

**FINDINGS IN SUPPORT OF AN EXEMPTION FROM COMPETITIVE BIDDING UNDER ORS
279C.335(2)
JOHN GUMM PROJECT**

I. Introduction. Columbia County is proposing to remodel the historic John Gumm School for County use. The County is currently working with an Energy Saving Performance Contractor (“ESPC”) on an energy efficient remodel of the school. In the event that the ESPC delivers a project proposal that exceeds the County’s available funds it is seeking an alternative contractor to work with the County and design professionals to develop a project that best fits the County’s needs within its available budget. Due to the need to limit the scope of the project to fit the budget, and the nature and complexity of the project, staff recommends using the competitive proposals alternative contracting process provided for under ORS 279C.400-279C.410. The competitive proposals alternative contracting process is authorized for procurement of construction as long as the Local Contract Review Board approves an exemption from competitive bidding as provided in ORS 279C.335(2). The Columbia County Board of Commissioners is the County’s Local Contract Review Board under ORS 279A.060.

II. The Competitive Proposals Alternative Contracting Process. The competitive proposals procurement process is used when the purpose of the procurement is to accomplish a stated outcome. Under the competitive proposals form of procurement the County issues an RFP stating what it wishes to accomplish, and contractors respond with proposals of how they can help the County reach that goal. The proposals are evaluated based upon quality and price. The County can then select the proposals that best fit its needs and negotiate with those contractors to develop best final offers. It’s anticipated that this will result in a final contract that delivers maximum benefit to the County within its budgetary constraints.

III. Findings. ORS 279C.335(2), implementing ORS 279C.330, requires the Board to make certain findings in order to grant an exemption as follows.

A. ORS 279C.335(2)(a): Exempting the contract is unlikely to encourage favoritism or substantially diminish competition.

Finding: The requested exemption will not encourage favoritism or substantially diminish competition. The County is utilizing a competitive proposal process to select the contracting firm. 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. A contract will be awarded based on selection criteria identified in the RFP that will be based on, among other things, cost, quality of past projects, personnel qualification, and ability to stay within budget. An opportunity to protest the award will also be available in accordance with ORS 279C.400 to 279C.410 and OAR 137-049-0600 to 137-049-0690.

B. ORS 279C.335(2)(b): Exempting the contract will likely result in substantial cost savings and other substantial benefits to the County. In approving a finding under this paragraph, the Local Contract Review Board shall consider the type, cost and amount of the contract and, to the extent applicable, the following:

1. ORS 279C.335(2)(b)(A). How many persons are available to bid?

Finding: There should be no reduction in the number of persons available to bid under the competitive proposals process versus the competitive bid process. As with a competitive bid solicitation, the RFP will be advertised in the *Daily Journal of Commerce*, a trade journal of statewide circulation, and the *Chronicle*, a local newspaper. All licensed contractors will have the opportunity to submit a proposal. Proposals submitted by small-scale contractors and joint venture partnerships will be considered and even encouraged. The County will encourage local contractors to participate in the RFP process as well.

The County expects that a substantial number of contractors will be interested in the project, and that there will be vigorous competition during the RFP process. There is nothing in the nature of the competitive proposals procurement process that would discourage bidders who would otherwise respond to a conventional invitation to bid.

2. ORS 279C.335(2)(b)(B). The construction budget and the projected operating costs for the completed public improvement.

Finding: The anticipated budget for this project is \$8,500,000. A competitive proposal process will keep the project within that budget by allowing additional opportunity for value engineering during the contractor selection and negotiation phase. Under this format, the County and contractor will have time to collaborate on finish options and other project details prior to finalizing an agreement. This will significantly limit the potential for costly change orders by providing clarification and addressing discrepancies within the construction documents up front.

The competitive proposal process will allow potential contractors to bid on the full cost of carrying out the County's design and, if that proposal exceeds the budget amount, to propose changes to the project's scope to deliver the project within budget.

3. ORS 279C.335(2)(b)(C). Public benefits that may result from granting the exemption.

Finding: The John Gumm School is an historic structure in the St. Helens community. It is of utmost importance to the public that the finished facility embrace that history, is of high-quality, and is easy to maintain to ensure a lasting positive impression to its end-users, neighbors and passersby. Using a competitive proposals process instead of a low-bid process allows the County to evaluate the quality of a contractor's finished product while considering the contractor's history of performing similar projects within budget. A competitive proposals procurement method will also benefit the public by delivering a project that meets the County's

budget limits. Unlike a traditional “low-bid” process where the contract is awarded to the lowest bidder, the competitive proposal process permits the County to consider other factors such as time, qualifications, and the contractor’s approach to the project.

4. ORS 279C.335(2)(b)(D). Whether value engineering techniques may decrease the cost of the public improvement.

Finding: A competitive proposal process will provide the County an increased level of flexibility and choice during the contract negotiation process, assisting in the successful delivery of a high-quality project outcome. Continued collaboration between the Project Architect/Engineer and County management personnel on construction details, installation, fabrication, budget and other aspects of the project will allow the County to make informed cost-benefit tradeoff decisions early on during the contract negotiation phase of the process. A negotiated contract with a stipulated sum or other arrangement similar to a fixed price contract will encourage the General Contractor to work with the County and Project Architect /Engineer to find the highest quality, most cost-effective solutions to unforeseen issues and provide a wider range of choice on the final selection of finishing options and materials. Value engineering may or may not decrease the contract sum, but it should improve the County's ability to (a) manage the project within the budget and (b) reduce extra-cost change orders and the costs associated with project delay.

