SOUTH SUBURBAN SANITARY DISTRICT WWTP IMPROVEMENTS PROJECT FINDINGS IN SUPPORT OF AN EXEMPTION FROM COMPETITIVE BIDDING

1. General

The Oregon Legislative Assembly encourages public agencies to consider alternative and innovative contracting methods, other than lowest bid, which consider market realities. Under ORS 279C.335(2), a local contract review board may exempt certain contracts from traditional competitive bidding by showing that an alternative contracting process is unlikely to encourage favoritism or diminish competition, and that it will result in substantial cost savings to the public agency.

For the reasons set forth more fully below, the South Suburban Sanitary District WWTP Improvements Project (Project) is proposed for construction through the Construction Manager/General Contractor (CM/GC) competitive selection process. CM/GC is a method of project delivery in which the owner executes a single contract with one entity to provide construction management and general contracting services. Because the CM/GC is selected before the design is complete, the CM/GC can participate in the final design effort and provide valuable advice from a construction perspective that will help ensure a design that fosters smooth, cost-effective construction. The CM/GC's participation in the final design effort also promotes team building among the respective managers of the CM/GC, owner, and the design professional, and that team building helps ensure that problems which may arise during construction will be resolved efficiently with minimal delay and cost.

With this method, a general contractor will be selected based on a competitive proposal process. South Suburban Sanitary District (District, hereafter District)) will consider the proposer's experience and capabilities; their proposed work plan; project management capabilities focused on leadership, communications and organization; and a project control plan focused on cost, schedule, safety, and quality control. Proposals will be solicited through advertising and directly from interested and qualified contractors. A District evaluation team will evaluate the contractor proposals and subsequently recommend approval to award a contract to the contractor that best meets all District evaluation criteria.

CM/GC affords singular responsibility which, in turn promotes an early team approach that leads to continued value engineering and constructability review, reducing design and construction time. All of this translates into potential cost savings, reduces the owner's administrative burden, and provides "guaranteed" costs. The following are findings for an exemption from the competitive bidding requirement in accordance with the SSSD Board of Directors (Local Contract Review Board) Draft Resolution No. 248.

2. Background

The District is constructing this project in response to revised NPDES water quality requirements for discharge to the Klamath River. The Oregon Department of Environmental Quality (DEQ)

issued, and EPA approved, the Upper Klamath and Lost River Subbasins Total Maximum Daily Load in September 2019. In response, Oregon DEQ issued revised NPDES permit requirements for the District which require discharge to meet newly issued effluent water quality characteristics by October 2026.

The District has been planning its response to the expected TMDL since the late 2000's and submitted a Facilities Plan (West Yost, 2022) to Oregon DEQ in late 2022, documenting a plan for achieving compliance. This plan was based on membrane bioreactor (MBR) technology. Changes in District elected leadership about this time, resulted in preference for a different technology, and so in March 2023, the District submitted a Facilities Plan addendum (Jacobs, 2023) documenting an approach for providing a moving bed biofilm reactor (MBBR) to reduce nutrients, and effluent filtration to reduce suspended solids. The MBBR option is the intended basis for this construction project.

This will be a complex and sensitive project for several reasons. It involves the sole wastewater facility serving the District's service area. There is no storage capacity for wastewater, thus the collection system must be kept operational during the entire construction period until the improvements are constructed. By its nature this project will require close coordination with District operations staff as well as management and will trigger multiple requirements related to safety and environmental protection with involvement by federal and state agencies and community interests.

To comply with schedule imposed by the Department of Environment Quality, effluent must meet the new NPDES permit requirements by October 1, 2026. In order to incorporate the construction contractor's input into the design process with its strictly defined timelines, the construction contractor will need to be selected no later than the second quarter of 2024. At that time, the design will still be underway. Elements relevant to the construction contractor qualification and selection process can be identified, but progress on the design will not be so far along that the contractor's input cannot still be incorporated appropriately.

District proposes using a qualification-based selection process to select the contractor. The process would consider qualifications such as the contractors' experience and qualifications with similar types of projects, construction management planning, scheduling and coordinating capability, experience working in operating facilities, safety plans and record, and pricing schedules.

