toward either the disadvantaged business goal or the goal for women, but not to both. Metro shall choose the goal to which the contract value is applied.

- (3) Metro shall count toward its goals a portion of the total dollar value of a contract with an eligible joint venture equal to the percentage of the ownership and control of the disadvantaged or female business partner in the joint venture.

- (4) Metro shall count toward its goals only expenditures to DBEs and WBEs that perform a commercially useful function in the work of a contract. A DBE or WBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether a DBE or WBE is performing a commercially useful function, Metro shall evaluate the amount of work subcontracted, industry practices and other relevant factors.
- (5) Consistent with normal industry practices, a DBE or WBE may enter into subcontracts. If a DBE or WBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the DBE or WBE shall be presumed not to be performing a commercially useful function. The DBE or WBE may present evidence to Metro to rebut this presumption. Metro's decision on the rebuttal of this presumption is subject to review by USDOT for USDOT-assisted contracts.
- (6) A DBE or WBE which provides both labor and materials may count toward its disadvantaged business goals expenditures for materials and supplies obtained from other than DBE or WBE suppliers and manufacturers, provided that the DBE or WBE contractor assumes the actual and contractual responsibility for the provision of the materials and supplies.
- (7) Metro shall count its entire expenditure to a DBE or WBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale).
- X (8) Metro shall count against the goals 60 percent of its expenditures to DBE or WBE suppliers that are not manufacturers, provided that the DBE or WBE supplier performs a commercially useful function in the supply process.
- (9) When USDOT funds are passed-through by Metro to other agencies, any contracts made with those funds and any DBE participation in those contracts shall only be counted toward Metro's goals. Likewise, any USDOT funds passed-through to Metro from other agencies and then used for contracting shall count only toward that agency's goals. Project managers

responsible for administration of pass-through agreements shall include the following language in those agreements:

(a) Policy. It is the policy of the Department of Transportation that minority business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this agreement. Consequently, the MBE requirements of 49 CFR Part 23 apply to this agreement.

(b) MBE Obligation. The recipient or its contractor agrees to ensure that minority business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of USDOT-assisted contracts."

(b) DBE or WBE participation shall be counted toward meeting annual goals as follows:

(1) Except as otherwise provided below, the total dollar value of any contract which is to be performed by a DBE or WBE is counted toward meeting annual goals.

(2) The provisions of paragraphs (a)(2) through (a)(8) of this section, pertaining to contract goals, shall apply equally to annual goals.

(Ordinance No. 83-165, Sec. 16; amended by Ordinance No. 84-181, Sec. 8; and Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; and Ordinance No. 88-252, Sec. 1)

2.04.180 Compliance and Enforcement:

(a) Metro shall reserve the right, at all times during the period of any contract, to monitor compliance with the terms of this chapter and the contract and with any representation made by

a contractor prior to contract award pertaining to DBE and WBE participation in the contract.

(b) The Liaison Officer may require, at any stage of contract completion, documented proof from the contractor of actual DBE and WBE participation.

(Ordinance No. 83-165, Sec. 17; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

Project _____

Contract No. _____

PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is between the METROPOLITAN SERVICE DISTRICT, a municipal corporation organized under ORS Chapter 268, referred to herein as "Metro," located at 2000 S.W. First Avenue, Portland, OR 97201-5398, and _____, referred to herein as "Contractor," located at _____.

In exchange for the promises and other consideration set forth below, the parties agree as follows:

1. Duration. This personal services agreement shall be effective _____ and shall remain in effect until and including _____, unless terminated or extended as provided in this Agreement.
2. Scope of Work. Contractor shall provide all services and materials specified in the attached "Exhibit A -- Scope of Work," which is incorporated into this Agreement by reference. All services and materials shall be provided by Contractor in accordance with the Scope of Work, in a competent and professional manner. To the extent that the Scope of Work contains additional contract provisions or waives any provision in the body of this Agreement, the Scope of Work shall control.
3. Payment. Metro shall pay Contractor for services performed and materials delivered in the maximum sum of _____ AND _____/100THS DOLLARS (\$ _____), in the manner and at the time specified in the Scope of Work.
4. Insurance.
 - a. Contractor shall purchase and maintain at the Contractor's expense, the following types of insurance, covering the Contractor, its employees, and agents:
 - (1) Broad form comprehensive general liability insurance covering personal injury and property damage, with automatic coverage for premises, operations, and product liability. The policy must be endorsed with contractual liability coverage; and
 - (2) Automobile bodily injury and property damage liability insurance.
 - b. Insurance coverage shall be a minimum of \$500,000 per occurrence, \$250,000 per person, and \$50,000 property damage. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.

c. Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSUREDS. Notice of any material change or policy cancellation shall be provided to Metro 30 days prior to the change or cancellation.

d. Contractor, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Contractor shall provide Metro with certification of Workers' Compensation insurance including employer's liability.

e. If required by the Scope of Work, Contractor shall maintain for the duration of this Agreement professional liability insurance covering personal injury and property damage arising from errors, omissions, or malpractice. Coverage shall be in the minimum amount of \$500,000. Contractor shall provide to Metro a certificate of this insurance, and 30 days' advance notice of material change or cancellation.

5. Indemnification. Contractor shall indemnify and hold Metro, its agents, employees and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Agreement, with any patent infringement arising out of the use of Contractor's designs or other materials by Metro and for any claims or disputes involving subcontractors.

6. Maintenance of Records. Contractor shall maintain all of its records relating to the Scope of Work on a generally recognized accounting basis and allow Metro the opportunity to inspect and/or copy such records at a convenient place during normal business hours. All required records shall be maintained by Contractor for three years after Metro makes final payment and all other pending matters are closed.

7. Ownership of Documents. All documents of any nature including, but not limited to, reports, drawings, works of art and photographs, produced by Contractor pursuant to this Agreement are the property of Metro, and it is agreed by the parties that such documents are works made for hire. Contractor hereby conveys, transfers, and grants to Metro all rights of reproduction and the copyright to all such documents.

8. Project Information. Contractor shall share all project information and fully cooperate with Metro, informing Metro of all aspects of the project including actual or potential problems or defects. Contractor shall abstain from releasing any information or project news without the prior and specific written approval of Metro.

9. Independent Contractor Status. Contractor shall be an independent contractor for all purposes and shall be entitled only to the compensation provided for in this Agreement. Under no circumstances shall Contractor be considered an employee of Metro. Contractor shall provide all tools or equipment necessary to carry out this Agreement, and shall exercise complete control in achieving the results specified in the Scope of Work. Contractor is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for

payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work; and for meeting all other requirements of law in carrying out this Agreement. Contractor shall identify and certify tax status and identification number through execution of IRS form W-9 prior to submitting any request for payment to Metro.

10. Right to Withhold Payments. Metro shall have the right to withhold from payments due to Contractor such sums as necessary, in Metro's sole opinion, to protect Metro against any loss, damage, or claim which may result from Contractor's performance or failure to perform under this Agreement or the failure of Contractor to make proper payment to any suppliers or subcontractors.

11. State and Federal Law Constraints. Both parties shall comply with the public contracting provisions of ORS chapter 279, and the recycling provisions of ORS 279.545 - 279.650, to the extent those provisions apply to this Agreement. All such provisions required to be included in this Agreement are incorporated herein by reference. Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations including those of the Americans with Disabilities Act.

12. Assignment. This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstance, be assigned or transferred by either party.

13. Termination. This Agreement may be terminated by mutual consent of the parties. In addition, Metro may terminate this Agreement by giving Contractor five days prior written notice of intent to terminate, without waiving any claims or remedies it may have against Contractor. Termination shall not excuse payment for expenses properly incurred prior to notice of termination, but neither party shall be liable for indirect or consequential damages arising from termination under this section.

14. No Waiver of Claims. The failure to enforce any provision of this Agreement shall not constitute a waiver by Metro of that or any other provision.

15. Modification. This Agreement is the entire agreement between the parties, and may only be modified in writing, signed by both parties.

CONTRACTOR

METROPOLITAN SERVICE DISTRICT

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____