



Staff Report

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TO: Mayor and City Council

THROUGH: Steve Powers, City Manager

FROM: Peter Fernandez, PE, Public Works Director

SUBJECT:

Public Hearing on exemption from competitive bidding and authorization of an alternative contracting method for the Police Facility Project.

Ward(s): All

Councilor(s): All

Neighborhood(s): All

ISSUE:

Shall City Council, acting as the Local Contract Review Board, adopt Resolution No. 2017-49 in support of an exemption from the competitive bidding process and use of a Construction Manager/General Contractor contracting method for the City's new Police Facility Project?

RECOMMENDATION:

Adopt Resolution No. 2017-49 in support of an exemption from the competitive bidding process and the use of a Construction Manager/General Contractor contracting method for the City's Police Facility Project.

SUMMARY AND BACKGROUND:

A Construction Manager/General Contractor (CM/GC) method is recommended for the Police Facility because the project requires significant construction over a short, inflexible time period. The CM/GC will guarantee a maximum price and be contractually bound to complete the final project design within the guaranteed price. The CM/GC contracting method typically results in a much shorter overall construction duration compared to traditional design-bid-build public contracting. Meeting the project schedule and budget are critical for public confidence and bonding requirements.

A September 2020 occupancy date has been set for the Police Facility. September 2020 coincides with bond spending requirements to avoid accruing arbitrage penalties. Arbitrage penalties begin to

accrue if 85 percent of the bond proceeds are not expended within three years of the debt issuance.

Oregon Revised Statutes (ORS) Chapter 279C and the City's Public Contracting Rules (PCR) 9.7, allow City Council, acting as the Local Contract Review Board, to 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 diminishes 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. A CM/GC contractor would be competitively selected through a Request for Proposal process.

FACTS AND FINDINGS:

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

The CM/GC will be selected through a competitive and open Request for Proposals (RFP) selection process authorized by the City.

A) Solicitation Process: Pursuant to ORS 279C.360, the CM/GC 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; and
7. Complaint process and remedies available.

C.) Competition: The City anticipates that competition for the Project will be similar to that experienced in other projects of this type. The competition will remain open to all qualifying proposers. The City will communicate with the construction contracting community and the engineering consulting community about the CM/GC contracting method. The evaluation and solicitation process employed will be open and impartial. Selection will be made on the basis of final proposal scores derived from price and experience, quality, innovation, and other factors. The competitive process used to award subcontracts for all competitively bid construction work will be specified in the CM/GC 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 CM/GC.

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 CM/GC RFP selection process will likely result in substantial 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 CM/GC RFP of this size and complexity typically result in between five and seven interested proposers. The actual numbers of proposals received may be lower, but a minimum of three proposals for this project are anticipated.

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

Budget: The City has a fixed budget available for the Police Facility Project that cannot be exceeded. The completion date cannot be extended. Early reliable pricing provided by the CM/GC 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 CM/GC contracting method is expected to produce a scope of work and constructible design that best meets the requirements of the Police Facility Project with significantly lower risk to costs. Involving the CM/GC during design allows the project risks to be identified early in the process and provides for the teamwork between the City, the design consultant, and the CM/GC to address and minimize those risks. The Project requires expertise regarding the constructability and long-term cost/benefit analysis of innovative design, knowledge best obtained directly from the construction industry. Many decisions arising during the design process 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 this size and complexity. Since there are significant costs associated with delay, timely project completion is critical.

Fewer Change Orders: When the CM/GC participates in the design process, fewer change orders occur during project construction than in the traditional design-bid-build public contracting methods. This is due to the CM/GC's better understanding of the City's needs and the architect's design intent. As a result, the Police Facility Project is more likely to be completed on time and within budget. Fewer change orders reduce the administrative costs of project management for both the City and the CM/GC.

GMP Change Orders Cost Less: Fewer change orders will result in a lower GMP. The design-bid-build method typically results in the contractor charging 15 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 five percent.

Cost Savings: Utilizing the GMP method allows the City to obtain the full savings if the actual costs are below the GMP. When the CM/GC completes the project, savings between the GMP and the actual cost accrue to the City.

Contractor's Fee Is Less: Contracts with CM/GC's are designed to create a better working relationship between the City and the contractor than the traditional design-bid-build public contracting method. As a consequence, the overhead and profit fee is generally in the three to five percent range. 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 CM/GC as an alternative contracting method allows construction work to commence relatively rapidly on some portions of the work while design continues on the remaining portions. The CM/GC method shortens the overall duration of the construction and provides for completion of the project by the due date. It is critical to adhere to both the schedule and budget of the Police Facility Project.

