



State of Oregon  
Department of  
Environmental  
Quality

# Construction Management/ General Contractor Alternative Contracting Process

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Prepared by:  
Clean Water State Revolving Fund Loan Program  
Oregon Department of Environmental Quality  
811 SW 6<sup>th</sup> Avenue  
Portland, OR 97204  
1-800-452-4011  
<http://www.deq.state.or.us/wq/loans/loans.htm>

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# Background

State law allows the Construction Management/General Contractor method as an alternative contracting process. This delivery method combines the skills and insights of a general contractor and construction manager into a single contract. A CM/GC firm's construction expertise can provide a useful contribution to a project's design. Early involvement of a CM/GC firm is an important aspect of the CM/GC process and sets the CM/GC process apart from the traditional design-bid-build contracting method.

Project construction reflecting the traditional design-bid-build method for project delivery is common in the Clean Water State Revolving Fund loan program. A CWSRF loan recipient using the design-bid-build method contracts with separate entities for a project's design and construction phases. These phases allow distinct time frames when DEQ reviews documents and confirms compliance with CWSRF loan program requirements.

It is important a CWSRF loan recipient understands and complies with CWSRF loan program requirements and provides associated documentation during the design, construction and post-construction phases of a project. The following information describes how and when a loan recipient using a CM/GC process must comply with CWSRF loan program requirements.

DEQ recommends that a community pursuing a CM/GC process be knowledgeable about this contracting process. The document [Oregon Public Contracting Coalition Guide to CM/GC Contracting](#) provides important information regarding the CM/GC alternative contracting process. DEQ's project construction webpage provides additional information and details on the various CWSRF loan program requirements.

## Legal Considerations

A loan recipient should decide early in the project's planning phase whether a CM/GC contracting process benefits the community and if it effectively serves the project objectives. The decision to use a CM/GC contracting process should be based upon and directly related to the project's characteristics and the loan recipient staff's ability to manage this alternative contract process.

Recent revisions in Oregon's public contracting laws (Oregon Revised Statutes, Chapters 279, 279A, 279B and 279C) exempt certain public improvement contracts and classes of contracts from competitive bidding. The CM/CG contracting process has significantly different legal requirements than a traditional design-bid-build process. Loan recipients should be knowledgeable of Oregon's public improvement contracting laws (ORS 279C.330 - 279C.355) and seek qualified legal counsel before attempting to procure and award a CM/GC contract.

Oregon's public improvement contracting laws do not provide a statutory framework for alternative contracting methods such as a CM/GC process. ORS 279C.335 requires public improvements be undertaken through competitive bidding (award to the lowest, responsive, responsible bidder), while allowing exemptions to competitive bidding under strict procedural safeguards.

A loan recipient seeking an exemption from competitive bidding, to pursue a CM/GC contracting process, must follow the specific process stated in ORS 279C.335(2). The process includes the submittal of findings to the public agency's governing body or a local contract review board. An exemption requires the findings demonstrate it is unlikely that an exemption will encourage favoritism or substantially diminish competition and that award pursuant to the exemption will likely result in substantial cost savings to the agency. Oregon law [ORS 279C.335(5)] also requires public notice of a proposed exemption and an opportunity for the public to comment on the findings before the governing body considers approval of an exemption.

# Clean Water State Revolving Fund Requirements

A loan recipient must comply with a variety of requirements to receive funding for a project through the CWSRF loan program. When using a CM/GC process, the timing and implementation of some of these requirements are different from a traditional design-bid-build process. CWSRF requirements that are different when using a CM/GC contracting process are described below. CWSRF loan program requirements that are the same for all projects, regardless of the contracting method, include facilities planning, a defined user charge system, environmental review, and value engineering.

## Pre-construction Phase

### Documentation of an Exemption from Competitive Bidding

Before DEQ is able to fund a project using a CM/GC alternative contracting process, the loan recipient must provide assurance to DEQ that they received an exemption from Oregon public contracting laws requiring competitive bidding. A loan recipient must provide the following documents to DEQ's project officer:

- A copy of the findings (as defined by ORS 279C.330) justifying an exemption from competitive bidding, and
- A signed copy of the final finding's adoption by a local contract review board or a signed resolution by a loan recipient's governing body approving the exception to competitively bidding a project.

### Selecting a CM/GC Firm

When soliciting a CM/GC firm, a loan recipient may make a request for qualifications followed by a request for proposals from qualified contractors. A loan recipient often conducts interviews prior to awarding a contract. The solicitation process is the loan recipient's responsibility. DEQ is not involved in qualifying or selecting the CM/GC firm.

