

**METROPOLITAN EXPOSITION -RECREATION COMMISSION
RESOLUTION NO. 97-37**

Repealing Resolution No.125 of the Metropolitan Exposition-Recreation Commission which on May 8, 1991, adopted the MERC Purchasing Policy and Guidelines, and approving a new resolution adopting replacement Purchasing Policy and Guidelines.

The Metropolitan Exposition-Recreation Commission finds:

1. That MERC through Resolution No. 125, adopted Purchasing Policy and Guidelines, dated May 8, 1991, governing procurement activities for all MERC Facilities;
2. That the audit of MERC and OCC purchasing practices conducted by the Metro Auditor recommended revisions to the Purchasing Policy and Guidelines;
3. That the Metro Council passed Ordinance No. 97-677B which increased the dollar amount of contracts that MERC is exempted from the formal competitive bidding process from \$31,000 to contracts up to \$75,000 or less;
4. That MERC Staff was directed to update and incorporate these revisions into the Purchasing Policy and Guidelines to be consistent with these requirements;
5. That MERC Staff was directed to remove the Petty Cash and Travel Guidelines Sections from this Purchasing Policy and Guidelines and submit these Sections for Commission approval as individual policies.
6. That the MERC wishes to adopt as policy these new Purchasing Policy and Guidelines and abolish through repeal of Resolution 125, the Purchasing Policy and Guidelines currently in place.


BE IT THEREFORE RESOLVED:

1. That the Metropolitan Exposition-Recreation Commission hereby repeals Resolution 125, dated May 8, 1991, establishing the MERC's Purchasing Policy and Guidelines;
2. That the Metropolitan Exposition-Recreation Commission hereby adopts the new Purchasing Policy and Guidelines dated July 9, 1997, attached hereto, for the purpose of providing policy and guidelines to govern procurement activities at all MERC Facilities.

Passed by the Commission on this 9th day of July 1997.



Chair



Secretary / Treasurer

Approved As To Form:
Daniel B. Cooper, General Counsel

By: 

Kathleen Pool
Senior Assistant Counsel

MERC STAFF REPORT

Agenda Item/Issue: Approving the revised MERC Purchasing Policy and Guidelines and repealing Resolution 125, dated May 8, 1991.

Resolution No.: 97-37

Date: July 9, 1997

Presented By: Jim Waki

Background and Analysis: Staff was directed to revise the MERC Purchasing Policy and Guidelines to incorporate recommendations resulting from the audit by the Metro Auditor and revise the dollar amounts of public contracts exempted from the competitive bidding process. Also a number of revisions were incorporated to streamline the procurement process and clarify MERC's First Opportunity Target Area Minority and Women Owned Business Program.

Major revisions included:

- Increasing the dollar amount that exempts contracts from the formal bidding process from \$31,000 to contracts up to \$75,000 or less.
- Increasing the informal personal services amount from \$25,000 up to \$75,000 or less.
- Raising First Opportunity Purchasing threshold from \$2,500 to \$5,000 affording increased purchasing and contracting opportunities for state certified MBE/WBE Target Area Business Enterprises and adding Certified Emerging Small Businesses.
- Reducing the number of competitive quotes from four (4) to three (3) for procurements under \$75,000.
- Adding "Oregon Preference" policy as recommended by the Metro audit report and ORS Chapter 279.
- Adding a definitions section to assist Purchasing and Policy Guideline users.
- Removing Sections on Petty Cash and Travel Guidelines from these Purchasing Policy and Guidelines. These Sections to be submitted individually for Commission approval.

An Administrative Procedure will be developed from this Purchasing and Policy Guideline to implement the policy and provide instructions for MERC employees to follow.

Fiscal Impact: The revisions will not have a direct fiscal impact but will improve and streamline the procurement process while allowing MERC flexibility to operate in an efficient manner and still ensure competitive procurements.

Recommendation: Staff recommends that the Metropolitan Exposition-Recreation Commission approve Resolution No. 97-37 repealing Resolution No. 125 dated May 8, 1991 and approving the adoption of Purchasing Policy and Guidelines dated July 9, 1997.

METROPOLITAN EXPOSTION-RECREATION COMMISSION

PURCHASING POLICY AND GUIDELINES

JULY 9, 1997

**Approved by MERC Resolution No. 97-37 on July 9, 1997
Repeals MERC Resolution No. 125 adopted on May 8, 1991**

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PREAMBLE

This document contains the purchasing policy and guidelines adopted by the Metropolitan Exposition-Recreation Commission. As applicable, provisions of Chapter 6.01 of the Code of Metro and applicable provisions of ORS Chapter 279 are incorporated herein.

