

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING AN) RESOLUTION NO. 20-5109
 EXEMPTION FROM COMPETITIVE)
 BIDDING AND PROCUREMENT OF)
 CONSTRUCTION MANAGER/GENERAL) Introduced by Chief Operating
 CONTRACTOR SERVICES BY) Officer Marissa Madrigal in
 COMPETITIVE REQUEST FOR) concurrence with Council President
 PROPOSALS FOR CONSTRUCTION OF) Lynn Peterson
 METRO REGIONAL CENTER CHILDCARE)
 FACILITIES UPGRADES)

WHEREAS, Metro intends to design and renovate the Metro Regional Center’s Childcare Facilities; 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 renovation of the Metro Regional Center’s childcare facilities;
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:

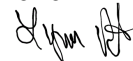
3.1 Prepare a form of Request for Proposals for CM/GC Contractor services that includes the evaluation criteria for contractor selection:

- 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 renovate the Metro Regional Center's childcare facility.

ADOPTED by the Metro Council this 11 day of June, 2020



Lynn Peterson, Council President

Approved as to Form:

Carrie MacLaren

Carrie MacLaren, Metro Attorney

MRC Childcare Facilities Upgrades - Exhibit A

Findings in Support of an Exemption from Competitive Bidding and Authorizing the Procurement by Request for Proposals of Construction Manager General Construction Services for the MRC Childcare Facilities Upgrades project

Pursuant to ORS 279C.335(2) and (4), and Metro Code Section LCRB 49-0620, the Metro Contract Review Board makes the following findings in support of exempting the procurement of the Metro Regional Center Childcare Facilities Upgrades project from competitive bidding, and authorizing use of an Request for Proposal (RFP) 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 Metro Regional Center Childcare Facilities Upgrades 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 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 Metro Regional Center Childcare Facilities Upgrades project 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. 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 \$1 million.

MRC Childcare Facilities Upgrades - Exhibit A

Statutory Factors

1. **Number of entities available to bid:** Seasonal timeline are likely to discourage bidders from participating in a traditional design-bid-build process. This is in part due to large school bond construction work so we've identified a construction schedule from September 2020 thru February 2021. The opportunity to partner with the architecture and engineering team and perform investigative early work is likely to encourage more proposers.
2. **Construction budget and future operating costs:** Utilizing an RFP 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 potential for 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 changes, leading to a project having lower long term operating maintenance and repair costs.
3. **Public Benefits:** 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 Metro Regional Center 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 meeting the project budget. 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:** The contractor and subcontractors must be able to demonstrate in their proposal that they have experience with Childcare facilities, exposure to and expertise in building envelope systems, demonstrated successes with compressed schedules, and have worked on public buildings projects, understand the logistics of general public and staff traffic control, access, removing demolished materials, etc. The selection of a contractor with such 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. **Reduces risk to Metro and the public.** The risks to Metro Regional Center'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 and based on successful its prior experience working safely, effectively and efficiently in or near an office environment where Metro staff and the public are present, rather than awarding the project to the low bidder. Furthermore, the selection of a contractor.
7. **Exemption's effect on funding:** Does not apply.

MRC Childcare Facilities Upgrades - Exhibit A

8. **Better Control of Impact of Market Conditions on Cost and Time to Complete:** Does not apply.
9. **Technical complexity:** The exemption will allow the Contractor to select subcontractors that have demonstrated technical expertise, knowledge, and experience with the logistical challenges of demolition and construction in a public office setting, 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. The RFP process will take into account each contractor's past performance and technical knowledge.
10. **New construction, renovation or remodel:** The Childcare Facilities Upgrades is a renovation project and is tentatively slated to start end of FY21-Q1 or beginning of FY21-Q2
11. **Occupancy during construction:** The Childcare center will remain closed during the construction period, but the rest of Metro Regional Center will be open and occupied while construction proceeds..
12. **Phased Construction Work:** Does not apply.
13. **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
 - May be completed in a faster time frame
 - When skillfully managed, costs less than a design-bid-build project that is designed and constructed in the traditional manner, due to opportunities for value engineering early in the design process.
 - 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 \$40 million OCC Plaza & Renovation project was substantially complete in October 2019. The benefits to the OCC Plaza & Renovation Project achieved through the CM/GC process include:

 - 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 was able to start while integrated delivery planning for future phases was still being developed. This kept the project on schedule and allowed for ongoing construction activities during daily OCC business operations.

MRC Childcare Facilities Upgrades - Exhibit A

- Six percent of the Guaranteed Maximum Price 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 exceeded 50 percent COBID subcontractor participation. This unprecedented achievement accounts for approximately \$16 million going to the local COBID subcontractor community.
- With pre-construction time to develop community partnerships and leverage relationships with subcontractors, the project met workforce diversity goals achieving 35 percent of project work hours attributed to non-white workers.
- Partnering with the OCC through preconstruction planning and ongoing coordination the OCC was able to safely maintain normal business operations. Validated by this fact: during 14 months of Plaza & Renovation Project construction the OCC achieved record event sales and attendance.

3. Benefits and drawbacks of CM/GC to the Metro Regional Center Childcare Facilities Upgrades project. The CM/GC method provides an invaluable means of addressing the risks to Metro presented by the project's site conditions and timeline.

By involving the contractor extensively during the design process, Metro Regional Center 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 Metro Regional Center Childcare Facilities Upgrades project

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 20-5109 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 METRO REGIONAL CENTER CHILDCARE FACILITIES UPGRADES

Date: April 22, 2020

Prepared by: Dan Hoskin

BACKGROUND

The Childcare facility has not undergone any updating in several years. The center's layout is no longer supporting the operational needs of a NAEYC accredited childcare. In addition, the facility lacks adequate teacher/parent conference space, quality teacher/child lines of sight, toilets in the toddler space, and surfaces and fixtures are worn and damaged from age and use both inside the facility and in the playground area.

Merryman Barnes Architects (MBA), and their design team has made design recommendations, and is in the process of schematic design development for the project.

This project involves a remodel of select interior areas to provide a safe, functional space for children and teachers and repair portions of Metro property. In addition scope for the project will include the demolition and removal of all existing plumbing fixtures, flooring, wall treatments, casework and lighting. The value of this work is approximately seven hundred thousand dollars.

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 Childcare facilities, 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.

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). Metro Regional Center 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 Metro Regional Center Childcare Facilities Upgrades 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), 49-0130, 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 COVID 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