

FINDINGS IN SUPPORT OF AN EXEMPTION FROM COMPETITIVE BIDDING UNDER
ORS 279C.335(2) - USE OF THE CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC)
CONTRACTING METHOD FOR THE UMATILLA FALLS ENTRY MONUMENT PROJECT

BEFORE THE CITY OF UMATILLA CITY COUNCIL

The City of Umatilla (City) desires to construct an entry monument near the intersection of Highway 730 and US 395. The City directed their on-call engineer (J-U-B Engineers, Inc.) to design the traditional design-bid-build project and advertise it for bids in 2022. The City received two bids (\$2.3 million and \$2.4 million) which significantly exceeded the City's budget of \$1.2M; therefore, the City decided to reject the bids and reevaluate a different approach. The City and their engineer have identified risks associated with the project that may have led to the higher bids including traffic control, shallow bedrock, right of way and maintenance of traffic considerations and utility challenges. In consideration of these facts, an alternative method of construction should be considered.

Under the CM/GC process, the City solicits prospective contractors through a competitive request for proposals (RFP) and interview process. Selection is based upon criteria related to the CM/GC experience of the contractor rather than the low bid. The contractor works with the owner and engineer during the design phase to develop the final design with the goals of improved constructability, risk management and value engineering. At the end of the design phase (90% milestone), the owner and contractor negotiate and agree on a guaranteed maximum price (GMP) and the construction schedule, which is typically documented through a GMP amendment. Execution of the GMP Amendment starts the construction phase of the project. If the parties are unable to agree to a GMP, the City has the sole right to stop the process and use a different approach.

Statute ORS 279C.335 requires, with certain exemptions, that all public contracts be based on competitive bidding and be awarded to the lowest cost and responsible bidder. However, ORS 279C.335(2) permits the City to act as the public contract review authority and to grant, upon certain findings, specific exemptions from the requirement for competitive bidding. Therefore, under the Oregon Statutes and the following findings, the City of Umatilla is authorizing the use of the CM/GC method of construction contracting. The Umatilla City Council acts as the City's Local Contract Review Board under ORS 279A.060. ORS 279C.335(2) requires the Local Contract Review Board to make certain findings to grant the exemption as follows.

FINDINGS OF FACT

1. ORS 279C.335(2)(a): *"The exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts."*

- Finding: The requested exemption will not encourage favoritism or substantially diminish competition. The City will utilize a competitive RFP and interview process to select a qualified CM/GC. The procurement will be formally advertised with public notice. Full competition will be encouraged and all qualified contractors will be invited to submit a proposal. The award will be based on an objective review and scoring of proposal by a qualified review committee based on identified selection criteria. Once selected, the CM/GC will select subcontractors via competitive process consistent with the requirements described in ORS 279C.337(3).
2. ORS 279C.335(2)(b)(A): *"How many persons are available to bid."*
 - Finding: The City previously received two bids under the traditional design, bid, build approach. The CM/GC project delivery method has increased in popularity and there are several contractors in the region with experience constructing similar improvements using the CM/GC approach.
 3. ORS 279C.335(2)(b)(B): *"The construction budget and the project operating costs for the completed public improvement."*
 - Finding: The City has an identified construction budget for the project. The City has not conducted a detailed analysis of the operating costs but expects that improved design and risk mitigation resulting from the CM/GCs participation in the final design phase will reduce added construction costs and delays and long-term operating costs. Operating costs will be a consideration during the value engineering.
 4. ORS 279C.335(2)(b)(C): *"Public benefits that may result from granting the exemption."*
 - Finding: Unlike a traditional design/bid/build procurement, an RFP process allows the City to review the qualifications of the proposed contractors, ensuring the selected contractor has the experience to deliver the project. Bringing the contractor on board during the design phase establishes a team approach that leads to better communication, continual value engineering, market pricing information, and constructability review. The City expects that the CM/GC process will result in a final design that meets the City's budget and reduce change orders and limit delays during the construction phase.
 5. ORS 279C.335(2)(b)(D): *"Whether value engineering techniques may decrease the cost of the public improvement."*
 - Finding: The CM/GC delivery method allows for the contractor to participate in the value engineering process during the design phase. The team approach fosters improvements to design and scope of work as necessary to meet the project budget and schedule before finalizing the design. Given the risks

