

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING AN ) RESOLUTION NO. 20-5093  
 EXEMPTION FROM COMPETITIVE )  
 BIDDING AND PROCUREMENT OF ) Introduced by Chief Operating  
 CONSTRUCTION MANAGER/GENERAL ) Officer Marissa Madrigal in  
 CONTRACTOR SERVICES BY ) concurrence with Council President  
 COMPETITIVE REQUEST FOR ) Lynn Peterson  
 PROPOSALS FOR CONSTRUCTION OF )  
 THE COMMERCIAL FOOD WASTE )  
 PROCESSING FACILITY AT METRO  
 CENTRAL TRANSFER STATION

WHEREAS, Metro intends to design and construct improvements to Metro Central Transfer Station for the purpose of processing commercial food waste, used in the creation of renewable natural gas; 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's LCRB Rules 49-0600 to 49-0670 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 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, ORS 279C.335(5)(a) and LCRB Rules 49-0630 through 49-0670 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 or 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 Construction Manager/General Contractor ("CM/GC") public improvement contract for construction of the commercial food waste processing facility at Metro Central Transfer Station;
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:

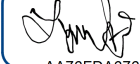
3.1 Prepare a form of Request for Proposals for CM/GC Contractor services that includes as evaluation criteria for contractor selection:

- Contractor's proposed fees for pre-construction services
- Contractor's proposed overhead and profit for construction services
- Project understanding and proposed project approach
- Contractor's record of completion of projects of similar type, scale and complexity, including demonstrated public improvement CM/GC project experience and expertise
- Contractor's record of coordinating multi-disciplinary approaches to value engineering challenges
- Contractor's record of working with owners and design professionals to identify ways to incorporate long-term operational efficiencies into projects
- Proposed milestone dates, including but not limited to substantial completion
- Contractor's demonstrated quality and schedule control
- Financial capacity
- Contractor's experience in incorporating sustainability construction practices and design into projects
- Contractor's demonstrated commitment to workforce diversity and record of use of subcontractor businesses certified by the Certification Office of Business Inclusion and Diversity (COBID)
- Any other criteria that 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 49-0640(2)(a), (b) and (c);

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 to the Request for Proposals, authorizes the Chief Operating Officer to execute a CM/GC contract with the most advantageous proposer to construct the commercial food waste processing facility at Metro Central Transfer Station.

ADOPTED by the Metro Council this 7 day of May, 2020.

Signed by:  
  
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Lynn Peterson, Council President

Approved as to Form Signed by:

  
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Carrie MacLaren, Metro Attorney

## Exhibit A to Resolution No. 20-5093

**Findings in Support of an Exemption from Competitive Bidding and Authorizing the Procurement by RFP of Construction Manager/General Contractor construction services for the Commercial Food Waste Processing Project**

Pursuant to ORS 279C.335(2) and (4), and Metro Contract Review Board Administrative Rules Sections 49-600-670, the Metro Contract Review Board makes the following findings in support of exempting the procurement of the Commercial Food Waste Processing Project from competitive bidding, and authorizing use of an RFP solicitation for a Construction Manager/General Contractor (“CM/GC”) 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 Commercial Food Waste Project from competitive bidding is “unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts” as follows: The RFP will be formally advertised with public notice and disclosure of the planned CM/GC contracting method and made available to all qualified contractors. Award of the contract will be based on the identified selection criteria and dissatisfied proposers will have an opportunity to protest the award. Full and open competition based on the objective selection criteria set forth in the Metro Contract Review Board resolution will be sought, with the contract award going to the most advantageous proposer. Competition for the RFP will be encouraged by: Posting on ORPIN (Oregon Procurement Information Network), utilizing the Portland Business Tribune and a minority business publication for the public advertisement; performing outreach to local business groups representing minorities, women, and emerging small businesses and by contacting contractors known to Metro to potentially satisfy the RFP criteria. Those proposers not selected by Metro will have an opportunity to protest the award. 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. Competition among subcontractors will be encouraged through publicly-advertised subcontractor solicitations and be based on a low-bid competitive method, or a method whereby both price and qualifications of the subcontractors are evaluated in a competitive environment, consistent with the CM/GC Contract requirements.

