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December 17, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Second Reading on Ordinance and Board Order Temporarily Amending Clackamas County Code Section 2.05.160.2 to Allow for Vacation Accrual for Non-Represented Employees During Covid 19 Pandemic and Wildfire Emergency and Declaring an Emergency

Purpose/Outcomes	<i>Temporary amendment of the County Code to allow for vacation accrual above 280 hour limit.</i>
Dollar Amount and Fiscal Impact	<i>Fiscal impacts should be negligible and included in annual budgets of affected departments</i>
Funding Source	<i>County General Fund</i>
Duration	<i>Temporary until December 31, 2021.</i>
Previous Board Action	<i>The Board of County Commissioners discussed this item on November 17, 2020 and a first reading took place on December 3, 2020.</i>
Strategic Plan Alignment	<i>1. How does this item align with your department's Strategic Business Plan goals? This item is generally applicable throughout County operations and is not specific to County Counsel 2. How does this item align with the County's Performance Clackamas goals? Build public trust through good government</i>
Counsel Review	<i>If item is a contract, including IGAs, leases, or other binding agreements, please put in the date of County Counsel Review and the initials of the attorney performing the review) 1. Date of Counsel review: November 30, 2020 Initials of County Counsel performing review. SLM</i>
Procurement Review	<i>1. Was the item processed through Procurement? Yes___ No <u>X</u> 2. If no, provide brief explanation. No procurement required</i>
Contact Person	<i>Stephen L. Madkour, County Counsel</i>

Background:

Clackamas County employs over 2,000 full-time employees, the majority of which are represented by various bargaining units. Approximately 450 employees are Non-represented.

With the beginning of the Covid 19 pandemic in early 2020, the County work force transitioned to remote working situations. The pandemic in conjunction with the Governor's Executive Orders hindered the opportunity of all residents, including those employed by the County, from travelling and taking regular vacations. An addition basis for employees failing to use vacation was the need for workforce resiliency within the County operations. Some critical county functions were unable to allow employees their regular vacation schedules because of uncertainty and lack of back-up in their workforce. Lastly, in addition to a Covid 19 pandemic, the County, its residents and its employees were also confronted with a Wildfire emergency.

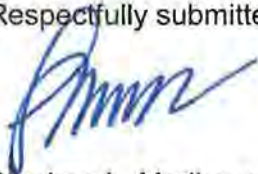
For those non-represented employees who are unable to take vacation and use their accrued vacation hours, those employees face the possibility of forfeiting the use and value of those accrued hours.

County Administration has already agreed to eliminate the cap on accrued vacation hours for all represented employees and allow that policy to exist until December 31, 2021. In order to accommodate non-represented employees who continue to work but cannot take vacation due to Covid-related travel restrictions, and not to penalize those employees and risk them losing the use and value of their accrued vacation hours, the Board of County Commissioners would have to temporarily amend the portion of the County Code to allow for the accrual of vacation hours above the 280 hours through December 31, 2021.

Recommendation:

Staff respectfully recommends reading Ordinance temporarily amending Code Chapter 2.05.160.2 by title only and if passed to be effective immediately.

Respectfully submitted,



Stephen L. Madkour
County Counsel

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of Temporarily
Amending Clackamas County
Code Section 2.05.160.2 to allow
for Vacation Accrual for Non-
represented County Employees
during a Covid19 Pandemic and
Wildfire Emergency and Declaring
an Emergency



Ordinance and Board Order No.
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Whereas, Clackamas County employs over 2,000 full-time employees. The majority of County employees are represented by various bargaining units. Approximately 450 employees are Non-represented employees; and

Whereas, with the beginning of the Covid 19 pandemic in early 2020, the County work force transitioned to remote working situations. The pandemic in conjunction with the Governor's Executive Orders hindered the opportunity of all residents, including those employed by the County, from travelling and taking regular vacations; and

Whereas, an additional reason employees failing to use vacation was the need for workforce resiliency within County operations and the inability to allow some employees to use vacation leave because of uncertainty and lack of back-up in their workforce; and

Whereas, in addition to a Covid 19 pandemic, the County, its residents and its employees were also confronted with a Wildfire emergency; and

Whereas, Section 2.05.160.2 of the Clackamas County Code provides for Vacation Leave for non-represented county employees. The specific language of the Code section provides:

- B. Non-represented employees hired on or after January 1, 2001, and employees hired prior to that date who elected to enroll in the vacation sellback program when that program was first made available, accrue vacation leave, and may sellback vacation leave, as follows:
1. Vacation leave shall be accrued at the rate of sixteen (16) hours vacation leave per full month of service, regardless of years of service.
 2. Such employees who have used at least forty (40) hours of vacation time in a calendar year may elect to sell back 40 hours vacation during that same calendar year. To receive compensation in lieu of time off, the employee must submit a completed "request to sell vacation" form to the payroll office no later than December 31st of that calendar year.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
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- C. The maximum vacation accrual shall be 280 hours. Vacation accrual may be accumulated beyond 280 hours during the calendar year (January 1 through December 31) but will be reduced to 280 hours as of January 1. Vacation accrual exceeding 280 hours on January 1 will not be compensated.

