

**RESOLUTION NO. 2021-07**

**A RESOLUTION OF THE LOCAL CONTRACT REVIEW BOARD  
ADOPTING FINDINGS TO SUPPORT AN EXEMPTION FROM COMPETITIVE  
BIDDING REQUIREMENTS FOR THE DEVELOPMENT SERVICES ANNEX  
AND CITY HALL RENOVATION, DECLARING SUCH EXEMPTION,  
AND AUTHORIZING A PROCESS TO AWARD A CONSTRUCTION  
MANAGER/GENERAL CONTRACTOR (CM/GC) CONTRACT**

**RECITALS**

- A. The Forest Grove City Council is the Local Contract Review Board for the City of Forest Grove.
- B. ORS 279C.335(2) authorizes a Local Contract Review Board to exempt specific projects from the competitive bidding requirements of ORS Chapter 279C.335(1) upon approval of certain findings of fact, and “when appropriate, direct(s) the use of alternate contracting methods that take account of market realities and modern practices and are consistent with the public policy of encouraging competition.”
- C. Oregon Administrative Rule 137-049-0610 defines permissible alternative contracting methods, including Construction Manager/General Contractor (CM/GC) methods of contracting for public improvements.
- D. The City’s Local Contract Review Board has determined that using the CM/GC form of contracting for project including a planned Development Service Annex (DSA) and the renovation of City Hall will be most beneficial to the City and its residents, based on the findings adopted herein.
- E. Selection of a CM/GC firm for the Project will be made using a Request for Proposal that identifies specific selection criteria, and requires a competitive bid in the form of a Guaranteed Maximum Price (GMP) for the Project, including the CM/GC’s fee for services. The CM/GC will also be required to provide full performance and payment bonds for the work following detailed review of the design documents.
- F. ORS 297C.335(5) requires the City to hold a public hearing to allow comments on the Local Contract Review Board’s draft findings. Notice of this public hearing shall be advertised in at least one trade newspaper of general statewide circulation not less than 14 days prior to the hearing. Notice of the public hearing was advertised in the Daily Journal of Commerce on January 8, 2021.

G. The City Council, acting as the local Contract Review Board, hereby adopts the following Findings of Fact to support an exemption from competitive bidding to permit the award of a CM/GC contract for the Project:

1. The CM/GC process will provide the City of Forest Grove with the following advantages:

- Cost savings, as described below;
- Ability to work with contractor to sequence construction to keep City Hall operational to extent feasible during construction;
- Reduction of schedule risk typically associated with multiple construction agreements;
- Opportunity to select a qualified CM/GC firm versus award project to any bondable low bidder;
- Accurate cost data for project decisions;
- Greatest assurance of successful schedule management; and
- Higher confidence in obtaining quality construction.

2. Project Description.

The City is currently in the preliminary design phase for the construction of replacement building for the Engineering Office originally constructed in 1890 and the renovation of City Hall constructed in 1937. The project consists principally of replacing the current one-story 3,600 square-foot Engineering Office with two-story 7,200 square-foot new building and remodeling the interior of the 7,000 square-foot City Hall to include improvements to staff work areas, lighting and carpeting improvements, restroom remodeling, and HVAC system changes required for the project. Total estimated project costs including design, construction, furnishing and fixtures are projected to be \$4,600,000.

3. Responsibilities of the CM/GC Firm.

a) Design Phase.

The CM/GC firm will provide scheduling, bid packaging, cost estimating, and review design documents from the standpoint of value, long lead procurements, design feasibility and constructability, and negotiating a Guaranteed Maximum Price for the work prior to completion of the construction documents.

b) Bid Process.

All material procurement and work by subcontractors will be competitively bid. The CM/GC firm will coordinate the bid process for all work with full oversight and participation by City staff. The CM/GC firm will provide a recommendation to the City for each subcontract. Upon approval from the City, the CM/GC will execute a contract with the approved subcontractor.

c) Construction Phases.

