

MINUTES OF THE COUNCIL INTERNAL AFFAIRS COMMITTEE  
OF THE METROPOLITAN SERVICE DISTRICT

Special Meeting

December 12, 1988

Committee members present: Councilors Mike Ragsdale (Chair),  
Elsa Coleman (V. Chair), Tanya  
Collier, Corky Kirkpatrick and  
David Knowles

Committee members absent: None

Also present: Councilor-elect Roger Buchanan,  
Metro General Counsel Daniel  
Cooper, Metro Director of Finance  
and Administration Ray Phelps and  
Metro Construction Manager Neil  
Saling

Chair Ragsdale called the meeting to order at 5:40 p.m. and announced the meeting would be an informal work session to review proposed Ordinance No. 88-271A, for the Purpose of Amending Metro Code Chapter 2.04 Relating to Contracting Procedures. The Chair said the committee would review the ordinance section-by-section.

Council Administrator Donald Carlson introduced the ordinance and advised the Committee of the materials that had been distributed to them for the work session. The materials Mr. Carlson identified were: 1) copy of Metro Code Chapter 2.04 "Metro Contract Procedures," 2) copy of Ordinance No. 88-271A (a revision of Ordinance No. 88-271 including language suggested by General Counsel) and 3) copy of additional amendments suggested by General Counsel.

The Committee then proceeded with a summary review of each section of the ordinance. A summary of the amendments approved by the Committee titled "AMENDMENTS AND ACTIONS REGARDING ORDINANCE NO. 88-271A, Adopted by the Internal Affairs Committee, December 12, 1988," is attached and made a part of these minutes.

Chair Ragsdale recessed the Committee meeting at 7:10 p.m. during review of Section 2. of the ordinance and reconvened the meeting at 7:20 p.m. and resumed discussion of Section 2. of the ordinance. Chair Ragsdale again recessed the meeting at 9:35 p.m. during discussion of Section 5. of the ordinance and reconvened the meeting at 9:45 p.m.

Chair Ragsdale announced the Council Internal Affairs Committee would consider the Committee's amended version of Ordinance No. 88-271A on December 22, 1988. Council staff will prepare and

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distribute the draft to Committee members and staff prior to the meeting for review and comment.

There was no other business, and the meeting was adjourned at 10:38 p.m.

Respectfully submitted,

*Gwen Ware - Barrett*

Gwen Ware-Barrett  
Council Committee Clerk

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attachment

AMENDMENTS AND ACTIONS REGARDING ORDINANCE NO. 88-271A

Adopted by the Internal Affairs Committee  
December 12, 1988

For clarity, actions of a general nature or affecting more than one section of Ordinance No. 88-271A have been grouped together under the section titled "General Provisions."

The following terms have been used to identify the status of sections of the ordinance:

"Current" refers to Ordinance No. 88-271A as presented to the Council Internal Affairs Committee at the December 12, 1988 meeting and further distinguishes that the section or subsection did not contain any changes or amendments from the earlier version, Ordinance No. 88-271.

"Current amended" refers to the Ordinance No. 88-271A document presented to the Council Internal Affairs Committee at the December 12, 1988, meeting and further distinguishes amendments proposed and/or material added to the section or subsection in the document as presented to the Committee.

"Current added" refers to the Ordinance No. 88-271A document presented to the Council Internal Affairs Committee at the December 12, 1988, meeting and further distinguishes the sections or subsections were proposed to be added in the document as presented to the Committee.

"Amend" refers to actions approved by the Council Internal Affairs Committee amending the Ordinance No. 88-271A document presented to the Committee at the December 12, 1988, meeting.

Where previous amendments were proposed that would renumber or reletter subsequent sections or subsections, those subsections are identified by the nomenclature in the "current" version as presented to the Committee at its December 12, 1988, meeting.

