

DRAFT

FINDINGS OF FACT AND ORDER GRANTING EXEMPTION
FROM COMPETITIVE BIDDING REQUIREMENTS

EXEMPTION #

Before the County Attorney of the Lincoln County Board of Commissioners of the State of
Oregon

In the Matter of)	****Draft****
Exemption Request of the)	Findings of Fact
Lincoln County Board of Commissioners)	and Order Granting Exemption
To Use CM/GC Alternative Delivery Method)	from Competitive Bidding
Requirements for the Lincoln County Commons Project)	
)	

ORS 279C.300 and 279C.335(1) require, with certain exceptions, that all public improvement contracts be based on competitive bidding and, under ORS 279C.375, be awarded to the responsible bidder submitting the lowest responsive bid. However, ORS 279C.335(2) provides that the Lincoln County Board of Commissioners acting as the primary public contract review authority for the State of Oregon (“State”), may exempt, under certain conditions, a public improvement contract or a class of public improvement contracts from the competitive bidding requirements of ORS 279C.335(1) after the Commission approves the findings that the contracting agency submits as set forth in ORS 279C.335(2). Under OAR 125-246-0170(3)(a)(C) the Commission has delegated that exemption authority to the County Attorney.

Lincoln County performs procurements on behalf of The Lincoln County Board of Commissioners and has received a request from The Lincoln County Commons project team to pursue an exemption from competitive bidding to allow for the use of Construction Manager/General Contractor (“CM/GC”) alternative delivery method for the new Commons (“Project”). Lincoln County, in conjunction with The Commons project team has prepared the requisite findings to support the County Attorney’s approval of the exemption.

The Notice of Proposed Exemption and Draft Findings of Fact and Order were advertised in the Daily Journal of Commerce on March 4, 2026 and posted on the County website at: <https://www.co.lincoln.or.us/1242/Bids-and-RFPs>

I. Project Description and Background

The Lincoln County Commons, “Home of the Lincoln County Fair,” has been an important gathering place for community events and celebrations in Lincoln County for more than 100 years. In addition to the Fair, the Commons is home to many other public and private events throughout the year. The County’s vision is for the

Commons to continue its role as an important gathering place that offers a variety of venues that serve county residents and attract new activities and opportunities. The purpose of the proposed construction at the Lincoln County Commons is to improve existing facilities, design and add new buildings and other ancillary facilities to better use the space, and develop a management and operations plan that will sustain the Commons over time. We want to see the space as something that can be used year-round for a wide variety of events and community activities.

Vision and Mission Statement:

- Our vision is to see the Lincoln County Commons (formerly the Lincoln County Fairgrounds) become an important gathering place for Lincoln County.
- Our mission is to offer a variety of venues which will make the Lincoln County Commons a preferred destination for residents and visitors.
- Our core values are to respect traditions of the past and cast new directions for the future with a focus on youth.
- Our strategic areas of focus for the Lincoln County Commons are the activities contemplated in the ORS 565.230: The Lincoln County Commons shall “be utilized to the fullest extent for pleasure, recreation and public benefit and for the holding of any exhibitions, shows, carnivals, circuses, dances, entertainments or public gatherings.”
- Our strategic goals are to facilitate the development of venues to realize our strategic areas of focus. Our action plans will be developed between the Fair Board, the Lincoln County Commissioners and the citizens of Lincoln County.
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Key improvements to the LC Commons:

- New multipurpose building that replaces the existing Main Hall. Need to demo the current one. (Possibly use the new structure as an emergency shelter)
- New, partially covered pavilion to replace indoor and outdoor Arena facilities
- Renovated Floral Building to serve as the new location for 4-H meetings and activities
- Updated Livestock Barn to continue housing animal activities
- A new gateway feature at the corner of 3rd Street and Harney Street to welcome visitors to the Commons
- A new stage, sunken amphitheater, outdoor plazas, and expansive lawn areas for the community to enjoy
- A new food court that can be used year-round by the high school and community
- Updated lighting, fencing, and security to better protect the site and allow the space to be used partially for different events.
- Other projects within Fair and rodeo property
- Cooperation with utility and street easements and road work with the City of Newport

