

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING AN) RESOLUTION NO. 17-4771
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)
CONSTRUCTION OF THE OREGON CONVENTION)
CENTER PLAZA, ENTRIES, AND INTERIOR)
RENOVATIONS)

WHEREAS, the Metro Exposition and Recreation Commission (MERC) intends to renovate the Oregon Convention Center’s Northeast Plaza, Holladay Street and Martin Luther King Jr. Boulevard entries, and select interior spaces (the “Interior Renovations”) to accommodate increased traffic from the new Convention Center Hotel and to resolve programming, physical layout and maintenance challenges that currently exist; and

WHEREAS, ORS 279C.335 and Metro Code Section 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 innovative 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, on October 27, 2016, via 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,” the Metro Contract Review Board approved an exemption from competitive bidding for the OCC Exterior Plaza and Entries and authorized the procurement of a Construction Manager/General Contractor (“CM/GC”) to carry out the public improvement project; and

WHEREAS, Metro and OCC now wish to expand the above set forth authorization to include the renovation of the Interior of the Oregon Convention Center, and therefore wish to obtain a new exemption from competitive bidding to include renovation of the OCC Plaza, Entries, and Interior Renovations by the CM/GC; and

WHEREAS, construction of the Plaza, Entries, and Interior Renovations is planned for Metro fiscal years 2018, 2019 and 2020; 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

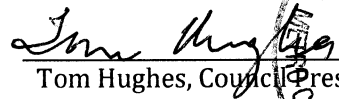
WHEREAS, said administrative rules and ORS 279C.335(2) and (4) require that the Metro Contract Review Board hold a public hearing and adopt written findings establishing, among other things, that the exemption of a public improvement contract from competitive bidding is unlikely to encourage favoritism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

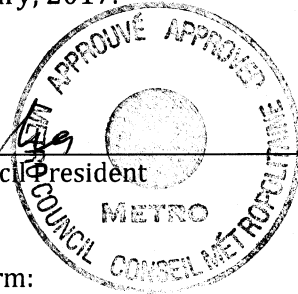
BE IT RESOLVED THAT THE METRO CONTRACT REVIEW BOARD:

1. Exempts from competitive bidding the procurement and award of a CM/GC public improvement contract for the construction of the OCC Plaza, Entries, and Interior Renovations.
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 herein by 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 fees for pre-construction services, contractor's proposed overhead and profit costs for construction services, contractor's demonstrated complex 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 subcontractor businesses Certified by the Office of Business Inclusion and Diversity (COBID) and any other criteria the ensure 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 for Proposals and Contract 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 in the Request for Proposals, authorizes the Chief Operating Officer to execute a contract with the most advantageous proposer to construct the OCC Plaza, Entries, and Interior Renovations.
6. Staff working on this Construction Management General Contractor public improvement contract are directed to work with Metro's Construction Careers Pathway Project staff prior to drafting the contract, to find opportunities to direct up to 1% of the contract amount towards efforts that increase the participation of women and people of color on Metro projects.

ADOPTED by the Metro Council this 9 day of February, 2017.


Tom Hughes, Council President



Approved as to Form:

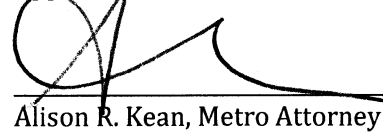

Alison R. Kean, Metro Attorney

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 , Entries, and Interior Renovations

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, Entries, and Interior Renovations 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, Entries, and Interior Renovations 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 Portland Business Tribune and a minority business publication for the public advertisement; performing outreach to local business groups representing minorities, women, emerging small businesses and service disabled veterans 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, emerging small businesses, and service disabled veterans.

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, Entries, and Interior Renovations 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 is unaffected by exemption from competitive bidding. Regardless of procurement method, 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. Competition is anticipated to be robust.

