

EXHIBIT 1

FINDINGS OF FACT AND CONCLUSIONS SUPPORTING EXEMPTION UNDER ORS 279C.335(2) FROM DESIGN-BID-BUILD PROCUREMENT METHOD AND APPROVAL OF AN ALTERNATIVE PROCUREMENT ALLOWING THE USE OF THE CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC) COMPETITIVE SELECTION PROCESS AND CONTRACTING METHOD FOR THE LIBRARY BOND FUNDED CAPITAL PROJECTS

I. BACKGROUND

A. The Construction Manager/General Contractor Project Delivery Method

The Construction Manager/General Contractor (CM/GC) method is a modern construction delivery method used by both public and private organizations. In the CM/GC method, the Owner hires a Design and Engineering firm to perform Building design of a project, and also hires a CM/GC contractor during the design phase to provide construction expertise to the Owner and the design firm. The Project Team is made up of Owner, Designer, and CM/GC. This Team continues throughout the duration of the project.

The CM/GC contractor negotiates a Guaranteed Maximum Price (GMP) with the owner for an agreed-upon scope of work, generally near the completion of design. During construction, the CM/GC contractor is responsible for self-performing an agreed percentage of the work and subcontracts out the remaining work elements.

The County will use a Competitive Solicitation to pre-qualify CM/GC Contractors. This solicitation and the contract negotiations will also define the use of Apprenticeship Programs, Diversity sub-contractor programs, and the use of “green” construction practices such as LEED certification, as part of the contract(s) with the CM/GC contractor(s).

In general the expected benefits of this delivery method are:

- Cost savings/cost certainty
- Higher quality plans and construction
- Faster completion of the projects
- Greater flexibility for adapting to change
- Enhanced community engagement and diversity participation

The CM/GC process is becoming a more common approach for certain types of construction projects by public agencies within Oregon, and indeed, was approved by the Board for use on the new Downtown Courthouse project and the new Gladys McCoy Health Department Headquarters building. The Oregon Public Contracting Coalition (PCC), a diverse group of government and non-government professionals experienced in public contracting, developed a guide for those public agencies considering the CM/GC process. Some recommendations contained in the document were incorporated into ORS Chapter 279C by the legislature. A publication called the Oregon Public Contracting Coalition Guide to CM/GC Contracting (the Guide), written by the PCC and the Construction Engineering Management Program, Department of Civil, Construction, and Environmental Engineering, at Oregon State University, February 2002, is available on-line at:

http://www.agc-oregon.org/wp-content/uploads/2011/10/CM_GC_Guide_05.pdf

The Guide suggests that the CM/GC method is most likely to benefit the Owner for projects that:

- are high risk,
- are technically complex,
- have unusual site conditions,
- have schedule constraints,
- require complex phasing schemes,
- have budget limitations,
- may realize cost savings resulting from value engineering,
- and are greater than \$2 million in cost.

The Oregon legislature enacted 2013 Oregon Laws, Chapter 522 (SB 254), which established new procedures, under ORS 279C.335, for exempting public contracts for CM/GC delivery methods from traditional bidding requirements. On July 1, 2014, the Oregon Department of Justice adopted interim rules amending the Attorney General's Model Rules in OAR Chapter 137, Division 049, to implement the new law. The findings of fact and conclusions in this Exhibit 1 have been drafted in compliance with 2013 Oregon Laws, Chapter 522, and the Model Rules in OAR Chapter 137, Division 049, as amended in 2014.

