

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF REJECTING AN )	RESOLUTION NO. 94-1920
APPEAL BY ROLLINS & GREENE BUILDERS,) )	
INCORPORATED, OF THE AWARD OF A )	Introduced by the Council
\$361,150 CONTRACT TO REMODEL THE )	Regional Facilities Committee
RESEARCH BUILDING AT THE METRO )	
WASHINGTON PARK ZOO AND AUTHORIZ- )	
ING THE EXECUTIVE OFFICER TO )	
EXECUTE THE AGREEMENT WITH )	
LONIGAN CONSTRUCTION COMPANY )	

WHEREAS, The Metro Washington Park Zoo issued a Request for Bids for a contract to remodel the research building at the Metro Washington Park Zoo; and

WHEREAS, Several bids were received and were evaluated by the Zoo; and

WHEREAS, Following evaluation of all proposals, the Department determined that Lonigan Construction Company was the low bidder; and

WHEREAS, Rollins & Greene Builders, Incorporated, objected to the award of the contract to Lonigan Construction Company and filed an appeal to the Executive Officer within the time frame specified in the Metro Code; and

WHEREAS, The Executive Officer, by letter to Lonigan Construction Company's attorney dated February 1, 1994, rejected Rollins & Greene's bid; and

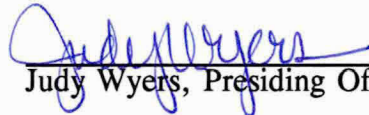
WHEREAS, Rollins & Greene appealed the Executive Officer's decision to the Metro Contract Review Board in the time frame specified in the Metro Code; and

WHEREAS, After reviewing all relevant material, and providing Rollins & Greene an opportunity to be heard, the Board has concluded that the appeal should be rejected and the contract awarded to Lonigan Construction Company; now, therefore,

BE IT RESOLVED,

That the Metro Contract Review Board hereby rejects the appeal of Rollins & Greene Builders, Incorporated, of the award to remodel the research building at the Metro Washington Park Zoo, and authorizes the Executive Officer to execute the agreement with Lonigan Construction Company.

ADOPTED by the Metro Contract Review Board this 24th day of February, 1994.

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

gl  
1155

## REGIONAL FACILITIES COMMITTEE REPORT

---

RESOLUTION NO. 94-1920, REJECTING AN APPEAL BY ROLLINS & GREENE BUILDERS, INCORPORATED, OF THE AWARD OF A \$361,150 CONTRACT TO REMODEL THE RESEARCH BUILDING AT THE METRO WASHINGTON PARK ZOO AND AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE THE AGREEMENT WITH LONIGAN CONSTRUCTION COMPANY

Date: February 17, 1994

Presented by: Councilor McFarland

**COMMITTEE RECOMMENDATION:** At its February 16, 1994 meeting the Regional Facilities Committee voted 5-0 to recommend Contract Review Board approval of Resolution No. 94-1920. All committee members were present and voted in favor.

**COMMITTEE DISCUSSION/ISSUES:** Mr. John Thomas testified, identifying himself as an attorney representing the appellant, Rollins & Greene. Mr. Thomas argued that the Metro Code requires bidders on construction contracts to identify, at the time of bid opening, those minority and women-owned businesses to be used on a project. He said the successful bidder, Lonigan Construction Company, did not do so, and their bid for the remodel of the research building at the Zoo should be rejected. He said the Executive Officer's rejection of Rollins & Greene's appeal is flawed because the Executive does not have authority to rule that failure to submit the names of minority and women-owned businesses (MBE and WBE) is a minor irregularity. He added that the Code does not allow bidders to submit the pertinent MBE and WBE information after bid opening, which Metro allowed Lonigan to do.

Chair Hansen called on Senior Assistant Counsel Mark Williams. Mr. Williams said the Code does allow the Executive to waive Lonigan's omission as a minor irregularity; he said the question is not whether Metro can do so, but whether it should, and that is a judgment call for the Contract Review Board to make. He stated the issue as a question of whether Lonigan's omission was simply a failure to provide information or was it more significant and produced an inequity in the bidding process. Councilor Hansen asked Mr. Williams to clarify that both firms' bids contained some omissions, and he said they did. Rollins & Greene's bid did not contain some information on their good faith efforts to secure MBE and WBE subcontractors.

In response to a question from Councilor Gates, Mr. Williams summarized the good faith efforts section of the Code, and described those sections missing in the Rollins & Greene bid. He discussed the process followed in awarding the bid, saying that either firm in question could have been considered low bidder, depending on alternatives selected. Metro contracting staff saw that both bids had deficiencies, gave both firms two days to provide the missing information (which both did), and then chose to award the contract to Lonigan.

