

**MINUTES OF THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT**

**REGULAR MEETING  
FEBRUARY 3, 1983**

**Councilors Present:** Councilors Banzer, Bonner, Deines, Etlinger, Hansen, Kafoury, Kelley, Kirkpatrick, Van Bergen, Waker, and Williamson.

**Councilors Absent:** Councilor Oleson (excused).

**Also Present:** Rick Gustafson, Executive Officer.

**Staff:** Donald Carlson, Andrew Jordan, Ray Barker, Tom O'Connor, Dan LaGrande, Steven Siegel, Dennis Mulvihill, and Diane Dimon.

**Testifiers:** Charles Crews, National Business League  
James Mayes, National Business League  
O.B. Hill, National Business League

A regular meeting of the Council of the Metropolitan Service District was called to order at 6:40 P.M. by Presiding Officer Banzer.

**1. Introductions.**

There were no introductions.

**2. Councilor Communications.**

Councilor Etlinger reported on the Region 8 meeting of the Associated Oregon Counties which he and Councilor Oleson attended. He said the AOC was going to pursue a change in Metro's enabling legislation to allow Metro to issue revenue bonds for the construction of a regional jail, as well as pursuing the Counties' ability to issue bonds for jails.

Councilor Hansen stated that he had been contacted by members of the National Business League who had expressed concern about Executive Order Nos. 15 and 16 which affected minority business enterprise rules, and specifically how they would apply to the contract for the Alaska Tundra Exhibit. He said they had expressed interest in making a short presentation to the Council and that he would appreciate the Council hearing the group at 7:30 p.m.

Presiding Officer Banzer noted that the Services Committee meeting which was originally scheduled for February 8th and then postponed to February 9th would not be held either of those dates and that the Council Secretary would be contacting the Councilors to arrange a convenient date to hear from Jeff Clunie regarding the Energy Recovery Facility.

3. Executive Officer Communications.

There were no Executive Officer Communications.

4. Written Communications to Council on Non-Agenda Items.

Presiding Officer Banzer noted that she had received a letter from Henry Kane which contained suggestions on how to improve the process for filling Council vacancies.

5. Citizen Communications to Council on Non-Agenda Items.

There were no citizen communications at this time. (See No. 8 for presentation by the National Business League.)

6. Committee Appointments.

Presiding Officer Banzer presented the Council Committee appointments for 1983, as follows:

Regional Services

Gary Hansen, Chair  
Cindy Banzer  
Ernie Bonner  
Jack Deines  
Corky Kirkpatrick  
Bob Oleson

Council Coordinating

Corky Kirkpatrick, Chair  
Cindy Banzer, Vice Chair  
Ernie Bonner  
Gary Hansen  
Marge Kafoury  
Bob Oleson

Regional Development

Marge Kafoury, Chair  
Sharron Kelley, Vice Chair  
Bruce Etlinger  
George Van Bergen  
Dick Waker  
Charlie Williamson

Contract Review Board

Bruce Etlinger, Chair  
Sharron Kelley  
Jack Deines

Friends of the Zoo

Bruce Etlinger  
Corky Kirkpatrick  
Jack Deines, alternate

Audit/Investment Committee

Charlie Williamson, Chair  
Cindy Banzer  
George Van Bergen

Joint Policy Advisory  
Committee on Transportation

Charlie Williamson, Chair  
Bruce Etlinger, Vice Chair  
Dick Waker  
Corky Kirkpatrick, alternate

Bi-State Task Force Committee

Gary Hansen, Chair  
Dick Waker, alternate

Motion: Councilor Etlinger moved confirmation of the  
1983 Metro Council Committee appointments.  
Councilor Kafoury seconded the motion

Councilor Etlinger stated he hoped that the Committees would come up with clear work plans for the organization. Presiding Officer Banzer stated she had asked the Committee chairs to prepare a work plan for the year. Councilor Kafoury stated that she would like to see the Council look at their purpose and organizational functions and proposed that a reorganization committee be established. Councilor Van Bergen asked if such a reorganization committee could be set up immediately. Presiding Officer Banzer responded that she would first like to have the opportunity to set up an organizational structure for such a committee.

Vote: By voice vote, the motion to confirm the 1983 Metro Council Committee appointments was carried, with one dissenting vote (Deines).

