

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING)
THE METRO CODE SECTION 2.04.045)
RELATING TO APPROVAL OF CONTRACT)
AMENDMENTS, AND DECLARING AN)
EMERGENCY)

ORDINANCE NO. 94-562B
Introduced by
Councilor Susan McLain

THE METRO COUNCIL HEREBY ORDAINS:

Section 1: Metro Code Section 2.04.045 is amended to read as follows:

2.04.045 Public Contract Extensions and Amendments (Including Change Orders, Extra Work and Contract Renewals):

(a) The Executive Officer may execute amendments to contracts, other than Personal Services contracts, which were not subject to Council approval pursuant to Section 2.04.033, or which were exempted from the requirement of Council approval by action of the Council, provided that any one of the following conditions are met:

- (1) The original contract was let by competitive bidding, the amendment is for the purpose of authorizing additional work for which unit prices or bid alternates were provided that established the cost for the additional work and the original contract governs the terms and conditions of the additional work; or
- (2) The amendment is a change order that resolves a bona fide dispute with the contractor regarding the terms and conditions of a contract for a public improvement and the amendment does not materially add to or delete from the original Scope of Work included in the original contract; or

(3) The amount of the aggregate cost increase resulting from all amendments does not exceed 20 percent of the initial contract if the face amount is less than or equal to \$1,000,000 or 10 percent if the face amount is greater than \$1,000,000; amendments made under subsection (1) or (2) are not included in computing the aggregate amount under this subsection; or the Contract Review Board has approved the contract amendment.

(b) No contract which was originally subject to Council approval pursuant to Metro Code Section 2.04.033 may be amended without the express approval of the Council evidenced by a duly adopted resolution or ordinance, except as follows:

(1) The Executive Officer may approve any amendment that is a change order that resolves a bona fide dispute with the contractor regarding the terms and conditions of a contract for a public improvement if the amendment does not materially add to or delete from the original Scope of Work included in the original contract. Provided, however, the Executive Officer must obtain Council approval for any such change order that results in a total aggregate increase of more than 5 percent of the original contract amount. If the Council approves a change order pursuant to this subsection it may also in the same action authorize additional change orders to resolve future disputes in an amount not to exceed that established by the Council.

- (2) The Executive Officer may approve any contract amendment to a contract for a public improvement that does not increase the contract amount more than \$15,000 if the amount of the aggregate cost resulting from all amendments authorized pursuant to this subsection does not exceed 5 percent of the initial contract. In computing the dollar amount of any amendment for the purpose of this subsection, only the amount of additional work or extra cost shall be considered and may not be offset by the amount of any deletions.
- (3) The Executive Officer may approve a change order for additional work if the original contract was let by competitive bidding, the amendment is for the purpose of authorizing additional work for which unit prices or bid alternates were provided that established the cost for the additional work and the original contract governs the terms and conditions of the additional work.
- (4) The Executive Officer may approve a change order to a public improvement contract in order to meet an emergency.

(c) Personal Services contracts may be amended only as provided for in Metro Code Section 2.04.054.

- (d) Prior to executing any amendment to a contract authorized pursuant to subsection 2.04.045(b), the Executive Officer shall file a written report explaining the purpose of the amendment and the authority for its execution

~~with the Clerk of the Council. All reports shall be referred to the appropriate Council Committee for discussion and considerations.~~

~~(a) — Selection Process: Any contract amendment for additional work including contract renewals, change orders, extra work, field orders and other changes in the original specifications which increase the original contract price may be made with the contractor without competitive bidding subject to the extent any of the following conditions are met:~~

- ~~(1) — The original contract was let by competitive bidding, unit prices or bid alternates were provided that established the cost for additional work and a binding obligation exists on the parties covering the terms and conditions of the additional work. However, in the event that the increase in price results solely from extension of the termination date of the contract, the extension shall not be greater than three months; or~~
- ~~(2) — The amount of the aggregate cost increase resulting from all amendments does not exceed 20 percent of the initial contract if the face amount is less than or equal to \$1,000,000 or 10 percent if the face amount is greater than \$1,000,000; amendments made under subsection (1) are not included in computing the aggregate amount under this section; or~~
- ~~(3) — The increase in price is due to unexpected conditions which arise during performance of a construction, maintenance or repair contract and the Executive Officer determines that extension of the scope of~~

~~work on the current contract is the most economical method of dealing with the unexpected conditions; or~~

