

METROPOLITAN EXPOSITION RECREATION COMMISSION

Resolution No. 16-24

For the purpose of selecting Portland Mechanical Contractors, Inc., for the Oregon Convention Center's (OCC) "Drinking Fountain Replacement Project" and authorizing the Metro General Manager of Visitor Venues to execute the contract.

WHEREAS, the OCC's drinking fountains have aged, requiring additional ongoing maintenance each year; and

WHEREAS, the OCC clients and attendees often bring water bottles into the building, but the current fountains make it difficult to refill reusable bottles; and

WHEREAS, the OCC will install 19 water bottle filling stations throughout the facility, including stand-alone bottle fillers in staff kitchens and break rooms, eliminating the need to purchase expensive water bubblers; and

WHEREAS, this project was included and approved as part of the OCC's fiscal year 2016-2017 capital plan; and

WHEREAS, the OCC will use an on-call contractor, Portland Mechanical Contractors, Inc., to complete the installation, projecting a total project amount of one-hundred fifty-seven thousand six hundred and 00/100 dollars (\$157,600.00); and

WHEREAS, Portland Mechanical Contractors, Inc., has committed to use COBID certified suppliers for all materials and other needs such as patch, paint and demolition requirements, totaling \$117,000 of the \$157,600 projected costs, or almost 75 percent of the project award.


BE IT THEREFORE RESOLVED that the Metropolitan Exposition Recreation Commission:

1. Approves the contract with Portland Mechanical Contractors, Inc. in the form substantially similar to the attached Exhibit A.
2. Authorizes the Metro General Manager of Visitor Venues to execute the contract on behalf of the Commission.

Passed by the Commission on September 7, 2016.



Chair



Secretary/Treasurer

Approved As to Form:
Alison R. Kean Campbell, Metro Attorney

By: 

Nathan A. S. Sykes
Deputy Metro Attorney

Standard Public Contract

MERC CONTRACT NO. 207002

THIS Contract is entered into between Metropolitan Exposition Recreation Commission (MERC), an appointed commission of Metro, whose address is 600 NE Grand Avenue, Portland, Oregon 97232-2736, and **Portland Mechanical Contractors, Inc.**, whose address is **2000 SE Hanna Harvester Drive, Milwaukie, OR 97222**, hereinafter referred to as the "CONTRACTOR."

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 attached hereto as Attachment A. All services and goods shall be of good quality and, otherwise, in accordance with the Scope of Work.

ARTICLE II TERM OF CONTRACT

The term of this Contract shall be for the period commencing **September 12, 2016** through and including **July 31, 2017**.

ARTICLE III CONTRACT SUM AND TERMS OF PAYMENT

Contractor shall perform the above work for a maximum price not to exceed **ONE HUNDRED FIFTY SEVEN THOUSAND SIX HUNDRED AND NO/100TH DOLLARS (\$157,600.00)**.

The maximum price includes all fees, costs and expenses of whatever nature. Each of MERC's payments to Contractor shall equal the percentage of the work Contractor accomplished during the billing period. Contractor's billing invoices shall include the MERC contract number, Contractor name, remittance address, invoice date, invoice number, invoice amount, tax amount (if applicable), and an itemized statement of work performed and expenses incurred during the billing period, and will not be submitted more frequently than once a month. Contractor's billing invoices shall be sent to metroaccountspayable@oregonmetro.gov. The MERC contract number and contractor name shall be referenced in the email subject line. MERC requests that contractors submit billing invoices for services within 10 business days of performance. Payment shall be made by MERC on a Net 30 day basis upon receipt of Contractor 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 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.

Standard Public Contract

MERC CONTRACT NO. 207002

ARTICLE VI INSURANCE & BONDS

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

- A. The most recently approved ISO (Insurance Services Office) Commercial General Liability policy, or its equivalent, written on an occurrence basis, with limits not less than \$1,000,000 per occurrence and \$1,000,000 aggregate. The policy will include coverage for bodily injury, property damage, personal injury, contractual liability, premises and products/completed operations. CONTRACTOR'S coverage will be primary as respects METRO;
- B. Automobile insurance with coverage for bodily injury and property damage and with limits not less than minimum of \$1,000,000 per occurrence;
- C. Workers' Compensation insurance meeting Oregon statutory requirements including Employer's Liability with limits not less than \$500,000 per accident or disease; and

METRO, MERC, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSUREDS on Commercial General Liability and Automobile policies.

CONTRACTOR shall provide to MERC 30 days notice of any material change or policy cancellation.

