MINUTES OF THE COUNCIL REGIONAL FACILITIES COMMITTEE
OF THE METROPOLITAN SERVICE DISTRICT

October 8, 1991
Council Chamber

Committee Members Present: David Knowles (Chair), Jim Gardner (Vice Chair), Lawrence Bauer, Roger Buchanan and Ruth McFarland

Committee Members Absent: None

Other Councilors Present: Sandi Hansen, George Van Bergen and Judy Wyers

Chair Knowles called the regular meeting to order at 4:00 p.m.

1. Consideration of the Minutes of the September 10, and September 24, 1991 Meetings of the Regional Facilities Committee

Motion: Councilor Buchanan moved to approve the September 10 and September 24, 1991 meeting minutes.

Vote: All those present voted aye. The vote was unanimous and the minutes were adopted.

2. Consideration of Resolution No. 91-1494B, Authorizing the Execution of a Sale Agreement for the Acquisition of the Sears Facility

Neil Saling, Regional Facilities Director, gave staff report. He said Metro and Pacific Development Inc. (PDI) had reached an agreement on the terms of sale for the Sears Building. He said PDI had dropped its insistence on the payment of interest for the period between execution of the sale agreement and closing of the sale, in exchange for Metro's agreement that closing would occur no later than December 16, 1991. He said the other major issue resolved was the issue of dealing with the building cleanup and remediation of hazardous substances.

Mr. Saling said PDI agreed to be responsible for cleanup up to $250,000; estimates of the cost of the cleanup are now in the $225,000-$230,000 range. He said if asbestos or other hazardous substances are found within one year of the closing, PDI will pay up to $250,000 above the original cleanup costs. If the cost exceeds that cap, PDI may elect to re-purchase the property and pay back Metro's earnest money and the honoraria paid to the design/build teams, our project costs up to another $500,000, and 50% of project costs above that amount. He said PDI will subtract from this amount the post-closing cleanup costs they have paid. He said Metro could elect to waive PDI's responsibility for cleanup and do the work ourselves. Mr. Saling added that the asbestos found just before the earlier Council meeting had turned out not to be present, after all.

Councilor Bauer asked about standards for asbestos removal, and asked who would be liable if asbestos migrated to adjoining properties during the removal process. Mr. Saling said that the DEQ standard is 1% asbestos by weight, and PDI would be liable in case of any error. He added that the removal process requires wetting and bagging of the asbestos, which limits the chance of error such as Councilor Bauer outlined. He said if a Metro contractor working on the building roof allowed the material to migrate, Metro would be responsible. Dan Cooper, General Counsel added that Metro includes insurance requirements in contracts in order to cover such possibilities.

Mr. Saling said he expected the remediation to be complete by early February; the contract calls for it to be complete no later than March 31.

Councilor McFarland asked Mr. Saling to list the hazardous substances we expected to have to deal with. Mr. Saling listed the storage tank, pipes with asbestos wrap, some fireproofing, and vinyl asbestos tile in the floor. He said PDI agreed to remediate all those things. He said the only area Metro contractors would deal with is the roof, and PDI will reimburse Metro for the remediation costs of the roof. He explained the method to calculate the costs would be by asking for bids for demolition only (Metro's responsibility) and demolition with hazardous materials remediation; the difference is PDI's responsibility.

Councilor Van Bergen referred to a meeting he attended in the spring when staff recommended to the Building Relocation Task Force that we discontinue negotiations to buy the Sears Building. He wanted to know when the determination was made that the new scheme was practical. Mr. Saling referred to the Finance staff's August analysis. He cited the figure of $18.5 million for the current building purchase versus $26 million for the original proposal. He said the difference is in the scheme and the risk level of the two proposals. He said the goal was to purchase a building with costs per square foot of around $15. He said staff had prepared three alternative financing plans, with varying costs.

