

FINDINGS OF FACT FOR THE USE OF THE CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC) CONTRACTING METHOD

Before the Hermiston City Council

Regarding the Renovations to Existing Facilities

The City of Hermiston (“City”) is in western Umatilla County, Oregon; Hermiston is a rapidly growing, diverse, inclusive community, built on community engagement and partnerships, livability, and fiscal prudence. The current population is 19,696 citizens.

The scope of work and related budget associated with this Exemption includes renovations at several City of Hermiston facilities, including the following:

1. **Hermiston Library:** significant renovation of the existing Public Library; the City has completed limited interior improvements in the basement and the existing northwest exterior entrance, and the City would like to retain the design aesthetic and approach in a major renovation of the remainder of the facility, including the 1st Floor, balance of the basement, and exterior façade; the City would like to address accessibility/ADA concerns and modernization of the elevator as well. Renovations will occur while the Public Library remains open and accessible to the Hermiston Community. Anticipated total budget is \$3,000,000.
2. **Harkenrider Senior Center:** limited Tenant Improvements (TI) to the existing basement, which is currently in a core/shell condition with some utilities already present (i.e. sanitary sewer, domestic water) and other minor improvements; the limited Tenant Improvements are anticipated to include addition of restrooms, storage, T-BAR ceiling with acoustic panels, and with the potential to consider improved exterior access to the green space immediately adjacent to the west. Anticipated total budget is between \$500,000 and \$750,000.
3. **City Hall, Basement IT Expansion:** limited Tenant Improvements (TI) to the existing basement, which is currently in a core/shell condition with HVAC and utilities present; intent would be to provide office space for the City’s new IT department and staff, inclusive of private office space and workspace. Anticipated total budget is \$200,000.

Total anticipated budget for all projects is not to exceed \$3,950,000.

Each of the projects requires attention and diligence from a competent contractor to complete the respective construction projects within budget and in a timeframe that is least disruptive to the City’s daily operations and community use. In consideration of these facts, an alternative method of construction should be considered; therefore, under the Oregon Statutes and based upon the following findings, the City Council is authorizing the use of the Construction Manager/General Contractor (CM/GC) method of construction contracting.

The guiding applicable statute is ORS 279C.335 which requires, with certain exemptions, that all public contracts be based on competitive bidding and be awarded to the lowest responsive and responsible bidder. ORS 279A.060, ORS 279C.335(2) and ORS 279.330 permit the City Council to

act as the public contract review authority and to grant, under certain conditions and upon certain findings, specific exemptions from the requirement for competitive bidding.

Finding of Fact

Use of the CM/GC method to construct the City's projects will: (a) result a in more predictable schedule, ensure the available construction budget aligns with the scope of work, and reduce the financial risk to the City; (b) will allow the City to select a contractor with the specialized expertise required to ensure safety and coordination during construction; and (c) not encourage favoritism nor diminish competition.

Specific findings which substantiate these conclusions are as follows:

1. **Finding:** The City Council finds that the CM/GC method will result in more predictable schedule and construction costs and reduced financial risk to the City.
 - a. **Reduced Financial Risk:** The CM/GC delivery method will result in more predictable costs and less financial risk. Through discussions with the City and the design team, the CM/GC will be able to obtain a complete understanding of the City's needs, the architect's design intent, the scope of the project, the condition of the existing facilities, and the operational needs of the City. With the CM/GC's pre-construction participation, they will offer suggestions for cost savings, value engineering opportunities, and improvements to the design. This will result in a schedule and project scope that fits within the available funds. With the benefit of this knowledge, the CM/GC will be able to establish and affirm a Guaranteed Maximum Price (GMP) for the scope of work.
 - b. **Schedule:** Volatility of supply chain, lack of subcontractor availability, and other critical items are risks to meeting the City's project completion and operational timelines. With the CM/GC's network, understanding of the construction market, and knowledge of project schedule restrictions, the CM/GC can develop a schedule with the City as part of the pre-construction phase.
 - c. **Early Subcontractor Outreach:** The CM/GC will be able to outreach to a network of subcontractors for constructability feedback and schedule development during the pre-construction phase. The CM/GC may opt to pre-qualify subcontractors to ensure that subcontractors have availability, crew size, and financial resources to deliver their work to meet the construction schedule.
 - d. **Fewer Change Orders:** When the CM/GC participates in the design process, fewer change orders will occur during the construction process. This is due to the CM/GC's better understanding of the City's needs and the designer's intent. As a result, the project is more likely to be completed on time and on budget. In addition, fewer change orders reduce project management costs for both the City and the contractor.
 - e. **GMP Change Orders Cost Less:** The traditional Design-Bid-Build method typically results in contractors charging up to 15% mark-up on change orders. The CM/GC method applies predetermined mark-ups. The experience of the industry has been to establish the mark-up in the range of 5% to 10%.

