

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING AN) RESOLUTION NO. 15-4656
EXEMPTION FROM COMPETITIVE BIDDING)
AND AUTHORIZING PROCUREMENT OF)
CONSTRUCTION MANAGER/GENERAL) Introduced by Chief Operating Officer Martha
CONTRACTOR SERVICES BY COMPETITIVE) Bennett, with the concurrence of Council
REQUEST FOR PROPOSALS FOR THE) President Tom Hughes
CONSTRUCTION OF THE NEW POLAR BEAR)
HABITAT AND ASSOCIATED)
INFRASTRUCTURE AT THE OREGON ZOO)

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 polar bear habitat, which includes associated infrastructure work such as a public plaza with guest amenities, visitor path upgrades, and utility upgrades (the “Polar Bear Habitat”); and

WHEREAS, construction of the Polar Bear Habitat is planned for Metro fiscal years 2018 through 2019; 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, Metro Code Section 2.04.054(c) authorizes the Metro Contract Review Board to exempt a public improvement contract from competitive bidding and direct 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, the Oregon Zoo wishes to obtain an exemption from competitive bidding for the Polar Bear Habitat public improvement project, and instead procure the construction of the Polar Bear Habitat by an alternative contracting method known as Construction Manager/General Contractor (CM/GC); and

WHEREAS, ORS 279C.335(4)(c) and ORS 279C.337 require that Construction Manager/General Contractor Services be procured in accordance with the administrative rules adopted by the Oregon State Attorney General and set forth in OAR 137-049-0600 to OAR 137-049-0690; and

WHEREAS, said administrative rules and ORS 279C.335(2) and (4) require that the Metro Contract Review Board hold a public hearing and adopt written findings establishing, among other things, 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 Polar Bear 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 services that includes as evaluation 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 record of completion of projects of similar type, 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 demonstrated commitment to workforce diversity and record of 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 in accord with ORS 279C.335(4)(c) and OAR 137-049-0600 to OAR 137-049-0690; 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 Polar Bear habitat.

ADOPTED by the Metro Council this 12th day of November 2015.



Tom Hughes, Council President

Approved as to Form:



Alison R. Kean, Metro Attorney

EXHIBIT A

Findings in Support of an Exemption from Competitive Bidding and Authorizing the Procurement by RFP of CM/GC Services for Construction of the Oregon Zoo Polar Bear Exhibit and Associated Infrastructure

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 Polar Bear habitat at the Oregon Zoo from competitive bidding, and authorizing use 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 Polar Bear 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 objective selection criteria set forth in the Metro Contract Review Board resolution will be sought, with the contract award going to the most advantageous proposer. Competition for the RFP will be encouraged by: posting on ORPIN (Oregon Procurement Information Network), 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. The CM/GC subcontractor selection process will be a low bid competitive method for contracts by requiring a minimum of three bids per scope, unless there is an approved exception. Competition among subcontractors will be encouraged by: contacting local subcontractors, including MWESB firms and notifying them of any opportunities within their area of expertise and by performing outreach to local business groups representing minorities, women and emerging small businesses.

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 Polar Bear habitat from competitive bidding will likely result in substantial costs savings to Metro, considering the following factors required by OAR 137-049-0630 and ORS:

- a. **Number of entities available to bid:** This factor has no application to the Construction of the Polar Bear habitat, as there are numerous firms interested in participating in the procurement, many of which would have bid on the project in the absence of the exemption from competitive bidding.
- b. **Construction budget and future operating costs:** Utilizing an RFP process to select a CM/GC will allow Metro to obtain 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. The ability to have the CM/GC do early work prior to completion of design shortens the overall duration of construction, resulting in less disruption to the Zoo as the state's top paid tourist attraction. Faster progress and an earlier completion date will also help Metro avoid the risk of inflationary increase in materials and construction labor costs.

CM/GC constructability review also allows for an ongoing review of the long term operating costs of design options, allowing for midcourse design choices leading to a project having lower long term operating maintenance and repair costs.

Metro has experience benefitting from CM/GC on constructability review with Elephant Lands, the zoo's largest project to date.

