

BEFORE THE CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING EXEMPTION) RESOLUTION NO. 94-1993
OF THE REQUIREMENT FOR COMPETITIVE)
BIDDING IN METRO CODE CHAPTER 2.04.060) Introduced by Rena Cusma
AND AUTHORIZING A SOLE SOURCE CONTRACT) Executive Officer
WITH ASSOCIATED GENERAL CONTRACTORS)
(AGC) FOR PROMOTING BUILDING INDUSTRY)
RECYCLING PROJECTS TO ITS MEMBERSHIP)

WHEREAS, Metro's Waste Reduction Division has developed an extensive building industry waste reduction program;

WHEREAS, Commercial building waste generates up to 75% of all building industry waste or an equivalent of 16% of all waste generated in the Metro region; and

WHEREAS, Associated General Contractors (AGC) represents 525 commercial building contractors in the region including over 50% of the 20 largest; and

WHEREAS, AGC is receptive to promoting construction recycling among its membership in partnership with Metro; and

WHEREAS, First-hand experience with construction recycling has been shown to change commercial contractors' waste management practices; and

WHEREAS, This resolution is submitted to the Executive Officer for consideration and is forwarded to the Contract Review Board for approval, now therefore,

BE IT RESOLVED, That the Contract Review Board of Metro hereby exempts the attached personal services contract with Associated General Contractors (Exhibit A) from the normal selection process pursuant to Metro Code Chapter 2.04.60 and authorizes the execution of the contract because the Board finds Associated General Contractors is the sole provider of the required services.

ADOPTED by the Metro Contract Review Board this 22nd day of December, 1994.



Judy Wyers, Presiding Officer

RESOLUTION NO. 94-1993
EXHIBIT A

Contract No: 904053

PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter, located at 600 NE Grand Avenue, Portland, Oregon 97232, and Associated General Contractors (AGC), referred to herein as "Contractor," located at 9450 SW Commerce Circle, Suite 200, Wilsonville, OR 97070.

In exchange for the promises and other consideration set forth below, the parties agree as follows:

1. Duration. This personal services agreement shall be effective on the last signature date below and shall remain in effect until and including June 30, 1995, unless terminated or extended as provided in this Agreement.

2. Scope of Work. Contractor shall provide all services and materials specified in the attached "Exhibit A -- Scope of Work," which is incorporated into this Agreement by reference. All services and materials shall be provided by Contractor in accordance with the Scope of Work, in a competent and professional manner. To the extent that the Scope of Work contains additional contract provisions or waives any provision in the body of this Agreement, the Scope of Work shall control.

3. Payment. Metro shall pay Contractor for services performed and materials delivered in the amount(s), manner and at the time(s) specified in the Scope of Work for a maximum sum not to exceed FIFTEEN THOUSAND DOLLARS (\$15,000).

4. Insurance.
 - a. Contractor shall purchase and maintain at the Contractor's expense, the following types of insurance, covering the Contractor, its employees, and agents:
 - (1) Broad form comprehensive general liability insurance covering bodily injury and property damage, with automatic coverage for premises, operations, and product liability. The policy must be endorsed with contractual liability coverage; and
 - (2) Automobile bodily injury and property damage liability insurance.

b. Insurance coverage shall be a minimum of \$500,000 per occurrence. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.

c. Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSUREDS. Notice of any material change or policy cancellation shall be provided to Metro 30 days prior to the change or cancellation.

d. Contractor, its subcontractors, if any, and all employers working under this Agreement that are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Contractor shall provide Metro with certification of Workers' Compensation insurance including employer's liability. If Contractor has no employees and will perform the work without the assistance of others, a certificate to that effect may be attached, as Exhibit B, in lieu of the certificate showing current Workers' Compensation.

e. If required by the Scope of Work, Contractor shall maintain for the duration of this Agreement professional liability insurance covering personal injury and property damage arising from errors, omissions, or malpractice. Coverage shall be in the minimum amount of \$500,000. Contractor shall provide to Metro a certificate of this insurance, and 30 days' advance notice of material change or cancellation.

