DRAFT

FINDINGS OF FACT SUPPORTING AN EXEMPTION FROM COMPETITIVE BIDDING REQUIREMENTS AND USE OF THE CM/GC AS PART OF AN INTEGRATED PROJECT DELIVERY (IPD) CONTRACTING METHOD

By the Legislative Administrator
of the Oregon State Legislature

Exemption Determination for the Oregon State Capitol Master Plan and Master Plan Renovation Project located at 900 Court Street NE, Salem, Oregon 97301.

The Oregon Legislative Assembly, acting by and through the Legislative Administrator ("LA"), intends to conduct a construction and remodeling project at the Oregon Capitol. The Legislative Administrator has authority to conduct this procurement under ORS 173.720 (2) and Oregon Legislative Administration Committee procurement policy. Although not bound to the entirety of ORS chapters 279A, B and C, the Legislative Administrator intends to follow a process which meets the intent of these statutes so that the highest standards of process and transparency are displayed.

ORS 279C.335 (1) requires, with certain exceptions, that all public improvement contracts be based on competitive bids and, under ORS 279C.375, awarded to the lowest responsive and responsible bidder. ORS 279C.335(2) allows the LA, acting in the capacity of a contract review board, to grant, under certain conditions, exemptions from the requirement for competitive bidding after making and approving specified findings. The Legislative Administration Committee has delegated authority to the LA to grant an exemption from competitive bidding. The LA finds that taking the actions listed in this document are equivalent to meeting the requirements set forth in ORS 279C.335 as the requirements apply to contracting agencies subject to the Public Contracting Code.

LA intends to use an alternative contracting method for this procurement, and will issue an order that states conditions and approves findings that are equivalent to the requirements specified in ORS 279C.330 and ORS 279C.335(2)(a) and (b). ORS 279C.330 defines "Findings" and references specific information to be addressed. ORS 279C.335(2) sets forth exemption criteria that must be addressed in the findings.

ORS 279C.335(5)(a) requires a public hearing to be held before these findings are approved, allowing the opportunity for all interested parties to comment on the draft findings. A hearing for review of these findings was held on July 31, 2013, 2:00 PM PST at Hearing Room "A", at the Oregon State Capitol 900 Court Street NE, Salem, Oregon 97310, as published in the public notices section of the Daily Journal of Commerce, the Oregonian, and Statesmen Journal on July

17, 2013. Oral and written testimonies were received, and responses to comments and questions were provided to the testifying parties.

I
BACKGROUND

PROJECT DESCRIPTION

"From the beginning, we felt this building should have all of the simplicity and fine proportion that is associated with the classic but that the detail should be related to contemporary life. This thought seemed especially appropriate when we considered the section of the country where the Capitol is to be placed, the progressive northwest where the newer ideas have more fertile soil to grow in." – Francis Keally, Architect of the Oregon State Capitol, 1936

The State Capitol has served the citizens and Legislature of Oregon well for over 70 years. However, due to age, additional space needs, requirements of the Legislature, and code and safety issues, the Capitol is in need of renovation. The Capitol Master Plan of 2009 was commissioned and funded to analyze the existing conditions of the facility, determine where upgrades are required, identify how space needs can be met, and develop a concept, cost plan and a phasing strategy to address the long term vision for a complete renovation of the Capitol.

The result of the final 2013 update to the 2009 master plan stated five recommendations as follows:

RECOMMENDATIONS

Based on this background and these concerns, the Review Committee makes the following recommendations, which are described in detail in the remainder of the report:

Recommendation 1: Address the seismic and other life-safety concerns as top priorities and address the operational concerns when efficient opportunities arise. The Legislative Assembly should seismically retrofit the Capitol and correct the other life-safety issues throughout the building. When work is being done to achieve the seismic and life-safety repairs, it will be possible to do the work necessary to correct operational deficiencies at the same time in order to reduce overall construction costs.

Recommendation 2: Use guidelines for addressing the operational concerns, while leaving specific decisions to the Legislative Administrator and design team. The Legislative Assembly should provide guidelines for how space should be allocated and used in the Capitol, while leaving specific decisions about the location of offices in the Capitol to the Legislative Administrator and design team engaged in the construction. Further, needs within the Capitol change over time, and guidelines will provide useful direction while still giving the Legislative Administrator flexibility to address changing needs. The Review Committee has recommended a set of guidelines beginning at page 17 of this report.

