

BEFORE THE METRO PUBLIC CONTRACT REVIEW BOARD

FOR THE PURPOSE OF EXTENDING THE ) RESOLUTION NO. 94-1898  
PERSONAL SERVICES CONTRACT FOR AUDIT )  
SERVICES WITH KPMG PEAT MARWICK ) Introduced by the  
FOR ONE YEAR WITH AN ADDITIONAL ONE ) Finance Committee  
YEAR OPTION )

WHEREAS, ORS 297.465 requires an annual audit of the agency's financial statements; and

WHEREAS, the contract with KPMG Peat Marwick, independent Certified Public Accountants, will expire on March 31, 1994; and

WHEREAS, the Metro Code allows extension of Personal Service contracts without competitive proposals under certain circumstances; and

WHEREAS, it has been determined that those circumstances have been met; and

WHEREAS, KPMG Peat Marwick has fulfilled the provisions of the current contract in a timely, efficient and cost effective manner; now, therefore

BE IT RESOLVED,

The Metro Public Contract Review Board hereby authorizes the extension of the Personal Services Agreement No. 901871 with KPMG Peat Marwick to provide audit services for the period April 1, 1994 through March 31, 1995 with an option to extend for an additional year at March 31, 1995.

ADOPTED by the Public Contract Review Board of Metro this 10th day of February 1994.

  
\_\_\_\_\_  
Judy Wyers, Presiding Officer

## STAFF REPORT

IN CONSIDERATION OF RESOLUTION 94-1898 FOR THE PURPOSE OF EXTENDING THE PERSONAL SERVICES CONTRACT FOR AUDIT SERVICES WITH KPMG PEAT MARWICK FOR ONE YEAR WITH AN ADDITIONAL ONE YEAR OPTION

Date: January 18, 1994

Presented by: Jennifer Sims

## PROPOSED ACTION

Adoption of Resolution No. 94-1898 would authorize the Finance and Management Information Department to extend the present personal services contract for audit services to include the fiscal year 1994 financial statement audit and grant an *option* to extend for an additional year at the completion of this approved contract extension.

## FACTUAL BACKGROUND AND ANALYSIS

The contract with KPMG Peat Marwick for audit services will expire on March 31, 1994.

The Metro Code allows the Council as Public Contract Review Board to extend personal services contracts without competitive proposals if the contractor is performing a continuing activity for the agency, as is the case with the annual audit. This same section of the Code (2.04.054) requires that competitive proposals be solicited at least once every three years. However, Code section 2.04.041 allows the Council to exempt specific contracts by resolution subject to the requirements of ORS 279.015(2) and ORS 279.015(5). This ORS section allows exemption from competitive bidding if the agency finds that it is unlikely that such exemption will encourage favoritism in the awarding of public contracts and that the awarding of the contract will result in substantial cost savings to the agency.

The waiver from seeking competitive proposals and the extension of the present contract is sought as being in the best interests of Metro. Continuing Metro's working relationship with the present auditors presents the following advantages:

- The department is facing possible change in its computerized accounting and information system in the next fiscal year. The implementation of new systems is always problematic and somewhat chaotic. A major change such as new auditors would best be delayed to a time when operations are more "normal." An audit firm with Metro experience will be most capable of assisting in identifying problem areas during the conversion.
- Metro also faces a transition period involving change in the Council from 13 to 7 members, and the election of a Metro Auditor. It would be advantageous to have continuity in the audit firm at this time.

- Metro is a unique and complicated entity. The present auditors have gained understanding and insight into Metro's operations that would be difficult to duplicate by first year auditors. There is minimal disruption of Metro staff by auditors who know their way around agency operations, allowing Metro staff to stay productive during the audit process.

KPMG Peat Marwick has offered a fee equivalent to the current audit fee of \$47,000 plus a cost of living increase for the one year extension period. The one year option amount would be calculated based on the extension amount plus cost of living adjustment. Staff believes that this represents a substantial cost saving to the agency in that the changes and expansion in the agency's activities over the last three years of this contract would be expected to precipitate an increase in fees if competitive proposals were entertained. KPMG Peat Marwick's bid for the initial year of the contract three years ago was \$44,200. The next lowest bids received were Deloitte & Touche at \$50,000 and Grant Thornton at \$51,350.