identified with this project (shallow bedrock, overhead power, traffic control, underground utilities), the goal is for the engineer and contractor to work together to value engineer a project that meets the budget and schedule for the City.

6. ORS 279C.335(2)(b)(E): *"The cost and availability of specialized expertise that is necessary for the public improvements."*
 - Finding: The Entry Monument project is not a large dollar capital project, but is complex in that it requires a contractor with unique experience in entry monument projects and work in an existing intersection.
7. ORS 279C.335(2)(b)(F): *"Any likely increases in public safety."*
 - Finding: The CM/GC process will enhance public safety because the City will be able to consider the historical safety record of the contractor selected. The contractor will also be involved with the final design and construction schedule.
8. ORS 279C.335(2)(b)(G): *"Whether granting the exemption may reduce risks to the contracting agency."*
 - Finding: One of the advantages of the CM/GC method is to allow the owner, engineer and contractor to work collaboratively to identify risks and mitigation strategies to avoid or significantly reduce those risks. Reducing risks generally leads to lower construction bids and schedule benefits. Several of those risks might include: shallow bedrock, overhead power, traffic control, and lack of existing utilities.
9. ORS 279C.335(2)(b)(H): *"Whether granting the exemption will affect the sources of funding for the public improvement."*
 - Finding: The City is funding the project with cash reserves.
10. ORS 279C.335(2)(b)(I): *"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."*
 - Finding: If necessary, the City could take advantage of market prices by facilitating early purchase of certain materials and equipment. Job costing information from the contractor will allow the design team to consider alternative materials that may generate cost savings.
11. ORS 279C.335(2)(b)(J): *"Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement."*
 - Finding: One of the advantages of the CM/GC method is to allow the owner, engineer and contractor to work collaboratively to identify risks and mitigation

strategies to avoid or significantly reduce those risks. Reducing risks generally leads to lower construction bids and schedule benefits. Several of those risks might include: shallow bedrock, overhead power, traffic control, and lack of existing utilities. Evaluating these risks with the contractor during design may result in changes to the size of the project and the technical elements of the project.

12. ORS 279C.335(2)(b)(K): *"Whether the public improvement involves new construction or renovates or remodels an existing structure."*

- Finding: This project involves new construction in an existing intersection.

13. ORS 279C.335(2)(b)(L): *"Whether the public improvement will be occupied or unoccupied during construction."*

- Finding: There are no plans to occupy the entry monument at any time.

14. ORS 279C.335(2)(b)(M): *"Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions."*

- Finding: Construction is anticipated to occur in a single phase.

15. ORS 279C.335(2)(b)(N): *"Whether the contracting agency or state agency has, or has retained under contract, and will use contracting agency or state agency 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."*

- Finding: The City's on-call engineer (J-U-B) will serve as its owner representative. J-U-B has much experience with alternative project delivery, including CM/GC. J-U-B has also engaged Layne Powell for legal review and development of the contracts. Layne Powell has extensive experience with CM/GC alternative contracting method and has represented public contracting agencies on various CM/GC projects.

CONCLUSION OF FINDINGS OF FACT

It is in the best interest of the City of Umatilla to utilize the CM/GC project delivery method for the Umatilla Falls Entry Monument Project. This will a) result in substantial cost savings and reduce risk to the City, b) allow the City to select through an accepted RFP procurement process a qualified contractor with the specialized expertise required, c) benefit the public by improvement safety and coordination during construction, and d) not encourage favoritism or diminish competition.