

DRAFT FINDINGS FOR AN EXEMPTION FROM COMPETITIVE BIDDING

CITY OF LEBANON, OREGON

WATER TREATMENT PLANT PROJECT

BID PACKAGE 2 - INTAKE, RAW WATER PUMP STATION, & WATER TREATMENT PLANT

Oregon Revised Statute (ORS) 279C.300 requires competitive bidding of public works improvement contracts unless specifically excepted or exempted from competitive bidding as provided under ORS 279C.335. Under ORS 279C.335, the City of Lebanon Local Contract Review Board may exempt a contract from competitive bidding based on approval of two findings:

1. The exemption is unlikely to encourage favoritism in the awarding of the public improvement contract or substantially diminish competition for the public improvement contract.
2. Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the City of Lebanon.

In approving the finding under ORS 279C.335(2)(b), the Local Contract Review Board must consider the type, cost and amount of the contract and, to the extent applicable to the particular public improvement contract, all items outlined in ORS 279C.335(2)(b)(A-N).

This document presents information the City of Lebanon Local Contract Review Board will consider in its approval of the findings to exempt the Water Treatment Plant Project, Bid Package 2 - Intake, Raw Water Pump Station, and Water Treatment Plant from competitive bidding and use a CM/GC method of delivery.

I. BACKGROUND

The City of Lebanon is undertaking the Water Treatment Plant project to reliably meet its future water demands. The project replaces an aged plant with a new water treatment plant. The project includes construction of a new intake on the South Santiam River; a new raw water pump station; new water treatment plant; and raw water transmission, water transmission, sewer, and stormwater pipelines.

The project was separated into two construction packages to secure competitive bids from the most qualified contractors. Bid Package 1 included work by utility contractors for the off-site raw water conveyance pipeline, water transmission main, sanitary and stormwater pipelines, and a crossing of the Albany Canal for a new Cheadle Lake drain. Bid Package 2 included work by general contractors with experience constructing river intakes, raw water pump stations, and water treatment plants.

Bids were received on May 12, 2016 for Bid Package 1 - Off-Site Utilities project. The low bid was \$3,576,527.35, which was \$271,000 lower than the City's estimated cost. The City awarded Bid Package 1 to the lowest responsive, responsible bidder on June 8, 2016 following the provisions of ORS 279C.

On May 24, 2016 bids were received for Bid Package 2 - Intake, Raw Water Pump Station, and Water Treatment Plan project. Seven bids were received ranging from \$28.9 million to \$34.9 million. The low bid was \$8.2 million over the estimated cost for the project and \$6.9 million over the City's funding limit. Under provisions of ORS 279C.340, the City negotiated with the apparent lowest responsive, responsible bidder to solicit value engineering and other options in an attempt to bring the contract within the City's funding limit. Negotiations revealed that significant changes to the scope of the project from the original bid proposal were required. Accordingly, in compliance ORS 279C.340, the City did not award the project.

Analysis of bids for Bid Package 2 revealed that construction costs for the building, HVAC system, and electrical, instrumentation, and controls work were significantly higher than the historical data used to prepare the cost estimate, even with the escalation factors that were applied to reflect current market conditions. The analysis concluded that significant reductions in project scope were needed to bring the contract within the City's funding limit. The analysis further revealed the need to know real-time construction pricing to make judicious benefit-cost decisions when making significant changes to the project scope to reduce costs.

To achieve the significant scope and cost reductions required, based on real-time construction prices, a two phase Construction Manager / General Contractor (CM/GC) delivery method for completion of the project is proposed by City staff. Under Phase 1, the selected CM/GC firm will provide a value engineering review of the original design to identify scope and cost reductions and provide a guaranteed maximum price for the work. In Phase 2, the CM/GC firm will construct and commission the project components.

II. SUMMARY OF FINDINGS

With regard to ORS 279C.335, the City of Lebanon Local Contract Review Board has considered the following two findings in its decision to exempt the contract for Bid Package 2 from competitive bidding:

1. The exemption is unlikely to encourage favoritism in the awarding of the public improvement contract or substantially diminish competition for the public improvement contract.

Analysis: The City will select the CM/GC firm through a competitive selection process. The City will issue a Request for Proposals (RFP) in a manner that will attract competition from qualified firms through advertisement in the Daily Journal of Commerce and local newspaper, and posting on the City's web site.

The Request for Proposals will attract proposers having the specialized knowledge, capacity, and skills for the project from within the state and the Pacific Northwest. A sufficient number of CM/GC firms are available to respond to the RFP. However, current market conditions may limit the number of firms that actually respond.