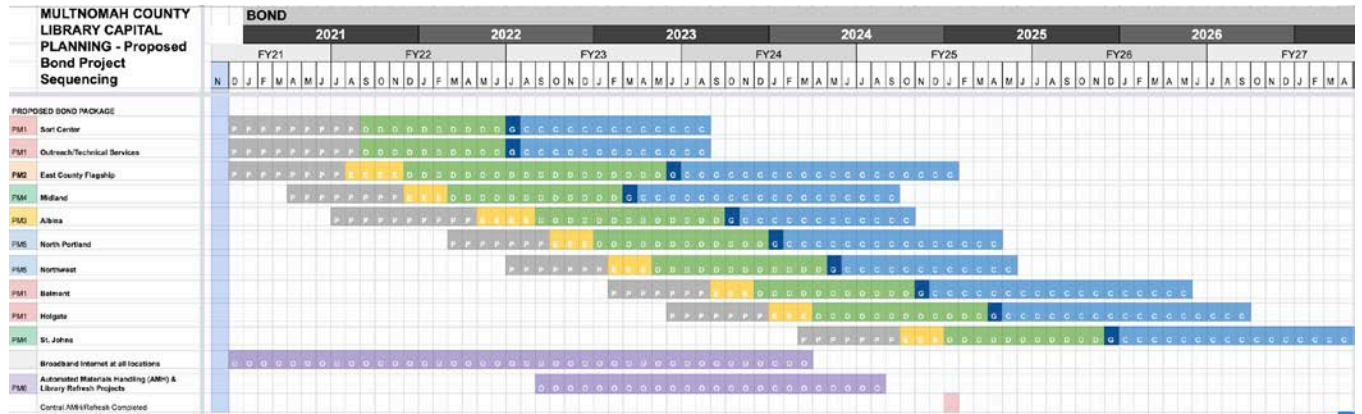
B. Project Description – Library Bond funded Capital Projects

Projects to be accomplished with the voter-approved November 2020 bond include:

- Building a new East County Flagship library
- Rebuilding and expanding four Destination libraries
- Renovating and expanding three Neighborhood libraries
- Increasing efficiency and reducing handling costs by converting to an automated materials handling system, like that of most modern public libraries. This involves establishing a system-wide books and materials sorting and distribution center and installing automated materials handling equipment across the system
- Connecting all libraries to gigabit speed internet service
- Increasing accessibility of buildings, services and technology for people with disabilities
- Improving seismic readiness: all newly constructed facilities will be built to “immediate occupancy” seismic standards to serve as community anchors after a major seismic event. Renovated buildings continue to meet current “survivability” standards.

The Library Bond Funded Projects are currently at the pre-procurement stage.

The schedule currently envisioned for the Library Bond funded Capital Projects is shown below:



- Sort Center/Outreach & Technical Services: 2021 Q1 - 2023 Q3
- East County Flagship: 2021 Q1 - 2025 Q1
- Midland Library: 2021 Q2 - 2024 Q4
- Albina Library: 2021 Q2 - 2024 Q4
- North Portland Library: 2022 Q1 - 2025 Q2
- Belmont Library: 2023 Q1 - 2026 Q2
- Holgate Library: 2023 Q2 - 2026 Q3
- St. Johns Library: 2024 Q1 - 2027 Q2
- Refresh of other locations: 2022 Q3 - 2024 Q3
- Broadband for all locations: 2021 Q1 - 2024 Q2

Major schedule considerations related to permitting include the current workload within the permitting offices of the City of Portland, particularly during the pandemic, and the time required for Design Assist Review (DAR) and the Design Commission approvals. By targeting the projects to occur over a ten year period, we allow for schedule contingency, should such jurisdictional delays affect the projects’ schedules.

II. FINDINGS REGARDING COMPETITION

ORS 279C.335 (2) requires that an agency make certain findings as a part of exempting certain public contracts or classes of public contracts from competitive bidding. ORS 279C.335 (2) (a) requires an agency to find that: “It is unlikely that such exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts.”

The County’s procedures for procurement of the CM/GC contractor will encourage competition. The procurement will be advertised in the Daily Journal of Commerce. At the same time, the County anticipates that a limited pool of contractors will compete for this contract due to the highly specialized design and construction needs of the project. Moreover, for the project to be successful, the County needs a highly qualified contractor to perform this work.

