

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING AN	)	RESOLUTION NO. 16-4745
EXEMPTION FROM COMPETITIVE BIDDING AND	)	
AUTHORIZING PROCUREMENT OF	)	Introduced by Chief Operating Officer
CONSTRUCTION MANAGER GENERAL	)	Martha Bennett in concurrence with
CONTRACTOR SERVICES BY COMPETITIVE	)	Council President Tom Hughes
REQUEST FOR PROPOSALS FOR THE	)	
RENOVATION OF THE OREGON CONVENTION	)	
CENTER EXTERIOR PLAZA AND ENTRIES	)	

WHEREAS, the Metro Exposition and Recreation Commission (MERC) intends to redesign and renovate the Oregon Convention Center’s northeast Plaza and Holladay and Martin Luther King Jr. Blvd. (MLK) entries to accommodate increased traffic from the new Convention Center Hotel and to resolve programming, physical layout and maintenance challenges that currently exist; and

WHEREAS, renovation of the Plaza and entries is planned for Metro fiscal years 2018 and 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, Metro and OCC wish to obtain an exemption from competitive bidding for the OCC Plaza and entries redesign public improvement project, and instead procure the renovation of the Plaza and exterior entries renovation by an alternative contracting method known as Construction Manager General Contractor (CM/GC); and

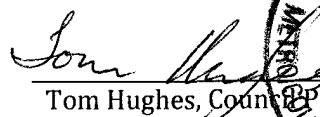
WHEREAS, ORS 279C.335(4)(c) and ORS 279C.337 require that CM/GC services be procured in accordance with the administrative rules adopted by the Oregon State Attorney General and set forth in OAR 137-049-0600 to OAR 137-049-0690; and

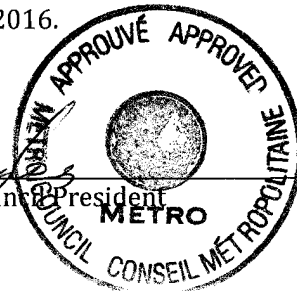
WHEREAS, said administrative rules and ORS 279C.335(2) and (4) require that the Metro Contract Review Board hold a public hearing and adopt written findings establishing, among other things, that the exemption of a public improvement contract from competitive bidding is unlikely to encourage favoritism 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:

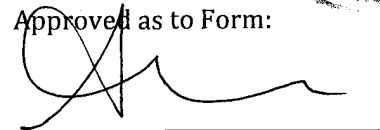
1. Exempts from competitive bidding the procurement and award of a public improvement contract for the renovation of the OCC Plaza and entries redesign;
2. Adopts as its findings in support of such exemption the justification, information and reasoning set forth on the attached Exhibit A, which is incorporated by this reference as if set forth in full;
3. Authorizes the Chief Operating Officer to prepare a form of Request for Proposals for CM/GC services that includes the following evaluation criteria: 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; contractor's demonstrated CM/GC project experience; contractor's record of completion of projects of similar type, scale and complexity; contractor's demonstrated quality and schedule control; contractor's experience in incorporating sustainability construction practices and design into projects; and contractor's demonstrated commitment to workforce diversity and record of use of businesses Certified by the Office of Business Inclusion and Diversity (COBID); and any other criteria that ensures a successful, timely, and quality project, in the best interests 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 for Proposals by the Office of Metro Attorney, to issue such approved form, and thereafter to receive responsive proposals for evaluation; and
5. Following evaluation of the responses in the Request for Proposals, authorizes the Chief Operating Officer to execute a contract with the most advantageous proposer for renovation of the OCC Plaza and entries.

ADOPTED by the Metro Council this \_\_\_\_\_ day of October, 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 and Authorizing the Procurement by RFP of CM/GC Services for Construction of the Oregon Convention Center Plaza and Entries Redesign**

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 Oregon Convention Center Plaza and entries redesign from competitive bidding, and authorizing use of an RFP solicitation for a Construction Manager General Contractor (CM/GC) 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 Oregon Convention Center (OCC) Plaza and entries redesign 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 sub-contractors, including COBID 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 OCC Plaza and entries redesign from competitive bidding will likely result in substantial costs savings to Metro, considering the following factors required by OAR 137-049-0630 and ORS 279C-335 2(b):

- a. **Number of entities available to bid.** This factor has no application to the Construction of the OCC Plaza and entries redesign, as there are numerous firms interested in participating in the procurement, many of which would have bid on the project the in 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. Involving the contractor early in 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 and risk to revenue generation to the OCC. 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 re-designed Plaza and entries are available for convention center guests and the general public as quickly as possible, thus enhancing the visitor experience. The concert area and outdoor receptions spaces that will be created by the plaza re-design will provide additional revenue to the OCC. In addition to the public benefits from the cost savings noted above, the procurement of a CM/GC construction contract through the RFP process will help realize Metro's goal of obtaining COBID participation by enabling a qualitative review of proposers' approach to COBID outreach and mentoring partnerships.
- d. **Value Engineering.** The CM/GC process will enable the contractor to work with the project architect and OCC staff to help reduce construction costs by providing early input and constructability review to designers, avoiding costly redesign 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.** The Plaza and entries redesign includes work which will require a design team and contractor with depth of experience, including but not limited to: environmentally sustainable site design, stormwater management, guest safety, project phasing to minimize impacts to guests, pedestrian circulation and wayfinding, and convention and event logistics and 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 part of the traditional low bid process.
- f. **Public Safety.** The Plaza and entries redesign is a complex project subject to a tight schedule. Construction will occur across the entire Northeast corner of the OCC site, including two of the three entrances, while the OCC 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 Metro and OCC project management and facilities staff to plan for minimizing safety hazards and conflict between the project and ongoing

