

**RESOLUTION NO. 2801**

**A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE USE OF A CONSTRUCTION MANAGER / GENERAL CONTRACTOR (CMGC) ALTERNATIVE CONTRACTING METHOD FOR THE WATER TREATMENT PLANT (WTP) EXPANSION PROJECT (CAPITAL IMPROVEMENT PROJECT #1144).**

WHEREAS, the City has planned, designed, and budgeted for the completion of Capital Improvement Project #1144 for the Water Treatment Plant expansion, known as WTP Expansion Project (the Project); and

WHEREAS, the City has made findings (Exhibit A) supporting the use of CMGC contracting to complete the Project; and

WHEREAS, the City has advertised a Public Notice on March 2, 2020 in the Daily Journal of Commerce announcing its intention to utilize a CMGC contracting method for completion of the Project ;and

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The attached findings submitted to the Wilsonville City Council justifying an exemption from competitive bidding in completion of the Project are adopted.
2. The Wilsonville City Council acting as the Local Contract Review Board authorizes the use of CMGC contracting to complete the Project.
2. This resolution becomes effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 16<sup>th</sup> day of March 2020, and filed with the Wilsonville City Recorder this date.

  
\_\_\_\_\_  
Tim Knapp, Mayor

ATTEST:

  
\_\_\_\_\_  
Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Knapp	<u>Yes</u>
Council President Akervall	<u>Yes</u>
Councilor Lehan	<u>Yes</u>
Councilor West	<u>Yes</u>
Councilor Linville	<u>Yes</u>

EXHIBIT:

- A. Findings for an Exemption from Competitive Bidding – WTP Expansion (CIP 1144)

# EXHIBIT A

## Findings for an Exemption from Competitive Bidding

### Water Treatment Plant (WTP) Expansion (CIP 1144), City of Wilsonville

#### **General**

Oregon Revised Statute (ORS) 279C.300 requires competitive bidding of public improvement contracts unless specifically excepted or exempted as provided under 279C.335. ORS 279C.335(2), provides that this local contract review board may exempt certain public improvement contracts, or classes of contracts, from traditional competitive bidding by showing that an alternative contracting process is unlikely to encourage favoritism or diminish competition, but will likely result in substantial cost savings and other substantial benefits to the contracting agency and/or the public.

For the reasons set forth more fully below, it is recommended that a Construction Manager/General Contractor (CMGC) team be selected by utilizing the competitive proposal process, in accordance with ORS 279C.400, for the contract to build the WTP Expansion Project. The CMGC proposal process is advantageous for this Project for the following reasons:

- It allows for the contractor to be involved early in the design process, providing an opportunity for contractor's identification of cost and schedule savings, identification of solutions that best address the complexities of the Project (i.e. constructing extensive capacity improvements while keeping the WTP fully operational), early identification of project risks and develop plans to help mitigate those risks.
- It allows for the opportunity to utilize the contractor's expertise to tailor the scheduling and phasing of construction to best meet the needs of stakeholders and the public.
- It allows City of Wilsonville (City) to select a contractor with the specific experience in successfully completing similarly complex projects.

In accordance with ORS 279C.330, ORS 279C.335, and Resolution No. 2801 of the Wilsonville City Council in its capacity as the Local Contract Review Board, the following are findings which justify an exemption from the competitive bidding requirement.

#### **Background**

The City of Wilsonville – Willamette River Water Treatment Plant Master Plan Update 2017 (MP) identified capital improvements needed to expand the capacity of the water treatment plant (WTP) from 15 million gallons per day (MGD) to 20 MGD. These improvements consist primarily of electrical and pumping system upgrades. The MP also identified necessary life safety, seismic retrofit, and asset repair and replacement (R&R) projects. These improvements will be combined into one project for the sake of efficiency. When completed, the project will provide sufficient capacity to accommodate growth in the City for the next 10 years, improve seismic resilience, and replace outdated equipment that is no longer supported by vendors.

