

Findings in Support of an Exemption from Competitive Bidding and Authorizing the Procurement by RFP of Construction Manager/General Contractor construction services for the Commercial Food Waste Processing Project

Pursuant to ORS 279C.335(2) and (4), and Metro Contract Review Board Administrative Rules Sections 49-600-670, the Metro Contract Review Board makes the following findings in support of exempting the procurement of the Commercial Food Waste Processing Project from competitive bidding, and authorizing use of an RFP solicitation for a Construction Manager/General Contractor (“CM/GC”) 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 Commercial Food Waste 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 planned CM/GC contracting method and 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. Those proposers not selected by Metro will have an opportunity to protest the award. 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. Competition among subcontractors will be encouraged through publicly-advertised subcontractor solicitations and be based on a low-bid competitive method, or a method whereby both price and qualifications of the subcontractors are evaluated in a competitive environment, consistent with the CM/GC Contract requirements.

2. 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 Commercial Food Waste Project from competitive bidding will likely result in substantial costs savings to Metro, considering the following factors required by Metro Local Contract Review Board (LCRB) Administrative Rule 49-0630 and ORS 279C.335 2(b):

(A) Type, cost and amount of contract

This will be a Construction Manager/General Contractor contract estimated to be \$6,000,000.

(B) Number of Entities available to bid;

As this procurement anticipates using design elements that are found in many construction manufacturing processes, we anticipate many firms that are independently qualified to meet Metro’s needs.

(C) The construction budget and the projected operating costs for the completed public improvement;

The direct involvement of the CM/GC in the design process provides for ongoing constructability review and value engineering, and fosters teamwork that results in a better design, fewer change orders, and faster progress with fewer unexpected delays, resulting in lower costs to Metro via and other services. Faster progress and an earlier completion date will also help Metro avoid the risk of inflationary increases in materials and construction labor costs. The ability to have the General Contractor do early work prior to completion of design shortens the overall duration of construction. 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. Metro will have the ability to cancel the Construction Contract prior to the construction phase and procure construction services through competitive bid should the GMP proposed by the CM/GC be considered too high or if continuing the relationship with the CM/GC should prove undesirable.

(D) Public benefits that may result from granting the exemption;

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. Reduction of risk of design flaws, misunderstandings and conflicts inherent to contractors performing based on designs in which they have had no opportunity for input, therefore reducing the likelihood of contract claims and increasing the likelihood of cost-savings through increased efficiency. Increased quality of work due to greater coordination of efforts between design and construction phases and the ability to evaluate prospective contractors on multiple factors including experience, expertise, and commitment to sustainability and diversity/inclusion, not just pricing;

(E) Whether value engineering techniques may decrease the cost of the public improvement;

The process will enable the contractor to work with the project designer and 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 designer and contractor to work together on both practical and innovative solutions to complex design issues.

(F) The cost and availability of specialized expertise that is necessary for the public improvement;

The scopes of work to be performed under this procurement require technical expertise in design and construction of solid waste and waste treatment technologies. Granting this exemption will allow an RFP process that allows for selection criteria accounting for such experience as well as cost, and not just low bid.

(G) Any likely increases in public safety;

Metro Central Transfer Station is a public facility. Centralized planning and construction increase contractor coordination and reduces exposure to the public as well as commercial haulers using the facility during construction.

(H) Whether granting the exemption may reduce risks to the contracting agency, the state agency or the public that are related to the public improvement;

An exemption will allow for better control of risks related to project costs and schedule delays by reducing/eliminating unforeseen conditions and associated change orders through advanced collaboration between designers and those constructing the improvements. The risks to Central Transfer Station'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.

(I) Whether granting the exemption will affect the sources of funding for the public improvement;

This exemption is not expected to affect the sources of funding for related public improvements.

(J) Whether granting the exemption will better enable the contracting agency to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement;

The exemption will allow for better control of increases to project costs and schedules by reducing/eliminating unforeseen conditions and associated change orders through advanced and continuous coordination of the design and construction tasks being performed by a common contractor. Metro will retain the ability to procure construction service through competitive bid should continuing the relationship with a CM/GC contractor prove undesirable.

(K) Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement;

The exemption will allow the Contractor to pre-qualify/select subcontractors that have demonstrated technical expertise, knowledge, and experience with the logistical challenges of the project, 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.

(L) Whether the public improvement involves new construction or renovates or remodels an existing structure;

This factor is inapplicable.

(M) Whether the public improvement will be occupied or unoccupied during construction;

Metro Central will be operating while construction is ongoing. Improper phasing or execution of the work could affect operations. The CM/GC process provides consideration of phasing concerns and protecting ongoing operations by Metro, the design professional and CM/GC during the design process.

(N) Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions; and

In some cases, the CM/GC contracting method allows for site preparations and other construction activity to occur prior to the completion of the final design under early work orders, saving time and resulting in faster project delivery.

(O) Whether the contracting agency or state agency has, or has retained under contract, and will use contracting agency or state agency personnel, consultants and legal counsel that have necessary expertise and substantial experience in alternative contracting methods to assist in developing the alternative contracting method that the contracting agency or state agency will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract.

The Office of Metro Attorney and CPMO 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.

3. Additional Findings:

A. Industry practices, surveys, trends. The industry-accepted benefits of the CM/GC method include:

- Integrated design process results in a better, more “constructible” 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
- Reduces the likelihood of change orders for unforeseen conditions

B. Past experience and evaluation of Metro CM/GC projects. Metro has extensive past and ongoing successful experience with CM/GC contracting at the Oregon Zoo with its Zoo Bond Implementation Program, the remodel of the Oregon Convention Center, and projects at the Arlene Schnitzer Concert Hall and Antoinette Hatfield Hall.

C. Benefits and drawbacks of CM/GC for the Commercial Food Waste Processing Project. The benefits are as stated above in these findings. Metro staff sees no drawbacks in the approach.

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