

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING AN) RESOLUTION NO. 16-4722
EXEMPTION FROM COMPETITIVE BIDDING)
AND AUTHORIZING PROCUREMENT BY) Introduced by Chief Operating Officer
REQUEST FOR PROPOSALS FOR THE) Martha J. Bennett, in concurrence with
CONSTRUCTION OF NATURE-BASED PLAY) Council President Tom Hughes
AREA AND ASSOCIATED INFRASTRUCTURE)
AT OXBOW REGIONAL PARK)

WHEREAS, in May 2013, area voters approved a five-year local option levy for the purpose of preserving water quality, fish and wildlife habitat and maintaining Metro's parks and natural areas for the public; and

WHEREAS, as part of implementing the operating levy, Metro Parks and Nature's five-year work plan includes projects for natural area restoration and maintenance, improvements for visitors, park maintenance, volunteer programs, conservation education, and community grants; and

WHEREAS, play area improvements at Oxbow Regional Park were identified as one of the 2013 levy access improvement projects in the five-year work plan; and

WHEREAS, construction of the play areas is planned for Metro fiscal year 2016; and

WHEREAS, Metro Parks and Nature has been awarded \$167,500 in Land & Water Conservation Fund (LWCF) grant funding through the State of Oregon; and

WHEREAS, the LWCF grant requires completion by June 30, 2017; and

WHEREAS, Metro Parks and Nature has developed conceptual designs for providing nature-based play area improvements at Oxbow Regional Park; and

WHEREAS, Metro Parks and Nature is under contract with an experienced play area design team to develop nature-based play area improvement plans; and

WHEREAS, Metro Parks and Nature recognizes that outdoor play and exposure to nature and natural materials are vital to the development of children; and

WHEREAS, Metro Parks and Nature has experience with the design and construction of nature-based play areas at Cooper Mountain Regional Park and Blue Lake Regional Park; and

WHEREAS, Metro Parks and Nature has funded through the Nature in Neighborhoods grant program, nature-based play areas at Westmoreland Park, Cully Park and Gateway Green in the City of Portland; Nadaka Park in the City of Gresham; Bull Mountain Park in the City of Tigard; and Hawthorne Park in Clackamas County; and

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

WHEREAS, Metro Parks and Nature wishes to obtain an exemption from competitive bidding, and instead procure the construction of the nature-based play areas through an alternative contracting method. The alternative contracting method proposed for this project is utilizing a Request for Proposal (RFP) with a Not-To-Exceed price to secure the construction contractor. Metro Parks and Nature expects the RFP contracting method to result in improved design and construction team collaboration, project design, safety, cost control, schedule efficiencies, and visitor experience; 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(5) 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 or other substantial benefits to Metro; now therefore

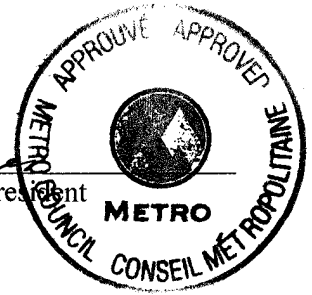
BE IT RESOLVED that the Metro Contract Review Board:

1. Exempts from competitive bidding the procurement and award of a public improvement contract for the construction of the new nature-based playgrounds at Oxbow Regional Park; and
2. Adopts as its findings in support of such exemption the justifications, information, and reasoning set forth in the attached Exhibits A and B, which are incorporated by reference as if set forth in full; and
3. Authorizes the Chief Operating Officer to prepare a form of Request for Proposals that includes as criteria for contractor selection the contractor's demonstrated public improvement project experience and expertise, the contractor's completion of projects of similar scope, scale and complexity, proposed contract management costs, 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 that is most advantageous to Metro to construct the nature-based playgrounds.

ADOPTED by the Metro Council this 28 day of July 2016.


Tom Hughes, Council President



Approved as to form:

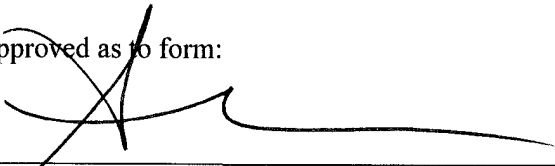

Alison R. Kean, Metro Attorney

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 Oxbow Regional Park nature-based play area improvements from competitive bidding, in favor of a Request for Proposals (RFP) solicitation for a public improvement construction contract:

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 nature-based play area improvements at Oxbow Regional Park 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 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 contractor that is the most advantageous to Metro. 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 type of project, 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.

