

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING) RESOLUTION NO. 96-2347
AN EXEMPTION TO THE METRO CODE)
CHAPTER 2.04.060, PERSONAL SERVICES) Introduced by Mike Burton,
CONTRACTS SELECTION PROCESS, AND) Executive Officer
AUTHORIZING A SOLE-SOURCE CONTRACT)
WITH THE PORTLAND ART MUSEUM FOR)
SPONSORSHIP OF AN EDUCATIONAL)
PROGRAM IN CONJUNCTION WITH THE)
MUSEUM AND INTEL FOUNDATION.)

WHEREAS, Metro supports educational programs that further waste reduction objectives in the region; and

WHEREAS, The Portland Art Museum requested that Metro, in conjunction with Intel Foundation, sponsor development of a high-quality inter-active CD-ROM educational program for the classroom to be distributed to schools in the region; and

WHEREAS, Automating the Museum's education program will eliminate the use of thousands of sheets of paper annually, which results in reducing substantially the waste generated each year by the production and distribution of this paper-reliant school curriculum; and

WHEREAS, Metro's participation as a sponsor in this program was approved and anticipated by inclusion of \$5,000 in the FY 1995-96 budget of the Regional Environmental Department, and will cover the cost of producing and distributing 2,500 CD-ROMs; and

WHEREAS, The Portland Art Museum is the only organization appropriate to perform the services as outlined in the contract Scope of Work; and

WHEREAS, The Executive Officer has reviewed the contract with the Portland Art Museum for sponsorship of the inter-active CD-ROM educational project for schools in the region, and hereby recommends Council approval; now, therefore,

BE IT RESOLVED, THAT

The Metro Council hereby exempts the attached contract (Exhibit "A" hereto) with the Portland Art Museum from the competitive proposal requirement pursuant to Metro Code Chapter 2.04.060 because the Board finds that the Portland Art Museum the sole provider of the required service.

ADOPTED by the Metro Council this 13th day of June, 1996.



Jon Kvistad, Presiding Officer

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 96-2347 FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION TO THE METRO CODE CHAPTER 2.04.060, PERSONAL SERVICES CONTRACTS SELECTION PROCESS, AND AUTHORIZING A SOLE-SOURCE CONTRACT WITH THE PORTLAND ART MUSEUM FOR SPONSORSHIP OF AN EDUCATIONAL PROGRAM IN CONJUNCTION WITH THE MUSEUM AND INTEL FOUNDATION.

June 5, 1996

Presented by: Judith Mandt

PROPOSED ACTION

Adoption of Resolution No. 96-2347 would authorize an exemption to competitive contract procedures and authorize the execution of a personal services contract with the Portland Art Museum. The contract will provide funds to fulfill Metro's participation in a three-way grant between the Museum, Intel Foundation and Metro to develop a CD-ROM project for the Museum's in-school education program.

FACTUAL BACKGROUND

The Portland Art Museum has for many years presented an education program in the public schools of the region designed to educate school children about the Museum's collection and other aspects of art in the state. The program has typically been a paper-reliant medium, involving duplication of virtually thousands of pages of paper each year in the production of curricula and pamphlets that are distributed in the classroom. Developing the program on a CD-ROM will permit revisions to the program and use of the materials electronically, thus eliminating production and the subsequent use of hundreds of cases of paper, even if recycled.

The Art Museum requested Intel Foundation and Metro to participate in a grant that would modernize the education program by developing a high-quality CD-ROM for electronic presentation in the classroom. Intel Foundation agreed to serve as the major sponsor with a contribution from a supporting participant. Metro agreed to participate because the project furthers Metro's waste reduction objective, and \$5,000 was approved in the FY 1995-96 budget for the Regional Environmental Management Department.

The funds will pay for the duplication and distribution of 2,500 educational CD-ROMs to all schools in the region. Metro will be recognized as a sponsor on the CD-ROM and on all accompanying marketing, promotional, and media materials to be used when the project is launched in the schools later this year.

Exemption from the competitive bidding procedures and authorization of a sole source contract is requested because the Portland Art Museum is the only organization capable of performing this service.

BUDGET IMPACT

The Regional Environmental Management Department FY 1995-96 budget included \$5,000 for the cost of this contract.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 96-2347.

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 Portland Art Museum referred to herein as "Contractor," located at 1219 S.W. Park Avenue, Portland, Oregon 97205-2486.