Whereas, for those non-represented employees who are unable to take vacation and use their accrued vacation hours, those employees face the possibility of forfeiting the use and value of those accrued hours; and

Whereas, County Administration has already agreed to eliminate the cap on accrued vacation hours for all represented employees and allow that policy to exist until December 31, 2021; and

Whereas, in order to accommodate non-represented employees who continue to work but cannot take vacation due to Covid-related travel restrictions, and not to penalize those employees and risk them losing the use and value of their accrued vacation hours, the Board of County Commissioners would have to temporarily amend the portion of the County Code to allow for the accrual of vacation hours above the 280 hours through December 31, 2021;

NOW THEREFORE, IT IS HEREBY ORDERED That the Clackamas County Board of County Commissioners Orders as follows:

1. The Board finds that a compelling public interest exists based on the facts recited herein to temporarily amend Section 2.05.160.2(B) and (C) of the Clackamas County Code to provide for the accrual of Vacation Leave for non-represented county employees in excess of 280 hours.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of Temporarily
Amending Clackamas County
Code Section 2.05.160.2 to allow
for Vacation Accrual for Non-
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2. This amendment is temporary and shall expire on December 31, 2021, at which time the amendment will expire and the existing Code language will continue to apply.
3. The Board declares an emergency and this Code amendment shall become effective immediately upon passage.

DATED this 17th day of December, 2020

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary



Gregory L. Geist
Director

Public Hearing and Approval of a Resolution for Exemption and Authorization to use the Request for Proposals Method to Obtain a Progressive Design Builder for the Tri-City WRRF Outfall Project

Purpose/Outcomes	Public Hearing before the Board of County Commissioners, acting as the governing body of Water Environment Services, for the Proposed Exemption and Authorization to use the Request for Proposals procurement method to obtain a Progressive Design Builder for the Tri-City WRRF Outfall Project.
Dollar Amount and Fiscal Impact	This action does not have a financial impact; however, the total construction cost is estimated to be between \$21-\$25 million.
Funding Source	WES capital funds. No general funds involved.
Duration	If the Resolution is approved, WES will proceed with procurement of a contract with an Owners Representative in early Spring 2021 and a Progressive Design Builder in the Summer of 2021. The Project is expected to be complete by the end of 2024.
Previous Board Action	The Board has previously approved a contract with Jacobs Engineer Contract for preliminary design work (BCC Agenda Item 051619 VI 1), and an amendment to that contract in April 2020.
Strategic Plan Alignment	<ul style="list-style-type: none"> • This project supports the WES Strategic Plan goal to provide properly functioning infrastructure that supports healthy streams and reduces flooding. • This project supports the County's Strategic Plan of building a strong infrastructure that delivers services to customers and honors, utilizes, promotes and invests in our natural resources.
Counsel Review	Amanda Keller, 12/8/2020
Contact Person	Jeff Stallard, Project Manager 503-742-4694 Lynne Chicoine, Capital Program Manager 503-742-4559 George Marlton, County Procurement Officer 503-742-5442

BACKGROUND

Water Environment Services ("WES") is requesting an exemption from the traditional competitive procurement process and authorization to use the Request for Proposals procurement method to obtain a Progressive Design Builder ("PDB") for the Tri-City Water Resource Recovery Facility Outfall Project ("Project").

Oregon law requires all public improvement projects to be procured by competitive bid, with the default project delivery method being design-bid-build, unless the Local Contract Review Board

("LCRB"), which in this case is Clackamas County Board of County Commissioners, acting in its capacity as the governing body of Water Environment Services ("Board"), grants an exemption. In order to grant an exemption, the Board must hold a hearing, with notice published 14 days prior, and adopt a resolution making certain findings about the exemption as required by ORS 279C.335 and the Clackamas County Local Contract Review Board Rules ("LCRB Rules") Section C-049-0600.

Clackamas County Procurement placed a Public Notice and copy of the draft findings on the Oregon Procurement Information Network ("ORPIN") on December 1, 2020, and with the Business Tribune online edition on December 2, 2020 and its print version on December 4, 2020, which included the date and time of a Public Hearing to take place before the Board.

The Project

The Tri-City Water Resource Recovery Facility ("WRRF"), which is owned and operated by WES, discharges treated effluent from the facility through an existing 72-inch to 84-inch diameter outfall pipeline to the Willamette River. The peak flow into the Tri-City WRRF is approaching the outfall's rated hydraulic capacity of 75 million gallons per day ("mgd"). In January of 2019, WES completed the Sanitary Sewer Master Plan for which a dynamic model was developed to evaluate the current and future capacity needs for the system. The model identified a need to increase the outfall capacity at the Tri City WRRF to 180 mgd to meet build-out conditions.

