

FACTS & FINDINGS:

Pursuant to ORS 279C.335(2) and PCR 9.7 City Council, acting as the Local Contract Review Board, may exempt a public improvement contract or a class of public improvement contracts from the competitive bidding requirements if, after a public hearing, the Local Contract Review Board finds that such an exemption is unlikely to encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts, and the exemption will likely result in substantial cost savings and other substantial benefits to the City or the public.

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

The Construction Manager at Risk (CMAR) contractor for the Willow Lake Water Pollution Control Facility South Secondary Clarifiers Rehabilitation Project (Project) will be selected through a competitive Request for Proposal (RFP) selection process according to Public Contracting Rules. Therefore, it is unlikely that the awarding of the construction contract for this Project will encourage favoritism or substantially diminish competition. This finding is further supported by the following:

- A) **Solicitation Process:** Pursuant to ORS 279C.360, the CMAR RFP solicitation will be advertised at least once in the Daily Journal of Commerce, and in as many additional issues and publications as the City may determine.
- B) **Full Disclosure:** To ensure full disclosure of all information, the RFP solicitation package will include:
 - 1. Detailed Description of the Project
 - 2. Contractual Terms and Conditions
 - 3. Selection Process
 - 4. Evaluation Criteria
 - 5. Role of Evaluation Committee
 - 6. Provisions for Questions and Comments
 - 7. Complaint Process and Remedies Available
- C) **Competition:** As outlined below, the City will follow processes which maintain competition in the procurement of a CMAR contractor.
 - 1. The City anticipates that competition for the Project will be similar to that experienced in other projects of similar type and complexity. The competition will remain open to all qualifying proposers.
 - 2. The City will be communicating with the construction contracting community as well as the engineering consulting community about the CMAR contracting method.
 - 3. The evaluation and solicitation process employed will be open and impartial. Selection will be made based on final proposal scores derived from price and other criteria, which expand competition beyond price to include experience, quality, innovation

factors, etc.

4. The competitive process used to award subcontracts for all competitively bid construction work will be specified in the CMAR contract and will be monitored by the City. The City may designate in the contract the proposed percentage of construction work that must be subcontracted and may not be self-performed by the CMAR contractor.
2. **Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the City or the public.**

Awarding construction contract(s) for the Project using the CMAR delivery method will likely result in cost savings to the City. This finding is supported by the following information required by ORS 279C.330 and ORS 279C.335(2)(b):

A) How many persons are available to bid?

Based on previous experience in Oregon, a typical RFP of the anticipated size and complexity of the Project will result in several interested proposers. The actual number of proposals received may vary, but a minimum of three proposals are anticipated.

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

Budget: The City has a targeted budget available for the Project that cannot be exceeded. The completion date cannot be extended without running the risk of significant additional costs. Early reliable pricing provided by the CMAR contractor during the design phase reduces the potential for time delays due to subsequent discovery of higher-than-anticipated costs and consequent changes of plans.

Long-Term Costs: The Project requires expertise regarding the constructability and long-term cost/benefit analysis of innovative design. That knowledge is best obtained directly from the construction industry. Many decisions arising during the design process will require immediate feedback on constructability and pricing. Under the traditional design-bid-build contracting method, there is a higher risk of increased change orders and schedule impacts for a project of the size and complexity. Since there are significant costs associated with delay, time is of the essence. The CMAR contracting method assists in providing a scope of work and constructable design that best meets the requirements of the Project with significantly lower risk to Project costs. Project risks can be identified and minimized early in the process via collaboration between the City, the design team, the CMAR contractor, and their team of subconsultants and subcontractors.

Fewer Change Orders: When the CMAR contractor participates in the design process, fewer change orders occur during project construction. This is due to the CMAR contractor's better understanding of the City's needs and design intent and the flexibility to collaborate during the design process. As a result, the Project is more likely to be completed on time and within budget. In addition, fewer change orders reduce the administrative costs of project management for both the City and the CMAR contractor.

Guaranteed Maximum Price (GMP) Change Orders Cost Less: The CMAR contractor and the City will agree on a GMP near the end of the Project design phase. In addition to being less frequent, change orders under a GMP are processed at less cost. The design-bid-build method typically results in the contractor charging up to twenty percent markup on construction change orders. The GMP method applies lower predetermined markups. The experience of the industry is that the markup is in the range of three to seven percent.

Cost Savings: The GMP method allows the City to obtain the full savings if the actual costs are below the GMP. When the CMAR contractor completes a project, any savings between the GMP and the actual cost accrue to the City.

CMAR Contractor's Fee Is Less: CMAR contracts are designed to create a better working relationship with the contractor. Therefore, the overhead and profit fee are generally in the range of three to five percent. Contractors indicate this is slightly lower than the fee anticipated on similar design-bid-build contracts.

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

Time Savings: Use of CMAR as an alternative contracting method allows construction work to commence relatively rapidly on some portions of the work while design of the remaining portions continues. The CMAR method shortens the overall duration of construction and provides for completion of the Project by the due date. It is critical to adhere to both the schedule and budget of this Project. Shortening the construction duration will also reduce the additional coordination of City personnel and facilities required by construction.

