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300-2024

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Accept Guaranteed Maximum Price of \$1,003,753,656 from MWH-Kiewit JV and amend total contract amount to \$1,290,000,000 for construction of the second and final phase of the Bull Run Filtration Facility Project (Procurement Report - RFP 00001428)

Accepted

April 10, 2024

The Portland Water Bureau provides high-quality drinking water to nearly 1 million people. The Water Bureau strives to provide excellent water every minute of every day to enhance public health and safety and contribute to the economic viability and livability of the Portland metropolitan region.

The Water Bureau is responsible for delivering the Bull Run Filtration Projects (Filtration) to protect public health and comply with federal safe drinking water regulations. The goal of the Bull Run Filtration Facility Project (Filtration Facility) is to design and construct a new water filtration facility to remove *Cryptosporidium* and other potential contaminants from the Bull Run supply. Construction of Filtration is needed for the Water Bureau to meet the compliance agreement with the Oregon Health Authority (OHA) that requires the Water Bureau to begin delivering filtered water to customers by September 30, 2027.

Ordinance No. 189146, passed by Council on August 29, 2018, authorized Procurement Services to use an alternative contracting method to select a Construction Manager/General Contractor (CM/GC) to construct the Filtration Facility. Procurement Services advertised Request for Proposals Number 00001428 on February 28, 2020, for pre-construction services and construction of the Filtration Facility.

On April 23, 2020, three proposals were received that were then reviewed, evaluated, and scored by a five-member evaluation committee made up of Water Bureau representatives. The evaluation committee selected MWH-Kiewit JV as the highest-scoring proposer. Pre-Construction Services Contract Number 30007669 was entered into with MWH-Kiewit JV, effective March 3, 2021, and has a current contract value of \$11,869,777.

Introduced by

[Commissioner Mingus Mapps](#);
[Mayor Ted Wheeler](#)

Bureau

[Water: Management and Finance](#)

Contact

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Design & Construction,
Manager II

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Requested Agenda Type

Time Certain

Date and Time Information

Requested Council Date

April 10, 2024

Requested Start Time

3:00 pm

Time Requested

45 minutes (2 of 3)

The Pre-Construction Services Contract included project partnering; collaborative project design; constructability reviews; development of construction procurement, management, and safety plans; cost estimating; and the development of Guaranteed Maximum Prices (GMPs) for Filtration Facility construction. Pre-construction services are nearing completion as the Filtration Facility moves into construction.

Ordinance No. 191368, presented to Council on June 28, 2023, and passed on July 12, 2023, authorized the Water Bureau to implement the Filtration Facility in two phases with two GMPs and updated the estimated total cost of construction to \$1,069,000,000. The Ordinance also authorized the Chief Procurement Officer to execute a contract for construction of the first phase of the Filtration Facility upon Council's acceptance of the Chief Procurement Officer's report recommending acceptance of GMP1, and authorized the Chief Procurement Officer to amend the contract for construction of the second and final phase of work upon Council's acceptance of the Chief Procurement Officer's report recommending acceptance of GMP2.

On June 28, 2023, the Chief Procurement Officer presented Council with a report recommending the award of a CM/GC contract for construction services to MWH-Kiewit JV for the first phase of construction for the GMP1 of \$286,245,376 (Contract 30008511).

The Chief Procurement Officer recommends the acceptance of the GMP2 for the amount of \$1,003,753,656 for the construction of the second and final phase of work and the amendment of the contract for a total contract amount (GMP1 and GMP2) of \$1,290,000,000.

The Filtration Facility is aligned with the City of Portland Construction Diversity and Inclusion Policy (CDIP) and Regional Workforce Equity Agreement (RWEA), which focus on expanding economic opportunities for Black and Indigenous people, people of color, and women. RWEA centers workforce development and safe/anti-racist workspaces for women and people of color through the City's core values of equity, fiscal responsibility, transparency, communication, collaboration, and anti-racism. RWEA is a collaborative effort between public owners and unions to promote hiring local vendors, suppliers, contractors, and subcontractors, as well as local area workforce, which will return long-term community benefits.

MWH-Kiewit JV's planned COBID participation exceeds the 25 percent goal for Filtration Facility construction, with \$294,000,000 (26 percent) of hard construction costs going to COBID-certified contractors, including 18 percent to minority-owned contractors and 4 percent to women-owned contractors. Of the COBID-certified contractors, 38 percent are African American, 15 percent are Caucasian, 14 percent are still to be awarded, 12 percent are Hispanic, 12 percent are Native American, and 9 percent are Asian Pacific. The City has reviewed the recommended GMP and confirmed that the proposal is consistent with the Procurement Plan.

