



AGENDA COVER MEMO

Memorandum Date: 9/10/24

Order Date: 9/17/24

TO: Board of County Commissioners

DEPARTMENT: Public Works

PRESENTED BY: Dan Hurley, Public Works Director
Shawn Hubbell, Procurement Manager

AGENDA ITEM TITLE: PUBLIC HEARING/ORDER In the Matter of Authorizing a Construction Manager/General Contractor (CM/GC) Approach to Soliciting for Construction of a Portion of the CleanLane Resource Recovery Facility.

I. MOTION

A. September 17, 2024: Options after public hearing:

1. Move to approve Order No. 24-08-20-11, In the Matter of Authorizing a Construction Manager/General Contractor (CM/GC) Approach to Soliciting for Construction of a Portion of the CleanLane Resource Recovery Facility. *[This motion will approve the findings and authorize an alternative procurement process known as a CM/GC approach. A competitive RFP process would then be utilized to award a CM/GC contract.]*
2. Move to deny the CM/GC approach to soliciting for construction of a portion of the CleanLane Resource Recovery Facility. *[With this motion, Public Works will need to follow the standard competitive bidding requirements for a public improvement contract to construct a portion of the CleanLane Resource Recovery Facility. A traditional design-bid-build method would be utilized.]*

II. AGENDA ITEM SUMMARY

Typically, Public Improvement contracts are awarded to the lowest bidder through a traditional design-bid-build contracting method. The County's Contracting Policies in Lane Manual Chapter 20 allow for award of such contracts through an Alternative

Contracting Method if approved by the Lane County Board of Commissioners. Staff considers the CleanLane Resource Recovery Facility construction project as an ideal candidate for an Alternative Contracting Method, specifically a CM/GC method. The benefits of utilizing a CM/GC approach for this project should allow the County to realize:

- increased ability to avoid delays and meet the construction timeline required to take advantage of external funding,
- increased opportunities to reduce construction costs during the design process,
- improved collaboration throughout the design and construction process, resulting in a more successful project outcome.

Pursuant County Contracting Policies, staff have prepared written findings to seek an exemption from the traditional design-bid-build contracting method for this project. These findings support the criteria that the exemption is unlikely to encourage favoritism or substantially diminish competition, and that utilizing the CM/GC approach will likely result in substantial savings in both cost and time to construct the facility. The findings have been published for the public to view and a public hearing has been held prior to staff asking for a motion by the Board of County Commissioners to approve use of the Alternative Contracting method.

III. BACKGROUND/IMPLICATIONS OF ACTION

A. Board Action and Other History

On August 20, 2024 the Board of County Commissioners held a public hearing regarding taking a CM/GC approach to construct a portion of the CleanLane Resource Recovery Facility. Due to a publication error in a trade newspaper, it was decided the public hearing would be continued on September 17, 2024.

On December 5, 2023, the Board of County Commissioners approved the Construction and Operation of an Integrated Materials & Energy Recovery Facility (IMERF) and authorized increases to Solid Waste Disposal Fees for FY24/25 and FY25/26 to begin funding the facility ([BO 23-12-05-07](#)). A history of Board actions leading up to this approval can be found in the [December 5, 2023, Board Packet](#).

B. Policy Issues

Lane Manual Section 20.200.130 allows for Exemptions from Competitive Selection for Alternate Contracting Methods. This section requires the Lane County Review Board (LCRB) to:

- a. Hold a public hearing, in accordance with OAR 137-049-0630.
- b. Give at least fourteen (14) days' notice of the public hearing, in accordance with ORS 279C.335(5)(b) and ORS 279C.335(5)(c).
- c. Approve written findings that:
 - i. It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts.
 - ii. The awarding of public improvement contracts under the exemption will likely result in substantial cost savings to the County or the public. In making this finding, the LCRB may consider the type, cost and amount of the contract, the number of persons available to bid, and must consider all required factors in ORS 279C.335(2)(b), to the extent applicable.

Upon approval of the findings, as mentioned above, the Local Contract Review Authority (the County Board of Commissioners) may authorize an exemption from the competitive bidding requirement thereby permitting use of an Alternative Contracting Method.