3. Findings – Information

(a) Operational, Budget and Financial Data

The approximate cost of the work to be performed under the construction contract for the Project is estimated to be in the range of $50 million.

(b) Public Benefit

The public will benefit from an expeditious construction of the Project. The work is mandated by the existing agreement with Oregon DEQ. Non-compliance could subject District to costly legal penalties. Therefore, the public will also indirectly benefit from

having an experienced contractor implement the Project, improved quality and lower cost of the Project, and the retained flexibility for interactions with collections and water reclamation plant operators that will inevitably arise during design and construction.

(c) Schedule

On September 27, 2020 the District received DEQ's updated NPDES No. 100700 implementing the more strict effluent requirement for total nitrogen, ammonia, phosphorus and excess thermal load. The NPDES permit establishes an enforceable compliance schedule for construction of improvements to the District wastewater system. This schedule for Wastewater Treatment Plant improvements requires that the improvements be complete and achieve compliance with all of the final effluent limits, by meeting the limits or ceasing discharge to the Klamath River, by October 31, 2026..

(d) Value Engineering

The qualification-based proposal process and negotiated contract approach gives the contractor an increased opportunity to engage in value engineering, which increases the likelihood of cost savings to District, as well as quality improvements. The selected contractor will be brought on board immediately in the design process in order to assist with the construction scheduling, phasing, costing, operator interaction issues, quality assurance, and design constructability reviews. The selected contractor will also be able to advise the operations and design professionals regarding specialty construction issues (such as deep foundation construction techniques (piles, ground improvement such as deep soil mixing), temporary facilities (potentially pumping, wastewater screening), seasonal construction constraints, and long lead time procurements.

(e) Specialized Expertise

District needs to select a contractor on this Project that has specialized expertise in wastewater treatment equipment installation and startup, work within significantly constrained areas including narrow dike corridors, around water holding dikes, construction crane equipment operation in proximity to and as permitted per 14 CFR Part 77, on a defined schedule while working around an active wastewater collection system with safety and security requirements. Several different highly specialized technologies will need to be used during construction. In addition, significant coordination with the operators and piping and equipment modifications to the existing facilities that will be required as part of the work.

This mix of expertise cannot be adequately evaluated in a sealed bid process but can be better evaluated through a negotiated process. Utilizing the competitive bid process cannot guarantee selection of the best qualified contractor to perform this work. Traditional methods of prequalification are unsuited to the specialized nature of this Project, particularly with a tight time frame.

A qualified project manager with strong leadership skills is one of the components required for successful contractor’s work. The RFP process will allow District to review the

qualifications of each proposer's project manager and confirm his/her ability to carry out the proposer's contractual obligations.

(f) Public Safety

As the potential for disruption in the wastewater collection system and potential treatment plant operations is directly affected by this work, the utmost care must be taken in all construction operations to avoid interruption of conveyance or compromise of facility security. All work will be performed in accordance with OR-OSHA safety regulations and applicable OSHA regulations. Access into the facilities and the work area is controlled by the District and will not be allowed to the general public. The qualification-based selection process will allow the District to take contractor's safety records and safety programs into account.

(g) Market Conditions

There is no shortage of work for waste and water treatment contractors. As a result of a large infusion of federal infrastructure funding and implementation deadlines for federally and state mandated wastewater and water treatment standards, qualified contractors are very busy.

No negative impact is expected as a result of the use of the request for proposal selection process. There are several Oregon-based construction companies with specialized expertise in wastewater treatment and conveyance projects. Significant opportunities exist for qualified local contractors to compete as a prime contractor or subcontractor on the project. It is expected that there will be an adequate number of competitors available to propose as construction manager/general contractors on this Project. Even so, there are a limited number of firms capable of adequately meeting the challenges provided by coordination of the potential technologies and challenges associated with the constrained site, active treatment operations, and working under strict time schedules. Selection of a contractor with the necessary expertise to manage the technical complexities will be critical to overall Project success.

