

BEFORE THE METRO COUNCIL

RELATING TO CONTRACT PROCEDURES) ORDINANCE NO. 94-554B
AMENDING METRO CODE CHAPTER 2.04)
TO INCREASE TO \$25,000 THE MAXIMUM) Introduced by
AMOUNT OF CONTRACTS THAT MAY BE) Councilor Sandi Hansen
LET WITHOUT USING A FORMAL BID OR)
REQUEST FOR PROPOSALS PROCESS)

WHEREAS, The Metro Code requires formal bid procedures for Personal Services Contracts over \$10,000 and Public Contracts over \$15,000; and

WHEREAS, Contracts of less than the threshold amounts of \$10,000 and \$15,000 may be let by securing quotes from qualified bidders; and

WHEREAS, Representatives of the minority contracting community have indicated that raising the limit for letting contracts without formal bid procedures will improve the ability of minority- and women-owned businesses to compete for Metro contracts;

WHEREAS, The State of Oregon has a \$25,000 threshold for contracts to be let without formal bids, and Multnomah County is planning to adopt the State's guidelines; and

WHEREAS, The Council finds that raising the competitive bid threshold to \$25,000 would not encourage favoritism, or diminish competition and should result in substantial time and cost savings set forth in attached Exhibit A; now, therefore,

THE METRO COUNCIL HEREBY ORDAINS:

1. The following Sections of the Metro Code are amended to read as follows:

CHAPTER 2.04

METRO CONTRACT PROCEDURES

SECTIONS:

2.04.030 Rules and Procedures Governing All Personal Services and Public Contracts:

(a) **Applicability:** All Personal Services Contracts and Public Contracts are subject to the applicable selection, review and approval procedures of this Chapter.

(b) **Initiating a Contract:** When a department initiates a contract not in the form of a Purchase Order, it must first notify the ~~Department of Finance & Administration Contracts Division of the Department of General Services~~ of its intention and request the issuance of a contract number which shall appear on all copies of the contract. The department must complete a Contract Summary form indicating the specifics of the contract. This form must be forwarded to the ~~Department of Finance & Administration Contracts Division of the Department of General Services~~ either with a fully executed contract (one copy) if the amount is estimated to be \$2,500 or under, or with an unexecuted contract (three copies) for review, approval and signature if the amount is over \$2,500.

(c) **Documentation Required for Contract Files:** The ~~Department of Finance & Administration Contracts Division of the Department of General Services~~ will maintain central files for all contracts. An original copy should be given to each contractor. All correspondence relating to a contract which alters conditions or amounts must be included in the central files as should all papers which document the process of obtaining competitive bids, quotes, or proposals. In any case where a low bid, quote, or proposal is not accepted, a detailed justification must be included with the contract file. Other documentation, if applicable, that should be included in the file includes:

- Mailing Lists
- Affidavits of Publication
- Insurance Endorsements and Certificates
- Amendments
- Extensions
- Related Correspondence
- Quotes, Proposals, and Bids
- Bonds
- DBE/WBE Information
- Contract Closure Form
- Personal Services Evaluation Form

(d) **Contract Review:** Prior to approval by the appropriate person or body, contracts shall be reviewed as follows:

- (1) Any contract which deviates from a standard contract form, exceeds ~~\$10,000~~**\$25,000** for a Personal Services Contract or ~~\$15,000~~ for a Public Contract, or is with another public agency must be reviewed by the General Counsel.
- (2) Contracts involving federal or state grant funds must be reviewed by the Deputy Executive Officer.

(e) Disadvantaged Business Program: All contracting and purchasing is subject to the Metro Disadvantaged Business Enterprise Program. Metro will take affirmative action to do business with Disadvantaged Business Enterprises. ~~The Director of Finance and Administration~~ Contracts Division of the Department of General Services will maintain a directory of disadvantaged businesses which shall be consulted and used in all contracting and purchasing of goods and services. If a disadvantaged business is included in the directory that appears capable of providing needed goods or services, that business should be contacted and given an opportunity to compete for Metro business. Contracts awarded subject to the program may be exempted from the competitive bidding process by resolution of the Contracting Review Board.

(f) Monthly Contract Report: The Executive Officer will provide a monthly report to the Council, pursuant to Section 2.04.032, of all contracts, including extensions and amendments, which have been executed during the preceding month; provided, however, that such monthly report need not include purchase orders under \$500.

(g) Federal/State Agency Approval: When required by federal or state law or regulations, review and approval of Metro contracts shall include prior concurrence or approval by appropriate federal or state agencies.

(h) No contract or contract amendment may be approved or executed for any amount in excess of the amount authorized in the budget.

2.04.031 Notice of Award and Appeals:

(a) At least five (5) days prior to the execution of any Public Contract ~~over \$15,000~~ or a Personal Services Contract over ~~\$10,000~~ ~~the District~~ \$25,000, Metro shall provide a Notice of Award to the contractor selected and to all contractors who submitted unsuccessful bids or proposals. This requirement may be waived by the Executive Officer for any emergency contract entered into pursuant to this Code.

(b) Bid/Request for Proposals Appeal Procedures: The following procedure applies to aggrieved bidders and proposers who wish to appeal an award of a Public Contract ~~above \$15,000~~ and/or a Personal Services Contract above ~~\$10,000~~ \$25,000. The appeal process for bids is the same as for Requests for Proposals. In the case of Requests for Proposals, disagreement with the judgment exercised in scoring by evaluators is not a basis for appeal.

- (1) All appeals shall be made in writing and shall be delivered to the ~~Contracts Administrator~~ Procurement Officer at Metro's main office within five (5) working days of the postmarked date on the Notice of Award. The written appeal must describe the specific citation of law, rule, regulation, or procedure upon which the appeal is based.

- (2) The ~~Contracts Administrator~~ Procurement Officer shall forthwith notify the appropriate department head and the Executive Officer of the appeal. Within ten (10) working days of the receipt of notice of appeal, the Executive Officer shall send a notice of rejection of the appeal or a notice of acceptance of the appeal as applicable to the appellant. The appellant may appeal the Executive Officer's decision to reject the appeal in writing to the Contract Review Board within five (5) working days from the postmarked date on the Notice of Rejection.
- (3) The Contract Review Board will review the grounds for appeal, all pertinent information, and the Executive Officer's recommendation, and make a decision. The decision of the Contract Review Board is final.
- (4) No contract which is the subject of a pending appeal may be executed unless the Contract Review Board shall have given its approval at the request of the Executive Officer. The Executive Officer may request the Contract Review Board to determine a matter without waiting for the expiration of the time periods provided for herein.

2.04.032 Contract Information Reports:

(a) The Executive Officer shall provide a monthly report to the Council showing the status of all contracts in effect at Metro as of the date of the report. The report shall be divided into four sections: (a) Contracts Awarded; (b) Contracts Amended; (c) Open Contracts; and (d) Contracts Closed.

- (1) Contracts Awarded: This section shall report all new contracts awarded since the date of the previous report to the Council of all new contracts. Information contained in this report will be the cost center of the department responsible for the contract, contract number, starting and ending dates of the contract, type of contract, amount of the contract, vendor name, and a brief description of the purpose of the contract.
- (2) Contracts Amended: This section shall report all contracts amended by Change Order since the date of the previous report to the Council of contract amendments. Information contained in this report will be the contract number, vendor name, amendment number, type of amendment, the original amount of the contract, the amount of the contract amendment, the new total contract amount, the percent of the amount of increase in excess of the original amount of the contract, and a brief description of the purpose of the contract.

- (3) **Contracts Open:** This section shall report all contracts in effect on the last day of the month for which the report is prepared. Information contained in this report will be the cost center of the department responsible for the contract, contract number, starting and ending dates of the contract, type of contract, amount of the contract, the amount expended to date, vendor name, and a brief description of the purpose of the contract.
- (4) **Contracts Closed:** This section shall report all contracts closed by the last day of the month for which the report is prepared. Information contained in this report will be contract number, vendor name, type of contract, date contract closed, amount of the contract, final amount expended, and a brief description of the purpose of the contract.

(b) **Contract Type:** Each contract will be identified by a type code to describe the class of contract entered into by Metro. There shall be six types of contracts at Metro:

- (1) Personal Services;
- (2) Pass-Through Agreements;
- (3) Labor and Materials;
- (4) Intergovernmental Agreements;
- (5) Procurement; and
- (6) Construction.

(c) Prior to entering into (1) any public contract or personal services agreement pursuant to the authority granted in Section 2.04.060 authorizing Sole Source Contract, or (2) any Public Contract or Personal Services Agreement in an amount exceeding ~~\$15,000~~ **\$25,000** for which only one bid or response to a Request for Proposals has been received, the Executive Officer shall file a written report with the Council detailing the reasons why a Sole Source Contract was entered into or giving an explanation of why only one bid or response was received.

(d) The Executive Officer shall provide to the Council during the annual budget process a list of proposed contracts and Intergovernmental Agreements to be entered into during the ensuing fiscal year. The Council shall designate all listed contracts and Intergovernmental Agreements as either "A" or "B". For contracts designated by the Council as "A" contracts and being subject to this requirement by duly adopted ordinance, which may be the annual budget ordinance, copies of bid or proposal documents shall be filed with the Clerk of the Council and referred to the appropriate Council committee for review and comment. Documents must be filed with the Clerk of the Council at least thirty-five (35) days prior to the date of release for response by potential bidders. If the Council or a committee has not within fourteen (14) days of the date of filing scheduled the matter for a hearing the documents may be released to prospective bidders at any time after the fourteenth (14th) day. In any event, bid documents may be released to prospective bidders on the

thirty-fifth (35th) day after filing with the Council. For Intergovernmental Agreements designated by the Council as "A" contracts and being subject to this requirement by duly adopted ordinance, copies of the proposed agreement and scope of work or similar project description shall be filed with the Clerk of the Council and referred to the appropriate Council committee for review and comment. Documents shall be filed with the Clerk of the Council at least fourteen (14) days prior to execution of the agreement.

(e) Between the time of release of competitive bid or Request for Proposal documents for "A" contracts, as defined in subsection (d), and the designated due date for responses, all technical addenda which do not materially alter the bid document, the basis of award for the bid or proposal, or the proposed services or product to be contracted, shall be filed with the Metro General Counsel and the Clerk of the Council at the time of their release. All non-technical addenda to the bid documents shall be filed, with a staff report explaining the purpose and nature of the addendum, with the Metro General Counsel and the Clerk of the Council at least seven (7) days prior to their release. The Metro General Counsel shall determine if the addendum materially adds to or deletes from the original scope of work included in the bid documents or the basis of award for the bid or proposal. If the General Counsel finds that an addendum materially alters a bid document as described herein, for a contract subject to Council approval under Section 2.04.033, the General Counsel shall prepare an appropriate resolution for Council approval of the addendum. Council may act to approve an addendum per the Council's authority to approve the competitive bid or Request for Proposal document under subsection 2.04.033(a)(1). Such resolution shall be filed with the Clerk of the Council and placed on the agenda for the next scheduled Metro Council meeting. Any addendum filed by General Counsel for Council approval shall not be issued by the Metro Executive Officer or designated department until the Council acts on the resolution. Any addendum approved by the Council must be issued by the Metro Executive Officer or designated department not less than fourteen (14) days prior to the bid or proposal opening date unless the original opening date is extended at least fourteen (14) days. In any event, Council approval of the contract will act to cure any claim that any addendum to the contract bid or proposal document was material as described herein and was not approved by Council.

(f) Except as provided in subsection (f), all other contracts designated by the Council as "B" contracts shall be subject to the requirement that copies of bid documents shall be filed with the Clerk of the Council at the time they are released for response by potential bidders. For Intergovernmental Agreements designated as "B" contracts, copies of the contract and scope of work or similar project description shall be filed with the Clerk of the Council at the time they are to be executed. At the time any of the above documents are filed, the Executive Officer shall furnish the Council with information stating the purpose and nature of the proposed contract, the appropriation to be charged with the contract, and a statement of the contract's impact on the District in future fiscal years.

(g) Any Public Contract ~~\$15,000 or more~~ or Personal Services Contract ~~\$10,000~~ ~~exceeding \$25,000~~ or more or any Intergovernmental Agreement not on the list of

proposed contracts submitted by the Executive Officer as required by subsection (d) shall be subject to the filing and Council or committee review requirements in subsection (d) or if appropriate, the provisions of Section 2.04.033.

