



Home of the Tualatin River National Wildlife Refuge

## URA RESOLUTION 2010-002

### **A RESOLUTION EXEMPTING A PUBLIC IMPROVEMENT CONTRACT FROM TRADITIONAL BIDDING IN ACCORDANCE WITH ORS 279C.335(2)**

**WHEREAS**, the Sherwood Urban Renewal Agency (“URA”) wishes to redevelop a URA owned property (machine works building); and

**WHEREAS**, staff has determined that the URA would receive significant benefits by utilizing a Construction Manager/General Contractor (CM/GC) methodology in performing the project management, design and construction processes; and

**WHEREAS**, the City Attorney has reviewed the requirements of the Oregon Attorney General’s Model Public Contracting Rules, and the Oregon Revised Statutes (ORS) for implementing the CM/GC contracting method; and

**WHEREAS**, the intent of the URA is to exempt the contract for the machine works building’s redevelopment from traditional competitive bidding processes and utilize the CM/GC method to complete the project.

### **NOW, THEREFORE, THE URA BOARD OF DIRECTORS, ACTING AS URA’S LOCAL CONTRACT REVIEW BOARD, RESOLVES AS FOLLOWS:**

**Section 1:** In accordance with ORS 279C.335(2), the contract for the redevelopment of the machine works building is exempt from traditional competitive bidding.

**Section 2:** For this project, staff and URA’s partner on this project, Capstone Partners, LLC, are directed to utilize the construction manager/general contractor (CM/GC) method of contracting. As part of that process, a contractor may be solicited through a request for proposals, where qualitative factors such as contractor’s experience, resources and reputation will be thoroughly considered and where URA and Capstone will be permitted to negotiate with one or more proposers to select a contractor that best meets URA’s interests and by extension the interests of Sherwood’s residents.

**Section 3:** This exemption is supported by findings, attached as Exhibit A and incorporated into this Resolution.

**Section 4:** This Resolution is effective immediately upon its adoption.

Duly passed by the URA Board of Directors this 1<sup>st</sup> day of June 2010.

  
Keith S. Mays, URA Board Chair

ATTEST:

  
Sylvia Murphy, CMC, District Recorder



## EXHIBIT A

City of Sherwood  
27500 NW Cedar St  
Sherwood, OR 97139  
Tel: 503-425-3322  
Fax: 503-425-3324  
www.sherwoodoregon.gov

Mayor  
Bob Wray

Council  
Mayor: Robert Wray  
Council: Bob Wray, Jeff  
Johnson, Tom  
Lundberg, Greg  
Patterson, David  
Macklin

City Manager  
Tommy Quinn

### Report of Findings for Exemption from Public Contracting Code

#### A. Introduction

The Sherwood Urban Renewal Agency's Governing Board is the Agency's local contract review board ("LCRB"). Pursuant to ORS 279C.335(2), a LCRB may exempt a public improvement contract from the public contracting code's traditional bidding procedures. To do so, it must be able to find that the exemption:

1. is unlikely to encourage favoritism in the awarding of, or substantially diminish competition for, public improvement contracts; and
2. will likely result in substantial cost savings to the contracting agency.<sup>1</sup>

Alternatively, a LCRB may exempt a public improvement contract if the resulting project is a "pilot project" under the contracting code – i.e., when the use of a particular alternative contracting method to deliver the project is the first time the method has been used in the jurisdiction.<sup>2</sup>

As these findings demonstrate, exempting the contract for the machine works building's redevelopment (the "MW Contract") will not encourage favoritism or substantially diminish competition and will likely result in substantial cost savings to the Agency. In addition, these findings justify the LCRB's approval of and authorization for staff to utilize the construction manager/general contractor ("CM/GC") method to redevelop the machine works building. The public contracting code and its related rules expressly permit the use of the CM/GC method as an alternative contracting method,<sup>3</sup> and it would be the first time the Agency used it to construct a public improvement.

Pursuant to ORS 279C.330, these findings must address eight categories of information as they may relate to the desired exemption. The categories are:

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.

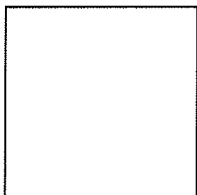
Not all eight topic areas may be relevant or pertinent to a particular exemption. The Agency reviewed the categories, determined which are relevant, analyzed them in these findings



2009 Top Ten Selection



2007 18<sup>th</sup> Best Place to Live



<sup>1</sup> ORS 279C.335(2)(a) and (b).

<sup>2</sup> ORS 279C.335(2)(c).

<sup>3</sup> OAR 137-049-0690.

and made additional observations based on its assumptions and experience to support exempting the MW Contract.

## **B. Background.**

The machine works building's redevelopment is central to the Cannery site's overall redevelopment. The redevelopment will result in a multifunctional facility owned by the public. It is envisioned to serve as a community and cultural/arts center for Sherwood, its residents and visitors to the City. A steering committee made up of Sherwood residents and interested stakeholders is refining its vision for the building's redevelopment and will soon present its final recommendations to the Agency's Governing Board.

At this time, the redeveloped facility is expected to include a stage for the performing arts, classrooms and meeting rooms, storage space, possibly retail space and "raw" portions that can be improved in subsequent phases as budgets and needs permit. The redeveloped facility is expected to have a certain degree of internal flexibility with respect to space – e.g. internal "walls" that will permit space to be increased or decreased in certain areas as necessary. The redeveloped facility is expected to seek LEED certification upon its completion.