OCC 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 successes in planning in advance for visitor needs and safety

- g. **Reduces risk to Metro and the public.** The Plaza and entries redesign is a major construction project that will take place along the access from the light rail and the new Convention Center Hotel as well as at two of the three public entrances to the facility itself. As such, it will have an impact on the revenue-generating operations of the Oregon Convention Center. The use of CM/GC will reduce the risk to OCC operations by minimizing the duration of the construction disruption through early work amendments. Early Construction manager involvement in project phasing and planning will inform the decisions of designers and OCC staff so that OCC 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 Plaza and entries redesign 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 Metro to save on labor and material costs for early work elements in an 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 sitework and grading which abuts public transportation and roadways, as well as complex phasing and highly coordinated scheduling required around public facilities that must remain open to and safe for the public require 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 OCC Exterior Plaza and entries redesign project involves new construction which much tie in to the existing building, as well as extensive excavation, grading, and sitework on the building exterior adjacent to the entries. Some of this work could impact the lower levels of the Convention Center interior. 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 take place at the exterior access and entries to the OCC, while the entire facility 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 OCC & Metro staff to minimize conflict between the project and ongoing OCC 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 and thus reduce the risk of construction delays and costly change orders.
  - m. **Multi-phase construction.** The OCC Exterior Plaza and entries re-Design 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, consultant and legal counsel with CM/GC expertise.** The Office of Metro Attorney, Project Manager, and Project Architect have the necessary qualifications and expertise to negotiate, administer, and enforce the terms of Metro's CM/GC public improvement contract, including prior experience governing large CM/GC projects and managing them to a successful completion.
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 COBID 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 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 COBID participation, with approximately \$4M going to the COBID 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 the OCC Plaza and entries redesign.** The CM/GC method provides an invaluable means of addressing the risks to Metro presented by the project's site conditions and timeline.

1. Facility must remain open and operational, and the work will take place at the exterior approach and entries.
2. Widespread public access and need to preserve a quality visitor experience to maintain current revenues.
3. Need to complete work before the completion of the Convention Center Hotel.
4. Adjacency to public transportation and state highway infrastructure.
5. Extensive program goals with somewhat limited budget for the anticipated scope.

By involving the contractor extensively during the design process, the OCC 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 the 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 OCC Exterior Plaza and entries redesign project.

## **STAFF REPORT**

IN CONSIDERATION OF RESOLUTION NO. 16-4745 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 RENOVATION OF THE OREGON CONVENTION CENTER EXTERIOR PLAZA AND ENTRIES

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Date: September 10, 2016

Prepared by: Nancy Strening and  
Gabriele Schuster

### **BACKGROUND**

The Oregon Convention Center (OCC) has a terraced, landscaped plaza located at the northeast corner (MLK & NE Holladay). The symmetrical terraces are suited for casual everyday use but there is little programmable space for events, activities or gatherings. The strong orientation to the building suggests a path to the front door of the OCC, which causes confusion in terms of way finding, since the two main entry doors are blocks away to the south and west. The existing trees and shrubs have outgrown their spaces. A redesign of the plaza at the northeast corner of the OCC will resolve the programming, physical layout, and maintenance challenges that currently exist.

Given the fact that a new convention center hotel is being planned for the three block site directly north across NE Holladay street, the corner plaza has potential to become a significant, more vibrant open space in Portland's Lloyd District.

The OCC is a 25 year-old facility. Updates and improvements are needed in anticipation of the headquarters hotel. Through a competitive procurement process, LMN Architects was hired to provide consulting and design services to create a cohesive plan for the execution of future capital projects. LMN conducted the initial phase project recommendations and cost estimating. One of the priority issues LMN identified was the confusion in navigation and ambiguity surrounding the visual identification of the OCC's main entrances. LMN proposed a project to modify the main entrances to be more visually identifiable. The OCC now wishes to proceed with the design of these entry modifications.

Because the entries design project and Plaza design project must integrate perfectly and are expected to proceed simultaneously, the preferred approach, and a best practice, is to use the Construction Manager General Contractor (CM/GC) alternative construction contracting method. This will allow staff, the design firm and the construction contractor to work together to better manage public safety while keeping the OCC open and operational for our visitors during construction.

As set forth in the findings attached to the Resolution, the CM/GC form of public improvement contracting allows the early participation of the contracting entity in the design process, and leads to more accurate budgeting and construction cost estimates, affords early constructability review leading to fewer change orders and substantial cost savings to Metro and MERC. CM/GC contracting also fosters early and continuous collaboration between MERC, the designer and the contractor. This "overlap" shortens the overall duration of the project, lessening the risks to public



safety, disruption of revenue generation, and inflationary increases in construction and materials and labor costs.

CM/GC offers a distinct advantage over traditional design-bid-build (low bid) method when seeking increased participation by COBID contractors. Contracts are procured by a Request for Proposals, which enables Metro to specifically request and qualitatively evaluate proposer's approach to COBID outreach and partnership and workforce diversity. The CM/GC delivery method offers a better ability for public agencies to increase the use of COBID firms 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). OCC and cPMO staff, as well as the Office of Metro Attorney concur.

Therefore, staff seeks Council authorization to pursue the CM/GC alternative procurement process for the OCC Exterior Plaza and entries and redesign. 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 2.04.54, 2.04.54C; 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 COBID 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 limited change orders.

#### **RECOMMENDED ACTION**

Metro Council, acting as Public Contract Review Board, approve the use of a construction manager general contractor process and exempt this project from traditional competitive bidding. Further, Council authorize the execution of the resulting contract by the Chief Operating Officer in a form to be approved by the Office of Metro Attorney.