2.04.040 Public Contracts, General Provisions:

(a) **Competitive Bidding:** Metro may enter into an intergovernmental agreement with the State of Oregon to make purchases from State Price Agreement established by the State of Oregon by competitive bids. Metro may purchase directly from these price agreements that are based on the State's competitive bids. Unless exempt from public bidding, all other public contracts shall be awarded to the lowest, responsive, responsible bidder responding to competitive bids by Metro.

(b) **Oregon Preference:** In all public contracts, the District shall prefer goods or services that have been manufactured or produced in Oregon if price, fitness, availability and quality are otherwise equal. Where a contract in excess of \$10,000 is awarded to a contractor not domiciled or registered to do business in Oregon, the initiating Department shall assure compliance with the provisions of ORS 279.021.

(c) **Rejection of Bids:** The Executive Officer or the Deputy Executive Officer may reject any bid not in compliance with all prescribed public bidding procedures and requirements and may, for good cause, reject any or all bids upon a finding that it is in the public interest to do so, for example, when all bids exceed the budget or estimate for that project.

(d) **Bonds:** Unless the Board shall otherwise provide, bonds and bid security requirements are as follows:

- (1) Bid security not exceeding 10 percent of the amount bid for the contract is required unless the contract is for ~~\$15,000~~ **\$25,000** or less.
- (2) For public improvements, a Labor and Materials bond in an amount equal to 100 percent of the contract price is required for contracts over \$15,000.
- (3) For public improvements, a Performance bond in an amount equal to 100 percent of the contract price is required for contracts over \$10,000. If the contract is under \$50,000, the performance bond and labor and material bond may be one bond; if the contract is \$50,000 or more, there shall be two bonds.
- (4) Bid security, labor and material bond and performance bond may be required even though the contract is of a class not identified above, if the Executive Officer determines it is in the public interest.

- (5) Bid security and labor and performance bonds will not be required for food products procured pursuant to Chapter 2.04.090.
- (6) Bid security and bonds may be provided in the form of a surety bond, cash, cashier's check or certified check.

2.04.041 Requirement of Competitive Bidding, Exemptions:

(a) **State Law:** The following contracts are exempt from the competitive bidding selection process pursuant to State Statute:

- (1) Contracts with other public agencies or the federal government.
- (2) Contracts made with qualified nonprofit agencies providing employment opportunities for the handicapped.
- (3) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145.
- (4) Contracts for supplies estimated to be less than \$500.

(b) **Board Rule:** The following classes of public contracts are exempt from the competitive bidding process based on the findings by the Contract Review Board that the exemption will not encourage favoritism or substantially diminish competition for public contracts and that such exemptions will result in substantial cost savings:

- (1) Purchase and sale of Zoo animals.
- (2) Purchase and sale of Zoo gift shop retail inventory and resale items.
- (3) All contracts estimated to be less not more than \$15,000 \$25,000, provided that the selection process described in the appropriate Code sections is followed.
- (4) Contracts estimated not to exceed \$25,000 for road, highway or parking lot maintenance provided that at least three (3) competitive quotes are obtained, if available, and a record of said quotes and efforts to obtain them are maintained.
- (5) Emergency contracts when the Executive Officer makes written findings that an emergency exists and that the emergency consists of circumstances that could not have been reasonably foreseen and requires prompt execution of a contract to remedy that condition. An

emergency contract must be awarded within sixty (60) days of the declaration of the emergency unless the Board grants an extension.

- (6) Purchase of food items pursuant to Section 2.04.090.
- (7) Contracts for warranties in which the supplier of the goods or services covered by the warranty has designated a sole provider for the warranty service.
- (8) Contracts for computer hardware and software. Selection procedures for these contracts, however, must follow the RFP process outlined in Section 2.04.050, "Personal Services Contracts."
- (9) Contracts under which Metro is to provide a service only and incurs no financial obligation to another party.
- (10) Contracts for the lease or use of the Oregon Convention Center or other facilities operated by the Metropolitan Exposition-Recreation Commission.
- (11) For the purchases by the Metropolitan Exposition-Recreation Commission, all contracts estimated to be less than \$31,000 provided that any rules adopted by the Commission which provide for substitute selection procedures are followed.
- (12) For purchases by the Metropolitan Exposition-Recreation Commission, emergency contracts when the General Manager makes written findings that: 1) immediate procurement is essential to prevent a delay in work or extra expense to the Commission in circumstances which could not have been foreseen and avoided; 2) there is a threat of immediate damage to Commission property; or 3) there is an immediate danger to citizens or employees. The General Manager shall report to the Commission at its next regularly scheduled meeting of any contracts entered into pursuant to this section.
- (13) For purchases by the Metropolitan Exposition-Recreation Commission, 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.

(c) Board Resolution: Specific contracts, not within the classes exempted in subsection (b) above, may be exempted by the Board by resolution subject to the requirements of ORS 279.015(2) and ORS 279.015(5). The Board shall, where appropriate,

direct the use of alternate contracting and purchasing practices that take account of market realities and modern innovative contracting and purchasing methods, which are consistent with the public policy of encouraging competition.

(d) Limitation: The exemptions in subsections (a)-(c), above, are exemptions to the competitive bid process only; all other procedures, including review and approval, apply to these contracts.

2.04.043 Public Contracts Between \$2,501\$2,500 and \$15,000\$25,000:

(a) Selection Process: Unless completely exempt from competitive bidding under Section 2.04.041, when the amount of the contract is \$2,500 or more, but lessnot more than \$15,000\$25,000, the District must obtain a minimum of three (3) competitive quotes. The District shall keep a written record of the source and amount of the quotes received. If three (3) quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes. "Prior to selecting any contractor for a public contract greater than \$10,000, but not more than \$25,000, the contracting department shall notify the Department of General Services of the nature of the proposed contract, the estimated cost of the contract, and the name of a contact person. The Department of General Services shall publish notice of the intent to solicit competitive quotes, including a summary of the information supplied by the contracting department. No contract selection may be made until at least five days after such publication and after consideration of all quotes received."

(b) Review Process: After selection and prior to approval, the contract must be reviewed by the ~~Department of Finance and Administration~~Contracts Division of the Department of General Services.

(c) Approval Process: (1) For contracts of \$2,500 or more, either the Executive Officer or Deputy Executive Officer must sign; however, the Director or Assistant Director of the Zoo may sign purchase orders of \$10,000 or less. When designated in writing to serve in the absence of the Executive Officer or Deputy Executive Officer, the Director of ~~Regional Facilities~~General Services may sign contracts. No contract may be approved or executed for any amount in excess of the amount authorized in the budget.

(d) All contracts are subject to the rules and procedures of Code Section 2.04.030, "Rules and Procedures Governing Personal Services and Public Contracts."

2.04.044 Public Contracts of over \$15,000\$25,000 or More:

(a) Selection Process: Unless exempt from competitive bidding by Code section 2.04.041, the following competitive bidding procedures shall apply to all contracts:

- (1) The initiating department staff will prepare bid specifications and compile a list of potential bidders.
- (2) The bid document will be reviewed by the ~~Department of Finance and Administration~~ Contracts Division of the Department of General Services and by the General Counsel before bids are solicited or advertised, and shall include the contract form to be used.
- (3) A request for bids will be advertised in the manner required by law and in a local minority newspaper, and in any appropriate trade magazine. Additional advertisement may be appropriate depending upon the nature of the contract.
- (4) The initiating department will receive and open sealed bids at the time and place designated in the request for bids.
- (5) The opened bids will be reviewed by the requesting department and a recommendation and contract will be submitted to the ~~Department of Finance and Administration~~ Contracts Division of the Department of General Services.
- (6) After selection and prior to approval, the contract must be reviewed by the ~~Department of Finance and Administration~~ Contracts Division of the Department of General Services.
- (7) The initiating department will notify all bidders in writing of the contract award and obtain any necessary bonds and insurance certificates.
- (8) The District shall reserve the right to reject any or all quotes or bids received.

(b) Approval Process: All initial contracts with a contract price of more than \$15,000 ~~\$25,000 or more~~ shall be approved and executed by the Executive Officer or Deputy Executive Officer. When designated in writing to serve in the absence of the Executive Officer or Deputy Executive Officer, the Director ~~Regional of Facilities~~ of General Services may approve and execute contracts of \$15,000 ~~\$25,000 or more~~. No contract may be approved or executed for any amount in excess of the amount authorized in the budget.

(c) Within thirty (30) days of award of a construction contract, the ~~Department of Finance and Administration~~ Contracts Division of the Department of General Services shall provide the notice required by ORS 279.363.

(d) All contracts are subject to the rules and procedures of Code Section 2.04.030, "Rules and Procedures Governing Personal Services and Public Contracts."

(e) Prior to the award of a contract to any bidder other than the apparent low bidder the Executive Officer shall obtain the prior approval of the Contract Review Board.
2.04.052 Personal Services Contracts Between \$2,500 and \$10,000~~\$25,000~~:

(a) **Selection Process:** For Personal Services contracts \$2,500 or more but less than ~~\$10,000~~\$25,000, the Department Director shall use the following process:

- (1) Proposals shall be solicited from at least three (3) potential contractors who, in the judgment of the Department Director, are capable and qualified to perform the requested work. "Prior to selecting any contractor for a personal services contract greater than \$10,000 but not more than \$25,000, the contracting department shall notify the Department of General Services of the nature of the proposed contract, the estimated cost of the contract, and the name of a contact person. The Department of General Services shall publish notice of the intent to solicit competitive proposals, including a summary of the information supplied by the contracting department. No contract selection may be made until at least five days after such publication and after consideration of all proposals received."
- (2) The initiating Department shall document the fact that at least three (3) proposals have been solicited. Preferably, the proposals should be written, but this is not required. The District reserves the right to reject any or all proposals for any reason.
- (3) Evaluation, as determined by the Department Director, may require oral presentations and shall include use of a contractor evaluation form. The objective is the highest quality of work for the most reasonable price. The quality of the proposal may be more important than cost.
- (4) **Personal Services Evaluation Form:** The Personal Services evaluation form shall document the reasons for the selection. Proposals shall be evaluated according to predetermined criteria. The evaluation process may include the evaluators assigning a quantifiable score on how each aspect of a proposal meets the predetermined criteria. The contract may be awarded to the firm receiving the highest average score.
- (5) Notification of selection or rejection shall be made in writing after final review by the initiating department.

(b) Review Process: After selection and prior to approval, the contract must be reviewed by the ~~Department of Finance and Administration~~ Contracts Division of the Department of General Services.

(c) Approval Process: For contracts of \$2,500 or more, either the Executive Officer or Deputy Executive Officer must sign. When designated in writing to serve in the absence of the Executive Officer or Deputy Executive Officer, the Director of Regional Facilities ~~General Services~~ may sign contracts. No contract may be approved or executed for any amount in excess of the amount authorized in the budget.

(d) All contracts are subject to the rules and procedures of Code Section 2.04.030, "Rules and Procedures Governing Personal Services and Public Contracts."

2.04.053 Personal Services Contracts of ~~more than \$10,000~~ \$25,000 or More:

(a) Selection Process: For Personal Services contracts of ~~more than \$10,000~~ \$25,000 or more an evaluation of proposals from potential contractors shall be performed as follows:

- (1) A request for proposals shall be prepared by the initiating department and shall be reviewed by the General Counsel and the ~~Department of Finance and Administration~~ Procurement Officer. Where appropriate, notice of the request shall be published in a newspaper of general circulation or in trade magazines. In addition, Metro shall notify in writing at least three (3) potential contractors, who, in the judgment of the Department Director, are capable and qualified to perform the requested work. The initiating department will be responsible for maintaining the file and making the appropriate notification.
- (2) All requests for proposals shall at a minimum contain a description of the project and a brief summary of the project history, contain a detailed proposed scope of work or other specifications setting forth expected performance by the contractor, include a description of the criteria that will be utilized to evaluate proposals and the estimated budget for the project.
- (3) Evaluations of proposals shall include use of a contract evaluation form. The use of an oral interview or an evaluation team is recommended.
- (4) Personal Services Evaluation Form: The Personal Services evaluation form shall document the reasons for the selection. Proposals shall be evaluated according to predetermined criteria. The evaluation process may include the evaluators assigning a quantifiable score on how each

aspect of a proposal meets the predetermined criteria. The contract may be awarded to the firm receiving the highest average score.