- Planning for future phases of The Common development

II. Description of Proposed Alternative Contracting Method

Lincoln County has prepared the front end of the project's budget, scope and time and is in the next phase of team formation. After procuring an owner's representative as well as an architect of record Lincoln County is now seeking to retain a general contractor for the preconstruction and construction phases. Lincoln County studied various alternative methods of contracting as compared to the traditional design-bid-build methods and has determined that the use of CM/GC or Construction Manager/General Contractor method would best serve this project, Lincoln County and the State. Per ORS279C.337, Lincoln County through the County Attorney will seek to process the exemption and move in to procuring a CM/GC via Request for Proposal method of selection where qualifications, experience, approach, team and a variety of other requirements will be scored to select the best contractor as opposed to low bid method.

III. Findings Required by ORS 279C.335

Finding #1: ORS 279C.335(2)(a) requires an agency to find that: “The exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts.” As required by ORS 279C.335(4)(c) and ORS 279C.337(1), County Attorney will conduct the procurement for CM/GC services in accordance with the applicable Lincoln County model rules utilizing a single-phase request for proposals (“RFP”). The Procurement will be formally advertised with public notice and disclosure of the planned Alternative Contracting Method, competition will be encouraged, Award will be made based upon identified selection criteria, and there will be an opportunity to protest that Award. Accordingly, and for the reasons set forth in more detail below, County Attorney and Lincoln County find that the proposed exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts.

1. Public Notice and Disclosure of the Planned Alternative Contracting Method.

Lincoln County will utilize a competitive single phase RFP procurement process in accordance with the requirements of ORS 279C.337 and other applicable provisions of ORS 279C.300 through 279C.875 and the applicable Lincoln County Model Rules for procurements of CM/GC services. Lincoln County will comply with the requirement for public improvement advertisements as set forth in ORS 279C.360 and advertise the solicitation in the Daily Journal of Commerce. The solicitation documents will clearly disclose the CM/GC Alternative Contracting Method. The solicitation documents will be publicly available through the County Website and County Owner's Representative.

2. Competition Will Be Encouraged.

The procurement process has been formulated to encourage competition. The selection process will be open and available to all qualified contractors. An open and competitive solicitation process will provide an opportunity for qualified contractors with experience in the CM/GC method for project delivery and with key qualifications associated with the unique subject matter involved in the Project. The selection will be made on the basis of price and non-price factors and thereby expands the basis of competition beyond price alone, to include qualifications, experience, specialized expertise, innovation, and best practices factors. A possible mandatory pre-proposal conference, open to all interested parties, giving the opportunity for potential proposers to ask questions, request clarifications and suggest changes to the solicitation documents.

3. Award will be made based upon identified selection criteria.

The solicitation documents will describe the evaluation criteria in detail and will specify the weight Lincoln County will give for each criterion, in accordance with OAR 137-049-0650. As described in OAR 137-049-0640, factors in addition to price may be considered in the selection process, but only as set forth in the RFP. Additionally, evaluation factors need not be precise predictors of future costs and performance, but to the extent possible such evaluation factors must be reasonable estimates based on information available to the Contracting Agency and shall: (a) Be reasonable estimates based on information available to the Contracting Agency; (b) Treat all Proposals equitably; and (c) Recognize that public policy requires that Public Improvements be constructed at the least overall cost to the Contracting Agency. Examples of evaluation criteria may consist of firm and personnel experience on similar projects, adequacy of equipment and physical plant, sources of supply, availability of key personnel, financial capacity, past performance, safety records, project understanding, proposed methods of construction, proposed milestone dates, references, service, and related matters that could affect the cost or quality of the Work. In CM/GC contracting, factors may also include the ability to respond to the technical complexity or unique character of the project, analyze and propose solutions or approaches to complex project problems, analyze and propose value engineering options, analyze and propose energy efficiency measures or alternative energy options, coordinate multiple disciplines on the project, effectively utilize the time available to commence and complete the improvement, and related matters that could affect the cost or quality of the Work.

