

RESOLUTION NO. 2021 – 58

A Resolution by the McMinnville Contract Review Board adopting findings to utilize a Construction Manager / General Contractor as an alternative procurement method for the Navigation Center.

RECITALS:

WHEREAS, ORS Chapter 279C requires a competitive bidding process for Public Improvement Contracts, unless a statutory exception applies, a class of Contracts has been exempted from the competitive bidding process, or an individual Contract has been exempted from the competitive bidding process, in accordance with ORS 279C.335 and any applicable Contracting Agency administrative rules; and

WHEREAS, ORS 279.335 (2) provides for alternatives to the competitive bidding requirement that otherwise applies to public contracting, upon the adoption of certain findings following a public process; and

WHEREAS, The City of McMinnville (City) would like to use a Construction Manager / General Contractor (CM/GC) alternative contracting method for the Navigation Center Project (Project). CM/GC is defined by ORS 279C.332(3) as a method that procures a CM/GC at the same time as the design team so that the CM/GC can review and analyze the design as developed and suggest changes in the design that will minimize potential errors, delays, unexpected costs and other problems during construction; and

WHEREAS, the City of McMinnville's local Contract Review Board (Board) finds that under ORS 279.335 it has authority to grant specific exemptions from the competitive bidding requirements based on the following findings;

- (a) It is unlikely that such exemption will encourage favoritism in the awarding of the public contract or substantially diminish competition for the public contract, and
- (b) The awarding of the public contract pursuant to the exemption will result in substantial cost savings to the public; and

WHEREAS, The Board has drafted findings and set a public hearing that were the subject of a notice complying with ORS 270.335(5); and

WHEREAS, the Board has conducted a public hearing for the purpose of taking comments on the draft findings for the use of the CM/GC approach as an exemption from the competitive bidding requirements for the Project; and

WHEREAS, the Board, having considered the comments of interested parties, and upon deliberation upon the entire record herein;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF McMinnville, OREGON as follows:

1. The City Council adopts the findings attached hereto and incorporated by reference herein as Exhibit 1 to pursue an alternative procurement method for the Navigation Center
2. This Resolution will take effect immediately.

Adopted by the Common Council of the City of McMinnville serving as the McMinnville Contract Review Board at a regular meeting held the 14th day of December 2021 by the following votes:

Ayes: _____ Drabkin, Garvin, Geary, Menke, Peralta, Chenoweth _____

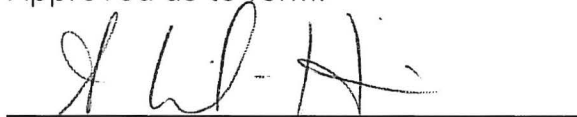
Nays: _____

Approved this 14th day of December 2021.



MAYOR

Approved as to form:



City Attorney

Attest:



City Recorder

EXHIBITS:

1. Findings and Decisions of The City Of McMinnville Contract Review Board to Allow an Exemption to the Public Contracting Requirements for a Public Improvement Contract for the Navigation Center Project.

EXHIBIT 1

FINDINGS AND DECISIONS OF THE CITY OF MCMINNVILLE CONTRACT REVIEW BOARD TO ALLOW AN EXEMPTION TO THE PUBLIC CONTRACTING REQUIREMENTS FOR A PUBLIC IMPROVEMENT CONTRACT FOR THE NAVIGATION CENTER PROJECT

Statutory Requirements

Oregon public contracting code as set forth in Oregon Revised Statutes ORS Chapter 279C, allows the use of a Construction Manager / General Contractor (CM/GC) alternative contracting method for public improvement contracts and provides flexibility in both proposal evaluation and contract negotiation under specific conditions and when authorized by the Local Contract Review Board. In order to utilize a competitive RFP for public improvements, ORS 279C.335 requires that the Local Contracting Review Board make certain findings as part of authorizing the use of an alternative contracting method. The findings must demonstrate that:

1. It is unlikely that the exemption will encourage favoritism in the awarding of the public improvement contract or substantially diminish competition for the public improvement contract; and
2. The awarding of public improvement contracts under the exemption will likely result in substantial cost savings to the public.

