

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO	)	ORDINANCE NO. 14-1345
CODE CHAPTER 2.04 TO UPDATE METRO	)	
CONTRACT POLICIES AND PROCEDURES	)	Chief Operating Officer Martha Bennett in concurrence with Council President Tom Hughes

WHEREAS, Metro Code Chapter 2.04 establishes Metro policies for the procurement of personal services contracts and public contracts, and for special procurements;

WHEREAS, the Chief Operating Officer has proposed revisions to Metro Code Chapter 2.04 to align the procurement of personal services and public contracts with the State of Oregon’s contracting code and to approve a class of special procurements for personal services and public contracts that will further Metro’s policy goals and promote the public interest; and

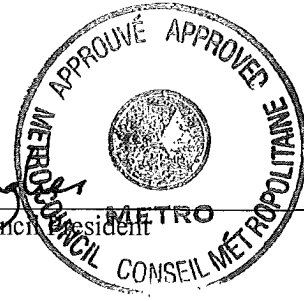
WHEREAS the Metro Council finds that the proposed revisions to Metro Code Chapter 2.04 will help Metro achieve efficiencies in contracting and better meet its program objectives; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Metro Code Section 2.04.042 is amended as set forth in Exhibit A attached to this Ordinance.
2. Metro Code Section 2.04.052(d) is amended as set forth in Exhibit B attached to this Ordinance.
3. Metro Code Section 2.04.053(a) is amended to delete one class special procurement and to add an additional class special procurement as set forth in Exhibit C attached to this Ordinance.
4. Metro Code Section 2.04.056 is amended as set forth in Exhibit D attached to this Ordinance.
5. Metro Code Section 2.04.070 is amended as set forth in Exhibit E attached to this Ordinance.
6. Metro Code Section 2.04.120 is amended as set forth in Exhibit F attached to this Ordinance.
7. Metro Code Section 2.04.150 is amended as set forth in Exhibit G attached to this Ordinance.
8. Pursuant to Metro Charter Section 39(1), as necessary for the health, safety, or welfare of the Metro area, an emergency is declared to exist. This Ordinance shall take effect immediately in order to allow contracts under the new class special procurement set forth in Exhibit C for work required to implement the Natural Areas levy to proceed in time for the 2015 spring planting season.

ADOPTED by the Metro Council this 23rd day of October, 2014.

  
Tom Hughes, Council President



Attest:

  
Alexandra Eldridge, Recording Secretary

Approved as to Form:

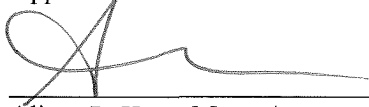
  
Alison R. Kean, Metro Attorney

Exhibit A to Ordinance No. 14-1345

2.04.042 Procurement of Personal Services Contracts

(a) Any procurement of personal services not exceeding ~~\$5,000.00~~\$10,000.00 may be awarded in any manner deemed practical or convenient by the Chief Operating Officer.

(b) Any procurement of personal services exceeding ~~\$5,000.00~~\$10,000.00 but not exceeding ~~\$100,000.00~~\$150,000.00 shall be awarded in accordance with the provisions of ORS 279B.070. In addition, the contracting department shall notify the Procurement Officer of the nature of the proposed contract, the estimated cost of the contract, and the name of the contact person.

(c) Any procurement of personal services exceeding ~~\$100,000.00~~\$150,000.00 shall be awarded in accordance with the provisions of ORS 279B.060.

Exhibit B to Ordinance No. 14-1345

2.04.052 Public Contracts -- Public Improvement Contracts

[...]

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

- (1) Bid security not exceeding 10 percent of the amount bid for the contract is required unless the contract is for ~~\$100,000.00~~ \$150,000.00 or less.
- (2) For public improvements, a labor and materials bond and a performance bond, both in an amount equal to 100 percent of the contract price are required for contracts over ~~\$100,000.00~~ \$150,000.00.
- (3) Bid security, labor and material bond and performance bond may be required even though the contract is of a class not identified above, if the Chief Operating Officer determines it is in the public interest.

