



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Wednesday, September 20, 2023

Meeting date: _____

Department: Public Works

Title: Consider a Board Order to Schedule a Public Hearing Regarding the Use of Alternative Contracting Procedures for Acquisition of the Marion County Public Safety Radio Communications Project.

Agenda Planning Date: 9/14/2023 Management Update/Work Session Date: 9/12/2023 Audio/Visual aids

Time Required: 10 min Contact: Brian Nicholas Phone: x7943

Requested Action: Public Works is seeking Board approval of an order scheduling a public hearing to solicit public testimony regarding the use of Alternative Contracting Procedures for the purchase, installation, provisioning and commissioning of the County's Public Safety Radio Communications Project in accordance with Marion County Public Contracting Rules (MPCPR) Sections 40-0600 to 40-0690 and Oregon Revised Statute (ORS) 279C.335.

Issue, Description & Background: Public Works intends to request Contract Review Board authorization for the use of price-based and non-price-based selection criteria for the selection of a qualified vendor to design, supply and install a new public-safety-grade radio communications system, subscriber radios, and related systems and equipment for use by the Marion County Sheriff's Office, Public Works, Juvenile Services and other County departments. This is a design-build project for which the use of qualifications-based contractor selection is customary. The use of both price-based and non-price-based selection criteria will ensure Marion County selects a vendor that provides a proposal design that best fits Marion County's stated system performance requirements. MPCPR and ORS require the Board to conduct a public hearing. Then, if the Board finds that the use of Alternative Contracting Procedures is beneficial to the public, the Board may approve the use of Alternative Contracting Procedures through Board Order. The proposed date for the public hearing is October 11, 2023.

Financial Impacts: The total estimated cost of this project is \$12,000,000, of which \$11,150,000 is paid for by a combination of ARPA and DOJ (federal) funds. This is a budgeted project in the current fiscal year.

Impacts to Department & External Agencies: Construction of the proposed radio system will provide reliable public-safety-grade radio communications for the Sheriff's Office and other County departments. The system will have the capacity to provide the same services to first responder agencies throughout Marion County, should those agencies choose to use the new radio system.

List of attachments: 1. Board Order establishing the date of a public hearing 2. Findings for Exemption

Presenter: Brian Nicholas, Public Works Department

Department Head Signature: [Handwritten signature: Brian Nicholas]

BEFORE THE BOARD OF
COMMISSIONERS
FOR MARION COUNTY, OREGON

In the matter of setting a public hearing)
to consider granting an exemption to allow)
an alternative competitive process pursuant)
to Marion County Public Contracting Rules.)

ORDER NO. _____

This matter came before the Marion County Board of Commissioners, acting as the Marion County Contract Review Board (Board), at its regularly scheduled public meeting on Wednesday, September 20, 2023, to set a public hearing regarding a proposed exemption from the Marion County Public Contracting Rules.

WHEREAS, the Contracts Officer or designee has advised the Board that Marion County Public Works seeks to allow the use of an alternative competitive process to solicit proposals for the ARPA – Public Safety Radio Communications System Project, the Board believes it is appropriate to consider granting the alternative competitive process, and state law requires a public hearing before the exemption may be granted.

IT IS HEREBY ORDERED that the Board will hold a public hearing on the 11th day of October, 2023 at 9:30 AM to receive testimony regarding the proposed alternative competitive process to solicit for the ARPA – Public Safety Radio Communications System Project.

IT IS FURTHER ORDERED that notice of the public hearing be posted and published forthwith.

DATED this 20th day of September 2023.

MARION COUNTY BOARD OF
COMMISSIONERS

Chair

Commissioner

Commissioner

Original: Clerk

Cc: BOC

Public Works

Jeff White, Finance Director

**MARION COUNTY
FINDINGS FOR EXEMPTION
FROM CONTRACT REVIEW BOARD RULES FOR
ARPA – PUBLIC SAFETY RADIO COMMUNICATIONS SYSTEM**

Introduction

Marion County Public Works Department requests a public hearing to be held on October 11, 2023, to receive testimony regarding the use of a competitive Alternative Contracting Method for the procurement of goods and services for the Public Safety Radio Communications System Project.

