

DRAFT FINDINGS FOR EXEMPTION FROM COMPETITIVE BIDDING

City of Aurora, Oregon

For Proposed

Wastewater System Improvements Project

Marion County



March 2024

Oregon Revised Statute (ORS) 279C.335(1) requires competitive bidding of public works improvement contracts unless specifically excepted or exempted from competitive bidding as provided under ORS 279C.335(2). Under ORS 279C.335(2), the City of Aurora Local Contract Review Board may exempt a contract from competitive bidding based on approval of two findings:

1. The exemption is unlikely to encourage favoritism in the awarding of the public improvement contract or substantially diminish competition for the public improvement contract.
2. Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the City of Aurora.

In approving the finding under ORS 279C.335(2)(b), the Local Contract Review Board must consider the type, cost and amount of the contract and, to the extent applicable to the particular public improvement contract, all items outlined in ORS 279C.335(2)(b)(A-N).

This document presents information the City of Aurora Local Contract Review Board will consider in its approval of the findings to exempt the Wastewater System Improvements Project from competitive bidding and use a CM/GC method of delivery.

BACKGROUND

The City of Aurora owns and operates the Aurora Wastewater Treatment Plant (WWTP), which is nearing capacity. To best serve our community and increase capacity at the WWTP, the City plans to improve the WWTP with a new sequencing batch reactor (SBR), effluent storage lagoon, relocation of the influent screen, update to the chlorination disinfection system, and an upgrade of the Supervisory Control and Data Acquisition (SCADA) system. All improvements will be constructed at the City's property for the existing wastewater treatment facility.. Per Mutual Agreement Order with the Business Oregon, the City is committed to completing construction and commissioning of the new WWTP before December 31, 2026.

SUMMARY OF FINDINGS

In regard to ORS 279C.335, the City of Aurora Local Contract Review Board has considered the following two findings in its decision to exempt from the Wastewater System Improvements from competitive bidding:

1. *The exemption is unlikely to encourage favoritism in the awarding of the public improvement contract or substantially diminish competition for the public improvement contract.*

Analysis: The City will select the CM/GC firm through a competitive selection process. The City will issue a Request for Proposals (RFP) in a manner that will attract competition from qualified firms through advertisement in the Daily Journal of Commerce and posting on the City's web site, or QuestCDN online plan center.

The Request for Proposals will attract proposers having the specialized knowledge, capacity, and skills for the project from within the state and the Pacific Northwest. A sufficient number of CM/GC firms are available to respond to the RFP. However, current market conditions may limit the number of firms that respond.

Pre-defined scoring criteria will be included in the RFP. Scoring criteria will be based on qualifications and experience of the firm related to the project components, complexity, and size; qualifications and experience of the proposed CM/GC team related to performance on similar recent projects; project understanding and approach; ability to achieve cost-reduction through value engineering; ability to self-perform portions of the work; safety record; financial standing; and pricing of services for Phase 1 (pre-construction services and guaranteed maximum price development) and markup on the cost of work in Phase 2 (construction). Review of proposals and scoring will be performed by City staff with the assistance of the consulting city engineer. Reviewers will follow the pre-defined scoring criteria.

Additionally, the contract between the City and the CM/GC firm will require portions of the work to be contracted by the CM/GC firm through receipt of competitive proposals. The CM/GC firm will be required to comply with the provisions of ORS 279C.337 for selection of subcontractors.

Finding: The process used by the City to select the CM/GC firm and the number of firms available to propose makes the exemption unlikely to encourage favoritism in the awarding of the public improvement project or substantially diminish competition for the public improvement contract.

- 2. Awarding a public improvement contract under the exemption will likely result in substantial cost and schedule savings allowing compliance with timelines in the agreement between the City and Business Oregon; and other substantial benefits to the City of Aurora.*

Analysis: The project involves construction of a new sequencing batch reactor (SBR), effluent storage lagoon, relocation of the influent screen, update to the chlorination disinfection system, and an upgrade of the Supervisory Control and Data Acquisition (SCADA) system.

Awarding a contract to a qualified CM/GC contractor provides opportunity for the City to employ a contractor-led value engineering review of the design during development. The RFP procurement approach allows the City to select a CM/GC firm most capable of achieving the scope and any cost reductions and deliver a high-quality project within an agreed upon guaranteed maximum price and schedule.

The CM/GC contractor can provide realistic determination of costs and constructability issues that will allow cost-benefit decisions to be made by the City. The contracting method will allow alternatives to be reviewed in a team environment of City staff, the design engineer, and the contractor working in a partnership. During the process, the CM/GC's construction experience and knowledge will aid in early identification of effective measures to minimize risks. This partnering approach will likely reduce the need for change orders, claims, and delays, resulting in significant cost savings and delivery of quality facilities on time. It is likely that there will be a lower chance of disruption to the schedule by using the CM/GC approach.

