

RESOLUTION NO. 18-47

A RESOLUTION AUTHORIZING A SPECIAL PROCUREMENT USING THE COMPETITIVE PROPOSAL PROCESS OF CONTRACTING IN LIEU OF COMPETITIVE BIDDING FOR THE CONSTRUCTION CONTRACT FOR THE BOONES FERRY ROAD – PHASE 1 PROJECT.

WHEREAS, the City Council of the City of Lake Oswego 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) and ORS 279C.400 provides a process for exempting certain contracts from competitive bidding and authorizes the selection of a contractor through the request for proposal (“RFP”) method of solicitation and construction as an alternative to traditional competitive bidding, pursuant to OAR 137-049-0130, -620, -640, and -650; and

WHEREAS, the findings (“Findings”) in Exhibit A to this Resolution address the criteria of ORS 279C.335(2):

- (a) The exemption is unlikely to encourage favoritism in awarding 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 savings and other substantial benefits to the contracting agency; and

WHEREAS, the draft Findings were made available to the public 14 days before the public hearing on this Resolution; and

WHEREAS, the City Council determines that the Boones Ferry Road – Phase 1 project should be constructed by the competitive proposal method of contracting.

NOW THEREFORE, IT IS HEREBY RESOLVED AS FOLLOWS;

1. The City Council adopts the Findings in Exhibit A to this Resolution.
2. Based upon the Findings, the City Council concludes that the exemption of the construction contract from competitive bidding, and the use of the alternative competitive proposal method of contracting, will promote competition, will not encourage favoritism, and is likely to result in substantial cost savings and other substantial benefits to the City.
3. The contract for construction of the Boones Ferry Road – Phase 1 project is exempted from competitive bidding, and the contractor shall be selected by the competitive proposal method in accordance with the City’s public contracting rules and the process

described in the Findings.

4. This Resolution shall take effect upon adoption.

ADOPTED this 6th day of November, 2018, by the City of Lake Oswego City Council.

AYES:

NOES:

ABSTAIN:

EXCUSED:

Kent Studebaker, Mayor

ATTEST:

Anne-Marie Simpson, City Recorder

APPROVED AS TO FORM:

David Powell, City Attorney

Exhibit A to Resolution 18-47

Findings

Oregon Revised Statute (ORS) 279C.335 requires competitive bidding of public improvement contracts unless specifically exempted from competitive bidding. Under ORS 279C.335(2), a local contract review board (Lake Oswego City Council, in this instance) may exempt certain public improvement contracts from competitive bidding based on the following:

- a. The exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement 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.*

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

The traditional bidding method for contractor procurement is low-bid, which primarily considers cost quote. An alternative contracting process may be used that scores contractors based on weighted scoring criteria and cost. Alternative contracting processes that weigh criteria other than cost have proven to be advantageous for the state and other local agencies on complex capital projects, resulting in assurance that the overall project goals may be considered and proposers evaluated on all criteria, not just cost. The highest scoring proposer based on all evaluation criteria is then identified. The experience from the state and other local agencies is that this process has resulted in the selection of a contractor with experience and capability to assure the overall success of the project than would otherwise occur in a typical low bid scenario. The LOTWP project also did not use the traditional low-bid process – a request for qualifications / request for bids process was used, where pre-qualified highly-qualified and experienced bidders would provide final bids.

For the reasons set forth more fully below, it is recommended that the contractor be selected by utilizing the competitive proposal process in accordance with ORS 279C.400 to solicit and award the public improvement contract for construction of Work Order 183 – Boones Ferry Road– Phase I project.

BACKGROUND

The Boones Ferry Road – Phase 1 project is a roadway improvement project that will reconstruct the entire roadway section from south of Madrona Street to north of the Oakridge Road/Reese Road Intersection, including a signalized intersection at Lanewood Street. The improvements will include a new roadway section, improved storm drainage and stormwater quality facilities, new and upgraded traffic signals, crosswalks, street lights, sidewalks, bike lanes, left turn lanes, center medians, and will underground franchise utilities.

