

*City of St. Helens*  
**RESOLUTION NO. 1975**

**A RESOLUTION ADOPTING FINDINGS TO UTILIZE CONSTRUCTION  
MANAGER/GENERAL CONTRACTOR (CM/GC) AS AN ALTERNATIVE  
PROCUREMENT METHOD FOR THE POLICE STATION PROJECT AND  
EXEMPTING PROJECT FROM COMPETITIVE BIDDING REQUIREMENTS**

**WHEREAS,** ORS Chapter 279C requires a competitive bidding process for Public Improvement Contracts, unless a statutory exception applies, a class of Contracts has been exempted from the competitive bidding process, or an individual Contract has been exempted from the competitive bidding process, in accordance with ORS 279C.335 and any applicable Contracting Agency administrative rules; and

**WHEREAS,** ORS 279.335(2) provides for alternatives to the competitive bidding requirement that otherwise applies to public contracting, upon the adoption of certain findings following a public process; and

**WHEREAS,** The City would like to use a Construction Manager/General Contractor (CM/GC) alternative contracting method for the Police Station (Project). Construction Manager/General Contractor (CM/GC) is defined in OAR 137-049-0690 as an alternative procurement method that results in a Public Improvement Contract in which an integrated project team approaches and applies professional management during the planning, design, and construction of a project. The integrated Project Team consists of the Agency (City), City's Representative Consultant (optional), architectural engineer (A&E), CM/GC Contractor (Contractor), Independent Cost Estimator (ICE), and subcontractors. In CM/GC contracts, the City contracts separately for design and construction services. Both the CM/GC Contractor and the A&E are selected through a qualifications-based or best-value selection process and both may be retained from the beginning of design through the end of construction; and

**WHEREAS,** Staff has determined that the City would realize significant benefits by using an alternative competitive bid process in selecting a firm to design and construct the new Police Station and it is unlikely that such exemption will encourage favoritism in the awarding of the public contract or substantially diminish competition for the public contract; and

**WHEREAS,** The City Council acts as the City of St. Helens Local Contract Review Board and finds that under ORS 279.335 it has authority to grant specific exemptions from the competitive bidding requirements based on the attached findings; and

**WHEREAS,** The City will invite prospective CM/GC teams to submit competitive proposals in response to the City's Request for Proposals ("RFP"). A Selection Committee will select CM/GC team based on an evaluation of the proposals received. The selection committee will include various members of City staff. The RFP process will be completed in accordance with the Alternative Contracting Methods requirements set forth in the Oregon Revised Statutes.

**NOW, THEREFORE, THE CITY OF ST. HELENS RESOLVES AS FOLLOWS:**

**Section 1.** In accordance with ORS279C.335 the contract for the Police Station Project is exempt from traditional competitive bidding.

**Section 2.** This exemption is supported by the draft findings attached in Exhibit A which is incorporated herein by reference.

**Section 3.** This Resolution is effective immediately upon its adoption.

**APPROVED AND ADOPTED** by the City Council on March 1, 2023 by the following vote:

Ayes:

Nays:

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Jessica Chilton, Council President

ATTEST:

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Kathy Payne, City Recorder

## Exhibit A

### II. FINDINGS REGARDING REQUIRED INFORMATION

Use of Alternative Contracting methods, such as Construction Manager/General Contractor (CM/GC), is made possible under ORS Chapter 279C, which permits certain contracts or classes of contracts to be exempt from competitive public bidding under strict procedural safeguards. Like other alternative contracting methods, CM/GC has significantly different legal requirements than a typical design-bid-build project delivery method.

Pursuant to ORS 279C.335, a local contract review board may exempt specific contracts from traditional, competitive bidding by showing that an alternative contracting process is unlikely to encourage favoritism or diminish competition and will result in cost savings and other substantial benefits to the public agency. In exempting the public works improvement from competitive bidding under ORS 279C.335(2)(b), the Local Contract Review Board must consider the type, cost and amount of the contract and, to the extent applicable to the particular public improvement contract, all 14 items under ORS 279C.335(2)(b)(A-N). The Oregon Attorney General's Model Public Contract Rules provide for public notice and opportunity for the public to comment on draft findings in favor of an exemption before their final adoption.

ORS 279C.330 provides that: “findings” means the justification for a contradicting agency conclusion that includes, but is not limited to, information regarding:

- Operational, budget and financial data;
- Public benefits;
- Value engineering;
- Specialized expertise required;
- Public safety;
- Market conditions;
- Technical complexity; and
- Funding sources.

**The City of St. Helens (City) finds that the information regarding these criteria, as set forth below, supports the Council’s decision to use the CM/GC contracting method for the Project.**

**1. Unlikely to Encourage Favoritism:** The City will select the CM/GC through a competitive process that fosters competition and focuses on qualifications and delivering best value to the City with disregard to favoritism. The City will issue a RFP in a manner that will attract competition from qualified firms through advertisement and posting on the City's web site.

The RFP will attract Proposers having the specialized knowledge, capacity, and skills for the Project from within the state and Pacific Northwest. A sufficient number of CM/GC firms are available to respond to the RFP.