5. Indemnification. Contractor shall indemnify and hold Metro, its agents, employees and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Agreement, or with any patent infringement or copyright claims arising out of the use of Contractor's designs or other materials by Metro and for any claims or disputes involving subcontractors.

6. Maintenance of Records. Contractor shall maintain all of its records relating to the Scope of Work on a generally recognized accounting basis and allow Metro the opportunity to inspect and/or copy such records at a convenient place during normal business hours. All required records shall be maintained by Contractor for three years after Metro makes final payment and all other pending matters are closed.

7. Ownership of Documents. All documents of any nature including, but not limited to, reports, drawings, works of art and photographs, produced by Contractor pursuant to this Agreement are the property of Metro, and it is agreed by the parties that such documents are works made for hire. Contractor hereby conveys, transfers, and grants to Metro all rights of reproduction and the copyright to all such documents.

8. Project Information. Contractor shall share all project information and fully cooperate with Metro, informing Metro of all aspects of the project including actual or potential problems or defects. Contractor shall abstain from releasing any information or project news without the prior and specific written approval of Metro.

9. Independent Contractor Status. Contractor shall be an independent contractor for all purposes and shall be entitled only to the compensation provided for in this Agreement. Under no circumstances shall Contractor be considered an employee of Metro. Contractor shall provide all tools or equipment necessary to carry out this Agreement, and shall exercise complete control in achieving the results specified in the Scope of Work. Contractor is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work; and for meeting all other requirements of law in carrying out this Agreement. Contractor shall identify and certify tax status and identification number through execution of IRS form W-9 prior to submitting any request for payment to Metro.

10. Right to Withhold Payments. Metro shall have the right to withhold from payments due to Contractor such sums as necessary, in Metro's sole opinion, to protect Metro against any loss, damage, or claim which may result from Contractor's performance or failure to perform under this Agreement or the failure of Contractor to make proper payment to any suppliers or subcontractors.

11. State and Federal Law Constraints. Both parties shall comply with the public contracting provisions of ORS chapter 279, and the recycling provisions of ORS 279.545 - 279.650, to the extent those provisions apply to this Agreement. All such provisions required to be included in this Agreement are incorporated herein by reference. Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations including those of the Americans with Disabilities Act.

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

13. Assignment. This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstance, be assigned or transferred by either party.

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

days prior written notice of intent to terminate, without waiving any claims or remedies it may have against Contractor. Termination shall not excuse payment for expenses properly incurred prior to notice of termination, but neither party shall be liable for indirect or consequential damages arising from termination under this section.

15. No Waiver of Claims. The failure to enforce any provision of this Agreement shall not constitute a waiver by Metro of that or any other provision.

16. Modification. Notwithstanding any and all prior agreements or practices, this Agreement constitutes the entire Agreement between the parties, and may only be modified in a writing signed by both parties.

ASSOCIATED GENERAL CONTRACTORS

METRO

Signature

Signature

Print name and title

Print name and title

Date

Date

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STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 94-1993 FOR THE PURPOSE OF AUTHORIZING EXEMPTION OF THE REQUIREMENT FOR COMPETITIVE BIDDING IN METRO CODE CHAPTER 2.04.060 AND AUTHORIZING A SOLE SOURCE CONTRACT WITH ASSOCIATED GENERAL CONTRACTORS (AGC) FOR PROMOTING BUILDING WASTE RECYCLING PROJECTS TO ITS MEMBERSHIP

Date: November 28, 1994

Presented by: Jim Goddard
Debbie Gorham

PROPOSED ACTION

Adoption of Resolution No. 94-1993 would authorize the exemption from competitive bidding procedures and authorize execution of the attached Personal Services Agreement with Associated General Contractors (AGC). The agreement is for the purpose of promoting building waste recycling to its membership, to assist its members with recycling on their projects, and to document and promote successes to other AGC members. AGC has 525 building contractor members in the Portland region primarily engaged in commercial building projects. This places them in a unique position to provide their membership with education and assistance about construction recycling.

