



March 31, 2016

Board of County Commissioners
Clackamas County

Members of the Board:

REQUEST FOR AN EXEMPTION AND AUTHORIZATION TO USE THE REQUEST FOR PROPOSALS METHOD TO OBTAIN CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC) SERVICES FOR THE KELLOGG CREEK WATER POLLUTION CONTROL PLANT IMPROVEMENTS PROJECT FOR CLACKAMAS COUNTY SERVICE DISTRICT NO.1

In order to use the Request for Proposals method to solicit for Public Improvement projects, the Board, acting as the Local Contract Review Board for and governing body of Clackamas County Service District No.1., must approve findings of fact ("Proposed Findings") that justify the granting of an exemption from competitive bidding requirements.

The Local Contract Review Board Rule C049-0620, ORS 279C.335 and the Attorney Generals Model Rules require the following process for exemptions of this nature:

1. Before final adoption of the Proposed Findings exempting a contract for a public improvement from the requirement of competitive bidding, a public agency shall hold a public hearing. Notification of the public hearing shall be published in at least one trade newspaper of general statewide circulation a minimum of 14 days prior to the hearing.
2. The notice shall state that the public hearing is for the purpose of taking comments on the agency's draft findings for an exemption from the competitive bidding requirement. At the time of the notice, copies of the draft findings shall be made available to the public. At the option of the public agency the notice may describe the process by which the Proposed Findings are finally adopted and may indicate the opportunity for public comment.
3. At the public hearing the agency shall offer an opportunity for any interested party to appear and present comment.

To meet these requirements these Proposed Findings are being presented to the Board for the exemption from the competitive bidding requirement.

The Purchasing Manager caused an advertisement to be placed in the Daily Journal of Commerce on **March 14, 2016** notifying interested parties of the Proposed Findings. The advertisement states that the proposed findings are available at the Office of the Purchasing Manager and that a Public Hearing will be held on **March 31, 2016**. This meeting will be the last opportunity for receiving comments. If no comments are received that result in a revision of the Proposed Findings the Board of Commissioners may, at its discretion, adopt these Proposed Findings at the public hearing.

PROPOSED FINDINGS:

A. Nature of the Project:

The Clackamas County Board of Commissioners, acting as the governing board for Clackamas County Service District No. 1, approved an agreement between Clackamas County Service District No. 1 and the City of Milwaukie for long-term wastewater treatment provided by the continued operation of the Kellogg Creek Wastewater Pollution Control Plant (“KCWPCP”). The District needs to refurbish the plant and has identified the following improvements to provide for reliability of the treatment system, while being a good neighbor:

- Yard utility replacements
- Secondary sludge pump station improvements
- Peak wet weather flow management
- Secondary process blower replacement
- Site power and backup power system improvements
- Influent pump station improvements
- Primary sludge pump replacement
- Waste activated sludge thickening improvements
- Plant water pump replacement
- Aeration basin zone covers and associated odor control improvements

Each of these improvements needs to be sequenced and coordinated to ensure the continued functionality of the KCWPCP during construction. Due to the need to seamlessly coordinate the multiple and complex facets of the work, the District is proposing to utilize the CM/GC method to obtain construction services to deliver the project.

B. Estimated Cost of the Project:

The current construction budget is estimated to be 15 million dollars.

C. Narrative Description of Findings for Exemption to use the Request for Proposals Method to Obtain CM/GC Construction Services:

Under the traditional design-bid-build method, the design firm must fully complete construction plans and specifications before a single construction contract can be advertised, bid and awarded. Many additional months are required before construction can begin. Alternatively, the District can fast track the construction under several separate construction contracts; however, the District would be separately responsible for each of the contracts.

Public agencies have become increasingly vulnerable to costly claims, delays and litigation when disputes erupt between separate contractors on the same site.

A CM/GC contract is an alternative form of procurement that results in a contract with a construction manager/general contractor who undertakes project team involvement with design development; provides constructability reviews; provides value engineering; scheduling; estimating; and sub-contracting services; establishes a “Guaranteed Maximum Price” (“GMP”) to complete the work as may be allowed under the contract; coordinates and manages the building process; provides general contractor expertise; and acts as a member of the project team along with District staff, project engineers, and other consultants.