The exemption will likely result in substantial cost savings and other substantial benefits to Metro.

The Metro Contract Review Board finds that exempting the procurement of the construction of the nature-based play area improvements from competitive bidding will likely result in substantial costs savings and other substantial benefits to Metro, considering the following factors:

- a. Limited number of persons available to bid.

Nature-based play areas, including their design and construction, are an emerging field of expertise, and as such, there are a limited number of qualified persons available to bid on the project. The alternative contracting procurement should eliminate the potential that no contractors would bid on a typical design/bid/build project, as experienced by other jurisdictions when procuring similar public improvements through the competitive bidding process. Given the type of project, 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.

b. Construction budget and operational costs.

Utilizing an RFP process to select a contractor will allow Metro to obtain guaranteed maximum price project costs from the construction contractor, and also allow for cost reductions through pre-construction services by the contractor during the final design phase, including a constructability review, estimates of probable material/installation costs and other services. Given the uniqueness of the project improvements, involving the contractor during the final design process fosters collaboration, teamwork and ownership that results in improved communication, a better design, fewer change orders, and faster progress with fewer unexpected delays, resulting in lower costs to Metro.

c. Public benefits in granting exemption.

The expeditious completion of the project by using the alternative RFP process will promote the efficient and effective completion of the project, thereby making it available for use by the public as soon as possible, thus more quickly bringing safe, unique and inclusive amenities to Oxbow Regional Park and the Metro area.

d. Value engineering techniques.

The alternative procurement process will enable the contractor to work with the project design and engineering team to improve implementation of the design and help reduce construction costs by providing early input and constructability review to designers, avoiding costly redesigns and change orders, and providing opportunities for the designer, engineer, and contractor to work together on both practical and innovative solutions to complex design and construction issues. This type of play environment is unique and often reactionary to the setting and the materials available for construction; often utilizing on-site products and materials. 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.

e. Specialized expertise required.

Unique projects require special qualifications. The design and construction of nature-based playgrounds requires special expertise, knowledge, and experience, all of which can be factored into the contractor selection in the RFP process. This type of play environment is unique and often reactionary to the setting and the materials available for construction; using on-site products and materials. 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 Oxbow Regional Park 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.

f. Increase in public safety.

Oxbow Regional Park is a well-visited park. Construction will occur in what are typically two heavily visited areas, while the rest of the park continues to be safely open to the public. The alternative contracting process will enable the contractor to work with the project design staff and park staff to understand, plan for, and minimize safety hazards and conflicts between the project and ongoing park operations. By providing input into issues of project phasing, construction staging areas, construction access corridors, and scheduling, the contractor will be critical to reducing impacts and the ultimate success of the project. 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.

g. Reduced risks.

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 Metro and park patrons. The RFP process will take into account each contractor's past performance, technical knowledge, and sub-consultant experience. Based on the necessary quality of the finished product, and the uniqueness of the undertaking, the Procurement Officer believes an alternative contracting process to be necessary and in the best interest of the agency.

h. Impact on source of funding, market costs, and time necessary for completion.

As stated above, the alternative contracting process allows agency staff to coordinate the design and construction teams, involve the contractor during the design process, resulting in a better, safer design, fewer change orders, and faster progress with fewer unexpected delays, resulting in lower costs to Metro. Nature-based play areas are not off-the-shelf installations. Rather, they often require one-of-a-kind construction details for which the professional design community and/or construction industry do not have standard pricing structures.

i. Impact on agency's ability to control the impact of market conditions and costs and time necessary for completion.

The alternative contracting process will allow the agency to more effectively and efficiently control the project and ensure its timely completion. Nature-based play areas are not off-the-shelf installations. Rather, they often require one-of-a-kind construction details for which the professional design community and/or construction industry do not have standard pricing structures.

j. Technical complexity of project.

The design and construction of the nature-based playgrounds 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 Metro and park patrons. The RFP process will take into account each contractor's past performance and technical knowledge. Based on the necessary quality of the finished product, and the uniqueness of the undertaking, the Procurement Officer believes an alternative contracting process to be necessary and in the best interest of the agency.

k. New construction.

The project is for new construction. The need to ensure that it is properly, safely, efficiently, and successfully implemented is of importance.

l. Occupation.

Although, the playground improvements will not be constructed on vacant lands, this factor is not applicable as occupation issues do not impact this choice of construction contracting.

m. Phases.

The project will involve a single phase of construction. The need to ensure that it is properly, safely, efficiently, and successfully implemented is of importance.

n. Experienced agency staff.

