

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING AN	)	RESOLUTION NO. 22-5236
EXEMPTION FROM COMPETITIVE	)	
BIDDING AND PROCUREMENT OF	)	Introduced by Chief Operating
CONSTRUCTION MANAGER/GENERAL	)	Officer Marissa Madrigal in
CONTRACTOR SERVICES BY	)	concurrence with Deputy Council
COMPETITIVE REQUEST FOR	)	President Christine Lewis
PROPOSALS FOR THE OREGON ZOO	)	
<u>BLACK BEAR IMPROVEMENT PROJECT</u>	)	

WHEREAS, Metro intends to renovate the Black Bear habitat located at the Oregon Zoo. (the "Oregon Zoo Black Bear Improvements 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 Oregon Zoo Black Bear Improvements 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 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 Oregon Zoo Black Bear Improvement Project.

ADOPTED by the Metro Council this 20<sup>th</sup> day of January, 2022.



Christine Lewis, Deputy Council President

Approved as to Form:



Nathan Sykes, Deputy Metro Attorney

## Oregon Zoo Black Bear Improvements - Exhibit A

### Findings in Support of an Exemption from Competitive Bidding and Authorizing the Procurement by Request for Proposals of Construction Manager General Constructor (CM/GC) Services for the Oregon Zoo Black Bear Improvements

Pursuant to ORS 279C.335(2) and (4), and Metro Code Section LCRB 49-0620 through 49-0660, and 49-0690, the Metro Contract Review Board makes the following findings in support of exempting the procurement of the Oregon Zoo Black Bear Improvements project from competitive bidding, and authorizing use of a Request for Proposal (RFP) process 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 Oregon Zoo Black Bear Improvements 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 Bid Locker, 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 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.

#### **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 Oregon Zoo Black Bear Improvements 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 project delivery model is a common public improvement procurement practice. Area agencies such as City of Portland, Multnomah County, Tri-Met, and Port of Portland utilize the CM/GC process for their large, complex public improvement projects. In CM/GC projects the General Contractor becomes a part of the project team during the design process, in order to provide constructability, logistics and value engineering expertise to the construction documentation process. CM/GC offers a distinct advantage to Metro over traditional design-bid-build (low bid) method in its ability to obtain enhanced participation by COBID contractors. The current rough-order-of-magnitude estimate for the entire project is \$350,000.

## Oregon Zoo Black Bear Improvements - Exhibit A

### Statutory Factors

1. **Number of entities available to bid:** This factor is unaffected by exemption from competitive bidding. Regardless of procurement method, there are numerous firms interested in participating in the procurement, many of which would have bid on the project in the absence of the exemption from competitive bidding.
2. **Construction budget and future operating costs:** Using 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 Landscape Architect and Metro staff to hold scope within the construction budget by providing early input and constructability review to designers, avoiding costly redesign and change orders, and providing opportunities for the Landscape Architect 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 constructing operations and maintenance facilities and park facilities, demonstrated successes with sustainability and subcontractor equity, and have successfully completed public improvement 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. **Public Safety:** The CM/GC contracting process will enable the Contractor to work with the project Landscape Architect and Metro staff to plan for minimizing safety hazards and conflict between the project and ongoing operations by providing early input into issues of project phasing, construction staging areas, construction access and scheduling. Such integrated early planning efforts are expected to limit risks to public and Metro staff safety. The ability to factor safety performance on similar projects into contractor selection is inherent in the RFP process, but is not part of the traditional low bid process.

**Oregon Zoo Black Bear Improvements - Exhibit A**

7. **Reduces risk to Metro and the public.** The risks to Oregon Zoo's ongoing operations 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 prior experience working safely, effectively and efficiently in or near a similar environment where Metro staff and the public are present, 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 select subcontractors that have demonstrated technical expertise, knowledge, and experience with the logistical challenges of demolition and construction in a similar 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.
11. **New construction, renovation or remodel:** The project is most appropriately scoped as a major renovation. The addition of the general contractor to the project team during project scoping and design will pay dividends by helping to inform Metro's decision-making. Construction of the Oregon Zoo Black Bear Improvements project is tentatively slated to start in mid-FY 23.
12. **Occupancy during construction:** The existing Oregon Zoo Black Bear Habitat has four resident black bears. They have access to a holding building, a primary outdoor yard and a secondary off-exhibit outdoor yard. The resident black bears will remain on-site during construction, but can be restricted to the holding building and off-exhibit outdoor yard. The primary outdoor yard is the project area. The Black Bear Bridge running overhead of the habitat will remain open to visitors and staff during construction. The CM/GC contracting process will enable the contractor to work with the project Landscape Architect and Metro staff to minimize conflict between the project and ongoing operations, by providing early input into issues of project phasing, construction staging areas, construction access and scheduling. Such integrated early planning efforts are expected to limit conflicts and thus reduce the risk of construction delays and costly change orders.
13. **Phased Construction Work:** Part of the CM/GC's pre-construction work will be determining whether the project can be conducted in phases, allowing for early work amendments to start on some phases while finalizing overall design, which ultimately saves time on the overall project and may mitigate impact to ongoing operations. Early work phases are expected to uncover latent conditions at the project site that, once exposed, will then be addressed efficiently and less expensively during ongoing design, avoiding costly redesigns and change orders.
14. **Availability of personnel, consultant and legal counsel with CM/GC expertise.** The Office of Metro Attorney, Project Manager, and Project Landscape 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.

