

**Findings to Document the Basis for a Contract-Specific Exemption from Standard Competitive Procedures for a Public Improvement Contract For Contract Management/General Contractor Service to Complete the Dynamic Measurements Office Improvements in the LCOG Owned Park Place Building.**

**November 10, 2011**

The purpose of this document is to provide findings that state the need for an exemption from competitive bidding requirements for a direct award of a public improvement contract pursuant to ORS 279C.335(2) and LCOG's Public Contracting Regulations.

The specific findings are listed below. These are provided for consideration of the Lane Council of Governments Executive Board acting in its capacity as the LCOG Contract Review Board. These factual statements, in the aggregate, provide the basis for directly awarding the contract to Lee Construction without the standard solicitation and bidding processes that would otherwise be required.

Background

LCOG owns the Park Place Building. The building currently has vacant space available for lease. LCOG has negotiated a ten year lease with Dynamic Measurement Group, Inc. for approximately 6,000 square feet of the third floor of the building. As a provision of the lease, LCOG will be required to make certain improvements and remodeling to the leased premises.

About two years ago, LCOG went through a public solicitation and bidding process to award a Construction Manager/General Contractor (CM/GC) contract for the improvements in LCOG's own space in the building. That process resulted in awarding the CM/GC work to Lee Construction. Lee Construction completed LCOG's tenant improvements and did so with excellent results. In working on the project and a second project on the second floor in 2010, Lee Construction developed an intimate knowledge of the building's particular systems and materials.

LCOG has been competing with other property owners to secure Dynamic Measurements as a tenant. To meet the requirements of the new lease an aggressive construction schedule for the tenant improvements is required. The design process will be part of the construction process, with substantial completion of the improvements set for February 29, 2012. LCOG has received recommendations from its architect as well as its property manager that the time schedule for this project demands a CM/GC with knowledge of the building. Due to its recent work on several similar project in the building, LCOG wishes to directly award a CM/GC contract to Lee Construction.

1) Nature of contract. This exemption is for a contract-specific exemption. The contract will be for CM/GC services to make tenant improvements in the Park Place Building in the space that will be rented by Dynamic Measurements. The exemption calls for the allowance of a direct procurement without bidding and solicitation procedures.

2) Estimated Contract Price. The estimated contract price for this work \$250,000. This pricing is subject to some variation as construction proceeds. LCOG plans to enter into a guaranteed maximum price agreement with the contractor after reaching agreement with Dynamic Measurements.

3) Substantial cost savings. Savings will be realized as a result of Lee Construction's knowledge of the building. There will be no cost for exploration or education about the building. In addition, the guaranteed maximum price that is a component of the CM/GC process limits the actual cost of the project. There will also be time and money saved by not conducting an RFP process for selection of the CM/GC. An RFP selection was conducted just 2 years ago and Lee Construction was selected. Lee Construction performed well for the LCOG improvements. LCOG is not aware

of any new CM/GC contractors in the area as compared to two years ago when Lee Construction prevailed in the earlier public solicitation process. Moreover, given the aggressive construction schedule required to meet deadlines, there simply is not time to prepare the required RFP documents for a CM/GC contract, solicit bids, review bids, and enter into a contract with the winning bidder.

4) Unlikely to encourage favoritism or diminish competition. LCOG went through a public bidding process for very similar work about two years ago. Lee Construction prevailed in that public process. Given the advantages that Lee Construction has due to its knowledge of the building and working relationship with LCOG, it is very likely that Lee Construction would score high in any new public RFP process for this current CM/GC work. The timing of the construction schedule, together with Lee Construction's recent history working in the building come together for a unique set of facts that make an exemption prudent. These unique facts are not likely to arise again. As a result, this single contract exemption is not likely to encourage favoritism with Lee Construction or diminish the competition for future work.

5) The contracting method to be employed. The proposal here is to directly award the CM/GC services contract to Lee Construction. This will be a one-time contract-specific exemption covering the CM/GC work for the Dynamic Measurements tenant improvements in the Park Place Building.

