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3 **RESOLUTION 2018-09**

4 **A RESOLUTION OF THE CITY OF LINCOLN CITY GRANTING EXEMPTION FROM**
5 **COMPETITIVE BIDDING FOR CONSTRUCTION OF A NEW POLICE FACILITY BY**
6 **MEANS OF A CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC)**
7 **AND AUTHORIZING ALTERNATIVE CONTRACTING METHOD.**

8 **Whereas**, the Lincoln City City Council ("City") acts as the local contract review board
9 for the City, and in that capacity, has authority to exempt certain contracts from the
10 competitive bidding requirements of ORS Chapter 279C; and;

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12 **Whereas**, ORS 279C.335(2) provides a process for exempting certain contracts from
13 competitive bidding and authorizes the selection of a contractor through alternative
14 contracting methods;

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16 **Whereas**, draft Findings of Fact ("Findings") addressing competition, operational,
17 budget and financial data, public benefits, value engineering, specialized expertise
18 required, market conditions, technical complexity, public safety, and funding sources
19 recommended by the City were available fourteen (14) days in advance of the public
20 hearing on this Resolution; and

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22 **Whereas**, the City provided Notice of this public hearing in the Daily Journal of
23 Commerce on May 14, 2018; and

24
25 **Whereas**, after consideration of the comments at the public hearing and after review of the
26 proposed findings, the City Council finds and determines that the City of Lincoln City
27 New Police Facility should be constructed by a CM/GC contracting method.

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29 **NOW THEREFORE, BE IT RESOLVED**, by the City Council of the City of Lincoln
30 City as follows:

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32 **Section 1.** The City adopts the Findings set forth in Exhibit A to this Resolution.

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34 **Section 2.** The exemption of the CM/GC contract from competitive bidding will
35 promote competition and will not encourage favoritism, because the CM/GC will be
36 chosen by a competitive RFP process, and the major portion of the construction

1 work will be performed by subcontractors chosen by competitive bidding.
2

3 **Section 3.** The contract for construction of the City of Lincoln City Police Facility by a
4 CM/GC for a Guaranteed Maximum Price (GMP) is exempt from competitive bidding,
5 and the CM/GC shall be selected by alternative contracting method in accordance
6 with the City's public contracting rules and the process described in the attached
7 Findings.
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9 **Section 4.** This resolution is effective upon adoption.

10 PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF LINCOLN CITY THIS
11 11TH DAY OF JUNE 2018.
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16 DON WILLIAMS, MAYOR
17

18 ATTEST:
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20 
21 _____
22 CATHY STEERE, CITY RECORDER
23 CITY RECORDER
24

EXHIBIT A

FINDINGS IN SUPPORT OF ALTERNATIVE CONTRACTING METHOD FOR THE CONSTRUCTION OF A NEW POLICE BUILDING FACILITY IN LINCOLN CITY OREGON

Introduction

Use of Alternative Contracting methods, such as CM/GC (Construction Manager/General Contractor), is made possible under ORS Chapter 279C, which permits certain contracts or classes of contracts to be exempt from competitive public bidding under strict procedural safeguards. Like other alternative contracting methods, CM/GC has significantly different legal requirements than a typical design-bid-build project delivery method.

Pursuant to ORS 279C.335015, a local contract review board may exempt specific contracts from traditional, competitive bidding by showing that an alternative contracting process is unlikely to encourage favoritism or diminish competition and will result in cost savings to the public agency. The Oregon Attorney General's Model Public Contract Rules provide for public notice and opportunity for the public to comment on draft findings in favor of an exemption before their final adoption.

ORS 279C.330 provides that: "findings" means the justification for a contracting agency conclusion that includes, but is not limited to, information regarding:

- Operational, budget and financial data;
- Public benefits;
- Value engineering;
- Specialized expertise required;
- Public safety;
- Market conditions;
- Technical complexity; and
- Funding sources. [2003 c.794 §102]

Findings

Operational, Budget, and Financial Data

The construction of a new police building facility will serve as the City's only police building and a new Emergency Operations Center. The existing police building, constructed for a different purpose in the 1960s is approximately 6,000 square feet. The new facility needs determined in a needs assessment study in 2016 are between 22,000 – 24,000 square feet. The projected total cost for the project is \$10 million dollars.

CM/GC provides opportunities for cost saving in a variety of ways. The inherent flexibility and openness of the process allows the City to more easily make appropriate changes as necessary to meet the project budget. The construction of a new facility next to the existing facility to be occupied during the construction of a new facility will present a substantial challenge.

The Guaranteed Maximum Price ("GMP") includes the expected cost to construct the project, the CM/GC firm's fee, and a contingency amount that the CM/GC believes should be available to cover changes to the proposed scope. Any increase in cost due to subcontractor bids higher than estimated, or added cost of scope items included in the contract documents but left out of the CM/GC's estimate, must be absorbed within the GMP. The CM/GC has no incentive to identify change orders that require additional funds and an overhead premium. All costs must be held within the GMP.

Additionally, if the City requests a major scope change that increases the GMP, the CM/GC firm receives only reimbursement for the cost of the change plus its stated fee percentage, typically 3-4%, far less than the approximately 15% which a general contractor would charge on a traditional contract.

Public Benefit

The Project is needed to accommodate police services over the next 50+ years. There are numerous deficiencies with the current space that increasingly hamper efforts to provide quality policing services to the residents of Lincoln City and provide adequate facilities for police staff. The capacity of the existing facility has clearly been exceeded, and the police building is not currently accessible to all the members of our community. The Project will provide greatly enhanced spacing needs to maximize communication and interaction between police personnel; maximize storage; minimize distractions and conflict from more active functions; to properly welcome the public to its facility; meet current seismic requirements for essential buildings; meeting training needs, evidence processing, electronic communications and facility security; serve as an Emergency Operations Center including dispatch center and fully functional public safety answering point when events require and serve as a mixed-use community meeting room.

