

MINUTES OF THE METRO COUNCIL FINANCE COMMITTEE

January 26, 1994

Council Chamber

Committee Members Present: Rod Monroe (Chair), Richard Devlin (Vice Chair), Roger Buchanan, Jim Gardner, Jon Kvistad, Susan McLain, George Van Bergen

Councilors Also Present: Ruth McFarland

Chair Monroe called the Finance Committee meeting to order at 4:09 p.m.

1. Consideration of January 12, 1994 Finance Committee Meeting Minutes

Motion: Councilor Kvistad moved to approve the January 12, 1994 Finance Committee meeting minutes as submitted.

Vote: Councilors Buchanan, Gardner, Kvistad, Van Bergen and Monroe voted aye. Councilors Devlin and McLain were absent.

The vote was unanimous and the motion passed.

2. Resolution No. 94-1898, For the Purpose of Extending the Personal Services Contract for Audit Services with KPMG Peat Marwick for One Year with an Additional One Year Option

Jennifer Sims, Director of Finance and Management Information Systems, presented the staff report and said the purpose of the resolution was to amend the personal services contract for audit services with KPMG Peat Marwick. She noted the current three year contract was due to expire on March 31, 1993, and the request was to extend the contract for a one year period with an additional one year option. Ms. Sims said such an extension was allowed by Metro Code with the provision that it would not encourage favoritism and would result in cost savings to the agency. Ms. Sims noted transition was anticipated in several Metro areas; including computerization of accounting systems next year, changes in the Executive Office, changes in Council structure, and a new Auditor position, all of whom she hoped would be involved in the selection of an auditor for the next three years. She said KPMG Peat Marwick was competitive in the marketplace, which would mean cost savings, and said the firm was auditor for Multnomah County, which would help Metro with the Parks. She noted Tri-Met approved this type of extension recently to provide continuity on their light rail project auditing.

Chair Monroe supported the one year extension that would conclude after the new Executive Officer and the new Council had been in office for three months.

Motion: Councilor Van Bergen moved to recommend Resolution No. 94-1898 to the full Council for adoption.

In response to Donald E. Carlson, Council Administrator, Ms. Sims said the Department might propose another year extension to follow.

Councilor Van Bergen clarified his motion for approval to recommend the resolution was exclusive of external influences such as Multnomah County or implementation of a new system, but rather, he said, his motion was based on the fact that the firm had continuity with Metro, and that a new Auditor would be on board Jan. 1, 1995.

Councilor Gardner asked what role would the elected Auditor have under the Charter in contracts for audit services, in other words, would that still remain a Council function to approve those contracts. Daniel B. Cooper, General Counsel, said the role of the Auditor as defined by the Charter was narrow in function and he believed

the role was limited to financial and performance auditing only. He said the relationship between the Council and the Auditor in those functions would be similar to the relationship between the Council and the Executive for other administrative functions. He said the Council would be dealing with the Auditor rather than the Executive Officer regarding the audit contract. He said that the role of the Auditor was still being defined.

Ms. Sims indicated by state law an independent auditor for a financial audit was mandated, and indicated a direct relationship between FMI and an outside financial audit firm would continue in the future.

Vote: Councilors Buchanan, Gardner, Kvistad, McLam, Van Bergen and Monroe voted aye. Councilor Devlin was absent.

3. Resolution No. 94-1886, For the Purpose of Authorizing Execution of Change Order No. 19 and the Ratification of Change Orders No. 1 Through 18 to the Hoffman Construction Company Contract for the Construction of the Metro Regional Center and Adjacent Parking Structure

Doug Butler, Interim Regional Facilities Director, addressed the Committee and said each of the change orders included in the proposed resolution had been discussed at the Regional Facilities at the time that the work was underway. He said the proposed change order would authorize execution of Change Order No. 19 and authorize the ratification of Change Orders No. 1 through 18 to the Hoffman Construction Co. contract. Mr. Butler said the Committee was being asked for approval as there appeared to be sufficient ambiguity concerning the 10% rule, and indicated his interest in an atmosphere of open discussion. He agreed with the direction proposed by the resolution, and said many of the items were ones that required a change order as they were nothing more than an allowance in the original contract, converted when plans and bids were final to a contract amendment. He said covered also were City of Portland requirements of Metro during the permit process, and covered unforeseen matters that were likely to occur in such a renovation project as this has been.

