

**FINDINGS IN SUPPORT OF AN EXEMPTION FROM COMPETITIVE BIDDING UNDER ORS
279C.335(2)
BELLTOWER RESTORATION PROJECT**

Purpose

Columbia County is the recipient of a \$2,000,000 State grant to make improvements to its Court facilities. A requirement of the permit to construct the Court facility improvements is to restore the Belltower. A belltower restoration design has been approved by the St. Helens Historic Commission. Due to funding limitations the County is seeking proposals to complete the restoration according to the existing design. As an alternative, the County is seeking proposals to complete the restoration according to the existing design but with alternative materials that would reduce the cost of project. Finally, as an alternative, the County is seeking proposals to replace the belltower roof. The General Services Director recommends using a one-step competitive proposal process for a basic negotiated construction contract for restoration of the belltower and roof replacement in accordance with ORS 279C.400 to 279C.410 and OAR 137-049-0600 to 137-049-0690.

The request for proposals alternative contracting process is authorized for procurement of construction as long as the Local Contract Review Board approves an exemption from competitive bidding as provided in ORS 279C.335(2). The Columbia County Board of Commissioners is the County's Local Contract Review Board under ORS 279A.060.

Introduction

Use of Alternative Contracting methods, such as Basic Negotiated Construction Contracting, is made possible under ORS Chapter 279C.335, which permits certain contracts or classes of contracts to be exempt from competitive public bidding under strict procedural safeguards. Like other alternative contracting methods, a Basic Negotiated Construction Contract method has different legal requirements than a typical design-bid-build project delivery method.

Pursuant to ORS 279C.335(2), a local contract review board may exempt specific contracts from traditional, competitive bidding if it finds that:

- “(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 or the state agency that seeks the exemption * * *. In approving a finding under this paragraph, 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, the following:

- (A) How many persons are available to bid;

- (B) The construction budget and the projected operating costs for the completed public improvement;
- (C) Public benefits that may result from granting the exemption;
- (D) Whether value engineering techniques may decrease the cost of the public improvement;
- (E) The cost and availability of specialized expertise that is necessary for the public improvement;
- (F) Any likely increases in public safety;
- (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;
- (H) Whether granting the exemption will affect the sources of funding for the public improvement;
- (I) 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;
- (J) Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement;
- (K) Whether the public improvement involves new construction or renovates or remodels an existing structure;
- (L) Whether the public improvement will be occupied or unoccupied during construction;
- (M) Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions; and
- (N) Whether the contracting 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.

Findings

1. Competition and Cost Savings (ORS 279C.335(2)(a))

A. Competition.

For the reasons that follow, a negotiated contract procured through a competitive proposals process is unlikely to encourage favoritism and diminish competition. A one-step competitive proposals process will involve an RFP that will be publicly advertised with disclosure of the alternative contracting method in local as well as industry publications. A contract will be awarded based on selection criteria identified in the RFP that will be based on, among other things, cost, quality of past projects, personnel qualification, and ability to stay within budget. An opportunity to protest the award will also be available in accordance with **ORS 279C.400 to 279C.410 and OAR 137-049-0600 to 137-049-0690.**

B. Cost Savings.

A competitive proposals process in this case will result in cost savings because it will allow for the selection of a contractor based on cost as well as past performance, including a demonstrated ability to construct quality projects within budget and knowledge of cost-savings alternative materials. The competitive bidding process, on the other hand, relies solely on the lowest bid, which can result in higher costs due to change orders. A competitive proposals process will also allow for clarification and collaboration during the negotiation phase of the procurement, which will reduce the need for costly change orders.

2. Substantial Cost Savings and Other Public Benefits (ORS 279C.335(2)(b))

A. How Many Persons Are Available to Bid

There should be no reduction in the number of persons available to bid under the competitive proposals process versus the competitive bid process. As with a competitive bid solicitation, the RFP will be advertised in the *Daily Journal of Commerce*, a trade journal of statewide circulation, and the *Scappoose Spotlight*, a local newspaper of general circulation. All licensed contractors will have the opportunity to submit a proposal. Proposals submitted by small-scale contractors and joint venture partnerships will be considered and even encouraged. The County will encourage local contractors to participate in the RFP process as well.

B. Construction Budget and Projected Operating Costs

The Belltower restoration is being funded by a \$2,000,000 State grant to make improvements to its Court facilities. The project is expected to be over budget, leading to the need to find cost-cutting measures if possible. Because the County is not able to supplement the project with general fund dollars, it is critical that the project stay within the funding constraints of the grant. A competitive proposal process will keep the project within the budget, or as close to it as possible, by allowing additional opportunity for value engineering during the contractor selection and negotiation phase. Under this format the County and contractor will have time to collaborate on finish options and other project details prior to finalizing an agreement. This will significantly limit the potential for costly change orders by providing clarification and addressing discrepancies within the construction documents up front.

C. Public Benefit that May Result from Granting the Exemption

It is of utmost importance to the public that the finished project embraces the history and

culture of the local community, is of high-quality and easy to maintain to ensure a lasting positive impression to its end-users, neighbors and passersby. To ensure these goals are met, the County has taken a hands-on approach during each of the project phases leading up to this point and desires to continue doing so throughout its completion. Using a competitive proposals process instead of a low-bid process allows the County to evaluate the quality of a contractor's finished product while considering the contractor's history of performing projects within budget.

