

METROPOLITAN EXPOSITION-RECREATION COMMISSION

RESOLUTION NO. 125

Repealing Resolution No. 12 of the Metropolitan Exposition-Recreation Commission which on November 22, 1988, adopted the MERC's initial Purchasing Guidelines, and approving a new Resolution adopting replacement Purchasing Policies and Guidelines.

The Metropolitan Exposition-Recreation Commission finds:

1. That the MERC through Resolution No. 12, adopted Purchasing Guidelines, dated November 22, 1988, governing procurement activities for all MERC facilities.

2. That following the consolidation with METRO, certain inconsistencies were discovered between the MERC's Purchasing Guidelines and certain requirements of sections of METRO Administration and METRO Code.

3. That MERC Staff was directed by the Commission to work with METRO Staff to resolve inconsistencies with the Purchasing Policy.

4. That MERC Staff with assistance and input from METRO Staff have formulated new Purchasing Policies and Guidelines for procurement that are consistent with applicable METRO requirements.

5. That the MERC wishes to adopt as policy these new Purchasing Policies and Guidelines and abolish through repeal of Resolution 12, the Purchasing Guidelines currently in place.

BE IT THEREFORE RESOLVED:

1. That the Metropolitan Exposition-Recreation Commission hereby repeals Resolution 12, dated November 22, 1988, establishing the MERC's Purchasing Guidelines.

2. That the Metropolitan Exposition-Recreation Commission hereby adopts the new Purchasing Policy and Guidelines dated May 8, 1991, attached hereto, for the purpose of providing policy and guidelines to govern procurement activities at all MERC facilities.

Passed by the Commission on this 8th day of May, 1991.



Chairman



Secretary/Treasurer

APPROVED AS TO FORM:



Metro General Counsel

Metropolitan Exposition-Recreation Commission

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M E M O R A N D U M

May 8, 1991

TO: Metropolitan Exposition-Recreation Commission

FROM: Mark Hunter - Asst. to the Gen. Mgr. *Mark Hunter*
Freda Walker - Purchasing/Outreach Coordinator *Freda Walker*

RE: Purchasing Policy and Guidelines

Presently, Purchasing Guidelines adopted by the MERC through RESOLUTION 12, on November 22, 1988, are being utilized for procurement purposes. As a result of the consolidation with METRO in July of 1990, it became apparent that there were some inconsistencies with the MERC guidelines and certain requirements of sections of METRO Administration. Subsequently, staffs of METRO Admin. and MERC Admin. were asked by the MERC's finance committee to address issues that were of significance to both organizations and find viable solutions to those issues through establishment of Administrative Rules applicable to the guidelines set out in RESOLUTION 12.

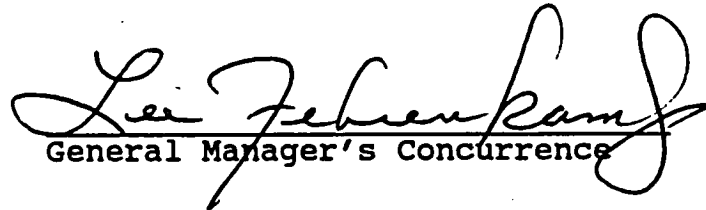
In the process of establishing these Administrative Rules (now referred to as Administrative Procedures), it became apparent that RESOLUTION 12, contained procedural issues as well as policy issues. Upon recommendation of General Counsel, MERC Staff extracted procedural issues from RESOLUTION 12, and attempted to address any remaining inconsistencies with METRO requirements through modification of applicable sections of RESOLUTION 12, and the establishing of the Administrative Procedures. The enclosed draft documents represent the result of staff's efforts to date. Significant changes include: 1. Increasing formal personal services threshold from \$10,000 to \$25,000, 2. Establishment of a 10 year maximum for contract duration, 3. Definition of Implied Authorization for contractual issues. It is anticipated that there will be some additional modification to the Administrative Procedures as a result of present analysis of issues within the METRO Administration, that will effect MERC's operation to an extent in the next fiscal year.

On April 10, 1991 draft Purchasing Policies and Guidelines were brought before the Commission for approval. The Commission asked that it be given additional time to review the Policy

further. Commission representatives subsequently met with staff to discuss additional revisions including first opportunity procurement. Those additional revisions are enumerated on the attached exhibit and have been included in the Policy.

In light of the fact that MERC Staff will begin solicitation of procurement items between May 15, and June 15, in order to have contracts in place by July 1, 1991, (beginning of the new fiscal year), it would be desirable to have the new policy in place prior to the implementation of the procurement processes to preclude inconsistencies during that solicitation period. It is not anticipated that changes in the Administrative Procedures during that time will greatly impact procurement processes or impact adopted policy.

Staff therefore recommends that the Metropolitan Exposition-Recreation Commission repeal RESOLUTION 12 and through RESOLUTION, adopt the Purchasing Policy and Guidelines for the Metropolitan Exposition-Recreation Commission, dated May 8, 1991.


General Manager's Concurrence

METROPOLITAN EXPOSITION-RECREATION COMMISSION

PURCHASING POLICY AND GUIDELINES

MAY 8, 1991

**Approved by MERC Resolution No. 125 on May 8, 1991
Repeals MERC Resolution No. 12 adopted on November 22, 1988**

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PREAMBLE

This document contains the purchasing policy and guidelines for the Metropolitan Exposition-Recreation Commission. Chapter 6.01 of the Code of the Metropolitan Service District and applicable provisions of ORS Chapter 279 are incorporated herein.

METROPOLITAN EXPOSITION-RECREATION COMMISSION

PURCHASING POLICY AND GUIDELINES

1.0 DUTIES AND POWERS

In accordance with §6.01.040 of the Metro Code, the Metropolitan Exposition-Recreation Commission (referred to as Commission) is empowered to enter into contracts, incur obligations and do all other acts and things necessary or convenient to carry out the purposes of providing convention, trade and spectator facilities. Specifically, the Commission has the authority to enter into contracts of such types and in such amounts, including intergovernmental agreements, as the Commission may deem necessary, appropriate, or convenient for the renovation, equipping, maintenance, repair, operation, and marketing of the use of buildings and facilities for which it is responsible, and for professional and other services. The Council of the Metropolitan Service District shall serve as the contract review board. Pursuant to Chapter 2.04 of the Metro Code, the Council acting as the local contract review board has defined competitive bidding and established authorization to exempt the Commission from selected competitive bidding requirements.

1.1 AUTHORIZATIONS

Pursuant to Metro Code §6.01.040, the Commission is impliedly empowered to amend and terminate contracts to which the Commission is a party, as the Commission may deem necessary, appropriate or convenient.

The Commission shall not enter into contracts which exceed a total of ten (10) years in duration. In no event shall amendments or extensions be granted which extend the duration beyond ten (10) years from the date of the original contract.

1.2 CONTRACT APPROVAL

Commission approval of all contracts and amendments, extensions or renewals thereof is required except as specifically authorized by the Commission in these policies or the Commission's adopted facility marketing policies.

Any formal non-personal service contract amendment for additional work, including; change orders, extra work, field work orders, other changes in the original contract scope, which increases the original contract price may be made without competitive bidding provided that budgeted funds are available, and the aggregate cost increase resulting from all amendments does not exceed: twenty percent (20%) of the initial contract amount if the initial contract amount is less than or equal to \$1,000,000 or ten percent (10%) of the initial contract amount if the initial contract amount is greater than \$1,000,000.

Any formal personal service contract amendment for additional services beyond the scope of the initial contract may be made without competitive proposals provided that budgeted funds are available, and the aggregate cost increase resulting from all amendments does not exceed: Twenty Thousand dollars (\$20,000) or twenty percent (20%) of the initial contract amount whichever is greater.

Amendments which exceed the preceding rules shall be approved by Commission resolution.

Amendments which do not exceed the preceding rules shall be approved by the Finance & Administration Director and the General Manager.

1.3 EXCEPTION TO PURCHASING POLICY AND GUIDELINES

These policies do not apply to any employment contract for Commission personnel which shall require Commission approval in all circumstances including amendments or extensions thereof.

2.0 TARGET AREA FIRST OPPORTUNITY POLICY

The Commission shall support the advancement of state certified Disadvantaged Business Enterprises, Women-Owned Business Enterprises and Emerging Small Businesses (as defined by Oregon law) located in the target area as identified in MERC Resolution No. 38. For purchases and contracts of \$2,500 or less first opportunity shall be afforded to businesses which meet the description above.

3.0 DISADVANTAGED AND WOMEN-OWNED BUSINESS POLICY

The Commission hereby adopts in principle, policy, and content Metro Code §2.04.100 through §2.04.180 (Metro Disadvantaged Business Program) as they apply to locally-funded contracts of the Commission. This adoption includes any and all ordinances subsequently adopted by the Metro Council relating to Metro's Disadvantaged Business Program.

The General Manager shall designate Commission staff to perform the functions of the Liaison Officer to carry out the program as it relates to Commission activities.

4.0 GENERAL PURCHASING POLICY

The Commission shall comply with the rules and procedures contained in this policy, administrative procedures and any additional requirements of ORS Chapter 279, for any and all purchases, leases and sales of personal property, goods or services.

4.1 EXEMPTIONS FROM COMPETITIVE BIDDING PROCESS

Pursuant to Chapter 2.04 of the Metro Code and in addition to exemptions from competitive bidding authorized by state law the following classes of public contracts are exempt from the competitive bidding process:

- A. Sole Source Procurement.
- B. 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.
- C. Contracts for computer hardware and software provided purchases are procured in accordance with the administrative procedures governing personal service contracts.
- D. Contracts under which the Commission is to provide a service only and incurs no financial obligation to another party.
- E. Contracts for the lease or use of all MERC facilities.
- F. All contracts estimated to be less than \$31,000 provided that the selection process described in the appropriate sections of Administrative Procedures which implement this policy.
- G. Emergency purchases where immediate procurement is essential to prevent a delay in work or extra expense to the Commission, for circumstances that could not have been foreseen and avoided; where there is a threat of immediate damage to Commission property; or where there is a threat of immediate danger to citizens or employees.
- H. 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.
- I. Purchases made pursuant to an inter governmental agreement with the State of Oregon to make purchases from the State Pricing Agreement.
- J. Any other type of public contract that has been exempted from the competitive bidding process by the contract review board.

4.2 PROTEST OF CONTRACT AWARD

All protests based on contract award or the bidding process shall be resolved by the General Manager or designee. Unresolved protests shall be considered by the Commission. Appeals from the decision of the Commission shall be brought before the Contract Review Board.

Disagreement with the judgment exercised by evaluators in scoring a proposal shall not be a basis for appeal.

5.0 INFORMAL PURCHASING

Any purchase or lease of supplies, materials, equipment, labor, non-personal services or construction which costs no more than \$31,000 may be made by following the informal purchasing policy contained in this section and the Administrative Procedures. Informal purchasing procedures are methods used to purchase goods and services which do not require

advertisement for bid, resolution or written contract. Informal purchases do not require Commission approval.

Purchases shall be made in accordance with this policy and the Administrative Procedures. Purchases of \$2,500 to \$31,000 shall be accompanied by documentation of four (4) written competitive quotes. At least one of the four quotes shall be obtained from a target area business and one quote shall be obtained from a state certified DBE or WBE contractor. The target area business quote does not meet the DBE or WBE quote requirement. Purchases up to \$2,500 do not require more than one quote. In the event quotes cannot be obtained from a target area business, DBE or WBE written documentation is required as evidence of a reasonable effort to obtain such quotes for good faith efforts as defined by the Metro Code.

6.0 FORMAL PURCHASING

Any purchase or lease of supplies, material, equipment, labor, non-personal services and construction costing more than \$31,000, shall be made pursuant to the formal purchasing requirements contained in the Administrative Procedures .

Formal purchasing requires Commission approval of advertising for bid, Commission approval of contract award, and written contract. Commission staff is responsible for determining the exact specification for any proposed purchase requiring formal bid. The Commission then assesses the bids and selects the lowest responsible bidder. The Commission may reject any and all bids. The Commission may, however, at the time it approves the bid documents, waive the requirement for Commission approval of contract award subject to conditions established by the Commission.