Following an evaluation of alternatives, a 90-inch diameter outfall pipe is proposed to convey treated flow from the Tri City WRRF along Old Agnes Avenue and the I-205 right-of-way. Trenchless construction will be utilized to construct the outfall from a pit at the I-205 interchange with Hwy 99E to the Willamette River and back toward the main street round-a-bout.

Selection of the Progressive Design Build ("PDB") contractor is anticipated in 2021, with scheduled project completion in 2024. The construction cost is estimated to be between \$21- 25 million. This estimate does not include design or permitting, and is fully funded as part of the WES Capital Improvement Plan.

Under the PDB project delivery method, the PDB contractor performs both design and construction using an integrated team, usually with a consulting engineer. For the Tri-City Outfall project, the team, in close coordination with the WES project team, will develop the project approach, design, construction plan, schedule, staffing and pricing to successfully deliver the project. This model will bring the builder into the project at a relatively early point in the design process to lend their expertise in the design phase and mitigate risk associated with construction challenges. Having these activities occur during the design phase can benefit the Owner through lower construction costs, faster project completion, better project understanding, and closer relationships between Owner and PDB contractor.

Under the PDB process, rather than selecting a general contractor solely on a cost competitive basis, the PDB contractor is retained using a Request for Proposals ("RFP") process, which is based on a number of criteria, including qualifications and experience. Once a PDB contractor is selected, an initial project budget is established, which includes both the value of the technical scope of work using the construction contractor's real-time pricing data, and the value of the project risk profile, as mutually agreed with the Owner. The open book nature of the pricing process allows the project contingencies to be visible throughout the design and construction process, providing an opportunity for eliminating unrealized risk-related contingencies as the work moves forward.

As the project design progresses, the PDB contractor is expected to provide a guaranteed maximum price ("GMP"), which is negotiated at a predetermined point during design. This GMP provides the upper limit of the project construction costs, and allows the Owner to budget the value of the expected maximum construction cost. If the GMP is accepted by the Owner, the PDB contractor is then awarded the project and acts as the general contractor to perform the work. If the GMP is not accepted by the Owner, the PDB process includes an "off-ramp," in which the Owner could direct the PDB contractor to complete the construction documents and then competitively bid the project's construction phase, similar to the traditional DBB approach.

For WES to use this alternative project delivery method, the Board must first grant an exemption from standard requirements.

Grant of Exemption

In accordance with ORS Chapter 279.335 and LCRB Rules Section C-049-0600, an exemption generally requires the Board to adopt a resolution making the following two findings ("Findings"):

1. That the exemption is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public improvement contracts.
2. That the exemption will result in substantial cost savings and other substantial benefits to the agency.

The resolution and Findings developed by WES staff addressing these two factors are attached hereto, and demonstrate that the exemption is not likely to encourage favoritism or diminish competition for public improvement contracts, and will result in substantial cost savings and other substantial benefits to the agency and the public.

RECOMMENDATION:

Staff respectfully recommends the Board of County Commissioners, acting as the governing body of Water Environment Services, take the following actions:

Approve the Resolution Granting Exemption from Competitive Bidding for the Tri-City Outfall Project By Means of a Progressive Design Builder and Authorizing Selection by Request for Proposals.

Respectfully submitted,

Greg Geist
Director, WES

Placed on the _____ Agenda by the Procurement Division.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

A RESOLUTION GRANTING EXEMPTION FROM
COMPETITIVE BIDDING FOR THE TRI-CITY OUTFALL
PROJECT BY MEANS OF A PROGRESSIVE DESIGN BUILDER
AND AUTHORIZING SELECTION BY REQUEST FOR
PROPOSALS

RESOLUTION NO.

WHEREAS, the Clackamas County Board of County Commissioners (“Board”), acting as the governing body of Water Environment Services (“WES”), is the local contract review board for WES pursuant to ORS 279A.060;

WHEREAS, the Board has authority to exempt certain contracts from the competitive bidding requirements of ORS Chapter 279C; and

WHEREAS, ORS 279C.335 provides a process for exempting certain contracts from competitive bidding and authorizes the selection of a contractor through the request for proposal (“RFP”) process; and

WHEREAS, draft findings, attached hereto as Exhibit A and incorporated herein (“Findings”), addressing competition, operational, budget and financial data, public benefits, value engineering, specialized expertise required, market conditions, technical complexity, public safety and funding sources recommended by WES were available 14 days in advance of the public hearing on this Resolution as related to the Tri-City WRRF Outfall Project (“Project”); and

WHEREAS, the Findings also highlight the public benefits of using the Progressive Design Build method of contracting for the Project;

WHEREAS, the Board has reviewed the Findings and is satisfied with the supporting information and materials that have been provided to justify the application of the exemption and the use of the RFP process in its place;

