

STREETCAR RELOCATION PROJECT**FACTUAL FINDINGS FOR
PROPOSED EXEMPTION FROM COMPETITIVE BIDDING**

The Portland Bureau of Transportation (“PBOT”) and the City of Portland Procurement Services (“Procurement Services”) recommend that the Portland City Council (“Council”) adopt the following factual findings and take any other necessary action to exempt the Streetcar Relocation Project (the “Project”) from the competitive bidding requirements of ORS Chapter 279C and City Code Title 5.34 and approve the Construction Manager/General Contractor (“CM/GC”) as the alternative contracting process for the selection of a Construction Manager/General Contractor (“Contractor”) for the Project. Capitalized terms used herein shall have the meaning ascribed to them in the Ordinance.

I. BACKGROUND

The Project will provide a double track streetcar segment along SW 4th Avenue and SW Montgomery Street where it is currently single track. This new double track segment will provide improved service in the University District. In addition to the double track segment, the Project will also construct the associated train signals, overhead catenary system, and a streetcar track turn-out.

The total Project cost is estimated at \$3.7 million. PBOT was awarded a ConnectOregon grant by ODOT in the amount of \$1,958,651 for the design and construction of the Project. The Portland Development Commission has \$213,483 the adopted 13/14 budget and the remaining funds will come from general fund dollars and Tax Increment Funds. The Project must be completed by January 2015 to meet the funding requirements of the Connect Oregon grant.

Ordinarily, the City is required to use competitive sealed bidding as the process to award a construction contract for the public improvements contemplated for the proposed Project. Nonetheless, state law permits the City to exempt such contracts if Council is able to approve certain findings justifying an alternative approach. The factual bases to support the required Findings, including the Additional Findings (as hereinafter defined) are set forth below.

II. NO FAVORITISM OR DIMINISHED COMPETITION

ORS 279C.335 (2) requires that Council make certain findings as a part of exempting public contracts or classes of public contracts from competitive bidding. ORS 279C.335 (2) (a) requires Council to make a finding that, “[i]t is unlikely that such an exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts.” This finding is appropriate for the Project and is supported by the following facts.

A Contractor will be selected through a CM/GC form of contracting in lieu of using the traditional design-bid-build (low-bid) competitive sealed bidding process to select a general contractor. The Oregon Public Contracting Coalition Guide to CM/GC Contracting published in February 2002 describes CM/GC as the following:

CM/GC augments the traditional scope of work of the general contractor with that of a construction manager under a single contract with the owner. At an early point in the design phase, the owner, using a competitive selection process, selects a contractor to provide construction management and general contracting services. By joining the project team during design, the CM/GC firm can collaborate with the architect/engineer (A/E) on the development of the design and preparation of the design documents. Once the design has progressed to an acceptable level, the CM/GC firm submits a guaranteed maximum price (GMP) for the project to the owner. After agreement on a GMP is reached, the CM/GC firm undertakes the construction of the facility. The CM/GC firm procures subcontracts with trade contractors using multiple bid packages to construct the project, and manages the construction process on behalf of the owner. General conditions work is typically self-performed by the CM/GC firm and, in some cases, the CM/GC firm may be allowed to self-perform portions of the trade work.

A Request for Proposals (“RFP”) for selecting a Contractor for the Project will be prepared and advertised in Portland’s Daily Journal of Commerce and on Procurement’s website at least three weeks in advance of the deadline set for submitting responses to the RFP. The proposals will be evaluated by a selection committee based on criteria such as experience, technical expertise, key personnel and staffing, diversity program and percentage profit and overhead markup. The selection committee will review and rank the written proposals; hold interviews if necessary; and recommend a Contractor for the CM/GC Contract to Council for award. As a result of the competitive RFP process, the use of an alternative contracting method will be unlikely to encourage favoritism in the awarding of public contracts.

The alternative process can result in even broader participation and greater competition than the traditional bidding process. All qualified General Contractors and Construction Management firms will have an opportunity to compete. These firms include some that might not be willing to face the uncertainties and potential financial risks associated with bidding and contracting for construction under a traditional design-bid-build competitive bid process. Structuring the Project under a CM/GC contract that includes the Contractor in the design phase allows the selected firm to improve constructability, develop phasing and staging plans to efficiently perform the work, and determine effective construction methods. This may make the Project more attractive to qualified firms because of the opportunity to better understand the Project prior to providing the City with a price for the Project and to reduce their risk in undertaking the Project. Therefore, competition will not be diminished, and may even be enhanced by advertising the Project through a CM/GC process.