5. ORS 279C.335(2)(b)(E). The cost and availability of specialized expertise that is necessary for the public improvement.

Finding: The John Gumm Project is complex in that it requires just the right contractor with the expertise and experience to manage multiple subcontractors. It is extremely difficult to ensure an acceptable range of finish quality through written specifications alone. Vast options for finish materials and a wide range of appropriate installation techniques continually evolve. The degree at which an individual building professional is knowledgeable of current best practices, manufacturer’s recommendations, and the availability of material/product selections will have either a positive or detrimental impact on the quality, cost and delivery schedule of the finished project.

The County is seeking a General Contractor who has recent experience on similar builds, within a reasonable proximity, that can provide specific examples of such work so the County and/or its representatives, can physically inspect the quality of craftsmanship and selection of finish materials and surfaces. This will also provide an opportunity for the County to more effectively verify the level of customer satisfaction enjoyed by its end-users and/or property owners, and local building authorities.

County personnel with experience and expertise in contract law, construction management, facilities maintenance and general operations will be part of a team that works with the Project Architect/Engineer and selected General Contractor to ensure the project is completed successfully.

6. ORS 279C.335(2)(b)(F). Any likely increases in public safety.

Finding: Columbia County maintains an ongoing commitment and focus on risk management and safe work practices. Public safety during all construction activities associated with this project, the safety of each of the trade workers involved with its development, and a finished product that facilitates accessibility and safety of all end users who will work within and receive services provided by this facility is an essential, non-negotiable bottom-line standard for the County. Throughout all construction phases the County will partner with OROSHA's consultative services and the General Contractor to maintain a safe atmosphere for all of the project workers and manage potential risks to surrounding public activities. With a competitive proposal process, the County can evaluate as selection criterion a contractor's performance on prior projects in satisfying safety requirements. This determination is not available under the low-bid process.

7. ORS 279C.335(2)(b)(G). Whether granting the exemption may reduce project related risks to the County or the public.

Finding: As described in F, above, the County is committed to risk management and safe work practices. A competitive proposal process will give the County more control over selecting a contractor that shares the County's commitment to risk management. This would not be available under the low-bid process. The competitive proposals process also allows the contractor to identify and help address technical issues during the proposal and contract negotiation phases, which facilitates advanced problem solving and can yield cost and schedule benefits.

8. ORS 279C.335(2)(b)(H). Whether granting the exemption will affect the sources of funding for the public improvement.

Finding: The use of the competitive proposals contracting method will not adversely impact the funding for this project.

9. 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: The construction industry is a highly volatile and fast paced

environment, that often drives contractors to rush to project completion, lose focus on the overall finish quality, and argue for additional charges through change orders. In contrast, a General Contractor is more likely to maintain a high quality, cost-effective approach through project completion under the competitive proposal process. As described above, the County and contractor will collaborate on finish options and other project details prior to finalizing an agreement under a negotiated contract. This will significantly limit the potential for costly change orders by providing clarification and addressing discrepancies within the construction documents up front. This collaboration provides a higher probability for all of the project stakeholders to maintain a sense of ownership, which evokes a higher level of pride in workmanship and a more common desire for successful completion of a high quality while controlling costs.

10. 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: The restoration of a large historic building to meet the requirements of modern offices and public spaces presents a complex problem. The competitive proposals process will allow the County to select a contractor with the confidence that the contractor has the necessary competence to deal with these technical complexities and can provide quality workmanship and dependable performance as a project team member. Collaboration between project stakeholders during the negotiation phase will provide additional opportunity to address technical complexities and project logistics in a proactive manner. An increased level of communication in the beginning will encourage teamwork and incentivize participants to carry out a successful project.

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

Finding: This project involves the renovation and improvement of a historic structure. The project will result in the reuse of the building for County offices, County museum, and public meeting facilities that meet the requirements of the post pandemic world.

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

Finding: The building will be unoccupied during the construction project.

13. 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: Currently construction is anticipated to occur in a single phase however as part of the competitive proposal process the County is open to phasing options to enable it to meet budget constraints.

14. ORS 279C.335(2)(b)(N). Whether the County has, or has retained under contract, and will use County personnel, consultants and legal counsel that have necessary expertise and substantial experience in alternative contracting methods to assist in developing the competitive proposals method that will be used to award the contract and to help negotiate, administer and enforce the terms of the contract.

Finding: County personnel have substantial experience in conducting procurements using alternative contracting methods. The actual procurement of the contractor will be through an RFP process, the process used by the County for many of its non-public improvement contracts.

As noted above, County personnel with experience and expertise in contract law, construction management, facilities maintenance and general operations will be part of a team that works with the Project Architect/Engineer and selected General Contractor to ensure the project is completed successfully.

Ultimate Finding: The primary difference with the competitive proposals contracting process and the traditional design/bid/build process is that the competitive proposal process permits the County to better consider factors other than price in selecting a contractor to complete this project. This will benefit the County both financially and in other ways such as early involvement of the General Contractor with the Project Architect/Engineer, streamlined decision-making, accelerated progress, and an overall heightened development experience.

For these reasons, use of the competitive proposals alternative contracting method for the John Gumm Remodel Project is likely to result in substantial cost savings and deliver other significant public benefits as compared to use of the standard design/bid/build process within the meaning of ORS 279C.335(2)(b).