Some of the qualified CM/GC firms in the Pacific Northwest that may respond the City's RFP are listed below:

1. Slayden Construction Group, Inc. (now under MWH/Stantec)
2. M.A. Mortenson Company
3. Wildish
4. Natt McDougal Company
5. CH2M

6. *HDR, Inc.*
7. *Hoffman Construction Company*

Pre-defined scoring criteria will be included in the RFP. Scoring criteria will be based on qualifications and experience of the firm related to the project components, complexity, and size; qualifications and experience of the proposed CM/GC team related to performance on similar recent projects; project understanding and approach; ability to achieve cost-reduction through value engineering; ability to self-perform portions of the work; safety record; financial standing; and pricing of services for Phase 1 (value engineering and guaranteed maximum price development) and markup on the cost of work in Phase 2 (construction and commissioning). Review of proposals and scoring will be performed by City staff with the assistance of the design engineer. Reviewers will follow the pre-defined scoring criteria.

Additionally, the contract between the City and the CM/GC firm will require portions of the work to be contracted by the CM/GC firm through receipt of competitive proposals. The CM/GC firm will be required to comply with the provisions of ORS 279C.337 for selection of subcontractors.

Finding: The process used by the City to select the CM/GC firm and the number of firms available to propose makes the exemption unlikely to encourage favoritism in the awarding of the public improvement project or substantially diminish competition for the public improvement contract.

2. Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the City of Lebanon.

Analysis: Bids received under ORS 279C.300 for competitive bidding were 40% higher than the Engineer's estimated cost. Analysis of the bids revealed a significant difference between the historical pricing information used to prepare the Engineer's estimate and current market pricing for the building, HVAC system, electrical, instrumentation, and controls work. The analysis further revealed the need to know real-time construction pricing to make judicious benefit-cost decisions when making significant changes to the project scope to reduce costs.

Significant scope and cost reductions are required for the City to move forward with the project components, which are critical for the City to meet its commitment to provide safe and reliable potable water to its customers. Awarding a contract to a qualified CM/GC contractor provides opportunity for the City to employ a contractor-led value engineering review of the original design. The RFP procurement approach allows the City to select a CM/GC firm most capable of achieving the scope and cost reductions required, and deliver high quality facilities within an agreed upon guaranteed maximum price and schedule.

The CM/GC contractor can provide realistic determination of costs and constructability issues that will allow cost-benefit decisions to be made by the City. The contracting method will allow alternatives to be reviewed in a team environment of City staff, design engineer, and contractor working in a partnership. During the process, the CM/GC's construction experience and knowledge will aid in early identification of effective measures to minimize risks. This partnering approach will likely reduce the need for change orders, claims, and delays, resulting in significant cost savings and delivery of quality facilities on time.

Using CM/GC delivery for the justice center and library the City realized significant advantages to the qualifications-based selection through early collaboration between the design team and the contractor, and the ability to reduce costs through contractor input into the construction methods. It is likely that there will be a lower chance of disruption to the schedule, cost overruns, and delays by using the CM/GC approach.

Finding: Awarding the project to a CM/GC contractor under the exemption provides opportunity to achieve substantial cost savings and other substantial benefits to the City. The City will be able to employ a contractor led value engineering review of the original design; take advantage of collaboration between the City, design engineer, and the contractor; and take advantage of the contractor's knowledge and experience to manage risks and reduce costs.

III. RESPONSE TO ITEMS UNDER ORS 279C.335(2)(b)

In approving the finding under ORS 279C.335(2)(b), the Local Contracting Review Board must consider the type, cost and amount of the contract and, to the extent applicable to the particular public improvement contract 14 items outlined in ORS 279C.335(2)(b)(A-N). Information considered by the Local Contract Review Board related to each of these requirements follows:

(A) How many persons are available to bid:

Information considered by the Local Contract Review Board: The City will select the CM/GC firm through a competitive selection process. The City will issue a Request for Proposals (RFP) in a manner that will attract competition from qualified firms through advertisement in the Daily Journal of Commerce and local newspaper, and posting on the City's web site.

The Request for Proposals will attract proposers having the specialized knowledge, capacity, and skills for the project from within the state and the Pacific Northwest. A sufficient number of CM/GC firms are available to respond to the RFP. However, current market conditions may limit the number of firms that actually respond.

Some of the qualified CM/GC firms in the Pacific Northwest that may respond the City's RFP are listed below:

- 1. Slayden Construction Group, Inc. (now under MWH/Stantec)*
- 2. M.A. Mortenson Company*
- 3. Wildish*
- 4. Natt McDougal Company*
- 5. CH2M*
- 6. HDR, Inc.*
- 7. Hoffman Construction Company*

(B) The construction budget and the projected operating costs for the completed public improvement:

Information considered by the Local Contract Review Board: The City has established a budget of \$25 million for the project. Operating costs for the project are estimated to be on the order of \$500,000 per year.