NOW THEREFORE, BE IT RESOLVED BY BOARD OF WATER ENVIRONMENT SERVICES THAT:

1. The Board adopts the Findings, as set forth in Exhibit A to this Resolution, and makes the following additional findings:
 - a. The exemption from competitive bidding will promote competition and will not encourage favoritism, because the contractor will be chosen by a competitive RFP process and a significant portion of the construction work may be performed by subcontractors chosen by competitive bidding.
 - b. The exemption from competitive bidding is likely to result in substantial cost savings and other substantial benefits to WES and to the public, for the reasons set forth in the adopted Findings.
2. The Board authorizes Water Environment Services staff to proceed with the procurement of Progressive Design Builder services for the Project using the Request for Proposals process in accordance with the Attorney General Model Rules under ORS 279A.065(3).

ADOPTED this 17 day of December, 2020.

WATER ENVIRONMENT SERVICES:

Chair

Recording Secretary

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

**EXHIBIT A
TRI-CITY WRRF OUTFALL PROJECT
FINDINGS IN SUPPORT OF USE OF REQUEST FOR PROPOSALS
AND ALTERNATIVE CONTRACTING METHODS**

These Findings are for the approval of the use of an alternative contracting method so that Water Environment Services (“WES”) may utilize the request for proposals (“RFP”) competitive process to retain a construction contractor to use the Progressive Design-Build project delivery method for the Tri City Water Resource Recovery Facility Outfall Project (“Project”).

A. Alternative Contracting Exemption under Oregon Law

Oregon law requires all public improvement projects to be procured by competitive bid, with the default project delivery method being design-bid-build, unless the Local Contract Review Board (“LCRB”), which in this case is Clackamas County Board of County Commissioners, acting as the governing body of Water Environment Services (“Board”), grants an exemption. In accordance with the Clackamas County Local Contract Review Board Rules (“LCRB Rules”) Section C-049-0600 and ORS 279C.335, an exemption generally requires the Board make two findings:

1. That the exemption is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public improvement contracts.
2. That the exemption will result in substantial cost savings and other substantial benefits to the agency.

For public improvement projects, ORS 279C.335 provides that the agency desiring an exemption from competitive bidding must justify through a findings report information concerning the following fourteen items:

- a. How many persons are available to bid;
- b. The construction budget and the projected operating costs for the completed public improvement;
- c. Public benefits that may result from granting the exemption;
- d. Whether value engineering techniques may decrease the cost of the public improvement;
- e. The cost and availability of specialized expertise that is necessary for the public improvement;
- f. Any likely increases in public safety;
- g. Whether granting the exemption may reduce risks to the contracting agency, the state agency, or the public that are related to the public improvement;
- h. Whether granting the exemption will affect the sources of funding for the public improvement;
- i. Whether granting the exemption will better enable the contracting agency to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement;
- j. Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement;
- k. Whether the public improvement involves new construction or renovates or remodels an existing structure;
- l. Whether the public improvement will be occupied or unoccupied during construction;
- m. Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions; and
- n. Whether the contracting agency or state agency has, or has retained under contract, and will use contracting agency or state agency personnel, consultants and legal counsel that have necessary expertise and substantial experience in alternative contracting methods to assist in developing the alternative contracting method that the contracting agency or state agency will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract.

As described in this findings report, it is recommended that the Tri City Water Resource Recovery Facility Outfall Project be delivered through the Progressive Design-Build method, subject to the LCRB Rules and the County’s procurement process.

B. Background Information

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF CLACKAMAS COUNTY, STATE OF OREGON

The Tri-City Water Resource Recovery Facility (“WRRF”), which is owned and operated by WES, discharges treated effluent from the facility through an existing 72-inch to 84-inch diameter outfall pipeline to the Willamette River. The outfall is currently approaching its rated hydraulic capacity of 75 million gallons per day (“mgd”). In January of 2019, WES completed the Sanitary Sewer Master Plan for which a dynamic model was developed to evaluate the current and future capacity needs for the system. The model identified a need to increase the wet weather outfall capacity at the Tri City WRRF to 180 mgd to meet build-out conditions.

Following an evaluation of alternatives, a 90-inch diameter outfall pipe is proposed to convey treated flow from the Tri City WRRF along Old Agnes Avenue and the I-205 right-of-way, to a receiving pit near Hwy 99E in Oregon City. Trenchless construction will be utilized to construct the outfall from the receiving pit at the I-205 interchange to the Willamette River and back toward the main street round-a-bout. See Figure 1 for the proposed outfall alignment.

Selection of the Progressive Design Build contractor is anticipated in 2021, with scheduled project completion in 2024. The total construction cost is estimated to be between \$21- 25 million. This estimate does not include design or permitting, and is fully funded as part of the WES Capital Improvement Plan.



