

METROPOLITAN EXPOSITION-RECREATION COMMISSION

RESOLUTION NO. 02-07

**For the purpose of** selecting Northwest Engineering Service, Inc. to enter into a contract for "Testing and Balancing of Mechanical Systems (TAB) for the Oregon Convention Center Expansion," and authorizing the General Manager to execute the contract.

WHEREAS, in order to complete the Oregon Convention Center Expansion in accordance with standard industry requirements, the mechanical systems in the building must be tested and balanced to verify that the constructed HVAC systems function properly and in accordance with the design specifications established by the mechanical engineer, and

WHEREAS, the Commission approved Resolution No. 01-33 passed on October 24, 2001, for the issuance of a Request for Proposal and authorized the General Manager to execute a contract for said Testing and Air Balancing of Mechanical Systems for the Oregon Convention Center, and


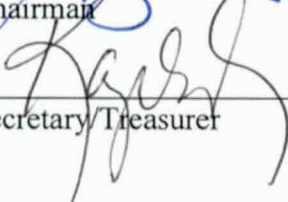
WHEREAS, Northwest Engineering Service, Inc submitted the only responsive bid in response to Request for Proposal No. 01R-58-MERC for said Testing and Air Balancing of Mechanical Systems, and

WHEREAS, the negotiated cost of \$183,460 exceeds the approved \$110,000 budgeted for said testing and air balancing, and

WHEREAS, funds have been identified within the Capital Budget to finance the increase.

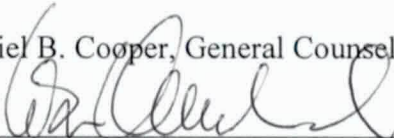
BE IT THEREFORE RESOLVED that the Metropolitan Exposition-Recreation Commission selects Northwest Engineering Service, Inc. to enter into a contract (attached as Exhibit A) for Testing and Balancing of Mechanical Systems for the Oregon Convention Center Expansion in an amount not to exceed \$183,460, and authorizes the General Manager to execute the contract on behalf of the Commission.

Passed by the Commission on February 27, 2002.

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

Approved As to Form:

Daniel B. Cooper, General Counsel

By:   
\_\_\_\_\_  
Senior Assistant Counsel

## MERC STAFF REPORT

**Agenda Item/Issue:** Authorizing the General Manager of MERC to execute Contract #923781 with Northwest Engineering Service, Inc. "Testing and Balancing of Mechanical Systems (TAB) for the Oregon Convention Center Expansion".

**Resolution No:** 02-07

**Date:** February 27, 2002

**Presented by:** Karl Schulz, Senior Project Manager

**Background:** Resolution No. 01-33, passed on October 24, 2001, the MERC Commission authorized staff to issue a Request for Proposals for said testing and air balancing services for the Expansion, and authorized the General Manager to execute a contract provided the cost of the contract did not exceed the available funds budgeted of \$110,000. The certified consulting agency will be responsible to inspect, test, balance systems, and document in a formal report the HVAC systems installed or modified at the Oregon Convention Center Expansion site for the duration of the project.

This resolution requests approval to increase the contract amount for Testing and Air Balancing Services from \$110,000 to \$183,460 based on the following issues.

**Process:** Request for Proposals No. 01R-58-MERC was released 11/27/02. It defined the scope of services to be provided by the TAB consulting company for the mechanical systems for the Expansion and the existing OCC building, and the requirements for the selection, contracting and testing services to be provided. A total of five vendors responded to the release and requested a copy of the RFP; two of those vendors subsequently requested full drawings and specs. A total of two bids were received prior to the deadline of 11:00AM, December 18, 2001.

One bid was declared non-responsive to the requirements provided in the RFP staff since it did not provide any of the required information of the RFP other than a cost proposal. The second proposer, Northwest Engineering Services, Inc., was originally bid as a not to exceed contract amount of \$260,600. The proposal amount and services were reviewed by Expansion Staff and CBG Engineers, Inc. to revise the fee proposed from the proposer. The amount of services was negotiated to \$183,460 for services to complete the Testing and Air Balancing Services for the Expansion. Based on review with the Mechanical Consultant, CBG Engineering, they feel that Northwest Engineering Services, Inc. contract of service and fee is appropriate for the services needed to properly test and balance the Expansion of the Oregon Convention Center. Expansion Staff confirms and feel the cost for services is acceptable and that budget and contract amounts need to be adjusted accordingly.

**Fiscal Impact:** The contracting of Testing and Balancing of Mechanical Systems (TAB) was budgeted in the original Expansion Project Budget under Testing Agencies for \$110,000, and approved by the MERC Commission in Resolution #01-33 based on the knowledge that these services are required for all major construction projects. The additional funding required, \$73,460 for the contract shall be funded by miscellaneous service program I. D. 57623E that has approximately \$300,000 available for this scope of work and contract. This will provide funds to complete the Testing and Balancing Services. The additional amount would not impact the overall project budget since funds are available for this contract.

**Recommendation:** Staff recommends that the Commission authorize the General Manager of MERC to execute contract #923781 with Northwest Engineering Service, Inc. in the not to exceed amount of \$183,460 for said Testing and Balancing of Mechanical Systems (TAB) services for the Oregon Convention Center Expansion, based on the recommendations of the staff.