- 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, and a project that is more likely to be delivered on-time and on-budget. 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, entries, and interior spaces, including the entry lobbies and the Oregon Ballroom 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. The re-configuration of the circulation space (the "connector") between the Holladay/ABC lobbies and Ginkoberry Concourse will improve accessibility for guests and staff. 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, Entries, and Interior Renovations 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, Entries, and Interior Renovations 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, and in the public lobby, ballroom, and circulation spaces of the interior 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. The selection of a contractor with experience in safely performing a major renovation while a facility remains open to the public will result in a substantially lower risk to Metro. The ability to factor safety performance on similar projects into contractor selection is inherent in the RFP process, but is not part of the traditional low bid process.
- g. **Reduces risk to Metro and the public.** The Plaza, Entries, and Interior Renovations 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 Plaza, Entries, and Interior Renovations 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. This work will impact the lower and ballroom 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, interior lobby and circulation spaces, the Oregon Ballroom, and lower level operations areas 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 Plaza, Entries, and Interior Renovations 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 expert 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 Lands 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, Entries, and Interior Renovations.

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, interior lobby and circulation spaces, the Oregon Ballroom, and lower level operations spaces
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 service 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 Plaza, Entries, and Interior Renovations

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 17-4771 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
OREGON CONVENTION CENTER PLAZA, ENTRIES, AND INTERIOR RENOVATIONS

Date: January 23, 2017

Prepared by: Nancy Strening, CPMO
and Gabi Schuster, Procurement Manager

BACKGROUND

In anticipation of the Convention Center Hotel, updates and improvements to the 26 year-old Oregon Convention Center ("OCC") facility are needed in order to bring the venue up to current delegate expectations and improve overall market position within the competitive landscape. LMN Architects was hired to review and recommend renovations of underutilized or dated spaces to create new, highly flexible and functional spaces with upgraded finishes and infrastructure.

On October 27, 2016, the Metro Contract Review Board authorized an exemption from competitive bidding and the procurement by competitive request for proposals of a Construction Manager/General Contractor to renovate the OCC's northeast exterior plaza "Plaza," and the associated Holladay Street and Martin Luther King, Jr. Boulevard entries to the OCC Lobby ("Entries").

LMN Architects has been studying the facility and has recommended further renovations. OCC reviewed LMN's proposed projects and budget estimates, and have identified the following further projects OCC and Metro wish to execute together with the Plaza and Entries Projects ("the Interior Renovations"):

- Upgrades to the Holladay and MLK lobbies
- Renovation of infrastructure and finishes in the Oregon Ballroom and Oregon Ballroom Lobby
- Re-configuration of the circulation ("Connector") from the Holladay/ABC lobby to Ginkoberry Concourse for improved accessibility by visitors and staff.
- Addition of lower level multi-use space for OCC operations and Food and Beverage activities
- New carpeting for the remainder of public spaces to ensure a consistent look

Because the Plaza, Entries, and adjacent interior areas 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) as an alternative construction contracting method for all. Among the other public benefits set forth below and in the findings, 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.

The CM/GC method is a common procurement practice. 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 COBID contractors. The procurement method for CM/GC, a Request for Proposals, enable Metro to specifically request and qualitatively evaluate proposers' approach to COBID (Certification Office of Business Inclusion and Diversity) outreach and partnership, and workforce diversity. The CM/GC delivery method offers a better ability for public agencies to increase the utilization of COBID firms in partnership and 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 the Metro Attorney concur.

Therefore, staff seeks Council authorization to pursue the alternative contracting method known as CM/GC for the OCC Plaza, Entries, and Interior Renovations. This will allow Metro to consider expertise, experience completing similar projects, and COBID partnership, subcontracting and workforce diversity as well as cost when 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 CMGC 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 the Local Contract Review Board, approves an exemption from competitive bidding for the Oregon Convention Center Exterior and Interior Renovations, and authorizes procurement of a Construction Manager/General Contractor by request for competitive proposals, and authorizes the execution of the resulting CM/GC contract by the Chief Operating Officer in a form to be approved by the Office of Metro Attorney.