Figure 1. Proposed TC WRRF Outfall Route

C. Progressive Design-Build

The traditional project delivery method that public agencies use for municipal improvements is Design-Bid-Build (“DBB”). Under this approach, an Owner contracts separately with a consulting engineer and a contractor. The consulting engineer would develop a fully detailed package of contract documents that are issued for competitive bidding by prospective contractors. The agency would then contract with the lowest cost, responsible bidder for construction of the project.

Over the last twenty years, municipal organizations have begun to successfully deliver alternative methods of project construction to the DBB model. One alternative that has become more widely used in the water/wastewater sector is the Progressive Design-Build (“PDB”) approach, which integrates design and construction services into a single contract.

Under the PDB project deliver method, the PDB contractor performs both design and construction functions as an integrated team, usually with a consulting engineer. The team, in close coordination with the WES project team, develops the project approach, design, construction plan, schedule, staffing and pricing to deliver the project. This model brings the builder into the project at a relatively early point in the design process to lend their expertise in the design phase to mitigate risk associated with construction challenges.

Having these activities occur during the design phase can benefit the Owner through lower construction costs, faster project completion, better project understanding, and closer relationships between Owner and PDB contractor. Under the PDB process, rather than selecting a general contractor solely on a cost competitive basis, the PDB contractor is retained using a Request for Proposals (“RFP”) process, which is based on a number of criteria, including qualifications and experience.

Once a PDB contractor is selected using the RFP process, the initial project budget is established, which includes both the value of the technical scope of work using the construction contractor’s real-time pricing data, and the value of the project risk profile, as mutually agreed with the Owner. The open book nature of the pricing process allows the project contingencies to be visible throughout the design and construction process, providing an opportunity for eliminating unrealized risk-related contingencies as the work moves forward.

As the project design progresses, the PDB contractor is expected to provide a guaranteed maximum price (“GMP”), which is negotiated at a predetermined point during design. This GMP provides the upper limit of the project construction costs, and allows the Owner to budget the value of the expected maximum construction cost. If the GMP is accepted by the Owner, the PDB contractor is then awarded the project and acts as the general contractor to perform the work. If the GMP is not accepted by the Owner, the PDB process includes an “off-ramp,” in which the Owner could direct the PDB contractor to complete the construction documents and then competitively bid the project’s construction phase, similar to the traditional DBB approach.

For WES to use this alternative project delivery method, the Board must first grant an exemption from standard requirements in accordance with LCRB Rules Section C-049-0620 and ORS 279C.335.

D. Findings

1. No favoritism or diminished competition.

The exemption is sought only to authorize a different competitive process to the standard low-bid procurement process. The PDB contractor will still be selected through the competitive RFP process. To ensure the exemption requested does not encourage favoritism or substantially diminish competition, a well-defined competitive procedure will be followed to select the contractor for this public improvement contract.

The RFP solicitation will be broadly advertised in a manner consistent with other public improvements and all qualified firms will be encouraged to apply. Procurement will include advertisements in the Portland Tribune and will post the opportunity on the State of Oregon Procurement Website (“ORPIN”). Further steps include direct notification to qualified PDB contractors, scheduling a pre-proposal conference, and appointment of an evaluation committee that will consider proposals received utilizing the comprehensive criteria identified in the RFP.

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The qualifications-based RFP process for selecting a PDB contractor for this Project does not result in favoritism or diminished competition, because the process will remain competitive and contractors will be selected based on skills, experience and project approach. The qualifications-based RFP approach is widely recognized as one of the preferred alternative procurement methods for more complex projects. RFP responses allow contractors to compete based on their skills and experience. In this Project, some complexities will require a combination of skills that cannot be evaluated in a standard low-bid process, such as time constraints, budget constraints, and specialty construction methods. Overall, the ability to use the RFP process to select a PDB contractor fosters competition amongst the proposers similar to that of the traditional low-bid approach, while at the same time ensuring WES has the opportunity to evaluate non-monetary factors that will impact the quality and performance of the Project.

2. Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the public agency.

The benefits of using PDB for project delivery are greatest for larger, more complex projects; especially those that present high risk; those that are governed by schedule constraints; or those that would experience cost savings from the kind of value-engineering/design-evaluation that a construction contractor could provide during the design process. The Project will be a complex project to design, permit and construct. The Project will include risks associated with tunneling and work in the Willamette River. Preliminary geotechnical information collected during the conceptual design will inform the tunneling technology to be used, and has more closely defined the depth most suitable for the pipeline to be installed. Having an experienced tunneling contractor included during the design phase to lend their expertise will be beneficial. The construction schedule will be impacted by the in-water work windows set forth by the Oregon Department of Fish and Wildlife for work in the Willamette River. The requirement that portions of the tunneling be performed during this in-water work window will influence the construction schedule and sequence. An experienced contractor can advise on minimizing cost associated with construction scheduling.