7. Work Session on Legislative Program.

Donald Carlson, Deputy Executive Officer, stated that the staff was prepared, as a result of discussions with the Council Coordinating Committee, to go into a more in-depth discussion of legislative matters relating to the solid waste program and the zoo. He said as far as the areas of economic development, infrastructure financing, land use simplification, and general Metro matters, a report would be prepared and presented to the Council in the near future.

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Mr. Carlson said it was hoped the Council would come to some conclusions in terms of direction to Mr. O'Connor regarding the zoo and solid waste matters.

Mr. Tom O'Connor, Legislative Assistant, presented his memorandum regarding Legislative Issues and Guidelines for the Zoo and Solid Waste. (A copy of the memorandum is attached to the agenda of the meeting.) He said he would go through each of the areas contained in the memorandum, discuss them, exact from the Council a set of guidelines he could use in analyzing upcoming legislation, and work with the Coordinating Committee on Metro's positions.

Presiding Officer Banzer stated that it would be assumed that the recommendations presented by Mr. O'Connor in his memorandum would stand unless there was objection to them.

Councilor Deines asked what happened if a bill came out in final form that had provisions in it that the Council didn't like even though they may have initially supported the recommendation of Mr. O'Connor. Mr. O'Connor said there would be the opportunity to work with the Coordinating Committee to devise amendments to legislation to meet the concerns, solicit testimony by appropriate Councilors at the formal Committee hearing, and then if it went into a work session, they would have the opportunity to participate and seek amendment of the language.

Mr. O'Connor then proceeded with the review of the memorandum.

Recycling

HB 2244: Recommendation supported.

Oregon Environmental Council Bill: Recommendation supported. Councilor Kelley commented that while the bill may have negative effect on the Metro region, it might be something of value statewide and suggested that where that happened Metro should pursue being declared an exception.

Collection Franchise Requirements: Recommendation supported. There was considerable Council discussion regarding the Waste Reduction Plan and how it related to proposed legislation. Councilor Hansen commented that on the question of franchising requirements, it was his personal feeling that they should try to be as supportive towards that type of legislation as possible.

Bottle Bill Legislation: Recommendation supported.

Packaging Legislation: Recommendation supported.

Alternative Recycling Financing Legislation: Recommendation supported.

Incentives for Recycling Industries: Recommendation supported. Councilor Etlinger commented that he had inquired if Metro could use pollution control funds, or the tax credit that was going to be used for the garbage burner for supporting recycling.

Solid Waste Facility Permitting

HB 2236: Recommendation supported.

HB 2241: Recommendation supported.

At this time, the Council deferred the legislative guidelines to the end of the agenda and took up the presentation by the National Business League regarding Metro's MBE Policy.

8. MBE Policy.

Councilor Hansen introduced Charles Crews from the National Business League.

Mr. Charles Crews, President, National Business League, Oregon Chapter, 6939 N.E. Grand Avenue, Suite 4, Portland, 97211, submitted to the Council a letter regarding Metro's MBE Policy. He outlined five points the League wanted the Council to address as soon as possible: 1) Rescind Executive Order No. 15 enacted December 7, 1982 because MBE's and MBE organizations were not allowed input; 2) that the previous MBE program of Metro be reinstated; 3) that no contracts, now or in the future, be awarded until a clear and concise MBE program from Metro was established; 4) that Metro set up a contractors input committee made up of minorities and non-minorities and business organizations (must only be from the business community); and, 5) that a liaison person be hired, carrying out the duties outlined in the MBE program submitted to the Department of Transportation. (A copy of the letter is attached to the agenda of the meeting.)

Councilor Kafoury asked Mr. Crews exactly what the problems were with Executive Order 15. Mr. Crews responded that the

minority businesses and organizations had not had a chance to participate in the formulation of the Executive Order, and felt that that was unfair.

Councilor Hansen stated that he had no problem with any of the five points outlined by Mr. Crews. He said Executive Order 15 was a temporary situation until a long term MBE program was determined. He said Metro should have a model MBE program and supported the point that no contract be awarded until such a program was in place. He said the bids on the Alaska Tundra Exhibit, were going to be received February 9th and discussion needed to occur before that time to determine what to do about that contract.

