

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Exempting the Contract)
to Construct a new Transit Facility)
from Competitive Bidding)
_____)

RESOLUTION NO. 12-2010

WHEREAS, Columbia County intends to construct a new transit facility for its Columbia County Rider Transit Service in St. Helens, Oregon; and

WHEREAS, Bill Potter, the Project Manager for the transit facility project, has recommended that the transit facility be constructed using the Construction Manager/General Contractor (CM/GC) alternative contracting method, as defined in OAR 125-249-0610(2); and

WHEREAS, in order to use the CM/GC method, it is necessary to exempt the construction contract from the competitive bidding requirement provided in ORS 279C.335(1); and

WHEREAS, the Project Manager has drafted findings (the "Findings"), which are attached hereto, labeled Exhibit "A" and incorporated herein by this reference, for the Board of County Commissioners (the "Board"), as the local contract review board, to consider in support of exempting the transit facility project from the competitive bidding requirement; and

WHEREAS, pursuant to ORS 279C.335(5), the Board held a public hearing on the proposed exemption for the purpose of taking comments on the Findings, which hearing was held in Room 308 of the County Courthouse Annex on Wednesday, April 7, 2010; and

WHEREAS, ORS 279C.335(4) provides that the local contract review board shall, when appropriate, direct the use of alternative contracting methods that take account of market realities and modern practices and are consistent with the public policy of encouraging competition;

NOW, THEREFORE, it is hereby resolved, as follows:


1. Pursuant to its statutory authority the Board adopts the Findings attached hereto as Exhibit "A".
2. The contract to construct a new transit facility is exempted from the

low bid requirements for construction contracts.

3. County staff shall prepare a Request for Proposals to procure a Construction Manager/General Contractor for the transit facility project using the statutory competitive proposal procedures.


DATED this 7th day of April, 2010.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: 
Anthony Hyde, Chair

Approved as to form

By: 
Earl Fisher, Commissioner

By: 
Office of County Counsel

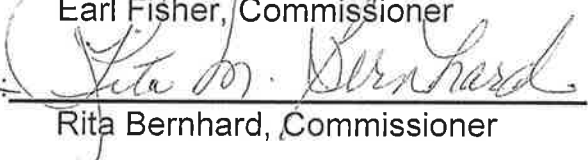
By: 
Rita Bernhard, Commissioner

EXHIBIT "A"

FINDINGS IN SUPPORT OF THE USE OF THE CONSTRUCTION MANAGER/GENERAL CONTRACTOR ALTERNATIVE CONTRACTING METHOD FOR THE COLUMBIA COUNTY TRANSIT FACILITY

The Columbia County Rider Transit Service has received federal and state funds to construct a new transit facility to be located in St. Helens, Oregon. Bill Potter, the Project Manager for the new transit facility, has recommended that the County procure the contract for the construction of the transit facility using the Construction Manager/General Contractor ("CM/GC") alternative contracting method as defined in OAR 125-249-0610(2).

ORS 279C.335(1) provides that: "All public improvement contracts shall be based upon competitive bids except: * * * (b) A public improvement contract exempt under subsection (2) of this section."

ORS 279C.335(2) permits a local contract review board to exempt a public improvement contract from the competitive bidding requirements of subsection (1) if it finds:

"(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 contracts under the exemption will likely result in substantial cost savings to the contracting agency * * * based upon the justification and information described in ORS 279C.330."

ORS 279.330 provides that: "'findings' means the justification for a contracting conclusion that includes, but is not limited to, information regarding:

- (1) Operational, budget and financial data;
- (2) Public benefits;
- (3) Value engineering;
- (4) Specialized expertise required;
- (5) Public safety;
- (6) Market conditions;
- (7) Technical complexity; and
- (8) Funding sources."

