

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING)
AN EXEMPTION FROM COMPETITIVE) RESOLUTION NO. 18-4941
BIDDING AND PROCUREMENT OF)
CONSTRUCTION MANAGER) Introduced by Chief Operating Officer
GENERAL CONTRACTOR SERVICES) Martha Bennett in concurrence with
BY COMPETITIVE REQUEST FOR) Council President Tom Hughes
PROPOSALS FOR ANTOINETTE)
HATFIELD HALL ROOF)
REPLACEMENT AND PARAPET)
REPAIR)

WHEREAS, the Metro Exposition and Recreation Commission (MERC) intends to replace the roof and repair the parapet at Antoinette Hatfield Hall located at 1111 SW Broadway, Portland, Oregon (the "Hatfield Improvement Project"); and

WHEREAS, ORS 279C.335 and Metro Local Contract Review Board Administrative Rule ("LCRB Rule") 49-0130 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 LCRB Rule 49-0620(1) 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, replacement of the roof and repair of the parapet at the Antoinette Hatfield Hall is planned for Metro fiscal years 2019 and 2020; and

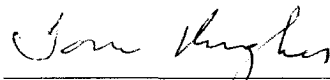
WHEREAS, ORS 279C.335(4)(c) and ORS 279C.337 require that CM/GC Services be procured in accordance with the administrative rules adopted by the Oregon State Attorney General and further set forth in LCRB Rule 49-0690; and

WHEREAS, said statute and rule 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 repair of the parapet and replacement of the roof of the Antoinette Hatfield Hall.
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 herein by reference as if set forth in full; and
3. Authorizes the Chief Operating Officer to:
 - 3.1 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 to ensure a successful, timely, and quality project, in the best interest of Metro and in accord with ORS 279C.335(4)(c) and LCRB Rule 49-0690; and
 - 3.2 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
 - 3.3 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 perform roof replacement and repair of parapet at the Antoinette Hatfield Hall.

ADOPTED by the Metro Council this 25 day of October, 2018.



Tom Hughes, Council President

Approved as to Form:



Nathan A. S. Sykes, Acting Metro Attorney

EXHIBIT A

Findings in Support of an Exemption from Competitive Bidding and Authorizing the Procurement by RFP of General Construction Services for Antoinette Hatfield Hall Roof Replacement and Parapet Repair

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 Antoinette Hatfield Hall Roof Replacement and Parapet Repair from competitive bidding, and authorizing use of an RFP solicitation for a Construction Manager General Contractor (CM/GC) public improvement construction contract:

A. 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 Antoinette Hatfield Hall Roof Replacement and Parapet Repair 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 alternative contracting method and will be 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, and the contract will be awarded to the most advantageous proposer. Competition for the RFP will be encouraged by: Posting on ORPIN (Oregon Procurement Information Network), public advertisements placed in the Portland Business Tribune and other minority business publications; 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 subcontractors, 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.

B. 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 Antoinette Hatfield Hall Roof Replacement and Parapet Repair from competitive bidding will likely result in substantial costs savings to Metro, considering the “type, cost and amount of the Contract,” the 14 factors required by ORS 279C.335(2)(b), and the “additional findings” per Metro Local Contract Review Board (LCRB) Administrative Rule 49-0630(3)(B) as follows:

Type, Cost and Amount of the Contract: (type of project, budgeted/expected overall cost (of project), budgeted/expected contract amount)

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. The General Contractor

is brought on board earlier in the design process in order to provide constructability and logistics expertise to the construction documentation process. 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 Hatfield Hall open and operational for our visitors during construction. CM/GC offers a distinct advantage over traditional design-bid-build (low bid) method to enhance participation by COBID contractors. The current rough-order-of-magnitude estimate for the entire project is \$4 million.

14 Statutory Factors

- 1. Number of entities available to bid:** The complex site logistics and seasonal timeline are likely to discourage bidders from participating in a traditional design-bid-build process. Additionally, the potential unknown conditions existing at the intersection of the building wall and roof construction present elevated risks to a low bid contractor. The opportunity to partner with the architecture and engineering team and perform investigative early work is likely to encourage more bidders.
- 2. Construction budget and future operating costs:** 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 Antoinette Hatfield 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.

- 3. Public Benefits:** The execution of the project by using the CMGC process will allow the schedule to be compressed sufficiently to perform the work during the “dry” period from June to October. 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.
- 4. Value Engineering:** 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.
- 5. Specialized Expertise Required:** In addition to prior experience with roofing and building envelope projects, contractor and subcontractors must be able to demonstrate in their proposal that they

have worked in a busy urban area and understand the logistics of traffic control, access, removing demolished materials, etc. 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.

