

METROPOLITAN EXPOSITION-RECREATION COMMISSION

RESOLUTION NO. 02-25

Requesting approval to issue a Request for Bids for replacement of carpet in all areas of the Portland Center for the Performing Arts, New Theatre Building.

WHEREAS, the New Theatre Building carpeting was installed as part of the original construction in 1987 and has received heavy use since that time; and

WHEREAS, the carpet in all areas has reached the end of its practical use expectancy; and

WHEREAS, the approved 5-year Capital Improvement Plan and proposed Fiscal Year 2002-2003 MERC Pooled Capital Budget includes provisions for a carpet replacement project; and

WHEREAS, PCPA is receiving \$2 million in capital funds from the City of Portland for Capital Projects within the PCPA facilities for projects such as the carpet replacement, budgeted at \$325,000; and


WHEREAS, replacement of the carpeting requires a public bid process as a public improvement; and


WHEREAS, MERC Staff has prepared a Request for Bids document for issuance and review in accordance with the MERC Purchasing Policy and Guidelines:

BE IT THEREFORE RESOLVED that the Metropolitan Exposition-Recreation Commission:

1. Approves issuance of the Request for Bids for the Carpet Replacement Project at the New Theatre Building, in a form substantially similar to the documents attached as Exhibit "A," to be issued by Staff in accordance with MERC's Purchasing Policy and Guidelines, and
2. That the Commission further, authorizes the General Manager to execute a contract with the lowest responsive and responsible Bidder, if any, provided that the Bid submitted is within the budgeted amount for the carpet replacement.

Passed by the Commission on July 24, 2002.



Chair


Secretary/Treasurer

Approved As to Form:

Daniel B. Cooper, General Counsel

By: 

MERC STAFF REPORT

Agenda Item/Issue: Approval to issue a Request for Bids for the Portland Center for the Performing Arts, New Theatre Building, "Carpet Replacement Project", and authority for the MERC General Manager to execute a Contract.

Resolution No: 02-25

Date: July 17, 2002

Presented by: Robyn Williams

BACKGROUND: The existing carpeting within PCPA's New Theatre Building, installed as part of the original construction in 1987, has been repaired several times in the last few years, and has now come to the end of its useful expectancy of fifteen years. MERC Staff has prepared a Bid Document to be issued for Bids in accordance with MERC's Purchasing Policy and Guidelines. This Document has been reviewed and substantially approved by METRO's Contracts Department and Legal Office.

FISCAL IMPACT: The Project's budget is currently set at \$325,000, which is included in the MERC Pooled Capital Budget for FY 02/03.

RECOMMENDATION: Staff recommends that the Metropolitan Exposition-Recreation Commission approve by resolution, issuance of a "Request for Bids", to replace the Carpet at the New Theatre Building, with the contract to be executed by the MERC General Manager, provided that the lowest responsive and responsible bid is within the budget of \$325,000.

AGREEMENT

Contract #924711

This Agreement is made by and between Rubenstein's Contract Carpet, LLC, hereinafter called 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 268.395, 268.400 and 268.310(6); hereinafter called MERC for the Portland Center for the Performing Arts, New Theatre Building, Carpet Replacement Project.

The Contractor and MERC agree as follows:

1. Contract Documents

The Contract Documents consist of this Agreement, the Advertisement for Bids, the Invitation to Bid, the Instructions to Bidders, the Bid Forms (including Bid price sheet with signature pages, Surety name request, Resident/Non-resident Bidder Status, Non-Collusion Affidavit, Bid Bond, MBE/WBE Business Program Compliance forms, MBE/WBE Utilization forms, the Certificate of Compliance for Recycled Materials), Prevailing Wage Rate Compliance, the Performance and the Labor and Materials Payment Bonds, the General Conditions, the Supplementary Conditions, the Technical Specifications, the Drawings, the approved building schedule, and other information and data as listed in the Supplementary Conditions, and any modifications of any of the foregoing in the form of Addenda or Change Orders in accordance with the terms of the Contract. Where applicable, reference to this Agreement herein shall be deemed to refer to all of the Contract Documents.