Using a traditional DBB method of project delivery on a complex project has the potential to result in costly change orders that occur during the construction phase, such as when conditions on the ground may not match those anticipated. This is a particular risk for a project that is heavily geotechnical, since soil conditions can vary from what was revealed in exploration. By utilizing a project delivery method that involves the contractor in the early stages of design, the project team can identify the complexities and mitigate them before they get to a point where they will result in costly changes.

Overall, the complexity of this Project lends itself to the PDB delivery method, with substantial cost savings and other substantial benefits coming from the ability to anticipate design issues earlier in the process, including those related to tunneling and in-water work, in addition to scheduling efficiencies.

a. *How many persons are available to bid?*

Regionally, there are a number of contractors with the capabilities and expertise to construct the Tri City WRRF Outfall Project. The large diameter pipeline and tunnel construction techniques do require specialized capabilities and typically a similar project utilizing the DBB process would yield between 3-5 bids. To date, multiple prospective contractors have expressed preliminary interest in participating in the PDB process for this Project. It is anticipated that WES will receive between 3-5 responses, which is comparable to what would be expected for a DBB project.

b. *What are the construction budget and projected operating costs for the complete public improvement?*

At the conceptual design level, the construction cost is estimated to be between \$21 and \$25 million. An RFP process will allow the selection of an experienced PDB Contractor to advance the project through final design and construction, lending their large diameter tunneling expertise. Their early involvement may shorten the construction duration and potentially reduce the impact to Jon Storm Park. Because the outfall is a gravity pipe, there are no operating costs either associated with, or arising out of, its construction.

c. *What are the public benefits that may result from granting the exemption?*

As a member of the Project team, the PDB contractor has a significant influence on impacts to the public. Throughout construction, the Project may disrupt the local community and will require strategic scheduling to minimize traffic disturbances and impact to Jon Storm Park. Under the DBB process, the typical project is completed with primary consideration toward maximizing profit and minimizing interruption for the contractor. By selecting a PDB contractor early in the process, the project team will be able to identify construction activities that will impact the public and incorporate mitigation approaches into the project planning.

The selected PDB contractor must construct the project to meet the requirements of the many required permits in a way that best represents WES to the public. By having the PDB contractor on the team through the permitting process, the project team (WES and PDB contractor) will be able to effectively communicate with stakeholders. Having the PDB contractor available for involvement throughout the permitting process helps the contractor evaluate mitigation strategies to reduce disruption to the community.

Granting the exemption maximizes public benefits by ensuring the selection of a contractor that has demonstrated qualifications to effectively manage the public impact aspects of the work, and provide a long lasting, high-value product.

d. *Is it possible that value-engineering techniques may decrease the cost of the public improvement?*

To achieve greater effects, value-engineering is best accomplished early in the project design. In a traditional DBB project, the contractor is typically not involved during value-engineering assessments. The DBB model only provides a finalized set of construction contract documents and the contractor has limited to no involvement with design considerations and value engineering.

In a PDB delivery model, the contractor provides a cost estimates relatively early in the design process, which provides an early warning if the project's estimated cost is at risk of exceeding the budget established at project kickoff. In this case, WES and the contractor may initiate value engineering at a point in the project where changes can be made to recover the budget. In the case of this technically complex Project, identifying tunneling methods and creative ideas around scheduling within permitting constraints will be key to mitigating risk and minimizing cost. Only contractors with large-diameter tunneling experience can bring the specialized knowledge required to identify value-engineering opportunities during design. This will be accomplished by ongoing design evaluation and constructability reviews by the construction contractor member of a PDB team. The evaluations and reviews will increase the

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opportunities for project success and reduce construction costs by defining or removing uncertainty so to reduce risk-based pricing that DBB contractors would bring to this type of project.

Granting the exemption will allow WES to select a contractor with demonstrated successful experience working with an owner to incorporate continuous value-engineering concepts and details into the design phase of the project to maximize cost savings for WES.

e. What is the cost and availability of specialized expertise that is necessary for the public improvement?

Design and construction of a large diameter pipeline, shaft, tunnel, and a diffuser under a riverbed requires specialized design and construction. The specialized techniques will be best implemented by contractors with demonstrated successful experience on similar projects. The selection of a contractor with such specialized expertise to construct the Project will result in a substantially lower risk to WES, because it increases the likelihood of the Project being completed on or ahead of schedule, resulting in lower costs with minimal disruption to the area.

As part of the RFP procurement and selection process, PDB contractors will be evaluated on the basis of experience of the firm and qualification of key staff to deliver the Project. Particular emphasis will be placed on PDB contractors with specific demonstrated experience in successful construction of large diameter gravity pipelines with a tunnel component and in-river construction.

The ability to factor expertise and experience into contractor selection is inherent in the RFP process, but is not normally part of the standard low-bid process. The standard process does not ensure a contractor will possess the needed special expertise because prospective bidders only need to meet a limited criterion. The ability to consider each proposer's degree of expertise in these areas is an integral component of the proposal evaluation process on a project with this degree of complexity and inherent risk.

f. Are there any likely increases in public safety?

