

BEFORE THE METRO COUNCIL CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING AN) RESOLUTION NO. 14-4507
EXEMPTION FROM COMPETITIVE BIDDING)
REQUIREMENTS AND ADOPTING FINDINGS) Introduced by Chief Operating
AUTHORIZING USE OF ALTERNATIVE) Officer Martha Bennett, with the
PROCUREMENT METHODS FOR THE PURCHASE OF) concurrence of Council President
THE ZOO CONCERT VENUE STAGE, TRUSS AND) Tom Hughes
CANOPY SYSTEM)

WHEREAS, the Metro Council is designated as the local public Contract Review Board (“CRB”) for Metro pursuant to ORS 279A.060 and Metro Code 2.04.010(d); and

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

WHEREAS, on January 9, 2014, Metro published a formal request for bids to purchase a new Zoo concert venue stage, truss and canopy system, (the “Zoo Stage”) and received no responsive bids; and

WHEREAS, Metro has determined that the vendor market participants for stage truss and canopy systems do not participate in formal bidding processes, and Metro now desires to exempt the Zoo Stage project from competitive bidding and employ an alternative procurement process designed to account for market realities and increase vendor competition; and

WHEREAS ORS 279C.335(4) and Metro Code Section 2.04.054(c) authorize the use of alternative procurement practices when it is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts; is reasonably expected to result in substantial cost savings to the contracting agency or the public; or otherwise substantially promotes the public interest in a manner that could not practically be realized by complying with competitive bidding requirements; and

WHEREAS, the Metro Contract Review Board finds that, as set forth in Exhibit A attached hereto, exempting the Zoo Stage contract from competitive bid requirements is unlikely to encourage favoritism in the award of the contract, or to diminish substantially the competition for such public improvement contracts, and further finds that the expeditious award of the contract in accord with an informal request for proposal process will result in substantial cost savings to Metro; and

WHEREAS, the Metro Contract Review Board finds that, as set forth in Exhibit A attached hereto, procurement of the Zoo Stage contract by means of an alternative procurement process in accord with Metro Code 2.04.053(c), using an “Intermediate Procurement Process,” in accord with ORS 279B.070, is unlikely to encourage favoritism in the award of the contract, or to diminish substantially the competition for such public improvement contracts, is reasonably expected to result in substantial cost savings to Metro, and otherwise substantially promotes the public interest by providing for the expeditious award of a contract so that the Zoo Stage may quickly be procured and installed in time for the 2014 concert season; and

WHEREAS, the procurement of the Zoo Stage contract using the Intermediate Procurement Process requires no public notice, and would allow Metro to informally solicit at least three competitive bids, followed by contract award to the bidder whose bid the Chief Operating officer deems best serve the interest of Metro; now therefore

BE IT RESOLVED that the Metro Council, sitting as the Metro Contract Review Board:

1. Exempts the procurement of the Zoo Stage Contract from the competitive bidding requirements of ORS 279C.335 and Metro Code Section 2.04.054.
2. Adopts as its findings in support of such exemption the justifications, information and reasoning set forth on the attached Exhibit A, incorporated herein by reference.
3. Authorizes the Chief Operating Officer to solicit informal price quotes or proposals in accord with the Intermediate Procurement Process provided in ORS 279B.070.
4. Authorizes the Chief Operating Officer to execute a contract for the purchase of the Zoo Stage with the proposer whose proposal best serves the interests of Metro, taking into account price and other considerations, including but not limited to product functionality and contractor experience.

ADOPTED by the Metro Council this _____ day of March, 2014.

Withdrawn

Tom Hughes, Council President

Approved as to Form:

Alison R. Kean, Metro Attorney

Exhibit A
Metro Contract Review Board Resolution 14-4507

**FINDINGS IN SUPPORT OF AN ALTERNATIVE PROCUREMENT PROCESS
FOR THE PURCHASE OF THE ZOO CONCERT STAGE, TRUSS AND ROOF SYSTEM**

As required by ORS 279C.335(a) and (b), the Metro Contract Review Board finds as follows:

