

CITY OF COOS BAY CITY COUNCIL
Agenda Staff Report

MEETING DATE	AGENDA ITEM NUMBER
July 2, 2013	

TO: Mayor Shoji and City Council

FROM: Jim Hossley, Public Works and Development Director

Through: Rodger Craddock, City Manager *rac*

ISSUE: Public Hearing on Resolution to Adopt Alternative Delivery Method for Contracting Construction Projects

BACKGROUND:

At the June 4, 2013 Council meeting, staff presented the concept of an alternative delivery method for contracting construction projects called Construction Manager/General Contractor (CM/GC) project delivery. The Council members expressed interest in trying this alternative method because of the complexity, limited funds, public impact, and a strict timeline to complete the Wastewater Treatment Plant 2 project. Per the City's purchasing rules, solicitation for any public contract or class of contracts (including CM/GC) through the Request for Proposal (RFP) process shall be undertaken only after findings have been made. The findings shall demonstrate that the lack of bids is unlikely to result in favoritism or to diminish substantially competition for the contract, and the exemption will result in substantial cost savings. In making such findings, the City Council acting as the Contracting Board may consider the type, cost, amount of the contract, number of persons available to bid, and such other factors as the Board may deem appropriate.

Prior to finalizing the findings supporting the exemption of a particular public contract or class of contracts, the Board shall hold a public hearing where interested parties shall be afforded an opportunity to appear and present testimony. Notice of the hearing shall be published not less than 14 days prior to the hearing in one trade newspaper of general circulation in the state. The notice shall state that the purpose of the public hearing is to take comments on the Board's draft findings for exemption, and that copies of the draft findings are available upon request from the Director. The notice for this public hearing was advertised in The World and the Daily Journal of Commerce on June 18, 2013.

ADVANTAGES:

The public hearing will provide Council the opportunity to take testimony from other perspectives on the alternative delivery method. Staff believes utilization of the CM/GC contract delivery process will allow the City to deliver the most comprehensive project for the allotted funding. Another public benefit is more expeditious completion of the project. The CM/GC process provides for better collaboration to ensure the Project will be completed on time, on budget, and at or above the quality described in the construction documents. It provides better opportunities for reducing construction time by fast tracking construction where beneficial.

Below for your comparison staff has prepared a spreadsheet that shows past projects; Fire Station #1 (conventional contracting method), Visitor Information Center (conventional contracting method), and the City Hall project (CM/GC method). Please note the change order log for the conventional contracting method verses the CM/GC method.

PROJECT/CONTRACTOR	CONTRACT METHOD	CONTRACT AMOUNT	CHANGE ORDERS	TOTAL CONTRACT PRICE
City Hall Seismic Retrofit CMGC/Chambers Construction	CMGC	\$2,185,275.00	Total of 5; 3 are deducts 2 where initiated by the City <\$125,125.00>	\$2,060,150.00
Fire Station #1 Team Construction	Conventional	\$3,830,800.00	Total of 16 \$210,977.23	\$4,041,777.23
Visitor' s Information Center Harmon Construction	Conventional	\$1,180,050.00	Total of 13 \$121,719.11	\$1,301,769.11

DISADVANTAGES:

May limit some contractors from presenting proposals due to experience necessary for the CM/GC method to be successful.

BUDGET:

Currently the engineering estimate for this project is between \$20 to \$24 million. Staff is working with the Department of Environmental Quality and Oregon Infrastructure Finance Authority to investigate potential funding sources for this project.

RECOMMENDATION:

Staff recommends that the City Council Adopt Resolution 13-11 for alternative delivery method for contracting construction projects.

ATTACHMENTS:

Section 10 of City's Contracting Rules
 Resolution 13-11 with Exhibit "A"

(2) For purchases in an amount in excess of \$2,000, and up to \$5,000, a department head can approve a purchase only after obtaining at least three (3) competitive quotes by telephone from responsible and responsive bidders.

(3) For purchases in an amount in excess of \$5,000 and up to \$10,000, a department head can approve a purchase only after obtaining at least three (3) written quotes from responsible and responsive bidders.

(4) For purchases in an amount in excess of \$10,000 and up to \$25,000 must be approved by the Director only after three (3) written quotes have been obtained from responsible and responsive bidders.

(b) Each department shall operate within its budget, or seek supplemental budgetary authority from the City Council with respect to the contract.

