

RESOLUTION 2018-18

A RESOLUTION OF THE CITY OF LINCOLN CITY GRANTING EXEMPTION FROM COMPETITIVE BIDDING FOR CONSTRUCTION OF THE SE 48TH PLACE WALL RELOCATION PROJECT BY MEANS OF AN AUTHORIZING ALTERNATIVE CONTRACTING METHOD, SPECIFICALLY CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC)

Whereas, the Lincoln City City Council ("City") acts as the local contract review board for the City, and in that capacity, has authority to exempt certain contracts from the competitive bidding requirements of ORS Chapter 279C; and;

Whereas, ORS 279C.335(2) provides a process for exempting certain contracts from competitive bidding and authorizes the selection of a contractor through alternative contracting methods;

Whereas, draft Findings of Fact ("Findings") addressing competition, operational, budget and financial data, public benefits, value engineering, specialized expertise required, market conditions, technical complexity, public safety, and funding sources recommended by the City were available fourteen (14) days in advance of the public hearing on this Resolution; and

Whereas, the City provided Notice of this public hearing in the Daily Journal of Commerce on August 29, 2018; and

Whereas, after consideration of the comments at the public hearing and after review of the proposed findings, the City Council finds and determines that the City of Lincoln City SE 48th Place Wall Relocation should be constructed by a CM/GC contracting method.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Lincoln City as follows:

Section 1. The City adopts the Findings set forth in Exhibit A to this Resolution.

Section 2. The exemption of the CM/GC contract from competitive bidding will promote competition and will not encourage favoritism, because the CM/GC will be

chosen by a competitive RFP process, and the major portion of the construction work will be performed by subcontractors chosen by competitive bidding.

Section 3. The contract for construction of the SE 48th Place Wall Relocation by a CM/GC for a Guaranteed Maximum Price (GMP) is exempt from competitive bidding, and the CM/GC shall be selected by alternative contracting method in accordance with the City's public contracting rules and the process described in the attached Findings.


Section 4. This resolution is effective upon adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF LINCOLN CITY THIS 10TH DAY OF SEPTEMBER 2018.



DON WILLIAMS, MAYOR

ATTEST:



CATHY STEERE, CITY RECORDER
CITY RECORDER

Exhibit A

REQUEST FOR PROPOSALS FOR CONSTRUCTION OF THE SE 48th PLACE WALL RELOCATION

FACTUAL FINDINGS FOR PROPOSED EXEMPTION FROM COMPETITIVE BIDDING

The Public Works Department ("City") recommends that the City of Lincoln City City Council ("Council") approve the following factual findings, including the Additional Findings (as hereinafter defined) (collectively, the "Findings") to exempt the SE 48th Place Wall Relocation (the "Project") from the competitive bidding requirements of ORS Chapter 279C and to approve the Request for Proposals for Construction as the alternative contracting method for the selection of a Construction Manager/General Contractor ("Contractor") for the Project. Capitalized terms used herein have the meaning ascribed to them in the Ordinance.

I. BACKGROUND

The project is located at the intersection of SE 48th Place and SE 51st Street where the existing 100 foot long block retaining wall is located over an existing 24-inch water main at the west end of the wall. The wall itself is of concern, but more importantly the wall was placed 6-inches over the City's water transmission main. The proposed work is to move the wall to the northwest away from the water main and construct a reliable wall with adequate drainage. The City is requesting proposals through a proposal review process to select a design and construction team to propose a construction means and methods for constructing a new wall.

II. NO FAVORITISM OR DIMINISHED COMPETITION

ORS 279C.335 (2) requires that Council make certain findings as a part of exempting public contracts or classes of public contracts from competitive bidding. ORS 279C.335 (2) (a) requires Council to make a finding that, "[i]t is unlikely that such an exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts." This finding is appropriate for the Project and is supported by the following facts.

The Contractor will be selected through a competitive Request for Proposals (“RFP”) process. The RFP will be advertised in Portland’s Daily Journal of Commerce at least three weeks in advance of the deadline set for submitting responses to the RFP. The proposals will be evaluated by a selection committee based on criteria such as experience, technical expertise, key personnel and staffing, and cost. The selection committee will review and rank the written proposals; hold interviews if necessary; and recommend a Contractor for the contract award. As a consequence of the competitive RFP process, the use of an alternative contracting method for the Project is unlikely to encourage favoritism in the awarding of public contracts.

The alternative process can result in even broader participation and greater competition than the traditional bidding process. All qualified general contractors and construction management firms will have an opportunity to compete. These firms include some that might not be willing to face the uncertainties and potential financial risks associated with bidding and contracting for construction under a traditional design-bid-build competitive bid process. Structuring the Project under a RFP contract that includes the Contractor in determining the method of construction allows the selected firm to improve constructability, develop phasing and staging plans to efficiently perform the work, and determine effective construction methods. This may make the Project more attractive to qualified firms because of the opportunity to better understand the Project prior to providing the City with a price for the Project and to reduce their risk in undertaking the Project. Therefore, competition will not be diminished, and may even be enhanced by advertising the Project through an RFP process.

