

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING AN	)	RESOLUTION NO. 23-5310
EXEMPTION FROM COMPETITIVE	)	
BIDDING AND PROCUREMENT OF	)	
CONSTRUCTION MANAGER/GENERAL	)	
CONTRACTOR SERVICES BY	)	
COMPETITIVE REQUEST FOR	)	Introduced by Chief Operating
PROPOSALS FOR ROOF SAFETY	)	Officer Marissa Madrigal in
UPGRADES AT THE METRO CENTRAL	)	concurrence with Council President
<u>TRANSFER STATION</u>	)	Lynn Peterson

WHEREAS, Metro intends to design and construct roof safety systems for the Metro Central Transfer Station’s main waste transfer building, to provide OSHA compliant roof safety for Metro employees and contractors needing safe and protected access to the roof (the “Metro Central Transfer Station Roof Safety Upgrades”); 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 Metro Central Transfer Station Roof Safety Upgrades; 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 experience with occupied, operational sites, limited staging space and phased construction
- Contractor's Proposed milestone dates, including but not limited to substantial completion
- Contractor's demonstrated quality and success with compressed schedules
- 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
- 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 Metro Central Transfer Station Roof Safety Upgrades.

ADOPTED by the Metro Council this 23rd of February 2023.



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Lynn Peterson, Council President

Approved as to Form:



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Carrie MacLaren, Metro Attorney

**Resolution 23-5310: Exhibit A  
Roof Safety Upgrades at the Metro Central Transfer Station**

**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 roof safety upgrades at the Metro Central Transfer Station**

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 roof safety upgrades at the Metro Central Transfer Station 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 roof safety upgrades at the Metro Central Transfer Station 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 (Metro Procurement’s online procurement site); 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 roof safety upgrades at the Metro Central Transfer Station 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:**

Public Works, rough-order-of-magnitude estimated construction contract amount \$600,000.

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

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### **Roof Safety Upgrades at the Metro Central Transfer Station**

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.

#### **Statutory Factors**

**1. Number of entities available to bid:**

This factor is unaffected by the 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 subcontractor outreach and mentoring partnerships.

**4. Value Engineering:**

The process will enable the General Contractor to work with the Professional Design Team and Metro 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 Professional Design Team and General Contractor to work together on both practical and innovative solutions to meeting the project budget. This type of contract will allow the designers to explore with the contractor the feasibility of innovative roof upgrade design solutions more easily and incorporate ongoing value engineering principles.

Examples of roof safety upgrade elements include:

- Exterior stairs with lockable gate and non-climbable fencing to prevent un-wanted access
- Catwalks with guard railings
- Personal fall arrest systems (I.e. tie-off locations attached to roof structure)
- Non-slip walking surfaces and working platforms adjacent to existing roof equipment
- Horizontal life-lines (i.e. structural horizontal cabling for workers to tie-off to)
- Designated safe work areas on low-slope portions of the roof

**5. Specialized Expertise Required:**

The Metro Central Transfer Station roof-space is an amalgamation of structures, built between 1920 and 2000, with each constructed using materials from their respective era's. For instance, Metro Central's Bay 3 original 1920 addition is composed of heavy, hot-dipped galvanized steel

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members that were riveted and later seismically upgraded by welding the riveted connections. Bay 1 was assembled in 1973 using a prefabricated and bolted steel structure. See Attachment 1 to Staff Report for additional information.

Because of varied building structures, the project seeks to apply value engineering principles and utilize standardized construction details across all roof structure types. Specialized expertise is required of the contractor to achieve this. Contractor expertise will help designers configure the best approach for standardized construction details, ensure the constructability of the design and deliver roof safety upgrades at the greatest value to Metro.

