

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING AN)	RESOLUTION NO. 18-4868
EXEMPTION FROM COMPETITIVE BIDDING)	
AND AUTHORIZING PROCUREMENT OF)	Introduced by Chief Operating Officer Martha
CONSTRUCTION MANAGER GENERAL)	Bennett in concurrence with Council
CONTRACTOR SERVICES BY COMPETITIVE)	President Tom Hughes
REQUEST FOR PROPOSALS FOR THE)	
CONSTRUCTION OF THE ARLENE)	
SCHNITZER CONCERT HALL ORCHESTRA)	
SHELL REPLACEMENT)	

WHEREAS, Portland’s Centers for the Arts (“Portland’5”) intends to replace the existing Orchestra Shell at the Arlene Schnitzer Concert Hall; and

WHEREAS, the Orchestra Shell Replacement is planned for Metro fiscal years 2018 and 2019; and

WHEREAS, ORS 279C.335 and Metro Local Contract Review Board Rules (“LCRBR”) require that all Metro public improvement contracts shall be procured based on competitive bids, unless exempted by the Metro Council, meeting as the Metro Contract Review Board; and

WHEREAS, Metro LCRBR authorize 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 Portland’5 wish to obtain an exemption from competitive bidding for the Arlene Schnitzer Concert Hall Orchestra Shell Replacement public improvement project, and instead procure the construction of the Orchestra Shell Replacement 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 Local 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 LOCAL CONTRACT REVIEW BOARD:

1. Exempts from competitive bidding the procurement and award of a public improvement contract for the construction of the Arlene Schnitzer Concert Hall Orchestra Shell Replacement; and

2. Adopts as its findings in support of such exemption the justification, information and reasoning set forth on the attached Exhibit A, which findings are incorporated by this reference as if set forth in full; and
3. Authorize the Chief Operating Officer to prepare a form of Request for Proposals for CM/GC services that includes as evaluation criteria for contractor selection: the contractor's proposed contract management costs for pre-construction services; the contractor's proposed overhead and profit costs for construction services; the contractor's demonstrated public improvement project experience and expertise; the contractor's demonstrated CM/GC 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 businesses Certified by the Office of Business Inclusion and Diversity (COBID), and any other criteria to 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 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 Arlene Schnitzer Concert Hall Orchestra Shell Replacement.

ADOPTED by the Metro Council this 22 day of February, 2018.


Tom Hughes, Council President



Approved as to Form:



Alison R. Kean, Metro Attorney

EXHIBIT A TO RESOLUTION 18-4868

Findings in Support of an Exemption from Competitive Bidding and Authorizing the Procurement by RFP of General Construction Services for Arlene Schnitzer Concert Hall Orchestra Shell Replacement

Pursuant to ORS 279C.335(2) and (4), and Metro Local Contract Review Board Rule 49-0630, the Metro Contract Review Board makes the following findings in support of exempting the procurement of the Arlene Schnitzer Concert Hall Orchestra Shell Replacement from competitive bidding, and authorizing use of a Request for Proposals (RFP) solicitation for a 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 Arlene Schnitzer Concert Hall Orchestra Shell Replacement 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 proposed form of standard construction contract 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, and emerging small businesses and by contacting contractors known to Metro to potentially satisfy the RFP criteria. The 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 and other substantial benefits to Metro:

The Metro Contract Review Board finds that exempting the procurement of the construction of the Arlene Schnitzer Concert Hall Orchestra Shell Replacement from competitive bidding will likely result in substantial costs savings and other substantial benefits to Metro. The foregoing finding is also made after considering the following factors:

- a. **Type, cost and amount of contract:** The \$3.75 million dollar Orchestra Shell Replacement Project is a public improvement project that must be delivered under the terms of a construction contract that is robust and flexible enough to govern an

accelerated and compressed timeline involving the delicate and complex renovation of a historic theater structure combined with the installation of a complex computer controlled “virtual orchestra shell” to account for and improve upon the less than optimal acoustic nature of the 90+ year-old concert hall.

- b. **Number of available bidders:** The Project’s compressed timeline and specialized subcontractor requirements may discourage bidders from participating in a low-bid process. Additionally, the potential unknown existing conditions in the 90+ year-old historic structure present elevated risks to bidders, causing them submit artificially high bids to account for the unknown risks to avoid bidding altogether. Staff anticipates that an RFP process will result in more contractors participating in the procurement process.
- c. **Construction budget and projected operating costs for completed project:** Utilizing an RFP process to select a General Contractor 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 General Contractor 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 Arlene Schnitzer Concert Hall. Faster progress and an earlier completion date will also help Metro avoid the risk of inflationary increase in materials and construction labor costs. Contractor 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.
- d. **Public benefits that may result from granting exemption:** Using an RFP process will enable the schedule to be compressed sufficiently so that early work can begin before the design has been completed. The Project must be completed during the 10 week “dark” period scheduled for July 1 through August 31, 2018. In addition to the public benefits from the cost savings noted above, the procurement of a CMGC 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.
- e. **Value engineering techniques:** The process will enable the contractor to work with the project architect and P’5 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.