Supplemental Commission approval will not be required for "Requests for Bids" for Public Improvement Projects or purchases of Capital Equipment that have been previously approved by the Commission through the budget process. Bid acceptance and contract approval by the Commission will still be required for these projects or purchases. "Requests for Bids" documents of this type will be made available to the Commission for review prior to the release of the documents to prospective contractors or purveyors.

Procedures utilized in advertising and awarding contracts which must be formally bid shall, at a minimum, comply with ORS Chapter 279 and the Disadvantaged and Business Program.

Public Notice - Distribution of bid documents and notice of availability shall be mailed or otherwise furnished to at least three (3) bidders and all known DBEs and WBEs in the business of providing the service or items required. Notices of availability shall indicate 1) where, when, and how long the bid documents may be obtained; 2) generally describe the supply, service, or construction desired; and 3) may contain other appropriate information. The Commission may establish a fee or require a deposit for the bid documents.

Advertising - A formal solicitation of bids shall be published at least once in at least one newspaper of general circulation in the area where the contract is to be performed and in as many additional issues and publications as staff may determine to be necessary or desirable to ensure competition.

The Purchasing Coordinator shall maintain a current list showing items to be purchased and, if applicable, the time when bids will be opened.

7.0 PURCHASING OF PERSONAL SERVICES

This section establishes guidelines for the procurement of professional, technical or expert services requiring special knowledge or training in accordance with § 6.01.040(i) of the Metro Code.

The objective in contracting for personal services is to obtain the highest quality of work for the most reasonable price. The quality of technical services may be more important than cost. The Commission reserves the right to reject any or all proposals.

7.1 INFORMAL PURCHASING OF PERSONAL SERVICES

A purchase requisition/purchase order and an agreement for personal services shall be used to authorize vendors to provide services and to encumber funds for contracts and service agreements costing \$25,000 or less. Procurement of these services shall not require Commission approval but shall be procured in accordance with the Administrative Procedures.

Personal services should be kept intact, that is, procurement should not be divided to avoid formal purchasing procedures.

Procurement of \$2,500 to \$25,000 shall be accompanied by documentation of four (4) written competitive quotes. At least one of the four quotes shall be obtained from a target area business and one quote shall be obtained from a state certified DBE or WBE contractor. Procurement up to \$2,500 does not require more than one quote. In the event quotes cannot be obtained from a target area business, DBE or WBE written documentation is required as evidence of a reasonable effort to obtain such quotes for good faith efforts as defined by the Metro Code.

7.2 FORMAL PURCHASING OF PERSONAL SERVICES

Procurement of personal services estimated to cost more than \$25,000 require Commission approval of advertising for proposal, Commission approval of contract award and written contract. Commission staff is responsible for determining the exact needs and assessment criteria for any proposed services requiring formal solicitation.

Procedures utilized in advertising and awarding contracts in excess of \$25,000 shall, at a minimum, comply with ORS Chapter 279 and the Disadvantaged Business Program.

Public Notice - Distribution of RFP documents and notice of availability shall be mailed or otherwise furnished to at least three (3) bidders and all known DBEs and WBEs in the business of providing the service required. Notices of availability shall indicate 1) where, when, and how long the RFP documents may be obtained; 2) generally describe the service desired; and 3) may contain other appropriate information. The Commission may establish a fee or require a deposit for the RFP documents.

Advertising - A formal solicitation of RFPs shall be published at least once in at least one newspaper of general circulation in the area where the contract is to be performed and in as many additional issues and publications as staff may determine to be necessary or desirable to ensure competition.

The Purchasing Coordinator shall maintain a current list showing services to be procured and, if applicable, the time when proposals will be opened.

8.0 PETTY CASH FUNDS

PURPOSE

This section establishes guidelines to permit disbursements in the form of cash. This policy is essential to provide adequate internal control and to comply with tax record requirements.

- Every petty cash disbursement should be supported by a receipt from the vendor. In some rare instances it may not be practical to obtain a receipt; in such cases, it shall be the responsibility of the Director of Finance & Administration or designee to determine the validity of the reimbursement. Written documentation shall be required to support any such transaction.
- Petty cash funds and records must at all times be kept in a locked metal box. The petty cash custodian is the only employee who may have keys and access to the box. In case of vacation or any other change of custodian, the custodian shall balance the fund before turning it and the keys over to his/her replacement. The cash count shall be checked and signed by the replacement and verified by a supervisor in writing.
- Petty cash funds are subject to audit at any time by authorized personnel.
- In some rare instances it may not be practical to obtain a receipt, in such cases it shall be the responsibility of the Controller to determine the validity of the expense. Written documentation shall be required to support any such transaction.

9.0 OUT-OF-TOWN TRAVEL

PURPOSE

This policy establishes guidelines governing out-of-town travel. All out-of-town travel shall be approved by the Commission, General Manager or designee of the General Manager.

SCOPE

Out-of-town travel is defined as travel in relation to official Commission business which requires the employee to travel more than 55 miles from Portland. Travel expenses related to travel under 55 miles from Portland which are \$25.00 or less, would fall under local travel and would be reimbursed through petty cash or through weekly expense reports. Entertainment expenditures for out-of-town travel are covered under Allowable Expenses, item number 6 below.

I. Allowable Expenses:

1. Transportation - Travel should be by the most direct route available, and the mode of transportation should be the one which is most economical and consistent with the purpose of the trip. Air travel shall be by coach or economy class. First class should not be used unless it is the only

means available. Air travel arrangements will be handled by MERC Administration. If the most appropriate mode of travel is by automobile, the traveler should request authorization from the Director of Finance & Administration. While the Commission retains insurance coverage for official business, **THIS IS NOT A SUBSTITUTE FOR PERSONAL INSURANCE**, since it only covers claims against the Commission, not against the traveler.

2. Lodging - Shall be within an adequate, but economic range. Receipts are required.
3. Automobile rental - Reasonable range. Receipts are required.
4. Meals - Reasonable range. Receipts are required. This allowance is for the meal consumption of traveling personnel only. It does not include entertainment of others. (Refer to item 6 - Special Expenses).
5. Fees/Tuition - Covers authorized fees for conventions, conferences or meetings. Receipts are required.
6. Special Expenses - Expenditures in this category are intended to include business related meals or other entertainment directly related to the conduct of Commission business or solicitation of events for Commission facilities. The expense must be an ordinary and necessary part of carrying on trade or business of the Commission. All documentation shall conform to the appropriate IRS regulations.
7. Miscellaneous Expenses - Include business related telephone charges, local transportation, baggage checks, parking fees, tips and other items included in the travel authorization and advance form. Receipts are required where customarily used.
8. In some rare instances it may not be practical to obtain a receipt, in such cases it shall be the responsibility of the Controller to determine the validity of the expense. Written documentation shall be required to support any such transaction.

II. Non-Allowable Expenses:

1. Expenses of a personal nature, which would have been incurred whether or not the traveler was on Commission business. This includes non-business entertainment, traffic violations, side trips and damage to the traveler's personal vehicle.
2. Shared Expenses - If accommodations are shared by an employee on official business and a person not authorized to travel, the Commission will pay the expenses equivalent to one person.
3. Expenditures for alcoholic beverages, notwithstanding applicable provisions of the Policy on Alcohol and Drugs in the Workplace, MERC Resolution No. 9.

4. Any expenditure that would reflect negatively on the Commission, such as gifts beyond the scope of approved promotional items bearing the facilities' logo(s) or name(s).

10.0 SPECIAL EXPENSES

PURPOSE

This policy establishes guidelines for authorizing certain personnel to expend funds and receive reimbursement for budgeted expenses incurred in their daily work activities for conducting Commission business and soliciting new events or new sources of sales income for Commission facilities.

I. Allowable Expenses:

1. **Mileage** - This is for reimbursement of mileage for use of personal vehicle for business purposes only. The rate of reimbursement shall not exceed the maximum rate established by IRS regulations. Such mileage may not reflect mileage to and from the employee's residence and primary work place and should not reflect mileage in excess of 55 miles from Portland.
2. **Parking** - This is for reimbursement of parking fees, including meters, for parking vehicle in conduct of Commission business.
3. **Entertainment** - Expenditures are intended to include business-related meals, and other appropriate entertainment, for clients which are directly related to the solicitation of events, and for persons involved in the operation of Commission facilities. All documentation shall conform to the appropriate IRS regulations.
4. **Fees/Tuition** - Covers authorized fees for conventions, conferences or meetings. Receipts are required.
5. In some rare instances it may not be practical to obtain a receipt, in such cases it shall be the responsibility of the Controller to determine the validity of the expense. Written documentation shall be required to support any such transaction.

II. Non-Allowable Expenses:

1. Expenses of a personal nature, which would have been incurred whether or not the employee was on Commission business. This includes non-business entertainment, traffic or parking violations.
2. Expenses that would normally be handled through Petty Cash or Purchase Requisition/Purchase Order procedures.
3. Expenditures for alcoholic beverages notwithstanding applicable provisions of the Policy on Alcohol and Drugs in the Workplace, MERC Resolution No. 9.

4. Any expenditure that would reflect negatively on the Commission, such as gifts beyond the scope of approved promotional items bearing the facilities' logo(s) and or name(s).

EXHIBIT A

METRO CODE § 2.04.100 through § 2.04.180

§2.04.100 Disadvantaged Business Program, Purpose and Authority

- (a) It is the purpose of this ordinance to establish and implement a program to encourage the utilization by Metro of disadvantaged and women-owned businesses by creating for such businesses the maximum possible opportunity to compete for and participate in Metro contracting activities.
- (b) The portions of this ordinance which relate to federally funded contracts are adopted pursuant to 49 CFR §23 and are intended to comply with all relevant federal regulations. Federal regulation 49 CFR §23 and its amendments implement §(105) (f) of the Surface Transportation Assistance Act of 1982 relating to the participation by Minority Business Enterprises in Department of Transportation programs.
- (c) This ordinance shall be known and may be cited as the "Metro Disadvantaged Business Program," hereinafter referred to as the "Program."
- (d) This ordinance supersedes the Metro "Minority Business Enterprise (MBE) Program" dated October 1980 and amended December 1982.

(Ordinance No. 83-165, §1; amended by Ordinance No. 84-181, §1; all previous Ordinances repealed by Ordinance No. 87-216, §1; amended by Ordinance No. 87-231, §1)

§2.04.105 Policy Statement

- (a) Through this Program, Metro:
 - (1) expresses its strong commitment to provide maximum opportunity to disadvantaged and women-owned businesses in contracting;
 - (2) informs all employees, governmental agencies and the general public of its intent to implement this policy statement; and
 - (3) assures conformity with applicable federal regulations as they exist or may be amended.
- (b) It is the policy of Metro to provide equal opportunity to all persons to access and participate in the projects, programs and services of Metro. Metro and Metro contractors will not discriminate against any person or firm on the basis of race, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status.

- (c) The policies, practices and procedures established by this ordinance shall apply to all Metro departments and project areas except as expressly provided in this ordinance.
- (d) The objectives of the program shall be:
 - (1) to assure that provisions of this ordinance are adhered to by all Metro departments, contractors, employees and USDOT sub-recipients and contractors.
 - (2) to initiate and maintain efforts to increase program participation by disadvantaged and women-owned businesses.
- (e) Metro accepts and agrees to the statements of 49 CFR §23.43(a)(1) and (2), and said statements shall be included in all USDOT agreements with USDOT sub-recipients and in all USDOT assisted contracts between Metro or USDOT sub-recipients and any contractor.

