

BEFORE THE METRO CONTRACT REVIEW BOARD

RESOLUTION OF THE METRO COUNCIL	)	RESOLUTION NO. 17-4790
ACTING AS THE METRO CONTRACT REVIEW	)	
BOARD, FOR THE PURPOSE OF AUTHORIZING	)	
AN EXEMPTION TO THE COMPETITIVE	)	
BIDDING PROCEDURES AND AUTHORIZING	)	Introduced by Chief Operating Officer
PROCUREMENT BY REQUEST FOR PROPOSALS	)	Martha J. Bennett, in concurrence with
FOR THE CONSTRUCTION OF THE	)	Council President Tom Hughes
WILLAMETTE FALLS RIVERWALK	)	
	)	

WHEREAS, Blue Heron Paper Company, Inc. operated a mill on the Willamette River waterfront in the City of Oregon City at the base of the Willamette Falls. In February 2011, the mill closed its doors, and Metro and its public partners, including the City of Oregon City, Clackamas County, and the State of Oregon (the “public partners”) began to investigate the site guided by four core values: economic redevelopment, healthy habitat, historic and cultural interpretation and public access to Willamette Falls, a natural wonder in our region;

WHEREAS, Metro and its public partners entered into a Memorandum of Understanding in September of 2014, promising to collaborate on a vision to bring public access to Willamette Falls through a “riverwalk” project on the former Blue Heron Paper Mill site;

WHEREAS, the riverwalk is intended to be a critical first investment in the site that will spur redevelopment and connect to a view of Willamette Falls from property owned by Falls Legacy, LLC and Portland General Electric (PGE);

WHEREAS, given the site’s significant historic associations and strong connection to the Willamette River and Willamette Falls, the site has been identified as a “legacy opportunity,” and the partners have since directed a team to prepare a design for the riverwalk that ensures the world-class vision is realized;

WHEREAS, the design is anticipated to be finalized in June 2017, and at the same time, the project team will identify a “Phase 1” for the project that will involve demolition and the construction of access and a falls viewing location;

WHEREAS, permitting for Phase 1 is anticipated to begin no later than July 2017 and will take approximately 12 months, followed by construction that is expected to begin by June 2018, with completion in 2020;

WHEREAS, the State of Oregon’s funding for the riverwalk provided by SB 5506 and HB 5030 requires completion by June 2020; and

WHEREAS, ORS 279C.335 and Metro’s Local Contract Review Board “Administrative Rules” require that all Metro public improvement contracts shall be procured based on competitive bids (Administrative Rule 49-0130) , unless exempted by the Metro Council, sitting as the Metro Contract Review Board (Administrative Rule 49-0620);

WHEREAS, ORS 279C.335(2) and Administrative Rule 49-0620 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 the public benefits, reduced risks, and efficiencies of such alternative methods, so long as they are consistent with the public policy of encouraging competition;

WHEREAS, recognizing the uniqueness, complexity and State funding deadlines of the Phase 1 project, the Willamette Falls project staff wish to obtain an exemption from competitive bidding for the Phase 1 project, and instead procure Phase 1 project demolition and construction by an alternative contracting method known as Construction Manager/General Contractor (CM/GC);

WHEREAS, ORS 279C.335(2) and (4), and Administrative Rule 49-0620, 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 is unlikely to encourage favoritism in the awarding of public improvement contracts, the exemption is unlikely to substantially diminish competition for the public improvement contracts; and that the exemption will likely result in substantial cost savings to Metro;

WHEREAS, in accordance with Administrative Rule 49-0620(7), notice of this hearing was published in at least one trade newspaper of general statewide circulation a minimum of fourteen (14) days before this hearing, which notice stated that the purpose of this hearing is to take comments on Metro's findings regarding an exemption from the competitive bidding requirements, and the draft findings were available to the public at the time of the published notice; 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 demolition and the Phase 1 construction of the Willamette Falls riverwalk; and
2. Adopts as its findings in support of such exemption the justifications, information, and reasoning set forth in the attached Exhibit A, which is incorporated by reference as if set forth in full; and
3. Authorizes the Chief Operating Officer to prepare a form of Request for Proposals for CM/GC services that includes as evaluation criteria for contractor selection: 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 minority, women, disable-veterans and emerging small businesses 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 Administrative Rule 49-0620; 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 in accordance with Administrative Rule 49-0690; 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 Phase 1 riverwalk project.

ADOPTED by the Metro Council this 1 day of June 2017.

