RESOLUTION NO. 2021-22

A RESOLUTION OF THE CITY OF LINCOLN CITY, ADOPTING FINDINGS FOR A PUBLIC CONTRACT EXEMPTION AND AUTHORIZING AN ALTERNATIVE CONTRACTING METHOD FOR THE ESTER LEE PUMP STATION IMPROVEMENT PROJECT

RECITALS

WHEREAS, ORS 279C.335(2) permits the City Council, acting as the Local Contract Review Board, to exempt a public improvement contract or class of contracts from the competitive bidding requirements of the Lincoln City Public Contracting Code and use an alternative contracting method, subject to making required findings; and

WHEREAS, on June 28, 2021, the City Council conducted an advertised public hearing on the proposed findings to exempt the Ester Lee Pump Station Project from competitive bidding and authorize an alternative public contracting method; and

WHEREAS, on June 28, 2021, after due consideration of public comment and the proposed findings in the record, the City Council, acting as the Local Contract Review Board, deliberated and decided to approve the exemption and authorize the alternative contracting method; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LINCOLN CITY, AS FOLLOWS:

SECTION 1. RECITALS. The above recitals are true and correct and are incorporated herein by this reference.

SECTION 2. APPROVAL. The City Council, acting as the Local Contract Review Board, hereby approves the required Findings to support the exemption from competitive bidding and the use of an alternative contracting method for the Ester Lee Pump Station Project, said findings being attached to this Resolution and incorporated herein by this reference; and

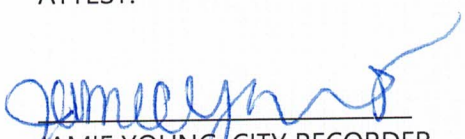
SECTION 3. EFFECTIVE DATE. This resolution is effective as of the date of its adoption and signature by the Mayor or Council President.

PASSED AND ADOPTED by the City Council of the City of Lincoln City this 28th day of June, 2021.

Susan Kay Wahlke

SUSAN WAHLKE, MAYOR

ATTEST:



JAMIE YOUNG, CITY RECORDER

APPROVED AS TO FORM:

RICHARD APPICELLO, CITY ATTORNEY

Findings in Support of Alternative Contracting Method

FOR THE DESIGN AND CONSTRUCTION OF ESTER LEE PUMP STATION REPLACEMENT PROJECT

Introduction

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, Design-Build has significantly different legal requirements than a typical design-bid-build project delivery method.

Pursuant 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 to 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.

ORS 279C.33O provides that: "findings" means the justification for a contradicting agency conclusion that includes, but is not limited to, information regarding:

- Operational, budget and financial data;
- Public benefits;
- Value engineering;
- Specialized expertise required;
- Public safety;
- Market conditions;
- Technical complexity
- Funding sources
- Findings

Background

This project will replace two sanitary sewer pump stations (Ester Lee North Pump Station and Ester Lee South Pump Station) with one new pump station located at the Ester Lee North Pump Station Site, construct 400 feet of sanitary sewer and

400 to 1,200 feet of force main. The pump station will incluce a building that will house the controls and a standby generator. The pump station site is located within an existing right-of-way but is within the FEMA flood zone. The top of the wet well along with the proposed building is required to be 2 feet above the FEMA flood zone. This means that the structures will have to be approximately 2 to 3 feet above the existing ground.

Operational, Budget, and Financial Data
The project cost estimate was develped at the concept phase. City has estimated the project budget at $1,300,000 over two years.

Public Benefit
Design-Build provides opportunities for cost savings through the flexibility and openness of the process, allowing the City to more easily make appropriate changes as necessary to meet the project budget.

The selected engineer and contractor team develop construction plans together, using their collective knowledge and experience, and remain a team through construction. This approach also allows the City, the Tribe and ODOT to see the design and costs associated early in the process to make changes to meet the project budget.

Value Engineering
The Design-Build process essentially is value engineering. Design options and real-time cost estimates provided by the team throughout the constructability reviews allow cost saving design changes or substitutes to be identified throughout the design and up to the build phase.

These beneficial actions by the team will improve design, expedite construction and eliminate the potential for costly change orders.

Specialized Expertise Required
Understanding the requriements for permitting, the impacts of the permitting requirements on the project and cost is one area of expertise required for this proejct.

Market Conditions

The Design-Build contracting process is a modern construction delivery method used by both public and private organizations. The team is tasked with knowing the latest construction techniques and products. The team will inform the City of current market conditions, labor and materials availability, and construction methodologies that can reduce design and construction time and costs. The process also allows the construction timing and sequence to be considered.

Technical Complexity
The Project has significant technical complexities which will be best addressed by a full team approach, with the team working with the City to solve specific challenges identified during the pre-construction phase.

Competition and Cost Savings
The Design-Build method of contracting provides the greatest cost controls for limited budgets and therefore benefits the City. The team approach, the schedule, the value analysis, and constructability reviews provides the ultimate in effective cost analysis. 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.

Unlikely to Encourage Favoritism or Diminish Competition
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. Competition will not diminish because the Design-Build contract will be awarded based on a competitive process.

Cost Savings
The low-bid process offers a level of certainty to the owner that the initial bid price of the project is the lowest cost; however, if changed conditions are encountered during construction, resulting change orders can have significant cost impacts.

With the Design-Build method, the contractor is required to submit their mark-up percent. The percent mark-up includes the contractor's profit. This allows the contractor a level of certainty and eliminates the motivation for finding ways to increase his profit during construction.

During the early design phase, the Design-Build team will provide value engineering and update cost estimate information. This will allow the City to also make changes early, assuring that the costs are going to radically change in final design or receive bids that are substantially higher than the engineer's estimate.

Additionally, the use of value engineering through cooperation among the engineer, contractor and City is essential to the Project delivery on time and within budget. Design-Build value engineering will eliminate change orders and progress delays to help meet the tight time schedule for the Project. These savings are not realized under a low bid process.

Summary

Substantial cost savings are anticipated from the Design-Build team approach because decision-making is based on cost effective and informed solutions.