Finding: Awarding the project to a CM/GC contractor under the exemption provides opportunity to achieve potential cost savings and other substantial benefits to the City. The City will be able to employ a contractor led value engineering review of the 30%, 60%, 90% and final designs; take advantage of collaboration between the City, design engineer, and the contractor; and take advantage of the contractor's knowledge and experience to manage risks and possibly reduce costs.

RESPONSE TO ITEMS UNDER ORS 279C.335(2)(b)

In approving the finding under ORS 279C.335(2)(b), the Local Contracting Review Board must consider the type, cost and amount of the contract and, to the extent applicable to the particular public improvement contract items outlined in ORS 279C.335(2)(b)(A-N). Information considered by the Local Contract Review Board related to each of these requirements follows:

(A) How many persons are available to bid:

Information considered by the Local Contract Review Board:

The City will select the CM/GC firm through a competitive selection process. The City will issue a Request for Proposals (RFP) in a manner that will attract competition from qualified firms through advertisement in the Daily Journal of Commerce, posting on the City's website, or QuestCDN online plan center.

The Request for Proposals will attract proposers having the specialized knowledge, capacity, and skills for the project from within the state and the Pacific Northwest. A sufficient number of CM/GC firms are available to respond to the RFP.

Some of the qualified CM/GC firms in the Pacific Northwest that may respond the City's RFP are listed below:

- Emery & Sons Construction
- J.W. Fowler Construction
- Rotschy, Inc.
- Slayden Construction Group, Inc. (now under MWH/Stantec)
- Stellar J Corporation

(B) The construction budget and the projected operating costs for the completed public improvement:

Information considered by the Local Contract Review Board:

The Engineer's Estimate values the cost of the project at approximately \$11,200,000. Operating costs shall be incorporated into the City's yearly budget and will be paid through sewer user fees.

(C) Public Benefits that may result from granting the exemption:

Information considered by the Local Contract Review Board:

The existing WWTP is undersized and unable to consistently meet permitted effluent quality standards. Construction of a new WWTP will enable the City to comply with permitted effluent quality standards and avoid penalties resulting from non-compliance.

Aurora is experiencing population growth and development within its sewer service area. Planning for major residential developments is already in progress, and nearly 1,000 new homes could be built within the next 2 to 3 years. The Aurora WWTP is nearing capacity. To

support growth, the City needs to improve the WWTP soon to avoid a moratorium on new development. An exemption would accelerate the procurement and construction process and allow the plant to be constructed within the limited time frame allowed for by the grant funding.

(D) Whether value engineering techniques may decrease the cost of the public improvement:

Information considered by the Local Contract Review Board:

Granting the exemption will allow the City to select a qualified CM/GC firm to lead a value engineering effort using real-time pricing to determine best overall product and pricing to provide information needed to determine cost of the project.

The CM/GC can provide realistic determination of costs and constructability issues that will allow cost-benefit decisions to be made by a team of City staff, design engineer, and contractor working in a partnership. Contractor-led value engineering can decrease the cost of the project.

(E) *The cost and availability of specialized expertise that is necessary for the public improvement:*

Information considered by the Local Contract Review Board:

Construction of wastewater treatment plant improvements requires a highly skilled contractor with abundant experience in large wastewater treatment plant construction. A detailed plan will need to be generated by the contracting team to deal with issues such as construction sequencing to keep the existing plant in operation, coordination with the selected SBR supplier for installation of complex equipment, de-watering, excavation techniques, and worker safety.

(F) *Any likely increases in public safety:*

Information considered by the Local Contract Review Board:

It is important to build the project with safety foremost in the contractor's approach to ensure safe working conditions for the contractor, neighbors, and public that could be affected by the project.

The CM/GC procurement method allows actual safety performance and work on similar projects to be considered as a selection criterion. It also permits the City to work closely with the contractor to ensure that the design permits appropriate safety measures, that the contractor understands the City's safety concerns, and that the contractor will take appropriate steps to address them.

(G) *Whether granting the exemption may reduce risks to the contracting agency or the public that are related to the public improvement:*

Information considered by the Local Contract Review Board:

Construction of the wastewater treatment plant requires significant excavation/shoring, work from elevated surfaces/platforms, chemical hazards, electrical hazards, work around heavy

machinery and significant equipment lock out tag out requirements, which may be encountered during all phases of construction. CM/GC contracting will allow the construction team to work together to determine the best means and methods to construct the project, remain OSHA-compliant and mitigate risks and hazards during construction.

