

**FINDINGS IN SUPPORT OF AN EXEMPTION FROM COMPETITIVE BIDDING
UNDER ORS 279C.335(2)
MANZANITA CITY HALL PROJECT**

I. Introduction. The City of Manzanita (the “City”) is planning to construct a new City Hall on approximately 2.67 acre parcel of land located at Underhill Plaza on the corner of Manzanita Street and Division in the City of Manzanita (the “City Hall Project”). Due to the nature and complexity of this project and the City and community goals and values, staff recommends using the Construction Manager/General Contractor (CM/GC) alternative contracting process. The CM/GC alternative contracting process is authorized for procurement of construction services under ORS 279C.337 as long as the Local Contract Review Board approves an exemption from competitive bidding as provided in ORS 279C.335(2). The Manzanita City Council acts as the City’s Local Contract Review Board under ORS 279A.060.

II. The CM/GC Alternative Contracting Process. Under the CM/GC process, the City solicits prospective contractors prior to completion of the design phase pursuant to a competitive request for proposals (RFP) process. Selection is based upon criteria relating to the experience and expertise of the contractor rather than low bid. The contractor works with the owner and architect during the design phase to develop the final design with the goals of improved constructability and value engineering, which often results in fewer change orders during construction and enables the City to expedite the construction schedule. It also enables the contractor to be involved in development of the construction program. At the end of the design phase, the owner and contractor negotiate and agree on a guaranteed maximum price (“GMP”) and the construction schedule, which is typically documented through a GMP Amendment. Execution of the GMP Amendment starts the construction phase of the project. The CM/GC alternative contracting method is commonly used by public contracting agencies for large, complex projects such as the City Hall Project.

III. Findings. ORS 279C.335(2), implementing ORS 279C.330, requires the Board to make certain findings in order to grant an exemption as follows.

A. 279C.335(2)(a): "The exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts."

Finding: The requested exemption will not encourage favoritism or substantially diminish competition. The City is utilizing a competitive RFP process to select the CM/GC firm. The procurement will be formally advertised with public notice. Full competition will be encouraged and all qualified contractors will be invited to submit a proposal. The award will be based upon an objective review and scoring of proposals by a qualified review committee based on identified selection criteria. Once selected, the CM/GC will select subcontractors via competitive process consistent with the requirements described in ORS 279C.337(3).

B. 279C.335(2)(b): Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the contracting agency . . . that seeks the exemption In approving a finding under this paragraph, 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:

1. ORS 279C.335(2)(b)(A). “How many persons are available to bid;”

Finding: The City expects that a substantial number of contractors will be interested in the City Hall project, and that there will be vigorous competition during the RFP process. The CM/GC project delivery method has increased in popularity and there are several contractors in the region with experience constructing similar improvements using the CM/GC approach.

2. ORS 279C.335(2)(b)(B). The construction budget and the projected operating costs for the completed public improvement;”

Finding: The City has not conducted a detailed analysis of the operating costs, but expects that the improved design resulting from the CM/GC's early participation during the design phase, and particularly the contractor's assistance with sustainability and seismic improvements designed to meet the City's rigorous goals, will substantially reduce long-term operating cost.

3. ORS 279C.335(2)(b)(C). “Public benefits that may result from granting the exemption;”

Finding: Unlike a traditional design/bid/build procurement, an RFP process allows the City to review the qualifications of the proposed general contractor's project team, ensuring the selected firm has experience and expertise in development of municipal facilities that include sustainable and energy efficient features.

Bringing the CM/GC on during the design phase also establishes a team approach early in the project that leads to better communication, continuous value engineering, and improved constructability review, which results in an improved final design and, consequently, streamlines construction of the project. The City expects that the CM/GC process will reduce change orders and limit delays during the construction phase. The City also expects that the CM/GC approach will facilitate better monitoring by staff to ensure that the Project stays within budget.

Overall, the public benefits of the CM/GC process include cost savings, better achievement of City community goals, and more timely delivery of the project due to fewer changes and disruptions.

4. ORS 279C.335(2)(b)(D). “Whether value engineering techniques may decrease the cost of the public improvement;”

Finding: Value engineering is a routine practice in public improvement projects regardless of procurement method. The CM/GC delivery method allows for the general contractor to participate in the value engineering process during the design phase, resulting in a more effective and efficient process as compared to value engineering via change orders to a completed design. The inherent

flexibility and team approach of the CM/GC project delivery method eases the process for making improvements to the design and scope of work as necessary to meet the project budget before finalization of the design. This is not something that the traditional bid process offers.