General Provisions:

1. The Committee directed General Counsel to provide consistency throughout Ordinance No. 88-271A in identifying legislative bodies referenced in the ordinance (i.e. whether the body is identified as the Metro Contract Review Board, the Board or the Metro Council).
2. Chair Ragsdale directed General Counsel to provide a definition for "emergency contract" consistent with that used by other jurisdictions.
3. Motion: Councilor Coleman moved to direct General Counsel to provide a definition for "notice of award,"

using the following language suggested by General Counsel as a model: "a written communication to a bidder or proposer informing them that their bid or proposal has been conditionally determined to be the lowest, responsive, responsible bid or most responsive proposal and that the District intends to enter into a contract upon completion by the bidder/proposer of all required conditions." The motion further authorized General Counsel to edit definition.

Vote: The five committee members voted aye, and the motion carried unanimously.

4. Chair Ragsdale directed General Counsel to alphabetize definitions listed in Metro Code section 2.04.010.
5. General Counsel will provide a definition of "sole source contract" and identify where that definition appropriately should be placed in the Metro Code.

Section 1. (Amends Metro Code Section 2.04.030)

1. Page 2 Amend section 2.04.030 to add a new subsection (e):

(e) At least five days prior to the execution of any public contract over \$15,000 or a personal services contract over \$10,000 the District 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.

2. Pages 2-4 Renumber following sections:
  - Current (e) Disadvantaged Business Program becomes (f)
  - Current (f) Monthly Contract Report becomes (g)
  - Current (g) Special Reporting Requirements becomes (h)
  - Current Amended (h) Code of Conduct becomes (i)
  - Current Amended (i) Federal/State Agency Approval becomes (j)
  - Current Added (j) Council Approval becomes (k)
  - Current Added (k) Bid/Request for Proposal Protest Procedure becomes (l)
  - Current Added (l) Annual Contract Schedule becomes (m)
3. Page 2 Current amended section 2.04.030(d)(1) approved.
4. Page 2 Current amended section 2.04.030(e) approved.
5. Page 2 Current amended section (f) approved.

Chair Ragsdale directed the Finance & Administration Department to report to Internal Affairs Committee at its first meeting in January, 1989, on the status of implementation of the monthly contract reporting system.

6. Page 2 Current added section 2.04.030(g) approved.
7. Page 3 Current amended section 2.04.030(h) approved.
8. Page 3 Current amended section 2.04.030(i) approved.
9. Page 3 Current added section 2.04.030(j) approved.
10. Pages 3-4 Amended current added section 2.04.030(k)(3) approved as follows (conceptual):

(3) The Contract Review Board will review the grounds for appeal, the record all pertinent information and the Executive Officer's recommendation and make a decision. The decision of the Metro [Council] Contract Review Board is final.

(Regarding reference to the appeal record, it was noted the intent of the Committee was to afford easy, speedy access of the aggrieved to the elected body. General Counsel Cooper will draft final language reflecting the Committee's intent.)

11. Page 4 Added new section 2.04.030(k)(4) approved as follows (would be renumbered to 2.04.030(l)(4)):

(4) No contract which is the subject of a pending appeal may be executed unless the Metro Contract Review Board shall have given its approval at the request of the Executive Officer. The Executive Officer may request the Metro Contract Review Board to determine a matter without waiting for the expiration of the time periods provided for herein.

Motion: Councilor Coleman moved approval of the above amendments to Section 1 of Ordinance No. 88-271A.

Mr. Phelps said the Executive Officer objected to sections 2.04.030(f) because the current accounting system was incapable of generating the requested monthly contract report information and (g) because of the certification procedure.

Vote: The vote was unanimously in favor of approving the above noted amendments to Section 1 of Ordinance No. 88-271A with all five Committee members voting aye.

The motion carried.

Motion: Councilor Knowles moved approval of Section 1 of Ordinance No. 88-271A as amended.

Vote: All five Committee members voted aye.

The motion carried unanimously.

Section 2. (Amends Metro Code Section 2.04.040)

1. Page 4 Amended current section (b) approved; second sentence to read as follows:

Where a contract in excess of \$[10,000] 15,000 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.

2. Page 5 Current amended section (d) approved which adds the following sentence after "Bonds:" Unless the Board shall otherwise provide, bonds and bid security requirements are as follows:

3. Page 5 Current amended section (d)(3) approved as follows, first sentence to read:

Performance bond in an amount equal to 100 percent of the contract price is required for contracts over [10,000] 15,000.