The CM/GC contractor will be selected through the County’s standard Request for Proposal (“RFP”) process that is open and competitive. The RFP specifies how a proposal should be structured and what the potential contractors should submit. The selection criteria are clearly stated in the RFP and will include:

- Proposer Qualifications
- Proposer Experience
- Organization and Key Personnel
- Project Approach
- Pre-Construction Services Fee

- CM/GC Fee
- Sustainable Practices
- Workforce Training and Diversity

After the proposals are submitted, the evaluation process will include the following steps:

- a) Proposals will be evaluated by an Evaluation Panel consisting of at least three County and non-County professionals well acquainted with the Library Capital Projects.
- b) Proposals will be checked for completeness and compliance with the minimum requirements listed in the RFP. Complete and responsive proposals will then be evaluated under the criteria stated within the RFP.
- c) Members of the Evaluation Panel will use the County's ERP Systems to independently score the proposals. The independent scores of each panel member will be combined into overall scores for each proposer.
- d) The Evaluation Panel will identify the highest scoring proposers in the competitive range. If there is a clear choice at this stage negotiation with that firm will be initiated. If there are multiple competitive proposals those firms will be invited to be interviewed.
- e) The Evaluation Panel will conduct interviews with the short-listed proposers.
- f) The Evaluation Panel will score the interviews, and these scores will be combined with the written proposal scores to yield a total score for each of the short-listed proposers. Based upon these final scores, the Evaluation Panel will rank the proposers and provide an award recommendation for three (3) to five (5) proposers.
- g) Upon expiration of the mandatory award protest period, the County will seek to enter into a contract with the top ranked firm. The County will seek to execute contracts containing the same terms and conditions with three (3) to five (5) firms. If not successful, the County will seek to enter into a contract with the next highest ranked firm. This process will continue until the County has entered into a contract with the desired number of qualified CM/GC proposers.

Given the above procurement process, County staff finds that selecting a CM/GC contractor pursuant to the exemption is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts.

III. FINDINGS REGARDING SUBSTANTIAL COST SAVINGS

ORS 279C.335 (2) requires that a public agency make certain findings as part of exempting certain public contracts or classes of public contracts from competitive bidding. 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 or the state agency that seeks the exemption or, if the contract is for a public improvement described in ORS 279A.050 (3) (b), to the contracting agency or the public.”

ORS 279C.335(2)(b) further provides that: “...the local contract review board shall consider the type, cost and amount of the contract and, to the extent applicable to the particular public improvement contract or class of public improvement contracts, the following:

- (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.”**

The Library Bond funded Capital Construction Projects are complex projects with complicated construction requirements. Construction expertise in Portland is important due to the permitting requirements for the City as well as the knowledge of how the weather and seasonal variations in the Pacific Northwest affect construction methods and schedules.

The Portland region has only a few very qualified local contractors with the experience, bonding capacity, past expertise and the skill set to work on the larger projects in the bond. The size of the projects will attract some national contractors from other regions of the country to consider bidding on the projects, if they can address the need for local expertise.

CM/GC does not include as direct an element of cost competition during the selection process as does the traditional method. There is typically not enough project design completed at the time of selection of the CM/GC for a firm bid, and, on the Library Projects, the CM/GC would be hired prior to any design being completed. Profit margin will be a factor in selection of the CM/GC. Pricing for the construction packages is negotiated.

On a technically complex project with an aggressive schedule, CM/GC offers several benefits that could lead to a lower overall project cost. The design incorporates input from the contractor and can be optimized for the selected contractor. The ongoing input from owner, designer, and contractor into the design can result in fewer design errors or omissions. Knowledgeable cost estimating and strong auditing from the owner and owner-hired independent experts can provide a check against inflated prices through negotiations when work packages are assigned. Additionally, the owner can reserve the right to bid a work package if a satisfactory price cannot be negotiated.

An area where CM/GC can potentially provide a major benefit on projects is in the avoidance of costly changes. Areas of uncertainty can be identified early in the project and managed proactively through such measures as additional investigation, and appropriate schedule or cost contingencies. These factors combine to suggest that CM/GC will yield a lower total price at completion than the other methods on complex, schedule constrained projects like these.

While it may be impossible to predict exactly how much lower the cost will be, there is some historical data: The Oregon Department of Corrections has significant experience with the CM/GC process and has identified achieved savings of 5% of the construction costs.