MWH-Kiewit JV is located in Portland, Oregon. MWH-Kiewit JV has a current City of Portland Business Tax Registration and an Equal Employment Opportunity Certification and is in full compliance with the City's contracting requirements. MWH-Kiewit JV is not certified by the Oregon Certification Office of Business Inclusion and Diversity.

Funds are available for this project under Owner Cost Center W02229.

It is recommended that a Performance Bond and Payment Bond, each at 100 percent of the contract amount, be furnished by the Contractor.

Recommended by:

Kathleen Brenes-Morúa

Interim Chief Procurement Officer

Impact Statement

Purpose of Proposed Legislation and Background Information

The purpose of this legislation is to allow Portland City Council the opportunity to review and accept the Guaranteed Maximum Price (GMP2) of \$1,003,753,656 from MWH-Kiewit JV for the construction of the second and final phase of the Bull Run Filtration Facility Project (Filtration Facility) for a total contract amount (GMP1 and GMP2) of \$1,290,000,000.

The Environmental Protection Agency considers *Cryptosporidium* to be a health risk and issued the Long Term 2 Enhanced Surface Water Treatment Rule to reduce illnesses caused by *Cryptosporidium* and other pathogens in drinking water. In January 2017, *Cryptosporidium* oocysts were found in the Bull Run supply, exceeding what is allowable by these drinking water regulations. To protect public health and comply with these regulations, the City of Portland signed a Bilateral Compliance Agreement with the Oregon Health Authority requiring the filtration facility be in operation by September 30, 2027.

City Resolution No. 37460 directed the Portland Water Bureau to plan, design, and construct the Bull Run Filtration Project (Filtration) to comply with federal and state drinking water regulations. Filtration includes the Filtration Facility planned on 95 acres of City-owned property and the Bull Run Filtration Pipelines Project to connect the facility to the existing water system.

Ordinance No. 189146, passed by Council on August 29, 2018, authorized Procurement Services to use an alternative contracting method to select a Construction Manager/General Contractor (CM/GC) for the Filtration Facility. The Chief Procurement Officer advertised Request for Proposals (RFP) Number 00001428 on February 28, 2020, for pre-construction services and construction of the Filtration Facility.

To meet the Filtration compliance deadline, the Water Bureau determined it is in the City's best interest to implement the Filtration Facility in two phases with two GMPs (GMP1 and GMP2). Ordinance No. 191368, passed by Council on July 12, 2023, authorized the Water Bureau to implement the Filtration Facility in two phases with two GMPs and updated the estimated total cost of construction to \$1,069,000,000.

No revenues will be impacted by this legislation.

This legislation does not change existing City policy.

Financial and Budgetary Impacts

The estimated total for the Filtration Facility CM/GC contract (GMP1 and GMP2) is approximately \$1,290,000,000 including contingency and has a high confidence level as GMP negotiations are complete. This is an increase of \$221,000,000 over the estimated total cost of construction for the facility.

The Filtration Facility is in the Water Bureau's 5-Year Capital Improvement Plan as part of the Treatment Program, with approximately \$78,000,000 available in the revised fiscal year (FY) 2023–24 budget. Approximately \$1,078,000,000 for FY 2024–25 to FY 2028–29 is in the FY 2024–25 requested budget. With the approval of the GMPs, the 10-Year Capital Improvement Plan will be adjusted to offset the additional amount of \$221,000,000. Updates to the 10-Year Capital Improvement Plan will be made in the FY 2024–25 Mayor's Proposed Budget. There is no impact to water retail rates. Funding for the Filtration Facility is from a combination of net proceeds from revenue bond sales, a low-interest Environmental Protection Agency Water Infrastructure Finance and Innovation Act loan, water sales revenue, and other construction fund revenues such as system development charges and interest earnings.

Funds are available in the Water Bureau's Owner Cost Center W02229.

No present or future positions will be created, eliminated, or re-classified as a result of this legislation.

Community Impacts and Community Involvement

The Filtration Facility and related Filtration Pipelines are anticipated to create 4,700 to 7,500 construction jobs, offering opportunities for local businesses and supporting career opportunities in the construction trades.

As part of the pre-construction services, the Water Bureau and MWH-Kiewit JV reached out to dozens of groups in the local contracting community to raise awareness of upcoming work opportunities and encourage equity contractor participation. This included outreach to LatinoBuilt, Oregon Association of Minority Engineers, Constructing Hope, Oregon Tradeswomen, Portland Youth Builders, Professional Business Development Group, and others.

Using the CM/GC method for the Filtration Facility allows the City to monitor use of equity contractors and participation of people of color and women in the workforce to help the City achieve Regional Workforce Equity Agreement (RWEA) and Construction Diversity and Inclusion Policy (CDIP) objectives. It also helps set the City and local economy on a path toward more local contractors having the ability to provide CM/GC services while meeting the requirements established by the RWEA.