~~(4) — The total cost of the contract, including amendments, does not exceed \$5,000 but if the amendment is for more than \$500, three (3) competitive quotes shall be obtained as described in Sections 2.04.042(a)(2) and 2.04.043(a).~~

~~(5) — In addition to the requirements of this subsection, any contract amendment or extension exceeding the amounts as provided in subsection (2) shall not be approved unless the Contract Review Board shall have specifically exempted the contract amendment or extension from the public bidding procedure except as provided in subsection (6) below.~~

~~(6) — In addition to the requirements of this subsection, individual change orders for a public improvement contract may be approved by the Executive Officer if they do not materially add to or delete from the original scope of work included in the original contract.~~

~~Change orders exceeding the amounts provided in subsection 2 which materially add to or delete from the original scope of work shall not be approved unless the Contract Review Board has specifically exempted the change order from the public bidding procedure.~~

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

~~###~~

~~(e) — Approval Process:~~

~~(1) — In applying the following rules for approval of contract amendments, when an amendment falls under two different rules, the amendment shall be approved under the rule for the higher dollar amount; e.g., an amendment of under \$2,500 (rule 2) which results in a contract price of \$2,500 or more (rule 3) shall be approved under the rule for contract prices of \$2,500 or more.~~

~~(2) — Under \$2,500: All contract amendments and extensions which are less than \$2,500 if the contract was originally for \$2,500 or more or which result in a total contract price of less than \$2,500 may be approved by the Director of the initiating department or by a designee of the Director approved by the Executive Officer if the following conditions are met:~~

~~(A) — A standard contract form is used;~~

~~(B) — Any deviations to the contract form are approved by the General Counsel;~~

~~(C) — The expenditure is authorized in the budget;~~

~~(D) — The contract does not further obligate the District beyond \$2,500;~~

~~(E) — The appropriate Scope of Work is attached to the contract; and~~

~~(F) — No contract amendment or extension may be approved in an amount in excess of the amount authorized in the budget.~~

~~(3) \$2,500 or More: All contract amendments and extensions which are for \$2,500 or more or which result in a total contract price of more than \$2,500 if the original contract was for less than \$2,500 may be approved by either 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 may sign contract amendments and extensions. No contract amendment or extension may be approved in an 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."~~

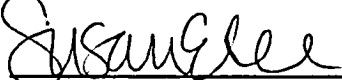
Section 2: Emergency Clause. This ordinance being necessary for the health, safety or welfare of the Metro area, for the reason that the Council wants to ensure appropriate policy level control of contract amendments to ensure fiscal protection of agency resources, an emergency is declared to exist and this ordinance shall be effective upon adoption by the Council.

ADOPTED by the Metro Council this 22nd day of September, 1994.



Judy Wyers, Presiding Officer

ATTEST:



Clerk of the Council

gl1159F

BEFORE THE METRO COUNCIL

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(3) The amount of the aggregate cost increase resulting from all amendments does not exceed 20 percent of the initial contract if the face amount is less than or equal to \$1,000,000 or 10 percent if the face amount is greater than \$1,000,000; amendments made under subsection (1) or (2) are not included in computing the aggregate amount under this subsection; or the Contract Review Board has approved the contract amendment.

(b) No contract which was originally subject to Council approval pursuant to Metro Code Section 2.04.033 may be amended without the express approval of the Council evidenced by a duly adopted resolution or ordinance, except as follows:

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(3) The Executive Officer may approve a change order for additional work if the original contract was let by competitive bidding, the amendment is for the purpose of authorizing additional work for which unit prices or bid alternates were provided that established the cost for the additional work and the original contract governs the terms and conditions of the additional work.

(4) The Executive Officer may approve a change order to a public improvement contract in order to meet an emergency.

(c) Personal Services contracts may be amended only as provided for in Metro

Code Section 2.04.054.

