

BEFORE THE METRO COUNCIL

RELATING TO CONTRACT POLICIES) Ordinance No. 96-635B
AMENDING METRO CODE CHAPTER 2.04)
) Introduced by
) Executive Officer Mike Burton
) and Councilor Susan McLain

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. The Metro Council finds:

(a) Chapter 2.04, Metro Contract Procedures, establishes policies and procedures for Metro regarding public contracts, personal services contracts, and intergovernmental agreements.

(b) This Code chapter has been amended from time to time over the last 15 years, but has not been comprehensively revised.

(c) As a result of the effect of multiple amendments, the Code chapter is in need of comprehensive revision in order to allow for more effective policies and procedures.

Section 2. Metro Code Chapter 2.04 is retitled as Chapter 2.04, Contract Policies.

Section 3. Existing sections 2.04.010 to 2.040.090 are hereby repealed and the following Metro Code sections 2.04.010 to 2.04.070 are hereby adopted:

CHAPTER 2.04

METRO CONTRACT POLICIES

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	<u>Contracts in General</u>
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Personal Services Contracts

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- 2.04.062 Sole Source
- 2.04.064 Sale of Surplus Property
- 2.04.070 Notice of Award and Appeals

2.04.010 Definitions

For the purposes of this chapter unless the context requires otherwise the following terms shall have the meanings indicated:

- (a) "Auditor" means the Metro auditor provided for in Section 18 of the 1992 Metro Charter.
- (b) "Competitive bidding" means an advertised solicitation of sealed bids.
- (c) "Contract Review Board or Board" means the Metro Contract Review Board created pursuant to section 2.04.050 of this chapter.
- (d) "Council Presiding Officer" means the council presiding officer provided for in Section 16 of the 1992 Metro Charter.
- (e) "Emergency" means the occurrence of a specific event or events that could not have been reasonably foreseen and prevented, and which requires the taking of prompt action to

remedy the condition and thereby avoid further physical damage or harm to individuals or the occurrence of avoidable costs.

(f) "Emergency contract" means a contract whose purpose is limited to remedying an emergency situation.

(g) "Executive Officer" means the Metro executive officer provided for in Section 17 of the 1992 Metro Charter.

(h) "Intergovernmental agreement" means a written agreement with any other unit or units of federal, state or local government providing for the acquisition of goods or services by Metro, for the provision of goods or services by Metro or for the payment or receipt of funds in order to promote or carry out a common purpose.

(i) "Notice of award" means written communication to a responsive, responsible bidder or proposer stating 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.

(j) "Personal services contract" means any contract by which Metro acquires a professional, artistic, creative, consulting, educational, or management service. Contracts which are predominately for the purpose of obtaining a product, labor or materials, or the services of a construction trade are not a personal services contract.

(k) "Procurement Officer" means the person designated by the executive officer to carry out the functions required of such person by this chapter.

(l) "Public agency" means any agency of the federal government, state of Oregon, or any political subdivision thereof, authorized by law to enter into public contracts and any public body created by intergovernmental agreement.

(m) "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.

(n) "Public improvement" means projects for construction, reconstruction or major renovation on real property by or for a public agency. "Public improvement" does not include emergency work, minor alteration, ordinary repair or maintenance in order to preserve a public improvement.

(o) "Request for Proposals or RFP" means the issuance of a request for offers that will be evaluated based on factors that are not limited to price alone.

(p) "Sole source contract" means a contract for which it can be documented there is only one qualified provider of the required service or material.

2.04.020 Authority to Award and Execute Contracts, Budget Limitations

Pursuant to the 1992 Metro Charter, the executive officer and auditor have the authority to award and execute contracts that are necessary to carry out their administrative responsibilities. These two officers may delegate authority to award and execute contracts on their behalf by doing so in writing. The council presiding officer is delegated authority to award and execute contracts on behalf of the council. Unless the council expressly approves a contract containing a requirement to the contrary, no contract may obligate Metro to the payment of funds not appropriated for that purpose by the council.