(Ordinance No. 83-165, §2; amended by Ordinance No. 84-181, §1; all previous Ordinances repealed by Ordinance No. 8, §1; amended by Ordinance No. 87-231, §1)

§2.04.110 Definitions: For purposes of this Ordinance, the following definitions shall apply:

- (a) **APPLICANT** -- one who submits an application, request or plan to be approved by a USDOT official or by Metro as a condition to eligibility for Department of Transportation (USDOT) financial assistance; and "application" means such an application, request or plan.
- (b) **CONSTRUCTION CONTRACT** -- means a contract for construction of building or other facilities, and includes reconstruction, remodeling and all activities which are appropriately associated with a construction project.
- (c) **CONTRACT** -- means mutually binding legal relationship or any modification thereof obligating the seller to furnish supplies or services, including construction, and the buyer to pay for them. For purposes of this ordinance a lease or a purchase order of \$500.00 or more is a contract.
- (d) **CONTRACTOR** -- means the one who participates, through a contract or subcontract, in the Program and includes lessees.
- (e) **DEPARTMENT** or "USDOT" -- means the United States Department of Transportation, including its operating elements.
- (f) **DISADVANTAGED BUSINESS ENTERPRISE** or DBE -- means a small business concern which is certified by an authorized agency and:
 - (1) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

- (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

For purposes of USDOT assisted contracts, the term Disadvantaged Business Enterprise shall be deemed to include Women-Owned Business Enterprises.

- (g) **EXECUTIVE DEPARTMENT** -- means the State of Oregon's Executive Department.
- (h) **JOINT VENTURE** -- is defined as an association of two or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge. In a joint venture between a DBE/WBE, the DBE/WBE must be responsible for a clearly defined portion of the work to be performed and must share in the ownership, control, management responsibilities, risks and profits of the joint venture. A joint venture of a DBE/WBE must receive Metro approval prior to contract award to be counted toward any DBE/WBE contract goals.
- (i) **LABOR AND MATERIALS CONTRACT** -- is a contract including a combination of service and provision of materials other than construction contracts. Examples may include plumbing repair, computer maintenance or electrical repair, etc.
- (j) **LESSEE** -- means a business or person that leases, or is negotiating to lease, property from a recipient or the Department on the recipient's or Department's facility for the purpose of operating a transportation-related activity or for the provision of goods or services to the facility or to the public on the facility.
- (k) **OREGON DEPARTMENT OF TRANSPORTATION or "ODOT"** -- means the State of Oregon's Department of Transportation.
- (l) **PERSONAL SERVICES CONTRACT** -- means a contract for services of a personal or professional nature.
- (m) **PROCUREMENT CONTRACT** -- means a contract for the purchase or sale of supplies, materials, equipment, furnishings or other goods not associated with a construction or other contract.
- (n) **RECIPIENT** -- means any entity, public or private, to whom USDOT financial assistance is extended, directly or through another recipient for any program.
- (o) **SMALL BUSINESS CONCERN** -- means a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.
- (p) **SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS or DISADVANTAGED INDIVIDUALS** -- means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans or Asian-Indian Americans and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of

the Small Business Act. Certifying recipients shall make a rebuttable presumption that individuals in the following groups are socially and economically disadvantaged. Certifying recipients also may determine, on a case-by-case basis, that individuals who are not a member of one of the following groups are socially and economically disadvantaged:

- (1) "Black Americans" -- which includes persons having origins in any of the Black racial groups of Africa;
 - (2) "Hispanic Americans" -- which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Portuguese-American, Spanish culture or origin, regardless of race;
 - (3) "Native Americans" -- which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - (4) "Asian-Pacific Americans" -- which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas; and
 - (5) "Asian-Indian Americans" -- which includes persons whose origins are from India, Pakistan, and Bangladesh.
- (q) **USDOT ASSISTED CONTRACT** -- means any contract or modification of a contract between Metro and a contractor which is paid for in whole or in part with USDOT financial assistance.
- (r) **USDOT FINANCIAL ASSISTANCE** -- means financial aid provided by USDOT or the United State Railroad Association to a recipient, but does not include a direct contract. The financial aid may be provided directly in the form of actual money, or indirectly in the form of guarantees authorized by statute as financial assistance services of Federal personnel, title or other interest in real or personal property transferred for less than fair market value, or any other arrangement through which the recipient benefits financially, including licenses for the construction or operation of a Deep Water Port.
- (s) **WOMEN OWNED BUSINESS ENTERPRISE or WBE** -- means a small business concern, as defined pursuant to Section 3 of the Small Business Act and implementing regulations which is owned and controlled by one or more women and which is certified by an authorized agency. "Owned and controlled" means a business which is at least 51 percent owned by one or more women or, in the case of publicly owned business, at least 51 percent of the stock of which is owned by one or more women, and whose management and daily business operations are controlled by one or more women. For purposes of USDOT assisted contracts, the term Disadvantaged Business Enterprise shall be deemed to include Women-Owned Business Enterprises.

(Ordinance No. 165, §3; amended by Ordinance No. 84-181, §2; all previous Ordinances repealed by Ordinance No. 87-231, §1; and Ordinance No. 88-252, §1)

§2.04.115 Notice to Contractors, Subcontractors and Sub-recipients:

Contractors, subcontractors and sub-recipients of Metro accepting contracts or grants under the Program which are USDOT-assisted shall be advised that failure to carry out the requirements set forth in 49 CFR §23.43(a) shall constitute a breach of contract and, after notification by Metro, may result in termination of the agreement or contract by Metro or such remedy as Metro deems appropriate. Likewise, contractors accepting locally-funded contracts under the Program shall be advised that failure to carry out the applicable provisions of the Program shall constitute a breach of contract and, after notification by Metro, may result in termination or such other remedy as Metro deems appropriate.

(Ordinance No. 83-165, §4; all previous Ordinances repealed by Ordinance No. 87-216, §1; amended by Ordinance No. 87-231, §1)

§2.04.120 Liaison Officer

- (a) The Executive Officer shall by executive order, designate a Disadvantaged Business Liaison Officer and, if necessary, other staff adequate to administer the Program. The Liaison Officer shall report directly to the Executive Officer on matters pertaining to the Program.
- (b) The Liaison Officer shall be responsible for developing, managing and implementing the program, and for disseminating information on available business opportunities so that DBEs and WBEs are provided an equitable opportunity to bid on Metro contracts. In addition to the responsibility to assure implementation of the Program.

(Ordinance No. 83-165, §5; amended by Ordinance No. 86-197, §1; all previous Ordinances repealed by Ordinance No. 97-216, §1; amended by Ordinance No. 87-231, §1)

§2.04.125 Directory

A directory of DBEs and WBEs certified by ODOT or the Executive Department, as applicable shall be maintained by the Liaison Officer to facilitate identifying such businesses with capabilities relevant to general contracting requirements and particular solicitations. The directory shall be available to contract bidders and proposers in their efforts to meet Program requirements.

(Ordinance No. 83-165, §6; all previous Ordinances repealed by Ordinance No. 87-216, §1; amended by Ordinance No. 87-231, §1)

§2.04.130 Minority-Owned Banks

Metro will seek to identify minority-owned banks within the policies adopted by the Metro Council and make the greatest feasible use of their services. In addition, Metro will encourage prime contractors, subcontractors and consultants to utilize such services by sending them brochures and service information on certified DBE/WBE banks.

(Ordinance No. 83-165, §7; amended by Ordinance No. 84-181, §3; all previous Ordinances repealed by Ordinance No. 87-216, §1; amended by ordinance No. 87-231, §1)

§2.04.135 Affirmative Action and Equal Opportunity Procedures

Metro shall use affirmative action techniques to facilitate DBE and WBE participation in contracting activities. These techniques include:

- (a) Arranging solicitations, time for the presentation of bids, quantities specifications, and delivery schedules so as to facilitate the participation of DBEs and WBEs.
- (b) Referring DBEs and WBEs in need of management assistance to established agencies that provide direct management assistance to such businesses.
- (c) Carrying out information and communications programs on contracting procedures and specific contracting opportunities in a timely manner, with programs being bilingual where appropriate.
- (d) Distribution of copies of the program to organizations and individuals concerned with DBE/WBE programs.
- (e) Periodic reviews with department heads to insure that they are aware of the program goals and desired activities on their parts to facilitate reaching the goals. Additionally, departmental efforts toward and success in meeting DBE/WBE goals for department contracts shall be factors considered during annual performance evaluations of the department heads.
- (f) Monitor and insure that Disadvantaged and Women-Owned Business Enterprises, planning centers and likely DBE/WBE contractors are receiving requests for bids, proposals and quotes.
- (g) Study the feasibility of certain USDOT-assisted contracts and procurements being set aside for DBE/WBE participation.
- (h) Distribution of lists to potential DBE/WBE contractors of the types of goods and services which Metro regularly purchases.
- (i) Advising potential DBE/WBE vendors that Metro does not certify DBE/WBEs, and directing them to ODOT until December 31, 1987, and, thereafter, to the Executive Department.
- (j) Specifying purchases by generic title rather than specific brand name whenever feasible.
- (k) Establishing an interdepartmental contract management committee which will meet regularly to monitor and discuss, among other issues, potential DBE and WBE participation in contracts. In an effort to become more knowledgeable regarding DBE and WBE resources, the committee shall also invite potential DBE and WBE contractors to attend selected meetings.

- (l) Requiring that at least one DBE or WBE vendor or contractor be contacted for all contract awards which are not exempt from Metro's contract selection procedures and which are 1) for more than \$500, but not more than \$15,001 in the case of non-personal services contracts; and 2) for more than \$2,500, but not more than \$10,001 for personal services contracts. The Liaison Officer may waive this requirement if he/she determines that there are no DBEs or WBEs on the certification list capable of providing the service or item. For contracts over the dollar amounts indicated in this section, all known DBEs and WBEs in the business of providing the service or item(s) required shall be mailed bid or proposal information.
- (m) The Executive Officer or his/her designee, may establish and implement additional affirmative action techniques which are designed to facilitate participation of DBEs and WBEs in Metro contracting activities.

(Ordinance No. 83-165, §8; amended by Ordinance No. 84-181, §4; Ordinance No. 87-216, §1; all previous Ordinances repealed by Ordinance No. 87-216, §1; amended by Ordinance No. 87-231, §1)

§2.04.140 Certification of Disadvantaged Business Eligibility

- (a) To participate in the Program as a DBE or WBE, contractors, subcontractors and joint ventures must have been certified by an authorized certifying agency as described in subsection (b) of this section.
- (b) Metro will not perform certification or recertification of businesses or consider challenges to socially and economically disadvantaged status. Rather, Metro will rely upon the certification and recertification processes of ODOT and will utilize ODOT's certification list until December 31, 1987, and, thereafter, the Executive Department's list in determining whether a prospective contractor or subcontractor is certified as a DBE or WBE. A prospective contractor or subcontractor must be certified as a DBE or WBE by one of the above agencies, as applicable, and appear on the respective certification list of said agency, prior to the pertinent bid opening or proposal submission date to be considered by Metro to be an eligible DBE or WBE and be counted toward meeting goals. Metro will adhere to the Recertification Rulings resulting from §105(f) or state law, as applicable.
- (c) Prospective contractors or subcontractors which have been denied certification by one of the above agencies may appeal such denial to the certifying agency pursuant to applicable law. However, such appeal shall not cause a delay in any contract award by Metro. Decertification procedures for USDOT-assisted contractor or potential contractors will comply with the requirements of Appendix A "Section by Section Analysis" of the July 21, 1983, Federal Register, Volume 45, No. 130, page 45287, and will be administered by the agency which granted certification.
- (d) Challenges to certification or to any presumption of social or economic disadvantage with regard to the USDOT-assisted portion of this Program, as provided for in 49 CFR §23.69, shall conform to and be processed under the procedures prescribed by each agency indicated in paragraph (b) of this section. That challenge procedure provides that:

- (1) Any third party may challenge the socially and economically disadvantaged status of any individual (except an individual who has a current 8(a) certification from the Small Business Administration) presumed to be socially and economically disadvantaged if that individual is an owner of a firm certified by or seeking certification from the certifying agency as a disadvantaged business. The challenge shall be made in writing to the recipient.
- (2) With its letter, the challenging party shall include all information available to it relevant to a determination of whether the challenged party is in fact socially and economically disadvantaged.
- (3) The recipient shall determine, on the basis of the information provided by the challenging party, whether there is reason to believe that the challenged party is in fact not socially and economically disadvantaged.
 - (i) if the recipient determines that there is not reason to believe that the challenged party is not socially and economically disadvantaged, the recipient shall so inform the challenging party in writing. This terminates the proceeding.
 - (ii) If the recipient determines that there is reason to believe that the challenged party is not socially and economically disadvantaged, the recipient shall begin a proceeding as provided in paragraphs (b), (4), (5) and (6) of this paragraph.
- (4) The recipient shall notify the challenged party in writing that his or her status as a socially and economically disadvantaged individual has been challenged. The notice shall identify the challenging party and summarize the grounds for the challenge. The notice shall also require the challenged party to provide to the recipient, within a reasonable time, information sufficient to permit the recipient to evaluate his or her status as a socially and economically disadvantaged individual.
- (5) The recipient shall evaluate the information available to it and make a proposed determination of the social and economic disadvantage of the challenged party. The recipient shall notify both parties of this proposed determination in writing, setting forth the reasons for its proposal. The recipient shall provide an opportunity to the parties for an informal hearing, at which they can respond to this proposed determination in writing and in person.
- (6) Following the informal hearing, the recipient shall make a final determination. The recipient shall inform the parties in writing of the final determination, setting forth the reasons for its decision.
- (7) In making the determinations called for in paragraphs (b) (3) (5) and (6) of this paragraph, the recipient shall use the standards set forth in Appendix C of this sub-part.

