

## **RESOLUTION NO. 2094**

### **A RESOLUTION EXEMPTING THE TROUTDALE COMMUNITY POLICE FACILITY PROJECT PUBLIC IMPROVEMENT CONTRACT FROM COMPETITIVE BIDDING IN ACCORDANCE WITH ORS 279C.335(2) AND TMC 2.24.190.**

#### **THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:**

1. Staff has determined that the City would realize significant benefits by utilizing an alternative competitive process in selecting a contractor to manage and construct the project;
2. Under ORS 279C.335(1), local public agencies are required to competitively bid all public improvement contracts except where the specific public improvement contract is exempted from that bidding requirement by statute or by an exemption created by a local contract review board.
3. The City Council for the City of Troutdale acts as the Troutdale Local Contract Review Board (Troutdale LCRB) pursuant to the Troutdale Municipal Code (TMC).
4. The notice was duly provided to the public pursuant to ORS 279C.335 regarding the proposed alternative contracting process by publishing a notice in the Daily Journal of Commerce, a trade newspaper of general statewide circulation, on February 4, 2011.
5. ORS Chapter 279C requires findings as basis for granting an exemption, and the City made copies of the draft findings available at the time of the notice, and at the City Council meeting of January 25, 2011.
6. The City held a public hearing on February 22, 2011 on whether to create an exemption to the requirement imposed by ORS Chapter 279C that public improvement contracts be competitively bid.
7. The City Council, acting in its capacity as the Troutdale LCRB, determined that construction of the Troutdale Community Police Facility project may be best accomplished through a Construction Manager/General Contractor contract.
8. The Troutdale LCRB found that the exemption from the terms of ORS Chapter 279C is:
  - a. Unlikely to encourage favoritism in the awarding of public improvement contracts; or

- b. Unlikely to substantially diminish competition for public improvement contracts; and
- c. The award of a public improvement contract under the exemption will result in cost savings to the City.

**NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL, ACTING AS THE LOCAL CONTRACT REVIEW BOARD FOR THE CITY OF TROUTDALE**

Section 1. In accordance with ORS 279C.335(2), the public improvement contract for the new Troutdale Community Police Facility is hereby exempted from the traditional competitive bidding process, and qualifies for procurement as a Construction Manager/General Contractor (CM/GC) contract through the competitive proposal process.


Section 2. This exemption is supported by findings, which are incorporated as Attachment A.


Section 3. The City Staff is directed to utilize the CM/GC contracting method, and that through a competitive proposal process, in accordance with TMC 2.24.180, qualitative factors such as contractor's experience, resources and reputation will be thoroughly considered, and where the City will be permitted to negotiate with one or more proposers to select a contractor that is in best interests of the City.

Section 4. This resolution is effective immediately upon its adoption.

**YEAS: 7  
NAYS: 0  
ABSTAINED: 0**

  
**Mayor Jim Kight**

  
**Date**

  
**Debbie Stickney, City Recorder**  
**Adopted: February 22, 2011**



# CITY OF TROUTDALE

FINANCE DEPARTMENT

**FINDINGS FOR EXEMPTION  
GRANTED BY THE LOCAL CONTRACT REVIEW BOARD  
EXEMPTING THE POLICE FACILITY PROJECT PUBLIC IMPROVEMENT  
CONTRACT FROM TRADITIONAL BIDDING  
IN ACCORDANCE WITH ORS 279C.335(2) AND TMC 2.24.190.**

## **Overview:**

### **Alternative Contracting Process**

For the construction of the new Troutdale Community Police Facility, City Staff believe it is in the best interest of the Public, that the City use the authorized alternative contracting method of Construction Management/General Contractor (CM/GC).

This allows flexibility in both proposal evaluation and contract negotiation. The City may select a firm to act as a CM/GC to construct public improvements by means of a competitive proposal process. A CM/GC performs specified construction manager services in addition to traditional general contractor services.

In order to use the CM/GC process, the Local Contract Review Board (LCRB) must direct its use by exception to the traditional public contracting practices, by approving findings submitted by the department seeking the exemption. The rules also require that the City give public notice and hold a public hearing to receive public comment on the findings before taking action on granting an exemption to a public improvement contract from the requirement of competitive bidding. The resulting contract will be subject to all requirements of public improvement contracts, including but not limited to hours of labor, retainage and payment, subcontractors, bonds, and prevailing wage requirements.

