COUNCIL REPORT

TO: Kent Studebaker, Mayor
Members of the City Council

FROM: Anthony Hooper, Support Services Supervisor
Public Works Department

SUBJECT: Public Hearing to Authorize the Use of the Construction Manager/General Contractor (CM/GC) Method of Contracting for the Operations Center Project

DATE: May 10, 2015

ACTION

Adopt Resolution 15-22, authorizing a special procurement for the use of the Construction Manager/General Contractor (CM/GC) method of contracting in lieu of competitive bidding of construction contracts for the Operations Center Project.

INTRODUCTION/BACKGROUND

A public hearing notice was published in the Daily Journal of Commerce on May 4. The notice also let the public know that the draft Findings of Fact document was available.

What are "Findings of Fact?"

In order to contract with a construction contractor in an alternative form from traditional design-bid-build, the City must state reasons why certain criteria under state law and local contracting rules are met. These are called the Findings of Fact and require a public notice period and hearing. The hearing allows the City Council to seek feedback from the public as to whether the draft Findings support the alternative contracting process.

What is CM/GC?

The CM/GC contracting method uses an integrated "Team" approach applying modern management techniques to the planning, design, and construction of a project in order to control time and cost, and to assure quality for the project owner. The "Team" consists of the City/Owner's Representative, an Architectural and Engineering Group (A&E Group) retained by the City, and the Construction Manager/General Contractor Group (CM/GC Group), each of whom is selected through a request for proposals process. The CM/GC method includes both pre-construction and construction phase services. The traditional linear approach to managing public projects uses either the design-bid-build (low bid or hard-bid) or design-build processes.

These traditional systems work very well on conventional projects that do not require complex, innovative approaches to the design and construction phases of the projects. There are certain types of projects that require a unique approach to construction management; projects that are better managed in a non-linear approach. These types of projects can be identified by the following criteria:

- Innovative funding scenarios, where multiple stakeholders may dictate final project criteria, land sales, and cash flow needs.
- Unknown land use and permitting with the conditions imposed thereof.
- Complex construction phase, where the actual contractors timely input is invaluable
- Projects where limiting budgets threaten the delivery of the project and where CM/GC alternatives can help to contain costs.
- Other projects where construction input is required during early phases of project design.

Additional differences are outlined in Table 1 below.

Table 1: Contracting Method Comparison

	CM/GC		Design-Bid-Build (Hard Bid)	
1	Collabortive partnering philosophy	+	Adversarial contract delivery	-
2	Team Building: Integrated Project Delivery	+	Contentious	-
3	Constructability: Highest Quality Design, Construct	+	Plans and Specs: Minimum Quality	-
4	Guaranteed Maximum Price	+	Guarenteed Minimum Price: Higher risk for c/o's and claims	-
5	Budget mgt. and Change control	+	Claims management / Litigation	-
6	Schedule control / adherence strong mgt. tools	+	Schedule delays claims: Higher risk for delays	-
7	Scope Management and Value Engineering	+	Construct per plans & specs: Scope creep: no bgt. Controls	-
8	Shared Risk: Collaborative and managed	+	Risk shift to Owner/ claims and litigation	-
9	Contingency: Shared management	+	Owner Controlled: Manage claims for delays and scope creep	-
10	VE and Cost Savings: Benefit to owner	+	Plan spec: Cost savings & VE: benefit Contractor	-
11	Managed Bidding and sub procurement	+	Low bid: no controls over contractor selection	-
12	Scope gap coverage of design phase	+	Scope plans and Specs: Not on the documents: C/O or claim	-
13	Site logistic planning and Execution	+	No control of work plan execution, Means & Methods	-
14	Comprehensive planning w/ A/E team	+	No precon support or planning	-
15	Support w/ Agencies: permitting: AHJ	+	minimum contract req. agency or AHJ support coordination	-
16	Comprehensive management oversight	+	Minimum staff required to execute the work	-
17	Cost control managed approach as a team	+	Adversarial contract delivery w/claims for changes	-
18	Time Savings and schedule innovation	+	Schedule delays and extensions: Time creep	-
19	Dispute Resolution: Partnering approach	+	mediation and litigation: Contentious	-
20	Liability: CM/GC at risk, but collaborative	+	Contractor risk: Higher risk of litigation for claims	-
21	Fees: Cost Plus Not to Exceed price: Open book	+	Lump Sum Bid: Low responsive & responsible bid: closed book	-
22	Flexibility in contract adjustments, scope	+	Rigid requirements for increases in time and Cost	-
23	Does not require airtight design	+	Requires air tight design	-
24	Intent of design documents	+	Only what is listed on design documents	-