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, 1996, unless terminated or extended as provided in this Agreement.
2. **Scope of Work.** Contractor shall provide all services and materials specified in the attached "Attachment 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 FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00)
4. **Insurance.** CONTRACTOR shall provide METRO with a certificate of insurance complying with this article and naming METRO as an insured within fifteen (15) days of execution of this Contract or twenty-four (24) hours before services under this Contract commence, whichever date is earlier.
 - 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 INSURED. 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. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

PORTLAND ART MUSEUM

METRO

Signature

Signature

Print name and title

Print name and title

Date

Date

ATTACHMENT A

PROJECT TITLE: Portland Art Museums CD-ROM Project

CONTRACTOR Portland Art Museum
1219 SW Park Avenue
Portland, OR 97205-2486

PROJECT CONTACTS: Ms. Lucy M. Buchanan
Director of Development

CONTRACT TERM: June 15, 1996 through June 30, 1996

CONTRACT AMOUNT: \$5,000.00

SCOPE OF WORK

The Contractor will create an educational CD-ROM program for children in grades 5-8, ages 11-14, that will supplement the existing visual arts curricula in schools throughout Metro's region, Oregon, and SW Washington. The Museum's CD-ROM program will feature up to 50 works of art from the Museum's permanent collection, which is the largest and richest artistic resource in the Pacific Northwest. As an important outreach tool, this educational CD-ROM program will teach children how to look at a work of art and to evaluate it on multiple-levels. The CD-ROM project promotes the use of this innovative non-paper reliant technology as an effective vehicle to reduce waste and paper in our schools. Metro's contribution will be used to duplicate and distribute at least 2,500 CD-ROMs to all schools in the region.

The Contractor shall be responsible for the following:

1. Work with a local multimedia firm to create the CD-ROM. These tasks include conceptual development, design and programming. Contractor will be responsible for all payments to the firm.
2. Provide Metro with periodic progress reports. Whenever possible, the contractor will provide images and prototypes.
3. Work with print media, radio and television to publicize the CD-ROM. Metro will be identified as a sponsor on all introductory materials for the program.
4. Host an "Evening for Educators", a program designed for teachers to learn about the Museum's many educational resources and the CD-ROM and its applications in the classroom.

Metro will be responsible for the following:

1. Work with contractor to provide technical assistance as needed.
2. Participate in the press conference and demonstration, and assist in the planning of the "Evening for Educators" as necessary.
3. As applicable, help promote the CD-ROM to a broad audience.

PAYMENT

Payment shall be made in a lump sum payment of **FIVE THOUSAND AND NO/100 DOLLARS (\$5,000)** upon receipt of invoice from Contractor that identifies Contractor's costs to duplication and distribution. Upon request, Contractor shall provide Metro with an expense summary sheet following distribution.

PROGRAM EVALUATION

Upon completion of project, Contractor will provide Metro with number of CD-ROMs distributed. By April, 1997 Contractor will make a general assessment of the CD-ROM's overall impact and student/teacher response to the program, and provide Metro with copies of same. Contractor will also include possible suggestions for future involvement.

JM:clk


S:\SHARE\MAND\CONTRACT\904939.PSA



METRO

DATE: May 23, 1996

TO: Contracts Management

FROM: Judith Mandt, Administration Manager 

RE: Sole Source Justification for Contract No. 904939
Portland Art Museum, \$5,000; 6/15/1996 - 6/30/1996

This contract is a sole source contract with the Portland Art Museum, a non-profit organization which provides cultural, artistic, and educational services to residents of the entire Metro region and the state. The museum is the only organization of its kind in Oregon, and the only entity that is capable of performing this service, thus necessitating exemption to competitive bidding procedures and initiation of a sole source contract for services.

JM:gbc
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TRANSMITTAL SUMMARY

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736
TEL 503 797 1700 | FAX 503 797 1799



METRO

To: Risk and Contracts Management

From:

Department BEM

Division Admin

Name Judith Mandt

Title Manager

Extension 16490

Date 5/17/96

Subject

Bid

Contract

RFP

Other

Purpose CD-ROM Project

Vendor Portland Art Museum

1219 SW Park Ave
Portland OR 97205

Vendor no. 9341

Contract no. 904939

Expense

Procurement

Personal/professional services

Services (U/M)

Construction

IGA

Revenue

Contract

Grant

Other

Budget code(s)

531-310540-52490-75000

This project is listed in the
1995-1996 budget.

Yes

Type A

No

Type B

Price basis

Unit prices, NTE

Per task

Total/lump sum

Payment required

Lump sum

Progress payments

Contract term

Completion*

Annual

Multi-year**

6/15/96
Beginning date*

6/30/96
Ending date

Total commitment

Original amount

\$ 5,000⁰⁰

Previous amendments

\$

This transaction

\$

Total

\$ 5,000⁰⁰

A. Amount of contract to be spent fiscal year 95-96

\$ 5,000⁰⁰

B. Amount budgeted for contract Misc Prof Services

\$ 10,000⁰⁰

C. Uncommitted/discretionary funds remaining as of 7/1/95

\$ 5,000⁰⁰ ...

Approvals

Project manager

[Signature]

Fiscal

Division manager

[Signature]

Budget manager

Department director

[Signature]

Risk

Legal