

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON  
ACTING AS THE PUBLIC CONTRACT REVIEW BOARD

**RESOLUTION NO. 07-126**

Approving an Exemption to Use a Construction Manager/General Contractor Method for Construction of the East County Justice Center Project

**The Multnomah County Board of Commissioners Finds:**

- a. In planning for the East County Justice Center, Facilities and Property Management (Facilities) analyzed three separate construction methods as part of the FAC-1 planning process.
- b. Facilities recommend to the Board that a Construction Manager/General Contractor (CM/GC) contracting method be used for construction of the East County Justice Center based on the findings attached hereto as Exhibit 1.
- c. Public Contracting Board Rule 49-0620 and ORS 279C.335 require an exemption from the competitive bidding requirements of ORS Chapter 279 in order to use an alternate contracting method and further require adoption of findings to support the exemption after notice and a public hearing.
- d. Notice of the hearing to consider the exemption and the attached findings was published in the Daily Journal of Commerce on June 13, 2007, more than 14 days before the hearing.
- e. The Board finds, based on the attached findings that it is in the best interest of the County to utilize a CM/GC contracting method in lieu of a competitive low bid process for the construction of the East County Justice Center.

**The Multnomah County Board of Commissioners Resolves:**

1. The Board approves and adopts the findings attached as Exhibit 1 in support of using a Construction Manager/General Contractor for the East County Justice Center Project.

2. The Board approves an exemption from competitive bidding requirements to allow use of a Construction Manager/General Contractor contracting method for construction of the East County Justice Center Project.

ADOPTED this 28th day of June, 2007.



BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON  
ACTING AS THE PUBLIC CONTRACT  
REVIEW BOARD

  
Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By   
John Thomas, Deputy County Attorney

SUBMITTED BY:

Lonnie Roberts, Commissioner District 4

# **EXHIBIT 1**

## **FINDINGS IN SUPPORT OF AN ALTERNATIVE CONTRACTING PROCESS FOR THE EAST COUNTY JUSTICE CENTER PROJECT ("Project")**

### **1. GENERAL**

The Oregon Legislative Assembly encourages public agencies to consider alternative and innovative contracting methods, other than low bid, that take into account market realities. Pursuant to ORS 279.015, a local contract review board may exempt certain contracts from traditional competitive bidding by showing that an alternative contracting process is unlikely to diminish competition and that it will result in costs savings to the public agency.

The Facilities and Property Management Division of Multnomah County ("FPM") desires to enter into a contract directly with a contractor for the preconstruction design assistance to the design architectural team and to subsequently construct and manage the East County Justice Center ("Project") through a Construction Manager/General Contractor ("CM/GC") selection process.

### **2. BACKGROUND**

The approval of the East County Justice Center Project Plan ("Project Plan") that created a capital project is defined by the County's Resolution 07-024.

The Development Plan (a portion of the Project Plan) includes the CM/GC selection process in the discussion of the schedule. The Project has always envisioned the use of the CMGC delivery process to facilitate the Project's unique sustainable elements, the accelerated construction schedule and the County's budget constraints.

Oregon Revised Statutes (ORS 279.015) and Public Contract Review Board Rule (PCRB 49-0600 to 49-0690) provide a means of contracting other than the traditional competitive low bid process to public agencies. A local Public Contract Review Board may exempt certain public contracts or classes of public contracts from the competitive bidding requirements upon approval of findings submitted by the public contracting agency seeking exemption.