Exhibit C to Ordinance No. 14-1345

2.04.053 Special Procurements

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

- ~~(1)~~ All contracts estimated to be not more than \$100,000.00 provided that the procedures required by Metro Code Section 2.04.056 are followed.
- ~~(2)~~ Food for zoo animals, the purchase and sale of zoo animals, and the purchase of zoo gift shop retail inventory and resale items.
- ~~(3)~~ Contracts for management and operation of food, parking or similar concession services at Metro facilities provided that procedures substantially similar to the procedures required for sealed competitive Request for Proposals used by Metro for personal services contracts are followed.
- ~~(4)~~ Emergency contracts provided that the provisions of ORS 279B.080 are followed. An emergency contract must be awarded within 60 days of the declaration of the emergency unless the Board grants an extension.
- ~~(5)~~ Purchase of food items for resale at facilities owned or operated by Metro.
- ~~(6)~~ Contracts for warranties, including but not limited to computer software warranties, in which the supplier of the goods or services covered by the warranty has designated an authorized provider for the warranty service.

- (~~7~~6) Contracts for computer hardware, or computer software.
- (~~8~~7) Contracts under which Metro is to receive revenue by providing a service.
- (~~9~~8) Contracts for the lease or use of the convention, trade, and spectator buildings and facilities operated by the Metro Exposition-Recreation Commission.
- (~~10~~9) Public contracts by the Metro Exposition-Recreation Commission in an amount less than \$100,000.00, which amount shall be adjusted each year to reflect any changes in the Portland SMSA CPI, provided that any rules adopted by the commission which provide for substitute selection procedures are followed.
- (~~11~~10) Contracts for equipment repair or overhaul, but only when the service and/or parts required are unknown before the work begins and the cost cannot be determined without extensive preliminary dismantling or testing.
- (~~12~~11) Contracts in the nature of grants to further a Metro purpose provided a competitive Request for Proposal process is followed.
- (~~13~~12) The procurement of utilities or any other services whose price is regulated by any governmental body, including but not limited to telephone service, electric, natural gas, and sanitary services, provided that if competition is available, a Request for Proposal process is followed.
- (~~14~~13) Contracts for goods or services when the provider of the procured goods or services is required by the federal government or by the state of Oregon.
- (~~15~~14) Contracts for co-operative procurements permitted under ORS 279A.220 to 279A.225.
- (~~16~~15) The procurement of art and art related production and fabrication provided that a Request for Proposal process is followed.

- (~~17~~16) Sponsorships which are identified and approved in the proposed budget and are not designated by Council as having a significant impact as outlined in Section 2.04.026 need not follow a competitive bidding or proposal process. In order to be eligible for this exemption the sponsorship shall provide Metro with event advertising and/or media releases.
- (~~18~~17) Sponsorship contracts, provided that quotes are obtained from at least three potential sponsors or that good faith efforts to obtain such quotes are documented. A sponsorship contract is any contract under which the sponsor's name or logo is used in connection with a facility's goods, buildings, parts of buildings, services, systems, or functions in exchange for the sponsor's agreement to pay consideration, including money, goods, services, labor, credits, property or other consideration.
- (~~19~~18) Contracts for projects that are not public improvements as defined in Metro Code Section 2.04.010(n) in which a contractor provides a material and substantial portion of the funding for such project.
- (~~20~~19) Contracts with any media outlet for the purchase of classified advertising, display advertising or the placement of public notices to publicize legal notices of public meetings and procurements.
- (20) Contracts not exceeding \$150,000 for personal services or for trade services (and not required as part of a public improvement project) when the provider of the procured services is a not-for-profit organization, and the purpose of the services is to implement Metro programs and projects, provided the Metro Council has approved by resolution a process for awarding such contracts.
- (21) Any contract exempt from competitive bidding under any statute of the state of Oregon.

Exhibit D to Ordinance No. 14-1345

2.04.056 Procurement of Public Contracts

(a) Any procurement of a public contract not exceeding ~~\$5,000.00~~\$10,000.00 may be awarded in any manner deemed practical or convenient by the Chief Operating Officer.

(b) Any procurement of a public contract exceeding ~~\$5,000.00~~\$10,000.00 but not exceeding ~~\$100,000.00~~\$150,000.00 shall be awarded in accordance with the provisions of ORS 279B.070. In addition, the contracting department shall notify the Procurement Officer of the nature of the proposed contract, the estimated cost of the contract, and the name of the contact person.