- (8) During the pendency of a challenge under this section, the presumption that the challenged party is a socially and economically disadvantaged individual shall remain in effect. Federal Regulation 49 CFR §23.69.

(Ordinance No. 83-165, §9; amended by Ordinance No. 84-181, §5; all previous Ordinances repealed by Ordinance No. 87-216, §1; amended by Ordinance No. 87-231, §1; and Ordinance No. 88-252, §1)

§2.04.145 Annual Disadvantaged Business Goals

- (a) The Metro Council shall, by resolution each June, establish annual DBE goals and for locally-funded contracts, separate WBE goals for the ensuing fiscal year. Such annual goals shall be established separately for construction contracts labor and materials contracts, personal services contracts, procurement contracts, and USDOT-assisted contracts regardless of type.
- (b) Annual goals will be established taking into consideration the following factors:
- (1) projection of the number and types of contracts to be awarded by Metro;
 - (2) projection of the number, expertise and types of DBEs and WBEs likely to be available to compete for the contracts;
 - (3) past results of Metro's efforts under the Program;
 - (4) for USDOT-assisted contract goals, existing goals of other local USDOT recipients and their experience in meeting these goals; and
 - (5) for locally-funded contract goals, existing goals of other Portland metropolitan area contracting agencies, and their experience in meeting these goals.
- (c) Annual goals for USDOT-assisted contracts must be approved by the United States Department of Transportation. Federal Regulation 49 CFR, §23.45(g)(3).
- (d) Metro will publish notice that the USDOT-assisted contract goals are available for inspection when they are submitted to USDOT or other federal agencies. They will be made available for thirty (30) days following publication of the notice. Public comment will be accepted for forty-five (45) days following publication of the notice.
- (e) Metro will publish notice regarding proposed locally-funded contract goals not later than ten (10) days prior to adoption of the goals.

(Ordinance No. 83-165, §10; amended by Ordinance No. 86-197, §1; all previous Ordinances repealed by Ordinance No. 87-216; amended by Ordinance No. 87-231, §1; and Ordinance No. 88-252, §1)

§2.04.150 Contract Goals

- (a) The annual goals established for construction contracts shall apply as individual contract goals for construction contracts over \$50,000.
- (b) The Liaison Officer may set a contract goal for any contract other than construction contracts over \$25,000. The setting of such contract goal shall be made in writing prior to the solicitation of bids for such contract. Contract goals for contracts other than construction contracts over \$50,000 shall be set at the discretion of the Liaison Officer and shall not be tied, necessarily, to the annual goal for such contract type.
- (c) Even though no DBE/WBE goals are established at the time that bid/proposal documents are drafted, the Liaison Officer may direct the inclusion of a clause in any RFP or bid documents for any contract described in this section which requires that the prime contractor, prior to entering into any subcontracts, make good faith efforts, as that term is defined in §2.03.160, to achieve DBE/WBE participation in the same goal amount as the current annual goal for that contract type.
- (d) Contract goals may be complied with pursuant to §2.04.160 and/or §2.04.175. The extent to which DBE/WBE participation will be counted toward contract goals is governed by the latter section.

(Ordinance No. 83-165, §11; repealed by Ordinance No. 87-216, §1; amended by Ordinance No. 87-231, §1; and Ordinance No. 88-252, §1)

§2.04.155 Contract Award Criteria

- (a) To be eligible for award of contracts containing a DBE/WBE goal, prime contractors must either meet or exceed the specific goal for DBE and WBE participation, or prove that they have made good faith efforts to meet the goal prior to the time bids are opened or proposals are due. Bidders/Proposers are required to utilize the most current list of DBEs and WBEs certified by ODOT until December 31, 1987, and, thereafter, by the Executive Department, in all of the bidders'/proposers' good faith efforts solicitations. The address where certified lists may be obtained shall be included in all applicable bid/proposal documents.
- (b) All invitations to bid or request for proposals on contracts for which goals have been established shall require all bidders/proposers to submit with their bids and proposals a statement indicating that they will comply with the contract goal or that they have made good faith efforts as defined in §2.04.160 to do so. To document the intent to meet the goals, all bidders and proposers shall complete and endorse a Disadvantaged Business Program Compliance form and include said form with bid or proposal documents. The form shall be provided by Metro with bid/proposal solicitations.
- (c) Agreements between a bidder/proposer and a DBE/WBE in which the DBE/WBE promises not to provide subcontracting quotations to other bidders/proposers are prohibited.

- (d) Apparent low bidders/proposers shall, by the close of the next working day following bid opening (or proposal submission date when no public opening is had), submit to Metro detailed DBE and WBE Utilization Forms listing names of DBEs and WBEs who will be utilized and the nature and dollar amount of their participation. This form will be binding upon the bidder/proposer. Within five working days of bid opening or proposal submission date, such bidders/proposers shall submit to Metro signed Letters of Agreement between the bidder/proposer and DBE/WBE subcontractors and suppliers to be utilized in performance of the contract. A sample Letter of Agreement will be provided by Metro. The DBE and WBE Utilization Forms shall be provided by metro with bid/proposal documents.
- (e) An apparent low bidder/proposer who states in its bid/proposal that the DBE/WBE goals were not met, but that good faith efforts within two working days of bid opening or proposal submission in accordance with §2.04.160. metro reserves the right to determine the sufficiency of such efforts.
- (f) Except as provided in paragraph (g) of this section, apparent low bidders or apparent successful proposers who state in their bids/proposals that they will meet the goals or will show good faith efforts to meet the goals, but who fail to comply with paragraph (d) or (e) of this section, shall have their bids or proposals rejected and shall forfeit any required bid security or bid bond. In that event the next lowest bidder or, for personal services contracts, the firm which scores second highest shall, within two days of notice of such ineligibility of the low bidder, submit evidence of goal compliance or good faith effort as provided above. This process shall be repeated until a bidder or proposer is determined to meet the provisions of this section or until Metro determines that the remaining bids are not acceptable because of amount of bid or otherwise.
- (g) The Liaison Officer, at his or her discretion, may waive minor irregularities in a bidder's or proposer's compliance with the requirements of this section provided, however, that the bid or proposal substantially complies with public bidding requirements as required by applicable law.

(Ordinance No. 83-165, §12; amended by Ordinance No. 86-197, §1; all previous Ordinances repealed by Ordinance No.87-216, §1; amended by Ordinance No. 87-231, §1)

§2.04.160 Determination of Good Faith Efforts

- (a) Bidders or Proposers on USDOT-assisted contracts to which DBE goals apply must, to be eligible for contract award, comply with the applicable contract goal or show that good faith efforts have been made to comply with the goal. Good faith efforts should include at least the following standards established in the amendment to Federal Regulation 49 CFR §23.45(h), Appendix A, dated Monday, April 27, 1981. A showing of good faith efforts must include written evidence of at least the following:
 - (1) Attendance at any pre-solicitation or pre-bid meetings that were scheduled by Metro to inform Disadvantaged and Women-Owned Business

Enterprises of contracting and subcontracting or material supply opportunities available on the project;

- (2) Advertisement in trade association, general circulation, minority and trade-oriented, women-focus publications, if any and through a minority-owned newspaper or minority-owned trade publication concerning the subcontracting or material supply opportunities at least ten (10) days before bids or proposals are due;
- (3) Written notification to a reasonable number, but no less than five (5) DBE firms that their interest in the contract is solicited. Such efforts should include the segmenting of work to be subcontracted to the extent consistent with the size and capability of DBE firms in order to provide reasonable subcontracting opportunities. Each bidder should send solicitation letters inviting quotes or proposals from DBE firms, segmenting portions of the work and specifically describing, as accurately as possible, the portions of the work for which quotes or proposals are solicited from DBE firms and encouraging inquiries for further details. Letters that are general and do not describe specifically the portions of work for which quotes or proposals are desired are discouraged, as such letters generally do not bring responses. It is expected that such letter will be sent in a timely manner so as to allow DBE sufficient opportunity to develop quotes or proposals for the work described.
- (4) Evidence of follow-up to initial solicitations of interest, including the following:
 - (A) the names, addresses, telephone numbers of all DBE contacted;
 - (B) a description of the information provided to DBE firms regarding the plans and specifications for portions of the work to be performed; and
 - (C) a statement of the reasons for non-utilization of DBE firms, if needed to meet the goal.
- (5) Negotiation in good faith with DBE firms. The bidder shall not, without justifiable reason, reject as unsatisfactory bids prepared by any DBE firms;
- (6) Where applicable, the bidder must provide advice and assistance to interested DBE firms in obtaining bonding, lines of credit or insurance required by Metro or the bidder;
- (7) Overall, the bidder's efforts to obtain DBE participation must be reasonably expected to produce a level of participation sufficient to meet Metro's goals; and
- (8) The bidder must use the services of minority community organizations, minority contractor groups, local, state and federal minority business assistance offices and other organizations identified by the Executive Department's Advocate for Minority and Women Business that provide assistance in the recruitment and placement of DBEs and WBEs.

(b) Bidders or proposers on locally-funded contracts to which DBE/WBE goals apply shall achieve the applicable contract goal or demonstrate that they have made good faith efforts to achieve the goals. Good faith efforts shall include written documentation of at least the following actions by bidders:

- (1) Attendance at any pre-solicitation or pre-bid meetings that were scheduled by Metro to inform DBEs and WBEs of contracting and subcontracting or material supply opportunities available on the project;

Documentation required: Signature of representative of bidder or proposer on pre-bid meeting attendance sheet.

- (2) Identifying and selecting specific economically feasible units of the project to be performed by DBEs or WBEs to increase the likelihood of participation by such enterprises;

Minimum documentation required: At least the documentation required under subsection (4) below.

- (3) Advertising in, at a minimum, a newspaper of general circulation, and trade association, minority and trade oriented, women-focused publications, if any, concerning the subcontracting or material supply opportunities on the project at least ten (10) days before bids or proposals are due;

Documentation required: Copies of ads published.

- (4) Providing written notice soliciting sub-bids/proposals to not less than five (5) DBEs or WBEs for each subcontracting or material supply work item selected pursuant to (2) above not less than ten (10) days before bids/proposals are due.

If there are less than five (5) certified DBEs/WBEs listed for that work or supply specialty then the solicitation must be mailed to at least the number of DBEs/WBEs listed for that specialty. The solicitation shall include a description of the work for which subcontract bids/proposals are requested and complete information on bid/proposal deadlines along with details regarding where project specifications may be reviewed.

Documentation required: Copies of all solicitation letters sent to DBE/WBE along with a written statement from the bidder/proposer that all the letters were sent by regular or certified mail not less than ten (10) days before bids/proposals were due.

- (5) Making, not later than five (5) days before bids/proposals are due, follow-up phone calls to all DBEs/WBEs who have not responded to the solicitation letters to determine if they would be submitting bids and/or to encourage them to do so.

Minimum documentation required: Log showing a) dates and times of follow-up calls along with names of individuals contacted and individuals

placing the calls; and b) results attained from each DBE/WBE to whom a solicitation letter was sent (e.g., bid submitted, declined, no response). In instances where DBE/WBE bids were rejected, the dollar amount of the bid rejected from the DBE/WBE must be indicated along with the reason for rejection and the dollar amount of the bid which was accepted for that subcontract or material supply item.