## Oregon Zoo Black Bear Improvements - Exhibit A

### 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 higher likelihood of constructability of design and 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 \$47 million Oregon Zoo Polar Passage, Primate Forest and Rhino, (“PPR”), project was substantially complete in March 2021. The benefits to the Oregon Zoo PPR 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 Oregon Zoo business operations.
- Seven and ½ 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 14 percent COBID subcontractor participation. This achievement accounts for more than \$4.7 million going to the local COBID subcontractor community.
- Partnering with the Oregon Zoo through preconstruction planning and ongoing coordination, the Zoo was able to safely maintain normal business operations: during 24 months of major construction in the middle of the zoo.

**3. Benefits and drawbacks of CM/GC to the Oregon Zoo Black Bear Improvements 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 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 services during design. Involving a contractor during the design fosters teamwork that results in a better design, faster progress with fewer delays and lower risk of costly change orders.

Given Metro’s favorable experience with CM/GC, staff foresees no drawbacks to adopting the CM/GC method to implement the Oregon Zoo Black Bear Improvements project.

## **STAFF REPORT**

IN CONSIDERATION OF RESOLUTION NO. 22-5236 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 OREGON ZOO BLACK BEAR IMPROVEMENTS PROJECT.

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Date: January 03, 2022

Prepared by: Staci Pfau

### **BACKGROUND**

The Oregon Zoo Black Bear exhibit was constructed in 2005 as part of the Great Northwest Cascade Canyon project. The four resident black bears have access to a holding building, an off-exhibit outdoor yard and a primary outdoor yard. Transfer to either outdoor yard is managed from the holding building. Bifurcating the outdoor space is an overhead bridge utilized by Guests and Staff to maintain clearance of the animal space. It also provides multiple opportunities to view the Black Bears in different zones of their habitat. The primary outdoor yard is part of the Zoo's natural hillside that was adapted for black bear use. The area has suffered from consistent storm water drainage challenges since its construction. Zoo staff are continuously working on drain lines and clearing silt from guest viewing areas. A combination of horticulture services and specialized trails contractors have made iterative improvements to re-work the pathways utilized by Keeper Staff to maintain a safe habitat for the animals.

The primary purpose of this project is to build a new climbing structure for the bears, providing many benefits for both the black bears and guests. For the bears, it provides new enrichment, outdoor shade, and opportunities to exercise both body and well-being. It also provides new viewing opportunities to enhance the guest experience. The secondary purpose is to address on-going drainage and path maintenance issues. The CM/GC will allow for the project team to work through the design and costs of the climbing structure early in the coordination so that the remaining construction budget can finalize scope for trail improvements and drainage work. The schedule for the overall project will be significantly condensed. Without the CM/GC contract budget for the drainage and pathway work could not begin until a design-bid-build contract was in-place for the climbing structure. It would likely require the site to be shut-off from black bear use a second time instead of completing work under a single mobilization.

The estimated value of this project is \$350,000.

The landscape architecture/engineering consultants for the project are beginning the design phase with Metro staff in February. It is desired that the Construction Manager General Contractor (CM/GC) project delivery method be used whereby the General Contractor will join the team at the beginning of the design development phase, providing beneficial pre-construction expertise and input. Procurement of a CM/GC requires an exemption from competitive bidding so that Metro may procure by Request for Proposals process in lieu of procurement by Invitation to Bid.

The alternative, 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 operations and maintenance facilities, park facilities, demonstrated successes with sustainability and their approach to 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). 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 Oregon Zoo Black Bear Improvement 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, 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 in addition to cost will be considered in the awarding of the contract. Increased use of COBID subcontractors is anticipated.

4. **Budget Impacts:** The CM/GC project delivery method provides safeguards for schedule and cost control of the project, including early involvement by construction contractor in the design process, as well as reducing the risk of substantial change orders.

## **RECOMMENDED ACTION**

Metro Council, acting as the Local Contract Review Board, approves an exemption from competitive bidding for the Black Bear Improvement project, and authorizes procurement of a Construction Manager/General Contractor by request for competitive proposals, and authorizes the execution of the resulting CM/GC contract by the Chief Operating Officer in a form to be approved by the Office of Metro Attorney.