

METROPOLITAN EXPOSITION-RECREATION COMMISSION

RESOLUTION 96-16

Metropolitan Exposition-Recreation Commission Resolution 96-16 conditionally accepting the Proposal of Hoffman Construction Company of Oregon, Portland, Oregon, and Authorizing the Chairman and Secretary/Treasurer to execute Contracts in accordance with the Request for Proposals, with Hoffman Construction, for the EXPO Expansion Construction Management/General Contracting Services (CM/GC).

WHEREAS, the Construction of a new building has been on the facility's long-term development agenda, and the impending visit of the America's Smithsonian exhibit requires a space otherwise unavailable in the Portland area at the necessary time, and

WHEREAS, METRO Contract Review Board by Resolution No. 96-2283 has approved use of the CM/GC process for selecting and contracting with a construction contractor, and

WHEREAS, Commission Staff subsequently issued "Request for Proposals" for CM/GC Services to construct such building and received five responses to said RFP, and

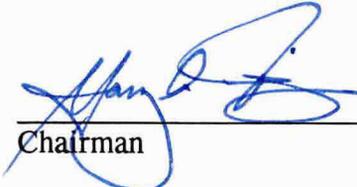
WHEREAS, a Selection Committee on behalf of the Commission evaluated all proposals received and selected Hoffman Construction Company as the proposer best qualified to perform all construction services, and

WHEREAS, financing for the project is currently being finalized, including a privately placed financing instrument and Oregon Convention Center Hotel/Motel tax reserves, this being adequate to cover the anticipated total project cost of approximately thirteen million dollars (\$13,000,000),

**BE IT THEREFORE RESOLVED** that the Metropolitan Exposition-Recreation Commission hereby awards in accordance with the "Request for Proposals (RFP), for Construction Manager/General Contractor Services for the EXPO Expansion, Issued February 14, 1996", and in accordance with the Proposal from Hoffman Construction, dated March 4, 1996, a Pre-Construction Contract not to exceed \$20,000.00, and

**BE IT FURTHER RESOLVED** that the MERC conditionally awards a Construction Services Contract in accordance with the RFP and the Hoffman Construction Proposal with a fixed fee of 3.2% of the Guaranteed Maximum Price (GMP) plus actual reimbursibles currently estimated at \$495,895, contingent upon establishment of an acceptable GMP, and contingent on the finalization of financing arrangements for the Project acceptable to the Commission, to Hoffman Construction Company of Oregon, Portland, Oregon, and authorizes the Chairman and Secretary/Treasurer to execute Contracts not substantially different from those Contract Forms included as part of the RFP Document, with Hoffman Construction, for the EXPO Expansion CM/GC Services.

Passed by the Commission on March 13, 1996.

  
\_\_\_\_\_  
Chairman

3-13-96  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Secretary/Treasurer

3-13-96  
\_\_\_\_\_  
Date

APPROVED AS TO FORM:  
Daniel B. Cooper, General Counsel

By:   
\_\_\_\_\_  
Mark B. Williams, Sr. Asst. Counsel

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## MERC Staff Report

**Agenda Item:** Approving Selection of a Contracting Company to Perform Construction Management/General Contracting" Functions for the Construction of the New Building at the Expo Center to Augment Existing Facilities and to House the "America's Smithsonian 150th Anniversary" Traveling Exhibit.

### Resolution 96-16

**Date:** March 13, 1996

**Presented By:** Mark Hunter, Jeff Blosser,  
Chris Bailey

#### Background Analysis:

As the MERC knows, the Expo new building construction is on a fast track in order to meet the very tight time frame caused by the Smithsonian's scheduled visit to Portland in March of 1997. To accomplish that tight time frame, we have proposed to use a CM/GC process whereby we advertise for a combination Construction Manager/General Contractor to perform both functions without bidding on the project on a competitive price basis. This allows the contractor to work for us early and for us to use their expertise in finalizing the design, methods, materials, solutions, etc. They then get competitive bids from subcontractors which represent the majority of the construction cost and we work with them to analyze the subs' costs and methods. A contractor operating on this basis usually works on either a fixed fee basis or a percentage of the total costs or a combination of both. This fee is negotiated up front and that is one of the determining factors in the choice of firms.