(d) Prior to executing any amendment to a contract authorized pursuant to subsection 2.04.045(b), the Executive Officer shall file a written report explaining the purpose of the amendment and the authority for its execution

~~with the Clerk of the Council. All reports shall be referred to the appropriate Council Committee for discussion and considerations.~~

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- ~~(2) — The amount of the aggregate cost increase resulting from all amendments does not exceed 20 percent of the initial contract if the face amount is less than or equal to \$1,000,000 or 10 percent if the face amount is greater than \$1,000,000; amendments made under subsection (1) are not included in computing the aggregate amount under this section; or~~
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- ~~(4) — The total cost of the contract, including amendments, does not exceed \$5,000 but if the amendment is for more than \$500, three (3) competitive quotes shall be obtained as described in Sections 2.04.042(a)(2) and 2.04.043(a).~~
- ~~(5) — In addition to the requirements of this subsection, any contract amendment or extension exceeding the amounts as provided in subsection (2) shall not be approved unless the Contract Review Board shall have specifically exempted the contract amendment or extension from the public bidding procedure except as provided in subsection (6) below.~~
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~~Change orders exceeding the amounts provided in subsection 2 which materially add to or delete from the original scope of work shall not be approved unless the Contract Review Board has specifically exempted the change order from the public bidding procedure.~~

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

~~(e) Approval Process:~~

~~(1) In applying the following rules for approval of contract amendments, when an amendment falls under two different rules, the amendment shall be approved under the rule for the higher dollar amount; e.g., an amendment of under \$2,500 (rule 2) which results in a contract price of \$2,500 or more (rule 3) shall be approved under the rule for contract prices of \$2,500 or more.~~

~~(2) Under \$2,500: All contract amendments and extensions which are less than \$2,500 if the contract was originally for \$2,500 or more or which result in a total contract price of less than \$2,500 may be approved by the Director of the initiating department or by a designee of the Director approved by the Executive Officer if the following conditions are met:~~

~~(A) A standard contract form is used;~~

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~~(C) The expenditure is authorized in the budget;~~

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~~may sign contract amendments and extensions. No contract amendment or extension may be approved in an 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."~~

~~Section 2: Emergency Clause. This ordinance being necessary for the health, safety or welfare of the Metro area, for the reason that the Council wants to ensure appropriate policy level control of contract amendments to ensure fiscal protection of agency resources, an emergency is declared to exist and this ordinance shall be effective upon adoption by the Council.~~

ADOPTED by the Metro Council this ____ day of _____, 1994.

Ed Washington, Deputy Presiding Officer

ATTEST:

Clerk of the Council

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1159E

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ATTEST:

Clerk of the Council

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1159E

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FINANCE COMMITTEE REPORT

ORDINANCE NO. 94-562A, AMENDING THE METRO CODE SECTION 2.04.045 RELATING TO APPROVAL OF CONTRACT AMENDMENTS

Date: September 1, 1994

Presented by: Councilor McLain

COMMITTEE RECOMMENDATION: At its August 24, 1994 meeting the Finance Committee voted 4-0 to recommend Council adoption of Ordinance No. 94-562A. Councilors Monroe, Kvistad, McLain, and Washington voted in favor. Councilors Buchanan, Devlin, Gardner, and Van Bergen were absent.

COMMITTEE DISCUSSION/ISSUES: Councilor McLain discussed the ordinance. She said Ordinance No. 94-562 was drafted to clarify Council's authority regarding review and approval of contract amendments. She said the ordinance had been discussed at the August 10 committee meeting, which resulted in amendments being drafted which accomplished four things as outlined in Dan Cooper's August 17 memo to her. Councilor McLain discussed those changes.

General Counsel Dan Cooper noted there is a fifth item added, which requires the Executive to report to the Council whenever she exercises the authority granted under the provisions of this ordinance.

Councilor Kvistad asked what the effect would be of reducing, from \$25,000 to \$10,000, the limitation on the Executive's authority to approve amendments. Mr. Cooper said he could not estimate the effect of such a change; he said the \$25,000 figure was included to be consistent with the minimum amount of contracts that require a formal RFP process as stipulated in Ordinance No. 94-554. Committee members and staff discussed the relationship between the figure for formal bids and the figure for contract amendments, and discussed the merits of the \$25,000 level for RFP's. (The latter issue had not yet been approved by Council, but was subsequently approved at the August 25 meeting; Councilor Kvistad did not want the \$25,000 figure for amendment authority to be included in this ordinance since it hadn't been adopted by Council for formal bids.)

Following some discussion of tying the amount for Executive approval of amendments to the amount required for formal bids, Councilor McLain accepted as a friendly amendment Councilor Kvistad's proposal to reduce the \$25,000 limitation to \$15,000.

Chair Monroe opened a public hearing and no one testified.

There was no further committee discussion.



METRO

Date: August 3, 1994
 To: Finance Committee
 From: Donald E. Carlson, ^{DEC} Council Administrator
 Re: Explanation of Ordinance No. 94-562 Relating to Approval of Contract Amendments

Ordinance No. 94-562, introduced by Councilor McLain, is on the August 10, 1994 Finance Committee agenda for committee consideration. The ordinance amends the section of the Metro Contract Code (Chapter 2.04) which deals with amendments to "Public Contracts". As defined in the Code a Public Contract. . .