6. **Public Safety:** The substantial demolition work and extensive need for scaffolding could impact public safety if not performed with a level of expertise that can be ensured with a qualifications based selection.
7. **Reduces risk to Metro and the public.** The risks to P-5's ongoing operations and contracting posed by the inability of the contractor to meet the schedule deadlines will be reduced by the selection of the contractor based on the demonstrated ability to perform the work as specified, rather than awarding the project to the low bidder.
8. **Exemption's effect on funding:** Does not apply.
9. **Better Control of Impact of Market Conditions on Cost and Time to Complete:** Does not apply.
10. **Technical complexity:** The exemption will allow the Contractor to pre-qualify/select subcontractors that have demonstrated technical expertise, knowledge, and experience with the logistical challenges of demolition and construction in a compressed urban site, 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.
11. **New construction, renovation or remodel:** The scope of work is likely to impact the P-5 administrative offices on the 5th floor space directly below the roof. 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.
12. **Occupancy during construction:** The building will remain occupied during the construction period. Improper execution of the work could impact the P-5 administrative offices on the 5th floor space directly below the roof.
13. **Phased Construction Work:** Does not apply.

14. **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.

Additional Findings:

1. **Industry practices, surveys, trends.** The industry-accepted benefits of the CM/GC method include:

- Results in a better design that meets the owner's objectives
- Encourages competition, especially for COBID subcontractors
- Can be completed in a faster time frame
- Costs less than a design-bid-build project that is designed and constructed in the traditional manner
- Reduces the risks of delays, cost overruns, and disputes
- Limits the number of change orders for unforeseen conditions

2. **Past experience and evaluation of Metro CM/GC projects.**

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:

- 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.
- 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.
- Phased construction in relation to the elephants themselves, allowing the herd to stay at the Zoo rather than temporary relocation.
- 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.
- The project achieved nine percent COBID participation, with approximately \$4M going to the COBID community.
- The Zoo was able to safely maintain visitor attendance and all normal activities during two and one-half years of construction

3. **Benefits and drawbacks of CM/GC to the Antoinette Hatfield Hall Roof Replacement and Parapet Repair Project.** The CM/GC method provides an invaluable means of addressing the risks to Metro presented by the project's site conditions and timeline.

- Facility must remain open and operational, and the activity will take place on the roof and in and around the public spaces at the street level exterior approach.
- Widespread public access and need to preserve a quality experience to maintain current revenues.
- Need to complete work during dry-season work period.
- Potentially unknown conditions at intersection of roof and wall systems can be discovered and addressed in the pre-construction period, avoiding schedule delays and costly change orders

By involving the contractor extensively during the design process, P-5 will be able to better account for, plan around, and address the above factors prior to and during 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 Metro's favorable experience with CM/GC, staff foresees no drawbacks to adopting the CM/GC method to implement the Antoinette Hatfield Hall Roof Replacement and Parapet Repair Project.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 18-4941 FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION FROM COMPETITIVE BIDDING AND PROCUREMENT OF CONSTRUCTION MANAGER GENERAL CONTRACTOR SERVICES BY COMPETITIVE REQUEST FOR PROPOSALS FOR THE ANTOINETTE HATFIELD HALL ROOF REPLACEMENT AND PARAPET REPAIR

Date: October 11, 2018

Prepared by: Nancy Strening

BACKGROUND

Hatfield Hall roof is original to the building from 1987 and has undergone decades of patching and partial repairs. It has reached the end of its useful life. The Exterior Insulated Finish System (EIFS) parapet wall panels are damaged by water infiltration, which is caused by a faulty construction detail where the roof system meets the parapet wall. Water has also infiltrated the space between the roof deck and the lightweight concrete insulation, causing leaks into the interior of the building. A new roof will not be effective in preventing water infiltration if the parapet wall correction is not made, therefore the design recommendations for those repairs shall be included in the scope.

Carleton Hart Architects (CHA), along with their consultant Professional Roof Consultants, has studied the conditions extensively, has made design recommendations, and is in the process of design development for the project.

Certain areas of the roof have been identified as good candidates for a green (vegetative) roof system, and CHA will provide a design solution for those areas. The intent is to develop an alternate price/cost for those areas for consideration by Metro and P-5.

In addition to the delivery, staging, and installation of new materials, the scope will include the demolition and removal of all existing roofing material, lightweight concrete insulation, and damaged parapet wall materials. All of this will take place on a tightly constrained urban site. Work must be performed during the dry season, which is also when P-5's Main Street programming takes place, rendering the north side of the building off limits for staging & logistics. As such, it is imperative that a contractor with expertise and experience working on such tight urban sites be selected for the project.

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 tight city sites, exposure to and expertise in building envelope 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.

This project has been selected to participate in the Property and Environmental Services (PES) Department of Metro's NAMC-Or/Metro Solicitation Review Project, which aims to 1) achieve goals identified in Metro's Strategic Plan to Advance Racial Equity, Diversity, and Inclusion, 2) help PES and project managers learn ways to increase participation of COBID firms directly from the COBID Community, and 3) identify and eliminate barriers for minority owned businesses to compete for PES contracts.

Metro & NAMC-Or staff conducted an assessment of the procurement process for the Antoinette Hatfield Hall Roof Replacement and Parapet Repair project, applying a racial equity lens to the entire process. This project will provide guidance and recommendations for ways to incorporate racial equity into the procurement process, helping PES/Metro and COBID contractors be more successful.

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 Antoinette Hatfield Hall Roof Replacement and Parapet Repair. 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** LCRB Rule 49-0620(1), 49-0130, and 49-0690; Oregon Revised Statutes 279C.335 and ORS 279C.337.
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

The Chief Operating Officer recommend adoption of Resolution No. 18-4941.