As described in OAR 137-049-0640, the RFP may provide for discussions with Proposers to be conducted for the purpose of Proposal evaluation prior to award or prior to establishing any Competitive Range. Accordingly, the RFP will include a description of how the County will use interviews and a Competitive Range in the evaluation of the process and how the County will evaluate interview information received, including how scores from RFP proposals, interviews and any other evaluation criteria will be combined. Proposals considered complete and responsive will be evaluated under the criteria by members of the Evaluation Committee who will independently score proposals. The Evaluation Committee may conduct interviews with one or more of the highest-scoring proposers. The Evaluation Committee will rank the proposers according to the proposal and, if applicable, interview criteria, and provide an award recommendation. Proposal evaluation shall be as objective as possible.

4. Opportunity for Protest of Award.

In accordance with OAR 137-049-0450 (Protest of Contractor Selection, Contractor Award), an adversely affected or aggrieved Proposer has the right to protest award.

Finding #2: ORS 279C.335(2)(b) requires an agency to find that “Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the contracting agency.” In approving this finding, the type, cost and amount of the contract and, to the extent applicable, the items listed in ORS 279C.335(2)(b)(A) – (N), shall be considered. For the reasons set forth in more detail below, County Attorney and Lincoln County find that the proposed exemption will likely result in substantial cost savings and other substantial benefits to the contracting agency.

1. Type of Contract.

As described in Section II above, the type of contract will be Construction Manager/General Contractor (CM/GC) per ORS 279C.337.

2. Cost and Amount of the Contract.

This method of contract is procured through an RFP process where subjective scoring requirements are added to an objective fee scoring section of the preconstruction fees, % fees for the work and overall general conditions of the contract. The initial contract will be for the preconstruction amount only until a successful Guaranteed Maximum Price (GMP) is achieved meeting Lincoln County budget at which time the CM will turn into the GC and construct the project after bidding out all the scopes of work. The current overall project budget is at a range of \$12-15M construction and \$17-\$20M project budget, however initial project programming and schematic design estimates may determine a need for higher budget and multiple phases of a project fairgrounds program over time.

3. Availability of Proposers: how many persons are available to bid. [ORS 279C.335(2)(b)(A)]

At this size, complexity and proximately and based off of the owner’s representative’s experience in Oregon over the last 28 years in the industry, we believe there are at least six to twelve CM/GC firms interested and willing to propose. We anticipate requiring a mandatory pre-proposal meeting which will benefit the County by determining the seriousness of both the project and proposer interest. The project team has received calls of interest for a few months and anticipate increased interest as we move through the RFP process.

4. The construction budget and the projected operating costs for the completed public improvement. [ORS 279C.335(2)(b)(B)]

As shown in #2 above the construction budget range is currently \$12-15M, however this may increase or decrease depending on the initial schematic phase of design and cost

estimating. The forecasted operating cost of the new fairgrounds is based off of the Fairground's current operating cost and projecting for an increase in size, use, location, and completion date. Data from the original master plan shows the estimate starting on page 21 and continues to 22 of the revised Master plan linked below.

[Revised-Master-Plan-for-the-Lincoln-County-Commons---February-2019-PDF](#)

Operations. Staffing is the highest operating cost. At the minimum level of staffing (described above), the Commons would have \$140,000 in staffing costs. We would anticipate more events and increases in staffing due to the new development. The Commons would have \$240,000 per year in staffing costs. Given that the Commons will have costs of goods and services beyond its labor costs, we would expect annual operating costs in years 1–5 to be in the range of \$225,000 to \$300,000.

5. Public benefits that may result from granting the exemption. [ORS 279C.335(2)(b)(C)]

Procuring the CM/GC early on during design as part of the planning team allows the team to plan for safety around all fairground activities including being neighbors with the adjacent high school activities that may be going on in the direct vicinity of the project. CM/GC allows for constructability reviews and risk register developments during design to ensure the highest quality and overall cost control, which is critical as a publicly funded project.

Having a CM/GC firm on board early during design prior to construction will allow phase planning of the Fairgrounds to optimize schedule due to weather, early procurement of long lead items and general construction bid climate. The Cm/GC will also be able to plan all work with and around the City streets and sidewalk urban renewal work surrounding the fairgrounds.