Recommendation 3: Gain the early benefit of a planning consultant and then use the Construction Manager/General Contractor ("CM/GC") contracting method with clear legislative oversight and a streamlined historic design review process. Early help from a planning consultant will lay the groundwork for a successful project. Further, the CM/GC contracting method is widely used on projects of this size. The project should be overseen by the Legislative Administration Committee with a single point of contact from the Legislature to the construction team. To the greatest extent possible, the historic design review process for the Capitol Master Plan should be streamlined and coordinated within a single entity.

Recommendation 4*: Following the 2015 Session, temporarily vacate the Capitol and coordinate the Master Plan with projects planned by the Department of Administrative Services ("DAS"). Construction of the Master Plan project should begin following the 2015 Session with the anticipated completion of the project before the 2019 Session. The Capitol should be vacated for the duration of the Master Plan project. DAS is planning other construction on the Capitol Mall, and space in a new office building planned by DAS can be used to house the Legislative Branch during construction of the Master Plan project. Close coordination with DAS's project will reduce overall costs and minimize complications with the Master Plan.

Post recommendation comment: Other options for interim relocation may also be evaluated by the LAC to ensure the State Capitol minimizes both cost and disruption to Capitol staff, and program functionality.

Recommendation 5: Fund the project in stages. The Legislature should fund the project in stages. First, a small initial expenditure should be made in the 2011-13

biennium to begin more detailed planning of the project. Next, a larger expenditure in the 2013-15 biennium should be made using bonding authority to complete the planning and design process. Finally, additional bonding authority should be granted beginning in the 2015 Session for the actual construction.

PROJECT SCOPE

The Executive Report of February 2013 furthered the 2009 Master Plan by recommending the building be renovated as a whole with the Capitol vacated during the construction process. The 2013 Report also confirmed the scope of the renovation as follows:

- Holistic seismic upgrades such as but not limited to base isolation system.
- Expansion of the building with infill of the light courts on a new Concourse Level.
- New mechanical, plumbing, electrical, data infrastructure and fire life safety replacement on the Concourse Level and on a selective and as needed basis throughout the 1938 building and 1977 wings.
- Renovation of office area on the Concourse Level to meet additional needs.
- ADA building access and facility upgrade on the Concourse Level and throughout.
- Restoration of the exterior stone, windows, and all exterior work.
- Renovation of each level of the building on a selective floor-by-floor basis respecting the historic character and materials of the building throughout.

The existing building has a total of 363,375 gross square feet (gsf). At the completion of the renovation and expansion, the Capitol is expected to have a total of 388,475 gsf, an increase of 25,100 gsf.

The complete scope and details for the renovation are to be determined during the Design Phase within a collaborative Integrated Project Delivery (IPD) between the Architect, Engineers, CM/GC Contractor, representatives of the Owner and stakeholders in the Capitol renovation process.

The Owner's Representative, Architect/Engineer and CM/GC Contractor are to be selected through a qualifications based "Best Value" RFP process. This selection process conforms to the IPD format for project delivery which is the desirable form of negotiated structure given the complexity of the seismic upgrades, the many unforeseen and unforeseeable elements in the historic building composition, and the need for phased funding as required by the Legislative process.

Other helpful reference master plan documents can be found here: http://www.leg.state.or.us/mp/masterplan.html

PROJECT MILESTONE SCHEDULE

- Pre- Design Planning Phase 05/11/2013 – 10/10/2013
  - RFP Awards 09/12/2013 – 10/10/2013
- Design Phase 10/18/2013 – 07/08/2015
  - Conceptualization Phase 10/18/2013 – 03/03/2014
  - Detailed Design 03/04/2014 – 10/01/2014
  - Implementation Documents 10/02/2014 – 07/08/2015
- Construction Phase 07/01/2015 – 01/01/2019
  - Move out and Mobilization 07/01/2015 – 08/28/2015
  - Excavation, Seismic Upgrade 09/01/2015 – 02/28/2017
  - Legislative Session 02/01/2016 – 03/07/2016
  - Renovations and Ops Upgrades 03/01/2017 – 07/31/2018
  - Commissioning and close out 08/01/2018 – 10/31/2018
  - Move back and demobilize 11/01/2018 – 01/01/2019
- Operational follow through 01/02/2019 – 03/29/2019