Mr. Butler indicated he was prepared also to update the Committee on the Metro Regional Center.

Councilor Van Bergen commented that General Counsel had independently reviewed the change orders and determined sufficient ambiguity to merit an omnibus contract review board approval of all change orders.

In response to Councilor Van Bergen, Mr. Cooper said in the normal course of business he received change orders being processed on contracts, and said his function was to approve them as to form and assure they were legally sufficient and were not ambiguous. He said the Metro Regional Center contract appeared to be below the 10% limit for material increases in Scope of Work for several change orders that he had approved. He said discussions with Neil Saling, former Regional Facilities Director, concerning other possible change orders as to whether or not they would be technical in nature resolving disputes and therefore outside the 10% limit. He said discussion included suggestions for possible approaches for resolving such disputes with the contractor. Mr. Cooper said he thought sometime in November, 1993, Change Order No. 18 came across his desk with a form attached that indicated the total change orders on the project were now over \$3 million. Mr. Cooper said at that point, not having seen a summary showing that dollar amount prior to that, he informed Mr. Saling he could not approve Change Order No. 18. Mr. Cooper said he informed Mr. Saling he did not think Mr. Saling had the authority to execute the change order without going to the Council first for Contract Review Board approval. Mr. Cooper said it became clear as they discussed the matter there was some confusion in Mr. Saling's mind about the change order authority he had because the building budget that was funded by the bond sale included the parking garage, and because the parking garage option was exercised by the Council at the same time they authorized the final purchase of the building and the sale of the building bonds. Mr. Cooper said the initial Hoffman contract had been let through a contract procedure when the only decision the Council made was that it wanted to buy the building, with no decision to buy and renovate the parking garage. He said the effect of that was that there was a large project budget, but an initial contract that was not anywhere near a contract for the full project. Mr. Cooper said Mr. Saling went forward thinking that his 10% bench mark was measured by the total budget he had available and not by the initial Hoffman contract. Mr. Cooper said he did not think that was the way Metro Code was written, and said he so informed Mr. Saling. Mr. Cooper said Mr. Saling immediately proceeded to follow

garage change orders were coming in, a resolution should have been brought forward to the Council through the Regional Facilities Committee at the same time the change orders were being discussed, to approve the exemption from competitive bidding of the additional work. Mr. Cooper said he believed the budget control was in place, and said he believed that was why the Council been bothered by the fact that a change order for Greenspaces office space was being processed with no money in the budget at that time and the Council had yet to approve the agreement with Multnomah County. He said there was a budget issue at that point. He said with the exception of that issue, he believed from his conversations with Mr. Butler and his staff and from FMI, that this was not a budget issue. Mr. Cooper said the budget included money for all of these change orders was in the budget with the exception of the Greenspaces office space. He said the sole question was for those changes that were material additions to the Scope of Work not included in the initial contract as the Council, has the Contract Review Board made a decision that this contractor to do the work as a change order rather than having that work bid out separately in a competitively bidding process. He said Metro had not received a complaint from any potential other contractor that they should have had an opportunity to bid for that work, but he felt procedurally in the future, anyone who missed the switch point should be before the Council explaining why it was missed and getting it cleaned up, rather than having something sit in a file unapproved for the future because there was no one to sue us because there was no legal wrong done.

Councilor Van Bergen asked if a procedure should be set up in the future for Contract Review Board approval of all change orders.