Background

Marion County received a \$67M American Rescue Plan Act (ARPA) federal allocation in June 2021. From these funds, the Marion County Board of Commissioners awarded to Marion County Public Works (the “Department”) an allocation of \$9,000,000 for the Public Safety Radio Communications System Project (the “Project”). The Oregon Legislature has allocated an additional \$950,000 in ARPA funds to the Project and the United States Congress has appropriated \$1,200,000 in Department of Justice funding to assist with the purchase of mobile and portable radios. Total available federal funding for this project is \$11,150,000.

The Project consists of the design and construction of a new county-wide P25 Phase II trunked radio system, data transport system, and conventional radio overlay system, including the supply, provisioning and installation of all system components and subscriber radios. The majority of project funding consists of ARPA funds, which must be fully obligated by December 31, 2024, and fully expended by December 31, 2026.

Marion County Public Contracting Rules (MCPCR Section 40-0610(2), (6)) identify Design-Build as an alternative contracting method and provide detailed procedures for the procurement process. In accordance with ORS 279C.335, the Board of Commissioners, acting as the Marion County Contract Review Board (Board), may authorize this alternative contracting method as an exemption for public improvement projects when justified as prescribed in public contracting code.

Findings

The Department has identified Alternative Contracting Method as the most appropriate and preferred procurement alternative for this Project. Radio systems are proprietary in nature, designed and manufactured by one of several radio equipment manufacturers based on the owner’s specified performance requirements, jurisdictional topography, available radio broadcast and receive sites, budget, operation and maintenance constraints, and many other considerations. Each radio manufacturer offers a different range of standard and optional system features and capabilities, which are further affected by the proprietary architecture of the designed system. While it is feasible for a design consultant to design certain elements of a radio system, the provisioning of a radio system can only be performed by the radio manufacturer. These are design-built systems that require factory design by the manufacturer and are, therefore, traditionally delivered using Design-Build Project Delivery. The public benefits of using Design-Build Project Delivery in this context are as follows:

1. Design-Build maximizes competition because any and all firms representing manufacturers capable of satisfying the owner’s performance specifications are qualified to submit a

competitive proposal. Each system design is specific to a manufacturer. Low-bid procurement of a consultant-designed radio system would preclude all proposers except those certified by the specific manufacturer around which the low-bid bid documents were prepared.

2. Design-Build eliminates wasted time and expense associated with the development of fully detailed bid documents, which would only then be supplanted by the manufacturer's proprietary design.
3. Design-Build minimizes the project delivery timeline, which is essential to satisfying the aggressive funding deadlines mandated by ARPA.
4. Design-Build places performance obligations on the radio manufacturer, enabling the owner to demand performance guarantees from the radio manufacturer regarding the performance and reliability of the finished product. In low-bid procurement, the owner carries these risks, which are significant for a large, complex system like a regional radio system.

Design-Build Project Delivery mandates the use of Best-Value contractor selection, an Alternative Contracting Method that uses a combination of price-based and non-price-based selection criteria, in lieu of low-bid procurement. The use of Best-Value contractor selection ensures contract award is made to a qualified proposer that provides the best combination of quality and price meeting the county's minimum specified performance requirements.

