

METROPOLITAN EXPOSITION-RECREATION COMMISSION

Resolution No. 08-10

For the Purpose of Amending Metropolitan Exposition Recreation Commission Contracting and Purchasing Rules to Expand Special Procurements To Contracts Under \$100,000

WHEREAS, on February 23, 2005 MERC Commission adopted the current version of the Contracting and Purchasing Rules; and

WHEREAS, these rules define a MERC Special Procurement as "a class of contracts that has been designated by the Metro Council as a special procurement" provided that the contract is more than \$100,000; and

WHEREAS, Per ORS279B.085 Metro Council, as the Local Contract Review Board for both Metro and MERC, established several classes of special procurements that allow the Chief Executive Officer to choose solicitation methods; and

WHEREAS, the Metro Council determined that these Special Procurements will be unlikely to encourage favoritism in the awarding of Public Contracts or to substantially diminish competition for Public Contracts, and will either: result in substantial cost savings to Metro or to the public; or otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B; and

WHEREAS, it will benefit MERC to expand these special procurements in our Purchasing and Contracting Rules to include contracts in any amount,

BE IT THEREFORE RESOLVED AS FOLLOWS:

- The Metropolitan Exposition-Recreation Commission hereby amends Section 6, Special Procurements to read (see Exhibit A)

Passed by the Commission on September 24, 2008




Chair

Approved as to form:
Daniel B Cooper, General Counsel



Secretary-Treasurer

By: 
Nathan Sykes, Metro Attorney

MERC STAFF REPORT

Agenda Item/Issue: For the Purpose of Amending Metropolitan Exposition Recreation Commission Contracting and Purchasing Rules to Expand Special Procurements To Contracts Under \$100,000

Resolution No.: 08-10

Date: September 24, 2008

Presented by: Julie Hoffman

Background:

Oregon Revised Statute 279B.085, Special Procurements describes procedures for Class Special Procurements and Contract Specific Special Procurements. The statute explains that a Local Contract Review Board (LCRB) may approve either type of Special Procurement when presented these written findings:

- The proposed contracting procedure
- The services or goods to be purchased, and
- The circumstances that justify the use of the procurement. These circumstances are that the purchase:
 - Is unlikely to encourage favoritism or substantially diminish competition
and
 - Will result in substantial cost savings to the agency or the public
or
 - Will substantially promote the public interest in a manner that cannot practicably be realized by complying with the “normal” procurement procedures
- In Metro Code 2.04.053, Special Procurements the Metro Contract Review Board (Metro’s LCRB (Metro Council)) adopts several classes of Special Procurements and dictates the method of which they are to be procured. These classes of Special Procurements are included in the Exhibit A.

Metro Code 2.04.024, Metropolitan Exposition Recreation Commission delegates contracting authority to MERC and establishes Metro Council as its Local Contract Review Board

Metro Code Section 6.01.040(J), Powers empowers the MERC Commission to enter into contracts as it deems necessary under rules adopted by the Commission

MERC’s Contracting and Purchasing Rules currently allow the award of a special procurement for contracts in excess of \$100,000.

It is in the best interest of MERC to amend our Purchasing and Contracting Rules to allow class special procurements for contracts of any amount. Our Local Contract Review Board has already determined that contracts referenced in Metro code and in Exhibit A meet the requirements to be Class Special Procurements.

Fiscal Impact: It is believed that MERC will receive significant financial savings through the use of these special procurement classes. By considering alternative methods of procurement, such as direct negotiation and cooperative procurement, MERC staff can ensure the best value for the agency.

Other Considerations: In addition to Metro, other local public agencies have adopted similar classes of special procurements to ensure efficiency in their procurement processes. These include City of Portland, Portland Development Commission, Multnomah County, and Portland Public Schools.

Recommendation: Staff recommends that the Commission by Resolution 08-10 amend MERC's Purchasing and Contracting Rules Section 6, Special Procurements to read (see Exhibit A)

Exhibit A

SECTION 6 – SPECIAL PROCUREMENTS

A. Metro Council Designation of Special Procurements

A contract may be awarded as a special procurement if (a) the contract is in a class of contracts that has been designated as a special procurement or (b) the specific contract has been approved by Metro Council as a special procurement. A current list of special procurements designated by Metro Council is contained in Attachment "A."