  
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Tom Hughes, Council President

Approved as to form:

  
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for 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 Administrative Rule 49-0630, the Metro Contract Review Board makes the following findings in support of exempting the procurement of the Willamette Falls riverwalk Phase 1 demolition of structures and construction 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 demolition of structures and construction of the Phase 1 riverwalk improvements at the former Blue Heron Mill site 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: posting on ORPIN (Oregon Procurement Information Network), contacting local sub-contractors, including COBID certified business, 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, disabled-veterans, 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 demolition of structures and construction of the Phase 1 riverwalk 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.**

This factor is not applicable. It is anticipated that there will be 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 project operational costs for the completed project.**

Utilizing an RFP process to select a CM/GC will allow Metro to obtain guaranteed maximum price project cost from the contractor, and also allow for cost reductions through pre-construction services by the contractor during the final design phase, including a constructability

review, and 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 and teamwork that is expected to result in improved communication, a better design, fewer change orders, and faster progress with fewer unexpected delays, resulting in lower costs to Metro.

Given the site's significant historic associations and strong connection to the Willamette River and Willamette Falls, the site has been identified as a "legacy opportunity." A world-class vision for the Willamette Falls Legacy Project was adopted by the public partners in 2014 and the partners have since directed a team to prepare the Preferred Design for the riverwalk that ensures the vision is realized. The site is unique, complex and extremely technical in nature.

Given the high degree of complexity of the project improvements, the need to integrate with pre-existing infrastructure (that may be unknown until uncovered), and challenging environmental and site constraints, involving the contractor early during the design process is anticipated to lower overall project 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.

**c. Public benefits in granting exemption.**

The timely completion of the project by using the alternative CM/GC 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, inclusive and world-class amenities to not only the Blue Heron site and the regional center of downtown Oregon City, but to the surrounding areas of West Linn, Clackamas County and the greater metro region. In addition, and in addition to the cost-savings noted above, given the timing constraints on the state's funding, the public will benefit from use of those funds for a better project.

**d. Value engineering techniques.**

The CM/GC process will enable the contractor to work with the project design and engineering team to improve implementation of the demolition plan and improvement design and help reduce demolition and 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. The site was constructed in a piecemeal fashion over a period of 150 years. This type of contract will allow the designers to more easily explore with the contractor the feasibility of innovative design solutions, respond to unanticipated conditions, 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.**

The closing of the Blue Heron Paper Mill operations in 2011 left 23 acres of land with abandoned industrial buildings stretching from Willamette Falls to the southern doorstep of Oregon City's historic downtown. The site includes dozens of buildings and elements that are regulated under state and federal historic and cultural preservation standards. The site also represents a significant cultural resource to Native Americans throughout the Pacific Northwest. It is intended that several historical elements will be incorporated into the project and project improvements, thus requiring careful review and development of demolition plans and construction activities. It is also expected that cultural resources will be unearthed, thus

requiring a unique approach to ground disturbing and other construction activities. As well, Endangers Species Act protected fish and wildlife are present and must be accounted for during demolition, deconstruction, and construction activities.

This complex site and these unique project elements require special qualifications. The demolition, design, and construction of the riverwalk require special expertise, knowledge, and experience, all of which can be factored into the contractor selection in the RFP process. The selection of a contractor with such specialized and proven 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 visitors of the riverwalk. 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.**

The Blue Heron site is privately owned by Falls Legacy, LLC, which has granted Metro an easement for construction of the riverwalk on its property. It is adjacent to the working PGE dam. Construction will occur on private property, but wholly within the easement, while the rest of the site continues to be closed to the public. The alternative contracting process will enable the contractor to work with the project design staff to understand, plan for, and minimize safety hazards and conflicts between the project and ongoing site and PGE 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 to Metro or the Public.**

The selection of a contractor with demonstrated experience and success in implementing complex 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 the project partners 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, a CM/GC is anticipated to result in less risk.

**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 demolition and design process, resulting in a better, safer design, fewer change orders, and faster progress with fewer unexpected delays, ensuring that Metro can take advantage of the state's funding as a source of funding for the project, within the deadlines attached to that funding.

**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. Constructing a world-class riverwalk will not involve off-the-shelf installations. Rather, it will 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 project involves many unique, technically complex elements. As mentioned above, the site was developed piecemeal, over a period of 150 years. The site includes dozens of building and elements that are regulated under state and federal historic preservation standards. A substantial amount of non-native fill now covers the site and natural grades and conditions have been substantially altered. It is intended that structures will be repurposed for reuse during and after demolition. Also, past uses resulted in the site being classified as a brownfield. The site also represents a significant cultural resource to Native Americans throughout the Pacific Northwest. Given historical Native American use and activity around Willamette Falls, it is anticipated that cultural resources may be unearthed or disturbed during construction activities. As such, ground disturbing activities that may impact archaeological and culturally significant resources will be strictly regulated, including state and federal oversight. Also, Endangered Species Act listed species are present, adding an additional layer of complexity and additional regulatory oversight.

