

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

RESOLUTION NO. 2010-006

Reaffirming an Exemption to Use a Construction Manager/General Contractor Method for Construction of the East County Courts and District Attorney Facility

The Multnomah County Board of Commissioners Finds:

- a. On June 28, 2007, the Board of Commissioners Acting as the Public Contract Review Board adopted Resolution 07-126 approving 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.
- b. On October 1, 2009, the Board of Commissioners adopted Resolution 09-121 approving a new project plan for an East County Courts and District Attorney Facility (East County Courts Project) at the site previously acquired for the East County Justice Center Facility and directing Facilities to implement the Schematic Design Phase of the Project Plan up to \$800,000.
- c. In planning for the East County Courts Project, Facilities and Property Management (Facilities) analyzed three separate construction methods as part of the FAC-1 planning process.
- d. Facilities recommended to the Board that a Construction Manager/General Contractor (CM/GC) contracting method may be an option for construction of the East County Courts Project based on the findings attached hereto as Exhibit 1.
- e. 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.
- f. Notice of the hearing to consider the exemption and the attached findings was published in the Daily Journal of Commerce on December 24, 2009, more than 14 days before the hearing.
- g. The Board reaffirms, based on the attached findings that it is in the best interest of the County to have the option to utilize a CM/GC contracting method in lieu of a competitive low bid process for the construction of the East County Courts Project.

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 Courts Project.

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

ADOPTED this 7th day of January 2010.



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 

Agnes Sowle, County Attorney

SUBMITTED BY:
Commissioner Diane McKeel

EXHIBIT 1

FINDINGS IN SUPPORT OF AN ALTERNATIVE CONTRACTING PROCESS FOR THE EAST COUNTY COURTS 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 Courts ("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, originally created in 2007.

The East County Justice Center Development Plan (a portion of the Project Plan) included the CM/GC selection process in the discussion of the schedule. The East County Courts project had 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.

On October 1, 2009, the Multnomah County Board of Commissioners approved a FAC-1 Amendment resulting in a County Resolution to approve a revised project of reduced scope identified as the East County Courts Project to proceed through Schematic Design at a cost not to exceed \$800,000. The FAC-1 Amendment was required due to a significant change in scope (reduction) between the scope of the 2007 East County Justice Center project, and the new East County Courts Project. Although the Project scope changed, most other elements of the original East County Justice Center Project Plan were intended to remain in place, including utilizing the CM/GC selection process for the new East County Courts scope of work. This exemption is intended to confirm that specific intent.

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 \$21 million (the CM/GC procurement portion will be approximately \$12.4 million). The annual operating costs of the Project building will be 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 overall 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 assists the entire Project Team to stay within budget through 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 courts needs for the next 50-80 years. The court system is currently backlogged due to the lack of courtroom space. The Project will provide 2 - 3 courtrooms. Security function will be improved, the Court Clerk functions will provide a wider range of services, and District Attorney operations will be provided as part of the Project. Services are integrated to provide the highest level of complementary public judicial 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 (ii) 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 throughout the design phases. During construction, it is the CM/GC's responsibility to meet the schedule 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 in controlling the Project costs and allow 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, current building materials, systems and products, and current labor markets and practices. 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 reduce 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 always provide an opportunity to obtain the most qualified contractor with the specialized expertise needed for the Project.

E. Public Safety

The CM/GC selected will be required show evidence of construction safety practices records a high level. The CM/GC's planning and management of work sequencing, safety equipment and protocols, and construction methodologies can reduce issues related to safety and related risks. All work during the construction will be done in accordance with OR-OSHA safety regulations.

The CM/GC method of delivery is a team approach and 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. 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 the option of pursuing a "fast track" construction approach to begin site work and ordering long-lead items while documentation of later elements are being finalized. Timing the market for the various aspects of construction can result in cost savings and ultimately keeps the Project Team on 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 successfully achieving the County's 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 that can demonstrate the competence necessary 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 / Budget Management

The Project is partially funded from proceeds from the sale of the County's Correctional Facility and Edgefield properties in Troutdale. It is anticipated that the balance of the project funding will be borrowed prior to authorization of construction.

The CM/GC method of contracting will include multiple costs estimates, created by two independent sources, beginning at very early stages of design. The evolution of design work can quickly respond to these early multiple estimates to maintain cost control. Early multiple estimates also help to avoid costly re-design of larger portions of design work to maintain budget.

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 experience in delivering similar projects, quality of previous work; available resources to meet schedule requirements; use of MWESB subcontractors; experience in commercial building and LEED certification, pre-construction services, schedule and budget 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 for construction is typically not diminished because the CM/GC will still be required to solicit multiple bids for all elements of the work. Even when certain elements of the work might be self-performed by the CM/GC, they will be required to solicit additional competitive bids.

B. Typically Results in Substantial Cost Savings

The benefits of the CM/GC process generally outlined under Findings, Part 3 above illustrate a process where:

- The contractor's expertise is integrated in the design process
- Important decisions can be made early and with more complete information
- Cost estimating at early stages help guide an affordable project
- Early planning and Fast-Tracking assists in the development of an aggressive schedule
- Early document evaluation assists to eliminate conflicts and errors

Under typical market conditions, these benefits all work in combination to deliver projects faster and at lower cost, which is an essential objective for the County.

5. SUMMARY

The East County Courts Project will benefit overall through an alternative means of construction contracting that utilizes an approach of CM/GC selection 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.