- (5) After evaluation is complete, the Department Director will recommend final selection through the ~~Department of Finance and Administration~~ Contracts Division of the Department of General Services.
- (6) Notifications of selection and rejection shall be made in writing by the initiating department.
- (7) Personal Services contracts with the Scope of Work must be approved by the department head and then forwarded to the ~~Department of Finance and Administration~~ Contracts Division of the Department of General Services for internal review and execution. General Counsel review is required.

(b) Approval Process: All initial contracts with a contract price of greater than ~~\$10,000~~ \$25,000 shall be approved and executed by the Executive Officer or Deputy Executive Officer. When designated in writing to serve in the absence of the Executive Officer or Deputy Executive Officer, the Director of ~~Regional Facilities~~ General Services may approve and execute contracts of ~~more than \$15,000~~ more than \$25,000 or more. No contract may be approved or executed for any amount in excess of the amount authorized in the budget.

(c) All contracts are subject to the rules and procedures of Code Section 2.04.030, "Rules and Procedures Governing Personal Services and Public Contracts."

2.04.135 Affirmative Action and Equal Opportunity Procedures: Metro shall use affirmative action techniques to facilitate MBE participation in contracting activities. These techniques include:

- (a) Making affirmative efforts to solicit proposals from MBEs.
- (b) Examining alternatives for arranging contracts by size and type of work so as to enhance the possibility of participation by MBEs.
- (c) Arranging solicitations, time for the presentation of bids, quantities specifications, and delivery schedules so as to facilitate the participation of MBEs.
- (d) Referring MBEs in need of management assistance to established agencies that provide direct management assistance to such businesses.
- (e) Carrying out specific information and communications programs on contracting procedures and specific contracting opportunities in a timely manner, with such programs

being bilingual, and in conformance with any requirements of the Americans with Disabilities Act, where appropriate.

(f) Distribution of copies of the MBE Program to organizations and individuals concerned with MBE programs.

(g) Periodic reviews with department heads to ensure that they are aware of the MBE Program goals and desired activities on their parts to facilitate the purposes of the MBE Program. Additionally, departmental efforts toward and success in meeting the purposes of the MBE Program shall be factors considered during annual performance evaluations of the department heads.

(h) Monitoring and ensuring that MBE planning centers and likely MBE contractors are receiving requests for bids, proposals and quotes.

(i) Distribution of lists to potential MBE contractors of the types of goods and services which Metro regularly purchases.

(j) Advising potential MBE vendors that Metro does not certify MBE's, and directing them to the Executive Department.

(k) Specifying purchases by generic title rather than specific brand name whenever feasible.

(l) Establishing an interdepartmental contract management committee which will meet regularly to monitor and discuss, among other issues, potential MBE participation in contracts. In an effort to become more knowledgeable regarding MBE resources, the committee shall also invite potential MBE contractors to attend selected meetings.

(m) Requiring that at least one MBE vendor or contractor be contacted for all contract awards which are not exempt from Metro's contract selection procedures and which are 1) for more than \$500 but not more than ~~\$15,000~~ \$25,000 in the case of non-personal services contracts; and 2) for more than \$2,500 but not more than ~~\$10,000~~ \$25,000 for personal services contracts. The Liaison Officer may waive this requirement if he/she determines that there are no MBEs on the certification list capable of providing the service or item. For contracts over the dollar amounts indicated in this section, all known MBEs in the business of providing the service or item(s) required shall be mailed bid or proposal information.

(n) Requiring that all prospective bidders attend scheduled prebid conferences on all construction contracts with an estimated value of over \$100,000.

(o) The Executive Officer or his/her designee, may establish and implement additional affirmative action techniques which are consistent with the MBE Program and designed to facilitate participation of MBEs in Metro contracting activities.

2.04.235 Affirmative Action and Equal Opportunity Procedures: Metro shall use affirmative action techniques to facilitate WBE participation in contracting activities. These techniques include:

- (a) Making affirmative efforts to solicit proposals from WBEs.
- (b) Examining alternatives for arranging contracts by size and type of work so as to enhance the possibility of participation by WBEs.
- (c) Arranging solicitations, time for the presentation of bids, quantities specifications, and delivery schedules so as to facilitate the participation of WBEs.
- (d) Referring WBEs in need of management assistance to established agencies that provide direct management assistance to such businesses.
- (e) Carrying out specific information and communications programs on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual, and in conformance with any requirements of the Americans with Disabilities Act, where appropriate.
- (f) Distribution of copies of the WBE Program to organizations and individuals concerned with WBE programs.
- (g) Periodic reviews with department heads to ensure that they are aware of the WBE Program goals and desired activities on their parts to facilitate the purposes of the WBE Program. Additionally, departmental efforts toward and success in meeting the purposes of the WBE Program shall be factors considered during annual performance evaluations of the department heads.
- (h) Monitoring and ensuring that WBE planning centers and likely WBE contractors are receiving requests for bids, proposals and quotes.
- (i) Distribution of lists to potential WBE contractors of the types of goods and services which Metro regularly purchases.
- (j) Advising potential WBE vendors that Metro does not certify WBE's, and directing them to the Executive Department.
- (k) Specifying purchases by generic title rather than specific brand name whenever feasible.

(l) Establishing an interdepartmental contract management committee which will meet regularly to monitor and discuss, among other issues, potential WBE participation in contracts. In an effort to become more knowledgeable regarding WBE resources, the committee shall also invite potential WBE contractors to attend selected meetings.

(m) Requiring that at least one WBE vendor or contractor be contacted for all contract awards which are not exempt from Metro's contract selection procedures and which are 1) for more than \$500 but not more than ~~\$15,001~~\$25,000 in the case of non-personal services contracts; and 2) for more than \$2,500 but not more than ~~\$10,001~~\$25,000 for personal services contracts. The Liaison Officer may waive this requirement if he/she determines that there are no WBEs on the certification list capable of providing the service or item. For contracts over the dollar amounts indicated in this section, all known WBEs in the business of providing the service or item(s) required shall be mailed bid or proposal information.

(n) Requiring that all prospective bidders attend scheduled prebid conferences on all construction contracts with an estimated value of over \$100,000.

(o) The Executive Officer or his/her designee, may establish and implement additional affirmative action techniques which are consistent with the WBE Program and designed to facilitate participation of WBEs in Metro contracting activities.

2.04.335 Affirmative Action and Equal Opportunity Procedures: Metro shall use affirmative action techniques to facilitate DBE and participation in contracting activities. These techniques include:

(a) Arranging solicitations, time for the presentation of bids, quantities specifications, and delivery schedules so as to facilitate the participation of DBEs.

(b) Referring DBEs in need of management assistance to established agencies that provide direct management assistance to such businesses.

(c) Carrying out information and communications programs on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate.

(d) Distribution of copies of the DBE Program to organizations and individuals concerned with DBE Programs.

(e) Periodic reviews with department heads to insure that they are aware of the DBE Program goals and desired activities on their parts to facilitate reaching the goals. Additionally, departmental efforts toward and success in meeting DBE goals for department contracts shall be factors considered during annual performance evaluations of the department heads.

- (f) Monitor and insure that Disadvantaged planning centers and likely DBE contractors are receiving requests for bids, proposals and quotes.
- (g) Study the feasibility of certain USDOT-assisted contracts and procurements being set aside for DBE participation.
- (h) Distribution of lists to potential DBE contractors of the types of goods and services which Metro regularly purchases.
- (i) Advising potential DBE vendors that Metro does not certify DBEs, and directing them to ODOT until December 31, 1987, and, thereafter, to the Executive Department.
- (j) Specifying purchases by generic title rather than specific brand name whenever feasible.
- (k) Establishing an interdepartmental contract management committee which will meet regularly to monitor and discuss, among other issues, potential DBE participation in contracts. In an effort to become more knowledgeable regarding DBE resources, the committee shall also invite potential DBE contractors to attend selected meetings.
- (l) Requiring that at least one DBE vendor or contractor be contacted for all contract awards which are not exempt from Metro's contract selection procedures and which are 1) for more than \$500 but not more than ~~\$15,000~~\$25,000 in the case of non-personal services contracts; and 2) for more than \$2,500 but not more than ~~\$10,000~~\$25,000 for personal services contracts. The Liaison Officer may waive this requirement if he/she determines that there are no DBEs on the certification list capable of providing the service or item. For contracts over the dollar amounts indicated in this section, all known DBEs in the business of providing the service or item(s) required shall be mailed bid or proposal information.
- (m) The Executive Officer or his/her designee, may establish and implement additional affirmative action techniques which are designed to facilitate participation of DBEs in Metro contracting activities.

ADOPTED by the Metro Council this 25th day of August 1994.

ATTEST:


 Clerk of the Council


 Ed Washington, Deputy Presiding Officer

EXHIBIT "A"

FINDINGS OF THE METRO PUBLIC CONTRACT REVIEW BOARD
August 25, 1994

Re: Establishment of a \$25,000 Limit prior to Implementation of Formal Purchasing Procedures

I. FINDING: ORS 279.015 allows the Metro Council as Public Contract Review Board to establish such procedural limits to competitive bidding by finding that:

- A. It is unlikely that the proposed minimum limit for implementation of formal purchasing procedures will encourage favoritism in the awarding of public contracts.
- B. It is unlikely that the proposed minimum limit for implementation of formal purchasing procedures will substantially diminish competition.
- C. The higher limit should result in substantial time and cost savings.

II. FINDING: The proposed action does not limit competition and may encourage minority business enterprise and women-owned business involvement in Metro's competitive bidding process.

- A. The Metro Council encourages the utilization of minority and women-owned businesses by creating the maximum possible opportunity to compete for and participate in Metro's procurement process including small construction projects.
- B. Small, local businesses including many minority and women-owned enterprises experience great difficulty in securing the bonding and meeting the other time-consuming procedural aspects of Metro's formal bid requirements.
- C. The lower limit is expected to increase competitive involvement by local, small businesses including those certified by the state of Oregon as minority and women-owned businesses.
- D. Competition will not be discouraged because on these small dollar contracts small contractors need to be encouraged to bid.

III. FINDING: Adequate controls are established by Metro Code to properly control procurements and projects up to the proposed formal bid amount in order to discourage favoritism.

- A. Formal bid requirements are justifiable controls over projects of larger dollar value, but serve to limit the profit potential and increase the cost for smaller contracts.
- B. Raising the limit will merely permit a simpler, expedited and less costly process to substitute for Metro's more complex, time consuming and excessive bidding controls.
- C. Purchases of goods and services including small construction projects up to the \$25,000 limit would be adequately controlled pursuant to sections 2.04.042 and 2.04.043 of the Metro Code with the understanding that in addition to the three (3) required quotes an additional one (1) from a MBE and one (1) from an WBE, if available, would be required so as to ensure three (3) to five (5) quotes in all instances in order to guard against favoritism.

IV. FINDING: A new \$25,000 formal bid limit is appropriate to Metro's needs and consistent with other governmental bodies.

- A. Raising the present limit from \$10,000 on personal services and \$15,000 on public contracts both to \$25,000 is more consistent with Metro's present control needs.
- B. It will result in a single limit as opposed to separate limits arbitrarily established.
- C. It will establish a dollar limit more in line with today's market pricing, comparable with the state of Oregon and less than MERC and the City of Portland.

V. FINDING: Raising the current limit will result in time and cost savings.

- A. There are inherent costs to formal requirements for printed plans/specifications, specific Council action, newspaper advertising, public bid openings, bonding and a myriad of other technical and clerical activities.
- B. Formal bid specifications require specific references to or actual documentation of the various applicable or potentially applicable federal, state and municipal laws, codes, and regulations thereby necessitating significant coordination and staff time to assemble, reproduce and ensure their proper presentation.
- C. The formal bid process by its nature, creates costly handling, processing and documentation reviews resulting in the delayed acquisition of needed, but non-controversial goods and services.