The CM/GC method avoids the cost in time and money involved in rebidding of the Project, should bids come in higher than expected. A traditional bid process runs the risk of obtaining bids that exceed the Project budget. In the CM/GC project delivery method, construction costs are determined at an earlier time and changes to the design and scope of the Project necessary to meet the Project budget are more easily achieved.

(h) Technical/Planning Complexity

Capability in planning the work will be crucial. Timely completion of the work in compliance with the requirements for protection of human health and the environment associated with this kind of project, while allowing the wastewater system to continue to operate in a safe and cost-effective manner, will be required of the contractor. Innovative planning that will further improve the construction schedule and on-site conditions will be encouraged.

The ability to coordinate and manage this project would be especially challenging to an inexperienced or narrowly focused team. This Project is complicated and will require ongoing coordination with Plant operators, Jacobs, District staff, and regulators. The RFP process allows District to consider the proposer's experience and expertise in this type of work, sensitivity to safety, legal, and operational issues, and the qualifications of its project manager and support team.

(i) Funding Sources

The contract is expected to be funded by District from Oregon DEQ State Revolving Fund Loan (SRF) proceeds. DEQ SRF loans require that the recipient follow state procurement procedures. This procedure outline herein adheres to the Oregon Revised Statutes.

4. Findings – Competition and Cost Savings

Considering the factors listed above, use of the CM/GC alternative contracting method must be unlikely to encourage favoritism or diminish competition and must result in substantial cost savings to District.

(a) Unlikely to Encourage Favoritism or Substantially Diminish Competition

The CM/GC is selected through a competitive selection process to provide both construction management and general contracting services. No reduction of competition is expected since the proposed process is open to the same contractors that would have participated in the traditional low bid method. Uniform evaluation criteria will be used in the selection of the CM/GC firm, and the construction work elements will be subcontracted and procured through open competitive bids managed by the CM/GC but based on identified selection criteria.

Favoritism will not play a role in the selection of the CM/GC. The selection will be conducted through an open and advertised RFP process. All qualified firms will be invited to submit proposals. The District will publish a legal notice in the local newspaper and the *Daily Journal of Commerce* in order to provide Project information to all interested contractors. Proposals will also be solicited directly from firms the District believes are qualified to perform the work. Proposers will be evaluated based on clearly stated criteria. A team will perform the evaluation to minimize the effects of any unconscious individual bias. All qualified firms will be able to participate in an open, competitive selection process. Rather than being diminished, competition will be expanded to encompass qualifications as well as price.

(b) Will result in Substantial Cost Savings

The CM/GC contracting method has the potential for achieving significant cost savings through involvement of the contractor in the design phase of the Project. By having the contractor available before the design is finalized, the contractor is able to review the design, propose cost saving revisions, and ensure the constructability of the Project so that costly change orders are less likely. In addition, the contractor can identify long lead time items that may benefit the project by purchasing in advance. It is apparent to the designer that early

procurement of certain electrical, control system, and process equipment is likely required to meet the treatment process compliance schedule. Construction of improvements involves a wide range of construction elements involving various installation technologies and interfacing with existing facilities.

Selection of a contractor possessing the necessary expertise and experience will result in substantial cost savings to the District. Cost savings will be realized because the District can select a well-organized, experienced contractor, which will result in fewer change orders and, in turn, reduced staff time to design, negotiate, and administer the changes. The expanded opportunity for value engineering described above can also result in cost savings. Using the most skilled contractor will optimize the design and construction aspects and help minimize problems associated with construction which is located in the midst of an active operating area; thus, it will help the District avoid additional costs that would otherwise be associated with resolving such problems.

The CM/GC process allows shortening of the overall time required to complete construction of a project. It also allows early procurement of major equipment with potentially long lead times, allowing the Project to avoid cost increases due to material shortages or cost escalation.

5. Summary

A contractor who has experience with these types of projects provides many benefits. The use of an RFP process will not diminish competition or result in favoritism and will result in cost savings to the District and most importantly completion of the project on schedule and in compliance with the DEQ requirements.