

**LANE TRANSIT DISTRICT
DRAFT EXEMPTION FINDINGS
FOR THE
OPERATIONS COMMAND CENTER AND EUGENE STATION MODERNIZATION PROJECTS**

**Findings of Fact in Support of Exemption from Competitive Bidding Process
to Approve of the Alternate Contracting Selection Method Known as
Construction Manager/General Contractor**

1. BACKGROUND

The Lane Transit District (LTD) Board approved the Capital Improvement Plan (CIP) which will provide Federal, State, and Local funds for the construction, additions and repairs of transit facilities and other property used for district purposes. As part of the initial pre-design and planning phase, the district staff have identified the need to consider alternative contracting methodologies to address specific types of work. Two projects identified for consideration are the Operations Command Center and the Eugene Station Modernization (Project or Projects).

The staff have reviewed various contracting methods best suited to address these two most complex, technically and logistically challenging projects. The staff has also reviewed contracting methods most recently utilized by other Oregon transit districts and public agencies. Based on the experience of staff and the review of projects completed in transit districts, state, and local public agencies in Oregon, it is recommended that LTD use a Construction Manager/General Contractor (CM/GC) construction contracting methodology for the Projects.

Traditionally public construction projects are competitively bid and awarded to the responsible low bidder using the Design-Bid-Build (DBB) methodology. ORS 279C.335 permits the LTD Board of Directors, acting in its capacity as the Local Contract Review Board, to exempt certain projects from the requirements of DBB, competitive low bid contracting. In doing so, the statute specifically says that the Local Contract Review Board shall:

- If appropriate, direct the use of alternative contracting methods that take account of market realities and modern practices and are consistent with the public policy of encouraging competition; and
- Require and approve or disapprove written findings by the contracting agency that support awarding a particular public improvement contract or a class of public improvement contracts, without the competitive bidding requirement.

Exemptions for this specific type of alternative contracting method CM/GC, have been granted for many government agencies. For example, LTD has used this alternative contracting method on the following projects: 2005-Franklin/Downtown to Downtown BRT, 2009-Gateway/Pioneer Parkway, BRT, 2009-Fleet Building Remodel/Expansion, 2015-West Eugene BRT. LTD's Director of Facilities has been involved in CM/GC projects for the District and the Facilities Project Manager has extensive experience using the CM/GC contracting method on multiple public agency projects of similar complexity as these projects. In addition, to name a few, the CM/GC contracting methodology has been successfully used or is the selected methodology by Oregon Department of Transportation, TriMet, the cities of Eugene and Springfield, the Oregon University System, Eugene School District 4J, Lane Community College, and the Eugene Water and Electric Board (EWEB).

Selection of the CM/GC firms will include a vigorous Request for Proposal (RFP) process. The RFP will include a detailed description of the project, contract terms and conditions, and specific criteria which will be used for the CM/GC selection. Firms selected to provide CM/GC services will be an integral member of the project teams from early design through construction. The proposals from the CM/GC firms will include a competitive bid for their fee based on the known general conditions for the project. At the appropriate milestone of the project, the selected CM/GC will provide the District with a Guaranteed Maximum Price (GMP) and a full performance/payment bond for the work.

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1. FINDINGS

LTD is currently in the pre-planning phase for the construction, additions and repairs of transit facilities and other property used for district purposes as included in the CIP. The Operations Command and Control and the Eugene Station Modernization Projects are complex in terms of the types of work involved and the logistics of integrating an active construction site into business and residential neighborhoods. In addition, these projects will need to proceed in occupied and/or adjacent to existing transit facilities during the normal operations of the transit system. The types of work will include new construction, major additions, demolition, non-routine maintenance, safety and security upgrades as well as ADA enhancements, all of which require an integrated and comprehensive design and construction approach such as CM/GC. The projects will require detailed planning and coordination that identify and accommodate the operational transit system requirements that will be impacted during construction to minimize the associated impacts to the operations of the transit system while ensuring the safety of staff, and the general public. The ability to involve construction expertise during the design process to develop the unique schedules, processes, and methods necessary for successful project delivery is a critical component of the overall Projects.

Recommendation to use CM/GC contracting methodology on these two Projects:

- The Operation Command Center Project is proposed to be an addition and remodel of the Operations Department totaling 15,000 GSF for the Dispatch and Emergency Operations Center, Employee Lounge, Training Rooms, and support services. The 23,500 GSF Glenwood facility built in 1988 will be occupied by the District's administrative departments during the project. The proposed addition/remodel will be adjacent and occupied by a fully functional operations department and parking facilities. The Dispatch and Emergency Operation Command Center, Employee Lounge, Training Rooms, and support services areas will be a highly specialized space with significant sustainability targets. This work will be loud, dusty, occasionally smelly, and potentially disruptive. The estimated construction budget for the project is \$6.8 million.
- The Eugene Station Modernization Project involves selective demolition, repairs, upgrades, and renovations of the Eugene Station including bus bays, walkways, buildings and structures that were built in 1996. The repairs, renovations and upgrades, and subsequent finish work must be carefully sequenced and planned to minimize disruptions. This work will be loud and disruptive to those at the Eugene Station but also adjacent neighboring areas. The customer service windows, driver support area, public safety offices, public support spaces, and bus operations will need to remain operational in the affected spaces. Additionally, the adjacent neighboring buildings disturbance needs to be minimized. Very careful planning and coordination will be required to ensure that LTD can continue transit services with minimal disruption to the buildings site and surrounding areas. The estimated construction budget for the project is \$3 million.