C. Board Goals

In December 2019, the Board approved the revised 2018-2021 Lane County Strategic Plan adding the following Key Strategic Initiatives and Key Activity Area under the *Vibrant Communities* priority:

2.b. Protect and enhance our natural and built environments

2.b.2 Pursue programs to reach a 63% waste recovery rate by 2025

In 2022, the Board added the following objective to the 2022-2024 Strategic Plan.

2.b.7 Fully vet the construction of a waste processing facility for the Short Mountain Landfill.

D. Financial and/or Resource Considerations

The contract to be executed with BHS PROJECTS @ LANE COUNTY, LLC (BHS PROJECT), a subsidiary of Bulk Handling Systems, will require the County to develop the site and construct a suitable building to house the sorting equipment. BHS PROJECTS will be responsible for constructing a portion of the building that will house the anaerobic digester and other ancillary equipment associated with the production of renewable natural gas. Lane County's portion of the construction is estimated at \$35 million. This amount is to be financed through new debt issuance as approved by the Board of County Commissioners.

E. Health Implications

There are no significant health implications identified with this action.

F. Analysis

The CM/GC construction will allow the cost of the County owned portion of the facility to remain within the \$35M estimated cost. As the facility will have two owners constructing the two parts of the facility, a CM/GC approach will allow for coordination in the design and construction phases to keep costs to a minimum and ensure the facilities are able to properly house the required sorting equipment and material flow process.

G. Alternatives/Options

1. Move to approve Order No. 24-08-20-11, In the Matter of Authorizing a Construction Manager/General Contractor (CM/GC) Approach to Soliciting for Construction of a Portion of the CleanLane Resource Recovery Facility. *[This motion will approve the findings and authorize an alternative procurement process known as a CM/GC approach. A competitive RFP process would then be utilized to award a CM/GC contract.]*
2. Move to deny the CM/GC approach to soliciting for construction of a portion of the CleanLane Resource Recovery Facility. *[With this motion, Public Works will need to follow the standard competitive bidding requirements for a public improvement contract to construct a portion of the CleanLane Resource Recovery Facility. A traditional design-bid-build method would be utilized.]*

IV. RECOMMENDATION

The Division recommends approval of the CM/GC approach to construction of a portion of the CleanLane Resource Recovery Facility.

V. TIMING/IMPLEMENTATION

Per approval of the CM/GC approach, the Division will post an RFP to select the contractor.

VI. FOLLOW-UP

The Waste Management Division will provide regular updates on the CleanLane project construction progress to the Board. Upon completion of the project, staff will provide the

Board an evaluation of the use of the CM/GC contracting method and its impact on the overall project.

ATTACHMENTS

Proposed Order

Findings

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: 24-08-20-11

IN THE MATTER OF APPROVING A
CONSTRUCTION MANAGER/GENERAL
CONTRACTOR (CM/GC) APPROACH TO
SOLICITING FOR CONSTRUCTION OF A
PORTION THE CLEANLANE RESOURCE
RECOVERY FACILITY.

WHEREAS, per Oregon Revised Statute (ORS) 459.015 (1) (d): “It is in the best interests of the people of Oregon to extend the useful life of solid waste disposal sites by encouraging waste prevention and the recycling and reuse of materials, and by requiring solid waste to undergo volume reduction through recycling and reuse measures to the maximum extent feasible before disposal. Implementation of waste prevention and recycling and reuse measures will not only increase the useful life of solid waste disposal sites, but also decrease the potential public health and safety impacts associated with the operation of disposal sites.”; and

WHEREAS, on December 5, 2023, following a competitive procurement process, the Lane County Board of Commissioners approved a contract with Bulk Handling Systems for the construction and operation of an Integrated Materials & Energy Recovery Facility (IMERF) to enable Lane County to preserve the useful life of the Short Mountain Landfill, to promote economic development and the creation of well-paying jobs in the community, and to mitigate the largest source of greenhouse gas emissions from Lane County’s solid waste operations; and

WHEREAS, Bulk Handling Systems has created a specific project entity named BHS Projects @ Lane County, LLC for the CleanLane Resource Recovery Facility project with Lane County; and