Selection of the CM/GC firm for this project will utilize a Request for Proposal (RFP). The RFP will identify specific criteria which will be utilized for the selection as required in TMC 2.24.180. The proposals from the CM/GC firms will include a competitive bid for their fee and the known general conditions for the project. The CM/GC will provide the City with a Guaranteed Maximum Price (GMP) and a full performance/payment bond for the work following detailed review of the design documents.

The ORS directs the LCRB to consider alternative contracting methods, and the TMC2.24.190B specifically states: *"In granting an exemption under this section, the city shall, when appropriate, use alternate contracting methods that take account of market realities and modern practices and are consistent with the public policy of encouraging competition."*

# Requirements:

Under the terms of ORS 279C.335(2) and Section 2.24.190 of the Troutdale Municipal Code (TMC), a local contract review board has authority to exempt a public improvement contract from the competitive bidding requirements imposed by ORS 279C.335(1) and TMC 2.24.100. If it does so, it must be able to make the following findings:

1. That the exemption is unlikely to encourage favoritism in the awarding of public improvement contracts; or substantially diminish competition for public improvement contracts; and
2. that award of public improvement contracts under the exemption will result in substantial cost savings to the contracting agency.

Under the terms of ORS 279C.330 the term "Findings" as used in ORS 279C.335 is defined as the justification for an agency's conclusion that a public improvement contract otherwise covered by the competitive bidding requirement should be exempt from that requirement.

Under the terms of ORS 279C.330, "Findings" include information (to the extent the information may be relevant) on eight topic areas or issues:

1. Operational, budget and financial data;
2. Public benefits;
3. Value engineering;
4. Specialized expertise required;
5. Public safety;
6. Market conditions;
7. Technical complexity; and
8. Funding sources.

These eight topic areas may not all be relevant or pertinent to the ability of a city to make the findings noted above as to a particular exemption. The City considered the topic areas, determined which were relevant and then made observations based on its assumptions and experience applicable to the findings.

The primary justifications for the exemption are to save time and money on the project, to ensure that an experienced and well equipped contractor can manage the construction, complete the project on time and within budget, and reassess the project as different needs and funding issues arise, and to assess the CM/GC process and its effectiveness.

Competition for the construction work will still be robust under the exemption, as selection of the CM/GC contractor will be on a competitive proposal basis as required under TMC 2.24.180.

## TOPIC AREAS.

The eight (8) factual criteria listed in ORS 279C.330 that may be relevant to the LCRB's ability to make the findings required of it by ORS 279C.335(2):

### Operational, Budget, and Financial Data.

The City has limited funds to perform the variety of tasks expected by its citizens, including those relating to public improvements. The limited \$7,540,000 budget cannot be exceeded. Each month that passes results in a further increase in the cost of construction. The CM/GC method of contracting is the quickest method of getting this project completed, while ensuring that the City will not incur additional costs beyond those budgeted.

The CM/GC's method of reduced risk provides a significant value and potential savings:

- a. **Reduced Financial Risk:** This project is occurring during the most troubling economic conditions in recent times. A large number of contractors, subcontractors and suppliers have gone out of business during this timeframe. It would be very costly and disruptive if these potential business failures took place on this project. Using the CM/GC process will allow the City to consider the contractor's financial strength as part of the competitive proposal process, rather than just the low bid amount.
- b. **Guaranteed Maximum Price (GMP) establishes a maximum prior to starting construction:** The CM/GC will be able to obtain a complete understanding of the City's needs, the architect's design intent, and the scope of the project and the operational needs of the City's administration by participating in the development of the design documents. With the CM/GC's participation in this phase of the project, they will offer suggestions for cost savings and improvements to the design. With the benefit of this knowledge, the CM/GC will be able to guarantee the maximum price paid by the City for the project.
- c. **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 owner'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.
- d. **GMP Change Orders Cost Less:** The traditional Design-Bid-Build method typically results in contractors charging 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 2% to 5%.

- e. **GMP Savings:** Under the CM/GC method the City would experience additional savings, if actual costs are below the GMP. When the CM/GC completes the project, a share of any savings between the actual costs and the GMP are returned to the City.
  
- f. **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. As a consequence, the overhead and profit fee is generally in the 2% to 5% range which is lower than the mark-up unusually applied to traditional bid projects.

The CM/GC process 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. While the basic design is complete, there are significant unknowns which are likely to be late stage developments and which will require the flexibility of a CM/GC to manage.