#### BUDGET IMPACT

Audit fees for a particular fiscal year audit cross two fiscal years. There remains approximately \$9,000 in the fiscal year 1993-94 budget. The amount currently under consideration for audit fees in the fiscal year 1994-95 budget process is adequate to cover the cost of the one year extension.

#### EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 94-1898.



# GRANT/CONTRACT SUMMARY

METROPOLITAN SERVICE DISTRICT

# COPY

GRANT/CONTRACT NO. 901871 BUDGET CODE NO. 610-041100-524110-00000  
 FUND: General DEPARTMENT: Finance&Info (IF MORE THAN ONE) \_\_\_\_\_  
 SOURCE CODE (IF REVENUE) Mgmt. \_\_\_\_\_

**INSTRUCTIONS**

1. OBTAIN GRANT/CONTRACT NUMBER FROM CONTRACTS MANAGER. CONTRACT NUMBER SHOULD APPEAR ON THE SUMMARY FORM AND ALL COPIES OF THE CONTRACT.
2. COMPLETE SUMMARY FORM.
3. IF CONTRACT IS —
  - A. SOLE SOURCE, ATTACH MEMO DETAILING JUSTIFICATION.
  - B. UNDER \$2,500, ATTACH MEMO DETAILING NEED FOR CONTRACT AND CONTRACTOR'S CAPABILITIES, BIDS, ETC.
  - C. OVER \$2,500, ATTACH QUOTES, EVAL. FORM, NOTIFICATION OF REJECTION, ETC.
  - D. OVER \$50,000, ATTACH AGENDA MANAGEMENT SUMMARY FROM COUNCIL PACKET, BIDS, RFP, ETC.
4. PROVIDE PACKET TO CONTRACTS MANAGER FOR PROCESSING

1. PURPOSE OF GRANT/CONTRACT Professional Tax Service - Audit

2. TYPE OF EXPENSE  PERSONAL SERVICES  LABOR AND MATERIALS  PROCUREMENT  
 PASS THROUGH AGREEMENT  INTER-GOVERNMENTAL AGREEMENT  CONSTRUCTION  
 OTHER

OR

TYPE OF REVENUE  GRANT  CONTRACT  OTHER

3. TYPE OF ACTION  CHANGE IN COST  CHANGE IN WORK SCOPE  
 CHANGE IN TIMING  NEW CONTRACT

4. PARTIES KPMG Peat Marwick & METRO

5. EFFECTIVE DATE 4/1/91 TERMINATION DATE 3/31/94  
 (THIS IS A CHANGE FROM \_\_\_\_\_)

6. EXTENT OF TOTAL COMMITMENT: ORIGINAL/NEW (can change based-on CPI) \$ 150,000.00  
 PREV. AMEND \_\_\_\_\_  
 THIS AMEND \_\_\_\_\_  
 TOTAL \$ \_\_\_\_\_

**7. BUDGET INFORMATION**

A. AMOUNT OF GRANT/CONTRACT TO BE SPENT IN FISCAL YEAR 1990891 \$ 19,000.00  
Accounting and  
 B. BUDGET LINE ITEM NAME \_\_\_\_\_ AMOUNT APPROPRIATED FOR CONTRACT \$ 19,000.00  
Audit Services /  
 C. ESTIMATED TOTAL LINE ITEM APPROPRIATION REMAINING AS OF 3/31/1991 \$ 19,000.00

**8. SUMMARY OF BIDS OR QUOTES (PLEASE INDICATE IF A MINORITY BUSINESS ENTERPRISE)**

<u>KPMG PEAT MARWICK</u>	\$ <u>44,200.00</u>	<input type="checkbox"/> MBE
SUBMITTED BY	AMOUNT	
<u>DELOITTE &amp; TOUCHE</u>	\$ <u>50,000.00</u>	<input type="checkbox"/> MBE
SUBMITTED BY	AMOUNT	
<u>GRANT THORNTON</u>	\$ <u>51,350.00</u>	<input type="checkbox"/> MBE
SUBMITTED BY	AMOUNT	

