

METROPOLITAN EXPOSITION RECREATION COMMISSION

RESOLUTION 05-08

For the purpose of selecting Contract Flooring & Interiors, Inc. as the lowest responsive and responsible bidder in response to a Request For Bids, relating to the Arlene Schnitzer Concert Hall "Carpet Replacement," and authorizing the General Manager to execute a contract with Contract Flooring & Interiors, Inc.

Whereas, the Arlene Schnitzer Concert Hall carpeting that was installed as part of the reconstruction in 1984 and has now reached the end of its useful life; and

Whereas, in the public interest, several areas of the carpet have been replaced and repaired for appearance and safety reasons; and

Whereas, Section 6.1 of the Commission's Purchasing Policies and Guidelines, in effect at the time of issuance of the Request for Bids, delegated authority to the General Manager to prepare and approve Request for Bids (RFB) documents and to solicit bids; and

Whereas, MERC staff, under the direction of the General Manager, prepared and issued a Request for Bids for the Arlene Schnitzer Concert Hall Carpet Replacement; and

Whereas, Section 3(B) of the Commission's Contracting And Purchasing Rules, effective March 1, 2005, requires the Commission to select the lowest responsive and responsible bidder, approve the contract award, and approve the written contract by resolution; and

Whereas, MERC staff has evaluated the bids, and Contract Flooring & Interiors, Inc. is the lowest responsive and responsible bidder.

BE IT THEREFORE RESOLVED as follows:

1. The Metropolitan Exposition Recreation Commission selects Contract Flooring & Interiors, Inc. as the lowest responsive and responsible bidder in response to the Request for Bids for the Arlene Schnitzer Concert Hall Carpet Replacement;
2. The Metropolitan Exposition Recreation Commission approves the award of a contract, in a form substantially similar to the attached Exhibit "A," to Contract Flooring & Interiors, Inc.
3. The Metropolitan Exposition Recreation Commission authorizes the General Manager to execute the contract on behalf of the Commission.

Passed by the Commission on March 23, 2005.



Chair



Secretary/Treasurer

Approved As to Form:
Daniel B. Cooper, Metro Attorney

By:



Lisa Umscheid

Senior Assistant Metro Attorney

MERC STAFF REPORT

Agenda Item/Issue: For the purpose of selecting Contract Flooring & Interiors, Inc. as the lowest responsive and responsible bidder in response to a Request For Bids, relating to the Arlene Schnitzer Concert Hall "Carpet Replacement," and authorizing the General Manager to execute a contract with Contract Flooring & Interiors, Inc.

Resolution No: 05-08

Date: March 23, 2005

Presented by: Robyn Williams

BACKGROUND: The existing carpeting within the Arlene Schnitzer Concert Hall, was installed as part of the building's reconstruction in 1984, has been repaired several times in the last few years, and has now come to the end of its useful life expectancy. MERC Staff prepared and issued Bid Documents and a Request for Bids in accordance with MERC's Purchasing Policies for the replacement of the carpet. Bids were received on March 9, 2005, with Contract Flooring & Interiors, Inc., Portland, OR, being the only, and therefore lowest responsive and responsible bidder for the amount of three hundred twenty three thousand eight hundred ninety nine & NO/100 dollars (\$323,899.00). In accordance with the bidding documents, MERC staff negotiated in good faith with the single bidder for a value-added contract price of two hundred ninety one thousand nine hundred seventeen and NO/100 dollars (\$291,917.00).

FISCAL IMPACT: The Project's budget is currently set at \$300,000, which is included in the MERC Pooled Capital Budget for FY 05/06.

RECOMMENDATION: Staff recommends that the Metropolitan Exposition-Recreation Commission, by Resolution 05-08 approve the contract award and written contract (attached hereto) with Contract Flooring & Interiors, Inc., Portland, OR, for the amount of two hundred ninety one thousand nine hundred seventeen and NO/100 dollars (\$291,917.00), for the Carpet Replacement at the Arlene Schnitzer Concert Hall.

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PUBLIC CONTRACT

Contract # 926496

This Contract is made by and between the Metropolitan Exposition-Recreation Commission, whose address is 777 N.E. Martin Luther King Jr. Blvd., Portland, OR, 97232, and governing body for the Portland Center for the Performing Arts, Arlene Schnitzer Concert Hall, located at 1037 SW Broadway, Portland, OR 97205, and Contract Flooring & Interiors, Inc., whose address is 135 NW Park Avenue, Portland, OR 97209, hereinafter referred to as the "Contractor." This Contract is for the Replacement of Carpet at the Arlene Schnitzer Concert Hall.

The Contractor and MERC agree as follows:

1. Contract Documents

The Contract Documents consist of this Contract, 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/ESB Business Program Compliance forms, MBE/WBE/ESB Utilization forms, the Certificate of Compliance for Recycled Materials, Statement of Employee Drug Testing Program and First Tier Subcontractor list), Prevailing Wage Rate Compliance, Performance and the Labor and Materials Payment Bonds, General Conditions, Supplementary Conditions, Technical Specifications, Appendices to the Specifications, the Drawings, the approved and updated Facility Schedule, Attachments A and B hereto, 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 Contract 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 Contract 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. This Contract may be amended only by written instrument signed by both MERC and Contractor. The law of the State of Oregon shall govern the construction and interpretation of this contract.

