

EXHIBIT A

Draft Findings For Exemption From Public Contracting Rules For The Use Of Design-Build Methodology For The Courthouse Square Complex

A. Background

The Salem Area Mass Transit District (SAMTD) and Marion County (County) are joint owners of the Courthouse Square Complex and both entities have the ultimate responsibility to taxpayers for the Courthouse Square Complex. The Courthouse Square Complex is located at 555 Court Street NE, Salem, OR and encompasses one entire city block bound by Church, Chemeketa, High and Court Streets. The Courthouse Square Complex contains a 163,000 square foot five story office building above grade, a below grade parking garage beneath the entire complex, a two-lane transit bus mall, Hatfield Plaza, and the north block area, and hereafter is referred to as the Courthouse Square Complex (CH2 Complex). The Courthouse Square Condominium Association, an Oregon non-profit corporation, manages the property on behalf of the owners, pursuant to a condominium declaration and bylaws. Marion County and Salem Area Mass Transit District are the owners of all of the condominium units, and are the only members of the Association. The condominium declaration specifically states that the office building must be remediated in the event of damage (subject to an option to convert the condominium to a tenancy in common if damages exceed a certain dollar threshold).

Construction of the CH2 Complex was completed in early 2000, and the office building officially opened in September 2000. Problems that were deemed cosmetic with the office building and the complex became evident by 2002. Initial problems included buckling floor tiles in restrooms, water seeping into the parking garage, and minor cracks in some walls. Problems thought to be cosmetic were also noted with pavers on the transit bus mall. The noticeable defects in 2002 were initially thought to be cosmetic and repairable.

Following further investigation, on June 30, 2010, engineering consultants recommended immediate closure of the transit bus mall and a portion of the parking structure under the transit bus mall. The transit bus mall closed on July 2, 2010. Additional analysis on the office building in July 2010 led to a recommendation that changed the classification of the office building from “safe” to “dangerous.” The City of Salem issued an abatement notice and ordered all of the occupants of the office building to vacate. The office building and two retail businesses were vacated by the end of September 2010.

The governing boards of both the County and SAMTD agreed to chart a course of action for the CH2 Complex after the County and SAMTD offices moved out of Courthouse Square. The County and SAMTD established a Courthouse Square Solutions Task Force made up of community members with various experience and expertise and elected officials of the boards of the two Owners to provide guidance on future direction of the CH2 Complex. The Owners’ governing boards have contracted with a firm to provide owners’ representative services. One of the first tasks for the owners’ representative is to develop a solicitation to obtain a market-driven cost estimate for remediation of the CH2 Complex. Once this cost is determined, the governing bodies will decide how to move forward with the most cost-effective solution.

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B. Statutory Requirements

Oregon public contracting code as set forth in Oregon Revised Statutes ORS Chapter 279C, allows the use of competitive Request for Proposals (RFP) for public improvement contracts and provides flexibility in both proposal evaluation and contract negotiation under specific conditions and when authorized by the Local Contract Review Board. The owners desire to use a Request for Proposals (RFP) solicitation to use the design-build construction methodology for the remediation of the Courthouse Square complex. The RFP document has been designed to fully comply with the requirements of Oregon public contracting code. In order to utilize a competitive RFP for public improvements, ORS 279C.335 requires that the Local Contract Review Board make certain findings as part of authorizing the use of an Alternative Contracting Method. The findings for the use of an RFP for a public improvement must demonstrate that:

1. It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts; and
2. The awarding of public improvement contracts under the exemption will likely result in substantial cost savings to the owners or the public.

For public improvement projects, agency findings must address certain additional factors, defined by ORS 279C.330. These include, but are not limited to: (1) Operational, budget and financial data; (2) Public benefits; (3) Value engineering; (4) Specialized expertise required; (5) Public safety; (6) Market conditions; (7) Technical complexity; and (8) Funding sources.

The rules also require that the owners give public notice and hold a public hearing to receive public comment on the findings before taking action on granting an exemption to a public improvement contract from the requirement of competitive bidding.

In reviewing this exemption from competitive bidding, the Local Contract Review Board has considered the following factors:

C. Competition/Favoritism:

1. The Request for Proposals (RFP) will be publicly advertised to ensure a fair, open, and competitive process. The owners will use a formal competitive remediation RFP process for selecting the design-build firm. The remediation RFP process allows the owners to select the firm best suited for the project based on factors such as experience, ability to respond to the technical complexity, unique character of the project, past performance, price and other factors specific to the project.
2. Objective selection criteria and a formal selection process will be included in the remediation RFP for selection of the design-build firm. The selection process to determine the highest ranking proposal will be based on a team review of weighted evaluation criteria identified in the remediation RFP.
3. The remediation RFP will include special requirements pursuant to federal, state and local public contracting code to ensure fair and open competition for any subcontractors or

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subconsultants. The design-build firm must follow procedures subject to the applicable federal, state, and local public contracting code for soliciting, receiving bids, and awarding any subcontracts.

