

## **Exhibit A to Resolution 26-5568**

### **Findings in Support of an Exemption from Competitive Bidding and Authorizing the Procurement by RFP of a CM/GC Contractor to Perform General Construction Services for the Oregon Zoo Coastal Shores Project**

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Pursuant to ORS 279C.335(2) and (4), the Metro Contract Review Board makes the following findings in support of exempting the procurement of the Oregon Zoo Coastal Shores project from competitive bidding, and authorizes 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 Coastal Shores 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 Local 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 subcontractors, including COBID firms and notifying them of any opportunities within their area of expertise and by performing outreach to local small business groups.

**B. Type, cost and amount of the contract.**

Contracting for the work using the CM/GC “type of contract,” resulting in 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 \$79 million.

**C. 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 Coastal Shores 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:

## **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 final agreement on project cost reduces risk to Metro and contractor, and 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. Faster progress and an earlier completion date will also help Metro avoid the risk of inflationary increases 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 to reduce long-term operating maintenance and repair costs.

The ability to have the Contractor do early work such as demolition prior to completion of design shortens the overall duration of construction, resulting in less disruption and risk to revenue generation for the Oregon Zoo.

- 3. Public Benefits:** The execution of the project by using the CM/GC 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-certified business participation by enabling a qualitative review of proposers' approach to outreach and mentoring partnerships. The CM/GC process also facilitates the effective implementation of the Regional Workforce Equity Agreement ("RWEA") 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 designers and Zoo staff to help reduce construction costs by providing early and frequent design input and review to designers, avoiding costly redesign and change orders, and providing opportunities for the engineers and contractor to work together during design on both practical and innovative solutions to complex design issues. 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:** 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 or will retain the specialized expertise essential to deliver the project's complex life support components. The habitats, aquatic animal life support systems, and water treatment system that provide healthy, sustainable environments for the Zoo's marine mammals, penguins, and fish and invertebrate exhibits must be carefully engineered and coordinated between the life support engineer, the general contractor, and architect to decrease risk. CM/GC allows the Zoo to design and strategically define and schedule construction processes, and coordinate collaboratively from the outset. Additionally, there needs to be tight coordination between the architect, general contractor, and third-party vendor for the installation of the new one-of-a-kind carousel within a covered shelter.

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 Coastal Shores could impact public safety if not performed with a level of expertise in operating in the Zoo visitor environment 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, on time and on-budget, rather than awarding the project to the lowest bidder.
- 8. Exemption 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, installation of aquatic life support and water treatment systems, fabrication of simulated rockwork, 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 delays and errors, 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 May 3, 2030. 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 of 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 2008 Zoo bond program provided opportunities to COBID-certified firms. Overall, the 2008 bond program spent \$15.4 million on COBID-certified firms. Of these COBID subcontracts, \$4.1 million (3.9%) went to minority-owned business enterprises, \$4.3 million (4.1%) 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 Coastal Shores Project.**

Benefits - The CM/GC method provides an invaluable means of addressing the risks to Metro presented by the project's site conditions, aquarium complexities 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 May 3, 2030.
- Potentially unknown site conditions at the Coastal Shores project site 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 services during design. Involving a contractor during the design fosters teamwork that results in a better design, faster progress with fewer delays, and fewer 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 Coastal Shores project.