Guaranteed Maximum Price (GMP)

The CM/GC method of contracting will allow the City to provide cost containment since this process allows for a Guaranteed Maximum Price (GMP) to be negotiated before construction. The GMP allows for a greater certainty of costs than in the traditional design-bid-build method by establishing lump sums prior to construction and establishing an overall cost ceiling for the CM/GC group to deliver the entire scope of the construction project. The GMP ultimately shifts risk from the City to the Contractor. With a GMP, only the City can cause a change order by adding something to the project, and change orders will come from a contingency that will be part of the Guaranteed Maximum Price. If the actual cost of the construction work is higher than the GMP, the contractor must bear the additional cost. If the cost is lower than the GMP, the savings go to the City.

DISCUSSION

Why is the CM/GC Process the Right Choice?

The Operations Center Project lends itself perfectly to the CM/GC method of contracting for the following reasons:

- **Complexity.** The project requires that construction is completed in stages to allow staff to continue to operate out of the existing facility. The team-based approach of CM/GC allows for greater coordination between the Architectural and Engineering team, the Owner's Representative and City staff team, and the Construction Manager/General Contractor Team because the process necessitates that all of these teams work together.

- **Budget.** Staff and Council have made it a priority for the project to not exceed $13 million. Recently, the $13 million budget was confirmed by the City's Owner's Representative firm, Day CPM, through their own independent analysis. The budget estimate is reliant on the CM/GC process being approved because this alternative process will save the City money as shown in the Findings of Fact. It is worth noting that there is a funding gap of $2.9 million that will need to be allocated during the FY 2016-17 budget process.

- **Schedule.** The CM/GC method will allow construction to be completed faster due to parallel and coordinated work between the A/E firm and the CM/GC firm. Currently, construction is expected to begin in the summer of 2016 and the building is anticipated to be ready to be moved into during the early months of 2017. The last stage is to demolish the existing old building, finish hardscaping and landscaping, and construct a vehicle barn, with this part of the project to be completed by the late summer of 2017. If CM/GC is not used, the traditional design-bid-build process would necessitate that the City push the schedule back.

There are many more reasons why the CM/GC method is a better choice for the City than the traditional design-bid-build method, as discussed in great detail in the attached Findings of Fact.

ALTERNATIVES & FISCAL IMPACT

The decision to authorize the CM/GC process does not have an immediate fiscal impact; however, the CM/GC method will save the City money as shown in the Findings of Fact.

RECOMMENDATION

Adopt Resolution 15-22 authorizing the use of the CM/GC procurement method for the Operations Center project.

ATTACHMENTS

1. Resolution 15-22
2. Findings of Fact

RESOLUTION NO. 15-22

A RESOLUTION AUTHORIZING A SPECIAL PROCUREMENT USING THE CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC) METHOD OF CONTRACTING IN LIEU OF COMPETITIVE BIDDING FOR THE CONSTRUCTION CONTRACT FOR AN OPERATIONS CENTER FOR THE LAKE OSWEGO PUBLIC WORKS DEPARTMENT

WHEREAS, the City Council of the City of Lake Oswego acts as the local contract review board for the City, and in that capacity has authority to exempt certain contracts from the competitive bidding requirements of ORS Chapter 279C; and

WHEREAS, ORS 279C.335(2) provides a process for exempting certain contracts from competitive bidding and authorizes the selection of a contractor through the request for proposal ("RFP") Construction Manager / General Contractor (CM/GC) method of solicitation and construction as an alternative to traditional competitive bidding, pursuant to Lake Oswego Public Contract Rule 103-0690; and

WHEREAS, the findings ("Findings") in Exhibit A to this Resolution address the criteria of ORS 279C.335(2):

(a) The exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts; and

(b) Awarding a public improvement contract under the exemption will likely result in substantial cost savings due to competition, operational, budget and financial data, public benefits, value engineering, specialized expertise required, market conditions, and technical complexity; and

WHEREAS, the draft Findings were made available to the public 14 days before the public hearing on this Resolution; and

WHEREAS, the City Council determines that the City of Lake Oswego Operations Center should be constructed by the CM/GC method of contracting.

