RESOLUTION
(44 -2017)

A RESOLUTION EXEMPTING A PUBLIC IMPROVEMENT CONTRACT FROM THE TRADITIONAL BIDDING REQUIREMENTS PURSUANT TO ORS 279C.335(2)

WHEREAS, the City is planning to construct new public works shop buildings with an as yet determined financing mechanism; and

WHEREAS, staff has determined that the City would realize significant benefits by utilizing an alternative competitive bid process in selecting a firm to manage the project and to design and construct the new buildings; and

WHEREAS, notice was provided to the public pursuant to ORS 279C.335 regarding the proposed alternative process; and

WHEREAS, a public hearing was held on the proposed alternative process on October 4, 2017; and

WHEREAS, the City will exempt the contract for the design and construction of the public works shop buildings from traditional competitive processes and will instead use the design-build method.

NOW, THEREFORE, BE IT RESOLVED BY THE FAIRVIEW CITY COUNCIL AS FOLLOWS:

Section 1 In accordance with ORS 279C.335(2) the contract for the public works shop buildings is exempt from traditional competitive bidding.

Section 2 This exemption is supported by the findings attached in Exhibit A which is incorporated by reference herein.

Section 3 This resolution is effective immediately upon its adoption.

Resolution adopted by the City Council of the City of Fairview, this 4th day of October, 2017.

Mayor, City of Fairview
Ted Tosterud

ATTEST

City Recorder, City of Fairview
Devree Leymaster

10-9-2017
Date

FINDINGS IN SUPPORT OF AN EXEMPTION FROM TRADITIONAL COMPETITIVE BIDDING PURSUANT TO ORS 279C.335(2)

Oregon law permits contract review boards, such as the Fairview City Council, to exempt a contract from traditional competitive bidding when it can make the following findings:

(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.

As an alternative to (b), if the agency has not used a particular type of alternative contracting method previously, the agency may find the method to constitute a "pilot project" in order to evaluate whether the method results in cost savings.

With respect to the Fairview Public Works Operations Facility (Project), staff has proposed delivering the project through a design-build delivery method. State law defines this method as "a form of Procurement that results in a Public Improvement Contract in which the construction Contractor also provides or obtains specified design services, participates on the project team with the Contracting Agency, and manages both design and construction. In this form of Contract, a single Person provides the Contracting Agency with all of the Personal Services and construction Work necessary to both design and construct the project." OAR 137-049-0610.

The City of Fairview has not previously constructed a public improvement using the design-build method. As such, the Project is a pilot project for the purposes of ORS 279C.335(3).

With respect to subsection (a) above, Fairview will issue a request for proposals ("RFP") inviting qualified design-build firms or teams to submit proposals for the project. By issuing an RFP, the City will use a competitive and transparent process to award a contract to the most qualified design-build contractor. The RFP will treat all proposers equally and will utilize criteria to ensure no proposer is favored over another proposer. Therefore, the City finds that the exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts.

With respect to subsection (b) above, use of the design-build delivery method for the Project will constitute a "pilot project" for the purposes of ORS 279C.335(3). Therefore, as a matter of law the City does not need to consider the 14 factors identified in 279C.335(2)(b)(A)-(N) in order to find that "the exemption will likely result in substantial cost savings and other substantial benefits." Regardless, the City believes an evaluation of those factors will nevertheless demonstrate that the exemption will likely save the City money and provide other benefits to the City.

A. Availability of Bidders. There are dozens of design-build contractors in Oregon that specialize in commercial and institutional projects. In addition, it is common for design firms (i.e. architects and engineers) to partner with construction contractors on a project-by-project basis. It is reasonable to assume that a robust pool of proposers will be available to compete for the work needed to deliver the Project.

B. *Budget and Operating Costs*.

1) The budget for the project could range from $2.5 to $3.5 million dollars. Use of a Design/Build delivery method will allow the City an increased probability of keeping the project within budget.
2) It is the City's belief that the Design/Build methodology will result in a superior product, thus resulting in operating costs that are comparable, if not less than, the operating costs for the current facility.

C. *Public Benefits*. The public will benefit in a number of ways from the exemption. Instead of considering lowest cost as the principal criterion for selecting a contractor, other factors can and should be considered. These include, but are not limited to: quality of materials, design and construction; warranties the contractor will provide relative to the design and construction; relevant experience with similar projects; and the financial operational strength of the bidder. The Project will allow for much needed upgrades and will permit the City to provide exceptional public works services to the City for many years into the future. Utilizing a well-qualified design-build contractor to deliver the Project will best ensure the buildings aesthetically, functionally and practically stands the test of time and will best ensure the City receives the best value for its limited budget.