BEFORE THE METRO COUNCIL

RELATING TO CONTRACT PROCEDURES) ORDINANCE NO. 94-554A
AMENDING METRO CODE CHAPTER 2.04)
TO INCREASE TO \$25,000 THE MAXIMUM) Introduced by
AMOUNT OF CONTRACTS THAT MAY BE) Councilor Sandi Hansen
LET WITHOUT USING A FORMAL BID OR)
REQUEST FOR PROPOSALS PROCESS)

WHEREAS, The Metro Code requires formal bid procedures for Personal Services Contracts over \$10,000 and Public Contracts over \$15,000; and

WHEREAS, Contracts of less than the threshold amounts of \$10,000 and \$15,000 may be let by securing quotes from qualified bidders; and

WHEREAS, Representatives of the minority contracting community have indicated that raising the limit for letting contracts without formal bid procedures will improve the ability of minority- and women-owned businesses to compete for Metro contracts; and

WHEREAS, The State of Oregon has a \$25,000 threshold for contracts to be let without formal bids, and Multnomah County is planning to adopt the State's guidelines; now, therefore,

THE METRO COUNCIL HEREBY ORDAINS:

1. The following Sections of the Metro Code are amended to read as follows:

CHAPTER 2.04

METRO CONTRACT PROCEDURES

SECTIONS:

2.04.030 Rules and Procedures Governing All Personal Services and Public Contracts:

(a) Applicability: All Personal Services Contracts and Public Contracts are subject to the applicable selection, review and approval procedures of this Chapter.

(b) Initiating a Contract: When a department initiates a contract not in the form of a Purchase Order, it must first notify the ~~Department of Finance & Administration~~ Contracts Division of the Department of General Services of its intention and request the issuance of a contract number which shall appear on all copies of the contract. The department must complete a Contract Summary form indicating the specifics of the contract. This form must be forwarded to the ~~Department of Finance & Administration~~ Contracts Division of the Department of General Services either with a fully executed contract (one copy) if the amount is estimated to be \$2,500 or under, or with an unexecuted contract (three copies) for review, approval and signature if the amount is over \$2,500.

(c) Documentation Required for Contract Files: The ~~Department of Finance & Administration~~ Contracts Division of the Department of General Services will maintain central files for all contracts. An original copy should be given to each contractor. All correspondence relating to a contract which alters conditions or amounts must be included in the central files as should all papers which document the process of obtaining competitive bids, quotes, or proposals. In any case where a low bid, quote, or proposal is not accepted, a detailed justification must be included with the contract file. Other documentation, if applicable, that should be included in the file includes:

- Mailing Lists
- Affidavits of Publication
- Insurance Endorsements and Certificates
- Amendments
- Extensions
- Related Correspondence
- Quotes, Proposals, and Bids
- Bonds
- DBE/WBE Information
- Contract Closure Form
- Personal Services Evaluation Form

(d) Contract Review: Prior to approval by the appropriate person or body, contracts shall be reviewed as follows:

- (1) Any contract which deviates from a standard contract form, exceeds ~~\$10,000~~ \$25,000 for a Personal Services Contract or ~~\$15,000~~ for a Public Contract, or is with another public agency must be reviewed by the General Counsel.

- (2) Contracts involving federal or state grant funds must be reviewed by the Deputy Executive Officer.

(e) Disadvantaged Business Program: All contracting and purchasing is subject to the Metro Disadvantaged Business Enterprise Program. Metro will take affirmative action to do business with Disadvantaged Business Enterprises. The ~~Director of Finance and Administration~~ Contracts Division of the Department of General Services will maintain a directory of disadvantaged businesses which shall be consulted and used in all contracting and purchasing of goods and services. If a disadvantaged business is included in the directory that appears capable of providing needed goods or services, that business should be contacted and given an opportunity to compete for Metro business. Contracts awarded subject to the program may be exempted from the competitive bidding process by resolution of the Contracting Review Board.

(f) Monthly Contract Report: The Executive Officer will provide a monthly report to the Council, pursuant to Section 2.04.032, of all contracts, including extensions and amendments, which have been executed during the preceding month; provided, however, that such monthly report need not include purchase orders under \$500.

(g) Federal/State Agency Approval: When required by federal or state law or regulations, review and approval of Metro contracts shall include prior concurrence or approval by appropriate federal or state agencies.

(h) No contract or contract amendment may be approved or executed for any amount in excess of the amount authorized in the budget.

2.04.031 Notice of Award and Appeals:

(a) At least five (5) days prior to the execution of any Public Contract ~~over \$15,000~~ or a Personal Services Contract over ~~\$10,000~~ ~~the District~~ \$25,000, Metro shall provide a Notice of Award to the contractor selected and to all contractors who submitted unsuccessful bids or proposals. This requirement may be waived by the Executive Officer for any emergency contract entered into pursuant to this Code.

(b) Bid/Request for Proposals Appeal Procedures: The following procedure applies to aggrieved bidders and proposers who wish to appeal an award of a Public Contract ~~above \$15,000~~ ~~and/or~~ a Personal Services Contract above ~~\$10,000~~ \$25,000. The appeal process for bids is the same as for Requests for Proposals. In the case of Requests for Proposals, disagreement with the judgment exercised in scoring by evaluators is not a basis for appeal.

- (1) All appeals shall be made in writing and shall be delivered to the ~~Contracts Administrator~~ Procurement Officer at Metro's main office within five (5) working days of the postmarked date on the Notice of

Award. The written appeal must describe the specific citation of law, rule, regulation, or procedure upon which the appeal is based.

- (2) The ~~Contracts Administrator~~ **Procurement Officer** shall forthwith notify the appropriate department head and the Executive Officer of the appeal. Within ten (10) working days of the receipt of notice of appeal, the Executive Officer shall send a notice of rejection of the appeal or a notice of acceptance of the appeal as applicable to the appellant. The appellant may appeal the Executive Officer's decision to reject the appeal in writing to the Contract Review Board within five (5) working days from the postmarked date on the Notice of Rejection.
- (3) The Contract Review Board will review the grounds for appeal, all pertinent information, and the Executive Officer's recommendation, and make a decision. The decision of the Contract Review Board is final.
- (4) No contract which is the subject of a pending appeal may be executed unless the Contract Review Board shall have given its approval at the request of the Executive Officer. The Executive Officer may request the Contract Review Board to determine a matter without waiting for the expiration of the time periods provided for herein.

2.04.032 Contract Information Reports:

(a) The Executive Officer shall provide a monthly report to the Council showing the status of all contracts in effect at Metro as of the date of the report. The report shall be divided into four sections: (a) Contracts Awarded; (b) Contracts Amended; (c) Open Contracts; and (d) Contracts Closed.

- (1) Contracts Awarded: This section shall report all new contracts awarded since the date of the previous report to the Council of all new contracts. Information contained in this report will be the cost center of the department responsible for the contract, contract number, starting and ending dates of the contract, type of contract, amount of the contract, vendor name, and a brief description of the purpose of the contract.
- (2) Contracts Amended: This section shall report all contracts amended by Change Order since the date of the previous report to the Council of contract amendments. Information contained in this report will be the contract number, vendor name, amendment number, type of amendment, the original amount of the contract, the amount of the contract amendment, the new total contract amount, the percent of the

amount of increase in excess of the original amount of the contract, and a brief description of the purpose of the contract.

(3) Contracts Open: This section shall report all contracts in effect on the last day of the month for which the report is prepared. Information contained in this report will be the cost center of the department responsible for the contract, contract number, starting and ending dates of the contract, type of contract, amount of the contract, the amount expended to date, vendor name, and a brief description of the purpose of the contract.

(4) Contracts Closed: This section shall report all contracts closed by the last day of the month for which the report is prepared. Information contained in this report will be contract number, vendor name, type of contract, date contract closed, amount of the contract, final amount expended, and a brief description of the purpose of the contract.

(b) Contract Type: Each contract will be identified by a type code to describe the class of contract entered into by Metro. There shall be six types of contracts at Metro:

- (1) Personal Services;
- (2) Pass-Through Agreements;
- (3) Labor and Materials;
- (4) Intergovernmental Agreements;
- (5) Procurement; and
- (6) Construction.

(c) Prior to entering into (1) any public contract or personal services agreement pursuant to the authority granted in Section 2.04.060 authorizing Sole Source Contract, or (2) any Public Contract or Personal Services Agreement in an amount exceeding \$15,000~~\$25,000~~ for which only one bid or response to a Request for Proposals has been received, the Executive Officer shall file a written report with the Council detailing the reasons why a Sole Source Contract was entered into or giving an explanation of why only one bid or response was received.

(d) The Executive Officer shall provide to the Council during the annual budget process a list of proposed contracts and Intergovernmental Agreements to be entered into during the ensuing fiscal year. The Council shall designate all listed contracts and Intergovernmental Agreements as either "A" or "B". For contracts designated by the Council as "A" contracts and being subject to this requirement by duly adopted ordinance, which may be the annual budget ordinance, copies of bid or proposal documents shall be filed with the Clerk of the Council and referred to the appropriate Council committee for review and comment. Documents must be filed with the Clerk of the Council at least thirty-five (35) days prior to the date of release for response by potential bidders. If the Council or

a committee has not within fourteen (14) days of the date of filing scheduled the matter for a hearing the documents may be released to prospective bidders at any time after the fourteenth (14th) day. In any event, bid documents may be released to prospective bidders on the thirty-fifth (35th) day after filing with the Council. For Intergovernmental Agreements designated by the Council as "A" contracts and being subject to this requirement by duly adopted ordinance, copies of the proposed agreement and scope of work or similar project description shall be filed with the Clerk of the Council and referred to the appropriate Council committee for review and comment. Documents shall be filed with the Clerk of the Council at least fourteen (14) days prior to execution of the agreement.

(e) Between the time of release of competitive bid or Request for Proposal documents for "A" contracts, as defined in subsection (d), and the designated due date for responses, all technical addenda which do not materially alter the bid document, the basis of award for the bid or proposal, or the proposed services or product to be contracted, shall be filed with the Metro General Counsel and the Clerk of the Council at the time of their release. All non-technical addenda to the bid documents shall be filed, with a staff report explaining the purpose and nature of the addendum, with the Metro General Counsel and the Clerk of the Council at least seven (7) days prior to their release. The Metro General Counsel shall determine if the addendum materially adds to or deletes from the original scope of work included in the bid documents or the basis of award for the bid or proposal. If the General Counsel finds that an addendum materially alters a bid document as described herein, for a contract subject to Council approval under Section 2.04.033, the General Counsel shall prepare an appropriate resolution for Council approval of the addendum. Council may act to approve an addendum per the Council's authority to approve the competitive bid or Request for Proposal document under subsection 2.04.033(a)(1). Such resolution shall be filed with the Clerk of the Council and placed on the agenda for the next scheduled Metro Council meeting. Any addendum filed by General Counsel for Council approval shall not be issued by the Metro Executive Officer or designated department until the Council acts on the resolution. Any addendum approved by the Council must be issued by the Metro Executive Officer or designated department not less than fourteen (14) days prior to the bid or proposal opening date unless the original opening date is extended at least fourteen (14) days. In any event, Council approval of the contract will act to cure any claim that any addendum to the contract bid or proposal document was material as described herein and was not approved by Council.

(f) Except as provided in subsection (f), all other contracts designated by the Council as "B" contracts shall be subject to the requirement that copies of bid documents shall be filed with the Clerk of the Council at the time they are released for response by potential bidders. For Intergovernmental Agreements designated as "B" contracts, copies of the contract and scope of work or similar project description shall be filed with the Clerk of the Council at the time they are to be executed. At the time any of the above documents are filed, the Executive Officer shall furnish the Council with information stating the purpose and nature of the proposed contract, the appropriation to be charged with the contract, and a statement of the contract's impact on the District in future fiscal years.

(g) Any Public Contract ~~\$15,000 or more~~ or Personal Services Contract ~~\$10,000 exceeding \$25,000 or more~~ or any Intergovernmental Agreement not on the list of proposed contracts submitted by the Executive Officer as required by subsection (d) shall be subject to the filing and Council or committee review requirements in subsection (d) or if appropriate, the provisions of Section 2.04.033.