The Filtration Facility is one of the City's first RWEA efforts. RWEA is a collaborative effort between public owners and unions to promote hiring local vendors, suppliers, contractors, and subcontractors, as well as local area workforce, which will return long-term community benefits. RWEA centers workforce development and safe/anti-racist workspaces for women and people of color through the City's core values of equity, fiscal responsibility, transparency, communication, collaboration, and anti-racism.

MWH-Kiewit JV's planned COBID participation exceeds the 25 percent goal for Filtration Facility construction, with \$294,000,000 (26 percent) of hard construction costs going to COBID-certified contractors, including 18 percent to minority-owned contractors and 4 percent to women-owned contractors. Of the COBID-certified contractors, 38 percent are African American, 15 percent are Caucasian, 14 percent are still to be awarded, 12 percent are Hispanic, 12 percent are Native American, and 9 percent are Asian Pacific. This is in addition to workforce diversity commitments that set goals for work hours performed by apprentice-level and journey-level people of color and women in the construction trades. MWH-Kiewit JV has been instrumental in outreach efforts and developing respectful workplace training as part of pre-construction services. The City has reviewed the recommended GMP and confirmed that the proposal is consistent with the Procurement Plan.

Three individuals will be invited to testify from OHA and the COBID community, and it is anticipated that community members will sign up to testify given known interest in the project.

The Water Bureau will continue current outreach efforts regarding Filtration, including ongoing communications with customers and the neighboring community about construction milestones and safety.

100% Renewable Goal

This action does not affect the City's total energy use or renewable energy use.

Although the new Filtration Facility is anticipated to increase the City's total energy use, the Filtration project team is working within several sustainability-oriented frameworks, including the Green Building Policy, LEED, and Envision, to reduce energy needs and use greener energy alternatives where possible. Both holistic sustainability opportunities and

specific design and operational opportunities have been identified to support the City's energy-efficiency goals when possible, such as designing the Filtration Facility and Filtration Pipelines to continue gravity operations.

Budget Office Financial Impact Analysis

Brief Context

GMP2 results in a \$300 million increase in FY 2025-26 and FY 2026-27, \$150 million each year.

For the sake of comparing projections, the pre GMP2 numbers will be referenced as the "Requested" and the post-GMP2 numbers will be referenced as the "Proposed." This naming convention is based on what the bureau knew at the time it submitted the FY 2024-25 Requested budget and what they know now as the City enters the FY 2024-25 Mayor's Proposed phase of budget development.

Strategies

The bureau is pursuing several strategies to account for the GMP2 price increase above previous estimates. They are as follows:

1. Pursue a second Water Infrastructure Finance and Innovation Act (WIFIA) loan

The bureau plans to pursue a second low-interest federal WIFIA loan if Council approves the GMP2s, which will fund 49 percent of the increase to the filtration project – roughly \$325-350 million. The bureau has been in contact with WIFIA staff and they have encouraged the bureau to apply for a second loan for the filtration project. The bureau anticipates the application process will be easier since the project has not changed, and the loan would be to help with project cost increases. While these resources are not guaranteed at this time, the bureau appears optimistic they can secure a second low-interest federal WIFIA loan.

The bureau has already received one low-interest (1.89%) federal WIFIA loan for \$727 million. These loans help reduce the costs for ratepayers to build the treatment facility, saving Portland at least \$247 million in repayment costs.

2. Rebalance the Capital Investment Plan (CIP)

Bureaus are required to provide five-year CIP to CBO and to the public. Because of the magnitude of rising costs related to GMP2, part of the bureau's strategy to mitigate its impact to their CIP is by rebalancing their CIP at the ten-year level.

The bureau has updated their 10-year CIP since getting GMP2. At the time of the FY 2024-25 Requested Budget, the 10-year CIP was \$2.43 billion dollars. As of March 13th, the 10-year CIP has been raised to \$2.58 billion.

After taking the second WIFIA loan into account, the bureau plans to delay work related to upgrading their Distribution Main system portfolio and slow down implementation efforts related to the Seismic Plan Improvements portfolio to offset the remaining \$150 million increase across FY 2025-26 and FY 2026-27.

- Distribution Mains Project: The bureau planned to spend \$261.2 million over the Requested 10-year CIP and now plans to spend \$217.2 million over the Proposed 10-year CIP.
- Seismic Plan Improvements Project: The bureau planned to spend \$150 million over the Requested 10-year CIP and now plans to spend \$28.8 million over the Proposed 10-year CIP.
- In total, the Distribution portfolio planned to spend \$558.5 million over the Requested 10-year CIP and now plans to spend \$408 million over the Proposed 10-year CIP, a \$150.5 million reduction.

