

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING)
A REQUEST FOR PROPOSALS)
DOCUMENT FOR HEARINGS OFFICER)
SERVICES)

RESOLUTION NO. 93-1744

Introduced by
Councilor Van Bergen

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

WHEREAS, Metro also utilizes the services of Hearings Officers in other cases involving land use decisions and relocation benefits; and

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

WHEREAS, the last list of prospective Hearings Officers was prepared in 1988 and there now remains only one available Hearings Officer from that list; and

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

BE IT RESOLVED,

1. That the Metro Council approves the Request for Proposals for Hearings Officer Services attached as Exhibit A and authorizes

immediate release for response by qualified attorneys.

ADOPTED by the Metro Council this 25th day of March,
1993.



Judy Wyers, Presiding Officer

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METRO
REQUEST FOR PROPOSALS
HEARINGS OFFICER SERVICES

INTRODUCTION

Metro is a regional government responsible for regional planning functions, the management of the Metro Washington Park Zoo, Oregon Convention Center, Portland Center for the Performing Arts, and Civic Stadium; facilities for solid waste disposal, including the Metro South Station, Metro Central Station, Metro Composter Facility, and solid waste disposal and waste reduction regulation and planning; Greenspaces, including the Smith and Bybee Lakes area; and metropolitan aspects of natural disaster planning and response coordination, as well as other functions.

Metro is soliciting written proposals for Hearings Officer Services to be utilized on an as needed basis for future contested case hearings.

PROPOSAL INFORMATION

Proposals will be received at the business office of Metro, Office of General Counsel, 2000 S.W. First Avenue, Portland, OR 97201-5398, to the attention of Daniel B. Cooper, General Counsel, until 5:00 p.m., April 8, 1993. Proposals submitted prior to that date should be delivered to the Office of General Counsel marked "Proposal - Hearings Officer Services."

Each proposal must be submitted in a form as described in this proposal document.

BACKGROUND/HISTORY OF PROJECT

Metro has the need for Hearings Officers on an occasional as needed basis. In the past, Hearings Officers have been primarily used for contested case proceedings involving requests to alter the Metro Urban Growth Boundary. Other cases have involved other land use decisions and relocation benefits. Cases could be related to personnel matters or other issues. All contested cases are conducted pursuant to Chapter 2.05 of the Metro Code (a copy of which is attached).

PURPOSE OF REQUEST FOR PROPOSALS (RFP)

The purpose of this RFP is to identify interested qualified Hearings Officers who are willing and able to conduct contested case hearings on an as needed basis for Metro. Hearings Officers must be active members of the Oregon State Bar. Selected attorneys with land use law and hearings experience may be assigned to conduct contested case hearings on

land use matters. Attorneys who have experience conducting or who have significant experience participating in other contested case proceedings may be assigned to conduct hearings on other matters.

QUALIFICATIONS/EXPERIENCE

The successful proposer(s) must possess the following qualifications and experience:

1. Experience in conducting hearings, as a Hearings Officer, or as chair of a board or commission involved in contested case proceedings, or by demonstrated ability to conduct hearings through other equivalent experience. Experience and ability in presenting complex materials to a lay board of decision-makers.

And either:

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

or

3. Experience with contested case hearings procedures in at least one other area of the law (broader subject matter experience preferred).

PROJECT ADMINISTRATION

Metro staff contact will be General Counsel Daniel B. Cooper. Council staff and Planning Department staff will be available to provide information as needed. The Hearings Officer will meet with Metro staff to discuss Metro's experience and expectations regarding cases, but operates independently of any specific supervision.

PROPOSAL INSTRUCTIONS

1. **Submission Proposals:**

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

Daniel B. Cooper, General Counsel
Metro
2000 S.W. First Avenue, Suite 410
Portland, OR 97201-5398

2. Deadline:

Proposals will not be considered if received after 5:00 p.m. on April 8, 1993. Proposals received after this time regardless of postmark will be returned and not be considered.

3. RFP as Basis for Proposals:

This RFP represents the most definitive statement Metro will make concerning information upon which proposals are to be based. Any oral information which is not contained in this RFP will not be considered by Metro in evaluating the proposals. All questions relating to the RFP or the project must be submitted in writing to Mr. Cooper. 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 April 1, 1993.

