

RESOLUTION NO. 18-28

A RESOLUTION ADOPTING FINDINGS IN SUPPORT OF ALTERNATIVE CONTRACTING METHOD FOR THE CONSTRUCTION OF THE OREGON CITY POLICE AND MUNICIPAL COURTS FACILITY

WHEREAS, the Oregon City Police Department is currently housed in a building purchased by the City of Oregon City in the 1980s. This building also houses the Oregon City Municipal Court and Code Enforcement. The Police operate out of the building and three modular trailers that are parked behind the building; and

WHEREAS, the current facility was not designed for its current purpose. The building is too small, does not meet safety requirements for police or court staff, is inefficient, and does not meet state-mandated seismic standards. For many years, the City has worked to solve the problem of building a facility that meets public needs for the police department; and

WHEREAS, in December of 2014, the Oregon City Commission approved purchase of the Mt. Pleasant School site from the Oregon City School District. The purpose of this purchase was to be the site of the future police and court facility. The concept design also provided space for a potential future City Hall; and

WHEREAS, this site is approximately 8.3 acres and currently has two buildings that made up the former Mt. Pleasant School. The larger building is approximately 40,000 square feet and is currently being leased by a private school; and

WHEREAS, the smaller annex building is approximately 7,000 square feet and is being used by the City in two capacities. Police utilize half the space for a gym and training space, while Oregon City Community Development occupies the other half; and

WHEREAS, in May of 2015, the Oregon City Commission approved the Community Safety Advancement Fund (CSAF) to provide revenue for the eventual construction of a new police and court facility. This was a fee added to Oregon City utility bills of \$6.50 per month, netting a revenue source of approximately \$1.1 million per year; and

WHEREAS, in September of 2017, Oregon City voters approved a revenue bond measure that allowed the police department to borrow money for the immediate construction of the police and court facility; and

WHEREAS, an alternative contracting method, known as the Construction Manager/General Contractor ("CM/GC") allows public entities to accommodate the various technical challenges in a more flexible and cost effective approach than the normal competitive bidding process; and

WHEREAS, as discussed in the attached findings, the CM/GC process insulates the City from price fluctuations in a volatile market, allows the City to make budget decisions while designing the building, and due to the sequential order of bidding, allows the City to have potential savings during design and construction. CM/GC does not diminish competition or encourage favoritism in awarding public improvement contracts.

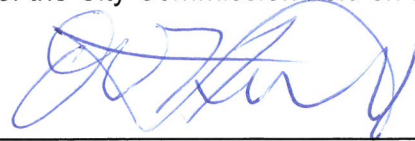
NOW THEREFORE, THE CITY OF OREGON CITY RESOLVES AS FOLLOWS:

Section 1. The City Commission adopts the findings attached hereto as Exhibit A, explaining why it is appropriate for the City to use the Construction Manager/General Contractor ("CM/GC") for the construction of the new Police and Municipal Courts Facility.

Section 2. Based on the findings adopted in Section 1 of this resolution, the Oregon City Commission hereby exempts from the requirements for competitive bidding the project to construct the new Police and Municipal Courts Facility.

Section 3. This resolution shall take effect immediately upon its adoption by the City Commission.

Approved and adopted at a regular meeting of the City Commission held on the 19th day of September 2018.



DAN HOLLADAY, Mayor

Attested to this 19th day of September 2018:



Kattie Riggs, City Recorder

Approved as to legal sufficiency:



City Attorney

Attachment:

Exhibit A – Resolution Findings

Exhibit A to Resolution 18-23

FINDINGS IN SUPPORT OF ALTERNATIVE CONTRACTING METHOD FOR THE CONSTRUCTION OF THE OREGON CITY POLICE AND MUNICIPAL COURTS FACILITY

Introduction

Use of Alternative Contracting methods, such as Construction Manager/General Contractor ("CM/GC"), is made possible under ORS Chapter 279C, which permits certain contracts or classes of contracts to be exempt from competitive public bidding under strict procedural safeguards. Like other alternative contracting methods, CM/GC has significantly different legal requirements than a typical design-bid-build project delivery method.

Pursuant to ORS 279C.335, a local contract review board may exempt specific contracts from traditional, competitive bidding by showing that an alternative contracting process is unlikely to encourage favoritism or diminish competition and will result in cost savings to the public agency. The Oregon Attorney General's Model Public Contract Rules provide for public notice and opportunity for the public to comment on draft findings in favor of an exemption before their final adoption.

ORS 279C.330 provides that: "findings" means the justification for a contradicting agency conclusion that includes, but is not limited to, information regarding:

- Operational, budget and financial data;
- Public benefits;
- Value engineering;
- Specialized expertise required;
- Public safety;
- Market conditions;
- Technical complexity; and
- Funding sources.

