Findings in Support of Alternative Contracting Method

For The Construction of the Public Works Equipment Building Project

Introduction

The use of Alternative Contracting methods, such as Design-Build, is made possible under ORS Chapter 279C, which permits certain contracts or classes of contracts to be exempt from competitive public bidding under strict procedural safeguards. Like other alternative contracting methods, the Design-Build delivery method has significantly different legal requirements than a typical design-bid-build project delivery method.

According to ORS 279C.335, a local contract review board may exempt specific contracts from traditional, competitive bidding by showing that an alternative contracting process is unlikely to encourage favoritism or diminish competition and will result in cost savings for the public agency. The Oregon Attorney General's Model Public Contract Rules provide for public notice and opportunity for the public to comment on draft findings in favor of an exemption before their final adoption.

Pursuant to ORS 279C.335(2), a local contract review board may exempt specific contracts from traditional, competitive bidding if it finds that:

(a) The exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts.

(b) 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 (Procurement authority) (3)(b), to the contracting agency or the public. In approving a finding under this paragraph, the Director of the Oregon Department of Administrative Services, the Director of Transportation, or 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 public improvement;

(E) The cost and availability of specialized expertise that is necessary for 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 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 the 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.

Background

This project will replace an existing "lean-to" equipment building, which is in disrepair and unsafe for its current use. The equipment building is constructed of steel and wood structure, metal roofing and siding, a gravel floor, and one side open. The lean-to was constructed many years ago and has undergone numerous repairs and is too small to accommodate the current fleet. Replacing this building with an enclosed metal building or similar type will serve in cost savings for the equipment it stores, as well as provide additional security and readiness for emergency events.

Currently, the existing building doesn't protect equipment from weather and theft. The new building will provide protection from the elements, remain in a dry climatized area, and will be ready for emergency events.

FINDINGS

1. Competition and Cost Savings (ORS 279C.335(2)(a))

A. Unlikely to Encourage Favoritism or Diminish Competition

Typically, the Design-Build delivery method is a two-step solicitation process, which

includes a request for qualifications (RFQ) and an RFP to select the design-builder. 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 best value proposer is awarded the contract. The design-builder is responsible for the design, as the engineer of record, and the construction of the project.

It is unlikely that the process of selecting a Design-Build firm will encourage favoritism in the awarding of the public contract or substantially diminish competition for the public contract. The competition will not diminish because public advertisement will be used for the Request for Qualification and Request for Proposal. All qualified specialty Design-Build teams will have the opportunity to submit and will be awarded based on a competitive process.

B. Cost Savings

The Design-Build delivery method offers a level of certainty to the owner that the initial bid price of the project is the most competitive delivery for the County. Design-build saves time and money by encouraging innovation and collaboration. Projects seeking innovation with designer and contractor involvement through collaboration, which integrates Design and Construction Phases and schedule acceleration could be considered for this alternative contracting method. With the Design-Build delivery method, the DB team will be asked to compile and own the submitted drawings. This allows the contractor a level of control over the implementation of the project schedule, reduces change orders, and results in a more accurate project bid. These costs are not always reflected in a low-bid project scenario.

During proposal submittal, the contractor will provide drawings according to the contract criteria and the associated cost estimate breakdown. This will allow the County to make decisions in the selection process, negotiate on project implementation, and assure that the costs stay within the estimated cost.

2. **Substantial Cost Savings and Other Public Benefits** (ORS 279C.335(2)(b))

A. How Many Persons Are Available to Bid

There should be no reduction in the number of persons available to bid under the competitive proposals process versus the competitive bid process. As with a competitive bid solicitation, the RFP will be advertised in the *Daily Journal of Commerce*, a trade journal of statewide circulation, and the *Chronicle*, a local newspaper. All licensed contractors will have the opportunity to submit a proposal. Proposals submitted by small-scale contractors and joint venture partnerships will be considered and even encouraged. The County will encourage local contractors to participate in the RFP process as well.

B. Construction Budget and Operating Cost

Public Works operations depends on equipment to be ready for emergency events, i.e. snow and ice, etc. These events require equipment to be in a ready state without delay. To provide this readiness, a secure and heated building will allow for the equipment to be warmed for immediate use. The building will be enclosed, which serves as security for the stored equipment.