As the local contract review board, the Board of County Commissioners for Columbia County has reviewed the recommendation to exempt the contract to construct

the transit facility from the competitive bidding requirement of ORS 279C.335(1) and makes the following findings:

FINDINGS

A. ORS 279.330.

1. Operational, budget and financial data. The total budget for constructing the transit facility is approximately \$1 million and is funded by a combination of funds from Connect Oregon II Grant Agreement No. 24936, dated May 27, 2009, and funds provided under the American Recovery and Reinvestment Act (ARRA) by State Grant Agreement No. 25720, dated June 29, 2009. Columbia County is not able to supplement these funds using general fund dollars due to ongoing financial concerns. Therefore, it is critical that the project stay within the funding constraints of the two grants. A CM/GC can keep the project within the budget by using cost control systems established well before construction begins. Unlike the low bid process for selection of a contractor (which excludes the contractor from the pre-construction phases), significant savings in overall project cost and time can be achieved by engaging the CM/GC early in the pre-construction process. This early engagement allow close monitoring of the construction market, sometimes called forecasting, and heads off unexpected activities that will result in a higher price thereby delivering additional economic savings and benefits to the County. The CM/GC challenges the entire project team to stay within budget by allowing for full and frank discussions of the cost and schedule implications of various design solutions. This CM/GC involvement permits the project team to make informed cost-benefit trade-off decisions, all to the financial benefit of the County.

2. Public benefits. The public benefit achieved with the use of a CM/GC for this project is evident throughout several aspects of the project's design and construction. In contrast to the low bid process for selection of a contractor, the early involvement of the CM/GC in the process provides for more collaboration among the project team and interested stakeholders and solidifies the commitment of the design team to jointly: (i) establish effective working relationships, (ii) identify problem areas , and (iii) develop economical solutions—thereby achieving costs and time savings for the project. During the pre-construction phase, the CM/GC provides guidance to the project team in scheduling project activities and projected time-lines. In addition the CM/GC is engaged in the project team process and makes recommendations about all aspects of design. During construction, it is the CM/GC's responsibility to get the work done in an efficient manner and with a total cost within the Guaranteed Maximum Price (GMP). The CM/GC provides a firm GMP and schedule commitment to the County that puts the CM/GC at risk, not the County. Removing elements of risk from the County is of great benefit to the County when initiating construction projects that use public funds.

If, at the end of the pre-construction phase, a GMP cannot be agreed upon, then the County has the right to use all the information developed by the CM/GC and the project team to bid the project competitively. This alternative bidding possibility limits the risk to the county while retaining the contractor's knowledge, skill and benefits of collaboration during the design and construction phase. These substantial benefits would not be achieved if the low bid process for selection of a contractor were used for this project since the contractor is excluded from the pre-construction phase.

3. Value engineering. The CM/GC process provides many additional 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 County to make informed cost-benefit tradeoff decisions during design. The CM/GC will collaborate and provide cooperation and information to the design project team on details, installation, fabrication, budget and all aspects of the project. During the pre-construction 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. The reviews ensure that good building practices are incorporated into the design documents. 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.

4. Specialized expertise required. The contractor ultimately selected as CM/GC must demonstrate experience and expertise in providing CM/GC services to public and private organizations, and be well qualified in the area of sustainable construction methodology. The CM/GC selection process is based on qualifications, with price as a factor. The fee is, however, less important than the overall qualifications and specialized expertise of the selected CM/GC. The County will benefit by acquiring a CM/GC which has established experience in building similar projects, experience in this type of delivery system, references from previous owners and architects, and an outstanding approach to the project, especially when incorporating sustainable practices. A low bid process does not provide an opportunity to obtain the most qualified contractor with the specialized expertise needed for the project.

5. Public safety. The CM/GC selected must be highly qualified and capable and show evidence of construction safety practices that are at the highest level of integrity. All work during the construction will be done in accordance with OR-OSHA safety regulations. 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 County's RFP process. This determination is not available under the low bid process.