- (C) Public benefits that may result from granting the exemption:

Information considered by the Local Contract Review Board: The City must provide a safe and reliable potable water supply to its customers. In 2007 the City completed an assessment of its current Water Treatment Plant. The assessment concluded that a new plant was needed. In 2009 the City completed a study of the capital improvements needed for the project; which were confirmed during preliminary design of the project.

Based on receipt of competitive bids, significant changes in the scope of the project are required for the City to move forward within its funding capacity. Granting the exemption from competitive bidding and employing a CM/GC delivery method provides opportunities through a contractor led value engineering effort to identify the changes needed to reduce the project cost. Thus, granting the exemption will allow the City to move forward with the project to ensure its ability to provide a safe and reliable potable water supply to its customers.

- (D) Whether value engineering techniques may decrease the cost of the public improvement

Information considered by the Local Contract Review Board: Granting the exemption will allow the City select a qualified CM/GC firm to employ a contractor led-value engineering effort using real-time construction pricing to provide information needed to decrease cost of the project. The CM/GC team can provide realistic determination of costs and constructability issues that will allow cost-benefit decisions to be made by a team of City staff, design engineer, and contractor working in a partnership. Contractor led value engineering will decrease the cost of the project.

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

Information considered by the Local Contract Review Board: Construction of the intake requires a specialized contractor that can complete work within the short regulatory in-water work period and properly address the significant technical construction issues. Additionally, expertise in raw water pump stations and water treatment plant construction methodology, sequencing, scheduling and cost estimating is essential to make sure the City realizes an optimum re-design that remains practical and within budget. All seven of the CM/GC firms listed under Item (A) have the specialized expertise required for the project.

Procurement of the CM/GC firm based on qualifications, understanding of the project, and approach to reduce project costs best assures the City of retaining a qualified firm for the project. Including cost in the selection criteria for CM/GC services performed in Phase 1 and the CM/GC markup on the cost of work in Phase 2 provides the City ability to select a firm that provides overall best value to the City.

- (F) Any likely increases in public safety

Information considered by the Local Contract Review Board: It is important to build the project with safety foremost in the contractor's approach to ensure safe working conditions for the contractor, neighbors, and traveling public that could be affected by the project. Additionally, delivery of safe drinking water to customers must be assured when the new plant is placed in service.

The CM/GC procurement method allows actual safety performance and commissioning work on similar projects to be considered as a selection criteria. It also permits the City to work closely with the contractor to ensure that the design permits appropriate safety measures, that

the contractor understands the City's safety concerns, and that the contractor will take appropriate steps to address them.

- (G) Whether granting the exemption may reduce risks to the contracting agency or the public that are related to the public improvement

Information considered by the Local Contract Review Board: Construction of the intake requires deep excavation, which may encounter bed rock. Original design of the intake included excavation of a toe in the bed rock for to anchor it from sliding. Additionally, rock anchors were included in the design to eliminate cost and schedule impacts if specialized construction means and methods were required to excavate the toe into the bed rock.

CM/GC contracting will allow the risk of needing specialized construction means and methods to be managed during construction without the need for a significant change order. An appropriate cost for the work needed to install rock anchors can be identified and only implemented if needed.

Additionally, the intake will be constructed immediately adjacent to River Drive. Strict adherence to safety measures will be needed to protect the public and workers. The partnering relationship provided through CM/GC delivery will provide opportunity for the City to work with the Contractor to ensure safety measures are followed and revised if needed to reduce risks to the public.

- (H) Whether granting the exemption will better enable the City to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement

Information considered by the Local Contract Review Board: CM/GC contracting has the benefit of allowing the selected contractor to solicit competitive bids for various aspects of work (equipment, labor, etc.) early in Phase 1 and coordinate construction activities among all resources to minimize construction risks and delays. The CM/GC will be able to prepare material and equipment submittals as part of the project re-scoping and issue purchase orders to subcontractors, suppliers, and vendors. Thus, granting the exemption will better enable the City to control the impact of price increases occurring in the current market by locking in prices early in the project. The CM/GC contracting method will also provide increased opportunity to identify and reach out to qualified small businesses that may otherwise not have an opportunity to participate in the project.

Additionally, using CM/GC will allow the project to move forward without the time needed for re-design and re-bidding. This savings in time will lessen the impact of the price increases occurring in the current market conditions.

- (I) Whether granting the exemption will better enable the City to address the size and technical complexity of the public improvement

Information considered by the Local Contract Review Board: Four characteristics of the project lead to its technical complexity and the requirement for a contractor with adequate capacity: 1) construction of the intake, raw water pump station, and water treatment plant must occur simultaneously and all facilities ready at the same time for commissioning, 2) the contractor must install equipment, devices, and controls supplied by a membrane system supplier selected by the City under a separate competitive bid, and must coordinate control integration and commissioning of the plant with the membrane system supplier, 3) in-water work for the intake must occur between July 15 and August 31 and follow special work

restrictions outlined in regulatory permits for protection of endangered species, and 4) supervision and oversight of construction at two separate sites, the intake and raw water pump station site and the water treatment plant site, which are separated by approximately one-mile.