(c) Any procurement of a public contract exceeding ~~\$100,000.00~~\$150,000.00 shall be awarded in accordance with the provisions of either ORS 279B.055, ORS 279B.060, or ORS 279B.085.



Exhibit E to Ordinance No. 14-1345

2.04.070 Notice of Award and Appeals

(a) At least seven (7) days prior to the execution of any public contract over ~~\$100,000.00~~\$150,000.00 for which a competitive bid or proposal process is required, Metro shall provide a notice of award to the contractor selected and to all contractors who submitted unsuccessful bids or proposals.

(b) Bid/Request for Proposals Appeal Procedures. The following procedure applies to aggrieved bidders and proposers who wish to appeal an award of a public contract or a personal services contract above ~~\$100,000.00~~\$150,000.00. The appeal process for bids is the same as for a Request for Proposals. In the case of a Request for Proposal(s), disagreement with the judgment exercised in scoring by evaluators is not a basis for appeal.

Exhibit F to Ordinance No. 14-1345

2.04.120 Program Activities

The Procurement Officer shall develop procedures in the following areas leading to increased business with ESBs, MBEs, and WBEs:

[...]

(g) Informal Purchasing Opportunities. Requiring that at least one ESB and one MBE and one WBE vendor or contractor be contacted for all purchases and contracts more than ~~\$5,000.00~~ \$10,000.00 and less than ~~\$50,000.00~~ \$150,000.00. The program coordinator may waive this requirement if he/she determines that there are no certified ESBs, MBEs and WBEs on the certification list capable of providing the service or item. Any such waivers shall be in writing, and shall be kept as supporting documentation.

(h) Informal Construction Opportunities. Requiring all public improvement construction opportunities for contracts more than ~~\$5,000.00~~ \$10,000.00 and less than \$50,000.00 to be bid only by qualified ESBs, MBEs and WBEs. The Procurement Officer may waive this requirement if he/she determines that there are no certified ESBs, MBEs and WBEs on the certification list capable of providing the project needed. Any such waivers shall be in writing, and shall be kept as supporting documentation.

(i) Additional Activities. The Procurement Officer may establish and implement additional techniques which are consistent with this Program and designed to facilitate participation of ESBs, MBEs and WBEs in Metro purchasing and contracting activities.

Exhibit G to Ordinance No. 14-1345

2.04.150 Good Faith Efforts at Maximizing ESB, MBE and WBE Opportunities

The Procurement Officer shall establish procedures relating to good faith opportunities for formal construction projects. Procedures shall be consistent in nature and scope with those of other local public bodies for ease in understanding for contractors.

(a) Good faith efforts for maximizing ESB, MBE and WBE subcontracting opportunities shall be required for construction contracts over ~~\$100,000.00~~\$150,000.00.

(b) At the discretion of the Procurement Officer, good faith efforts may be required for any other contract, including architects and engineers. This requirement shall be made in writing prior to the solicitation of bids or proposals for such contract.

(c) When construction projects using a proposal process are approved by Council, the staff shall consider past ESB, MBE and WBE utilization as part of the selection criteria. The program coordinator shall provide the awarded contractor with ESB, MBE and WBE targets for subcontracting.

(d) Compliance with good faith efforts during the bidding process is required. Contractors failing to comply will be considered non-responsive.

## STAFF REPORT

### IN CONSIDERATION OF ORDINANCE NO. 14-1345, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 2.04 TO UPDATE METRO CONTRACT POLICIES AND PROCEDURES

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Date: October 23, 2014

Prepared by: Tim Collier  
503-797-1913

## BACKGROUND

The Metro Contract Policies (Metro Code Chapter 2.04) direct the processes by which Metro contracts for goods and services. The last significant changes to Chapter 2.04 were adopted by the Metro Council in October 2010 and implemented Metro's Sustainable Procurement Program. Staff is currently working on a significant review of the contracting code, but does not anticipate bringing any changes to the Council until Fall 2015. However, staff has identified two areas in the contracting code that would benefit from updates during this interim period.

The first change involves updating the dollar thresholds for methods of source selection in the Metro contracting code. The Metro contracting code closely follows Oregon Revised Statute (ORS) Chapter 279 which guides procurement for all public entities in the State. In many cases the Metro Code references applicable State statutes and generally follows the State process to simplify and clarify procurement processes, instill public confidence, and maximize the economic investment in public contracting within the state.