2.04.040 Public Contracts, General Provisions:

(a) Competitive Bidding: Metro may enter into an intergovernmental agreement with the State of Oregon to make purchases from State Price Agreement established by the State of Oregon by competitive bids. Metro may purchase directly from these price agreements that are based on the State's competitive bids. Unless exempt from public bidding, all other public contracts shall be awarded to the lowest, responsive, responsible bidder responding to competitive bids by Metro.

(b) Oregon Preference: In all public contracts, the District shall prefer goods or services that have been manufactured or produced in Oregon if price, fitness, availability and quality are otherwise equal. Where a contract in excess of \$10,000 is awarded to a contractor not domiciled or registered to do business in Oregon, the initiating Department shall assure compliance with the provisions of ORS 279.021.

(c) Rejection of Bids: The Executive Officer or the Deputy Executive Officer may reject any bid not in compliance with all prescribed public bidding procedures and requirements and may, for good cause, reject any or all bids upon a finding that it is in the public interest to do so, for example, when all bids exceed the budget or estimate for that project.

(d) Bonds: Unless the Board shall otherwise provide, bonds and bid security requirements are as follows:

- (1) Bid security not exceeding 10 percent of the amount bid for the contract is required unless the contract is for ~~\$15,000~~ ~~\$25,000~~ or less.
- (2) For public improvements, a Labor and Materials bond in an amount equal to 100 percent of the contract price is required for contracts over \$15,000.
- (3) For public improvements, a Performance bond in an amount equal to 100 percent of the contract price is required for contracts over \$10,000. If the contract is under \$50,000, the performance bond and labor and material bond may be one bond; if the contract is \$50,000 or more, there shall be two bonds.

- (4) Bid security, labor and material bond and performance bond may be required even though the contract is of a class not identified above, if the Executive Officer determines it is in the public interest.
- (5) Bid security and labor and performance bonds will not be required for food products procured pursuant to Chapter 2.04.090.
- (6) Bid security and bonds may be provided in the form of a surety bond, cash, cashier's check or certified check.

2.04.041 Requirement of Competitive Bidding, Exemptions:

(a) **State Law:** The following contracts are exempt from the competitive bidding selection process pursuant to State Statute:

- (1) Contracts with other public agencies or the federal government.
- (2) Contracts made with qualified nonprofit agencies providing employment opportunities for the handicapped.
- (3) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145.
- (4) Contracts for supplies estimated to be less than \$500.

(b) **Board Rule:** The following classes of public contracts are exempt from the competitive bidding process based on the findings by the Contract Review Board that the exemption will not encourage favoritism or substantially diminish competition for public contracts and that such exemptions will result in substantial cost savings:

- (1) Purchase and sale of Zoo animals.
- (2) Purchase and sale of Zoo gift shop retail inventory and resale items.
- (3) All contracts estimated to be less than ~~\$15,000~~ ~~not more~~ than \$25,000, provided that the selection process described in the appropriate Code sections is followed.
- (4) Contracts estimated not to exceed \$25,000 for road, highway or parking lot maintenance provided that at least three (3) competitive quotes are obtained, if available, and a record of said quotes and efforts to obtain them are maintained.

- (5) Emergency contracts when the Executive Officer makes written findings that an emergency exists and that the emergency consists of circumstances that could not have been reasonably foreseen and requires prompt execution of a contract to remedy that condition. An emergency contract must be awarded within sixty (60) days of the declaration of the emergency unless the Board grants an extension.
- (6) Purchase of food items pursuant to Section 2.04.090.
- (7) Contracts for warranties in which the supplier of the goods or services covered by the warranty has designated a sole provider for the warranty service.
- (8) Contracts for computer hardware and software. Selection procedures for these contracts, however, must follow the RFP process outlined in Section 2.04.050, "Personal Services Contracts."
- (9) Contracts under which Metro is to provide a service only and incurs no financial obligation to another party.
- (10) Contracts for the lease or use of the Oregon Convention Center or other facilities operated by the Metropolitan Exposition-Recreation Commission.
- (11) For the purchases by the Metropolitan Exposition-Recreation Commission, all contracts estimated to be less than \$31,000 provided that any rules adopted by the Commission which provide for substitute selection procedures are followed.
- (12) For purchases by the Metropolitan Exposition-Recreation Commission, emergency contracts when the General Manager makes written findings that: 1) immediate procurement is essential to prevent a delay in work or extra expense to the Commission in circumstances which could not have been foreseen and avoided; 2) there is a threat of immediate damage to Commission property; or 3) there is an immediate danger to citizens or employees. The General Manager shall report to the Commission at its next regularly scheduled meeting of any contracts entered into pursuant to this section.
- (13) For purchases by the Metropolitan Exposition-Recreation Commission, 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.

(c) **Board Resolution:** Specific contracts, not within the classes exempted in subsection (b) above, may be exempted by the Board by resolution subject to the requirements of ORS 279.015(2) and ORS 279.015(5). The Board shall, where appropriate, direct the use of alternate contracting and purchasing practices that take account of market realities and modern innovative contracting and purchasing methods, which are consistent with the public policy of encouraging competition.

(d) **Limitation:** The exemptions in subsections (a)-(c), above, are exemptions to the competitive bid process only; all other procedures, including review and approval, apply to these contracts.

2.04.043 Public Contracts Between \$2,501\$2,500 and \$15,000\$25,000:

(a) **Selection Process:** Unless completely exempt from competitive bidding under Section 2.04.041, when the amount of the contract is \$2,500 or more, but less ~~not more~~ than \$15,000\$25,000, the District must obtain a minimum of three (3) competitive quotes. The District shall keep a written record of the source and amount of the quotes received. If three (3) quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes.

(b) **Review Process:** After selection and prior to approval, the contract must be reviewed by the ~~Department of Finance and Administration~~ **Contracts Division of the Department of General Services.**

(c) **Approval Process:** (1) For contracts of \$2,500 or more, either the Executive Officer or Deputy Executive Officer must sign; however, the Director or Assistant Director of the Zoo may sign purchase orders of \$10,000 or less. When designated in writing to serve in the absence of the Executive Officer or Deputy Executive Officer, the Director of ~~Regional Facilities~~ **General Services** may sign contracts. No contract may be approved or executed for any amount in excess of the amount authorized in the budget.

(d) All contracts are subject to the rules and procedures of Code Section 2.04.030, "Rules and Procedures Governing Personal Services and Public Contracts."

2.04.044 Public Contracts of ~~over \$15,000\$25,000 or More:~~

(a) **Selection Process:** Unless exempt from competitive bidding by Code section 2.04.041, the following competitive bidding procedures shall apply to all contracts:

- (1) The initiating department staff will prepare bid specifications and compile a list of potential bidders.
- (2) The bid document will be reviewed by the ~~Department of Finance and Administration~~ **Contracts Division of the Department of General**

~~Services~~ and by the General Counsel before bids are solicited or advertised, and shall include the contract form to be used.

- (3) A request for bids will be advertised in the manner required by law and in a local minority newspaper, and in any appropriate trade magazine. Additional advertisement may be appropriate depending upon the nature of the contract.
- (4) The initiating department will receive and open sealed bids at the time and place designated in the request for bids.
- (5) The opened bids will be reviewed by the requesting department and a recommendation and contract will be submitted to the ~~Department of Finance and Administration~~ ~~Contracts Division of the Department of General Services.~~
- (6) After selection and prior to approval, the contract must be reviewed by the ~~Department of Finance and Administration~~ ~~Contracts Division of the Department of General Services.~~
- (7) The initiating department will notify all bidders in writing of the contract award and obtain any necessary bonds and insurance certificates.
- (8) The District shall reserve the right to reject any or all quotes or bids received.

(b) **Approval Process:** All initial contracts with a contract price of ~~more than \$15,000~~ ~~\$25,000 or more~~ shall be approved and executed by the Executive Officer or Deputy Executive Officer. When designated in writing to serve in the absence of the Executive Officer or Deputy Executive Officer, the Director ~~Regional of Facilities of General Services~~ may approve and execute contracts of ~~\$15,000~~ ~~\$25,000 or more~~. No contract may be approved or executed for any amount in excess of the amount authorized in the budget.

(c) Within thirty (30) days of award of a construction contract, the ~~Department of Finance and Administration~~ ~~Contracts Division of the Department of General Services~~ shall provide the notice required by ORS 279.363.

(d) All contracts are subject to the rules and procedures of Code Section 2.04.030, "Rules and Procedures Governing Personal Services and Public Contracts."

(e) Prior to the award of a contract to any bidder other than the apparent low bidder the Executive Officer shall obtain the prior approval of the Contract Review Board.

2.04.052 Personal Services Contracts Between \$2,500 and \$10,000

(a) Selection Process: For Personal Services contracts \$2,500 or more but less than \$10,000, the Department Director shall use the following process:

- (1) Proposals shall be solicited from at least three (3) potential contractors who, in the judgment of the Department Director, are capable and qualified to perform the requested work.
- (2) The initiating Department shall document the fact that at least three (3) proposals have been solicited. Preferably, the proposals should be written, but this is not required. The District reserves the right to reject any or all proposals for any reason.
- (3) Evaluation, as determined by the Department Director, may require oral presentations and shall include use of a contractor evaluation form. The objective is the highest quality of work for the most reasonable price. The quality of the proposal may be more important than cost.
- (4) Personal Services Evaluation Form: The Personal Services evaluation form shall document the reasons for the selection. Proposals shall be evaluated according to predetermined criteria. The evaluation process may include the evaluators assigning a quantifiable score on how each aspect of a proposal meets the predetermined criteria. The contract may be awarded to the firm receiving the highest average score.
- (5) Notification of selection or rejection shall be made in writing after final review by the initiating department.

(b) Review Process: After selection and prior to approval, the contract must be reviewed by the ~~Department of Finance and Administration~~ Contracts Division of the Department of General Services.

(c) Approval Process: For contracts of \$2,500 or more, either the Executive Officer or Deputy Executive Officer must sign. When designated in writing to serve in the absence of the Executive Officer or Deputy Executive Officer, the Director of ~~Regional Facilities~~ General Services may sign contracts. No contract may be approved or executed for any amount in excess of the amount authorized in the budget.

(d) All contracts are subject to the rules and procedures of Code Section 2.04.030, "Rules and Procedures Governing Personal Services and Public Contracts."

2.04.053 Personal Services Contracts of ~~more than \$10,000~~\$25,000 or More:

(a) Selection Process: For Personal Services contracts of ~~more than \$10,000~~\$25,000 ~~or more~~ an evaluation of proposals from potential contractors shall be performed as follows:

- (1) A request for proposals shall be prepared by the initiating department and shall be reviewed by the General Counsel and the ~~Department of Finance and Administration~~ **Procurement Officer**. Where appropriate, notice of the request shall be published in a newspaper of general circulation or in trade magazines. In addition, Metro shall notify in writing at least three (3) potential contractors, who, in the judgment of the Department Director, are capable and qualified to perform the requested work. The initiating department will be responsible for maintaining the file and making the appropriate notification.
- (2) All requests for proposals shall at a minimum contain a description of the project and a brief summary of the project history, contain a detailed proposed scope of work or other specifications setting forth expected performance by the contractor, include a description of the criteria that will be utilized to evaluate proposals and the estimated budget for the project.
- (3) Evaluations of proposals shall include use of a contract evaluation form. The use of an oral interview or an evaluation team is recommended.
- (4) **Personal Services Evaluation Form:** The Personal Services evaluation form shall document the reasons for the selection. Proposals shall be evaluated according to predetermined criteria. The evaluation process may include the evaluators assigning a quantifiable score on how each aspect of a proposal meets the predetermined criteria. The contract may be awarded to the firm receiving the highest average score.
- (5) After evaluation is complete, the Department Director will recommend final selection through the ~~Department of Finance and Administration~~ **Contracts Division of the Department of General Services**.
- (6) Notifications of selection and rejection shall be made in writing by the initiating department.
- (7) Personal Services contracts with the Scope of Work must be approved by the department head and then forwarded to the ~~Department of Finance and Administration~~ **Contracts Division of the Department of**

General Services for internal review and execution. General Counsel review is required.

(b) **Approval Process:** All initial contracts with a contract price of greater than ~~\$10,000~~~~\$25,000~~ shall be approved and executed by the Executive Officer or Deputy Executive Officer. When designated in writing to serve in the absence of the Executive Officer or Deputy Executive Officer, the Director of ~~Regional Facilities~~**General Services** may approve and execute contracts of ~~more than \$15,000~~~~\$25,000 or more~~. No contract may be approved or executed for any amount in excess of the amount authorized in the budget.