- c. **Public Benefits:** The expeditious completion of the project by using the CM/GC process will help ensure that the new Polar Bear habitat is available for the bears and guests as quickly 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.
- d. **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.
- e. **Specialized expertise required.** Unique projects require special qualifications. The Polar Bear habitat 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; large-scale construction work through identified landslide area; guest safety on campus; and project phasing to minimize impacts to guests, animals, and Zoo operations. 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.
- f. **Public safety:** The Polar Bear habitat is a complex project subject to a tight construction schedule. Construction will occur across a large swath in 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 risks to public safety, thus reducing the risk of costly injury claims. Metro's experience using CM/GC on Elephant Lands demonstrated the success in planning in advance for visitor needs and safety.

- g. **Reduces risk to Metro and the public.** The Polar Bear project is a major construction project that will take place in the heart of the Zoo at its central hub. As such, it will have an impact on the revenue-generating operations of the Oregon Zoo. The use of CM/GC will reduce the risk to Zoo operations by minimizing the duration of the construction disruption through early work amendments. Early Construction Manager (CM) involvement in project phasing and planning will inform the decisions of designers and the Zoo Bond so that Zoo operations may continue in and around construction efforts meanwhile preserving the safety of visitors. Early involvement by the CM reduces the risk of change orders, thus shortening the likely duration, lessening the risk of late delivery. Metro's experience with CM/GC on Elephant Lands demonstrated the reduced risk in change orders on a large scale project.
- h. **Exemption's effect on funding.** The exemption of the Polar Bear project will have no effect on funding for the project.
- i. **Effect on ability to control impact of market conditions.** The ability to implement early work amendments will enable the Zoo to save on labor and material costs for early work elements in environment where construction costs are escalating rapidly. The ability to do early work shortens the project's overall duration, allowing bids to be obtained sooner, before further inflationary increases occur. The CM/GC firm will be working alongside the design team to identify measures to keep the project within budget during the design phase.
- j. **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 similar 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.
- k. **New construction, renovation or remodel:** The Polar Bear project involves new construction and the extensive replacement of existing antiquated infrastructure, much of which is underground and some of which is of unknown location, quality and condition. Some of the design limitations and conditions are likely to be

unknown until uncovered by work performed under an early work amendment, which can be performed during design development to inform the design process.

- l. **Occupancy during construction.** Construction will occur across a large swath in the center of the Zoo while the rest of the Zoo must continue to operate safely and be 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 minimize 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 conflicts thus reduce the risk of construction delays and costly change orders.
- m. **Multi-phase construction.** The Polar Bear project can be conducted in phases, allowing for early work amendments to start on the beginning construction phases while finalizing overall design, which ultimately saves time on the overall project. Early work phases are expected to uncover latent conditions at the project site that, once exposed, will then be addressed efficiently and less expensively during ongoing design, avoiding costly redesigns and change orders,
- n. **Availability of personnel, consultants and legal counsel with CM/GC expertise.** With the Elephant Lands project, the Zoo Bond Program has established a successful track record of negotiating, administering and enforcing the terms of Metro's CM/GC public improvement contract. This team, or a team equivalent in qualifications and expertise, will be deployed on the Polar Bear project.

3. **Other substantial benefits to Metro – additional findings.**

Industry practices, surveys, trends. 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. The report determined that 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

Past experience and evaluation of Elephant Land CM/GC.

The Zoo Elephant Lands project, now approximately 95% complete, is the largest construction project in the Zoo's history. The benefits to the Elephant Lands Project achieved through the

CM/GC process include:

1. The zoo obtained cost reductions through pre-construction services by the contractor during the design phase, including a constructability review (e.g. materials, phasing, layout and design) and value engineering.
2. Phased construction starting with relocation of Wildlife Live and new service road in March 2013. These two scopes of work were able to start while the main elephant project design was still being developed, which saved approximately eight months on the overall schedule and allowed for construction access to the site without disrupting Zoo activities.
3. Phased construction in relation to the elephants themselves, allowing the herd to stay at the Zoo rather than temporary relocation.
4. Five percent of GMP in change orders. On a project of this size and complexity, one would ordinarily expect a ratio of at least ten percent or greater in change orders increasing the cost of construction.
5. The project achieved nine percent MWESB participation, with approximately \$4M going to the MWESB community.
6. The Zoo was able to safely maintain visitor attendance and all normal activities during two and one-half years of construction.