PROJECT BUDGET

COST CATEGORY	DRAFT BUDGET MAY 30, 2013
CONSTRUCTION COSTS	$186,648,738

Summary

For most projects, the traditional low-bid contract approach is typically acceptable for public contracting. However, for projects that have highly specialized design and construction requirements and challenges such as: diverse and rare types of construction within the same project, unforeseen conditions, hazardous materials, holistic seismic work on a historic structure and landscape, design work that requires an answer to the "how to", or "means and methods" approach to the work, occupied and unoccupied facilities, and fixed budgets to yet undefined scope, an alternate contracting method utilizing a highly collaborative team integrated project delivery IPD model will be more appropriate and would likely produce reduced construction costs and time savings resulting in a successful outcome.

The CM/GC delivery process, as part of an Integrated Project Delivery (IPD) method, and as a proposed alternative to the tradition low-bid contract approach is an essential element to the success of the State Capitol Renovation Project. Further information and descriptions are detailed in the link within these findings and below. The definition of Integrated Project Delivery collaborating with CM/GC is as follows:

Please reference IPD Presentation here: http://www.leg.state.or.us/mp/IPDPresentation.pdf

Integrated Project Delivery (IPD) for the Oregon State Capitol Renovation Project (OSCR)

"IPD is a project delivery approach that integrates people, systems, business structures and practices into a process that collaboratively harnesses the talents and insights of all participants to optimize project results, increase value to the owner, reduce waste, and maximize efficiency through all phases of design, fabrication and construction."

A Working Definition: Integrated Project Delivery
Integrated Project Delivery Task Force; California AIA

IPD delivery puts the interest of the project above all others. Members of the project team are challenged to:

1. Take ownership of the project;
2. Continuously improve the services, disciplines, and project delivery;
3. Exceed the energy and water conservation goals of the project for sustainability;
4. Deliver the project using the Building Information Model to its cost effective capacity;
5. Challenge each other to drive innovation & find cost savings and schedule improvements to bring the project in at the best value to the American taxpayer; and
6. Employ open book, transparent processes.

IPD delivery is built on collaboration. As a result, it can only be successful if the participants share and apply common values and goals.

1. Mutual respect: Owner, architect, consultants, contractor, subcontractors and suppliers understand the value of collaboration and are committed to working as a team in the best interests of the project. To harness the collective capabilities of the integrated team, all key participants should be involved as early as possible with multiple disciplines and interests represented.

2. Mutual Benefit: All members will benefit from an IPD Delivery. IPD delivery will use innovative business models to support, rather than discourage, collaboration and efficiency.

3. Early Goal Definition: Project goals are developed early and agreed upon by all participants. Insight of each participant is valued in a culture that promotes and drives innovation and outstanding performance.

4. Enhanced Communication: Focus on team performance is based on communication among all participants that is open, straightforward and honest. Responsibilities are clearly defined in a no-blame culture leading to identification and resolution of problems, not determination of liability.

5. Appropriate Technology: IPD delivery will rely on cutting edge technologies. Technologies should be specified at project initiation, to maximize functionality, generality and interoperability.

6. High Performance: Integrated projects will lead to optimized design solutions, higher performance buildings, and sustainable design.

7. Leadership: Although each participant is committed to achieving project goals, leadership should be taken by the person or organization most capable with regard to specific work and services. Often, the design professionals and contractors lead in areas of their traditional competence with support from the entire team; however specific roles are necessarily determined on a task at hand basis. Roles are clearly defined, without creating artificial barriers that chill open communication and risk taking. Formation of the IPD core group consisting of stakeholders from the Owner, Design team and CM/GC to streamline decision making and problem resolution process.

IPD is particularly important in projects of great complexity like the Oregon State Capitol Renovation. The seismic upgrade of the Capitol Building involves a technically complex endeavor with extremely sophisticated engineering, high capacity temporary shoring, tight spaced excavation, difficult pin pile driving, and a variety of unforeseeable existing conditions in the buried sub-base foundation and soils.

