

RESOLUTION NO. 23- 40

**A RESOLUTION OF THE ASTORIA CITY COUNCIL ADOPTING FINDINGS TO  
SUPPORT AN EXEMPTION FROM COMPETITIVE BIDDING REQUIREMENTS  
FOR THE CONSTRUCTION OF THE 16<sup>TH</sup> ST. DISTRIBUTION WATERLINE  
REPLACEMENT PROJECT AND AUTHORIZING A PROCESS TO AWARD A  
CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/CG) CONTRACT.**

WHEREAS, the City of Astoria ("City") City Council ("Council") is the Local Contract Review Board of the City; and

WHEREAS, ORS 279C.335(2) authorizes a Local Contract Review Board to exempt specific projects from the competitive bidding requirements of ORS Chapter 279C.335(1) upon approval of certain findings of fact, and "when appropriate, direct(s) the use of alternate contracting methods that take account of market realities and modern practices and are consistent with the public policy of encouraging competition;" and

WHEREAS, Oregon Administrative Rule 137-049-0610 defines permissible alternative contracting methods, including Construction Manager/General Contractor (CM/GC) methods of contracting for public improvements; and

WHEREAS, the City's Local Contract Review Board has determined that using the CM/GC form of contracting for the construction of the 16<sup>th</sup> St. Distribution Waterline Replacement Project will be most beneficial to the City and its residents, based on the findings attached as Exhibit A; and

WHEREAS, selection of a CM/GC firm for replacement of the 16<sup>th</sup> St Distribution Waterline will be made using a Request for Proposal (RFP) that identifies specific selection criteria, includes the CM/GC's fee for services, and requires the CM/GC to provide full performance and payment bonds for the work, following detailed review of the design documents; and

WHEREAS, pursuant to ORS 279C.335(5)(b), the City published notice of the proposed exemption in the *Daily Journal of Commerce* 14 days prior to the date on which the City Council intends to take action to approve the exemption, with an additional notice published in the *Astorian*; and

WHEREAS, pursuant to ORS 279C.335(5), the City held the requested public hearing to allow comments on the Local Contract Review Board's draft findings on November 20, 2023; and

WHEREAS, after due deliberation, the City Council, acting as the Local Contract Review Board, hereby adopts the Findings of Fact in support of an exemption from competitive bidding to permit the award of a CM/GC contract for construction of the

16<sup>th</sup> St. Distribution Waterline Replacement Project, as set forth in Exhibit A.

**NOW, THEREFORE, THE CITY OF ASTORIA RESOLVES AS FOLLOWS:**

**Section 1.** The City Council adopts findings as found in Exhibit A attached hereto, to support an exemption from competitive bidding requirements for construction of the 16<sup>th</sup> St. Distribution Waterline Replacement Project, declaring such an exemption, and authorizing a process to award a Construction manager/General Contractor (CM/GC) contract.

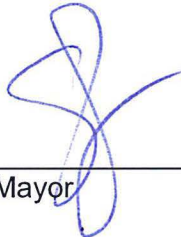
**Section 2.** This Resolution is effective upon its enactment by the City Council.

ADOPTED BY THE CITY COUNCIL THIS 20 DAY OF November, 2023.

APPROVED BY THE MAYOR THIS 20 DAY OF November, 2023.

ATTEST:

  
\_\_\_\_\_  
Scott Spence, City Manager

  
\_\_\_\_\_  
Mayor

ROLL CALL ON ADOPTION:		YEA	NAY	ABSENT
Councilor	Davis	X		
	Brownson	X		
	Adams	X		
	Hilton	X		
Mayor	Fitzpatrick	X		



**FINDINGS OF FACT FOR THE USE OF THE CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC) CONTRACTING METHOD FOR THE 16<sup>TH</sup> ST. DISTRIBUTION WATERLINE REPLACEMENT PROJECT**