Constructing all of these improvements on a Major Arterial roadway makes this the most complex roadway project ever undertaken by the City. This complexity will require a qualified contractor that has displayed the skill set on previous projects of similar magnitude and complexity, as well as the ability to

identify alternate approaches to value engineer and potentially reduce overall costs and/or schedule. Typically the City would use a “low-bidder” approach to award a construction contract and only cost of the project would be considered. However, if an exemption is granted and the competitive proposal process is allowed to be used, the contractor would be required to submit extensive information on past project experience, an organized and thoughtful project approach for this effort, innovative ideas on how to save time and money, and also details on how to interact with the local businesses and general public. This type of information would then be used by the City’s selection team to evaluate each contractor.

The Request for Proposal method is a common method to solicit consultants; this will be the first construction project to go through a competitive proposal process. The City has entered into other types of alternative bidding (e.g. CM/GC, RFQ/RFB). The competitive proposal process can be viewed as a contractor prequalification and bidding wrapped up into one process, and is referred to as a “best value” approach for contractor selection.

FINDINGS

Pursuant to ORS 279C.335, the following findings justify an exemption from OAR 137-049-0130 for the solicitation of a contractor for the Boones Ferry Road – Phase 1 project by competitive “best value” proposal.

1. The exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public involvement contracts. (ORS 279C.335(2)(a))

The City will award the contract through an open and advertised competitive proposal process. The alternative procurement method is open to all interested contractors, including those typically participating in the traditional low bid procurement process.

Favoritism will not play a role in the selection of the contractors. Selection will be conducted through an open and advertised Request for Proposal (RFP) process and the evaluation criteria will be stated in the RFP. All qualified firms will be invited to submit proposals. The City of Lake Oswego will advertise a RFP notice in the *Daily Journal of Commerce* in order to provide project solicitation information to all interested contractors. Proposers will be evaluated based on clearly stated criteria. A selection committee comprised of the consultant construction managers and experienced City of Lake Oswego staff will perform the evaluation, with written scoring based on the evaluation criteria. There will be an opportunity for proposers to protest the scoring of proposals per OAR 137-049-0450.

2. Substantial cost savings and other benefits (ORS 279C.335(2)(b)).

The exemption to the low-bid competitive process will likely result in a substantial cost savings and other benefits to the City and community, with consideration of the following factors required by OAR 137-049-0630 and ORS 279.335(2)(b):

A. How many persons are available to bid;

A publicly advertised competitive proposal process will be utilized to solicit interest from qualified contractors; granting the exemption does not decrease the opportunity or ability for any qualified contractor to submit a proposal.

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

The construction phase for the Boones Ferry Road – Phase 1 project is currently estimated to be approximately \$23 million. This cost includes construction management and City staff time as well as estimated construction costs.

The construction budget will not be adjusted due to the alternate bidding method. However cost savings and schedule acceleration may be identified by the contractor during the proposal period, when utilizing the alternative solicitation method.

By selecting a qualified contractor based on evaluation criteria that addresses the overall success of the project, including cost, the City will be able to select the “best value” proposer to work through the construction timeline, balancing the identified community interests and desires in completing the improvements efficiently, safely, and within budget.

C. Public benefits that may result from granting the exemption;

As previously mentioned, the proposers will be required to provide a proposal that responds to established scoring criteria. Outlined criteria will provide a chance for proposers to describe how they have dealt with working on similar projects in regards to schedule reduction, public outreach, and utility relocation.

Importantly, construction of the various segments has the potential to cause significant disruption to businesses, residents, and the traveling public if the construction is not managed exceptionally well. Therefore, selection of an experienced, cooperative, and solution-oriented contractor who will coordinate and execute construction of this project in a safe, proficient, and expedient manner will greatly benefit the public. Experienced contractors also have the knowledge to be able to offer value engineered solutions leading to a better value for the public. The public will also benefit from improved quality of the finished product by having an experienced contractor implement the improvements.

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

Utilization of the alternative bidding method for contractor selection will provide the proposer the opportunity to propose cost reducing or value engineering options that will be beneficial to the community and City. The contractor may elect to identify these options to stand out from other proposers and increase their respective score. Upon selection the City would then have the option to negotiate the proposal’s cost component, and potentially decrease the cost of the public improvement.

The traditional low-bidder method of contracting has no requirement or incentive to value engineer the design. The contractor may identify value engineering opportunities during the bidding process, however, the bidder would not be incentivized to communicate those to the City. This approach typically results in early and increased change orders, requiring fee baseline increases, and results in a financial benefit to the contractor and/or delay to the project. Either way, it is an increased risk to the City and often delays to the project.