WHEREAS, in order to effectuate an operations agreement with BHS Projects @ Lane County, LLC for the CleanLane Resource Recovery Facility (formerly the IMERF) project, the County is required to build and own a portion of the CleanLane Resource Recovery Facility where municipal solid waste and recyclable materials will be processed and BHS Projects @ Lane County, LLC is required to build and own a portion of the CleanLane Resource Recovery Facility where renewable natural gas will be produced; and

WHEREAS, the County staff has evaluated the benefits of delivering the CleanLane Resource Recovery Facility pursuant to a Construction Manager/General Contractor delivery method; and

WHEREAS, County staff has provided written findings, attached hereto as Exhibit A, that support exempting the CleanLane Resource Recovery Facility construction contract from the competitive bidding requirements under ORS 279C.335 and utilizing an Alternative Contracting Method, specifically Construction Manager/General Contractor; and

WHEREAS, Lane Manual Section 20.200.130(B) provides that in accordance with ORS 279C.335(2) a contracting entity may utilize an Alternative Contracting Method such as Construction Manager/General Contractor in lieu of competitive bidding if the Local Contract Review Board finds that doing so would be unlikely to encourage favoritism and will likely result in substantial cost savings and other substantial benefits for the contracting entity;

WHEREAS, the Lane County Board of Commissioners acting as the Local Contract Review

Board has reviewed the written findings attached hereto as Exhibit A and agrees that the exemption is unlikely to encourage favoritism and will likely result in substantial cost savings and other substantial benefits for the County;

NOW, THEREFORE, the Lane County Board of County Commissioners acting as the Local Contract Review Board **ORDERS** as follows:

1. That the written findings attached hereto as Exhibit A are hereby approved.
2. That a Construction Manager/General Contractor approach to soliciting for construction of a portion of the CleanLane Resource Recovery Facility pursuant to ORS 279A 065(3) is hereby authorized.

ADOPTED this 17th day of September, 2024.

Laurie Trieger, Chair
Lane County Board of Commissioners acting as
Local Contract Review Board

NOTICE OF PUBLIC HEARING

EXEMPTION FROM COMPETITIVE BIDDING

The Lane County Board of Commissioners is considering adopting the following written findings at the Board meeting on September 17, 2024. Interested parties may provide comments on the written findings by following the instructions found on the Lane County Board of Commissioners Meetings webpage at www.lanecounty.org

REQUEST FOR BOARD OF COMMISSIONERS' APPROVAL OF AN EXEMPTION FROM COMPETITIVE BIDDING REQUIREMENTS FOR CLEANLANE RESOURCE RECOVERY FACILITY AND USE OF AN ALTERNATIVE CONTRACTING METHOD KNOWN AS CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC)

ORS 279C.335 (1) requires, with certain exceptions, that all public improvement contracts be based on competitive bidding and, under ORS 279C.375, awarded to the lowest responsible bidder. The construction cost for the CleanLane Resource Recovery Facility will exceed \$100,000, which would ordinarily require an Invitation to Bid procurement process. However, ORS 279C.335(2), (County Rule LM 20.200.130(B) permits the use of alternative contracting methods, which allows the County to consider cost in addition to qualitative factors, when such a method will likely result in substantial cost savings to the County or the public and is unlikely to encourage favoritism or substantially diminish competition.

County Rule requires that the Local Contract Review Board (Board of Commissioners) approve findings that support exempting a contract from competitive bidding requirements. Prior to such approval a public hearing must be held with at least 14 days public notice to allow any interested party to appear and comment.

Therefore, pursuant to Lane County Public Contracting Rule LM 20.200.130(B)(2), the Public Works Waste Management Division requests approval to proceed with a Construction Manager/General Contractor (CM/GC) procurement process for the CleanLane Resource Recovery Facility through a qualifications-based, competitive selection process.

The Lane County Public Works Waste Management Division finds as follows:

Project Background.

