

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: 22-06-15-01

In the Matter of Approving an Exemption from Competitive Bidding and Authorizing the Procurement by Request for Qualifications of a Design-Build Contractor for the Proposed Multi-Use Community Facility and Delegating Authority to Enter into the Necessary Agreements

**WHEREAS**, the Board of County Commissioners has directed staff to include a Multi-Use Community Facility in the Lane Events Center Master Plan process; and

**WHEREAS**, the Board of County Commissioners has directed staff to work with the Eugene Emeralds to continue planning and exploring the feasibility of such a facility; and

**WHEREAS**, Lane County's 2022-2024 Strategic Plan includes an objective to evaluate a Multi-Use Community Facility with Eugene Emeralds baseball team as an anchor tenant that provides economic benefits and services to the broader community; and

**WHEREAS**, design and construction of a Multi-Use Facility of this scale and type, on the required time-line, will require specialized skills of designers and contractors working together; and

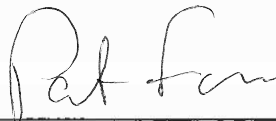
**WHEREAS**, the County's findings of fact demonstrate that the most effective contracting method to expedite the planning and construction of the Facility is by utilizing a design-build construction; and

**WHEREAS**, it is necessary to engage a design-build contractor early in order to receive an independent and realistic budget and timeline for planning and completion of the Facility;

**NOW, THEREFORE**, the Board of County Commissioners of Lane County **ORDERS** as follows:

1. The draft findings regarding an exemption from competitive bidding are approved and adopted; and
2. Procurement of a design-build contractor through a competitive Request for Qualifications process is authorized for the proposed Multi-Use Community Facility; and
3. The County Administrator is authorized to execute such documents as are necessary to engage the selected design-build firm.

**ADOPTED** this 15th day of June, 2022.



Pat Farr, Chair  
Lane County Board of Commissioners

**PROPOSED FINDINGS IN SUPPORT OF  
AN EXEMPTION FROM COMPETITIVE BIDDING AND  
AUTHORIZING THE PROCUREMENT BY REQUEST FOR QUALIFICATIONS OF  
A DESIGN-BUILD CONTRACTOR FOR THE PROPOSED MULTIUSE FACILITY**

Pursuant to ORS 279C.335(2) and (4), OAR 137-049-0630, and Lane Manual Chapter 20.200.130, staff have prepared the findings below for consideration by the Lane County Board of Commissioners, acting as the Local Contract Review Board for Lane County (LCRB). If adopted by the LCRB, these findings authorize and support adoption of an exemption to competitive bidding requirements, and to allow selection of a Design-Build contractor for construction of the proposed Multiuse Facility under consideration by the County:

**1. The exemption is unlikely to encourage favoritism or substantially diminish competition.**

Staff finds that exempting the procurement of the construction of the Multiuse Facility from competitive bidding “is unlikely to encourage favoritism or substantially diminish competition” as follows: the RFQ will be formally advertised with public notice and disclosure of the planned Design-Build contracting method and made available to all qualified contractors. Award of the contract will be based on the identified selection criteria and dissatisfied proposers will have an opportunity to protest the award. Full and open competition based on the objective selection criteria with the contract award going to the most advantageous proposer. Competition for the RFQ will be encouraged by posting in OregonBuys (Oregon procurement website), utilizing the Oregon Daily Journal of Commerce, posting on Lane County’s procurement website; performing outreach to local business groups.

**2. The construction budget and the projected operating costs for the completed public improvement.**

Staff found that exempting the procurement for the construction of the Multiuse Facility from competitive bidding will likely result in substantial costs savings to Lane County and partners, considering the following factors required by OAR 137-049-0630 and ORS 279C-335.2(b):

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

As the procurement pertains to an established trade, there are dozens of firms throughout Oregon, including numerous COBID-certified firms, which are independently qualified to meeting Lane County’s needs. or may collaborate with other firms to qualify as a team to provide the desired services.

**(B) The construction budget and the projected operating costs for the completed public improvement;**

This procurement addresses work that will likely be subject to significant public comment, design review, and conditions of approval. By integrating design and construction services into a single contract, the project will be better able to respond to public input and control costs by determining the most cost-effective methods of satisfying conditions of approval. Lane County will retain the ability to cancel the Construction Contract prior to the construction phase and procure construction

services through a competitive bid should continuing the relationship with a Progressive Design-Build contractor prove undesirable.

