

METROPOLITAN EXPOSITION RECREATION COMMISSION

RESOLUTION NO. 10-05

Accept Interior Technology as the lowest responsive and responsible bidder in accordance with the Metropolitan Exposition Recreation Commission (MERC) Contracting and Purchasing Rules, and authorize the MERC Interim General Manager to execute a contract with Interior Technology for the Movable Partition Retrofit Project, upon the approval by Metro Council to allocate \$341,000 from the Metro Tourism Opportunity and Competitiveness Account ("MTOCA").

WHEREAS, in the public interest, for the purpose of necessary major refurbishment, repair and retrofit of the Oregon Convention Center's movable partitions; and

WHEREAS, the approved FY 09-10 MERC Capital Budget includes provisions for the Oregon Convention Center Movable Partitions Retrofit Project with funds from the Metro Tourism Opportunity and Competitiveness Account ("MTOCA"); and

WHEREAS, staff completed a formal solicitation of bids culminating with a bid opening on January 5, 2010; and

WHEREAS, MERC staff has evaluated the lowest responsive and responsible bidder was Interior Technology with the bid of \$337,969 for phase 1 of this project; and

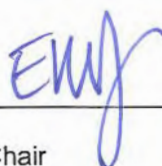
WHEREAS, Sections 3(B) and 4(D)(1)) of MERC's Contracting and Purchasing Rules, effective March 1, 2005, require the Commission to select the lowest responsive and responsible bidder, approve the contract award, and approve the written contract by resolution; and

WHEREAS, this bid is within the budget as previously set.

BE IT THEREFORE RESOLVED that the Metropolitan-Exposition Recreation Commission:


1. Accepts the Bid of Interior Technology for the Movable Partition Retrofit Project at the Oregon Convention Center; and
2. Authorizes the MERC Interim General Manager to execute the contract in substantially the same form, as attached Exhibit A to this resolution, with Interior Technology for the amount of \$337,969 for the performance of work in accordance with the bid documents contingent upon receipt of funds through the Metro Tourism Opportunity and Competitiveness Account "MTOCA".

Passed by the Commission on March 3, 2010.

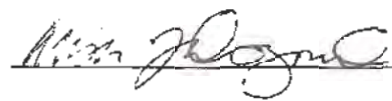

Chair

Approved as to form:

Daniel B. Cooper, Metro Attorney

By: 

Nathan A. Schwartz Sykes, Senior Attorney


Secretary/Treasurer



Standard Public Contract

For Public Contracts Greater than \$50,000

CONTRACT NO. _____

PUBLIC CONTRACT

THIS Contract is entered into between Metropolitan Exposition-Recreation Commission ("MERC"), whose address is 777 NE Martin Luther King, Jr., Blvd., Portland, Oregon 97232-2742, and Modernfold NW, Inc. - DBA Interior Technology (CCB #63245), whose address is 6775 SW 111th Ave., Beaverton, OR 97008, hereinafter referred to as the "CONTRACTOR. Contact is for work to be performed the Oregon Convention Center, located at 777 NE MLK Jr. Blvd, Portland, OR 97232

THE PARTIES AGREE AS FOLLOWS:

ARTICLE I SCOPE OF WORK

CONTRACTOR shall perform the work and/or deliver to MERC the goods described in the Scope of Work as below, and as per the "OCC – Movable Partition Retrofit Project RFP" All services and goods shall be of good quality and, otherwise, in accordance with the Scope of Work.

CONTRACTOR is to provide services in retrofitting and repairing movable partition walls.

<i>Contract is for work in:</i>	<i>Meeting Rooms</i>	<i>158 Units</i>
	<i>Exhibit Halls</i>	<i>172 Units</i>

ARTICLE II TERM OF CONTRACT

The term of this Contract shall be for the period commencing April 1, 2010 through and including December 31, 2010 unless terminated as provided in this Contract.

ARTICLE III CONTRACT SUM AND TERMS OF PAYMENT

MERC shall compensate the CONTRACTOR for work performed and/or goods supplied as described in the Scope of Work. MERC shall not be responsible for payment of any materials, expenses or costs other than those which are specifically included in the Scope of Work in an amount not to exceed (written amount) Three Hundred Thirty-Seven Thousand, Nine Hundred Sixty-Nine Dollars and No/100 (\$337,969.00). Payment shall be on a unit price only for those goods or services received in a condition or manner acceptable to MERC. CONTRACTOR'S invoice shall include an itemized statement of items purchased or services provided, and shall be sent to MERC, Attention: Accounts Payable, 777 NE Martin Luther King, Jr. Blvd., Portland, Oregon 97232-2742. MERC will pay Contractor within 30 days of receipt of an approved invoice.