The CM/GC firm will be responsible for completing the construction project, including scheduling of subcontractors, materials procurement and delivery. The CM/GC is responsible for completing the project on schedule, within budget, and at, or above, the quality defined in the specifications prepared by the design engineering firm.

4. Rationale for Using CM/GC Method.

a) No Diminished Competition or Encouragement of Favoritism.

Because a CM/GC will be selected through an open, competitive process among qualified contractors including formal proposals, successful experience criteria, interviews, and cost proposals, it is unlikely that the exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts.

Furthermore, because the work subcontracted by the CM/GC will be awarded to the lowest responsive bidder, this bid process will not result in favoritism in the awarding of public contracts.

b) Value Engineering.

The project renovates approximately 7,000 square feet of space. The City needs to review construction options to determine the feasibility of phasing construction to determine if sections of City Hall can remain open during renovation. A CM/GC will be able to provide the City with information during the design including the cost ramifications of phasing construction. If a traditional design/bid approach is used, information on phasing construction and the cost effects will not be available and the bid package will be more difficult to develop. Because the CM/GC method will allow for the phasing option to be fully developed, it will reduce overall project costs by reducing the cost to develop bid documents. Staff estimates that the City will save \$5,000 in design and engineering costs using the CM/GC method versus the design/bid approach.

The CM/GC will have the opportunity to work with the design engineer to perform value engineering to try to find alternatives to lower the cost of the project and to find the lowest-cost approach to sequencing and completing the required improvements.

Furthermore, because the CM/GC firm will have adequate time to prepare bid packages, review and analyze bids received from subcontractors, subcontractors are more likely to be well-qualified subcontractors, which should result in better quality and cost savings.

c) Change Order Cost Control.

Use of the CM/GC method should control change order costs in three ways:

1. The Engineering Office being replaced is 130 years old and shares a portion of the wall with the building to the north of it. Additionally, the building to the north of it has a full basement. Having the contractor review how to disconnect the Engineering Office while it is being disconnected from the other building during demolition and reviewing how to construct the new building to prevent damage to other building immediately adjacent to the construction is expected to reduce the potential for change orders caused by unforeseen conditions. Reduction of change orders should result in cost savings.
2. The City Hall being renovated is 83 years old and many of its systems or components (i.e., HVAC) being renovated are several decades old. Having the Contractor perform cost analysis and feasibility reviews is expected to reduce the potential for change orders caused by unforeseen conditions. Reduction of change orders should result in cost savings.
3. The CM/GC firm's fixed fee includes both overhead and profit, which, when added to the actual cost of the change, should be less than the standard fee added to change orders on projects awarded under the low-bidder method. The City's prior experience with CM/GC projects is that CM/GC contracts provide for a lower fixed fee than in design/build contracts. Reduction of overhead and profit on changes should result in cost savings.

d) Reduced Construction Time.

Using the CM/GC method of contracting will reduce construction time by allowing the contractor to plan phasing during the design portion instead of after bids are opened, when a change order would be required after the contractor determines the effects of phasing the construction. Using the CM/GC method will provide greater scheduling flexibility and allow improvements to begin at an earlier date. Staff estimates the improvements can begin and be completed three months earlier using the CM/GC method versus design/bid due to the effects of being able to plan phasing of the construction at earlier date. Staff estimates the earlier starting date will reduce construction costs by at least \$7,000. This is based on applying the inflation rate of construction cost increases to the estimated construction costs.

e) Qualified Management.

The City of Forest Grove Management Team is well equipped to manage the complexities of this CM/GC construction process. The City has used the CM/GC process on three previous construction projects using the same key staff who would be working on this Project in the following roles: Paul Downey, Director of Administrative Services, in managing the RFP process, contract negotiation including change orders and overseeing construction; and Andrew Losli, Facilities Maintenance Supervisor, who managed portions of the construction of the library renovation and construction of the Community Auditorium using the CM/GC method.

f) Operational, Budget, and Financial Data.