Section 9. Public Improvement Contracts.

(a) A contract for a public improvement shall be awarded by the Board based upon competitive bids.

(b) Exemptions. The requirements of subsection "a" do not apply to the following classes of public improvement contracts. The following exemptions are unlikely to encourage favoritism or substantially diminish competition, and awarding contracts under these exemptions will result in substantial cost savings to the City.

(1) Public improvement contracts valued at \$10,000 or less, may be awarded by the Board based upon verbal quotes.

(2) Public improvement contracts valued at more than \$10,000 and less than \$25,000, may be awarded by the Board based upon written quotes.

(3) With regard to subparagraphs "1" and "2," price quotes from at least 3 prospective contractors shall be requested. If three prospective contractors are not available, then fewer quotes may be solicited. The Board (or City) shall maintain records of the attempts to obtain quotes. The Board shall award the contract to the prospective contractor whose quote will best serve the interests of the City, taking into account price and other applicable factors, such as experience, expertise, availability, project understanding, contractor capacity, and contractor responsibility. If the contract is not awarded on the basis of the lowest price, the Board (or City) shall make a written record of the basis for the award.

Section 10. Request for Proposal.

a) The Board may exempt any public contract or class of contracts from competitive bidding requirements. Solicitation for any public contract or class of contracts through the RFP process shall be undertaken only after findings have been made:

(1) The lack of bids are unlikely to result in favoritism or to diminish substantially competition for the contract; and

(2) The exemption will result in substantial cost savings. In making such findings the Board may consider the type, cost, amount of the contract, number of persons available to bid, and such other factors as the board may deem appropriate; and

(b) Public Hearing. Prior to making the findings supporting the exemption of a particular public contract or class of contracts, the Board shall hold a public hearing, where interested parties shall be afforded an opportunity to appear and present testimony. Notice of the hearing shall be published not less than 14 days prior to the hearing in one trade newspaper of general circulation in the state. The notice shall state that the purpose of the public hearing is to take comments on the Board's draft findings for exemption, and that copies of the draft findings are available, upon request, from the Director.

(c) Contents of the Solicitation Document. Any RFP solicitation document shall contain a clear statement of the following:

(1) Contractual terms and conditions;

(2) Evaluation criteria to be applied in awarding the contract and their relative importance. Criteria may include but are not limited to cost, quality, service, compatibility, product reliability, operating efficiency and expansion potential;

(3) A statement of any terms and conditions which may be subject to negotiation, and an authorization for the proposal of alternative terms and conditions to those set forth in the RFP;

(4) Provisions for vendors to comment on any specifications which the proposer feels limit competition.

Section 11. Emergency Contracts.

(a) Emergency Contracts Under \$50,000. The Board may let public contracts without competitive procurement if an emergency exists. For the purposes of this rule, an emergency consists of circumstances creating an unforeseen and substantial risk of loss or damage to property, a significant interruption of governmental services or a threat to public health or safety which requires prompt execution of a contract to remedy the condition.

(1) The Director may declare an emergency, which shall authorize the City to enter into an emergency contract with a price under \$50,000. The Director must make written findings describing the emergency conditions necessitating prompt execution of the contract.

(2) Any contract awarded under this exemption shall be awarded within 60 days following declaration of the emergency unless an extension is granted by the Board.

(b) Emergency Contracts in Excess of \$50,000. The Board may enter into public contracts in excess of \$50,000 without competitive bidding when circumstances that could not reasonably be anticipated necessitate the prompt establishment and performance of

City of Coos Bay

Resolution 13 - 11

A RESOLUTION OF THE CITY OF COOS BAY, COOS COUNTY, OREGON, ADOPTING THE FINDINGS SUPPORTING AN EXEMPTION FROM THE INVITATION TO BID REQUIREMENTS AND USE OF THE CM/GC METHOD OF PROCUREMENT FOR THE CONSTRUCTION OF WASTE WATER TREATMENT PLANT 2

WHEREAS, Sections 5 and 10 of the City of Coos Bay Rules of Local Contract Review (RLCR), and ORS 279C.335(1) require, with certain exceptions, that all Public Improvement contracts be based on competitive bids and, pursuant to RLCR Section 5(b)(1) and ORS 279C.375, awarded to the lowest responsive and responsible bidder, and