ARTICLE IV LIABILITY AND INDEMNITY

CONTRACTOR is an independent contractor and assumes full responsibility for the content of its work and performance of CONTRACTOR'S labor, and assumes full responsibility for all liability for bodily injury or physical damage to person or property arising out of or related to this Contract, and shall indemnify, defend and hold harmless MERC, its agents and employees, 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 Contract. CONTRACTOR is solely responsible for paying CONTRACTOR'S subcontractors and nothing contained herein shall create or be construed to create any contractual relationship between any subcontractor(s) and MERC.

ARTICLE V TERMINATION

MERC may terminate this Contract upon giving CONTRACTOR seven (7) days written notice. In the event of termination, CONTRACTOR shall be entitled to payment for work performed to the date of termination. MERC shall not be liable for indirect, consequential damages or any other damages. Termination by MERC will not waive any claim or remedies it may have against CONTRACTOR.

ARTICLE VI INSURANCE

CONTRACTOR shall purchase and maintain at CONTRACTOR'S expense, the following types of insurance covering the CONTRACTOR, its employees and agents.

A. Broad form comprehensive general liability insurance covering personal injury, property damage, and bodily injury with automatic coverage for premises and operation and product liability shall be a minimum of \$1,000,000 per occurrence. The policy must be endorsed with contractual liability coverage. **MERC, its appointed officials, departments, employees and agents shall be named as an ADDITIONAL INSURED.**

B. Automobile bodily injury and property damage liability insurance. Insurance coverage shall be a minimum of \$1,000,000 per occurrence. **MERC, its appointed officials, departments, employees, and agents shall be named as an ADDITIONAL INSURED.** Notice of any material change or policy cancellation shall be provided to MERC thirty (30) days prior to the change.

This insurance as well as all workers' compensation coverage for compliance with ORS 656.017 must cover CONTRACTOR'S operations under this Contract, whether such operations be by CONTRACTOR or by any subcontractor or anyone directly or indirectly employed by either of them.

CONTRACTOR shall provide MERC with a certificate of insurance complying with this article and naming MERC as an additional 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.

CONTRACTOR shall not be required to provide the liability insurance described in this Article only if an express exclusion relieving CONTRACTOR of this requirement is contained in the Scope of Work.

ARTICLE VII PUBLIC CONTRACTS

All applicable provisions of ORS chapters 187 and 279A & B, and all other terms and conditions necessary to be inserted into public contracts in the State of Oregon, are hereby incorporated as if such provision were a part of this Agreement. Specifically, it is a condition of this contract that Contractor and all employers working under this Agreement are subject employers that will comply with ORS 656.017 as required by 1989 Oregon Laws, Chapter 684.

For public work subject to ORS 279C.800 to 279C.870, the contractor shall pay Prevailing Wage Rates as per the *Oregon Bureau of Labor and Industries (BOLI) "Prevailing Wage Rates for Public Contract Works Contracts in Oregon - Effective July 1, 2009"*, pursuant to the administrative rules established by the Commissioner of Labor and Industries. Contractor must provide a written schedule to employees showing the number of hours per day and days per week the employee may be required to work; and must pay daily, weekly, weekend and holiday overtime in accordance with, and as required by ORS 279C.520. Contractors must promptly pay, as due, all persons supplying to such contractor labor or material used in this contract. If the contractor fails to pay for labor or services, the contracting agency can pay and withhold these amounts due the contractor. Additionally, if the contractor or first-tier subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within 30 days after receipt of payment from the public contracting agency or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus shall pay interest in accordance with ORS 279C.515. If the contractor or first-tier subcontractor fails, neglects, or refuses to make payment, to a person furnishing labor or materials in connection with the public contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. Contractor must promptly pay for any medical services they have agreed to pay in accordance with ORS 279C.530. Contractor must pay any and all contributions and amounts due to the Industrial Accident Fund from contractor or subcontractor and incurred in the performance of the contract.