These factors require a negotiated and collaborative relationship between engineers, architect, general contractors and a variety of key subcontractors. Each element from engineering to seismic upgrade installation and completed foundations will be demand an ongoing partnership among all parties that cannot be prescribed or defined in a pre-construction hard bid contract without demanding extremely high premiums for risk and allowance for unforeseen by all parties.

All these factors contribute to making IPD the perfect choice of project delivery for the Oregon Capitol Renovation Project in conjunction with the CM/GC process.

IPD related to CM/GC can take on three forms, Level I, II, and III. Level I is the traditional CM/GC method of contracting that the State of Oregon is familiar with that incorporates the "white paper" standards for CM/GC practice in the Industry. Level III CM/GC-IPD has yet to be conducted in Oregon due to the heavy involvement and reluctance of strict contract requirements that tie all parties together into one binding agreement. Level III IPD is the highest form but also the one that is most difficult to consummate into a public contract due to seemingly impossible liability thresholds.

These findings, however, have proposed the middle ground or CM/GC-IPD Level II (also known as IPD-LITE) which still incorporates the practices and guiding principles of IPD to its fullest but maintains the traditional straight line contracts between the team members, i.e. Architect and Contractor direct to the owner. CM/GC-IPD Level II provides for team incentives, common practices and common goals where the team is all but linked to the success or failure of the project as one entity. In a way CM/GC-IPD Level II is traditional CM/GC only deeply collaborative. For the State Capitol Renovation Project, this type of contract understanding is imperative.

LA makes the following findings to support the decision to use an alternative contracting method other than competitive bidding, specifically a CM/GC-IPD method, for the State Capitol Renovation Project.

II
FINDINGS REGARDING REQUIRED INFORMATION

ORS 279C.330 provides that: "*'[F]indings' means the justification for a contracting agency conclusion that includes, but is not limited to, information regarding: (a) Operational, budget and financial data; (b) Public benefits; (c) Value Engineering; (d) Specialized expertise required; (e) Public safety; (f) Market conditions; (g) Technical complexity; and (h) Funding sources."* LA finds that many of these criteria support the decision to use the CM/GC-IPD contracting method for the State Capitol Renovation Project. This finding is supported by the following:

A) Operational, Budget and Financial Data:

The renovation of the State Capitol Building will require strict adherence to the appropriated funds, approximately $295 million dollars, allocated for the project. Design services by architectural and engineering firms cannot prescribe the means and methods by which the contractor performs the construction; therefore in the traditional low-bid contract approach this information would not be available. However, in this Project, construction means and methods will have a significant, if not dramatic, impact on the cost of the project and the speed at which it can be successfully completed.

The CM/GC-IPD process will allow early input on construction means and methods from the contractor and various team members, reducing the risk of major changes in design that would be very costly once construction begins. The CM/GC contractor will assist in determining the scope of work and development of the construction documents that meet the requirements of the project which will significantly lower the risk of budget and schedule overruns. Through the establishment of the Guaranteed Maximum Price (GMP) early in the Project, the resulting CM/GC contract will establish within the GMP the allowable fees, allowances, and project costs of the work. The CM/GC contract will ensure that any savings within the GMP at the conclusion of the Project will remain with the State. Please reference IPD Presentation here: http://www.leg.state.or.us/mp/IPDPresentation.pdf

Capitol existing square footage is 174,250 SF. Ancillary needs push that number to 180K SF. This number could increase to 210K SF based on other space requirements. However, for budgeting purposes this estimate assumes 180K SF.

Leased office space in the Salem market runs between $1 and $1.83 per square foot, 2013 costs. DAS uses $1.41 for an internal metric. Monthly leasing, assuming $1.41 per SF: $253,800 per month (potential savings per month in phased relocation). Leasing over 48 months: $12,182,400.

Tenant improvement costs for relocated space could be assumed at $30 per SF ($15 per SF infrastructure, $15 per SF minor remodeling). TI at 210K SF: $5,400,000.