NOW THEREFORE, IT IS HEREBY RESOLVED AS FOLLOWS;

1. The City Council adopts the Findings in Exhibit A to this Resolution.

2. Based upon the Findings, the City Council concludes that the exemption of the construction contract from competitive bidding, and the use of the alternative request for proposal (RFP) CM/GC method of contracting, will promote competition, will not encourage favoritism, and are likely to result in substantial cost savings to the City.

3. The contract for construction of the City of Lake Oswego's New Operations Center by a

Construction Manager/General Contractor for a Guaranteed Maximum Price is exempted from competitive bidding, and the contractor shall be selected by the RFP CM/CG method in accordance with the City's public contracting rules and the process described in the Findings.

4. This Resolution shall take effect upon adoption.

ADOPTED this 19th day of May, 2015, by the City of Lake Oswego City Council.

AYES:

NOES:

ABSTAIN:

EXCUSED:

_____
Kent Studebaker, Mayor

ATTEST:

_____
Anne-Marie Simpson, City Recorder

APPROVED AS TO FORM:

_____
David Powell, City Attorney

FINDINGS OF FACT AUTHORIZING A SPECIAL PROCUREMENT FOR THE USE OF THE CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC) METHOD OF CONTRACTING IN LIEU OF COMPETITIVE BIDDING FOR THE CONSTRUCTION CONTRACT FOR AN OPERATIONS CENTER FOR THE CITY OF LAKE OSWEGO PUBLIC WORKS DEPARTMENT (MAY 2015).

1. General

ORS 279C.335(2), ORS 279C.337, OAR 137-49-0620, OAR 137-49-0640, and OAR 137-49-0690, and the Lake Oswego Public Contract Rules 103-0600, -0620, and -0690 permit the local contract review board to exempt contracts from competitive bidding requirements upon approval of findings of fact showing that an alternative contracting process is unlikely to encourage favoritism or diminish competition and that the process will result in cost savings to the City. The City of Lake Oswego City Council acts as the Local Contract Review Board ("LCRB") for the City.

ORS 279C.337, OAR 137-49-0690, and Lake Oswego Public Contract Rule 103-0690 describe the Construction Manager / General Contractor (CM/GC) method of solicitation and construction as an alternative to traditional competitive bidding. The CM/GC approach is appropriate for construction projects that would benefit from a collaborative team approach to achieve time savings and cost savings, and to address technical complexities. The CM/GC process is appropriate when needed to address issues such as operations of the facility during construction, public safety, delivery of an early budget or Guaranteed Maximum Price, and projects requiring complex phasing or highly coordinated scheduling.

ORS 279C.330 defines "Findings" and identifies specific information to be provided as a part of the contracting City justification. Under ORS 279C.335 (5) a public hearing must be held before the findings are adopted, allowing an opportunity for interested parties to comment on the draft findings.

PURPOSE OF THESE FINDINGS: The City of Lake Oswego City Council has held a public hearing as required by ORS 279C. 335 and makes the following findings with respect to the issue of whether the construction contract for the new Public Works Operations Center ("Project"), as defined herein, should be exempt from competitive bidding, by the use of City the CM/GC method of alternative contracting. The Findings of Facts apply to the CM/GC method of public improvement projects described below, in accordance with ORS 279C.335 (2).

2. Background

The City of Lake Oswego's current Public Works Operations Center is aged and has been found to be cost prohibitive to maintain. The City has also outgrown the current antiquated operations facilities. It is in need of replacement. The City desires to construct new facilities at the existing Public Work's Operations Center site.

The City is in the process of procuring a design team to better serve the functional design needs of the City.

The project to replace the Operations Center includes but is not limited to strategic planning, complicated scheduling, and critical coordination of construction integrated with necessary safety measures. This project will be at a higher risk and have a high level of technical complexity due to constructing new facilities while still maintaining day-to-day operations, will be governed by significant schedule constraints, will require complex phasing, and will contain budget limitations that require close monitoring of the project budget. Therefore, it becomes critical to maintain both schedule and budget of this project while maintaining the essential facility operations.

