

METROPOLITAN EXPOSITION RECREATION COMMISSION

RESOLUTION NO. 11-08

For the purpose of selecting DeTemple Company, Inc. as the lowest responsive and responsible bidder in response to a Request For Bids, relating to the Portland Center for the Performing Arts (PCPA), Keller Auditorium "Boiler Replacement Project," and authorizing the General Manager to execute a contract with DeTemple Company, Inc.

WHEREAS, the existing boiler has reached its useful life expectancy; and

WHEREAS, in the public interest, for purposes of providing effective facility temperature maintenance, protection of the environment and significant energy savings, PCPA desires to replace the boiler; and

WHEREAS, Section 4(D)(1)(a) of the MERC Purchasing Policies and Rules, delegates authority to the General Manager to prepare and approve Request for Bids (RFB) documents and to solicit bids; and


WHEREAS, Section 4(D)(1)(c) of the MERC Contracting and Purchasing Rules, requires MERC to select the lowest responsive and responsible bidder, approve the contract award, and approve the written contract by resolution; and

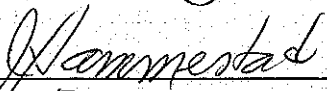
WHEREAS, MERC staff has evaluated the bids, and DeTemple Company, Inc. is the lowest responsive and responsible bidder.

BE IT THEREFORE RESOLVED as follows:


1. The Metropolitan Exposition Recreation Commission selects DeTemple Company, Inc. as the lowest responsive and responsible bidder in response to the Request for Bids for the PCPA, Keller Auditorium Boiler Replacement Project;
2. The Metropolitan Exposition Recreation Commission approves the award of a contract in the amount of \$179,980 and in a form substantially similar to the attached Exhibit "A," to DeTemple Company, Inc.
3. The Metropolitan Exposition Recreation Commission hereby delegates authority to the General Manager to execute the contract on behalf of the Commission.

Passed by the Commission on April 6, 2011.


Chair


Secretary/Treasurer

Approved As to Form:
Alison Kean Campbell, Acting Metro Attorney

By: 
Nathan A. Schwartz Sykes
Senior Metro Attorney

MERC Staff Report

Agenda Item/Issue: Approval of the contract award and written contract with DeTemple Company Inc., for the PCPA Keller Auditorium Boiler Replacement.

Resolution No: 11-08

Date: April 6, 2011

Presented by: Robyn Williams

BACKGROUND: During a recent inspection of the existing Boiler at Keller Auditorium which was installed in 1985, it was determined the boiler system has come to the end of its useful life and can no longer perform as needed. After the new boiler project was budgeted, Keller Auditorium was undergoing a thorough energy audit. The audit recommended replacing the existing flexible gas tube boiler system with a new high efficiency condensing boiler system. While a high efficiency condensing boiler system is more expensive initially, the calculated payback is 11.8 years, meaning that in 11.8 years this upgrade will have paid for itself by the utility savings that this higher efficiency model produces (\$0.67/kWh and \$1.3 per therm for simple payback calculation). This payback does not include the monetary rebate from the Energy Trust of Oregon (\$32,500). It was determined to be in the facility's best interest as well as complying with Metro goals and MERC's sustainability efforts to proceed with replacing the boiler system with the recommended high efficiency model.

Staff prepared and issued Bid Documents and a Request for Bids in accordance with MERC and Metro's Purchasing Policies for the boiler system replacement project. The complete project consists of purchasing and replacing the current gas tube boiler system with a high efficiency condensing boiler system to be designed and built by the contractor in accordance with pre-written technical specifications and required engineering. Staff conducted M/W/ESB outreach by advertising in a local M/W/ESB trade publication and contacting mechanical contractors directly through contractor certifications provided by the State of Oregon website for Oregon Business Development Department Office of Minority, Women and Emerging Small Business and inviting the certified contractors to attend the sitewalk and obtain our RFB documents. There were seven contractors listed on the State of Oregon website as Mechanical M/W/ESB contractors in the tri-county area. Staff also published the RFB in the Oregonian, DJC and Contract & Careers (a minority publication), specific additional FOTA outreach was not conducted however, there were no mechanical contractor's listed in the MERC FOTA database at the time of this RFB. Staff conducted a site walk for potential bidders in which eleven (11) mechanical contractors attended and one (1) vendor representative attended. Of the eleven (11) mechanical contractors that attended the site walk, four (4) were ESB firms; however no minority or women owned firms were in attendance. Four (4) bids were received on February 3, 2011 and ranged from \$179,980 to \$224,000. None of the bids were submitted by a certified M/W/ESB or FOTA contractor, nor did any contractor have any second tier sub-contractors listed as a part of their bid. After a technical review was completed by a mechanical engineer, it was determined that the lowest responsive and responsible bidder was DeTemple Company, Inc, in the amount of one hundred seventy-nine thousand, nine hundred and eighty & NO/100 dollars (\$179,980).