6) The date by which the contract needs to be awarded. In order to adhere to the very aggressive construction schedule, the contract for CM/GC services must be awarded as soon as possible. If this exemption is approved, LCOG proposes to directly award the contract to Lee Construction at the earliest opportunity.

7) Operational, budget and financial data. Lee Construction is uniquely qualified for this project role due to familiarity with the building, including electrical, plumbing, HVAC, demolition and construction. Due to this knowledge Lee Construction knows what to do, what materials to use, and the sub-contractors that also have knowledge of the building. This knowledge is required to meet the ambitious timeline necessary to achieve substantial completion by February 29, 2012. Elements of Lee Construction's operational control will have positive effect on the budget, beginning with the simultaneous occurrence of events saving six weeks in the schedule. Directly awarding a CM/GC contract to Lee Construction could occur upon approval of the Executive Committee. Making this direct award quickly will allow immediate progress on the following concurrent actions:

- a) Completion of architectural and engineering specifications for submission for building permits and price estimates by November 30, 2011;
- b) Application for demolition permit and commencement of demolition;
- c) Solicitation of multiple bids from sub-contractors capable of completing the work within budget and time schedule; and
- d) Ordering of long-lead items such as doors, lights and HVAC components.

8) Public benefits. This exemption will lead to public benefits due to the substantial cost and time savings identified above. The public will benefit from this economic use of public resources. The public will also benefit by complying with the aggressive construction timeline. By complying with the timeline, the work will be completed in a short time, thereby limiting disturbance to the building's other tenants. Also, completing the project within the timeline will free LCOG from possible penalties that could arise if construction takes longer than the GSA lease requires.

9) Value Engineering. Lee Construction did an excellent job on the LCOG improvements and gained first-hand knowledge of the building. Lee Construction already knows the best combination of cost effective and best quality that works in the building. This allows Lee Construction to participate in the design based on known conditions rather than relying on historical and incomplete observational data. It is anticipated that this knowledge and experience will greatly decrease the number of change orders that would otherwise normally be

experienced. With the prior work by Lee Construction, LCOG also experienced that Lee Construction provided an excellent combination of cost control while reacting to scheduling necessities.

10) Specialized expertise required. Lee Construction has specialized expertise in relation to the building due to recently completing extensive work on the building. This prior experience with the building will be utilized to save time and cost. Some of the systems involved in this work also serve other parts of the building that Lee Construction was involved in with its prior work. Knowledge of these interconnected systems is critical to prevent problems for other building tenants.

11) Public safety. Public safety is not at issue with this project and is not at issue in considering whether to employ standard bidding and solicitation procedures with this project. Approving an exemption here will not be a detriment to public safety.

12) Market conditions. The amount paid for the CM/GC role is a small part of the total cost of the project. Market conditions are favorable for a knowledgeable CM/GC to generate more competitive price estimates and more timely construction, but will not significantly affect the use of competitive bidding for the construction. Lee Construction will collect bids on over 90% of the construction costs related to the project, and the market has been producing bids that are lower than estimates. Lee Construction's knowledge and direct experience will save time and money in such tasks as the scheduling of sub-contractors and the delivery of materials.

13) Technical complexity. Lee Construction's knowledge and expertise will provide enhanced control of each aspect of the project. The contractor's participation and early input to the project improves each part of the project, including phasing, complicated scheduling, tenant occupancy, and budgeting issues. These factors result in better control of the timing, design and costs resulting in a higher quality product and having the coordination overview necessary to expedite the installation of specialized vendor work.

14) Funding Sources. The improvements are being done under contract with Dynamic Measurements. The timelines are very aggressive. Failing to meet the timeline could result in monetary penalties. To protect LCOG's funding source for this project, meeting the timeline is critical. In order to meet the aggressive timeline, it is necessary to employ a contractor that knows the building, and has a demonstrated ability to deliver specified product on schedule. There is no time for training, testing or investigation. Lee Construction is the only CM/GC contractor that has the current knowledge and expertise to fill this role.