9. NUMBER AND LOCATION OF ORIGINALS \_\_\_\_\_

10. A. APPROVED BY STATE/FEDERAL AGENCIES?  YES  NO  NOT APPLICABLE  
 B. IS THIS A DOT/UMTA/FHWA ASSISTED CONTRACT  YES  NO
11. IS CONTRACT OR SUBCONTRACT WITH A MINORITY BUSINESS?  YES  NO  
 IF YES, WHICH JURISDICTION HAS AWARDED CERTIFICATION \_\_\_\_\_
12. WILL INSURANCE CERTIFICATE BE REQUIRED?  YES  NO
13. WERE BID AND PERFORMANCE BONDS SUBMITTED?  YES  NOT APPLICABLE  
 TYPE OF BOND \_\_\_\_\_ AMOUNT \$ \_\_\_\_\_  
 TYPE OF BOND \_\_\_\_\_ AMOUNT \$ \_\_\_\_\_
14. LIST OF KNOWN SUBCONTRACTORS (IF APPLICABLE)  
 NAME \_\_\_\_\_ SERVICE \_\_\_\_\_  MBE  
 NAME \_\_\_\_\_ SERVICE \_\_\_\_\_  MBE  
 NAME \_\_\_\_\_ SERVICE \_\_\_\_\_  MBE  
 NAME \_\_\_\_\_ SERVICE \_\_\_\_\_  MBE
15. IF THE CONTRACT IS OVER \$10,000  
 A. IS THE CONTRACTOR DOMICILED IN OR REGISTERED TO DO BUSINESS IN THE STATE OF OREGON?  
 YES  NO  
 B. IF NO, HAS AN APPLICATION FOR FINAL PAYMENT RELEASE BEEN FORWARDED TO THE CONTRACTOR?  
 YES DATE \_\_\_\_\_ INITIAL \_\_\_\_\_
16. COMMENTS:

## GRANT/CONTRACT APPROVAL

<p>INTERNAL REVIEW</p> <p><u>William A. Amm</u>  <small>DEPARTMENT HEAD</small> 4-11-91</p> <p><u>David R. Cox</u>  <small>FISCAL REVIEW</small> 4/11/91</p> <p><u>William A. Amm</u>  <small>BUDGET REVIEW</small></p>	<p>CONTRACT REVIEW BOARD        (IF REQUIRED) DATE _____</p> <p>1. _____  <small>COUNCILOR</small></p> <p>2. _____  <small>COUNCILOR</small></p> <p>3. _____  <small>COUNCILOR</small></p>	<p>COUNCIL REVIEW        (IF REQUIRED)</p> <p>_____  <small>DATE</small></p>
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LEGAL COUNSEL REVIEW AS NEEDED:

A. DEVIATION TO CONTRACT FORM \_\_\_\_\_

B. CONTRACTS OVER \$10,000 David R. Cox

C. CONTRACTS BETWEEN GOVERNMENT AGENCIES \_\_\_\_\_

PERSONAL SERVICES AGREEMENT

THIS AGREEMENT dated this: 1st day of April 1991, is between the METROPOLITAN SERVICE DISTRICT, a municipal corporation, hereinafter referred to as "METRO," whose address is 2000 S.W. First Avenue, Portland, OR 97201-5398, and KPMG Peat Marwick, Certified Public Accountants, hereinafter referred to as "CONTRACTOR," whose address is 1211 SW Fifth Avenue, Portland, Oregon 97204, for the period of April 1, 1991, through March 31, 1994, and for any extensions thereafter pursuant to written agreement of both parties.

W I T N E S S E T H :

WHEREAS, This Agreement is exclusively for Personal Services;  
NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

CONTRACTOR AGREES:

1. To perform the services and deliver to METRO the materials described in the Scope of Work attached hereto;
2. To provide all services and materials in a competent and professional manner in accordance with the Scope of Work;
3. All applicable provisions of ORS chapters 187 and 279, 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 Agreement, including but not limited to ORS 279.310 to 279.320.

Specifically, it is a condition of this contract that Contractor and all employers working under this Agreement are subject employers that will comply with ORS 656.017 as required by 1989 Oregon Laws Chapter 684.