In consideration of these facts, an alternate method of construction other than design – bid – build should be considered for this public improvement. The following findings support an exemption from competitive bidding and support the use of the Construction Manager/General Contractor method of construction contracting.

Conceptual plans have been developed based on the input of the various stakeholders. The proposed facility improvements include removal and demolition of existing structures including the current office / motor pool building, construction of a new office and motor pool/shop building, new stormwater decant facility, new heated vehicle storage building, additional covered vehicle storage, police evidence/parks storage building, overall site development, storm water management, and landscaping.

As the design progresses, the following goals will continue to guide decision making:

- The facility will support the functional requirements of the City of Lake Oswego's Operations Division of the Public Works Department and Parks Maintenance Division of the Parks and Recreation Department.
- The facility will be durable and economical to construct, operate, and maintain.
- The facility will provide an appropriate working environment for its occupants.
- The facility will provide improved safety and working conditions.
- The facility will accommodate reasonable projections of future growth.

FINDINGS OF FACT

SUMMARY FINDINGS

Use of the CM/GC process for the new Public Works Operations Center Project complies with the criteria outlined in ORS 279C.335 (2):

1. It is unlikely the exemption will encourage favoritism or substantially diminish competition. The selection process will be fair and open to all interested proposers as established within the findings below.

2. The exemption will result in cost savings to the City. The City has found several areas in which cost savings will be achieved. Also, value will be added to the Project that could not otherwise be obtained.

SPECIFIC FINDINGS which substantiate the summary findings are as follows:

1. The CM/GC contractor will be selected through a competitive process in accordance with the Request for Proposal (RFP) selection process. Therefore, it is unlikely that the awarding of the construction contract for the Project will encourage favoritism or substantially diminish competition. This finding is supported by the following:

A. SOLICITATION PROCESS: Pursuant to ORS 279C.360, the CM/GC solicitation will be advertised at least once in the Daily Journal of Commerce, and in as many additional publications as the City may determine, including the City of Lake Oswego website.

B. FULL DISCLOSURE: To ensure full disclosure of all information, the Request for Proposals solicitation package will include:

1. Detailed Description of the Project
2. Contractual Terms and Conditions
3. Evaluation Criteria, including General Conditions.
4. Role of Evaluation Committee
5. Selection Process
6. Provisions for Comments
7. Complaint Process and Remedies Available

C. COMPETITION: As outlined below, the City will follow processes that maintain competition in the procurement of a CM/GC Contractor.

1. The City anticipates that competition for this contract will be similar to that experienced in other CM/GC projects of this type. The competition will be open to all qualifying proposers.

2. The City anticipates communicating with the construction contracting community through the Request for Proposal GM/GC.

3. The solicitation and evaluation process will be open and impartial. Selection will be made on the basis of final proposal scores derived from price and other components, which expand the ground of competition beyond price alone to include experience, quality, innovation factors, etc.

4. The competitive process used to award subcontracts for all competitively-bid construction work will be specified in the CM/GC contract and will be monitored by the City. The City will designate in the CM/GC contract the percentage of construction work that must be subcontracted.

D. SELECTION PROCESS: Other highlights of the selection process will include:

1. A non-mandatory pre-proposal conference will be announced and held to inform potential proposers of the Project. This conference will be open to all interested

parties. During this pre-proposal conference, as well as any time prior to ten (10) days before the close of the solicitation, interested parties will be able to ask questions, request clarifications and suggest changes in the solicitation documents if such parties believe that the terms and conditions of the solicitation are unclear, inconsistent with industry standards, or unfair and unnecessarily restrictive of competition.

2. The evaluation process will determine whether each proposer and its proposal are qualified and responsive to the minimum requirements of the RFP, and will weigh the responses relative to the criteria. The following process will be used:

   - Proposers will be evaluated for compliance with the minimum qualifications for selection. Qualified Proposers' Proposals will be evaluated for completeness and compliance with the requirements of the RFP. Those proposals that are materially incomplete or non-responsive will be rejected.

