



## COUNCIL RESOLUTION No. 69-2022

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ACTING AS THE LOCAL CONTRACT REVIEW BOARD, ADOPTING FINDINGS TO ALLOW ALTERNATIVE CONTRACTING FOR THE NEW CITY HALL PROJECT.

WHEREAS the city adopted Public Contracting Rules (PCRs) by Resolution 52-2022 to be in effect as of June 30, 2022, and

WHEREAS the construction manager/general contractor (CM/GC) form of alternative contracting is allowed per PCR 10.105.A, and


WHEREAS the use of a CM/GC procurement for the new city hall project complies with PCR 10.105.A by allowing the city to select a contractor based on qualifications and expertise beyond normal construction work, and

WHEREAS the use of a CM/GC procurement for the new city hall project requires the inclusion of equity criteria in its solicitation and promotes contracting opportunities to minority-owned, women-owned, service-disabled, veteran-owned, and emerging small businesses.

**Now, Therefore, be it Resolved** by the City Council of the City of Milwaukie, Oregon, acting as the local contract review board for the City of Milwaukie, that the Findings in the attached Exhibit A are hereby adopted pursuant to the authority granted to the board by Milwaukie Municipal Code (MMC) Chapter 3.05.030, to allow the use of the construction manager/general contractor alternative contracting method for the new city hall project.

Introduced and adopted by the City Council on **October 18, 2022**.

This resolution is effective immediately



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Mark F. Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:



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Scott S. Stauffer, City Recorder



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Justin D. Gericke, City Attorney

## EXHIBIT A

### FINDINGS IN SUPPORT OF ALTERNATIVE CONTRACTING METHOD FOR THE MILWAUKIE CITY HALL PROJECT

#### Introduction

Use of Alternative Contracting methods, such as Construction Manager/General Contractor (CM/GC), is made possible under ORS Chapter 279C and the city's adopted Public Contracting Rules (PCR), which permits certain contracts or classes of contracts to be exempt from competitive public bidding under strict procedural safeguards. Like other alternative contracting methods, CM/GC has significantly different legal requirements than a typical design-bid-build project delivery method.

Pursuant to ORS 279C.335 and PCR 10.110, a local contract review board may exempt specific contracts from traditional, competitive bidding by showing that an alternative contracting process is unlikely to encourage favoritism or diminish competition and will result in cost savings and other substantial benefits to the public agency. PCR 10.110.D provides for public notice and opportunity for public comment on draft findings in favor of an exemption before final adoption.

Under ORS 279C.330, "findings" means the justification for a contracting agency conclusion that includes, but is not limited to, information regarding:

- Operational, budget, and financial data;
- Public benefits;
- Value engineering;
- Specialized expertise required;
- Public safety;
- Market conditions;
- Technical complexity; and
- Funding sources.

#### Findings

##### Operational, Budget, and Financial Data

In April 2019, the city was presented with the opportunity to purchase the building located at 10501 SE Main Street. Staff explored the opportunity in response to the city's documented need for additional workspace and need to consolidate public facing operations to best serve the public.

The project includes the following major elements and goals:

- Consolidated Front Counter Design and Operations
- Council / Municipal Court Chambers
- Creation of Public Spaces / Accessibility: community room, wayfinding, and inclusive design

CM/GC provides opportunities for cost saving in a variety of ways. The inherent flexibility and openness of the process allows the City to more easily make appropriate changes as necessary to meet the project budget.

The firm Guaranteed Maximum Price (GMP) contract amount to be negotiated includes the expected cost to construct the project, the CM/GC firm's fee, and a contingency amount that the CM/GC believes should be available to cover changes to the proposed scope.

### **Public Benefit**

The project will be built with a qualified contractor that has experience with public tenant improvement projects. City staff have worked with design consultants, and conducted extensive stakeholder outreach, to design improvements that will make the new city hall accessible and functional for Milwaukie staff and customers.