The contractor and subcontractors must be able to demonstrate in their proposal that they have experience with CM/GC project delivery, roof safety construction and the myriad of associated Federal and State roof safety regulations and jurisdictional requirement. The contractor and subcontractors must also have demonstrated successes with subcontractor equity, have successfully completed public improvement projects, and understand the logistics of general public and staff traffic control, site access, removing demolished materials, etc. The selection of a contractor with such expertise to perform 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 Professional Design Team and Metro Central Transfer Station staff to plan for minimizing safety hazards and conflict between the project and ongoing facility operations by providing early input into issues of project phasing, equipment and material staging areas, construction access and scheduling. Such integrated early planning efforts are expected to limit risks of interruption to public customers and private garbage haulers while increasing site safety for all. 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.

**7. Reduces risk to Metro and the public:**

The risk of disruption to Metro Central's daily 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, private contractors 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 Metro to select a General Contractor and subcontractors that have

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demonstrated technical expertise, knowledge, and experience with the logistical challenges of 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:**

There are opportunities—if Metro engages a Contractor early in the process—to coordinate and co-design a phased solution that meets the operational needs of Metro Central staff, Metro Central's contracted operator, public customers, and private garbage haulers, at no additional cost. A large cost of this project is the logistics of getting construction materials onto the roof near the least-accessible, and highest roof slope, portions of the roof. There is an opportunity to work cooperatively with the Metro Central Operations, Metro Central's contracted operator, Contractor and Professional Design Team to create a plan for material delivery and storage on-site, staging of cranes in non-disruptive areas of the site and schedule crane lifting work to minimize disruption to daily facility operations and maintain normal access by public customers and private garbage haulers.

#### **12. Occupancy during construction:**

Metro Central Transfer Station is open 363 days a year, operational 24 hours a day, and will be occupied and operational during construction.

The CM/GC contracting process will enable the contractor to work collaboratively with the Metro project manager, Professional Design Team and Metro Central staff to minimize conflict between facility operations, public customers and private garbage haulers, by providing early input into issues of project phasing, equipment and material staging areas, construction access and scheduling. Such integrated early planning efforts are essential to maintaining normal facility operations and 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 and which phases can be completed during regular day-time hours, on weekends, or over-night, allowing for early work amendments to start on some phases while finalizing overall design, which ultimately saves time on the overall project and mitigate impacts 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.

Due to existing roof conditions, it is necessary for construction to occur solely during the dry summer months with construction on the least accessible, and steepest, portions of the roof occurring in the driest months. Doing so reduces the risk of project delays as the as the dry summer transitions to rainy fall season, increases construction worker safety throughout the project and allows the contractor more flexibility in strategic project phasing.

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Additionally, a separate project to replace existing roof exhaust fans will begin concurrently with the construction of roof safety upgrades. The delivery of new roof fans is expected to take 4-6 months, with on-site fan work lasting 4-6 weeks. In order to phase construction of both projects in this manner, working closely with the CM/GC tie-off contractor will be essential to understanding the construction schedule and determining when on-site roof exhaust fan replacement work can occur.

### **14. Availability of personnel, consultant and legal counsel with CM/GC expertise:**

The Office of Metro Attorney, Project Manager, and Professional Design Team 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 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.**

- 2022 – Blue Lake Park Demolition of Fishing Pier
- 2021 – Oregon Zoo Boardwalk and Gate J Security Improvement Project
- 2021 – Arlene Schnitzer Concert Hall City Sewer Connection Project
- 2000 – Oregon Convention Center VIP Suite B and Prefunction A & C Restrooms
- 2019 – Oregon Convention Center Plaza & Renovation Project
- 2019 – Lone Fir Cemetery Design and Construction of a Retaining Wall
- 2018 – Antoinette Hatfield Hall Roof Replacement and Parapet Repair

#### **3. Benefits and drawbacks of CM/GC to roof safety upgrades at the Metro Central Transfer Station.**

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



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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 for roof safety upgrades at the Metro Central Transfer Station.

