

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

AN ORDINANCE AMENDING CHAPTER 2.04)
METRO CONTRACT PROCEDURES OF THE)
METRO CODE IN ORDER TO MOVE ITEMS)
THAT ARE EXEMPTED FROM COMPETITIVE)
BIDDING TO METRO CODE 2.04.041,)
REQUIREMENT OF COMPETITIVE)
BIDDING, EXEMPTIONS, AND OTHER)
MINOR NON-POLICY CHANGES)

ORDINANCE NO. 90-342
Introduced by Rena Cusma,
Executive Officer

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. The Metro Council finds:

- (a) Items exempted from competitive bidding are not listed under items exempted for competitive bidding by Board Rule.
- (b) Certain portions of Chapter 2.04 need rewording for clarification purposes.

Section 2. The following sections of Chapter 2.04, Metro Contract Procedures of the Metro Code, are amended to read as follows:

2.04.040 Public Contracts, General Provisions:

- (a) Competitive Bidding: Unless exempt from competitive bidding, all public contracts shall be awarded to the lowest responsive, responsible bidder.
- (b) Oregon Preference: In all public contracts, the District shall prefer goods or services that have been manufactured or produced in Oregon if price, fitness, availability and quality are otherwise equal. Where a contract in excess of \$10,000 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.
- (c) Rejection of Bids: The Executive Officer or the Deputy Executive Officer may reject any bid not in compliance with all prescribed public bidding procedures and requirements and may, for good cause, reject any or all bids upon a finding that it is in the public interest to do so, for example, when all bids exceed the budget or estimate for that project.
- (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] a contract [is for] over \$15,000 [or less].
- (2) For public improvements, a Labor and Materials bond in an amount equal to 100 percent of the contract price is required for contracts over \$15,000.
- (3) For public improvements, a [P]performance bond in an amount equal to 100 percent of the contract price is required for contracts over \$10,000. If the contract price is under \$50,000, the performance bond and the labor and material bond may be one bond; if the contract price is \$50,000 or more, [there shall be two bonds] the successful contractor shall provide separately a performance bond and a labor and material bond.
- (4) [Bid security, labor] Labor and material bond and performance bond may be required [even though the contract is of a class not identified above,] for labor and materials contracts and contracts for the purchase of goods if the Executive Officer determines it is in the public interest.
- (5) Bid security and bonds may be provided in the form of a surety bond, cash, cashier's check or certified check.

2.04.041 Requirement of Competitive Bidding, Exemptions:

(a) State Law: The following contracts are exempt from the competitive bidding selection process pursuant to State Statute:

- (1) Contracts with other public agencies or the federal government.
- (2) Contracts made with qualified nonprofit agencies providing employment opportunities for the handicapped.
- (3) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145.
- (4) Contracts for supplies [estimated to be] if the value of the contract is less than \$500.

(b) Board Rule: The following classes of public contracts are exempt from the competitive bidding process based on the findings by the Contract Review 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) Purchase and sale of Zoo animals.
- (2) Purchase and sale of Zoo gift shop retail inventory and resale items.
- (3) All contracts estimated to be less than \$15,000, provided that the selection process described in the appropriate Code sections is followed.
- (4) Contracts estimated not to exceed \$25,000 for road, highway or parking lot maintenance provided that at least three (3) competitive quotes are obtained, if available, and a record of said quotes and efforts to obtain them are maintained.
- (5) Emergency contracts when the Executive Officer makes written findings that an emergency exists and that the emergency consists of circumstances that could not have been reasonably foreseen and requires prompt execution of a contract to remedy that condition. An emergency contract must be awarded within sixty (60) days of the declaration of the emergency unless the Board grants an extension.
- (6) Purchase of food items pursuant to Section 2.04.090.
- (7) 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.
- (8) Contracts for computer hardware and software. Selection procedures for these contracts, however, must follow the RFP process outlined in Section 2.04.050, "Personal Services Contracts."
- (9) Contracts under which Metro is to provide a service only and incurs no financial obligation to another party.
- (10) Contracts for the lease or use of the Oregon Convention Center or other facilities operated by the Metropolitan Exposition-Recreation Commission.