Councilor Washington asked why Metro has an MBE/WBE Code if we cannot require their participation. Mr. Williams said this Code section was adopted to replace Metro's former MBE/WBE Code, which counsel determined was no longer in compliance with federal court rulings. Without a disparity study to document industry discrimination, Metro cannot require MBE/WBE contracting and can do no more than require good faith efforts in locally funded contracts.

Councilor Washington asked what MBE/WBE firms would be subcontracting with Lonigan. Procurement Officer Rich Wiley said the Lonigan bid had Portland Custom Interiors as the MBE (for 7.7% of the contract), and Hobson General, Commercial Interiors and Specialties, and Aztec as WBE's (for 5%). The Rollins & Greene bid had the same MBE and WBE subcontractors, with the exception that Rollins & Greene did not include Aztec, and their WBE participation was 4.2%. Mr. Wiley added that all five bids received on the project contained some errors in completing the forms. Since there were no clean bids, his office chose to offer the two apparent low bidders the opportunity to provide the missing information.

Mr. William Lonigan, President of Lonigan Construction, testified. He spoke to the difficulty of concluding agreements with MBE's and WBE's by the time of bid opening.

Councilor McFarland moved to recommend Contract Review Board rejection of the appeal. Councilor Moore said she would probably feel differently about strict application of the Code if Metro had the authority to require MBE and WBE participation in construction contracts, but since there aren't such requirements she considers Lonigan's omission to be a minor irregularity. She said she believes it was equitable to offer both firms the same amount of time to provide the information lacking in their bids.

- (1) Projection of the number and types of contracts to be awarded by Metro;
- (2) Projection of the number, expertise and types of MBEs likely to be available to compete for the contracts;
- (3) Past results of Metro's efforts under the MBE Program; and
- (4) Existing goals of other Portland metropolitan area contracting agencies, and their experience in meeting these goals.

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

2.04.150 Good Faith Efforts at Maximizing MBE Opportunities:

(a) Good faith efforts at maximizing MBE opportunities shall be required for construction contracts over \$50,000.

(b) At the discretion of the Liaison Officer, good faith efforts at maximizing MBE opportunities may be required for any other contract. This requirement shall be made in writing prior to the solicitation of bids for such contract.

(c) Where good faith efforts are required, the Liaison Officer shall direct the inclusion of a clause in any RFP or bid documents which requires that the prime contractor, prior to entering into any subcontracts, make good faith efforts at maximizing MBE opportunities, as that term is defined in Section 2.04.160.

2.04.155 Contract Award Criteria:

(a) To be eligible for award of contracts subject to good faith efforts requirements, prime contractors must prove that they have made good faith efforts at maximizing MBE opportunities prior to the time bids are opened or proposal are due. Bidders/Proposers are required to utilize the most current list of MBEs certified by the Executive Department in all of the bidders'/proposers' good faith efforts solicitations. The address where certified lists may be obtained shall be included in all applicable bid/proposal documents.

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

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

(d) Bidders/proposers shall, at the time of bid opening, (or proposal submission date when no public opening is had), submit to Metro detailed MBE Utilization forms listing names of MBEs who will be utilized and the nature and dollar amount of their participation. This form will be binding upon the bidder/proposer. Within five (5) working days of bid opening or proposal submission date, such bidders/proposers shall submit to Metro signed Letters of Agreement between the bidder/proposer and MBE subcontractors and suppliers to be utilized in performance of the contract. A sample Letter of Agreement will be provided by Metro. The MBE Utilization forms shall be provided by Metro with bid/proposal documents.

(e) An apparent low bidder/proposer who states in its bid/proposal that good faith efforts at maximizing MBE opportunities were performed shall submit written evidence of such good faith efforts within two (2) working days of bid opening or proposal submission in accordance with Section 2.04.160. Metro reserves the right to determine the sufficiency of such efforts.

(f) Except as provided in paragraph (g) of this section, apparent low bidders or apparent successful proposers who state in their bids/proposals that they will show good faith efforts at maximizing MBE opportunities, but who fail to comply with paragraph (d) or (e) of this section, shall have their bids or proposals rejected and shall forfeit any required bid security or bid bond. In that event the next lowest bidder or, for personal services contracts, the firm which scores second highest shall, within two (2) days of notice of such ineligibility of the low bidder, submit evidence of good faith efforts as provided above. This process shall be repeated until a bidder or proposer is determined to meet the provisions of this section or until Metro determines that the remaining bids are not acceptable because of amount of bid or otherwise.

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

#### 2.04.160 Definition and Determination of Good Faith Efforts:

(a) Good Faith Efforts by Metro: Metro, through its Liaison Officer, shall make good faith efforts to maximize MBE opportunities on locally-funded contracts to which good faith efforts requirements apply, including the following:

- (1) Identifying project elements for which a significant minority capability exists for execution and/or a significant interest by minority firms has

## MINORITY BUSINESS ENTERPRISE UTILIZATION FORM

Name of Metro Project Metro Washington Park Zoo Research Building Remodel

Name of Bidder/Proposer Wm. L. Lonigan General Contractors, Inc.