2.04.022 Federal Law and Rules

Notwithstanding any provision of this chapter, the applicable federal laws, rules and regulations shall govern in any case where federal funds are involved and the federal laws, rules and regulations conflict with any of the provisions of this chapter or require additional conditions in public or personal services contracts not authorized by this chapter.

2.04.024 Metropolitan Exposition-Recreation Commission

The Metropolitan Exposition-Recreation Commission has authority to enter into contracts pursuant to Metro Code section 6.01.04(j). Notwithstanding any provision of this chapter to the contrary, the commission may without the prior approval of the executive officer enter into contracts in any amount in accordance with contracting rules adopted by the commission pursuant to the authority contained in section 6.01.040(j). However, the contract review board created pursuant to section 2.04.050 shall be the contract review board for the commission.

2.04.026 Council Approval of Contracts

(a) Notwithstanding any other provisions of this chapter, executive officer or auditor must obtain authorization by the council prior to execution of the following types of contracts:

- (1) Any contract which commits the district to the expenditure of appropriations not otherwise provided for in the current fiscal year budget at the time the contract is executed and which has a significant impact on Metro. The following types of contracts shall be considered to have significant impacts unless the council finds that under the circumstances a contract will not have a significant impact:

- (A) Any public contract for a term greater than 12 months for private operation of all or of a major part of a Metro facility or concessions at a Metro facility.
 - (B) Any public improvement contract for an amount over \$50,000.
 - (C) Any public contract which will potentially result in a material (more than 5 percent of the related fund) loss of revenues or increase in expenditures in more than one year in any Metro fund.
 - (D) Any contract for personal services for a term greater than 12 months and in an amount greater than \$50,000.
 - (E) Any contract for personal services for an amount greater than \$50,000 related to Metro's exercise of its regional planning functions pursuant to Section 5 of the 1992 Metro Charter.
 - (F) Any contract for personal services for an amount over \$25,000 related to the study by Metro of exercising authority, pursuant to Section 7 of the 1992 Metro Charter, over additional functions.
- (2) Any agreement entered into pursuant to ORS chapter 190 by which Metro 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; or
 - (3) Any contract for the purchase, sale, lease or transfer of real property owned by Metro. However, the executive officer may execute options to purchase real property.

(b) Prior to adoption of the annual budget, the executive officer shall submit a list of proposed contracts over \$25,000 to be entered into during the next fiscal year. The council shall designate in the annual budget ordinance which contracts have a significant impact on Metro.

Thereafter, if the executive officer proposes to enter into a contract that will commit the district to the expenditure of appropriations not provided for in the current fiscal year budget in an amount greater than \$25,000 that the council has not considered during the annual budget process the Executive Officer shall inform the council presiding officer in writing and shall recommend whether the contract should be classified as a significant impact contract. The presiding officer shall immediately cause copies of the notice to be furnished to all members of the Council. The Council may determine that the contract has a significant impact on Metro within 10 days of receipt of the notice from the executive officer. If the contract is determined by the Council to have a significant impact on Metro, execution by the executive officer shall be subject

to Council authorization. If the Council does not determine that the contract has a significant impact on Metro, the executive officer may execute the contract after transmitting a description of the purpose of the contract, the appropriation to which contract payments will be charged, and a summary of the scope of work to be performed to the council or a council committee as deemed appropriate by the presiding officer.

(c) All contracts which require council authorization pursuant to subsection (a)(1) or (b) above and which are subject to competitive bidding or request for proposals procedures shall require council authorization of the request for bids or request for proposals prior to release of bidding or proposal documents to vendors. At the time of council authorization of the competitive bid or request for proposal documents, the council may waive the requirement of council authorization of the contract.

2.04.028 Council Information Reports

The executive officer shall provide a monthly report to council showing all contracts awarded and amended during the preceding month.

