

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING AN)	RESOLUTION NO. 24-5425
EXEMPTION FROM COMPETITIVE BIDDING)	
AND PROCUREMENT OF CONSTRUCTION)	Introduced by Chief Operating Officer
MANAGER/GENERAL CONTRACTOR)	Marissa Madrigal in concurrence with
SERVICES BY COMPETITIVE REQUEST FOR)	Council President Lynn Peterson
PROPOSALS FOR OREGON ZOO ENTRY)	
PLAZA AND POLAR PLAZA PROJECT)	

WHEREAS, Metro intends to upgrade the Oregon Zoo Entry Plaza and Polar Plaza; 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 Entry Plaza and Polar Plaza Shelter; 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 prepare a form of Request for Proposals for CM/GC Contractor services that includes the following evaluation criteria for contractor selection:
 - a. Contractor's proposed fees for pre-construction services; and
 - b. Contractor's proposed overhead and profit for construction services; and
 - c. Contractor's Project understanding and proposed project approach; and

- d. Contractor's record of completion of projects of similar type, scale and complexity, including demonstrated public improvement CM/GC project experience and expertise; and
- e. Contractor's record of coordinating multi-disciplinary approaches to value engineering challenges; and
- f. Contractor's experience with occupied, operational sites, limited staging space and phased construction; and
- g. Contractor's Proposed milestone dates, including but not limited to substantial completion; and
- h. Contractor's demonstrated quality and success with compressed schedules; and
- i. Contractor's Financial capacity; and
- j. Contractor's experience in incorporating sustainability construction practices and design into projects; and
- k. Contractor's demonstrated commitment to workforce diversity and record of use of subcontractor businesses certified by the Certification Office of Business Inclusion and Diversity; and
- l. 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).

4. Authorizes the Chief Operating Officer to issue said form of Request for Proposals and Contract by the Office of the Metro Attorney following its approval, and thereafter to receive responsive proposals for evaluation; and

5. Authorizes the Chief Operating Officer to execute a CM/GC contract with the most advantageous proposer to construct the Oregon Zoo Entry Plaza and Polar Plaza Shelter following evaluation of the responses to the Request for Proposals.

ADOPTED by the Metro Council acting as the Metro Contract Review Board this 18 day of July 2024.



Lynn Peterson, Council President

Approved as to Form:



Nathan Sykes, Metro Attorney

EXHIBIT A**Findings in Support of an Exemption from Competitive Bidding and Authorizing the Procurement by RFP of General Construction Services for Oregon Zoo Entry Plaza and Polar Plaza Shelter Project**

Pursuant to ORS 279C.335(2) and (4), and Metro Code Section 2.04.054(c), the Metro Contract Review Board makes the following findings in support of exempting the procurement of the Oregon Zoo Entry Plaza and Polar Plaza Shelter 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 Oregon Zoo Entry Plaza and Polar Plaza Shelter 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 Entry Plaza and Polar Plaza Shelter 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: Contracting for the work using the CM/GC “type of contract” resulting substantial cost savings to Metro as set forth in findings 2, 4, 7, 9 and 12. The current rough-order-of-magnitude estimate for the entire project is \$19 million.

14 Statutory Factors

- 1. Number of Entities Available to Bid:** The complex site logistics and uncertainties involved in mobilizing work at the zoo and in Washington Park and work scheduling requirements related to the imperative to continue business on site during construction are likely to discourage bidders from participating in a traditional design-bid-build process. Additionally, these same complex site logistics present elevated risks that further discourage potential bidders. The opportunity to partner with the architecture and engineering team and perform investigative early work prior to agreement on cost is likely to encourage more participation by contractors and subcontractors.
- 2. Construction Budget and Future Operating Costs:** Utilizing an RFP process to select a General Contractor will allow Metro and contractor to work together during pre-construction to control costs 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 Contractor do early work prior to completion of design shortens the overall duration of construction, resulting in less disruption and risk to revenue generation for the Oregon Zoo. 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 CMGC process, including the ability to perform early work, will allow the schedule to be compressed sufficiently to address current supply chain issues and labor challenges being addressed by 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. The CMGC process also facilitates the effective implementation of the Regional Workforce Equity Agreement by establishing early and frequent collaboration among the general contractor, subcontractors and Metro. This leads to more seamless, efficient, and successful compliance by contractors and subcontractors with the workforce diversity, apprenticeship, recruitment and retention, anti-harassment, high road and equity contracting requirements of the RWEA, and results in projects being appropriately scoped and budgeted to include the production of these crucial public benefits.
- 4. Value Engineering:** The process will enable the contractor to work with the project engineer and zoo 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 complex sites and phased projects, contractor and subcontractors must be able to demonstrate in their proposal that they have worked on complex sites and understand the logistics of traffic control, access, removing demolished materials, and maintaining visitor access to the Zoo during construction. 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 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 work being done at both the zoo entry and polar plaza 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 the zoo'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. Products under consideration can be evaluated 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 on the campus of an operating Zoo, all of which can be factored into the contractor selection in the RFP process. The selection of a contractor with demonstrated experience and success in implementing similar projects will result in a substantially lower risk to Metro, because it increases the likelihood of the project being completed on budget, with fewer construction delays and change orders, resulting in lower costs and increased benefit to the community. The RFP process will take into account each contractor's past performance and technical knowledge. Based on the necessary quality of the finished project, and the technical complexity of the undertaking, the Procurement Manager believes an alternative contracting process to be necessary and in the best interest of the agency.
- 11. New Construction, Renovation or Remodel:** The scope of work has the potential to impact the comfort, health and safety of guests, animals and zoo staff. Some of the design limitations and conditions are likely to be unknown until uncovered by exploratory demolition work performed under an early work amendment, which can be performed during design development to inform the design process.

- 12. Occupancy During Construction:** The areas of the zoo surrounding the construction will remain open and in use during the construction period. Improper execution of the work could cause animal, visitor and staff health and safety issues, and/or temporary closure of the zoo.
- 13. Phased Construction Work:** The work must be done while the zoo stays open and must be complete by August of 2026. Contractor integration with Metro and the architecture and engineering team during the preconstruction period to plan the phased work in light of the results of investigative early work is more likely to produce a project that avoids the risk project delays.
- 14. Availability of Personnel, Consultant and Legal Counsel with CM/GC Expertise:** The Office of Metro Attorney and Project Manager 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 benefits to the 2008 Oregon Zoo Bond projects achieved through the CM/GC process include:

- Zoo 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.
- The bond program provided opportunities for minority-owned enterprises, women-owned enterprises, emerging small businesses and service-disabled veteran-owned own enterprises ("COBID firms"). Overall the bond program spent \$105.5 million on COBID-eligible construction contracts, and \$15.4 million, or 14.7 percent of that went to COBID firms.
- Of these COBID contracts, \$4.1 million (3.9%) went to minority-owned business enterprises, \$4.3 million (4.10%) went to women-owned business enterprises, and \$6.9 million (6.6%) went to emerging small businesses.

3. Benefits and Drawbacks of CM/GC to the Oregon Zoo Entry Plaza and Polar Plaza Shelter.

Benefits - The CM/GC method provides an invaluable means of addressing the risks to Metro presented by the project's site conditions and timeline.

- Zoo must remain open and operational, and the activity will take place in the major entry area of the zoo.
- Widespread public access and need to preserve a quality experience to maintain current revenues.
- Need to complete phases of the work in order to meet deadline of August 2026.
- Potentially unknown site conditions under the entry plaza and polar plaza 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, the Oregon Zoo 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 the zoo, 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.

Drawbacks - Given Metro's favorable experience with CM/GC, staff foresees no drawbacks to adopting the CM/GC method to implement the Oregon Zoo Entry Plaza and Polar Plaza Shelter.

IN CONSIDERATION OF RESOLUTION NO. 24-5425, 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 ENTRY PLAZA AND POLAR PLAZA PROJECT.

Date: June 28 2024

Department: Oregon Zoo, Capital Asset Management

Meeting Date: July 18 2024

Presenters:

Julie Hoffman (she/her), Finance and Regulatory Services

Prepared by: Kristin Solomon,
Kristin.solomon@oregonmetro.gov;

Length: 5 minutes

ISSUE STATEMENT

Metro Council is asked to consider approving the resolution to authorize an exemption to the competitive bidding procedures and authorizing procurement of a construction manager and general contractor.

In 2024, the Oregon Zoo Campus Plan was developed to evaluate and propose upgrades to the 60% of the zoo that was not modernized in the 2008 bond measure. This May, voters in the region passed the \$380 million Oregon Zoo Bond Measure 26-244 that will fund the next 10-15 years of development. The Oregon Zoo Entry Plaza and Polar Plaza Shelter project is the first project to be implemented from the new campus plan and funded by the 2024 bond.

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.

ACTIONS REQUESTED

Adopt Resolution no. 24-5425 to pursue the alternative procurement of Construction Manager General Contractor Services by a competitive Request for Proposals, for the Oregon Zoo Entry Plaza Polar Plaza Shelter 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.

IDENTIFIED POLICY OUTCOMES

A value-based selection process will enable the zoo to meet its goals of advancing its mission of *connecting our community to the wonder of wildlife to create a better future for all*. It will ensure a higher quality project that will support animal well-being and care, visitor experience and accessibility, and climate resilience at the zoo. Metro's Sustainable Buildings and Sites Policy will be implemented as well as the Strategic Plan to Advance Equity, Diversity and Inclusion, Clean Air Construction policy, Construction Careers Pathways policy and Contracting Equity Policy.

POLICY QUESTIONS

How well does the resolution advance the zoo's goals and needs by reducing liability and revenue risks and providing a foundation of cooperation in which a high quality result may be achieved on schedule and on budget?

POLICY OPTIONS FOR COUNCIL TO CONSIDER

- Adopt the Resolution approving the exemption from competitive bidding in favor of CM/GC project delivery method.
- Procure contractor using the traditional ITB procurement process.

STAFF RECOMMENDATION

Staff recommends that Council, acting as the Local Contract Review Board, approves an exemption from competitive bidding for the Oregon Zoo Entry Plaza and Polar Plaza project, authorization of 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.