1. It is unlikely that exempting the Zoo Concert Stage, Truss and Roof System Contract (“Zoo Stage Contract”) from competitive bidding and employing an intermediate procurement process will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts; and
2. The awarding of the Zoo Stage Contract under the exemption will likely result in substantial cost savings to Metro;
3. In light of the following justifications and considerations required by ORS 279C.330:
 - a. No Favoritism or Diminished Competition. Use of the Intermediate Procurement Process is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts, because Metro will be directly contacting no fewer than three and if possible 5 or more contractors having the technical expertise to compete for the Stage Project and will request proposals, employing a competitive process to select among responding contractors, in which price will be a factor. Metro is encouraging competition to the maximum extent practical in this instance.
 - b. Cost Savings. The contract will be awarded to the proposer whose quote or proposal best serves Metro. Price will be among the factors taken into consideration. Metro Procurement Services anticipates an increased vendor response to the direct solicitation allowed under Intermediate Procurement, leading to more competition on price.
 - c. Public Benefits. The use of the Intermediate Procurement Process will allow the Zoo to meet Stage Project deadlines, providing for a new and improved concert stage, truss and canopy system in time for the 2014 Zoo concert series, and avoiding additional stage rental expenses. Expediently procuring an improved permanent stage truss and canopy system for 2014 will provide an improved experience for the artist and listeners, potentially leading to increased attendance for 2014 and booking better acts for 2015 and beyond.
 - d. Specialized Expertise Required Due to Technical Complexity. The construction of the Stage Project Improvements requires specialized experience and technical knowledge that exists primarily outside the state of Oregon. This alternative process will ensure that out-of-state vendors, as well as the one known in-state vendor, with this specialized expertise are directly solicited for participation in the procurement.

- e. Public safety. Public safety is an element of this project, as an engineered permanent improvement would use a permanent in-ground footing system to address structural and wind loads, as opposed to a temporary rental product footing system that requires above ground anchors, weightings, and additional support infrastructure over an expanded footprint.

- f. Market conditions. Metro sought bids for the Stage Project through the statutorily required formal public bidding process, and received one submittal that was deemed non-responsive to the bid requirements. Metro subsequently learned that the accepted custom in the market for outdoor stage structure is for buyers to contact seller directly to solicit a proposal and price quote. To obtain vendor participation, Metro wishes to directly contact several vendors and solicit competitive proposals, in keeping with market realities for this specialized improvement.

- g. Competition. Metro will be directly contacting several contractors having the technical expertise to compete for the project and requesting bids, and will be employing a competitive process to select among responding contractors. Metro is encouraging competition to the maximum extent practical in this instance.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 14- 4507, FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION FROM COMPETITIVE BIDDING REQUIREMENTS AND ADOPTING FINDINGS AUTHORIZING USE OF ALTERNATIVE PROCUREMENT METHODS FOR THE PURCHASE OF THE ZOO CONCERT VENUE STAGE, TRUSS AND CANOPY SYSTEM

Date: March ____, 2014

Prepared by: Gabriele Schuster, Procurement Manager
(503) 797-1577

BACKGROUND

The Oregon Zoo is in the process of redeveloping its concert venue to integrate with the new Elephant Lands project and future development as detailed in the Zoo's 2011 Comprehensive Capital Master Plan. This included the development of a concept plan, the demolition of the old band shell, and the procurement and installation of a new stage with a truss and canopy system.

The procurement and installation of the stage, truss and canopy system is a public improvement project, such that Metro issued a formal Request for Bids on January 9, 2014. Despite notifying providers in advance of the publication of the RFB, Metro received no responsive bids. Metro subsequently contacted nationally known providers of stage, truss and canopy systems and learned that providers in the industry are unaccustomed and unlikely to respond to a formal Request for Bids, and that the industry standard procurement method is to respond to informal requests for proposals over the telephone or in writing.

In order to allow Metro to procure the new stage, truss and canopy system and complete the redevelopment of the concert venue in the most timely and cost effective manner, Metro Procurement Services recommends that the Metro Contract Review Board exempt this project from competitive bidding and authorize the use of an alternative procurement process. The findings in Exhibit A to the attached resolution support the requested exemption from competitive bidding and describe the benefits of the informal "intermediate procurement process." Competition will be sought to the maximum extent practical, with several providers being contacted directly and invited to submit competitive price quotes or proposals.

ANALYSIS/INFORMATION

1. **Known Opposition.** None known.
2. **Legal Antecedents.** Metro Code 2.04.010(d), 2.04.054(c); Oregon Revised Statutes 279A.060, 279B.070, 279C.330, 279C.335(4).
3. **Anticipated Effects.** Competition will be sought and encouraged to the maximum extent practical, but a second formal publicly noticed request for bid process will not be employed. Instead, the informal "intermediate procurement process" will be consistent with industry practices and market realities. No fewer than three and ideally five or more providers will be contacted directly by Metro, with a request for competitive proposals conforming to the Zoo's specifications. The contract will be awarded to the offeror whose quote or proposal best serves Metro, taking into consideration price as well as other considerations, including but not limited to product functionality and contractor experience. Metro Procurement Services anticipates an increased vendor response to the procurement.

4. **Budget Impacts** The use of the informal process will allow the Zoo to meet Project deadlines, providing for a new concert stage, truss and canopy system in time for the 2014 canopy system, and avoid additional stage rental expenses.

RECOMMENDED ACTION

It is recommended that the Metro Council, acting as Metro Contract Review Board, approve the requested exemption from competitive bidding requirements and authorize the use of an alternative procurement process consisting of an intermediate procurement process to procure the Zoo stage, truss and canopy system.