- (6) Using the services of minority community organizations, minority contractor groups, local, state and federal minority business assistance offices and other organizations identified by the Executive Department's Advocate for Minority and Women Business that provide assistance in the recruitment and placement of DBEs and WBEs; where applicable, advising and assisting DBEs and WBEs in obtaining lines of credit or insurance required by Metro or the bidder/proposer; and, otherwise, making efforts to encourage participation by DBEs and WBEs which could reasonable be expected to produce a level of participation sufficient to meet the goals.

Minimum documentation required: Letter form bidder/proposer indicating all special efforts made to facilitate attainment of contract goals, the dates such actions were taken and results realized.

- (7) Notwithstanding any other provision of this section, bidders and proposers on locally-funded contracts to which DBE/WBE goals apply need not accept the bid of a DBE or WBE on any particular subcontract or material supply item if the bidder/proposer demonstrates that none of the DBEs or WBEs submitting bids were the lowest responsible, responsive and qualified bidders/proposers on that particular subcontract item and that the subcontract item was awarded to the lowest responsible, responsive bidder/proposer.

Metro reserves the right to require additional written documentation of good faith efforts and bidders and proposers shall comply with all such requirements by Metro. It shall be a rebuttable presumption that a bidder or proposer has not performed or has not submitted documentation of all of the above actions.

(Ordinance No. 83-165, §13; amended by Ordinance No. 84-181, §6 and Ordinance No. 86-197, §1; all previous Ordinances repealed by Ordinance No. 87-216, §1; amended by Ordinance No. 87-231, §1; and Ordinance No. 88-252, §1)

§2.04.165 Replacement of DBE or WBE Subcontractors

Prime contractors shall not replace a DBE/WBE subcontractor with another subcontractor, either before contract award or during contract performance, without prior Metro approval. Prime contractors who replace a DBE or WBE subcontractor shall replace such DBE/WBE subcontractor with another certified DBE/WBE subcontractor or make good faith efforts as described in the preceding section to do so.

(Ordinance No. 83-165, §14; amended by Ordinance No. 86-197, §1; all previous Ordinances repealed by Ordinance No. 87-216, §1; amended by Ordinance No. 87-231, §1)

§2.04.170 Records and Reports

- (a) Metro shall develop and maintain a recordkeeping system to identify and assess DBE and WBE contract awards, prime contractors' progress in achieving goals and affirmative action efforts. Specifically, the following records will be maintained:
 - (1) Awards to DBEs and WBEs by number, percentage and dollar amount.
 - (2) A description of the types of contracts awarded.
 - (3) The extent to which goals were exceeded or not met and reasons therefor.
- (b) All DBE and WBE records will be separately maintained. Required DBE and WBE information will be provided to federal agencies and administrators on request.
- (c) The Liaison Officer shall prepare reports, at least semiannually, on DBE and WBE participation to include the following:
 - (1) the number of contracts awarded;
 - (2) categories of contracts awarded;
 - (3) dollar value of contracts awarded;
 - (4) percentage of the dollar value of all contracts awarded to DBE/WBE firms in the reporting period; and
 - (5) the extent to which goals have been met or exceeded.

(Ordinance No. 83-165, §15; amended by Ordinance No. 84-181, §7, and Ordinance No. 86-197, §1; all previous Ordinances repealed by Ordinance No. 87-216, §1; amended by Ordinance No. 87-231, §1)

§2.04.175 Counting Disadvantaged Business Participation Toward Meeting Goals

- (a) DBE/WBE participation shall be counted toward meeting the goals on each contract as follows:
 - (1) Subject to the limitations indicated in paragraphs (2) through (8) below, the total dollar value of a prime contract or subcontract to be performed by DBEs or WBEs is counted toward the applicable goal for contract award purposes as well as annual goal compliance purposes.
 - (2) The total dollar value of a contract to a disadvantaged business owned and controlled by both disadvantaged males and non-disadvantaged females is counted toward the goals for disadvantaged businesses and women, respectively, in proportion to the percentage of ownership and control of each group in the business.

The total dollar value of a contract with a disadvantaged business owned and controlled by disadvantaged women is counted toward either the disadvantaged business goal or the goal for women, but not to both. Metro shall choose the goal to which the contract value is applied.

- (3) Metro shall count toward its goals a portion of the total dollar value of a contract with an eligible joint venture equal to the percentage of the ownership and control of the disadvantaged or female business partner in the joint venture.
- (4) Metro shall count toward its goals only expenditures to DBEs and WBEs that perform a commercially useful function in the work of a contract. A DBE or WBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether a DBE or WBE is performing a commercially useful function, Metro shall evaluate the amount of work subcontracted, industry practices and other relevant factors.
- (5) Consistent with normal industry practices, a DBE or WBE may enter into subcontracts. If a DBE or WBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the DBE or WBE shall be presumed not to be performing a commercially useful function. The DBE or WBE may present evidence to Metro to rebut this presumption. Metro's decision on the rebuttal of this presumption is subject to review by USDOT for USDOT-assisted contracts.
- (6) A DBE or WBE which provides both labor and materials may count toward its disadvantaged business goals expenditures for materials and supplies obtained from other than DBE or WBE suppliers and manufacturers, provided that the DBE or WBE contractor assumes the actual and contractual responsibility for the provision of the materials and supplies.
- (7) Metro shall count its entire expenditure to a DBE or WBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale).
- (8) Metro shall count against the goals 60 percent of its expenditures to DBE or WBE suppliers that are not manufacturers, provided that the DBE or WBE supplier performs a commercially useful function in the supply process.
- (9) When USDOT funds are passed-through by Metro to other agencies, any contracts made with those funds and any DBE participation in those contracts shall only be counted toward Metro's goals. Likewise, any USDOT funds passed-through to Metro from other agencies and then used for contracting shall count only toward that agency's goals. Project

managers responsible for administration of pass-through agreements shall include the following language in those agreements:

- (a) **Policy.** It is the policy of the Department of Transportation that minority business enterprises as defined in §49 CFR Part 23, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this agreement. Consequently, the MBE requirements of §49 CFR Part 23 apply to this agreement.
- (b) **MBE Obligation.** The recipient or its contractor agrees to ensure that minority business enterprises as defined in §49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with §39 CFR Part 23 to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of USDOT-assisted contracts.
- (b) **DBE or WBE participation shall be counted toward meeting annual goals as follows:**
 - (1) Except as otherwise provided below, the total dollar value of any contract which is to be performed by a DBE or WBE is counted toward meeting annual goals.
 - (2) The provisions of paragraphs (a)(2) through (2)(8) of this section, pertaining to contract goals, shall apply equally to annual goals.

(Ordinance No. 83-165, §16; amended by Ordinance No. 84-181, §8; and Ordinance No. 86-197, §1; all previous Ordinances repealed by Ordinance No. 87-216, §1; amended by Ordinance No. 87-231, §1; and Ordinance No. 88-252, §1)

§2.04.180 Compliance and Enforcement

- (a) Metro shall reserve the right, at all times during the period of any contract, to monitor compliance with the terms of this chapter and the contract and with any representation made by a contractor prior to contract award pertaining to DBE and WBE participation in the contract.
- (b) The Liaison Officer may require, at any stage of contract completion, documented proof from the contractor of actual DBE and WBE participation.

(Ordinance No. 83-165, §17; all previous Ordinances repealed by Ordinance No. 87-216, §1; amended by Ordinance No. 87-231, §1)

Inter-department Purchase Requisition/Order - Purchase order which renders fiscal impact on more than one department.

Late Bid - Any bid received after the time and date set in the bid documents for receipt of bid.

Low Tie - Bids from two or more responsible bidders bid that are identical in price, fitness, availability, and quality and which meet all requirements and criteria set forth in the bid documents.

Lowest Responsive and Responsible Bidder - The lowest bidder who has substantially complied with all prescribed public bidding procedures and requirements and who has not been disqualified under ORS 279.037.

Notification of Award - Written communication to the lowest responsive and responsive bidder or proposer that the Commission has conditionally determined to award the contract to that bidder.

Open Purchase Requisition/Order (Open PR/O) - A purchase where some items are back ordered or services are rendered on a particular schedule. Vendors submit separate invoices for each order.

Payment Authorization (PA) - METRO form to be submitted with all invoices to authorize METRO-Accounting to remit payment to the vendor.

Personal Services Contract - The purchase of professional, technical, or expert services (i.e. personal in nature) requiring special knowledge or training. Contracts for procuring personal services are separated into three levels: Level I consists of contract prices less than \$2,501, and Level II includes contracts greater than \$2,501 but less than \$25,000. Level III consists of contracts greater than \$25,000. Procedures for procuring services differ depending on the level category.

Proposal - A competitive offer for personal services where specifications and price will not necessarily be the predominant award criteria.

Public Improvement Contract - Contract for the construction, reconstruction or major renovation on real property. Does not include emergency work, minor alteration or ordinary repair or maintenance.

Purchase Requisition/Order (PR/O) - Five-part form to authorize vendors to provide goods or services. The form acts as a purchase requisition (pre-numbered) and purchase order (when Purchasing Coordinator assigns purchase order number and secures appropriate signatures).

Purchasing Coordinator (PC)- The individual appointed by the General Manager who is delegated the responsibility of administering the purchasing and outreach policies and such related duties as may be described by the General Manager.

Request for Bid - Formal solicitation for bids in which price, responsiveness and responsibility will be the award criteria.

Request for Proposal - Formal solicitation for proposals in which price will not necessarily be the award criteria. Award criteria is predetermined and will be included in the bid documents.

Request to Bid (RTB) - Written request presented to the General Manager by management staff stating the need for goods or services and other pertinent information as described in these rules.

Responsible Bidder - A bidder whose reputation, past performance, and business and financial capabilities satisfy the needs for a specific contract. (ORS 279.037)

Responsive Bidder - A bid which does not vary from the specifications and terms set out in the invitation for bids.

RFP Documents - Instructions and information to vendors concerning proposal submission requirements.

Sole Source Contract - Any contract for which it can be documented that there is only one qualified provider of the required service or material.

Supplemental Use Purchase Requisition/Order - Purchase order based on a contract between a vendor and any other government entity which authorizes the Commission to make purchases pursuant to that government entity's initial contract.

Target Area Directory - List of state certified Disadvantaged Business Enterprises, Women Owned Business Enterprises and Emerging Small Businesses located in the identified target area.

INFORMAL PURCHASING PROCEDURES

EXECUTION:

The originator shall complete a purchase requisition/order (PR/O) identifying the facility, department, and type of expense. Any changes made to the PR/O must be initialed by the originator, department head, or person making the change. The originator secures the signature of the appropriate department head and forwards to the purchasing coordinator (PC).

The originator shall complete a purchase requisition/order (PR/O) identifying the facility, department, and type of expense. Any changes made to the PR/O must be initialed by the originator, department head, or person making the change. The originator secures the signature of the appropriate department head and forwards to the purchasing coordinator.

To purchase services less than \$2,500, the originator checks the Target Area Directory to determine whether a state certified vendor which provides the required services is located in the target area. If a vendor is identified in the directory, the originator contacts that vendor to determine whether the services are available to meet the department's needs. If the needs of the department can be met by the target area vendor the purchase shall be secured from that vendor.

If there are no vendors identified in the Target Area Directory, the originator may secure the goods from a vendor outside the target area. No additional documentation is required.

To purchase services valued between \$2,500 and \$31,000 a competitive quote sheet must be attached to the PR/O to document at least four (4) competitive quotes. At least one quote must be obtained from a target area business and one quote must be obtained from a state certified Disadvantaged Business Enterprise (DBE) or Women Owned Enterprise (WBE). The target area business quote does not meet the DBE or WBE quote requirement.

If a quote from a DBE, WBE or target area business cannot be obtained, evidence of a reasonable effort must be documented and attached as well. Failure to provide required information may delay processing.

Inter-department PR/O

Purchases which impact more than one department must be approved by all affected department heads. A verbal approval is sufficient, provided that the department head obtaining the verbal approval documents that on the PR/O.