A loan recipient is responsible for ensuring all public contracting requirements are followed and addressed when hiring a CM/GC firm. The loan recipient must submit a legal opinion, indicating the recipient has addressed all applicable contracting requirements, to DEQ's project officer prior to advertising the project.

The various state and federal requirements a loan recipient must comply with are identified in the Project Construction Contract Insert. DEQ will reimburse a loan recipient's payment requests for costs associated with the CM/GC firm only if the selected CM/GC firm has completely and properly executed the contract insert forms.

## **Pre-Design Report**

DEQ recommends a loan recipient prepare a pre-design report that establishes the basis for the design of all work tasks comprising the project. The loan recipient submits the pre-design report to DEQ's project officer. A DEQ senior engineer will review and approve the report to ensure the proposed project addresses key issues identified within the facility plan's recommended option. DEQ must approve, in writing, the pre-design report before a loan recipient can authorize the CM/GC firm to start design or construction work unless otherwise agreed to by the project officer, with concurrence by the senior engineer assigned to the project.

## **Final Plans and Specifications**

An advantage of a CM/GC contracting process is having separate work tasks identified, designed and constructed concurrently. This often results in a condensed design-construction schedule. The CM/GC firm must submit plans and specs for each work task along with a biddability review checklist to DEQ's project officer. The project officer will review these documents for process effectiveness, reliability, biddability, constructability and conformance with state construction standards.

A DEQ senior engineer must approve all final plans and specs for all work tasks prior to advertising the work. The CM/GC firm must submit any significant changes in design during construction to DEQ for review and approval. Construction may be delayed (at the CM/GC's expense) for DEQ approval if these changes are continual.

## **Plan of operation**

DEQ's project engineer will determine if a plan of operation is required for a particular project. When required by DEQ, the loan recipient must submit a draft plan of operation to DEQ for review and approval prior to advertising the project. The plan should describe the sequencing of key activities during construction startup, the construction period, and post-construction. The loan recipient must then submit the final plan of operation, incorporating comments from DEQ, prior to 50 percent completion of construction.

## **Subcontractor Bid Packages**

The CM/GC contracting process provides a loan recipient the option to award contracts with or without competitively bidding the work. Before requesting bids, the CM/GC firm must submit two sets of complete bid documents, including the contract insert, to DEQ's project officer for approval. The CM/GC firm should schedule a pre-bid meeting to inform prospective bidders of bidding conditions and to answer questions concerning the plans and specifications.

In some circumstances, a CM/GC firm can award a contract without competitive bidding. DEQ recommends that a CM/GC's contract with the loan recipient clearly define any work not requiring competitive bidding. For work procured without competitive bidding, a CM/GC firm must still submit final plans and specs, a biddability review checklist, the contract insert, and a description of the proposed work to DEQ's project officer for approval.

It may be in the best interest of a project to allow a CM/GC firm to bid in order to self-perform some work tasks. DEQ recommends the following actions by the loan recipient in this case:

- Publicly notice the project highlighting that the CM/GC firm is bidding the work
- Ensure bids are opened at a public bid opening
- Ensure the CM/GC firm is only allowed to bid on the type of work normally self-performed
- Administer any contract under which the CM/GC firm self-performs

## **Sub-Contracts**

Prior to contract award, the CM/GC firm must review the completed bid review checklist and submit it and the following documents to DEQ's project officer:

- The bid tabulation
- Proof of advertisement
- The apparent successful bidder's bid package

A bid review checklist must indicate a contractor completely and properly executed all necessary contract insert forms.

DEQ will review the contractor executed contract insert for completeness and substantive sufficiency. The completed contract insert must address all state and federal requirements such as Davis-Bacon prevailing wage rates and disadvantaged business enterprise requirements before DEQ is able to reimburse a loan recipient for costs incurred by a contractor.

Prior to awarding a contract through a non-competitive bid process, the CM/GC firm must provide DEQ with the following:

- A completed bid review checklist (modified as appropriate, see Table 1 for additional information)
- A statement describing how the contracting process complied with ORS 279C.335(2), (exemptions from competitive bidding)
- A description of the contracting process
- A statement describing the benefit achieved by awarding a contract without utilizing competitive bidding

DEQ will review these documents and determine if a loan recipient can be reimbursed for costs associated with the award.

Upon completion of and final payment for any public improvement contract, or class of contracts in excess of \$100,000 for which the CM/GC firm did not use a competitive bidding process, the CM/GC firm shall prepare and deliver to the loan recipient an evaluation of the public improvement contract in accordance with ORS 279C.355.

