TUALATIN SOIL AND WATER CONSERVATION DISTRICT

Findings of Fact to Support an Exemption from Competitive Bidding and Use of the Construction Management/General Contractor (CM/GC) Alternative Form of Contracting

SUMMARY

The leadership team for the Tualatin Soil and Water Conservation District (TSWCD or District) is working to develop plans for renovation, new construction, and associated site improvements at 7965 NE Cherry Drive, Hillsboro, OR 97124. The new buildings will house TSWCD's offices and staff when the District's current office lease expires.

This property will provide an environment that will educate the community, demonstrate conservation practices, be more affordable long-term, and enhance communication between employees and community members.

For the reasons detailed below, the proposed construction presents unique challenges because the construction window is compressed, possible deconstruction of existing buildings and infrastructure is needed before construction can proceed, the construction budget is limited, and the District does not have the expertise necessary to manage all details of the construction process.

In considering the unique nature of the project, the team has evaluated various methods that could be used to complete the Project, and for the reasons described in these Findings recommends using a Construction Management/General Contractor (CM/GC) process.

Typically, public construction projects are competitively bid after the design and other pre-construction processes are complete, and the contract is awarded to the lowest responsive, responsible bidder, using an Invitation to Bid. In comparison, selection of a CM/GC firm uses a Request for Proposal rather than a traditional Invitation to Bid, and the resulting contract consists of a personal services portion for pre-construction services, and a construction contract portion for work the individual or firm will be performing or managing, with a Guaranteed Maximum Price (GMP). A key benefit to this alternative is that it involves the construction contractor's expertise early in the process, which can save time and money.

Oregon Revised Statutes (ORS) 279C.335 permits the Tualatin Soil and Water Conservation District Board of Directors, acting as the Local Public Contract Review Board, to exempt specific projects from the standard competitive bidding requirements of ORS 279C; specifically, that the Local Contract Review Board shall: "where appropriate, direct the use of alternative contracting and purchasing practices that take account of market realities and modern or innovative contracting and purchasing methods, which are also consistent with the public policy of encouraging competition."

Oregon law requires the TSWCD to adopt a resolution exempting the CM/GC contract from competitive bidding so that the alternative process may be used. Before authorizing the exemption, the TSWCD's board must consider and adopt specific written findings to support the exemption. The findings must demonstrate, at minimum, that using the CM/GC process will

save costs and/or provide substantial other benefits; and will prevent favoritism and encourage competition in awarding public contracts.

ORS 279C.335(5) states that TSWCD may hold a public hearing of the Local Contract Review Board before approving the findings required. There will be a public hearing if a written response is received requesting that TSWCD hold a public hearing. The purpose of the public hearing is to take comments on the draft findings for an exemption from the competitive bidding requirement. Notification of a proposed exemption must be published in at least one trade newspaper of general statewide circulation a minimum of 14 days before the date on which TSWCD intends to take action to approve or disapprove the exemption.

FINDINGS OF FACT

1. **Introduction.** Since receiving a permanent tax levy in 2016, the goal of TSWCD's Board of Directors has been to find a permanent home in a facility designed to provide the best service to our customers and partners. This property will provide an environment that will educate the community, demonstrate conservation practices, be more affordable long-term, and enhance communication between employees and community members. TSWCD is currently in the pre-design phase for the Project.

   Meeting this timeline while minimizing, as much as possible, interference with TSWCD's operations and interruptions of service to its customers and partners will require the construction phase to be completed on a compressed schedule to ensure completion prior to the termination of the District's existing lease. Also, because TSWCD's staff lacks the necessary knowledge and experience to coordinate and oversee construction, engaging a qualified contractor for this work is likely to result in a more efficient process andreduce the likelihood of costly mistakes and multiple change orders. The project management team, which includes District staff and a licensed architect, believe the CM/GC alternative to traditional public contracting will best accomplish this goal.

   The following findings support this determination.

2. **General Project Description.** The Project consists of major additions/renovations to the site and building at 7965 NE Cherry Drive, Hillsboro, OR.