"means any purchase, lease or sale by Metro of personal property, public improvement or services, including those transacted by Purchase Order, other than agreements which are for personal services. . ."

These amendment procedures relate to all Metro contracts except "Personal Service" contracts.

The Ordinance replaces the existing amendment language with new wording which retains the current procedures, for the most part, with one major exception. In the proposed new language in Section 2.04.045 (3) (b) the following requirement is added:

"No contract which was originally subject to Council approval pursuant to Metro Code Section 2.04.033 may be amended without the express approval of the Council evidenced by a duly adopted resolution."

Section 2.04.033 states the following contracts shall be approved by the Council prior to execution:

1. Any contract which commits the District to the expenditure of revenues or appropriations not otherwise provided for in the current fiscal year (multi-year contracts) except those designated as "B" contracts in the Budget Ordinance.
2. Any intergovernmental agreement by which the District acquires or transfers any interest in real property, assumes any function or duty of another governmental body, or transfers any function or duty of Metro to another governmental unit.
3. Any contract for the sale, lease or transfer of real property owned by the District.

If the language highlighted above had been in the Code, there would have been no question that any amendment to the contract with Oregon Waste Systems, Inc. such as Amendment No. 4 would have had to be approved by the Council prior to execution by the Executive Officer.

The new language highlighted above will change the requirements for approval of change orders to construction projects. Prior to action on the ordinance I recommend that General Counsel review the language with the Committee so that members are aware of the potential impact on large construction projects. Dan Cooper will be at the Finance Committee meeting to discuss this with the Committee.

cc: Councilor McLain
Dick Engstrom
Dan Cooper
Casey Short

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING)	ORDINANCE NO. 94-562
THE METRO CODE SECTION 2.04.045)	
RELATING TO APPROVAL OF CONTRACT)	Introduced by
AMENDMENTS)	Councilor Susan McLain

THE METRO COUNCIL HEREBY ORDAINS:

Metro Code Section 2.04.045 is amended to read as follows:

2.04.045 Public Contract Extensions and Amendments (Including Change Orders, Extra Work and Contract Renewals):

(a) The Executive Officer may execute amendments to contracts, other than Personal Services contracts, which were not subject to Council approval pursuant to Section 2.04.033, or which were exempted from the requirement of Council approval by action of the Council, provided that any one of the following conditions are met:

- (1) The original contract was let by competitive bidding, unit prices or bid alternates were provided that established the cost for additional work and the original contract governs the terms and conditions of the additional work; or
- (2) The amendment is a change order that resolves a bona fide dispute with the contractor regarding the terms and conditions of a contract for a public improvement and the amendment does not materially add to or delete from the original Scope of Work included in the original contract; or

(3) The amount of the aggregate cost increase resulting from all amendments does not exceed 20 percent of the initial contract if the face amount is less than or equal to \$1,000,000 or 10 percent if the face amount is greater than \$1,000,000; amendments made under subsection (1) or (2) are not included in computing the aggregate amount under this subsection; or the Contract Review Board has approved the contract amendment.

(b) No contract which was originally subject to Council approval pursuant to Metro Code Section 2.04.033 may be amended without the express approval of the Council evidenced by a duly adopted resolution.

(c) Personal Services contracts may be amended only as provided for in Metro Code Section 2.04.054.

~~(a) — Selection Process: Any contract amendment for additional work including contract renewals, change orders, extra work, field orders and other changes in the original specifications which increase the original contract price may be made with the contractor without competitive bidding subject to the extent any of the following conditions are met:~~

- ~~(1) — The original contract was let by competitive bidding, unit prices or bid alternates were provided that established the cost for additional work and a binding obligation exists on the parties covering the terms and conditions of the additional work. However, in the event that the increase in price results solely from extension of the termination date of the contract, the extension shall not be greater than three months; or~~
- ~~(2) — The amount of the aggregate cost increase resulting from all amendments does not exceed 20 percent of the initial contract if the face amount is less than or equal to \$1,000,000 or 10 percent if the face amount is greater than \$1,000,000; amendments made under subsection (1) are not included in computing the aggregate amount under this section; or~~
- ~~(3) — The increase in price is due to unexpected conditions which arise during performance of a construction, maintenance or repair contract~~