## **Pre-Construction Meeting/Project Management Conference**

The pre-construction meeting and project management conference often occur the same day at the same location, but the content and intent of the meeting and conference are different.

The goal of the pre-construction meeting is to present and discuss applicable CWSRF loan program requirements. The loan recipient, the design engineer, DEQ's project officer or project engineer or both, and the CM/GC's representative attend this meeting with the contract recipient(s) and all interested or affected parties, including representatives of funding agencies and utilities.

The project management conference usually follows the pre-construction meeting. The loan recipient, design engineer and the CM/GC firm's representative attend this meeting. DEQ's project officer or project engineer or both, explain expectations of the loan recipient regarding record keeping, required submittals, and site inspections. DEQ discusses the schedule of on-site and off-site inspections and document submittals including the draft and final project performance standards, draft and final operation and maintenance manual, and the final plan of operation.

## Construction Phase

In addition to monthly inspections and semi-annual disadvantage business enterprise reports, a loan recipient, CM/GC firm or DEQ staff complete the following required activities during the construction phase:

Construction at 10-20 percent (if warranted):

- DEQ's project officer, project engineer or both perform site inspections.

Construction at 50 percent:

- DEQ's project officer, project engineer or both perform site inspections.
- The CM/GC firm submits (when required) a final plan of operation to the project officer for DEQ approval.
- The CM/GC firm submits the draft performance evaluation standards to the project officer for DEQ approval.
- The CM/GC firm submits a draft O&M manual to the project officer for DEQ approval.

Construction at 90 percent:

- DEQ's project officer, project engineer or both perform site inspections.
- The CM/GC firm submits the final performance evaluation standards to the project officer for DEQ approval.
- The CM/GC firm submits a final O&M manual to the project officer for DEQ approval.

Substantial completion of construction and project startup:

- Final site inspection performed by DEQ's project officer, project engineer or both.
- The loan recipient's design engineer submits a CWSRF construction certification form to DEQ's project officer.
- The loan recipient issues a notice of initiation of operation to DEQ's project officer.

## Post-Construction Phase

The CM/GC contracting process addresses the following post-construction CWSRF requirements in a similar manner as a traditional design-bid-build process.

- The loan recipient submits a brief, performance progress report to DEQ's project officer six months after initiation of operation.
- The loan recipient submits a performance evaluation report to DEQ's project officer 10½ months after the date of initiation of operation.
- DEQ's project engineer completes the final O&M inspection after reviewing the performance evaluation report.
- The loan recipient submits a performance certification statement to DEQ's project officer one year after initiation of operation.
- DEQ's project engineer approves the performance evaluation report following the final O&M inspection.
- DEQ's project officer, upon the recommendation of the project engineer, accepts the loan recipient's performance certification statement and closes-out affirmatively certified projects.
- DEQ's project officer requests a corrective action plan and schedule from the loan recipient for negatively certified projects.
- The loan recipient's design engineer submits as-built drawings to DEQ's project engineer.

**Table 1. Clean Water State Revolving Fund Requirements**

Table 1 lists CWSRF loan program design, construction and submittal requirements for a municipal wastewater project. The table compares these requirements of a traditional design-bid-build contracting process to a CM/GC alternative contracting process. The table also includes what documentation is associated with each requirement, and any variations in completing documents when using a CM/GC contracting process.

| Clean Water State Revolving Fund Requirement  | Traditional Design-Bid-Build Contracting Process | CM/GC Alternative Contracting Process   | Associated Document(s)   | Pertinent Document Sections When Using CM/GC Alternative Contracting Process  |
|---|--|---|--|---|
| <b>Pre-Construction Phase</b>   |  |   |  |   |
| Loan recipient submits a pre-design report to DEQ   | Prior to authorization of final design work      | Prior to authorization of any design or construction work   | Pre-design report  | Same  |
| Loan recipient submits plans and specs, including the contract insert and biddability review checklist to DEQ | Prior to requesting construction bids            | Separate plans and specs, insert and checklist developed for <b>each separate work task</b> - upon completion of each work task's design. | Biddability Review Checklist<br><br>Contract Insert  | Checklist - Questions 1, 5,9,10 and 11 of the section "information for bidders" may not apply when the CM/GC firm procures work without competitive bidding.<br><br>Insert - See additional instructions following table. |
| When required, loan recipient submits a draft plan of operation to DEQ  | Prior to advertising the project                 | Same  | Draft Plan of Operations   | Same  |
| DEQ approves funding of the contract award  | Prior to contract award                          | Prior to contract award for each work task  | Proof of Bid Advertisement<br><br>Bid Review Checklist<br><br>Bid Tabulation<br>Low bidder's bid package | Same<br><br>Checklist – second page, items 7 and 8 may not apply when a CM/GC firm procures work without competitive bidding.<br><br>Same<br>Selected contractor's bid package  |
| Pre-construction meeting/Project management conference  | Following contract award, before construction    | One time, following contract award, before initial construction   | Not applicable   | Not applicable  |

