

IN THE BOARD OF COMMISSIONERS OF THE
HOUSING AND COMMUNITY SERVICES AGENCY OF LANE COUNTY, OREGON
DBA HOMES FOR GOOD HOUSING AGENCY

ORDER 20-19-08-03H

In the Matter of the Joint Order of the Board of Commissioners and Local Contract Review Board Exempting the Construction of 1100 Charnelton and 13th and Tyler project from the Competitive Bidding Requirements and Directing the Use of the CMGC Alternative Contracting Method

WHEREAS, the Board of Commissioners of Homes for Good Housing Agency, Oregon (Agency) acts as the Agency's Local Contract Review Board (LCRB) (collectively, "Boards"), pursuant to ORS 279A.060; and

WHEREAS, pursuant to Oregon Revised Statutes (ORS) 279C.335(1), all public improvement contracts shall be based on competitive bids except those exempt by the LCRB; and

WHEREAS, pursuant to ORS 279C.336(2), the LCRB may exempt certain contracts from the traditional competitive bidding process after holding a public hearing and adopting findings demonstrating that an alternative contracting process is unlikely to encourage favoritism or diminish competition and will result in substantial cost savings to the public agency; and

WHEREAS, the Construction Manager/General Contractor (CM/GC) is an alternative contracting method that provides project delivery in which the owner executes a single contract with one entity to provide construction management and general contractor services; and

WHEREAS, the CM/GC is selected before design is complete, and as a result can provide valuable advice from a construction perspective to help ensure a design that fosters smooth and cost-effective construction; and

WHEREAS, the Agency is engaged in pre-development activities for both projects referenced above; and

WHEREAS, the Public Contracting Code divides powers and duties for contracting into two categories, those that must be performed by the LCRB, and those that must be performed by the "Contracting Agency"; and

WHEREAS, to make use of a CM/GC alternative contracting method, ORS 279C.335 and Agency Rule 137-049-0620 require the Board of Commissioners to submit findings to the LCRB which support the LCRB exempting the Project from competitive bidding requirements; and

WHEREAS, as provided in ORS 279C.335(5), the Agency published notice of the public hearing where the Boards would consider this Order once in the Daily Journal of Commerce, not less than 14 days before the hearing; and

WHEREAS, the LCRB considered the findings presented by the Board of Commissioners, as set forth in the attached Exhibit A, supporting the use of the CM/GC alternative contracting method. The CM/GC method was accomplished through the use of an RFP solicitation process to hire Essex Construction Company, a highly qualified, quality driven and experienced contractor with a demonstrated record of past performance and integrity to provide the professional services required for the Project; and

WHEREAS, the Boards considered public testimony regarding the use of the CM/GC method at the public hearing offered at the Board meeting held on March 18, 2020; and.

WHEREAS, the Boards, being fully advised, find and conclude as follows:

1. It is unlikely that the use of the CM/GC method will encourage favoritism in the awarding of a public improvement contract or will encourage favoritism in the awarding of a public improvement contract or will substantially diminish competition for a public improvement contract;
2. The use of the CM/GC process ensures early contractor input during the design construction planning processes and is expected to contribute to the ability to manage the costs of construction against approved budgets; and
3. The Agency has complied with all procedures under ORS 279C.335.

NOW, THEREFORE, it is hereby resolved as follows:

1. Findings. The above recitals, and those set forth on the attached Exhibit A, are hereby adopted by the Agency Board of Commissioners, sitting as the LCRB, as findings of fact supporting approval of the Agency Board of Commissioner's request for use of a CM/GC alternative contracting method for Agency's Project.

2. CM/GC Exemptions. Use of a CM/GC alternative contracting method is found to be in the Agency's best interests. The requested exemption is, therefore, approved and the Executive Director, Jacob Fox is hereby authorized to enter into a CM/GC contract with Essex Construction Company.

3. Post-Project Evaluation.

a) Upon Project conclusion, pursuant to ORS 279C.355 and Agency Rule 137-049-0620(2), Steve Ochs, Real Estate Development Director is hereby directed to prepare a formal post-project evaluation of the full Project to determine whether it was actually in the Agency's best interest to use the CM/GC alternative contracting method. The evaluation must be delivered to the LCRB within thirty (30) days of the date the Agency accepts the Project, as defined in the executed CM/GC contract.

b) The post-project evaluation shall set forth:

(1) Financial information, consisting of actual costs compared with original Project cost estimates, any guaranteed maximum price, and the number of change orders issued;

(2) A narrative description of successes and failures experienced during the design, engineering, and construction phases of each Project; and

(3) An objective assessment of the CM/GC alternative contracting methods, as compared to the findings set forth in this Order.

DATED this 19th day of August, 2020.