WHEREAS, RLCR Section 5 and 10 and ORS 279C.335(2), permit the Local Contract Review Board, as the City contract review authority, to grant, under certain conditions, specific exemptions from the requirement for awarding public improvement contracts by way of an invitation to bid process upon approval of specified findings, and

WHEREAS, RLCR Section 10(b) allows the Local Contract Review Board to exempt a Public Improvement contract from the competitive bid requirements, provided findings supporting the use of a non-competitive bid process show that (1) the lack of bids are unlikely to result in favoritism or to diminish substantially competition for the contract, and (2) the exemption will result in substantial cost savings, and

WHEREAS, to maximize the success of this project the City desires to procure the project using the Construction Manager/General Contractor (CM/GC) contracting methodology, and

WHEREAS, the Coos Bay City Council did, after holding a public hearing July 2, 2013, consider findings supporting that the use of the CM/GC contracting methodology is unlikely to result in favoritism or substantially diminish competition for the contract, and the use of the CMGC methodology will result in substantial cost savings over the use of a competitive bid process.

NOW THEREFORE, BE IT RESOLVED, that the City Council of the City of Coos Bay, Oregon declares that the prepared findings, Exhibit "A" attached hereto, support the decision to exempt from invitation to bid requirements and to use the CM/GC method of procurement for the construction of Waste Water Treatment Plant 2.

The foregoing resolution was duly adopted by the City of Coos Bay, Coos County, Oregon this 2nd day of July 2013.

Crystal Shoji, Mayor

ATTEST:

Susanne Baker, City Recorder

EXHIBIT A

PROPOSED FINDING SUPPORTING AN EXEMPTION FROM THE INVITATION TO BID REQUIREMENTS AND USE OF THE CMGC METHOD OF PROCUREMENT FOR THE CONSTRUCTION OF WASTE WATER TREATMENT PLANT 2

Before the Local Contract Review Board,

In the Matter of the Exemption)
Request of the City of Coos Bay)
Regarding the Construction of)
Waste Water Treatment Plant 2)

1. General

The Oregon Legislative Assembly encourages public agencies to consider alternative and innovative contracting methods, other than lowest bid, that take into account market realities. Under ORS 279C.335(2), a local contract review board may exempt certain contracts from traditional competitive bidding by showing that an alternative contracting process is unlikely to encourage favoritism or diminish competition, and that it will result in substantial cost savings to the public agency.

For the reasons set forth more fully below, the Coos Bay WWTP2 Improvements Project is proposed for construction through the Construction Manager/General Contractor (CMGC) competitive selection process. CMGC is a method of project delivery in which the owner executes a single contract with one entity to provide construction management and general contracting services. Because the CMGC is selected before the design is complete, the CMGC can participate in the final design effort and provide valuable advice from a construction perspective that will help ensure a design that fosters smooth, cost-effective construction. The CMGC's participation in the final design effort also promotes team building among the respective managers of the CMGC, owner, and the design professional, and that team building helps ensure that problems which may arise during construction will be resolved efficiently with minimal delay and cost.

With this method, a general contractor will be selected based on a competitive proposal process. The City will consider the proposers' experience and capabilities; their proposed work plan; project management capabilities focused on leadership, communications and organization; and a project control plan focused on cost, schedule, safety, and quality control. In addition, cost factors such as overhead and profit, markup of subcontractors, materials and equipment, insurance and bond rates and general conditions costs will be evaluated. Proposals will be solicited through advertising and directly from interested and qualified contractors. The City evaluation team will evaluate the contractor proposals and recommend approval to award a contract to the contractor that best meets all the City evaluation criteria.

CMGC affords singular responsibility which, in turn promotes an early team approach that leads to continued value engineering and constructability review, reducing design and construction time. All of this translates into cost savings, and reduces the owner's administrative burden and providing "guaranteed" costs. The following are findings for an exemption from the competitive bidding requirement in accordance with the City Council (Local Contract Review Board) Resolution 13-11.

2. Background

The existing Coos Bay WWTP2 is located in urban Coos Bay in the Empire neighborhood on the bay. The City has purchased property for the plant expansion on the east side of Empire Boulevard/Cape Arago highway.

This will be a complex and sensitive project for several reasons. It involves the sole wastewater treatment facility serving the western portion of Coos Bay and all of Charleston. It is essential that existing WWTP2 be kept operational while the upgrade and expansion takes place. By its nature this Project will require close coordination with plant staff as well as City management, and will trigger multiple requirements related to safety and environmental protection with involvement by federal and state agencies and community interests.