FACTUAL BACKGROUND AND ANALYSIS

Commercial building projects generate up to 75% of the building industry waste in the region. This is equivalent to 16% of the total wastestream. Recycling has been proven cost effective in managing waste from these projects. Widespread acceptance of recycling by the commercial building industry appears to be dependent on contractors gaining first hand experience in determining that recycling produces savings on their projects. This contract forms a partnership between Metro and AGC to provide this first hand experience to AGC contractors. AGC will develop a building industry recycling specialist position to provide direct assistance to contractors for the term of this contract. Metro staff believes that once contractors have been exposed to the wide variety of recycling options available to them in the Metro region they will embrace the practices as the standard manner of managing waste. This has been the case with a number of large general contractors in the area.

AGC's Board of Directors and executive committee have approved the concept and are willing to move forward with this project as a direct benefit to their membership. They are in a unique position by representing over 50% of the largest 20 commercial contractors in the region and having an on-going comprehensive contractor continuing education program. This project fits well into that program. The benefit to Metro's efforts in promoting recycling by this method is that the funding provided to AGC can only be directed at promoting recycling activities so that a clear message can be given and the results can be measured. Secondly, by working with AGC, the message will be given through a normal communication channel from an industry insider instead of from a government agency with less clout among the contractors. Third, it provides an AGC staff member with intimate knowledge of recycling that will carry on after this contract has been completed.

Metro has already developed a working relationship with AGC through previous programs and through their participation in the Resource-Efficient Building Steering Committee. They have reviewed Metro's building industry waste reduction programs for the past two and one-half years, have provided ideas and input for future programs and have acted as a champion for recycling within their association.

BUDGET IMPACT

The proposed contract with AGC includes a maximum expenditure of \$15,000 which is budgeted in the Miscellaneous Professional Services section of the Waste Reduction Division budget under "Advance Aggressive Commercial Contractors Recycling Techniques, \$15,000," and was described in the Contracts list.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 94-1993.

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ATTACHMENT A SCOPE OF WORK

Project:

Commercial building industry recycling

Need:

Commercial building construction projects generate up to 75% of building industry waste in the Metro region. This is equivalent to 16% of the total wastestream. Recycling has been proven cost effective in managing waste from these projects. Widespread acceptance of building industry recycling appears to be dependent on contractors gaining first hand experience and determining that recycling produces savings on their projects.

Objective:

1. Metro and Associated General Contractors (AGC) (Contractor) will jointly promote building industry recycling projects among its membership. Contractor represents 525 building contractors in the Portland region.
2. Provide assistance to the contractors to determine if construction recycling will work on their specific projects, help to implement recycling, and document and promote successes to other Contractor members.

Contractor Tasks:

1. Develop an AGC Building Industry Recycling Specialist position for the term of this project that will perform the job duties listed on the attached job description. The ideal qualifications of a person to perform the work are also listed. The Recycling Specialist will provide assistance to the contractor's members in development, implementation and tracking of recycling on their projects. At least ten projects will be targeted across the Metro region. The recycling services should be coordinated through the local government of the jurisdiction where the projects are located.
2. Provide publicity for the project in Contractor publications including *Construction News Update* and *Oregon Contractor*.
3. Disseminate construction recycling information in Contractor training programs. Highlight experience gained through this contract.
4. Provide a written evaluation of the effectiveness of this contract upon its completion.