- f. **Specialized expertise required:** The “virtual” electronic acoustic Orchestra Shell has unique performance and functionality provided by equipment that requires specific expertise. Subcontractors must be able to demonstrate that they can successfully install the specific components of the Meyer Sound Constellation System. 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.
- g. **Increase in public safety:** *Not applicable.*
- h. **Reduced risk to Metro or public:** The risks to Portland’s ongoing operations and contracting posed by the inability of the contractor to meet the schedule deadlines will be reduced by the ability to do early work and by the selection of a contractor based on the demonstrated ability to install the specific system, rather than assigning the project to the low bidder.
- i. **Effect on source of funding:** *Not applicable.*
- j. **Effect on agency’s ability to control the impact of market conditions and costs and time necessary for completion:** *Not applicable.*
- k. **Ability to better address the technical complexity of project:** The exemption will allow the Contractor to pre-qualify/select subcontractors that have demonstrated technical expertise, knowledge, and experience with the installation of the Meyer Sound Constellation System, 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, staff believes an RFP process to be necessary and in the best interest of the agency.
- l. **New construction, renovation or remodel:** The scope of work includes impacting and upgrading the electrical and mechanical infrastructure of the 90+ year-old Arlene Schnitzer Concert Hall. Some of this work could impact the interior design of the theater. 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.

- m. **Occupancy during construction**: As it is not feasible for the building to be occupied during construction, it is critical that the construction schedule align with the July 1 through August 31, 2018 “dark” period.
- n. **Multi-phase construction**: *Not applicable.*
- o. **Availability of Metro personnel and legal counsel with substantial CM/GC expertise and experience**: Metro personnel have and legal counsel have an established successful track record of negotiating, administering, and enforcing the terms of Metro’s CM/GC public improvement contract. A team of appropriate qualification and expertise will be deployed on the Project.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 18-4868 FOR THE PURPOSE
OF AUTHORIZING AN EXEMPTION FROM COMPETITIVE BIDDING
AND AUTHORIZING PROCUREMENT OF GENERAL CONTRACTOR
SERVICES BY COMPETITIVE REQUEST FOR PROPOSALS FOR THE
CONSTRUCTION OF ARLENE SCHNITZER CONCERT HALL
ORCHESTRA SHELL REPLACEMENT

Date: February 7, 2018

Prepared by: Nancy Strening
503-797-1929

BACKGROUND

Originally built in 1928, the Arlene Schnitzer Concert Hall is a historic theater building and performing arts center. The Arlene Schnitzer Concert hall plays host to a variety of presentations including classical, jazz, pop, rock, folk and gospel music, dance, theater, spoken word, lecture, and conferences. The current orchestra shell is 33 years old and in need of replacement. The shell itself cannot be repaired because parts are not available due to the age of the shell. Design standards and codes have also changed and the way the shell is installed is no longer considered a best safety practice. Replacing the traditional shell eliminates the need for heavy shell components and complex rigging, promotes ease of show set up and increases safety for stage crew and operations staff.

P'5 management and staff recommend replacement of a concert/band shell with a digital system for acoustic applications, which would significantly enhance the sound quality/effects of various types of performances without altering the architecture of the space. The digital acoustical system would create more opportunities to reach diverse audiences by providing flexibility that will allow for a larger variety of music/performances. Implementation will also include those aspects directly related to the removal of the traditional shell. Removal of the shell will result in a change in the visual background, lighting, and HVAC conditions on stage. Installation of the Constellation elements will require modifications to structural, electrical, and mechanical infrastructure in the audience chamber and back of house areas. Significant care and skill will need to be used on the part of the contractor to protect and enhance the beautiful interior of the 90+ year-old concert hall.

An alternate, qualifications based procurement method, a Request for Proposals, enables Metro to specifically request and qualitatively evaluate proposers' prior experience with the unique parameters of the project including experience with historic interiors, exposure to and expertise in digital acoustic systems, demonstrated successes with compressed schedules, and their approach to the COBID outreach and partnership and workforce diversity. This 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). Portland's and cPMO staff, as well as the Office of the Metro Attorney concur.

Therefore, staff seeks Council authorization to pursue the alternative procurement of General Contractor Services by a competitive Request for Proposals for the Arlene Schnitzer Concert Hall Orchestra Shell Replacement. 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 Local Contract Review Board Rules; Oregon Revised Statutes 279C.335(4); OAR 137-049-0600-OAR 137-049-0690
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 RFP process offers safeguards for schedule and 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, approves the use of a competitive Requests for Proposals for General Contractor process and exempts this project from traditional competitive bidding. Further, Council authorizes the execution of the resulting contract by the Chief Operating Officer in a form to be approved by the Office of the Metro Attorney.