The executive officer shall make available to the council on request information showing the status of all contracts whether listed in the adopted budget or not.

2.04.030 Regulations

The executive officer may establish by executive order additional regulations consistent with this chapter.

2.04.032 Prohibition Against Doing Business With Certain Former Metro Officials

(a) Except as provided for in subsection (d) below, Metro may not do business with any Metro official while the official is in office or within one year after the Metro official ceases to be a Metro official if the official had authority to exercise official responsibility in the matter. Any contract entered into in violation of this provision is void.

(b) Metro officials shall be deemed to have authority to exercise official responsibility as follows:

Elected officials have authority to exercise official responsibility over any Metro matter. Appointed commissioners have authority over any matter over which the relevant commission has jurisdiction. Department directors have authority over any matter related to the department they administer.

(c) Definitions: For the purpose of this section undefined terms used herein shall be construed as defined in ORS chapter 244; the following terms shall have the following meaning:

- (1) "Business" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain but excluding any income-producing not-for-profit corporation that is tax exempt under section 501(c) of the Internal Revenue Code with which a public official is associated in a nonremunerative capacity.
- (2) "Business with which the Metro official is associated" means any business of which the person or the person's relative is a director, officer, owner or employee, or agent or any corporation in which the person or the person's relative owns or has owned stock worth \$1,000 or more at any point in the preceding calendar year.
- (3) "Department director" means any person employed by Metro in a position on a permanent basis which is subject to appointment by the executive officer and confirmation by the Metro council.
- (4) "Doing business" means entering into a direct contractual relationship with a business with which the Metro official is associated.
- (5) "Elected official" means any person elected or appointed as a member of the Metro council, the executive officer, or the auditor.
- (6) "Metro" means all of Metro including any department or branch of Metro including any Metro commission.
- (7) "Metro commissioner" means any person appointed to a position on a commission created pursuant to an ordinance adopted by the Metro council whose appointment is subject to confirmation by the Metro council.
- (8) "Metro official" means any department director, elected official or Metro commissioner.

(d) Upon the request of the executive officer or a Metro commission, the council may waive the effect of the prohibition contained in subsection (a) upon making written findings that:

- (1) It is in the best interests of Metro to do business with the Metro official.
- (2) The Metro official took no action while in office that directly related to the preparation of the terms and conditions in the contract documents that may give an appearance of impropriety or favoritism.

- (3) Other factors exist which are explicitly found by the council to benefit Metro that outweigh the policy considerations of ensuring that no appearance of favoritism exists in the award of Metro contracts.

(e) This section applies only to Metro officials who first take office or are re-elected or re-appointed to an office after September 7, 1995. This section shall not be construed to permit any activity that is otherwise prohibited by any other statute, rule, ordinance, or other law.

2.04.040 Personal Services Contracts -- General

(a) Disadvantaged Business Program. All contracting for personal services is subject to the Metro Disadvantaged Business Enterprise Program, Metro Womens Business Program, and the Metro Minority Business Program provisions of this chapter.

(b) Substantive Requirements. All Metro personal services contracts shall contain all provisions required by ORS chapter 279 and shall be construed to be consistent with all relevant provisions of ORS chapter 279.

2.04.042 Personal Services Contracts Up to \$25,000

(a) For personal services contracts of less than \$2,500, multiple proposals need not be obtained, but are encouraged.

(b) Personal services contracts of \$2,500 or more but not more than \$25,000 shall be subject to the following process:

Proposals shall be solicited from at least three potential contractors who are capable and qualified to perform the requested work. Prior to selecting any contractor for a personal services contract greater than \$10,000 but not more than \$25,000, the procurement officer shall publish notice of the intent to solicit competitive proposals, and include a summary of the nature of the proposed contract, the estimated cost of the contract, and the name of a contact person. No contract selection may be made until at least five days after such publication and after consideration of all proposals received.