| Clean Water State Revolving Fund Requirement   | Traditional Design-Bid-Build Contracting Process                  | CM/GC Alternative Contracting Process | Associated Document(s)  | Pertinent Document Sections When Using CM/GC Alternative Contracting Process |
|--|---|---------------------------------------|---|--|
| <b>Construction Phase</b>  |   |                                       |   |  |
| DEQ inspections during construction  | At 10-20%, 50%, 90% and at substantial completion of construction | Same                                  | Not applicable  | Not applicable   |
| Loan recipient submits a final plan of operation, draft project performance evaluation standards and draft O&M manual to DEQ | At 50% construction completion                                    | Same                                  | Final Plan of Operation<br><br>Draft Performance Evaluation Standards<br>Draft O&M Manual | Same<br><br>Same<br>Same   |
| Loan recipient submits a final project performance evaluation standards and final O&M manual to DEQ                          | At 90% construction completion                                    | Same                                  | Final Performance Evaluation Standards<br><br>Final O&M Manual                            | Same<br><br>Same   |
| Loan recipient's design engineer submits a construction certification to DEQ   | At substantial completion of construction                         | Same                                  | Construction Certification Form   | Same   |
| Loan recipient submits a notice of initiation of operation to DEQ  | A date agreed upon by both the loan recipient and DEQ             | Same                                  | Not applicable  | Not applicable   |
| <b>Post-Construction Phase</b>   |   |                                       |   |  |
| Loan recipient submits a project performance progress report to DEQ  | 6 months after initiation of operation                            | Same                                  | Project Performance Progress Report   | Same   |
| Loan recipient submits a performance evaluation report (PER) to DEQ  | 10.5 months after initiation of operation                         | Same                                  | Performance Evaluation Report (PER)   | Same   |
| DEQ's project engineer completes the final O&M inspection  | After reviewing the performance evaluation report                 | Same                                  | Not applicable  | Not applicable   |

Clean State Revolving Fund Program

| <b>Clean Water State Revolving Fund Requirement</b>                              | <b>Traditional Design-Bid-Build Contracting Process</b> | <b>CM/GC Alternative Contracting Process</b> | <b>Associated Document(s)</b>                       | <b>Pertinent Document Sections When Using CM/GC Alternative Contracting Process</b> |
|--|---|--|---|---|
| <b>Loan recipient submits a performance certification statement (PCS) to DEQ</b> | 12 months after initiation of operation                 | Same   | Performance Certification Statement (PCS)           | Same  |
| <b>DEQ approves the performance evaluation report</b>                            | After the completion of final O&M inspection            | Same   | Not applicable                                      | Not applicable  |
| <b>DEQ accepts the performance certification statement</b>                       | 12 months after initiation of operation                 | Same   | Affirmative Certification<br>Negative Certification | Same<br>Same  |

## Contract Insert Instructions

The Project Construction Contract Insert contains forms that, when applicable, must be completed to comply with state and federal requirements. The contract insert contains four categories of forms: a) Contract Integrity forms, b) Disadvantaged Business Enterprise forms, c) Labor Relations forms and d) Contract Post-award forms. Below are modified instructions for each of the contract insert forms for use when a contract insert is prepared in conjunction with a CM/GC contracted project where the loan recipient is contracting the CM/GC firm and the CM/GC firm subsequently hires sub-contractors.

### Contract Integrity Forms

This group of Project Construction Contract Insert forms supports the general integrity of the loan recipients' contract.

1. **Contract Bidders List** applies only to CWSRF loans over \$250,000. This form must be kept current and in the loan recipients' project file. It must be made available to DEQ, EPA or an auditor auditing this project.
2. **Debarment and Suspension** must be completed and signed by a representative of the CM/GC firm and submitted to the DEQ Project Officer prior to contract award.
3. **Certification Regarding Lobbying Activities** must be signed by a representative of the CM/GC firm and submitted by the time of contract award from the loan recipient. A copy must be included in the contract copy to DEQ. Additionally, the CM/GC firm must obtain a signed copy of this form from each subcontractor, and retain the forms in the CM/GC firm's contract file.
4. **Disclosure of Lobbying Activities (Standard form LLL-A)** form must be submitted only when the CM/GC firm or subcontractor uses non-Federal funds to lobby in connection with the Oregon CWSRF program, including a project currently funded with Federal funds under an Oregon CWSRF loan. Submit via e-mail to [grants@omb.eop.gov](mailto:grants@omb.eop.gov) with the form in the text of the message and not as an attachment.
5. **Certification of Independent Price Determination** form must be signed by a representative of the CM/GC firm and submitted as part of the bid/proposal to the loan recipient. A copy must be included in the contract copy to DEQ. Additionally, the CM/GC firm must obtain a signed copy of this form from each subcontractor, and retain the copy in the CM/GC firm's contract file.

