



MARION COUNTY BOARD OF COMMISSIONERS

# Board Session Agenda Review Form

Meeting date:

Department:  Agenda Planning Date:  Time required:

Audio/Visual aids

Contact:  Phone:

Department Head Signature:   


**TITLE**

**Issue, Description & Background**   
Marion County Public Works (MCPW) has been allocated approximately \$14M in ARPA funding as part of the County's disbursement to construct wastewater and drinking water system improvements (the "Project") for Brooks-Hopmere on behalf of the Brooks Community Service District (BCSD). The Project is in the early stages of design, field investigation and environmental permitting. The current design phase will culminate in the completion of a water feasibility study and wastewater facility plan, including recommendations of the improvements to be constructed in the sequence most favorable to BCSD. The Marion County Board of Commissioners will then determine which improvements to construct with the available funding.   
  
The Project is large, technically complex, and must be completed prior to the expiration of ARPA funds on December 31, 2026. The Project complexity represents significant risk to Marion County if Project costs exceed available funding, the Project is not completed by the ARPA funding deadline, if the Project disrupts the continuous operation of the existing BCSD wastewater and drinking water systems, or fails to operate as expected once construction is complete. MCPW recommends the use of Construction Management / General Contractor (CMGC) procurement as the most effective and reliable means to mitigate these risks. In CMGC procurement, the general contractor is selected during design using a qualifications-based selection process. Subsequent construction work is procured through a combination of competitive bidding and open book negotiations. In this process, the County benefits from design and value engineering input by the construction team that will oversee construction of the final project, which generally results in fewer change orders and construction delays resulting from design errors, unforeseen site conditions and other causes.   
  
Oregon public contracting code and Marion County's Public Contracting Rules (MCPCR) require the board of commissioners to adopt a finding of public benefit and authorize the use of alternative contracting procedures, such as CMGC, prior to the start of procurement activities. The process begins with a board order notifying the public of the county's intent to use an alternative contracting method and scheduling a public hearing on the matter, including a minimum 14-day public notice period. If the board determines that alternative contracting procedures are justified following the public hearing, the board may adopt an order granting an exception to MCPCR and authorizing the procurement process to begin.

**Financial Impacts:**

**Impacts to Department**



MARION COUNTY BOARD OF COMMISSIONERS

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& External Agencies	to traditional design-bid-build projects. BCSD will benefit from the involvement of the CMGC to inform project decisions. No other impacts to external agencies are anticipated.
Options for Consideration:	<ol style="list-style-type: none"><li>1. Adopt the attached resolution scheduling a public hearing, including minimum 14-day public notice of the hearing.</li><li>2. Take no action at this time.</li></ol>
Recommendation:	Staff recommend Option 1, allowing the board to consider the use of CMGC procurement for this Project.
List of attachments:	Board Order setting a public hearing to consider granting an exemption to allow an alternative competitive process pursuant to Marion County Public Contracting Rules.
Presenter:	Camber Schlag; Chris Einmo

*Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)*

Copies to:	Alicia Henry, Public Works, ahenry@co.marion.or.us Brian Nicholas, Public Works, bnicholas@co.marion.or.us
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BEFORE THE BOARD OF  
COMMISSIONERS  
FOR MARION COUNTY, OREGON

In the matter of setting a public hearing        )  
to consider granting an exemption to allow    )  
an alternative competitive process pursuant )  
to Marion County Public Contracting Rules. )

ORDER NO. \_\_\_\_\_

This matter came before the Marion County Board of Commissioners, acting as the Marion County Contract Review Board (Board), at its regularly scheduled public meeting on Wednesday, July 19, 2023, to set a public hearing on a proposed exemption from the Marion County Public Contracting Rules.

WHEREAS, the Contracts Officer or designee has advised the Board that Marion County Public Works seeks to allow the use of an alternative competitive process to solicit proposals for the Brooks-Hopmere Drinking Water and Wastewater Improvement Project. The board believes that it is appropriate to consider granting the alternative competitive process, and state law requires a public hearing before the exemption may be granted.

IT IS HEREBY ORDERED that the board will hold a public hearing on the 2<sup>nd</sup> day of August, 2023 at 9:30 AM to receive testimony on the proposed alternative competitive process to solicit construction management/general contractor services for the Brooks-Hopmere Drinking Water and Wastewater Improvement Project.

IT IS FURTHER ORDERED that notice of the public hearing be posted and published forthwith.

DATED this 6<sup>th</sup> day of July 2023.