PROPOSAL CONTENTS

The proposal should contain not more than ten (10) pages of written material (excluding biographies and brochures, which may be included in an appendix), describing the ability of the proposer to perform the work requested. Contents of the proposal should be as follows:

1. Transmittal Letter:

Indicate attorney's name and name(s) of any legal assistants and that the proposal will be valid for ninety (90) days.

2. Approach/Philosophy:

Provide a statement of general philosophy on the role of the Hearings Officer in Metro's contested case proceedings and, if applicant is interested in conducting land use hearings for Metro, a statement regarding the interpretation and application of LCDC Goals for major amendments to the UGB.

3. Availability/Timing:

Identify any local jurisdictions, development companies, or other parties for whom you regularly perform work which might create an apparent conflict of interest on a case, and discuss whether you would anticipate any problems in this area. Also discuss whether your current schedule and existing commitments might interfere with your ability to accept between one and 12

cases a year from Metro and to produce reports requiring up to 40 hours work within a month of the hearings.

4. Experience:

List experience over the past five years similar to the work required here. For each project, include the name of the contact person, his/her title, role on the project, and telephone number. Include either a sample decision or brief you have written on a land use case, preferably one involving the exercise of judgment in the application of broad discretionary standards, ideally on a topic relating to LCDC Goal 14 compliance or any other statewide goal, or a sample decision or brief in a contested case regarding a subject other than a land use matter.

5. Cost/Budget:

List hourly rate for the proposed Hearings Officer. If a legal assistant will be assigned to administer routine case elements, list the hourly rate for that assistant, and identify the types of tasks to be assigned to that assistant. Also identify any expenses to be reimbursed. Please note that Metro expects most contested cases to be completed for \$2,500 or less.

6. Exceptions and Comments:

To facilitate evaluation of proposals, Metro wishes that all proposers adhere to the format outlined within this RFP.

Proposers wishing to take exception to, or comment on, any specified criteria within this RFP are encouraged to document their concerns in this part of their proposal. Exceptions or comments should be succinct, thorough, and organized.

GENERAL PROPOSAL/CONTRACT CONDITIONS

1. 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 as the result of this request, to negotiate with all qualified sources, or to cancel all or part of this RFP. Metro may select more than one proposal and allocate the Hearings Officer's workload between contractors.

2. Contract Type:

Metro intends to award a personal services contract with options for renewal for three (3) years with the selected firm for this project. A copy of the standard form contract which Hearings Officers will be expected to execute is attached.

3. 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 will be prepared for review and approval.

4. Validity Period and Authority:

The proposal shall be considered valid for a period of at least ninety (90) days and shall contain a statement to that effect. The proposal shall contain the name, title, address, and telephone number of an individual or individuals with authority to bind any company contacted during the period in which Metro is evaluating the proposals.

EVALUATION OF PROPOSALS

1. Evaluation Procedure:

Proposals received that conform to the proposal instructions will be evaluated. The evaluation will take place using the evaluation criteria identified in the following section. The evaluation process will result in Metro developing a short list of the attorneys who, in its opinion, are most qualified. Interviews with these attorneys will be requested prior to final selection of Hearings Officers.

2. Evaluation Criteria:

This section provides a description of the criteria which will be used in the evaluation of the proposals submitted to accomplish the work defined in the RFP.

General--Compliance with the RFP.

Approach/Philosophy:

- a. Demonstration of understanding of program objectives and legal requirements.
- b. Performance/process objectives.

Timing/Availability:

- a. Potential conflicts of interest.
- b. Scheduling commitment to project.

Experience Record:

- a. Experience in conduct of hearings.
- b. Experience in LCDC goals and rules.
- c. Experience with Metro's UGB process.
- d. Experience in making presentations to a lay body of decision-makers.

Budget Proposal/Cost:

- a. Stated ability to hear cases within Metro's expectations and within schedule.
- b. Clarity, understandability, and conformity to instructions.