(c) All contracts are subject to the rules and procedures of Code Section 2.04.030, "Rules and Procedures Governing Personal Services and Public Contracts."

2.04.135 Affirmative Action and Equal Opportunity Procedures: Metro shall use affirmative action techniques to facilitate MBE participation in contracting activities. These techniques include:

- (a) Making affirmative efforts to solicit proposals from MBEs.
- (b) Examining alternatives for arranging contracts by size and type of work so as to enhance the possibility of participation by MBEs.
- (c) Arranging solicitations, time for the presentation of bids, quantities specifications, and delivery schedules so as to facilitate the participation of MBEs.
- (d) Referring MBEs in need of management assistance to established agencies that provide direct management assistance to such businesses.
- (e) Carrying out specific information and communications programs on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual, and in conformance with any requirements of the Americans with Disabilities Act, where appropriate.
- (f) Distribution of copies of the MBE Program to organizations and individuals concerned with MBE programs.
- (g) Periodic reviews with department heads to ensure that they are aware of the MBE Program goals and desired activities on their parts to facilitate the purposes of the MBE Program. Additionally, departmental efforts toward and success in meeting the purposes of the MBE Program shall be factors considered during annual performance evaluations of the department heads.
- (h) Monitoring and ensuring that MBE planning centers and likely MBE contractors are receiving requests for bids, proposals and quotes.

(i) Distribution of lists to potential MBE contractors of the types of goods and services which Metro regularly purchases.

(j) Advising potential MBE vendors that Metro does not certify MBE's, and directing them to the Executive Department.

(k) Specifying purchases by generic title rather than specific brand name whenever feasible.

(l) Establishing an interdepartmental contract management committee which will meet regularly to monitor and discuss, among other issues, potential MBE participation in contracts. In an effort to become more knowledgeable regarding MBE resources, the committee shall also invite potential MBE contractors to attend selected meetings.

(m) Requiring that at least one MBE vendor or contractor be contacted for all contract awards which are not exempt from Metro's contract selection procedures and which are 1) for more than \$500 but not more than ~~\$15,000~~\$25,000 in the case of non-personal services contracts; and 2) for more than \$2,500 but not more than ~~\$10,000~~\$25,000 for personal services contracts. The Liaison Officer may waive this requirement if he/she determines that there are no MBEs on the certification list capable of providing the service or item. For contracts over the dollar amounts indicated in this section, all known MBEs in the business of providing the service or item(s) required shall be mailed bid or proposal information.

(n) Requiring that all prospective bidders attend scheduled prebid conferences on all construction contracts with an estimated value of over \$100,000.

(o) The Executive Officer or his/her designee, may establish and implement additional affirmative action techniques which are consistent with the MBE Program and designed to facilitate participation of MBEs in Metro contracting activities.

2.04.235 Affirmative Action and Equal Opportunity Procedures: Metro shall use affirmative action techniques to facilitate WBE participation in contracting activities. These techniques include:

(a) Making affirmative efforts to solicit proposals from WBEs.

(b) Examining alternatives for arranging contracts by size and type of work so as to enhance the possibility of participation by WBEs.

(c) Arranging solicitations, time for the presentation of bids, quantities specifications, and delivery schedules so as to facilitate the participation of WBEs.

(d) Referring WBEs in need of management assistance to established agencies that provide direct management assistance to such businesses.

(e) Carrying out specific information and communications programs on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual, and in conformance with any requirements of the Americans with Disabilities Act, where appropriate.

(f) Distribution of copies of the WBE Program to organizations and individuals concerned with WBE programs.

(g) Periodic reviews with department heads to ensure that they are aware of the WBE Program goals and desired activities on their parts to facilitate the purposes of the WBE Program. Additionally, departmental efforts toward and success in meeting the purposes of the WBE Program shall be factors considered during annual performance evaluations of the department heads.

(h) Monitoring and ensuring that WBE planning centers and likely WBE contractors are receiving requests for bids, proposals and quotes.

(i) Distribution of lists to potential WBE contractors of the types of goods and services which Metro regularly purchases.

(j) Advising potential WBE vendors that Metro does not certify WBE's, and directing them to the Executive Department.

(k) Specifying purchases by generic title rather than specific brand name whenever feasible.

(l) Establishing an interdepartmental contract management committee which will meet regularly to monitor and discuss, among other issues, potential WBE participation in contracts. In an effort to become more knowledgeable regarding WBE resources, the committee shall also invite potential WBE contractors to attend selected meetings.

(m) Requiring that at least one WBE vendor or contractor be contacted for all contract awards which are not exempt from Metro's contract selection procedures and which are 1) for more than \$500 but not more than ~~\$15,001~~\$25,000 in the case of non-personal services contracts; and 2) for more than \$2,500 but not more than ~~\$10,001~~\$25,000 for personal services contracts. The Liaison Officer may waive this requirement if he/she determines that there are no WBEs on the certification list capable of providing the service or item. For contracts over the dollar amounts indicated in this section, all known WBEs in the business of providing the service or item(s) required shall be mailed bid or proposal information.

(n) Requiring that all prospective bidders attend scheduled prebid conferences on all construction contracts with an estimated value of over \$100,000.

(o) The Executive Officer or his/her designee, may establish and implement additional affirmative action techniques which are consistent with the WBE Program and designed to facilitate participation of WBEs in Metro contracting activities.

2.04.335 Affirmative Action and Equal Opportunity Procedures: Metro shall use affirmative action techniques to facilitate DBE and participation in contracting activities. These techniques include:

(a) Arranging solicitations, time for the presentation of bids, quantities specifications, and delivery schedules so as to facilitate the participation of DBEs.

(b) Referring DBEs in need of management assistance to established agencies that provide direct management assistance to such businesses.

(c) Carrying out information and communications programs on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate.

(d) Distribution of copies of the DBE Program to organizations and individuals concerned with DBE Programs.

(e) Periodic reviews with department heads to insure that they are aware of the DBE Program goals and desired activities on their parts to facilitate reaching the goals. Additionally, departmental efforts toward and success in meeting DBE goals for department contracts shall be factors considered during annual performance evaluations of the department heads.

(f) Monitor and insure that Disadvantaged planning centers and likely DBE contractors are receiving requests for bids, proposals and quotes.

(g) Study the feasibility of certain USDOT-assisted contracts and procurements being set aside for DBE participation.

(h) Distribution of lists to potential DBE contractors of the types of goods and services which Metro regularly purchases.

(i) Advising potential DBE vendors that Metro does not certify DBEs, and directing them to ODOT until December 31, 1987, and, thereafter, to the Executive Department.

(j) Specifying purchases by generic title rather than specific brand name whenever feasible.

(k) Establishing an interdepartmental contract management committee which will meet regularly to monitor and discuss, among other issues, potential DBE participation in contracts. In an effort to become more knowledgeable regarding DBE resources, the committee shall also invite potential DBE contractors to attend selected meetings.

(l) Requiring that at least one DBE vendor or contractor be contacted for all contract awards which are not exempt from Metro's contract selection procedures and which are 1) for more than \$500 but not more than ~~\$15,000~~ \$25,000 in the case of non-personal services contracts; and 2) for more than \$2,500 but not more than ~~\$10,000~~ \$25,000 for personal services contracts. The Liaison Officer may waive this requirement if he/she determines that there are no DBEs on the certification list capable of providing the service or item. For contracts over the dollar amounts indicated in this section, all known DBEs in the business of providing the service or item(s) required shall be mailed bid or proposal information.

(m) The Executive Officer or his/her designee, may establish and implement additional affirmative action techniques which are designed to facilitate participation of DBEs in Metro contracting activities.

ADOPTED by the Metro Council this ____ day of _____ 199__.

Ed Washington, Deputy Presiding Officer

ATTEST:

Clerk of the Council

gl
1164A

FINANCE COMMITTEE REPORT

ORDINANCE NO. 94-554A, RELATING TO CONTRACT PROCEDURES AMENDING METRO CODE CHAPTER 2.04 TO INCREASE TO \$25,000 THE MAXIMUM AMOUNT OF CONTRACTS THAT MAY BE LET WITHOUT USING A FORMAL BID OR REQUEST FOR PROPOSALS PROCESS

Date: July 19, 1994

Presented by: Councilor Hansen

COMMITTEE RECOMMENDATION: At its July 12, 1994 meeting the Finance Committee voted 7-0, with one abstention, to recommend Council adoption of Ordinance No. 94-554A. Voting in favor were Councilors Monroe, Buchanan, Devlin, Kvistad, McLain, Van Bergen, and Washington. Councilor Gardner abstained.

COMMITTEE DISCUSSION/ISSUES: Council Analyst Casey Short presented the staff report. He said this ordinance was initiated by Councilor Hansen in response to concerns from minority contractors who said the low dollar levels for formal Requests for Proposals was an obstacle for small and minority businesses in receiving Metro contracts. The ordinance would raise the limit of contracts that could be let without a formal RFP or RFB process from \$10,000 for Personal Services contracts and \$15,000 for other Public contracts to \$25,000 for all contracts. Mr. Short said the ordinance also made technical corrections to the Code to reflect Metro's current organization, replacing existing references to the Finance and Administration Department with the General Services Department as the department that processes contracts.

Councilor McLain expressed a concern that raising the limit for formal bid procedures could lead departments to rely more on short lists of contractors with whom they were familiar rather than expanding the list of potential vendors. Procurement Officer Rich Wiley said the principal difference in the two processes in terms of notification is publication of the RFP or RFB notice, and said that efforts were generally made to notify a broad range of potential vendors. He also said the business logic for procurements is to provide the best deal for Metro, which argues for a maximum number of bidders. Councilor McLain asked for assurances that normal practice was to invite the greatest number of bids. Mr. Wiley and General Counsel Dan Cooper said they could not provide those assurances on a case by case basis. Councilor McLain said she would support changes in the Code to strengthen requirements that the maximum number of potential contractors are notified.

Councilor Hansen said this ordinance was part of a two part proposal she is working on to strengthen Metro's MBE and WBE contracting. The other part is a revision to the "A" and "B" contract designation criteria to require advance documentation from departments that they have identified potential women- and minority-owned businesses for solicitation of bids. She said

staff is working to prepare these changes, and would address Councilor McLain's concerns when implemented.

Councilor Van Bergen asked why the difference between Personal Services and other Public contracts exists in the current Code but not in the proposed ordinance. Mr. Cooper said state law distinguishes between the two types of contracts, giving more latitude to local governments in awarding personal service contracts. He said the changes proposed in the ordinance would merely raise the threshold amounts but not blur the distinctions between the two types of contracts.

Councilor Van Bergen asked whether adoption of this ordinance would affect the pending litigation to determine authority to approve contracts and contract amendments. Mr. Short said he did not think this Code change affected that issue because it deals with the front end of the process only, not the awarding of the contracts themselves.

Councilor Kvistad said he has concerns about Metro's contracting practices, specifically with oversight of contracts after they're awarded. Councilor Kvistad said he generally supports the goals of the ordinance, but would prefer that the problems with the contracting code be fixed before the limit is raised.

Councilor Devlin asked how this change in procedures would benefit small businesses. Councilor Hansen said the additional cost of preparing formal bids and proposals was too high for many small businesses to permit them to make a reasonable profit while still submitting a competitive bid on small contracts. Councilor Devlin said he shares concerns voiced by Councilors McLain and Kvistad that this proposed change could produce the opposite effect of that desired, namely to reduce the number of bidders.

Councilor McLain encouraged the Committee and staff to begin working on revising the Code to improve criteria for the awarding of contracts.

In response to Councilor Washington, Mr. Wiley said this change would allow staff to provide more assistance to small contractors in preparing their bids. He added that getting more firms in the bidding process should improve results for Metro, by broadening the pool of bidders and increasing competition.

Councilor Gardner said he is concerned that the process continue to be a competitive one. He said a problem that has been voiced about Metro's process is that only a few firms compete for Metro contracts, and he was not convinced that raising the limit for formal bids would improve competition.

Councilor Van Bergen requested that administrative direction be given to the Contracts Office to limit amounts to \$25,000 and not allow additional amounts to be added by amendment without proper approval.