A-MERC administrative procedures manual with instructions to implement this policy and guideline will be developed under the direction of the General Manager. Administrative procedures which do not require Commission approval may be revised as deemed necessary by the General Manager and do not require.

DEFINITIONS

Administrative Procedures - Procedures for implementation of MERC Purchasing Policy & Guidelines.

Certified Target Area Source - A State-certified WBE, MBE, or ESB contained in the Target Area Directory.

Commission - See Metropolitan Exposition - Recreation Commission.

Contract Review Board - Metro Council.

Emergency Purchase - Purchase that is essential to prevent: 1) a delay in work or extra expense to the Commission; 2) immediate damage to Commission property; 3) immediate danger to citizens or employees. This determination is made by the General Manager.

Emerging Small Business (ESB) - State of Oregon certified small business firms.

First Opportunity Target Area - Economically distressed area located in the immediate vicinity of the Oregon Convention Center as authorized by Section 2, Chapter 909 Oregon Laws, 1989.

Foreign Contractor - Contractor not domiciled or registered to do business in the State of Oregon.

Formal Purchase - Purchase of goods on Non-Personal Services in the amount of \$75,000 or more, which amount shall be adjusted each year to reflect any changes in the Portland Metropolitan Area CPI.

General Manager - The individual appointed by the Commission who is responsible for managing the Metropolitan Exposition - Recreation Commission Staff.

Good Faith Effort - Efforts to maximize MBE/WBE/ESB business participation on MERC contracting activities as defined in Metro Code 2.04.250 & 2.04.260.

Informal Purchase - Purchases of goods on Non-Personal Services less than \$75,000, which amount shall be adjusted each year to reflect any changes in the Portland Metropolitan Area CPI.

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.

MERC Facilities - Civic Stadium (Stad.), Portland Center for the Performing Arts (PCPA), Oregon Convention Center (OCC) and the Metropolitan Exposition Center (Expo).

Metropolitan Exposition - Recreation Commission (MERC) - The appointed 7-member Commission charged with overseeing the businesses of Civic Stadium, Portland Center for the Performing Arts, Oregon Convention Center, and the Portland Exposition Center.

Minority Business Enterprise (MBE) - State of Oregon certified minority owned business.

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

Personal Services Contract - The purchase of professional, technical, or expert services (i.e. personal in nature) requiring special knowledge or training.

Proposal - A Competitive offer for personal services where specification 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.

Quote - Price and delivery information from potential suppliers for goods or services as required by MERC Facilities. Can be either written or verbal.

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

Request for Proposal (RFP) - Formal solicitation for proposals in which price will not necessarily be the award criteria. Award criteria is predetermined and will be included in the RFP Documents.

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

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

Target Area Directory - List of State of Oregon Certified Minority, Women-Owned, and Emerging Small Business Enterprises located in the designated First Opportunity Target Area.

Woman Owned Business Enterprises (WBE) - State of Oregon Certified Women Owned Businesses.

METROPOLITAN EXPOSITION-RECREATION COMMISSION

PURCHASING POLICY AND GUIDELINES

1.0 DUTIES AND POWERS

In accordance with § 6.01.040 (J) of the Metro Code, the Metropolitan Exposition-Recreation Commission (referred to as the Commission) is empowered to enter into contracts as the Commission deems necessary under contracting rules adopted by the Commission. 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

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.

1.2 CONTRACT APPROVAL

Commission approval of all formal contracts and amendments, extensions or renewals thereof is required, except as specifically authorized by the Commission. The Commission pursuant to these policies has delegated authority to its General Manager to enter into certain types of contracts without Commission approval. The General Manager may delegate authority to exempt contracts by giving written authorization to Commission employees.

1.3 CONTRACT AMENDMENTS

Amendments to duly authorized contracts shall be approved by Commission resolution except as provided by these policies or by specific actions of the Commission. Amendments as described herein are subject to the approval of the General Manager.

1.3.1

Any amendment to a public contract 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 Commission approval provided that budgeted funds are available, and the aggregate cost increase resulting from all amendments dose 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.

1.3.2

Any formal personal service contract amendment for additional services beyond the scope of the initial contract may be made without 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, whichever is greater.

1.4 EXCEPTION TO PURCHASING POLICY AND GUIDELINES

These policies do not apply to: (1) employment contracts for Commission personnel, (2) contracts for the lease or use of MERC Facilities are also exempt from these policies, (3) contracts for food or beverage, parking, or operation of other concession type services at MERC facilities.

2.0 TARGET AREA FIRST OPPORTUNITY POLICY

The Commission shall support the advancement of Oregon State certified Minority Business Enterprises, Women-Owned Business Enterprises, and Emerging Small Businesses (as defined by Oregon law) located in the First Opportunity Target Area. Sections 5.1, 5.2 & 5.3 and 6.1, 6.2 & 6.3 of this Purchasing Policy are intended to implement the provisions of this Section.. A Target Area Directory listing all state certified businesses located in the target area will be maintained and distributed as necessary by the MERC Staff.