D. Whether Value Engineering May Decrease the Cost

A negotiated contract will provide the County an increased level of flexibility and choice during the construction process, assisting in the successful delivery of a high-quality project outcome. Continued collaboration between the Project Architect/Engineer and County management personnel on construction details, installation, fabrication, budget and other aspects of the project will allow the County to make informed cost-benefit tradeoff decisions early on during the contract negotiation phase of the process. A negotiated contract with a stipulated sum or other arrangement similar to a fixed price contract will encourage the General Contractor to work with the County to find the highest quality, most cost effective solutions to unforeseen issues and provide a wider range of choice on the final selection of finishing options and materials.

E. Specialized Expertise Required

Even while the project is relatively small structure, there are many levels of detail that can impact its overall finished quality. Quality of craftsmanship can be noticeably distinguishable even when looking at installations of identical products and/or similar builds. It is extremely difficult to ensure an acceptable range of finish quality through written specifications alone. Vast options for finish materials and a wide range of appropriate installation techniques continually evolve. The degree at which an individual building professional is knowledgeable of current best practices, manufacturer's recommendations, and the availability of material/product selections will have either a positive or detrimental impact on the quality, cost and delivery schedule of the finished project.

The County is seeking a General Contractor who has experience on similar builds, within a reasonable proximity, that can provide specific examples of such work so the County and/or its representatives can physically inspect the quality of craftsmanship and selection of finish materials and surfaces.

County personnel with experience and expertise in contract law, construction management, public transportation, facilities maintenance and general operations will be part of a team that works with the Project Architect/Engineer and selected General Contractor to ensure the project is completed successfully. The existing close working relationship between these key stakeholders, and inherent familiarity with the city planning and building division staff, and local permitting and approval processes, will be instrumental in achieving a successful project outcome.

F. Any Likely Increases in Public Safety

Columbia County maintains an ongoing commitment and focus on risk management and safe work practices. Public safety during all construction activities associated with this project, the safety of each of the trade workers involved with its development, and a finished product that facilitates accessibility and safety of all end users who will work within and receive services

provided by this facility is an essential, non-negotiable bottom-line standard for the County. With a competitive proposal process, the County can evaluate as selection criterion a contractor's performance on prior projects in satisfying safety requirements. This determination is not available under the low-bid process.

G. Whether Granting the Exemption May Reduce Risks to the County or the Public

As described in F, above, the County is committed to risk management and safe work practices. A competitive proposal process will give the County more control over selecting a contractor that shares the County's commitment to risk management. This would not be available under the low-bid process.

H. Whether Granting the Exemption Will Affect Funding Sources

This project is funded by a \$2,000,000 State grant to make improvements to its Court facilities. The grant does not restrict the County from using alternative contracting methods.

I. Market Conditions

The construction industry is a highly volatile and fast paced environment, which often times drives companies to rush to project completion, lose focus on the overall finish quality, and argue for additional charges through change orders. The Design Bid Build process can often allow room for contractors to find minute discrepancies in contract specifications that provide avenues for change order disputes. In contrast, a General Contractor is more likely to maintain a high quality, cost-effective approach through project completion with a negotiated contract. As described above, the County and contractor will collaborate on finish options and other project details prior to finalizing an agreement under a negotiated contract. This will significantly limit the potential for costly change orders by providing clarification and addressing discrepancies within the construction documents up front. This collaboration provides a higher probability for all of the project stakeholders to maintain a sense of ownership, which evokes a higher level of pride in workmanship and a more common desire for successful completion of a high quality while controlling costs.

J. Technical Complexity

Specific portions within the scope of this project's work may not be considered technically complex on an individual basis, but coordinating the variety of trades and building professionals involved poses many technical and logistical challenges that often require complex solutions. The competitive proposals process will allow the County to select a contractor with the confidence that the contractor has the necessary competence to deal with technical complexities and can provide quality workmanship and dependable performance as a project team member. Collaboration between project stakeholders during the negotiation phase will provide additional opportunity to address technical complexities and project logistics in a proactive manner. An increased level of communication in the beginning will encourage teamwork and incentivize participants to carry out a successful project.

K. New Construction or Remodel.

This public improvement project is for restoration of an existing belltower. Compliance with historical review requirements will be critical to success of the project. A competitive proposal process will allow the County to explore options to meet those requirements at the

lowest cost.

L. Occupied or Unoccupied During Construction.

The Courthouse will be occupied during construction and there are logistical challenges to ensure that state and County functions are not stopped. A competitive proposal process will allow the County to negotiate methods to avoid conflicts.

M. Single or Multiple Phases of Construction

Construction of will be completed in a single phase.

N. Agency Expertise in Alternative Contracting Methods.

County personnel, including the project manager and legal counsel, have substantial experience in conducting procurements using a competitive proposals process. The County uses this process for many of its non-public improvement contracts. County staff's experience extends to competitive proposals involving grants.