Address of Bidder/Proposer 4000 SW 114th, Beaverton, Oregon 97005

Phone Number ( 503 ) 641-6727

THE ABOVE BIDDER/PROPOSER:

A. ☒ Will contract/subcontract with MBEs. Please complete the form below.

B. ☐ Will not contract/subcontract with MBEs. Attach explanation.

### BIDDER/PROPOSER INTENDS TO SUBCONTRACT WITH THE FOLLOWING MINORITY BUSINESS ENTERPRISE(S) (MBES)

SUBCONTRACTOR/SUPPLIER	NATURE OF WORK BY COMMODITY CODE (SEE REVERSE)	DOLLAR VALUE OF PARTICIPATION

Amount of MBE Utilization 

Authorized Signature \_\_\_\_\_

Total Bid/Proposal Amount \_\_\_\_\_

Percentage MBE Utilization \_\_\_\_\_ Date: \_\_\_\_\_

**THIS FORM MUST BE SUBMITTED AT THE TIME OF BID OPENING  
OR PROPOSAL SUBMISSION**

# WOMEN-OWNED BUSINESS ENTERPRISE UTILIZATION FORM

Name of Project Metro Washington Park Zoo Research Building Remodel

Name of Bidder/Proposer Wm. L. Lonigan General Contractors, Inc.

Address of Bidder/Proposer 4000 SW 114th, Beaverton, Oregon 97005

Phone Number (503) 641-6727

## THE ABOVE BIDDER/PROPOSER:

A. ☒ Will contract/subcontract with WBEs. Please complete the form below.

B. ☐ Will not contract/subcontract with WBEs. Attach explanation.

## BIDDER/PROPOSER INTENDS TO SUBCONTRACT WITH THE FOLLOWING WOMEN-OWNED BUSINESS ENTERPRISE(S) (WBEs)

SUBCONTRACTOR/SUPPLIER	NATURE OF WORK BY COMMODITY CODE (SEE REVERSE)	DOLLAR VALUE OF PARTICIPATION

Amount of WBE Utilization 2

Authorized Signature [Signature]

Total Bid Proposal Amount: \_\_\_\_\_

Percentage WBE Utilization: \_\_\_\_\_ Date: \_\_\_\_\_

**THIS FORM MUST BE SUBMITTED AT THE  
TIME OF BID OPENING OR PROPOSAL SUBMISSION**

**PUBLISHED  
1ST TIME TODAY  
GON TRANSPORTATION  
COMMISSION  
BUILDING DEMOLITION  
AND REMOVAL OF  
RESULTING DEBRIS  
Is due 5:00 pm, Dec. 14  
INVITATION TO BID**

Bids will be received by the Oregon Transportation Commission, Right of Way Office at 5821 NE Glisan, Room 4, Portland, Or. 97213 for the DEMOLITION BUILDING AND REMOVAL OF RESULTING DEBRIS. The demolition is one to clear right of way for a construction project. This is a construction project in a business park located on no other buildings to be removed, in or near Beaverton, Washington Oregon as follows:

SW BARNES ROAD, BEAVERTON, OR (LOCATED IN SUNSET BUSINESS PARK) ODOT FILE 6125-025. Must be received by 5 PM, Tuesday, December 14, 1993. An agent from will open the parcel for inspection on hand to answer questions 9:30 AM and 11:30 AM, Friday, December 10, 1993.

There has been a hazardous material report made, a synopsis of which is included in the specifications. On must be done in accordance with local, State and Federal laws and applicable permits must be obtained from Contractor. All bidders must be bonded and insured in the State of Oregon capable of being bonded. Liability and a performance bond required to do this work. \$10,000 bid bond will be submitted with written bid. For unsuccessful bid, the bid bond will be returned after opening. For the successful bidder, the bid will be returned at the time of signing. Oregon Prevailing wage will apply as will the Reciprocal Preference Law.

Completion will be completed within a 12 month time frame. Failure to complete within the specified time will result in damages assessed against contractor. Oregon Transportation Commission has the right to reject any or all bids, except the proposal deemed best by the State of Oregon.

Additional information and specifications obtained by contacting Right of Way Office of the Oregon Highway Division at 21 NE Glisan St., Portland 97213 phone at 731-3275. With reference to Aid Highway projects, the State of Oregon Division in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (Stat. 252) and the regulations of the Department of Transportation, 49 C.F.R. part 21 issued pursuant to 49 C.F.R. part 21, hereby notifies all bidders that it affirmatively insures that in any contract entered into pursuant to this advertisement, minority business enterprises will be given full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color or national origin in connection with an award.