- A. Finding in consideration of the exemption being unlikely to encourage favoritism.** The District staff's past experience indicates that the use of the CM/GC methodology will not result in favoritism in the awarding of public contracts or substantially diminish competition for public contracts. The CM/GC firms will be selected through an open, competitive process among experienced and qualified contractors. The District will receive written proposals from contractors with the experience and staff required to complete the project. The process will utilize an RFP process that will be publicly advertised. The District will evaluate proposals, interview selected firms, and make CM/GC firm selections based on the advertised criteria in the RFP.
- B. Findings in consideration of operational, budget and financial data.** Many general contractors and subcontractors are being impacted by the quantity of work to be bid in the next three to six years. Currently the cost of materials and labor is adjusting to the market demand. With these current market conditions, the use of traditional design-bid-build contracting could result in bid costs which exceed the approved budget, or with no bids at all. The use of CM/GC will better

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enable the District to monitor and control the impact that market conditions will have on the cost and time necessary to complete the projects. Securing qualified key subcontractors earlier in the bid and award cycle is estimated to reduce costs. Due to the factors identified below, the use of CM/GC in lieu of Design-Bid-Build will likely result in substantial cost savings to the District.

2. CONSIDERATIONS

FOR PUBLIC IMPROVEMENT PROJECTS, ORS 279C.330 AND 279C.335 PROVIDE THAT THE DISTRICT FINDINGS INCLUDE INFORMATION REGARDING THE FOLLOWING:

- A. Availability of Bidders:** Pursuant to ORS 279C.400, the CM/GC Request for Proposal solicitation will be advertised in local and regional publications of general and industry specific circulation. Local and regional contractors have already expressed interest in the proposed projects and the use of a CM/GC contracting strategy provides contractors with the certainty provided in process.
- B. Construction Budget in accordance with Projects Estimated Budget:** LTD carefully established the budget for the 2 projects to be funded under the CARES Act and discussed that funds provided by the CARES Act must be utilized in the most efficient manner. Utilizing the CM/GC will allow the staff to use CM/GC pre-construction services during the design phase. Tasks to be performed by the CM/GC during this period include scheduling, logistics planning, constructability review, cost estimating and value engineering. These services will allow for the project team to develop a design, project schedule and budget that make the best use of available funds.
- C. Public Benefits:** The CM/GC methodology offers many public benefits such as the cost containment derived from a GMP and an integrated delivery schedule. The CM/GC process allows for greater collaboration and integration of constructability, maintainability and sustainability aspects in the project while maintaining the project schedule.
- D. Value Engineer Techniques:** The CM/GC, working with the design team during the design phase will assist the project team in identifying and implementing potential cost savings. The Value Engineering (VE) process allows the project team to continually evaluate the quality of materials, life cycle costs, and the constructability, maintainability, and sustainability of the components of the project. This inherent collaboration is expected to result in completing the projects within established budgets.
- E. The Cost and Availability of Specialized Expertise:** Completing a complex transit project on time, within budget, and in full compliance with construction documents and specifications requires the CM/GC firm to dedicate a qualified team with the experience and expertise to work collaboratively with the District, architects, engineers, and the project management team. These projects require special expertise in the areas of construction management, time scheduling, cost control, implementing DBE goals, tracking DBE goal measures, sustainability measures, materials and subcontractor procurement, value engineering, constructability, dust and air quality control, noise control, and operating in a transit facility environment. The collaborative process is expected to reduce or eliminate rework and minimize disruptions to ongoing transit activities and surrounding communities. The Request for Proposals (RFP) process used to select the CM/GC firms will enable the District to select the best contractor for each project.
- F. Increases in Public Safety:** The CM/GC firms will be required to prepare a project safety plan for each of the projects. The project safety plan will help ensure the project is conducted safely and help to minimize any transit and neighborhood impacts. With the CM/GC retained during the design phase they will have a specific understanding of the project, its complexities, the operational impacts, neighborhood impacts and schedule impacts – allowing the Safety Plan to accommodate all of the relevant factors.