Metro Tasks:

1. Provide \$15,000 in funding to Contractor for this project, primarily directed at providing a position to assist Contractor members in developing and implementing recycling on their specific projects. Metro will pay Contractor on an hourly basis for each hour the Building Industry Recycling Specialist spends performing the Essential Job Duties (described in the attached Job Description), or other related duties approved by Metro. Contractor's Construction Recycling Specialist shall not spend more than 40 hours in any one week performing duties related to this project without the prior written approval of Metro.
2. Provide technical assistance and review as needed by Contractor.
3. Evaluate recommendations in conjunction with Contractor to help overcome barriers which arise during this contract.
4. Metro reserves the right to review the performance of the person in the position after four (4) weeks on the job. If performance is unsatisfactory, Metro can terminate the contract or a replacement may be made by the contractor with another four week review period to follow.

Schedule:

The contract is expected to be awarded in December 1994. It will continue until June 30, 1995.

Budget:

\$15,000.00 is included in Metro's approved 1994-95 budget to perform this work.

Terms of Payment:

Metro shall pay Contractor for services performed and materials delivered to the maximum sum of FIFTEEN THOUSAND DOLLARS (\$15,000.00). This maximum sum includes all fees, costs and expenses of whatever nature. Each of Metro's payments to Contractor shall equal the percentage of the work Contractor accomplished during the billing period. Contractor's billing statements will include an itemized statement of the essential job duties performed and all other work done during the billing period, will not be submitted more frequently than once a month, and will be sent to Metro, Attention Solid Waste Department. Metro will pay Contractor within 30 days of receipt of an approved invoice.

ATTACHMENT B
JOB DESCRIPTION
BUILDING INDUSTRY RECYCLING SPECIALIST

This position is responsible for the development and implementation of recycling and waste reduction methods on Contractor member construction, renovation and demolition projects.

Essential Job Duties:

1. Be familiar with recycling options available to building contractors throughout the Metro region. Understand how recycling services can be provided in the jurisdictions where AGC members have projects.
2. Offer recycling services to members of AGC in at least ten projects.
3. Review upcoming projects of Contractor members. Determine how recycling and waste reduction techniques could be implemented, as well as the potential benefits. This will include:
 - a) Meeting with building contractor to understand current waste management method and project constraints.
 - b) Visit site and review plans to determine recycling potential on the project.
 - c) Assist contractor in completing Waste Management Plan to determine costs of managing waste with current methods and cost/savings by including recycling.
 - d) If Waste Management Plan indicated savings and the building contractor is willing to proceed, meet with hauler, recycler and/or processor to help building contractor make arrangements for recycling.
 - e) Visit the building site regularly to review progress, help solve problems and document progress.
 - f) Provide brief summary and financial analysis of results on project. Gauge the reaction of the building contractor. Provide information in a format suitable for use in Metro developed case studies. See attached.
 - g) Provide report at the end of the contract summarizing the results from the projects completed.

Qualifications:

1. Building and/or contracting background. Familiarity with building contractors and practices as well as barriers to making changes in the building process.
2. Interest and familiarity in construction recycling.
3. Ability to communicate new ideas and to work with diverse groups of people to make changes in building methods.



METRO

600 NE Grand Ave.
Portland, OR 97232
(503) 797-1700

Procurement Review Summary

To: Procurement and Contracts Division

From

Department Solid Waste

Division Waste Reduction

Name Jim Goddard

Title Recycling Manager

Extension 2058

Date 11/22/94

Subject

Bid

RFP

Contract

Other

Vendor

Associated General Contractors

9450 SW Commerce Circle
Wilsonville OR 97070 Suite 201

Vendor no.

Contract no. 904053

Purpose Commercial Building Industry Recycling

Expense

Procurement

Personal/professional services

Services (LM)

Construction

IGA

Revenue

Contract

Grant

Other

Budget code(s)

531-310320-524190-75753

This project is listed in the
199 4 -199 5 budget.