### **3. FINDINGS**

In exempting this CM/GC contract from the bidding requirements in ORS 279, the following findings support the requested alternative contracting method:

#### **A. Operational, Budget and Financial Data**

The total Project is being constructed at a cost of approximately \$15 million (the CM/GC procurement portion will be approximately \$11 million). While the Project building will increase operating costs by approximately \$10,000 per year, this cost is offset by the expected lower energy costs derived from energy efficiencies achieved by the cooperation and the direct actions of the CMGC and other members of the Project Team (consisting of the County's Project Manager, the Project design consultants and the CM/GC) in the design phase of the Project. The budget for the Project will be maintained through the cost control systems established by the CM/GC well before construction begins. Unlike the low bid process for selection of a contractor (which excludes the contractor from the preconstruction phases), significant savings in over all Project cost and time can be achieved by engaging the CM/GC early in the preconstruction process. This early engagement allows close monitoring of the construction market, sometimes called forecasting, and heads off unexpected activities that will result in a higher price thereby delivering additional economic savings and benefits to the County.

The CM/GC challenges the entire Project Team to stay within budget by allowing for full and frank discussions of the cost and schedule implications of various design solutions. This CM/GC involvement permits the Project Team to make informed cost-benefit tradeoff decisions, all to the financial benefit of the County.

## **B. Public Benefit**

The Project is needed to accommodate public safety needs for the next 15-25 years. The court system is currently backlogged due to the lack of courtroom space. The Project will provide 4 courtrooms. Security function will be improved and the Court Clerk functions will provide a wider range of services. Services are integrated to provide the highest level of complementary public safety functions and cost efficiencies.

The public benefit achieved with the use of a CM/GC for this Project is evident throughout several aspects of the project's design and construction. In contrast to the low bid process for selection of a contractor, the early involvement of the CM/GC in the process provides for more collaboration among the Project Team and interested stakeholders and solidifies the commitment of the Design Team to jointly: (i) establish effective working relationships, (ii) identify problem areas, and (iii) develop economical solutions—thereby achieving cost and time savings for the Project. During the Preconstruction phase, the CM/GC provides guidance to the Project Team in scheduling Project activities and projected timelines. In addition, the CM/GC is engaged in the Project Team process and makes recommendations about all aspects of design. During construction, it is the CM/GC's responsibility to get the work done in an efficient matter and with a total cost within the Guaranteed Maximum Price (GMP). The CM/GC provides a firm GMP and schedule commitment to the County that puts the CM/GC at risk, not the County. Removing elements of risk from the County is of great benefit to the County when initiating construction projects that use public funds.

If at the end of the Preconstruction phase a GMP cannot be agreed upon, then the County has the right to use all the information developed by the CM/GC and the Project Team to bid the Project competitively. This alternative bidding possibility limits the risk to the County while retaining the contractor's knowledge, skill and benefits of collaboration during the design and construction phase. These substantial benefits would not be achieved if the low bid process for selection of a contractor were used for this Project since the contractor is excluded from the preconstruction phases.

### **C. Value Engineering**

The CM/GC process provides many additional benefits and opportunities for cost savings. System options and real-time cost estimates provided by the CM/GC throughout the constructability reviews will aid the Project and allows the County to make informed cost-benefit tradeoff decisions during design. The CM/GC will collaborate and provide cooperation and information to the design Project Team on details, installation, fabrication, budget and all aspects of the Project. During the Preconstruction phase, the CM/GC will be evaluating the budget and making suggestions for cost-saving changes and value enhancements. The CM/GC will evaluate major systems and make design recommendations to the Project Team about which systems are most cost-effective. The reviews ensure that good building practices are incorporated into the design documents. 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.

### **D. Specialized Expertise**

The contractor ultimately selected as CM/GC will demonstrate experience and expertise in providing CM/GC services to public and private organizations, and will be well qualified in the area of sustainable construction methodology. The contractor will also have expertise in utilizing the County's Good Faith Effort and Workforce Hiring programs, both of which will be a contractual requirement.

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 County will benefit by acquiring a CM/GC which has established experience in building similar projects, experience in this type of delivery system, references from previous owners and architects, and an outstanding approach to the Project, especially when incorporating sustainable practices and LEED certification. A low bid process does not provide an opportunity to obtain the most qualified contractor with the specialized expertise needed for the Project.