Large scale construction requires considerable attention to on-site and off-site safety. The conceptual design of the Project contemplates a large, deep excavation in the clover leaf at southbound I205 and OR-99/McLoughlin Boulevard and some level of disruption in Jon Storm Park near the parking lot and boat dock. Deep and large excavation, additional traffic, and large construction equipment operation demand proper safety controls be in place at all times in order to minimize risk. Construction-generated staging, delivery, and parking activity will need to be considered in a comprehensive construction traffic safety and mitigation plan. Constant attention to traffic control, needs of park visitors and access to the Oregon City Shopping Center is crucial to maintaining a safe working and living environment for workers and the public.

The PDB delivery method will allow the contractor to work with the project team during the design to understand, plan for, and minimize safety hazards and conflicts between the project and the public. The contractor will provide input into issues of project phasing, construction staging areas, construction access corridors, and scheduling to reduce impacts. The close teamwork provides maximum flexibility to address both anticipated issues and concerns that may arise unexpectedly. Ultimately, this input will increase the public safety of the Project and reduce the risk of delays and claims.

g. Will granting the exemption reduce risks to the contracting agency or the public that are related to the public improvement?

Granting the exemption will allow for reduced project cost and schedule risk by mitigating unforeseen conditions and misinterpretations through collaboration between designers and those constructing the improvements. Since it is not possible to entirely eliminate risk from a project, the use of a PDB delivery will provide an opportunity to actively manage the cost, schedule, and quality risks during the design process through the negotiated sharing of those risks with the PDB Contractor.

h. Will granting the exemption affect the sources of funding for the public improvement?

No, the method of project delivery will not impact the source of funding. The project will be funded by rates and is budgeted for in the WES Capital Improvement Plant, regardless of project delivery method. WES finance will make a decision as to whether the project will be paid for in cash, through bonds or through the DEQ-administered State Revolving Loan Fund.

i. Will granting the exemption better enable the contracting agency to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement?

Market conditions for heavy and civil construction costs are currently volatile, due to the recent downturn in the economy throughout the nation and the Pacific Northwest related to the COVID-19 pandemic. WES needs to balance the ability to obtain a long-term, high-value facility while accounting for the pricing conditions of the current construction market. To ensure that WES is receiving value for its money, an independent consultant will be retained to act as its Owner's Representative ("OR") during the GMP negotiation process.

During the development of the GMP, solicitations of subcontractors for lower tier work will be required. In obtaining these bids, WES and the OR will be involved in the review and acceptance of the subcontractor firms that are solicited for bidding, and the bids will be openly reviewed with the contractor. Requiring a portion of the work to be let to subcontractors through a competitive bid process will allow WES to take advantage of the competitive bid market. As a result, the PDB method of delivery allows flexibility for WES to best react to the current market conditions.

In addition to managing contractor costs, having the contractor on board early provides the ability to facilitate early procurement of materials, which can provide a longer window for procurement of long lead items, and can also lock-in product costs to the benefit of WES.

After the GMP has been negotiated, the exemption will also allow for better control of increases to project costs and schedules by reducing unforeseen conditions and associated change orders through continuous coordination of the design and construction tasks being performed by the PDB contractor. Finally, WES will retain the ability to procure construction services through competitive bidding should continuing the relationship with the PDB contractor prove undesirable.

Overall, granting the exemption allows WES to balance quality-based selection with changing market conditions and to minimize material cost increases by leveraging contractor involvement early in the design process.

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j. Will granting the exemption better enable the contracting agency to address the size and technical complexity of the public improvement?

While the size of the Project in terms of construction cost is not outside the capability of many area contractors, the Project includes installing approximately a mile of very large diameter pipe. Approximately half of the length will be open cut, which except for the size of the pipe, is relatively straightforward, but about half a mile will require tunneling adjacent to a large shopping center and under a highly traveled state highway and a public park. The pipeline will terminate under the Willamette River bed at a depth of approximately 40 feet. Not all utility contractors are qualified to perform the work on a project of this type and complexity.

The large diameter pipeline, tunneling, and construction in the Willamette River require experienced construction crews that understand the impact geology can have on tunneling, know how to work around existing high traffic facilities and to ensure attention to details. Involvement by the PDB contractor during the design phase will also allow the contractor to more fully understand the project issues before providing a final price. For example, some geotechnical data is available, but the PDB contractor may elect to do additional exploration to better define risk and inform his approach. The technical complexity also impacts other project elements such as schedule, operations, and construction sequence which might be missed by a contractor submitting a low bid under a DBB process.