In the case of dollar thresholds for source selection, the Oregon Legislature updated the dollar amounts in the last major update to ORS Chapter 279. However, the Metro Code has not been updated to follow that change. The current Metro thresholds are as follows:

Type	Threshold	Metro Process
Small Procurement	Up to \$5,000	May be awarded in any manner deemed practical or convenient by the COO.
Intermediate Procurement	Up to \$100,000	Generally require informal Request for Proposals/Bids and notification of three MWESB firms.
Competitive Sealed Bids/Proposals	Over \$100,000	Formal, sealed Request for Proposals/Bids

The current thresholds in ORS Chapter 279 are:

- Small Procurement – Up to \$10,000
- Intermediate Procurement – Up to \$150,000
- Competitive Sealed Bids/Proposals – Over \$150,000

Staff is recommending changing the thresholds to match the limits in ORS 279 for the following reasons:

- Maintaining consistency with ORS 279 eases administrative burdens and provides greater predictability to vendors that work with multiple public entities.

- In the Metro program (Chapter 2.04) for Minority Business Enterprises (MBE), Women Owned Business Enterprises (WBE), and/or Emerging Small Businesses (ESB), current Metro Code (2.04.120) only requires notification of three MWESB firms (One WBE, one MBE, and one ESB) for contracts between \$5,000 and \$50,000. Current practice requires notification for contracts up to \$100,000, but that requirement is not in code. This change would formalize that current practice and require notification of three MWESB firms for all intermediate procurements.
- Increasing the threshold for small procurements has the potential to allow staff to award more contracts directly to MWESB firms without requiring them to go through procurement processes. Often, even informal request for proposal processes are intimidating and/or technically challenging for smaller firms and do not yield the desired responses from MWESB firms.

The second change is to create a new class of special procurement in Metro Code 2.04.053. Special procurements are defined as exceptions to the standard procurement rules defined in ORS 279B. Special procurements may authorize exemptions to competitive procurement rules or specify alternative procurement processes for awarding of contracts. Special procurements are authorized by ORS 279B.085 for contracts where awarding them is unlikely to encourage favoritism or substantially diminish competition for public contracts and where the contract results in either substantial cost savings or substantial promotion of the public interest in a manner that could not be realized by complying with the requirements for competitive procurements.

The new class of special procurement is designed to facilitate Metro's work with not-for-profit organizations, particularly in the areas of equity and community outreach. This need was initially identified as part of the Parks and Natural Areas Levy equity and outreach work. In identifying organizations to partner with in developing programs to reach underserved communities, staff determined that typical grant or request for proposal (RFP) processes would not be effective.

There were several barriers in the current processes available to staff that were identified:

- Grant programs and RFP processes typically involve staff developing specifications independently and then asking external groups to independently develop and submit proposals back to Metro. For these types of programs staff believes better outcomes would be achieved if programs were designed collaboratively, rather than in the traditional arms-length transaction as is currently required by the Metro Code.
- Many of the groups that Metro could partner with do not typically work as contractors for public agencies. They are often advocacy or service organizations that may be unfamiliar with and/or unequipped to respond to requests for proposals.
- Through these programs, Metro may be seeking to work with specific underserved populations or geographic areas, and a traditional RFP process is unlikely to result in responses that help achieve the program's goals.
- Staff has handled some of these program partnerships through sole source contracts. However, that process is typically handled individually for each contract and requires Council approval of each contract. That is inefficient, and will be very burdensome as equity and community outreach work increases in the Parks and Natural Areas programs as well as in other areas of Metro.

This new special procurement class would require up-front Council approval of the process for awarding the contracts and limits the contracts to not-for-profit organizations where the purpose of the services must be to implement Metro programs and projects. The objective is to create a flexible and collaborative method for working with community partners on improving or developing new Metro programs and projects.

## **ANALYSIS/INFORMATION**

1. **Known Opposition** None known.
2. **Legal Antecedents** Oregon Revised Statutes Chapter 279B, Metro Code Chapter 2.04
3. **Anticipated Effects** Revises Metro Code Chapter 2.04 to align the procurement of personal services and public contracts with the State of Oregon's contracting code and approves a class of special procurements for personal services and public contracts.
4. **Budget Impacts** None.

## **RECOMMENDED ACTION**

Staff recommends the adoption of Ordinance 14-1345