The work will need to be performed while the WWTP2 is operating. Existing WWTP2 is nearing the end of its useful life, and its timely replacement will assist the City in continuing to meet its wastewater treatment goals and meet or exceed compliance requirements. The City's schedule for the start of construction is the second quarter of 2015. In order to incorporate the construction contractor's input into the design process with its strictly defined timelines, the construction contractor will need to be selected during the second quarter of 2013. At that time, the design will still be underway. Elements relevant to the construction contractor qualification and selection process can be identified, but progress on the design will not be so far along that the contractor's input cannot still be incorporated appropriately.

The City proposes using a cost factor and qualification-based selection process to select the contractor. The process would consider qualifications such as the contractors' experience and qualifications with similar types of projects, construction management planning, scheduling and coordinating capability, experience working in operating facilities, safety plans and record, and pricing schedules.

3. Findings – Information

(a) Operational, Budget and Financial Data

The approximate cost of the work to be performed under the construction contract for the Project is estimated to be in the range of \$20 to \$24 million.

(b) Public Benefit

The public will benefit from an expeditious construction of the upgrade and expansion of the Coos Bay WWTP2. The existing facilities at WWTP2 are insufficient to meet current peak flows and redundancy requirements, as well as expected future flow conditions. The facility was originally constructed in 1964 and contains several components that have exceeded their useful life. The City of Coos Bay has entered into a Mutual Agreement and Order (MAO) with the Oregon Department of Environmental Quality (DEQ) to establish a schedule of objectives to upgrade the facility. Non-compliance could subject the City to costly legal sanctions. Therefore, the public will also indirectly benefit from having an experienced contractor implement the upgrade and expansion, improved quality and lower cost of the Project, and the retained flexibility for interactions with plant operators that will inevitably arise during design and construction.

(c) Value Engineering

The qualification and cost factor based proposal process and negotiated contract approach gives the contractor an increased opportunity to engage in value engineering, which increases the likelihood of cost savings to the City, as well as quality improvements. The requirement that the selected contractor competitively bid subcontracts, equipment and materials will ensure the City competitive pricing on the project. The selected contractor will be brought on board immediately in the design process in order to assist with the construction scheduling, phasing, costing, plant operator interaction issues, quality assurance, and design constructability reviews. The selected contractor will also be able to advise the plant and design professionals regarding long lead time procurements, as well as potential brand name purchases.

(d) Specialized Expertise

The City needs to select a contractor on this Project that has specialized expertise implementing a variety of upgrade and expansion technologies, on a very small site, on a defined schedule while working around an active wastewater treatment environment with safety and security requirements. In addition, at least two critical tie-ins to the influent sewer and the effluent pipeline and outfall will be required without interrupting treatment. Several different highly specialized technologies will need to be used during construction. In addition to the coordination with the plant operators and structural, mechanical, and piping modifications to the existing facility that will be required as part of the work, there will also be a high degree of construction difficulty because of the compactness and layout of the facility.

This mix of expertise cannot be adequately evaluated in a sealed bid process, but can be better evaluated through a proposal and negotiated process. Utilizing the competitive bid process cannot guarantee selection of the best qualified contractor to perform this work. Traditional methods of prequalification are unsuited to the specialized nature of this Project, particularly with a tight time frame.

A qualified project manager with strong leadership skills is one of the components required for successful contractor's work. The RFP process will allow the City to review the qualifications of each proposer's project manager and confirm his/her ability to carry out the proposer's contractual obligations.

(e) Public Safety

As compliance with Oregon DEQ water quality standards is directly affected by work on the WWTP2, the utmost care must be taken in all construction operations to avoid operations interruption or compromise of security. All work will be performed in accordance with OR-OSHA safety regulations and applicable OSHA regulations. Access into the WWTP2 and the work area is controlled by the City, and will not be allowed to the general public. The qualification-based selection process will allow the City to take contractor's safety records and safety programs into account.

(f) Market Conditions

There is a shortage of work for water/wastewater treatment contractors. As a result of the economic downturn, contractors from the non water/wastewater markets are increasingly bidding water/wastewater projects. Many of these contractors lack the understanding to

successfully meet the challenges of specialized treatment plant work. The size of the Project is such that it will attract a wide range of bidders as a design-bid-build project. As a CMGC request for proposal, the City would expect anywhere from 4 to 6 qualified treatment contractors to propose.