   The Project includes several complicating factors that may require multiple permits:
   - The construction site contains a pre-existing building that will need to be dismantled or reconfigured.
   - Additional engineering will be required to ensure that the stormwater retention and detention are in compliance and modeled for a 25-year storm.
   - Electrical infrastructure will need to be evaluated and possibly moved to meet current PGE location requirements.
   - Some trees will need to be removed.

3. **Responsibilities of the CM/GC Firm.**

   a) **Design Phase.** The CM/GC firm will assist with equipment and material selection,

construction scheduling, bid packaging, cost estimating, and the review of installation plans while considering value, long lead procurements, design feasibility, constructability, and establishing a Guaranteed Maximum Price for the work prior to completion of the construction documents.

b) Bid Process. The CM/GC firm will coordinate the bid process and material procurement process for all work in coordination with TSWCD. The Request for Proposals for the CM/GCwill clarify how bids submitted by subcontractors, distributors and manufacturers will be evaluated. The CM/GC firm will provide a written recommendation to TSWCD for each subcontract. Upon approval from TSWCD the CM/GC firm will execute a contract with the approved subcontractors and or manufacturers.

c) Construction Phase. The CM/GC firm will be responsible for the construction of the Project, including scheduling of materials procurement and delivery, and all the work completed by the CM/GC firm or subcontractors. The CM/GC firm is responsible for completing the project on schedule and at or above the quality defined in the specifications approved by TSWCD, at a cost not to exceed the GMP.

4. Rationale for Using CM/GC Method.

a) The Selection Process for the CM/GC and Subcontractors will be Competitive. It is unlikely that granting the exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts for the following reasons:

1. Competitive Request for Proposals. The CM/GC firm will be selected through an open, competitive process among qualified contractors. The District will use a competitive Request for Proposal ("RFP") process that will be publicly advertised. The RFP will identify specific criteria for the selection. It will require proposers to include a competitive fee; request hourly rates for pre-construction services; and set forth the general contract requirements, including the general conditions, bond and insurance requirements, and terms for completing the project. TSWCD's Facilities Committee will interview the firms before recommending an award to the Board. The District will award the contract to the responsible proposer whose proposal is determined in writing to be the most advantageous to the District based upon the evaluation factors set forth in the RFP.

2. Competitive Solicitation of Subcontractors. The expected construction method will be determined by the CM/GC, in collaboration with the District. The CM/GC firm will be required to competitively bid any subcontracts, and will have adequate time to prepare bid packages, review and analyze bids received from subcontractors and/or manufacturers. The CM/GC contract will require the CM/GC to obtain competitive bids from qualified subcontractors and suppliers to prohibit favoritism in the bid process.

b) Use of the CM/GC Alternative Contracting Method Will Result in Substantial Time and Cost Savings.

1. Multiple Construction Packages. The construction may be completed in phases that will need to be coordinated with each other, including requiring early bid or procurement packages. In order to meet the target occupation date, it may be possible to first construct sufficient portions of the Project to allow occupancy by the District without interrupting service to the public, and then complete the other portions in a second phase. Projecting and making purchases and coordinating contracts for all phases is likely to result in better bulk pricing, fewer staging costs, and economies of scale that should result in cost savings overall.

2. Procurement of Long-Lead Items. The CM/GC method will allow the early procurement of long-lead material/equipment, i.e., control panels, alarm system, door hardware, cameras, and electrical equipment including heating, ventilation, and cooling system materials.

3. Schedule Complexity. TSWCD's goal is to achieve substantial completion in July 2027. Phasing may be considered in order to allow the District to occupy the most vital part of the new facility without interrupting service to the public.

   In addition, involving the CM/GC in the development of buildable plans and the subsequent management of the construction project is likely to reduce material costs and shorten the construction timeline.

4. Change Order Cost Control. By using an experienced construction contractor to provide cost analysis, construction feasibility reviews and long-lead procurement during the design phase, the final number of change orders should be reduced. Change orders can increase the cost of construction, so reducing the number of change orders should avoid unnecessary increases.

5. Fixed Fee. The Guaranteed Maximum Price established in the contract is the CM/GC's fixed fee, including overhead and profit, which ensures that the CM/GC is motivated to manage costs effectively. Although change orders are possible under the GMP agreement, they typically include a lower overhead and profit cost than with a traditional time-and-materials change order. Reduction of overhead and profit on changes is expected to result in cost savings.