The County finds that awarding of these contracts with their unique challenges and circumstances pursuant to the exemption will result in substantial cost savings to the County.

The following section presents County staff findings relative to each of the factors required to be addressed by ORS 279C.335(2)(b) (A) through (N), with captions edited for space.

A. How Many Persons are available to Bid

The Library Bond funded Capital Construction Projects have large budgets, and are technically complex projects with complex construction requirements and potentially difficult site conditions. Technical complexities include site logistics, materials handling and traffic control.

Using the CM/GC method of contracting to ensure that the County is selecting the contractor(s) that will perform the work, from within the limited base of contractors qualified to do the work, will mitigate the risk of having contractors that are not qualified to do the work successfully bidding on the project.

B. Construction Budget and Projected Operating Costs

The Library Bond projects have budgets ranging from \$15 to \$125 million. Each project is funded with 100% County Bond funds. County funds for planning are in the Library and Facilities and Property Management Division FY2020-FY2021 budget.

The CM/GC delivery method offers Multnomah County major advantages over other delivery methods in achieving delivery of the completed projects within the available funding. Because the construction contractor provides constructability reviews of design documents, cost estimating, value engineering, and review of design options throughout the design development process, the 100% final design on which construction pricing will be based will have been

thoroughly reviewed from a cost basis. Design and construction will be managed to meet the unique challenges of these projects. Risk will be mitigated and allocated most cost-effectively. All pricing will be solicited competitively, or negotiated, with the objective of putting Multnomah County in the best position to deliver the projects within budget.

The CM/GC process puts Multnomah County in the best position to deliver these highly complex and unique projects within budget. Upon completion, ongoing operating costs will be included in the Multnomah County Facilities and Property Management Division and the Multnomah County Library annual budgets.

C. Public Benefits

When compared to the typical low bid method of project delivery, the CM/GC method provides opportunities to expedite the schedule and improve overall project quality, thereby reducing the overall impacts to the public during construction. Early work packages can be contracted to allow for schedule critical work to proceed ahead of complete design. The CM/GC is involved in the community engagement, design and ongoing review of contract documents, which improves the quality of the plans and specifications. Early stage CM/GC involvement also offers greater opportunity to mitigate impacts to the community and optimize diverse participation through community meetings and outreach that involve all key team members during planning and design.

In the County's proposed CM/GC approach, the construction contractor will be selected at or near the same time as the engineering and design firm(s), and before design work begins. This will allow the contractor to have input into the design and constructability and assist the County and designer in structuring the project for an optimal schedule. In addition, the contractor can start work on elements of the project that can be designed early if required by long procurement lead times. The ability to authorize construction work in packages that are subsets of the overall project allows significant scheduling flexibility and creates opportunity to complete the project in the shortest duration.

The CM/GC process will benefit the public by placing the County in the best position to mitigate community impacts, optimize diverse participation, deliver required features, reduce costs, expedite construction, and improve quality.

D. Target Value Design

Target-Value Design (TVD) is a cost control method by which aspects of the project are assigned budgets and are designed not to exceed those budgets. The CM/CG contractor is responsible for providing real-time cost estimating as each project progresses to ensure no aspect of a project is exceeding its budget. This method results in both initial savings as well as long-term savings for projects. In the CM/GC method, the relationship of the owner, construction contractor, and designer fosters a team approach to target-value design. The contractor, for example, can suggest ideas throughout the design development process. Multiple options for high cost or high impact items, such as construction methods, optimal material choices, environmental permitting, and local design requirements can be analyzed at various times during each project to evaluate initial construction costs as well as life cycle costs and benefits. Under the CM/GC method, target-value design is a continuous, iterative process that provides "real time" feedback to the owner and design team to ensure best value savings for the projects are optimized.

With design-bid-build, savings from cost cutting measures suggested by the construction contractor are divided between Multnomah County and the contractor. Under CM/GC with target value design, those savings accrue 100% to the County.