4. Page 5 Current amended section (d)(4) approved as follows:

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 [~~department-head-of-the-initiating~~ department] Executive Officer determines it is in the public interest.

5. Page 5 Amended current added (3) to be renumbered to (e) and added to current added section (3) (which became (e) as a result of previous amendment) approved to add a second sentence to read:

The Executive Officer shall request the Metro Contract Review Board to approve the award pursuant to Section 2.04.030(k)(4). (With previously approved amendments, referenced section becomes Section 2.04.030(1)(3).)

Motion: Councilor Knowles moved approval of the above amendments to Section 2 of Ordinance No. 88-271A.

Vote: The vote resulted in the five committee members voting aye and the motion carried.

Motion: Councilor Knowles moved approval of Section 2 of Ordinance No. 88-271A as amended.

Mr. Phelps said the Executive Officer had no objections to Section 2 of Ordinance No. 88-271A as amended.

Vote: The vote was unanimous with all five committee members voting aye. The motion carried.

Section 3. (Amends Metro Code Section 2.04.043)

1. Page 5 Amended current amended section (a) approved as follows:

Selection Process: Unless completely exempt from competitive bidding under Section 2.04.041. when the amount of the contract is [~~more than~~] \$2,500, or more but less than \$15,000, 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. [~~No contractor may be awarded in the aggregate, within the fiscal year, contracts in excess of \$30,000 without competitive bidding. -- In computing the aggregate under this subsection, awards under \$500 shall not be included.~~] General Counsel directed to draft language to be added to section 2.04.040 that will refer to the Contract Review Board all public contract awards to any contractor whose aggregate non-competitive bid awards within the fiscal year exceed \$15,000. (Motion by Kirkpatrick; carried 5/0 vote.)

2. Page 6 Current amended section (b) approved as follows:

Review Process: After selection and prior to approval, the contract must be reviewed by the [~~Director~~] Department of Finance and Administration.

3. Page 6 Current amended section (c) approved as follows:

Approval Process:

(1) [~~Between \$2,501 and \$10,000.~~] For contracts of [~~more than~~] \$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~~] \$15,000 or less. When designated in writing to serve in the absence of the Executive Officer or Deputy

Executive Officer, the Director of Finance and Administration may sign contracts. No contract may be approved or executed for any amount in excess of the amount authorized in the budget.

Delete section (c)(2) and (c)(3) as indicated in current version.

Motion: Councilor Knowles moved approval of the above amendments to Section 3 of Ordinance No. 88-271A.

Vote: The vote was unanimous with the five committee members present voting aye. The motion carried.

Motion: Councilor Knowles moved approval of Section 3 of Ordinance No. 88-271A as amended.

Vote: A vote on the motion resulted in the five committee members present voting aye. The motion carried.

Mr. Phelps said the Executive Officer had no objection to Section 3, however, he had not examined the implications of the \$15,000 threshold for aggregate non-competitive bid awards. Chair Ragsdale directed Mr. Phelps to write a memo to the chair detailing and clarifying the impact.

Section 4. (Amends Metro Code Section 2.04.044)

1. Page 7 Current amended section 2.04.044 title approved as follows:

Public Contracts [Over] of \$15,000 or More

2. Page 7 Amended current added section 2.04.044(a)(3) approved as follows:

Motion: Councilor Kirkpatrick moved to amend section 2.04.044(a)(3) to state copies of all bid documents shall be filed with the Clerk of the Council and referred to the appropriate Council Committee for review and comment as appropriate. If the Committee has not scheduled a public hearing on the item within 14 days of the filing, the bid document may be released for response by potential contractors. If such notice has been given, the Committee will within 35 days of filing with the Clerk of the Council either recommend the Council release the bid document, extend the review period or introduce an ordinance prohibiting expenditure of funds pursuant to the proposed contract.



Vote: The five committee members voted aye. The motion carried.

Chair Ragsdale directed Council staff to review Council rules to assure a referral process of bid documents to the appropriate Council committee will be in place.

3. Page 7 Amended current amended section 2.04.044(a)(4) (was (3)) approved to restore existing Code language contained in Metro Code section 2.04.044(a)(3) as follows:

A request for bids will be advertised in [~~at least one (1) business-oriented newspaper,~~] Portland Business Today, a local minority newspaper, and when feasible, in an appropriate trade magazine. Additional advertisement may be appropriate depending upon the nature of the contract.

Motion: Councilor Kirkpatrick moved to amend proposed Ordinance No. 88-271A, section 4., 2.04.044(a)(4) as indicated above.

Vote: The five committee members voted aye, and the motion carried.

4. Page 7 Current amended section 2.04.044(a)(5) (was (4)) approved (was renumbered only).
5. Page 7 Current amended section 2.04.044(a)(6) (was (5)) approved (was renumbered only).
6. Page 7 Current amended section 2.04.044(a)(7) (was (6)) approved.
7. Page 7 Current amended section 2.04.044(a)(8) (was (7)) approved (was renumbered only).
8. Page 7 Current amended section 2.04.044(a)(9) (was (8)) approved (was renumbered only).
9. Page 7 Add a new section 2.04.044(a)(10) to read:

No contract shall be executed if the Council shall by ordinance prohibit the execution of the contract.

Motion: Councilor Kirkpatrick moved to add a new section 2.04.044(a)(10) to Ordinance No. 88-271A as stated above.

Vote: The five committee members voted unanimously in favor of adding the new section, and the motion carried.

10. Page 8 Current amended section 2.04.044(a)(b) approved.

Motion: Councilor Kirkpatrick moved approval of the above-noted amendments to Section 4. of Ordinance No. 88-271A.

Vote: All Committee members voted in favor of the amendments, and the motion carried unanimously.

Motion: Councilor Kirkpatrick moved approval of Section 4. of Ordinance No. 88-271A as amended.

Vote: All Committee members voted in favor of the motion, and the motion carried unanimously.

Mr. Phelps said the Executive Officer did not object to the amended Section 4. of Ordinance No. 88-271A.

Section 5. (Amends Metro Code Section 2.04.045)

The Committee discussed change orders with emphasis on having the flexibility to effect change orders expeditiously. The Committee agreed to defer deliberation on this section, and Chair Ragsdale appointed Councilor Knowles, Convention Center Committee Chair, to serve as a subcommittee of one to review Section 5. of Ordinance No. 88-271A and language General Counsel would be drafting and report to the Internal Affairs Committee at their meeting scheduled for December 22, 1988.

Section 6. (Amends Metro Code Section 5.04.053)

Motion: Councilor Ragsdale moved to amend Section 6. of Ordinance No. 88-271A to reflect the same filing requirements, committee review process and timelines stated in Section 4. of Ordinance No. 88-271A.

Vote: The five Committee members voted aye, and the motion carried unanimously.

1. Page 12 Current amended section 2.04.053 title approved.
2. Page 12 Current amended section 2.04.053(a)(1) approved.
3. Page 12 Current added section 2.04.053(a)(2) approved.
4. Page 12 Current amended section 2.04.053(a)(3) approved (renumbered only).
5. Page 12 Current amended section 2.04.053(a)(4) approved (renumbered only).
6. Page 12 Current amended section 2.04.053(a)(5) approved (renumbered only).

7. Page 13 Current amended section 2.04.053(a)(6) approved (renumbered only).
8. Page 13 Current amended section 2.04.053(a)(7) approved.
9. Page 13 Current amended section 2.04.053(b)(1) approved.
10. Page 13 Current amended section 2.04.053(b)(2) approved (section deleted).
11. Page 13 Current amended section 2.04.053(b)(3), (A), (B), (C) approved (sections deleted).

Motion: Councilor Knowles moved approval of the above amendments to Section 6. of Ordinance No. 88-271A.

Vote: The five Committee members present voted aye, and the motion carried unanimously.

Motion: Councilor Knowles moved approval Section 6. of Ordinance No. 88-271A as amended.

Vote: All Committee members voted in favor of the motion, and the motion carried.