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

The construction of the project includes work that will require a contracting team with a depth of knowledge and experience, including but not limited to: stormwater management, erosion and sediment control, landscaping, tree removal, traffic control management, earth moving, water distribution, asphalt paving, utility relocation, traffic signal and illumination, and other typical construction expertise associated with constructing a major transportation corridor.

The selection of a contracting team with specialized expertise to construct the improvements will increase the likelihood of the project being completed on or ahead of schedule, and resulting in lower costs and increased benefit to the community. The ability to consider expertise, experience, and other factors in the contractor selection is integral to the competitive proposal process, but is not part of the traditional low bid process.

F. Any likely increases in public safety;

The construction of the Project is very complex, requiring a contractor with expertise to manage an array of challenges and maintain a safe work environment for personnel and the travelling public. The contract documents include best practices and standards that ensure safety for both pedestrians and the traveling public. However, the ability to execute contract documents and maintain a safe work zone typically takes oversight from a team of experienced and knowledgeable contractor and subcontractors working in unison with good communication.

The ability to coordinate all the intricacies of the project would be especially challenging to an inexperienced or narrowly focused team. This project is very complicated and will require on-going coordination with City of Lake Oswego staff, the construction manager, franchise utilities, emergency service providers, the community, inspectors, and others. The community will be best served by a well experienced contractor who has worked on projects of similar or greater complexity that require similar levels of coordination and communication to a multitude of stakeholders.

G. 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 risks to the City in any construction project are the quality, cost, and schedule of the work. The greatest reduction in risk comes by allowing the City to consider critical elements of experience, schedule, and cost

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

The exemption would have no effect on the project funding sources.

I. Whether granting the exemption will better enable the contracting agency to control the impact that market conditions may have on the cost or time necessary to complete the public improvement;

The competitive proposal process will enable the City to control the impact of market conditions by allowing the contractor to propose a reduced schedule and/or value engineering, prior to the contract being executed.

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

Construction of a project like Boones Ferry Road – Phase 1 is very complex, with improvements including a complicated segmented construction sequence, highly coordinated scheduling, franchise utility relocation coordination, and dynamic traffic control. To ensure the safety of the public and to coordinate with business owners, a project this complex requires technical expertise, knowledge, and experience, all of which can be factored into the competitive proposal process. The selection of a contractor with demonstrated experience and success in implementing similar projects will result in a substantially lower risk to the City because it increases the likelihood of the project being completed on budget, with fewer construction delays and change orders. All of this can result in a lower cost and increased benefit to the community. The RFP process will take into account each contractor's past performance and technical knowledge based on the quality of previous projects as well as the technical complexity of the project.

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

The Boones Ferry Road – Phase 1 project consists of both new construction and renovation/rehabilitation of the roadway. Improvements will include the construction of a new roadway section including sidewalks, bike lanes, landscaped medians, illumination, signals, and utility relocation (undergrounding). The complexity of the project is increased by the fact that this roadway is classified as a major arterial and the project will need to be completed while it remains open for use.

L. Whether public improvement will be occupied or unoccupied during construction;

The project team has developed a staging plan that would require the project to be done in three segments. The alternative bidding method would allow the contractor to evaluate the proposed staging order and propose an alternative that may reduce schedule, and/or cost. However, it will be required that the roadway remain open (occupied) by keeping one open lane in each direction with a two-way left turn lane. When work is being done in the median, the two-way left turn lane will not be required.

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

The project will be advertised as one phase with multiple segments for construction. The scoring criteria will allow each respective contractor to recommend the best approach to execute the three segments.

N. Whether the contacting 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.

Although the City has not used the competitive solicitation proposal type of alternate contracting method for construction contracts before, City staff has experience in soliciting and negotiating engineering services contracts through the use of RFPs, and alternative solicitation methods of CM/GC and RFQ/RFP. Soliciting proposals from construction consultant specifically, and consultants generally, is very similar to the proposed alternative proposal method. The City has also contracted with the knowledgeable staff at Otak, Inc. for preconstruction contract management, which includes the selection of a contractor via the competitive proposal method. Staff also investigated use of the “best value” solicitation methodology used by the state and other local agencies, and throughout the country. This approach has a track record of being highly successful for use on complex projects such as Boones Ferry Road – Phase 1.