2.04.044 Personal Services Contracts of More than \$25,000

Personal services contracts of \$25,000 shall be subject to the following process:

(a) A request for proposals shall be prepared and advertised at least once. Notice shall also be mailed to interested contractors known to Metro.

(b) All request for proposals shall at a minimum contain a description of the project and a brief summary of the project history, contain a detailed proposed scope of work or other specifications setting forth expected performance by the contractor, include a description of the

criteria that will be utilized to evaluate proposals and a broad range of the estimated cost for the project.

(c) Evaluations of proposals and the determination of the most qualified proposer shall be made.

2.04.046 Personal Services Contract Amendments

(a) Personal services contracts of an initial amount of \$25,000 or less may be amended to increase the amount of the contract to no more than twice the original contract amount. This limit is cumulative and includes any and all contract amendments or extensions. Any contract amendment(s) in excess of this ceiling requires approval by the council. The council shall determine whether it is appropriate to amend the contract despite the policy that favors competitive procurement of personal services.

(b) Contracts with an initial amount of greater than \$25,000 may be amended provided that any amendment that increases the total amount payable to an amount more than \$25,000 greater than the initial contract amount shall be subject to approval by the council. The council shall determine whether it is appropriate to amend the contract despite the policy that favors competitive procurement of personal services.

2.04.048 Notice of Award and Appeals of Personal Services Contracts

Notice of award and any appeal thereof shall be subject to the rules and procedures established in section 2.04.070 except that the final determination of any appeal shall be made by the council and not the contract review board.

2.04.050 Public Contract Review Board

(a) Creation of the Public Contract Review Board. Pursuant to ORS 279.055 the Metro council is designated and created as the Metro Contract Review Board.

(b) Powers of Board. The Metro contract review board shall have all the powers provided to a contract review board by ORS chapter 279.

(c) Contract Review Board Meetings

(1) The meetings of the contract review board shall normally, but need not, be conducted at the same time as, and as a part of, the regular meetings of the Metro council.

- (2) The rules of procedure adopted by the council for its proceedings shall also govern proceedings of the contract review board unless they conflict with rules adopted by the board.

2.04.052 Public Contracts -- General

(a) State Law Requirements, Procedures. The procedures for competitive bidding of all Metro public contracts and for the issuance of competitive Request for Proposals when authorized as an exception to competitive bid requirements shall comply with all requirements that are generally applicable to local governments. The executive officer may establish by executive order detailed procedural requirements consistent with this chapter and state law. In so doing, the executive officer may adopt in whole or in part the model rules of procedure established by the Oregon Attorney General pursuant to ORS 279.049.

(b) Substantive Requirements. All Metro public contracts shall contain all provisions required by ORS chapter 279 and shall be construed to be consistent with all provisions of ORS chapter 279.

(c) Rejection of Bids. The executive officer may reject any bid or proposal not in compliance with all prescribed procedures and requirements and may, for good cause, reject any or all bids or proposals upon finding that it is in the public interest to do so.

(d) Bonds. Unless the board shall otherwise provide, bonds and bid security requirements are as follows:

- (1) Bid security not exceeding 10 percent of the amount bid for the contract is required unless the contract is for \$25,000 or less.
- (2) For public improvements, a labor and materials bond and a performance bond, both in an amount equal to 100 percent of the contract price are required for contracts over \$25,000.
- (3) 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 executive officer determines it is in the public interest.

(e) Disadvantaged Business Program. All public contracts are subject to the Metro Disadvantaged Business Enterprise Program, Metro Womens Business Program, and the Metro Minority Business Program provisions of this chapter.

2.04.054 Competitive Bidding Exemptions

Subject to the policies and provisions of ORS 279.005 and 279.007, and the Metro Code, all Metro and Metropolitan Exposition-Recreation Commission public contracts shall be based upon competitive bids except:

(a) State Law. Classes of public contracts specifically exempted from competitive bidding requirements by state law.