Relocation costs using recent GSA metrics:

$5 per square foot boxing =	$900,000
$1 per square foot coordination =	$180,000
$3,000 per work station (689) =	$2,067,000
Move out costs =	$3,147,000
Move back costs	X 2
Total relocation =	$6,294,000

Total Relocation costs using these item costs:

Leasing =	$12,182,400
Tenant Improvements =	$5,400,000
Relocation Costs =	$6,294,000
Total Estimated Costs =	$23,876,400
Relocation and Move contingency =	$923,600
Total Projected Costs =	$24,800,000

Budget established by the Committee for Relocation: $24,800,000

B) Public Benefits:

Utilization of the CM/GC-IPD contracting method over the traditional low-bid contracting method, will allow the State to capture the contractor's expertise in scheduling, budgeting, and construction sequencing during the design phase of the project. The contractor will be a collaborating partner with the project team at the start of the design process, allowing for a full understanding of the complexity of the project. The public benefit of utilizing the CM/GC-IPD process is the ability to take full advantage of all team members' professional expertise resulting in maximization of use of each and every public dollar expended on the project.

Contracting with a CM/GC contractor, rather than a traditional low-bid contract approach with work occurring only after design is complete, would allow design and immediate asset preservation activities to occur concurrently.

C) Value Engineering:

Defined as a process of lessoning costs on a project by finding similar yet alternative means, methods, and/or products for less cost; in essence, receiving the same quality for less cost.

The CM/GC-IPD contracting method allows for full collaboration with all parties of the design/construction team, which should result in significant value engineering, and dynamic continuous cost modeling, both monetary and constructability, throughout the entire design and construction process. In essence, this method allows the value engineering process to continue from design all the way through construction; resulting in complete design documents, efficient construction methods, and potential for both cost and schedule savings. Under the traditional low-bid contracting method, value engineering would not occur until after the general contractor has bid out the work. This might result in delays from re-bidding as subcontractor scopes of work changed significantly after the initial bid and potential higher contractor and design team costs resulted as a consequence. In addition, under the Guaranteed Maximum Price (GMP) the benefit of value engineering returns to the State.

The unique relationship of the owner, contractor and the design team under the CM/GC process, which fosters a collaborative team approach, should result in significant value engineering. In essence, this method allows the value engineering process to happen all the way through the project. Traditional low-bid contract approach obtains pricing only after the design has been fully completed and does not allow input from the contractor. In the traditional low-bid contract approach any significant changes to the design would require the design team to produce new documents and the contractor to re-bid portions of work, resulting in schedule delays.

D) Specialized Expertise Required:

The State Capital Building is unique in that it is a landmark for the State of Oregon, is historically significant, and highly susceptible to potential damage due to earthquakes. The remodel work, seismic upgrade, and integration of all building systems will be highly technical in nature for this Project. Contractor experience with similar projects will bring tangible benefit to the Project. The CM/GC-IPD process allows the State to assess the skills, knowledge, and experience of the proposing professionals and select the team members most qualified.

The project will be complex and require the examination of many options of construction means and methods and their effects on the historic significance of the building, the schedule and budget. Particular expertise in building preservation/restoration involving hazardous materials will be a key factor in the evaluation of design options.

Design services by A/E firms cannot prescribe the means and methods by which the contractor performs the construction of the unique requirements for seismic upgrades such as but not limited to base isolation, and the restoration of the historic fabric of this important state landmark; therefore in traditional low-bid contract approach this information will not be available. This project's "means and methods" will have a significant impact on schedule, quality and budget. The CM/GC-IPD process will allow early input from the CM/GC, reducing the risk of major changes in design that would be very costly once construction begins. The CM/GC will assist in providing a scope of work

and construction documents that meet the requirements of the project with significantly lower risk of cost overruns. Target Value Design principles such as designing with the budget as a primary focus will drive the budget and programming process to ensure alignment of Budget and design/ program from the inception of the project.

The project requires the specialized understanding of the restoration and rehabilitation requirements of structures listed on the National Register of Historic Places, under the jurisdiction of the State Historic Preservation Office (SHPO), the City of Salem Historic Landmarks Commission, the State Energy Efficient Design Program and the local Building Official. While the project scope includes the restoration of the architectural features of the building that are the basis of its historical significance, the project also includes significant renovation to the building's mechanical, plumbing, electrical systems, low voltage/IT and structural seismic systems. Both the design and installation of these systems within the historical fabric of the building presents serious technical means and methods challenges that must be executed flawlessly to protect those historic elements.

