

Notice of Public Hearing

**Columbia Development Authority**

**Parking Lot and Interpretive Areas Project**

**Public Improvement Contracting Exemption**

January 18, 2024, at 1:00 pm

The Board of the Columbia Development Authority, an entity formed by Intergovernmental Agreement between the County of Morrow, County of Umatilla, Port of Morrow, Port of Umatilla and the Confederated Tribes of the Umatilla Indian Reservation (hereinafter "CDA"), acting in the capacity as the Local Contract Review Board, will conduct a Public Hearing on January 18, 2024, beginning at 1:00 pm to review and take comments on the draft findings of the adoption of an exemption from competitive bidding to ORS 279C.335(2). If approved, the exemption would allow CDA to solicit and award a contract pursuant to a Design-Build alternative contracting method for public improvements associated with the design and construction of the South Oregon Trail parking lot and Interpretive area and 1944 Explosion Site Fencing and Interpretative area, which will be located at the former Umatilla Chemical Depot. The meeting will begin at 1:00 pm. A public hearing will be during the meeting, and may be attended by zoom or in person at the Port of Morrow in Boardman, Oregon. All interested parties are encouraged to attend.

FINDING OF FACT SUPPORTING THE EXEMPTION FROM COMPETITIVE BIDDING REQUIREMENTS AND ALLOWING THE USE OF DESIGN BUILD FOR THE SOUTH OREGON TRAIL PARKING LOT AND INTERPRETIVE AREA AND 1944 EXPLOSION SITE FENCING AND INTERPRETATIVE AREA, WHICH WILL BE LOCATED AT THE FORMER UMATILLA CHEMICAL DEPOT (hereinafter referred to as the “Project”).

Before the Columbia Development Authority Board,

I

**BACKGROUND**

The CDA proposes to build a new ADA compliant parking lot and scenic overlook area.

The CDA is proposing to use an alternative to the competitive bid process and employ a delivery method known as Design-Build. The Design-Build contractor would be evaluated and selected based on specific experience and financial background, general approach to design-build contracting, and site-specific approach to the Project.

II

**FINDINGS REGARDING REQUIRED INFORMATION**

Definitions:

Oregon Revised Statute (“ORS”) 279C.300 states that the policy of the State of Oregon [is] that public improvement contracts awarded under this chapter must be based on competitive bidding, except as otherwise specifically provided in ORS 279C.335.

ORS 279C.330(2) “Findings” defined. As used on ORS 279C.335, “findings” means the justification for a conclusion that a contracting agency or state agency, in seeking an exemption from the competitive bidding requirement of ORS 279C.335(1), reaches based on the considerations set forth in ORS 279C.335(2).

ORS 279C.300 requires competitive bidding of public improvement contracts unless specifically excepted or exempted from competitive bidding as provided under 279C.335. Under ORS 279C.335(2), a local contract review board may exempt certain public improvement contracts or classes of contracts from competitive bidding based on the following:

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

In approving the findings under ORS 279C.335(2)(b), the Local Contract Review Board shall consider the type, cost and amount of the contract and, to the extent applicable to the particular public improvement contract or class of public improvement contracts, as outlined in ORS 279C.335(2)(b)(A-N).

For the reasons set forth more fully below, it is recommended that a design-build contractor be selected by utilizing the competitive proposal process in accordance with ORS 279C.400. The design-build proposal is advantageous for this project because:

1. It allows the contractor to be involved early in the design process, providing an opportunity for value engineering;
2. It allows the contractor to customize its proposal to suggest creative and innovative approaches to the project execution.
3. The design-build proposal process limits CDA's exposure to some risks, including disagreement between the designer and constructor and reduced errors of the contractor due to contract document interpretation and enforcement.
4. It allows for efficiency in the design and construction process which will result in time savings and a project completed faster than a typical design-bid-build delivery method.

ORS 279C.335(5)(a) states that a contracting agency shall hold a public hearing before approving the findings required by subsection (2) of this section and before the local contract review board grants an exemption from the competitive bidding requirement for a public improvement contract or a class of public improvement contracts.