Benefits and drawbacks of CM/GC to Polar Bear project construction. The CM/GC method provides an invaluable means of addressing the risks to Metro presented by the Zoo's unique working environment, which is complicated by the following factors:

1. Continual operations are required (24/7 basis)
2. Widespread public access and need to preserve 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

By involving the contractor extensively during the design process, the Zoo will be able to better account for, plan around, and address the above factors prior to commencing construction. This avoids project delays and expensive change orders, helps to reduce liability and revenue risks to Metro, and provides a foundation of cooperation upon which a high-quality result may be achieved, on schedule and on budget. Pre-construction services provided 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.

Given the Zoo Bond program's experience with CM/GC on the Elephant lands project, staff foresees no drawback to adopting the CM/GC method to implement the Polar Bear project.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 15-4656 FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION FROM COMPETITIVE BIDDING AND AUTHORIZING PROCUREMENT OF CONSTRUCTION MANAGER/GENERAL CONTRACTOR SERVICES BY COMPETITIVE REQUEST FOR PROPOSALS FOR THE CONSTRUCTION OF THE NEW POLAR BEAR HABITAT AND ASSOCIATED INFRASTRUCTURE AT THE OREGON ZOO

Date: October 30, 2015

Prepared by: Heidi Rahn
503-220-5709

BACKGROUND

The Oregon Zoo plans to construct a new polar bear habitat as part of executing the 2008 capital improvements bond. The vision for the Polar Bear project is to develop a new and larger habitat to encourage and promote exploring, digging, swimming, scratching, and other natural behaviors. As the world's largest land predators, polar bears need space, and the proposed upgrade will offer them not only more room, but also a safer and more natural habitat to explore.

The new habitat is needed to increase access to natural substrate; renovate and increase the efficiency of the water-filtration system; reduce temperatures; chill the pool water; and increase both land and pool space. New holding areas would have better lighting and ventilation, allowing better care for the animals. Space requirements, water quality, and housing conditions will meet or exceed the Manitoba Protocols established for zoo polar bears.

The Oregon Zoo has the opportunity to educate guests about climate change and the research the zoo conducts with polar bears to assess the impacts of such changes. A key component of the new Polar Bear exhibit will be to bring the zoo's research activities to the forefront of the visitor experience. One of the main objectives of the interpretive messaging will be to introduce facts about climate change, polar bear conservation, and actions visitors can take.

Infrastructure work associated with the polar bear project includes a public plaza with guest amenities, visitor path upgrades 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 Coalition¹ 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, complicated by:

- Ongoing 24-hour operations
 - Widespread public access and need for a quality visitor experience to maintain current revenues
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- Sensitive and potentially dangerous animal occupants
- Very difficult site layout, work site access, and geotechnical conditions
- Highly specialized exhibit construction means and methods
- Extensive program goals with somewhat limited budget for the anticipated scope and quality

The CM/GC procurement method is supported by the Oregon Zoo Bond Citizens' Oversight Committee and is a common procurement practice used by public agencies. Area agencies such as City of Portland, Tri-Met, and Port of Portland utilize the CM/GC process for their large, complex projects.

CM/GC offers a distinct advantage over traditional design-bid-build (low bid) method to enhance participation by MWESB (minority/woman-owned/emerging small business) contractors. The procurement method for CM/GC, a Request for Proposals, enables Metro to specifically request and qualitatively evaluate proposer's approach to MWESB outreach and partnership and workforce diversity. The CM/GC delivery method offers a better ability for public agencies to increase the use of minority, women and emerging small businesses (MWESB) in sub-contracting opportunities.

The attached resolution and findings in Exhibit A 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 management staff and the Office of Metro Attorney concur.

Therefore, staff seeks Council authorization to pursue the alternative procurement process known as CM/GC for the polar bear habitat at the Oregon Zoo. 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.
2. **Legal Antecedents** Metro Code 2.04.054, 2.04.054©; 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.