Mr. Phelps stated he did not think the Executive Officer would have objections to Section 6 as amended.

Section 7. (Amends Metro Code Section 2.04.054)

1. Page 14 Current amended section 2.04.054(b)(1) approved.
2. Page 14 Current amended section 2.04.054(b)(2) approved.
3. Page 14 Current amended section 2.04.054(b)(2)(A) approved.
4. Page 15 Current amended sections 2.04.054(b)(2)(B), (b)(2)(B)(i) and (b)(2)(B)(ii) approved (sections deleted).
5. Page 15 Current amended sections 2.04.054(b)(3), (b)(4), (b)(5), (b)(5)(A), (b)(5)(B) and (b)(5)(C) approved (sections deleted).

Motion: Councilor Kirkpatrick moved approval of the above amendments to Section 7. of Ordinance No. 88-271A.

Vote: The five Committee members voted aye, and the motion carried unanimously.

Motion: Councilor Kirkpatrick moved approval of Section 7. of Ordinance No. 88-271A as amended.

Mr. Phelps said the Executive Officer did not object to Section 7. of Ordinance No. 88-271A as amended.

Vote: The vote was unanimously in favor of the motion with all five Committee members voting aye. The motion carried.

Section 8. (Amends Metro Code Section 2.04.060)

General Counsel was directed to research the ability of the Contract Review Board (Metro Council) to delegate responsibilities to a subset of itself (Council Committee).

1. Page 16 Amended current amended section 2.04.060(a)

Motion: Councilor Kirkpatrick moved to amend section 2.04.060(a) and (b) by adding to the end of the second sentence in (a) the phrase "at the time of notice of intended award" and to delete the second sentence of 2.04.060(b) from subsection (b) and add that sentence to subsection (a). Subsections (a) and (b) would then read as follows:

(a) Selection Process: If there is only one qualified provider of the service required, the initiating department need not solicit and document proposals. The initiating department must document that there is only one qualified provider of the service required, and the [Council] Contract Review Board shall be given notice of the execution and the justification for the contract at the time of notice of intended award. For sole source contracts of \$2,500 or more, the Contract Review Board must by resolution grant a specific exemption from competitive bidding or alternative procurement processes authorized by this Code.

(b) Approval Process: The approval process for sole source contracts under \$2,500 is the same as described for regular personal services or public contracts, depending on the nature of the work. [~~For sole source contracts of \$2,500 or more, the Contract Review Board must by resolution grant a specific exemption from competitive bidding or alternative procurement processes authorized by this Code.~~]

Vote: A vote on the motion resulted in the five Committee members present voting aye. The motion carried unanimously.

Motion: Councilor Knowles moved approval of Section 8. of Ordinance No. 88-271A as amended.

Mr. Phelps said the Executive Officer did not object to Section 8. of Ordinance No. 88-271A as amended.

Vote: The vote on the motion resulted in the five Committee members voted aye, and the motion carried.

Section 9. (Amends Metro Code Section 2.04.090)

1. Page 16 Current amended section 2.04.090(a) approved.
2. Page 17 Current amended sections 2.04.090(c)(1), (c)(1)(b)(A), (c)(1)(b)(F) - new section, (c)(2), (c)(2)(A), (c)(3) - deleted, (c)(4) - deleted and (c)(5) were all approved.

Motion: Councilor Kirkpatrick moved approval of Section 9. of Ordinance No. 88-271A as amended.

Mr. Phelps said the Executive Officer did not have any comments on Section 9. of Ordinance No. 88-271A as amended.

Vote: A vote on the motion resulted in the five Committee members present voting aye, and the motion carried unanimously.

Section 10. (Amends Ordinance No. 88-247)

1. Page 19 Current added Section 10. approved.

Motion: Councilor Knowles moved approval of a new Section 10. of Ordinance No. 88-271A as distributed to the Committee.

Mr. Phelps said the Executive Officer had concerns regarding Section 10., specifically with respect to the process for change orders and amendments, whether or not appropriation at the contract level would be good practice administratively and the organization's ability to track expenditures at the level of detail proposed.

Vote: All members of the Committee voted aye, and the motion carried unanimously.