### **Value Engineering**

The CM/GC process provides many benefits and opportunities for cost savings and schedule, a process that will be necessary to achieve the desired improvements within the limits imposed by available funding and timeline. Accurate costs for build alternatives provided by the CM/GC throughout the constructability reviews will aid the project and allow the City to make an informed cost-benefit tradeoff. The CM/GC will evaluate the design drawings developed by Bainbridge to make recommendations to the Project Team regarding which elements can be constructed and enhanced to provide the greatest value to the city. The city must vacate the current city hall (address) by October 1, 2023 to facilitate new ownership and redevelopment of the site. Use of CM/GC will help the city ensure that we do not jeopardize our relocation timeline thereby creating challenges for a critical redevelopment project elsewhere on Main St.

The CM/GC process also requires the city to award at least 20% of the total score towards equity criteria, increasing the contracting opportunities and promoting economic growth to disadvantaged businesses. A portion of the 20% will be awarded to proposers that are certified with the State of Oregon Certification Office for Business Inclusion and Diversity (COBID), while the remaining equity score may be based on (but is not limited to) whether proposers award or attempt to award subcontracts to COBID-certified businesses or commit to a certain percentage of materials/labor be given to COBID-certified businesses through subcontracts.

All of these beneficial actions by the CM/GC process will improve design, expedite construction, eliminate potential for costly change orders, and encourage utilization of disadvantaged businesses. The benefits of value engineering are not available with the low bid process.

### **Specialized Expertise Required**

Integrating new systems into older building systems, constructing special purpose public meeting rooms, and constructing a new city council chambers that functions well for hybrid meetings (i.e., both in-person and virtual happening in the same meeting) is essential to a successful project. The general contractor must be able to work in concert with specialized audio visual and acoustic engineers to ensure that council chambers will function well for many years into the future despite the ever-changing landscape of technology.

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 City will benefit by acquiring a CM/GC, that has established experience and specialized expertise to manage this project. A low bid process does not provide an opportunity to obtain the most qualified contractor with the specialized expertise needed for the project. In addition, the contractor will be able to provide expertise on building materials, availability and cost to allow city staff to make value engineering decisions.

### **Public Safety**

The Project will provide for safe public access and compliance with ADA requirements. All work during the project will be done in accordance with Oregon Occupational Safety and Health Administration (OR-OSHA) safety regulations. The CM/GC selected will be highly qualified and capable to show evidence of construction safety practices that are at the highest level of integrity.

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, and inclusive design / ADA compliance, can be determined as part of the City's contractor selection process. This determination is not available under the low bid process.

### **Market Conditions**

The CM/GC contracting process is a modern construction delivery method used by both public and private organizations. 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.

Using the CM/GC process will allow trades and vendors to become involved earlier in the process. The current market for construction services is becoming increasingly tight with substantial increases in material and labor costs for public and private construction projects. By allowing the involvement of trades earlier in the process, the CM/GC will be able to acquire and involve higher quality subcontractors, which will lead to higher quality product for the City and its residents. Regardless, the CM/GC will be required to bid the major subcontracts for the project. These benefits are not available under the low bid process.

### **Technical Complexity**

The project has significant technical complexities that will be best addressed through a team approach, with the CM/GC working with the City and design consultant to solve specific challenges identified during the pre-construction phase. The project is technically complex due to the extensive alternate list which will define the final scope and use of existing materials, furniture and technology on site. This creates opportunities for cost savings but complicates finalizing design, budget, schedule, and permitting due to the number of alternates.

The CM/GC process enables the City to competitively select a prime contractor who has the necessary competence to address the technical complexities of this project and provide quality workmanship, dependable performance, fair and reasonable pricing, and efficient management as Project Team member. Under a low bid process, the technical competence of the contractor is difficult to evaluate.

### **Funding Sources**

Funding for this project will come from the 2023 to 2025 Biennium Budget adopted by City Council on add date 2022. The CM/GC process, with its negotiated contract price, will provide the necessary predictability.

The CM/GC method of contracting provides the greatest cost controls for limited budgets and therefore benefits the City. The team approach, the schedule, the value analysis, and constructability reviews provide the best and most 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.

### **Summary**

After careful consideration, the City has found the Alternative Contracting Method CM/GC more appropriate than a traditional low bid process to meet the overall project objectives for the New City Hall project. Upon approval of the alternative contracting method, the city plans to release the formal solicitation on or near October 19, 2022.