This action requires a Metro Council waiver of their requirement for competitive bids for construction which waiver has already been approved by Metro Council.

A request for proposals has been issued and 5 proposals have been received. They include Hoffman Construction, Drake Construction, Fletcher Wright, Baugh and Shimizu Construction. A committee of Metro and MERC staff will conduct interviews thru March 11 and will have a recommendation in the form of a resolution at the MERC meeting on March 13th.

#### Discussion with Commission:

This project has been discussed with the MERC Commission at many MERC meetings.

#### Fiscal and Budget Impacts:

This contract amount will be contained in the resolution. Management and construction services were estimated as part of the original \$13,000,000 project cost. Final county and Metro approvals for budget will be made before the services of this contract begin.

#### Recommendation:

Staff recommends that the Metropolitan Exposition-Recreation Commission approve the selection of the firm recommended in the Resolution which recommendation will be contained in the resolution to be sent to the MERC Commissioners prior to the MERC March 13th meeting.

## PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is by and between Hoffman Construction Company of Oregon, hereinafter referred to as "Contractor", and the Metropolitan Exposition-Recreation Commission, a metropolitan commission established by METRO to renovate, maintain and operate metropolitan convention, trade and spectator facilities pursuant to ORS 268 and the 1992 Metro Charter; hereinafter called MERC.

In exchange for the promises and other considerations set forth below, the parties agree as follows:

1. **Duration.** This personal services agreement shall be effective March 18, 1996 and shall remain in effect until and including April 1, 1997 unless terminated or extended as provided in this Agreement.
2. **Scope of Work.** Contractor shall provide all services and materials specified in the Request for Proposals (RFP), issued February 14, 1996, which is incorporated into this Agreement by reference, for work as described in said RFP, and any modifications of any of the foregoing in the form of Addenda or Change Orders in accordance with the Contract, for the Construction of a New Exhibition Building at the EXPO, 2060 N. Marine Drive, Portland, OR. All services and materials shall be provided by Contractor in accordance with the RFP and Proposal, in a competent and professional manner. To the extent that the RFP and Proposal contains additional contract provisions or waives any provision in the body of this Agreement, the RFP and Proposal shall control. To the extent that the RFP conflicts with the Proposal, the RFP shall control.
3. **Payment.** MERC shall pay Contractor for services performed and materials delivered in the amount(s), manner and time(s) specified in the RFP and Proposal for a maximum sum not to exceed, as stated in the Proposal submitted in response to the RFP, twenty thousand dollars (\$20,000.00).

### Insurance.

- a. Contractor shall purchase and maintain at the Contractor's expense, the following types of insurance, covering the Contractor, its employees, and agents:
  - (1) Broad form comprehensive general liability insurance covering bodily injury and property damage, with automatic coverage for premises, operations, and product liability. The policy must be endorsed with contractual liability coverage; and
  - (2) Automobile bodily injury and property damage liability insurance.
- b. Insurance coverage shall be a minimum of \$500,000 per occurrence. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.
- c. MERC, Metro, Multnomah County, and their elected officials, departments, employees, and agents shall be named as ADDITIONAL INSURED. Notice of any material change or policy cancellation shall be provided to the additional insureds thirty (30) calendar days prior to the change or cancellation.
- d. Contractor, its subcontractors, if any, and all employers working under this Agreement that are subject employers under the Oregon Worker's Compensation Law shall comply with ORS 656.017, which requires them to provide Worker's Compensation coverage for all their subject workers. Contractor shall provide MERC with certification of Worker's Compensation insurance

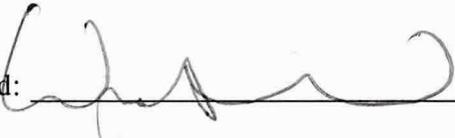
including employer's liability. If Contractor has no employees and will perform the work without the assistance of others, a certificate to that effect may be attached, as an Exhibit, in lieu of the certificate showing current Worker's Compensation.

- e. If required by the Scope of Work, Contractor shall maintain for the duration of this Agreement professional liability insurance covering personal injury and property damage arising from errors, omissions, or malpractice. Coverage shall be in the minimum amount of \$1,000,000. Contractor shall provide to MERC a certificate of this insurance, and thirty (30) calendar days' advance notice of material change or cancellation.

