

October 30, 2018

ADOPTION FINDINGS
GRANTING OF AN EXEMPTION FROM COMPETITIVE BIDDING AND
AUTHORIZING USE OF THE DESIGN-BUILD ALTERNATIVE CONTRACTING
METHOD FOR THE CAREER-TECHNICAL EDUCATION CENTER BUILDING
PROJECT

PREPARED BY: Mark Jeffery, Superintendent, Warrenton-Hammond School District

APPROVED BY: Members of the Warrenton-Hammond School District Board of Directors

REPORT: Background:

Earlier this year, the owner of R&M Steel Company, Robert Roberts, donated a 60' x 120' metal building to the Warrenton-Hammond School District ("WHSD") for use as a career-technical education center. WHSD intends to add the donated building to its high school facilities by installing the building and ancillary features on vacant land located at 1700 South Main Street, Warrenton, Oregon 97146 (the "Project"). When complete, the building is expected to include workshops, classrooms, a mezzanine, and office space. WHSD anticipates that the building will be developed in two phases. Phase 1 includes erecting the metal shell and developing the space so that WHSD obtains a certificate of occupancy from the City of Warrenton. Phase 2 consists of constructing two classrooms along with mezzanine and office space within the building.

The building is worth \$75,000 and will be held at R&M's factory until the site is ready. WHSD has budgeted \$535,000 to complete the Project, of which approximately \$335,000 are revitalization grants that must be used within a specific timeframe. To avoid loss of the donated building and grant funds, WHSD aims to complete the Project by March 1, 2019.

WHSD has obtained a conceptual sketch and select engineering plans, but must procure additional design and construction services to advance the Project. The additional design services will include drawings and plans

for a concrete pad that (i) will accommodate two classrooms, one restroom, office space, a mezzanine and automobile lifts and (ii) otherwise satisfies applicable structural and code requirements.

It appears that WHSD will benefit substantially from using the Design-Build process, rather than the standard competitive Invitation to Bid process. The Oregon Public Contracting Code (ORS 279C.300) requires that all public improvement projects be procured through a competitive bid process. The WHSD Board, acting as the Local Contract Review Board, may exempt the Project from competitive bidding as long as certain findings required by ORS 279C.330 and 279C.335 are made and an authorized alternative contracting method is used (OAR 137-049-0600 to 137-049-0690). A design-build alternative contracting process is authorized under OAR 137-049-0670. A Design-Builder is selected through a competitive request for proposals ("RFP") process where factors such as experience, expertise, team of designer and contractor, and a demonstrated record of performance can be considered. The other benefit of a Design-Build process is that the contractor is the lead and partners with an architectural firm as part of the team during the design phase, assisting in design development, constructability review, value engineering, scheduling, and estimating. Through this process a guaranteed maximum price is developed. The Design-Builder is the general contractor during the construction phase and will manage the project from the start to finish.

Staff will come back to the WHSD Board for approval of the contract when a Design-Build team is selected through a competitive RFP process.

Findings:

- a. The Board finds that the Project is well suited to the Design-Build project delivery method and contracting procedure because of its abbreviated timeline and need for careful planning and coordination between construction and engineering professionals to address (i) site condition issues and (ii) WHSD's dependence on this building for its long-term programmatic needs. The planning and coordination for this Project will

include management of site access and utilities, on-site development, and construction activities for the new building.

- b. The WHSD Board of Directors finds that WHSD personnel are knowledgeable and have a demonstrated capacity to manage the Design-Build process in all disciplines.
- c. Pursuant to ORS 279.335(2)(a), the Board finds that utilizing the Design-Build process is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition because a competitive RFP process will be utilized to solicit the Design-Builder, the procurement will be formally advertised, competition will be obtained through competitive proposals, and evaluation and award will be based on identified selection criteria reviewed and ranked by a WHSD team.
- d. Pursuant to ORS 279C.335(2)(b), the Board finds that utilizing the Design-Build process will result in substantial cost savings to WHSD because:
 - i. The proposed team approach will improve communication and continuity, which the Board expects will expedite decision making and reduce costly Project delays;
 - ii. Detailed constructability studies, evaluations of construction phasing, and developing options for procurement of materials is an efficient use of Design-Build resources and should result in cost and time savings. The contractor's involvement in the resolution of design and constructability issues is also very efficient, and should cultivate contractor's knowledge of the Project and reduce the need for change orders or added costs during construction.
 - iii. The time sensitivity of the Project and phased approach to developing the facility requires the skills of an experienced

general contractor; and the use of the Design-Build procurement process will enable WHSD to consider experience as part of the selection criteria;