Ad Dec. 6, 7, 8 & 9, 1993. 9680CB-41

**PUBLISHED  
1ST TIME TODAY  
COUNTY OF ADAMS  
1994 CRUSHING PROJECT  
Is due 2:30 pm, Dec. 20  
ADVERTISEMENT FOR BIDS  
RESOLUTION NO. R-115-93  
TO CONTRACTORS**

Bids will be received by Adams County at the office of the Board of Commissioners located in the court at 210 W. Broadway, Ritzville, Washington 99169, until 2:30 p.m., December 20, 1993 and will then be opened and publicly read for the 1994 Crushing Project, ERP-781. All proposals shall be accompanied by a proposal deposit in cash, certified cashier's check or surety bond in the amount of five percent (5%) of the amount of such bid proposal. Should

their opinion best serves the interest of Adams County. Pre-qualification of bidders is required. Maps, plans, specifications, and proposals may be obtained from the office of the Department of Public Works, 210 W. Broadway, Ritzville, Washington, 99169; phone (509) 659-0090. Informational copies of maps, plans and specifications are on file for inspection in the office of the Adams County Engineer in Ritzville, Washington, the chapter office of the Associated General Contractors of America in Spokane, Washington and Support Services Center, Seattle, Washington. DATED this 29th day of November, 1993. (SEAL) BOARD OF ADAMS COUNTY COMMISSIONERS BILL WILLS, Chairman DEAN H. JUDD, Commissioner BILL SCHLAGEL, Commissioner Published Dec. 6 & 7, 1993. 9666CB-21

**PUBLISHED  
FIRST TIME TODAY  
CITY OF CORVALLIS  
ROOFING MATERIALS  
AND INSTALLATION  
Bids due 2:30 pm, Dec. 27  
REQUEST FOR BIDS  
BID #93-35**

NOTICE IS HEREBY GIVEN that sealed bids are invited and will be received for the ROOFING MATERIALS AND INSTALLATION OF A HYPALON MEMBRANE TYPE ROOF FOR THE RE-ROOFING OF FIRE STATION #1 AND THE MAJESTIC THEATRE, for the City of Corvallis.

The work consists of: providing all materials, equipment and labor and installation necessary to re-roof Fire Station #1 and the Majestic Theatre per specifications.

Specifications and bid documents are available and may be examined or obtained for no charge at the City of Corvallis, Public Works Department, 1245 NE 3rd Street, P.O. Box 1083, Corvallis, Oregon 97339. Copies of the Standard Construction Specifications may be obtained at a one time cost of Thirty Dollars (\$30) per set. Bids must be delivered to the City of Corvallis, Public Works Department, on or before 2:30 p.m., Monday, December 27, 1993, at which time the sealed bids will be publicly opened and read. Bid proposals submitted after the above specified time shall not be received or opened.

A pre-bid project tour will be held. Meet at the City of Corvallis Public Works Department Offices at 2 p.m., Wednesday, December 15, 1993. All prospective bidders are required to attend.

Bidders shall be prequalified in accordance with the requirements set forth by the City of Corvallis and ORS 279.039 prior to the opening of bids. Prequalification forms may be obtained from the Public Works Department. No bid shall be received or considered by the city unless the bid contains a statement by the bidder as a part of its bid that the provisions of ORS 279.350 (Prevailing Wage) or 40 U.S.C. 276a are to be complied with.

Bids shall be submitted on the forms provided with the request for bids published by the City of Corvallis, and the documents are to be returned intact. All items contained in the invitation and specifications are applicable in preparing bids. Said bid shall be accompanied by a certified or cashier's check or bid bond in the amount of ten (10) percent of the total amount of the bid. The bid bonds shall be issued by a surety authorized and licensed to issue such bonds in the State of Oregon.

Each bid must contain a statement as to whether the bidder is a resident bidder as defined in ORS 279.029. No bid for a construction contract shall be received or considered by the City unless the bidder is registered with the Construction Contractors Board as required by ORS Chapter 701.