In April 2021, Astoria Public Works staff submitted a proposal to the State of Oregon for consideration to award the City discretionary federal funds from the American Rescue Plan Act to replace a critical water distribution pipeline originally constructed in 1895. In September 2021, the City was notified by Business Oregon that an award of Legislative Appropriation in the amount of \$2,790,000.00 had been identified in HB5006 during the 2021 Oregon legislative session to fund estimated project costs. The scope of the project is to design and replace up to 1,400 feet of existing 18-inch diameter cast iron waterline in the 16<sup>th</sup> St. right-of-way with 24-inch high density polyethylene pipe. This project will replace a waterline that has exceeded its expected design life with a more resilient modern material. The existing waterline is located in a tunnel that extends from Reservoir 2 located at 16<sup>th</sup> St. and James St. to 20 feet north of Lexington Ave. and is approximately 120 feet below the ground surface at its deepest point. This project was identified as a priority in the City's recently completed Water System Master Plan due to its age, vulnerability, and critical function in distributing water from the reservoir to a substantial portion of the City.

The planning and design process is underway for the project.

The construction activities will require specialized construction expertise due to the challenging location and unique circumstances of the City's water system. These issues increase risk to the City, the design professionals, and the public. Employment of a CM/GC can help minimize the risks and reduce costs by allowing the general contractor acting as the construction manager to contribute to feasibility analyses and cost estimating which is typically not permitted using standard procurement.

Under Oregon Statutes and the following findings, the Local Contract Review Board, which for the City of Astoria is the City Council, is authorizing the use of Construction Management/General Contractor (CM/GC) method of construction contracting for this project. The scope of work as outlined above will be noted in the RFP document for CM/GC services.

The 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 Astoria City Council, acting as the Local Contract Review Board, to grant under certain conditions and upon certain findings, specific exemptions from the requirement for competitive bidding.

## Findings of Fact

Use of the CM/GC method to construct the 16<sup>th</sup> Street Distribution Waterline Replacement Project will: (a) reduce risk to the City; (b) allow the City more opportunities to control the construction cost; (c) allow the City to select a contractor with the specialized expertise required; (d) benefit the public by improving safety and coordination during construction; and (e) not encourage favoritism or diminish competition.

Pursuant to ORS 279C.335(2) Astoria City Council has considered the type, cost, and amount of the contract and, to the extent applicable to the scope of work listed, 14 enumerated factors to reach this conclusion. (Please note, some of the Findings below contain more than one factor.)

1. Finding in considering the number of person(s) available to bid: 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 the City 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 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 10 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. City staff 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 the City office. Any questions or concerns about the selection process must be delivered to the City Public Works Director within seven (7) calendar days after receipt of the selection notice. No protest of the award selection shall be considered after this period.
  - v. The contact achieved through this process will require the CM/GC to use an open and competitive selection process for all components of the project.
2. Finding in consideration of the construction budget and the projected operating costs for the completed public improvement, public benefits that may result from granting the exemption, and whether value engineering techniques may decrease the cost of the public improvement: The City Council finds that the CM/GC method will result in greater control over project costs and reduced financial risk to the City. Public benefit would be a by-product of cost control and time savings. Utilization of the CM/GC method will also allow the City to incorporate value engineering techniques from the selected CM/GC which will reduce risk while providing potential savings.
- a. Reduced financial risk: The waterline replacement will take place during a period of high demand and volatility in the construction industry. The CM/GC process will allow the project team to predict project costs more accurately. This will allow the City to better manage the overall project budget and have more accurate information with which to make decisions.

- b. Guaranteed Maximum Price (GMP) establishes a maximum price prior to starting construction: The CM/GC will be able to obtain a complete understanding of the City's needs, the Engineer's design intent, and the scope of the project and the operational needs of the City by participating in the development of the design documents. With the CM/GC's participation in this phase of the project, they will offer value engineering propositions 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 projects.
  - 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 projects are more likely to be completed on time and 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 will enjoy the 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.
  - 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 usually applied to traditional bid projects.
3. Finding in consideration of the cost and availability of specialized expertise that is necessary for the public improvement: The City Council finds that the CM/GC method is necessary to take advantage of specialized knowledge and expertise of the contractor.
- a. Specialized Project: Utilizing the CM/GC process will allow the City to select a contractor who has a proven track record and capacity to successfully complete replacement of the waterline in a confined space which requires specialty equipment and training.