The technical complexity of the project requires a contractor that can integrate work at all three facilities and be able to manage all aspects of work. The CM/GC process will allow the City to acquire a highly qualified contractor with adequate staffing for the site supervision needed as opposed to a minimally staffed contractor secured through award to the lowest responsive, responsible competitive bidder. As a result, it is more likely that the CM/GC firm can address the technical complexities and size of the project more effectively, in part because of its qualifications and in part because it will have the opportunity to propose a project approach with adequate staff.

- (J) Whether the public improvement involves new construction or renovates or remodels an existing structure

Information considered by the Local Contract Review Board: New facilities are being constructed to replace the City's water treatment plant and intake. The new facilities are located on undeveloped land, remote from the existing water treatment plant and intake. No coordination or work at the existing facilities is required. Following a period of successful operation of the new facilities, the City will terminate operation of the existing facilities.

Using the CM/GC delivery method does not add benefit to the City relative to the need for coordination and discovery of unknown issues related to renovation or remodeling of an existing structure.

- (K) Whether the public improvement will be occupied or unoccupied during construction

Information considered by the Local Contract Review Board: During construction the facilities will be unoccupied. However, the new facilities will be occupied by the City when the Contractor is performing training, commissioning, and trial operation activities. Additionally, the City will order and coordinate deliveries of chemicals for commissioning and operation of the facility. During the commissioning and trial operation period the Contractor will need to coordinate with the City for completion of office, control, and laboratory spaces.

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

Information considered by the Local Contract Review Board: Construction of the project will be completed in one phase. In-water work for the intake is planned to occur in two consecutive years. The work area is to be isolated from the river during the first year and the isolation barrier removed during the second year. Using the CM/GC delivery method will allow the contractor an opportunity to develop a method to construct the intake during only the first in-water work period. The cost-benefit of this approach can be evaluated by the City in partnership with the contractor and implemented if beneficial to the City.

- (M) Whether the City has, or has retained under contract, and will use city 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 City will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract

Information considered by the Local Contract Review Board: The City recently constructed a new justice center and library using CM/GC delivery. The project was successfully completed within budget and schedule. Further, through the CM/GC method the City was able to partner with the contractor to address risks, reduce change orders, and build in features that benefited the community. The City has a model CM/GC RFP and contract from the project that is being used as a model on this project. Through this recent successful project the City has reasonable experience in using the CM/GC delivery method.

To support the City, the City has retained Carollo Engineers, Inc. for design and services during construction of the project. Carollo Engineers has the necessary expertise and substantial experience in alternative delivery of water treatment projects for municipalities. Carollo Engineers' extensive water treatment project experience includes using CM/GC and design-build delivery approaches in addition to the conventional design-bid-build approach used initially for the project. Carollo is a licensed contractor in Oregon and other states for its performance as a design-builder.

Locally, Carollo Engineers, Inc. completed the City of Salem, Willow Lake Water Pollution Control upgrade project under CM/GC delivery and is currently completing the new wastewater treatment facility for Oak Harbor, WA under CM/GC delivery. The local staff of Carollo Engineers and its design engineers has the qualifications and experience needed to work in partnership with the City and CM/GC contractor to successfully identify the cost reduction measures required and to help negotiate, administer, and enforce the terms of the contract.

IV. CONCLUSION

The City of Lebanon Contract Review Board can meet the requirements for allowing an exemption to the competitive bidding process as identified in ORS 279C.335 (2) for the project. Use of the CM/GC alternative delivery method for the project allows:

- The City to take advantage of the CM/GC contractor's knowledge and experience to achieve the significant scope changes and substantial cost reduction needed for the project to move forward.
- Use of a contractor-led value engineering of the original design with real-time construction pricing for the City to make judicious decisions that truly benefit the City.
- Use of a delivery method that allows decisions to be made through a partnership between the City, design engineer, and contractor.
- A guarantee of the maximum price for construction.
- Early procurement of materials and equipment and locking in of subcontract prices to manage the risk of significant price increases, which is occurring in the current market.
- Competitive selection of suppliers, equipment, materials, and subcontractors with solicitations managed by a contractor knowledgeable of the marketplace and market conditions.
- Sufficient and qualified staff to manage the multiple work sites and subcontractors
- Coordinated responsibility for worker safety

- CM/GC assumption of some risk (i.e., cost, schedule, safety, maintaining service, and constructability).

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