The City of Corvallis reserves the right to reject any or all bids, to add or delete items and/or quantities; to waive irregularities and/or informalities in any bid proposal, to postpone the award of bid for no more than forty (40) working days from the date of the bid opening and to further advertise the project for bids, and to make the award that is in the best interest

of the City and women owned businesses to bid. For additional information contact Liz Orman, Secretary, Public Works Department, at (503) 757-6916. Dated this 1st day of December, 1993. CITY OF CORVALLIS MARY STECKEL, Administrative Division Manager Published Dec. 6 & 8, 1993. 9665CB-21

**PUBLISHED  
FIRST TIME TODAY  
METRO WASHINGTON  
PARK ZOO  
RESEARCH BUILDING REMODEL  
Bids due 3:00 pm, Jan. 6  
INVITATION TO BID**

Metro is soliciting bids for construction of the Research Building Remodel at the Metro Washington Park Zoo. Sealed bids must be delivered to the Metro Washington Park Zoo, 4001 SW Canyon Road, Portland, OR 97221, to the attention of Dr. A.M. Rich, Assistant Zoo Director, no later than 3:00 p.m. PST, on January 6, 1994, at which time they will be publicly opened in Metro Washington Park Zoo's Facilities Management Resource Room. Bid envelopes must be clearly marked as BID: RESEARCH BUILDING REMODEL, METRO WASHINGTON PARK ZOO, ATTENTION: DR. A.M. RICH. If bids are delivered earlier they must be delivered to Dr. Rich at the Zoo Administration Building.

Bidding documents, including Drawings and Specifications depicting the Work, may be examined after December 6, 1993 at the offices of Mahlum & Nordfors, 50 SW Second Avenue, Portland, OR 97204, Monday through Friday between the hours of 9:00 a.m. and 4:30 p.m. PST. Copies of the Bidding Documents can be obtained from the same office upon receipt of a reimbursable deposit of \$50.00. Potential Bidders may contact Glen Taylor, Project Coordinator, Metro Washington Park Zoo, at (503) 797-1716 for additional information.

All bidders must certify that they will pay and comply with the minimum prevailing wage requirements of ORS 279.350.

Each bidder must indicate if it is a resident or nonresident bidder as defined in ORS 279.029.

All bidders must be registered with the Oregon Construction Contractors Board pursuant to ORS 671.530.

Bidders and Subcontractors may need to be licensed under ORS 468.883 (regarding licensing of contractors on projects involving asbestos abatement).

Metro may reject any bid not in compliance with all prescribed public bidding procedures and requirements and may reject for good cause any or all bids upon a finding of Metro that it is in the public interest to do so.

A Pre-Bid Conference is mandatory for all potential prime bidders and is scheduled for Wednesday, December 22, 1993, at 1:00 p.m., in the Metro Washington Park Zoo, Facilities Management Resource Room (Enter through Gate A), 4001 SW Canyon Road, Portland, Oregon.

Metro Code provisions 2.04.100 and 200 require all Bidders/Proposers to follow and document their specific good faith outreach efforts to State certified Minority and Women-owned Businesses. Certification of such good faith compliance and the declaration of any actual utilization pursuant to both programs is required at the time of Bid Opening/Proposal Submission.

The Successful Low Bidder/Proposer will be required to submit written evidence of good faith efforts within two (2) and signed Letters of Agreement within five (5) working days of Bid Opening/Proposal Submission. Metro reserves the right to determine the sufficiency of such efforts, accept or reject any Bid or Proposal, and retain any Bidder/Proposer's security or bid bond.

Published Dec. 6, 1993. 9673CB-11

**CITY OF SEATTLE  
WATERMAIN RELOCATION  
Bids due 2:00 pm, Jan. 12  
ADVERTISEMENT FOR BID  
Sealed bids will be received for the fol-**

lowing: DATE: 12/10/93, SEATTLE, WASHINGTON 98104 ONLY UP TO 2:00 PM on Wednesday, January 12, 1994, after which time bids will be publicly opened and summarily read in Suite 740. BIDS RECEIVED AFTER 2:00 PM (PST) WILL NOT BE ACCEPTED OR READ.

This project is located on the North and South shores of the Duwamish Waterway between 200 and 600 feet west of First Avenue South bascule bridge and along First Avenue South from the river to the intersection with East Marginal Way South in Seattle.

This project requires special qualifications (see Section 6-12.1(2)(B) and consists of constructing a 550-foot utilidor tunnel under the Duwamish Waterway and two (2) 20-foot diameter access shafts 90 feet deep, 30-inch steel water main in utilidor, sump pumps, tunnel lighting, electrical service, access hatches, cathodic protection, and relocation of a 30-inch water main from the north access shaft of the utilidor to the south side of the intersection of First Avenue SW and East Marginal Way South, including installation of fire hydrants, valves, vaults, cathodic protection, pavement patching, and other related and incidental work necessary for connection to the existing water main.

The Engineer's Estimate for this work is between \$6,500,000 and \$8,500,000, with the work to be completed in 200 Working Days.

Said bids shall be made in accordance with approved Drawings (unless otherwise noted), the Project Manual, and the City of Seattle Standard Specifications. Copies of the Drawings and Project Manual may be obtained by bidders at Construction Contracts, Seattle Engineering Department, Room 606 of the Municipal Building, 600 Fourth Avenue, Seattle, Washington 98104, telephone (206) 684-7616. Sets requested by phone will be sent C.O.D. via express service. There is no charge or deposit for the Bid Documents.