The total estimated available budget for this Project is \$4,600,000 which is also the estimated total cost of the work. The lower design costs associated with a CM/GC contract will enable more funds to be spent on the actual construction.

Once completed, this project will make administrative operations smoother and will allow staff to function more efficiently.

g) Specialized Expertise Required.

Utilizing a CM/GC on this project will be better than using just City staff to complete the project. The demolition of the building being demolished will be complex as it shares a wall with another building. The building to be built in its place must be done in tight

quarters as it is surrounded by other buildings. The City Hall being renovated is eighty-three years old. Having the expertise of the CM/GC during design will allow the CM/GC to address the technical and construction issues involved with this renovation project. The CM/GC can also address constructability issues involving the renovation of City Hall during the design phase.

h) Public Benefits.

By using the CM/GC method, portions of the City Hall being renovated can potentially remain operational during construction. This will result in cost savings to the rate payers as the City may not have to rent other space or modular buildings to house staff during the renovation.

i) Public Safety.

No significant public safety benefits are anticipated as a result of using the CM/GC contracting method.

j) Technical Complexity.

The demolition of the 130-year old Engineering Office will be complex as it shares a wall with a building that is even older. The other building also has a full basement which will further complicate demolition and construction. City staff and the design consultant believe that, given the complex nature of the demolition and protecting the other building from damage, a contractor with experience with demolition and construction in an urban setting with tight logistics is needed. The CM/GC process is the most cost-effective way to address this technical complexity.

k) Funding Sources.

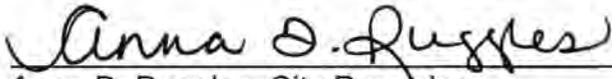
This Project will be paid for out of funds the City already has accumulated. The lower design costs associated with a CM/GC contract will enable more funds to be spent on the actual construction.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF FOREST GROVE AS FOLLOWS:**

1. The City Council of the City of Forest Grove, acting as the City's Local Contract Review Board, hereby:

- a) Adopts the findings described herein to support an exemption from competitive bidding for the contract to construct the Project.
  - b) Declares an exemption from competitive bidding for the contract to construct the Project.
  - c) Authorizes and directs City staff to proceed with the process of soliciting for a CM/GC contract for the Project according to applicable statutes and rules for such solicitations.
  - d) Directs the City Manager, and such persons as he may direct, to negotiate a CM/GC contract with the selected firm in a form approved by the City Attorney.
2. This resolution is effective immediately upon its enactment by the City Council.

**PRESENTED AND PASSED** this 25<sup>th</sup> day of January, 2021.

  
\_\_\_\_\_  
Anna D. Ruggles, City Recorder

**APPROVED** by the Mayor this 25<sup>th</sup> day of January, 2021.

  
\_\_\_\_\_  
Peter B. Truax, Mayor



*A place where families and businesses thrive.*

<u>CITY RECORDER USE ONLY:</u>	
AGENDA ITEM #:	<u>7.</u>
MEETING DATE:	<u>01/25/2021</u>
FINAL ACTION:	<u>RESO 2021-07</u>

**CITY COUNCIL STAFF REPORT**

---

**TO:** *City Council*

**FROM:** *Jesse VanderZanden, City Manager*

**MEETING DATE:** *January 25, 2021*

**PROJECT TEAM:** *Paul Downey, Administrative Services Director*

**SUBJECT TITLE:** *CM/GC Construction Method Resolution*

**ACTION REQUESTED:**

<input type="checkbox"/>	Ordinance	<input type="checkbox"/>	Order	<input checked="" type="checkbox"/>	X	Resolution	<input type="checkbox"/>	Motion	<input type="checkbox"/>	Informational
--------------------------	-----------	--------------------------	-------	-------------------------------------	---	------------	--------------------------	--------	--------------------------	---------------

*X all that apply*

**ISSUE STATEMENT:**

City staff presented using the Construction Manager/General Contractor (CM/GC) contracting method to the Council at a work session on January 11, 2021, on the proposed Development Services Annex (DSA) and renovation of City Hall project. Staff has determined that hiring a contractor using the Construction Manager/General Contractor (CM/GC) contracting method is the best alternative to have the concerns addressed early in the design process. City staff has prepared a resolution for City Council, acting as the local Contract Review Board, to adopt findings supporting an exemption from competitive bidding requirements for the project, declare such an exemption, and authorize a process to award a CM/GC contract.