The GMP is the total maximum price that will be paid by the District for construction of the project. The GMP includes all reimbursable costs and fees for completion of the work as defined by the contract, except for material changes in the scope of work. Therefore, the use of a GMP limits the number and type of change orders that a contractor may seek during the construction of the project.

Important advantages of the CM/GC approach for this project are that the process ensures the proposed project can be constructed within a specific budget and on as rapid a schedule as possible. These factors are of particular importance with regard to the project for several reasons:

1. The CM/GC approach will provide for an accelerated project timeline that will allow for coordination of all elements of the project. The accelerated project delivery will also minimize the impact of inflation on the overall cost of the project.
2. The selection of construction methods and sequencing will benefit significantly by involving a single entity for both management and construction of the site improvements. The CM/GC approach provides the District with many alternative approaches to the project. Therefore, it is less likely that an optimal solution will be overlooked due to time and resource constraints.
3. Project costs may be lower because of the close working relationship between the designer and constructor. This may lead to incorporation of more economical design features and the application of cost-saving construction methods.
4. Project may proceed more efficiently because designers and constructors are members of the same team thereby fostering a cooperative exchange of ideas. This dynamic will allow for design efficiencies to be woven into the construction process and allow for resolution of design issues that arise during construction.
5. The District gains the opportunity to fix the total project cost early in the process cooperatively with the CM/GC team.
6. The District’s administrative burden for the project is reduced by conducting one solicitation for the project, as opposed to conducting multiple solicitations for a design/ bid/ build approach. Having a single source of responsibility for construction of a facility in accordance with a performance-based specification helps ensure that the facility will perform as specified by the District.
7. One of the highest potential areas for claims filed by subcontractors, or excessive bid costs involves issues related to perceived schedule difficulties, delays and disruptions in the workflow. This type of project is especially prone to such problems if not continually and carefully supervised.

Construction expertise and considerations for constructability are incorporated into the project because the CM/GC is working closely with the design team and the County. Resolution of construction conflicts or deficiencies is the responsibility of the CM/GC entity, not the District.

8. The District has previous experience utilizing the CMGC process. The most recent projects include the Tri City Plant projects in 2008 and 2009. Additionally the Procurement Division and County Counsel have utilized the CMGC process for multiple projects over the past 10 years. Further, the engineering firm retained by the District has a history of success in delivering CMGC projects.

D. Proposed Alternative Contracting and Purchasing Practices:

1. The District desires to select the CM/GC firm using the following competitive process:
 - a. Publicly advertise a Request for Proposal.
 - b. The contractor will be selected through an evaluation process that will consider qualifications, construction team experience, both the technical proposal and the fee proposal.

Evaluation and Selection Criteria:

1. Firm Background	Points: 0 - 5
2. Firm Experience and Success	Points: 0 – 15
3. Key Staff Experience	Points: 0 – 15
4. Project Understanding	Points: 0 – 10
5. Pre-Construction Services Approach	Points: 0 - 15
6. Project Delivery Services	Points: 0 – 15
7. Firm Safety Record	Points: 0 – 5
8. Management Fee Percentage	Points: 0 – 20

- c. The submitted proposals will be reviewed and scored by the Selection Committee. Points will be awarded based on the relative merit of the information provided in response to the solicitation. The highest rated response in each area will be given the highest number of points available. The District may ask proposers to make oral presentations to discuss and clarify the submitted proposal.
- d. The Selection Committee through the Procurement Division will provide a recommendation to the Board of Commissioners for their consideration.

E. Statutory Tests

1. Background:

ORS 279C.335 requires that the Local Contract Review Board make certain findings as a part of authorizing the use of an Alternative Contracting Method. The District desires to use a Request for Proposals solicitation method to select a CM/GC contractor for this project. The District's Request for Proposals approach has been designed to fully comply with the tests of Oregon Public Contracts Statute ORS 279C.335 and the Attorney General Model Rule for alternative contracting methods, including the following:

- a. It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts; and,
- b. The awarding of public improvement contract under the exemption will result in a substantial cost savings to the contracting agency or the public.

2. Test:

a. Maximizing Competition:

The District will employ a competitive Request for Proposals process for selecting the CM/GC, where the cost of services (along with other factors) is one element of the selection criteria.