THE SEATTLE STANDARD SPECIFICATIONS ARE AN INTEGRAL PART OF THE BID DOCUMENTS. COPIES MAY BE OBTAINED FROM THE 5TH FLOOR INFORMATION COUNTER IN THE MUNICIPAL BUILDING, 600 4TH AVENUE, SEATTLE, WA (206) 684-5349 AT \$35 PLUS TAX PER COPY.

THIS CONTRACT CONTAINS PROVISIONS THAT REQUIRE THE SUCCESSFUL BIDDER TO: 1) PRESERVE AND SUBMIT INTO ESCROW WITHIN 7 CALENDAR DAYS AFTER THE CONTRACT IS EXECUTED, A COPY OF ALL DOCUMENTATION USED TO PREPARE THE BID FOR THIS CONTRACT (SEE SECTION 1-02.15); AND 2) PARTICIPATE IN A DISPUTES RESOLUTION PROCESS THAT INCLUDES A THREE PARTY DISPUTES REVIEW BOARD (SEE SECTION 1-04.5).

Pre-Bid Conference and Pre-Bid Tour of Project Site.

There will be an optional Pre-Bid Conference and an informative tour of the project site conducted by Seattle Engineering Department representatives for the benefit of all prospective bidders.

Date: December 15, 1993.

Time: Pre-Bid Conference 9 a.m.; Site Tour following.

Place: Washington Department of Transportation Office, 6431 Corson Avenue South, Room 216, Seattle, Washington 98108.

Prospective bidders who want additional information about the project and reports/studies which may be available may write or call:

Katherine Claeys, P.E. at (206) 684-8175 or Rob Gorman, Engr., at (206) 233-7205.

Address: Municipal Building Room 806, 600 4th Avenue, Seattle, Washington 98104.

All substantive questions regarding the Drawings, Project Manual or bidding requirements shall be submitted to Katherine Claeys in writing or via fax at the sender's responsibility, (206) 684-8581.

One copy of the Drawings and Project Manual may be viewed at the Public Works and Consultant Contracting Section.

Drawings and Project Manuals are on file at the following plan centers: Associated General Contractors, Seattle; Construction Data Plan Center, Seattle; General Contractors, Tacoma; Association of Subcontractors, Tacoma; Eastside Plan Center, Bellevue; and Valley Plan Center, Kent.

PURSUANT TO CHAPTER 378, WASH-

**METRO**

Date: February 9, 1994

To: Presiding Officer Judy Wyers  
Councilor Sandi Hansen  
Chair, Regional Facilities Committee

From: Mark B. Williams, Senior Assistant Counsel/s/ MARK B. WILLIAMS *[Signature]*

Regarding: APPEAL BY ROLLINS & GREENE BUILDERS, INCORPORATED, OF  
THE AWARD OF THE CONTRACT TO REMODEL THE RESEARCH  
BUILDING AT THE METRO WASHINGTON PARK ZOO TO  
LONIGAN CONSTRUCTION COMPANY  
Our file: 11.§3.5

---

**I. INTRODUCTION**

Rollins & Greene Builders, Incorporated (Rollins & Greene) has appealed the award of a contract to Lonigan Construction Company (Lonigan) for the remodel of the Research Building at the Metro Washington Park Zoo. The contract was awarded through a Request for Bids (RFB) in which it was determined that Lonigan was the low bidder.

Rollins & Greene's appeal is brought under Metro Code Section 2.04.031, a copy of which is included in the attachments to this memo. Section 2.04.031 allows an unsuccessful bidder to appeal for relief first to the Executive Officer, and then to the Contract Review Board. In a letter issued to Rollins & Greene's attorney dated February 1, 1994, the Executive Officer rejected Rollins & Greene's appeal, and Rollins & Greene has now appealed to the Contract Review Board.

The Metro Council Presiding Officer, who also presides over the Contract Review Board, can either schedule this matter for a hearing before the full Council (sitting as the Contract Review Board) or refer it to the Regional Facilities Committee, which can then make its recommendation to the full Board. Rollins & Greene is not entitled to a contested case hearing, but it is entitled to be heard either before the Regional Facilities Committee or the full Board. It is likely that the successful bidder, Lonigan, will wish to be heard as well. Each party or their attorney should be notified in advance of the hearing. The Committee or the full Board has the discretion to allow written statements to be filed, and to set the time

allowed for any oral presentations. The project is being delayed pending the outcome of these proceedings.