6. Whether value engineering techniques may decrease the cost of the public improvement. [ORS 279C.335(2)(b)(D)]

The CM/GC method of contracting has the highest opportunity to Value Engineer since the contractor is part of the design before it is completed and can provide input into constructability, material and system choices, product availability and source material that can save on cost and schedule. These advantages are simply not available with a traditional hard bid project and can result in cost increases vs decreases. CM/GC can also be part of design meetings and fairground board inputs to understand intent of how spaces are supposed to function on a fairground and rodeo development; this allows opportunity for alternative construction methods to meet intent that may be more viable or cost effective.

7. The cost and availability of specialized expertise that is necessary for the public improvement. [ORS 279C.335(2)(b)(D)]

Rodeos, Fairgrounds and event center focused developments are specialized in many ways. There are overall not many of these types of developments in the NW and thus the pool of

specialized resources in terms of designers and constructors becomes vitally important to obtain the highest quality service partners. Many items in the design process are noted as “performance spec” where the basic code requirements and user intent is indicated, but the final design is per the design-build subcontractor. A CM/GC allows design-build subcontractors to be involved during the design process rather than after award of hard bid. This provides opportunities for systems evaluations, alternatives, systems coordination, etc.

8. Any likely increases in public safety. [ORS 279C.335(2)(b)(E)]

This exemption will result in an increase in public safety given the CM/GC firm will be brought on board early in design to plan during a preconstruction phase where safety and coordination between urban renewal street improvement activities, adjacent high school activities and its safety department can coordinate and plan all construction activities well ahead of time instead of cramming safety planning in a two week hard bid scenario with no coordinated planning.

9. Whether granting the exemption may reduce risks to the contracting agency, the state agency or the public that are related to the public improvement. [ORS 279C.335(2)(b)(F)]

Granting this exemption will reduce the risk to Lincoln County by reducing the amount of change orders and placing construction changes within the GMP via a contingency dedicated to construction built within the GMP. Since the CM/GC firm gets a fee % on the contents of the GMP including the full contingency amount typically 3-5% range the markup on changes within the GMP are less than change orders outside the GMP which would carry markups of 10-15% on Labor, Equipment and Materials.

One of the greatest risks and needs of this method of contracting is the ability to be flexible and shift in schedule and changes given the site soil conditions, various easements between the County and City, working with the local School District and City teams with surrounding street and sidewalk developments, off and on site utility work for storm lines, water lines, power and emergency generator needs, storm system control and general requirements of working on a public project. Risks are further mitigated due to ability to coordinate and conduct constructability reviews and plan risk registry matrix adoption across the teams working on the project. As noted above, it also gives CM/GC ability to understand operational and user intent and thereby prioritize particular items or systems.

10. Whether granting the exemption will affect the sources of funding for the public improvement. [ORS 279C.335(2)(b)(G)]

Granting this exemption has no impact on the funding of the project.

11. 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. [ORS 279C.335(2)(b)(H)]

The CM/GC partner becomes a part of the team during early planning and has flexibility in phasing to match the best time to bid various portions of the work. In a traditional approach of design-bid-build the bid will occur at one specified time according to a hardline schedule and the market will determine the outcome with no flexibility. The CM/GC method allows the contractor to study, forecast and test the market to propose to the team the best interest bid climate when to bid certain pieces of the project. With CM/GC you have the ability to choose what bids are in the best interest of the project and not just simply accepting the low bid in every scenario. This is also advantageous to hire local in the Lincoln County and City of Newport markets.

The CM/GC will have more control over when bids within different planned packages go out to the market. They will be able to determine the best time to solicit the best bids for the project as opposed to a hard bid scenario that bids when the documents are complete with little ability to shift. This becomes a big advantage to the public agency utilizing CM/GC approach top subcontractor biddings and market condition control.

12. Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement. [ORS 279C.335(2)(b)(I)]

Retaining a CM/GC allows flexibility in design and schedule changes since the CM/GC firm is on board early during design and before construction. This allows time to provide constructability reviews, schedule and procurement planning as well as phase planning to coordinate the complexity that will come with mitigating the unsuitable soils and weather conditions, working alongside the High School and City projects, ensuring all utilities are coordinated. As noted above, it also gives CM/GC ability to understand fairground operational and rodeo/vendor user intent and thereby prioritize particular items or systems.