III. SUBSTANTIAL COST SAVINGS

ORS 279C.335 (2) requires that Council make certain findings as part of exempting public contracts or classes of public contracts from competitive bidding. ORS 279C.335 (2) (b) requires Council to find that “[t]he awarding of public improvement contracts under the exemption will result in substantial cost savings to the public contracting agency.” This finding is appropriate for the Project and is supported by the following facts.

The CM/GC contracting process affords the opportunity for the Contractor to participate during the design phases of the Project, lending its expertise, knowledge, and experience to provide feedback as to whether the Project’s proposed design is feasible within the limited time constraints. Similarly, this allows the Contractor to make value engineering suggestions, that is, suggestions that propose alternative and less expensive ways of achieving the same result. This

can result in more practical, constructible, and economic design solutions. Participation in the design process also enables the Contractor to become more familiar with the Project features and requirements before it prepares its price for the work. This familiarity means that the Contractor may not include cost contingencies that other contractors frequently include in their bids to take account of uncertainties that are not resolvable during the brief bidding period under a traditional design-bid-build competitive bid process.

It has been PBOT's experience that because of the brief bidding period in the traditional design-bid-build process, contractors frequently do not have adequate time to understand the complexities of a project and sometimes this can lead to costly disputes, claims, cost overruns, or worse during construction. The CM/GC contracting process allows the opportunity for the City to be involved in the Contractor's bidding and negotiating cost during the selection of subcontractors and material suppliers, costs that can represent a substantial portion of the construction cost and that are largely masked during the traditional low-bid process.

IV. THE FACTUAL BASES TO SUPPORT THE ADDITIONAL FINDINGS

In order to declare the exemption, Council must approve additional findings in the areas set forth below (the "Additional Findings").

A. Operational, Budgetary, and Financial Data

The Project involves technical complexities and requires specialized expertise for its construction within a very tight timeframe. Construction must be completed by January 2015 to meet the funding requirements of the Connect Oregon grant. Using a CM/GC contracting method instead of the traditional low-bid method of selecting a contractor allows the Contractor to be involved in decision-making during the design process to ensure that the Project as designed can be built in the timeframe required.

The operational, budgetary, and financial limitations of the Project can best be met through the CM/GC contracting process as such alternative process is more likely to result in the best qualified Contractor with specialized expertise in building technically complex projects is more likely to meet the Project's budgetary requirements and provide the best value to the City.

In contrast to the traditional low bid method of selecting a contractor, by using an alternative contracting method a Contractor can be chosen while the design process is underway and be available to participate in cost negotiations, constructability review and value engineering when these efforts are most likely to result in significant cost savings and construction efficiencies.

B. Public Benefits

The CM/GC contracting process will result in the selection of the most qualified Contractor for the uniquely specialized requirements of the Project's construction. Having the Contractor available to the team to participate in cost negotiations, constructability reviews, and value engineering will provide significant value to the Project.

The Contractor will be available to work directly with the City, designers, Portland Streetcar Operations and affected property owners, businesses and residents in fashioning the best construction schedule, phasing, and interim traffic and access strategies. The result will be a construction program with the least impact on adjacent and nearby properties, businesses and residences along the alignment during construction and after completion of the Project.

In contrast the traditional low bid method requires completion of a design before bidding, which precludes contractor participation in cost estimating and negotiations, constructability review, value engineering and decisions on schedule, phasing, and temporary facilities. Therefore, the CM/GM contracting method will lead to the least overall cost to the public for constructing the Project with the lowest financial impact.

C. Value Engineering

The CM/GC contracting process will afford the opportunity to engage the Contractor in value engineering and constructability reviews during the design process, before numerous design decisions have already been made, when value engineering has proven to be most effective. Because of the participation of the Contractor in the design process, there will be a reduction in uncertainties and the likelihood for cost overruns and claims for design modifications, delays, and varied conditions during construction.

In contrast, the traditional low-bid method of contractor selection precludes any feedback or value engineering proposals from the contractor before bidding. When such suggestions are made post-bid, there is usually a time delay in negotiating the effect of those changes on the cost of the project and the City often does not end up with the full financial benefit that value engineering proposals received before the bid provides.