### **ATTACHMENTS**

Attachment "1"	Metro Code Section 2.04.031.
Attachment "2"	Copy of Advertised Notice, Invitation to Bid.
Attachment "3"	Request for Bids. Note: Due to the size of the document, only one copy has been produced and it is available in the Council office for inspection.
Attachment "4"	Bid Proposal submitted by Lonigan Construction Company.
Attachment "5"	Bid Proposal submitted by Rollins & Greene Builders, Incorporated.
Attachment "6"	Supplemental information on compliance with MBE/WBE. Program submitted by Lonigan Construction Company.
Attachment "7"	Supplemental information on compliance with MBE/WBE. Program submitted by Rollins & Greene Builders, Incorporated.
Attachment "8"	Good Faith Analysis of Bid by apparent low bidder, Lonigan Construction Company.
Attachment "9"	Notice of Award issued to Lonigan Construction Company.
Attachment "10"	Letter of Appeal submitted by Rollins & Greene Builders, Incorporated, dated January 24, 1994.
Attachment "11"	Letter in response to Rollins & Greene Builders, Incorporated, appeal submitted by Lonigan Construction Company, dated January 24, 1994.
Attachment "12"	Executive Officer Rena Cusma's letter rejecting appeal, dated February 1, 1994.
Attachment "13"	Letter of Appeal from Rollins & Greene Builders, Incorporated, to the Metro Contract Review Board, dated February 7, 1994.

### **II. BASIS OF APPEAL OF AWARD**

Lonigan was awarded this contract as the low bidder. Rollins & Greene was the second low bidder. Rollins & Greene's appeal alleges that Lonigan failed to comply with portions of Metro's Minority Business Enterprise (MBE) and Women Business Enterprise (WBE) Programs. Specifically, Rollins & Greene asserts that Lonigan failed to submit, at the time of bid opening, a list of the minority and women business contractors to be utilized and the nature and dollar amount of their participation as required by Metro Code Sections

2.04.155(d) (MBE Program) and 2.04.255(d) (WBE Program). Rollins & Greene request that the Contract Review Board grant its appeal, and award it the contract.

### **III. BACKGROUND OF APPEAL**

This contract was put out to bid as a base contract with alternatives. Depending upon which alternatives the Zoo ultimately selected, the low bidder was either Lonigan or Rollins & Greene. Upon opening the bids, Metro staff determined that both Lonigan and Rollins & Greene had failed to completely comply with different elements of Metro's MBE and WBE programs.

#### **A. Lonigan**

Metro Code Sections 2.04.155(d) and 2.04.255(d) are identical, and require bidders to submit to Metro at the time of bid opening, detailed MBE and WBE Utilization forms stating whether any MBE or WBE subcontractors will be used, and, if so, the nature and dollar amount of their participation. Lonigan submitted the required forms, and indicated that both MBE and WBE subcontractors would be used, but failed to list the names of the subcontractors, or the nature and dollar amount of their participation. Lonigan complied with all other requirements of the programs.

#### **B. Rollins & Greene**

Rollins & Greene submitted the required MBE and WBE Utilization forms discussed above. However, Rollins & Greene's bid failed to comply with other, separate parts of the Code. Metro Code Sections 2.04.160(b) and 2.04.260(b) are substantively identical, and require bidders to perform and document six required types of "good faith efforts" at maximizing MBE and WBE opportunities. Rollins & Greene's bid failed to respond to the last three of the six requirements. Rollins & Greene complied with all other requirements of the program.

Upon discovering that both Lonigan and Rollins & Greene had failed to comply strictly with the provisions of Metro's MBE and WBE programs, Metro contracting staff contacted both bidders, and advised them to supply any missing information. Both bidders supplied the missing information and documentation within two working days. Metro staff treated both bids as responsive, determined that Lonigan was the low bidder based upon the alternatives selected by the Zoo, and awarded the contract to Lonigan.

Presiding Officer Judy Wyers  
Councilor Sandi Hansen  
February 9, 1994  
Page 4

Rollins & Greene appealed the awarding of the contract to Lonigan to the Executive Officer in a timely manner. In a letter dated February 1, 1994, the Executive Officer rejected Rollins & Greene's appeal. On February 7, 1994, Rollins & Greene filed a timely appeal to the Contract Review Board.

#### **IV. ANALYSIS OF APPEAL**

Metro Code Section 2.04.031 requires that an appellant "describe the specific citation of law, rule, regulation, or procedure upon which the appeal is based." Rollins & Greene's appeal is based solely on claimed violations of Metro Code Sections 2.04.155(d) and 2.04.255(d). Therefore, those are the only provisions of the Code which the Contract Review Board must consider.