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 for the replacement of the carpet at the Arlene Schnitzer Concert Hall. 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 negotiated reductions from the original Bid Amount (See Attachment A), or 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.

The Contract Amount is Two Hundred Ninety One Thousand Nine Hundred Seventeen and 00/100 Dollars (\$291,917.00). MERC shall make payments to Contractor in the manner and at the times provided in the Contract Documents and as described in Attachment B, payment terms for the Options Carpet.

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 Contract

Time is of the essence of this Contract. The Contract Time shall commence upon execution of the contract by both CFI and MERC. Contractor shall commence work under this Contract within no more than ten (10) calendar days after execution of the Contract. Contractor shall bring the Work to substantial completion no later than September 15, 2005, or at such date as may be extended by Change Order approved by Contractor and MERC. By executing this Contract, Contractor confirms and accepts that the Contract Time 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.

This Contract Term shall be from the date of Notice to Proceed through November 30, 2005, unless otherwise extended by Amendment signed by both parties to this Contract. The end date of the Contract Term is intended to allow for finalization of all closeout requirements, receipt of warranties, manuals and final payment, but does not alter requirements for substantial completion of the Work by the date specified.

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 Contract and all of the Contract Documents.

9. Entire Contract

The Contract Documents constitute the final written expression of all of the terms of this Contract 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.

10. Liability and Indemnity

Contractor is an independent contractor and assumes full responsibility for the content of its work and performance of Contractor's labor. Contractor assumes full responsibility for all liability for bodily injury or physical damage to person or property arising out of or related to this Contract, and shall defend, indemnify, and hold harmless the City of Portland, Metropolitan Exposition-Recreation Commission, Metro, their agents, elected and appointed officials, and employees (the Indemnitees) from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with the performance of this Contract. Contractor is solely responsible for paying Contractor's subcontractors and nothing contained herein shall create or be construed to create any contractual relationship between any subcontractor(s) and MERC.

11. Termination

MERC may terminate this Contract upon giving Contractor seven (7) days' written notice. In the event of termination, Contractor shall be entitled to payment for work performed to the date of termination. MERC shall not be liable for indirect or consequential damages or any other damages. Termination by MERC will not waive any claim or remedies it may have against Contractor.

12. Insurance

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

Broad form comprehensive general liability insurance covering personal injury, property damage, and bodily injury with automatic coverage for premises and operation and product liability shall be a minimum of \$1,000,000 per occurrence. The policy must be endorsed with contractual liability coverage. MERC, its appointed officials, departments, employees, and agents shall be named as an ADDITIONAL INSURED.

Automobile bodily injury and property damage liability insurance. Insurance coverage shall be a minimum of \$1,000,000 per occurrence. MERC its appointed 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 be 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.

13. Public Contracts

All applicable provisions of ORS chapters 187 and 279, and all other terms and conditions necessary to be inserted into public contracts in the State of Oregon, are hereby incorporated as if such provision were a part of this Agreement, including, but not limited to, ORS 279.C500 to 279.C670. Specifically, it is a condition of this contract that Contractor and all employers working under this Agreement are subject employers that will comply with ORS 656.017 as required by 1989 Oregon Laws, Chapter 684.

For public work subject to ORS 279.C800 to 279.C870, the Contractor shall pay prevailing wages and shall pay an administrative fee to the Bureau of Labor and Industries pursuant to the administrative rules established by the Commissioner of the Bureau of Labor and Industries.

Contractor 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 thirty (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.C515. 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, the person may file a complaint with the Construction Contractors Board unless due to a good faith dispute as defined by ORS 279.C580. 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.

For public improvement work, all contractors must demonstrate that an employee drug-testing program is in place.

14. Attorney's Fees

In the event of any litigation concerning this Contract, the prevailing party shall be entitled to reasonable attorney's fees and court costs, including fees and costs on appeal to any appellate courts.

15. Quality of Goods and Services

Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of the highest quality. All workers and subcontractors shall be skilled in their trades. Contractor guarantees all work against defects in material or workmanship for a period of one (1) year from the date of acceptance or final payment by MERC, whichever is later. All guarantees and warranties of goods furnished to Contractor or subcontractors by any manufacturer or supplier shall be deemed to run to the benefit of MERC.

16. Ownership of Documents

Unless otherwise provided herein, all documents, instruments and media of any nature produced by Contractor pursuant to this agreement are Work Products and are the property of MERC, including but not limited to: drawings, specifications, reports, scientific or theoretical modeling, electronic media, computer software created or altered specifically for the purpose of completing the Scope of Work, works of art and photographs. Unless otherwise provided herein, upon MERC's request, Contractor shall promptly provide MERC with an electronic version of all Work Products that have been produced

or recorded in electronic media. MERC and Contractor agree that all work Products are works made for hire and Contractor hereby conveys, transfers, and grants to MERC all rights of reproduction and the copyright to all such Work Products.