- f. **GMP Savings:** Under the CM/GC method the City will enjoy full savings, if actual costs are below the GMP. When the CM/GC completes the project, any savings between the actual costs and the GMP are returned to the City.
 - g. **Contractor Fee is Less:** Contracts with the CM/GC are designed to create a better working relationship between all parties resulting in reduced risk to the contractor. Therefore, the overhead and profit fee are generally in the 3% to 6% range which is lower than the mark-up usually applied to traditional design-bid-build projects.
- 2. **Finding:** The City Council finds that the CM/GC process will result in a contractor that has the necessary public agency construction experience to minimize the impact to the City's daily operations and community use. The CM/GC will develop a schedule that accounts for reduced impact during regular City operations and prioritizes staff and the greater public's needs.
 - a. Construction activities will take place within the City's existing public facilities. An intense and well-thought-out safety and coordination plan must be implemented to ensure members of the public and staff are kept safe, and City and community use are minimally disrupted. Utilizing the CM/GC process will allow the City to select a contractor who has the sensitivity and experience to safely and successfully work in close proximity and in direct coordination with ongoing activities.
- 3. **Finding:** The City Council finds that there will be no impact on the funding sources as a result of this exemption. The City's funding sources for this project will remain the same whether accomplished through a traditional design-bid-build process or through the CM/GC process. No adverse impact on the funding source will occur because of this exemption.
- 4. **Finding:** The City Council finds that competition will not be inhibited, nor will favoritism be encouraged because of this exemption. The CM/GC will be selected through a competitive negotiation process in accordance with the cost and qualification-based process authorized by City Administration and Council.
 - a. **Solicitation Process:** Pursuant to ORS 279C.400 the CM/GC Request for Proposal (RFP) solicitation will be advertised in local and regional publications of general and industry specific circulation.
 - b. **Full Disclosure:** To ensure full disclosure of information, the RFP will include the following information:
 - i. Detailed Description of the Project
 - ii. Contractual Terms and Conditions
 - iii. Selection Process
 - iv. Evaluation Criteria
 - v. Role of the Evaluation Committee
 - vi. Provision for Comments
 - vii. Complaint Process and Remedies
 - c. **Selection Process:** Highlights of the selection process will include:
 - i. During the pre-proposal period, interested parties will, at any time prior to seven (7) business days before the close of the solicitation, be able to ask questions and request clarifications if they believe that any of the terms and conditions of the solicitation are unclear, inconsistent with industry standards or unfair and unnecessarily restrictive of competition.

- ii. Sealed proposals will be submitted to the City at a time specified in the advertisements.
 - iii. The following evaluation process will be used:
 1. Proposals will be evaluated for completeness and compliance with the requirements of the RFP.
 2. Proposals considered complete and responsive will be evaluated to determine if they meet the qualifying criteria of the RFP. If a proposal is unclear, the proposer may be asked to provide written clarification. Those proposals that do not meet the requirements will be rejected.
 3. Proposals will be independently scored against predetermined criteria by the voting members of the Evaluation Committee. Scores will be combined and assigned to each proposal.
 4. The Evaluation Committee may convene to select from the highest ranked proposals a finalist(s) for interviews.
 5. The Evaluation Committee may conduct interviews.
 6. The Evaluation Committee may use the interview to confirm the scoring of the proposal and to clarify questions. Based on the revised scoring, the Evaluation Committee will rank the proposals and provide an award recommendation.
 7. The City and legal counsel will negotiate a contract with the top ranked firm. If an agreement cannot be reached, the City will have the option to enter into an agreement with the second-ranked firm, and so on.
 - iv. Competing CM/GC firms will be notified in writing of the selection of the apparent successful proposal and will be given seven (7) calendar days after receipt of the notice to review the RFP file and evaluation report at City Hall. Any questions or concerns about the selection process must be delivered to the City within seven (7) calendar days after receipt of the selection notice. No protest of the award selection shall be considered after this time.
 - v. The contract achieved through this process will require the CM/GC to use an open and competitive selection process for all components of the project.
- 5. Finding:** The City Council finds that there will be no adverse impact on the operations, finance, and budget if this exemption is provided. Whether this project is secured through a traditional design-bid-build method or through the CM/GC process, the operations, financial, and budgetary impact will be the same – other than the potential savings mentioned in Finding #1. More importantly, there will be no adverse impact on operations, financial or budgetary data using the CM/GC process.

Conclusion of Findings of Fact

It is in the best interest of the City of Hermiston to utilize the CM/GC project delivery method. The CM/GC method will (a) result a in more predictable schedule, ensure the available construction budget aligns with the scope of work, and reduces financial risk to the City; (b) will allow the City to select a contractor with the specialized expertise required to ensure safety and coordination during construction; and (c) not encourage favoritism nor diminish competition.