III. SUBSTANTIAL COST SAVINGS

ORS 279C.335 (2) requires that Council make certain findings as part of exempting public contracts or classes of public contracts from competitive bidding. ORS 279C.335 (2) (b) requires Council to find that “[t]he awarding of public improvement contracts under the exemption will result in substantial cost savings to the public contracting agency.” This finding is appropriate for the Project and is supported by the following facts.

The RFP contracting process affords the opportunity for the Contractor to participate during the design phases of the Project, lending its expertise, knowledge, and experience to provide feedback as to whether the Project’s

proposed design is feasible within the project parameters. Similarly, this allows the Contractor to make value engineering suggestions, that is, suggestions that propose alternative and less expensive ways of achieving the same result. Because of limited resources, cost containment is of critical importance to the City. Participation in the design process also enables the Contractor to become more familiar with the Project features and requirements before it prepares its price for the work. This familiarity means that the Contractor may not include cost contingencies that other contractors frequently include in their bids to take account of uncertainties that are not resolvable during the brief bidding period under a traditional design-bid-build competitive bid process.

IV. THE FACTUAL BASES TO SUPPORT THE ADDITIONAL FINDINGS

In order to declare the exemption, Council must approve additional findings in the areas set forth below (the "Additional Findings")

A. How Many Persons are Available to Bid

The RFP contracting method will result in broader participation and greater competition than the traditional bidding process. All qualified general contractors and construction management firms will have an opportunity to compete. These firms include some that might not be willing to face the uncertainties and potential financial risks associated with bidding and contracting for construction under a traditional design-bid-build competitive bid process.

B. The Construction Budget and the Projected Operating Costs for the Project

The Project will be funded by the Water Improvement Fund. The anticipated construction costs are estimated at \$240,000.00. The budget for the Project was based on the preliminary estimates of necessary work through initial geotechnical site investigations and design. The RFP contracting method will provide the opportunity for careful consideration of means and methods of construction as well as cost saving measures through construction phasing and timing which will make the delivery of the project within budget more likely.

C. Public Benefits That May Result from Granting the Exemption

There are multiple public benefits in connection with exempting the Project. The RFP process is critical to facilitating this specialized Project with design and construction challenges.

RFP participation with and feedback to the City will be invaluable in determining the correct method and price of performing the technical removal of an existing wall and replacement with a new one, while protecting surrounding properties.

The RFP contracting method allows coordination of the contractor's and subcontractors' work. This coordination minimizes disruption to the public.

D. Whether Value Engineering Techniques May Decrease the Cost of the Project

Value engineering is defined as a process by which multiple subject experts evaluate and propose the most cost effective ways to deliver a project without reducing project quality and functionality. Value engineering will be enhanced on this Project where the contractor has been selected before the method of work is determined. In that way, the contractor's suggestions can be incorporated into the contract rather than have bids come after the design is already completed, which may limit the amount of change that can be accomplished to the Project and still meet schedule requirements as well as the design intent. Changes after a project is competitively bid can result in higher costs for the City. A traditional competitive bid process cannot take value engineering into account during the design stage because the design is usually complete before bids are received.

Having the Contractor propose the method prior to the start of construction best leverages the value engineering ideas that are accepted and incorporated into the final contract.

E. The Cost and Availability of Specialized Expertise Required for the Project

Through the RFP process, the City will have an opportunity to evaluate and select the Contractor with the specialized expertise required for the Project. The Project involves several components that require specialized expertise to implement a high quality Project as well as to meet the environmental impact criteria. Specifically, the Project requires construction to occur in close proximity to

existing single family homes and the streets SE 48th Place, SE 51st street and SE Schooner Creek Road,.

The RFP contracting method provides the best opportunity for the City to allocate additional weight in the selection process to contractors with a high degree of specialized expertise necessary for the particular requirements of the Project.

F. Likely Increases in Public Safety

The RFP contracting method allows a contractor's actual safety performance on similar projects to be considered as selection criteria. It also permits the City to work closely with the Contractor during the Project to ensure that the construction process provides appropriate safety measures, that the Contractor understands the City's safety concerns and that the Contractor will take appropriate steps to address them.

G. Whether Granting the Exemption May Reduce Risks to the City related to the Project

The Project will be constructed within a physically limiting area for staging and construction work. The Project will require adherence to Oregon State Land regulations regarding the proximity to creek resources and to construct within the physical boundaries within the City's easements. Using the RFP contracting method will allow the City to hire the Contractor who develops a comprehensive construction schedule and staging before initiating the work with input from the Project Team. The interaction between the Project Team and the Contractor makes it far more likely that the construction method selected will take into account any potential construction problems and allow early coordination of construction phases to minimize impacts to the surrounding residents, businesses and visitors.

A competitive selection of the Contractor through the RFP process allows the City to minimize disruptions to the local businesses, residents and transportation systems during construction, as well as ensuring that the Project is delivered expeditiously to serve the community.

The RFP process for selecting the Contractor allows the City an opportunity to question the respondents to discern their expertise on contracting methods and

phasing. This approach also offers the greatest flexibility, risk reduction, reliability, and ease of construction. The Project budget is likely to be more stable as a result of this approach and it is less likely that there will be Project overruns.

