

**Council Convention Center Committee Minutes**

September 8, 1988

8:30 a.m.

Metro Council Chambers

Attending: Councilors, Kelley, Knowles, Van Bergen,  
Waker

Staff: Neil McFarlane, Neil Saling, Sandy  
Stallcup, Berit Younie

Councilor Knowles, Chairman, called the meeting to order at  
8:45 a.m.

Councilor Knowles asked Neil Saling to give a brief background of the general contract bid period and activities up to this point. Saling stated that the bid period began July 11, 1988 with advertisements for bids and had proceeded during the ensuing six week period; that there had been over 275 plan holders and the bid period had culminated in bid opening on August 23, at which six bids were received and opened. Immediately upon opening the bids, the convention center project staff began evaluating the bids for responsiveness and reviewing the alternates. The review process soon became concentrated on the two lowest bidders, Hensel Phelps and Hoffman-Marmolejo, and the remaining bidders requested to be excused from further bidding requirements.

Tom Walsh, chairman of the Advisory Committee on Design and Construction (ACDC), reported the ACDC recommendation. Walsh reviewed the 13 alternates that his committee analyzed. He stated that ACDC had recommended Alternates No. 3(A) (Add 4 bus shelters), No. 4 (Add escalators), Nos. 9(B) & 10(B) (Add operable partitions by IAC) and No. 11(A) (Surface hardener by Masterbuilder) be selected. Because of the low base bid figures, the committee was relieved to not have to consider any of the deductive alternates; and that because of the discrepancy between the cost of wrap-up insurance and the amount the bidders were willing to "pay" for wrap-up, the committee recommended against selecting the wrap-up insurance option.

Walsh noted that the ACDC recommendation would entail use of contingency funds; however, ACDC felt that the addition of the bus shelters and the escalators were of vital importance in the building and that it made economic and practical sense to add these two items at this point.

Walsh also noted that there had been considerable discussion at the two ACDC meetings at which alternates were reviewed regarding the operable partitions. ACDC finally settled on IAC primarily because of their improved design and high quality acoustical capabilities.

Walsh further reported following the selection of alternates, ACDC was apprised of the Executive Officer's findings that Hensel Phelps had failed to meet good faith documentation requirements for disadvantaged business enterprises, and therefore had been deemed non-responsive. In light of this, ACDC's recommendation was that the general contract be awarded to Hoffman-Marmolejo.

Councilor Knowles requested Jessica Marlitt report on Council Staff recommendation. Marlitt indicated that the Council staff recommendation differed from ACDC's recommendation in one aspect: the Council staff recommended the selection of operable partitions manufactured by Modernfold rather than IAC. The reasoning was threefold:

- (1) A report by General Manager of the Coliseum, Lee Fehernkamp, that Modernfold partitions were superior because of ease of operation and future low labor costs.

- (2) The determination that additional funds would be necessitated by additional structural steel requirements of the IAC partitions.

- (3) The determination that Modernfold offered superior service support. This finding was substantiated by Turner Construction's research on the issue.

Councilor Waker indicated his preference for Modernfold. Councilor Waker based his opinion on research conducted by DMJM and his personnel review during the course of site visits to other convention centers.

Councilor Gardner inquired why the alternate for adding computerized sound system was not being recommended as selected, specifically, what equipment would the Center have if this alternate was not selected. Tom Walsh responded that the alternate was an upgrade and that without its selection the Center would be adequately equipped with a manual mixing system. The discussion at ACDC concerning this item was that this upgrade could be added at a later date and that the during the interim two-year construction period there was the possibility for significant technological improvements in the

industry which would be missed if the alternate was selected at this time.

Councilor Kelley inquired as to the necessity of selecting the escalator alternate at this time. Tom Walsh responded that ACDC agreed the addition of this second set of escalators was an important feature of the building in terms of both operations and marketing. Additionally it is most cost effective to place this alternate in the building at this time, i.e. the price had been competitively bid and there would be significant construction costs associated with adding escalators to the finished building. Lastly, adding at a later date would entail significant construction activity which would adversely affect on-going Center activities.