(b) Board Rule. The following classes of public contracts are exempt from the competitive bidding process based on the legislative finding by the board that the exemption will not encourage favoritism or substantially diminish competition for public contracts and that such exemptions will result in substantial cost savings:

- (1) All contracts estimated to be not more than \$25,000 provided that the procedures required by section 2.04.056 are followed.
- (2) Purchase and sale of zoo animals, zoo gift shop retail inventory and resale items, and any sales of food or concession items at Metro facilities.
- (3) Contracts for management and operation of food, parking or similar concession services at Metro facilities provided that procedures substantially similar to the procedures required for formal Request for Proposals used by Metro for personal services contracts are followed.
- (4) Emergency contracts provided that written findings are made that document the factual circumstances creating the emergency and establishing why the emergency contract will remedy the emergency. An emergency contract must be awarded within 60 days of the declaration of the emergency unless the board grants an extension.
- (5) Purchase of food items for resale at the zoo provided the provisions of section 2.04.060 are followed.
- (6) Contracts for warranties in which the supplier of the goods or services covered by the warranty has designated a sole provider for the warranty service.
- (7) Contracts for computer hardware and software provided that procedures substantially similar to the procedures required for formal Request for Proposals used by Metro for personal services contracts are followed.
- (8) Contracts under which Metro is to receive revenue by providing a service.

- (9) Contracts for the lease or use of the Oregon Convention Center or other facilities operated by the Metro Exposition-Recreation Commission.
- (10) Contracts for purchases by the Metro Exposition-Recreation Commission in an amount less than \$31,000 provided that any rules adopted by the commission which provide for substitute selection procedures are followed;
or
- (11) Contracts for equipment repair or overhaul, but only when the service and/or parts required are unknown before the work begins and the cost cannot be determined without extensive preliminary dismantling or testing.
- (12) Contracts in the nature of grants to further a Metro purpose provided a competitive request for proposal process is followed.

(c) Board Resolution. Specific contracts, not within the classes exempted in subsection (a) and (b) above, may be exempted by the board by resolution subject to the requirements of ORS 279.015(2) and ORS 279.015(5). The board shall, where appropriate, direct the use of alternate contracting and purchasing practices that take account of market realities and modern innovative contracting and purchasing methods, which are consistent with the public policy of encouraging competition.

2.04.056 Public Contracts Under \$25,000

(a) Under \$2,500. Competitive bids are not required for public contracts less than \$2,500. Metro should, where feasible, obtain competitive quotes.

(b) Between \$2,500 and \$10,000. Unless otherwise exempt from competitive bidding under section 2.04.054, when the amount of the contract is \$2,500 or more, but less than \$10,000, Metro must obtain a minimum of three competitive quotes. Metro shall keep a written record of the source and amount of the quotes received. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes.

(c) Between \$10,000 and \$25,000. Unless otherwise exempt from competitive bidding under section 2.04.054, when the amount of the contract is \$10,000 or more, but not more than \$25,000, Metro must obtain a minimum of three competitive quotes. Metro shall keep a written record of the source and amount of the quotes received. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes. In addition, the contracting department shall notify the procurement officer of the nature of the proposed contract, the estimated cost of the contract, and the name of the contact person. The procurement officer shall publish notice of the intent to solicit competitive quotes, including a summary of the information supplied by the contracting department regarding the

nature of the proposed contract. No contract selection may be made until at least five days after such publication and after consideration of all quotes received.

(d) Contracts under \$25,000 should be awarded on the basis of the least cost alternative available that is capable of performing the work required.

2.04.058 Public Contract Amendments

(a) The executive officer may execute amendments to public contracts which were not designated as contracts having a significant impact on Metro, provided that any one of the following conditions are met:

- (1) The original contract was let by a formal competitive procurement process, the amendment is for the purpose of authorizing additional work for which unit prices or 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 \$100,000 or 10 percent if the face amount is greater than \$100,000; amendments made under subsection (1) or (2) are not included in computing the aggregate amount under this subsection; or
- (4) The Metro contract review board has authorized the extension of the contract amendment.

(b) No contract which was designated as a contract having a significant impact on Metro 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 than 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 \$25,000 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 a formal competitive procurement, 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) No public contract may be amended to include additional work or improvements that are not directly related to the scope of work that was described in the competitive process utilized to award the contract.

(d) For the purpose of this section any contract which was subject to specific council authorization of its execution prior to the effective date of this ordinance shall be considered to be a contract that has a significant impact on Metro.

2.04.060 Food Products

(a) All food items and food service contracts will be procured through competitive bidding, except as provided in sections (b) through (e) below.

(b) Competitive bids or quotes are not required when food items other than those routinely stocked by a Metro department are needed for requested catering services.

(c) Competitive bids or quotes are not required for fully or partially prepared food items which require:

- (1) The use of a specific recipe provided and/or developed in conjunction with a Metro department; or
- (2) The use of a proprietary recipe or formula which is the property of a vendor.

(d) Purchases of groceries, meat, poultry, and produce may be limited to vendors who have been prequalified. The executive officer shall establish prequalification procedures that ensure competition and fairness.

2.04.062 Sole Source

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. Sole source contracts may not exceed \$2,500 unless the board shall have specifically exempted the contract from the public bidding or applicable alternative procurement procedure.

2.04.064 Sale of Surplus Property

Contracts for sale of surplus property may be executed without competitive oral or sealed bids only when the executive officer determines in writing that the number, value and nature of the items to be sold make it probable that the cost of conducting a sale by bid will be such that a liquidation sale will result in substantially greater net revenue to Metro.

2.04.070 Notice of Award and Appeals

(a) At least five days prior to the execution of any public contract over \$25,000 for which a competitive bid or proposal process is required, Metro shall provide a notice of award to the contractor selected and to all contractors who submitted unsuccessful bids or proposals.

(b) Bid/Request for Proposals Appeal Procedures. The following procedure applies to aggrieved bidders and proposers who wish to appeal an award of a public contract or a personal services contract above \$25,000. The appeal process for bids is the same as for a request for proposals. In the case of a request for proposals, disagreement with the judgment exercised in scoring by evaluators is not a basis for appeal.

- (1) All appeals shall be made in writing and shall be delivered to the procurement officer at Metro's main office within five working days of the postmarked date on the notice of award. The written appeal must describe the specific citation of law, rule, regulation, or procedure upon which the appeal is based.

- (2) The procurement officer shall forthwith notify the appropriate department director and the executive officer of the appeal. Within 10 working days of the receipt of the notice of appeal, the executive officer shall send a notice of rejection of the appeal or a notice of acceptance of the appeal, as applicable, to the appellant. The appellant may appeal the executive officer's decision to reject the appeal in writing to the board within five working days from the postmarked date on the notice of rejection.
- (3) The board will review the grounds for appeal, all pertinent information, and the executive officer's recommendation, and make a decision. The decision of the board is final.
- (4) No contract which is the subject of a pending appeal may be executed unless the board shall have given its approval at the request of the executive officer. The executive officer may request the board to determine a matter without waiting for the expiration of the time periods provided for herein.
- (5) In the event council authorization of execution of the contract is required under section 2.04.026 of this Code the appeal shall be heard before the council considers authorization of the contract.

(c) Appeals from Disqualifications

- (1) The board shall hear all appeals from any person who is disqualified by Metro as a bidder. The basis for the appeal shall be limited to the following grounds:
 - (A) Disqualification of bidder pursuant to ORS 279.037.
 - (B) Denial of prequalification to bid pursuant to ORS 279.039 and 279.041.
- (2) Any person who wishes to appeal disqualification as a bidder shall, within three business days after receipt of notice of disqualification, notify in writing the general counsel that the person appeals the disqualification. The general counsel shall promptly notify the board of the appeal by providing notice to the presiding officer.
- (3) Promptly upon receipt of notice of appeal, the presiding officer shall notify the appellant and the general counsel of the time and place of the appeal proceeding.