Findings

Operational, Budget, and Financial Data

Although there are additional civic facilities planned for the site in the future, this phase of the project will be limited to the design and construction of the Police and Municipal Courts Facility. The Police and Municipal Courts program defines this phase to be approximately 38,000 square feet. An early task of the project team will be to determine whether the Police and Municipal Courts program square footage is most effectively addressed using a single building or multiple buildings based on function and "essential" facility requirements per applicable building codes. The projected total cost for the project is \$21 million dollars.

CM/GC provides opportunities for cost saving in a variety of ways. The inherent flexibility and openness of the process allows the City to more easily make appropriate changes as necessary to meet the project budget. The increasing costs of construction materials will present a large challenge.

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.

Additionally, if the City requests a major scope change that increases the GMP, the CM/GC firm receives only reimbursement for the cost of the change plus its stated fee percentage, typically 3-4%, far less than the approximately 15% which a general contractor would charge on a traditional contract.

Public Benefit

The Project is needed to accommodate police services over the next 50+ years. There are numerous deficiencies with the current space that increasingly hamper our efforts to provide quality public safety services to the residents of Oregon City. The capacity of the existing facility has been clearly exceeded and the existing building is not seismically safe according to state-mandated standards. The Project will provide greatly enhanced public meeting spaces, private interview areas, court facilities, and sufficient storage and staff workspaces in a building that is ADA accessible and energy efficient.

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.

Specialized Expertise Required

The features and components of the Police and Municipal Courts Facility are neither repetitive nor generally available for off the- shelf purchase as would be the case in common office or general use buildings. The contractor ultimately selected as CM/GC will be required to demonstrate experience and expertise in providing CM/GC services to public and/or private organizations. These services can include design and construction of public safety facilities; experience with the historic resources process and how they will ensure compliance with applicable SHPO and NPS requirements; LEED certification; and relationship management with neighbors, neighborhood associations, and other public entities not directly involved with the Project. .

The CM/GC selection process is based on qualifications, with price as factor. The fee is, however, less important than the overall qualifications and specialized expertise of the selected CM/GC. The City will benefit by acquiring a CM/GC that has established experience and specialized expertise to manage this project. A low bid process does not provide an opportunity to obtain the most qualified contractor with the specialized expertise needed for the Project.

Public Safety

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.

Market Conditions

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.

Technical Complexity

The types of buildings not only serve as a pillar in the community, but also must function properly to increase the safety of the community they serve. The Project has significant technical complexities, such as a higher level of security for the building and space-needs for confidential and community places for the public and staff; 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.

The ability to coordinate and manage this Project, while working with the City and major stakeholders, is highly complex in nature. This complexity is especially challenging to an inexperienced firm.

This Project also requires technical expertise and experience in commercial construction involving public entities generally and public safety, specifically. The CM/GC process enables the City to competitively select a prime contractor who has the necessary competence to deal with the technical complexities of this Project and can provide quality workmanship, dependable performance, fair and reasonable pricing, and efficient management as Project Team member. Under a low bid process, the technical competence of the contractor is difficult to evaluate.

Funding Sources

Funding for this Project will come from revenue saved, bonds issued by the City, and the sale of the current building. As a public entity, the City needs budget predictability. The CM/GC process, with its negotiated GMP will provide the necessary predictability. Additionally, there is a high expectation from both the individual entities and donors that construction will be built and available for public use in the near future.

The CM/GC method of contracting provides the greatest cost controls for limited budgets and therefore benefits the City. The team approach, schedule, 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.

Competition and Cost Savings

Unlikely to Encourage Favoritism or Diminish Competition

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. Competition will not diminish because the CM/GC contract will be awarded based on a competitive process and the CM/GC will use a competitive bidding process to select their subcontractors, which is not required under a low bid process.

Cost Savings

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. Using a CM/GC will allow more flexibility to develop, evaluate, and implement design changes with less impact on construction cost and time. Substantial cost savings are anticipated from the Project Team approach that are utilized in the CM/GC method of delivery because decision-making is based on cost effective and informed solutions. Progress reviews are frequent and diligent, this resulting in fewer design corrections and change orders during construction. Additionally, the use of value engineering through cooperation among the architect, engineer, contractor, and City is essential to the Project delivery on time and within budget. CM/GC value engineering will reduce bid addenda, contract change orders, and progress delays to help meet the tight time schedule for the Project. These savings are not realized under a low bid process.

Summary

After careful consideration, the Oregon City Commission has found the Alternative Contracting Method CM/GC more appropriate than a traditional design-bid-build process to meet the overall project objectives for the Police and Municipal Courts Facility.

In December 2014, the Oregon City Commission approved the purchase of Mt. Pleasant School from the Oregon City School District. The purpose of the purchase was to eventually become the site of the Police and Municipal Court Facility. Additionally, space was provided for a potential future City Hall through a design concept. The Project is located in Oregon City, which is in the greater Portland metropolitan region. There are several firms with the experience and expertise in this type of work, so it is anticipated that there will be likely to bid on the project. The CM/GC process offers the best opportunity for successfully managing a large, complex construction on a budget and on time.