### DBE Forms

These forms demonstrate and document the loan recipients' good faith efforts to achieve participation by Disadvantaged Business Enterprises and their selected prime and subcontractor's awareness and understanding of Oregon's Fair Share Objectives as subcontractors and suppliers.

1. **Fair Share Objectives, Six Good Faith Efforts, Contract Administration and Contract Language** form must be completed by the loan recipient, the CM/GC firm and any subcontractor who will further subcontract on the project within the scope of the CWSRF loan. All boxes in this attachment must be initialed and this attachment signed. One completed attachment for the CM/GC firm must be submitted as part of the bid/proposal to the loan recipient. One completed attachment for each subcontractor who will further subcontract must be submitted to the CM/GC firm prior to contract award. A copy of each must be included in the contract copy to DEQ with one attachment initialed and signed by the loan recipient.
2. **List of Contacted DBE Businesses** must be completed by a representative of the CM/GC firm and submitted as part of the bid/proposal to the loan recipient. A copy must be included in the contract copy to DEQ.
3. **DBE Program Utilization Form 6100-4** must be submitted for each DBE subcontractor (one form per DBE subcontractor). It must be signed and submitted by the CM/GC firm to the loan recipient by the time of contract award. A copy must be included in the contract copy to DEQ.

4. **DBE Program Subcontractor Performance Form 6100-3** must be provided to and completed by each DBE subcontractor. Each form must be submitted by the CM/GC firm to the loan recipient by the time the contract is awarded. A copy must be included in the contract copy to DEQ.
5. **DBE Subcontractor Participation Form 6100-2** form must be delivered by the CM/GC firm to DBE Subcontractors. Completing and submitting this form is optional for the DBE Subcontractor. The form is a mechanism for DBE Subcontractors to report contract concerns directly to EPA.
6. **DBE Subcontractor Participation Form Certification** must be signed by a representative of the CM/GC firm and submitted by the time of contract award from the loan recipient. A copy must be included in the contract copy to DEQ.

## Labor Relations Forms

This group of forms demonstrates and documents the loan recipients' awareness and understanding of contract requirements pertaining to labor relations, wages and overtime, and job site expectations.

1. **Contractors Compliance Statement with Executive Order #11246 form** must be signed by a representative of the CM/GC firm and submitted by the time of contract award from the loan recipient. A copy must be included in the contract copy to DEQ. More information about Executive Order #11246 can be found at <http://www.dol.gov/compliance/laws/comp-eeo.htm>.
2. **Certification of Non-segregated Facilities form** must be signed by a representative of the CM/GC firm and submitted by the time of contract award from the loan recipient. A copy must be included in the contract copy to DEQ. The CM/GC firm must obtain a signed copy of this form from each subcontractor, and retain these copies in the CM/GC firm's contract file.
3. **Non-discrimination in Employment, Notice to Labor Unions or Other Organization of Workers form** must be submitted for each union (one form per union) represented in the CM/GC firm's contracted work force by the time of contract award.
4. **Prevailing Wage Agreement (Davis Bacon) form** must be initialed and signed by the loan recipient, the CM/GC firm and all subcontractors. The CM/GC firm copy must be submitted as part of the bid/proposal to the loan recipient. A copy of Attachment 15 forms signed by the loan recipient and the CM/GC firm must be submitted with the contract copy to DEQ. The CM/GC firm must obtain a signed copy of this form from each subcontractor, and retain these copies in the CM/GC firm's contract file.
5. **Oregon Overtime Rules** does not require a signature.

## Contract Post Award Requirements

After the loan recipient awards the contract, the following posting requirements must be at the job site.

1. **CWSRF Project Sign** must be posted on the project work site throughout the course of construction to permit public viewing.
2. **Executive Order 11246-Requirements of Affirmative Action** must be posted at the job site for the duration of the project.

For additional clarification when completing the contract insert forms, contact your regional [CWSRF project officer](#).