

NOTICE OF PUBLIC HEARING

Agenda Title: Resolution Approving Exemption under ORS 279C.335(2) from Design-Bid-Build Procurement Method and Approving an Alternative Procurement Allowing Use of the Construction Manager/General Contractor (CM/GC) Competitive Selection Process and Contracting Method for the Sobering Center Construction Project.

Date: Thursday September 19th, 2024

Time: 9:30 am

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FINDINGS OF FACT AND CONCLUSIONS SUPPORTING EXEMPTION UNDER ORS 279C.335(2) FROM DESIGN-BID-BUILD PROCUREMENT METHOD AND APPROVAL OF AN ALTERNATIVE PROCUREMENT ALLOWING THE USE OF THE CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC) COMPETITIVE SELECTION PROCESS AND CONTRACTING METHOD FOR THE CONSTRUCTION OF THE SOBERING CENTER.

I. BACKGROUND

A. The Construction Manager/General Contractor Project Delivery Method

The Construction Manager/General Contractor (CM/GC) method is a modern construction delivery method used by both public and private organizations. In the CM/GC method, the Owner hires a Design and Engineering firm to perform Building design of a project, and also hires a CM/GC contractor during the design phase to provide construction expertise to the Owner and the design firm. The Project Team is made up of Owner, Designer, and CM/GC. This Team continues throughout the duration of the project.

The CM/GC contractor negotiates a Guaranteed Maximum Price (GMP) with the owner for an agreed-upon scope of work, generally near the completion of design. During construction, the CM/GC contractor is responsible for self-performing an agreed percentage of the work and subcontracts out the remaining work elements.

The County will use a Competitive Solicitation to pre-qualify CM/GC Contractors. This solicitation and the contract negotiations will also define the use of Apprenticeship Programs, Diversity sub-contractor programs, and the use of "green" construction practices

such as LEED certification, as part of the contract(s) with the CM/GC contractor(s).

In general the expected benefits of this delivery method are:

- Cost savings/cost certainty
- Higher quality plans and construction
- Faster completion of the projects
- Greater flexibility for adapting to change
- Enhanced community engagement and diversity participation

The CM/GC process is a common approach for certain types of construction projects managed by public agencies within Oregon, and was approved by the Board for use on the new Downtown Courthouse, the new Gladys McCoy Health Department Headquarters building, and Library Bond Capital projects. The Oregon Public Contracting Coalition (PCC), a diverse group of government and non-government professionals experienced in public contracting, developed a guide for those public agencies considering the CM/GC process. Some recommendations contained in the document were incorporated into ORS Chapter 279C by the legislature. A publication called the Oregon Public Contracting Coalition Guide to CM/GC Contracting (the Guide), written by the PCC and the Construction Engineering Management Program, Department of Civil, Construction, and Environmental Engineering, at Oregon State University, February 2002, is available on-line at:

http://www.agc-oregon.org/wp-content/uploads/2011/10/CM_GC_Guide_05.pdf

The Guide suggests that the CM/GC method is most likely to benefit the Owner for projects that:

- are high risk,
- are technically complex,
- have unusual site conditions,
- have schedule constraints,
- require complex phasing schemes,
- have budget limitations,
- may realize cost savings resulting from value engineering,
- and are greater than \$2 million in cost.

The Oregon legislature enacted 2013 Oregon Laws, Chapter 522 (SB 254), which established new procedures, under ORS 279C.335, for exempting public contracts for CM/GC delivery methods from traditional bidding requirements. On July 1, 2014, the Oregon Department of Justice adopted interim rules amending the Attorney General's Model Rules in OAR Chapter 137, Division 049, to implement the new law. The findings of fact and conclusions in this Exhibit 1 have been drafted in compliance with 2013 Oregon Laws, Chapter 522, and the Model Rules in OAR Chapter 137, Division 049, as amended in 2014.

B. Project Description – Multnomah County Sobering Center

Legislative definition of Deflection House Bill 4002: Collaborative program between law enforcement agencies and behavioral health entities that assists individuals who may have substance use disorder, another behavioral health disorder or co-occurring disorders to create community-based pathways to treatment, recovery support services, housing, case

management or other services. Program goal is to connect individuals who would otherwise be arrested for possession of a controlled substance to a behavioral health pathway toward recovery.

The Facilities and Property Management (FPM) division is working with a real estate brokerage firm in a search to acquire a building, or enter into a long-term lease. The building is expected to be between 25,000 and 50,000 square feet, and ideally, was built or underwent a major renovation in the last 30 years. The goal is to acquire or lease a facility, and start formal design, by the end of 2024.