Metro staff, including project managers, the Procurement Department, and Office of Metro Attorney, has the expertise and substantial experience in alternative contracting methods and have assisted in developing the alternative contracting methods to be used in awarding this public improvement contract. Agency staff will also help negotiate, administer and enforce the terms of the public improvement contract. The process for which approval is sought was also recommended by other jurisdictions after they experienced difficulties with the traditional competitive design/bid/build process for a similar public improvement.

EXHIBIT B

Findings in Support of Use of Alternative Contracting Method

Utilizing a Request for Proposal (RFP) process will not diminish competition, as it will allow for open competition among contractors experienced in nature-based play area projects. The RFP will be formally advertised in local publications and posted on Metro's website, as well as mailed to known experienced contractors.

Properly implemented alternative contracting practices provide 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 at Oxbow Regional Park 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 natural environment
4. Highly specialized/unique design and construction means and methods
5. Extensive program goals and limited budget for the anticipated scope and quality

A key benefit of the alternative procurement method sought is the involvement of 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 collaboration, teamwork and ownership that results in improved communication, a better, safer design, faster progress with fewer delays, and less costs.

Utilizing an RFP process for procurement will enable Metro Parks and Nature to:

- coordinate design and construction team to ensure an efficient and successful project
- improve cost control with the contractor
- grant the ability to select a contractor based on necessary experiential qualifications rather than low bid
- eliminate the potential that no contractors bid on the design/bid/build project which happened in other local projects
- reduce the need for extensive design and detailing by the landscape architect and engineer; the contractor provides input and direction and shop drawing for design ideas that are generated by the design team.
- organize an integrated team that allows for increased ownership and creativity throughout the design and construction process

- promote efficiency around schedule and project delivery
- reduce the chance of change orders based on errors or omissions in the final construction drawings
- reduce the need for oversight required by the landscape architect
- utilize a process that was recommended by other agencies that have done similar projects
- allow for unique play experiences and detailing
- allow the design and contracting team to react to the setting and the materials available for construction; using on-site products and materials

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 16-4722, METRO COUNCIL, ACTING AS THE METRO CONTRACT REVIEW BOARD, FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION FROM COMPETITIVE BIDDING AND AUTHORIZING PROCUREMENT BY REQUEST FOR PROPOSALS FOR THE CONSTRUCTION OF NATURE-BASED PLAY AREA IMPROVEMENTS AND ASSOCIATED INFRASTRUCTURE AT OXBOW REGIONAL PARK

Date: July 28, 2016

Prepared by: Gabriele Schuster, Procurement, Ext. 1577
Rod Wojtanik, Parks & Natural Areas, Ext. 1846

BACKGROUND

Metro Parks and Nature plans to construct new nature-based play area improvements and the associated infrastructure at Oxbow Regional Park (Oxbow) as part of implementing the voter approved 2013 Operating Levy.

A conceptual design for play area improvements at Oxbow was created as part of the plan prepared under a separate contract with Learning Landscapes Design LLC. The concept is to provide unique nature-based play experiences that foster creativity, collaboration and a connection to the natural world. The concepts for Oxbow play area improvements were presented to Metro Council in 2014 when staff requested authorization to apply for a Land & Water Conservation Fund grant. Metro Council approved that request and subsequently Metro was awarded the grant and received funding in August of 2015.

Recognizing the uniqueness of this project, the alternative procurement recommendation is an acceptable procurement practice used by public agencies when a construction project is identified with the criteria stated in Resolution Exhibits A and B. In this instance, the alternative procurement method for securing a construction contractor is a Request for Proposal (RFP), rather than a Request for Bid (RFB), and is the most beneficial to Metro.

The resolution and attached findings describe the specialized nature of this project and play area development. Based on these findings, the Procurement Officer believes that a value and experience based selection process (RFP) is more appropriate than a traditional, RFB competitive bid (which looks solely at lowest bid price). Therefore, it is recommended to Council that an alternative procurement process be authorized. This will allow the agency 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.
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 alternative procurement process offers safeguards for cost control of the project, including involvement by the construction contractor from the schematic design phase through construction documents and construction cost development process, as well as limiting change orders.

RECOMMENDED ACTION

Metro Council, acting as Public Contract Review Board, approves the use of an alternative procurement process and exempts this project from traditional competitive bidding. Further, Council authorizes the execution of the resulting contract, solicited by a Request for Proposal, by the Chief Operating Officer in a form to be approved by the Office of the Metro Attorney.