In March 2022, the Waste Management Division issued a Request for Proposals for Waste Recovery Facilities to help the Division meet or exceed its 63% recovery goal. After a competitive process, the Division selected Bulk Handling Systems (BHS) to enter a contract to further explore building a Waste Processing Facility located near Short Mountain Landfill.

In April 2022, the Board added the following objective to the 2022-2024 Strategic Plan:

2.b.7 Fully vet the construction of a waste processing facility for the Short Mountain Landfill

In July 2023, after determining that siting the facility at the Short Mountain Landfill was cost prohibitive, the Division identified a potential property in Goshen for the Integrated Material and Energy Recovery Facility (IMERF) and entered into a Purchase & Sale Agreement (PSA) pending approval by the Board of County Commissioners.

In September and November 2023, County staff provided updates to the Board of Commissioners on the vetting status for constructing a waste processing facility including cost estimates from the 30% design plans for the facility. In December 2023 the Board of Commissioners approved the purchase of a 26-acre property in Goshen to site the facility for \$1,500,000. They also delegated authority to the County Administrator to execute the necessary agreements and contracts for the IMERF, as well as approving tipping fee increases necessary to fund the IMERF operations.

The proposed contract with BHS will require the County to develop the site and construct a suitable building to house the tipping floor and sorting equipment. BHS will build the portion of the building that will house the anaerobic digestion facility and related equipment that will capture and condition the methane gas and place it into the natural gas system. The 30% design for the facility estimated costs for site preparation and building construction at approximately \$50 million for both buildings. The County portion is estimated to be \$35 million for the sorting equipment building. BHS is able to leverage a federal tax credit of approximately \$15 million to offset the construction cost for their building if construction begins before the end of 2024.

A CM/CG approach will allow the County to construct the County's portion of the facility at a substantial cost savings.

- 1. Project Requirements.** This project has many different factors contributing to its complexity. This project is a partnership between the County and BHS that will decrease risk and cost to the County. By allowing BHS to construct the gas portion of the building, the County is able to save \$15 million on construction costs due to the federal tax credit available to BHS. This shared approach is a crucial component in making this project financially feasible for the County.

In the interest of meeting budget expectations, collaboration with the County and the design team (Bulk Handling Systems) will be crucial to ensure the project team maximizes cost efficiencies throughout the design process, while helping to ensure the final product meets future needs of the County.

The CM/GC provides immediate and on-going input to the design team resulting in accelerated design and construction schedules, improved management of the construction budget, and potentially lower costs.

- 2. The CM/GC Approach.** A typical design/bid/build project has six phases: (1) programming; (2) schematic design; (3) design development; (4) construction documents (5) bidding; and (6) construction. Under the proposed method, the CM/GC will be selected at the completion of phase 3, design development, and will provide feedback to the design team on the constructability and cost of their proposed design strategies prior to development of construction documents. Under the design/bid/build approach, the contractor is not selected until the conclusion of phase 5 bidding, potentially adding months to the project schedule as the feedback provided comes after design and construction documents are complete.
- 3. The CM/GC establishes several variables critical to the project remaining within budget and assuring a fast-track project completion.** These include: (i) a Guaranteed Maximum Price (GMP) to complete the project; (ii) committing to a schedule and establishing the sequence of work based on critical path method (CPM) analysis; (iii) commitment by the CM/GC to implement the final project design within the GMP; and (iv) full coordination by the CM/GC of the project design and construction team. This approach ensures that the subcontractor bids can be solicited in a timely manner that should result in best pricing. In the traditional design/bid/build process, the final budget and schedule cannot be established with certainty until after bidding.

Timing is also of the essence as delays in design and construction would result in significant increases to the total cost of building the facility and potentially make the project unfeasible. It is also beneficial to the County to have the selected contractor on board during design to ensure the two separately owned buildings are designed and built to work together seamlessly.