~~and the Executive Officer determines that extension of the scope of work on the current contract is the most economical method of dealing with the unexpected conditions; or~~

- ~~(4) The total cost of the contract, including amendments, does not exceed \$5,000 but if the amendment is for more than \$500, three (3) competitive quotes shall be obtained as described in Sections 2.04.042(a)(2) and 2.04.043(a).~~
- ~~(5) In addition to the requirements of this subsection, any contract amendment or extension exceeding the amounts as provided in subsection (2) shall not be approved unless the Contract Review Board shall have specifically exempted the contract amendment or extension from the public bidding procedure except as provided in subsection (6) below.~~
- ~~(6) In addition to the requirements of this subsection, individual change orders for a public improvement contract may be approved by the Executive Officer if they do not materially add to or delete from the original scope of work included in the original contract.~~

~~Change orders exceeding the amounts provided in subsection 2 which materially add to or delete from the original scope of work shall not be approved unless the Contract Review Board has specifically exempted the change order from the public bidding procedure.~~

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

~~(e) Approval Process:~~

- ~~(1) In applying the following rules for approval of contract amendments, when an amendment falls under two different rules, the amendment shall be approved under the rule for the higher dollar amount; e.g., an amendment of under \$2,500 (rule 2) which results in a contract price of \$2,500 or more (rule 3) shall be approved under the rule for contract prices of \$2,500 or more.~~
- ~~(2) Under \$2,500: All contract amendments and extensions which are less than \$2,500 if the contract was originally for \$2,500 or more or which result in a total contract price of less than \$2,500 may be approved by the Director of the initiating department or by a designee of the Director approved by the Executive Officer if the following conditions are met:~~

- ~~(A) — A standard contract form is used;~~
- ~~(B) — Any deviations to the contract form are approved by the General Counsel;~~
- ~~(C) — The expenditure is authorized in the budget;~~
- ~~(D) — The contract does not further obligate the District beyond \$2,500;~~
- ~~(E) — The appropriate Scope of Work is attached to the contract; and~~
- ~~(F) — No contract amendment or extension may be approved in an amount in excess of the amount authorized in the budget.~~

~~(3) — \$2,500 or More: All contract amendments and extensions which are for \$2,500 or more or which result in a total contract price of more than \$2,500 if the original contract was for less than \$2,500 may be approved by either 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 may sign contract amendments and extensions. No contract amendment or extension may be approved in an 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."~~

ADOPTED by the Metro Council this ____ day of _____, 1994.

Judy Wyers, Presiding Officer

ATTEST:

Clerk of the Council

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METRO

Date: August 17, 1994
To: Councilor Susan McLain
From: Daniel B. Cooper, General Counsel *DBC*
Regarding: ORDINANCE 94-562A
Our file:

I am enclosing at your request a proposed amended version of Ordinance 94-562. If approved by the Finance Committee, Ordinance 94-562A would change Ordinance 94-562 as follows:

- (1) Clarify the intent of the limited authorization for change orders based on unit prices or bid alternates;
- (2) Authorize the Executive Officer to have limited authority to resolve disputes on multi-year construction contracts provided that the aggregate cost impact may not exceed 5 percent of the contract without Council approval;
- (3) Authorize change orders for deletions or additional work for construction contracts provided no one addition may exceed \$25,000; the dollar value of deletions may not be used as an offset in determining the amount of an addition and the aggregate increase may not exceed 5 percent of the contract; and
- (4) Adds an emergency clause so the limitations on the Executive Officer's authority contained in the ordinance would go into effect immediately rather than in 90 days.



METRO

DATE: September 26, 1994

TO: Rena Cusma, Executive Officer

FROM: Susan Lee, Acting Clerk of the Council *SL*

RE: TRANSMITTAL OF ORDINANCE NOS. 94-562B, 94-564, 94-565B, 94-570B, and 94-567

Attached for your consideration are true copies of the ordinances referenced above adopted by the Council on September 22, 1994.

If you wish to veto any of the above referenced ordinances, I must receive a signed and dated written veto message from you no later than 5:00 p.m., Thursday, September 29, 1994. The veto message, if submitted, will become part of the permanent record. If no veto message is received by the time and date stated above, these ordinances will be considered finally adopted.

I, *Rena Cusma*, received this memo and true copies of Ordinance Nos. 94-562B, 94-564, 94-565B, 94-570B, and 94-567 from the Clerk of the Council on September 26, 1994.