E. The CM/GC Process and of Specialized Expertise Necessary for the Projects

The CM/GC selection process is based on qualifications as well as certain preconstruction and construction fees with price as a significant factor. The County will evaluate proposers on such factors as:

- Proposer Qualifications
- Proposer Experience
- Organization and Key Personnel
- Project Approach
- Pre-Construction Services Fee
- CM/GC Fee
- Sustainable Practices

A low bid process does not provide the opportunity to obtain the most qualified contractors with the specialized expertise needed for the projects. The CM/GC process allows the County to select a contractor based on qualifications in design and construction, instead of selecting the low bidder on a completed design, and, thus, to acquire the specialized expertise needed for project design, design assist constructability reviews, quality assurance, site logistics planning, and target-value design.

F. Public Safety

Safe and efficient movement of traffic must be maintained around construction sites. Local street systems are needed at various parts of the day for traffic entering and leaving work sites during normal working and peak commuting hours. Important users include pedestrian and bicycle traffic at various times of day. It is crucial that all work be highly coordinated with the public to avoid unnecessary traffic delays. At the same time, an extended closure of surface streets to these surface users, i.e. vehicles, bicycles and pedestrians, can be disruptive and should in most instances be avoided, if possible. Maintaining safe movement of roadway, bicycle and pedestrian traffic around construction sites will require contractors dedicated to meeting all of those goals in addition to the primary construction tasks.

The CM/GC process may reduce safety risks by:

- screening potential contractors based on their safety record and approach;
- providing the contractors with clear upfront knowledge of project constraints;
- cooperatively planning the work sequencing with input from the owner, designer, and contractor from a public safety perspective; and
- encouraging ongoing safety input from the entire Project Team.

The CM/GC selection process values proven safety performance and builds upon it, providing enhanced opportunity for the County to optimize public safety implementation during construction.

G. Risk Reduction to County

Many of the projects will be technically complex and will require that the selected contractors plan and execute difficult operations. Once again, the site logistics and material/labor coordination will be critical to the success of the project. The CM/GC method will facilitate early identification and mitigation of risks by leveraging the expertise of the CM/GCs in addition to the county and designers.

Because the CM/GC method of project delivery allows the County to select each contractor based largely on staff qualifications and demonstrated success on past projects, the County can

reduce risk to the Library Bond Projects by selecting contractors with demonstrated expertise.

H. Impact on Project Funding Sources

Using the CM/GC method of project contracting and delivery will not impact the funding of the projects.

I. Market Conditions

The CM/GC process enables the County to better manage the negative impact of inflationary market conditions in several ways:

- Facilitate the early purchase of certain project elements (such as large steel fabrications, sheet metal, copper and other commodity items) if appropriate to take advantage of market prices.
- Start construction sooner than the traditional method of contracting would allow because of the ability to start construction of early schedule tasks before other elements of the projects are designed;
- Deliver the projects in a shorter overall time than by the traditional method, reducing overhead costs.

J. Technical Complexity

The Library Bond Projects have multiple technical complexities. Areas of technical complexity include:

- Traffic management and site logistics phasing to minimize impacts to street traffic and related roadway and sidewalk traffic (autos, bicycles, pedestrians)
- Potentially complex permitting
- Potentially challenging site conditions
- Control of the construction to limit concerns of neighboring building owners, occupants and visitors
- Unique construction with requirements for higher volumes of space and critical acoustical issues

With the CM/GC delivery method, contractors are selected based significantly on qualifications. As the design is developed, the County and the projects will benefit from qualified contractor input regarding complicated design, construction and permitting issues. In addition, since each contractor is made aware of complicated technical issues during the design process, the risks are better identified, understood, and managed. Each contractor is involved in solving the problems proactively. The likelihood of successfully resolving technical complexities without undesirable schedule and cost impacts is enhanced. Because traditional design-bid-build delivery does not allow for designer-owner-contractor interaction during design development, it provides the County less opportunity to resolve technical issues most effectively, whether it be for new construction, renovation or remodel.

K. Occupied or unoccupied during construction?

The existing Library branches will remain open during non-construction phases. The County will attempt to minimize the disruption to roadway (cars, trucks, and buses), sidewalk (bicycles and pedestrians). Each CM/GC will be required to produce an acceptable work plan to address these items and be required to maintain this work plan throughout the construction schedule.