4. To maintain records relating to the Scope of work on a generally recognized accounting basis and to make said records available to METRO at mutually convenient times;

5. To indemnify and hold METRO, its agents and employees 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. To comply with any other "Contract Provisions" attached hereto as so labeled; and

7. CONTRACTOR shall be an independent contractor for all purposes, shall be entitled to no compensation other than the compensation provided for in the Agreement. CONTRACTOR hereby certifies that it is the direct responsibility employer as provided in ORS 656.407 or a contributing employer as provided in ORS 656.411.

In the event CONTRACTOR is to perform the services described in this Agreement without the assistance of others, CONTRACTOR hereby agrees to file a joint declaration with METRO to the effect that CONTRACTOR services are those of an independent contractor as provided under Chapter 864 Oregon Laws, 1979.

METRO AGREES:

1. To pay CONTRACTOR for services performed and materials delivered in the maximum sum of ONE HUNDRED FIFTY THOUSAND AND 00/100THS (\$150,000.00) DOLLARS and in the manner and at the time designated in the Scope of Work; and

2. To provide full information regarding its requirements for the Scope of Work.

BOTH PARTIES AGREE:

1. That either party may terminate this Agreement upon giving CONTRACTOR written notice ninety (90) days prior to July 1 of any year, without waiving any claims or remedies it may have against CONTRACTOR;

2. That, in the event of termination, METRO shall pay CONTRACTOR for services performed and materials delivered prior to the date of termination; but shall not be liable for indirect or consequential damages;



3. That, in the event of any litigation concerning this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs, including fees and costs on appeal to an appellate court;

4. That this Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any condition, be assigned or transferred by either party; and

5. That this Agreement may be amended only by the written agreement of both parties.

CONTRACTOR NAME

METROPOLITAN SERVICE DISTRICT

*KPMC Rent Marwich*

By: *Joseph F. Hoffmann*

By: *[Signature]*

Date: *5/16/91*

Date: *5-28-91*

APPROVED AS TO FORM:

By: *[Signature]*

Date: *6-10-91*

DRC:jm  
PERSONAL..CNT

CONTRACT CONDITIONS

SCOPE OF WORK

In accordance with the requirements of Oregon Revised Statutes 297.405 through 297.555 between KPMG PEAT MARWICK, Certified Public Accountants of Portland, Oregon, and the METROPOLITAN SERVICE DISTRICT, Oregon, provides as follows:

1. It hereby is agreed that KPMG PEAT MARWICK shall conduct an audit of the accounts and fiscal affairs of the METROPOLITAN SERVICE DISTRICT, Oregon, for the period beginning July 1, 1990, and ending June 30, 1991, and annually thereafter for Fiscal Years 1992 and 1993, in accordance with the Minimum Standards for Audits of Municipal Corporations as prescribed by law. The audit shall be undertaken in order to express an opinion upon the financial statements of the METROPOLITAN SERVICE DISTRICT, Oregon, and upon the financial statements of the METROPOLITAN EXPOSITION-RECREATION COMMISSION, and to determine if the METROPOLITAN SERVICE DISTRICT has complied substantially with appropriate legal provisions.

2. KPMG PEAT MARWICK agrees that the services they have contracted to perform under this contract shall be rendered by them or under their personal supervision and that the work will be faithfully performed with care and diligence.

3. It is understood and agreed that, should unusual conditions arise or be encountered during the course of the audit whereby the services of KPMG PEAT MARWICK are necessary beyond

the extent of the work contemplated, written notification of such unusual conditions shall be delivered to the METROPOLITAN SERVICE DISTRICT, Oregon, who shall instruct in writing KPMG PEAT MARWICK concerning such additional services, and that a signed copy of each such notification and instruction shall be delivered immediately to the Secretary of State by the Party issuing the same.

4. The audit shall be started as soon after this contract is executed as is agreeable to the Parties hereto and shall be completed and a written report thereon delivered within a reasonable time as is agreeable to the Parties hereto, but not later than six months after the close of the audit period covered by this contract. Adequate copies of such report shall be delivered to the METROPOLITAN SERVICE DISTRICT, Oregon, and its form and content shall be in accordance with and not less than that required by the Minimum Standards for Audits of Oregon municipal corporations.

