



FINDINGS DOCUMENT UMPQUA COMMUNITY COLLEGE

Exemption From Competitive Bidding for A Public Improvement Contract (I.E., Alternative Contracting Method) Design Build, Solicitation Process for The Remodel and Construction Work on Housing Properties

BACKGROUND

The findings herein support a resolution authorizing the Umpqua Community College ("College") Board of Education (board), acting as the Local Contract Review Board, to exempt the renovation and construction work on housing properties located on Cass, Jackson and Oak Streets from the competitive bid process and instead use an alternative contracting method consisting of a Request for Proposals ("RFP") for the selection of Design-Build method.

The selection process will include an evaluation of potential general contractors and design team through the issuance of an RFP. The proposals received in response to that RFP will be evaluated based upon the criteria stated in the RFP. The criteria to be evaluated may include, but not be limited to: proposer's pricing proposal; labor rates; equipment rates and charges; overhead; profit, fee and mark-ups; proposer's experience with the construction of academic buildings and experience in multi-phase construction projects; experience in renovation of multi-story buildings; experience with historical buildings; proposer's experience in sustainable construction; previous experience of the firm, as well as key personnel (e.g., design team, electrical, HVAC), for projects of similar complexity; references; success with value engineering; the performance history of the contractor and key personnel demonstrating an ability to deliver projects on time and within budget; demonstrated ability of the contractor and key personnel to work in a harmonious and non-adversarial manner with the College and stakeholders, including neighbors, utilities, local governments and regulators; ability to maintain a drug-free workplace; compliance with environmental regulations; and ability to maintain a safe, healthful and accident-free workplace.

The Renovation Project is planned to include redesign of existing floor plans, construction/renovation of properties to create a mix of student housing, classrooms and office space dependent upon the individual building and space availability. Properties include:

- 1034 SE Oak St. / Built in 1912 / 18,864 SF
- 729 SE Jackson St / Built in 1955 / 24,300 SF
- 704 SE Cass Ave / Built in 1916 / 18,900 SF

STATUTORY REQUIREMENTS

Oregon statutes require all public improvement projects to be procured by competitive low bid, unless an exemption is granted by the state or the public contract review board of a public agency. (ORS 279C.330 and 279C.335) These statutes provide that an exemption allowing other contracting methods may be used based on findings that:



Findings in Support of Design-Build Procurement Method

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

Pursuant to ORS 279C.335(2)(b), for public improvement projects, agency findings to support substantial cost savings and other benefits to the agency must consider the type, cost and amount of the contract, and, to the extent applicable, the following additional factors:

- 1) How many persons are available to bid;
- 2) The construction budget and the projected operating costs for the completed public improvement;
- 3) Public benefits that may result from granting the exemption;
- 4) Whether value engineering techniques may decrease the cost of the public improvement
- 5) The cost and availability of specialized expertise that is necessary for the public improvement;
- 6) Any likely increases in public safety;
- 7) Whether granting the exemption may reduce risks to the contracting agency, the state agency or the public that are related to the public improvement;
- 8) Whether granting the exemption will affect the sources of funding for the public improvement;
- 9) 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;
- 10) Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement;
- 11) Whether the public improvement involves new construction or renovates or remodels an existing structure;
- 12) Whether the public improvement will be occupied or unoccupied during construction;
- 13) Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions; and
- 14) 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.



In reviewing and approving this exemption from competitive bidding, the College has considered the following factors:

A. The exemption is unlikely to encourage favoritism or substantially diminish competition. (ORS 279C.335(2)(a)).

The process anticipated by this exemption is a competitive RFP process resulting in the selection of contractor for the Design-Build method. Competition will be based not merely on price but on a variety of factors designed to deliver a quality project on time, for the least overall cost to the College. Evaluation factors used for selection are intended to result in a source selection process that is objectively neutral, transparent, and reviewable. Such a process is unlikely to substantially diminish competition or result in favoritism. Moreover, the process chosen places no restriction on the proposer and does not prohibit partnership arrangements. This expands the opportunity for small and medium-sized contractors to participate.

The introduction of evaluation elements that permit evaluation of the quality of the contractor's design-build team and the ability of the design-build team to deliver the work for the price promised increases the pool of potential proposers. All contractors, including Oregon businesses, are able to compete either as named proposers or as members of a construction management team/partnership. To foster competition among prospective proposers, the project will be advertised electronically on the College's website, and on the State of Oregon's website OregonBuys.

The proposal evaluation committee will include a representative from the College's procurement and facilities office, along with staff from Student Services involved in the execution of the project. This composition and cross-section of evaluators further assures integrity in the selection process. The evaluation committee will develop scored criteria and procedures that will be published in the RFP and the College will provide a protest procedure for aggrieved parties.

Finding: Based upon the foregoing, the College finds that it is unlikely that this exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public 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, (ORS 297C.335(2)(b)).