D. Specialized Expertise Required.

The Project has a series of unique construction requirements not normally encountered on public works projects. The Project involves the construction of a drivable concrete track slab with embedded girder rail and specialized rubber insulation for cathodic protection of underground City and private utility lines. Special track work and train signal equipment will be needed where the tracks connects to existing Streetcar tracks at each end of the project. Poles and overhead wires, transformer equipment, vaults and housings and underground conduits must be installed for traction electrification. All construction work will be carried out in the existing roadway where the construction must typically share space with heavy vehicular and pedestrian traffic, and also maintain existing streetcar operations.

The CM/GC contracting process provides the best opportunity for the City to provide additional weight in the selection process to Contractor's with a high degree of specialized expertise necessary for the particular and unique requirements of the Project.

In contrast, the traditional low-bid method of contractor selection can only utilize a prequalification process to ensure that contractors have the minimum qualifications necessary to construct the project, but that process does not allow additional weight to be given in the selection process to contractors who may far exceed the minimum required. Selection of a highly qualified, as opposed to a minimally qualified contractor, is likely to save the City money on this complex Project.

E. Public Safety

The Project will be constructed in public rights-of-way and the Contractor will need to provide safe access for vehicular traffic, pedestrians, and cyclists, as well as allow operation of Portland Streetcar, and public access to businesses and institutions. The Project requires roadway excavated and reconstructed, and trackway and overhead traction electrification system to be

installed. Because the Project is located in the Central Business District, the Contractor will need to develop detailed construction and traffic plans to accommodate all roadway users. In addition, there will be a segment that will require around-the-clock construction activities and the Contractor will need to ensure safe working conditions for all construction workers.

The CM/GC contracting process will enable the City to select a Contractor based on its experience and qualifications for meeting demanding public safety and worker safety requirements while working in a dense urban environment.

In contrast, the traditional low-bid method of contractor selection only permits the City to emphasize safety in its specifications and cannot give additional weight in the selection process to contractors whose track record exceeds standard safety requirements. In fact, the traditional method often does not contemplate safety in the selection process at all because of the price-driven nature of the process.

F. Market Conditions

Numerous subcontractors and suppliers with unique expertise and capabilities will be required to build the specialized features of the Project. Some of these subcontractors and suppliers may be in high demand on other projects, particularly since one or more light rail projects may be concurrently under construction elsewhere.

Because the Contractor will be selected during the design process, the alternative contracting process will allow the City more direct involvement and provide the Contractor with more time than the normal competitive bidding process affords for soliciting bids, negotiating and gaining firm commitments from qualified subcontractors and material suppliers.

In contrast, the traditional low-bid method of contractor selection means that subcontractors are not usually selected until the contractor puts together a bid for the project, which usually occurs immediately prior to the bid. This means a traditional bidder has a much shorter time frame to acquire subcontractors than a contractor selected through a CM/GC process which is acquired much earlier in the design process. As a result, this should give the Contractor selected through the alternative process additional time to put together the most qualified, and most economical, project team.

G. Technical Complexity

Special technical complexities of the Project include the design and construction of the rail-embedded track slab, cathodic rail insulation system, track drainage, traction electrification system, special trackwork and train signal equipment and coordination and/or construction of underground and overhead utilities and equipment. This work must be precisely scheduled in order to ensure the efficient flow of work to meet the project's deadline and minimum disruption to traffic and adjacent properties.

The CM/GC contracting process, through its utilization of evaluation criteria will afford the best opportunity for the City to engage a Contractor that has a high level of expertise in the demanding technical requirements of building and scheduling the Project.

In contrast, the traditional low-bid method of contractor selection can utilize a prequalification process to ensure that a contractor has the minimum qualifications necessary to construct the project, but does not allow additional weight to be given in the selection process to contractors

who may far exceed the minimum required. Selection of a highly qualified, as opposed to a minimally qualified contractor, is likely to save the City money on the Project.

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H. Funding Sources

The \$3.7 million cost of the Project will be funded from three sources; the ConnectOregon grant from ODOT and the Portland Development Commission (budgeted) and general fund dollars. The Project will be built in compliance with City regulations and requirements including MWESB.

The CM/GC selection process will enable the City to select a Contractor that can give assurance that it has experience and expertise in working with local and federal governmental administrative requirements and available to participate in development of the quality assurance, testing and reporting programs that will be established during construction. A maximum construction contract amount within the fixed budget will be negotiated with the selected Contractor.

In contrast, the traditional low-bid method of contractor selection does not permit the City to evaluate and rank a contractor's history in meeting deadlines or working with local and federal administrative requirements.