## **Resolution 23-5310: Staff Report Roof Safety Upgrades at the Metro Central Transfer Station**

IN CONSIDERATION OF RESOLUTION NO. 23-5310 OF THE METRO COUNCIL ACTING AS THE METRO CONTRACT REVIEW BOARD FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION TO THE COMPETITIVE BIDDING PROCEDURES AND AUTHORIZING PROCUREMENT OF CONSTRUCTION MANAGER/GENERAL CONTRACTOR SERVICES BY COMPETITIVE REQUEST FOR PROPOSALS FOR ROOF SAFETY UPGRADES AT THE METRO CENTRAL TRANSFER STATION

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Date: February 23, 2023  
Department: Capital Asset Management  
(CAM) - Construction Project Management  
Office (CPMO)  
Meeting Date: February 23, 2023

Prepared by: Eric Crandall  
Eric.Crandall@oregonmetro.gov  
Presenter(s): Julie Hoffman, Eric Crandall  
Length: 30 min

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### **ACTION REQUESTED**

Approve the recommendation to authorize the alternative procurement of Construction Manager General Contractor services by a competitive Request for Proposals, for roof safety upgrades at the Metro Central Transfer Station.

### **STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION**

- **Known Opposition:** None
- **Legal Antecedents:** LCRB Rule 49-0620(1), 49-0130, and 49-0690; Oregon Revised Statutes 279C.335 and ORS 279C.337.
- **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.
- **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.

### **BACKGROUND**

The Metro Central Transfer Station's main transfer building is composed of four "bays" that were constructed in a series of five additions between 1920 and 2000 (See Attachment 1 to Staff Report). The additions are constructed using exposed steel beams and columns, but do not share common construction techniques since building technologies varied greatly from one decade to the next. For instance, Metro Central's Bay 3 original 1920 addition is composed of heavy, hot-dipped, galvanized steel members with riveted connections, that were later seismically upgraded via welding the riveted connections, while Bay 1 was assembled in 1973 using a prefabricated and bolted steel structure.

Considering that the last major addition to Metro Central was in 1990 - and the Occupational Health and Safety Administration (OSHA) began implementing fall protection requirements in 1994 - Modern roof safety systems (i.e. personal fall restraints, ladder or stair access, roof tie-off's, walking platforms, etc.) were not included as part of Metro Central's additions.

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Due to these conditions, Metro and the contracted facility operator have not been able to perform routine/regular maintenance work on existing roof equipment and new roof projects have delayed until roof safety upgrades are completed.

Metro Construction Project Management Office (CPMO) staff met with Waste Prevention and Environmental Services' (WPES) Metro Central Superintendent, WPES Metro Central staff, Metro Integrated Pest Management (IPM), WPES Environmental Compliance team, WPES Safety Specialists, and Metro Central's contracted private operator, to determine the work needs of these groups on the main transfer building roof. All expressed a direct need to have safe and compliant roof access to address a broad range of work needs:

- Equipment maintenance
- Perform regulated environmental compliance inspections
- Complete pest management duties and address roof pest residency that is currently inaccessible
- Fulfill Metro operator contractual obligations such as roof gutter cleaning, gutter repairs and down-spout clearing, etc.
- Install new pest management devices via private contractor
- Replace thirty-one roof exhaust fans to meet building permit obligations, increase air flow and better air-quality work conditions
- Clean (pressure wash) transparent roofing panels to remove organic growth and greatly increase natural daylighting in the facility

These groups also expressed a need to develop and implement routine maintenance schedules to ensure roof work needs are regularly monitored, documented, and addressed in a timely manner.

There are also challenges when working to coordinate roof work by external contractors. External contractors have either declined work opportunities, or bids were received well over expected amounts because contractors are required to supply their own safe roof access. In turn, Metro incurs the added costs of contractor supplied safe roof access.

Metro staff met with the Professional Design Team to review options to construct OSHA compliant roof safety upgrades. The conclusion at the meeting was that due to the varied construction methods, lacking documentation of historic construction plans, risk of the constructability of design solutions, higher risk of increased cost due to unforeseen structural conditions in Bay 3 1920 and 1940 additions, as well as significant constraints and complexity in construction staging/phasing that minimally impact facility operations – Use of a traditional design and build procurement method was not the optimal approach.