Unlike the traditional means of design using as-built drawings, this project will require the understanding of actual existing conditions as they are today, 75 years after original construction of some of the State Capitol's buildings. Experience with similar projects and similar investigations of historic buildings, will bring tangible benefits to the project. The CM/GC RFP evaluation process will allow the assessment of these experiences, project understanding and required skills of each proposer, resulting in the selection of the most qualified contractor to execute this project and assist with the move transition of the Capitol occupants. The essential skills required will include: 1) understanding the special requirements of restoring and modernizing historic buildings, 2) experience in specialized destructive investigations, 3) understanding this specific holistic seismic work such as but not limited to base isolation, 4) coordinating abatement of unforeseen conditions, and 5) all other scopes of work outlined in the 2009 master plan. It is important to understand that the CM/GC-IPD process allows for the "Best Value" selection approach to extend into the subsequent selection of the required subcontractors, further guaranteeing that the goal of the "best qualified" contractors to do the work on this historic structure is achieved.

E) Public Safety:

The building is in need of upgrades to facilitate survivability of the building and its occupants during a seismic event. Upgrades may include holistic seismic upgrades such as but not limited to base isolation system and interior shear walls for building stabilization. The CM/GC-IPD process will allow the design and owner to utilize the contractor expertise during the design phase to evaluate the different seismic upgrade options; resulting in the most efficient and cost effective solution to maximize safety of both the building and its occupants, as well as maintaining the character and outward appearance of the building. In addition, ADA accessibility issues will be reviewed and addressed during this Project. The seismic and accessibility upgrades will be designed for fire and life safety code compliance.

The work of this project may be in and directly adjacent to occupied facilities. The CM/GC contractor will be selected, in part, based on its experience with similar project conditions and proposed approach to the work ensuring the that potential hazards to the employees of the State and stakeholders accessing the site to conduct the business of the State during construction.

The project site will have the presence of hazardous materials that will require the CM/GC contractor to implement risk mitigation measures. These risk mitigation measures must protect employees and stakeholders from exposure to harmful levels of dust, noise and hazardous materials. The CM/GC contractor will need to be knowledgeable with all applicable State and Federal codes, policies and rules.

F) Market Conditions:

The project is located in Salem, Oregon; however the larger Portland market is close enough to provide service to the project without extraordinary impact. Current interest by the industry is great due to the high profile and nature of this type of historic project.

The current construction market conditions are improving, but are doing so at a very slow pace. As a result, there is a surplus of qualified contractors available at this time to perform this work. In the low-bid marketplace, contractors are bidding projects near, or at, cost; resulting in the potential for significant change order costs to the State due to unforeseen conditions. The CM/GC-IPD process will minimize this risk by (1) utilizing contractor expertise in pre-construction planning and investigation to minimize unknowns, (2) the contractor will provide a Guaranteed Maximum Price (GMP) for the project, and (3) the contractor is limited in project overhead/profit due to the quoted percentage fee for work performed and a fixed General Conditions and 4) the expertise of the Integrated Project Delivery team to provide collaborative input into the entire process from the beginning throughout.

G) Technical Complexity:

The seismic upgrade of the Capitol Building involves a technically complex endeavor with extremely sophisticated engineering, high capacity temporary shoring, tight spaced excavation, difficult pin pile driving, and a variety of unforeseeable existing conditions in the buried sub-base foundation and soils.

These factors require a negotiated and collaborative relationship between engineers, architect, general contractors and a variety of key subcontractors. Each element from engineering to seismic upgrades will demand an ongoing partnership among all parties that cannot be prescribed or defined in a pre-construction hard bid contract without demanding extremely high premiums for risk and allowance for unforeseen by all parties.

The project has many unknowns and will require the specialized skills of a CM/GC contractor familiar with restoring and modernizing historic structures to provide the "means and methods" viewpoint to develop a final scope of work during the design

process. The technical complexity of this project is unique insofar as it is not about current technology per se, so much as it is about installing technology driven systems that meet current standards in to a 75-year-old building without negatively impacting its historic aesthetics. Efficient management of the state and local regulatory agency review processes are necessary to achieve the duel objectives of restoring and modernizing that are required for this project. A high level of collaboration between the owner, designer, regulatory and construction entities is required and facilitated by the CM/GC-IPD approach. Please reference IPD Presentation here: http://www.leg.state.or.us/mp/IPDPresentation.pdf

H) Funding Sources:

The State of Oregon intends to fund the renovation, both design and construction, in a phased manner. The total project costs are not seen as favorable to fund in a single executive decision so the instruction given to the Pre-design planning manager was to organize the project budget into phased elements that will allow the State to fund the project in an manner that is subject to oversight by means of the Legislative process.