3.0 ADOPTION OF METRO GOOD FAITH EFFORTS REQUIREMENT FOR CONSTRUCTION PROJECTS

For Construction contracts over \$75,000 (which amount shall be adjusted each year to reflect changes in the Portland, Oregon CPI) the Commission hereby adopts in principle, policy, and content the "Good Faith Effort" program established by Metro Code § 2.04.100 through § 2.04.280 (Metro Minority Business Enterprise, Women Owned Business, and Emerging Small Business Program) as they apply to contracts of the Commission. This adoption includes any and all ordinances subsequently adopted by the Metro Council relating to Metro's Minority Business Enterprise, Women Owned Business, and Emerging Small Business Program.

The General Manager shall designate MERC staff to perform the functions of the Liaison Officer to carry out the MBE / WBE / ESB program as it relates to Commission contracting activities.

3.1 CONTRACTS LIST

The MERC Staff shall maintain a "current and pending contracts list" showing items to be purchased and, if applicable, due dates and times bids will be opened.

4.0 GENERAL PURCHASING POLICY

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

4.1 OREGON PREFERENCE

In all public contracts, under ORS 279.021, the Commission shall prefer goods or services that have been manufactured or produced in Oregon if price, fitness, availability, and quality are otherwise equal. Where a contract in excess of \$10,000 is awarded to a Foreign Contractor, MERC Staff shall assure compliance with the provisions of ORS 279.021, as outlined in the Administrative Procedures.

4.2 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. Contracts for warranties in which the supplier of the goods or services covered by the warranty has been designated a sole provider for the warranty service.
- B. Contracts for computer hardware and software provided purchases are procured in accordance with the Administrative Procedures governing Personal Service Contracts.
- C. Contracts under which the Commission is to provide a service only and incurs no financial obligation to another party.
- D. Contracts for the lease or use of all MERC Facilities.
- E. Contracts estimated to be less than \$75,000 (Amount shall be adjusted each year to reflect Portland, Oregon CPI), provided that the selection process described in the appropriate sections of Administrative Procedures has been followed.
- F. Emergency Purchases.
- G. 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.

- H. Contracts for management and operation of food, parking, or similar concession services at MERC facilities provided that procedures substantially similar to the procedures required for formal Request for Proposals used by MERC for personal services contracts are followed.
- I. Contracts for computer hardware and software provided that procedures substantially similar to the procedures required for formal Request for Proposals used by MERC for personal services contracts are followed.
- J. Purchases made pursuant to an inter-governmental agreement with the State of Oregon to make purchases from the State Pricing Agreements.
- K. Any other type of public contract or specific contract that has been exempted from the competitive bidding process by the Contract Review Board.

4.3 PROTEST OF CONTRACT AWARD

Any aggrieved bidder who wishes to protest a contract award must notify the MERC General Manager or Designee 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 at the General Manager's discretion.

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 at the

discretion of the Commission. If the proposer wishes to appeal the decision of the Commission, the protestor shall appeal to the Contract Review Board in writing within five (5) working days of the Commission's decision on the protest.

5.0 INFORMAL PURCHASING OF GOODS AND SERVICES

Purchases or lease of supplies, materials, equipment, labor, services other than personal services, or construction which cost less than \$75,000 (Amount to be adjusted each year to reflect the Portland, Oregon CPI) may be made following the informal purchasing policy contained in this and the Administrative Procedures.

Informal purchasing procedures are methods which do not require advertisement for bid, resolution or a written contract but do require that an approved purchase order be issued. Purchases should be kept intact, that is, procurement should not be divided to avoid monetary approval levels as required in this policy and the Administrative Procedures.

5.1 PURCHASES LESS THAN \$5,000

Purchases less than \$5,000 require only one quote if a state certified MBE, WBE, or ESB located in the Target Area has been selected. If not available at a reasonably competitive price from such a firm, then any other sources that can provide the goods or services, regardless of location, may be selected. The file shall contain documentation justifying the non-selection of a target area firm.

5.2 PURCHASES BETWEEN \$5,000 - \$75,000

Purchases of at least \$5,000 but less than \$75,000 (Amount to be adjusted to reflect any changes in the Portland, Oregon CPI) require documentation of at least three written competitive quotes. At least one of the quotes shall be from a state certified MBE, WBE, or ESB Target Area source. A second quote is required from any state certified MBE, WBE, or ESB business regardless of location. The third quote may be obtained from any other source that can provide the product or service. In the event that any required quotes cannot be obtained, written documentation is required as evidence of a "Good Faith Effort" to utilize MBE, WBE, or ESB Businesses. Nothing shall prevent staff from obtaining more than three quotes at any time. Additionally, the General Manager shall have the authority to require additional quotes or direct that

additional competitive procedures (such as an RFP or RFQ process) shall be used, based upon written findings that such procedures are warranted and will not decrease competition or deny State Certified MBE/WBE/ESBs (Target Area or otherwise) opportunities for MERC Contracting. Any findings by the General Manager shall be documented and included as part of the contract file.