SCOPE OF WORK

1. The Hearings Officer shall be assigned on a case-by-case basis to conduct contested case proceedings. The number of cases assigned in a year may vary from none to 10 or more. A Hearings Officer will be expected to accept all cases assigned to a maximum of six.
2. Hearings Officer shall meet with Metro staff to discuss the applications, case procedures, and to establish hearing dates. Upon assignment of cases to the Hearings Officer, the Hearings Officer shall within three (3) days of assignment determine whether he/she has any conflict of interest, bias, or prehearing contacts, with respect to the case or the parties thereof. If such condition exists, whether apparent or real, the Hearings Officer shall notify

Metro within the three-day period, whereupon the Hearings Officer may decline the assignment or Metro may withdraw the assignment. Metro will not be charged for the Hearings Officer's time in determining whether these conditions exist, nor will Metro be charged for any time devoted to a case in which one of these conditions is later found to exist.

3. Hearings Officer may visit the site of each land use case prior to preparation of his/her report, but shall not devote more than one (1) hour for each view, exclusive of travel time to and from the site, unless otherwise approved by Metro.
4. After the initial hearing date has been scheduled, Metro will provide notice as required.
5. Hearings shall be held at Metro offices or in facilities obtained or approved by Metro at Metro expense.
6. The Hearings Officer shall conduct the hearing(s). Hearings Officer shall conduct hearings in a fair yet efficient manner and may establish time limits for hearing participants. Hearings may be continued if necessary, but completion of hearings in a timely manner is of the essence. The Hearings Officer is responsible for ensuring that all applicable rules and guidelines are met. It is anticipated that the Metro staff, in a given case, may certify to the Hearings Officer specific questions related to the case. In that event, Hearings Officer shall specifically respond to each such question in the Findings, Conclusions, and Recommendations.

Decisions and recommendations of Hearings Officer shall be in accordance with and based upon Oregon law related to the subject of the hearing. Metro's General Counsel shall identify the applicable standards for approval. It shall be Hearings Officer's responsibility to interpret these standards as they apply to the subject of the hearing. In addition, the Hearings Officer shall comply with all contested case procedures adopted by Metro and with any other applicable laws affecting hearing procedures. The Hearings Officer shall be familiar with past Metro cases and consistent with them whenever possible.

7. The Hearings Officer shall prepare and submit to Metro the original and one copy of each Proposed Order including Findings, Conclusions, and Recommendations. The Proposed Order shall include a list of parties, rulings on motions, and on the admissibility of evidence, Findings of Fact, Conclusions of Law, a recommended decision, and a statement of reasons for decision. The Proposed Order shall be due and filed with Metro on or before the thirtieth (30) day following conclusion of the hearing of each case.

The Proposed Order, Findings, Conclusions, and Recommendations shall be prepared consistent with the standards of good practice of the legal profession.

8. The Hearings Officer shall make an oral presentation to the Metro Council of the Findings, Conclusions, and Recommendations.
9. In certain cases, the Metro Council may require rehearing or modification of parts of all of a Proposed Order. In that event, Hearings Officer shall carry out the direction of the Council in a timely manner. Hearings Officer shall provide a modified report within ten (10) days of such Council direction to modify, or within ten (10) days of the rehearing, whichever is applicable.
10. The Hearings Officer shall keep accurate and detailed records for the purpose of computing compensable time and shall submit said records to Metro no later than the end of the next succeeding month in which the services were completed. Such records shall include the following information: description of service performed, to whom service should be charged, date of service, time spent for each charge and each direct expense. The level of detail of this information shall be such that each charge is clearly understandable to Metro staff and the applicant.
11. Payment through the first consideration by the Council shall be made in lump sum within forty-five (45) days of the Hearings Officer's oral presentation of his/her Proposed Order to the Council. If additional work is required after that time, payment shall be made monthly within thirty (30) days of receipt of a record of compensable time for such work. If the Hearings Officer is not required to make an oral presentation to the Council, payment shall be made in lump sum within forty-five (45) days of receipt of the Proposed Order.
12. Except as provided below, the Hearings Officer agrees to perform all services and deliver to Metro all materials outlined in the Scope of Work at a rate of \$_____ per hour for a total not to exceed \$2,500 per case without written permission from the Metro General Counsel.