This project is included in the 2010-2011 adopted budget as reflected in the PCPA Keller Boiler Project. The funding as allocated in the budget is \$100,000. The additional \$79,980 for this contract will be used from unspent capital comprised of monies from capital projects that were postponed as well as projects that came in under budget. This increase to the overall project budget is reflected in the revised Capital Project Plan as provided in Resolution 11-07. The overall project budget of \$191,726 is inclusive of this contract, in the amount of \$179,980, also including a two percent contract contingency, permit fees, BOLI fees, asbestos abatement and engineering and design services.

The \$179,980 contract total fiscal impact will be partially offset by an incentive offer rebate from the Energy Trust of Oregon (ETO) in the amount of \$32,500. Upon completion of this project, the ETO will pay MERC the guaranteed incentive rebate amount of \$32,500 which will ultimately reflect a replacement cost of \$147,480.

FISCAL IMPACT: The Project shall be paid for out of the 2010-2011 adopted budget.

RECOMMENDATION: Staff recommends that the Metropolitan Exposition-Recreation Commission, by Resolution No.11-08, approve the contract award and written contract with DeTemple Company, Inc , for the amount of One hundred seventy-nine thousand, nine hundred and eighty & NO/100 dollars (\$179,980) for the Keller Auditorium Boiler Replacement Project.

Standard Public Contract

For Public Contracts Greater than \$50,000

CONTRACT NO. _____

PUBLIC CONTRACT

THIS Contract is entered into between Metropolitan Exposition-Recreation Commission ("MERC"), whose address is 777 NE Martin Luther King, Jr., Blvd., Portland, Oregon 97232-2742, and DeTemple Company, Inc. (CCB# 2510), whose address is 1951 NW Overton Street, Portland, OR, 97209, hereinafter referred to as the "CONTRACTOR." Work is to be take place at the Portland Center for the Performing Arts – Keller Auditorium, located at 222 SW Clay, Portland, OR 97201.

THE PARTIES AGREE AS FOLLOWS:

ARTICLE I TERM OF CONTRACT

The term of this Contract shall be for the period commencing April 15, 2011 through and including August 30, 2011, with substantial completion by June 30, 2011, unless terminated or extended as provided in this Contract.

ARTICLE II CONTRACT SUM AND TERMS OF PAYMENT

MERC shall compensate the CONTRACTOR for work performed and/or goods supplied as described in the Scope of Work. MERC shall not be responsible for payment of any materials, expenses or costs other than those which are specifically included in the Scope of Work, in an amount not to exceed (written amount) One Hundred Seventy-Nine Thousand, Nine Hundred and Eighty Dollars and NO/100 (\$179,980.00). Payment shall be on a unit price only for those goods or services received in a condition or manner acceptable to MERC. CONTRACTOR'S Invoice shall include an itemized statement of items purchased or services provided, and shall be sent to MERC, Attention: Accounts Payable, 777 NE Martin Luther King, Jr. Blvd., Portland, Oregon 97232-2742. As per Article VII of this document, Contractor's invoice must breakout and withhold retainage as obligated by Public Contracting Code, and submit certified payroll with their invoice as per Prevailing Wage Requirement Law. MERC will pay Contractor within 30 days of receipt of an approved invoice.