In response to Councilor Van Bergen, Mr. Cooper said Metro Code was what he termed pretty clear although not totally clear on the necessity for a Contract Review Board approval on any construction contract that was in excess of 10% if the contract was over \$1 million for material add to the change of work. He said there was clear code language for an instance in which the agency was within the project budget and resolving a dispute with the contractor for code requirement work which was unknown beforehand, for which payment to the contractor was necessary to get the building complete. He said such an instance would be outside the 10% rule. He felt there could be projects in which such a situation could be more complex than others, but he said the procedures should be in place in the Regional Facilities Department to make sure that every time there was a change order, the question was asked: was this a material change in the Scope of Work; was Metro asking the contractor to do that which the contractor had not been asked to do before; and, if it was, where did we stand with reference to the 10% requirement; were we within budget on the project. Mr. Cooper said if the answer was that we were not within budget on the project or were over the 10% limit, then the matter should be brought before the Council.

In response to Councilor Van Bergen, Mr. Cooper said a mitigating factor could be found in that each change order here before the Committee had been taken before the Regional Facilities Committee. Mr. Cooper said in discussion with Mr. Saling and Mr. Short, each of these change orders had been discussed at the Regional Facilities Committee. He said Mr. Saling had reported a number of times to the full Council regarding how the project was proceeding against the budget. He said he believed there was an attempt to inform the Council. He said if it were true that in other cases that had not been the case, he did not believe this situation fit. Mr. Cooper said he thought Casey Short, Council Analyst, felt he had asked the question as to why these were not coming before the Council, but, he said, Mr. Short had not asked the question of Mr. Cooper. Mr. Cooper said he thought if he had known what Mr. Short had known, he would have given him the advice that it should have been coming to the Council sooner.

Councilor Van Bergen suggested the possibility of adding language to the proposed resolution that would identify for the general public that each one of these items was reviewed by the Regional Facilities Committee showing that change orders had come before a verifiable Committee of the Council.

Mr. Carlson was not certain what level of specificity of review of the change orders, the dollar amounts, or additional work was discussed by the Regional Facilities Committee.

Councilor McFarland addressed the Committee, and said Regional Facilities Committee members had reviewed the tapes in the public record of the relevant previous Regional Facilities Committee meetings in order to be

assured that they had heard and done what they believed they had. She said the change orders had been brought before the Committee as suggestions and possibilities. She said the Committee had requested specific answers, and were promised answers that were not received. She said with each succeeding question and matter that came up, the Committee was assured by the Department that nothing was final until it came before the Committee for approval. Councilor McFarland indicated Councilor Hansen and Councilor McLain were extremely concerned about the appropriateness of the Committee's oversight. She said that the change orders had not received Committee approval, and said the last meeting with Mr. Saling was with promises of answers to questions that were not received. Councilor McFarland said to imply the Regional Facilities Committee had heard these matters and had given their stamp of approval was not true, and said the Committee was assured every time that these matters would not go forward until the Committee had an opportunity to vote on it.

Councilor McLain noted she had been the Chair of the Regional Facilities Committee the year before last, and said reports had been requested for every meeting. She said the Committee had requested a component that showed exactly what the change orders were and how much they were. She said Mr. Cooper typified the conversation appropriately in that the way the change orders were presented, the impression was that they would be within the 10% limit. Councilor McLain commented it appeared to be within the ability of the Department Director to do what he saw fit underneath that 10% limit without taking it to the full Council. He said the reports were to keep the Committee apprised as to the change orders, that the matter was still within the budget and under the 10% limit, and noted a contingency fund was in place. Councilor McLain considered there to be a glitch in that the matter did not come to the full Council for a vote as it was simply considered to be a matter of reporting and review on an ongoing basis. Councilor McLain did not believe there was an effort to hide any of the changes, but rather was a misunderstanding or an incomplete understanding of what the 10% limit involved or the Committee's involvement with an actual vote or actual approval. Councilor McLain felt the tape of this meeting would clear up the situation.

Mr. Carlson asked Mr. Cooper if the change order provision of Metro Code concerning 10% of the contract price was a separate issue from the budget and appropriation authority issue of the Council. He said when Mr. Saling assumed that because the Council annually approves a budget for project work, that did not necessarily mean that he or the Department or any other department would not have to manage the contract to make sure that the extension provisions of that contract meet the Code requirements. In other words, Mr. Carlson said, they were two separate issues.