Findings in Support of Design-Build Procurement Method

1. How many persons are available to bid?

The Request for Proposals will be posted on the College's website and published on the State of Oregon's Procurement site OregonBuys. Based on prior experience, the College anticipates receiving up to 10 responses.

2. The construction budget and the projected operating costs for the completed public improvement.

A Design-Build method will allow the awarded party to be involved the early stages of budget development and coordination for all three properties, as well as creating a collaborative line of communication with the College's leadership. There will be a higher likelihood of avoiding delays in occupancy due to the ability to engage in early constructability discussions with the contractor and designer that will be working together on the renovation of the three buildings. Budgets will be more accurate due to contractor participation in their establishment.

The selection of a Design-Build, partially based on the quality of their prior projects, will increase the possibility of completing a higher quality renovations than if a traditional low-bid process were used, resulting in lower operational and long-term fiscal impacts.

3. Public benefits that may result from granting the exemption.

The Design-Build delivery method with source selection based on a competitive RFP offers the best opportunity to deliver a coordinated project on time and within budget. This method allows the contractor and design-team to create; value engineering to occur, working with the concept designs and continuation throughout the project; assistance in evaluating the best and most cost-effective approach for renovation of three buildings; and opportunities for work to be in tandem when necessary. The early involvement of the contractor and the "give and take" of the Design-Build process provides the best opportunity for "on-time and on-budget" delivery of the Project.

The College's experience with the traditional design-bid-built method has resulted in contracting with firms for the construction of major projects that have passed the statutory requirement of bidder responsibility and who have been able to secure bonding, but who have been lacking in experience, quality, and/or the ability to manage a complex project effectively. The traditional delivery method has resulted in disputed claims, late deliveries, multiple change orders and compromised quality that may not be apparent immediately, or that in one case has led to expensive and time-consuming claims-settlement procedures. This is of particular concern on phased projects, where disputes can arise due to a contractor on a subsequent phase alleging adverse impacts caused by work completed in previous phases of the project.

While the "hard-bid" model provides an adequate prediction of final project cost for "simple" projects or for equipment purchases, it is not a good predictor of final cost on more complex, phased projects. An RFP process that includes a detailed evaluation of the proposer's cost and pricing data affords the public owner an opportunity to determine if the proposer's numbers are



realistic and reflect the cost of the work. The hard-bid model provides no opportunity to see how the proposed amounts were actually generated.

The Design-Build method takes into account market realities and modern practices consistent with the public policy of encouraging competition. This alternate method is better able to address the shortcomings of the "hard bid" or "low bid" (i.e., traditional design/bid/build or CM/GM), delivery method.

The use of this process will allow a more collaborative method for the project to remain on schedule, reducing the anticipated period until occupancy. This process will increase the chances of staying within budget, due to providing the ability to score proposals in part on the prior history of the contractor, the participation of the contractor in constructability review, value engineering, and in establishing a Guaranteed Maximum Price. The public will benefit from adherence to a completion date that allows students to housing. In addition, the properties will very likely be renovated to a higher level of quality using this process, again, maximizing the public benefit.

Setting a Guaranteed Maximum Price earlier in the design will allow the College to ensure that the project will fit within budget and maximize the efficiency of funds. Additionally, within the Design-Build process, the funding source can be flexible to enable acquiring funding at the most beneficial time in the project schedule. Under the Design-Build method, the College will benefit from savings if actual costs are below the Guaranteed Maximum Price (GMP).

Finding: Based upon the foregoing, this proposed exemption and contract process will benefit the public by providing a contract method that results in the most likely opportunity to achieve completion of a high-quality project within schedule and within budget.

4. Whether value engineering techniques may decrease the cost of the public improvement.

Value engineering experiences and successes will be scored criteria in the selection process. This practice will initially begin with the involvement of the selected firm during the construction document design phase of the project and will continue through project completion. The Design-Build process provides a much more favorable opportunity for effective value engineering in comparison to the traditional design-bid-build method due to the ability to select a firm based on their skills in this area, and in their much earlier participation on the project.

An essential part of each renovation project is the value engineering analysis. Value engineering is the means used to determine the best project design that meets the needs and priorities of the College, within the College's budget. Value engineering is done most effectively by a team consisting of the College, architect, consultants, and the contractor. When the contractor participates, the team can render the most comprehensive analysis of all factors that affect the cost, quality, and schedule of the project.

The inherent flexibility and openness of the Design-Build process allows the College to more easily change the design and scope of work as necessary to meet the project budget before the final design is fixed. This is not something that the traditional bid process offers.



Finding: Based on the foregoing, the College finds that value engineering techniques have been considered, or will be adequately considered, and may decrease renovation costs for this project.

5. The cost and availability of specialized expertise that is necessary for the public improvement.

It is important for the College to work with a contractor that has: specialized expertise in multi-phased, sustainable construction, experience in renovation of multi-story buildings; experience with historical buildings; and work safely in a congested area. Through integrated participation, project scope and design evolve with greater value for the College. The Design-Build method allows the contractor's specialized expertise to be utilized during the design phase.

