

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING AN	)	RESOLUTION NO. 21- 5212
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 THE ARLENE	)	
SCHNITZER CONCERT HALL CITY	)	
<u>SEWER CONNECTION PROJECT</u>	)	

WHEREAS, Metro must disconnect the Arlene Schnitzer Concert Hall from its existing private sanitary sewer line and connect to the City of Portland’s existing sanitary sewer line located under Salmon Street (the “Arlene Schnitzer Concert Hall City Sewer Connection 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 be procured based on competitive bids, unless exempted by the Metro Council, sitting as the Metro Contract Review Board; and

WHEREAS, Metro's LCRB 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 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 (2) and (5)(a), and LCRB Rules 49-0630 through 49-0690 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 the construction of the Arlene Schnitzer Concert Hall City Sewer Connection Project; and
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 following evaluation criteria for contractor selection:

- Contractor's proposed fees for pre-construction services;
- Contractor's proposed overhead and profit for construction services;
- Contractor's 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;
- Contractor's proposed milestone dates, including but not limited to substantial completion;
- Contractor's demonstrated quality and schedule control;
- Contractor's financial capacity;
- Contractor's sources of supply;
- 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) and (b);

3.2 Following the approval of said form of Request for Proposals and Contract by the Office of the Metro Attorney, to issue said 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 Arlene Schnitzer Concert Hall City Sewer Connection Project.

ADOPTED by the Metro Council this 4<sup>th</sup> day of November, 2021.



---

Lynn Peterson, Council President

Approved as to Form:



---

Carrie MacLaren, Metro Attorney

## EXHIBIT A

### **Findings in Support of an Exemption from Competitive Bidding and Authorizing the Procurement by RFP of General Construction Services for Arlene Schnitzer Concert Hall City Sewer Connection**

Pursuant to ORS 279C.335 (2) and (4), and Metro Local Contract Review Board (LCRB) Administrative Rule 49-0630, the Metro Contract Review Board makes the following findings in support of exempting the procurement of the Arlene Schnitzer Concert Hall City Sewer Connection 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 Arlene Schnitzer Concert Hall City Sewer Connection 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 Arlene Schnitzer Concert Hall City Sewer Connection 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:

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

The Arlene Schnitzer Concert Hall City Sewer Connection is a time-sensitive complex infrastructure modernization-adaptation project occurring during a period of sever and continuing labor and supply

chain shortages. This requires Contractor constructability review during design and engineering to avoid project delays and expensive project amendments resulting from hidden or unplanned for site conditions and unanticipated materials and equipment shortages. The rough-order-of-magnitude estimate for the entire project is \$1 million.

#### **14 Statutory Factors**

- 1. Number of entities available to bid:** The complex site logistics and requirements to continue business/performances in the building during construction are likely to discourage bidders from participating in a traditional design-bid-build process. Additionally, the type of work involved, pumping raw sewage underneath the audience chamber and stage area of the building above, 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 subcontract 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 Portland's and its clients. 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 CM/GC process will allow the procurement and contracting schedule to be compressed providing more working time to cope with the supply chain issues and labor shortages affecting the construction industry. 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 Engineer and Portland's 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 engineers and Contractor to work together on both practical and innovative solutions to complex design issues. This type of contract will allow the engineers 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 septic pump construction, specialty acoustic pipe installation, controls, and subterranean plumbing connections, 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 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 work being done directly underneath the audience chamber and stage house 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 Portland'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:** Engaging the Contractor during the design and specification process will allow more nimble reaction to the current supply chain and labor shortage issues being experienced by the construction industry. Materials and equipment choices can be evaluated not only on cost, but also based on availability and lead times. Subcontractors are more likely to bid and commit workforce to General Contractors who can demonstrate that they are already under contract for projects.
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, the risks to operations of a project containing construction defects, 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 infrastructure replacement work has the potential to impact the comfort, safety, and of Portland's staff, clients, and customers. 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 require cancellation of rehearsals, performances, and operational work, resulting in a loss of revenue for Portland's, clients, and staff.
13. **Phased Construction Work:** The final phase of the work must be done during a two-week period without performances or events, and this period must be blocked out months in advance. Failure to have the earlier phases complete by the committed "dark" period in late August 2022, will impact and, potentially, cause currently scheduled performances and events to be cancelled. Additionally, this work is a prerequisite to a larger project being done by the City of Portland, which would in turn experience schedule delays if phased goals are not met. Having the Construction Manager work together with the Project Engineer during the design process to plan an executable phased approach makes it more likely that the project will meet its schedule goals and avoid disrupting operations.
14. **Availability of personnel, consultant and legal counsel with CM/GC expertise.** The Office of Metro Attorney, Project Manager, and Project Engineer 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 Arlene Schnitzer Concert Hall ("ASCH") Acoustic Enhancement Project recently reached completion. The benefits to the ASCH Acoustic Project achieved through the CM/GC process include:

  - Portland's 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.
  - Close cooperation between the architect and Contractor allowed for rapid and successful solutions to challenges proposed by prior unknown conditions in the 92 year-old facility.
3. **Benefits and drawbacks of CM/GC to the Project.** The CM/GC method provides an invaluable means of addressing the risks to Metro presented by the project's site conditions and timeline including:

- Facility must remain open and operational, and the activity will take place underneath the audience chamber and stage house.
- Widespread public access and need to preserve a quality experience to maintain current revenues.
- Need to complete initial phases of the work in order to meet deadline posed by scheduled “dark” period.
- Potentially unknown conditions at sub-basement building level and subterranean sidewalk levels 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, Portland’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 Arlene Schnitzer Concert Hall City Sewer Connection Project.



## **STAFF REPORT**

IN CONSIDERATION OF RESOLUTION NO. 21-5212, 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 ARLENE SCHNITZER CONCERT HALL CITY SEWER CONNECTION

---

Date: November 4, 2021

Prepared by: Nancy Strening

### **BACKGROUND**

Beginning in late 2021, the City of Portland Environmental Services Department will be starting a project to upgrade hundreds of miles of underground sewer pipes. This project will impact the Arlene Schnitzer Concert Hall (the "Schnitzer") because it is connected to an old private sewer line, for which the City has no responsibility. The City's Project will effectively disable this existing line. The City requires the Schnitzer sanitary system to be connected to the existing City line that is running under Salmon street, approximately 25 feet above the current line.

MFIA Engineering has studied the conditions extensively, has made design recommendations, and is the process of design development for the Project.

The Scope of Work includes re-routing the internal sanitary piping to a new tank and pump assembly in the lower level mechanical room, and providing a new pressurized, insulated pipe which will run underneath the audience chamber and stage house to connect with the approved City connector line running underneath Salmon street. Access to the mechanical room is very limited, thus the tank must be built on site. The facility must remain in operation during the Project.

A qualifications based alternative procurement method, a Request for Proposals, will enable 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 septic tank and pump systems, demonstrated successes with compressed schedules, keeping staff, clients and the public safe and comfortable during the Project, and their approach to the COBID outreach and partnership and workforce diversity. Further, this procurement method has proven to be a more effective way for public agencies to increase the use of COBID firms in sub-contracting opportunities.

The Arlene Schnitzer Concert Hall City Sewer Connection is a time-sensitive complex infrastructure modernization- project occurring during a period of sever and continuing labor and supply chain shortages. The execution of the project by using the CM/GC project

delivery method will allow the procurement and contracting schedule to be compressed, providing more working time to cope with the supply chain issues and labor shortages affecting the construction industry. The complexity of the Project demands Contractor constructability review and value engineering during design to avoid project delays and expensive project amendments resulting from hidden or unplanned-for site conditions. Involving the Contractor early in the design process will foster teamwork and result in a better design, fewer change orders, and faster progress with fewer unexpected delays, resulting in lower costs to Metro. Contractor constructability review during engineering also provides for design adjustments to address the long term operating costs of various design options, leading to a project having lower long term operating maintenance and repair costs. Finally, faster progress and an earlier completion date will also help Metro avoid the risk of inflationary increases in materials and construction labor costs.

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 lower bid price). Portland's, cPMO staff, and the Office of the Metro Attorney concur.

Therefore, staff seeks Council authorization to pursue the alternative procurement of Construction Manager/General Contractor Services by a competitive Request for Proposals, for the Arlene Schnitzer Concert Hall City Sewer Connection. 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, 49-0630, 49-0640, 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 Request for Proposals 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 the Local Contract Review Board, approves an exemption from competitive bidding for the Arlene Schnitzer Concert Hall City Sewer Connection, and authorizes procurement of a Construction Manager/General Contractor by request for competitive proposals, and authorizes the execution of the resulting Construction

Manager/General Contractor contract by the Chief Operating Officer in a form to be approved by the Office of Metro Attorney.