**2. The exemption will likely result in substantial cost savings to Metro.**

The Metro Contract Review Board finds that exempting the procurement of the construction of the Commercial Food Waste Project from competitive bidding will likely result in substantial costs savings to Metro, considering the following factors required by Metro Local Contract Review Board (LCRB) Administrative Rule 49-0630 and ORS 279C.335 2(b):

*(A) Type, cost and amount of contract*

This will be a Construction Manager/General Contractor contract estimated to be \$6,000,000.

*(B) Number of Entities available to bid;*

As this procurement anticipates using design elements that are found in many construction manufacturing processes, we anticipate many firms that are independently qualified to meet Metro’s needs.

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*(C) The construction budget and the projected operating costs for the completed public improvement;*

The direct involvement of the CM/GC in the design process provides for ongoing constructability review and value engineering, and fosters teamwork that results in a better design, fewer change orders, and faster progress with fewer unexpected delays, resulting in lower costs to Metro via and other services. Faster progress and an earlier completion date will also help Metro avoid the risk of inflationary increases in materials and construction labor costs. The ability to have the General Contractor do early work prior to completion of design shortens the overall duration of construction. 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. Metro will have the ability to cancel the Construction Contract prior to the construction phase and procure construction services through competitive bid should the GMP proposed by the CM/GC be considered too high or if continuing the relationship with the CM/GC should prove undesirable.

*(D) Public benefits that may result from granting the exemption;*

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. Reduction of risk of design flaws, misunderstandings and conflicts inherent to contractors performing based on designs in which they have had no opportunity for input, therefore reducing the likelihood of contract claims and increasing the likelihood of cost-savings through increased efficiency. Increased quality of work due to greater coordination of efforts between design and construction phases and the ability to evaluate prospective contractors on multiple factors including experience, expertise, and commitment to sustainability and diversity/inclusion, not just pricing;

*(E) Whether value engineering techniques may decrease the cost of the public improvement;*

The process will enable the contractor to work with the project designer and 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 designer and contractor to work together on both practical and innovative solutions to complex design issues.

*(F) The cost and availability of specialized expertise that is necessary for the public improvement;*

The scopes of work to be performed under this procurement require technical expertise in design and construction of solid waste and waste treatment technologies. Granting this exemption will allow an RFP process that allows for selection criteria accounting for such experience as well as cost, and not just low bid.

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*(G) Any likely increases in public safety;*

Metro Central Transfer Station is a public facility. Centralized planning and construction increase contractor coordination and reduces exposure to the public as well as commercial haulers using the facility during construction.

*(H) Whether granting the exemption may reduce risks to the contracting agency, the state agency or the public that are related to the public improvement;*

An exemption will allow for better control of risks related to project costs and schedule delays by reducing/eliminating unforeseen conditions and associated change orders through advanced collaboration between designers and those constructing the improvements. The risks to Central Transfer Station'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.

*(I) Whether granting the exemption will affect the sources of funding for the public improvement;*

This exemption is not expected to affect the sources of funding for related public improvements.

*(J) Whether granting the exemption will better enable the contracting agency to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement;*

The exemption will allow for better control of increases to project costs and schedules by reducing/eliminating unforeseen conditions and associated change orders through advanced and continuous coordination of the design and construction tasks being performed by a common contractor. Metro will retain the ability to procure construction service through competitive bid should continuing the relationship with a CM/GC contractor prove undesirable.

*(K) Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement;*

The exemption will allow the Contractor to pre-qualify/select subcontractors that have demonstrated technical expertise, knowledge, and experience with the logistical challenges of the project, 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.

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*(L) Whether the public improvement involves new construction or renovates or remodels an existing structure;*

This factor is inapplicable.

*(M) Whether the public improvement will be occupied or unoccupied during construction;*

Metro Central will be operating while construction is ongoing. Improper phasing or execution of the work could affect operations. The CM/GC process provides consideration of phasing concerns and protecting ongoing operations by Metro, the design professional and CM/GC during the design process.

*(N) Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions; and*

In some cases, the CM/GC contracting method allows for site preparations and other construction activity to occur prior to the completion of the final design under early work orders, saving time and resulting in faster project delivery.

*(O) Whether the contracting agency or state agency has, or has retained under contract, and will use contracting agency or state agency personnel, consultants and legal counsel that have necessary expertise and substantial experience in alternative contracting methods to assist in developing the alternative contracting method that the contracting agency or state agency will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract.*

The Office of Metro Attorney and CPMO have the necessary qualifications and expertise to negotiate, administer, and enforce the terms of Metro's CM/GC public improvement contract, including prior experience governing large CM/GC projects and managing them to a successful completion.