Donald Carlson, Deputy Executive Officer, distributed to the Council copies of a letter to Mr. James Berry of the National Business League which responded to an inquiry of the League. (A copy of the letter is attached to the agenda of the meeting.) Mr. Carlson then outlined the history behind the issuance of Executive Order 15. He said Executive Order 15 was intended to clarify the application of the MBE program and the administration of it. He said it was staff's recommendation that the bidding process for the Alaska Tundra Exhibit continue, with the MBE policies as contained in Executive Order 15 applied to the bids. He said the Council would determine on February 24th whether the bid should be awarded and whether the MBE policy requirements had been met.

Mr. Gustafson, Executive Officer, clarified that Executive Order 15 allowed for bidders to submit documentation that they had made a good faith effort to involve minority contractors. He said bidders could choose between the good faith effort or 10% minority business participation.

Mr. Crews reiterated that the League was not contacted and a majority of the MBE's affected had no input into the Executive Order. He said they were asking that the bids for the contract be set over until there was a clearer understanding of what the MBE participation should be. He said there was a great deal of confusion regarding the bidding process, and that prime contractors were not advertising or were late in advertising for minority business bids to fulfill the best effort criteria. He said a delay of a week or two shouldn't affect the construction of the project.

Councilor Kafoury stated that partial solution to the problem might be to request the staff to prepare an addendum delaying the opening of the bids to assure that there was sufficient

time for the minority contractors to respond to advertising for bids. She said the black community and other minorities in the community needed assurance that there would be an adequate review of the bid documents when submitted that minority business goals were being obtained.

Mr. James Mayes, Secretary, National Business League, testified that the Minority Business Program Metro had at one time was the best program in the region because it contained a mandatory incentive for all contractors to seek out MBE's and provide them with at least 10% of the work. He said the addition of the good faith effort by Executive Order 15 did not provide adequate minority participation, and said he was upset that he was not involved in the meetings regarding Executive Order 15. He said the Alaska Tundra contract was a big contract and minorities should have been guaranteed a portion of it and that was why they wanted it held up until the issue was resolved.

Presiding Officer Banzer questioned whether the 10% requirement met the intent of providing for minority participation when prime contractors sometimes always went to the same minority contractors to achieve the 10% goal.

Councilor Etlinger requested that staff provide him with Metro's MBE performance record in dollars and percentages prior to Executive Order 15. He said he thought the request the League had made was reasonable if it did not have a massive impact on the construction deadline for the Alaska Tundra Exhibit.

Presiding Officer Banzer asked what the impact would be on the project if the matter was referred to the Coordinating Committee. Mr. Kay Rich, Assistant Zoo Director, responded that if the Council did not approve contract award on February 24th there would be a serious impact on completing the Exhibit by May 1984. Presiding Officer Banzer suggested that the issue be sent to the Coordinating Committee for review and discussion, with the hope that resolution could be attained by February 24th and no later than March 3rd.

Mr. Rich clarified that the last addendum sent out specifically stated a 10% goal and that there was a very good possibility that the goal would be achieved.

Councilor Williamson commented that no matter what the Coordinating Committee did, the rules shouldn't be changed before February 24th, because bidders were working with one set of rules and to change them in the middle of the process would cause problems.

Councilor Rafoury said she was concerned that sufficient advertising for minorities was not occurring. She said along with sending the issue to the Coordinating Committee they should consider requesting an additional addendum to be published which would delay the opening of the bids and require the general contractors to provide for the full twenty days of advertising.

Mr. Carlson explained that the bid document stated that bidders had to have a fourteen day publication period and the Executive Order stated twenty days. He said they put out an addendums that delayed the bid opening seven days to allow contractors the opportunity under the good faith effort criteria the full twenty days to advertise.

Mr. Gustafson stated that there was no requirement for publication if it was a contractor's intent to provide the 10% and the publication requirement was only necessary if the contractor could not provide for minority participation and therefore had to submit documentation that he had advertised twenty days in advance.

Councilor Waker said that it seemed what was being contended was that Executive Order 15 was not going to achieve the results that the previous policy achieved. He said the bid process would produce the evidence as to whether Executive Order 15 was going to get the job done or not and recommended that the Council go ahead with the bidding process.