Supplemental Use PR/O

Competitive bidding procedures may be waived provided the Commission is an authorized user of any other government entity's procurement process. To procure goods or services pursuant to an existing government agreement it is necessary to follow the procedures established by that government entity.

Construction PR/O

If the PR/O is a construction purchase order, a written agreement shall be attached thereto and incorporated into the PR/O. The agreement shall contain applicable provisions relating specifically to ORS Chapter 279 such as bid security, performance bond and prevailing wage rates.

Submit the PR/O to the Purchasing Coordinator (PC) along with appropriate support documentation. The PC reviews the request checking for support documentation, completeness and proper approval. Upon verification, the PC assigns a purchase order number, signs and secures written approval from the Finance Department to assure budget control.

The PR/O is now an official purchase order.

The PC separates the PR/O and distributes it as follows:

Vendor	White Copy
Originating Department	Yellow Copy
Receiving Department	Pink Copy
Accounts Payable Dept.	Blue Copy
Purchasing Department	Green Copy

An originating department may request to receive the vendor copy in lieu of the PC mailing it to the vendor, in order to hand deliver it to the vendor as well as informing the vendor orally of the purchase order number to procure goods and services for immediate needs.

**PERFORMANCE/
ACCEPTANCE:**

After goods or services have been received, the receiving department must check the appropriate boxes on the receiving copy (pink) of the PR/O to verify receipt of the items or services rendered. The receiving copy must then be signed and forwarded, along with the appropriate packing slip and/or invoice, to accounts payable for payment.

Cost Overrun

In the event expenditures exceed the authorized amount by 20% or less, the receiving copy shall be denoted by the department head approving the cost overrun. If the overrun exceeds 20% of the authorized amount, the receiving copy shall be denoted by the department head and the

Director of Finance & Administration or designee approving the cost overrun.

If procurement is for a construction PR/O, the department head shall complete a notification of substantial completion and forward it with the receiving PR/O for final payment.

Open PR/Os: If the PR/O is open, the receiving department shall retain the original receiving copy until the last order is received. For interim deliveries or invoices, the receiving department shall submit copies of the receiving PR/O form (checked as to receipt and acceptance) to accounts payable.

PAYMENT:

Upon receipt of the invoice, the accounts payable clerk date stamps the invoice with the appropriate facility acceptance stamp. The accounts payable clerk then forwards the invoice to the department head for signature.

The department head signs the invoice in the proper place and returns to accounts payable (the receiving PR/O should be attached if not already in the possession of the accounts payable clerk).

Upon receipt of the signed invoice, the accounts payable clerk prepares a METRO-Payment Authorization Form (PA). For budget control the PA must be approved by the Director of Finance & Administration or designee. Upon proper approval the accounts payable clerk submits the original copy of the PA along with the vendor invoice and PR/O receiving copy (notification of substantial completion if applicable) to the METRO-Accounting Department which authorizes payment of the invoice.

FORMAL PURCHASING PROCEDURES

EXECUTION:

Preparatory

The originator forwards a Request to Bid (RTB) to the appropriate management level staff person stating the following: a detailed description of needed goods or services; scope of work; necessary qualifications; schedule time line; list of potential bidders; and other pertinent information.

The originator forwards the RTB to the PC. The PC consolidates the RTB into a Request for Bids (RFB) checking accuracy, completeness, and clarity. The PC then forwards it to the General Manager or designee for budget verification and/or revision and final approval.

The RFB is then forwarded to Legal Counsel for review, who approves as to legal requirement.

Following final approval by the General Manager and affirmative review by legal counsel, the General Manager or designee presents the RFB to the Commission for authorization to formally solicit bids. If approved by Commission resolution the PC prepares an advertisement and advertises the RFB pursuant to provisions of this section.

Bid Documents

- (1) Bid documents shall include the following:
 - (a) Instructions and information to bidders concerning the bid submission requirements. This includes the date and time for bid opening, the name and title of the person who is to receive the bid, the address of the office to which bids are to be delivered, and any other special information;
 - (b) Where applicable, the purchase description, specifications, delivery or performance schedule, inspection and acceptance requirements, and special evaluation factors;
 - (c) The contract terms and conditions including warranty and bonding or other bid security requirements, if required; and
 - (d) All addenda issued by the Commission.
- (2) Bid documents shall be mailed to at least three (3) potential bidders and to all State of Oregon certified DBEs and WBEs in the business of providing the service required.
- (3) Compliance and exceptions to the terms and conditions:
 - (a) Bidders are responsible for noting the terms and conditions included as applicable to each set of bid documents.

- (b) By signing and returning bid proposal form, the bidder acknowledges acceptance of and the intent to abide by the terms and conditions.
- (c) Any exceptions to the terms and conditions must be clearly stated in writing by the bidder in the signed returned proposal. The Commission reserves the right to reject any bid which takes exception to the terms and conditions. Exceptions to the terms and conditions become contractual obligations only upon written acceptance by the Commission.

Public Notice

- (1) Distribution - Bid documents and notice of the availability of bid documents shall be mailed or otherwise furnished to at least three (3) bidders for the purpose of securing competition. Notices of availability shall indicate where, when, and for how long the bid documents may be obtained. In general, the notice shall describe the service desired and may contain other appropriate information. The Commission may charge a fee or require a deposit for the bid documents.
- (2) Advertising - Solicitation for bids shall be published in at least one newspaper of general circulation in the area where the contract is to be performed and in as many additional publications as Commission staff deem necessary or desirable to ensure competition.
- (3) All bid advertisements shall state:
 - (a) The date and time of bid closing, which shall not be less than five (5) days after the date of the last publication of the advertisement;
 - (b) The date that pre-qualification applications must be received by, if applicable;
 - (c) The character of the work to be done or the items to be purchased;
 - (d) The office where specifications may be obtained;
 - (e) The name and title of the person designated to receive bids;
 - (f) The date, time, and place that bids will be opened;
 - (g) Whether or not a contractor or subcontractor is required to be licensed under ORS 468.883; and
 - (h) That a bid may be rejected for not complying with all prescribed public bidding procedures and requirements.
- (4) Public Inspection - Bid documents shall be maintained by the PC and shall be made available for public inspection.

Bid Submission and Preparation Instructions

- (1) Bids shall be typed or prepared in ink and shall be signed by the bidder or an authorized representative of the bidder.
- (2) Bids shall be made on the bid form provided.
- (3) Alterations or erasures, if any, shall be initialed in ink by the person signing the bid.
- (4) Bids shall contain a fully executed bid package, including all required documents and descriptive literature.
- (5) Bids shall be submitted in a sealed envelope. Bids shall be properly addressed to the person identified in the bid documents and appropriately marked.

Addenda to Bid Documents

Form changes (i.e. additions, deletions) to bid documents shall be according to this section:

- (1) Distribution - Addenda shall be sent to all prospective bidders known to have obtained the bid documents or attending any mandatory pre-bid conference(s).
- (2) Timeliness - Addenda shall be issued within a reasonable time (five (5) days prior to bid closing) to allow prospective bidders to consider them in preparing their bids, but in no case less than 72 hours before bid closing. If necessary, the Commission may notify prospective bidders by telegram, facsimile, or telephone, followed by a confirming written addenda.

Bidder Pre-qualifications

The Commission may require mandatory pre-qualification of bidders on forms prescribed by the Commission. When pre-qualification is required by the bid documents as a condition for bidding, the Commission shall not consider bids of any prospective bidder who is not qualified in accordance with the Commission's adopted criteria for pre-qualification.

If a bidder is currently pre-qualified by either the State Department of Transportation or the State Department of General Services to perform contracts, the bidder shall be rebuttably presumed qualified to perform the same kind work for the Commission (ORS 279.047).

Pre-bid Conferences

Pre-bid conferences may be held by the Commission staff to explain the procurement requirements or conduct site inspections. The Commission may require attendance at the pre-bid conference(s) as a condition for bidding.

Such conferences shall be announced to all prospective bidders in the bid documents. The pre-bid conferences shall be held within a reasonable time after the bid documents have been issued to allow bidders to attend, but sufficiently before bid closing to allow consideration of the conference results in preparing bid. Statements made at the pre-bid conferences shall

not change the bid documents, unless confirmed to all prospective bidders by means of a written addenda to the bid documents.

Bid Security

Bid security not to exceed ten percent (10%) of the bid amount shall be required for construction contracts. The Commission may require bid security for construction PR/Os or other contracts to guarantee acceptance of the award.

The following forms of bid security will be accepted by the Commission:

1. Surety bond from a company authorized to do business in the State of Oregon;
or
2. Cashier's check or certified check; or
3. Annual surety bond filed with the Commission (except construction contracts);
or
4. Irrevocable letter of credit.

The bid security shall be forfeited if the bidder fails to execute a properly awarded contract. The bid security of unsuccessful bidders may be returned to them when the bids have been opened and the contract has been awarded. Bid security of unsuccessful bidders shall not be retained by the Commission after the contract has been properly executed.

Receipt, Opening and Recording, and Inspecting Bids

- (1) Receipt - Upon receipt by the person designated in the bid documents, each bid and modification shall be time-stamped or marked by hand, but not opened. Each bid shall be stored in a secure place until bid opening. If bids or modifications are opened inadvertently or opened prior to bid opening because they were improperly identified by the bidder, the bids or modifications shall be resealed and stored for opening at the correct time. When this occurs, documentation of this procedure shall be placed in the bid file.
- (2) Opening and Recording - Bids and modifications shall be opened publicly at the time, date, and place designated in the bid documents.
- (3) Inspection - The opened bids shall be available for public inspection prior to award, except to the extent that the bidder designates trade secrets or other proprietary data to be confidential. Commission staff shall verify and determine that the confidential information claimed to be exempt is in fact exempt from disclosure under the Oregon Public Records Law. Prices, makes, model, or catalog number of items offered, scheduled delivery dates, and terms of payment shall be publicly available regardless of any designation to the contrary.

Late Bids, Late Withdrawals, and Late Modifications

Any bid, withdrawal or modification received after the time and date set in the bid documents as bid closing is late.

Late bids, withdrawals, or modifications will be returned to the bidder unopened. If the late submittal is inadvertently opened it will not be considered and will be returned to the bidder.

Low Tie

After bid opening if a low tie results the contract shall be awarded to the bidder whose goods or services have been manufactured or produced in this state (ORS 279.021 (1)).

Low tie bids that remain tied after application of the preceding statutory Oregon preference shall be awarded according to the following sequence:

- (1) Preference shall be given to the bidder whose principal offices, headquarters or principal place of business are located in Oregon.
- (2) If a tie still remains after applying (1) above, award shall be made by drawing lots among any tied Oregon bidders. Such bidders shall be given notice and an opportunity to be present when the lots are drawn.
- (3) If none of the tied bidders is located in Oregon, contract award shall be made by drawing lots.

Review of Responses

After review by the appropriate manager(s), PC, and requesting department, a selection is made. Legal Counsel reviews the selection to ensure legal compliance.

Commission Review and Approval

The General Manager or designee presents a contract award recommendation to the Commission. If approved, the Commission adopts a resolution to award the contract to the bidder that is both the lowest responsive and responsible which directs the General Manager to enter into the contract.

Award Notification

The PC notifies all bidders in writing of the contract award.

Performance Bond

To ensure faithful performance of construction contracts, the successful bidder shall deliver a good and sufficient bond in a sum equal to the contract price. The Commission may require performance security for construction PR/Os or other contracts. In lieu of a surety bond, the Commission permits a successful bidder to submit a cashier's check, certified check or irrevocable letter of credit in an amount equal to one hundred percent (100%) of the contract price.

Failure to furnish the performance bond prior to the stated deadline may result in the rejection of the bid and forfeiture of bid security and award to the next lowest responsive and responsible bidder.

Upon receipt of the performance bond, the PC submits a copy of the bond to the METRO Insurance Coordinator for verification.