The facility is anticipated to accommodate up to 50 beds that include sobering and managed withdrawal services, have the ability to take involuntary holds placed by law enforcement agencies, and accommodate participants who need to stay at the facility over 24 hours. Based on these criteria, the building requirements need to meet a higher occupancy classification, an institutional classification. This enhanced occupancy level, along with the unique program elements of the Center, will require a major building renovation.

II. FINDINGS REGARDING COMPETITION

ORS 279C.335 (2) requires that an agency make certain findings as a part of exempting certain public contracts or classes of public contracts from competitive bidding. ORS 279C.335 (2) (a) requires an agency to find that: *“It is unlikely that such exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts.”*

The County’s procedures for procurement of the CM/GC contractor will encourage competition. The procurement will be advertised on OregonBuys, Multco MarketPlace or other local newspapers. In order for the project to be successful, the County needs a highly qualified contractor to perform this work.

The CM/GC contractor will be selected through the County’s standard Request for Proposal (“RFP”) process that is open and competitive. The RFP specifies how a proposal should be structured and what the potential contractors should submit. The selection criteria are clearly stated in the RFP and will include:

- Proposer Qualifications
- Proposer Experience
- Organization and Key Personnel
- Project Approach
- Pre-Construction Services Fee
- CM/GC Fee
- Sustainable Practices
- Workforce Training and Diversity

After the proposals are submitted, the evaluation process will include the following steps:

- a) Proposals will be evaluated by an Evaluation Panel consisting of at least three County and non-County professionals well acquainted with Major Capital Projects.
- b) Proposals will be checked for completeness and compliance with the

minimum requirements listed in the RFP. Complete and responsive proposals will then be evaluated under the criteria stated within the RFP.

- c) Members of the Evaluation Panel will use the County's ERP System to independently score the proposals. The independent scores of each panel member will be combined into overall scores for each proposer.
- d) The Evaluation Panel will identify the highest scoring proposers in the competitive range. If there is a clear choice at this stage negotiation with that firm will be initiated. If there are multiple competitive proposals those firms will be invited to be interviewed.
- e) The Evaluation Panel will conduct interviews with the short-listed proposers, if applicable.
- f) The Evaluation Panel will score the interviews, if applicable, and these scores will be combined with the written proposal scores to yield a total score for each of the short-listed proposers. Based upon the final score, a Notice of Intent to Award will be issued to the highest scoring firm.
- g) Upon expiration of the mandatory award protest period, the County will enter into contract negotiations with the top ranked firm.

Given the above procurement process, County staff finds that selecting a CM/GC contractor pursuant to the exemption is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts.

FINDINGS REGARDING SUBSTANTIAL COST SAVINGS

ORS 279C.335 (2) requires that a public agency make certain findings as part of exempting certain public contracts or classes of public contracts from competitive bidding. ORS 279C.335 (2) (b) requires an agency to find that: "*Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the contracting agency or the state agency that seeks the exemption or, if the contract is for a public improvement described in ORS 279A.050*

(3) (b), to the contracting agency or the public."

ORS 279C.335(2)(b) further provides that: "...the local contract review board shall consider the type, cost and amount of the contract and, to the extent applicable to the particular public improvement contract or class of public improvement contracts, the following:

- (A) How many persons are available to bid;**
- (B) The construction budget and the projected operating costs for the completed public improvement;**
- (C) Public benefits that may result from granting the exemption;**
- (D) Whether value engineering techniques may decrease the cost of the public improvement;**
- (E) The cost and availability of specialized expertise that is necessary for the public improvement;**
- (F) Any likely increases in public safety;**
- (G) Whether granting the exemption may reduce risks to the contracting agency, the state agency or the public that are related to the public improvement;**
- (H) Whether granting the exemption will affect the sources of funding for the**

public improvement;

(I) 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;

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

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

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

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

(N) 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.”

A Major Capital Construction Project for the Sobering Center will be a complex project with complicated construction requirements. Construction expertise in Portland is important due to the permitting requirements for the City as well as the knowledge of how the weather and seasonal variations in the Pacific Northwest affect construction methods and schedules.

The Portland region has a number of very qualified local contractors with the experience, bonding capacity, past expertise and the skill set to work on the Sobering Center project.

CM/GC does not include as direct an element of cost competition during the selection process as does the traditional method. There is typically not enough project design completed at the time of selection of the CM/GC for a firm bid, and, at the Sobering Center, the CM/GC would be early during design. Profit margin will be a factor in selection of the CM/GC. Pricing for the construction packages is negotiated.

On a technically complex project with an aggressive schedule, CM/GC offers several benefits that could lead to a lower overall project cost. The design incorporates input from the contractor and can be optimized for the selected contractor. The ongoing input from owner, designer, and contractor into the design can result in fewer design errors or omissions. Knowledgeable cost estimating and strong auditing from the owner and owner-hired independent experts can provide a check against inflated prices through negotiations when work packages are assigned. Additionally, the owner can reserve the right to bid a work package directly if a satisfactory price cannot be negotiated.