No negative impact is expected as a result of the use of the request for proposal selection process. There are four to six Oregon-based construction companies with specialized expertise in wastewater treatment plant projects. It is expected that there will be an adequate number of competitors available to propose as construction manager/general contractors on this Project. Even so, there are a limited number of firms capable of adequately meeting the challenges provided by coordination of the potential multitude of technologies to be applied to an operating plant on a complex and constrained site, working under strict time schedules. Selection of a contractor with the necessary expertise to manage the technical complexities will be critical to overall Project success.

The CMGC method avoids the cost in time and money involved in rebidding of the Project, should bids come in higher than expected. A traditional bid process runs the risk of obtaining bids that exceed the Project budget. In the CMGC project delivery method, construction costs are determined at an earlier time and changes to the design and scope of the Project necessary to meet the Project budget are more easily achieved.

(g) Technical/Planning Complexity

Capability in planning the work will be crucial. Timely completion of the work in compliance with the requirements for protection of human health and the environment associated with this kind of project, while allowing the WWTP2 to continue to operate in a safe and cost effective manner, will be required of the contractor. Innovative planning that will further improve the construction schedule and on-site conditions will be encouraged.

The ability to coordinate and manage this project would be especially challenging to an inexperienced or narrowly focused team. This Project is complicated and will require ongoing coordination with Plant operators, CH2M Hill, City staff, and regulators. The RFP process allows the City to consider the proposers' experience and expertise in this type of work, sensitivity to safety, legal, and operational issues, and the qualifications of its project manager and support team, while maintaining a competitive cost development.

(h) Funding Sources

City Staff is coordinating with both Department of Environmental Quality and the Oregon Infrastructure Finance Authority for funding options.

4. Findings – Competition and Cost Savings

Considering the factors listed above, use of the CMGC alternative contracting method must be unlikely to encourage favoritism or diminish competition, and must result in substantial cost savings to the City.

(a) Unlikely to Encourage Favoritism or Substantially Diminish Competition

The CMGC is selected through a qualifications and cost competitive selection process to provide both construction management and general contracting services. No reduction of

competition is expected since the proposed process is open to the same contractors that would have participated in the traditional low bid method. Uniform evaluation criteria will be used in the selection of the CMGC firm, and the construction work elements will be subcontracted and procured through open competitive bids managed by the CMGC but based on identified selection criteria.

Favoritism will not play a role in the selection of the CMGC. The selection will be conducted through an open and advertised RFP process. All qualified firms will be invited to submit proposals. The City will publish a legal notice in the Coos Bay *The World* newspaper and the *Daily Journal of Commerce* in order to provide Project information to all interested contractors. Proposals will also be solicited directly from firms the City believes are qualified to perform the work. Proposers will be evaluated based on clearly stated criteria. A team will perform the evaluation in an effort to minimize the effects of any unconscious individual bias. All qualified firms will be able to participate in an open, competitive selection process. Rather than being diminished, competition will be expanded to encompass qualifications as well as price.

(b) Will result in Substantial Cost Savings

The CMGC contracting method has the potential for achieving significant cost savings through involvement of the contractor in the design phase of the Project. By having the contractor available before the design is finalized, the contractor is able to review the design, propose cost saving revisions, and ensure the constructability of the Project so that costly change orders are less likely. Construction of the WWTP2 Improvements involves a wide range of construction elements involving various building and mechanical trades, and purchase of sophisticated equipment. Cost saving are expected from the CMGC being able to separately contract for each of the elements.

Selection of a contractor possessing the necessary expertise and experience will result in substantial cost savings to the City. Cost savings will be realized because the City can select a well-organized, experienced contractor, which will result in fewer change orders and, in turn, reduced staff time to design, negotiate, and administer the changes. The expanded opportunity for value engineering described above will also result in cost savings. Using the most skilled contractor will optimize the design and construction aspects and help minimize problems associated with construction, which is located in the midst of an active operating area; thus, it will help the City avoid additional costs that would otherwise be associated with resolving such problems.

The CMGC process allows shortening of the overall time required to complete construction of a project. It also allows early procurement of major equipment, allowing the Project to avoid cost increases due to material shortages or cost escalation.

5. Summary

A contractor who has experience with these types of projects provides many benefits. The use of an RFP process will not diminish competition or result in favoritism, and will result in cost savings to the City.