**BACKGROUND:**

Historically, public construction projects are competitively bid and awarded to the responsible low bidder. The CM/GC contracting method is another method available to public agencies when the use of the CM/GC method is justified. This process involves the selection of a CM/GC early in the design process so an agency can utilize the contractor’s expertise early in the project to help address issues and potentially reduce the costs of the project.

ORS 279C.335(2) authorizes the Local Contract Review Board, which for the City of Forest Grove is the City Council, to exempt specific projects from the competitive public bidding requirements of ORS 279C.335(1) upon approval of certain findings of fact, and “where appropriate, direct(s) the use of alternative contracting methods that take account of market realities and modern practices and are consistent with the public policy of encouraging competition.” This resolution is a request to proceed with CM/GC services through a qualifications-based, competitive selection process.

As presented at the January 11, 2021, Council work session, the project has several issues that a CM/GC could help the City and the design team address during the design phase of the project

instead of hearing about contractors' concerns during the bid process after design is complete. The issues are:

- The Engineering Office (1928 Council Street) was constructed in 1890 and does not have a separate wall from Frye's Sporting Goods. It is essentially a three-walled building that is connected to Frye's south unreinforced masonry wall. Additionally, Frye's has a full basement running the length of that wall. Demolition of the Engineering Office and construction of the new building will be complicated so no damage is done to Frye's building.
- Besides Frye's, there are other buildings very close to the Engineering Office including City Hall.
- The other issue is that the City Hall portion of the project is a remodel project which tends to generate more unforeseen conditions claims by the contractor. Having the contractor involved during design reduces the amount of unforeseen conditions.

Utilizing the CM/GC process will enable the City to require that a contractor have experience working in an urban environment with tight logistics including demolition experience in that environment. The City would not be able to do that using the traditional hard bid method. It will be beneficial to have the contractor available during the design phase to address constructability issues that may arise. If constructability issues are identified and addressed during design, the possibility of surprises during construction which could be costly to address will be reduced. The contractor can also help with phasing of construction to address overall costs and if portions of City Hall can remain open during renovation.

The City will still use a competitive process to hire a CM/GC. Selection of a CM/GC firm for this project will utilize a Request for Proposal. The Request for Proposal will identify specific criteria, which will be utilized for the selection. The proposals from the CM/GC firms will include a competitive bid for their fee and general conditions for the project. The CM/GC will provide the City with a Guaranteed Maximum Price (GMP) and a full performance/payment bond for the work following detailed review of the design documents.

To ensure additional competitive processes, the selected CM/GC firm will be required to competitively bid or quote the remaining elements of the project. The CM/GC contract will have rules that must be followed when awarding subcontracts on the project. For example, the rules will require City approval for subcontractor contracts awarded to a firm other than the subcontractor with the lowest price. By having the CM/GC propose a fee & general conditions and then bidding the subcontract work, all of the costs of the project will be subject to competitive procurement.

ORS 297C.335(5) requires the City to hold a public hearing of the Local Contract Review Board to allow comments on the City's draft findings. Notice of this public hearing must be advertised in at least one trade newspaper of general statewide circulation not less than 14 days prior to the hearing. Notice of the public hearing was advertised in the Daily Journal of Commerce on January 8, 2021.

**FISCAL IMPACT:** The CM/GC method affords the City the opportunity to still competitively procure all elements of the project while helping to address constructability issues during design instead of finding out about those issues after the project has been bid. This provides the opportunity to reduce the potential for change orders which could increase the project costs.