Phased funding will allow for sequenced implementation and possible pauses in processes, both design and construction. Such phasing would come at very high premiums in a hard bid context but can be provided for in a negotiated contractual arrangement that does not penalize the State in any substantial manner because of funding difficulties at the Legislative level.

III
FINDINGS REGARDING COMPETITION

ORS 279C.335(2) requires that an agency make certain findings as a part of exempting certain public improvement contracts from competitive bidding. ORS 279C.335 (2) (a) requires an agency to find that: "*It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts."* This finding is supported by the following facts:

A) Pursuant to ORS 279C.360 (1) An advertisement for public improvement contracts will be published at least once in at least one newspaper of general circulation in the area where the contract is to be performed and in as many additional issues and publications as LA may determine is necessary to ensure adequate competition.

B) Full Disclosure and Competitive Bidding: To ensure full disclosure of all Project requirements, the Request for Proposals (RFP) solicitation package will include the following elements:

1) A detailed description of the Project
2) Contractual terms and conditions, including IPD requirements
3) A selection process description

4) Evaluation criteria
5) A protest process and remedies

C) Selection Process: The Selection Process may include the following elements:

1) A pre-proposal vendor conference, open to all interested parties, will be held at least ten (10) days prior to the close of the solicitation and will offer the opportunity for potential proposers to ask questions, request clarifications, and suggest changes to the solicitation documents.

2) The evaluation process will include the following steps:
   a) Proposals will be evaluated for completeness and compliance with the requirements listed in the RFP.
   b) Proposals considered complete and responsive will be evaluated under the criteria of the RFP.
   c) The voting members of the Evaluation Committee will independently score proposals.
   d) A group of the highest scoring Proposers will be selected as finalists.
   e) If there is an obvious runaway winner then selection will be made without interviews. If the results are typical, providing three or more highly qualified firms, the Evaluation Committee may conduct interviews of the finalists.
   f) If interviews are required, the Evaluation Committee will use the interviews to confirm the scoring of the proposals and to clarify any questions. Based upon the revised scoring, the Evaluation Committee will rank the Proposers, and provide an award recommendation.
   g) LA will attempt to negotiate a contract with the top ranked firm. If negotiations are not successful, negotiations will be conducted with the next ranked firm.

3) Competing proposers will be notified in writing of the selection and be given an evaluation report of the selection process.

D) Subcontractor Selection Process: The competitive and best value process used to award subcontracts by the CM/GC contractor will be specified in the contract and will be monitored by LA. The following specific minimum requirements may be anticipated to be included within the contract:

1) Solicitations will be advertised at least ten (10) days prior to opening in the Daily Journal of Commerce and at least one other newspaper specifically targeted to reach the minority, women and emerging small business audiences.

2) All offers will be written and submitted to a specific location by a specific time (unless specific other prior arrangement has been made with LA). Offerors must be registered with the Construction Contractors Board.

3) The subcontract may be awarded to the lowest offeror or best value offeror (unless this requirement is specifically waived by LA for a specific contract), in accordance with industry standards, and/or unless another subcontract bid has been deemed in the public's best interest whether low or not.

4) If fewer than three (3) offers are submitted, approval by LA will be required prior to acceptance of the offer.

5) Prevailing wage rates and all other standard terms and conditions of Oregon Public Work Contracts apply.

6) The CM/GC contractor may provide normal layout, clean up, and other "pick-up" work required to complete the Project with its own personnel and resources, without subcontracting, in accordance with the contract and subject to LA approval.

7) For those items for which the CM/GC contractor or any of its subsidiaries, other affiliates or businesses in which it has a financial interest intends to provide an offer, such intention must be publicly announced in the approved manner at least 21 days prior to receipt of offers. Offers must then be delivered to LA and opened by LA at an announced time, date and place.

