



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: September 12, 2018

Department: Business Services Agenda Planning Date: Sept 6, 2018 Time required: 5 min

Audio/Visual aids: n/a

Contact: Camber Schlag Phone: 503-566-3944

Department Head Signature: [Handwritten Signature]

TITLE: Shall the Contract Review Board approve an order setting a public hearing on a proposed exemption to Marion County Public Contracting Rules?

Issue, Description & Background: Marion County Business Services, Facilities Management Program is requesting an exemption to allow the use of a Design-Build delivery method as an alternative competitive process for the Courthouse Square Fire Alarm System Upgrade public improvement contract. Marion County Public Contracting Rules (MCPCR), Sections 40-0600 to 40-0690, and ORS 279C.335 detail when an alternative contracting method may be used for a public improvement project and the process that must be followed. If the appropriate exemption process is followed, a design-build form of public improvement contract and alternative solicitation may be used. MCPCR Section 40-0690 and ORS 279C.335. The Board may only use an alternative solicitation process if public notice is provided and a public hearing held to receive public comment. At the conclusion of the public hearing, the Board may exempt a public improvement contract from the public bidding requirements if it approves findings that the exemption is unlikely to encourage favoritism, or substantially diminish competition and will likely result in substantial cost savings and other substantial benefits. The use of a design-build form of contracting generally allows the County and the firm the ability to collaborate on value engineering and time saving initiatives during the design phase. An exemption is sought to utilize a design-build request for proposals solicitation in order to allow for flexibility in both proposal evaluation and contract negotiation. The resulting contract from the alternative procurement process will be treated as a public improvement contract as defined by public contracting code and will be subject to all requirements for public improvement contracts, including but not limited to, hours of labor, retainage and paymeny, subcontractors, bonds and prevailing wage requirements.

Financial Impacts: Funds for the CH2 Fire Alarm System Upgrade Project is included in the Fiscal Year 18/19 budget #18-024 in the amount of \$200,000.

Impacts to Department & External Agencies: None

Options for Consideration: 1. Approve the board order setting a public hearing on a proposed exemption to Marion County Public Contracting Rules for consideration of an alternative solicitation process for the Courthouse Square Fire Alarm System Upgrade project. 2. Decline to approve an order setting a public hearing and require the department move forward with the standard invitation to bid for a public improvement project.



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Recommendation:

Business Services and Finance Department staff are in support of the request to have the Board set a public hearing on a proposed exemption to the Marion County Public Contracting Rules for the Courthouse Square Fire Alarm System Upgrade Project.

List of attachments:

Board Order
Draft Findings for Exemption
Public Notice

Presenter:

Larry Tilford, Kevin Burton, Camber Schlag

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)

Copies to:

Tina Toney, Business Services

BEFORE THE BOARD OF
COMMISSIONERS
FOR MARION COUNTY, OREGON

In the matter of setting a public hearing)
to consider granting an exemption to allow)
an alternative competitive process pursuant)
to Marion County Public Contracting Rules.)

ORDER NO. _____

This matter came before the Marion County Board of Commissioners at its regularly scheduled public meeting on Wednesday, September 12, 2018 to set a public hearing on a proposed exemption from the Marion County Public Contracting Rules.

The Contracts Officer, or designee, has advised the Board that Marion County Business Services – Facilities Management seeks an exemption to allow the use of an alternative competitive process to solicit proposals for the Courthouse Square Fire Alarm System Upgrade. The board believes that it is appropriate to consider granting the exemption through a special procurement process, and state law requires a public hearing before the exemption may be granted.

IT IS HEREBY ORDERED that the board will hold a public hearing on the 3rd day of October 2018 at 9:30 AM to receive testimony on the proposed special procurement exemption to the Marion County Public Contracting Rules to use an alternative contracting method to solicit Design-Build Services for the Courthouse Square Fire Alarm System Upgrade.

IT IS FURTHER ORDERED that notice of the public hearing be posted and published forthwith.

DATED this ____ day of September 2018.

MARION COUNTY BOARD OF
COMMISSIONERS

Chair

Commissioner

Commissioner

Original: Clerk
cc: BOC
Facilities

Camber Schlag Finance

PUBLIC NOTICE

Notice is hereby given that the Marion County Board of Commissioners will consider approval to grant an exemption for a public improvement project under Marion County Public Contracting Rules Section 40-0640 and ORS 279C.335 during a public hearing at 9:30 AM on Wednesday, October 3rd, 2018. Approval of the exemption will authorize the use of a design-build solicitation as an alternative competitive process for the project delivery methodology for the Courthouse Square Fire Alarm System Upgrade project.

Any person wishing to comment for or against the approval of the exemption of a public improvement project or request an American with Disabilities Act accommodation, may do so in writing. All written comments or protests for the exemption of the public improvement or accommodation requests may be directed to Jacob Clotfelter, Marion County Finance, PO Box 14500, Salem OR 97309, by fax: 503 373-4379 or email jclotfelter@co.marion.or.us and must be delivered in writing prior to 5:00 PM on Friday, October 5, 2018. Additional information or justification for this process may be obtained on Marion County's website: <http://www.co.marion.or.us> under the Board of Commissioner's link.

Is/ Camber Schlag
Contracts and Procurement Manager

**MARION COUNTY
FINDINGS FOR EXEMPTION
FROM CONTRACT REVIEW BOARD RULES
FOR COURTHOUSE SQUARE FIRE ALARM SYSTEM UPGRADE**

Marion County Business Services Department, Facilities Management Program is requesting an exemption to allow the use of an alternative competitive process for a public improvement project.

Background

The Courthouse Square Complex (“Complex”) is located at 555 Court Street NE, Salem, Oregon. The Complex is located within one entire city block bound by Church, Chemeketa, High and Court Streets containing a five story office building and a two-lane transit bus mall. The Complex has separately owned units and common elements that are co-owned by Marion County and Salem Area Mass Transit District; commonly known as Cherriots.

The Complex currently has a Silent Night Model 5104B alarm system providing life and fire safety services using a Honeywell NFS-320 Notifier for alarms and status reporting. The building’s HVAC system has smoke detectors in the ducting and, upon detecting smoke in the building, these will trigger the alarm. Currently the alarm is an annunciator beeper on the first floor and a bell at the south main entry doorway. Notification of an alarm is sent through the phone intercom system by a live designated person. This part of the process is not automated. The proposal for adding horns and strobes to the fire alarm system will upgrade the service, provide for automated notification both audio and visual, and eliminate the human element.

The County's Public Contracting Rules require the use of the traditional “Invitation to Bid” on public improvement contracts. Marion County Public Contracting Rules, Section 40-0610(2) identifies design-build as an alternative contracting method. Design-build is a form of procurement that results in a public improvement contract in which the construction contractor also provides or obtains specified design services, participates on the project team with the County, and manages both design and construction. In this form of contract, a single contractor provides the County with all of the personal services and construction work necessary to design and construct the project. The Board of Commissioners may authorize alternative contracting methods as an exception for public improvement projects when justified as prescribed in public contracting code.

Findings

The County has identified the competitive design-build solicitation method as the best option because a single contract for both design and construction transfers the majority of responsibility for the completeness, accuracy and integration of the design and construction processes to the design-build entity. The design-build contracting method also reduces design time, simplifies construction drawings, minimizes change orders, and provides a unified, integrated team approach at the onset of the project, and the best value for the money, time, and effort invested.

A. Statutory Requirements

Oregon public contracting code as set forth in ORS Chapter 279C, allows the use of competitive design-build for public improvement contracts and provides flexibility in both proposal evaluation and contract negotiation under specific conditions and when authorized by the Local Contract Review Board. The County desires to use a design-build solicitation for the Project. The design-build process will comply with the requirements of Oregon public contracting code. In order to utilize a competitive design-build solicitation for public improvements, ORS 279C.335 requires that the Local Contract Review Board make certain findings as part of authorizing the use of an Alternative Contracting Method. The findings for the use of a design-build RFP for a public improvement must demonstrate that:

1. It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts; and
2. The awarding of public improvement contracts under the exemption will likely result in substantial cost savings and other substantial benefits to the County or the public.

For public improvement projects, agency findings must address certain additional factors set forth in ORS 279C.335 (2)(b). These include, but are not limited to: (1) Availability of persons to bid; (2) construction, budget and operating costs; (3) Public benefits; (4) Value engineering; (5) Specialized expertise required; (6) Public safety; (7) Reduction in risk; (8) Funding sources; (9) Market conditions; (10) Technical complexity; (11) Size and complexity; (12) New construction or renovations; (13) Occupied or unoccupied during construction; (14) Single or multiple phases; and (15) Public and private personnel assigned to project.

The rules also require that the County give public notice and hold a public hearing to receive public comment on the findings before taking action on granting an exemption to a public improvement contract from the requirement of competitive bidding.