Additionally, the CM/GC must publicly advertise at least five (5) days in advance in publications of record and the CM/GC must make a good faith effort to obtain at least three (3) proposals for most sub contracts. The CM/GC must award the work of each such subcontract to the responsible proposer submitting the lowest most advantageous proposal.

b. Minimizing Favoritism:

An objective selection criteria and a formal selection process will be used to select the CM/GC.

Additionally, the CM/GC must make a good faith effort to obtain at least three competitive proposals for each particular work sub-component to be completed, including work components which the CM/GC may be interested in self-performing. The District may allow the CM/GC to perform some of the trade work if the CM/GC engages in the same competitive process with trade subcontractors for that work. In such cases, proposals will be submitted to the District for evaluation.

When there are single fabricators of materials, special packaging requirements for subcontractor work, or work to be performed by the CMGC, advance approval by the District's representative is required.

c. **Substantial Cost Savings:**

1. **Fast Track Project:** The project will be able to be completed more rapidly, thereby minimizing inflationary impact to the District. The fast track process will allow for certain elements of construction to proceed in step with the design process.

2. **Value Engineering:** The CM/GC will work along with the District and District's Design Consultant recommending cost savings alternatives as the design evolves.

3. **Constructability:** The CM/GC will provide recommendations to the District and District's Design Consultant to be incorporated into the design for simplifying and reducing the cost of construction.

4. **Document Reviews:** The CM/GC will regularly review construction documents as they evolve, recommending clarifications and corrections which will reduce vulnerability to contractor change orders, disputes and claims during construction.

5. **Labor Impact Issues:** Involvement of the CM/GC during the design and construction will include analysis of the local labor market and recommendations to the District team for the selection of materials and systems least vulnerable to cost premium as the result of labor shortages.

6. **Cost Estimating:** The CM/GC will provide detailed cost estimates at each design milestone, which along with the District's estimates will make it possible for the District to make decisions, fully informed of cost implications, in the selection of the least expensive alternatives.

7. **Reduced Change Order Exposure:** The CM/GC has direct control of the construction at a fixed GMP, thereby reducing exposure to change order costs.

8. **Phased Construction:** Phased construction opportunities, which result from the CM/GC method of construction, can result in opportunities for significant cost savings:

a. Earlier start of construction reduces the impact of inflation on project funds.

b. Early purchase of long-lead items allows for better competitive pricing and lower prices.

c. Phased construction results in faster overall construction schedules, thus reducing CM/GC and subcontractor overhead and creating other opportunities for efficiencies.

d. Each of the improvements needs to be sequenced and coordinated to ensure the continued functionality of the KCWPCP during construction. The ability to seamlessly coordinate the multiple and complex facets of the work will minimize potential impacts to the ongoing operation of the plant.

9. 100% Performance Bond: Requirements for a 100% performance and 100% payment bonds protect the District in the event of contractor default. The CM/GC will be responsible for the performance of the subcontractors during construction.

10. Guaranteed Maximum Price: The CM/GC will guarantee the final cost of the project, including change orders within the CM/GC's control, protecting the District from cost overruns.

11. Improved Teamwork: The CM/GC process provides for improved teamwork between the District, District Design Consultant, and Contractor by minimizing adversarial relationships, resulting in savings from disputes and claims.

These findings and the supporting Request for Proposal solicitation documents have been reviewed and approved by County Counsel.

RECOMMENDATION: Staff respectfully recommends that the Board, acting as the Local Contract Review Board for and governing body of Clackamas County Service District No. 1, considers the comments received from the public on the proposed findings and direct staff to revise the findings, if necessary. If no revisions are to be made, staff recommends that the Board adopt the findings and grant the requested exemption.

Respectfully submitted,

Lane Miller,
Procurement Director

As set forth above, the Board of County Commissioners, acting as the Local Contract Review Board for and governing body of Clackamas County Service District No. 1, by their signature below approves the proposed alternative contracting process and the Findings and Exemption from competitive bidding for the Kellogg Creek Water Pollution Control Plant Improvements Project.

CLACKAMAS COUNTY BOARD OF
COUNTY COMMISSIONERS on behalf of
CLACKAMAS COUNTY SERVICE
DISTRICT NO. 1 by:

Chair

Recording Secretary

Date

Approved as to Form:

County Counsel