Protest of Contract Award

Any aggrieved bidder who wishes to protest a contract award must notify the PC in writing within five (5) working days of the postmark date on the notice of award or the date of the alleged violation. The protest must describe the specific rule, regulation, statute, or procedure upon which the appeal is based and the specific alleged conduct which violates such authority. **Disagreement with the judgment exercised by evaluators in scoring a proposal is not a basis of appeal.**

The General Manager or designee shall respond to protestor within ten (10) working days of receipt of notice of appeal. The response shall reject the protest if the General Manager or designee finds that the protest is lacking in merit or uphold the appeal. Acceptance of the protest by the General Manager or designee may cause the rejection of all bids or proposals or the award of the contract to a different bidder.

If the protestor wishes to appeal the decision of the General Manager or designee, the protestor must submit a written appeal to the General Manager within five (5) working days of the postmark date on the General Manager's or designee's decision. This appeal shall be presented to the Commission at its next meeting by the General Manager or designee. The Commission shall, by resolution, reject the protest due to lack of merit or uphold the protest. Acceptance of the protest by the Commission may cause the rejection of all bids or proposals or may require the contract be awarded to a different bidder. If the proposer wishes to appeal the decision of the Commission, the protestor shall appeal to the Contract Review Board.

Contract Preparation

The PC coordinates preparation of all contracts to ensure compliance with ORS Chapter 279 as well as Commission directives.

All contracts shall contain a proviso which requires contractors to submit a contract summary report with each invoice. The summary report shall contain: the total contract amount, a breakdown of each prior billing, current contract balance, and the amount presently billed.

The PC obtains a contract number from METRO-Contract Division and forwards the contract to the successful bidder to be signed and returned with any required documents (certificates of insurance, worker's compensation insurance, etc.). The successful bidder must return the signed contract and required documents within the time limits as stated in the contract, specifications, or transmittal correspondence.

Upon receipt of the signed contract from the contractor, the PC secures the signature of the General Manager to complete the contract execution. Finally, the PC prepares and submits

a contract summary form to the METRO-Contract Division identifying vendor name, duration, compensation and type of action and expense.

AMENDMENTS:

Any contract amendment for additional work, including; change orders, extra work, field work orders, other changes in the original contract scope, which increases the original contract price may be made without competitive bidding or Commission approval, provided that budgeted funds are available, and the aggregate cost increase resulting from all amendments does not exceed: twenty-percent (20%) of the initial contract amount.

Amendments which exceed the preceding rule shall be approved by Commission resolution.

Amendments which do not exceed the preceding rule shall be approved by the Director of Finance & Administration and the General Manager.

**PERFORMANCE/
ACCEPTANCE:**

After receipt of all procured goods or services, the department head of the originating department shall complete a notification of substantial compliance and forward it to the PC.

PAYMENT: All invoices must include the contract number. Upon receipt of the invoice, the accounts payable clerk date stamps the invoice with the appropriate facility acceptance stamp. The accounts payable clerk then forwards the invoice to the department head for signature.

The department head signs the invoice in the proper place and returns it to accounts payable.

Upon receipt of the signed invoice, the accounts payable clerk prepares a METRO-Payment Authorization Form (PA). For budget control the PA must be approved by the Director of Finance & Administration or designee. Upon proper approval the accounts payable clerk submits the original copy of the PA along with the vendor invoice and contract summary statement to the METRO-Accounting Department which authorizes payment of the invoice.

PERSONAL SERVICE PROCEDURES

APPLICATION:

This section applies to any purchase of professional, technical, or expert services (i.e. personal in nature) requiring special knowledge or training. Examples of personal services are those services provided by planners, architects, engineers, lawyers, doctors, dentists, ministers, or consultants in the following areas: investments, insurance, advertising, graphics, training, public relations, data processing, and management systems, etc.

Services which do not fall under this category include secretarial, journeyman construction trades, janitorial, bus transportation, security, or similar services which require minimal training. Requests for these types of services must be procured under non-personal services purchasing procedures (informal or formal depending on the purchase price).

EXECUTION :

The originator shall complete a PR/O identifying the following: the facility, department, type of expense, and a detailed description of the services to be performed. Specific terms: (i.e. deliverable due dates, products, etc.) Any changes made to the PR/O must be initialed by the originator or department head or person making the change. The originator secures the signature of the appropriate department head. **Failing to provide required information may delay processing.**

To purchase services estimated to cost less than \$2,500 the originator checks the Target Area Directory to determine whether a state certified vendor which provides the required services is located in the target area. If a vendor is identified in the directory the originator contacts that vendor to determine whether the services are available to meet the department's needs. If the needs of the department can be met by the target area vendor the purchase shall be secured from that vendor.

If there are no vendors identified in the Target Area Directory, the originator may secure the services from a vendor outside the target area. No additional documentation is required.

To purchase services valued between \$2,500 and \$31,000 a competitive quote sheet must be attached to the PR/O to document at least four (4) competitive quotes. At least one quote must be obtained from a target area business and one quote must be obtained from a state certified Disadvantaged Business Enterprise (DBE) or Women Owned Enterprise (WBE). The target area business quote does not meet the DBE or WBE quote requirement.

Submit the PR/O to the Purchasing Coordinator (PC) along with appropriate support documentation. The PC reviews the request checking for support documentation, completeness, proper approval and prepares an agreement for personal services. The agreement is reviewed by the department head and Director of Finance & Administration . If approved as to terms described, the PC forwards the agreement in duplicate to the vendor for authorized

signature. Upon receipt of the signed agreements the PC secures the signature of the Director of Finance & Administration .

One original agreement is forwarded to the vendor along with the vendor copy of the PR/O. The other original agreement shall be maintained by the PC. A copy of the agreement shall be sent to the originating department.

The PC distributes other copies of the PR/O as follows:

Originating Department	Yellow Copy
Receiving Department	Pink Copy
Accts Payable Dept.	Blue Copy
Purchasing Department	Green Copy

AMENDMENTS:

Any contract amendment for additional services beyond the scope of the initial contract may be made without competitive proposals or Commission approval, provided that budgeted funds are available, and the aggregate cost increase resulting from all amendments does not exceed: fifty-percent (50%) of the initial contract amount or \$30,000.

Amendments which exceed the preceding rule must be approved by Commission resolution.

Amendments which do not exceed the preceding rule must be approved by the Director of Finance & Administration and the General Manager.

**PERFORMANCE/
ACCEPTANCE:**

After services have been performed, the receiving department must check the appropriate boxes on the receiving PR/O to verify receipt of the services rendered and sign and forward the receiving copy along with the invoice to accounts payable for payment.

PAYMENT:

Upon receipt of the invoice, the accounts payable clerk date stamps the invoice with the appropriate facility acceptance stamp. The accounts payable clerk then forwards the invoice to the department head for signature.

The department head signs the invoice in the proper place and returns to accounts payable (the receiving PR/O should be attached if not already in the possession of the accounts payable clerk).

Upon receipt of the signed invoice, the accounts payable clerk prepares a METRO-Payment Authorization Form (PA). For budget control the PA must be approved by the Director of Finance & Administration or designee. Upon proper approval the accounts payable clerk submits the original copy of the PA along with the vendor invoice and PR/O receiving copy to the METRO-Accounting Department which authorizes payment of the invoice.

Preparatory

To procure personal services which exceed \$25,000 the originator prepares a Request to Bid (RTB) stating: a detailed description of needed services; scope of work; necessary qualifications; statement of specific criteria to be used to evaluate proposals; closing time and date; list of potential bidders; and other pertinent information.

The originator forwards the RTB to the General Manager or designee for review and budget verification. Upon affirmative review, the PC consolidates the RTB into a Request for Proposals (RFP) checking accuracy, completeness, and clarity. The PC then forwards it to the General Manager or designee for revision and final approval.

The RFP is then forwarded to Legal Counsel for review, who approves as to legal requirement.

Following final approval by the General Manager and affirmative review by legal counsel, the General Manager or designee presents the RFP to the Commission for authorization to formally solicit proposals. If approved by the Commission the PC prepares an advertisement and advertises the RFP pursuant to provisions of this section.

RFP Documents

- (1) RFP documents shall include the following:
 - (a) Instructions and information to proposers concerning the proposal submission requirements, including the date and time for proposal opening, the name and title of the person who is to receive the proposals, the address of the office to which proposals are to be delivered, and any other special information;
 - (b) Where applicable, the purchase description, specifications, delivery or performance schedule, inspection and acceptance requirements, special evaluation factors, and whether negotiations will be conducted based on proposals;
 - (c) The contract terms and conditions, including warranty and bonding or other security requirements, if required; and
 - (d) All addenda issued by the Commission.
- (2) RFP documents shall be mailed to at least three (3) potential proposers and to all known State certified DBEs and WBEs in the business of providing the service required.
- (3) Compliance and exceptions to terms and conditions:
 - (a) Proposers are responsible for noting the terms and conditions included as applicable to each set of RFP documents.
 - (b) By signing and returning the proposal form, the proposer acknowledges acceptance of and the intent to abide by the terms and conditions.

- (c) Any exceptions to the terms and conditions must be clearly stated in writing by the proposer in the signed returned proposal. The Commission reserves the right to reject any proposal which takes exception to the terms and conditions. Exceptions to the terms and conditions become contractual obligations only upon written acceptance by the Commission.

Public Notice

- (1) Distribution - RFP documents and notice of the availability of RFP documents shall be mailed or otherwise furnished to a sufficient number of proposers for the purpose of securing competition. Notices of availability shall indicate where, when, and for how long the RFP documents may be obtained. In general, the notice shall describe the service desired and may contain other appropriate information. The Commission may charge a fee or require a deposit for the RFP documents.
- (2) Advertising - Solicitation for RFPs shall be published in at least one newspaper of general circulation in the area where the contract is to be performed and in as many additional publications as the Commission staff may deem necessary or desirable to ensure competition.
- (3) All RFP advertisements shall state:
 - (a) The date and time of RFP closing, which shall not be less than five (5) days after the date of the last publication of the advertisement;
 - (b) The date that pre-qualification applications must be received by, if applicable;
 - (c) The character of the services performed;
 - (d) The office where specifications may be seen;
 - (e) The name and title of the person designated to receive RFPs; and
 - (f) The date, time, and place that proposals will be opened.

Proposal Submission and Preparation Instructions

- (1) Proposals shall be typed or prepared in ink and shall be signed by the proposer or an authorized representative of the proposer.
- (2) Proposals shall be made in accordance with the RFP documents.
- (3) Alterations or erasures, if any, shall be initialed in ink by the person signing the proposal.
- (4) Proposals shall contain a fully executed proposal package, including all required documents and descriptive literature.

- (5) Proposals shall be submitted in a sealed envelope. Proposals shall be properly addressed to the person identified in the proposal documents and appropriately marked.

Addenda to RFP Documents

Form changes (i.e. additions, deletions) to RFP documents shall be according to this section:

- (1) Distribution - Addenda shall be sent to all prospective proposers known to have obtained the RFP documents or attending any mandatory pre-bid conference(s).
- (2) Timeliness - Addenda shall be issued within a reasonable time (five (5) days prior to RFP closing) to allow prospective proposers to consider them in preparing their proposals, but in no case less than 72 hours before RFP closing. If necessary, the Commission may notify prospective proposals by telegram, facsimile, or telephone, followed by a confirming written addenda.

Proposer Pre-qualifications

The Commission may require mandatory pre-qualification of proposers on forms prescribed by the Commission. When pre-qualification is required by the RFP documents as a condition for bidding, the Commission shall not consider RFPs of any prospective proposer who is not qualified in accordance with the Commission's adopted criteria for pre-qualification.

If a proposer is currently pre-qualified by either the State Department of Transportation or the State Department of General Services to perform contracts, the proposer shall be rebuttably presumed qualified to perform the same kind of work for the Commission (ORS 279.047).

Pre-bid Conferences

Pre-bid conferences may be held by the Commission Staff to explain the procurement requirements or conduct site inspections. The Commission may require attendance at the pre-bid conference(s) as a condition for bidding.

Such conferences shall be announced to all prospective proposers in the RFP documents. The pre-bid conferences shall be held within a reasonable time after the RFP documents have been issued to allow proposers to attend, but sufficiently before RFP closing to allow consideration of the conference results in preparing proposal. Statements made at the pre-bid conferences shall not change the RFP documents, unless confirmed to all prospective proposers by means of a written addenda to the RFP documents.