Value engineering may or may not decrease the contract sum but it should improve the City's ability to (a) manage the project within the budget and (b) reduce extra-cost change orders and the costs associated with project delay. The City also expects to be able to take advantage of reduced architectural and other professional consultant service fees because of this more streamlined CM/GC approach.

5. ORS 279C.335(2)(b)(E). "The cost and availability of specialized expertise that is necessary for the public improvement:"

Finding: The City Hall project is not a large dollar project, but is complex in that it requires a contractor with the expertise and experience to manage multiple subcontractors and to construct a project that will be able to withstand coastal conditions and any seismic events. The RFP process allows for review of contractor expertise and the particular expertise of the contractor's proposed team, which is not afforded by a low-bid procurement.

6. ORS 279C.335(2)(b)(F). "Any likely increases in public safety:"

Finding: The CM/GC process will enhance public safety because the City will be able to consider the safety record of the contractors selected and because the CM/GC will be integral to planning the construction schedule and safety measures during the design phase.

7. ORS 279C.335(2)(b)(G). Whether granting the exemption may reduce risks to the contracting agency . . . or the public that are related to the public improvement;"

Finding: The scope and magnitude of the work requires long-term planning and scheduling around the City's calendar. Directly involving the contractor in development of these key plans during the design phase will result in a more realistic, achievable, and expeditious schedule.

In addition, the CM/GC process allows the contractor to identify and help address technical issues during the design phase, which facilitates advanced problem solving and often yields cost and schedule benefits.

8. ORS 279C.335(2)(b)(H). "Whether granting the exemption will affect the sources of funding for the public improvement:"

Finding: City Hall Project funding will include but not be limited to existing reserve funds and proceeds from the sale of the former City Hall property. Employing the CM/GC process will not affect any of the funding sources known to date.

9. ORS 279C.335(2)(b)(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.

Finding: Because the CM/GC process results in the selection of the general contractor early in the design phase, the City is better able to take advantage of market prices by facilitating early purchase of certain materials and equipment. The key value added of the CM/GC process is the real time market job costing from projects around the Oregon market and the West Coast. This knowledge allows the contractor and architect time to consider alternative items that may generate cost savings.

10. ORS 279C.335(2)(b)(J). "Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement."

Finding: Building an entirely new City Hall for a coastal community is complex and will require careful planning and coordination. One of the biggest advantages of the CM/GC method is the ability to coordinate all technical work before the start of construction and to establish a more accurate construction schedule. Being able to apply best practices as a team should result in a better end product with respect to quality and budget.

11. ORS 279C.335(2)(b)(K). "Whether the public improvement involves new construction or renovates or remodels an existing structure."

Finding: This project involves new construction with several complex attributes. Use of the CM/GC process will ensure that the selected contractor has the experience and expertise to successfully construct the project.

12. ORS 279C.335(2)(b)(L). "Whether the public improvement will be occupied or unoccupied during construction;"

Finding: There are no plans to occupy the new City Hall during construction. The current temporary City Hall, however, will be operating throughout construction, and space within that facility is limited. Consequently, the City will aim to expeditiously transition its operations to the new City Hall once substantial completion of construction is achieved.

13. ORS 279C.335(2)(b)(M). "Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions;"

Finding: Construction is anticipated to occur in a single phase.

14. ORS 279C.335(2)(b)(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."

Finding: The City has engaged the Klosh Group ("Klosh") to serve as its owner representative. Klosh contributes years of experience working on projects conducted using the CM/GC delivery method. The design team procurement process is ongoing but the City will consider each proposer's experience with CM/GC contracting along with other criteria. The City's outside legal counsel, Miller Nash LLP, also has extensive experience with the CM/GC alternative contracting method and has represented public contracting agencies on various CM/GC projects.

Ultimate Finding: For these reasons, use of the CM/GC Alternative Contracting Method for the City Hall Project is likely to result in substantial cost savings and deliver other significant public benefits as compared to use of the standard design/bid/build process within the meaning of ORS 279C.335(2)(b).