MARION COUNTY BOARD OF  
COMMISSIONERS

Original: Clerk  
cc: BOC

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Chair

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Commissioner

Public Works

Camber Schlag Finance

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Commissioner



## PUBLIC NOTICE

Notice is hereby given that the Marion County Board of Commissioners will consider approval to grant an exemption for a public improvement project under Marion County Public Contracting Rules Section 40-0640 and ORS 279C.335 during a public hearing to be held at the Marion County Board of Commissioner's regularly scheduled weekly public meeting at 555 Court Street NE, Salem, Oregon, 37301 at 9:30 am on August 2, 2023. Approval of the exemption would authorize the use of a Construction Manager/General Contractor solicitation as an alternative competitive process for the project delivery methodology for the Brooks-Hopmere Drinking Water and Wastewater Improvements Project.

Any person wishing to comment for or against the approval of the exemption for this public improvement project or request an American with Disabilities Act accommodation may do so in writing. All written comments or protests for the exemption of the public improvement or accommodation requests may be directed to Camber Schlag, Marion County Finance, PO Box 14500, Salem OR 97309, by fax: 503 373-4379 or email [cschlag@co.marion.or.us](mailto:cschlag@co.marion.or.us) and must be delivered in writing prior to 5:00 PM on Tuesday, August 1, 2023. Additional information or justification for this process may be obtained on Marion County's website: <http://www.co.marion.or.us> under the Board of Commissioner's link.

Is/ Camber Schlag  
Contracts and Procurement Manager

**MARION COUNTY  
FINDINGS FOR EXEMPTION  
FROM CONTRACT REVIEW BOARD RULES FOR  
BROOKS-HOPMERE WASTEWATER AND DRINKING WATER IMPROVEMENTS**

**Introduction**

Marion County Public Works Department requests a public hearing to be held on August 2, 2023, to receive testimony on a proposed alternative competitive process to solicit Construction Management / General Contractor (CMGC) services for the Brooks-Hopmere Wastewater and Drinking Water Improvements Project.

**Background**

Marion County received a \$67M American Rescue Plan Act (ARPA) federal allocation in June 2021. From these funds, the Marion County Board of Commissioners awarded to Marion County Public Works (the “Department”) total allocations of \$14,848,000 for wastewater system improvements and drinking water system improvements (the “Project”) on behalf of the Brooks Community Service District (BCSD)

The Project consists of:

1. design and construction of either a new wastewater treatment facility or expansion of the existing treatment facility for BCSD,
2. design and construction of either improvements to the existing BCSD sanitary sewer collection system, or replacement of the existing system with a new gravity sewer,
3. design and construction of new water supply, treatment, storage, and pumping facilities for the BCSD; and
4. design and construction of a new water distribution system for the BCSD.

The Department has awarded a contract for architectural and engineering (A&E) services to Keller and Associates (the “Engineer”) for this Project. The A&E services contract contemplates the use of CMGC project delivery. Under the A&E services contract, the Engineer will complete master planning, a drinking water feasibility study and a wastewater facility planning study, which will enable the County to define the final construction scope and budget for each system within the available funding.

This Project has two significant challenges:

1. ARPA rules mandate aggressive funding obligation and expenditure deadlines.
  - a. All ARPA funds must be ‘obligated’ no later than December 31, 2024, meaning that project design and permitting must be complete and a construction contract executed by that date.
  - b. Furthermore, all ARPA funds must be fully expended by December 31, 2026. This is an extraordinarily aggressive timeline for drinking water and sanitary sewer projects of this type. An expedient construction contracting methodology will be essential to meeting the ARPA funding deadlines.

2. A surge in state and federal funding for infrastructure projects related to wildfire recovery in Oregon, the ARPA program and other large federal funding programs have resulted in sharp increases in pressure on specialized contractors and supply chains to meet the demand.

## **Findings**

The Department has identified the competitive CMGC solicitation method as the preferred contract delivery option for this Project because of the complex nature of the work, which requires a greater emphasis on the general contractor's experience and technical ability, as well as the very strict expenditure deadlines associated with ARPA funding.

The CMGC process allows selection of the public improvement firm best suited for the Project based on these and other factors such as experience, past performance, price and best value, not solely on lowest bid.

### **A. Statutory Requirements**

Oregon public contracting code, as set forth in ORS Chapter 279C, allows the use of competitive CMGC 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 Department desires to use a CMGC solicitation for the Project. The CMGC process will comply with the requirements of Oregon public contracting code. In order to utilize a competitive CMGC solicitation for public improvements, ORS 279C.335 requires the Local Contract Review Board make certain findings as part of authorizing the use of an Alternative Contracting Method. These 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.
  - (1) The CMGC solicitation will be publicly advertised to ensure a fair, open, and competitive process.
  - (2) The Project CMGC process allows the County to select the firm based on factors such as
    - i. experience,
    - ii. ability to respond to the technical complexity,
    - iii. unique character of the Project,
    - iv. past performance,
    - v. price,
    - vi. value,
    - vii. and other factors specific to the Project.
  - (3) The selection process to determine the highest-ranking proposal will be based on a team review of weighted evaluation criteria identified in the solicitation.
  - (4) The CMGC solicitation will include requirements pursuant to federal, state and local public contracting code to ensure fair and open competition for any subcontractors or sub-consultants.
2. The awarding of public improvement contracts under the exemption will likely result in substantial cost savings and other substantial benefits to the County or the public.