As Rollins & Greene claims, Metro Code Sections 2.04.155(d) and 2.04.255(d) do require bidders to submit detailed MBE and WBE Utilization forms at the time of bid opening. However, Rollins & Greene overstates its case somewhat when it argues that Metro Code Sections 2.04.155(f) and 2.04.255(f) mandate rejection of bids which fail to supply these forms at the time of bid opening, without leaving any room for discretionary judgment. These sections of the Code provide in pertinent part:

(f) Except as provided in paragraph (g) of this section, apparent low bidders...who fail to comply with [Metro Code Sections 2.04.155(d) and 2.04.255(d)]...shall have their bids or proposals rejected.... (emphasis added)

Thus the mandate of rejection for failure to supply detailed MBE/WBE Utilization forms at the time of bid opening is subject to the exception contained in Metro Code Sections 2.02.155(g) and 2.04.255(g). These sections of the Code provide in pertinent part:

(g) The Liaison Officer, at his/her discretion, may waive minor irregularities in a bidder's...compliance with the requirements of this section provided, however, that the bid or proposal substantially complies with public bidding requirements as required by applicable law. Any such waivers shall be in writing, and shall be kept in the appropriate files. (emphasis added)

In her letter rejecting Rollins & Greene's appeal, a copy of which is included as Attachment "12" to this memo, the Executive Officer gave several reasons for rejecting the appeal. The Executive first noted that Metro's MBE/WBE programs do not actually require that a bidder contract with any MBEs or WBEs, and that a bid indicating that no such contracts would be signed would comply with the Code. From this, the Executive concluded that failure to list the specific MBEs and WBEs selected as subcontractors should not in and

of itself be fatal to Lonigan's bid, since the Code does not require the bidder to subcontract with any MBEs or WBEs in the first place. Secondly, the Executive pointed out that Metro Code Sections 2.04.155(e) and 2.04.255(e) allow apparent low bidders to submit final documentation of their good faith efforts within two working days, and that both Lonigan and Rollins & Greene had been afforded this opportunity. Finally, the Executive determined that any late compliance by Lonigan should be waived as a minor irregularity:

[T]he requirements contained in Metro Code Section 2.04.155(f) are subject to Section 2.04.155(g), which allows Metro to waive minor irregularities in a bidder's compliance with the requirements of the MBE program. I find that any irregularities in Lonigan's compliance with the MBE program are minor in nature, and those irregularities are therefore waived. There is no allegation here that Lonigan actually failed to comply with the "good faith" requirements of the Code. The only allegation is that Lonigan did not completely fill out the MBE Utilization Form at the time of its bid. Since Lonigan did sign and file the form, and since it filed it again within two working days indicating which MBE/WBE subcontractors had been selected, and since Lonigan complied with all other requirements of the MBE program, I find that any irregularities in Lonigan's bid are minor, and that Lonigan has substantially complied with both the spirit and the letter of the applicable public bidding requirements.

Rollins & Greene argues that Lonigan's late filing of the MBE and WBE Utilization forms cannot be waived as a minor irregularity. This Office disagrees with that contention. The section of the Code which states that a failure to supply those forms at the time of bid opening must result in rejection of a bid is explicitly made subject to Metro's right to waive minor irregularities. Therefore, it seems clear that the intent behind the Code was to allow a failure to comply with this provision to be waived as a minor irregularity, provided that the bid substantially complies with public bidding requirements. In this case, Metro staff and the Executive Officer determined that Lonigan's failure to supply the information requested by the form on time was a minor irregularity, and that Lonigan had complied with all of the other public bidding rules and extensive good faith effort requirements of the MBE and WBE programs, thus establishing "substantial compliance."

## **V. CONCLUSION**

This Office does not agree that Lonigan's failure to file the MBE/WBE Utilization forms on time cannot be waived as a minor irregularity. The question before the Contract Review Board, therefore, is not whether Metro has the power to waive this minor irregularity, but whether Metro should waive it. In considering this appeal, the Contract Review Board should

Presiding Officer Judy Wyers  
Councilor Sandi Hansen  
February 9, 1994  
Page 6

consider Lonigan's overall compliance with applicable public bidding requirements, including Metro's MBE/WBE programs and the purpose of those programs. The Contract Review Board should also consider the first two basis for the Executive's rejection of the appeal: (1) the fact that Lonigan's bid would have complied with the Code in total if Lonigan had simply failed to contract with any MBEs or WBEs at all, and indicated that on the form, and (2) the fact that the Code in general permits successful bidders to submit evidence of good faith efforts within two working days of award. These two factors may properly be considered in determining whether Lonigan's late filing of the MBE/WBE Utilization forms should be waived as a minor irregularity.

Metro staff involved in this project and I will be available to answer questions at the time set for Rollins & Greene to address the Committee or the Board, as the case may be.

gl  
1749

#### Attachments

cc: Metro Council  
Rena Cusma  
Sherry Sheng  
Douglas E. Butler  
Glenn Taylor  
Rich Wiley