## **Findings**

Pursuant to ORS 279C.335(2), the following Findings justify an exemption from ORS 279C.335(1) and OAR 137-049-0130.

**1. *The exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts. (ORS 279C.335(2)(a))***

The CMGC will be selected through a competitive proposal process. No reduction of competition is expected since the proposed process is open to the same contractors that could have participated in the traditional design-bid-build process. There are multiple contractors both locally and across the state with the ability to compete for this contract. Uniform evaluation criteria will be used in the selection of contractors.

Favoritism will not play a role in the selection of the CMGC. Selection will be conducted through an open and advertised request for qualification (RFQ) process. All qualified firms will be invited to submit qualifications. The City will publish a legal notice in the Daily Journal of Commerce in order to provide Project information to all interested entities. Proposers will be evaluated based on clearly stated criteria. A team will perform the evaluation in an effort to minimize the effects of any individual bias. All qualified firms will be able to participate in an open, competitive selection process.

**2. *Substantial cost savings and other benefits (ORS 279C.335(2)(A-N)).***

Using a CMGC contracting method is expected to result in substantial cost savings and other substantial benefits as identified in ORS 279C.335(2)(b).

**A) How many persons are available to bid;**

A publicly-advertised competitive proposal process will be utilized to select the CMGC. The use of this contracting method does not prevent any contractor that otherwise would have proposed had the City procured the project using the traditional design-bid-build method. Thus, all qualified contractors are able to compete for selection for the project.

Staff understands that the Willamette Water Supply Program recently opted to utilize a CMGC approach for construction of the new Water Treatment Plant and associated transmission lines. Five qualified contractors submitted proposals in response to the solicitation for CMGC services for the first phase of WTP construction. A similar level of interest from qualified contractors is anticipated for the City of Wilsonville WTP Expansion Project.

**B) The construction budget and projected operating costs for the completed public improvement;**

The construction budget and operating costs will not be adjusted due to the alternate procurement method. There are however, many less tangible, cost savings that are likely to be realized by using the CMGC method. Some of these less-tangible savings include a project team that works more cohesively, resulting in shorter design and construction timelines. Early

involvement of a contractor through a CMGC contract should result in reduced change orders, disputes and claims during construction and will provide for the opportunity to identify value engineering and construction sequencing ideas commensurate with the contractor's means and methods that can result in construction and operations cost savings. The contractor's involvement during design also reduces the number of unknowns discovered during construction due to the contractor's familiarity with existing conditions and design details.

**C) Public benefits that may result from granting the exemption;**

One of the main advantages to the public of the CMGC contracting method is the impact on the Project's schedule. Once design is complete, the City and the CMGC need to negotiate a Guaranteed Maximum Price (GMP) for the Project, but the construction bid phase in the traditional procurement approach is eliminated, enabling the City to move quickly from design to construction. Once the CMGC team has an approved design and GMP, construction of the project and/or procurement of long-lead time equipment can begin. Schedule savings can also result in a reduction of contractor general conditions costs, as well as benefit the City in having infrastructure available for use earlier and a less protracted disruption to the plant.

Other substantial benefits to the public include the City's ability to select a team based on their qualifications as they relate to the particular challenges of this Project. Construction on an existing WTP has the potential to cause significant disruptions to ongoing WTP operations, if not managed exceptionally well. Selection of an experienced, cooperative, and solutions-oriented CMGC with the demonstrated ability to coordinate and execute construction of these projects in a safe, proficient, and expedient manner will greatly benefit the public.

**D) Whether value engineering techniques may decrease the cost of the public improvement;**

The CMGC contracting method gives the contractor an increased opportunity to engage in value engineering, which increases the likelihood of cost savings to the City. The CMGC contracting method brings the contractor on board early in the design process and allows the contractor to voice comments and concerns with the design. This allows the designer to more fully understand constructability and sequencing issues early on.