ARTICLE III SCOPE OF WORK

CONTRACTOR shall perform the work and/or deliver to MERC the goods described in the Scope of Work All services and goods shall be of good quality and, otherwise, in accordance with the Scope of Work.

CONTRACTOR is to provide and install a new boiler system, Contractor shall replace the existing gas tube boiler system with a high efficiency condensing system as specifically outlined in the request for bids. Scope of Work is to include: design and construction, equipment purchase, installation, demolition and removal of existing system a control work as specified in the "PCPA – Keller Auditorium Boiler Replacement Project Request for Bids" Documents dated February 3, 2011, hereto attached as "Attachment "A". Contractor agrees to comply with each and every term, condition and provision of the contract documents. Contractor agrees to provide all labor, tools, equipment, machinery, supervision, transportation, and every other item and service necessary to perform the work described in the contract documents. Contractor agrees to comply with each and every term, condition and provision of the contract documents including the RFB. Contractor may be subject to liquidated damages if work not in compliance with Request for Bids Documents as referenced above, and Contract Agreement. All work on this contract is subject to Prevailing Wage Rates.

Additional Requirements:

CONTRACTOR must provide to MERC:

- A written Workplace Safety Program and Drug Policy prior to start of work
- A copy of Contractor's Certificate of Insurance as specified in Article VI below
- A written Work Schedule to be approved by Owner 48 hours prior to start of work. Work must be performed without causing any disruptions to scheduled events. Owner will make every effort to keep construction areas off limits to the public to accommodate the Contractor's Work Plan.

Contractor must coordinate all work with Project Manager.

The Contract Time shall commence upon issuance of the Notice to Proceed which is anticipated to be issued following execution of the contract. Contractor shall commence work under this Contract within no more than ten (10) calendar days after issuance of written Notice to Proceed. Contractor shall bring the Work to **substantial completion no later than June 30, 2011, or at such date as may be extended by Change Order approved by Contractor and Owner.** By executing this Contract, Contractor confirms and accepts that the Contract Time so stated is a reasonable period for performance of all of the Work.

The end date of the Contract Term is intended to allow for finalization of all closeout requirements, receipt of warranties, manuals and final payment, but does not alter requirements for substantial completion of the work by the date specified.

Owner will coordinate with Contractor regarding the dates and approximate shifts that are available and unavailable to the Contractor to perform the required work, depending on the location in the building of the scheduled event, the type of event and the Work being conducted simultaneously with the event. **Due to the likely possibility of additional "bookings" or cancellations of events in the building, this schedule may be modified, which may positively or negatively impact the work schedule. It is not anticipated however, that the net number of days available to the Contractor as indicated on the schedule included as part of these documents will be lessened. In the event of a schedule change, the Owner will notify the Contractor directly following the implementation of the change so that work plans may be modified accordingly.** Due to the nature of the Public Events Facility industry, it will be necessary for the Contractor to work closely with the Project Manager and applicable building staff to coordinate day-to-day logistical requirements for the benefit of the Contractor and to afford Owner Staff the necessary time to perform event or non-event related functions. Contractor shall be liable to incur liquidated damages if not substantially complete by contract terms. Liquidated damages shall be assessed at no less than One Hundred Dollars (\$100) per day unless contract is extended.

ARTICLE IV LIABILITY AND INDEMNITY

CONTRACTOR is an independent contractor and assumes full responsibility for the content of its work and performance of CONTRACTOR'S labor, and assumes full responsibility for all liability for bodily injury or physical damage to person or property arising out of or related to this Contract, and shall indemnify, defend and hold harmless MERC, Metro, its agents and employees, 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 Contract. CONTRACTOR is solely responsible for paying CONTRACTOR'S subcontractors and nothing contained herein shall create or be construed to create any contractual relationship between any subcontractor(s) and MERC.

ARTICLE V TERMINATION

MERC may terminate this Contract upon giving CONTRACTOR seven (7) days written notice. In the event of termination, CONTRACTOR shall be entitled to payment for work performed to the date of termination. MERC shall not be liable for indirect, consequential damages or any other damages. Termination by MERC will not waive any claim or remedies it may have against CONTRACTOR. Contractor may be liable for liquidated damages.