L. Is the Construction Phased?

We may choose to phase some projects to reduce the overall project schedule.

M. Project Staff Qualifications

The County has Department Staff and the County Attorney's Office, as well as consultants and outside legal counsel retained under contract, that have the necessary expertise and substantial experience in alternative contracting methods (including the CM/GC method) and will use the County Staff, County Attorneys, consultants and outside legal counsel to assist in developing the proposed CM/GC contracting method and to help negotiate, administer and enforce the terms of the pending public improvement contracts.

IV. Conclusion

In accordance with ORS 279C Multnomah County finds that:

Regarding Competition:

Given the above procurement process, County staff finds that selecting CM/GC contractors pursuant to the exemption is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts.

Regarding Substantial Cost Savings:

The County staff finds more specifically for ORS 279C.335(2)(b) Items A-M identified in Section III as follows:

- A. Several of the Library Bond funded Capital Construction Projects will have large budgets and are technically complex, with complex construction requirements. There is a limited contractor base qualified to plan and carry out such projects.
- B. The CM/GC delivery method offers Multnomah County major advantages over other delivery methods in achieving delivery of the completed projects within the available funding.
- C. The CM/GC process will benefit the public by placing the County in the best position to mitigate community impacts, optimize diverse participation, deliver required features, expedite construction, and improve quality.
- D. The CM/GC process facilitates and encourages target-value design. Because target-value design happens during the design phase prior to pricing the work, the benefits accrue 100% to the County. The CM/GC process allows the County to select a contractor based on qualifications to acquire the specialized expertise required to successfully complete the projects.
- E. The CM/GC process allows the County to select contractors based on qualifications in design and construction, instead of selecting the low bidder on a completed design, and, thus, to acquire the specialized expertise required to successfully construct the projects.
- F. The CM/GC selection process values proven safety performance and builds upon it, providing enhanced opportunity for the County to optimize public safety implementation during construction.
- G. The CM/GC method of project delivery allows the County to select each contractor based on staff qualifications and demonstrated success on past projects. The County can reduce risk to the Library Bond Projects by selecting contractors with demonstrated expertise in constructing and refreshing new and existing library branches.
- H. Using the CM/GC method of project contracting and delivery will not impact the funding of the projects.
- I. The CM/GC process enables the County to better manage the negative impact of inflationary market conditions.
- J. The Library Bond Projects have multiple technical complexities. As designs are developed, the County will benefit from qualified contractor input regarding complicated design, construction and permitting issues. In addition, since the contractor is made aware

of complicated technical issues during the design process, the risks are better identified, understood, and managed by the appropriate party to deal with each specific risk.

- K. The County will attempt to minimize the disruption to roadway (cars, trucks and buses) and sidewalk (bicycles and pedestrians) traffic. The CM/GCs will prepare a plan and provide all services or equipment necessary to minimize any risk to the public or the transportation pathways that are affected by the construction of the Library Bond Projects.
- L. We may choose to phase some projects to reduce the overall project schedule.
- M. The County will use a combination of in-house staff, attorneys, and hired consultants to secure the expertise required by ORS 279C to successfully prosecute the CM/GC contract.

Based on the findings stated in the beginning of Section III at pages 5-6; and the findings for Items A – M above, the County is confident that awarding of these contracts with their unique challenges and circumstances pursuant to the exemption will result in substantial cost savings to the County.

County Staff recommends that the CM/GC delivery method be approved for the Library Bond funded Capital Projects. CM/GC puts Multnomah County in the best position to meet budgets, deliver the projects at least cost, minimize public impacts, achieve needed quality, acquire the special expertise required to successfully construct the unique projects, and to deliver the projects safely.

In addition, as described above, the use of CM/GC Construction Contracting methodology, when coupled with appropriate Competitive Procurements, provides the County with solid risk mitigation and cost savings opportunities. County Staff recommends the ongoing use of CM/GC Construction Contracting methodology be approved for the Library Bond funded Capital Projects.