Delaying these projects does not affect water system operation and the system will continue to be maintained, though the tradeoffs to meet regulatory compliance compared to delay seismic plan improvements brings inherent risk. CBO notes that customer rates would notably increase above what is previously forecasted (see below) if the bureau did not decide to reprioritize and realign its CIP as described above.

3. Rate Stabilization Account

The bureau has a Rate Stabilization Account (RSA) within the Water Operating Fund to smooth retail rate increases over the financial planning period. This account is one of the bureau's key tools to meet its financial planning objectives which includes maintaining financial stability and predictability for itself and the public. It is worth noting that the bureau planned to draw from the RSA to mitigate the cost of the filtration project before GMP2 was finalized.

The bureau has plans to make transfers to the Water Fund as well as make transfers from the RSA over the next ten years. Factoring for these adjustments over ten years, the RSA is projected to have an ending balance that is \$51.8 million lower in FY 2033-34 than previously planned. The ending balance for the RSA was projected to be \$216.4 million in the Requested and is now estimated to be \$164.6 million in the Proposed. Further draws on the RSA are possible, but not advisable given that its use as stated keeps the bureau within its forecasted rate increases. The RSA helps demonstrate to creditors that the bureau has sufficient liquidity to maintain a strong credit rating and ensure debt service coverage meets planning standards. Further the RSA is an available reserve to address unforeseen requirements. CBO affirms that mitigating the increased expenses associated with GMP2 with the RSA is an appropriate and justified use of the account.

Similar Projects

The bureau has done research to compare initial cost estimates versus the eventual GMP with other municipalities embarking on similar projects,

though scale varies. The bureau has looked at projects to expand or upgrade water and waste water infrastructure in California, Florida, and Minnesota and have seen an average increase of 44% between initial cost estimates and their respective GMP arrangements. This indicates that market conditions have impacted projects across the country, including some local comparisons. The cost estimates for this project were developed and scoped across multiple fiscal years, so the gap between cost estimates and the GMP are not surprising given the current economic and labor construction environment.

Affordability

The bureau is pursuing a second WIFIA loan and realigning its CIP because it intends to keep rates within the forecast of future rate increases provided to Council each year. Not only is the bureau required to have a five-year CIP, but they are also required to project future year rate-increases for customers that balances their operating and capital needs. Below is a table of the bureau's projected rate over the next five years – unlike the previous analysis where the bureau has made changes between the Requested and Proposed, the bureau is **not** planning on revising forecasted annual rate increases as a result of GMP2.

Fiscal Year	Rate Increase
FY 2024-25	7.9%
FY 2025-26	8.1%
FY 2026-27	8.1%
FY 2027-28	8.1%
FY 2028-29	8.1%

City Council is responsible for setting water rates and has historically been willing to support rate increases, which helps the bureau make longer-term financial plans. These increases inform the bureau's ability to balance their operating expenses and their CIP.

Assuming no unknown increases to operating costs and assuming actual rate increases is consistent with the rate forecast, the bureau plans to increase rates annually by 8.1% through FY 2030. Afterwards, the bureau projects an annual rate increase of 4.5% after FY 2030.

Finally, the bureau remains committed to its its robust suite of affordability programs to assist low-income customers in paying their bills. There are no planned reductions to affordability programs as a result of the GMP2 price increase.

Relative Risks

CBO notes that the cost of the project can still increase even after receiving and approving a Guaranteed Maximum Price. Change orders, which are common in large construction projects, are possible. Change orders are a written amendment to an existing contract after the effective date that alters the work, the contract sum, or the contract time. These can arise for many reasons, including unforeseen challenges related to the work site, or rescope needs from the bureau. Per best practice, the bureau has \$103.8 million set aside in contingency for the filtration project to cover these costs.

Overall, CBO is supportive of the bureau moving forward with the revised filtration project costs and believes the bureau has taken the right steps to 1) maintain their projected annual rate increase forecast 2) minimize financial risk and 3) to ensure the bureau's core operations continue despite realignment of its CIP.

Agenda Items

300 Time Certain in [April 10-11, 2024 Council Agenda](https://www.portland.gov/council/agenda/2024/4/10)
(<https://www.portland.gov/council/agenda/2024/4/10>)

Accepted - Prepare Contract

Motion to accept the report: Moved by Mapps and seconded by Wheeler.

Commissioner Dan Ryan Yea

Commissioner Rene Gonzalez Yea

Commissioner Mingus Mapps Yea

Commissioner Carmen Rubio Yea

Mayor Ted Wheeler Yea