BEFORE THE METRO COUNCIL

RELATING TO CONTRACT PROCEDURES) ORDINANCE NO. 94-554
AMENDING METRO CODE CHAPTER 2.04)
TO INCREASE TO \$25,000 THE MAXIMUM) Introduced by
AMOUNT OF CONTRACTS THAT MAY BE) Councilor Sandi Hansen
LET WITHOUT USING A FORMAL BID OR)
REQUEST FOR PROPOSALS PROCESS)

WHEREAS, The Metro Code requires formal bid procedures for Personal Services Contracts over \$10,000 and Public Contracts over \$15,000; and

WHEREAS, Contracts of less than the threshold amounts of \$10,000 and \$15,000 may be let by securing quotes from qualified bidders; and

WHEREAS, Representatives of the minority contracting community have indicated that raising the limit for letting contracts without formal bid procedures will improve the ability of minority- and women-owned businesses to compete for Metro contracts; and

WHEREAS, The State of Oregon has a \$25,000 threshold for contracts to be let without formal bids, and Multnomah County is planning to adopt the State's guidelines; now, therefore,

THE METRO COUNCIL HEREBY ORDAINS:

1. The following Sections of the Metro Code are amended to read as follows:

CHAPTER 2.04

METRO CONTRACT PROCEDURES

SECTIONS:

2.04.030 Rules and Procedures Governing All Personal Services and Public Contracts:

(a) **Applicability:** All Personal Services Contracts and Public Contracts are subject to the applicable selection, review and approval procedures of this Chapter.

(b) **Initiating a Contract:** When a department initiates a contract not in the form of a Purchase Order, it must first notify the Department of Finance & Administration Management Information of its intention and request the issuance of a contract number which shall appear on all copies of the contract. The department must complete a Contract Summary form indicating the specifics of the contract. This form must be forwarded to the Department of Finance & Administration Management Information either with a fully executed contract (one copy) if the amount is estimated to be \$2,500 or under, or with an unexecuted contract (three copies) for review, approval and signature if the amount is over \$2,500.

(c) **Documentation Required for Contract Files:** The Department of Finance & Administration Management Information will maintain central files for all contracts. An original copy should be given to each contractor. All correspondence relating to a contract which alters conditions or amounts must be included in the central files as should all papers which document the process of obtaining competitive bids, quotes, or proposals. In any case where a low bid, quote, or proposal is not accepted, a detailed justification must be included with the contract file. Other documentation, if applicable, that should be included in the file includes:

- Mailing Lists
- Affidavits of Publication
- Insurance Endorsements and Certificates
- Amendments
- Extensions
- Related Correspondence
- Quotes, Proposals, and Bids
- Bonds
- DBE/WBE Information
- Contract Closure Form
- Personal Services Evaluation Form

(d) **Contract Review:** Prior to approval by the appropriate person or body, contracts shall be reviewed as follows:

- (1) Any contract which deviates from a standard contract form, exceeds ~~\$10,000~~ \$25,000 for a Personal Services Contract or \$15,000 for a Public Contract, or is with another public agency must be reviewed by the General Counsel.
- (2) Contracts involving federal or state grant funds must be reviewed by the Deputy Executive Officer.

(e) Disadvantaged Business Program: All contracting and purchasing is subject to the Metro Disadvantaged Business Enterprise Program. Metro will take affirmative action to do business with Disadvantaged Business Enterprises. The Director of Finance and Administration & Management Information will maintain a directory of disadvantaged businesses which shall be consulted and used in all contracting and purchasing of goods and services. If a disadvantaged business is included in the directory that appears capable of providing needed goods or services, that business should be contacted and given an opportunity to compete for Metro business. Contracts awarded subject to the program may be exempted from the competitive bidding process by resolution of the Contracting Review Board.

(f) Monthly Contract Report: The Executive Officer will provide a monthly report to the Council, pursuant to Section 2.04.032, of all contracts, including extensions and amendments, which have been executed during the preceding month; provided, however, that such monthly report need not include purchase orders under \$500.

(g) Federal/State Agency Approval: When required by federal or state law or regulations, review and approval of Metro contracts shall include prior concurrence or approval by appropriate federal or state agencies.

(h) No contract or contract amendment may be approved or executed for any amount in excess of the amount authorized in the budget.

2.04.031 Notice of Award and Appeals:

(a) At least five (5) days prior to the execution of any Public Contract ~~over \$15,000~~ or a Personal Services Contract over ~~\$10,000~~ ~~the District~~ ~~\$25,000~~, Metro shall provide a Notice of Award to the contractor selected and to all contractors who submitted unsuccessful bids or proposals. This requirement may be waived by the Executive Officer for any emergency contract entered into pursuant to this Code.

(b) Bid/Request for Proposals Appeal Procedures: The following procedure applies to aggrieved bidders and proposers who wish to appeal an award of a Public Contract ~~above \$15,000~~ ~~and/or~~ a Personal Services Contract above ~~\$10,000~~ ~~\$25,000~~. The appeal process for bids is the same as for Requests for Proposals. In the case of Requests for Proposals, disagreement with the judgment exercised in scoring by evaluators is not a basis for appeal.

- (1) All appeals shall be made in writing and shall be delivered to the Contracts Administrator at Metro's main office within five (5) working days of the postmarked date on the Notice of Award. The written appeal must describe the specific citation of law, rule, regulation, or procedure upon which the appeal is based.

- (2) The Contracts Administrator shall forthwith notify the appropriate department head and the Executive Officer of the appeal. Within ten (10) working days of the receipt of notice of appeal, the Executive Officer shall send a notice of rejection of the appeal or a notice of acceptance of the appeal as applicable to the appellant. The appellant may appeal the Executive Officer's decision to reject the appeal in writing to the Contract Review Board within five (5) working days from the postmarked date on the Notice of Rejection.
- (3) The Contract Review Board will review the grounds for appeal, all pertinent information, and the Executive Officer's recommendation, and make a decision. The decision of the Contract Review Board is final.
- (4) No contract which is the subject of a pending appeal may be executed unless the Contract Review Board shall have given its approval at the request of the Executive Officer. The Executive Officer may request the Contract Review Board to determine a matter without waiting for the expiration of the time periods provided for herein.

2.04.032 Contract Information Reports:

(a) The Executive Officer shall provide a monthly report to the Council showing the status of all contracts in effect at Metro as of the date of the report. The report shall be divided into four sections: (a) Contracts Awarded; (b) Contracts Amended; (c) Open Contracts; and (d) Contracts Closed.

- (1) **Contracts Awarded:** This section shall report all new contracts awarded since the date of the previous report to the Council of all new contracts. Information contained in this report will be the cost center of the department responsible for the contract, contract number, starting and ending dates of the contract, type of contract, amount of the contract, vendor name, and a brief description of the purpose of the contract.
- (2) **Contracts Amended:** This section shall report all contracts amended by Change Order since the date of the previous report to the Council of contract amendments. Information contained in this report will be the contract number, vendor name, amendment number, type of amendment, the original amount of the contract, the amount of the contract amendment, the new total contract amount, the percent of the amount of increase in excess of the original amount of the contract, and a brief description of the purpose of the contract.

- (3) **Contracts Open:** This section shall report all contracts in effect on the last day of the month for which the report is prepared. Information contained in this report will be the cost center of the department responsible for the contract, contract number, starting and ending dates of the contract, type of contract, amount of the contract, the amount expended to date, vendor name, and a brief description of the purpose of the contract.
- (4) **Contracts Closed:** This section shall report all contracts closed by the last day of the month for which the report is prepared. Information contained in this report will be contract number, vendor name, type of contract, date contract closed, amount of the contract, final amount expended, and a brief description of the purpose of the contract.

(b) **Contract Type:** Each contract will be identified by a type code to describe the class of contract entered into by Metro. There shall be six types of contracts at Metro:

- (1) Personal Services;
- (2) Pass-Through Agreements;
- (3) Labor and Materials;
- (4) Intergovernmental Agreements;
- (5) Procurement; and
- (6) Construction.

(c) Prior to entering into (1) any public contract or personal services agreement pursuant to the authority granted in Section 2.04.060 authorizing Sole Source Contract, or (2) any Public Contract or Personal Services Agreement in an amount exceeding ~~\$15,000~~ \$25,000 for which only one bid or response to a Request for Proposals has been received, the Executive Officer shall file a written report with the Council detailing the reasons why a Sole Source Contract was entered into or giving an explanation of why only one bid or response was received.

(d) The Executive Officer shall provide to the Council during the annual budget process a list of proposed contracts and Intergovernmental Agreements to be entered into during the ensuing fiscal year. The Council shall designate all listed contracts and Intergovernmental Agreements as either "A" or "B". For contracts designated by the Council as "A" contracts and being subject to this requirement by duly adopted ordinance, which may be the annual budget ordinance, copies of bid or proposal documents shall be filed with the Clerk of the Council and referred to the appropriate Council committee for review and comment. Documents must be filed with the Clerk of the Council at least thirty-five (35) days prior to the date of release for response by potential bidders. If the Council or a committee has not within fourteen (14) days of the date of filing scheduled the matter for a hearing the documents may be released to prospective bidders at any time after the fourteenth (14th) day. In any event, bid documents may be released to prospective bidders on the

thirty-fifth (35th) day after filing with the Council. For Intergovernmental Agreements designated by the Council as "A" contracts and being subject to this requirement by duly adopted ordinance, copies of the proposed agreement and scope of work or similar project description shall be filed with the Clerk of the Council and referred to the appropriate Council committee for review and comment. Documents shall be filed with the Clerk of the Council at least fourteen (14) days prior to execution of the agreement.

(e) Between the time of release of competitive bid or Request for Proposal documents for "A" contracts, as defined in subsection (d), and the designated due date for responses, all technical addenda which do not materially alter the bid document, the basis of award for the bid or proposal, or the proposed services or product to be contracted, shall be filed with the Metro General Counsel and the Clerk of the Council at the time of their release. All non-technical addenda to the bid documents shall be filed, with a staff report explaining the purpose and nature of the addendum, with the Metro General Counsel and the Clerk of the Council at least seven (7) days prior to their release. The Metro General Counsel shall determine if the addendum materially adds to or deletes from the original scope of work included in the bid documents or the basis of award for the bid or proposal. If the General Counsel finds that an addendum materially alters a bid document as described herein, for a contract subject to Council approval under Section 2.04.033, the General Counsel shall prepare an appropriate resolution for Council approval of the addendum. Council may act to approve an addendum per the Council's authority to approve the competitive bid or Request for Proposal document under subsection 2.04.033(a)(1). Such resolution shall be filed with the Clerk of the Council and placed on the agenda for the next scheduled Metro Council meeting. Any addendum filed by General Counsel for Council approval shall not be issued by the Metro Executive Officer or designated department until the Council acts on the resolution. Any addendum approved by the Council must be issued by the Metro Executive Officer or designated department not less than fourteen (14) days prior to the bid or proposal opening date unless the original opening date is extended at least fourteen (14) days. In any event, Council approval of the contract will act to cure any claim that any addendum to the contract bid or proposal document was material as described herein and was not approved by Council.

(f) Except as provided in subsection (f), all other contracts designated by the Council as "B" contracts shall be subject to the requirement that copies of bid documents shall be filed with the Clerk of the Council at the time they are released for response by potential bidders. For Intergovernmental Agreements designated as "B" contracts, copies of the contract and scope of work or similar project description shall be filed with the Clerk of the Council at the time they are to be executed. At the time any of the above documents are filed, the Executive Officer shall furnish the Council with information stating the purpose and nature of the proposed contract, the appropriation to be charged with the contract, and a statement of the contract's impact on the District in future fiscal years.

(g) Any Public Contract ~~\$15,000 or more~~ or Personal Services Contract ~~\$10,000 or more~~ ~~of \$25,000 or more~~ or any Intergovernmental Agreement not on the list of proposed contracts

submitted by the Executive Officer as required by subsection (d) shall be subject to the filing and Council or committee review requirements in subsection (d) or if appropriate, the provisions of Section 2.04.033.