Mr. Cooper said the Council was both the budget arm as the legislative arm, and also had under state law the power to make decisions regarding competitive bidding. He said the competitive bidding laws were set by the state legislature and must be followed by all local governments. He said once a project was budgeted, the administration still had to follow competitive bidding laws. Mr. Cooper said the Metro Contract Code was the means by which the Council had set forth procedures to clarify just how competitive works. He said the questions of change orders to contracts was an issue that arose out of those competitive bidding laws; that is, when was it legitimate to say this contractor, because he was already mobilized, already on site was the logical entity to provide work, even though the price for that work was not obtained through a competitive process, and noted the possibility of having two contractors on site simultaneously would tend to justify the use of change orders.

Mr. Cooper said he wanted all to understand that his impressions of what was said in the Regional Facilities Committee was merely hearsay. He said he did not know what the Committee was told. He said his impressions were from conversation with Mr. Saling directly and were what Mr. Saling understood at the time. Mr. Cooper said he believed Mr. Saling believed he was under the 10% limit because he was using a base which was wrong. In that regard, Mr. Cooper said the change orders before the Committee for consideration would be considered exactly those kinds of change orders that would routinely be done as part of the big contract rather than being separately bid in a competitive fashion, which, Mr. Cooper, said made sense. Mr. Cooper said the fact that the Council was not asked to approve the change orders wasn't a failure of the Committee, but rather a failure of Mr. Saling to properly use the appropriate base from which to calculate his authority.

Mr. Carlson suggested the Committee direct Mr. Cooper to succinctly and clearly point the issue of contract management to the administration and particularly to the Contract Office, the responsible body in Metro to assure that the provisions of the Contract Code were met. He hoped this could be used as a learning issue and remind all that the Contract Code was separate from the budget and appropriation authority the Council provided for Metro departments.

Mr. Butler said he believed procedures were currently in place in the Contract Office to appropriately conduct such business, and said that combined with his personal philosophy and the guidance from this Committee and Council, that such a situation would not happen again.

Chair Monroe felt it would do no harm to direct Mr. Cooper to draft a letter as suggested by Mr. Carlson to be sent to Mr. Butler and the Executive Officer. Chair Monroe said he understood Mr. Butler to say he was going to do it anyway, and that he appreciated that. Mr. Cooper indicated his intent had been to do it anyway.

Motion: Councilor Van Bergen moved to recommend Resolution No. 94-1886 to the full Council for adoption.

Councilor Van Bergen said he considered the contract a totally executed contract and there was not much else Metro could do.

Vote: Councilors Buchanan, Devlin, Gardner, McLain, Van Bergen and Monroe voted aye. Councilor Kvistad voted no.

The motion passed.

- Updates: Metro Regional Center

Mr. Butler provided updates to the Committee on items of interest connected with Metro Regional Center. He said the unexpended balance remaining of the appropriated budget for the building was \$129,000. Mr. Butler said items left needing work included the plaza space, which could cost up to \$70,000 for services to be put in place; i.e. electricity, water, plumbing, with a possible additional \$60,000 in interior improvements for a total of \$130,000; stronger signage for the building, cost factor - \$25,000 to \$30,000; conference rooms, noting an audio system was necessary for the JPACT room, cost factor - around \$50,000, and the possibility of relocating the vending machines in Room 501 to use it as both a conference room and a lunch room.

He said under discussion was the feasibility of utilizing the Council Chamber for JPACT once the cable access is in place permanently.

Mr. Butler said the curb cuts on north side of building did not meet code, and noted there was an engineering problem and said a sizable dollar amount could be involved to exactly meet code.

Mr. Butler said expenditures in amount of \$210,000 were projected as against the \$129,000 currently budgeted, and said he was looking for guidance.

Chair Monroe recommended prioritizing expenditures within the existing \$129,000 funding.

Councilor Kvistad was interested in cost for general renovation in Council area with the coming changes in Council composition, and mentioned the possibility of a skylight. Chair Monroe said at the least it would be necessary to create 6 offices out of 12.

