

METROPOLITAN EXPOSITION-RECREATION COMMISSION

RESOLUTION 99-35

Metropolitan Exposition-Recreation Commission Resolution 99-35 accepting the Proposal of Hoffman Construction Company of Oregon ("Hoffman Construction"), and Authorizing the Chairman and Secretary/Treasurer to execute Contracts in accordance with the Request for Proposals, with Hoffman Construction, for the Expo Hall "D" Construction Management/General Contracting Services (CM/GC).

WHEREAS, the Commission by Resolution 99-08 recommended construction of a new Hall "D" to the Metro Council; and

WHEREAS, Metro Contract Review Board by Resolution No. 99-2790 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" ("RFP") for CM/GC Services to construct said building and received nine responses to said RFP; and

WHEREAS, a Selection Committee on behalf of the Commission evaluated all proposals received and subsequently interviewed the three highest ranked candidates, and selected Hoffman Construction as the Proposer best qualified to perform all construction services; and

WHEREAS, the Chairman and Secretary of the Commission subsequently reviewed the Selection Process, and

WHEREAS, the RFP provides that there shall be separate contracts for Pre-Construction Services and Construction Services; and

WHEREAS, financing for the project has not yet been finalized to fund the anticipated total project cost of approximately fifteen million eight hundred thousand dollars (\$15,800,000); and

WHEREAS, award of the Construction Services Contract for Hall "D" is to be contingent upon establishment of an acceptable Guaranteed Maximum Price and on the finalization of financing arrangements for the Project acceptable to the Commission; and

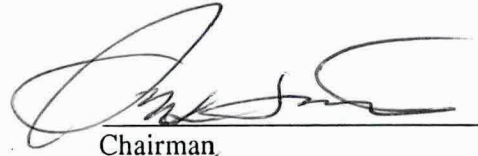
WHEREAS, the Hoffman Construction Proposal includes a fixed fee percentage of 2.95% of the total final construction cost, plus actual reimbursable currently estimated at \$493,598; and

BE IT THEREFORE RESOLVED that the Metropolitan Exposition-Recreation Commission hereby selects Hoffman Construction Company of Oregon as the best qualified proposer in response to the Commission's Request for Proposals for Construction Manager/General Contractor Services for the Expo Hall "D" Construction, issued June 17, 1999; and

BE IT FURTHER RESOLVED that the Commission authorizes the Chairman and Secretary/Treasurer to execute a contract with Hoffman Construction Company of Oregon for Pre-Construction services in an amount not to exceed \$32,000 in a form substantially similar to Pre-Construction Contract form included as part of the Request for Proposals document; and

BE IT FURTHER RESOLVED that the Metropolitan Exposition-Recreation Commission selects Hoffman Construction Company of Oregon for award of the Construction Services Contract for Hall "D" and authorizes the Chairman and Secretary/Treasurer to approve a Guaranteed Maximum Price acceptable to the Commission and execute said contract in substantially the same form as provided in the Request for Proposals, upon completion of the project financing arrangements.

Passed by the Commission on August 5, 1999.



Chairman

8/5/99

Date



Secretary/Treasurer

8/11/99

Date

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

By:   
Kathleen Pool, Senior Assistant Counsel

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MERC Staff Report

**Agenda Item:** Approving Selection of Hoffman Construction Company of Oregon, Portland, Oregon, to Perform Construction Management/General Contracting" Services for the Construction of the EXPO Hall "D".

**Resolution 99-35**

**Date:** August 5, 1999

**Presented by:** Chris Bailey and Mark Hunter

**Background Analysis:**

In order to complete the reconstruction of Hall "D" to accommodate previous event schedule commitments, to maximize revenue and to save construction costs, Staff proposed the use of 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 with the design team early in the process to utilize their expertise in the design phase, incorporating information regarding construction methods, materials used, logistical solutions, etc.

Staff recommended and the Commission approved issuance of an RFP for the solicitation of CM/GC Proposers for this Project.

This action required 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 was issued and nine proposals were received. They included Baugh Construction, Drake Construction, DPR Construction, Hoffman Construction, Lease Crutcher Lewis, McCarthy, OC America, Shimizu, and Turner Construction. A committee of Metro and MERC staff, and two qualified individuals outside METRO/MERC conducted interviews on July 27, 1999 and recommended the acceptance Hoffman Construction Company of Oregon, to be approved as the CM/GC for the EXPO Hall "D" Construction.

At a Special Telephone Conference Meeting of the Commission on July 29, 1999, the Commission tabled Resolution 99-35 pending review of the Selection Process by members of the Commission.

On August 3, 1999, the Chairman and Secretary Treasurer met with Staff, Metro General Counsel Representative, Kathleen Pool and Berit Stevenson, METRO, a member of the Selection Committee, and reviewed the Selection Committee's process, finding it to be appropriate, and further directed Staff to arrange a second Special Telephone Conference Meeting of the Commission for potential passage of the Resolution.

**Fiscal and Budget Impacts:**

Approval of the CM/GC Contract by Resolution includes two parts. The first part is approval of Pre-Construction Services for \$32,000. The second part is a fixed-fee percentage of 2.95% based on the final construction cost, estimated reimbursible expenses of \$493,598.00, and an acceptable Guaranteed Maximum Price (GMP) for the project Construction.

Management and construction services were estimated as part of the original \$15,800,000 project cost. Final MERC and METRO approvals for the financing of the Project will be made prior to the beginning of the Construction Services Contract.

**Recommendation:**

Staff recommends that the Metropolitan Exposition-Recreation Commission approve the selection of the Hoffman Construction Company of Oregon, as recommended by the Selection Committee, for performance of Construction Manager/General Contractor Services for the EXPO Hall "D" Construction Project, by passage of Resolution 99-35, at the special meeting of the Commission on August 5, 1999.

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**PERSONAL SERVICES AGREEMENT**

THIS AGREEMENT made 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.

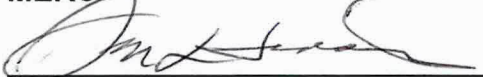
In exchange for the promises and other consideration set forth below, the parties agree as follows:

1. Duration. This personal services agreement shall be effective July 31, 1999 and shall remain in effect until and including April 30, 2001, 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 June 17, 1999, 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 at the 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, of Thirty Two Thousand and no/100 Dollars (\$32,000.00).
4. 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, and their elected officials, departments, employees, agents shall be named as ADDITIONAL INSURED. Notice of any material change or policy cancellation shall be provided to the additional insured (30) 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 Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Contractor shall provide MERC with certification of Workers' 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 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 Metro a certificate of this insurance, and thirty (30) days' advance notice of material change or cancellation.
5. Indemnification. Contractor shall defend, indemnify and hold MERC, Metro, 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 this 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 of 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 other 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.

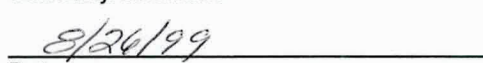
**MERC**



Chairman



Secretary/Treasurer



Date

**Contractor**



*FOR* President/Chairman

Secretary/Treasurer



Date