## **E. Public Safety**

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 Project is intended to house public safety government services together in one distinct building and will be well located for this purpose.

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 County's RFP process described in Section 4.A below; this determination is not available under the low bid process.

## **F. Market Conditions**

The CM/GC contracting process is a modern construction delivery method used by both public and private organizations. It involves the contractor early on in the design of a project and allows for cost savings and fast track construction.

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.

## **G. Technical Complexity**

This Project requires technical expertise and experience in commercial construction involving public entities. Expertise in LEED certification is also an integral part of the Project and will determine the success or failure of County sustainable objectives and the ability to acquire energy efficiency financial incentives. The ability to coordinate and manage this Project, while working with several distinct local governments and major stakeholders, is highly complex in nature. This complexity is especially challenging to an inexperienced firm.

The CM/GC process enables the County to competitively select a prime contractor in whom they have confidence has the necessary competence to deal with the technical complexities of this Project and that 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.

## **H. Funding Sources**

The Project has been included in the 5-year Capital Improvement Program plan for the last two years and is included in the 2008 CIP Program Offer #72049. Proceeds from the sale of the County's Correctional Facility and Edgefield properties in Troutdale (the revenue for which is scheduled for receipt by December 2007) and the City of Gresham participation will cover the cost of construction, land acquisition and other costs associated with the Project.

The CM/GC method of contracting provides the greatest cost controls for limited budgets and therefore benefits the County. 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.

This Project is being funded solely from local sources. The County funds are extremely limited so the expected cost savings from using a CM/GC contractor is particularly critical to assuring that the County will get the best possible Project for the limited dollars available for construction without having to expend general fund dollars.

## **4. COMPLETION AND COST SAVINGS**

Consistent with Oregon Law, use of an alternative contracting method must be seen as unlikely to encourage favoritism or diminish competition and result in substantial cost savings. Based on the following information, this Project will accomplish both.

### **A. Unlikely to Encourage Favoritism or Diminish Competition**

The CM/GC will be selected through the County's Request for Proposal ("RFP") process which is an open competitive process. The selection criteria will include quality of previous work; available resources to meet schedule requirements; use of MWESB subcontractors; experience in commercial building and LEED certification, time critical project management, fee and other relevant criteria. The assessment of the CM/GC will be keyed to their ability to demonstrate the experience and qualifications necessary to meet Project needs.

Competition will not be diminished because the CM/GC contract will be awarded based on a competitive process and the CM/GC will use a competitive bidding process to select their subcontractors which is not required under a low bid process.

## **B. Will Result in Substantial Cost Savings**

During the design phase prior to material and subcontractor bidding, the CM/GC will provide value engineering and update cost estimate information. This engineering and cost estimate will assist final decision-making about the Project scope, product quality and material finish. Using a CM/GC will allow more flexibility to develop, evaluate, and implement design changes with less impact on construction cost and time. Substantial cost savings are anticipated from the Project Team approach that is utilized in the CM/GC method of delivery because decision making is based on cost effective and informed solutions. Progress reviews are frequent and diligent, thus resulting in fewer design corrections and change orders during construction. Additionally, the use of value engineering through cooperation among the architect, engineer, contractor and County is essential to the Project delivery on time and within budget. The CM/GC will participate in the design phase to propose the most economical and practical building solutions. CM/GC value engineering will reduce bid addenda, contract change orders and progress delays to help meet the tight time schedule for the Project. These savings are not realized under a low bid process.

## **5. SUMMARY**

The East County Justice Center is best accomplished through an alternative means of construction contracting that utilizes an approach of selection that is based on qualifications and experience rather than lowest bid. The selection of the CM/GC through an RFP process will not diminish competition or show favoritism, and will result in cost savings to the County. The special emphasis on LEED certification requires experience that is not widely shared in the construction contractor community. Therefore, FPM believes this exemption request is justified and in accordance with Oregon Law and is in the best interest of the County.