Councilor Gardner said he agreed with Chair Monroe, and suggested a leasor be sought who would take the space on an as-is basis and make the interior improvements themselves. He said less lease income would be received, but it would be offset by a reduced investment.

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Councilor McLain said safety would be a higher priority than signage.

Chair Monroe was interested in the general public being able to see the meetings on live cable and asked that the matter be pursued.

4. Status Report on Construction Support Program Staffing

Mr. Butler distributed to the Committee a document entitled "Summary of FTE Allocation for Selected Construction Support Division Staff." and reviewed the summary. This document has been made part of the permanent meeting record.

He noted expenditures in total were down for the parking garage. He said the document represented the department's honest projections over time. The Committee discussed the summary further.

In response to Mr. Carlson, Mr. Butler said he had not yet determined whether a budget appropriation amendment would be necessary for the Building Management Fund. Mr. Butler said he would come back to the Finance Committee if such a determination were made.

Councilor Van Bergen requested a report from the Council Administrator on the report given by Mr. Butler herewith.

5. General Fund Revenue Report and Appropriations Through December 31, 1993

Ms. Sims distributed her memorandum to the Committee dated December 22, 1993 regarding General Fund Budget Versus Actual through December 1993. This document has been made a part of the permanent meeting record. Ms. Sims noted December revenues were good, and said the Zoo Lights program was good due to good weather, the Building Fund continued to be down as it had been assumed we would have sub-lease revenue there which was not being generated, Convention Center revenue was up, and solid waste facilities revenue was up in total. She highlighted information in the memorandum related to excise tax receipts, and noted information was contained in the memorandum as had been requested by the Committee last month, that had the excise tax been 6% rather than 7% for the five months of August through December, excise tax receipts would have been \$304,000 less than collected so far, \$2,669,000. Ms. Sims explained the four cases in which expenditures appeared to exceed appropriations as outlined in the memorandum.

6. Status Report on Metro Committee for Citizen Involvement Recommendation for Citizen Budget Advisory Committee

Ms. Sims said the Metro Committee for Citizen Involvement recommended the formation of a Citizen Budget Advisory Committee. She said staff had met with MCCI representatives, and said she felt continued discussion would be beneficial. She said discussion with the Executive Officer had just occurred, and said emphasis was on maximizing Metro dollars to reach the largest number of people. Ms. Sims discussed a view for the future which would include the implementation of an electronic bulletin board and live cable TV as good avenues for reaching the general public at large. Ms. Sims noted cost for the electronic bulletin board was around \$15,000, while actual out of pocket cost for any one cable TV program was as low as \$250, and noted staff time would be additional cost.

Ms. Sims said the Committee saw the recommendation as one that should be put into place and then refined with the use. She said the Executive Officer, however, expressed concern about possible staff time costs associated with the Citizen Budget Advisory Committee proposal as well as concerns about the possibility of setting up a

process and a bureaucracy for the new Executive Officer, who might not favor that approach. Ms. Sims noted the current budget appropriation for 1.25 FTE for Citizen Involvement at \$67,000, and said an estimate of actual expenditure throughout Metro to support citizen involvement and public outreach was being compiled, and said, that although she was still missing some figures, the figure was over \$1 million per year. Ms. Sims said it would be necessary to meet again with MCCI representatives, and she said the issue would be brought forward in the FY 1994-95 Proposed Budget.

Councilor McLain said the issue was determining the structure to provide the ability to follow through with the Charter mandate for a Metro Committee for Citizen Involvement, and questioned Ms. Sims comments regarding the views of the Executive Officer. Ms. Sims said the Executive Officer, per this Committee's request, was specifically responding to the proposal to form a Citizen Budget Advisory committees, and said the response brought forward this date should be considered a preliminary response.

The Committee and Staff discussed citizen involvement in the process further. It was noted the cable TV scenario would include live call-ins. Councilor Devlin commented he did not feel such a scenario would be a substitute for public involvement in direct communication with regional elected officials.

In response to Councilor Kvistad, Ms. Sims said two meetings to date had occurred with MCCI, but she expressed time constraints due to work on the FY 94-95 Proposed Budget, no other contacts had occurred. Councilor Kvistad noted the matter of the Citizen Budget Advisory committees was under the purview of the Executive, and Ms. Sims said the issue was being worked on.

