

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Exempting the Proposed)
Court Facilities Improvement Project)
from Competitive Bidding and Approving) RESOLUTION NO. 66-2022
an Alternative Contracting Method)
)

WHEREAS, Columbia County intends to construct improvements to the Courthouse and Courthouse Annex under a State of Oregon grant for Court Facilities Improvements, hereinafter the "Project"; and

WHEREAS, ORS 279C.335 requires that unless excepted or exempted, contracts for public improvements shall be by competitive bids; and

WHEREAS, Riley Baker, Director of General Services and Project Manager for the Project, has recommended that the County procure services for the construction of the Project through a Request for Proposals ("RFP") process as an alternative to competitive bidding; and

WHEREAS, ORS 279C.335(2) allows the Board of County Commissioners ("Board") as the local contract review board to exempt a public improvement contract from the competitive bidding requirement upon approval of certain findings primarily designed to ensure that the exemption will not encourage favoritism and will likely result in substantial cost savings; and

WHEREAS, the Project Manager has drafted findings ("Findings"), which are attached hereto as Exhibit A and incorporated herein by this reference, for the Board to consider in support of exempting the transit facility project from the competitive bidding requirement; and

WHEREAS, pursuant to ORS 279C.335(5), the Board held a public hearing on November 23, 2022, for the purpose of taking comments on the Findings. Notice of the hearing was published on November 9, 2022, in the Daily Journal of Commerce, a trade newspaper of statewide circulation; and

WHEREAS, ORS 279C.335(4) provides that the local contract review board shall, when appropriate, direct the use of alternative contracting methods that take account of market realities and modern practices and are consistent with the public policy of encouraging competition;

NOW, THEREFORE, it is hereby resolved, as follows:

1. Pursuant to its statutory authority the Board adopts the Findings attached hereto and incorporated herein as Exhibit A.

2. The contract for the Court Facilities Improvement Project is exempted from the requirement for competitive bidding.

3. County staff shall prepare a Request for Proposals to procure a Design/Build Contractor for the Project using the statutory competitive proposal procedures.

DATED this 23 day of November, 2022.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: 
Henry Heimuller, Chair

By: 
Casey Garrett, Commissioner

By: 
Margaret Magruder, Commissioner

Approved as to form

By: 
Office of County Counsel

**FINDINGS IN SUPPORT OF AN EXEMPTION FROM COMPETITIVE BIDDING UNDER ORS
279C.335(2)
COURT FACILITIES IMPROVEMENT PROJECT**

I. Introduction. Columbia County is the recipient of a \$2,000,000 State grant to make improvements to its Court facilities. A prioritized list of potential projects under consideration include:

1. Elevator for the old Courthouse.
2. Bell Tower & Fire Escape/Egress Seismic Upgrades.
3. ADA Restroom Upgrades.
4. Back-up Generator Replacement.
5. Old Courthouse Front Lobby/Stairwell, Assembly Area, & Window Replacement.
6. State Courts Space Reconfiguration & Tenant Improvements.

Preliminary research indicates that the cost of these projects exceeds the amount of this grant. Due to the need to limit the scope of the project to fit this budget as well as the time limitations of the grant, and the nature and complexity of this project, staff recommends using the Design-Build alternative contracting process. The Design-Build alternative contracting process is authorized for procurement of construction as long as the Local Contract Review Board approves an exemption from competitive bidding as provided in ORS 279C.335(2). The Columbia County Board of Commissioners is the County's Local Contract Review Board under ORS 279A.060.

II. The Design-Build Alternative Contracting Process. Design-Build is a form of Procurement that results in a Public Improvement Contract in which the Design-Builder is responsible for the design, engineering and construction of the project.

The selection of a design-builder is based on their qualifications and approach to design and construction. The proposals are evaluated based on quality and price, including alternative technical concepts. The selected contractor works with the County during the design phase to develop the final design with the goals of improved constructability and value engineering, which often results in fewer change orders during construction and enables the County to expedite the construction schedule. It also enables the contractor to be involved in development of the construction program.

III. Findings. ORS 279C.335(2), implementing ORS 279C.330, requires the Board to make certain findings in order to grant an exemption as follows.

A. ORS 279C.335(2)(a): Exempting the contract is unlikely to encourage favoritism or substantially diminish competition.

Finding: The requested exemption will not encourage favoritism or substantially diminish competition. The County is utilizing a competitive RFP process to select the Design-Build firm. The procurement will be formally advertised with public notice. Full competition will be encouraged, and all qualified contractors will be invited to submit a proposal. The award will be based upon the review and scoring of proposals by a

review committee based on identified selection criteria.

B. ORS 279C.335(2)(b): Exempting the contract will likely result in substantial cost savings and other substantial benefits to the County. In approving a finding under this paragraph, the local contract review board shall consider the type, cost and amount of the contract and, to the extent applicable, the following:

1. ORS 279C.335(2)(b)(A). How many persons are available to bid?

Finding: The County expects that a substantial number of contractors will be interested in the project, and that there will vigorous competition during the RFP process. The Design-Build process is frequently used by public and private entities and a number of potential contractors are available in reasonable proximity to the Courthouse.

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

Finding: The County anticipates an RFP process that allows potential contractors to propose projects from an approved list subject to the limitation that the total cost of the proposed work cannot exceed the \$2,000,000 budget. This will assure that the contract come within budget. Further, the County anticipates that the value engineering aspect of this contracting method will result in an improved design and the contractor's assistance with sustainability and seismic improvements designed to meet the County's rigorous goals, will substantially reduce long-term operating cost.