The CM/GC process will assist in providing a scope of work and constructible design that best meet the requirements of the project with significantly lower risk of cost overruns do to delay and redesign. Involving the contractor during design will allow potential risks to be addressed early and provide the contractor with a detailed knowledge of the project which are expected to result in lower construction costs.

### **Public Benefit.**

The primary public benefit is more expeditious completion of the project with the time savings and resultant cost savings. 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.

### **Value Engineering.**

Because the contractor is working with the design team during the design phase, the contractor will assist the project team to identify and implement possible cost savings. The Value Engineering process allows the project team to evaluate quality materials and life cycle costs, thereby helping to reduce operating costs.

The CM/GC also identifies whether project sequencing is viable and design elements can be built as drawn. All of these beneficial actions by the CM/GC will improve design, expedite construction and eliminate the potential for costly change orders. The benefits of value engineering are not available with the low bid process.

### **Specialized Expertise Required.**

Completing a complicated project on time, on budget and at or above the quality expected requires the CM/GC firm to dedicate a qualified Team with the experience and expertise to work with the City, the Architect and the Project Manager. With such experience, mistakes are likely fewer and disruptions are likely to be minimized. The request for proposals process used to select the CM/GC will enable the City to select the best contractor for the project.

The features and components of a public safety facility are neither repetitive nor generally available for off-the shelf purchase as would be the case in common office or general use buildings. The contractor ultimately selected as CM/GC will demonstrate experience and expertise in providing CM/GC services to public safety entities.

The CM/GC selection process is based on qualifications, with price as a 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.

### **Public Safety.**

The CM/GC firm will prepare a construction safety plan for the project. The construction safety plan will help ensure the project is built safely and will minimize the impacts to the neighborhood and the project.

The project will provide for safe public access and full 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 show evidence of construction safety practices that are at the highest level of integrity. The CM/GC's input into work and 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 contractor selection process; this determination is not available under the low bid process.

### **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.

### **Technical Complexity.**

The project has significant technical complexities which will be best addressed by a full team approach, with the CM/GC firm working with the City and the Architect to solve specific challenges identified during the pre-construction phase.

The project is technically complex due to difficult site conditions and associated slope, retaining wall and drainage issues, and the neighboring CCB structure which must be protected during construction of the new Police Facility.

This project also requires technical expertise and experience in commercial construction involving public entities. The CM/GC process enables the City to competitively select a prime contractor who has the necessary competence to deal with the technical complexities of this project and can provide quality workmanship, dependable performance, fair and reasonable pricing and efficient management as a Project Team member. Under a low bid process the technical competence of the contractor is difficult to evaluate.

### **Funding Sources.**

At the November 2, 2010 General Election the voters approved a \$7,540,000 bond measure for the new Troutdale Community Police Facility. The voters expect the City to construct the designed and approved police facility, within budget, following all legal requirements and best management practices, while maintaining effective communication with stakeholders.

As a public entity, the City needs budget predictability. 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.

## Requirements Summary:

Based on the above TOPIC AREAS, the LCRB makes the following findings for an exemption from the competitive bidding requirement in accordance with the terms of ORS 279C.335(2) and TMC 2.24.190:

**Finding:** It is unlikely that such exemption will encourage favoritism or substantially diminish competition for the public improvement contract.

- The CM/GC will be selected through a competitive selection process to provide both construction management and general contracting services pursuant to the established formal procurement requirements of TMC 2.24.180. 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 CM/GC firm, and the construction work elements will be subcontracted and procured through open bids managed by the CM/GC.

**Finding:** The awarding of a CM/GC contract pursuant to the exemption will result in substantial cost savings to the City.

Substantial cost savings are expected through adoption of the CM/GC process. The following are the reasons supporting the expectation that substantial cost savings would be realized:

- This method has the potential for achieving significant cost savings through early involvement of the contractor in the design phase of the project. By having the contractor available in the early stages of the design, the contractor would be 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 Police Facility involves a wide range of construction elements ranging from the various building trades to public street improvements. Cost saving are expected from the CM/GC being able to separately contract for each of the elements.
- The CM/GC 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 CM/GC 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.

## **Conclusion:**

After careful consideration, the LCRB has found the alternative contracting method CM/GC, appropriate to meet the overall project objectives for the Troutdale Community Police Facility public improvement contract, and based upon the above, the LCRB finds the exemption is appropriate and meets ORS 279C.335(2) and TMC 2.24.190 criteria.