Geoffrey Hyde, MCCI Committee representative, addressed the Committee, and felt a framework for such groups should be put into place FY 94-95. Mr. Hyde said training was part of the MCCI proposal, and pointed out if Metro waited until after the new Executive Officer was in office, the groups would not be able to be budgeted until FY 96-97. He noted the Committee the MCCI had unanimously forwarded their recommendation for Citizen Budget Advisory committees to the Finance Committee. Mr. Hyde believed such groups would get a lesson in government budgeting and could take a better understanding back to their neighborhoods. He believed citizen involvement on the front end of the process would alleviate the dissatisfaction citizens feel at the outcome, and he believed citizen involvement would benefit Metro both politically and in public relations. Mr. Hyde said building on a framework incepted FY 94-95 in future years would be beneficial, and said he hoped to bring representatives from other local jurisdictions in for further discussion with the Committee.

The Committee and Mr. Hyde held further discussion. Councilor McLain indicated her support for the formation of the Citizen Budget Advisory Committees.

7. Tax Study Committee

Ms. Sims referenced a document which was distributed to the Committee containing a schedule of presentations to local government and interest groups of recommendations of the Metro Tax Study Committee, Charter mandated planning needs and Metro's upcoming budget process. This document has been made a part of the permanent meeting record. She said other presentations were scheduled as well. Ms. Sims said the Executive Officer had scheduled a meeting with the Tax Study Committee to occur on January 27, 1994 to review the preparation of the Proposed FY 1994-95 base budget assuming a 6% excise tax with no local government dues along with other possibilities based on other levels of revenue possibilities.

The Committee discussed reactions from the citizenry, and Chair Monroe indicated he felt a favorable reaction could be reported overall. He added that some local jurisdictions did not appear to be opposed to, and were in fact in favor of, some continuation of local dues an option and seemed to feel that would be preferable to an additional tax.

Councilor McLain reported responses from the local government and interest groups she was in touch with had been favorable. She said she had requests for Metro FY 1994-95 Proposed Budgets and requests for times at which citizens could appear to testify at the Budget Committee meetings.

In response to Councilor Gardner, Ms. Sims said the question had been asked by Daniel B. Cooper, General Counsel, as to when the work of a technical analysis to determine the legal steps necessary to implement other possible revenue sources should begin. She said it was agreed that not a lot of legal work should be done until a better sense of how much money and what emphasis would be needed, and until the current schedule was completed. Ms. Sims noted a trigger point would precipitate such work. Chair Monroe concurred. Chair Monroe responded to Councilor Gardner, noting it was not now known when such a trigger point would be reached, but said as soon as the Finance Committee, acting as the Budget Committee, felt the trigger point had been reached, action could be taken. He guessed that point might be reached late March or early April. In response to Councilor Gardner, Chair Monroe agreed it was prudent to ask Legal Counsel how long the work would take. Ms. Sims concurred. Chair Monroe requested Ms. Sims have discussion with Legal Counsel to determine the appropriate lead time for the work.

Councilor Kvistad commented he opposed both the process which identified two other possible revenue sources and the two other possible revenue sources which were identified. He supported and encouraged general discussion concerning the issue. Chair Monroe invited Councilors to attend the referenced meetings in their districts.

In response to Councilor Devlin, Ms. Sims said to date discussions with the Executive Officer constructive of the FY 94-95 Proposed Budget did not include consideration of changing line items currently funded by excise tax to be allocated as Support Services. Chair Monroe encouraged such consideration occur. Ms. Sims concurred.

Chair Monroe said his message to local groups was that all options considered by the Tax Study Committee were on the table for discussion, including those that were rejected, such as the option of not doing any, the option of using sources currently used such as local dues and excise tax, the option of going to the voters for an income tax surcharge, etc.

There being no further business, the meeting adjourned at 6:00 p.m.

Respectfully submitted,



Marilyn Geary-Symons
Committee Recorder