Councilor Hansen said if the matter was referred to the Coordinating Committee on the 14th that the decision regarding the Alaska Tundra Exhibit would be made because the bid opening date was February 9th. He said it would be very difficult to reject all the bids on February 24th at the Council meeting if they judged that the MBE policies had not been met. He said the bottom line on the question of the fairness of Executive Order 15 was that the people most directly effected by it were not involved in the process. He said it was easy to cast blame on staff or the minority community that did have input, but the fact was that the Council had received a copy of the Executive Order and didn't question it at that time.

Mr. Crews stated that the addendum only indicated that proof was needed to show a good faith effort and did not state the 10% minority participation requirement. General Counsel Jordan stated that the 10% was in the bid document.

Councilor Bonner stated that the policy issue for the Council seemed to be to determine if the Executive Order was consistent with the Council's policy on MBE participation.



Councilor Waker said his position was that minority contractors were entitled the best possible opportunity to bid on work within the framework of the fact that the public was entitled to the lowest possible cost. He said he thought Executive Order 15 was a reasonable attempt to deal with both principles, and thought the Council should not continue to debate the issue.

Mr. O.B. Hill, Vice President, National Business League, and minority businessman, stated there were discrepancies in the documentation provided to the National Business League by Mr. Gustafson and the addendums to the bid documents. He said Executive Order 15 required twenty days of advertising in newspapers, however, the addendum required proof of advertising, which was not in the Executive Order. He said Executive Order 15 made null and void the document submitted to the Department of Transportation regarding Metro's MBE program.

Motion: Councilor Kirkpatrick moved that the issue be referred to the Coordinating Committee for the meeting of February 14th in order to adequately address the requests of the National Business League; with the understanding that should it be decided that the bids received February 9th for the Alaska Tundra Exhibit did not meet MBE objectives, it was possible for the Council to reject all bids at the meeting of the Council on February 24th. Councilor Waker seconded the motion.

Councilor Kafoury asked if there was going to be an evaluation committee to review all the bid documents. Mr. Carlson responded that staff would be evaluating the bid documents and then they would be submitted to the Coordinating Committee.

Councilor Kafoury said that it seemed they were trying to change policy while a process was going on. She said they either ought to stop the process and determine just exactly what they intended or notify people who intend to bid of the Council's interpretation of what they meant when they said "good faith".

Vote: The vote on the motion resulted in:

Ayes: Councilors Kirkpatrick, Waker, and Williamson.

Nays: Councilors Banzer, Bonner, Etlinger, Hansen, Kafoury, and Kelley

Absent: Councilors Deines, Oleson, and Van Bergen.

Motion failed.

Motion: Councilor Williamson moved to terminate the bid for the Alaska Tundra Exhibit and reissue the RFP after the Coordinating Committee and Council had deliberated on the issue. Councilor Kirkpatrick seconded the motion.

Councilor Hansen said the motion wouldn't be necessary if a meeting and hearing before the 9th could be held to discuss the options available. Councilor Kirkpatrick stated she was not in favor of making a major policy change without adequate time to let people know they were considering it and without staff time to prepare. Councilor Kafoury suggested that in order to assure that the MBE process worked, they proceed with the process for the Alaska Exhibit, with the stipulation that a panel of citizens selected from the minority community participate in reviewing the bids.

Vote: The vote on the motion to terminate the bid process for the Alaska Tundra Exhibit resulted in:

Ayes: Councilor Kirkpatrick.

Nays: Councilors Banzer, Bonner, Etlinger, Hansen, Kafoury, Kelley, and Williamson.

Absent: Councilors Deines, Oleson, Van Bergen, and Waker.

Motion Failed.

At this time, the Council recessed to 9:25 p.m.

Motion Councilor Bonner moved that the bid opening date be extended to February 18th, that the matter be referred to the Services Committee for a hearing on possible rescission of Executive Order 15. Councilor Etlinger seconded the motion.

Councilor Bonner stated he did not like the options to either cancel the bids and start over or accept the process already in place. He said if there was a question about Executive Order 15 as to whether or not it was consistent with Council policy, they needed to resolve that issue first. He said it should go to the Services Committee because they had a meeting on Tuesday and it could be decided before the Council meeting on the 24th.