H. Whether Granting the Exemption will Affect the Funding Sources for the Project

The construction Project budget is \$240,000.00, The Project will be funded using Capital Improvement Funds from the Water Department. Using the RFP process, the confidence rating regarding the Project cost increases and, correspondingly, the contingency percentage decreases. The RFP contracting method creates more financial certainty for the City. While funding does not change based on use of the RFP contracting method, the Project budget is likely to be more stable as a result of the alternative contracting method and it is less likely that there will be Project cost overruns.

I. Whether Granting the Exemption will Better Enable the City to Control the Impact That Market Conditions May Have on the Cost of and Time Necessary to Complete the Project

The RFP contracting method for the Project would reach the same or greater market of construction contractors as the traditional low bid process. Considering the complexity and location of the Project and major components of work, the RFP will reach the regional marketplace. The RFP will also require a response addressing the latest market innovations in sequencing and in construction means and methods. Selection of the Contractor will be made by a committee, that will evaluate qualifications, expertise and ability to deliver on the City's policy goals and community expectations, among other things, in addition to cost to ensure the best combination to achieve the Project objectives.

J. Whether Granting the Exemption Will Better Enable the City to Address the Size and Technical Complexity of the Project

Special technical complexities of the Project include retaining wall construction methods to replace an existing wall with a new wall. The RFP contracting method will allow the Contractor to proactively be involved in developing construction approaches and methods to maximize the quality and constructability in the area.

K. Whether the Project Involves New Construction or Renovates an Existing Structure.

The Project will replace an existing structure.

L. Whether the Project Will be Occupied or Unoccupied During Construction

The Project will be constructed within the construction easement boundaries at the intersection of SE 48th Place, SE 51st Street, and SE Schooner Creek Road. Due to the heavy usage of the street, staging and phasing of the project are important considerations that must be implemented during construction to minimize the impacts to the community.

M. Whether the Project Will Require a Single Phase or Multiple Phases of Construction Work to Address Specific Project Conditions.

An important goal of the Project is to complete the construction in an expeditious manner. The intent is to place the wall with little impacts to the surrounding area and within the City's right of way. Incorporating cost saving ideas and avoiding hurried plans or adaptations during the construction phase allows the City to avoid costly change orders or disputes that impact the schedule or budget. It is necessary to carefully consider the means and methods of construction and possible phasing options during the design phase of the Project to ensure a minimum of delays and costs during construction.

N. Whether the City Has or Will Retain Personnel, Consultants and Legal Counsel that Have Necessary Expertise and Substantial Experience in Alternative Contracting Methods to Assist in Developing the Alternative Contracting Method and to Help Negotiate, Administer and Enforce the Terms of the Project Contract

City personnel have the expertise and experience necessary to effectively implement the RFP contracting method and to negotiate, administer and enforce the terms of the resultant construction contract for the Project.

**NOTICE OF PUBLIC HEARING
CITY OF LINCOLN CITY BEST VALUE CONTRACTING
COMPETITIVE BIDDING EXEMPTION**

Notice is hereby given that the City Council of Lincoln City will hold a public hearing to take oral and written comments on the City's draft findings in support of an exemption from competitive bidding under ORS 279C.335 for the construction of the SE 48th Place Retaining Wall Replacement Project.

The City is requesting the exemption from competitive bidding to allow the use of a procurement method that presents an alternative to the traditional low-bid method of contracting. The method known as Best Value or Source Selection awards projects to the contractor offering the best combination of price, technical qualifications, technical approach. The City's evaluation and scoring of competing contractor's technical qualifications and technical approach components, combined with comparison of the contractor's price component will be the basis of award.

The project is located at the intersection of SE 48th Place and SE 51st Street where the existing 100 foot long block retaining wall is located over an existing and shallow 24-inch water transmission main at the west end of the wall. The integrity wall itself is of concern, but more importantly the wall was placed 6-inches over the City's water transmission main. The proposed work is to move the wall to the northwest away from the water main and construct a reliable wall with adequate drainage. The City is requesting proposals through a proposal review process to select a design and construction team to propose a construction means and methods for constructing a new wall.

The draft findings may also be viewed on Lincoln City's website at www.lincolncity.org. Copies of draft findings may be obtained at a cost of 30 cents per page.

Public Hearing Information

Date: September 10, 2018

Time: City Council Meeting, 6:00 PM*

Place: City Council Chambers, 801 SW Highway 101, 3rd Floor
Lincoln City, Oregon

**(This is a regularly scheduled City Council meeting, and the public hearing will not be the first item on the agenda.)* Comments must be submitted in writing by noon on September 5, 2018 to be included in the City Council packet. Written comments received after noon September 5, 2018 will be provided to City Council at the hearing. Any person may provide oral or written comments to the City Council at the September 10, 2018 hearing. Written comments should be addressed to:

Comments on the Draft Findings should be addressed to:

Stephanie Reid, City Engineer
Public Works Department
P.O. Box 50
Lincoln City OR, 97367

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