Port of Newport
Administration Building

DRAFT Findings in Support of Exemption from Public Bidding
October 28, 2014

1. General

ORS 279C.335 permits a local contract review board to exempt contracts from traditional competitive bidding upon approval of written findings of fact showing that an alternative contracting process is unlikely to encourage favoritism or diminish competition, and that the process will result in substantial cost savings to the public agency.

ORS 279C.400 – ORS 279C.410 describe the Request for Proposals method of solicitation as an alternative to traditional competitive bidding. Pursuant to ORS 279C.410, a public agency using the Request for Proposals method may award a contract to the responsible proposer "whose proposal is determined in writing to be the most advantageous to the contracting agency based on the evaluation factors set forth in the request for proposals and, when applicable, the outcome of any negotiation authorized by the request for proposals."

2. Background

The Port of Newport (Port) is planning to construct a new administration building to replace their existing temporary facility located in Newport. The existing facility cannot be used beyond the Fall of 2016. Contemplated construction work includes items listed in staff findings attached as Exhibit A.

Design for this project is expected to be completed by _____, 2014 and, as such, an approved construction budget has not been established. However, based on preliminary square footage assumptions and known function requirements, it is reasonable to assume construction costs could be at least $1 million, as stated in Exhibit A.

The Port proposes to undertake and complete the construction work using the construction manager/general contractor (CM/GC) method of contracting with a proposer selected through the Request for Proposals method of solicitation. The CM/GC will participate in construction design and planning, provide construction management services, hire all construction sub-contractors and act as the general contractor for the proposed construction.

3. Findings

For the reasons set forth below, and in addition to the staff findings attached as Exhibit A, it is unlikely that the proposed exemption will encourage favoritism or diminish competition in the awarding of public contracts, and awarding a public contract under the proposed exemption will likely result in substantial cost savings and other substantial benefits to the Port.

Competitive Procurement

The Port will use a Request for Proposals process to select and hire a qualified and experienced CM/GC. The RFP will be broadly advertised in Oregon and adequate time will be allowed for proposers to respond. It is expected there are a substantial number of qualified, capable and interested CM/GC construction firms available to respond.

Proposals will be evaluated on several criteria including, but not be limited to, fee proposals, CM/GC firm experience (including experience of proposed project team, similar project experience, firm capacity), plan for project completion (with focus on completion within budget and on schedule), and safety plans. An evaluation team will review and rank the proposals, interview the highest ranked respondents, and recommend the best qualified proposer to the Port Commission.

The Port will also require the CM/GC to competitively bid the subcontracts required for construction of the new operations center.

Cost Savings

The Port expects this use of the alternate contracting process will allow for selection of a qualified and experienced CM/GC for construction of this new facility and, by joining the owner, architect and engineers early in the design process, will enable the selected CM/GC to participate in design, material and equipment evaluations, constructability review and decisions, and value engineering. The Port believes this approach will allow identification of cost savings and reduce the number of change orders once construction is started.

The Port expects that employment of a CM/GC will provide opportunity for cost savings through use of multiple bid packages and the resulting early completion of the project or components of the project.

The Port also expects use of the CM/GC process on this project will allow more efficient use of the Port staff with resulting reductions in labor and associated resource costs.

Use of the CM/GC process allows establishment of a Guaranteed Maximum Price (GMP) that will include the expected costs of construction plus contingency to cover

what the CM/GC expects to be needed for changes to the proposed scope of work. Cost increases due to subcontractor bids higher than estimated or added cost for any work included in the original scope but left out of the CM/GC estimate would be absorbed in the GMP.

Public Safety

The Port expects all construction work on this project will be accomplished in accordance with applicable regulations and will meet stringent safety standards. The selected CM/GC will be expected to provide knowledge and evidence of construction safety practices to ensure a high degree of public and worker safety. The CM/GC's safety-related performance on past projects will be assessed during the RFP selection process. The CM/GC's participation in developing the final design and related bid documents and their on-going input on the work methods, controls and sequencing is expected to help manage and reduce risk related to on-site construction safety.