- iv. WHSD expects to be able to take advantage of reduced architectural service fees as a result of the more streamlined Design-Build approach; and
 - v. Historically, the Design-Build process helps reduce the number of change orders because the contractor is the lead during the design phases.
- e. Pursuant to ORS 279C.335 (2) (b) (A-N), the Board of Directors makes the following specific findings in support of the above-noted findings:

(A) How many persons are available to bid:

WHSD anticipates that approximately eight companies are available to bid on the Project.

(B) The construction budget and the projected operating costs for the completed public improvement:

The construction budget is \$535,000. But our goal is to work alongside the Design-Builder to identify costs savings opportunities from a building construction and operational standpoint. Engaging a Design-Builder should increase the likelihood of identifying these opportunities.

(C) Public benefits that may result from granting the exemption:

Bringing the Design-Builder on to lead the Project and contribute to the design promotes a team approach early in the process that leads to continuous value engineering and improved constructability review, resulting in an improved final Project. This process will reduce change orders and limit delays during the construction phase. This benefits the public through cost savings, provides "guaranteed" costs, and is

more likely to result in timely delivery of the Project.

(D) Whether value engineering techniques may decrease the cost of the public improvement:

Value engineering is a routine practice in public improvement projects regardless of procurement method. The Design-Build delivery method allows for the general contractor and subcontractors with specialized expertise and common project goals to lead the value engineering process during the design phase, resulting in a more effective and efficient process as compared to value engineering by change order to a completed design. The Design-Build delivery method should further benefit this process, as the design can be crafted to address future use and development of the building (e.g. the addition of automobile and welding equipment).

(E) The cost and availability of specialized expertise that is necessary for the public improvement:

The RFP process allows for review of contractor expertise, which is not afforded in traditional design-bid-build procurements.

(F) Any likely increases in public safety:

The Design-Build process will enhance public safety because WHSD will be able to consider the safety record of the proposers. This will be important since the compacted schedule could create additional safety risks.

(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 Design-Build method should help address schedule pressures and, consequently, reduce the risk of WHSD losing the donated building or grant funding.

(H) Whether granting the exemption will affect the sources of funding for the public improvement:

The Design-Build process should help WHSD maintain the funding it has obtained for the project.

(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:

Under the Design-Build process, the contractor can use its knowledge of the current construction market to implement cost and time saving ideas. If there is advantageous pricing or less costly items available in the marketplace, the contractor can perform certain work or order materials quickly to obtain the benefit. Whereas the traditional design-bid-build process requires that the contractor begin its work after the design is complete, by which time the cost or time saving opportunity may have dissipated.

(J) Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement:

The Design-Build process will aid development of the Project in a manner that accommodates WHSD's long-term programmatic needs.

(K) Whether the public improvement involves new construction or renovates or remodels an existing structure:

This project is a new building.

(L) Whether the public improvement will be occupied or unoccupied during

construction:

The improvement is a new building so it will be unoccupied during the initial construction. But the building may be occupied during subsequent improvements.

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

There will be two phases, as described above.

(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 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:

WHSD has facilities personnel with knowledge of the Design-Build delivery method that will work to administer and enforce the terms of the design-build contract for the Project. WHSD's outside legal counsel, Miller Nash Graham & Dunn LLP has extensive experience with the Design-Build alternative contracting method.

For these reasons, use of the Design-Build Alternative Contracting Method for the Project is likely to result in substantial cost savings as compared to use of the standard design-bid-build process within the meaning of ORS 279C.335(2)(b).

RECOMMENDATION: That the Warrenton-Hammond School District Board of Directors, acting as the Local Contract Review Board for WHSD (1) adopt the findings presented and grant an exemption from competitive bidding for the Career Technical Education Center Building Project and

(2) authorize use of the Design-Build delivery method as the alternative contracting method for the Career Technical Education Center Building Project.