Proposal Security

The Commission may require proposer security for personal service contracts to guarantee acceptance of the award. The security amount may not exceed ten percent (10%) of the proposal amount.

The following forms of bid security will be accepted by the Commission:

1. Surety bond from a company authorized to do business in the State of Oregon;
or
2. Cashier's check or certified check; or
3. Annual surety bond filed with the Commission (except construction contracts);
or
4. Irrevocable letter of credit.

The security shall be forfeited if the proposer fails to execute a properly awarded contract. The security of unsuccessful proposers may be returned to them when the proposals have been opened and the contract has been awarded. Security of unsuccessful proposers shall not be retained by the Commission after the contract has been properly executed.

Receipt, Opening, Recording, and Inspecting Proposals

- (1) Receipt - Upon its receipt, each proposal and modification shall be time-stamped or marked by hand, but not opened. Each proposal shall be stored in a secure place until proposal opening. If proposals or modifications are opened inadvertently or opened prior to proposal opening because they were improperly identified by the proposer, the proposal or modifications shall be resealed and stored for opening at the correct time. When this occurs, documentation of this procedure shall be placed in the RFP file.
- (2) Opening and Recording - Proposals and modifications shall be opened publicly at the time, date, and place designated in the RFP documents.
- (3) Inspection - The opened proposals shall be available for public inspection prior to award, except to the extent that the proposer designates trade secrets or other proprietary data to be confidential or pending any presentations which may be required pursuant to the RFP documents. Commission staff shall verify and determine that the confidential information claimed to be exempt is in fact exempt from disclosure under the Oregon Public Records Law. Prices, makes, model, or catalog number of items offered, scheduled delivery dates, and terms of payment shall be publicly available regardless of any designation to the contrary.

Late Proposals, Late Withdrawals, and Late Modifications

Any proposal, withdrawal or modification received after the time and date set in the RFP documents as bid closing is late.

Late proposals, withdrawals, or modifications will be returned to the proposer unopened. If the late submittal is inadvertently opened it will not be considered and will be returned to the proposer.

Evaluation and Negotiation

The appropriate Manager, PC, and originating department evaluate responses. If necessary, negotiations occur. Staff award selection is made.

A contract is prepared to include scope of work, compensation, and schedule of deliverable(s). The proposed contract is forwarded to Legal counsel reviews for legal compliance and returns the contract to the PC.

Commission Approval

The General Manager or designee presents a contract award recommendation to the Commission. If approved, the Commission adopts a resolution to award the contract and direct the General Manager to enter into the contract.

Award Notification

The PC notifies all bidders in writing of the contract award.

Performance Bond

The Commission may require performance security for personal services contracts. In lieu of a surety bond, the Commission permits a successful proposer to submit a cashier's check or certified check in an amount equal to one hundred percent (100%) of the contract price. Failure to furnish the performance bond prior to the stated deadline may result in the rejection of the proposal and forfeiture of security and award to the next lowest responsive and responsible proposer.

Protest of Contract Award

Any aggrieved proposer who wishes to protest an award must notify the PC in writing within five (5) working days of the postmark date on the notice of award or the date of the alleged violation. The protest must describe the specific rule, regulation, statute, or procedure upon which the appeal is based and the specific alleged conduct which violates such authority. **Disagreement with the judgment exercised by evaluators in scoring a proposal is not a basis of appeal.**

The General Manager or designee shall respond to protestor within ten (10) working days of receipt of notice of appeal. This response shall reject the protest if the General Manager or designee finds that it is lacking in merit or uphold the appeal. Acceptance of the protest by the General Manager or designee may cause the rejection of all proposals or the award of the contract to a different proposer.

If the protestor wishes to appeal the decision of the General Manager or designee, the protestor must submit a written appeal to the General Manager within five (5) working days of the postmark date on the General Manager's response. This appeal shall be presented to the Commission at its next meeting by the General Manager or designee. The Commission shall, by resolution, reject the protest due to lack of merit or accept the protest. Acceptance of the protest by the Commission may cause the rejection of all proposals or may require the contract be awarded to a different proposer. If the proposer wishes to appeal the decision of the Commission, the protestor shall appeal to the Contract Review Board.

Contract Preparation

The PC coordinates preparation of all contracts to ensure compliance with ORS Chapter 279 as well as Commission directives.

All contracts shall contain a proviso which requires contractors to submit a contract summary report with each invoice. The summary report shall contain: the total contract amount, a breakdown of each prior billing, current contract balance, and the amount presently billed.

The PC obtains a contract number from METRO-Contracts Division and forwards the contract to the successful bidder to be signed and returned with any required documents (certificates of insurance, etc.). The successful bidder must return the signed contract and required documents within the time limits as stated in the contract or specifications.

Upon receipt of the signed contract, the PC secures the signature of the General Manager to complete the execution of the contract and prepares and submits a contract summary form to the METRO-Contracts Division.

AMENDMENTS:

Any contract amendment for additional services beyond, the scope of the initial contract shall be made without competitive proposals or Commission approval, provided that budgeted funds are available, and the aggregate cost increase resulting from all amendments does not exceed: \$20,000 or twenty-percent (20%) of the initial contract amount.

Amendments which exceed the preceding rule shall be approved by Commission resolution.

Amendments which do not exceed the preceding rule must be approved by the Director of Finance & Administration and the General Manager.

**PERFORMANCE/
ACCEPTANCE:**

After receipt of all procured services the department head of the originating department shall complete a notification of substantial compliance and forward it to the PC.

PAYMENT:

All invoices must include the contract number. Upon receipt of the invoice, the accounts payable clerk date stamps the invoice with the appropriate facility acceptance stamp. The accounts payable clerk then forwards the invoice to the department head for signature.

The department head signs the invoice in the proper place and returns it to accounts payable.

Upon receipt of the signed invoice, the accounts payable clerk prepares a METRO-Payment Authorization Form (PA). For budget control the PA must be approved by the Director of Finance & Administration or designee. Upon proper approval the accounts payable clerk submits the white copy of the PA along with the vendor invoice and contract summary statement to the METRO-Accounting Department which authorizes payment of the invoice.

PETTY CASH FUND PROCEDURE

APPLICATION:

This section applies to reimbursements for minor ordinary operating expenses not to exceed \$25.00.

Allowable petty cash expenses:

1. Non-recurring items requiring prompt payment.
2. Rapid reimbursement to employees who do not normally submit expense reports for out-of-pocket expenses.
3. Other minor expenses falling within the prescribed framework which, in the best judgment of the General Manager or designee, are more efficiently handled through petty cash.

Non-allowable petty cash expenses:

1. Any item not an ordinary operating expense, i.e. contributions, flowers, speeding tickets, etc.
2. Cashing personal checks.
3. Any non-business use.

Employee makes purchase and obtains a receipt. The employee shall prepare a petty cash voucher and obtain supervisor approval and present the voucher to the petty cash custodian in the accounts payable department.

Petty cash custodian completes petty cash voucher, reimburses the employee and secures the employee's signature verifying reimbursement.

ACCOUNTING:

The Controller or designee reviews vouchers and receipts and approves account reimbursement prior to the fund being impressed.

The petty cash custodian shall initiate reimbursement not less than once each accounting period to replenish the petty cash account.

OUT-OF-TOWN TRAVEL PROCEDURE

Two weeks prior to departure (to insure adequate processing time) the traveler completes a Travel Authorization and Advance form listing their destination and a brief description of the purpose of the trip. List in the appropriate columns the expenses to be prepaid by MERC, and the anticipated expenses to be incurred by the traveler during the trip. The amount of the cash advance (if requested) should be based upon those anticipated expenses. Attach any back-up documentation relating to the trip (conference registration, convention agenda, meeting schedule, etc.) and forward to the General Manager or his designee for approval. After approval is obtained, the Travel Authorization and Advance form is processed by MERC accounting through Metro's accounts payable system and a check cut for the traveler. Within ten (10) days of returning, the traveler completes another Travel Authorization and Advance form listing the actual expenses incurred and attaches all receipts backing-up those expenditures. Subtract the amount of the cash advance (if obtained prior to the trip and if a balance is due the traveler, MERC accounting will process through Metro's accounts payable system. If the traveler owes MERC, a check should be attached to the form.

Allowable Expenses:

1. Transportation - Travel should be by the most direct route available, and the mode of transportation should be the one which is most economical and consistent with the purpose of the trip. Air travel shall be by coach or economy class. First class should not be used unless it is the only means available. Air travel arrangements will be handled by MERC Administration. If the most appropriate mode of travel is by automobile, the traveler should request authorization from the Director of Finance & Administration. While the Commission retains insurance coverage for official business, **THIS IS NOT A SUBSTITUTE FOR PERSONAL INSURANCE**, since it only covers claims against the Commission, not against the traveler.
2. Lodging - Shall be within an adequate, but economic range. Receipts are required.
3. Automobile Rental - Reasonable range. Receipts are required.
4. Meals - Reasonable range. Receipts are required. This allowance is for the meal consumption of traveling personnel only. It does not include entertainment of others. (Refer to item 6.- Special Expenses).
5. Fees/Tuition - Covers authorized fees for conventions, conferences or meetings. Receipts are required.
6. Special Expenses - Expenditures in this category are intended to include business related meals or other entertainment directly related to the conduct of Commission business or solicitation of events for Commission facilities. The expense must be an ordinary and necessary

part of carrying on trade or business of the Commission. All documentation shall conform to the appropriate IRS regulations.

7. Miscellaneous Expenses - Include business related telephone charges, local transportation, baggage checks, parking fees, tips and other items included in the travel authorization and advance form. Receipts are required where customarily used.
8. In some rare instances it may not be practical to obtain a receipt, in such cases it shall be the responsibility of the Controller to determine the validity of the expense.

Non-Allowable Expenses:

1. Expenses of a personal nature which would have been incurred whether or not the traveler was on Commission business. This includes non-business entertainment, traffic violations, side trips and damage to the traveler's personal vehicle.
2. Shared Expenses - If accommodations are shared by an employee on official business and a person not authorized to travel, the Commission will pay the expenses equivalent to one person.
3. Expenditures for alcoholic beverages, notwithstanding applicable provisions of the Policy on Alcohol and Drugs in the Workplace, MERC Resolution No. 9.
4. Any expenditure that would reflect negatively on the Commission, such as gifts beyond the scope of approved promotional items bearing the facilities' logo(s) or name(s).

SPECIAL EXPENSE PROCEDURE

Special expense reimbursement may be handled through either petty cash or weekly expense reports. The employee fills out the appropriate form attaching all applicable receipts and obtains the approval of their department or facility manager. Reimbursements through petty cash (less than \$25.00) are handled by the petty cash custodian . Reports are processed by MERC accounting through Metro's accounts payable system.

Allowable Expenses:

1. Mileage - This is for reimbursement of mileage for use of personal vehicle for business purposes only. Such mileage may not reflect mileage to and from the employee's residence and primary work place and should not reflect mileage in excess of 55 miles from Portland.
2. Parking - This is for reimbursement of parking fees, including meters, for parking vehicle in conduct of Commission business.
3. Entertainment - Expenditures are intended to include business-related meals, and other appropriate entertainment, for clients which are directly related to the solicitation of events, and for persons involved in the operation of Commission facilities. All documentation shall conform to the appropriate IRS regulations.
4. Fees/Tuition - Covers authorized fees for conventions, conferences or meetings. Receipts are required.
5. In some rare instances it may not be practical to obtain a receipt, in such cases it shall be the responsibility of the Controller to determine the validity of the expense.

Non-Allowable Expenses:

1. Expenses of a personal nature, which would have been incurred whether or not the employee was on Commission business. This includes non-business entertainment, traffic or parking violations.
2. Expenses that would normally be handled through Petty Cash or Purchase Requisition/Purchase Order procedures.
3. Expenditures for alcoholic beverages, notwithstanding applicable provisions of the Policy on Alcohol and Drugs in the Workplace, MERC Resolution No. 9.
4. Any expenditure that would reflect negatively on the Commission, such as gifts beyond the scope of approved promotional items bearing the facilities' logo(s) and or name(s).