Yes

No

Type A

Type B

Price basis

Unit

Total

Other

Payment required

Lump sum

Progress payments

Term

Completion

Annual

Multi-year**

11/22/94
Beginning date

6/30/95
Ending date

Total commitment	Original amount	\$ <u>15,000⁰⁰</u>
	Previous amendments	\$ _____
	This transaction	\$ _____
	Total	\$ <u>15,000⁰⁰</u>
	A. Amount of contract to be spent fiscal year <u>94-95</u>	\$ <u>15,000⁰⁰</u>
	B. Amount budgeted for contract <u>Misc. Prof. Services</u>	\$ <u>400,000⁰⁰</u>
	C. Uncommitted/discretionary funds remaining as of <u>11/18/94</u>	\$ <u>352,799.24</u> ...

Approvals

Joseph Zimmerman
Division manager Debbie Graham

Bob Mat
Department director

Labor

Fiscal

Budget

Risk

Legal

Competitive quotes, bids or proposals:

Submitted by _____	\$Amount _____	M/W/DBE _____	Foreign or Oregon Contractor _____
Submitted by _____	\$Amount _____	M/W/DBE _____	Foreign or Oregon Contractor _____
Submitted by _____	\$Amount _____	M/W/DBE _____	Foreign or Oregon Contractor _____

Comments: _____

Attachments:

- Ad for bid
- Plans and specifications
- Bidders list (M/W/DBEs included)

Instructions:

1. Obtain contract number from procurement division.
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. Less than \$2,500, attach memo detailing need for contract and contractor's capabilities, bids, etc.
 - C. More than \$2,500, attach quotes, evaluation form, notification of rejection, etc.
 - D. More than \$10,000 or \$15,000 attach RFP or RFB respectively.
 - E. More than \$50,000, attach agenda management summary from council packet, bids, RFP, etc.
4. Provide packet to procurement for processing.

Special program requirements:

General liability: _____ / _____ / _____

Liquidated damages \$ _____ day

<input type="checkbox"/> Workers comp	<input type="checkbox"/> Prevailing wages
<input type="checkbox"/> Auto	<input type="checkbox"/> Non-standard contract
<input type="checkbox"/> Professional liability	<input type="checkbox"/> Davis/Bacon

Dates:

Ads _____ (Publication) _____

Pre-bid meeting _____ Bid opening** _____

Filed with council _____ For action _____

Filed with council committee _____ For hearing _____

Project estimate: _____

Funding:

- Local/state
- Federal
- Other

Bond requirements:

_____ % Bid \$ _____

_____ % Performance \$ _____

_____ % Performance \$ _____

_____ % Performance/payment* \$ _____

_____ % LM \$ _____

** Minimum project two weeks from last day advertised

SOLID WASTE COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 94-1993, FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION FROM THE REQUIREMENT FOR COMPETITIVE BIDDING IN METRO CODE CHAPTER 2.04.060 AND AUTHORIZING A SOLE SOURCE CONTRACT WITH ASSOCIATED GENERAL CONTRACTORS (AGC) FOR PROMOTING BUILDING INDUSTRY RECYCLING PROJECTS TO ITS MEMBERSHIP

Date: December 21, 1994

Presented by: Councilor McLain

Committee Recommendation: At the December 20 meeting, the Committee voted unanimously to recommend Council adoption of Resolution No. 94-1993. Voting in favor: Councilors Buchanan, Hansen, McFarland, McLain, Monroe and Wyers.

Committee Issues/Discussion: Jim Goddard, Recycling Section Supervisor, presented the staff report. He explained that the purpose of the resolution is to authorize a \$15,000 sole-source contract with Associated General Contractors (AGC) to hire a temporary employee to work with its membership to promote onsite recycling at commercial construction sites. The contract was included on the approved contract list for the current fiscal year.

Goddard noted that AGC was the largest commercial construction trade association in the region and that this contract will facilitate improved commercial construction debris recycling at both small and large construction sites throughout the region. Such debris makes up a significant portion of the region's total wastestream. He indicated that AGC members have been very responsive when they have been made aware of recycling opportunities in the past and that this contract will provide for an involved distribution of recycling information to its members.