Chair,
Board of Commissioners

President,
Local Contract Review Board

ATTEST:

ATTEST:

Secretary,
Board of Commissioners

Secretary,
Local Contract Review Board

EXHIBIT A

CM/GC EXEMPTION FINDINGS ORS 279C.330(1) and ORS 279C.335(2)(b)

1. Firms Available to Bid. All interested and qualified contractors will have an opportunity to provide a response to the RFP, which was advertised in the *Daily Journal of Commerce*.

2. Operational, Budget, and Financial Data. The approximate cost of the work to be performed under the construction contract for the 13th & Tyler development is estimated at \$3,210,000. The approximate cost of the work to be performed under the construction contract for 1100 Charnelton is estimated at \$9,600,000. This is a significant amount of money in relation to the Agency's budget and resources. Having a CM/GC involved early in the construction phasing will allow the Agency to work with the contractor to develop construction plans that will optimize savings. The utilization of the CM/GC method has been shown in its use by other agencies in Oregon to alleviate financial risk due to minimizing delay and requests for additional work and change orders. By undertaking these developments, it is anticipated that the Agency will find that reduced risks provide a significant value and substantial cost savings to the Agency.

3. Public Benefit. Efficient completion of the construction will provide an efficiently built, safe structure. A CM/GC coordinated approach increases the ability for Agency to mitigate the risk of structure failure and to continue to provide a dedicated standard of care to the public. The public will benefit from the improved quality and lower cost of the developments anticipated through use of the CM/GC process. Approving the CM/GC exemption will allow a contractor to be hired earlier in the process than the traditional design-bid-build process. In turn, this better enables the Agency to complete the Developments on time. Creating a Project team at the start of the developments, comprised of the Architect, the Agency, and CM/GC creates a more informed and better quality decision making process. A more efficient construction team reduces the Agency's financial exposure and enhances delivery of the Developments. The Agency, therefore, finds that the CM/GC alternative contracting method is required to ensure a qualified general contractor is retained for these complex developments, while addressing time and cost constraints.

4. Value Engineering. The RFP selection process, early involvement of the contractor, and negotiated contract approach gives the contractor a significant opportunity to engage in value engineering (i.e. the evaluation of what a system does as compared to cost). The selected CM/GC will be brought on board following award of a contract in order to assist the Project team with construction scheduling, phasing, costing, operator interaction issues, quality assurance, and design constructability reviews. The selected CM/GC will also advise the Agency and the design team regarding specialty construction issues and any long lead time procurements. CM/GC contributions to the design phase permit a collaborative approach to value engineering which ultimately translates into time and cost savings realized by the Agency. Construction issues which may not otherwise be known to the design team can be factored in and addressed while the design is drafted. In turn, this results in a higher quality product, lower costs, and a telescoped timeline.

5. Specialized Expertise. Building multi-family developments in urban settings is a complex process. It is important to utilize a general contractor that has demonstrated expertise in managing, scheduling, and building new construction under these conditions in a satisfactory manner. The Agency therefore, finds that selecting a firm through an RFP process allows the Agency to contract with a firm with the appropriate CM/GC expertise. The necessary mix of experience and expertise for a CM/GC contractor cannot be adequately evaluated in a formal lowest responsible bid selection process. A qualified project manager with strong leadership skills is one of the components required for a successful CM/GC project. The RFP process allows the Agency to review the qualifications of each proposer's project manager and confirm the manager's ability, experience, record of quality, past performance and integrity needed to carry out the proposer's contractual obligations. The process will also allow the Agency to identify qualified teams that have met critical deadlines in past developments and that have the ability of work collaboratively to meet the team needs. The costs for such specialized expertise are included in the overall Project budgets and will be included within accepted GMPs.

6. Public Safety. Efficient completion and structurally sound completion of the developments is in the public interest.

7. Funding Source. The Agency will finance these developments through a variety of public and private proceeds that are committed at an early timeframe. Therefore, it is critical for the developments to come in on budget and on time from both legal and public perception perspectives. The CM/GC process, with its maximum price provisions, value engineering potential, constant oversight from a project manager, and construction input beginning in the design phase will help the Agency stay within its budget and wisely spend public funds.

8. Market Conditions. Identifying and contracting with the full Project team at an early stage will allow the Agency to capitalize on current market conditions, rather than having them affect a later bid/build phase. Such cost and market variables can be anticipated in the GMP, but ultimately should have no effect on the Agency. The CM/GC subcontractors cannot go over the GMP, but may come in under the GMP, and the Agency will realize those cost differences. Having a qualified CM/GC play a role as an integrated team member early in the developments with the Agency, the Architect and other Project members provides advantage to the Agency, as it adds expertise to the design phase which translates into Agency savings and provides more budgetary certainty.

