

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE ) ORDINANCE NO. 98-768  
METRO CODE AUTHORIZING )  
EXEMPTIONS FROM COMPETITIVE ) Introduced by Mike Burton, Executive  
BIDDING FOR UTILITIES AND CERTAIN ) Officer  
OTHER TYPES OF CONTRACTS

WHEREAS, Chapter 2.04, Metro Contract Policies, establishes policies for Metro regarding public contracts, personal services contracts and intergovernmental agreements, and

WHEREAS, occasional business and economic changes promote needed changes in Metro's contracting procedures, and

WHEREAS, the utility industry being deregulated provides opportunity for cost savings and competitive bidding is not an efficient manner to procure these services, and

WHEREAS, contracts for art and art related fabrication are needed and competitive bidding is not an efficient manner to procure these services, and

WHEREAS, occasionally Metro sponsors events such as SOLV for which competitive processes are not efficient.

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Council adopts the findings in Attachment A.
2. Metro Code Section 2.04.054 is amended as follows:

2.04.054 Competitive Bidding Exemptions

Subject to the policies and provisions of ORS 279.005 and 279.007, and the Metro Code, all Metro and Metropolitan Exposition-Recreation Commission public contracts shall be based upon competitive bids except:

(a) State Law. Classes of public contracts specifically exempted from competitive bidding requirements by state law.

(b) Board Rule. The following classes of public contracts are exempt from the competitive bidding process based on the legislative finding by the board that the exemption will not encourage favoritism or substantially diminish competition for public contracts and that such exemptions will result in substantial cost savings:

- (1) All contracts estimated to be not more than \$25,000 provided that the procedures required by section 2.04.056 are followed.

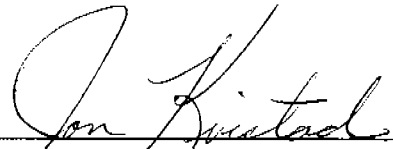
- (2) Purchase and sale of zoo animals, zoo gift shop retail inventory and resale items, and any sales of food or concession items at Metro facilities.
- (3) Contracts for management and operation of food, parking or similar concession services at Metro facilities provided that procedures substantially similar to the procedures required for formal Request for Proposals used by Metro for personal services contracts are followed.
- (4) Emergency contracts provided that written findings are made that document the factual circumstances creating the emergency and establishing why the emergency contract will remedy the emergency. An emergency contract must be awarded within 60 days of the declaration of the emergency unless the board grants an extension.
- (5) Purchase of food items for resale at the zoo provided the provisions of section 2.04.060 are followed.
- (6) Contracts for warranties in which the supplier of the goods or services covered by the warranty has designated a sole provider for the warranty service.
- (7) Contracts for computer hardware and software provided that procedures substantially similar to the procedures required for formal Request for Proposals used by Metro for personal services contracts are followed.
- (8) Contracts under which Metro is to receive revenue by providing a service.
- (9) Contracts for the lease or use of the convention, trade, and spectator buildings and facilities operated by the Metro Exposition-Recreation Commission.
- (10) Public contracts by the Metro Exposition-Recreation Commission in an amount less than \$75,000, which amount shall be adjusted each year to reflect any changes in the Portland SMSA CPI, provided that any rules adopted by the commission which provide for substitute selection procedures are followed; or
- (11) Contracts for equipment repair or overhaul, but only when the service and/or parts required are unknown before the work begins and the cost cannot be determined without extensive preliminary dismantling or testing.

- (12) Contracts in the nature of grants to further a Metro purpose provided a competitive request for proposal process is followed.
- (13) The procurement of utilities, including telephone service, electric, natural gas, and sanitary services, (provided that competition is available) and a request for proposal process is followed.
- (14) The procurement of art and art related production and fabrication provided that a request for proposal process is followed.
- (15) Sponsorships which are identified and approved in the proposed budget and are not designated by Council as having a significant impact as outlined in 2.04.026 need not follow a competitive bidding or proposal process. In order to be eligible for this exemption the sponsorship shall provide Metro with event advertising and/or media releases.

