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191429

Ordinance

Approve findings to authorize exemption to competitive bidding requirements and approve use of alternative contracting method of Construction Manager/General Contractor and authorize payment for construction of the North Portland Aquatic Center Project

Passed

The City of Portland ordains:

Section 1. The Council finds:

1. Portland Parks and Recreation is the steward of over 10,000 acres of land at more than 250 locations throughout the City of Portland. It offers thousands of recreational and enrichment opportunities for people of all ages and abilities giving life and beauty to the City. The City of Portland ("City") Bureau of Parks and Recreation ("PP&R") established a set of guiding principles in its 2020 Vision Plan to deliver high quality parks and recreation services to all Portlanders.
2. The goal of the North Portland Aquatic Center Project ("Project") is to provide a new aquatic center, unique to North Portland that will work to build community pride and provide essential aquatic and recreational spaces.
3. City Council approved Ordinance 191038 on Wednesday, October 19, 2022, to authorize a contract with ELS Architecture and Urban Design to provide site selection, programming, schematic design and land use permitting services for the North Portland Aquatic Center. This contract effort included extensive community engagement process to determine the final site, program and schematic design elements for the new facility.
4. Ordinance 191038 added the North Portland Aquatic Center Project to the PP&R's Capital Improvement Plan (CIP) Project list.
5. City Council approved Ordinance 191095 on Wednesday, December 7, 2022, to accept a grant in the amount of \$15 million from State of Oregon Department of Administrative Services for the design and construction of the North Portland Aquatic Center.
6. Additional funding is available through the System Development Charges ("SDC") and a State of Oregon Lottery Funds Grant in order to move forward with design and construction.
7. The Project will require specialized skills and experience in construction methodology, sequencing, scheduling, and cost estimating for the aquatic

Introduced by

[Commissioner Dan Ryan](#)

Bureau

[Parks & Recreation](#)

Contact

Robin Johnson Craig
Capital Project Manager

✉ Robin.JohnsonCraig@portlandorego

📞 [503-823-4182](tel:503-823-4182)

Requested Agenda Type

Regular

Date and Time Information

Requested Council Date


August 23, 2023

- facility elements. Technical and specialized expertise will be needed to deliver those unique features for this specialized building type.
8. Construction of the Project presents significant technical complexities which may best be addressed by a collaborative effort between the City, design professionals and the Contractor.
 9. The Project will require the input of a highly specialized and qualified contractor during construction in order to meet the project schedule requiring completion by 2029.
 10. An alternative contracting method utilizing a Construction Manager/General Contractor (CM/GC) will allow the Parks Bureau to select the most qualified contractor with the necessary skills and expertise for the Project.
 11. The Parks Bureau proposes using the CM/GC contracting method, which will allow construction input during the design process, constructability reviews that will allow value engineering, early development of a construction phasing plan, assistance in the permitting processes, and improved phasing and scheduling.
 12. The City Council is the Local Contract Review Board may exempt certain public contracts from the competitive bidding requirements of ORS Chapter 279C.
 13. Findings addressing competition, favoritism, operational, budget, financial data, public benefits, value engineering, specialized expertise, public safety, market conditions, technical complexity and funding sources recommended by PP&R were made available and a notice of the public hearing of this Ordinance was published fourteen (14) days in advance of the public hearing.
 14. The City will invite prospective contractors to submit competitive proposals in response to the City's solicitation requirements. The selection committee will select the CM/GC based upon an evaluation of the proposals as required by the solicitation documents. The selection process will be completed under the guidance and direction of Procurement Services.
 15. Based on the Factual Findings, attached as Exhibit A, the exemption of the Project from the competitive bidding requirements of ORS Chapter 279C is:
(i) unlikely to encourage favoritism or to diminish competition for public contracts because the contract will be awarded using a competitive alternative selection process that is supported by the Regional Workforce Equity Agreement which optimizes diverse community participation inclusive of racial and ethnic minorities, women, and disadvantaged enterprises and employees; and (ii) likely to result in substantial cost savings to the City as the CM/GC will be integrated into the design team for value engineering, constructability review, land use review, permitting, and assistance in developing a construction phasing plan. Such early integration will greatly reduce the chances of redesign and change orders.
 16. The current estimate for hard construction costs is up to \$69,900,000 with a Low Confidence Level Rating. Partial SDC Funding of the Project is approved and State of Oregon Lottery Funds have been issued via Bond for Parks reimbursement of project costs. State of Oregon Lottery bonds are set to expire in May 2026.