ORS 279C.335(5)(b) states that Notification of the public hearing must be published in at least one trade newspaper of general statewide circulation a minimum of 14 days before the hearing.

ORS 279C.335(5)(c) states the notice must state that the public hearing is for the purpose of taking comments on the draft findings for an exemption from the competitive bidding requirement. At the time of the notice, copies of the draft findings must be made available to the public. At the option of the contracting agency or state agency, the notice may describe the process by which the findings are finally adopted and may indicate the opportunity for further public comment.

ORS 279C.335(5)(d) states at the public hearing, the contracting agency or state agency shall offer an opportunity for any interested party to appear and comment.

### III

#### **FINDINGS REGARDING COMPETITION**

The Design-Build Contractor will be selected based on specific experience and financial background, general approach to design-build contracting, and site-specific approach to the Project. Based on these criteria, the exemption from the competitive bidding process for this Project is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts. The following facts support this finding:

1. Solicitation Advertisement. Pursuant to ORS 279C.360, the solicitation will be advertised in the East Oregonian.
2. Full Disclosure. To ensure full disclosure of all qualification requirements, the solicitation package will include:
  - a. The criteria that CDA will use to evaluate the proposals for the design-build contractor;
  - b. How the CDA will use interviews in the procurement and how the CDA will evaluate information obtained from the interviews;
  - c. Description of any other criteria CDA may consider in selecting a design-build contractor, including:
    - i. Proposer qualifications;
    - ii. Proposer experience;
    - iii. Organizations and key personnel;
    - iv. Project approach.
  - d. Description of how CDA will combine scoring from the interviews and from evaluating the proposals to arrive at a proposer's final score and ranking;
  - e. State that CDA will not pay any amount that exceeds a fixed price, guaranteed maximum price or other maximum price specified in the public improvement contract unless the amount results from material changes to the scope of work set forth in the public improvement contract and the parties to the public improvement contract agree in writing to the material changes;
  - f. State that the contracting agency will conduct the procurement in accordance with model rules the Attorney General adopts under ORS 279A.065(3);
  - g. Specify deadlines and time periods for the procurement that allow prospective contractors a reasonable opportunity to submit proposals

3. Selection Process. The selection process and negotiation will include the following elements:
  - a. Prior to the submission of proposals, CDA will provide an opportunity to interested contractors to conduct a walk-through inspection tour of the site. Knowledgeable representatives will be available to answer questions about the site. The purpose of this pre-proposal conference and site visit is to answer any questions regarding the RFP, proposal procedures, and administrative matters and to clarify technical matters.
  - b. Each of the selected Proposer's submission will be reviewed for completeness and compliance with the minimum requirements listed in the RFP. CDA will score the proposals. The scores will be combined into overall scores for each proposer.
  - c. Based upon these final scores, the Evaluation Panel will rank the Proposers and provide an award recommendation.
  - d. Upon expiration of the mandatory award protest period, CDA will seek to enter into contract with the top ranked firm. If not successful, CDA will seek to enter into contract with the next ranked firm. This process will continue until the CDA has entered a contract with a qualified proposer.

#### IV.

#### **FINDINGS REGARDING COMPETITION COST SAVINGS AND SUBSTANTIAL BENEFITS TO AGENCY**

ORS 279C.335(2) states a local contract review board may exempt a public improvement from the competitive bidding requirements of subsection 1 after the local contract review board approves a finding that the exemption will likely result in substantial cost savings and other substantial benefits to the contracting agency or the state agency that seeks the exemption. Based on the local contract review boards consideration of the below factors, an award of a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the CDA

1. Persons available for bid. There is a limited base of contractors qualified to do the work required within the time required by CDA. Using a design-build contractor will mitigate the risk of having contractors not qualified to perform the scope of work. The Project will be advertised in the East Oregonian.
2. Construction budget and operating costs for completed public improvement. The design-build contract format allows for direct consultation during the design with the contractor performing the work. This opportunity fosters value engineering discussions which improve efficiency to construction methods and can alter the end product by fully considering constructability challenges. Overall Project costs will benefit in a cost

savings. Additionally, there are many, less tangible, savings that may be realized. Some of these less-tangible savings include reduced staff resources dedicated to the Project, a Project team that works more cohesively, and shorter design and construction timelines.