(c) Board Resolution. Specific contracts, not within the classes exempted in subsections (a) and (b) above, may be exempted by the board by resolution subject to the requirements of ORS 279.015(2) and ORS 279.015(5). The board shall, where appropriate, direct the use of alternate contracting and purchasing practices that take account of market realities and modern innovative contracting and purchasing methods, which are consistent with the public policy of encouraging competition.

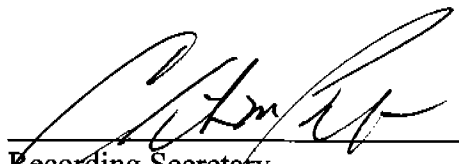
(Ordinance No. 96-635B, Sec. 3. Amended by Ordinance No. 97-677B, Sec. 2)

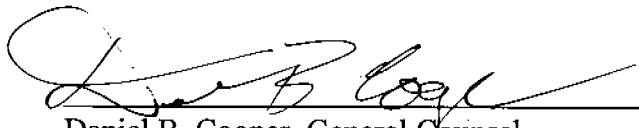
ADOPTED by the Metro Council this 10<sup>th</sup> day of DECEMBER, 1998.

  
\_\_\_\_\_  
Jon Kvistad, Presiding Officer

Approved as to Form:

ATTEST:

  
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Recording Secretary

  
\_\_\_\_\_  
Daniel B. Cooper, General Counsel

## **STAFF REPORT**

### FOR THE PURPOSE OF AMENDING THE METRO CODE AUTHORIZING EXEMPTIONS FROM COMPETITIVE BIDDING FOR UTILITIES AND CERTAIN OTHER TYPES OF CONTRACTS

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Date: August 13, 1998

Presented by: Scott Moss

## **PROPOSED ACTION**

Adopt Ordinance No. 98-768 authorizing amending 2.04 to allow request for proposals (rather than low bid) for utilities and art production. The ordinance also provides that sponsorships approved by the Council in the budget process and on the contract list, not designated significant impact, do not need to go through a competitive process.

## **FACTUAL BACKGROUND AND ANALYSIS**

Many utilities are being deregulated allowing for competition among service providers. Metro/MERC desires authorization to evaluate service providers based on cost, service, quality, features, experience, delivery methods and reliability. Requesting proposals, rather than bids, would not diminish competition and allow for all appropriate factors to be considered in the selection of the utility. Utilities include telephone service (local and long distance), electricity, natural gas, and sanitary services.

Art and art fabrication requires special artistic skills and qualifications. Metro/MERC desires authorization to evaluate art producers based on factors other than cost, such as experience, qualifications, past performance, and references. Requesting proposals rather than bids would not diminish competition and allow for all appropriate factors to be considered in the selection of the art producer.

Metro Council occasionally authorizes sponsorship contracts with entities such as SOLV, Regional Arts Commission, etc. The current contract code requires such sponsorships to have the Council waive the competitive procurement process even after the funds have been budgeted and approved by Council. This amendment proposes that sponsorships that are in the approved budget and the contracts list, and not designated as having significant impact, are waived from competitive bidding and proposals.

## **BUDGET IMPACT**

None

## **EXECUTIVE OFFICER RECOMMENDATION**

The Executive Officer recommends approval of Ordinance No. 98-768.

## Attachment A

ORS 279.015(2) requires that an agency make certain findings as a part of exempting certain public contracts or classes of public contracts from competitive bidding. The Contracting Board must find that - It is unlikely that such exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts.

These findings support that favoritism will not occur and competition will not be diminished.

A) Solicitations Advertisement: Request for Proposals are advertised in accordance with Metro Code and placed on the internet and contract telephone hotline.

B) Full Disclosure: To ensure full disclosure of all project requirements, the Contracting Manual requires proposals to obtain the following: Detailed description of the project, Contractual Terms and Conditions, Selection Process Description, and Evaluation Criteria.

C) Selection Process: Selection for contractor from a Request for Proposal is outlined in the Metro Code and the Contracting Manual. Proposals are independently evaluated by at minimum of two individuals.

D) Specialized Expertise Required: These projects involves the need for skills at conceptual estimating, detailed scheduling, artistic skills, past expertise/experience, and special knowledge.

E) Technical Complexity: Providing utilities to large facilities and art fabrication is technically complex.

F) Competitive Price: Performing a competitive proposal process for utilities and art products and fabrication ensures the best value for the amount paid.