Neil McFarlane and Sandy Bradley reported on the budget implications of the ACDC recommendations. The ACDC recommendation would require funding source for the excess (\$402,000) over and above the \$46,317,000 which is currently available for construction. The Executive Officer's recommendation is that this shortfall be made up with general obligation bond interest earnings. McFarlane and Bradley reviewed the status of the the interest earnings fund which is sufficient to meet obligations of tax rate reduction while allocating \$1.7 million to the project's contingency funds. The amount necessary to pay for alternate selection in excess of the \$46,317,000 currently available would then be allocated from contingency to the construction line item. This allocation would leave the project's contingency funds slightly less than 5%, the level which has been recommended as the prudent.

Jessica Marlitt reported that the Council staff arrived at the same conclusion, but at a figure slightly higher which resulted from exactly 5% contingency levels.

Council Waker indicated his concerns that the project be covered with adequate contingency funds. He also indicated that he did not object to such a use of interest earnings.

Chairman Knowles opened the meeting to Public Testimony.

Don Walton, Regional Manager of Modernfold, testified, indicating that the product he represented, Modernfold partitions, were superior to all other products in terms of acoustical specifications and ease of operation. He also indicated that Modernfold partitions would require additional structural steel. Councilor Waker reiterated his support of

Modernfold. Discussion followed as to the respective merits of the IAC and the Modernfold partitions.

MOTION: Councilor Waker moved to approve the ACDC recommendation subject to the the modification, i.e. substituting Modernfold for IAC.

VOTE: Motion passed unanimously.

Chairman Knowles moved the discussion to the issue of compliance with Metro's D/WBE program.

Ray Phelps reviewed the contents of a memo written by him to Rena Cusma, Metro Executive Officer, regarding review of the Hensel Phelps' good faith submittal and of the finding that such submittal does not comply with Metro D/WBE code. Phelps indicated that Hensel Phelps met three of the six criteria enumerated. However, they failed to meet criteria which required written notification to D/WBEs, follow-up phone contact to those D/WBEs non-responsive to prior written solicitations and use of minority community organizations to encourage D/WBE participation.

Phelps stated that the review of the Hensel Phelps good faith efforts was limited to the documentation submitted and that efforts were not made to go beyond the "four corners" of the documentation.

Upon completion of extensive review of the documentation, Metro staff determined that Hensel Phelps had not complied fully with the Metro Code requirements. This determination is the basis of the Executive Officer's recommendation that the Hensel Phelps bid be rejected on the grounds of non-responsiveness and therefore, that the Hoffman-Marmolejo bid be considered the lowest, responsive bid.

Councilor Waker inquired if the criteria used during the good faith review were absolute. Phelps responded that they were.

Councilor Van Bergen inquired if there were any issue as to whether Hensel Phelps had sufficient notice of the Metro D/WBE Code requirements in light of the recent amendments. Phelps responded that there was no issue relating to Hensel Phelps notice of the current Code requirements.

Dan Cooper then reported that he had reviewed the Hensel Phelps good faith documentation and the memorandum written by Ray Phelps. Pursuant to the Metro code requirements and the findings of the Phelps' memo, a rebuttable presumption exists

that Hensel Phelps did not make a good faith effort. Hensel Phelps must be given an opportunity to rebut this presumption.

Councilor Knowles opened the meeting to public testimony on the issue of the D/WBE requirements.

Doug Ragen, attorney for Miller, Nash, et al., representing Hensel Phelps, and Larry Gonda and Jerry Meyer of Hensel Phelps testified.

Mr. Ragen stated that he hoped all members of the Committee had an opportunity to read the Hensel Phelps response to the Phelps' memo, which had been delivered to all members of the Metro Council the preceding day. This response was the attempt to rebut the findings that Hensel Phelps had not met good faith requirements. Mr. Ragen continued, stating that Hensel Phelps had not been given an opportunity to respond to issues during the good faith review; there was no opportunity to rebut prior to the issuing of the Executive Officer's recommendation. He asked that the Committee review the overall good faith effort of Hensel Phelps in light of the Hensel Phelps response. He noted that other jurisdictions, when faced with the same documentation and review, had accepted the Hensel Phelps effort as good faith.

He also felt that in fairness the second bidder, Hoffman-Marmolejo's efforts should be reviewed and compared to those of Hensel Phelps. He said that when both are reviewed, it was clear that Hensel Phelps' efforts resulted in far greater actual participation.

Mr. Cecil Drinkward, President, Hoffman Construction Company and Ed Marmolejo, President of Marmolejo Contractors testified.