These documents form the Contract and are, by this reference, expressly incorporated herein. All are as fully a part of the Contract as if attached to this Agreement and repeated fully herein. No amendment made to this Contract nor Change Order issued shall be construed to release either party from any obligation contained in the Contract Documents except as specifically provided in any such amendment or Change Order.

2. Scope of Work

Contractor agrees to provide all labor, tools, equipment, machinery, supervision, transportation, permits and every other item and service necessary to perform the Work described in the Contract Documents. Contractor agrees to fully comply with each and every term, condition and provision of the Contract Documents.

3. Contract Amount

As consideration for Contractor's performance hereunder, MERC agrees to pay Contractor the Contract Amount as adjusted by approved Change Orders issued pursuant to the Contract Documents. Contractor agrees to accept the Contract Amount as full payment for Contractor's performance of the above described Work. Contractors must promptly pay, as due, all persons supplying to such contractor labor or material used in this contract. If the contractor or first-tier subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within 30 days after receipt of payment from MERC or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus shall pay interest in accordance with ORS 279.314. If the contractor or first-tier subcontractor fails, neglects, or refuses to make payment the person may file a complaint with the Construction Contractors Board unless to a good faith dispute as defined by ORS

297.445. Contractor must pay any and all contributions and amounts due to the Industrial Accident Fund from contractor or subcontractor and incurred in the performance of the contract. No liens or claims are permitted to be filed against METRO or MERC on account of any labor or material furnished. Contractors are required to pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

The Contract Amount is \$246,137.00, (Two Hundred Forty Six Thousand One Hundred Thirty Seven and 00/100 dollars), which includes the Base Bid and Alternate as per Bid of January 21, 2003. MERC shall make payments to Contractor in the manner and at the times provided in the Contract Documents.

4. Additional or Deleted Work

Contractor shall, when so instructed by MERC under the procedures of the Contract Documents, perform additional Work or delete Work in accordance with the Contract Documents. Any increase or decrease in the Contract Amount shall be determined pursuant to the applicable provisions of the Contract Documents.

5. Time of Completion; Adjusted Payments; Term of Agreement/Contract

Time is of the essence of this Agreement. The Contract Time shall commence upon issuance of the Notice to Proceed. Contractor shall commence work under this Contract within no more than (10) calendar days after issuance of written Notice to Proceed. Contractor shall bring the work to substantial completion no later than **May 31, 2003**. By executing this Agreement, Contractor confirms and accepts that the substantial completion date so stated is a reasonable period for performance of all of the Work.

If Contractor fails to substantially complete the Work, within the Contract Time, as determined by MERC in accordance with the Contract Documents, Contractor may be subject to liquidated damages to MERC as described in the Contract Documents, General Conditions, Section 00700.

The Agreement/Contract Term shall be from the date of final execution through August 15, 2003, unless otherwise extended by Addendum signed by both parties to this Agreement.

6. Bonds

Contractor submits herewith a Performance Bond and a separate Labor and Materials Payment Bond, both in a form acceptable to MERC and otherwise in accordance with the Contract Documents and each in the Contract Amount to ensure full compliance, execution and performance of this Contract by Contractor and payment by Contractor of labor and material Suppliers as more fully described in the Contract Documents.

7. Remedies for Default

If Contractor fails to perform as specified in the Contract Documents, MERC shall be entitled to all the rights and remedies which this Contract provides, as well as all remedies provided by law. This Contract shall not be construed as limiting or reducing the remedies provided by law which MERC would have in the absence of any provision of the Contract.

8. Laws of Oregon Apply

The laws of Oregon shall govern the interpretation and construction of this Construction Agreement and all of the Contract Documents.

9. Entire Agreement

The Contract Documents constitute the final written expression of all of the terms of this Agreement and are a complete and exclusive statement of those terms. Any and all representations, promises, warranties, or statements by either party that differ in any way from the terms of this written agreement shall be given no force and effect. This Contract shall be changed, amended, or modified only by written instrument signed by both MERC and Contractor. This Contract shall not be modified or altered by any course of performance by either party.

CONTRACTOR

MERC

MS By: *[Signature]*

By: *[Signature]*

Title: Manager

Title: General Manager

Date: 2-7-03

Date: 2/10/03