In FY 2022 a budget of $200,000 was placed into the Capital Outlay for the construction of the building. Since that budget was established a detailed evaluation of the scope and budget

has been performed. The scope was defined by interviews with current staff and their operational needs for a new building, as well as a review of the delivery methods. The result of the evaluation and interviews has proven that the original budget, scope, and delivery method required refinement. A professional cost estimator was hired to provide a more accurate cost for the project, which has increased significantly to $700,000.

Additional funds will be added to the project for FY 2023 to fully fund the project for delivery in FY 2023.

C. Public Benefit

A Design-Build delivery method provides the most public benefit and opportunities for cost savings, including a 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, integration of design and construction and the GMP are identified.

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.

D. Value Engineering

The Design-Build team can customize project sequencing, and propose equipment and methods most viable to 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.

E. Specialized Expertise Required

Prefabricated metal buildings and the associated foundation are specialized in design and construction. Efficient construction requires specialized knowledge in all of the trades required to design and erect this type of structure.

Only through a process where qualifications and competitiveness exist can the County weigh, evaluate and select the type of expertise needed to address the technical complexities of this public improvement project.

F. Any Likely Increases in Public Safety

Columbia County maintains an ongoing commitment and focuses on risk management and safe work practices. Public safety during all construction activities associated with this project, the safety of each of the trade workers involved with its development, and a finished

product that facilitates accessibility and safety of all end users who will work within and receive services provided by this facility are an essential, non-negotiable bottom-line standard for the County. Throughout all construction phases the County will partner with OROSHA's consultative services and the General Contractor to maintain a safe atmosphere for all of the project workers and manage potential risks to surrounding public activities. With a competitive proposal process, the County can evaluate as selection criterion a contractor's performance on prior projects in satisfying safety requirements. This determination is not available under the low-bid process.

G. Whether Granting the Exemption May Reduce Risks

Whether Granting the Exemption May Reduce Risks to the County or the Public As described in F, above, the County is committed to risk management and safe work practices. A competitive proposal process will give the County more control over selecting a contractor that shares the County's commitment to risk management. This would not be available under the low-bid process.

H. Whether Granting the Exemption Will Affect Funding Sources

This project is funded entirely by the Public Works budget. Outside grants will not be requested for this project. However, a competitive proposal process is allowable under the requirements of both funding sources.

I. Market Conditions

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 increased availability of and need for technical expertise, value engineering, or other types of specialized expertise, as well as a need to investigate the compatibility, experience, and availability of contractors require that certain public improvement contracts be awarded based upon an evaluation of several criteria, rather than simply cost.

In the current economic environment where there is rapidly increasing materials cost Design/Build can present a significant advantage because there is no delay between the design and build phases required by the traditional design/bid/build process. Also, through the design/build process, you typically reach a fixed price more quickly and avoid the risk of having to rebid the project with a new design because the first round of bids came in too high.

J. Technical Complexity

The Project 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 County personnel familiar with the type of build project implementation will be necessary for the pre-construction phase.

K. New Construction or Remodel

This public improvement project is for new construction. The project will result in a new

equipment storage building.

L. Occupied or Unoccupied During Construction.

The site will be occupied during construction. However, the building will not be occupied.

M. Single or Multiple Phases of Construction

Construction of the equipment building will be completed in a single phase.

N. Agency Expertise in Alternative Contracting Methods.

County personnel, including the project manager and legal counsel, have substantial experience in conducting procurements using a competitive proposals process. The County uses this process for many of its non-public improvement contracts. County staffs experience extends to competitive proposals involving design-build, design-bid-build, and construction manager at risk.

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.

Summary

The primary difference when considering an alternative delivery method is that design-build includes both design and construction under one contract whereas traditional methods include separate contracts.

The County will benefit from streamlined decision-making, accelerated progress, and an overall heightened development experience.

The clear advantages of the Design-Build delivery method are:

a) The close relationship between designer and contractor, which allows real-time schedule, cost updates, and interventions, which further allows for thoughtful decision making throughout the entire project.

b) The insight and coordination of the Design-Builder into all of the systems and assemblies to avoid timely (and most of the time, costly) changes and interpretations.