Mr. Drinkward began by stating that he felt there were errors in the Hensel Phelps' response. He noted that at bid opening, Hensel Phelps indicated they would have 3% minority participation, and 24 hours later, Hensel Phelps indicated on a follow-up submittal that they would have only .9% minority participation. It was several days later that Hensel Phelps re-submitted their documentation and now indicated 3.6% participation. Mr. Drinkward felt that this was obviously not in conformance with the contract specifications, and that this was evidence of "pro forma" good faith efforts on the part of Hensel Phelps as opposed to "real" efforts.

Mr. Drinkward noted that the goals of 10% and 3% were realistic goals for this project. He indicated that two of

the six bidders had met goal, specifically, Kiewit and Hoffman-Marmolejo. He also noted that these were the two local firms involved.

Mr. Drinkward then discussed at length the Hensel Phelps response, indicating where he disagreed.

Mr. Drinkward lastly stated the Hoffman-Marmolejo was a legitimate joint venture and that Marmolejo was a true joint venture partner. He indicated that Marmolejo Contracting would be managing and performing \$4.4 million worth of work, including all the concrete work.

Ed Marmolejo testified. He reiterated much of what Mr. Drinkward had stated to, noting that there is a distinction between "real" and "pro forma" good faith efforts. He stated that he had been in business for several years and had the experience to distinguish between these two. He felt it was obvious that the efforts of Hensel Phelps were not intended to encourage actual participation. Mr. Marmolejo ended by enumerating a list of elements of true good faith efforts:

1. Waiver of Bonds
2. Forming Joint Ventures
3. Making advance payments to D/WBEs
4. Allowing cost-plus contracts
5. Giving advice and consultation as needed
6. Prompt payments

Bruce Broussard, Publisher of the American Contractor, approached to give testimony. He indicated he represented several black community organizations. Mr. Broussard stated that the system, both at Metro and other government contracting agencies, was, in his opinion, not working.

Wally Mehrens, Executive Officer of the Columbia Building Association, next approached to give testimony. Mr. Mehrens discussed "responsiveness" versus "responsibility". He indicated the lowest bidder is not always a responsible bidder. He felt that as evidenced by the inconsistent minority participation reported by Hensel Phelps, that Hensel Phelps could not be considered a "responsible" bidder. He also indicated that as evidenced by the list of subcontractors submitted by Hensel Phelps, workers would be imported from outside the state by Hensel Phelps.

Jerry Meyers of Hensel Phelps responded to testimony of Ed Marmolejo; stating that Hensel Phelps has a history of waiving bonds, making advance payments, etc. He stated that Hensel Phelps is very serious about encouraging D/WBE

participation and requested the Committee review the record of Hensel Phelps.

Councilor Knowles moved for identification of alternates to be recommended.

MOTION: Councilor Waker motioned to approve the ACDC recommendation, subject to amending the ACDC recommendation by substituting Modernfold for IAC partitions.

VOTE: Motion passed unanimously.

Councilor Van Bergen asked why a resolution rather than an ordinance, to which Dan Cooper, General Counsel, responded that the action was not legislative in nature, therefore required a resolution.

Councilor Van Bergen indicated he felt it necessary that the Committee make independent findings concerning the Hensel Phelps good faith efforts.

MOTION: Councilor Waker then moved to approve Resolution 88-977, subject to the development of independent findings of fact.

Councilor Knowles stated that the Convention Center project was of very high visibility both to the State of Oregon and, more particularly, to Northeast Portland. The perception of the Northeast Portland community is that this project is the economic engine which will bring significant economic benefits to their neighborhoods. What the community is looking for is JOBS.

VOTE: Motion passed unanimously.

MOTION: Councilor Waker moved for adoption of Resolution No. 88-972, to approve a contract with Preston, Thorgrimson, Ellis & Holman.

Councilor Kelley said she was uncomfortable with this contract as Metro already has a lobbyist and she wants to vote "no", or abstain. There was further discussion and it was clarified by McFarlane that the money would come from the hotel/motel tax fund and the management fund of the Convention Center Project budget.

MOTION WITHDRAWAL: Councilor Waker withdrew his motion.

Chairman Knowles stated the resolution will be rescheduled at a future meeting.

There was no further discussion. The meeting was adjourned at 11:40 a.m.

Respectfully submitted,

*Berit Younie*  
Berit Younie