5. It is understood and agreed that the METROPOLITAN SERVICE DISTRICT, Oregon, is responsible for such financial statements as may be necessary to fully disclose and fairly present the results of operations for the period under audit and the financial condition at the end of that period. Should such financial statements not be prepared and presented within a reasonable period of time, it is understood that KPMG PEAT MARWICK shall draft them for the METROPOLITAN SERVICE DISTRICT, Oregon. The cost of preparing such financial statements shall be

in addition to the fee for conducting the audit as set forth in Paragraph 8 below.

6. The request for proposal for audit services issued by the METROPOLITAN SERVICE DISTRICT and the proposal documents submitted by KPMG PEAT MARWICK are incorporated herein by reference.

7. It is understood and agreed that either Party may cancel this contract by giving notice in writing to the other Party at least ninety (90) days prior to July 1 of any year.

8. In consideration of the faithful performance of the conditions, covenants, and undertakings herein set forth, the METROPOLITAN SERVICE DISTRICT, Oregon, hereby agrees to pay KPMG PEAT MARWICK the sum of FORTY-FOUR THOUSAND TWO HUNDRED AND NO/100THS (44,200.00) DOLLARS for the fiscal year 1991 audit, and the same amount for each fiscal year audit thereafter except that an increase for inflation, not to exceed the annual Portland Metropolitan Consumer Price Index and as further described below shall be added for each audit subsequent to the fiscal year 1991 audit. The increase will be determined from the table provided monthly by Bureau of Labor Statistics, "All Urban Consumers" living in Portland, Oregon. The initial increase will be calculated using the difference between the second half of 1990 index (82-84 base or 129.8) and the index increase on the following years second half of 1991 index (82-84 base). Subsequent increases shall be calculated in the same manner using the index rate (82-84 base) of the preceding second half period.

The maximum increase in any year is limited to six percent (6%). KPMG PEAT MARWICK shall give notice of such proposed increase for inflation not later than April 1 of the fiscal year for which the increase is proposed. The METROPOLITAN SERVICE DISTRICT hereby affirms that proper provision for payment of such fees has been or will be duly made and that funds for the payment thereof are or will be made legally available.

FINANCE COMMITTEE REPORT

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RESOLUTION NO. 94-1898 EXTENDING THE PERSONAL SERVICES CONTRACT FOR AUDIT SERVICES WITH KPMG PEAT MARWICK FOR ONE YEAR WITH AN ADDITIONAL ONE YEAR OPTION

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Date: January 31, 1994

Presented By: Councilor Monroe

**COMMITTEE RECOMMENDATION:** At its January 26, 1994 meeting the Committee voted unanimously to recommend Council approval of Resolution No. 94-1898. Committee members present and voting were Councilors Buchanan, Gardner, Kvistad, McLain, Monroe and Van Bergen. Councilor Devlin was absent.

**COMMITTEE DISCUSSION/ISSUES:** Jennifer Sims, Director of Finance and Management Information, presented the Staff Report. She stated the purpose of the resolution is to authorize extension of the audit contract with KPMG Peat Marwick for one additional year with an option to extend an additional year on March 31, 1995. Ms. Sims pointed out that the Metro Contract Code provides for three year terms for Personal Services contracts with the ability to extend up to a total of five years as long as the extension does not encourage favoritism and will result in cost savings. She pointed out several transitional issues which make it advantageous to retain the current audit firm: 1) the Department will likely move toward selecting a new financial management system during the next fiscal year and having an audit firm which knows Metro's system and processes will be helpful in moving toward converting to a new system; 2) Metro is changing from a 13 to a 7 member Council and adding an elected Auditor which makes it advantageous to have continuity of audit firm during this time; and 3) continuing the current auditor who have knowledge and experience with Metro's operations will minimize disruption of Metro staff and enable staff to stay productive during the audit process.

She pointed out that KPMG Peat Marwick has offered a fee which is based on the current year fee (\$47,000) plus a cost of living increase. This is less or very close to the fees proposed by other firms three years ago when the current contract was proposed.

Chair Monroe stated he had discussed this matter with Ms. Sims and agreed that it would be advantageous to extend the contract for one more year while the transition occurs with the elected officials.

In response to a question from Council Staff, Ms. Sims said that another years extension might be requested in March 1995 because the transition to a new financial management system might be underway at that time.