An area where CM/GC can potentially provide a major benefit on projects is in the avoidance of costly changes. Areas of uncertainty can be identified early in the project and managed proactively through such measures as additional investigation, and appropriate schedule or cost contingencies. These factors combine to suggest that CM/GC will yield a lower total price at completion than the other methods on complex, schedule constrained projects like these.

While it may be impossible to predict exactly how much lower the cost will be, there is some

historical data: The Oregon Department of Corrections has significant experience with the CM/GC process and has identified achieved savings of 5% of the construction costs.

The County finds that awarding of this contract with its unique challenges and circumstances pursuant to the exemption will result in cost savings to the County.

The following section presents County staff findings relative to each of the factors required to be addressed by ORS 279C.335(2)(b) (A) through (N), with captions edited for space.

A. *How many persons are available to bid*

Using the CM/GC method of contracting to ensure that the County is selecting the contractor(s) that will perform the work, from within the limited base of contractors qualified to do the work, will mitigate the risk of having contractors that are not qualified to do the work successfully bidding on the project. There are over ten firms in the region that are likely well qualified to do work on the project

B. *The construction budget and the projected operating costs for the completed public improvement*

A construction budget has not been determined since a site for the project has not been chosen and the full scope has not been finalized. The CM/GC delivery method offers Multnomah County major advantages over other delivery methods in achieving delivery of the completed projects. Because the construction contractor provides constructability reviews of design documents, cost estimating, value engineering, and review of design options throughout the design development process, the 100% final design on which construction pricing will be based will have been thoroughly reviewed from a cost basis. Design and construction will be managed to meet the unique challenges of these projects. Risk will be mitigated and allocated most cost-effectively. All pricing will be solicited competitively, or negotiated, with the objective of putting Multnomah County in the best position to deliver the projects within budget.

An operating budget has not been determined for the future Sobering Center. Upon completion, ongoing operating costs will be included in the Multnomah County Facilities and Property Management Division and the Multnomah County Health Department annual budgets.

C. *Public benefits that may result from granting the exemption*

When compared to the typical low bid method of project delivery, the CM/GC method provides opportunities to expedite the schedule and improve overall project quality, thereby reducing the overall impacts to the public during construction. Early work packages can be contracted to allow for scheduled critical work to proceed ahead of complete design. The CM/GC will be involved in design and ongoing review of contract documents, which will improve the quality of the plans and specifications. Early stage CM/GC involvement also offers greater opportunity to mitigate impacts to the community and optimize diverse participation through outreach that involve all key team members during planning and design.

In the County's proposed CM/GC approach, the construction contractor will be selected at or near the same time as the engineering and design firm(s), and before design work begins.

This will allow the contractor to have input into the design and constructability and assist the County and designer in structuring the project for an optimal schedule. In addition, the contractor can start work on elements of the project that can be designed early if required by long procurement lead times. The ability to authorize construction work in packages that are subsets of the overall project allows significant scheduling flexibility and creates opportunity to complete the project in the shortest duration.

The CM/GC process will benefit the public by placing the County in the best position to mitigate community impacts, optimize diverse participation, deliver required features, reduce costs, expedite construction, and improve quality.

D. Whether value engineering techniques may decrease the cost of the public improvement

Target-Value Design (TVD) is a value engineering technique, or cost control method, by which aspects of the project are assigned budgets and are designed not to exceed those budgets. The CM/CG contractor is responsible for providing real-time cost estimating as each project progresses to ensure no aspect of a project is exceeding its budget. This method results in both initial savings as well as long-term savings for projects. In the CM/GC method, the relationship of the owner, construction contractor, and designer fosters a team approach to target-value design. The contractor, for example, can suggest ideas throughout the design development process. Multiple options for high cost or high impact items, such as construction methods, optimal material choices, environmental permitting, and local design requirements can be analyzed at various times during each project to evaluate initial construction costs as well as life cycle costs and benefits. Under the CM/GC method, target-value design is a continuous, iterative process that provides “real time” feedback to the owner and design team to ensure best value savings for the projects are optimized.

E. The cost and availability of specialized expertise that is necessary for the public improvement

The CM/GC selection process is based on qualifications as well as certain preconstruction and construction fees with price as a significant factor. The County will evaluate proposers on such factors as:

- Proposer Qualifications
- Proposer Experience
- Organization and Key Personnel
- Project Approach
- Pre-Construction Services Fee
- CM/GC Fee
- Sustainable Practices

A low bid process does not provide the opportunity to obtain the most qualified contractors with the specialized expertise needed for the projects. The CM/GC process allows the County to select a contractor based on qualifications in design and construction, instead of selecting the low bidder on a completed design, and, thus, to acquire the specialized expertise needed for project design, design assist constructability reviews, quality assurance, site logistics planning, and target-value design.