Contractor is required to turn in Certified Payroll Reports each month to Contracting Public Agency. In addition to any other retainage obligated by the Public Contracting Code, the Prevailing Wage Requirement Law requires public agencies to withhold 25 percent of any amount earned by the prime contractor if the prime contractor does not submit certified payroll reports. Once the certified payroll reports have been submitted, the public agency must pay the 25 percent withheld within 14 days. ORS 279C.845(7)

Contractor and every subcontractor must have a Public Works Bond filed with the Construction Contractors Board prior to starting work on the Contract, unless exempt, in accordance with ORS 279C.830(3). Contractors are required to pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

No liens or claims are permitted to be filed against MERC on account of any labor or material furnished. CONTRACTOR shall meet MERC Bonds and Bid Security requirements as follows:

1. Bid Security not exceeding 10 percent of the amount bid for the contract is required unless the contract is for \$50,000 or less.
2. For public improvements, a labor and material bond and a performance bond, both in the amount equal to 100 percent of the contract price are required for contracts over \$50,000.
3. Bid security, labor and material bond and performance bond may be required even though a contract is of a class not identified above, if the General Manager determines it is in the public interest.

CONTRACTOR shall meet the Metro "Good Faith Efforts" Requirement for Construction Projects as below:

For construction contracts of \$100,000 or more, the Commission adopts in principle, policy, and content, the "Good Faith Effort" program established by Metro Code§ 2.04.100 through 2.04.190 (Metro Minority Business Enterprise, Women Owned Business, and Emerging Small Business Program) as they apply to contracts of the Commission. This adoption includes any and all ordinances subsequently adopted by the Metro Council relating to Metro's Minority Business Enterprise, Women Owned Business and Emerging Small Business Program. The General Manager shall designate MERC staff to perform the functions of the Liaison Officer to carry out the MBE/WBE/ESB program as it relates to MERC contracting activities.

For public improvement work all contractors must demonstrate that an employee drug-testing program is in place, per ORS 279C.505-2

ARTICLE VIII QUALITY OF GOODS AND SERVICES

Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of the highest quality. All workers and subcontractors shall be skilled in their trades. CONTRACTOR guarantees all work against defects in material or workmanship for a period of one (1) year from the date of acceptance or final payment by MERC, whichever is later. All guarantees and warranties of goods furnished to CONTRACTOR or subcontractors by any manufacturer or supplier shall be deemed to run to the benefit of MERC.

ARTICLE IX OWNERSHIP OF DOCUMENTS

Unless otherwise provided herein, all documents, instruments and media of any nature produced by Contractor pursuant to this agreement are Work Products and are the property of MERC, including but not limited to: drawings, specifications, reports, scientific or theoretical modeling, electronic media, computer software created or altered specifically for the purpose of completing the Scope of Work, works of art and photographs. Unless otherwise provided herein, upon MERC request, Contractor shall promptly provide MERC with an electronic version of all Work Products that have been produced or recorded in electronic media. MERC and Contractor agree that all work Products are works made for hire and Contractor hereby conveys, transfers, and grants to MERC all rights of reproduction and the copyright to all such Work Products.

ARTICLE X SUBCONTRACTORS

CONTRACTOR shall contact MERC prior to negotiating any subcontracts and CONTRACTOR shall obtain approval from MERC before entering into any subcontracts for the performance of any of the services and/or supply of any of the goods covered by this Contract.

MERC reserves the right to reasonably reject any subcontractor or supplier and no increase in the CONTRACTOR'S compensation shall result thereby. All subcontracts related to this Contract shall include the terms and conditions of this agreement. CONTRACTOR shall be fully responsible for all of its subcontractors as provided in Article IV.

ARTICLE XI RIGHT TO WITHHOLD PAYMENTS

MERC shall have the right to withhold from payments due CONTRACTOR such sums as necessary, in MERC's sole opinion, to protect MERC 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.

If a liquidated damages provision is contained in the Scope of Work and if CONTRACTOR has, in MERC's opinion, violated that provision, MERC shall have the right to withhold from payments due CONTRACTOR such sums as shall satisfy that provision. All sums withheld by MERC under this Article shall become the property of MERC and CONTRACTOR shall have no right to such sums to the extent that CONTRACTOR has breached this Contract.

**ARTICLE XII
SAFETY**

If services of any nature are to be performed pursuant to this agreement, CONTRACTOR shall take all necessary precautions for the safety of employees and others in the vicinity of the services being performed and shall comply with all applicable provisions of federal, state and local safety laws and building codes, including the acquisition of any required permits.

**ARTICLE XIII
INTEGRATION OF CONTRACT DOCUMENTS**

All of the provisions of any procurement documents including, but not limited to, the Advertisement for Bids, Proposals or responses, General and Special Instructions to Bidders, Proposal, Scope of Work, and Specifications which were utilized in conjunction with the bidding of this Contract are hereby expressly incorporated by reference. Otherwise, this Contract represents the entire and integrated agreement between MERC and CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by both MERC and CONTRACTOR. The law of the state of Oregon shall govern the construction and interpretation of this Contract.