In reviewing this exemption from competitive bidding, the Local Contract Review Board has considered the following factors:

B. Competition/Favoritism (279C.335 (2)(a)):

1. The RFP for a design-build solicitation will be publicly advertised to ensure a fair, open, and competitive process. The County will use a formal competitive design-build process for selecting a public improvement firm (firm). The Project design-build process allows the County to select the firm best suited for the project based on factors such as experience, ability to respond to the technical complexity, unique character of the project, past performance, price and other factors specific to the project.
2. Objective selection criteria and a formal selection process will be included in the solicitation for selection of the public improvement firm. The selection process to determine the highest ranking proposal will be based on a team review of weighted evaluation criteria identified in the solicitation.

3. The Project solicitation will include requirements pursuant to state and local public contracting code to ensure fair and open competition for any subcontractors or sub-consultants. The public improvement firm must follow procedures subject to the applicable state and local public contracting code for soliciting, receiving bids and awarding any subcontracts.

C. Findings Criteria ORS (279C.335 (2)(b)):

Awarding the Project under this exemption will likely result in a cost savings because (1) price will still be a significant factor in the scoring of the proposals and (2) selecting a firm that is capable of complying with the timelines and that is also able to manage a highly-technical and complex project will provide additional resource savings to the county.

As set forth in ORS 279C.335, the justification of the exemption shall include consideration of other substantial benefits, including, but not limited to:

(1) Availability of persons to bid. The County anticipates multiple firms to submit proposals, as would have been the case if a formal Invitation to Bid was pursued.

(2) The construction budget and the projected operating costs for the completed public improvement. The total Project budget is anticipated to be \$230,000.00. The Project will provide a much safer work environment for the building staff to provide superior service to the community.

(3) Public benefits that may result from granting the exemption. The County requires timely completion on a schedule in order to avoid unnecessary disruption of County operations. Ensuring expertise to meet the County's schedule and deliver safe operation of the facility during construction of the building will provide public benefits and limit additional resource expenditures.

(4) Whether value engineering techniques may decrease the cost. Value engineering design and construction personnel-working as a team evaluate alternative systems, materials and methods efficiently and accurately. Design and construction expertise is brought to bear upon all components of the project.

(5) The cost and availability of specialized expertise that is necessary. The use of the design-build methodology provides the most likely opportunity to acquire a specialized, technical, peer reviewed and cost-effective solution for the Project. This project delivery method enables the firm to provide successful techniques and the integration of building systems into the plan of accommodating an occupied and functional public safety facility.

(6) Any likely increases in public safety. The County will benefit from the integrated project team's experience, knowledge, and specialized technical expertise needed to properly maintain public safety operations in a safe and efficient manner. Experience performing construction activities around site occupants in a safe and effective manner is paramount.

(7) Whether granting the exemption may reduce risks. The use of the design-build methodology provides the opportunity to award a firm that has the most relevant experience to achieve project success, with the least amount of risk to the county.

(8) Whether granting the exemption will affect the sources of funding. Funding is allocated for the project; the exemption will not affect the sources of funds.

(9) Whether granting the exemption will better enable the County to control the impact that market conditions may have on the cost of and time necessary to complete the project.

With firms being afforded the opportunity to bid on many available projects, the County should not settle on low bids exclusively. Low bidders could lack the experience required of this extremely technical project.

(10) Whether granting the exemption will better address the size and technical complexity of the project. The use of the design-build methodology allows the County and the firm the ability to collaborate with the logistical details of moving building staff and operations, with the necessary technical expertise that comes from equivalent projects. The Courthouse Square functions as a center for county government operations. A logistical approach must be taken with this project because occupants and operations will be near the work site while the systems are under construction. As a result, there will be a strict timeline and it will be essential to maintain the safety and functionality during this construction project.

(12) Whether new construction or renovates or remodels an existing structure. The project involves the renovation of the existing fire alarm system

(13) Whether the public improvement will be occupied or unoccupied during construction. The buildings will be occupied during the renovation and will maintain normal operations throughout the project.

(14) Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions. This is not a phased project; however, work will occur in different areas at different times in order to maintain safe and functional operations of the Marion County governance.

(15) Public and private personnel assigned to project. The County will use its experienced personnel including project management, legal counsel, and a procurement manager.

D. Competitive Bidding Strategies

The resulting contract from the design-build alternative procurement process will be treated as a contract for public improvement as defined by public contracting code and will be subject to all requirements for public improvement contracts, including but not limited to hours of labor, retainage and payment, subcontractors, bonds, insurance, warranties, peer reviews, as well as prevailing wage requirements.

E. Conclusion

Based on the foregoing, the findings outlined above justify the proposed exemption and use of an alternative contracting method. The use of an alternative contracting method will benefit the public by providing a construction methodology that results in the most likely opportunity to acquire a specialized, technical, peer reviewed and cost-effective solution for the Project. Using an alternative contracting method will result in an open environment that takes into account modern realities and practices that are consistent with the public policy of encouraging competition.