13. Whether the public improvement involves new construction or renovates or remodels an existing structure. [ORS 279C.335(2)(b)(J)]

The project will be new and renovation construction, characterized as modernizing existing County Fairgrounds.

14. Whether the public improvement will be occupied or unoccupied during construction. [ORS 279C.335(2)(b)(K)]

The project will be constructed on an existing fairgrounds and rodeo, event center site therefore the site itself will not be occupied when being constructed on, however, construction will most likely take place over several phases whereby activities will be adjacent to high school and city urban renewal developments to streets and sidewalks during the life of the fairgrounds upgrade activities and will require the utmost care in site access and safety.

15. Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions. [ORS 279C.335(2)(b)(L)]

There will most likely be multiple phases on this project that could include early procurement of long lead materials and equipment. Other phases may include rodeo and vendor activity for summer prep of 2027 and remaining project completion by end of 2027. Other side projects would include coordinating utility easement projects with the City of Newport and streets and sidewalk coordination developments surrounding the fairgrounds site.

16. 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. [ORS 279C.335(2)(b)(M)]

Lincoln County has retained the consulting services of DPM Company, LLC, an experienced owner’s representative who has extensive CM/GC experience in the Oregon public sector in addition to completing the overall management of CM/GC GMP contracts locally such as the NOAA Marine Operations Center and International Terminal projects in Newport. Lincoln County has an internal legal counsel who has experience in alternative methods of contracting and county procurement rules. Finally, as part of the team, Lincoln County has retained an architect who also has extensive experience with CM/GC GMP contracts in the state of Oregon, LRS Architects, who previously worked on the 2019 fairgrounds master plan.

IV. Additional Findings

The County has experience utilizing CM/GC on a past project listed below.

Project Name	Delivery Method	Agency		
County-OSU Extension Office Remodel	CM/GC	Lincoln County		

*******CONCLUSIONS *******

Findings have been developed in compliance with ORS 279C.330, 279C.335(2), 279C.335(4) and 279C.350, applying the criteria required by ORS 279C.330(2) and 279C.335(2). Lincoln County has completed the public notice process and considered any feedback it received in the preparation of these findings. Based upon these findings, Lincoln County has determined that an exemption from competitive bidding requirements is justified for the Project using the CM/GC alternative contracting method and finds:

1. Following the selection process described, an exemption is unlikely to encourage favoritism in the awarding of the public improvement contracts or substantially diminish competition for the public improvement contracts; and
2. Award of the public improvement contracts pursuant to the exemption will likely result in substantial cost savings and other substantial benefits to Lincoln County and the public.

ORDER OF CHIEF PROCUREMENT OFFICER

An exemption from public competitive bidding requirements for the Project is hereby granted to Lincoln County to enter into the described public improvement contracts using the CM/GC alternative contracting method. This Order is subject to the following conditions:

1. To the extent feasible, and consistent with this exemption, this procurement will follow the applicable provisions of ORS Chapters 279A and 279C and OAR 137 Division 49.
2. Lincoln County, in concert with the County Counsel, shall establish and follow standards for evaluating proposals under this procurement and for making contract awards.
3. Lincoln County shall work with the County Counsel to develop suitable contract language for the contract and shall incorporate into the contracts such additional or substitute terms that Lincoln County and the County Counsel may determine to be necessary for compliance with Oregon law and other applicable law or otherwise appropriate for the protection of the State.
4. Upon completion of the Project, Lincoln County shall evaluate the Project in accordance with the requirements of ORS 279C.355 and OAR 137-049-0620(3) and will summarize the evaluation in a public report. The evaluation will include actual Project costs, the GMP amount, the number of Project change orders, a narrative description of the successes and failures during the design, engineering and construction of the Project and an objective assessment of the impact of the CM/GC process as compared to the findings in this exemption request. In its evaluation, Lincoln County will also compare the actual CM/GC contracting costs to estimated costs if Lincoln County had used a traditional DBB approach.

THE PRECEDING FINDINGS AND CONCLUSIONS ARE HEREBY INCORPORATED, APPROVED AND ADOPTED.

Board Chair Lincoln County
Lincoln County Board of Commissioners

Date

REVIEWED BY THE LINCOLN COUNTY ATTORNEY

County Attorney

By email dated