- (1) Price will still be a significant factor in the scoring of the proposals, and
- (2) Selecting a firm that is capable of complying with Project timelines and managing a highly technical and complex project will provide additional resource savings to the County.

For public improvement projects, ORS 279C.335(2)(b) establishes additional factors for the Board's consideration, including but not limited to: (1) availability of persons to bid; (2) construction budget and operating costs; (3) public benefits; (4) value engineering; (5) specialized expertise required; (6) public safety; (7) reduction in risk; (8) funding sources; (9) market conditions; (10) size and technical complexity; (11) new construction or renovations; (12) occupied or unoccupied during construction; (13) single or multiple phases; and (14) public and private personnel assigned to project.

The rules also require the County give public notice and hold a public hearing to receive public comment on the findings before taking action to grant 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:

**B. Competition/Favoritism (279C.335 (2)(a)):**

Awarding the project under this exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts.

1. The Construction Manager General Contractor (CMGC) solicitation will be publicly advertised to ensure a fair, open, and competitive process. The County will use a formal competitive CMGC process for selecting a public improvement firm (firm). The Project CMGC process allows the County 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, value, and other factors specific to the Project.
2. Objective selection criteria and a formal selection process will be included in the Project CMGC solicitation for selection of the public improvement firm. The selection process to determine the highest-ranking proposal will be based on a team review of weighted evaluation criteria identified in the solicitation.
3. The Project CMGC solicitation will include requirements pursuant to federal, state and local public contracting code to ensure fair and open competition for any subcontractors or subconsultants. The public improvement firm must follow specified procedures subject to the applicable state and local public contracting code for soliciting, receiving bids, and awarding any subcontracts.

**C. Findings Criteria ORS (279C.335 (2)(b)):**

Awarding the Project under this exemption will likely result in no significant increase in total Project costs because (1) price will still be a significant factor in the scoring of the proposals and (2) selecting a firm that is capable of complying with Project timelines and that is also able to manage a highly technical and complex project will provide additional resource savings to the county.

As set forth in ORS 279C.335, the justification of the exemption shall include consideration of other substantial benefits, including, but not limited to:

1. **Availability of persons to bid.** The Department anticipates response from multiple qualified proposers, situated both locally and from larger markets. An adequate number of qualified firms exist in the marketplace and the Project and CMGC solicitation process contain no factors that would discourage qualified proposers from responding to a contract solicitation.
2. **The construction budget and the projected operating costs for the completed public improvement.** The constructed Project will be developed to match available funding, which currently totals approximately \$14M, but may increase during the course of the Project if additional funding is secured. This constitutes a large public improvement project. CMGC is a recommended contracting methodology for large, complex construction procurements. CMGC is expected to mitigate the risk of budget overrun by minimizing construction-phase change orders.
3. **Public benefits that may result from granting the exemption.** This project is funded using American Rescue Plan Act (ARPA) funds, one-time funding that expires December 31, 2026. Obligation and expenditure deadlines associated with ARPA are extremely aggressive for a project of this size and complexity. The opportunity to fund the construction of community-wide municipal sewer infrastructure, which is critical for economic development of the Brooks Community Service District area, is unlikely to occur for the foreseeable future. The public will benefit from the construction of critical infrastructure, the lack of which has constrained economic development for decades.
4. **Whether value engineering techniques may decrease the cost.** Value engineering (VE) is widely used in public infrastructure projects and is an integral part of the CMGC process. VE reduces total project costs by utilizing the public infrastructure firm's construction expertise to identify cost saving measures and improve constructability during design so these measures can be incorporated into the construction documents, generally resulting in lower construction costs and faster project completion. In contrast, traditional design-bid-build projects do not incorporate the construction team's expertise in value engineering and can lead to extensive change orders and construction delays. VE will be utilized on this project.
5. **The cost and availability of specialized expertise that is necessary.** The water and wastewater improvements resulting from this Project will likely use specialized or proprietary equipment in treatment and distribution/collection systems due to the unique configuration of the system and limitations of available land. CMGC procurement will provide ample opportunity to evaluate the use and benefit of specialized or proprietary technology and engage the work of qualified subject matter experts to ensure the end project performs as intended and is readily constructable.
6. **Any likely increases in public safety.** This Project will include the replacement or extension of portions of the BCSD water distribution and sanitary sewer collection systems, all of which must remain fully operational until the new system is complete. The existing wastewater treatment plant is reaching its permitted operating limits, creating a risk to public health. The BCSD existing agreement for water supply is a temporary agreement and may be rescinded. Expediting construction of new water supply alternatives will improve water system resiliency,