6. Market conditions. The CM/GC contracting method is a modern construction delivery method used by both public and private organizations. It involves the contractor early on in the design of a project and allows for cost saving and fast track construction. 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.

7. Technical complexity. This project requires technical expertise and experience in complex construction involving public entities. The ability to coordinate and manage this project, while working with the County and major stakeholders, is highly complex in nature. This complexity is especially challenging to an inexperienced firm.

The CM/GC process enables the County to competitively select a prime contractor with the confidence that the contractor has the necessary competence to deal with the technical complexities of this project and that can provide quality workmanship, dependable performance, fair and reasonable pricing and efficient management as a project team member. Under a low bid process the technical competence of the contractor is difficult to evaluate.

8. Funding sources. The CM/GC method of contracting provides the greatest cost controls for limited budgets and therefore benefits the County. 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.

This project is being funded solely from grant funds. The grant funds are extremely limited so the expected cost savings from the using a CM/GC contractor is particularly critical to assuring that the County will get the best possible project for the limited dollars available for construction without having to expend general fund dollars.

B. ORS 279.335(2)(a).

The CM/GC will be selected through the County's Request for Proposals (RFP)

process which is an open competitive process. The County will solicit CM/GC proposals through public advertisement in a trade publication of general statewide circulation. The County will also establish an evaluation committee that will evaluate the proposals based on identified selection criteria and will encourage competition. An award will be made based on the Committee's evaluation of the competitive criteria. Finally, the County will provide an opportunity to contest the award.

The selection criteria will include quality of previous work; available resources to meet schedule requirements; use of minority, women and/or emerging small business subcontractors; time critical project management, fee and other relevant criteria. The assessment of the CM/GC will be keyed to its ability to demonstrate the experience and qualifications necessary to meet project needs. Competition will not be diminished 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 its subcontractors which is not required under a low bid process.

C. ORS 279.335(2)(b).

The CM/GC contract will include a guaranteed maximum price ("GMP"). The Contractor's overhead rate and fee and the proposed GMP are two of the most significant factors to be evaluated in selecting a contractor. In addition, the County may negotiate with the successful proposer until an acceptable price is reached. This negotiation will help define and contain project costs. Negotiation up front will avoid excessive change orders and other unanticipated changes to the scope of the work that might otherwise give raise to an increase in the GMP. In addition, the unique characteristics of the project lead to the conclusion that the CM/GC process will result in cost savings. The opportunity to select the best overall contractor under the CM/GC methodology will allow the County to avoid problems resulting from uncertain site conditions and potential weather delays and therefore avoid excessive project costs.

During the design phase prior to material and subcontractor bidding, the CM/GC will provide value engineering and update cost estimate information. The value engineering and cost estimates 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, thus resulting in fewer design corrections and change orders during construction. Additionally, the use of value engineering through cooperation among the architect, engineer, contractor and County is essential to the project delivery on time and within budget. The CM/GC will participate in the design phase to propose the most economical and practical building solutions. CM/GC value engineering will reduce bid addenda, contract change orders, progress delays to help meet the tight time schedule

for the project. These savings are not realized under a low bid process.

In addition, the public improvement presents significant technical complexities that are best addressed by a collaborative team effort between the County, design professionals and Contractor, in which the Contractor will assist in addressing specific project challenges through pre-construction consultation and which will allow for value engineering. The project involves the construction to an existing structure and new structures with underground facilities which will require consistency and functionality between the security, electrical, lighting, fire/life safety, and data/communication systems in existing and new structures. Contractor input on issues such as public safety, delivery of an early budget or GMP, systems continuity between existing and new structure, and coordinated scheduling will save the County money by avoiding delays and other problems during construction.

CONCLUSION

Construction of the transit facility is best accomplished through an alternative means of construction contracting that utilizes an approach of selection that is based on qualifications and experience rather than lowest bid. The selection of the CM/GC through an RFP process will not diminish competition or show favoritism, and will result in cost savings to the County.