E) Growing Pool of Contractors: With the recent growth in the use of alternative contracting there is a growing pool of contractors qualified to lead the CM/GC effort. The selection process will be open and available to all qualified contractors and promote good competition.

IV
FINDINGS REGARDING SUBSTANTIAL COST SAVINGS

ORS 279C.335(2) requires that a public agency make certain findings in requesting approval of the exemption of a certain public improvement contract or class of public improvement contracts from competitive bidding. ORS 279C.335 (2) (b) requires an agency to find that "*The awarding of public improvement contracts under the exemption will likely result in substantial cost savings to the contracting agency."* This finding is supported by the following facts:

A) Fewer Changes at Less Cost: Under a CM/GC contract, the only changes that affect the cost of the facility are significant changes to the scope made by the Owner. Careful planning and scope definition are critical to the success of the CM/GC-IPD project. Cost risk within the CM/GC scope is borne by the CM/GC contractor by use of a Guaranteed Maximum Price and in accordance with the best practices defined in the IPD collaborative standards process.

B) Better Informed Decisions: The unique partnership relationship between the IPD team including, but not limited to, the design and construction teams, major early procured subcontractors, engineering and verification consultants such as those that specialize in geotechnical, structural/seismic, and historic restoration work, in a CM/GC-IPD delivery model provides early and professional input on design decisions that have significant cost and time impacts and allow for value engineering without affecting the schedule. In addition, better informed and timely decisions within the collaborative design and construction teams facilitate a reduction in the time scheduled for construction, which will likely result in substantial cost savings to the State. Cost savings to the State due to the reduction in overall schedule and combined with value engineering construction components compared to the conventional Design/Bid/Build project approach could reach 10% of the original construction estimate. This is based on past experience within the construction industry that has employed the CM/GC method versus the traditional Design/Bid/Build method.

C) Matching Budget and Scope: The very nature of the CM/GC-IPD contract approach provides an early match between budget and scope. Project clarity and understanding by the entire team occur very early as both A/E and CM/GC are procured at the same time. The scope is determined by the State and the budget is established and contractually obligated by the CM/GC contractor with shared risk and common goal across the IPD team.

D) Value Engineering: The CM/GC delivery method will provide the opportunity for value engineering and continuous dynamic cost modeling utilizing Virtual Design & Construction techniques (VDC) and Building Information Modeling (BIM) that would not be available in the traditional Design/Bid/Build process. Past projects administered by the State by the CM/GC method have resulted in hundreds of thousands of dollars in savings. Substantial cost savings are expected to accrue to the State by the use of the CM/GC contracting method by value engineering various components, i.e. systems selection, base isolation scope, utilities, construction materials and methods, site layout and overall finish elements. The early involvement of the contractor will assist in establishing design methods that will not adversely affect construction in the field, and establish the means and methods early in the process. Under the traditional Design/Bid/Build approach, the means and methods are established only after the project has been completely designed, therefore having significant cost impacts. The CM/GC method provides the opportunity for a compressed design and construction schedule, with lower change order rates and schedule extensions.

E) Post Project Evaluation: Upon completion of the Project, in accordance with ORS 279C.355, LA may perform a post-contract evaluation and if so, will summarize the evaluation in a public report.

V
SUMMARY

Use of the CM/GC-IPD contract for the State Capitol Renovation Project is justifiable under these findings of fact. Additionally, an exemption from competitive bidding requirements is justified under the criteria outlined in ORS 279C.330, findings have been developed in compliance with ORS 279C.335 (2), and if so, the LA may perform the post project evaluation required by ORS 279C.355. Based upon the previously listed findings, the LA specifically concludes that:

A) Following the described selection process, an exemption is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; and

B) Award of a public contract pursuant to the exemption will likely result in substantial cost savings to the public contracting agency.

The Oregon Legislative Administrator determines that these findings are substantially equivalent to the findings required under ORS 279C.335 (2) and hereby approves an exemption from competitive bidding requirements. Questions regarding these findings during the public notice period and hearing may be addressed to Randy Isaac, Facility Services Manager, randy.isaac@state.or.us.

Signed,

Kevin M. Hayden
Legislative Administrator

Reviewed by Legislative Council

_____ _____

Dexter Johnson, Legislative Council Date