   - Proposals will be independently scored by the voting members of the Evaluation Committee. Scores will then be combined and assigned to the proposals.

   - The Evaluation Committee will convene to select the highest-scoring proposers (the Competitive Range) for formal interviews.

   - Competing proposers will be notified in writing of exclusion of the Proposer from the Competitive Range, and excluded Proposers will be given seven (7) calendar days after receipt of the notice to review the RFP file and evaluation report. Any questions, concerns, or protests about the selection process for selection of the Competitive Range will be subject to the requirements of the OAR 125-049-0450, must be in writing, and must be delivered to the City of Lake Oswego Public Works Director or designee within seven (7) calendar days after receipt of the selection notice. No protest of the selection of the Competitive Range will be considered after this time period.

   - The Evaluation Committee will conduct the interviews.

   - The Evaluation Committee will use the interview to confirm the Evaluation Committee's understanding of the proposal, and the processes and procedures that will be used by the Proposer to construct the Operation Center in an efficient, cost-effective, and timely manner. Based upon the revised scoring, the Evaluation Committee will rank the proposers, and provide an award recommendation.

   - The City of Lake Oswego Public Works Director or designee will negotiate a contract with the top-ranked firm. If an agreement cannot be reached, the City will have the option to terminate negotiations with that proposer, and then negotiate an agreement with the second-ranked firm, and so forth.

- Proposers will be notified in writing of the selected proposer and will be given seven (7) calendar days after receipt of the notice to review the RFP file and evaluation report. Any questions, concerns, or protests about the selection process will be subject to the requirements of OAR 125-049-0450, must be in writing, and must be delivered to the City of Lake Oswego Public Works Director or designee within seven (7) calendar days after receipt of the selection notice. No protest of the award selection will be considered after this time period.

3. The CM/GC contract achieved through this process will require the CM/GC to use an open, competitive selection process to bid all work to be performed by subcontractors.

2. Awarding the construction contract for the Project using the CM/GC method will likely result in cost savings to the City. This finding is supported by the following information required by ORS 279C.335 (2) (b) and ORS 279C.330.

A. OPERATIONAL, BUDGET, FINANCIAL DATA

1. BUDGET: The City has a fixed budget available for the Project that cannot be exceeded. The completion date cannot be exceeded. Early reliable pricing provided by the CM/GC contractor during the design phase will reduce the potential for time delays due to later discovery of higher-than-anticipated costs and consequent changes of direction. The CM/GC alternative contracting procedures will allow the City to work with the selected CM/GC contractor to use value engineering to keep the Project within the budget.

2. LONG TERM COSTS: The Project will require expertise regarding the constructability and long-term cost/benefit analysis of innovative design. That knowledge is best obtained directly from the construction industry. Many decisions will be required during the design process that call for immediate feedback on constructability and pricing. Under the traditional design-bid-build process, there is a high risk of increased change orders and schedule impacts for a project of this size and complexity. Since there are significant costs associated with delay and the completion date cannot be exceeded, time is of the essence. The CM/GC process will assist in providing a scope of work and constructible design that best meet the requirements of the Project with significantly lower risk to the project costs and time for construction. Involving the CM/GC during design will allow project risks to be addressed early. Teamwork between the City, the design consultant, and the construction contractor (CM/GC) will minimize those risks.

3. FEWER CHANGE ORDERS: When the CM/GC participates in the design process, fewer change orders occur during project construction. This is due to the CM/GC's better understanding of the owner's needs and the architect's design intent. As a result, the project is more likely to be completed on time and within budget. In addition, fewer change orders reduce the administrative costs of

project management for both the City and the contractor.

4. SAVINGS: If actual costs are less than the GMP, the entire savings will be realized by the City.

B. PUBLIC BENEFITS

1. TIME SAVINGS: The CM/GC method allows construction work to commence relatively rapidly on some portions of the work while design continues on the remaining portions. This will shorten the duration of the construction and allow completion of the project by the due date. Use of a CM/GC in conjunction with the team approach will result in a better coordinated project and speedy completion, in addition to minimizing disruption to City Operations Department.

2. COST SAVINGS: The Project will benefit from the active involvement of the CM/GC contractor during the design process in the following ways:

   - The contractor's input regarding the constructability and cost-effectiveness of various alternatives will guide the design toward the most cost-effective choice.