A Construction Manager/General Contractor (CM/GC) project delivery method, wherein the General Contractor partners with the Professional Design Team and Metro project manager, is beneficial by providing early input into design constructability, permitting, project phasing, equipment and material staging areas, construction access, and scheduling.

The CM/GC project delivery method also helps Metro staff better understand construction costs early in the design process and refine estimates throughout design with all parties agreeing upon a

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Guaranteed Maximum Price (GMP) prior to the start of construction. The use of CM/GC's GMP 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.

For this project the Metro procurement manager believes that a value-based selection process for a Construction Manager General Contractor is more appropriate than a traditional, design-bid-build process (which solely considers lowest bid price). An 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 occupied, operational sites; demonstrated successes with compressed schedules; cost control; limited staging space and phased 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.

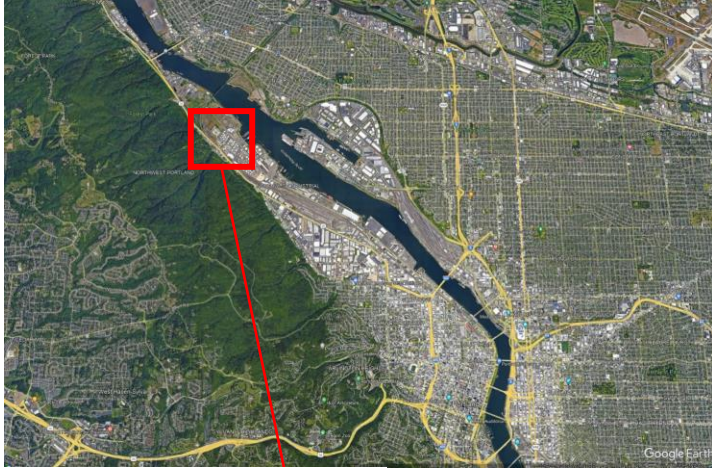
The attached resolution and findings in Exhibit A to Resolution No. 23-5310 further describe the specialized nature of this project and advantages of Construction Manager General Contractor delivery method. Metro Central operations, CPMO staff, and the Office of the Metro Attorney concur with these findings.

Therefore, staff seeks Council authorization to pursue the alternative procurement of CM/GC services by a competitive Request for Proposals, for roof safety upgrades at the Metro Central Transfer Station. 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.

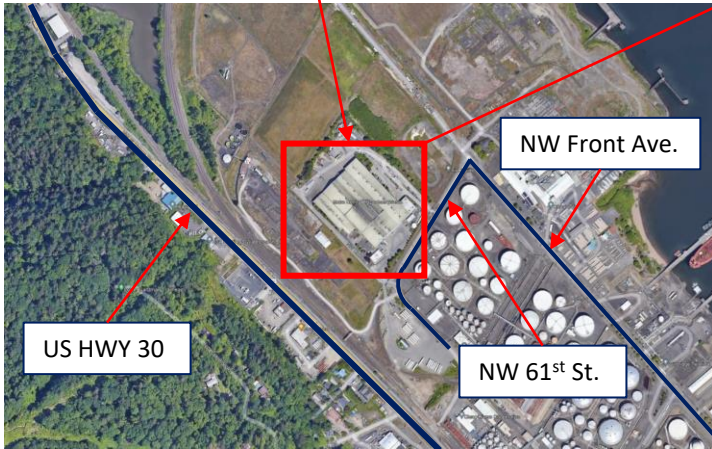
### **ATTACHMENTS**

Attachment 1: Satellite image of Metro Central Transfer Station with "bay" names and year constructed

# Metro Central Transfer Station: 6161 NW 61st St., Portland



Regional Overview



NW Portland Overview



Site Overview