For public improvement projects, findings must address certain additional factors, defined by ORS 279C.330. These include, but are not limited to:

1. Operational, budget and financial data;
2. Public Benefits;
3. Value Engineering;
4. Specialized expertise required;
5. Public safety;
6. Market Conditions;
7. Technical Complexity;
8. Funding Sources.

The rules also require that the owners give public notice and hold a public hearing to receive public comment on the findings before taking action on granting and exemption to a public improvement contract from the requirement of competitive bidding.

In reviewing this exemption from competitive bidding, the Board has considered the following factors:

Competition/Favoritism

It is unlikely that the process of selecting a CM/GC firm will encourage favoritism in the awarding of the public contract or substantially diminish competition for the public contract.

1. A Request for Proposal (RFP) will be publicly advertised for the CM/GC to ensure a fair, open, and competitive process. The City will use a formal competitive RFP process for

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selection. The RFP process allows the City to select the company best suited for the project based on factors such as experience, ability to respond to technical complexity, unique character of the project, past performance, ability to design and construct within our budget, and other factors specific to the project.

2. Objective selection criteria and a formal selection process will be included in the RFP for selection of the CM/GC. The selection process to determine the highest ranking proposal will be based on a team review of weighted evaluation criteria identified in the RFP.
3. The CM/GC alternative contracting method will include special requirements pursuant to federal, state, and local public contracting code to ensure fair and open competition for any subcontractors. The CM/GC must follow procedures subject to the applicable federal, state, and local public contracting code for soliciting, receiving bids, and awarding any subcontracts.

Substantial Cost Savings

A CM/GC alternative contracting method should result in substantial project cost savings due to the unique nature of the Navigation Center project per the following: being a rehabilitation of two existing structures on separate lots that will be connected with a newly constructed addition.

1. This project will be rehabilitating two existing structures on two separate lots that are adjacent to each other and then constructing an addition between the two structures effectively connecting them. However, the two existing structures are located on two unique topographical sites with potential slope and soil issues that will make the design and construction of the addition of the two structures complex to design. A CM/GC can work with the designer to provide constructability feedback on the proposed designs of the new construction, which will help to inform the design and prevent costly change orders during construction.
2. Use of a CM/GC form of contract will obtain the services of a construction manager to ensure that work is well coordinated and that the costs are properly evaluated. Costs options for materials, construction sequences, packaging of bids, bid timing, and other factors affecting the production of bid documents can be viewed with greater certainty and knowledge.
3. During the design phase prior to material and subcontractor bidding, the CM/GC will provide value engineering and update cost estimate information. This engineering and cost estimate will assist final decision-making about the project scope, product quality and material finish. Substantial cost savings are anticipated from the Project Team approach that is utilized in the CM/GC method of delivery because decision-making is based on cost effective and informed solutions.
4. Use of the CM/GC will result in substantial time savings to the City of McMinnville which is critical for two reasons. The City of McMinnville was awarded a grant for the construction of the Navigation Center, but the grant timeframe is very compressed. Additionally, construction materials are inflating rapidly so any time savings will result in cost savings to the overall project. The General selection of the CM/GC can be accomplished simultaneously with the earlier phases of the design work. The contract can be approved with the CM/GC and the CM/GC can participate in the plans review so

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that the guaranteed maximum price can be determined more quickly with the CM/GC process than with the competitive bid process.

5. By having the CM/GC as a part of the project team and developing a guaranteed maximum price, the City is assured that the project scope and budget will match. The Guaranteed Maximum Price ("GMP") includes the expected cost to construct the project, the CM/GC firm's fee, and a contingency amount that the CM/GC believes should be available to cover changes to the proposed scope. Any increase in cost due to subcontractor bids higher than estimated, or added cost of scope items included in the contract documents but left out of the CM/GC's estimate, must be absorbed within the GMP. The CM/GC has no incentive to identify change orders that require additional funds and an overhead premium. All costs must be held within the GMP.