Cost Savings: The Police Facility Project will benefit from the active involvement of a CM/GC contractor during the design process:

1. The CM/GC'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 CM/GC allows the architect to implement solutions that utilize the capacity of that equipment.
3. The CM/GC can provide current and reliable information regarding the cost and availability of materials, including those that are experiencing price volatility and scarcity.
4. The CM/GC can order materials while design is being completed, avoiding inflationary price increases and providing lead-time that may be required for scarce materials.

Guaranteed Maximum Price Establishes a Maximum Price Prior to Completion of Documents: The CM/GC obtains a complete understanding of the City's needs, the architect's design intent, the scope of the project, and the operational needs of the project by participating in the construction document phase. With the CM/GC participating in this early phase, the CM/CG can offer suggestions for improvement and make recommendations that reduce costs. With the benefit of this knowledge, the CM/GC 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.

CM/GC Process: The CM/GC process offers an opportunity for value engineering ("VE") that is more effective than can be attained through VE during the traditional design-bid-build process. VE is most effective prior to construction and during the design phase by a team consisting of the owner, architect, consultants, and the CM/GC. When VE is conducted during the design phase with the CM/GC's participation, 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 CM/GC has the ability to set the schedule, sequence work, and commit to implement the design within the schedule and budget.

The Design-Bid-Build Process: If the City uses the traditional design-bid-build process, the contractor would not participate in the VE process until after the design phase and during the construction phase of the project. Contractor participation in the VE process during the construction phase tends to be less effective than when it is implemented during design, and it is typically accompanied by delays and additional administrative costs for review of contractor generated VE change proposals. When compared to VE on a CM/GC project, there tends to be less incentive and time for the contractor to investigate and suggest VE options.

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

Early selection of the CM/GC creates more informed, better quality decision making by the project team. A more efficient construction team saves the City money.

Several benefits of participation by the CM/GC on this Project will be realized:

- Developing the design documents to reflect the best work plan that accommodates the City, the design team, and CM/GC;
- Producing the best grouping of the bid packages that will help ensure better trade coverage;
- Determining the most efficient construction staging area;
- Identifying the most cost-effective route through the property for the various utilities; and
- Helping adjust the work plan when needs change along the way.

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

F) Any likely increases in public safety.

All work must be coordinated to avoid safety and security risks to the general public and to ensure efficiency in construction. The collaboration among the City, architect, and the CM/GC assures coordination of work and consideration for the safety of vehicular and pedestrian paths surrounding the Police Facility Project. CM/GC contracting of the Police Facility Project ensures that public safety and security are effectively managed 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 CM/GC process mitigates risks through site coordination with City and other agencies, such as Oregon Department of Transportation (ODOT); site staging and laydown coordination; and site safety and work hours.

A CM/GC's Guaranteed Maximum Price provides a complete project within the City's budget.

A CM/GC engaging in early work amendments gives insight and site verification of unforeseen conditions to the Architects, CM/GC, 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 Police Facility Project with the sale of general obligation bonds providing the available funds of \$61,800,000 from the May 2017 Bond Election. Therefore, the CM/GC 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 typical construction market factors that exist in Oregon, the difficulty in establishing the best work sequence for this complex project complicates the ability to accurately estimate the cost of the Police Facility Project. The economy today makes it necessary for many contractors to bid on jobs for which they might not be qualified. The CM/GC contracting method is more likely to result in an experienced and better suited contractor for the project than a design-bid-build contracting method. The complexities to be addressed throughout the Police Facility 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 require special expertise. The Police Facility 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 CM/GC to negotiate and price multiple options, and to schedule complex tasks. A high level of coordination involving the City and all design and construction entities is required, which is best facilitated by the CM/GC contracting method.

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

The public improvement involves demolition of the existing structure, significant off-site improvements, and a new Police Facility for the City.

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

The property where the Police Facility will be constructed will be unoccupied during construction. The significant off-site improvements will be occupied and in-use during construction.

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

The Police Facility Project currently anticipates a complex, phased approach to develop the site and then to construct the buildings.

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 Attorney and bond counsel will support the project. DAY CPM Services, Owner's Representative, and CB Two Architects, LLC, City's Architect, have extensive expertise and experience with CM/GC.

Brian D. Martin, PE

City Engineer

Attachment:

1. Resolution No. 2017-49