Councilors Van Bergen and Knowles discussed actions that had been taken since the determination not to proceed with the earlier proposal. Mr. Saling compared the two proposals, saying the earlier proposal was some $26 million. He said a proposal arose calling for development of two floors of office space and two floors of parking, which is estimated to cost $18.5 million. Councilor Van Bergen asked to be provided with a copy of the financial analysis staff had prepared. He then asked to be provided a copy of any analysis of this proposal against other proposals to furnish Metro a headquarters building.

Councilor Wyers asked how this project would affect other Metro programs. Mr. Saling referred to the financial analysis, which showed some of the impact on departments, in terms of transfers and excise tax increases required to pay the debt service. Councilor Wyers said her perspective was as a member of the Finance Committee concerned about use of the excise tax and funding for future programs; she wanted to know the effect of the Sears project on the entire agency. Mr. Saling noted that Metro's current building provides 60% of the space needs identified in the space plan; with Transportation's move to an adjacent building, Metro is now at 75%. Mr. Saling pointed out that cost increases attributable to the Sears move are driven primarily by added space, rather than cost per square foot. Councilor Knowles asked staff to reassemble information on the agency's finances, space needs, and the relationship between financing for this program and financing for other programs. Councilor Wyers said she would appreciate seeing the information, citing the juxtaposition of Metro's buying an $18 million building right after raising Zoo fees.

Councilor Hansen said Metro would not be able to find a comparable building in a location so close to the Convention Center. She asked if Metro wanted to have a headquarters in this location, and if so, does the money justify the move? She believed so, trusting in the work of the staff and committee. She also noted the lack of the opportunity to purchase the Hanna property was unfortunate and did not want that to happen with the Sears property.

Councilor Bauer asked to have the real estate consultant who prepared the analysis of the earlier Sears proposal do an analysis of the current proposal, to determine whether we were paying fair market value. He explained that his purpose in making this request was primarily to substantiate the appropriateness of our costs, in order to justify the expense to obtain financing. Mr. Saling said he had comparisons of lease and purchase rates; he believes the Sears rate is acceptable and comparable to alternatives.

Council Administrator Don Carlson asked Mr. Saling what was the basis for his reference to a cost in the range of $16 per square foot. Mr. Saling explained that Finance staff has developed three alternative financing proposals, and the "ramped" debt service provides the lowest initial rate (at approximately $16 per square foot in the first year) but that it is more expensive in the long run than the other two.

Councilor Van Bergen asked what it would cost to get out of the agreement prior to the December closing date. Mr. Cooper and Casey Short said it would cost $250,000 in forfeited earnest money, plus

$75,000 in design/build team honoraria. In response to Councilor Van Bergen's follow-up question, Mr. Cooper said that Metro would not be forced to buy the building under a specific performance clause.

Mr. Saling pointed out the resolution provides for Metro to have a two-month option on the garage at no additional cost; this is a material change in the resolution from the "B" version.

<u>Motion</u>: Councilor Bauer moved to recommend Resolution No. 91-1494C to full Council for adoption.

<u>Vote</u>: Councilors Bauer, Buchanan, and McFarland voted aye. Councilor Gardner voted nay. Councilor Knowles was absent. The vote was 3/1 and the motion passed.

Councilor Gardner noted he continued to vote nay consistent with his previous votes and remarks.

<u>3. Consideration of Resolution No. 91-1507, Exempting the Headquarters RFQ/RFP Process from Competitive Bidding Process Pursuant to Metro Code 2.04.041</u>

Mr. Saling gave his staff report. He said the revised findings to the resolution clarified such that the process did not discourage competition and did not encourage favoritism. He said the findings on cost savings showed potential savings of the fast track design/build process of approximately $1.2 million.

<u>Motion</u>: Councilor McFarland moved to recommend Resolution No. 91-1507A to the full Council for adoption, deleting the "Draft" from the final copy.