- (4) The board shall conduct the appeal proceeding and decide the appeal within 10 days after receiving notification of the appeal from the general counsel. The board shall set forth in writing the reasons for the decision.
- (5) Appeal Proceeding.
 - (A) The presiding officer shall preside over the appeal proceeding. The general order shall be as follows:
 - (i) Presentation by Metro of documentation and testimony supporting the disqualification.
 - (ii) Presentation by the appellant of documentation and testimony opposing the disqualification.
 - (B) Members of the board shall have the right to ask both Metro and the appellant questions and to review documentation referred to and presented by the parties.
 - (C) Formal court rules of evidence shall not apply.
 - (D) The board shall consider de novo the notice of disqualification, and record of investigation made by Metro and any evidence provided by Metro and the appellant prior to or at the appeal proceeding. There shall be no continuance or reopening of the appeal proceeding to offer additional evidence unless the appellant can demonstrate to the presiding officer that the additional evidence was not known to the appellant at the time of the proceeding or that with reasonable diligence the appellant would not have discovered the evidence prior to the appeal proceeding.
 - (E) A tape recording will be made of the appeal proceeding which shall be made available to the appellant upon payment of costs to Metro of making the tape.
 - (F) The board shall render a decision which shall be reviewed only upon petition in the Circuit Court of Multnomah County. The petition must be filed within 15 days after the date of the decision.
- (6) Metro may reconsider its determination with regard to the disqualification at any time prior to the appeal proceeding.

(d) Appeals of contract awards and decisions of the auditor shall be made directly to the contract review board.

Section 4. The definition of Executive Department contained in Metro Code sections 2.04.110(h); 2.04.210(h); and 2.04.310(g) is amended to read:

"Executive Department" means the State of Oregon's Executive Department or such state agency, department or entity to which has been delegated the responsibility to certify a Minority Business Enterprise, Women Business Enterprise, or a Disadvantaged Business Enterprise and to engage in related activities.

Section 5. Transition Provisions:

(a) Any contract initiated prior to the effective date of this ordinance and executed after the effective date of this ordinance shall be valid if the procedures utilized were in substantial compliance with this ordinance.

(b) Any public contract or personal services contract executed prior to the effective date of this ordinance that was subject to Council approval pursuant to former Metro Code section 2.04.033 or any similar previous Code requirement shall be considered to be a contract having a significant impact on Metro for the purpose of Metro Code section 2.04.058.

Section 6. Sections 2 and 3 of this Ordinance shall take effect on July 1, 1996. Upon the adoption of this Ordinance, the Council shall designate contracts proposed for funding during Fiscal Year 1996-1997 as contracts having a significant impact on Metro pursuant to Metro Code section 2.04.026, as it will be in effect on July 1, 1996.

Section 7. This Ordinance being necessary for the immediate preservation of the public health, safety or welfare of the Metro area, in order to provide an orderly transition in contracting policies that will coincide with the advent of the new fiscal year, an emergency is declared to exist, and this Ordinance takes effect on passage.

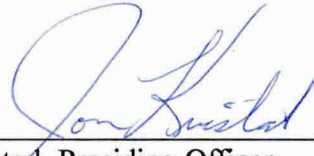
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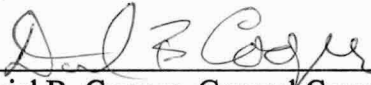
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ADOPTED by the Metro Council this 11th day of April, 1996.



Jon Kvistad, Presiding Officer

Approved as to Form:



Daniel B. Cooper, General Counsel

jep
r-o/1252b

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 96-635^B RELATING TO CONTRACT POLICIES AMENDING METRO CODE CHAPTER 2.04.