F. *Any likely increases in public safety*

Safe and efficient movement of traffic must be maintained around construction sites. Local street systems are needed at various parts of the day for traffic entering and leaving work sites during normal working and peak commuting hours. Important users include pedestrian and bicycle traffic at various times of day. It is crucial that all work be highly coordinated with the public to avoid unnecessary traffic delays. At the same time, an extended closure of surface streets to these surface users, i.e. vehicles, bicycles and pedestrians, can be disruptive and should in most instances be avoided, if possible. Maintaining safe movement of roadway, bicycle and pedestrian traffic around construction sites will require contractors dedicated to meeting all of those goals in addition to the primary construction tasks.

The CM/GC process may reduce safety risks by:

- screening potential contractors based on their safety record and approach;
- providing the contractors with clear upfront knowledge of project constraints;
- cooperatively planning the work sequencing with input from the owner, designer, and contractor from a public safety perspective; and
- encouraging ongoing safety input from the entire Project Team.

The CM/GC selection process values proven safety performance and builds upon it, providing enhanced opportunity for the County to optimize public safety implementation during construction.

G. *Whether granting the exemption may reduce risks to the contracting agency, the state agency or the public that are related to the public improvement*

The project will be technically complex and will require that the selected contractor plan and execute difficult operations. Once again, the site logistics and material/labor coordination will be critical to the success of the project. The CM/GC method will facilitate early identification and mitigation of risks by leveraging the expertise of the CM/GCs in addition to the county and designers.

Because the CM/GC method of project delivery allows the County to select a contractor based largely on staff qualifications and demonstrated success on past projects, the County can reduce risk to the project by selecting a contractor with demonstrated expertise.

H. *Whether granting the exemption will affect the sources of funding for the public improvement*

Using the CM/GC method of project contracting and delivery will not impact the funding sources of the project.

I. *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 CM/GC process enables the County to better manage the negative impact of inflationary market conditions in several ways:

- Facilitate the early purchase of certain project elements (such as large steel

fabrications, sheet metal, copper and other commodity items) if appropriate to take advantage of market prices.

- Start construction sooner than the traditional method of contracting would allow because of the ability to start construction of early schedule tasks before other elements of the projects are designed;
- Deliver the project in a shorter overall time than by the traditional method, reducing overhead costs.

J. *Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement*

Large Major Capital Projects like the Sobering Center have multiple technical complexities.

Areas of technical complexity include:

- Traffic management and site logistics phasing to minimize impacts to street traffic and related roadway and sidewalk traffic (autos, bicycles, pedestrians)
- Potentially complex permitting
- Potentially challenging site conditions
- Control of the construction to limit concerns of neighboring building owners, occupants and visitors
- Unique construction with requirements for higher volumes of space and critical acoustical issues

With the CM/GC delivery method, contractors are selected based significantly on qualifications. As the design is developed, the County and the projects will benefit from qualified contractor input regarding complicated design, construction and permitting issues. In addition, since each contractor is made aware of complicated technical issues during the design process, the risks are better identified, understood, and managed. The contractor is involved in solving the problems proactively. The likelihood of successfully resolving technical complexities without undesirable schedule and cost impacts is enhanced. Because traditional design-bid-build delivery does not allow for designer-owner-contractor interaction during design development, it provides the County less opportunity to resolve technical issues most effectively, whether it be for new construction, renovation or remodel.

K. *Whether the public improvement involves new construction or renovates or remodels an existing structure*

The project will be a renovation of a building.

L. *Whether the public improvement will be occupied or unoccupied during construction*

This project will be a new location with no known occupancy issues to consider and is expected to be unoccupied during construction.

M. *Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions; and*

We may choose to phase the programming for the construction project will not be phased..

N. *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 County has Department Staff and the County Attorney's Office, as well as consultants, that have the necessary expertise and substantial experience in the CM/GC construction delivery method) and will use the County Staff, County Attorneys, and consultants to assist in developing the proposed CM/GC contracting method and to help negotiate, administer and enforce the terms of the pending public improvement contracts.

III. Conclusion

In accordance with ORS 279C Multnomah County finds that:

Regarding Competition:

Given the familiarity by County employees and the design firm of the CM/GC construction delivery method, and the known benefits of the method as stated in this document, County staff finds that selecting a CM/GC contractor pursuant to the exemption is unlikely to encourage favoritism in the awarding of public contracts or diminish competition for public contracts. County staff believe there will be cost savings and substantial schedule savings in using the CM/GC method for the Sobering Center project as well