D. *Value Engineering*. Value engineering is a systematic method employed to increase efficiencies, improve functionality and reduce costs. In the context of the Project, a design-build firm with expertise in designing and constructing institutional buildings for the public will be best able to suggest alternative design concepts, materials and construction techniques and methods to Fairview that may reduce the Project's cost and completion schedule. Using a design-build process will ensure that the resulting contractor is well versed in value engineering and able to suggest alternatives to certain designs and construction methods that will yield equivalent or superior benefits at reduced costs for the City. Because value engineering generally involves negotiation with the contractor and such negotiations are prohibited under the traditional competitive bidding process, the exemption will permit Fairview to realize a variety of potential benefits that accompany value engineering. The City could not readily or legally avail itself of these benefits in the absence of an exemption to the traditional design-bid-build delivery method.

E. *Cost and Availability of Specialized Expertise*. As discussed above, the Project is needed to upgrade current public works facilities and will be used for years to come. The current public works shop has been a subject of concern since 2000 and has been discussed several times over the last 17 years in terms of its capacity, efficiency and seismic stability. The current building has deficiencies related to rest room, locker room, workspace, and storage capacities. Similarly, it has no fire suppression system and is not ADA accessible. The primary concern, however, is the fact that it poses a risk to life safety in the event of an earthquake, and has been recommended and included in CIPs for replacement for the past 17 years. It is critical that the building is designed and constructed to maximize efficiencies. The City expects the successful design-build contractor to have substantial experience designing and building publicly-owned facilities. The significant number of design-build contractors operating in the region, the value engineering services the contractor will perform and the guaranteed maximum price ("GMP") the contractor will commit to before the construction begins should result in a cost to the City that is extremely

competitive and more valuable than the cost the City would incur through a traditional bidding process.

F. *Increases in Public Safety*. The design-build procurement method allows historical safety performance and commissioning work on similar projects to be considered as a selection criteria. It also permits the City to work closely with the contractor to ensure that the design and work sequences include appropriate safety measures, that the contractor understands the City's safety concerns, and that the contractor will take appropriate steps to address them. The design-build method promotes better collaboration with the contractor during design to result in increased public safety through increased vetting of construction means and methods.

G. *Reduction of Risks*. In a traditional design-bid-build delivery method, the design professional develops the specifications and work plan; but communicating the information to the general contractor during the bid phase can be challenging due to the level of detail needed. In contrast, the use of the design-build method enables, and by definition requires, the contractor to fully understand the design during the design phase itself. The construction professionals develop a work plan with the design professionals and City representatives simultaneously, which substantially mitigates the risk associated with a construction contractor claiming (correctly or incorrectly) the design to be incomplete or incorrect. A single point of responsibility for both the design and construction greatly reduces the risk of changes orders to the City and results in a reduced contingency.

H. *Funding Sources*. The exemption is not anticipated to affect funding sources for the Project.

I. *Impact of Market Conditions*. Recently, the market for public improvement projects has been impacted significantly as a result of increased commercial construction across the country and specifically in the Pacific Northwest. A shortage of skilled craftsmen and laborers and a demand for building materials has equated to a rise in construction costs. Even when historical cost data and reliable sources are used, architectural and pre-construction cost estimates for building trades and labor are often inaccurate in a traditional delivery method without real time construction pricing. Cost-benefit decisions in a design-build context, through use of value engineering for example, can be made using real-time construction costs to keep the Project within budget. Both equipment and sub-trade work can be procured early to eliminate price uncertainty and lessen the impact of price escalation during the construction period. In addition, the City through design-build is afforded the flexibility of awarding early construction work packages (e.g., site/civil work, foundation work, etc.) prior to design completion of the overall project. Furthermore, design-build affords the ability and time to adjust the Project budget during design when true pricing is understood such that the Project is designed at or below budget. The method provides flexibility to reduce the impact of market conditions, specifically through schedule acceleration. This savings in time operates to lessen the impact of price increases occurring in current market conditions. For these reasons, granting an exemption to competitive bidding will better enable the City to control the impact that market conditions may have on the cost of and time necessary to complete the Project.

J. *Size and Technical Complexity*. The exemption is not likely to better enable the City to address the size and technical complexity of the Project.

K. *New Construction versus Renovation*. The Project will involve new construction.

L. *Occupied During Construction*. As brand new buildings, the Project will not be occupied during construction.

M. *Phasing of Construction*. The City anticipates construction to occur in one phase.

N. *Expertise of Staff and Consultants*. The City anticipates utilizing our Public Works Director as project manager. He is well versed in all types of project delivery methods including design-build. The City's legal counsel has previously worked on several projects utilizing alternative contracting methods, including design-build.

CONCLUSION: The Fairview City Council finds that use of a design-build delivery method will foster competition among a large pool of eligible proposers and will likely result in cost savings to the City. In addition, use of design-build will be a "pilot project" for Fairview and will allow the City to evaluate the extent of such savings. Therefore, the Fairview City Council approves of the use of a design-build delivery method for the Project.