17. Subcontractors

Contractor shall contact MERC prior to negotiating any subcontracts and Contractor shall obtain approval from MERC before entering into any subcontracts for the performance of any of the services and/or supply of any of the goods covered by this Contract.

MERC reserves the right to reasonably reject any subcontractor or supplier and no increase in the Contractor's compensation shall result thereby. All subcontracts related to this Contract shall include the terms and conditions of this agreement. Contractor shall be fully responsible for all of its subcontractors as provided in Article 10.

18. Right to Withhold Payments

MERC shall have the right to withhold from payments due 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.

If a liquidated damages provision is contained in the Scope of Work and if Contractor has, in MERC's opinion, violated that provision, MERC shall have the right to withhold from payments due Contractor such sums as shall satisfy that provision. All sums withheld by MERC under this Article shall become the property of MERC and Contractor shall have no right to such sums to the extent that Contractor has breached this Contract.

19. Safety

If services of any nature are to be performed pursuant to this agreement, Contractor shall take all necessary precautions for the safety of employees and others in the vicinity of the services being performed and shall comply with all applicable provisions of federal, state and local safety laws and building codes, including the acquisition of any required permits.

20. Integration of Contract Documents

All of the provisions of any bidding documents including, but not limited to, the Advertisement for Bids, General and Special Instructions to Bidders, Proposal, Scope of Work, and Specifications which were utilized in conjunction with the bidding of this Contract are hereby expressly incorporated by reference. Otherwise, this Contract represents the entire and integrated agreement between MERC and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by both MERC and Contractor. The law of the state of Oregon shall govern the construction and interpretation of this Contract.


21. Compliance

Contractor shall comply with federal, state, and local laws, statutes, and ordinances relative to the execution of the work. This requirement includes, but is not limited to, non-discrimination, safety and health, environmental protection, waste reduction and recycling, fire protection, permits, fees and similar subjects.

22. Assignment

Contractor shall not assign any rights or obligations under or arising from this Contract without prior written consent from MERC.

Contract Flooring & Interiors, Inc.

By: 
Signature

Print Name: JEFF IWASAKI

Title: Principal

Date: 4/26/05
SI

Metropolitan E-R Commission

By: 
Signature

Name: Jeff Miller

Title: MERC General Manager

Date: 5/5/05

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ORIGINAL

MERC #1



Attachment A

CF&I PROPOSAL FORM April 7, 2005	Chris Lambert 503-209-0295
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SUBMITTED TO:	PROJECT:
MERC Mark Hunter/ Sarah Bernard	Arlene Schnitzer Concert Hall Replacement Project

CF&I will furnish & install the materials listed below in compliance with the enclosed terms and conditions U.O.N.

The following proposal reflects the accepted list of changes made to the base bid of Base bid \$ 323,899.00

Exercise alternate to double stick in lieu of stretch over pad	Deduct <\$11,649.00>
Cost reductions from Options Carpet	<\$ 3,198.00>
Manage overrun of carpet from Options to meet attic stock requirements of project	<\$ 7,849.00>
Use CF&I remnant overstock for Knee Wall at Dress Circle	<\$ 410.00>
Installation labor reduction in cost	<\$ 800.00>
Install area rug in basement as is currently as direct glue overlapping rug with bound edge	<\$ 1,876.00>
Delete prep needed at main lobby carpet to float and prepare to receive double stick carpet	< 6,200.00>
**Prep will be responsibility of MERC or Mark Hunter	

Total Revised reflecting above deductions \$291,917.00

CLARIFICATIONS: PRICE DOES NOT INCLUDE THE FOLLOWING - OVERTIME, MAJOR FLOOR PREP, ATTIC STOCK, SLAB MOISTURE CONDITIONS.

Authorized Signature: _____

By: _____

ACCEPTANCE OF PROPOSAL: All prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified in this proposal. **Payments will be made as billed.** It is understood and agreed that this is work not provided for in any other agreement.

Accepted By: _____ Signature: _____

Date: _____ Title: _____

ORIGINAL



Attachment B

CF&I PROPOSAL FORM March 22, 2005	Chris Lambert 503-209-0295
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SUBMITTED TO:	PROJECT:
MERC Mark Hunter	Arlene Schnitzer Concert Hall

CF&I will furnish & install the materials listed below in compliance with the enclosed terms and conditions U.O.N.

The following represents the payment terms from Options Carpet on their requirements for custom carpet orders;

- 1/3 down payment required to initiate order \$60,159.33
- 1/3 payment due at time material is shipping \$60,159.33
- Balance due Net 30 after shipment is received \$60,159.33

Authorized Signature: _____

By: _____

ACCEPTANCE OF PROPOSAL: All prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified in this proposal. **Payments will be made as billed.** It is understood and agreed that this is work not provided for in any other agreement.

Accepted By: _____ Signature: _____

Date: _____ Title: _____

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