

EXHIBIT A

Findings in Support of an Exemption from Competitive Bidding and Authorizing the Procurement by RFP of General Construction Services for Arlene Schnitzer Concert Hall City Sewer Connection

Pursuant to ORS 279C.335 (2) and (4), and Metro Local Contract Review Board (LCRB) Administrative Rule 49-0630, the Metro Contract Review Board makes the following findings in support of exempting the procurement of the Arlene Schnitzer Concert Hall City Sewer Connection 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 Arlene Schnitzer Concert Hall City Sewer Connection 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 ORPIN (Oregon Procurement Information Network), 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 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 Arlene Schnitzer Concert Hall City Sewer Connection 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:

C. Type, Cost and Amount of the Contract: (type of project, budgeted/expected overall cost (of project), budgeted/expected contract amount)

The Arlene Schnitzer Concert Hall City Sewer Connection is a time-sensitive complex infrastructure modernization-adaptation project occurring during a period of sever and continuing labor and supply

chain shortages. This requires Contractor constructability review during design and engineering to avoid project delays and expensive project amendments resulting from hidden or unplanned for site conditions and unanticipated materials and equipment shortages. The rough-order-of-magnitude estimate for the entire project is \$1 million.

14 Statutory Factors

- 1. Number of entities available to bid:** The complex site logistics and requirements to continue business/performances in the building during construction are likely to discourage bidders from participating in a traditional design-bid-build process. Additionally, the type of work involved, pumping raw sewage underneath the audience chamber and stage area of the building above, present elevated risks to a low bid contractor. The opportunity to partner with the architecture and engineering team and perform investigative early work is likely to encourage more subcontract bidders.
- 2. Construction budget and future operating costs:** 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 Portland's and its clients. 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 CM/GC process will allow the procurement and contracting schedule to be compressed providing more working time to cope with the supply chain issues and labor shortages affecting 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.
- 4. Value Engineering:** The process will enable the Contractor to work with the Project Engineer and Portland's 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 septic pump construction, specialty acoustic pipe installation, controls, and subterranean plumbing connections, contractor and subcontractors, must be able to demonstrate in their proposal that they have worked in a busy urban area and understand the logistics of traffic control, access, removing demolished materials, etc. 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 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 directly underneath the audience chamber and stage house 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 Portland'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. Materials and equipment choices can be evaluated not only on cost, but also 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 in a compressed urban site, 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, the risks to operations of a project containing construction defects, 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 infrastructure replacement work has the potential to impact the comfort, safety, and of Portland's staff, clients, and customers. 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.

12. **Occupancy during construction:** The building will remain occupied during the construction period. Improper execution of the work could require cancellation of rehearsals, performances, and operational work, resulting in a loss of revenue for Portland's, clients, and staff.
13. **Phased Construction Work:** The final phase of the work must be done during a two-week period without performances or events, and this period must be blocked out months in advance. Failure to have the earlier phases complete by the committed "dark" period in late August 2022, will impact and, potentially, cause currently scheduled performances and events to be cancelled. Additionally, this work is a prerequisite to a larger project being done by the City of Portland, which would in turn experience schedule delays if phased goals are not met. Having the Construction Manager work together with the Project Engineer during the design process to plan an executable phased approach makes it more likely that the project will meet its schedule goals and avoid disrupting operations.
14. **Availability of personnel, consultant and legal counsel with CM/GC expertise.** The Office of Metro Attorney, Project Manager, and Project Engineer 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 Arlene Schnitzer Concert Hall ("ASCH") Acoustic Enhancement Project recently reached completion. The benefits to the ASCH Acoustic Project achieved through the CM/GC process include:

 - Portland's 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 in the 92 year-old facility.
3. **Benefits and drawbacks of CM/GC to the Project.** The CM/GC method provides an invaluable means of addressing the risks to Metro presented by the project's site conditions and timeline including:

- Facility must remain open and operational, and the activity will take place underneath the audience chamber and stage house.
- Widespread public access and need to preserve a quality experience to maintain current revenues.
- Need to complete initial phases of the work in order to meet deadline posed by scheduled “dark” period.
- Potentially unknown conditions at sub-basement building level and subterranean sidewalk levels 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, Portland’5 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 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.

Given Metro’s favorable experience with CM/GC, staff foresees no drawbacks to adopting the CM/GC method to implement the Arlene Schnitzer Concert Hall City Sewer Connection Project.