2.04.040 Public Contracts, General Provisions:

(a) **Competitive Bidding:** Metro may enter into an intergovernmental agreement with the State of Oregon to make purchases from State Price Agreement established by the State of Oregon by competitive bids. Metro may purchase directly from these price agreements that are based on the State's competitive bids. Unless exempt from public bidding, all other public contracts shall be awarded to the lowest, responsive, responsible bidder responding to competitive bids by Metro.

(b) **Oregon Preference:** In all public contracts, the District shall prefer goods or services that have been manufactured or produced in Oregon if price, fitness, availability and quality are otherwise equal. Where a contract in excess of \$10,000 is awarded to a contractor not domiciled or registered to do business in Oregon, the initiating Department shall assure compliance with the provisions of ORS 279.021.

(c) **Rejection of Bids:** The Executive Officer or the Deputy Executive Officer may reject any bid not in compliance with all prescribed public bidding procedures and requirements and may, for good cause, reject any or all bids upon a finding that it is in the public interest to do so, for example, when all bids exceed the budget or estimate for that project.

(d) **Bonds:** Unless the Board shall otherwise provide, bonds and bid security requirements are as follows:

- (1) Bid security not exceeding 10 percent of the amount bid for the contract is required unless the contract is for ~~\$15,000~~ \$25,000 or less.
- (2) For public improvements, a Labor and Materials bond in an amount equal to 100 percent of the contract price is required for contracts over \$15,000.
- (3) For public improvements, a Performance bond in an amount equal to 100 percent of the contract price is required for contracts over \$10,000. If the contract is under \$50,000, the performance bond and labor and material bond may be one bond; if the contract is \$50,000 or more, there shall be two bonds.
- (4) Bid security, labor and material bond and performance bond may be required even though the contract is of a class not identified above, if the Executive Officer determines it is in the public interest.

- (5) Bid security and labor and performance bonds will not be required for food products procured pursuant to Chapter 2.04.090.
- (6) Bid security and bonds may be provided in the form of a surety bond, cash, cashier's check or certified check.

2.04.041 Requirement of Competitive Bidding, Exemptions:

(a) **State Law:** The following contracts are exempt from the competitive bidding selection process pursuant to State Statute:

- (1) Contracts with other public agencies or the federal government.
- (2) Contracts made with qualified nonprofit agencies providing employment opportunities for the handicapped.
- (3) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145.
- (4) Contracts for supplies estimated to be less than \$500.

(b) **Board Rule:** The following classes of public contracts are exempt from the competitive bidding process based on the findings by the Contract Review Board that the exemption will not encourage favoritism or substantially diminish competition for public contracts and that such exemptions will result in substantial cost savings:

- (1) Purchase and sale of Zoo animals.
- (2) Purchase and sale of Zoo gift shop retail inventory and resale items.
- (3) All contracts estimated to be less than ~~\$15,000~~\$25,000, provided that the selection process described in the appropriate Code sections is followed.
- (4) Contracts estimated not to exceed \$25,000 for road, highway or parking lot maintenance provided that at least three (3) competitive quotes are obtained, if available, and a record of said quotes and efforts to obtain them are maintained.
- (5) Emergency contracts when the Executive Officer makes written findings that an emergency exists and that the emergency consists of circumstances that could not have been reasonably foreseen and requires prompt execution of a contract to remedy that condition. An

emergency contract must be awarded within sixty (60) days of the declaration of the emergency unless the Board grants an extension.

- (6) Purchase of food items pursuant to Section 2.04.090.
- (7) Contracts for warranties in which the supplier of the goods or services covered by the warranty has designated a sole provider for the warranty service.
- (8) Contracts for computer hardware and software. Selection procedures for these contracts, however, must follow the RFP process outlined in Section 2.04.050, "Personal Services Contracts."
- (9) Contracts under which Metro is to provide a service only and incurs no financial obligation to another party.
- (10) Contracts for the lease or use of the Oregon Convention Center or other facilities operated by the Metropolitan Exposition-Recreation Commission.
- (11) For the purchases by the Metropolitan Exposition-Recreation Commission, all contracts estimated to be less than \$31,000 provided that any rules adopted by the Commission which provide for substitute selection procedures are followed.
- (12) For purchases by the Metropolitan Exposition-Recreation Commission, emergency contracts when the General Manager makes written findings that: 1) immediate procurement is essential to prevent a delay in work or extra expense to the Commission in circumstances which could not have been foreseen and avoided; 2) there is a threat of immediate damage to Commission property; or 3) there is an immediate danger to citizens or employees. The General Manager shall report to the Commission at its next regularly scheduled meeting of any contracts entered into pursuant to this section.
- (13) For purchases by the Metropolitan Exposition-Recreation Commission, 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.

(c) Board Resolution: Specific contracts, not within the classes exempted in subsection (b) above, may be exempted by the Board by resolution subject to the requirements of ORS 279.015(2) and ORS 279.015(5). The Board shall, where appropriate,

direct the use of alternate contracting and purchasing practices that take account of market realities and modern innovative contracting and purchasing methods, which are consistent with the public policy of encouraging competition.

(d) Limitation: The exemptions in subsections (a)-(c), above, are exemptions to the competitive bid process only; all other procedures, including review and approval, apply to these contracts.

2.04.043 Public Contracts Between ~~\$2,501~~\$2,500 and ~~\$15,000~~\$25,000:

(a) Selection Process: Unless completely exempt from competitive bidding under Section 2.04.041, when the amount of the contract is \$2,500 or more, but less than ~~\$15,000~~\$25,000, the District must obtain a minimum of three (3) competitive quotes. The District shall keep a written record of the source and amount of the quotes received. If three (3) quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes.

(b) Review Process: After selection and prior to approval, the contract must be reviewed by the Department of Finance and ~~Administration~~ & Management Information.

(c) Approval Process: (1) For contracts of \$2,500 or more, either the Executive Officer or Deputy Executive Officer must sign; however, the Director or Assistant Director of the Zoo may sign purchase orders of \$10,000 or less. When designated in writing to serve in the absence of the Executive Officer or Deputy Executive Officer, the Director of ~~Regional Facilities~~ General Services may sign contracts. No contract may be approved or executed for any amount in excess of the amount authorized in the budget.

(d) All contracts are subject to the rules and procedures of Code Section 2.04.030, "Rules and Procedures Governing Personal Services and Public Contracts."

2.04.044 Public Contracts of ~~\$15,000~~\$25,000 or More:

(a) Selection Process: Unless exempt from competitive bidding by Code section 2.04.041, the following competitive bidding procedures shall apply to all contracts:

- (1) The initiating department staff will prepare bid specifications and compile a list of potential bidders.
- (2) The bid document will be reviewed by the Department of Finance and ~~Administration~~ & Management Information and by the General Counsel before bids are solicited or advertised, and shall include the contract form to be used.

- (3) A request for bids will be advertised in the manner required by law and in a local minority newspaper, and in any appropriate trade magazine. Additional advertisement may be appropriate depending upon the nature of the contract.
- (4) The initiating department will receive and open sealed bids at the time and place designated in the request for bids.
- (5) The opened bids will be reviewed by the requesting department and a recommendation and contract will be submitted to the Department of Finance and Administration & Management Information.
- (6) After selection and prior to approval, the contract must be reviewed by the Department of Finance and Administration & Management Information.
- (7) The initiating department will notify all bidders in writing of the contract award and obtain any necessary bonds and insurance certificates.
- (8) The District shall reserve the right to reject any or all quotes or bids received.

(b) Approval Process: All initial contracts with a contract price of ~~\$15,000~~\$25,000 or more shall be approved and executed by the Executive Officer or Deputy Executive Officer. When designated in writing to serve in the absence of the Executive Officer or Deputy Executive Officer, the Director ~~Regional of Facilities of General Services~~ may approve and execute contracts of ~~\$15,000~~\$25,000 or more. No contract may be approved or executed for any amount in excess of the amount authorized in the budget.

(c) Within thirty (30) days of award of a construction contract, the Department of Finance and Administration & Management Information shall provide the notice required by ORS 279.363.

(d) All contracts are subject to the rules and procedures of Code Section 2.04.030, "Rules and Procedures Governing Personal Services and Public Contracts."

(e) Prior to the award of a contract to any bidder other than the apparent low bidder the Executive Officer shall obtain the prior approval of the Contract Review Board.

2.04.052 Personal Services Contracts Between \$2,500 and ~~\$10,000~~\$25,000:

(a) Selection Process: For Personal Services contracts \$2,500 or more but less than ~~\$10,000~~\$25,000, the Department Director shall use the following process:

- (1) Proposals shall be solicited from at least three (3) potential contractors who, in the judgment of the Department Director, are capable and qualified to perform the requested work.
- (2) The initiating Department shall document the fact that at least three (3) proposals have been solicited. Preferably, the proposals should be written, but this is not required. The District reserves the right to reject any or all proposals for any reason.
- (3) Evaluation, as determined by the Department Director, may require oral presentations and shall include use of a contractor evaluation form. The objective is the highest quality of work for the most reasonable price. The quality of the proposal may be more important than cost.
- (4) Personal Services Evaluation Form: The Personal Services evaluation form shall document the reasons for the selection. Proposals shall be evaluated according to predetermined criteria. The evaluation process may include the evaluators assigning a quantifiable score on how each aspect of a proposal meets the predetermined criteria. The contract may be awarded to the firm receiving the highest average score.
- (5) Notification of selection or rejection shall be made in writing after final review by the initiating department.

(b) Review Process: After selection and prior to approval, the contract must be reviewed by the Department of Finance and Administration & Management Information.

(c) Approval Process: For contracts of \$2,500 or more, either the Executive Officer or Deputy Executive Officer must sign. When designated in writing to serve in the absence of the Executive Officer or Deputy Executive Officer, the Director of Regional Facilities General Services may sign contracts. No contract may be approved or executed for any amount in excess of the amount authorized in the budget.

(d) All contracts are subject to the rules and procedures of Code Section 2.04.030, "Rules and Procedures Governing Personal Services and Public Contracts."

2.04.053 Personal Services Contracts of \$10,000 \$25,000 or More:

(a) Selection Process: For Personal Services contracts of \$10,000 \$25,000 or more an evaluation of proposals from potential contractors shall be performed as follows:

- (1) A request for proposals shall be prepared by the initiating department and shall be reviewed by the General Counsel and the Department of Finance and Administration & Management Information. Where

appropriate, notice of the request shall be published in a newspaper of general circulation or in trade magazines. In addition, Metro shall notify in writing at least three (3) potential contractors, who, in the judgment of the Department Director, are capable and qualified to perform the requested work. The initiating department will be responsible for maintaining the file and making the appropriate notification.

- (2) All requests for proposals shall at a minimum contain a description of the project and a brief summary of the project history, contain a detailed proposed scope of work or other specifications setting forth expected performance by the contractor, include a description of the criteria that will be utilized to evaluate proposals and the estimated budget for the project.
- (3) Evaluations of proposals shall include use of a contract evaluation form. The use of an oral interview or an evaluation team is recommended.
- (4) Personal Services Evaluation Form: The Personal Services evaluation form shall document the reasons for the selection. Proposals shall be evaluated according to predetermined criteria. The evaluation process may include the evaluators assigning a quantifiable score on how each aspect of a proposal meets the predetermined criteria. The contract may be awarded to the firm receiving the highest average score.
- (5) After evaluation is complete, the Department Director will recommend final selection through the Department of Finance and Administration & Management Information.
- (6) Notifications of selection and rejection shall be made in writing by the initiating department.
- (7) Personal Services contracts with the Scope of Work must be approved by the department head and then forwarded to the Department of Finance and Administration & Management Information for internal review and execution. General Counsel review is required.

(b) Approval Process: All initial contracts with a contract price of greater than \$10,000\$25,000 shall be approved and executed by the Executive eOfficer or Deputy Executive Officer. When designated in writing to serve in the absence of the Executive Officer or Deputy Executive Officer, the Director of Regional FacilitiesGeneral Services may approve and execute contracts of \$15,000\$25,000 or more. No contract may be approved or executed for any amount in excess of the amount authorized in the budget.

(c) All contracts are subject to the rules and procedures of Code Section 2.04.030, "Rules and Procedures Governing Personal Services and Public Contracts."

ADOPTED by the Metro Council this ____ day of _____ 199__.

Judy Wyers, Presiding Officer

ATTEST:

Clerk of the Council

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