A. Statutory Requirements

The Department desires to use an Alternative Contracting Method for the Project. Oregon public contracting code, as set forth in ORS Chapter 279C, allows public agencies to use competitive Best-Value contractor selection for public improvement contracts and provides flexibility in both proposal evaluation and contract negotiation under specific conditions and when authorized by the Local Contract Review Board. ORS 279C.335 requires the Local Contract Review Board make certain findings before authorizing the use of an Alternative Contracting Method. These findings must demonstrate the following:

1. *It is unlikely that an exemption from the competitive bidding requirements of ORS 279C.335 will encourage favoritism in the awarding of the public improvement contract or substantially diminish competition for the public improvement contract.*
 - (1) The use of Best-Value contractor selection and Design-Build Project Delivery maximizes competition by enabling a multitude of radio manufacturers to submit competitive proposals using their own proprietary products, systems and designs. The solicitation will be publicly advertised to ensure a fair, open, and competitive process.
 - (2) Best-Value selection will be based on the following selection criteria using a uniform scoring system:
 - i. Proposer qualifications and experience,
 - ii. Proposer's project approach and management plan,
 - iii. Proposer's work plan and proposed delivery schedule,
 - iv. Proposer's staffing plan and cost control measures,
 - v. Proposer's proposal design and conformance with County's specified performance requirements,
 - vi. Proposed price, and
 - vii. Other factors specific to the Project.

- (3) The Best-Value selection process used to determine the highest-ranking proposal(s) will be based on a team review of weighted evaluation criteria identified in the solicitation.
 - (4) The solicitation will include requirements pursuant to federal, state and local public contracting code to ensure fair and open competition for subcontractors or sub-consultants.
2. *Awarding the public improvement contract under an exemption from the competitive bidding requirements of ORS 279C.335 will likely result in substantial cost savings and other substantial benefits to the County or the public.*
- (1) Allowing proposers to base their proposals on their own proprietary designs and products enables Marion County to demand performance guarantees from the radio manufacturer, making the contractor wholly responsible for system performance and compliance with Marion County's performance specifications, significantly reducing risk to the County.
 - (2) The use of Design-Build Project Delivery makes the contractor wholly responsible for achieving the project delivery deadlines associated with ARPA.
 - (3) Price will be a significant factor in the scoring of proposals, ensuring the County does not pay a premium.

For public improvement projects, ORS 279C.335(2)(b) establishes additional factors for the Board's consideration, including but not limited to: (1) availability of persons to bid; (2) construction budget and operating costs; (3) public benefits; (4) value engineering; (5) specialized expertise required; (6) public safety; (7) reduction in risk; (8) funding sources; (9) market conditions; (10) size and technical complexity; (11) new construction or renovations; (12) occupied or unoccupied during construction; (13) single or multiple phases; and (14) public and private personnel assigned to project.

The rules also require the County give public notice and hold a public hearing to receive public comment on the findings before taking action to grant an exemption to a public improvement contract from the requirement of competitive bidding.

In reviewing this exemption from competitive bidding, the Local Contract Review Board has considered the following factors:

B. Competition/Favoritism (279C.335 (2)(a)):

Awarding the project under an exemption from the competitive bidding requirements of ORS 279C.335 is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts.

1. The use of Design-Build Project Delivery will maximize competition.
2. The solicitation will be publicly advertised to ensure a fair, open, and competitive process. The County will use a formal competitive process for selecting a public improvement contractor. The procurement process allows the County to select the firm best suited for the Project based on factors such as experience, past performance, schedule, project delivery plan, proposed technical solution, price, value, and other factors specific to the Project.
3. Objective selection criteria and a formal selection process will be included in the Project solicitation for selection of the public improvement contractor. The selection process to

determine the highest-ranking proposal will be based on a team review of weighted evaluation criteria identified in the solicitation.

4. The Project solicitation will include requirements pursuant to federal, state and local public contracting code to ensure fair and open competition for any subcontractors or subconsultants. The public improvement respondents must follow specified procedures subject to the applicable state and local public contracting code for soliciting, receiving bids, and awarding any subcontracts.

C. Findings Criteria ORS (279C.335 (2)(b)):

Awarding the Project under an exemption from the competitive bidding requirements of ORS 279C.335 will likely result in no significant increase in total Project costs because (1) price will still be a significant factor in the scoring of proposals, and (2) the use of Design-Build Project Delivery will significantly reduce cost risk to the County.