In contrast, the traditional method of contracting only allows for the contractor to see the contract documents once they are issued, at the construction bidding phase. At this point, not only is there is little incentive for the contractor to engage in value engineering efforts, but the design has already progressed past the point of incorporating many of the suggestions that the contractor would have offered.

In addition to potential direct cost savings to the public, indirect cost savings may be realized through a reduced duration of impact to the public through efficient operations and construction phasing tailored for this specific Project.

**E) The cost and availability of specialized expertise that is necessary for the public improvement;**

The CMGC contracting method is not expected to increase the cost, or decrease the availability, of specialized expertise necessary for the public improvement. Design availability and cost of design services are not anticipated to be impacted since the method for contracting these services is not significantly different from those found in the traditional design-bid-build contracting method. Construction availability and cost are also not anticipated to be impacted because a competitive process is required for all subcontracted work, unless otherwise justified by the General Conditions. This results in costs and availability comparable to those found in the traditional design-bid-build contracting method. Additionally, this Project is anticipated to garner significant interest from many firms throughout the region, resulting in a competitive environment similar to the traditional contracting method.

**F) Any likely increases in public safety;**

No adverse effects to public safety are anticipated as a result of pursuing the CMGC contracting method. The contractor will be following the same construction standards, City standards and will be using the same best practices as with the traditional contracting method.

The CMGC procurement method allows historical safety performance on similar projects to be considered as a selection criteria. It also permits the City to work closely with the contractor to ensure that the design and work sequences include appropriate safety measures, that the contractor understands the City's safety concerns and that the contractor will take appropriate steps to address them.

The CMGC method promotes better collaboration with the contractor during design resulting in increased public and City staff safety through increased vetting of construction means and methods.

**G) Whether granting the exemption may reduce risks to the contracting agency, the state agency or the public that are related to the public improvement;**

The CMGC contracting method differs from the traditional design-bid-build method in that the contractor is involved in the design process, typically very early. The contractor's involvement in design allows the contractor to better understand the design details, existing conditions and construction sequencing requirements; this knowledge reduces the risk of change orders, claims and the exceedance of the project schedule. In addition, the contractor can participate in risk workshops, utilizing their experience to identify potential risks which can be evaluated for severity and probability and in which design efforts may reduce the potential impacts or, in some cases, eliminate the risk altogether.

Once the design for the project has reached a pre-determined milestone, a GMP is then provided to the City. This GMP is the price that the CMGC team will complete the construction of the project. This method of obtaining construction costs is anticipated to minimize the number of change orders on a project and as a result minimize cost overruns; furthermore, the reduction in project uncertainty with having the contractor involved during design translates into cost savings to the City in the form of reduced contingency.

**H) Whether granting the exemption will affect the sources of funding for the public improvement;**

Funding for the Project will primarily be through a combination of water operations funds, system development charges (SDCs), and City of Sherwood wholesale user fees. These funding sources are not anticipated to pose restrictions to the proposed CMGC contracting method.

**I) Whether granting the exemption will better enable the contracting agency to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement;**

Using the CMGC method, benefit-cost decisions can be made using real-time construction costs to keep the project within budget. Materials, equipment and sub-trade work can be procured early to eliminate price uncertainty and lessen the impact of price escalation during the construction period. In addition, under CMGC the City has the flexibility of awarding early construction work packages (e.g., demolition work, procurement of long-lead equipment, etc.) prior to design completion of the overall project; furthermore, having the contractor on board during design through the CMGC method provides the City the ability and time to adjust the project budget during design when true pricing is understood, so the project budget reflects the true cost of the design.

The CMGC method provides flexibility to reduce the impact of market conditions, specifically through schedule acceleration. This savings in time lessens the impact of the price increases occurring in the current market conditions. For these reasons, granting an exemption to competitive bidding will better enable the City to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement.