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Attachment - Personal Services Agreement

Project _____
Contract No. _____

PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter, 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 amount(s), manner and at the time(s) specified in the Scope of Work for maximum a sum not to exceed _____ AND _____/100THS DOLLARS (\$_____).
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 bodily 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. 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 that are subject employers under the Oregon Workers' Compensation Law 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. If Contractor has no employees and will perform the work without the assistance of others, a certificate to that effect may be attached, as Exhibit B, in lieu of the certificate showing current Workers' Compensation.

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, or with any patent infringement or copyright claims 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. Situs. The situs of this Agreement is Portland, Oregon. Any litigation over this agreement shall be governed by the laws of the state of Oregon and shall be conducted in the circuit court of the state of Oregon, for Multnomah County, or, if jurisdiction is proper, in the U.S. District Court for the District of Oregon.

13. 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.

14. Termination. This Agreement may be terminated by mutual consent of the parties. In addition, Metro may terminate this Agreement by giving Contractor ___ 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.

15. 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.

16. Modification. Notwithstanding and succeeding any and all prior agreement(s) or practice(s), this Agreement constitutes the entire Agreement between the parties, and may only be expressly modified in writing(s), signed by both parties.

_____ METRO
By: _____ By: _____
Title: _____ Title: _____
Date: _____ Date: _____

PLANNING COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 93-1744, FOR THE PURPOSE OF APPROVING A REQUEST FOR PROPOSALS DOCUMENT FOR HEARINGS OFFICER SERVICES

Date: March 11, 1993 Presented by: Councilor Van Bergen

Committee Recommendation: At the March 9 meeting, the Planning Committee voted unanimously to recommend Council adoption of Resolution No. 93-1744. Voting in favor: Councilors Van Bergen, Kvistad, Devlin, Gates, Monroe, and Moore.

Committee Issues/Discussion: Gail Ryder, Council Analyst presented the staff report. She explained that Metro Code requires contested case hearings on UGB amendments that must be before a Hearings Officer. Hearings Officers are also utilized in other cases involving land use decisions and relocation benefits.

It is the responsibility of the Council to, from time to time, approve and provide to the Executive a list of prospective Hearings Officers. The last list was prepared in 1988 when Chris Thomas and Larry Epstein were offered one year contracts, with the possibility of two extensions. From the original list only Mr. Epstein remains at this time and the last extension has expired. His contract was extended once beyond the 2nd extension's due date of 10/1/91 to complete the PCC-Rock Creek application.

The process set forth in the code prevents the Executive from selecting an attorney not on the list and with the potential of conflict of interest disqualification of our one Hearings Officer, we could be in a bind.

STAFF REPORT

CONSIDERATION OF RESOLUTION 93-1744 FOR THE PURPOSE OF
APPROVING A REQUEST FOR PROPOSALS DOCUMENT FOR HEARINGS
OFFICER SERVICES

Date: March 2, 1993

Presented by: Councilor George Van Bergen

PROPOSED ACTION

This resolution releases a Request for Proposal (RFP) to identify interested qualified Hearings Officers who, if selected, will through contract with Metro conduct our contested case hearings on amendments to the regional Urban Growth Boundary and other land use decisions and relocation benefits. Selected attorneys must be active members of the Oregon State Bar with land use law and hearings experience in conducting contested case proceedings.

FACTUAL BACKGROUND AND ANALYSIS

In 1982, the Metro Council approved Ordinance No. 82-137, which created Metro Code Section 2.05.025(a), setting up a procedure for contested cases. The section, which remains unamended, requires that contested case hearings be conducted by or under the control of the Presiding Officer or a Hearings Officer and that contested case hearings on Urban Growth Boundary amendments must be before a Hearings Officer. The section also maintains that the Council, from time to time, is to provide and approve a list of prospective Hearings Officers, which may be appointed by the Executive Officer. Hearings Officers must be members of the Oregon State Bar, except in the case of contested case hearings held before the Council.

The last time the Metro Council issued an RFP to solicit qualified hearings officers was in 1988. This process resulted in the selection of two qualified applicants, Christopher Thomas and Larry Epstein, who were placed under contract. Each contract was for one year with the possibility of two annual extensions that expired 10/1/91. Mr. Epstein's contract was briefly extended beyond the above date to complete the PCC-Rock Creek application. At present both contracts have expired and a new list of qualified Hearings Officers is needed.