

**Findings in Support of an Exemption from Competitive Bidding
and Authorizing the Procurement by RFP of General Construction Services
for Arlene Schnitzer Concert Hall Orchestra Shell Replacement**

Pursuant to ORS 279C.335(2) and (4), and Metro Local Contract Review Board Rule 49-0630, the Metro Contract Review Board makes the following findings in support of exempting the procurement of the Arlene Schnitzer Concert Hall Orchestra Shell Replacement from competitive bidding, and authorizing use of a Request for Proposals (RFP) solicitation for a public improvement construction contract:

1. The exemption is unlikely to encourage favoritism or substantially diminish competition.

The Metro Contract Review Board finds that exempting the procurement of the construction of the Arlene Schnitzer Concert Hall Orchestra Shell Replacement 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 proposed form of standard construction contract 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, with the contract award going to the most advantageous proposer. Competition for the RFP will be encouraged by: posting on ORPIN (Oregon Procurement Information Network), utilizing the Portland Business Tribune and a minority business publication for the public advertisement; 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.

2. The exemption will likely result in substantial cost savings and other substantial benefits to Metro:

The Metro Contract Review Board finds that exempting the procurement of the construction of the Arlene Schnitzer Concert Hall Orchestra Shell Replacement from competitive bidding will likely result in substantial costs savings and other substantial benefits to Metro. The foregoing finding is also made after considering the following factors:

- a. **Type, cost and amount of contract:** The \$3.75 million dollar Orchestra Shell Replacement Project is a public improvement project that must be delivered under the terms of a construction contract that is robust and flexible enough to govern an accelerated and compressed timeline involving the delicate and complex renovation of a historic theater structure combined with the installation of a complex computer

controlled “virtual orchestra shell” to account for and improve upon the less than optimal acoustic nature of the 90+ year-old concert hall.

- b. **Number of available bidders:** The Project’s compressed timeline and specialized subcontractor requirements may discourage bidders from participating in a low-bid process. Additionally, the potential unknown existing conditions in the 90+ year-old historic structure present elevated risks to bidders, causing them submit artificially high bids to account for the unknown risks to avoid bidding altogether. Staff anticipates that an RFP process will result in more contractors participating in the procurement process.
- c. **Construction budget and projected operating costs for completed project:** Utilizing an RFP process to select a General Contractor will allow Metro to obtain cost reductions through pre-construction services by the contractor during the design phase, including a constructability review, value engineering, and other services. Involving the contractor early in the design process fosters teamwork that results in a better design, fewer change orders, and faster progress with fewer unexpected delays, resulting in lower costs to Metro. The ability to have the General Contractor do early work prior to completion of design shortens the overall duration of construction, resulting in less disruption and risk to revenue generation to the Arlene Schnitzer Concert Hall. 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.
- d. **Public benefits that may result from granting exemption:** Using an RFP process will enable the schedule to be compressed sufficiently so that early work can begin before the design has been completed. The Project must be completed during the 10 week “dark” period scheduled for July 1 through August 31, 2018. In addition to the public benefits from the cost savings noted above, the procurement of a CMGC 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.
- e. **Value engineering techniques:** The process will enable the contractor to work with the project architect and P’5 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 architects and contractor to work together 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.
- f. **Specialized expertise required:** The “virtual” electronic acoustic Orchestra Shell has unique performance and functionality provided by equipment that requires specific expertise. Subcontractors must be able to demonstrate that they can successfully install

the specific components of the Meyer Sound Constellation System. 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.

- g. **Increase in public safety:** *Not applicable.*
- h. **Reduced risk to Metro or public:** The risks to Portland's ongoing operations and contracting posed by the inability of the contractor to meet the schedule deadlines will be reduced by the ability to do early work and by the selection of a contractor based on the demonstrated ability to install the specific system, rather than assigning the project to the low bidder.
- i. **Effect on source of funding:** *Not applicable.*
- j. **Effect on agency's ability to control the impact of market conditions and costs and time necessary for completion:** *Not applicable.*
- k. **Ability to better address the technical complexity of project:** The exemption will allow the Contractor to pre-qualify/select subcontractors that have demonstrated technical expertise, knowledge, and experience with the installation of the Meyer Sound Constellation System, 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, staff believes an RFP process to be necessary and in the best interest of the agency.
- l. **New construction, renovation or remodel:** The scope of work includes impacting and upgrading the electrical and mechanical infrastructure of the 90+ year-old Arlene Schnitzer Concert Hall. Some of this work could impact the interior design of the theater. Some of the design limitations and conditions are likely to be unknown until uncovered by work performed under an early work amendment, which can be performed during design development to inform the design process.
- m. **Occupancy during construction:** As it is not feasible for the building to be occupied during construction, it is critical that the construction schedule align with the July 1 through August 31, 2018 "dark" period.
- n. **Multi-phase construction:** *Not applicable.*

- o. **Availability of Metro personnel and legal counsel with substantial CM/GC expertise and experience:** Metro personnel have and legal counsel have an established successful track record of negotiating, administering, and enforcing the terms of Metro's CM/GC public improvement contract. A team of appropriate qualification and expertise will be deployed on the Project.