ARTICLE VI
INSURANCE

CONTRACTOR shall purchase and maintain at CONTRACTOR'S expense, the following types of insurance covering the CONTRACTOR, its employees and agents.

- A. Broad form comprehensive general liability insurance covering personal injury, property damage, and bodily injury with automatic coverage for premises and operation and product liability shall be a minimum of \$1,000,000 per occurrence. The policy must be endorsed with contractual liability coverage. **MERC, Metro, and their elected and appointed officials, departments, employees and agents shall be named as an ADDITIONAL INSURED.**
- B. Automobile bodily injury and property damage liability insurance. Insurance coverage shall be a minimum of \$1,000,000 per occurrence. **MERC, Metro and their elected and appointed officials, departments, employees, and agents shall be named as an ADDITIONAL INSURED.** Notice of any material change or policy cancellation shall be provided to MERC thirty (30) days prior to the change.

This insurance as well as all workers' compensation coverage for compliance with ORS 656.017 must cover CONTRACTOR'S operations under this Contract, whether such operations be by CONTRACTOR or by any subcontractor or anyone directly or indirectly employed by either of them.

CONTRACTOR shall provide MERC with a certificate of insurance complying with this article and naming MERC and Metro as additional insureds within fifteen (15) days of execution of this Contract or twenty-four (24) hours before services under this Contract commence, whichever date is earlier.

ARTICLE VII
PUBLIC CONTRACTS

All applicable provisions of ORS chapters 187 and 279A & B, and all other terms and conditions necessary to be inserted into public contracts in the State of Oregon, are hereby incorporated as if such provision were a part of this Contract. Specifically, it is a condition of this contract that Contractor and all employers working under this Contract are subject employers that will comply with ORS 656.017 as required by 1989 Oregon Laws, Chapter 684.

All applicable provisions of ORS Chapters 187 and 279A & B, and all other terms and conditions necessary to be inserted into public contracts in the State of Oregon, are hereby incorporated as if such provision were a part of this Contract including, but not limited to, ORS 279B.220 to 279B.235.

For public work subject to ORS 279C.800 to 279C.870, the contractor shall pay Prevailing Wage Rates as per the *Oregon Bureau of Labor and Industries (BOLI) "Prevailing Wage Rates for Public Contract Works Contracts in Oregon - Effective January 1, 2011"*, pursuant to the administrative rules established by the Commissioner of Labor and Industries. Contractor must provide a written schedule to employees showing the number of hours per day and days per week the employee may be required to work; and must pay daily, weekly, weekend and holiday overtime in accordance with, and as required by ORS 279C.520.

Contractors must promptly pay, as due, all persons supplying to such contractor labor or material used in this contract. If the contractor fails to pay for labor or services, the contracting agency can pay and withhold these amounts due the contractor. Additionally, if the contractor or first-tier subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within 30 days after receipt of payment from the public contracting agency or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus shall pay interest in accordance with ORS 279C.515. If the contractor or first-tier subcontractor fails, neglects, or refuses to make payment, to a person furnishing labor or materials in connection with the public contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. Contractor must promptly pay for any medical services they have agreed to pay in accordance with ORS 279C.530.

Contractor must pay any and all contributions and amounts due to the Industrial Accident Fund from contractor or subcontractor and incurred in the performance of the contract.

Contractor is required to Submit Certified Payroll Reports each month to MERC as Contracting Public Agency to: MERC—Construction/Capital Projects Dept—Attn: Renee Pace, 777 NE MLK Jr Blvd Portland, OR 97232; as well as to BOLI. In addition to any other retainage obligated by the Public Contracting Code, the Prevailing Wage Requirement Law requires public agencies to withhold 25 percent of any amount earned by the prime contractor if the prime contractor does not submit certified payroll reports. Once the certified payroll reports have been submitted, the public agency must pay the 25 percent withheld within 14 days: ORS 279C.845(7)

Contractor and every subcontractor must have a Public Works Bond filed with the Construction Contractors Board prior to starting work on the Contract, unless exempt, in accordance with ORS 279C.830(3). Contractors are required to pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

CONTRACTOR shall meet MERC Bonds and Bid Security requirements as follows:

1. Bid Security not exceeding 10 percent of the amount bid for the contract is required unless the contract is for \$50,000 or less.
2. For public improvements, a labor and material bond and a performance bond, both in the amount equal to 100 percent of the contract price are required for contracts over \$50,000.
3. Bid security, labor and material bond and performance bond may be required even though a contract is of a class not identified above, if the General Manager determines it is in the public interest.