- b. Construction activities near the public and within an existing facility: Construction activities will take place around and within an existing tunnel adjacent to public streets, the community college, and residences. The project will require large excavations within existing roadways at each end of the existing tunnel. A well thought out safety and coordination plan must be implemented to ensure members of the public, adjacent buildings and utilities, and citizens are kept safe; and that transportation and delivery of potable water are not unduly affected. Utilizing the CM/GC process will allow the City to select a contractor who has the sensitivity and experience to work in proximity safely and successfully.
4. Finding in consideration of any likely increases in public safety: The City Council finds that the CM/GC process will result in improving public safety during construction activities. Under the competitive bidding process, specifications can be developed requiring the contractor to provide for public safety. However, there is often a large gap in the knowledge between contractors necessary to properly implement these safety requirements and maintain good public relations. Through the CM/GC selection process, the City will be able to select a contractor who understands the City's goals and who is committed to fully implementing a comprehensive safety and communication plan.
5. Finding in consideration of whether granting the exemption may reduce risks to the contracting agency or the public that are related to the public improvement: The City Council finds that the CM/GC process will result in reducing risks to public agencies and the public related to the construction. This portion of the City's water system is integral to fire hydrant flows in the downtown area. Coordination between the City, the design professionals, and the CM/GC will decrease the risks of delaying the restoration of service by increasing the communication between the design professionals and the contractor prior to finalizing the plans and specifications.
6. Finding in consideration of whether granting the exemption will affect the sources of funding for the public improvement: The City Council finds that there will be no impact on the funding source because of this exemption. The City's funding source for this project will remain the same whether accomplished through a traditional design-bid-build process or through the CM/GC process. City staff have verified that CM/GC is an allowable procurement method with the funding agency. No adverse impact on the funding source will occur because of this exemption.
7. Finding in consideration of whether granting the exemption will better enable the contracting agency to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement; whether granting the exemption will better enable the Astoria City Council to address the size and technical complexity of the public improvement: The City Council finds that utilization of the CM/GC process will provide advantages to address market conditions and the technical complexity of the project through such measures as CM/GC evaluation, greater control over scheduling impacts on costs, and through the timing of bid packages to the subcontractor community to ensure full participation and competition.



8. Finding in consideration of whether the public improvement involves new construction or renovates or remodels an existing structure; whether the public improvement will be occupied or unoccupied during construction: The City Council finds that there will be no adverse impact on the operation, funding, or budget if this exemption is provided. However, the ability of the City to evaluate potential contractors on their ability and track record to complete construction and minimize the duration that existing facilities are out of service will be of added benefit and will reduce risk. Whether this project is secured through a traditional design-bid-build method or through the CM/GC process, the operational, financial, and budgetary impact will be the same – other than the potential savings mentioned in Finding #2. More importantly, there will be no adverse impact on operations, financial or budgetary data using the CM/GC process.
9. Finding in consideration of whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions: The City Council finds that a CM/GC process will result in better coordination between City staff, the design professionals, and the selected contractor in determining any improvements necessary to prepare the water system for the waterline replacement.
10. Finding in consideration of the use of City 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 Council finds that the City has retained the appropriate assistance and expertise to develop the Request for Proposal process for CM/GC services and has contracted with the appropriate personnel to negotiate, administer, and enforce the resulting contract. Additionally upon the completion of the selection and negotiation of the awarded CM/GC, the City will retain the assistance of legal counsel with the appropriate level of experience for assistance as necessary to administer the resulting contract.

### **Conclusion of Findings of Fact**

It is in the best interest of the City Council and the City of Astoria to utilize the CM/GC project delivery method for the above referenced scope of work. The CM/GC will (a) result in greater cost control and reduce risk to the City; (b) allow the City to select a contractor with the specialized expertise required; (c) benefit the public by improving safety and coordination during construction; and (d) not encourage favoritism or diminish competition.