Date: February 14, 1996

Presented by: Scott Moss and Dan Cooper

PROPOSED ACTION

To perform a comprehensive revision of Metro Code Chapter 2.04. This chapter establishes the policy of the Council for Metro's contracting efforts.

FACTUAL BACKGROUND AND ANALYSIS

Metro Code Chapter 2.04 was written 15 years ago and has undergone several amendments over the years. The Metro Council, Executive Officer and General Counsel recognized the need to perform a comprehensive revision of this code to assure that Council's policies are enacted and allowing the Executive Officer to provide efficient procedures to carry out those policies.

The following objectives are promoted by the proposed code change:

- Assure integrity by maintaining the public trust and by carrying out the policy established by the Metro Council
- Provide efficiency by allowing contracting to occur in a timely manner and provide the right quality and quantity to Metro's operating departments.
- Promote competition by simplifying contracting procedures and being friendlier to small business, which assures the maximum overall value for each dollar spent.

The proposed revision does not change the MBE/WBE/DBE sections of the contract code.

Attached is a summary of code changes.

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BUDGET IMPACT

There is no budget impact.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Ordinance 96-635.

SUMMARY OF CONTRACT CODE CHANGES

1. During the budget process Council reviews, approves, and funds contracts over \$25,000. If a proposed contract has not been approved in the budget process, it shall be forwarded to the Council Presiding Officer to determine if Council review is required.
2. The new code establishes Metro's contracting policy and allows the Executive Officer to establish internal processing procedures. (A few procedures that relate to policy will remain intact.)
3. Eliminates the "A" and "B" contracting policy. Establishes "significant impact" contracts. After budget, Council approves RFBs/RFPs and contracts if they are "significant impact" and are multi-year, defined as:
 - contracts over 36 months for operation of all or part of a Metro facility or concessions.
 - public improvement contracts or personal services contracts over \$250,000.
 - A contract decreasing revenues or increasing expenditures by more than 5% of the fund.
 - Personal services contracts for regional planning over \$100,000.
 - Personal services contracts for studies on services allowed under the charter and not currently exercised over \$25,000.

Contracts acquiring or transferring property or other governmental functions continues to require Council approval.

4. All proposed contracts over \$25,000 must be approved by Council in the annual budget process. If the contract was not included in the budget process, a 10-day notice will be forwarded to the Presiding Officer. If it is a significant impact contract, it must be approved by resolution. If it is not a significant impact contract, a description of the contract and appropriation unit will be provided to the Council.
5. Clearly distinguishes between personal services and public contracts.
6. Increases performance and labor & materials bonds to \$25,000. Encourages small businesses to compete for small Metro projects.
7. Revenue contracts for concessions and parking can be done with an RFP. Previously required Council approval to do a proposal rather than bid.

SUMMARY OF CONTRACT CODE CHANGES

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8. Public contracts quote threshold has increased to \$2,500 from \$500. Although departments must continue to obtain quotes from a WBE and MBE for any purchase over \$500 (reduces the three quote requirement to two).
9. Personal Services contracts can be amended to double contract if under \$25,000. If over \$25,000, the contract can only be amended to an additional \$25,000 by the Executive Officer. After this threshold, amendments must be approved by Council. This changes the current policy that unlimited amendments under \$10,000 can be done without Council approval.
10. In Public contracts, the scope of work cannot be amended to include activities not related to the original scope of work without Council approval.
11. A quarterly status report of **all** contracts listed in budget will be provided to Council. Monthly reports showing newly entered contracts and amendments will continue.
12. Current "A" contracts are considered "significant impact" contracts.
13. An appeal process has been added to cover disqualifications of bidders.
14. Emergency clause to allow for personal services and public contracts.
15. Allows for repair of items not to be competitively bid if unable to determine price.
16. Grants to non-profit and others (recycling stream restoration, etc.) are to follow competitive RFP process.