

BEFORE THE METRO CONTRACT REVIEW BOARD

RESOLUTION OF THE METRO COUNCIL)	RESOLUTION NO. 17-4827
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 A DESIGN-BUILD APPROACH TO)	Council President Tom Hughes
CONSTRUCTION OF THE 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 conceptual design was finalized in June 2017. “Phase 1” for the project will involve demolition and the construction of access and a falls viewing location;

WHEREAS, permitting for Phase 1 is anticipated to begin in August 2017 and will take approximately 12 months, followed by construction that is expected to begin in the summer of 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 design-build;

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:

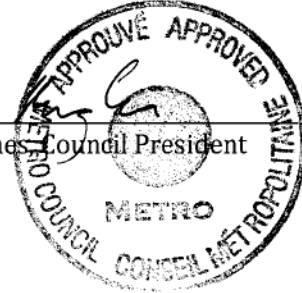
BE IT RESOLVED THAT THE METRO CONTRACT REVIEW BOARD:

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 or delegate a form of Request for Proposals for design-build services that includes, but is not limited to, as evaluation criteria for contractor selection: contractor's demonstrated public improvement project expertise, contractor's demonstrated design-build project experience, contractor's record of completion of projects of similar type, scale and complexity, contractor's demonstrated quality and schedule control, demonstrated value engineering experience, 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 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

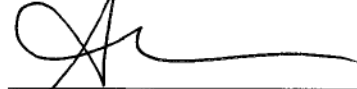
5. Following evaluation of the responses to the Request for Proposals, authorizes the Chief Operating Officer to execute a contract that is most advantageous to Metro to construct the Phase 1 riverwalk project.

ADOPTED by the Metro Council this 17 day of August 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

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 specific criteria, which will include at a minimum those 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. Number of people available to bid.

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. The alternative procurement choice will not impact the number of people available to bid.

The design-build delivery method is appearing as an industry trend for similar unique, complex and large projects. For example, the City of Portland is utilizing the method for its Willamette River Crossing tunnel and water main project.

b. Construction budget and projected operating costs for the completed project.

Utilizing a design-build process will allow Metro to contract with one entity to provide final design and to construct the project in accordance with that design. The delivery method affords Metro the ability to define the scope for both design and construction without 100% complete designs. This is intended to result in earlier project cost certainty, 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, having one responsible entity 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." 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, having earlier integration of design and constructor is anticipated to lower overall project costs.

The delivery method also allows for an ongoing review of the long term operating costs of design options, allowing for innovative midcourse design choices leading to a project having lower long term operating maintenance and repair costs.

c. Public benefits in granting exemption.

The deliver method establishes distinct roles and responsibilities. Design-build provides Metro with a single point of contact for the project responsibilities and thereby eliminates the need for resolving conflicts between design professionals and constructors. Risks can then be effectively and efficiently managed by the design-builder. This results in enhanced project benefits, including, quality control, time savings, and additional financial efficiencies, since project budget, schedule and constructability are emphasized throughout the process. The process provides the ability to evaluate alternative design, materials, and methods efficiently and accurately. This continuing project scrutiny often results in substantial cost savings, both initially and over the life of the project. In the design-build system, firm construction costs are known earlier in the process. The design-build process will also 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 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 design build process will integrate the contractor's construction team and 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 project team 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 project team to more easily explore with 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, Endangered 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 project team to understand, plan for, and minimize safety hazards and conflicts between the project and ongoing site and PGE operations. 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.

Design-build provides Metro with a single point of contact for the project responsibilities and thereby eliminates the need for resolving conflicts between design professionals and constructors. Risks can then be effectively and efficiently managed by the design-builder. This results in enhanced project benefits, including, quality control, time savings, and additional financial efficiencies, since project budget, schedule and constructability are emphasized throughout the process.

h. Impact on source of funding.

As stated above, the alternative contracting process allows agency staff to coordinate with one design-build construction team, 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 contracting process will enable the project team 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 design-build 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. 17-4827 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 A DESIGN-BUILD APPROACH TO CONSTRUCTION OF THE WILLAMETTE FALLS RIVERWALK.

Date: August 17, 2017 Prepared by: Brian Moore, Parks & Natural Areas, Ext. 1761

BACKGROUND

On June 01, 2017, Metro Council, acting as the Local Contract Review Board, passed a resolution authorizing an exemption to the competitive bidding procedures and authorizing procurement by request for proposals for a Construction Management General Contractor for construction of the Willamette falls riverwalk. It was determined that a more integrated project delivery method will be more efficient and better use of public resources. Doing so will allow cost and time savings resulting from a clearer authority and decision making structure within the consulting team.

The intended procurement method remains a Request for Proposals based on qualifications and is now expanded to include a designer as part of the responding team.

This request is presented to ensure proper adherence to purchasing requirements. 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 design build 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, by reducing change orders through integration of the construction management and design team and by aligning contract incentives for project delivery.

RECOMMENDED ACTION

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