With respect to favoritism, the City will take prescriptive measures to assure an open competition. Strict adherence to pre-defined scoring criteria that will be included in the RFP will be followed. Scoring criteria will be based on the experience of the CM/GC firm and project personnel;

understanding of the technical and work requirements for the Project; approach for managing and minimizing Project risks; approach to safety; and consideration of professional design and/or construction management support costs or fees. Review of proposals and scoring will be performed by City staff. All reviewers shall follow the pre-defined scoring criteria.

**2. Available Bidders:** The RFP will attract CM/GC firms having the specialized knowledge, capacity, and skills for the Project from within the state, and the Pacific Northwest. A sufficient number of CM/GC firms are available to respond to the RFP.

**3. Operational, Budget and Financial Data:** As the Project funding is limited, and the potential scope is quite broad, a precise determination of the overall Project budget cannot be made at this time given market conditions. The initial estimated target Guaranteed Maximum Price (“GMP”) for the police facility is approximately \$12.6 million.

CM/GC provides opportunities for cost saving in a variety of ways. The inherent flexibility and openness of the process allows the City to more easily make appropriate changes as necessary to meet the project budget. If the CM/GC contracting method is used, the CM/GC contractor could assess the scope and phasing of the Work and provide real time detailed cost estimating during the design phase and can maximize value through the possible use of various work packages. This additional input would allow the City to more accurately determine costs and funding requirements, and potentially include additional project elements if feasible. These phased Project budget adjustments cannot be effectively accomplished with a traditional Design-Bid-Build contracting process. The City anticipates a lower overall cost and better value using the CM/GC contracting method, as described more fully below.

The CM/GC process will assist in developing a scope of work and construction documents that meet the requirements of the Project with significantly lower risk of cost overruns, particularly with the use of a GMP where most of the risk of unforeseen costs for the defined scope will be absorbed by the CM/GC contractor. The firm GMP contract amount includes the expected cost to construct the project, the CM/GC firm's fee, and a contingency amount that the CM/GC believes should be available to cover the proposed scope. The resulting CM/GC contract will establish, within the GMP amount, the allowable fees, allowances and Project costs of the Work. Under the CM/GC process, any savings in Project costs will remain with the City and used for other capital construction.

**4. Public Benefits:** The benefit to the public of a local police force with up-to-date facilities is apparent. Additionally, the public will benefit by maximizing the facility at the least cost to the public. Given market volatility, the utilization of the CM/GC delivery method will allow the team to use Target Value Design tools and early work amendments to procure materials that have long lead times, and receive design assistance from subcontractors who can provide cost savings and assurances with meeting project deadlines.

Use of CM/GC as an alternative contracting method will allow construction work to commence relatively rapidly on some portions of the Work while design continues on the remaining portions. This will shorten the overall duration of the construction (thereby saving costs), maintaining both the schedule and the budget of the Project while ensuring coordination with the Design Team.

Further, as described below, the CM/GC delivery method will benefit the public as well by ensuring their safety when they are present in the new building.

**5. Value Engineering:** Value Engineering (“VE”) is encouraged by the City on all city projects. VE can be defined as an organized effort directed at analyzing designed building features, systems, equipment, and material selections for the purpose of achieving essential functions at the lowest lifecycle cost consistent with required performance, quality, reliability, and safety. The CM/GC method of project delivery will result in earlier, more reliable, and higher quality VE since a sizable amount of project design and planning will be accomplished with the involvement of and in conjunction with the CM/GC contractor during the design development phase. The City can expect to realize substantial benefits of a lower construction cost and a well-developed scope of work for the Project. The benefits of enhanced VE are not available with the traditional low bid process.

The unique relationship of the owner, construction contractor and the Design Team under the CM/GC process for Project delivery fosters a team approach, which should result in significant VE benefits. The traditional Design-Bid-Build method procures a contractor and pricing only after the design has been fully completed, which does not allow for pertinent input from the construction contractor as to the chosen means and methods. Design plans and specifications that utilize alternative materials and methodology identified by the CM/GC that add value or save costs can be developed during the design phase when using the CM/GC delivery method. Alternative materials or methods identified by the CM/GC could be considered in the pricing before the GMP amendment is executed, reducing the number of change orders during construction of the Project.

**6. Specialized Expertise Required:** The CM/GC selection process is based on qualifications, with price as factor. The fee is, however, less important than the overall qualifications and specialized expertise of the selected CM/GC. The City will benefit by acquiring a CM/GC which has established experience and specialized expertise to manage this Project. A low bid process does not provide an opportunity to obtain the most qualified contractor with the specialized expertise needed for the Project.

As the project is located in a known flood plain area and the building use will be used for The St. Helen’s Police Department (a function with significant safety concerns), the City recognizes that the architect and engineering team cannot perfectly document all unforeseen or unknown conditions due to the variables involved. It will be incumbent on the CM/GC, the CM/GC’s trade partner team, and subcontractors to determine the best way to phase and integrate the various flood protections and security components of the building.