**STAFF RECOMMENDATION:** Staff recommends that the City Council, acting in the capacity of the Local Contract Review Board, review and approve the findings of fact supporting a specific exemption from competitive bidding requirements for use of a Construction Management/General Contractor process for construction of the Development Services Annex and the renovation of City Hall.

**ATTACHMENT(s):** Resolution of the Local Contract Review Board Adopting Findings to Support an Exemption from Competitive Bidding Requirements for the Development Services Annex and City Hall Renovation, Declaring Such Exemption, and Authorizing a Process To Award a Construction Manager/General Contractor (CM/GC) Contract.

CITY OF FOREST GROVE, OREGON  
NOTICE OF PUBLIC HEARING

Exemption from Competitive Bidding Requirement

The Forest Grove City Council, acting as the Local Contract Review Board, will hold a public hearing on Monday, January 25, 2021, at 7:00 p.m. for the purpose of taking comments on the City's draft findings for an exemption from the competitive bidding requirement under ORS 279C.335. The project will be demolishing an approximate 3,600 square-foot building and replacing it with an approximate 7,200 square-foot two-story building and remodeling the interior of the City's adjacent 7,000 square-foot City Hall. The City Council will be asked to consider an exemption from the competitive bidding requirement so the project may be completed using a Construction Manager/General Contractor (CM/GC). The hearing will be conducted remotely by video conferencing. Any interested party may observe and participate at the Community Auditorium, 1915 Main Street, Forest Grove, OR, as space allows. However, the City encourages written comments be submitted by email to [aruggles@forestgrove-or.gov](mailto:aruggles@forestgrove-or.gov) or in writing to the City Recorder, City of Forest Grove, PO Box 326, Forest Grove, OR 97116 prior to the public hearing. Draft findings for an exemption from the competitive bidding requirements may be obtained from the Director of Administrative Services, PO Box 326, Forest Grove, OR 97116, 503-992-3220 or [pdowney@forestgrove-or.gov](mailto:pdowney@forestgrove-or.gov).

Publish – January 8, 2021, in Daily Journal of Commerce

Date: January 25, 2021

Agenda Item: 7.

Subject: PUBLIC HEARING AND RESOLUTION NO. 2021-07 OF THE LOCAL CONTRACT REVIEW BOARD ADOPTING FINDINGS TO SUPPORT AN EXEMPTION FROM COMPETITIVE BIDDING REQUIREMENTS FOR THE DEVELOPMENT SERVICES ANNEX AND CITY HALL RENOVATION, DECLARING SUCH EXEMPTION, AND AUTHORIZING A PROCESS TO AWARD A CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC) CONTRACT

# CITY COUNCIL MEETING

## Request to Testify at Public Hearing

**Public Hearings – Public hearings are held on each matter required by state law or City policy. Anyone wishing to testify should sign-in for the Public Hearing prior to the meeting. The Mayor or presiding officer will review the complete hearing instructions prior to testimony. The Mayor or presiding officer will call the individual or group by the name given on the sign-in form. When addressing the Mayor and Council, please move to the witness table (center front of the room). Each person should speak clearly into the microphone and must state their first and last name and provided a mailing address for the record. All testimony is electronically recorded. In the interest of time, Public Hearing testimony is limited to three minutes unless the Mayor or presiding officer grants an extension. Written or oral testimony is heard prior to any Council action.**

*Please sign-in below to testify:*

**PROPONENTS:** (Please print legibly)

**First & Last Name:**

**Address:**

**City, State & Zip Code:**

---

---

---

---

---

---

---

---

---

---

**OPPONENTS:** (Please print legibly)

**First & Last Name:**

**Address:**

**City, State & Zip Code:**

---

---

---

---

---

---

---

---

---

---

**OTHERS:** (Please print legibly)

**First & Last Name:**

**Address:**

**City, State & Zip Code:**

---

---

---

---

---

---

---

---

---

---