The technical complexity of this Project requires a contractor that is familiar with complex construction materials and techniques. The competitive Request for Proposals for PDB procurement allows WES to evaluate contractors' technical experience and staff that have conducted similar work to that required for the Project.

k. Will the public improvement involve new construction, or renovation or remodeling of an existing structure?

The Project is primarily new construction of a gravity pipeline and diffuser. The new construction will require connecting the new pipe to the existing one, which is an in-service outfall. Accordingly, the connections will need to be carefully planned and scheduled during the design phase of the Project.

The PDB process will allow WES to select a contractor who has a history of successfully completing pipeline projects while limiting unplanned impacts to existing facilities.

l. Will the public improvement be occupied or unoccupied during construction?

With the exception of Jon Storm Park, the majority of the Project construction will take place in an existing right-of-way that will be unoccupied during construction. The proposed tunneling techniques will minimize disruptions to Jon Storm Park, Oregon City Shopping Center, I-205 and OR99/McLoughlin Boulevard. For the in-river portion of the work, the contractor will adhere to the Oregon Department of Fish and Wildlife's Willamette River in-water work window and any other permit requirements. Coordination will be required for tie-in to the Tri City WRRF, which is an occupied facility that must remain operational during construction.

While most of the rights of way will be unoccupied during construction, the PDB process will allow the Contractor to fully understand and mitigate the impacts to the park and adjacent highways and commercial areas.

m. Will the public improvement require a single phase of construction work or multiple phases of construction work to address specific project conditions?

At this point, it is anticipated that this Project will be constructed in a single phase. The tunneling portion of the project will be scheduled to minimize the time the tunneling machine is on site and coordinated with the in-water work window for the Willamette River.

However, an advantage of PDB delivery is flexible adaptation to changing project conditions and the open book GMP process allows for the preparation of multiple negotiated design packages for the release for construction if that proves to be advantageous to WES. Possible advantages include commencing construction of the open cut portion of the pipeline as early as is practical, or advanced procurement of pipe material if market conditions are favorable.

While construction of the Project is anticipated to occur in one phase, the PDB delivery process could allow for phasing for potential scheduling advantages or to accommodate permitting requirements.

n. Does the contracting agency have, or has it retained under contract, contracting agency personnel, consultants and legal counsel that have necessary expertise and substantial experience in alternative contracting methods to assist in developing the alternative contracting method that the contracting agency will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract?

WES has experience in implementing and completing projects utilizing alternative delivery methods, including the use of Construction Manager/General Contractor ("CM/GC") contracting method for the recent \$18M Kellogg Creek WRRF Improvements Project. County Counsel and County Procurement have additional experience working on CM/GC project delivery for the Housing Authority of Clackamas County and North Clackamas Parks and Recreation District, including development of necessary documentation and negotiation of contract terms.

For this Project, a team has been established that includes staff from WES, County Counsel, and County Procurement that will actively participate in the project from inception to completion. WES will retain the services of an Owner's Representative to assist with the procurement and contracting phase and services during construction administration. County Counsel and County Procurement will contract with additional outside entities or obtain additional required expertise as necessary throughout the development of this Project.

The combination of staff and consultants have experience completing similar projects using PDB delivery and have the necessary qualifications and expertise to negotiate, administer, and enforce the terms of the public improvement contract.

E. Contract Terms and Conditions

The technical complexities and uncertainties of the Project make it critical for the contract to contain specific terms and conditions that will increase efficiency and result in reduced costs. The Project team and WES' OR will provide a contract that includes industry best practices, mitigates WES and the project's risk exposure, and ensures fees that are fair and reasonable for the Project. County Counsel will also ensure that the contract includes all legally required public procurement terms.

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F. Reservation of Rights

ORS 279C.335(6) provides that the representations in and the accuracy of these findings are the bases for a contract-specific exemption if adopted by a LCRB resolution. These findings also describe, to some extent, anticipated features of the RFP and resulting public improvement contract, but the final parameters of the contract are those characteristics that will be announced in the solicitation document, and WES specifically reserves all of its rights in this regard.

G. Recommendation for Proposed Project Delivery Approach

A competitive RFP process to procure a PDB contractor is the preferred option for the Project. The RFP process will ensure that the selected contractors have the experience, expertise, and past performance to position the Project for success. Further, the RFP process ensures that meaningful competition occurs and that favoritism is not an element of the selection process. These factors will assist WES in achieving fair and equitable selection of a contractor that will deliver both quality design and successful completion while minimizing public impacts, controlling construction costs, and meeting an agreed-upon schedule.

The industry-accepted benefits of the PDB delivery include:

- Integrated design process results in a superior, more constructible design
- Shortened project schedules
- Reduced likelihood of change orders for unforeseen conditions
- Presence of “off-ramp” for contractual flexibility
- QBS selection
- Single contract for design and construction

WES staff therefore recommends adoption of a resolution approving a contract-specific exemption for the Project that permits use of the PDB delivery method, and to permit use of the competitive RFP process to select a PDB contractor.