## PERSONAL SERVICES AGREEMENT

**THIS AGREEMENT** is entered into between the Metropolitan Exposition-Recreation Commission (MERC), whose address is P.O. Box 2746, Portland, Oregon 97208 and governing body for the Oregon Convention Center located at 777 NE Martin Luther King, Jr. Blvd, Portland, OR 97232 and Northwest Engineering Service, Inc whose address is 14835 SW 72<sup>nd</sup> Avenue, Tigard, OR 97224 hereinafter referred to as the "CONTRACTOR."

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

### Duration

This personal services agreement shall be effective February 1, 2002 and shall remain in effect until and including December 31, 2003 unless terminated or extended as provided in this Agreement.

### Scope of Work

CONTRACTOR shall provide all services and materials specified in the attached "Exhibit A — Request for Proposal, No.01R-58-MERC" which is incorporated into this Agreement by reference. CONTRACTOR, in accordance with the Scope of Work, shall provide all services, materials, and management in a competent and professional manner as required by the Request For Proposal – Exhibit A, and as proposed and defined in:

Exhibit B-1: "Defining Scope for TAB Services", OCC Expansion Office  
dated 1/24/02;

Exhibit B-2: "Convention Center Expansion, Test and Balance NESI Quote #6776A,  
Northwest Engineering Service, Inc, dated 1/16/02;

Exhibit B-3: Proposal for RFP No. 01R-58-MERC, submitted by  
Northwest Engineering Service, Inc, dated 12/18/02

CONTRACTOR shall assign and dedicate staff to the OCC Expansion Project on an as-needed basis during the construction of the Expansion. Hours shall be approved by MERC's Authorized Representative on a monthly basis to remain within hour estimates of project management time.

### Payment

MERC shall pay CONTRACTOR for services performed on a time and materials basis using unit rates as defined in Exhibits B-1, B-2, and B-3 in the amount(s), that would total to a maximum sum not to exceed One Hundred Eighty-Three Thousand Four Hundred Sixty Dollars (\$183,460.00).

### Insurance

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

- A. Broad form comprehensive general liability insurance covering personal injury, property damage, and bodily injury with automatic coverage for premises and operation and product liability. The policy must be endorsed with contractual liability coverage.

- B. Automobile bodily injury and property damage liability insurance. Insurance coverage shall be a minimum of \$1,000,000 per occurrence. If coverage is written with an aggregate limit, the aggregate limit shall not be less than \$1,000,000. MERC it's elected officials, departments, employees, and agents shall be named as an ADDITIONAL INSURED. Notice of any material change or policy cancellation shall be provided to MERC thirty (30) days prior to the change.

This insurance as well as all workers' compensation coverage for compliance with ORS 656.017 must cover CONTRACTOR'S operations under this contract, whether such operations are by CONTRACTOR or by any subcontractor or anyone directly or indirectly employed by either of them.

CONTRACTOR shall provide MERC with a certificate of insurance complying with this article and naming MERC as an additional insured within fifteen (15) days of execution of this contract or twenty-four (24) hours before services under this contract commence, whichever date is earlier.

CONTRACTOR shall not be required to provide the liability insurance described in this article only if an express exclusion relieving CONTRACTOR of this requirement is contained in the Scope of Work.

#### **Indemnification**

CONTRACTOR shall indemnify and hold MERC, its agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with its errors, omissions, or negligence during the performance of this Agreement, or with any patent infringement or copyright claims arising out of the use of CONTRACTOR'S designs or other materials by MERC and for any claims or disputes involving subcontractors.

#### **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.

#### **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.

**Project Information**

CONTRACTOR shall share all project information and fully cooperate with MERC and MERC's Authorized Representatives, informing MERC and MERC's Authorized Representatives 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.

**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, 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.

**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.

**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.

**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.

**Assignment**

This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstance, be assigned or transferred by either party.

**Termination**

This Agreement may be terminated by mutual consent of the parties. In addition, MERC may terminate this Agreement by giving CONTRACTOR 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.

**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.

**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.

Northwest Engineering Service, Inc.

Name: Roy M. Steege

Signature: Roy M. Steege

Title: PRESIDENT

Date: 3/6/02

Metropolitan Exposition-Recreation Commission

Name: MARK B. Williams

Signature: [Signature]

Title: GM

Date: 3/7/02

**ATTACHMENTS:**

Exhibit A: Request for Proposal #01R-58-MERC, Testing and Air Balancing Services for Oregon Convention Center Expansion (November 26, 2001), total 39 pages

Exhibit B-1: "Defining Scope for TAB Services", Karl Schulz, Oregon Convention Center Expansion, 1/24/02

Exhibit B-2: "Convention Center Expansion, Test and Balance NESI Quote #6776A", Bruce Gilpin, Northwest Engineering Service, Inc, 1/16/02

Exhibit B-3: Proposal for Testing and Air Balancing Services for Oregon Convention Center Expansion, Submitted by Northwest Engineering Service Inc, 12/18/01