CONTRACTOR shall meet the Metro "Good Faith Efforts" Requirement for Construction Projects as below:

For construction contracts of \$100,000 or more, the Commission adopts in principle, policy, and content, the "Good Faith Effort" program established by Metro Code § 2.04.100 through 2.04.190 (Metro Minority Business Enterprise, Women Owned Business, and Emerging Small Business Program) as they apply to contracts of the Commission. This adoption includes any and all ordinances subsequently adopted by the Metro Council relating to Metro's Minority Business Enterprise, Women Owned Business and Emerging Small Business Program. The General Manager shall designate MERC staff to perform the functions of the Liaison Officer to carry out the MBE/WBE/ESB program as it relates to MERC contracting activities. Metro and MERC have a compelling government interest to ensure that their contracts provide fair and equal employment opportunities for minority, women, and emerging small businesses reflecting the diversity found in the Portland Metropolitan area. **Therefore, MERC aspires to utilize 15% (by dollar value) MBE/WBE/ESB subcontractor participation on this project.** Accordingly, the prime contractor is required to submit proof showing that Good Faith Effort has been made to contract with MBE/WBE/ESB subcontractors. **Additionally, MERC aspires to utilize 10% (by dollar value) of subcontractors within the First Opportunity Target Area (FOTA).** Contractor shall submit an MWESB/FOTA report along with certified payroll for compliance.

For public improvement work all contractors must demonstrate that an employee drug-testing program is in place.

ARTICLE VIII QUALITY OF GOODS AND SERVICES

Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of the highest quality. All workers and subcontractors shall be skilled in their trades. CONTRACTOR guarantees all work against defects in material or workmanship for a period of one (1) year from the date of acceptance or final payment by MERC, whichever is later. All guarantees and warranties of goods furnished to CONTRACTOR or subcontractors by any manufacturer or supplier shall be deemed to run to the benefit of MERC.

ARTICLE IX
OWNERSHIP OF DOCUMENTS

Unless otherwise provided herein, all documents, instruments and media of any nature produced by Contractor pursuant to this contract are Work Products and are the property of MERC, including but not limited to: drawings, specifications, reports, scientific or theoretical modeling, electronic media, computer software created or altered specifically for the purpose of completing the Scope of Work, works of art and photographs. Unless otherwise provided herein, upon MERC request, Contractor shall promptly provide MERC with an electronic version of all Work Products that have been produced or recorded in electronic media. MERC and Contractor agree that all work Products are works made for hire and Contractor hereby conveys, transfers, and grants to MERC all rights of reproduction and the copyright to all such Work Products.

ARTICLE X
SUBCONTRACTORS

CONTRACTOR shall contact MERC prior to negotiating any subcontracts and CONTRACTOR shall obtain approval from MERC before entering into any subcontracts for the performance of any of the services and/or supply of any of the goods covered by this Contract.

MERC reserves the right to reasonably reject any subcontractor or supplier and no increase in the CONTRACTOR'S compensation shall result thereby. All subcontracts related to this Contract shall include the terms and conditions of this contract. CONTRACTOR shall be fully responsible for all of its subcontractors as provided in Article IV.

ARTICLE XI
RIGHT TO WITHHOLD PAYMENTS

MERC shall have the right to withhold from payments due CONTRACTOR such sums as necessary, in MERC's sole opinion, to protect MERC against any loss, damage or claim which may result from CONTRACTOR'S performance or failure to perform under this contract or the failure of CONTRACTOR to make proper payment to any suppliers or subcontractors.