**ARTICLE XIV
COMPLIANCE**

CONTRACTOR shall comply with federal, state, and local laws, statutes, and ordinances related to the execution of the work. This requirement includes, but is not limited to, non-discrimination, safety and health, environmental protection, waste reduction and recycling, fire protection, permits, fees and similar subjects.

**ARTICLE XV
ASSIGNMENT**

CONTRACTOR shall not assign any rights or obligations under or arising from this Contract without prior written consent from MERC.

CONTRACTOR

Signature: _____

Printed Name: _____

Date: _____

Company: Interior Technology

Address: 6775 SW 111th Ave

Beaverton, OR 97008

Tax I.D. or SS#: 93-0599679

Telephone/Fax: 503- 643-9480 / 503- 626-3568

CCB # 63245

**METROPOLITAN EXPOSITION-RECREATION
COMMISSION**

Signature: _____

Printed Name Cheryl Twete

Date: _____

Title: Interim General Manager

Copy 1 - MERC Contracts

Copy 2 - Facility

Copy 3 - Contractor

MERC STAFF REPORT

Agenda Item/Issue: For the purpose of accepting Interior Technology as the lowest and most responsive bidder in accordance with Metropolitan Exposition Recreation Commission (MERC) Contracting and Purchasing Rules, and authorizing the MERC Interim General Manager to execute a contract with Interior Technology for the Movable Partition Retrofit Project upon the approval by Metro Council to allocate \$341,000 from the Metro Tourism Opportunity and Competitiveness Account (MTOCA).

Resolution No.: 10-05

Presented By: Jeff Blosser

Date: March 3, 2010

Prepared By: Jeff Blosser/
Heather Peck

Background and Analysis: The Metro Council has approved a program to fund capital projects at the Oregon Convention Center (OCC) known as MTOCA. The Council has adopted policies and guidelines for establishing a process and criteria for these proposed investments. The MERC Budget Committee discussed the Goals and Strategies identified in the Policy and Guidelines and recommended the Movable Partition Retrofit Project to the full MERC Commission for approval. The MERC Commission approved their recommendation at its February 3 Meeting. The purpose of Resolution 10-05 is to accept the lowest and most responsive bid and authorize execution of a contract for the partition retrofit project.

Staff recommended that this project be a major priority for MTOCA funding for this year's capital projects list. The partitions are located in the original side of the Convention Center and are nearly 20 years old and have never been replaced. It is necessary to replace the partitions due to loss of functionality and the need to update the movable walls for safety and customer service. The Commission has previously approved this partition retrofit project at \$560,000 to be completed in two phases over a two fiscal year period (Fiscal Years 2009-10 and 2010-11). The Metro Council must also approve each specific MTOCA project funding request and is scheduled to hear a resolution on the partition retrofit project on March 4, 2010 for an amount not to exceed \$341,000 in FY 09-10. In the event that the Metro Council does not authorize the MTOCA resources sufficient to fund this project, then the contract will not be executed.

Staff completed a formal solicitation of bids per MERC contracting and purchasing rules for this project culminating with a bid opening in January 2010. Interior Technology's bid came in at \$519,000 for the entire project, \$41,000 under the budgeted amount. The project will be broken into two parts with \$341,000 being spent this fiscal year and the remaining \$178,000 is proposed to be authorized next year with a second request from the Commission to Metro Council for use of MTOCA monies, as is currently proposed in the 2010-11 OCC Budget for consideration.

MERC received three responses to the RFB process from the following companies: Advanced Equipment Corporation for \$570,940; Barclay Dean Architectural Products for \$615,200 and Interior Technology for \$519,894. MERC received no bid responses from the FOTA area or from any MWESB firms for this project.

Therefore, staff is asking for Commission approval to accept the bid from Interior Technology as the lowest responsive and responsible bidder and authorize execution of the contract for this work.

Fiscal Impact:

The budget of \$341,000 for phase one of this project is within the MERC approved FY 2009-10 budget amount for this capital project. Due to the competitive bidding environment, the project bid has actually come in under budget, with cost savings to MERC of \$41,000.

Recommendation: Staff recommends that the Metropolitan Exposition-Recreation Commission adopt Resolution 10-05, accepting the lowest responsive and responsible bid by Interior Technology and direct the MERC Interim General Manager to execute a contract in substantially the same form as attached Exhibit A to the resolution with Interior Technology to complete the work of refurbishing and retrofitting the Movable Wall Partitions at the Oregon Convention Center, contingent on the Metro Council approval of MTOCA funding of \$341,000 to complete phase one work.