

## Oregon Zoo Black Bear Improvements - Exhibit A

### Findings in Support of an Exemption from Competitive Bidding and Authorizing the Procurement by Request for Proposals of Construction Manager General Constructor (CM/GC) Services for the Oregon Zoo Black Bear Improvements

Pursuant to ORS 279C.335(2) and (4), and Metro Code Section LCRB 49-0620 through 49-0660, and 49-0690, the Metro Contract Review Board makes the following findings in support of exempting the procurement of the Oregon Zoo Black Bear Improvements project from competitive bidding, and authorizing use of a Request for Proposal (RFP) process 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 Black Bear Improvements 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 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 Black Bear Improvements 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:

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

The CM/GC project delivery model is a common public improvement procurement practice. Area agencies such as City of Portland, Multnomah County, Tri-Met, and Port of Portland utilize the CM/GC process for their large, complex public improvement projects. In CM/GC projects the General Contractor becomes a part of the project team during the design process, in order to provide constructability, logistics and value engineering expertise to the construction documentation process. CM/GC offers a distinct advantage to Metro over traditional design-bid-build (low bid) method in its ability to obtain enhanced participation by COBID contractors. The current rough-order-of-magnitude estimate for the entire project is \$350,000.

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### Statutory Factors

1. **Number of entities available to bid:** This factor is unaffected by exemption from competitive bidding. Regardless of procurement method, there are numerous firms interested in participating in the procurement, many of which would have bid on the project in the absence of the exemption from competitive bidding.
2. **Construction budget and future operating costs:** Using an RFP 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 potential for 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 changes, leading to a project having lower long term operating maintenance and repair costs.
3. **Public Benefits:** 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 Landscape Architect and Metro staff to hold scope within the construction budget by providing early input and constructability review to designers, avoiding costly redesign and change orders, and providing opportunities for the Landscape Architect and Contractor to work together on both practical and innovative solutions to meeting the project budget. 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:** The contractor and subcontractors must be able to demonstrate in their proposal that they have experience constructing operations and maintenance facilities and park facilities, demonstrated successes with sustainability and subcontractor equity, and have successfully completed public improvement projects, understand the logistics of general public and staff traffic control, access, removing demolished materials, etc. The selection of a contractor with such 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 CM/GC contracting process will enable the Contractor to work with the project Landscape Architect and Metro staff to plan for minimizing safety hazards and conflict between the project and ongoing operations by providing early input into issues of project phasing, construction staging areas, construction access and scheduling. Such integrated early planning efforts are expected to limit risks to public and Metro staff safety. The ability to factor safety performance on similar projects into contractor selection is inherent in the RFP process, but is not part of the traditional low bid process.

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7. **Reduces risk to Metro and the public.** The risks to Oregon Zoo's ongoing operations 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 and based on successful prior experience working safely, effectively and efficiently in or near a similar environment where Metro staff and the public are present, 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:** Does not apply.
10. **Technical complexity:** The exemption will allow the Contractor to select subcontractors that have demonstrated technical expertise, knowledge, and experience with the logistical challenges of demolition and construction in a similar setting, 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. The RFP process will take into account each contractor's past performance and technical knowledge.
11. **New construction, renovation or remodel:** The project is most appropriately scoped as a major renovation. The addition of the general contractor to the project team during project scoping and design will pay dividends by helping to inform Metro's decision-making. Construction of the Oregon Zoo Black Bear Improvements project is tentatively slated to start in mid-FY 23.
12. **Occupancy during construction:** The existing Oregon Zoo Black Bear Habitat has four resident black bears. They have access to a holding building, a primary outdoor yard and a secondary off-exhibit outdoor yard. The resident black bears will remain on-site during construction, but can be restricted to the holding building and off-exhibit outdoor yard. The primary outdoor yard is the project area. The Black Bear Bridge running overhead of the habitat will remain open to visitors and staff during construction. The CM/GC contracting process will enable the contractor to work with the project Landscape Architect and Metro staff to minimize conflict between the project and ongoing operations, by providing early input into issues of project phasing, construction staging areas, construction access and scheduling. Such integrated early planning efforts are expected to limit conflicts and thus reduce the risk of construction delays and costly change orders.
13. **Phased Construction Work:** Part of the CM/GC's pre-construction work will be determining whether the project can be conducted in phases, allowing for early work amendments to start on some phases while finalizing overall design, which ultimately saves time on the overall project and may mitigate impact to ongoing operations. Early work phases are expected to uncover latent conditions at the project site that, once exposed, will then be addressed efficiently and less expensively during ongoing design, avoiding costly redesigns and change orders.
14. **Availability of personnel, consultant and legal counsel with CM/GC expertise.** The Office of Metro Attorney, Project Manager, and Project Landscape Architect 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.

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### 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
- May be completed in a faster time frame
- When skillfully managed, costs less than a design-bid-build project that is designed and constructed in the traditional manner, due to higher likelihood of constructability of design and opportunities for value engineering early in the design process.
- 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 \$47 million Oregon Zoo Polar Passage, Primate Forest and Rhino, ("PPR"), project was substantially complete in March 2021. The benefits to the Oregon Zoo PPR project achieved through the CM/GC process include:

- 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.
- Phased construction was able to start while integrated delivery planning for future phases was still being developed. This kept the project on schedule and allowed for ongoing construction activities during daily Oregon Zoo business operations.
- Seven and ½ percent of the Guaranteed Maximum Price in change orders. On a project of this size and complexity, one would ordinarily expect a ratio of at least ten percent or greater in change orders increasing the cost of construction.
- The project exceeded 14 percent COBID subcontractor participation. This achievement accounts for more than \$4.7 million going to the local COBID subcontractor community.
- Partnering with the Oregon Zoo through preconstruction planning and ongoing coordination, the Zoo was able to safely maintain normal business operations: during 24 months of major construction in the middle of the zoo.

**3. Benefits and drawbacks of CM/GC to the Oregon Zoo Black Bear Improvements project.** The CM/GC method provides an invaluable means of addressing the risks to Metro presented by the project's site conditions and timeline.

By involving the contractor extensively during the design process, Metro 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 services during design. Involving a contractor during the design fosters teamwork that results in a better design, faster progress with fewer delays and lower risk of costly change orders.

Given Metro's favorable experience with CM/GC, staff foresees no drawbacks to adopting the CM/GC method to implement the Oregon Zoo Black Bear Improvements project.