If a liquidated damages provision is contained in the Scope of Work and if CONTRACTOR has, in MERC's opinion, violated that provision, MERC shall have the right to withhold from payments due CONTRACTOR such sums as shall satisfy that provision. All sums withheld by MERC under this Article shall become the property of MERC and CONTRACTOR shall have no right to such sums to the extent that CONTRACTOR has breached this Contract.

ARTICLE XII
SAFETY

If services of any nature are to be performed pursuant to this contract, CONTRACTOR shall take all necessary precautions for the safety of employees and others in the vicinity of the services being performed and shall comply with all applicable provisions of federal, state and local safety laws and building codes, including the acquisition of any required permits. Contractor shall supply a written safety program/policy that all employees must follow. Workplace safety MUST be in compliance with OSHA regulations at all times

ARTICLE XIII
INTEGRATION OF CONTRACT DOCUMENTS

All of the provisions of any procurement documents including, but not limited to, the Advertisement for Bids, Proposals or responses, General and Special Instructions to Bidders, Proposal, Scope of Work, and Specifications which were utilized in conjunction with the bidding of this Contract are hereby expressly incorporated by reference. Otherwise, this Contract represents the entire and integrated contract between MERC and CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by both MERC and CONTRACTOR.

ARTICLE XIV
JURISDICTION

The Contract was entered into in the State of Oregon. This Contract will be interpreted, construed and enforced in accordance with the laws of the State of Oregon. Both parties agree that exclusive jurisdiction for any claim under this Contract will be in Multnomah County, Oregon.

ARTICLE XV
SEVERABILITY

The parties agree that any provision of this Contract that is held to be illegal, invalid, or unenforceable under present or future laws shall be fully severable. The parties further agree that this Contract shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never been a part of them and the remaining provisions of the Contract shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Contract. Furthermore, a provision as similar to the illegal, invalid, or unenforceable provision as is possible and legal, valid, and enforceable shall be automatically added to this Contract in lieu of the illegal, invalid or unenforceable provision. Any failure by MERC to enforce a provision of the Contract is not to be construed as a waiver by MERC of this right to do so.

ARTICLE XVI
BINDING ON ASSIGNS AND SUCCESSORS

This Contract is binding upon the parties hereto and upon the heirs, administrators, representatives, executors, successors, and assigns, and will inure to the benefit of said parties and each of them and to their heirs, administrators, representatives, executors, successors and assigns.

ARTICLE XVII
COMPLIANCE

CONTRACTOR shall comply with federal, state, and local laws, statutes, and ordinances related to the execution of the work. This requirement includes, but is not limited to any requirements associated with the grant funds used for this project, non-discrimination, safety and health, environmental protection, waste reduction and recycling, fire protection, permits, fees and similar subjects.

ARTICLE XVII
COUNTERPARTS

This Contract may be executed in counterparts or multiples, any one of which will have the full force of an original.

ARTICLE XIX
DELIVERY OF NOTICES

Any notice, request, demand, instruction, or any other communications to be given to any party hereunder shall be in writing, sent by registered or certified mail or fax as follows:

To: Commission Robyn Williams, Executive Director, Portland Center for the Performing Arts
Heather Peck, Project Manager
777 NE Martin Luther King Jr. Blvd.
Portland, Oregon 97232

To: Contractor DeTemple Company, Inc.
1951 NW Overton Street
Portland, Or. 97209

ARTICLE XX
ASSIGNMENT

CONTRACTOR shall not assign any rights or obligations under or arising from this Contract without prior written consent from MERC.

CONTRACTOR

Signature: _____

Printed Name _____

Date: _____

Title: _____

Company: De Temple Company, Inc

Address 1951 NW Overton St.

Portland, Or. 97209

Telephone: 503-227-2641

Tax I.D. or SS#: 93-0893475

CCB 2510

**METROPOLITAN EXPOSITION-RECREATION
COMMISSION**

Signature: _____

Printed Name Teri Dresler

Date: _____

Title: General Manager

Signature: _____

Printed Name Robyn Williams

Date: _____

Title: Executive Director - PCPA

Copy 1 - Metro Contracts

Copy 2 - Project Manager / File

Copy 3 - Contractor