The primary justifications for the exemption are to save time and money in awarding the MW Contract, to ensure that an experienced and well equipped contractor can both manage the construction and complete the project on time and within budget, and to assess the CM/GC process and its effectiveness. Competition for the MW Contract will still be robust under the exemption, as proposals for the building's redevelopment will be solicited from qualified CM/GC contractors.

## **C. Findings.**

1. Operational, budget and financial data. The Agency has limited funds to do the variety of the tasks expected of it by its constituents, including those relating to public improvements. This is especially true in this instance, in so far as the Agency is still finalizing its budget for the building's redevelopment. Costs for preparing a formal construction bid can amount to a significant percentage of the overall cost of the project. Some estimate that the average preparation costs for formal bids can amount to 5 to 10 percent of a project's overall cost. By avoiding the traditional bidding process, those costs could be saved and applied to the actual construction of the improvements.

Central to the CM/GC contracting process is the manner in which the contractor is involved in the process. The contractor (wearing the CM hat) will be brought in very early and will work with the Agency, its staff and its design team to get the building's redevelopment up and running sooner than would occur under the traditional delivery process. In fact, construction may (and often does) begin as design work continues. During this time, the contractor closely collaborates with the design team to identify areas where costs can be reduced via value engineering, life cycle costing, etc.

The CM/GC method is intended to ensure that costs are contained to the greatest extent possible and to avoid the many change orders that often accompany project delivery under the traditional process. To this end, the CM/GC method requires the contractor to fully perform and deliver the project within a guaranteed maximum price ("GMP"). The GMP usually includes certain reimbursable direct contractor costs, plus a fee that constitutes full payment for the work (the general contractor portion) and the personal services (the construction manager portion). The contractor is at risk for cost overruns above this GMP.

2. Public benefit. The public benefits in a number of ways from the exemption. Time is saved by avoiding the formal process. The redevelopment will be completed faster than it would be under the traditional design-bid-build process to serve Sherwood, its residents and those persons who will use or benefit from a redeveloped machine works building. By proceeding through a CM/GC process, the public will reap the benefit of working with a highly experienced and skilled contractor who can respond to stakeholder input and translate that input into a finished product that is flexible enough to accommodate a variety of uses and functions.
3. Value engineering. Value engineering is a systematic method employed in certain projects to increase efficiencies, improve functionality and reduce costs. In the public improvement context, it is typically applied to public works projects with several interrelated specifications. This is certainly true of the machine works building and its redevelopment. As mentioned above, the completed facility is expected to be highly multifunctional and able to accommodate a variety of uses. This includes flexibility within the building's internal space. The CM/GC process will ensure that the resulting contractor is well versed in value engineering and able to suggest alternatives to certain designs and construction methods that will yield equivalent benefits at reduced costs. Because it may involve negotiation with the contractor and such negotiations are prohibited under the traditional competitive bidding process, the exemption will permit the Agency to realize potential benefits that may accompany value engineering.
4. Specialized expertise required. As discussed above, the redevelopment of the machine works building is a central feature of the larger Cannery redevelopment project. The Cannery project itself is a public/private partnership between the Agency and Capstone Partners, LLC. It is believed that successfully redeveloping the machine works building is critical to the Cannery site's overall success.

The Cannery site's redevelopment has a number of moving parts, including the construction of public infrastructure, a public plaza and private mixed use buildings in addition to the redevelopment of the machine works building. Some or all of the Cannery site will be redeveloped simultaneously with the machine works building's redevelopment. Therefore, it is critical to engage a contractor who is not only experienced with the CM/GC delivery method but also a contractor that has worked on similar multi-phase, large scale redevelopments, preferably in an infill context such as the Cannery site.

5. Public safety. Not likely relevant to the exemption. The public's safety is not likely improved nor compromised by the exemption.
6. Market conditions. The market for construction services is currently depressed. The construction industry has experienced one of the highest rates of job losses in the state. The exemption will speed money faster to this industry than would otherwise be possible through traditional bidding and will result in more dollars being injected into the trade by avoiding the formal bid preparation costs. In addition, the depressed market should result in highly competitive proposals from qualified CM/GC contractors. Using an alternative contracting method such as CM/GC will allow the Agency and Capstone to negotiate with contractors prior to awarding the MW Contract and deliver the best value to the Agency, Sherwood residents and future users of the redeveloped building.
7. Technical complexity. As discussed above, the redeveloped building's intended multi-functionality, coupled with the multiple parts and phases to the Cannery site's redevelopment, results in a technically complex project. When a public improvement presents technical complexities, Oregon's public contracting rules encourage agencies

to consider and use the CM/GC method.<sup>4</sup> The rules discuss overcoming project complexities through a collaborative effort between an agency, its design professionals and a CM/GC contractor where the contractor will address specific project challenges through pre-construction services. These include input on the facility's operation during construction (or, as in this case, the operation of a larger area within which the facility resides), tenant occupancy, historic preservation and projects requiring complex phasing or highly coordinated scheduling.

8. Funding sources. Not likely relevant to the exemption.
9. Pilot project. This will be the first time the Agency has used the CM/GC contracting method to complete a public improvement and pursuant to ORS 279C.335(2)(c) it intends to determine whether the use of the CM/GC method results in anticipated cost savings.

**D. Conclusion.**

For the above reasons, the LCRB finds the exemption appropriate and meets ORS 279C.335(2)'s criteria.

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<sup>4</sup> OAR 137-049-0690(1)(c).