B. Procedures For Special Procurements

Special procurements shall be procured in accordance with the specific procedure, if any, contained in the Metro Code for that class of procurement. If no procurement is specified by Metro Code for the class of the special procurement, procurement shall be performed by means of procedures chosen by the Chief Executive Officer as an appropriate method tailored to fit and in light of the demands, circumstances and market realities associated with obtaining each of the enumerated goods and services. Such procurement procedures may included but shall not be limited to direct negotiations with individual or multiple vendors or suppliers; negotiations with ranked proposers; competitive negotiations; or multiple tiered competitions.

Exhibit A

Attachment A
From Metro Code

2.04.53 Special Procurements

- a Pursuant to ORS 279B.085, the following public contracts are approved as classes of special procurements based on the legislative finding by Metro Contract Review Board that the use of a special procurement will be unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for the public contracts and will result in substantial cost savings to Metro or the public or will otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with the requirements that are applicable under ORS 279B.055, ORS 279B.060, ORS 279B.065, ORS 279B.070:
- 1) All contracts estimated to be not more than \$100,000 provided that the procedures required by Section 13 of this Ordinance are followed.
 - 2) Purchase and sale of zoo animals, zoo gift shop retail inventory and resale items.
 - 3) Contracts for management and operation of food, parking or similar concession services at Metro facilities provided that procedures substantially similar to the procedures required for sealed competitive Request for Proposals used by Metro for personal services contracts are followed.
 - 4) Emergency contracts provided the provisions of ORS 279B080 are followed. An emergency contract must be awarded within 60 days of the declaration of the emergency unless the Board grants an extension.
 - 5) Purchase of food items for resale at facilities owned or operated by Metro.
 - 6) Contracts or warranties, including but not limited to computer software warranties, in which the supplier of the goods or services covered by the warranty has designated an authorized provider for the warranty service.
 - 7) Contracts for computer hardware, software
 - 8) Contracts under which Metro is to receive revenue by providing a service.
 - 9) Contracts for the lease or use of the convention, trade, and spectator buildings and facilities operated by the Metropolitan Exposition-Recreation Commission
 - 10) Public contracts by the Metropolitan Exposition-Recreation Commission in an amount less than \$100,000, which amount shall be adjusted each year to reflect any changes in the Portland SMSA CPI, provided that any rules adopted by the commission which provide for substitute selection procedures are followed.
 - 11) 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.
 - 12) Contracts in the nature of grants to further a Metro purpose provide that a competitive Request for Proposal process is followed.
 - 13) The procurement of utilities or any other services whose price is regulated by any governmental body, including but not limited to telephone service,

electric, natural gas, and sanitary services, provided that if competition is available, a Request for Proposal process is followed.

- 14) Contracts for goods or services when the provider of the procured goods or services is required by the federal government or by the state of Oregon.
- 15) Contracts for co-operative procurements permitted under ORS 279A.220 to ORS 279A.225.
- 16) The procurement of art and art related production and fabrication provided that a Request for Proposal process is followed.
- 17) Sponsorships which are identified and approved in the proposed budget and are not designated by Council as having a significant impact as outlined in Section 2.04.026 need not follow a competitive bidding or proposal process. In order to be eligible for this exemption the sponsorship shall provide Metro with event advertising and/or media releases.
- 18) Sponsorship contract, provided that quotes are obtained from at least three potential sponsors or that good faith efforts to obtain such quotes are documented. A sponsorship contract is any contract under which the sponsor's name or logo is used in connection with a facility's goods, buildings, parts of buildings, services, systems, or functions in exchange for the sponsor's agreement to pay consideration, including money, goods, services, labor, credits, property or other consideration.
- 19) Contracts for projects that are not public improvements as defined in Metro Code Section 2.04.010(m) in which a contractor provides a material and substantial portion of the funding for such project.