**J) Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement;**

The WTP Expansion Project will be challenging due to the technical complexity and scale of the improvements on a fully operational WTP. This work is complicated and will require ongoing coordination with City staff, Veolia WTP operations staff, the design engineer, and the construction contractor. The CMGC selection process allows the City to consider the proposer's experience and expertise in this type of work, sensitivity to safety, legal, and operational issues, as well as the general qualifications of its project manager, and support team.

**K) Whether the public improvement involves new construction or renovates or remodels an existing structure;**

This reconstruction project renovates existing systems by replacing infrastructure in the form of new equipment, seismic retrofits, and upgraded electrical and pumping systems. Using a CMGC method, the construction contractor is part of the project team early on and is involved in field investigation and design coordination, thereby reducing the risk of discovering unknown conditions while renovating the existing systems.

**L) Whether public improvement will be occupied or unoccupied during construction;**

It will be essential to complete construction without significantly disrupting WTP operations. The CMGC method will allow the contractor to plan project phasing and timing of the improvements and any associated temporary process shutdowns to allow continued production of drinking water for City residents and businesses.

**M) Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions;**

Phasing of the project has not yet been determined and is a primary area of optimization to be gained by utilizing the CMGC method and the resulting contractor/designer/owner teamwork. The utilization of the CMGC contracting method will allow critical path improvements to be identified and phased accordingly to minimize the overall impact to ongoing WTP operations.

**N) Whether the contracting agency or state agency has, or has retained under contract, and will use contracting agency or state agency personnel, consultants and legal counsel that have necessary expertise and substantial experience in alternative contracting methods to assist in developing the alternative contracting method that the contracting agency or state agency will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract.**

The City will include previous CMGC experience among the qualifications to be evaluated in selecting both the design engineer and the construction contractor.

**3. Additional Findings**

OAR 137-049-0630(3)(b) permits other findings, in addition to those listed above, to be considered with regard to the expected benefits and drawbacks of particular Alternative Contracting Methods. The following discussion of benefits and drawbacks of this contracting method may be a duplication of those found above, but they are the main elements to consider for the CMGC contracting method, so additional dialogue is warranted.

**a) Advantages**

**More cohesive project team.**

With the CMGC contracting method the contractor and designer can work as a team to get the project designed and built. Having a more cohesive project team results in fewer design-related change orders, reduces the number of potential claims created by the project, and provides flexibility to optimize project phasing for the greatest benefit to the public.

**Shortest delivery schedule.**

Not only does this contracting method eliminate the necessity of a construction bid phase, the contractor may also begin the construction of the project prior to the design reaching 100 percent. Both of these factors greatly expedite the completion of the project; furthermore, the CMGC method allows for the project phasing to be optimized by being well matched to the



construction team's specific means, methods and capacities; this will allow for the improvements to be utilized by the public in the shortest amount of time.

**Owner can reject guaranteed maximum price without significant project delays.**

Should a GMP not be agreeable to the owner, an off-ramp is built in to this contracting method. This off-ramp has two options, the first of which is to finish the design to 100 percent and competitively bid the project. The second option is to terminate the first contract and attempt to negotiate with another CMGC.

**b) Drawback to CMGC Process**

There are limited opportunities to make changes to the project's scope once guaranteed maximum price has been established. Costs are high for changes that are made to the Project after the guaranteed maximum price has been established. This is not dissimilar from changes made after a project has been bid for the traditional contracting method, the difference is that the contracting agency has a larger timeframe to establish their initial decisions using the traditional methods.

With the CMGC contracting method, the advantage of having an expedited project delivery is weighed against having an in-depth public outreach process throughout the design phase. While public outreach and public comment may be sought at the beginning of the project, scope alterations after the guaranteed maximum price has been established is not recommended - as noted above.

**Summary**

Using a competitive proposal CMGC contracting method to select a contractor who has experience with these types of projects provides many benefits. The use of this process will not diminish competition or result in favoritism and is expected to result in overall cost savings to the City. Most important, completion of the project in a timely manner reduces impacts to the City and ensures quality, safety, and reliability both during and after construction.