**3. Additional Findings:**

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

- Integrated design process results in a better, more “constructible” 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
- Reduces the likelihood of change orders for unforeseen conditions

*B. Past experience and evaluation of Metro CM/GC projects.* Metro has extensive past and ongoing successful experience with CM/GC contracting at the Oregon Zoo with its Zoo Bond Implementation Program, the remodel of the Oregon Convention Center, and projects at the Arlene Schnitzer Concert Hall and Antoinette Hatfield Hall.

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*C. Benefits and drawbacks of CM/GC for the Commercial Food Waste Processing Project.* The benefits are as stated above in these findings. Metro staff sees no drawbacks in the approach.



## **STAFF REPORT**

### **IN CONSIDERATION OF RESOLUTION NO. 20-5093 FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION FROM COMPETITIVE BIDDING AND PROCUREMENT OF CONSTRUCTION MANAGER/GENERAL CONTRACTOR CONSTRUCTION SERVICES BY REQUEST FOR PROPOSALS FOR DESIGN, PROCUREMENT AND CONSTRUCTION OF IMPROVEMENTS AND EQUIPMENT FOR PROCESSING COMMERCIAL FOOD WASTE AT METRO CENTRAL TRANSFER STATION**

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Date: April 23, 2020

Prepared by: Will Elder

## **BACKGROUND**

The Waste Prevention and Environmental Services department is embarking on a project to make necessary improvements to Metro Central Transfer Station for processing commercial food waste for the production of renewable natural gas in partnership with the City of Portland. These improvements require modifications to the existing food waste receiving area, the purchase of new processing equipment and design services to manage the process. This work follows a feasibility study that recommended improvements should be made at our existing transfer station to accommodate needed commercial food waste processing and improve how this material is managed at Metro Central over the long term.

The Metro region began a commercial food waste program in 2005. Changes were made at Metro Central Transfer Station to accommodate the program, but the transfer station was not designed for this function, especially over the long term as the program grew. Organic material is very acidic, and this has led to the degradation of the food waste bay floor over time.

In 2014 staff was directed by Council to look at options for accelerating the recovery of food waste from garbage. Food waste represents the largest percent of material in garbage and is a major contributor to greenhouse gas production in landfills. In 2018 staff was directed by Council to require certain businesses to participate in a commercial food waste collection program and this January, Council approved a ban on disposal of commercial food waste beginning in 2025.

The Commercial Food Waste Processing procurement represents the culmination of more than 15 years of work by WPES to reduce waste and find the highest and best use for food waste. Food is identified frequently in our Regional Waste Plan (RWP) as a priority and this project will help accomplish RWP goals. It also represents a unique partnership opportunity with The City of Portland. The commercial food waste processed at Metro Central Station will be transferred to Columbia Boulevard Wastewater Treatment Plant where it will be used in the production of renewable natural gas.

Metro's procurement manager believes that a value-based selection process for a Construction Manager/General Contractor (CM/GC) is more appropriate than a traditional, design-bid-build process (which solely considers lowest bid price). An alternative qualifications-based procurement method (Request for Proposals), enables Metro to specifically request and qualitatively evaluate proposers' prior experience with the unique parameters of the project including experience with occupied, operational sites; demonstrated successes with compressed schedules; cost control; limited staging space and construction. Metro can also evaluate proposers' approach to Certification Office of Business Inclusion and Diversity (COBID) subcontractor outreach and partnership as well as workforce diversity. This delivery method offers a better ability for public agencies to increase the use of COBID firms in sub-contracting opportunities.

The estimated cost of six million has been budgeted and would represent a direct infusion of money into our local economy to support workers at a time when this is greatly needed.

The attached resolution and findings in Exhibit A further describe the specialized nature of this project and advantages of CM/GC delivery method. Waste Prevention and Environmental Services staff, Procurement and the Office of the Metro Attorney concur with these findings.

Therefore, staff seeks Council authorization to pursue the alternative procurement of CM/GC services by a competitive Request for Proposals, for the Construction of Improvements and Equipment for Processing Commercial Food waste at Metro Central Transfer Station project. 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), 49-0630, 49-0640, 49-0650, and 49-0670; Oregon Revised Statutes 279C.335.
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**

Approve the recommendation to authorize the alternative procurement of CM/GC services by a competitive Request for Proposals, for the Processing Commercial Food waste at Metro Central Transfer Station project.