NOW, THEREFORE, the Council directs:

- A. Council hereby adopts the Factual Findings for Proposed Exemptions from Competitive Bidding, attached as Exhibit A, and on that basis exempts the Project from the competitive low bid requirements of ORS 279C.
- B. The Chief Procurement Officer is authorized to use a competitive solicitation process to select a CM/GC for the Project, and upon selection of a CM/GC, is authorized to execute a contract for CM/GC pre-construction services for the Project, provided that the contract has been approved as to form by the City Attorney.
- C. Upon Council's acceptance of the Chief Procurement Officer's report for recommending the acceptance of the Guaranteed Maximum Price for the Project, the Chief Procurement Officer is authorized to execute a contract for construction of the Project, provided that the contract has been approved as to form by the City Attorney.
- D. The Mayor and City Auditor are authorized to draw and issue checks chargeable to the PP&R Capital Improvement Fund when demand is presented and approved by the proper authorities.
- E. As required by ORS 279C.355 and PCC 5.34.820C, PP&R will prepare and deliver a post project evaluation to the Council on behalf of the Chief Procurement Officer within 30 days of the date the City accepts the project.

Documents and Exhibits

 [Exhibit A \(https://www.portland.gov/sites/default/files/council-documents/2023/2023_08_01_npac-2-cmgc-exemption-exhibit-a-findings-final.doc\)](https://www.portland.gov/sites/default/files/council-documents/2023/2023_08_01_npac-2-cmgc-exemption-exhibit-a-findings-final.doc) 112.5 KB

An ordinance when passed by the Council shall be signed by the Auditor. It shall be carefully filed and preserved in the custody of the Auditor (City Charter Chapter 2 Article 1 Section 2-122)

Passed by Council
August 23, 2023

Auditor of the City of Portland
Simone Rede

Impact Statement

Purpose of Proposed Legislation and Background Information

The purpose of this legislation is to authorize the City to use a Construction Manager/General Contractor (CM/GC) contracting method that would support successful completion of the project in the most efficient and cost-effective manner to achieve PP&R and City goals. This ordinance allows the City to pursue an alternative contracting method. If approval is granted, a separate Request for Proposal (RFP) process will occur to select the most qualified contractor to engage in the design phase of the project as well as construct the improvements identified. One Guaranteed Maximum Price (GMP) will be developed to cover the

complete construction costs of the project and brought to City Council for approval prior to construction activities starting.

The North Portland Aquatic Center Project (Project) will provide North Portland residents increased access to recreational aquatic programming and facilities and has included a focused outreach to underserved communities who have been historically excluded from public pools. Portland Parks & Recreation (PP&R) has projected 70,000 people will be served by the future Aquatic Center -- of them, ~24% are Black people, Indigenous people, or People of Color, and 14% live below the federal poverty line. Currently, this community has an inadequate level of access to aquatic facilities based on PP&R's defined level of service goals -- to provide a full-service indoor Aquatic Center within three miles of every resident. All community users will feel a sense of belonging and ownership of this new facility, regardless of backgrounds, abilities, and lifestyles.

PP&R hopes to provide access and opportunities for young children and communities from diverse backgrounds to learn basic water survival skills and explore additional opportunities offered through an established Aquatics Center. Access to these life skills is a racial equity issue. Black children in the United States drown at a rate three times higher than white children. Many factors contribute to this unacceptable public health outcome, including the accessibility of aquatic services and programming.

The use of the CM/GC contracting method allows unique collaboration between the Contractor and the Design Team during the design phase. Besides the obvious benefits of a better design package especially for the technical aspects, other benefits include better coordination with stakeholders and better sequencing of construction activities to minimize impacts to the neighborhood and adjacent schools, ability to reduce potential schedule delays and intent to reduce escalation risk for project delivery for the North Portland Aquatic Center.