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

Finding: A Design-Build delivery method provides the most public benefit and opportunities for cost savings, including budget, internal resources, risk allocation, clear project goals, reduced delivery time, better feedback, single source of responsibility, enhanced innovations, partnering, early knowledge of project cost and the integration of design and construction. It also allows the County to make a selection of which projects to include in the final contract based on firm pricing for the work to be performed.

The Design-Build contracting method is an alternative to the design-bid-build or "low-bid" process, whereby the County's selection of a construction contractor is not only based on price but other factors such as time, qualifications, or a contractor's approach to the project work.

The Design-Build delivery method is managed through a single entity: a Design-Builder. It also implies that the builder can provide a turn-key process,

starting from preliminary concepts through the construction of the project, but correspondingly includes anything in between. This consists of all design, engineering, and municipal submittals. This delivery method is, in the true sense of the phrase, a one-stop-shop where the County delegates all responsibilities to the Design-Builder.

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

Finding: The Design-Build team can customize project sequencing, propose equipment and methods most viable with the existing conditions and the allotted budget. All of these beneficial actions by the Design-Build team will improve value, expedite construction, and in turn eliminate potential change orders.

The benefits of value engineering are allowed for use as a part of the best value process, but only after design and bidding are completed limiting decisions to a short time period to determine if the project can move forward financially.

Value engineering may or may not decrease the contract sum, but it should improve the County's ability to (a) manage the project within the budget and (b) reduce extra-cost change orders and the costs associated with project delay. The County also expects to be able to take advantage of reduced architectural and other professional consultant service fees because of this more streamlined approach.

5. ORS 279C.335(2)(b)(E). The cost and availability of specialized expertise that is necessary for the public improvement.

Finding: The Court Facility's Improvement Project is complex in that it requires a contractor with the expertise and experience to manage multiple subcontractors. The RFP process allows for review of contractor expertise and the particular expertise of the contractor's proposed team, which is not afforded by a low-bid procurement.

6. ORS 279C.335(2)(b)(F). Any likely increases in public Safety.

Finding: The Design-Build process will enhance public safety because the County will be able to consider the safety record of the contractors selected and because the Design-Builder will be integral to planning the construction schedule and safety measures during the design phase.

7. ORS 279C.335(2)(b)(G). Whether granting the exemption may reduce project related risks to the County or the public.

Finding: The scope and magnitude of the work requires long-term planning and scheduling around the County's calendar. Directly involving the contractor in development of these key plans during the design phase will result in a more realistic, achievable, and expeditious schedule. It will also help assure that the project is completed within its budget.

In addition, the Design-Build process allows the contractor to identify and help address technical issues during the design phase, which facilitates advanced problem solving and often yields cost and schedule benefits.

8. ORS 279C.335(2)(b)(H). Whether granting the exemption will affect the sources of funding for the public improvement.

Finding: The use of the Design-Build contracting method will not adversely impact the funding for this project.

9. ORS 279C.335(2)(b)(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.

Finding: The Design-Build delivery method has been a design and construction delivery method used by both public and private organizations for numerous years. Proposers are required to present the required qualifications and project experience. This includes knowledge of the latest construction techniques and products. The team will inform the County of current market conditions, labor and materials availability, and construction methodologies. This can be incorporated into proposals and design and reduce construction time and costs. The Design-Build process also accelerates the construction process which is an important factor in cost savings these inflationary times.

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

Finding: The Design-Build process will allow the County to fine tune the project scope to stay within the project budget. This Project also has significant technical complexities which are best addressed by a specialty contractor with installation & design expertise. Collaboration between a designer and contractor familiar with the requested work and the County will be necessary for the pre-construction phase.

11. ORS 279C.335(2)(b)(K). Whether the public improvement involves new construction or renovates or remodels an existing structure.

Finding: This project involves the renovation and improvement of existing structures. Use of the Design-Build process will ensure that the

selected contractor has the experience and expertise to successfully construct the project and allow the County to share scheduling requirements early in the design process.

12. ORS 279C.335(2)(b)(L). Whether the public improvement will be occupied or unoccupied during construction.

Finding: The building will be occupied during the construction project. The Design-Build model presents significant advantages in such a situation as it encourages early collaboration between the design and construction elements of the project team to resolve any potential conflicts between the construction project and the County and States need to continue operations.

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

Finding: Currently construction is anticipated to occur in a single phase however as future funding becomes available additional phases may be added to the project

14. ORS 279C.335(2)(b)(N). Whether the County has, or has retained under contract, and will use County personnel, consultants and legal counsel that have necessary expertise and substantial experience in alternative contracting methods to assist in developing the Design-Build method that will be used to award the contract and to help negotiate, administer and enforce the terms of the contract.

Finding: County personnel have substantial experience in conducting procurements using alternative contracting methods. The actual procurement of the contractor will be through a RFP process, the process by the County for many of its non-public improvement contracts.

The Design-Build delivery method contracts with a single entity, the design-builder, to design and construct a project. The collaborative approach, construction schedule, value analysis, and plan presentation all provide effective cost analysis options. It is critical, and also consistent with the spirit of collaboration encouraged throughout the process that everyone on the Project Team works towards a budget of which they can take ownership.

Ultimate Finding: The primary difference with the Design-Build contracting process is that both design and construction are governed by a single contract. This will benefit the County both financially and in other ways such as involvement of the contractor performing the work during the design phase, streamlined decision-making, accelerated progress, and an overall heightened development experience.

For these reasons, use of the Design-Build Alternative Contracting Method for the Court Facility

Improvement Project is likely to result in substantial cost savings and deliver other significant public benefits as compared to use of the standard design/bid/build process within the meaning of ORS 279C.335(2)(b).