Cost Savings: The Project will benefit from the active involvement of a CMAR contractor during the design process in the following ways:

1. The CMAR contractor's input regarding the constructability and cost-effectiveness of various alternatives will guide the design toward the most economic choices.
2. Consideration of the specific equipment available to the CMAR contractor allows the designer to implement solutions that utilize the capacity of that equipment.
3. The CMAR contractor provides current and reliable information regarding the cost and availability of materials, especially those that are experiencing price volatility and/or scarcity.
4. The CMAR contractor can also order equipment and materials while design is being completed to avoid inflationary price increases and provide the lead time that may be required for specialty equipment and/or scarce materials.

GMP Establishes a Maximum Price Prior to Completion of Documents: The CMAR contractor obtains a complete understanding of the City's needs, the design intent, the scope of work, and the operational needs of the Project by leading in the development of the construction documents. By participating in the design phase, the CMAR contractor can provide suggestions for improvement and cost reduction. With the benefit of this knowledge, the CMAR contractor also guarantees a maximum price to be paid by the City for constructing the Project.

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

CMAR Process: The CMAR processes offer an opportunity for value engineering (VE) that is more effective than can be attained through VE during the design-bid-build process. VE is most effective prior to construction and during the design phase by a team consisting of the owner, architect, engineer, and the CMAR contractor. When VE is conducted during the design phase led by the CMAR contractor, the team can render the most comprehensive evaluation of all factors that affect the cost, quality, and schedule of the Project prior to construction. Design phase VE minimizes delays and additional administrative costs that would otherwise be a factor with VE during the construction phase on a design-bid-build project.

- The CMAR methods have the benefit of:
 - The ability to set the schedule,
 - The ability to sequence work, and
 - Commitment from the contractor to implement the construction within the schedule and budget.

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

Integrating the contractor with the design team early through the CMAR contracting method creates more informed, better-quality decision making. A more efficient construction team saves the City money.

The Project is highly complex involving significant construction over a short period. Use of CMAR in conjunction with the team approach results in a better coordinated Project, speedy completion, and minimizes disruption to operations. Several critical variables valuable to the Project design are clarified. The CMAR contractor guarantees the maximum price to complete the Project; determines the construction schedule; establishes the sequence of work; is contractually bound to implement the final design within the GMP; and participates as an essential member of the Project design and construction team.

Several benefits of CMAR on this Program will be realized:

- Developing the design documents to reflect the best work plan that accommodates the City, design team, and CMAR contractor;
- Producing the best grouping of bid packages to help ensure better trade coverage;
- Determining the most efficient construction staging area;
- Providing cost-effective coordination with utilities; and
- Helping adjust the work plan as necessary.

This component cannot be addressed by the usual design-bid-build method of construction because the contractor is selected solely by having the lowest bid.

F) Any likely increases in public safety.

The Willow Lake WPCF is isolated and away from the general public, but construction will occur in the middle of an operating wastewater treatment facility and require close

coordination with the City's operations. All work must be coordinated to avoid safety risks to City staff and to ensure efficiency in construction. The collaboration between the City, designer, and CMAR contractor ensures coordination of work and consideration for the safety of vehicular and walking paths surrounding the Project. In addition, CMAR contracting ensures that public safety is effectively managed in a "fast track" mode to minimize delays.

G) Whether granting the exemption may reduce risks to the City or the public that are related to the public improvement.

The CMAR process mitigates risks as described above and listed below:

- Site coordination with City staff;
- Site staging and laydown coordination;
- Site safety and work hours;
- The establishment of the GMP provides a complete project within the City's budget; and
- A CMAR contract allows for the City to engage in early work amendments that give more insight and site verification of unforeseen conditions to the designers, CMAR contractor, and City, as well as expediting the construction schedule by starting early work during the design phase.

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

The City is funding the Project with public utility rate funding with a current Capital Improvement Program approved budget of \$14.9 million. Therefore, the CMAR process has no impact on the funding sources.

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

In addition to the multitude of construction market factors that exist today in Oregon (such as competition of other projects, environmental issues that limit construction materials, variable bid market, material price volatility, and others), the difficulty in establishing the best work sequence for this complex project complicates the ability to accurately estimate the cost of the Project. The early involvement by the CMAR contractor allows for the opportunity to sequence and phase aspects of construction as well as gage the market and take advantage of early procurement of materials to lock in material cost savings. CMAR also allows for early construction phasing to begin, which can result in timely completion of the Project. The complexities to be addressed throughout the Project are not well served by the design-bid-build process.

J) Whether granting the exemption will better enable the City to address the size and technical complexity of the public improvement.

Technical expertise is required for environmental management, quality management, scheduling, estimating, meeting sustainable facilities standards and guidelines, and ensuring energy efficiency. The complexity and scheduling issues discussed above require special expertise. This Project draws upon existing skills and capabilities available in the construction community, as the Project presents overall challenges similar to those faced on

many public works projects. Specialized skills are required of the CMAR contractor to negotiate and price multiple options and schedule complex tasks. A high level of coordination involving the City and all the design and construction entities is required, which is best facilitated by the CMAR contracting method.

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

The Project involves rehabilitation of four existing clarifiers to continue operations to treat wastewater and meet NPDES permit requirements for discharge.

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

The existing Willow Lake WPCF will be occupied during rehabilitation of the four existing clarifiers and appurtenances.

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

Due to the complexity, NPDES permitting requirements, and high flow volumes during the wet-weather period, we anticipate a complex phased approach to construction that includes rehabilitating one clarifier each summer over a four-year period.

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 City is supported by its legal counsel and Project Managers with experience managing CMAR contracts. If needed the City can contract with consultants who have extensive experience with CMAR project delivery and are available to assist as Consulting Project Managers or Owners Representatives in a supporting role.