As set forth in ORS 279C.335, the justification of the exemption shall include consideration of other substantial benefits, including, but not limited to:

1. **Availability of persons to bid.** The Department anticipates response from multiple qualified proposers, situated both locally and from larger markets. The use of Design-Build Project Delivery will maximize the number of potential respondents capable of submitting a responsive proposal.
2. **The construction budget and the projected operating costs for the completed public improvement.** The constructed Project will be developed to match available funding, which currently totals \$12M. This constitutes a large public improvement project. Design-Build Project Delivery is a recommended contracting methodology for large, complex construction procurements that is expected to mitigate the risk of budget overrun by shifting performance risk from the County to the contractor.
3. **Public benefits that may result from granting the exemption.** This project is funded using American Rescue Plan Act (ARPA) funds, one-time funding that expires December 31, 2026. Obligation and expenditure deadlines associated with ARPA are extremely aggressive for a project of this size and complexity. The opportunity to fund a Public Safety Radio Communications System is unlikely to occur for the foreseeable future through other funding sources. The public will benefit from the construction of critical infrastructure, the lack of which has constrained Public Safety for decades.
4. **Whether value engineering techniques may decrease the cost.** Value Engineering is largely not applicable to this project.
5. **The cost and availability of specialized expertise that is necessary.** Radio systems of this scale are proprietary systems designed by the manufacturer to satisfy the owner's performance requirements. The proposed Alternative Contracting Method ensures the specialized expertise of the radio system manufacturer is utilized in system design and deployment.

6. **Any likely increases in public safety.** The proposed Alternative Contracting Method prioritizes public safety by providing the most expedient form of project delivery contract combined with strong performance obligations from the radio manufacturer.
7. **Whether granting the exemption may reduce risks.** The proposed Alternative Contracting Method minimizes risk to the County by assigning the lion's share of cost and performance risk to the radio manufacturer.
8. **Whether granting the exemption will affect the sources of funding.** ARPA funds may be used with Alternative Contracting Methods. This exemption will not affect the sources of funds.
9. **Whether granting the exemption will better enable the County to control the impact that market conditions may have on the cost of and time necessary to complete the project.** The use of Design-Build Project Delivery is the predominant means of delivering projects of this type, so prospective proposers will be familiar and well versed in this project delivery technique.
10. **Whether granting the exemption will better address the technical complexity of the project.** The use of Design-Build Project Delivery places the management of project complexity and technical solutions in the hands of the radio manufacturer, the party best able to address these challenges.
11. **Whether new construction or renovates or remodels an existing structure.** This factor is largely not applicable to this Project.
12. **Whether the public improvement will be occupied or unoccupied during construction.** Existing radio systems must remain operational while the new radio system is being deployed. The radio manufacturer is the party best suited to design and deploy the new radio system to prevent operational disruption of existing radio systems, which is most compatible with Design-Build Project Delivery.
13. **Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions.** Project phasing is compatible with Design-Build Project Delivery.
14. **Public and private personnel assigned to project.** The Department has limited personnel resources to apply to this Project. Design-Build Project Delivery significantly reduces demands on County staff, enabling delivery of this Project using existing personnel resources.

D. Competitive Bidding Strategies

This procurement is expected to attract ample bidding competition. The proposed Alternative Contracting Method is consistent with the experience and expectations of contractors performing work in this market. Selection of the contractor will involve a competitive proposal process utilizing both price-based and non-price-based selection criteria. The contract resulting from this procurement will be categorized as a Contract for Public Improvement as defined in public contracting code, subject to

all public contracting rules, including but not limited to labor regulations, retainage and payment, bond, insurance and warranties.

E. Conclusion

Based on the foregoing, the findings outlined above justify the proposed exemption and use of an Alternative Contracting Method. The use of an Alternative Contracting Method will benefit the public by providing a project delivery approach that results in the best value, least risk and most likely opportunity to acquire the needed specialized technical solution for the Public Safety Radio Communications System Project within existing funding deadlines. Using an Alternative Contracting Method will result in a competitive proposal environment that addresses the complexity of the Project consistent with public contracting rules.