Councilor Buchanan asked Mr. Cooper to explain why there was a variation from the competitive bidding process. Mr. Cooper said that Oregon law establishes rules for competitive bidding and contracting procedures in general. He said those laws discourage non-competitive bidding, but allow for exception to low-bid, sealed bid contract awards based on contract specifications. He said such alternatives are sometimes used by local governments if competition is still provided for; the law calls for objective and clear criteria to be established to discourage favoritism and document or identify cost savings. He said Oregon law provides for alternative procedures which are occasionally used by local governments, some of which he cited. He said there is no appellate law on the use of these statutes because no one has questioned the validity of such processes in the appellate court.

Councilor Buchanan asked where the line is drawn that dictates the use of alternative procedures. Mr. Cooper said the statutes call for identification and justification of substantial cost savings through the use of the alternative procedure. He said staff has estimated savings of over $1 million. He said it is up to Council to determine if that amount is "substantial" which is the statutory requirement.

<u>Vote</u>: Councilors McFarland, Bauer, Buchanan and Gardner voted aye. Councilor Knowles was absent. The vote was 4/0 and the motion passed.

<u>4. Consideration of Resolution No. 91-1505B, Authorizing the Issuance of Metro Headquarters Project Design/Build RFP</u>

Mr. Saling began by citing Dan Cooper's memo of October 2, 1991 in which he expressed his opinion that Metro's current Disadvantaged Business Enterprise (DBE) program is unconstitutional. Mr. Saling recommended that the RFP for the Sears building be issued without adhering to the Code provisions governing DBE utilization.

Councilor McFarland stated she was uncomfortable voting for the resolution without having seen the changes being proposed. Councilor Gardner asked if there were any changes to the RFP other than those dealing with DBE utilization. Berit Stevenson, Senior Management Analyst, said those would be the only substantive changes, though there were some technical changes to ensure consistency in terminology throughout the document.

Councilor Van Bergen said that Mr. Cooper can offer his opinion on the constitutionality of the law, but he cannot make the law; there is an ordinance on the books that has the force and effect of law though it may be unconstitutional. He did not see how the Council could direct the Executive Officer to issue an RFP which is contrary to adopted law.

Councilor Bauer agreed with Councilor Van Bergen. He said that if approval of the Resolution as proposed offered even a remote chance of violating the Metro Code, he would feel more comfortable changing the Code prior to approving the Resolution. Councilor McFarland added that she would only agree to vote to forward the Resolution to Council with the stipulation that the Code would be changed. She said she would not vote in favor of the resolution at Council if it countered the adopted rules and regulations. Councilor Bauer suggested the Committee direct counsel to draft an emergency ordinance changing the Code and that it be considered at Council prior to consideration of Resolution No. 91-1505C.

Councilor Gardner asked Mr. Saling to clarify the different versions of the resolution under discussion. Mr. Saling explained version 91-1505B included provisions for the DBE/WBE utilization goals as directed by the existing Code. He said the "C" version called for outreach to Emerging Small Businesses (ESB's), but no reference to DBE's or WBE's; the goals and outreach earlier directed at DBE's and WBE's would remain the same, but would be for ESB's instead.

Motion: Councilor McFarland moved to forward Resolution No. 91-1501 to full Council without a recommendation from the Committee.

Vote: Councilors McFarland, bauer, Buchanan and Gardner voted aye. Councilor Knowles was absent. The vote was 4/0 and the motion passed.

UNSCHEDULED AGENDA ITEM

Motion: Councilor Bauer moved that legal counsel draft an emergency ordinance for consideration at the October 10, 1991 Council meeting, which would provide clarification that Resolution No. 91-1501 be consistent with the Code, and that the ordinance be placed on the agenda prior to consideration of the aforementioned resolution.

Councilor Bauer also clarified that he was asking that there be no inconsistency between State statute, the Metro Code, and Resolution No. 91-1501. He said the drafted emergency ordinance should eliminate any such inconsistencies.

Vote: Councilors Bauer, McFarland, Buchanan and Garner voted aye. Councilor Knowles was absent. The vote was 4/0 and the motion passed.

Vice chair Gardner adjourned the meeting at 4:50 p.m.

Respectfully submitted,

Susan Lee

Susan Lee
Committee Clerk

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