No negative financial impacts to the Agency are expected as a result of using the RFP solicitation process to select a CM/GC for these developments. There is a sufficient pool of qualified Oregon-based construction companies with expertise in the type and size of developments planned, and there are additional qualified firms located in the greater Pacific Northwest. A substantial number of competitors submitted proposals for these developments, which allowed the Agency to select from among a number of qualified contractors.

9. Technical Complexity. Because of the site and schedule constraints, effective project planning and coordination will be crucial among the Agency, project manager, Architect and CM/GC. Strong budget and schedule controls will be essential. The conventional design-bid-

build approach would contain too much risk for the Agency on this development. The CM/GC will bring specific construction expertise to the team process and assist in addressing specific challenges as part of its pre- construction services. The CM/GC will also provide input on issues such as operations of the facility during construction, public safety, phasing and coordinated scheduling. The CM/GC method encourages innovative planning and coordination that further improve the construction schedule and on-site conditions. The ability to coordinate and manage these developments would be especially challenging to an inexperienced or narrowly- focused team. The RFP process allows the Agency to consider the proposer's experience and expertise in completing this type of work, its sensitivity to safety, legal, and operational issues, and the qualifications and experience of its project manager and support team.

10. New Construction or Renovation of an Existing Structure. Both developments involve new construction.

11. Occupied or Unoccupied During Construction. Agency's facilities will be new construction and not be occupied during construction.

12. Single Phase or Multiple Phases of Construction Work to Address Specific Project Conditions. Both developments are intended to be constructed in single phases of construction. These developments include multi-story buildings and a multiplicity of technical issues related to multi-story buildings, electrical systems, piping systems, HVAC systems, and fire alarm and security systems, as well as complex sequencing and phasing of work. It is important to the success for both budget and schedule that the Agency have a general contractor that understands the complexity, has the ability to manage this type of complex developments and develops bid instructions to attract appropriate subcontractors to perform the work. The Agency, therefore, finds that selecting a firm through the CM/GC method allows the Agency to contract with a firm with the needed technical phasing expertise.

13. Whether the Agency has the Personnel, Consultants and Legal Counsel that have Necessary Expertise and Substantial Experience in Alternative Contracting Methods. Staff, in conjunction with the Architect (who was chosen based upon qualifications and experience with the CM/GC project delivery model), an experienced contractor, as well as other team members and the Agency Legal Counsel, together, will have the level of expertise with the CM/GC alternative contracting method needed to produce a high quality outcome. The Agency acknowledges that the expertise will come primarily from non-staff elements. To this end, the Agency's contract with the chosen Architect obligates the Architect to assist with and oversee the CM/GC selection process.

14. Unlikely to Encourage Favoritism or Substantially Diminish Competition. As noted in Finding 1, CM/GC competition was encouraged through the use of an RFP solicitation process, with notice of the RFP published so as to reach a wide range of potentially interested proposers. No reduction of competition is expected since the RFP for this CM/GC contract was advertised in the same manner as a traditional low bid solicitation, with full disclosure of the planned CM/GC alternative contracting method. Uniform evaluation criteria was used in the selection and award of the CM/GC firm, and the construction work elements will be subcontracted and procured through open competitive bids managed by the CM/GC and based on identified selection criteria. Favoritism cannot play a role in the selection of the CM/GC, as award was based upon set,

weighted RFP criteria. All qualified firms were able to participate in an open, competitive selection process, with an opportunity to protest the award before it was final.

15. Will Result in Substantial Cost Savings. The CM/GC contracting method has the potential to achieve substantial cost savings for the Agency through the involvement of the contractor in the design phase of the development. Early input by the CM/GC during the design process is expected to contribute to general cost savings through constructability assessments, life cycle cost analysis, and value engineering. By having the CM/GC available before the design is finalized, the contractor is able to participate in the design, propose cost saving revisions, and ensure the constructability of the developments so that costly change orders are less likely.

Cost savings will also be realized because, through the RFP selection process, the Agency selected a well-organized, experienced CM/GC. This should also lead to fewer change orders and, in turn, reduce staff and Architect time to design, negotiate, and administer the changes.

Lastly, the CM/GC method allows for early procurement of major equipment, allowing the developments to avoid cost increases due to material shortages or cost escalation. If subcontracted costs are less than identified in the guaranteed maximum price, some or all of the savings will be passed on to the Agency under the agreement required of the CM/GC.

16. Time Savings. An exempt CM/GC process allows the Agency to condense the overall time required to complete construction of the developments by enabling the Agency to procure construction services simultaneously or shortly after soliciting Architect services. Having the CM/GC on board early in the process allows for coordination in the development of the construction schedules and the initiation of early site work, where advantageous or warranted. This can help to shorten construction periods and minimize construction operational impacts. Early detection of potential construction difficulties, from a contractor's view, can also prevent potential delays and costly and time consuming change orders.