6. Acceleration. Because the GMP is established in advance, the CM/GC approach will reduce the risk of increased costs if the project needs to be accelerated to complete it on time.

7. Qualified Advisors. The TSWCD staff has not used the CM/GC method of construction before, and the small staff does not include anyone experienced with public construction projects. Therefore, the Facilities Committee has engaged an architect and an attorney with experience advising public bodies on the complexities of a CM/GC construction process, who will work closely with TSWCD staff to ensure the process is carried out successfully and in compliance with legal requirements.

8. Operational, Budget and Financial Data. The total budget will be established during development of final building plans, considering availability of funding and long-term affordability. The CM/GC process is expected to further reduce life cycle cost through Value Engineering, thereby further reducing the operating cost.

9. Public Benefits. By concentrating decision-making in a uniquely qualified team, CM/GC process generally provides for better collaboration to ensure the project will be completed on time, on budget and at or above the quality described in the construction documents. It provides better opportunities for reducing construction time by fast- tracking construction where beneficial. This is expected to result in cost savings for the public because timely construction reduces costs, and construction delays increase costs.

10. Value Engineering. By working with the design team during the design phase, the CM/GC will help the project team identify and implement possible cost savings. The value engineering process allows the project team to evaluate quality materials and life cycle costs, thereby helping to reduce operating costs.

11. Specialized Expertise Required. The compressed construction schedule; the limited budget of public funds; the need to possibly deconstruct an existing building; and the requirement to comply with Oregon laws that apply to public construction projects all require a qualified team with the collective experience and expertise to work with TSWCD, other public agencies, and the Project Manager to bring the Project to successful completion. The request for proposals process used to select the CM/GC will enable TSWCD to select the best-qualified firm from among the proposers.

12. Public Safety. Engaging licensed contractors with experience in constructing public buildings will help to ensure that all customary industry safety precautions are taken during construction, and that all building requirements meant to protect public safety will be followed.

13. Market Conditions. Current market conditions show that there is plentiful work for the construction industry. Due to this volume of work, costs for materials and labor are increasing and materials and equipment may take longer to order since manufacturers and distributors are not keeping large amounts of inventory in stock. The CM/GC firm will be responsible for ordering the materials and equipment on time from manufacturers and distributors who can deliver the material and equipment on time and avoid increased costs due to delay.

    Furthermore, construction costs continue to increase over time, making it likely that completing the Project as soon as possible, and in as fast a time frame as possible, will save costs that would not be realized by following a longer, more traditional design-bid-build process.

14. Technical Complexity. This project presents unique construction challenges because of the combination of an existing building, the limited construction timeline, and a limited budget. The existing building and infrastructure must be addressed before new

construction can begin, including:

- Possible removal of existing building;
- Re-assessing the existing underground electrical distribution system, that may require removing and/or moving all wire and conduit from the construction site;
- Removing trees.

15. Funding Sources. The Project will be paid for primarily with reserve funds and possible loan funds if needed. The District will pledge future tax receipts to secure loan funding with desirable terms and conditions, if needed. Establishment of a preliminary and final GMPs will better enable the TSWCD to manage available resources.

    Because TSWCD obtains most of its funding from property taxes, the Board of Directors feels a strong obligation to its taxpayers to ensure that funds are managed responsibly, efficiently, and effectively. Building and owning its own facility, rather than entering into another long-term lease, is intended to improve service to customers in the short term and to produce cost savings once the loan is satisfied.

CONCLUSION AND RECOMMENDATION

For the reasons described above, the use of the CM/GC alternative contracting method is likely to provide TSWCD with the following advantages:

- Substantial cost savings.
- Reduction of schedule risk typically associated with complex construction Project.
- 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 project completions by the projected completion dates.
- Higher confidence in obtaining quality construction.

The Executive Director recommends that the Board of Directors, acting in the capacity of the District's 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 the following construction project at 7965 NE Cherry Drive, Hillsboro, OR.

Lacey M Townsend

Executive Director, Tualatin Soil and Water Conservation District
May 15, 2024