5.3 PURCHASES ABOVE \$75,000

Purchases or lease of supplies, material, equipment, labor, non-personal services and construction in the amount of \$75,000 (Amount to be adjusted to reflect any changes in the Portland, Oregon CPI) or more, shall be made pursuant to the formal purchasing requirements contained in Section 6.0 and the related section(s) of the Administrative Procedures; provided, that in addition construction contracts subject to formal purchasing shall be subject to the Good Faith Efforts program incorporated into these Policies by Section 3.0.

Procedures utilized in advertising and awarding contracts which must be formally bid shall, at a minimum, comply with ORS Chapter 279., Metro's & MERC's MBE/WBE/ESB Programs.

6.0 FORMAL PURCHASES

6.1 COMMISSION AUTHORIZATION

Formal Purchasing requires Commission authorization by Resolution, to solicit bids, approval of contract award, and approval of the 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 requirements for Commission approval of contract award subject to conditions established by the Commission, such as authorizing the General Manager to enter into a contract.

Commission approval will not be required for Request for Bids (RFB) Documents for Public Improvement Contracts or Capital Purchases that have been previously approved by the Commission through the annual budget approval process. Bid acceptance and contract approval by the commission will still be required for these projects or purchases. Requests for Bids (RFB) Documents will be made available to the Commission for review prior to the release of the documents to prospective contractors or purveyors.

6.2 PUBLIC NOTICE

A notice of availability of Bid Documents shall be mailed or otherwise furnished to at least three (3) bidders and all Certified Target Area Sources classified as MBEs, WBEs, and ESBs in the business of providing the service or items required. The notice of availability 1) shall indicate where, when, and how long the Bid Documents may be obtained; 2) shall 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.

6.3 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.

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

A Purchase Order or an agreement for personal services shall be used to authorize vendors to provide services and to encumber funds for contracts and services agreements costing less than \$75,000.

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 of personal services.

7.1 PERSONAL SERVICES CONTRACTS LESS THAN \$5,000

Purchases less than \$5,000 require only one quote if a state certified MBE, WBE, or ESB located in the Target Area has been selected. If not selected, any other sources that can provide the personal services, regardless of location, may be selected without further documentation.

7.2 PERSONAL SERVICES CONTRACTS BETWEEN \$5,000 - \$75,000

Purchases of personal services of at least \$5,000 but less than \$75,000 (Amount to be adjusted to reflect any changes in the Portland, Oregon CPI) require documentation of three written competitive quotes. At least one of the quotes shall be from a state certified MBE, WBE, or ESB Target Area source. A second quote is required from any state certified MBE, WBE, or ESB business regardless of location. The third quote may be obtained from any other source that can provide the services. In the event that any required quotes cannot be obtained, written documentation is required as evidence of a "Good Faith Effort" to utilize MBE, WBE, or ESB Target Area Businesses. Nothing shall prevent staff from obtaining more than three

quotes at any time. Additionally, the General Manager shall have the authority to require additional quotes or direct that additional competitive procedures (such as an RFP or RFQ process) shall be used, based upon written findings that such procedures are warranted and will not decrease competition or deny State Certified MBE / WBE / ESBs (Target Area or otherwise) from opportunities for MERC Contracting. Whenever an RFP is not used, the documentation requirements of this section are to be followed at a minimum. Any findings by the General Manager shall be documented and included as part of the contract file.

7.3 PERSONAL SERVICE CONTRACTS ABOVE \$75,000

Procurement of personal services estimated to cost more than \$75,000 (Amount to be adjusted to reflect any changes in the Portland, Oregon CPI) requires Commission approval to issue a Request for Proposal (RFP) to award the contract and of the written contract. Commission staff is responsible for determining the exact needs and assessment criteria for any proposed services requiring formal solicitation. The Commission may elect to utilize an RFQ process in addition to, or as a substitute for, the RFP process. . The Commission reserves the right to reject any or all proposals.

7.3.1 PUBLIC NOTICE

A notice of availability of RFP Documents shall be mailed or otherwise furnished to at least three (3) bidders and all Certified Target Area Sources classified as in the business of providing the service required. The notice of availability 1) shall indicate where, when, and how long the RFP documents may be obtained; 2) shall 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.

7.3.2 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.