The design, demolition and construction of the riverwalk 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 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 demolition, deconstruction and new construction. The need to ensure that it is properly, safely, efficiently, and successfully implemented is of importance. Some of the design limitations and conditions are likely to be unknown until uncovered by work performed under an early work assignment, which can be performed during design development to inform the design process.

**l. Occupation.**

Construction will occur across the site while the rest of site must continue to operate safely, in the case of the PGE dam. Public tours will also continue during construction. The CM/GC contracting process will enable the contractor to work with the project architect and construction and design staff to minimize conflict between the project and ongoing operations, by providing early input into issues of 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. Phases.**

The project will involve a single phase of construction (Phase 1). The need to ensure that it is properly, safely, efficiently, and successfully implemented is of importance. Subphases, in terms of early work amendments, to begin demolition while finalizing design will ultimately save time on the overall project. Early work phases are expected to uncover latent conditions at the project site that once exposed, can be addresses efficiently and less expensively during ongoing design, avoiding costly redesigns and change orders.

n. **Experienced agency staff.**

Metro staff, including project managers, the Procurement Department, and Office of Metro Attorney, has the expertise and substantial experience in the CM/GC alternative contracting method and have assisted in developing the alternative contracting method to be used in awarding and executing on this public improvement contract. Agency staff will also help negotiate, administer and enforce the terms of the public improvement contract.



## **STAFF REPORT**

IN CONSIDERATION OF RESOLUTION NO. 17-4790 OF THE METRO COUNCIL ACTING AS THE METRO CONTRACT REVIEW BOARD, FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION TO THE COMPETITIVE BIDDING PROCEDURES AND AUTHORIZING PROCUREMENT BY REQUEST FOR PROPOSALS FOR THE CONSTRUCTION OF THE WILLAMETTE FALLS RIVERWALK.

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Date: June 1, 2017      Prepared by: Alex Gilbertson, Parks & Natural Areas, Ext. 1583

### **BACKGROUND**

On July 7, 2016, the State of Oregon, through its Portland Metro Regional Solutions Office and its Parks and Recreation Department, Clackamas County, the City of Oregon City, and Metro entered into an Intergovernmental Agreement for the Willamette Falls Legacy Project. This agreement formally established the project “Partners,” the group charged with overseeing the implementation of the project.

The Partners have since directed a team to prepare a design for a “riverwalk” that will serve as the vehicle to pursue the project’s core values: public access, healthy habitat, cultural and historic interpretation, and economic redevelopment at the former Blue Heron Mill site in Oregon City. The design is expected to be finalized by June 2017. At the same time, the project team will identify a “Phase I” for the project that will involve demolition and the construction of access and a falls viewing location. Permitting for Phase I will begin no later than July 2017 and will take approximately 12 months, based on analysis by the team’s land use experts. Construction drawings will also be prepared during this time. Construction, including demolition and site preparation, is expected to begin by June 2018, with completion in 2020.

This effort represents the responsible expenditure of funds contemplated in the IGA, including \$5M provided by SB 5506, \$5M provided by Metro Natural Areas Bond funding, \$1.2M from Oregon City, roughly \$6M from private fundraising, \$400,000 from the property owner, and House Bill 5030 and Senate Bill 5507 approved an additional \$7.5 million of State funding for the riverwalk.

Given the complexity of this Phase I project, staff, recommends that one contractor oversee the construction of the Phase I project as a Construction Management General Contractor (CM/GC), which would be procured in accordance with law through a Request for Proposals process. Managing the construction of the remaining projects with one CM/GC contract will reduce the total construction schedule and save in construction costs. Combining construction management for the projects will not impact competitive bidding since it is anticipated that the contract will require bids from a minimum of three subcontractors and suppliers in every scope of work. Cost and time savings from construction coordination will allow the Partners to make full use of the state’s funding contribution.

The CM/GC contractor will provide Metro with CMGC's professional expertise in the areas of demolition, deconstruction, cost estimating, value engineering, "constructability" review, scheduling of activities, procurement, safety, and construction coordination and supervision during the design phase.

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 Exhibit A. 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 technical and unique project. Based on these findings, staff believes that a value and experience based selection process (RFP) for a CM/GC is more appropriate than a traditional, RFB competitive bid (which looks solely at lowest bid price).

### **ANALYSIS/INFORMATION**

1. **Known Opposition:** None known.
2. **Legal Antecedents:** Oregon Revised Statutes 279C.335; Metro Local Contract Review Board Rule 49-0600 through 49-0630
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 conceptual design phase through construction documents and construction cost development process, as well as limiting change orders.

### **RECOMMENDED ACTION**

Approve an exemption from competitive bidding, authorizing Metro to procure through an RFP process a CM/GC Contract for the Phase I riverwalk project.