Value Engineering

The CM/GC process provides many 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 City to make informed cost-benefit tradeoff. 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 both in to purchase and install and for long term maintenance and operations. 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.

Specialized Expertise Required

The features and components of the police building are neither repetitive nor generally available for off-the-shelf purchase as would be the case in common office or general use buildings. The contractor ultimately selected as CM/GC will demonstrate experience and expertise in providing CM/GC services to public and/or private organizations, and will be well qualified in the area of

sustainable and energy efficient construction methodologies. The contractor will also have expertise in working with public safety buildings.

The CM/GC selection process is based on qualifications, with price as factor. The fee is, however, less important than the overall qualifications and specialized expertise of the selected CM/GC. The City will benefit by acquiring a CM/GC which has established experience and specialized expertise to manage this project. A low bid process does not provide an opportunity to obtain the most qualified contractor with the specialized expertise needed for the Project.

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 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 City's contractor selection process; this determination is not available under the low bid process.

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 "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.

Technical Complexity

The Project has significant technical complexities which will be best addressed by a full team approach, with the CM/GC firm working with the City and the Architect to solve specific challenges identified during the pre-construction phase.

The project is technically complex due to its poor soil conditions and proximity to wetlands. Further, the new building will be located next to the existing station and keeping the operations and safety functions during construction is going to be challenging. Expertise in working in constrained site conditions will be needed.

Expertise in energy efficient building practices and sustainable materials is also an integral part of the Project and will determine the City's ability to successfully acquire energy efficiency financial incentives. The ability to coordinate and manage this Project, while working with the

City and major stakeholders, is highly complex in nature. This complexity is especially challenging to an inexperienced firm.

This Project also requires technical expertise and experience in commercial construction involving public safety buildings, the unique needs of a police facility require expertise and understanding of this type of facility. The CM/GC process enables the City to competitively select a prime contractor who has the necessary competence to deal with the technical complexities of this Project and can provide quality workmanship, dependable performance, fair and reasonable pricing and efficient management as Project Team member. Under a low bid process the technical competence of the contractor is difficult to evaluate.

Funding Sources

Funding for this Project will come from revenue bonds issued by the City. As a public entity, the City needs budget predictability. The CM/GC process, with its negotiated GMP will provide the necessary predictability. Additionally, there is a high expectation from both the individual entities and donors that construction will be built and available for public use in the near future. The CM/GC method of contracting provides the greatest cost controls for limited budgets and therefore benefits the City. 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.

Competition and Cost Savings

Unlikely to Encourage Favoritism or Diminish Competition

It is unlikely that the process of selecting a CM/GC firm will encourage favoritism in the awarding of the public contract or substantially diminish competition for the public contract. Competition will not diminish 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. The City has not previously used the CM/GC process.

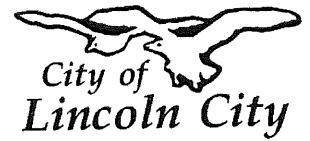
Cost Savings

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, this resulting in fewer design corrections and change orders during construction. Additionally, the use of value engineering through cooperation among the architect, engineer, contractor and City is essential to the Project delivery on time and within budget. 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.

Summary

The Project is technically complex due to its integration with the existing facility and soil conditions and the nature of the police buildings. Although the site is a difficult one, it is nevertheless the best location in town for the police building. The Project has involved substantial design effort and community involvement. The Project will be highly visible in the community and construction tours are anticipated. All these challenges will require a level of management and flexibility above that ordinarily available with traditional competitive (low-bid) public contracting. The CM/GC process offers the best opportunity for successfully managing a large, complex construction on a budget and on time.



**NOTICE OF PUBLIC HEARING REGARDING THE PROPOSED EXEMPTION TO
COMPETITIVE BIDDING FOR THE CITY OF LINCOLN CITY'S POLICE
DEPARTMENT BUILDING PROJECT CONSTRUCTION**

Notice is hereby given that the City Council of Lincoln City will hold a public hearing to take oral and written comments on the City's draft findings in support of an exemption from competitive bidding under ORS 279C.335 for the construction of the Police Department Building Project.

The City is requesting the exemption from competitive bidding to allow the use of an alternative procurement method that presents an alternative to the traditional low-bid method of contracting. The proposed Alternative Contracting method is CM/GC (Construction Manager/General Contractor), is made possible under ORS Chapter 279C, which permits certain contracts or classes of contracts to be exempt from competitive public bidding under strict procedural safeguards.

The draft findings may also be viewed on Lincoln City's website at www.lincolncity.org. Copies of draft findings may be obtained at a cost of 30 cents per page.

Public Hearing Information

Date: Monday, June 4, 2018

Time: Special Meeting, 6:00 PM*

Place: City Council Chambers, 801 SW Highway 101, 3rd Floor
Lincoln City, Oregon

**(This is a special meeting of the City Council and the public hearing will not be the first item on the agenda.)* Comments must be submitted in writing by noon on Tuesday May 29, 2018 to be included in the Agenda Packet. Written comments received after Tuesday May 29, 2018 will be provided to the City Council at the hearing. Any person may provide oral or written comments to the City Council at the June 4th hearing. Comments on the Draft Findings should be addressed to:

Stephanie Reid, City Engineer
Public Works Department
P.O. Box 50
801 SW Highway 101, 3rd Floor
Lincoln City OR, 97367

Date of Publication: May 14, 2018 Daily Journal of Commerce