   - Knowing the specific equipment available to the contractor allows creation of a design that best utilizes the capacity of that equipment.

   - The contractor will be able to provide current and reliable information regarding the cost of materials that are experiencing price volatility and the availability of scarce materials.

   - The contractor will also be able to order materials while design is being completed in order to avoid inflationary price increases and provide the lead-time that may be required for scarce materials.

   - The contractor will be able to help develop design documents to reflect the best work plan that accommodates the City, the design team, and contractor within the project deadline;

   - The contractor will have early involvement in the specification of materials and work phasing, allowing:
     - The contractor to schedule the best grouping of the subcontractor bid packages that will help insure optimum subcontractor work coverage;
     - The most efficient construction staging area in and around the Operations Center; and
     - Adjustment of the work plan when the needs change along the way that has as minimal impact upon price and schedule as possible.

   This cannot be addressed by the usual design/bid/build method of construction. All of the above results in a better coordinated project with less cost and change orders.

3. GUARANTEED MAXIMUM PRICE (GMP): By participating in the construction document phase, the contractor will be able to obtain a complete understanding of the City's needs, the architect's design intent, the scope of the project, and the operational needs of the City, and will be able to offer suggestions for improvement and cost-reduction. The contractor will also be able to better calculate an appropriate GMP, a price within which the CM/GC is contractually bound to implement the final project design. The CM/GC is able to guarantee the maximum price to complete the project because the CM/GC was involved in the design process, identification of the specifications for the work, preparation of the construction schedule, and establishment of the sequence of work. .

C. VALUE ENGINEERING (VE)

1. **WITH THE DESIGN-BID-BUILD PROCESS:** If the City were to utilize the design-bid-build method, the contractor would not participate in value engineering. Instead, a value engineering consultant would be hired to participate in the design and cost evaluation process. This adds costs and administrative complications, without providing the same benefits of early contractor participation.

2. **WITH CM/GC:** The CM/GC process offers a unique opportunity for value engineering that is not possible through the design-bid-build process. VE is done most effectively by a team consisting of the owner, architect, consultants, and the contractor. When the contractor participates, the team can render the most comprehensive evaluation of all factors that affect the cost, quality, and schedule of the project.

D. **SPECIALIZED EXPERTISE:** The construction project is highly complex because it involves significant construction over a short mandated period of construction. Early selection of the CM/GC and inclusion of the CM/GC's expertise with the other members of the project construction team creates more informed, better quality decision-making by the project construction team. A more efficient construction team saves the City money.

E. MARKET CONDITIONS: As well as the multitude of construction market factors that exist today in Oregon (e.g., competition of other projects, environmental issues that limit construction materials, variable bid market, unemployment, etc.), the difficulty in establishing the best work sequence complicates the City's ability to accurately estimate the cost of this project. The economy today makes it necessary for many contractors to bid for jobs for which they might not be qualified. Alternative contracting methods will be more likely to result in a more experienced and better suited contractor for the particular project. The complexities which need to be addressed to accomplish the tasks are not well served by the usual competitive procurement. CM/GC ensures the City can select the best contractor for the most beneficial reasons for the project outside of having to select based upon lowest responsive and responsible bid.

G. **TECHNICAL COMPLEXITY:** Technical expertise will be required for environmental management, quality management, scheduling, estimating, meeting sustainable facilities standards and guidelines, and ensuring energy efficiency. The complexity and scheduling

issues discussed in the Background section above will require special expertise. However, the Project will draw upon existing skills and capabilities available in the construction community. Specialized skills will be required of the contractor to negotiate and price multiple options and schedule complex tasks. A high level of coordination among the affected City departments, the design entity, and the contractor and subcontractors is required and facilitated by the CM/GC contractor's approach.

3. OTHER INFORMATION

A. FUNDING SOURCES: The City intends to fund the Project by General Fund revenue, utility fees, and capital project reserves for a total estimated project budget of $13M.

B. PUBLIC SAFETY: All work must be coordinated to avoid safety risks to the public and to ensure efficiency in construction. The coordination between the City, designer and contractor will assure coordination of work and consideration for the safety of vehicular and pedestrian traffic by the Project.