- 4. The CM/GC approach allows value engineering to take place when it is most effective—during design rather than after bidding.** Value engineering is a means to determine the best project design that meets the needs and priorities of the owner within the established budget. Value engineering is done most effectively by a team consisting of the owner, architect, consultants, and contractors such as exists with the CM/GC approach. When the contractor participates in evaluating design decisions, the design team receives immediate feedback on issues of constructability, cost, quality, and scheduling of the project. The CM/GC can then commit to implementation of the project design within the prescribed schedule and budget. In the traditional design/bid/build process, value engineering with the contractor does not occur until after bidding, if at all.
- 5. The CM/GC approach is likely to reduce the number of construction change orders.** Having the CM/GC involved during the design process leads to a better understanding by the contractor of the owner's needs and the architect's design intent. The design team can also benefit from more effective value engineering when the contractor is involved during the design process. The CM/GC also assumes responsibility for implementation of the project design on time and within budget. Frequent and diligent progress reviews by the CM/GC throughout the design phase results in fewer design corrections and change orders during construction, which reduces budget risks.
- 6. The CM/GC selection process will encourage competition.** To ensure full public disclosure of all information, the County's Request for Proposals (RFP) solicitation package will include project goals and objectives, a detailed project description, contract terms and conditions, selection process, evaluation criteria, role of evaluation committee, provisions for comments, and protest process and remedies available. The CM/GC will be selected using objective criteria under the following competitive process:

 - Advertisements, pursuant to ORS 279C.360 (1), will be placed in the Daily Journal of Commerce, posted on the County's website, and posted on the Oregon state-wide procurement site OregonBuys.
 - With sufficient time before the proposal due date, interested parties will be able to ask questions, request clarifications, and suggest changes in the solicitation documents if such parties believe that the terms and conditions of the solicitation are unclear, inconsistent with industry standards, or unfair and unnecessarily restrictive of competition.
 - An evaluation process will determine whether a proposal meets the minimum requirements of the RFP, as set forth in the RFP. These requirements include, but are not limited to, the contractor's experience and qualifications, experience with value engineering, and the ability to meet bonding requirements specified in the RFP.
 - The evaluation committee will use clear criteria that has been included in the the RFP to evaluate and score the candidates. The evaluation committee may interview the top rated, qualified candidate(s). The County will then proceed to negotiate and upon Board approval, enter into a contract with the top ranked firm and authorize the Phase I portion of the contract for pre-construction CM/GC design assistance. Once an acceptable GMP can be agreed upon, the County will execute a GMP Amendment for the Phase II portion of the work, construction, which will include a fixed fee based on a percentage of direct costs. The evaluation criteria will also include a pricing component including the cost to perform the Phase I services and the CM/GC Fee associated with Phase II services.

7. The RFP document will set forth clearly the contractual requirements of the CM/GC for soliciting, receiving, and awarding sub-bids. These include, but are not limited to:

- Competition will be strongly encouraged with attempts to obtain at least three (3) bids for most portions of the work.
- For work that is estimated to exceed \$100,000. sealed bids will be required and opened publicly at the time specified in the bid advertisements.
- The CM/GC may self-perform the work of the “General Conditions” and other minor “pick-up” work but is prohibited from performing portions of the trade work without bidding against other qualified sub-bidders.
- Adherence to prevailing wage rates and all other standard conditions of Oregon public works contracts.

8. This request complies with the criteria outlined in 279C.335 (2):

- *It is unlikely the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts.* The process used will not involve favoritism nor diminish competition. The selection process for the CM/GC will be done on a competitive, qualifications-based manner. Cost elements will also be evaluated. Evaluation committee members will evaluate proposals based on clear criteria outlined in the RFP. Public notices will be published, and notices sent to firms that have expressed interest. Market conditions indicate there are sufficient entities with CM/GC experience to have a competitive RFP process. Further, major portions of the project will be competitively quoted at the subcontractor level.
- *The awarding of public improvement contracts under the exemption will result in substantial cost savings to the contracting agency.* The CM/GC process will result in substantial cost savings to Lane County by allowing the County, the architect, and the contractor to work together as a team to maximize design and cost efficiencies. The proposed CM/GC method has the element of a guaranteed maximum price (GMP) ensuring that project funding requirements will be met. The CM/GC process maximizes value engineering by promoting collaboration between the owner, architect, and contractor during design, sub-bidding, and construction. Utilizing the traditional design/bid/ build process is estimated to be more costly and would require significantly more time to complete the project.