Technical complexity

The cost effective design and construction of an administration building is site specific. There is an added level of design and construction complexity associated with building on the Oregon coast related to water intrusion, corrosion, schedule delays, and unexpected cost overruns due to inclement weather. The Port believes all of these issues are best addressed using the CM/GC process and thereby ensuring the contractor is involved early in design and able to work with the architect and owner to help determine design solutions to the technical complexity and challenges associated with this particular work. The CM/GC approach allows for this joint problem solving while the more traditional design-bid-build approach does not.

Value Engineering

Having the CM/GC work with the architect, engineers and owner during design allows the CM/GC to recommend design approaches that will help reduce problems, errors and unforeseen costs that may occur during construction. Provision of this ongoing "constructability" perspective helps develop a project design that is feasible for final construction, cost effective and most effective for end use. This process allows for extensive value engineering and effective review of alternate construction methods and materials during all phases of design. In comparison, the design-bid-build approach requires completion of all project design before the general contractor and sub-contractors are employed, and does not by definition allow for contractor input into value engineering questions related to constructability, cost effectiveness or suitability for final use.

Specialized Expertise

Cost effective design and construction of a new administration building that meets all Port functional requirements and is completed within budget and on schedule will require a general contractor with specialized experience and qualifications working in coastal conditions. The Port expects that by using the CM/GC process and employing that contractor during design will help ensure successful completion of this facility.

The CM/GC selection process is based on qualifications and experience and, although price is a consideration, it is less important than qualifications. The Port expects to benefit from hiring a contractor with specialized expertise to assist in design and provide construction management. A low bid process does not provide the opportunity to hire the most qualified contractor with the specialized expertise needed for this project.

Market Conditions

The Port expects the CM/GC will be able to provide the design team with current and accurate input on construction costs and techniques as well as material and equipment availability, suitability and cost. It is expected this information will reduce design and construction time and costs.

Use of the CM/GC process also allows for expediting certain portions of the work (e.g., site work, foundations, on-site utilities, long lead items, etc.) while still completing other portions of design (e.g., interiors, HVAC systems, etc). Managing and timing the construction work in relation to the market can result in cost savings. These "fast-track" benefits are not available when using the low-bid process.

The CM/GC process allows for development of bid packages that can provide more opportunity for local contractors to bid on particular work. This process can be supplemented by requiring the CM/GC to conduct forums to inform local contractors of construction bidding opportunities.

Funding Sources

The Port expects to fund this project using unrestricted NOAA funds and, as such, it is important that the Port obtain reasonable assurance about the final cost and the related "flow of funds" schedule for the work. The CM/GC process which serves to reduce the likelihood of construction changes orders, provides for this assurance to a greater degree than when using the design-bid-build process. The CM/GC process provides more substantial and effective cost controls for limited and public budgets that will benefit the Port. The overall team approach, value analysis, constructability reviews and on-going attention to current construction material and labor costs help ensure effective budget controls.

Retained Counsel and Consultants

The Port's legal counsel is Peter Gintner with Macpherson, Gintner & Diaz in Newport, Oregon. Mr. Gintner is experienced with all aspects of the CM/GC construction process and has provided legal counsel for Lincoln County School District, Central Lincoln People's Utility District and the Port of Newport on construction projects that selected and employed a CM/GC.

The Port employs Rick Fuller. Mr. Fuller has recent experience working with CM/GC projects and managing owner interests in development and construction of the NOAA MOC-P facility in Newport. Mr. Fuller has experience in CM/GC selection, contract negotiation and the CM/GC construction process.

The Port expects to employ Goebel/Capri as architects to complete preliminary planning and schematic design for the new facility. Goebel/Capri has experience in the CM/GC process.

Public Benefit

There is substantial public benefit associated with all of the above findings. The Port expects use of the alternate contracting process will allow for selection of a CM/GC well qualified for the specialized and technical challenges of this project and thereby enable the Port to construct a cost effective administration building within an established budget and schedule.

Conclusions

Based on the foregoing, the Board of Commissioners of the Port of Newport conclude the following:

1. It is unlikely that the requested exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts.

2. Awarding a public improvement contract under the requested exemption will likely result in substantial cost savings to the Port of Newport.