CONTRACTOR shall provide MERC with a Certificate of Insurance complying with this article upon return of the CONTRACTOR signed agreement to MERC. CONTRACTOR shall email Certificate of Insurance to submitdocuments@oregonmetro.gov. Certificate of Insurance shall identify the MERC contract number.

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.

In addition, for public works subject to ORS 279C.800 to 279C.870, CONTRACTOR and every subcontractor shall have a public works bond required by 2005 Oregon Laws Chapter 360 filed with the Construction Contractors Board before starting work on the project, unless exempt under Section 2 of 2005 Oregon Laws Chapter 360.

ARTICLE VII PUBLIC CONTRACTS

All applicable provisions of ORS chapters 187 and 279A, 279B, and 279C 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 wages. If such public work is subject both to ORS 279C.800 to 279C.870 and to 40 U.S.C. 276a, the CONTRACTOR and every subcontractor on such public work shall pay at least the higher prevailing wage. The CONTRACTOR and each subcontractor shall pay workers not less than the specified minimum hourly rate of wage in accordance with Section 7 of 2005 Oregon Laws Chapter 360. MERC shall pay an administrative fee as provided in ORS 279C.825(1) to the Bureau of Labor and Industries pursuant to the administrative rules established by the Commissioner of Labor and Industries. CONTRACTORS must promptly pay, as due, all persons supplying to such contractor labor or material used in this contract. 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 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. No liens or claims are permitted to be filed against MERC on account of any labor or material furnished. CONTRACTORS are required to pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

Standard Public Contract

MERC CONTRACT NO. 207002

For public improvement work all CONTRACTORS must demonstrate that an employee drug-testing program is in place.

ARTICLE VIII MODIFICATIONS

MERC may approve changes and modifications to the original contract, including deletions of work, order of additional materials, and additional services reasonably related to the original work scope. Contractor may propose changes in the work that Contractor believes are necessary, will result in higher quality work, improve safety, decrease the amount of the contract, or otherwise result in a better or more efficient work product. If such changes are approved by MERC, they shall be executed by written contract amendment signed by both parties. Such changes shall not relieve Contractor of any obligation or warranty under the contract. No oral statements by either party shall modify or affect the terms of the contract.

ARTICLE IX 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 X 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.

- A. CONTRACTOR and subcontractors shall maintain all fiscal records relating to such contracts in accordance with generally accepted accounting principles. In addition, CONTRACTOR and subcontractors shall maintain any other records necessary to clearly document:
1. The performance of the CONTRACTOR, including but not limited to the contractor's compliance with contract plans and specifications, compliance with fair contracting and employment programs, compliance with Oregon law on the payment of wages and accelerated payment provisions; and compliance with any and all requirements imposed on the CONTRACTOR or subcontractor under the terms of the contract or subcontract;
 2. Any claims arising from or relating to the performance of the CONTRACTOR or subcontractor under a public contract;
 3. Any cost and pricing data relating to the contract; and
 4. Payments made to all suppliers and subcontractors.
- B. CONTRACTOR and subcontractors shall maintain records for the longer period of (a.) six years from the date of final completion of the contract to which the records relate or (b.) until the conclusion of any audit, controversy or litigation arising out of or related to the contract.
- C. CONTRACTOR and subcontractors shall make records available to METRO, and its authorized representatives, including but not limited to the staff of any METRO department and the staff of the METRO Auditor, within the boundaries of the METRO region, at reasonable times and places regardless of whether litigation has been filed on any claims. If the records are not made available within the boundaries of METRO, the CONTRACTOR or subcontractor agrees to bear all of the costs for METRO employees, and any necessary consultants hired by METRO, including but not limited to the costs

Standard Public Contract

MERC CONTRACT NO. 207002

of travel, per diem sums, salary, and any other expenses that Metro incurs, in sending its employees or consultants to examine, audit, inspect, and copy those records. If the CONTRACTOR elects to have such records outside these boundaries, the costs paid by the CONTRACTOR to METRO for inspection, auditing, examining and copying those records shall not be recoverable costs in any legal proceeding.

D. CONTRACTOR and subcontractors authorize and permit METRO and its authorized representatives, including but not limited to the staff of any METRO department and the staff of the METRO Auditor, to inspect, examine, copy and audit the books and records of CONTRACTOR or subcontractor, including tax returns, financial statements, other financial documents and any documents that may be placed in escrow according to any contract requirements. METRO shall keep any such documents confidential to the extent permitted by Oregon law, subject to the provisions of section E.

E. CONTRACTOR and subcontractors agree to disclose the records requested by METRO and agree to the admission of such records as evidence in any proceeding between METRO and the CONTRACTOR or subcontractor, including, but not limited to, a court proceeding, arbitration, mediation or other alternative dispute resolution process.

F. CONTRACTOR and subcontractors agree that in the event such records disclose that METRO is owed any sum of money or establish that any portion of any claim made against Metro is not warranted, the CONTRACTOR or subcontractor shall pay all costs incurred by METRO in conducting the audit and inspection. Such costs may be withheld from any sum that is due or that becomes due from METRO.

G. Failure of the CONTRACTOR or subcontractor to keep or disclose records as required by this document or any solicitation document may result in disqualification as a bidder or proposer for future METRO contracts as provided in ORS 279B.130 and Metro Code Section 2.04.070(c), or may result in a finding that the CONTRACTOR or subcontractor is not a responsible bidder or proposer as provided in ORS 279B.110 and Metro Code Section 2.04.052.

ARTICLE XI 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 XII 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. In addition for public improvement work, if a CONTRACTOR is required to file certified statements under ORS 279C.845, MERC shall retain 25 percent of any amount earned by the CONTRACTOR on the public works until the contractor has filed all required certified statements with MERC.

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.

Standard Public Contract

MERC CONTRACT NO. 207002

ARTICLE XIII 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 XIV 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 laws of the state of Oregon shall govern the construction and interpretation of this Contract.

ARTICLE XV COMPLIANCE

CONTRACTOR shall comply with federal, state, and local laws, statutes, and ordinances relative 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 XVI: REPRESENTATIONS, WARRANTIES AND COVENANTS RELATING TO COMPLIANCE WITH TAX LAWS

Contractor represents and warrants that Contractor is in compliance with all applicable local, regional and state Tax Laws as of the effective date of this Contract. Contractor agrees to continue to comply with all Tax Laws throughout the duration of this Contract and any extensions. Any breach of the above set forth warranty, misrepresentation, or violation of Contractor's covenant to continue to comply with said Tax Laws during the term of the Contract shall constitute a material breach of this Contract. Such breach shall entitle Metro to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies against Contractor available under this Contract, at law, or in equity, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing a replacement contractor, limited specific performance, declaratory or injunctive relief. For purposes of this section, the term "Tax Laws" includes but is not limited to laws ORS 305.620 and ORS chapters 316, 317 and 318, and any tax provisions imposed by a political subdivision of this state that applies to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor, or that applies to goods, services, or property, whether tangible or intangible, supplied by Contractor.

ARTICLE XVII INTERGOVERNMENTAL COOPERATIVE AGREEMENT

Pursuant to ORS 279A and the Metro public contract code, Metro participates in an Intergovernmental Cooperative Purchasing program by which other public agencies shall have the ability to purchase the goods and services under the terms and conditions of this awarded contract. Any such purchases shall be between the Contractor and the participating public agency and shall not impact the Contractor's obligation to Metro under this agreement. Any estimated purchase volumes listed herein do not include volumes for other public agencies, and Metro makes no guarantee as to their participation in any purchase. Any Contractor may decline to extend the prices and terms of this solicitation to any or all other public agencies upon execution of this contract. Unless the Contractor specifically declines to participate in the program by marking the box below, the Contractor agrees to participate in the Intergovernmental Cooperative Purchasing program. **Contractor declines to participate in the Intergovernmental Cooperative Purchasing program or is not applicable to this Contract as indicated by the following initials _____.**

Standard Public Contract

MERC CONTRACT NO. 207002

ARTICLE XVIII 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.

ARTICLE XIX ASSIGNMENT

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

ARTICLE XX SEVERABILITY

The parties agree that any provision of this Contract that is held to be illegal, invalid, or unenforceable under present or future laws shall be fully severable. The parties further agree that this Contract shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never been a part of them and the remaining provisions of the Contract shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Contract. Furthermore, a provision as similar to the illegal, invalid, or unenforceable provision as is possible and legal, valid and enforceable shall be automatically added to this Contract in lieu of the illegal, invalid, or unenforceable provision. Any failure by MERC to enforce a provision of the Contract is not to be construed as a waiver by MERC of this right to do so.

ARTICLE XXI COUNTERPARTS

This Contract may be executed in counterparts or multiples, any one of which will have the full force of an original.

ARTICLE XXII DELIVERY OF NOTICES

Any notice, request, demand, instruction, or any other communications to be given to any party hereunder shall be in writing, sent by registered or certified mail or fax as follows:

To Contractor: Nick Odle
Portland Mechanical Contractors, Inc.
2000 SE Hanna Harvester Drive
Milwaukie, OR 97222
503-656-6367 fax

To Metro: Metro Procurement Services
600 NE Grand Ave
Portland, Oregon 97232
503-797-1791 fax

With Copy to: Josh Lipscomb
777 NE Martin Luther King Jr. Blvd
Portland, OR 97232
503-731-7806 fax

CONTRACTOR

METROPOLITAN EXPOSITION RECREATION
COMMISSION

By _____

By _____

Print Name _____

Print Name _____

Date _____

Date _____

Exhibit A to Resolution 16-24**Scope of Work – Attachment A**

MERC Contract No. 207002

1. Purpose and Goal of Work

The purpose of this work is to replace the existing drinking fountains at the Oregon Convention Center (OCC) with updated Elkay bottle filler drinking fountains.

2. Description of the Scope of Work

The contractor shall perform the following tasks in a professional manner and with sensitivity that OCC is a meeting and exhibition space and disruptions should be kept to a minimum.

1. Schedule work with OCC personnel.
2. Provide demolition of existing drinking fountains.
3. Provide saw cuts in CMU walls for 10 locations to accept new chillers and drinking fountains.
4. Provide and install (15) Elkay LZWS-LRPBM28K with chiller and bottle filler.
5. Provide and install (5) Elkay LZWS-EDFPBM117K with bottle filler and Elkay ECH8 remote chiller.
6. Provide and Install (1) LZSW8WSSP drinking fountain with bottle filler.
7. Provide (1) Elkay LZWSM8K and install (3) Elkay LZWSM8K bottle fillers with chillers.
8. Provide sheetrock removal and patching where removed for access.
9. Repaint walls where sheetrock was patched with similar color.
10. Clean site and haul away debris.

Exclusions:

- Overtime and weekend.
- Work outside of this scope.
- Electrical work of any kind.

Total Cost: \$157,600.00:

- Estimated amount purchased from WBE Mesher Supply: \$106,304.00
- Estimated amount of work completed by ESB A Cut Above: \$11,600.00

3. Deliverables/Outcomes

Contractor shall provide installation of 23 bottle filler drinking fountains in a professional manner so that the new drinking fountains will provide a benefit to the customers of OCC.

MERC STAFF REPORT

Agenda Item/Issue: For the purpose of approving the contract award to Portland Mechanical Contractors, Inc., for the Oregon Convention Center's (OCC) "Drinking Fountain Replacement Project" and authorizing the General Manager of Visitor Venues to execute the contract.

Resolution No: 16-24

Date: September 7, 2016

Presented by: Scott Cruickshank

BACKGROUND: The OCC drinking fountains within the facility have aged and require additional, ongoing maintenance each year. Clients and attendees often mirror the OCC's commitment to sustainability by bringing personal water bottles for use while inside the building. The current water fountain structure makes it difficult for users to refill their personal bottles. To address both the need for ongoing maintenance as well as help support the use of reusable bottles within the building, the OCC will install 19 water bottle filling stations. Prior to installation, the OCC will have tested the existing fixtures for lead. If present, OCC will then test local piping. If any test result exceed allowable thresholds, the contractor will replace contaminated piping on a time and material basis. All new materials and fixtures will be lead free. This project, approved in the OCC's FY 2016-2017 capital plan, will also include stand-alone bottle fillers installed in staff kitchens and break rooms eliminating the need for future purchasing of expensive water bubblers.

The OCC will use an on-call contractor, Portland Mechanical Contractors, Inc., to complete the installation. Portland Mechanical Contractors, Inc., will use Mesher Supply Company, a COBID certified supplier for all materials and has committed to using a COBID certified business for other needs such as patch, paint and demolition requirements. The use of Mesher Supply Company's services amounts to \$106,000 and the other COBID certified business amounts to an additional \$11,000, totaling \$117,000. Out of the \$157,600 projected costs, almost 75 percent of the project award will be allocated to COBID certified companies. In addition, this team of plumbers brings prior knowledge and familiarity with the structure, practices and procedures of the OCC.

FISCAL IMPACT: The fiscal year 2016-2017 approved budget for Oregon Convention Center includes \$175,000.00 allocated to the Drinking Fountain Replacement Project.

RECOMMENDATION: Staff recommends that the Metropolitan Exposition and Recreation Commission, by Resolution No. 16-24, approve the contract award and written contract (attached hereto) with Portland Mechanical Contractors, Inc. for the amount one hundred fifty-seven thousand, six hundred & 00/100 dollars (\$157,600.00) for the Oregon Convention Center's "Drinking Fountain Replacement Project" and delegate authority to the General Manager of Visitor Venues to execute the contract.