

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING AN) RESOLUTION NO. 14-4499
EXEMPTION FROM COMPETITIVE BIDDING)
AND AUTHORIZING PROCUREMENT BY) Introduced by Chief Operating Officer Martha
REQUEST FOR PROPOSALS FOR THE) Bennett, with the concurrence of Council
CONSTRUCTION OF THE NEW EDUCATION) President Thomas Hughes
CENTER AT THE OREGON ZOO 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 regional conservation education center, which includes associated infrastructure work such as a public plaza with guest amenities, a storm water detention planter, visitor path upgrades, a separate education program participant entrance and utility upgrades (the “New Education Center”); and

WHEREAS, construction of the New Education Center is planned for Metro fiscal years 2015 through 2016; 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 Education Center by an alternative contracting method known as Construction Manager/General Contractor (CM/GC); 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 and adopt written findings showing that: the exemption of a public improvement contract from competitive bidding is unlikely to encourage favoritism in the awarding of public improvement contracts; 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 Education Center; 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 for pre-construction services, contractor's proposed overhead and profit costs for construction services, 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 demonstrated quality and schedule control, the contractor's experience in incorporating sustainability construction practices and design into projects, and the contractor's record of and commitment to 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

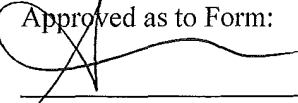
4. Following the approval of said form of Request of Proposals by the Office of the Metro Attorney, to issue such approved form, and thereafter to receive responsive proposals for evaluation; and
5. Following evaluation of the responses to the Request for Proposals, authorizes the Chief Operating Officer to execute a contract with the most advantageous proposer to construct the New Education Center.

ADOPTED by the Metro Council this 9 day of January 2014.



Tom Hughes, Council President



Approved as to Form:


Alison R. Kean, 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 Education Center at the Oregon Zoo 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 Education Center 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. Given the size of the project and the present market conditions, it is likely that the same general contractors that would have bid on the project will also submit a proposal in response to the RFP.

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 Education Center 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 Education Center is available for regional conservation education partners, zoo education program participants and 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 by enabling a qualitative review of proposers' approach to MWESB outreach and mentoring partnerships.

- 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**. Unique projects require special qualifications. The Education Center project includes work that can only be performed by a few specialists and which will require a design team and contractor with depth of experience, including but not limited to: green building; specific animal husbandry and laboratory requirements; integration of large artworks; large-scale utility work through identified landslide areas, and full-time traffic control and guest safety. 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 the community. 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 Education Center is a complex project subject to a tight construction schedule. Construction will occur across a large swath from the western entrance to Washington Park to the center of the zoo while 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. **Technical complexity**: The design and construction of 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 the community. The RFP process will take into account each contractor's past performance and technical knowledge. Based on the necessary quality of the finished project, and the technical complexity

of the undertaking, the Procurement Manager 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, recommended Construction Management by General Contractor (CM/GC) as a beneficial contracting process for zoo bond projects.

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. 14-4499 FOR THE PURPOSE OF
AUTHORIZING AN EXEMPTION FROM COMPETITIVE BIDDING AND AUTHORIZING
PROCUREMENT BY REQUEST FOR PROPOSALS FOR THE CONSTRUCTION OF THE
NEW EDUCATION CENTER AT THE OREGON ZOO AND ASSOCIATED
INFRASTRUCTURE

Date: January 9, 2014

Prepared by: Tim Collier, 503-797-1913
Brent Shelby, 503-525-4240

BACKGROUND

The Oregon Zoo plans to construct a regional conservation education center as part of executing the 2008 capital improvements bond, including associated infrastructure work; a public plaza with guest amenities, a storm water detention planter, visitor path upgrades, a separate education program participant entrance and upgrading utilities.

Recognizing the complexity of this project, Metro referred to analysis performed under contract by Pinnell Busch, a project management consulting firm, on recommended procurement and construction delivery methods for zoo bond program projects. Pinnell Busch collaborated with the Oregon Public Contracting Coalition whose findings concluded a Construction Management by General Contractor (CM/GC) would be the best contracting method for projects constructed in the zoo's working environment. The CM/GC recommendation is supported by the Oregon Zoo Bond Citizens' Oversight Committee and is a common procurement practice used by public agencies in the region.

Findings in Exhibits A and B describe the specialized nature of this project. Based on these findings, the Metro Procurement Manager believes that a value-based selection process is more appropriate than a traditional, competitive bid (which solely considers lowest bid price). Zoo Bond Program management staff and the Office of Metro Attorney concur the CM/GC method is the most beneficial to Metro.

Therefore, it is recommended to Council that the CM/GC alternative procurement process be authorized. This will allow Metro to consider cost as well as experience and expertise in completing similar projects and in selecting the most advantageous contractor for this project

ANALYSIS/INFORMATION

1. **Known Opposition** None known.
2. **Legal Antecedents** Metro Code 2.04.054, 2.04.054c; Oregon Revised Statutes 279C.335(4).
3. **Anticipated Effects** Public 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.