The Design-Build contractor will have experience with sound attenuation, heating, plumbing, lighting and electrical systems, installation specific to the unique requirements of projects with similar requirements to the building renovations. These "lessons learned" will add to the knowledge of the architect in the implementation of the most appropriate systems and materials.

The Design-Build method allows the vast majority of costs to be competitively bid under the umbrella of a pre-selected General Contractor. The Design-Build method allows the contractor to competitively bid out the vast majority of the cost of the project, providing the best value for the scopes of work in the bidding packages.

Finding: Based on the foregoing, the College has considered and finds that any specialized expertise required for this project will be best achieved through issuing a RFP to select a Design-Build firm, which is authorized by an exemption from competitive bidding.

6. Any likely increases in public safety.

The Design-Build process will enhance public safety because the College will be able to consider the safety record of the contractors selected. This will be important due to the property locations and coordination of work. In addition, Design-Build contracting will ensure that public safety is being effectively managed in a "fast track" mode to minimize delays.

Finding: Based on the foregoing, the College finds that a RFP process to select a Design-Build is the best method for the College to assure selection of a firm that will provide maximum safety for the public.

7. 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 contract allows the College to engage in early work agreements that give more insight and site verification of unforeseen condition to the Architects, Contractors, and the College, as well as expediting the renovation schedule by starting early work during the design phase.

Criteria used to evaluate proposals will help ensure the College will be working with a contractor that will take a team, rather than adversarial, approach to the project; will have the necessary technical and managerial skills to optimally organize, and ultimately complete this complex project;



has past experience and knowledge to meet the construction schedule; and provides a quality-built building at a reasonable price, both in terms of actual dollars, and staff resources.

This team approach reduces the risk of errors, missteps and complaints arising out of the construction process that would cause delay.

Finding: Based on the foregoing, the College finds that the operational, budget, and financial needs of the College would be best satisfied through this proposed alternative contracting method and that any impact on the College budget and financial situation would be positive.

8. Whether granting the exemption will affect the sources of funding for the public improvement.

There will be no impact on the sources of funding for this project due to utilization of Design-Build process.

Finding: Based on the foregoing, the College has considered the funding source and has determined that the best use of those funds is to issue an RFP to select a Design-Build.

9. 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.

Because the Design-Build process appoints the firm at the beginning of the design, we are able to take advantage of market prices by facilitating early purchase of certain project elements, if needed. The essential added value of the Design-Build process is the real time market job costing from the local area, state and Northwest region.

For example, the construction team may provide early input that is less expensive but equally advantageous to the design team. If the College bid this contract traditionally, after design completion the College may not receive this timely cost saving input and would have to make an adjustment in the field, which would cost time and maybe only save a percentage of funds.

Finding: Based on the foregoing, the College finds that the market conditions are more conducive to a qualifications-based, enhanced selection process rather than the traditional design-bid-build method.

10. Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement.

This project has several aspects that add to its technical complexity. First, there is very limited space in which the contractor can mobilize and stage for construction. This can create conflicts with city operations, residential areas and general safety. Secondly, the project consists of multiple phases, possibly within each property. Third, this project will incorporate many sustainable-design aspects for each property. There is a possibility of challenges of discovery of unforeseen construction situations and the resulting scheduling challenges necessary to perform the work.



The Design-Build method allows the contractor to provide information and insights regarding the technical complexity of the project and to make recommendations to be incorporated into the design to reduce the amount and scope of change orders.

Finding: Based on the foregoing technical complexity, the College finds it is in the College's and public's interest to proceed with an exemption from competitive bidding for the selection of a Design-Build, utilizing a RFP, which will allow the College to select a qualified contractor with the necessary technical experience and demonstrated history of success.

11. Whether the public improvement involves new construction or renovates or remodels an existing structure.

This improvement is renovation and/or remodel of existing structures.

12. Whether the public improvement will be occupied or unoccupied during construction.

This public improvement involves renovation and/or remodel. Occupation is dependent upon individual property and each phase of the project. Oak Street property may be student occupied during remodel.

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

The College anticipates the public improvement to be multi-phased, with some phases working in tandem. This phase approach best assures bidding that incorporates all long-range construction costs of the project.

14. 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.

The College will use consultants and legal counsel with expertise and experience in alternative contracting methods to assist in developing the alternative methods and to help negotiate and enforce the terms of the public improvement contract.



FINDINGS DETERMINATION

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

CONCLUSION

The benefits and characteristics required for the use of a Design-Build contract have been reasonably demonstrated in the discussion above. The Design-Build with Guaranteed Maximum Price (GMP) is the option that best allows for consideration of the critical factors during design and construction. With a general contractor as part of the owner and designer team, the likelihood of successful construction implementation is enhanced. Having the contractor involved early will allow for a quick start of construction once permits are issued. Fast tracking the design and construction allows for early occupancy, thereby meeting the public's expectations.