Strict adherence to safety measures will be needed to protect the public and workers as this project is being constructed. The partnering relationship provided through a CM/GC delivery will provide opportunity for the City to work with the Contractor to ensure safety measures are followed and revised if needed to reduce the risk to the public.

(H) Whether granting the exemption will affect the sources of funding for the public improvement:

Information considered by the Local Contract Review Board:

The CM/GC Procurement method of Contracting is allowed through Oregon Revised Statute. Funding for this project is expected to be thorough the American Rescue Plan Act, City Sanitary Sewer Rates, and City Sanitary Sewer System Development Charges. All the above-mentioned funds allow for the CM/GC Procurement method to be used. Funding must be allocated by December 31, 2024 and spent by December 31, 2026.

(I) Whether Granting the exemption will better enable the City to control the impact that market conditions may have of the cost of and the time necessary to complete the public improvements:

Information considered by the Local Contract Review Board:

CM/GC Contracting has the benefit of allowing the selected contractor to solicit competitive bids for various aspects of the work (materials, labor, etc.) early in the project and coordinate construction activities among all resources to minimize construction risks and delays. The CM/GC contracting method will also provide for the City to procure major long-lead equipment prior to commencing construction to reduce schedule. The CM/GC method also allows the City to directly procure major equipment packages with the benefit of avoiding additional markup by the Contractor to reduce cost.

(J) Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvements:

Information considered by the Local Contract Review Board:

The technical complexity, limited time frame for construction, and overall length of the project requires a contractor that can work efficiently and be able to manage all aspects of the project. The CM/GC process will allow the City to acquire a highly qualified contractor with adequate staffing for the site supervision needed. As a result, it is more likely that the CM/GC firm can address the technical complexities and size of the project more effectively, in part because of their qualifications and adequate staffing.

(K) *Whether the public improvement involves new construction or renovates or remodels an existing structure:*

Information considered by the Local Contract Review Board:

The project involves renovations of the existing wastewater treatment plant, and decommissioning and demolition of the existing wastewater treatment plant at a nearby site. The existing treatment plant will continue to operate and the new infrastructure will add treatment capabilities.

(L) *Whether the public improvement will be occupied or unoccupied during construction:*

Information considered by the Local Contract Review Board:

The buildings included in the new WWTP will not be occupied during construction and will not be made available for the City's use until substantial completion of the project. The City will continue to staff/operate the existing WWTP during construction.

(M) *Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions:*

Information considered by the Local Contract Review Board:

Construction of the project is expected to be completed in one phase. It is likely, that due to the length and complexity of the project, it will take about two years to complete. While construction will be completed in one phase, there will likely be an early equipment procurement phase of the project to mitigate for some of the specialty and/or long lead time equipment to not cause delays in the construction phase.

(N) *Whether the City has, or has retained under contract, and will use city 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 City will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract.*

Information considered by the Local Contract Review Board:

To support the City in the process, the City has selected Keller Associates to be the Design Engineer for the project. Keller Associates will assist the City while navigating the American Rescue Plan Act and daily construction activities due to the limited amount of City Staff available. Keller Associates will be subcontracted with Central Geotech (Geotechnical Engineering) to provide additional design and permit support for the project.

Keller Associates has recently and is currently participating as the engineer of record for public improvements using the CM/GC delivery method for other cities in Oregon. These projects have been successfully completed within budget and on schedule. Keller Associates has been able to partner with qualified contractors to perform value engineering, address risks, and reduce change orders, all which benefited the communities in which these projects were constructed.

The City's attorney and design engineer have reasonable experience in using the CM/GC delivery method.

CONCLUSION

The City of Aurora Contract Review Board can meet the requirements for exemption to the competitive bidding process as identified in ORS 279C.335 (2) for the Wastewater System Improvements Project. Use of the CM/GC alternative delivery method for the project allows:

- Use of the contractor led value engineering of the design with real-time construction pricing for the City to make judicious decisions with a tangible benefit to the City.
- Use of a delivery method that allows decisions to be made through a partnership between the City, design engineer, and contractor.
- A guarantee of the maximum price for construction to be issued following value engineering of the design.
- Competitive selection of suppliers, equipment, materials, and subcontractors with solicitations managed by a contractor knowledgeable of the marketplace and market conditions.
- Sufficient and qualified staff to manage the work site and subcontractors.
- Coordinated responsibility for a design that reduces risk and improves worker safety.
- CM/GC contract requires the Contractor and Design Engineer to consider project risks (i.e., cost, schedule, safety, permit compliance, maintaining WWTP service, and constructability).