3. Public benefits that may result from granting exemption. Expected benefits of the exemption include: (1) constructability and plan review; (2) cost savings; (3) greater cost certainty of the budget; and (4) faster completion of the Project.

When compared to the typical low bid method of project delivery, the design-build method provides opportunities to expedite the schedule and improve overall project quality, thereby reducing the overall impacts to the public during construction. Early work packages can be evaluated by the contractor to allow for project schedule critical work to proceed ahead of complete design. Under a design-build approach, the contractor will be responsible for the design and structuring the project for an optimal schedule.

4. Value engineering techniques. Value engineering techniques used by the design-build contractor will allow for increased cost savings of the public improvement and still provide for the most benefits needed in the Project. Techniques would include review and analysis of designs, costing of processes and materials for best use, compaction of schedules, additional and varied times of reviews can allow for cost and benefit savings as well as estimating of construction processes, materials used, labor and other costs.
5. Cost and availability of specialized expertise. The design-build contractor needs skills in design, building methodology and administration. The design-build contractor will provide a complete budget and phasing plan with known costs before beginning construction work at the site.
6. Likely increases in public safety. The design-build contractor will determine and incorporate special precautions to ensure public safety and work crew safety during the execution of the work. Additionally, the design-build process allows for screening of the potential contractor and their safety record which is not possible in competitive bid methods.
7. Whether granting exemption may reduce risks. The design-build method will facilitate early identification and mitigation of risks by leveraging the expertise of the design-build contractor. The design-build method allows CDA to select the design-build contractor based on their staff qualifications and demonstrated success on past projects.
8. Whether granting exemption will affect source of funds. Granting of the exemption will not affect the source of the funds for the renovation.
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. The design-build process enables the design-build contractor to better manage the negative impact of inflationary market conditions in several ways:

- a. Facilitate the early purchase of certain project elements if appropriate to take advantage of market prices or weather windows.
  - b. Start construction sooner than the traditional method of contracting would allow because of the ability to start construction of early schedule tasks before other elements of the project are designed.
  - c. Deliver the Project in a shorter overall time than by the traditional method, reducing overhead costs.
10. Whether granting exemption will better enable CDA to address the size and complexity of the public improvement. The design-build contractor is selected in large part on qualifications. The Project will benefit from collaboration within the design-build team regarding design, construction, and permitting issues. Risks are better identified, understood, and managed. Problems are solved proactively with the likelihood of resolving technical complexities enhanced without impacting schedule and costs. Traditional bidding methods do not allow for designer-owner-contractor interaction during design development to resolve technical issues most effectively.
11. Whether the public improvement involves new construction or renovates or remodels an existing building. The public improvement involves new construction.
12. Whether the building will be occupied or unoccupied during construction. The Project will be unoccupied during construction.
13. Whether the public improvement will require a single or multiple phase of construction. The public improvement will require a single phase of construction.
14. Whether CDA has retained or will retain persons and agents with necessary expertise and substantial experience. CDA has retained persons and agents with necessary expertise.

## V

### CONCLUSION

In accordance with ORS 279C, the Board of the Columbia Development Authority finds that:

Given the above procurement process, selecting a design-build contractor pursuant to the exemption is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts.

Based on the findings stated above, awarding of this exemption and contract with its unique challenges and circumstances pursuant to the exemption will result in cost savings to the CDA.

The Board of the Columbia Development Authority recommends that the design-build delivery method be implemented for the Project. Design-build puts the Project in the best position to meet budget, deliver the project at least cost, minimize public impacts, achieve needed quality, acquire the special expertise required to successfully construct this unique project, and to deliver the project safely.

An exemption from competitive bidding requirements is appropriate and approved under the facts set forth above.

**FINDINGS APPROVED, AND EXEMPTION GRANTED**

Signatures: