

CITY OF HERMISTON
RESOLUTION NO. 2109

A RESOLUTION GRANTING AN EXEMPTION FROM THE COMPETITIVE BID REQUIREMENTS OF ORS 279C.335(1) FOR USE OF THE DESIGN-BUILD METHOD OF CONTRACTING FOR EOTEC COUNTY FAIR BUILDING AND RV PARK DEVELOPMENT 2018

WHEREAS, the City of Hermiston ("City") Council adopted Ordinance No. 2104 on March 28, 2005 and amended by Ordinance No. 2237 on December 14, 2015, designating the City Council as the local contract review board for the City, and providing that the Council, acting as the local contract review board, shall have all the powers granted by the Oregon Revised Statutes; and

WHEREAS, ORS 279C.335(1) provides that all public improvement contracts shall be based upon competitive bids; with certain exceptions including an exemption for a specific contract for a public improvement which is approved in accordance with the provisions of ORS 279C.335(2), (3), (4), and (5); and

WHEREAS, the City's Local Public Contracting Regulations authorize the use of alternative contract methods for public improvement contracts as an alternative to the requirement for competitive bidding; and

WHEREAS, ORS 279C.335(2) requires that certain findings be adopted by the Local Contract Review Board in order to grant an exemption from the competitive bidding requirement for an alternative contract method for public improvement contracts; and

WHEREAS, pursuant to ORS 279C.335(5)(b), the City published notice of a public hearing for the purpose of taking public comment on the City's draft findings for the exemption from the competitive bidding requirement, for more than 14 days prior the hearing date of September 10, 2018; and

WHEREAS, on September 10, 2018 the City Council acting as the Local Contract Review Board, reviewed the proposed findings, and desires to proceed with granting the exemption from the requirement for competitive bidding pursuant to the provisions of ORS 279C.335 and the City's Local Contract Review Board Rules;

NOW, THEREFORE, the City of Hermiston resolves as follows:

Section 1. Findings Approved. The findings in support of the requested exemption, as prepared by City staff, and attached hereto as Exhibit "A", are hereby approved and adopted.

Section 2. Exemption Granted. Based upon the findings set forth in Exhibit "A", the exemption from competitive bidding requirements to allow a Design-Build method of

contracting for the EOTEC County Fair Building and RV Park Project 2018 is hereby granted.

Section 3. Effective Date. This Resolution goes into effect immediately.

PASSED by the Common Council on September 10, 2018.

SIGNED by the Mayor this 10TH day of September 2018.

MAYOR

ATTEST:

CITY RECORDER

EXHIBIT A

CITY OF HERMISTON, OREGON ("City") EOTEC COUNTY FAIR BUILDING AND RV PARK PROJECT 2018 ("Project")

DRAFT FINDINGS FOR AN EXEMPTION FROM COMPETITIVE BIDDING

Oregon Revised Statute (ORS) 279C.300 requires competitive bidding of public improvement contracts unless specifically excepted or exempted from competitive bidding as provided under 279C.335. Under ORS 279C.335(2), a local contract review board may exempt certain public improvement contracts or classes of contracts from competitive bidding based on the following:

1. The exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts.
2. Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the contracting agency.

In approving the findings under ORS 279C.335(2)(b), 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, as outlined in ORS 279C.335(2)(b)(A-N).

For the reasons set forth more fully below, it is recommended that a progressive design-build team be selected by utilizing the competitive proposal process in accordance with ORS 279C.400 and City of Hermiston Resolution 2109 for a specific contract to design and build the Project. The progressive design-build proposal process is advantageous for this project as:

- it allows for the contractor to be involved early in the design process, providing a wide opportunity for value engineering
- it allows design-build teams to customize their proposals to suggest creative and innovative approaches to project execution
- the design-build proposal process limits the City's exposure to some risks, including disagreements between the designer, the contractor and reduced errors of the contractor due to contract document interpretation and enforcement
- having the design team and contractor operate under a single contract incentivizes the design-build team to act as a more cohesive group, avoiding the potentially contentious relationship that the traditional design-bid-build process provides.
- single contract between the City and the progressive design build team reduces contract complexity

In accordance with ORS 279C.330, 279C.335, and City Resolution No. 2109 the Hermiston City Council in its capacity as the Local Contract Review Board, makes the following findings which justify an exemption from the competitive bidding requirement.

Findings

Pursuant to ORS 279C.335, the following Findings justify an exemption from OAR 137-049-0130.

1. The exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts. (ORS 279C.335(2)(a))

Design-build teams are selected through competitive proposal processes. No reduction of competition is expected since the proposed process is open to the same contractors and engineering firms that would have participated in the traditional design-bid-build process, and there are multiple contractors both in Eastern Oregon and across the state with the ability to compete for this contract. Uniform evaluation criteria will be used in the selection of contractors.

Favoritism will not play a role in the selection of design-build teams. Selection will be conducted through an open and advertised RFP process. All qualified firms will be invited to submit proposals. The City of Hermiston will publish a legal notice in the East Oregonian and the Daily Journal of Commerce in order to provide Project information to all interested entities. Proposers will be evaluated based on clearly stated criteria. A City review team will perform the evaluation of proposals in an effort to minimize the effects of any individual bias. All qualified firms will be able to participate in an open, competitive selection process.

2. Substantial cost savings and other benefits {ORS 279C.335(2)(b)}.

Using a design-build contracting method will likely result in substantial cost savings and other benefits as described below.

a) How many persons are available to bid;

A publicly-advertised competitive proposal process will be utilized to select the progressive design-build team. The use of this contracting method does not prevent any contractor or consultant from submitting a proposal on the Project that otherwise they would have bid, had the City procured the Project using the traditional design-bid-build method.

b) The construction budget and projected operating costs for the completed public improvement;

The progressive design build format allows for direct consultation during design with the contractor that will be performing the work. This opportunity fosters value engineering

discussions which improve efficiency to construction methods and can alter the end product by fully considering constructability challenges. Overall Project costs will result in a cost savings. Additionally, there are many, less tangible, cost savings that may be realized. Some of these less-tangible savings include: reduced City staff resources dedicated to the Project, a Project team that works more cohesively, shorter design and construction timelines, and less impact to the public.

c) Public benefits that may result from granting the exemption;

One of the main advantages to the public of the progressive design-build contracting method is the Project's schedule. This method engages the contractor at the initiation of design thereby eliminating the conventional construction bid phase. In addition to the removal of the construction bid phase, once the design-build team has an approved design and agreed upon price, construction on the Project can begin. This allows the contractor to begin construction in areas where right of way or easements are not necessary or in areas where easements have been granted. Typically, right of way or easement procurement is a critical path task that can extend or delay construction start times in a traditional design-bid-build contract.

d) Whether value engineering techniques may decrease the cost of the public improvement;

The progressive design-build contracting method gives the contractor an increased opportunity to engage in value engineering, which generally reduces cost to the City. The progressive design-build contracting method brings the contractor on board immediately and allows the contractor to voice their comments and concerns with the design. This allows the designer to more fully understand constructability and sequencing issues early on. As a member of the progressive design-build team that is tasked to build a project for a fixed price, the contractor is incentivized to assist with the construction scheduling, phasing, costing, public involvement, safety, and quality assurance. Another incentive that the contractor has to pursue value engineering efforts is that savings realized through these efforts on progressive design-build projects are often split between the owner and the progressive design-build team. In contrast, the traditional method of contracting only allows for the contractor to see the contract design documents once they are issued for the construction bidding phase. At this point not only is there is little incentive for the contractor to engage in value engineering efforts, but the design has already progressed past the point of incorporating many of the suggestions that the contractor would have offered.

e) The cost and availability of specialized expertise that is necessary for the public improvement;

The progressive design-build contracting method is not expected to increase the cost or availability of specialized expertise necessary for the public improvement. Design availability and cost are not anticipated to be impacted since the method for contracting

these services is not significantly different from those found in the traditional design-bid-build contracting method.

f) Any likely increases in public safety;

No adverse effects to public safety are anticipated as a result of pursuing the progressive design-build contracting method. The design engineer will be held to the same standard of care as with the traditional contracting methods. The contractor will be following the same construction standards and City standards and will be using the same best practices as with the traditional contracting methods.

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;

The progressive design-build contracting method differs from the traditional design-bid-build methods in that the contractor is involved from the beginning of the design. This allows the City to put the full responsibility of the constructability and coordination on the progressive design-build team. In the traditional method the City supplies the design to the contractor, and the contractor expects to rely on it without modification. If the design proves to be defective, in terms of constructability or otherwise, the owner cannot hold the contractor responsible, and will likely find it difficult to pass responsibility back to the designer.

In addition to the protections that this contracting method provides the City with regard to the design, cost overruns can also be mitigated. Once the design for the Project has reached a pre-determined milestone (which will be less than 100% of the design completion), a price for completing the design and construction of the Project is then provided to the City. This is the price for which the design-build team will complete the design and construction of the Project. This method of obtaining construction costs minimizes the number of change orders on a project and as a result minimizes cost overruns.

h) Whether granting the exemption will affect the sources of funding for the public improvement;

Funding for the Project is from the City's designated EOTEC funds and from Umatilla County. These funding sources are not anticipated to pose restrictions to the proposed progressive design-build contracting method.

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;

Utilizing the progressive design-build contracting method will likely allow the City to minimize risk associated with market conditions. Under a traditional contracting

method, the time between the issuing of the contract documents for bid and the notice to proceed can be on the order of months. This time delay is seen by the contractors as a cost risk as the cost of materials can increase substantially in a short amount of time. The progressive design-build contracting method eliminates this procurement process and therefore minimizes the cost associated with this risk that the contractor builds into their bid.

No negative schedule impact is anticipated on the Project as a result of market conditions with regard to the chosen contracting method. The design-build contracting method allows the contractor more flexibility to dictate their own sequencing and schedule once a price has been agreed upon. This will likely result in a benefit to the Project with regard to schedule impacts from a market conditions viewpoint.

j) Whether granting the exemption will better enable the City to address the size and technical complexity of the public improvement;

The integration of a new building to the EOTEC complex and the addition of a permanent RV park will require coordination with City staff and Venuworks staff as the operator of the facility. Largely, the benefit to the Design Build method is that collaboration with the contractor results in immediate feedback on constructability questions and alternate approaches which likely enhance the final design. Having all members of the team onboard from the beginning of the process will enhance all aspects of the project from design to constructability to schedule.

k) Whether the public improvement involves new construction or renovates or remodels an existing structure;

The vast majority of this Project consists of new construction.

l) Whether public improvement will be occupied or unoccupied during construction;

The entire Project will be constructed while the EOTEC facility is operating. The goal is to complete the two projects with the least impact to the existing facility and its operations. The contracting method lends itself to greater coordination from the start of the project.

m) Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions;

The Project will likely be a multi-phase Project. The team will prioritize construction to take place as efficiently as possible. The utilization of the progressive design-build contracting method will significantly benefit this Project by allowing construction to begin in specific areas while other activities are occurring in other areas. This flexibility is

available specific to this proposed contract type and is anticipated to reduce project time.

3. Additional Findings

OAR 137-049-0630{3}(b) permits other findings, in addition to those listed above, to be considered with regard to the expected benefits and drawbacks of particular Alternative Contracting Methods. The following discussion of benefits and drawbacks of this contracting method may be a duplication of those found above, but they are the main elements to consider for a progressive design-build contracting method, so additional dialogue is warranted.

a) Advantages

More cohesive project team. With a traditional contracting method, the relationship between the designer/owner and the contractor is generally adversarial from the start. With the progressive design- build contracting method the contractor and designer work as a team as the single point of responsibility to get the Project designed and built. This contracting method necessitates collaboration between the designer and contractor as they are acting as a single entity. Having a more cohesive Project team results in fewer design-related change orders and reduces the number of potential claims created by the Project.

Owner can reject the price without significant project delays. Should a price not be agreeable to the owner, an off-ramp is built in to this contracting method. This off-ramp has two options, the first of which is to finish the design to 100% with the same team, then continue on a traditional path for the construction portion of the Project. The second option is to terminate the first contract and attempt to negotiate with another design-builder.

Timing is critical for the Project, so the selected contracting method should be flexible enough to minimize delays should a pricing conflict arise. Impacts to the Project's schedule when utilizing the off- ramp can be kept to a minimum when comparing the progressive design-build contracting method to the traditional contracting method.

b) Drawbacks

Limited opportunities to make changes to the project's scope once the price has been established. Costs are high for changes that are made to the Project after the price has been established. This is not dissimilar from changes made after a project has been bid for the traditional contracting method, the difference is that the contracting agency has a larger timeframe to establish their initial decisions using the traditional methods.

While it is critical that the City's project team is confident in their early decision making for the scope of this Project, the majority of the individual elements of this Project are

not overly complex. This is advantageous as the decision making will be fairly straightforward and many design elements can be taken from existing EOTEC facilities.

Summary

Using a competitive proposal progressive design-build contracting method to select a design-build team who have experience with these types of projects provides many benefits. The use of this process will not diminish competition or result in favoritism and should result in overall cost savings to the City. Most important, completion of the Project can occur in the shortest duration possible.