5. **Indemnification.** Contractor shall defend, indemnify and hold MERC, Metro, Multnomah County, and their agents, employees and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, which are related in any way to Contractor's or its subcontractor's performance of this agreement, or by any patent infringement or copyright claims arising out of the use of Contractor's designs or other materials by MERC.
6. **Maintenance of Records.** Contractor shall maintain all of its records relating to the Scope of Work on a generally recognized accounting basis and allow MERC the opportunity to inspect and/or copy such records at a convenient place during normal business hours. All required records shall be maintained by Contractor for three years after MERC makes final payment and all other pending matters are closed.
7. **Ownership of Documents.** All documents of any nature including, but not limited to, reports, drawings, works of art and photographs, produced by Contractor pursuant to this Agreement are the property of MERC, and it is agreed by the parties that such documents are works made for hire. Contractor hereby conveys, transfers, and grants to MERC all rights of reproduction and the copyright to all such documents. The documents shall not be used by MERC or others on other projects unless the projects involve modifications in relation to the scope of this current project. Contractor retains the right to use images of the interior and exterior of the project in Contractor's professional and promotional materials.
8. **Project Information.** Contractor shall share all project information and fully cooperate with MERC, informing MERC of all aspects of the project including actual or potential problems or defects. Contractor shall abstain from releasing any information or project news without the prior and specific written approval of MERC.
9. **Independent Contractor Status.** Contractor shall be an independent contractor for all purposes and shall be entitled only to the compensation provided for in this Agreement. Under no circumstances shall Contractor be considered an employee of MERC. Contractor shall provide all tools or equipment necessary to carry out this Agreement, and shall exercise complete control in achieving the results specified in the Scope of Work. Contractor is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work; and for meeting all other requirements of law in carrying out the Agreement. Contractor shall identify and certify tax status and identification number through execution of IRS form W-9 prior to submitting any request for payment to MERC.
10. **Right to Withhold Payments.** MERC shall have the right to withhold from payments due to Contractor such sums as necessary, in MERC's sole opinion, to protect MERC against any loss, damage, or claim which may result from Contractor's performance or failure to perform under this Agreement or the failure of Contractor to make proper payment to any suppliers or subcontractors.

11. State and Federal Law Constraints. Both parties shall comply with the public contracting provisions of ORS chapter 279, and the recycling provisions or ORS 279.545-279.650, to the extent those provisions apply to this Agreement. All such provisions required to be included in this Agreement are incorporated herein by reference. Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations including those of the Americans with Disabilities Act.
12. Situs. The situs of this Agreement is Portland, Oregon. Any litigation over this agreement shall be governed by the laws of the State of Oregon and shall be conducted in the Circuit Court of the state of Oregon for Multnomah County, or, if jurisdiction is proper, in the U.S. District Court for the District of Oregon.
13. Assignment. Contractor has been selected for its unique abilities, and therefore this Agreement may not, under any circumstances, be assigned or transferred by Contractor without MERC's express written consent.
14. Termination. This Agreement may be terminated by mutual consent of the parties. In addition, MERC may terminate this Agreement by giving Contractor fourteen (14) calendar days prior written notice of intent to terminate, without waiving any claims or remedies it may have against Contractor. Termination shall not excuse payment for expenses properly incurred prior to notice of termination, but neither party shall be liable for indirect or consequential; damages arising from termination under this section.
15. No Waiver of Claims. The failure to enforce any provision of this Agreement shall not constitute a waiver by MERC of that or any provision.
16. Modification. Notwithstanding and succeeding any and all prior agreement(s) or practice(s), this Agreement constitutes the entire Agreement between the parties, and may only be expressly modified in writing(s), signed by both parties.

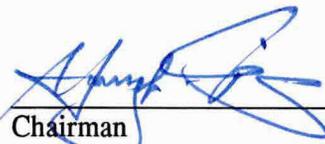
HOFFMAN CONSTRUCTION COMPANY  
OF OREGON

Signed: 

Title: President

Date: 3/15/96

MERC

  
Chairman

3-19-96  
Date

  
Secretary/Treasurer

3-19-96  
Date