Councilor Hansen stated he wanted to make two amendments to Councilor Bonner's motion: Extend the bid opening one week to

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the 16th, which would allow more time; and allow the Coordinating Committee to hear it instead of the Services Committee. Councilor Bonner accepted the suggestions as friendly amendments.

Councilor Waker spoke in opposition to the motion. He said the bid should be opened on the 9th with award on the 24th. He said the opportunity was available on the 24th to reject all the bids if they so desired. He said they could decide whether to rescind Executive Order 15 at the same time they would be reviewing the bids for consistency with the MBE policy and Executive Order 15.

Councilor Kafoury said she was also opposed to the motion. She agreed that they should proceed with the bid opening and reiterated that a review panel should participate with the staff in evaluating the bids.

Vote: The vote on the motion to delay bid opening to February 16 and refer the issue to the Coordinating Committee meeting on February 14th for possible rescission of Executive Order 15 resulted in:

Ayes: Councilors Banzer, Bonner, Etlinger, and Hansen.

Nays: Councilors Kafoury, Kelley, Kirkpatrick, and Waker.

Absent: Councilors Deines, Oleson, Van Bergen, and Williamson.

Motion failed.

Motion: Councilor Kafoury moved: Establishment of a review panel which would evaluate the bids received for the Alaska Tundra Exhibit, the review panel to consist of representatives of the minority community, including members of the National Business League, to evaluate whether or not the 10% MBE level was attained; 2) that the Council undertake a major review of the MBE program, a major component to be public participation, with the end result to develop fair and equitable procedures regarding minority business enterprises, and 3) that the review of the MBE policy occur and be completed prior to any contracts being awarded.

Presiding Officer Banzer asked if the intent of the motion was to address major contracts or any contracts awarded before the MBE review was complete.

Councilor Kafoury stated she meant construction contracts and wasn't sure how to define major.

Mr. Gustafson stated that it would be appropriate that it apply to any contract for which the MBE program would be applicable.

Councilor Etlinger suggested that affirmative action be added to the motion. Councilor Kafoury said she would rather deal with the MBE/FBE program first but agreed that affirmative action should be looked at some time in the future.

Councilor Hansen stated he felt there was agreement on the Council that they wanted to improve their MBE program and that they wanted more input from the minority community. He said the bottom line was that there was an estimated \$1.6 million job, which was the biggest contract they would let for the year, and ten percent of that for minority contractors would keep four to six small contractors afloat during the current economic crisis. He said he was probably going to vote against the motion because it still didn't address the five issues that were raised by the National Business League.

Vote: The vote on the motion resulted in:

Ayes: Councilors Banzer, Kafoury, Kelley,  
Kirkpatrick, and Waker.

Nays: Councilor Bonner, Etlinger, and Hansen.

Absent: Councilors Deines, Oleson, Van Bergen, and  
Williamson.

Motion carried.

Councilor Hansen asked how the review would be implemented. Presiding Officer Banzer responded that she would send out a memo setting up a procedure for the review of the bids to be opened on February 9th.

7. Work Session on Legislative Program (Continued).

Mr. O'Connor continued with the presentation of his memorandum.

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Hazardous Waste Legislation: Recommendation supported.

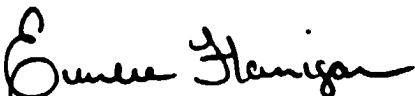
Pollution Control Tax Credits Legislation: Recommendation supported.

Councilor Waker stated that since there were only five Councilors left to hear the legislative package that perhaps it would be more productive to continue it to another time when there would be a chance for better attendance.

Mr. O'Connor stated that he had one item which he needed direction on before the meeting adjourned, and that was proposed Public Contracting Legislation. He distributed a memorandum regarding the legislation (a copy of the memorandum is attached to the agenda of the meeting), and described the proposed legislation. He said his recommendation was that Metro should support the position of the League of Oregon Cities and Associated Oregon Counties and seek to maintain local control over contracting as currently in State law. Recommendation supported by the Councilors present (Waker, Kirkpatrick, Etlinger, Kelley and Hansen)

There being no further business, the meeting was adjourned at 10:00 P.M.

Respectfully submitted,



Everlee Flanigan  
Council Clerk

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