

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING AN) RESOLUTION NO. 11-4267
EXEMPTION FROM COMPETITIVE BIDDING)
AND AUTHORIZING PROCUREMENT BY) Introduced by Acting Chief Operating Officer
REQUEST FOR PROPOSALS FOR THE) Daniel Cooper, with the concurrence of
CONSTRUCTION OF THE NEW ZOO) Council President Thomas Hughes
ELEPHANT HABITAT AND ASSOCIATED)
INFRASTRUCTURE)

WHEREAS, at the General Election held on November 4, 2008, the Metro Area voters approved Oregon Zoo Bond Measure 26-96, entitled “Bonds to Protect Animal Health And Safety; Conserve and Recycle Water,” a major component of which is the construction of a new elephant habitat, which includes associated infrastructure work such as constructing a new perimeter service road, relocating the zoo train route and train snow shed, relocating birds of prey mews and upgrading utilities (the “New Elephant Habitat”); and

WHEREAS, construction of the New Elephant Habitat is planned for Metro fiscal years 2012 through 2014; and

WHEREAS, ORS 279C.335 and Metro Code 2.04.054 require that all Metro public improvement contracts shall be procured based on competitive bids, unless exempted by the Metro Council, sitting as the Metro Contract Review Board; and

WHEREAS, the Oregon Zoo wishes to obtain an exemption from competitive bidding, and instead procure the construction of the New Elephant Habitat by an alternative contracting method known as Construction Manager/General Contractor (CM/GC), which the Oregon Zoo expects to result in substantial cost savings to Metro, quicker construction, and the increased participation and competition among Minority, Women, and Emerging Small Business (MWESB) contractors; and

WHEREAS Metro Code Section 2.04.054(c) authorizes the exemption of a public improvement contract from competitive bidding and the appropriate use of alternative contracting methods that take account of market realities and modern innovating contracting and purchasing methods, so long as they are consistent with the public policy of encouraging competition, subject to the requirements of ORS 279C.335; and


WHEREAS, ORS 279C.335(4) requires that the Metro Contract Review Board hold a public hearing adopting written findings showing that: the exemption of a public improvement contract from competitive bidding is unlikely to encourage favoritism in the awarding of the public improvement contract associated with the exemption; said exemption is unlikely to substantially diminish competition for public improvement contracts; and that said exemption will likely result in substantial cost savings to Metro; now therefore

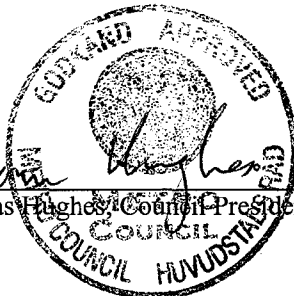
BE IT RESOLVED THAT THE METRO CONTRACT REVIEW BOARD:

1. Exempts from competitive bidding the procurement and award of a public improvement contract for the construction of the New Elephant Habitat; and
2. Adopts as its findings in support of such exemption the justifications, information and reasoning set forth on the attached Exhibits A and B, which are incorporated by this reference as if set forth in full; and

3. Authorizes the Chief Operating Officer to prepare a form of Request for Proposals for Construction Management/General Contractor that includes as criteria for contractor selection the contractor's proposed contract management costs, contractor's demonstrated public improvement project experience and expertise, the contractor's demonstrated Construction Manager/General Contractor project experience, the contractor's completion of projects of similar scale and complexity, the contractor's experience in incorporating sustainability construction practices and design into projects, and the use of minority, women and emerging small businesses (MWESB) and any other criteria that ensures a successful, timely, and quality project, in the best interest of Metro and the Oregon Zoo; and
4. Following the approval of said form of Request of Proposals by the Office of the Metro Attorney, to issue such approved form, and thereafter to receive responsive proposals for evaluation; and
5. Following evaluation of the responses to the Request for Proposals, authorizes the Chief Operating Officer to execute a contract with the most advantageous proposer to construct the New Elephant Habitat.

ADOPTED by the Metro Council this 30 day of June 2011.


Thomas Hughes, Council President



Approved as to Form:

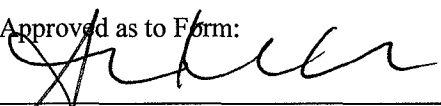

Alison Kean Campbell, Acting Metro Attorney

EXHIBIT A

Findings in Support of an Exemption from Competitive Bidding

Pursuant to ORS 279C.335(2) and (4), and Metro Code Section 2.04.054(c), the Metro Contract Review Board makes the following findings in support of exempting the procurement of the New Elephant Habitat from competitive bidding, in favor of an RFP solicitation for a Construction Manager/General Contractor public improvement construction contract:

1. The exemption is unlikely to encourage favoritism or substantially diminish competition.

The Metro Contract Review Board finds that exempting the procurement of the construction of the New Elephant Habitat from competitive bidding is “unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts” as follows: The RFP will be formally advertised with public notice and disclosure of the planned CM/GC alternative contracting method and made available to all qualified contractors. Award of the contract will be based on the identified selection criteria and dissatisfied proposers will have an opportunity to protest the award. Full and open competition based on the criteria set forth in the Metro Contract Review Board resolution will be sought, with the contract award going to the most advantageous proposer. Competition will be encouraged by: contacting local sub-contractors, including MWESB firms and notifying them of any opportunities within their area of expertise; utilizing the Oregon Daily Journal of Commerce and a minority business publication for the public advertisement; performing outreach to local business groups representing minorities, women and emerging small businesses; and by contacting contractors known to Metro to potentially satisfy the RFP criteria.