Other Findings Criteria (ORS 279C.330)

As set forth in ORS 279C.330, the justification of exemption may include consideration of other factors including, but not limited to:

1. Operational, Budget and Financial Data: The overall project will have a construction budget not to exceed \$900,000, including hard costs, soft costs, fixtures, and furnishings.
2. Public Benefits: This project provides needed emergency shelter and on-site services for McMinnville's homeless population.
3. Value Engineering: The CM/GC process provides many benefits and opportunities for cost savings. System options and real-time cost estimates provided by the CM/GC throughout the constructability reviews will aid the Project and allows the City to make informed cost-benefit tradeoff. During the Preconstruction phase, the CM/GC will be evaluating the budget and making suggestions for cost-saving changes and value enhancements. The CM/GC will evaluate major systems and make design recommendations to the Project Team about which systems are most cost-effective both in to purchase and install and for long term maintenance and operations.

The CM/GC also identifies whether Project sequencing is viable and design elements can be built as drawn. All of these beneficial actions by the CM/GC will improve design, expedite construction and eliminate the potential for costly change orders. The benefits of value engineering are not available with the low bid process.

4. Public Safety: The CM/GC will be required to maintain public safety during completion of work on the site. Additionally the competitive selection process will allow consideration of safety records and experience with similar construction projects that would not be possible as part of a traditional competitive bid process.

The Project will provide for safe public access and full compliance with ADA requirements. All work during the construction will be done in accordance with OR-OSHA safety regulations. The CM/GC selected will be highly qualified and capable and show evidence of construction safety practices that are at the highest level of integrity. The CM/GC's input into work and trade sequencing, and construction methodologies can reduce issues related to safety and provides for close controls and related risk reductions on the site.

The CM/GC method of delivery is a team approach and provides for a high level of responsibility and visible adherence to public safety. The contractor's performance on prior projects in satisfying these safety needs can be determined as part of the City's contractor selection process; this determination is not available under the low bid process.

5. Market Conditions: Construction prices are on the rise. Contractor knowledge is essential to create and expedite bid packages in the competitive bidding environment.

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The CM/GC contracting process is a modern construction delivery method used by both public and private organizations. The CM/GC is tasked with keeping the Project Team up-to-date on the latest construction techniques and products. The CM/GC will inform the Project Team of current market conditions, labor and materials availability, and construction methodologies that can reduce design and construction time and costs.

The CM/GC process allows "fast track" construction to start while detailing structures, interiors, and systems at the same time as awarding site work, foundations, and long-lead items. Timing the market for the various aspects of construction can result in cost savings and ultimately keeps the Project Team on a schedule. These fast-track benefits are not available under the low bid process.

6. Technical Complexity: This project will be new construction on a very steep site with potential soil instability connecting two existing structures that are not on the same level..

The Project has significant technical complexities which will be best addressed by a full team approach, with the CM/GC firm working with the City and the Architect to solve specific challenges identified during the pre-construction phase.

7. Funding Sources: Funding Sources for the project will come from a grant received by the City of McMinnville from the State of Oregon to build a Navigation Center per HB 2006 (2021 Oregon Legislative Session). Funding is limited so securing a Guaranteed Maximum Price and a project schedule reduces uncertainty and reduces the financing risks for the project.

The CM/GC method of contracting provides the greatest cost controls for limited budgets and therefore benefits the City. The team approach, the schedule, the value analysis, and constructability reviews provides the ultimate in effective cost analysis. It is critical, and also consistent with the spirit of collaboration encouraged throughout the process that everyone on the Project Team works towards a budget of which they can take ownership.

The resulting contract from the CM/GC alternative procurement process will be treated as a public contract for public improvement as defined by public contracting code and will be subject to all requirements for public improvement contracts, including but not limited to hours of labor, retainage and payment, subcontractors, bonds, insurance, warranties, reviews, and well as prevailing wage requirements.

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Conclusion:

Based on the foregoing, the findings outlined above justify the proposed exemption and use of an alternative contracting method. After careful consideration, the City of McMinnville Contract Review Board has found the CM/GC alternative contracting method more appropriate than a traditional design-bid-build process to meet the overall project objectives for the Navigation Center Project.

The Project is a technically complex rehabilitation and connection of two existing structures on a steeply sloped sites with potential soil instability. The CM/GC process offers the best opportunity for successfully managing a complex construction on a budget and on time.