improving public health in the event of a loss of the existing supply. The current BCSD system is not able to provide the required fire flow. The proposed improvements would provide fire flow capacity under NFPA guidelines, resulting in improvement of public safety in the event of a fire. Expediting the Project through the use of CMGC procurement will provide a public health benefit by more quickly and reliably bringing new water and wastewater treatment facilities online, improving the quality of drinking water and discharged effluent. Additionally, involvement of the CMGC during the development of construction phasing and switchover plans will ensure the switchover is well planned and occurs without impacting day-to-day operation of the BCSD's water distribution and sewer collection systems.

7. **Whether granting the exemption may reduce risks.** Risk reduction is the paramount advantage of CMGC procurement since it provides the County with opportunities to evaluate risk then challenge the engineering and construction management firm to create effective plans to mitigate those risks during design when risk mitigation measures are most effective. This provides a higher level of cost and schedule certainty. Traditional design-bid-build projects involve a higher risk of bid failure when a low number of bidders participate. Local contracting resources are already strained in the current contracting environment as a result of market changes during the COVID-19 pandemic combined with recovery efforts from the local 2020 Lionshead and Beachie Creek wildfires.
8. **Whether granting the exemption will affect the sources of funding.** ARPA funds may be used with CMGC procurement. This exemption will not affect the sources of funds.
9. **Whether granting the exemption will better enable the County to control the impact that market conditions may have on the cost of and time necessary to complete the project.** This Project is being procured during the long-term recovery period following the COVID-19 pandemic as disruptions to the local supply chain make material prices and logistics unpredictable. Many local contracting resources are strained or limited. The Department has experienced multiple failed bids for local projects in the past few years due to extraordinarily high bid prices and limited bidder numbers. Open-book negotiation processes associated with the CMGC process will enable the County to weed out excessive or unbalanced bids and award work to the public infrastructure firm at reasonable rates that reflect the local market.
10. **Whether granting the exemption will better address the technical complexity of the project.** This is a very complex and technical project with numerous engineering, land use, environmental permitting, water rights, construction and start-up challenges. Having the input of the public improvement firm that will construct the project during design, permitting, and preliminary planning will ensure the construction team enters the construction phase with a well-developed contracting plan with a contract value that adequately accounts for all risk mitigation measures. This greatly mitigates cost and schedule risk to the county.
11. **Whether new construction or renovates or remodels an existing structure.** The Project involves both new construction and the renovation and/or demolition of existing facilities. The Project scope is compatible with the use of CMGC procurement.
12. **Whether the public improvement will be occupied or unoccupied during construction.** The existing water distribution and wastewater collection systems must continue to operate during construction. This requires extensive coordination with BCSD operations combined

with a comprehensive public outreach strategy so that existing customers do not experience service disruptions. The CMGC procurement method will allow the Department to weigh the proposers' prior demonstrated proficiency in coordinating with operators and the public during construction.

13. **Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions.** This is a phased project in which existing infrastructure must remain operational as new infrastructure is being built and commissioned. CMGC provides opportunities to achieve significantly better Project outcomes in these circumstances than traditional design-bid-build contracting by involving an experienced water/wastewater plant construction contractor early in the project, bringing specialized expertise to all phases of the project from design through commissioning.
14. **Public and private personnel assigned to project.** The Department has limited personnel resources to apply to this Project. CMGC significantly multiplies the size and number of large, complex projects County staff can effectively deliver by leveraging the personnel resources of the engineering and public infrastructure firms. It is essential that the County use an alternative to traditional design-bid-build contracting to deliver this Project.

#### **D. Competitive Bidding Strategies**

The resulting contract from the CMGC contract resulting from this procurement will be categorized as a Contract for Public Improvement as defined in public contracting code, subject to all public contracting rules, including but not limited to: labor regulations, retainage and payment, bond, insurance and warranties. Selection of the CMGC will involve a competitive proposal process utilizing both cost and qualification-based selection criteria. Furthermore, the CMGC will be required to competitively bid all subcontracted work and disclose all private bid results to the County.

#### **E. 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 project delivery approach that results in the best value, least risk and most likely opportunity to acquire the specialized technical solution for the Brooks-Hopmere Drinking Water and Wastewater Improvement Projects within existing funding deadlines. Using an alternative contracting method will result in an open environment that addresses the complexity of the Project consistent with public contracting rules.