2. The exemption will likely result in substantial cost savings to Metro.

The Metro Contract Review Board finds that exempting the procurement of the construction of the New Elephant Habitat from competitive bidding will likely result in substantial costs savings to Metro, considering the following factors:

- a. **Operational, budget and financial data:** Utilizing an RFP process to select a CM/GC will allow Metro to obtain guaranteed maximum price project costs from the construction contractor(s), and also allow for cost reductions through pre-construction services by the contractor during the design phase, including a constructability review, value engineering, and other services. Given the high degree of complexity of the project improvements, the need to integrate with pre-existing infrastructure, and challenging environmental and topographical site constraints, involving the contractor early during the design process fosters teamwork that results in a better design, fewer change orders, and faster progress with fewer unexpected delays, resulting in lower costs to Metro. Faster progress and an earlier completion date will also help Metro avoid the risk of inflationary increase in materials and construction labor costs.
- b. **Public Benefits:** The expeditious completion of the project by using the CM/GC process will help ensure that the new expanded habitat is available for the Zoo’s elephants and for viewing by the public as soon as possible, thus more quickly bringing economic benefits to the Zoo and to the Metro Area. In addition to the public benefits from the cost savings noted above, the procurement of a CM/GC construction contract through RFP process will help realize Metro’s aspirational goal of obtaining 15 percent MWESB participation.

- c. **Value engineering:** The CM/GC process will enable the contractor to work with the project architect and the Zoo bond staff to help reduce construction costs by providing early input and constructability review to designers, avoiding costly redesigns and change orders, and providing opportunities for the architects and contractor to work together on both practical and innovative solutions to complex design issues. This type of contract will allow the designers to more easily explore with the contractor the feasibility of innovative design solutions and incorporate ongoing value engineering. Such solutions are expected to result in a more innovative project, at a lower cost, with shortened project completion time.
- d. **Specialized expertise required.** The construction of complex animal habitats like the New Elephant Habitat requires special expertise, knowledge, and experience, all of which can be factored into the contractor selection in the RFP process. The selection of a contractor with such specialized expertise to construct the project will result in a substantially lower risk to Metro, because it increases the likelihood of the project being completed on or ahead of schedule, resulting in lower costs and increased benefit to elephants and Zoo patrons. The ability to factor expertise and experience into contractor selection is inherent in the RFP process, but is not normally part of the traditional competitive bid process.
- e. **Public safety:** The New Elephant Habitat is a large, complex project subject to a tight construction schedule. Construction will occur while the Elephants remain on exhibit and the rest of the Zoo continues to be safely open to the public. The CM/GC contracting process will enable the contractor to work with the project architect and the Zoo construction and design staff to plan for minimizing safety hazards and conflict between the project and ongoing Zoo operations, by providing early input into issues of project phasing, construction staging areas, construction access corridors, and scheduling. Such integrated early planning efforts are expected to limit delay causing conflicts and decrease risks to public safety, thus reducing the risk of delays and costly injury claims.
- f. **Market conditions:** As stated above, the CM/GC contracting process involves the contractor early during the design process, resulting in a better design, fewer change orders, and faster progress with fewer unexpected delays, resulting in lower costs to Metro. Faster progress and an earlier completion date is expected to allow Metro to take advantage of a lingering downturn in construction and materials costs resulting from the economic recession and slow economic recovery.
- g. **Technical complexity:** The design and construction of large animal zoo exhibits requires technical expertise, knowledge, and experience, all of which can be factored into the contractor selection in the RFP process. The selection of a contractor with demonstrated experience and success in implementing such projects will result in a substantially lower risk to Metro, because it increases the likelihood of the project being completed on budget, with fewer construction delays and change orders, resulting in lower costs and increased benefit to elephants and Zoo patrons. The RFP process will take into account each contractor's past performance and technical knowledge. Based on the necessary quality of the finished habitat, and the technical complexity of the undertaking, the Procurement Officer believes an alternative contracting process to be necessary and in the best interest of the agency.