4. Federal Transit Administration (FTA) Circular 4220.1F prohibits geographic preferences on FTA-funded projects. If FTA funding is used to pay for any portion of the proposed solution for the CH2 Complex, the FTA requirements will take precedence over state or local laws on this issue. Marion County public contracting rules Section 10-0100 also state when federal funds are involved, that the federal statutes or regulations will take precedence over the county's local contracting rules. FTA Circular 4220.1F Section 2(a)(4) prohibits solicitation requirements that contain features that unduly restrict competition. FTA recipients are also prohibited by 49 U.S.C. Section 5325 (h) from using FTA assistance to support an exclusionary or discriminatory specification. Including in-state or local geographic restrictions or preferences in a solicitation document for qualifications and/or in evaluating proposals are prohibited under FTA Circular 4220.1F for Third Party Contracting Guidance.

D. Substantial Cost Savings:

1. **Project Team Efficiencies:** The design-build methodology partners the contractor with the necessary engineering and other specialized disciplines needed for the development and completion of its proposed solution in response to the remediation RFP. The proposed solution will include input from the contractor, engineers, and others working as a team fostering a cooperative exchange of ideas. This project team dynamic will allow for:
 - a. input and regular reviews during the development of the proposed solution, providing opportunities for recommending clarifications and corrections that will reduce vulnerability to contractor change orders, disputes and claims during construction.
 - b. design efficiencies to be woven into the proposed solution and construction process, providing quick resolution of design/engineering issues that arise and keeps the project on schedule, thereby saving both time and money.
 - c. the design-build firm to provide analysis of the local labor market to make recommendations to the owners' project team for the selection of materials and systems least vulnerable to cost premium as the result of labor issues.
2. **Shortened Project Schedule:** Due to the fact that the existing CH2 Complex requires a remediation solution, the remediation RFP will solicit for specific fully costed solutions that will allow for certain elements of construction to proceed soon after contract award. This methodology shortens the delivery period because it eliminates the procurement phase between the design and the construction phase used in the traditional design-bid-build contracting method. The design-build methodology allows the project to be completed more rapidly thereby minimizing the impact of cost escalation to the owners. (See attached sample timeline diagram.)
3. **Lower Project Costs:** The use of design-build methodology allows for lower overall project costs. In addition to the shortened project timeline to complete the project, additional costs savings will result from:
 - a. **Cost Estimating:** The use of design-build methodology allows the design-build firm to provide cost estimates, taking into account value engineering opportunities, during

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the development of its response to the RFP, and arrive at the final cost for its proposed solution.

- b. **Reduced Change Order Exposure:** The design-build firm has direct control of the proposed solution at a fixed cost thereby reducing exposure to requests for information (RFI) and design/construction changes that may result in higher change order costs once construction of the project begins.

E. Other Findings Criteria (ORS 279C.330)

As set forth in ORS 279C.330, the justification of the exemption may include consideration of other factors, including, but not limited to:

1. **Operational, budget, and financial data.** The use of a remediation RFP provides the owners the cost of remediation and the information needed to determine the owners the ability to pay and budget appropriately. The use of a remediation RFP provides the owners the data necessary to make decisions on the future direction for the CH2 Complex.
2. **Public benefits.** Restored access to government and transit services will benefit the public. The return of occupants and visitors to the CH2 Complex provides added economic benefits for local businesses.
3. **Value engineering.** The design-build construction methodology provides opportunities for the contractor, engineers and other specialized consultants to factor in any needed value engineering (cost savings measures) in the development of its proposed solution.
4. **Specialized expertise.** The use of the design-build construction methodology provides the most likely opportunity to acquire a specialized, technical, peer reviewed, and cost-effective solution to repair the CH2 Complex. This project delivery method enables the design-build firm to include viable successful construction techniques, quality assurance/quality control elements and the integration of building systems into its proposed solution.
5. **Technical complexity.** The use of design-build construction methodology allows the owners, owners' staff, owners' representative, and the selected design-build firm to take a collaborative team approach with the necessary technical expertise, experience, and project management skills.
6. **Public safety.** The owners will benefit from the integrated project team's experience, knowledge, and specialized technical expertise needed to correct the structural deficiencies and restore life safety and serviceability in order to put a joint government asset back into service.

F. Competitive Bidding Strategies

The resulting contract from the design-build alternative procurement process will be treated as a public contract for public improvement as defined by public contracting code and will be subject to all requirements for public improvement contracts, including but not limited to hours of labor, retainage and payment, subcontractors, bonds, insurance, warranties, peer reviews, as well as prevailing wage requirements.

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G. Conclusion

Based on the foregoing, the findings outlined above justify the proposed exemption and use of an alternative contracting method. The use of an alternative contracting method will benefit the public by providing a construction methodology that results in the most likely opportunity to acquire a specialized, technical, peer reviewed, and cost-effective solution for the remediation of the Courthouse Square Complex. Using an alternative contracting method will result in an open environment that takes into account modern realities and practices that are consistent with the public policy of encouraging competition (ORS 279C.335(4)(a).) This sets the stage for the owners to obtain critical information necessary to make an informed decision on the CH2 Complex that is in the public's best interest.