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- G. Reduce Risks to the Contracting Agency or the Public:** The most significant risk to the District on these two projects is the inability for a contractor to complete the project on schedule. The CM/GC process allows the selection process to evaluate proposals based on a demonstrated ability to perform work in accordance with the construction schedule. The construction schedules will be complex; technically and logistically challenging due to the types of the work to be completed at both sites, in occupied facilities and active transit sites. The CM/GC method enables the completion of construction documents to facilitate timely subcontractor bids and awards and will allow for schedule efficiencies during the construction of the project.
- H. Sources of Funding:** These CM/GC projects will be funded as part of the LTD CIP identified CARES Act funds. Establishment of a preliminary and final guaranteed maximum price will better enable the District to budget its CIP resources among these projects.
- I. Impact of Market Conditions:** The cost of materials and labor is continually adjusting to the market demand. Ordering materials and equipment may take longer when manufacturers and distributors are fully engaged with bond work throughout the region. The CM/GC firms will order materials and equipment in a timely manner from manufacturers and distributors that can deliver the material and equipment on time to avoid delays caused by late shipments. The use of CM/GC will better enable the District to control the impact that market conditions have on the cost and time necessary to complete the projects. Securing qualified subcontractors earlier in the bid and award cycle is more likely to ensure that both materials and labor are available in accordance with the project schedule. The CM/GC method will also identify and allow for the early procurement of long-lead materials and equipment such as mechanical and electrical equipment, windows and doors to prevent schedule impacts.
- J. Size and Complexity of the Projects:** Completing a complicated, technically and logistically challenging construction project in business and residential neighborhoods will be challenging. In addition, some of the projects will be completed on an occupied facility. The CM/CG firms will develop a construction plan for district approval that will minimize disruption to the site's surrounding neighborhoods, operational activities and master schedule.
- K. New Construction, Renovation or Remodel:** The two projects to be funded by the CARES Act include new construction, renovations and remodels. The CM/GC selection process will allow the District to select a contractor with the qualifications most relevant to the specific project.
- L. The Project will be Occupied During Construction:** Major construction, renovation and remodel projects will occur in occupied buildings, some projects are scheduled to occur on existing facilities and in close proximity to existing facilities. An intense and well thought out safety and coordination plan must be implemented to ensure members of the public and staff members are kept safe and operational activities are not disrupted. Utilizing the CM/GC process will allow the District to select a contractor who has the sensitivity and experience to safely and successfully work in an active operational buildings or facilities in close proximity and in direct coordination with ongoing activities.
- M. Single Phase or Multiple Phases of Construction:** The preliminary schedule for design and construction of the new construction, addition, and remodel projects suggest that there may be significant benefits to establishing an early work package to include site preparation work and/or additions to facilities. Some projects will require temporary or permanent relocation sequencing. The CM/GC process will allow for improved coordination and implementation during the multi-phased construction process.
- N. Substantial Experience in Alternative Contracting Methods:** The District's Director of Facilities and Project Manager together have an estimated 30 years of experience with administering alternative contracting methods with all applicable state and federal laws. This experience will provide for the ability to negotiate, administer and enforce the terms of a CM/GC agreement.

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Conclusion of Findings of Fact

Based on the Findings identified, for considerations required above, the CM/GC contract method meets the requirements of ORS 279C.335 and it is in the best interest of the LTD to utilize the CM/GC project delivery method for the above referenced scopes of work.

3. PUBLIC NOTICE

ORS Sections 279C.330 and 279C.335 requires the District publish a notice for public opportunity to comment on the draft findings before an exemption may be granted by the Local Contract Review Board. Additionally, a local contracting agency may hold a public hearing. Notice shall be given for not less than 14 days period prior to the comment deadline and local board's public meeting reviewing the findings and any comments received. Advertisement shall be in at least one trade newspaper of general statewide circulation. This process fully complies with the statutory requirements regarding the request for an exemption.

Separate advertisements for any resulting RFPs will be advertised in the District's usual press outlets for such solicitations in accordance with Local Policy and Public Contracting Rules.

- **Estimated Solicitation Information for the Projects:**

- ☐ The RFP solicitations are scheduled to be released in May 2022.
- ☐ Proposal responses due dates in June 2022.
- ☐ Contractor selections and recommendations to the Board in July and/or August 2022.

4. CONTRACT TERMS AND CONDITIONS:

The coordination associated with this Project make it critical to enter into a contract with specific terms and conditions that will increase efficiency and result in reduced costs. The contract will contain, among other things, provisions for insurance, indemnification, bonding, and compliance with the Attorney General's Model Public Contracting Rules. The District's legal counsel reviews the pending Contract through the Contract Committee process before documents move forward to Board approval.

5. RECOMMENDATION

That LTD adopt a resolution exempting the Operations Command Center and Eugene Station Modernization Projects from competitive bidding procedures and authorizing the use of the CM/GC alternative contracting delivery strategy as the best value to and in best interests of the District. Separate recommendations will be provided and resolutions requested to award the Projects to the successful proposing CM/GC firms after the solicitations complete process and selection.