Financial and Budgetary Impacts

The hard costs for construction are estimated to cost in the range of approximately \$54,500,000 (25-meter pool) or \$69,900,000 (50-meter pool). The wide range of cost is largely based on the option for building a larger pool size to serve a greater range of users. The estimates remain at low confidence rating per City of Portland Administrative Rules - Assigning Confidence Ratings to Project Cost Estimates.^[1] This project is partially funded by the System Development Charge (SDC) funds and the State of Oregon Lottery Funds Grant.

The estimated ongoing costs for the Project (including operations and maintenance, programming, and capital major maintenance) will be developed in conjunction with the design and programming plan. Based on similar facilities and best practices, it is expected that ongoing costs will be several million dollars. Those ongoing costs will begin to be incurred upon opening the facility -- targeted at FY 2028-29. This is beyond the window of the current 5-year Parks Local Option Levy (Parks Levy). It is expected that those costs will be borne by a successor resource to the Parks Levy as part of PP&R's Sustainable Future effort.

This legislation will neither generate nor reduce current or future revenue. No current positions will be affected, and no positions will be created, eliminated, or reclassified as a result of this legislation.

[1] Low confidence rating per City of Portland ADM-1.13 - Assigning Confidence Ratings to Project Cost Estimates:

<https://www.portland.gov/policies/administrative/purchasing/adm-113-assigning-confidence-ratings-project-cost-estimates>

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Community Impacts and Community Involvement

The use of a CM/GC contracting method is critical to facilitating this complicated Project with the least amount of disruptions to the general public, business and property owners, and commerce in the project area. This method promotes schedule efficiencies through early Contractor involvement and the incorporation of schedule-saving approaches prior to the completion of the design. The CM/GC method gives the Contractor more time to engage the community to develop an Aquatic Center that reflects community pride and is safe, clean, and accessible for all ages, cultures, and abilities.

Utilizing the CM/GC method allows the City to monitor Contractor outreach and utilization of apprentices, D/M/W/ESB/SDVBE subcontractors and help the City achieve Subcontractor Equity Program objectives for this Project. Also, this alternate contracting method helps to set the City and local economy on a path where more local Contractors have the ability to provide CM/GC services while meeting the qualifications established by the Subcontractor Equity Program. The Regional Workforce Equity Agreement will be a requirement for the Preconstruction Services contract for the Contractor.

100% Renewable Goal

The CM/GC Contractor will work with the Design Team to support and advise on efficient construction approaches and materials to support meeting the City's goal of meeting 100 percent of community-wide energy needs with renewable energy by 2050. The future Aquatic Center will incorporate renewable energy approaches in the design. This action will increase the City's total energy use. The design is targeting to increase overall City renewable energy use.

Budget Office Financial Impact Analysis

This ordinance requests Council approve a variance to the City's codified contracting method in pursuit of the "Construction Manager/General Contractor" —exempting this project from the competitive sealed bidding process the City typically uses. This exemption is allowable under state law provided the Council approves certain findings—namely "no favoritism or diminished competition" and "substantial cost savings." PP&R posits that both of these findings will be actualized in the "Additional Findings" section of Exhibit A —which council must approve to declare the exemption.

Agenda Items

687 Regular Agenda in [August 16, 2023 Council Agenda](https://www.portland.gov/council/agenda/2023/8/16)
(<https://www.portland.gov/council/agenda/2023/8/16>)

Passed to second reading

Passed to second reading August 23, 2023 at 9:30 a.m.

705 Regular Agenda in [August 23, 2023 Council Agenda](https://www.portland.gov/council/agenda/2023/8/23)
(<https://www.portland.gov/council/agenda/2023/8/23>)

Passed

Commissioner Rene Gonzalez Yea

Commissioner Mingus Mapps Yea

Commissioner Carmen Rubio Absent

Commissioner Dan Ryan Yea

Mayor Ted Wheeler Yea