For successful Project completion, expertise and an innovative approach are required in: (a) managing and coordinating both design and construction; (b) implementing performance specifications; (c) providing VE and constructability reviews; (d) scheduling and estimating; (e) assessing risk; and (f) providing a completed Project through a collaborative CM/GC delivery method.

The Project requires the knowledge, craftsmanship, special expertise and experience of a contractor team that has worked on other buildings with high security requirements specific to a

police force. In addition, because this building is located near a known flood plain, there may be unforeseen conditions that will require field judgment that relies on the expertise of a contractor experienced with the local conditions. Due to these construction details, it is paramount that the Project be delivered by a contractor selected based on price and qualifications and not one based on a low bid. The selected CM/GC contractor and its expert subcontractors will be critical team members for the Project.

**7. Public Safety:** The Project will provide for safe public access and compliance with ADA requirements. All work during the construction will be done in accordance with OR-OSHA safety regulations. The CM/GC selected will be highly qualified and capable, and must show evidence of construction safety practices that are at the highest level of integrity. The CM/GC's input into work, trade sequencing and construction methodologies can reduce issues related to safety and provides for close controls and related risk reductions on the site.

The CM/GC method of delivery is a team approach and provides for a high level of responsibility and visible adherence to public safety. The contractor's performance on prior projects in satisfying these safety needs can be determined as part of the City's selection process. This determination is not available under the low bid process.

Two identified design drivers are the location of the building in a flood plain and the need to ensure a safe and secure facility for the St. Helens' Police Department, any members of the general public who might be visiting the facility, and any occupants of its holding cells. The CM/GC process will allow the design team to work closely with the General Contractor to ensure that the integrity of the building and the safety of the Police force and public are both achieved while keeping the project within the available budget, completed on time using the most up to date standards for a modern police facility. Using a traditional Design-Bid-Build process would extend the time and therefore the budget which would limit the scope components that could be included. This could result in a structure that was more at risk of floods or less secure for the police force and general public.

**8. Effect on Funding:** The use of CM/GC will have no effect upon the availability of funding.

**9. Market Conditions:** The CM/GC contracting process is a modern construction delivery method used by both public and private organizations. The CM/GC is tasked with keeping the Project Team up to date on the latest construction techniques and products. The CM/GC will inform the Project Team of current market conditions, labor and materials availability, and construction methodologies that can reduce design and construction time and costs.

The CM/GC process allows "fast track" construction to start while detailing structures, interiors, and systems at the same time as awarding site work, foundations, and long-lead items. Timing the market for the various aspects of construction can result in cost savings and ultimately keeps the Project Team on a schedule. These fast-track benefits are not available under the low bid process.

In addition, using the CM/GC process will allow trades to become involved earlier in the process. The current market for construction services is becoming increasingly tight with substantial increases and public and private construction projects. By allowing the involvement of trades

earlier in the process, the CM/GC will be able to acquire and involve higher quality subcontractors, which will lead to a higher quality product for the City and its residents. These benefits are not available under the low bid process.

**10. Technical complexity:** This Project would benefit from a CM/GC contractor with in-depth technical expertise of the current supply chain and labor issues that contribute to the national and regional volatility of the construction market. Design issues relative to designing a public safety building will impose an additional layer of complexity better handled by those with experience with this project type. As described above, the Project involves early work packages, phased permitting and management of varied subcontractors within a fast-track schedule. A CM/GC contractor with technical expertise will be required to identify and price multiple possible solutions, as well as to identify current and hidden conditions that may impact the Project at multiple points of design and during construction. A high level of communication and coordination among the City, the design professional and the construction contractor, all working as a team, is required, which would be facilitated by utilizing the CM/GC approach for the Project. Under a low bid process the technical competence of the contractor is difficult to evaluate.

**11. Funding Sources:** The CM/GC method of contracting provides the greatest cost controls for limited budgets and therefore benefits the City. The team approach, the schedule, the value analysis, and constructability reviews, provides the ultimate in effective cost analysis. It is critical, and also consistent with the spirit of collaboration encouraged throughout the process, that everyone on the Project Team works towards a budget of which they can take ownership.

The total estimated project budget at this time is \$12.6 million. It is anticipated that the current funding will only accommodate an updated police facility. Due to the volatility of current market conditions of labor and materials, it will be necessary to have a CM/GC contractor provide insight as soon as possible to verify budget sufficiency given market conditions.

**12. Experienced Consultants:** The City has experience using CM/GC delivery, will use specialized advisor services when necessary, and the law firm of Jordan Ramis for legal support for the Project. Possible areas where specialized advisors with specific expertise may be hired or utilized include for exempting the Project from competitive bidding, for preparing the RFP for securing the CM/GC firm through a competitive process, for overseeing the work of the CM/GC firm during initial design and guaranteed maximum price development, and for providing assistance during negotiation of the terms, conditions, scope, and pricing for final design, permitting, and construction.

**Summary:** After careful consideration of the above, the City has found the CM/GC more appropriate than a traditional design-bid-build process to meet the overall project objectives for the Project.