EXHIBIT B

Findings in Support of Use of Alternative Contracting Method

In February 2011, Pinnell/Busch, Inc., an experienced construction management firm in Portland, Oregon, worked with the Zoo's bond project team and a number of industry experts in alternative contracting methods (primarily members of the Oregon Public Contracting Coalition) to survey industry practices and results. The team's final report, recommending Construction Management/General Contractor (CM/GC) as a beneficial contracting process for zoo bond projects, was presented to the Oregon Zoo Bond Advisory Group (OZBAG) in March 2011. OZBAG supported the group's findings and the recommendation to pursue a CM/GC contract for the new elephant habitat and associated infrastructure project.

Utilizing an RFP process will not diminish competition, as it will allow for open competition among contractors experienced in CM/GC projects. The RFP will be formally advertised in local publications and posted on Metro's web site, as well as mailed to known experienced contractors. CM/GC is now the most widely used contracting method for large, mission-critical, public building projects in Oregon.

Properly implemented CM/GC contracting provides a process that ensures a successful project. Frequently cited benefits of the method include:

1. Results in a better design that meets the owner's objectives
2. Encourages competition, especially for Minority, Women, and Emerging Small Business (MWESB) subcontractors
3. Can be completed in a faster time frame
4. Costs less than a design-bid build project that is designed and constructed in the traditional manner
5. Reduces the risks of delays, cost overruns, and disputes
6. Limits the number of change orders for unforeseen conditions

These benefits would likely be particularly present for projects constructed in the Zoo's working environment which is complicated by the following factors:

1. Continual operations (24/7 basis)
2. Widespread public access and need for a quality visitor experience to maintain current revenues
3. Extremely sensitive and dangerous occupants
4. Very difficult site layout, work site access, and geotechnical conditions
5. Highly specialized exhibit construction means and methods
6. Extensive program goals with somewhat limited budget for the anticipated scope and quality

A key benefit of CM/GC is involving a contractor during the design process. Pre-construction services offered during this process include a constructability review, value engineering, and other services during design. Involving a contractor during the design fosters teamwork that results in a better design, faster progress with fewer delays, and less costs.

In addition, the use of an alternative contracting process will also satisfy the requirement set forth in ORS 279B.085(6) that the contract will be awarded to the entity that is "the most advantageous to the contracting agency."

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 11-4267, METRO COUNCIL,
ACTING AS THE METRO CONTRACT REVIEW BOARD, FOR THE
PURPOSE OF AUTHORIZING AN EXEMPTION FROM COMPETITIVE
BIDDING AND AUTHORIZING THE REQUEST FOR PROPOSALS OF
PROCUREMENT FOR THE CONSTRUCTION OF THE NEW ZOO
ELEPHANT HABITAT AND ASSOCIATED INFRASTRUCTURE

Date: May 19, 2011

Prepared by: Darin Matthews, 503 797-1626
Craig Stroud, 503 220-2451

BACKGROUND

The Oregon Zoo plans to construct a new elephant habitat as part of executing the 2008 capital improvements bond, including associated infrastructure work; a new perimeter service road, relocating the zoo train route, relocating birds of prey mews and upgrading utilities.

The project conceptual design was created as part of the master plan prepared under a separate contract with SRG Architects. Recognizing the complexity of this project, Metro contracted with Pinnell Busch, a project management consulting firm, to research a recommended procurement method. Pinnell Busch collaborated with the Oregon Public Contracting Coalition whose findings concluded a Construction Manager General Contractor, CM/GC, would be the best contracting method for the new elephant habitat. The CM/GC recommendation is supported by the Oregon Zoo Bond Advisory Group as well as the Oregon Zoo Bond Oversight Committee and is a common procurement practice used by public agencies when a construction project is identified with the criteria stated in Exhibit A and B.

The Zoo Bond Program Director and Construction Manager have reviewed the recommendation developed by Pinnell Busch and the Oregon Public Contracting Coalition and agree the CM/GC procurement method is the most beneficial to Metro.

The resolution and attached findings describe the specialized nature of this project. Based on these findings, the Procurement Officer believes that a value-based selection process is more appropriate than a traditional, competitive bid (which looks solely at lowest bid price). Therefore, it is recommended to Council that an alternative procurement process, Construction Manager General Contractor, be authorized. This will allow the Oregon Zoo to consider cost, as well as experience and expertise in completing similar projects in selecting the most advantageous contractor for this project.

ANALYSIS/INFORMATION

1. **Known Opposition:** None known.
2. **Legal Antecedents:** Metro Code 2.04.054, 2.04.054(c); Oregon Revised Statutes 279C.335(4).
3. **Anticipated Effects:** Procurement process will be open and competitive, but items other than cost will be considered in the awarding of the contract. Increased use of MWESB subcontractors is anticipated.

4. **Budget Impacts:** The CM/GC process offers safeguards for cost control of the project, including early involvement by construction contractor in the design process, as well as a limited change orders.

RECOMMENDED ACTION

Metro Council, acting as Public Contract Review Board, approves the use of a Construction Manager General Contractor process and exempts this project from traditional competitive bidding. Further, Council authorizes the execution of the resulting contract by the Chief Operating Officer in a form to be approved by the Office of the Metro Attorney.