- (11) For the purchases by the Metropolitan Exposition-Recreation Commission, all contracts estimated to be less than \$31,000 provided that any rules adopted by the Commission which provide for substitute selection procedures are followed.
- (12) For purchases by the Metropolitan Exposition-Recreation Commission, emergency contracts when the General Manager makes written findings that:
 - 1) immediate procurement is essential to prevent a delay in work or extra expense to the Commission in circumstances which could not have been foreseen and avoided;
 - 2) there is a threat of immediate damage to Commission property;
 - or 3) there is an immediate danger to citizens or employees.The General Manager shall report to the Commission at its next regularly scheduled meeting of any contracts entered into pursuant to this section.
- (13) For purchases by the Metropolitan Exposition-Recreation Commission, 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.
- (14) Contracts for services if the value of the contract is less than \$500.
- (15) When the value of a public contract is greater than \$500, but less than \$2,500, the district may accept less than three (3) quotes if at least three (3) quotes are sought. In this case, the district will prepare a written record to show the effort to obtain at least three (3) quotes.

(c) Bonds: The following contracts are exempt from bid security and bond requirements:

- (1) Bid security for contracts priced at \$15,000 or less, unless the Executive Officer determines it is in the public interest to require bid security.
- (2) Labor and material bond for contracts priced at \$15,000 or less, unless the Executive Officer determines it is in the public interest to require labor and material bond.
- (3) Performance bond for contracts priced at \$10,000 or less, unless the Executive Officer determines it is in the public interest to require performance bond.

(d) [(c)] Board Resolution: Specific contracts, not within the classes exempted in subsection (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.

(e) [(d)] Limitation: The exemptions in subsections (a)-(c), above, are exemptions to the competitive bid process only; all other procedures, including review and approval, apply to these contracts.

2.04.042 Public Contracts [Under] Between \$500 and \$2,500:

(a) Selection Process: When the amount of the contract is \$500 or more, but less than \$2,500, 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.

[(1) Under \$500: Unless completely exempt from competitive bidding under Section 2.04.041, competitive bids are not required for public contracts less than \$500. The District should, where feasible, obtain competitive quotes.]

[(2) Between \$500 and \$2,500: Unless completely exempt from competitive bidding under Section 2.04.041, when the amount of the contract is \$500 or more, but less than \$2,500, 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.]

(b) Approval Process: For public contracts of an amount of less than \$2,500, the Director of the initiating department, or a designee of the Director approved by the Executive Officer, may sign contracts if the following conditions are met:

- (1) A standard contract form is used;
- (2) Any deviations to the contract form are approved by the General Counsel;
- (3) The expenditure is authorized in the budget;
- (4) The contract does not further obligate the District for \$2,500 or more;

(5) The appropriate Scope of Work is attached to the contract;

(6) The contract is for an entire project or purchase; not a portion of a project or purchase which, when complete, will amount to a cost of \$2,500 or more; and

(7) No contract may be approved or executed for any amount in excess of the amount authorized in the budget.

(c) All contracts are subject to the rules and procedures of Code Section 2.04.030, "Rules and Procedures Governing Personal Services and Public Contracts."

(d) Prior to the award of a contract to any bidder other than the apparent low bidder the Executive Officer shall obtain the prior approval of the Contract Review Board.

ADOPTED by the Council of the Metropolitan Service

District this _____ day of _____, 1990

Not Adopted

Tanya Collier, Presiding Officer

ATTEST:

Clerk of the Council

STAFF REPORT

CONSIDERATION OF ORDINANCE NO. 90-342, FOR THE PURPOSE OF AMENDING CHAPTER 2.04 CONTRACT PROCEDURES OF THE METRO CODE IN ORDER TO MOVE ITEMS THAT ARE EXEMPTED FROM COMPETITIVE BIDDING TO 2.04.041, REQUIREMENT OF COMPETITIVE BIDDING, EXEMPTIONS AND OTHER MINOR NON-POLICY CHANGES

Date: March 9, 1990

Presented By: Ray Phelps

PROPOSED ACTION

Amend the Metro Code in order to move certain provisions of 2.04.041(a)(1) and 2.04.042(a)(2), exemption from the three quote requirement, to 2.04.041, Requirement of Competitive Bidding, Exemptions. Other minor changes for clarification purposes that do not alter the existing policy of the Contract Review Board are also recommended.

FACTUAL BACKGROUND AND ANALYSIS

A review of the contract provisions of the Metro Code during the drafting of operating procedures revealed that certain items exempted from competitive bidding were not appropriately stated under 2.04.04, Exemptions. The review also indicated the need for minor revisions.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Ordinance No. 90-342.