**(C) Public benefits that may result from granting the exemption;**

Expected benefits include:

- Obtaining, through a Progressive Design-Build team—a single entity responsible for architectural and engineering design, plan preparation, value engineering, construction engineering, construction, quality control, and required documentation—a fully integrated entity with a single point of responsibility, secured by performance and payment bonds;
- Improved ability to respond to public input and conditions of approval by integrating design consultant and construction contractor expertise into a single point of contact;
- Reduction of risk of design flaws, misunderstandings, and conflicts inherent to contractors performing based on designs in which they have had no opportunity for input, therefore reducing the likelihood of contract claims and increasing the likelihood of cost-savings through increased efficiency;
- Increased quality of work due to greater coordination of efforts between design and construction phases and the ability to evaluate prospective contractors on multiple factors including experience, expertise, and commitment to sustainability and diversity inclusion, not just pricing;
- Shortening project time as construction activity may commence prior to completion of a biddable design;
- Reduced project duration as multiple procurement processes are reduced to a single request for procurement early in the project;
- By teaming the builder and design team into an integrated single point of responsibility, the progressive design-build approach provides both increased efficiency in its administration and more reliable cost and constructability input during the design process;
- A progressive design build approach would allow Lane County to accelerate the design and construction schedule in attempt to achieve occupancy of the ballpark for the Emeralds by April of 2024. This accelerated schedule would also avoid the burden of an additional years' worth of escalation on the project budget.

**(D) Whether value engineering techniques may decrease the cost of the public improvement;**

By bringing an experienced contractor on early in the project to perform design and constructability assessments simultaneously, the potential for change orders during construction is greatly reduced, which translates into savings of both time and money when compared to other approaches to the design and construction of similar projects.

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

The scopes of work to be performed under this procurement require technical expertise in construction of a multiuse facility including amenities for a ballpark.

Granting this exemption will allow an RFQ process that allows for selection criteria accounting for such experience as well as costs, and not just low bid.

**(F) Any likely increases in public safety;**

None expected.

**(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;**

An exemption will allow for better control of risks related to:

- Project costs and schedule delays by reducing/eliminating unforeseen conditions and associated change orders through advanced collaboration between designers and those constructing the improvements;
- Communication and misinterpretation or misunderstandings between the designer and builder as design and construction will be performed by the same contractor;
- Design flaws and contractor claims due to design inadequacies as the designer and builder will be one in the same. This reduces the likelihood of Contract claims, as Lane County will be better able to hold a contractor accountable for a design or construction error because the contractor will not be able to deflect responsibility toward another firm.

**(H) Whether granting the exemption will affect the sources of funding for the public improvement;**

This exemption is not expected to affect the sources of funding for related public improvements.

**(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;**

This exemption will allow for better control of increases to project costs and schedules by reducing/eliminating unforeseen conditions associated with change orders through advanced and continuous coordination of the design and construction tasks being performed by a common contractor. Lane County will retain the ability to procure construction services through competitive bid should continuing the relationship with a Progressive Design-Build contractor provide undesirable.

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

The exemption will allow for closer and continuous coordination of investigation, design, and implementation efforts, thus allowing the Progressive Design-Build contractor the opportunity to either simplify a project's relative complexity or ensure that those performing construction have sufficient understanding of the technical requirements of the work. This increases the likelihood of stimulating innovative design solutions while addressing public input through the collaboration of the construction contractor and design team.

- (K) Whether the public improvement involves new construction or renovates or remodels an existing structure;**

This project is new construction located on existing County-owned property at the Lane Event Center.

- (L) Whether the public improvement will be occupied or unoccupied during construction;**

The property will be 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**

This project will require multiple phases to address the multiuse requirements/amenities that need to be constructed.

- (N) Whether the contracting agency has, or has retained under contract, and will use contracting 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 will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract. ORS 279C.335(3).**

Lane County has the personnel expertise and experience, and if needed, access to consultants who can ensure the successful use of an alternative Progressive Design-Build contracting method. Staff has access to third-party consultants that may provide cultural resource assessments, monitoring, negotiation, administration support, and independent cost estimate reviews.

### **3. Additional Findings:**

**A. Industry practices, surveys, trends. The industry-accepted benefits of the Progressive Design-Build method include:**

- Integrated design process results in a better, more “constructible” design that meets the owner’s objectives
- Encourages competition, especially for COBID subcontractors
- Can be completed in a faster time frame
- Costs less than a design-bid-build project that is designed and constructed in the traditional manner
- Reduces the risks of delays, cost overruns, and disputes
- Reduces the likelihood of change orders and unforeseen conditions

**B. Experience and evaluation of Lane County Progressive Design-Build projects.**

Lane County has not implemented a Progressive Design-Build process on a public improvements project. Staff are confident they have the experience and expertise to

implement such procurement contracting method, in cooperation with consultants experienced in assisting owners with design and construction of large sports facilities, as described in section 2(N) above.

**C. Benefits and drawbacks of Progressive Design-Build to Lane County's Multiuse Facility.**

The benefits re as stated above in these findings. Staff have identified no significant drawbacks to utilizing the Design-Build approach.