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26-001 ADOPT FINDINGS - GRANT AN EXEMPTION FROM COMPETITIVE BIDDING - AUTHORIZE USE OF THE DESIGN-BUILD ALTERNATIVE CONTRACTING METHOD FOR THE CLIMB CENTER RENOVATION PROJECT

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STRATEGIC THEME: Operational Excellence: Efficiency, Effectiveness, and Fiscal Sustainability; Community Engagement: Workforce, Education, and Industry Alignment

REPORT: The voter-approved 2022 Bond Program includes funding for deferred maintenance and updating technology, facilities and equipment throughout the district. The College currently leases office space for Planning & Capital Construction (P&CC) staff at the Capitol Park Building. As part of the College's ongoing review of space utilization it has become apparent the CLIMB Center is under-utilized and there is sufficient space to move the P&CC staff to the building. The project would also address deferred maintenance needs in the building and reconfigure the auditorium to better service College needs. The existing lease for the Capitol Park building expires on June 30th, 2026. There is an intention to eliminate the cost of the lease and have P&CC staff move as soon as possible.

Because of the complexity of this project and the accelerated schedule, Staff recommends that the Design-Build(D-B) process be utilized. The D-B alternative contracting process is authorized for procurement of construction services under ORS 279C.337 provided that the Local Contract Review Board (the Board of Directors for PCC under ORS 297A.060) approves an exemption from competitive bidding. Under the D-B contracting method:

- Prospective contractors are solicited through a competitive request for proposals ("RFP") process where factors such as experience, expertise, team of designer and contractor, and a demonstrated record of performance can be considered. The contractor is the lead and partners with an architectural firm as part of the team during the design phase, assisting in design development, constructability review, value engineering, scheduling, and estimating. Through this process a guaranteed maximum price is developed. The Design/Builder is the general contractor during the construction phase and will manage the project from the start to finish.

- The contractor/architect team works with the owner during the design phase to develop the final design with the goals of improved constructability and value engineering, which results in fewer change orders and the ability to expedite the construction schedule. It also enables the contractor to be involved in development of the construction program, including implementation of the College's inclusivity goals. (Under the standard design/bid/build method, the design is completed before the project is bid, award is based upon low bid, and the contractor comes on board at that point.)

- At the end of the design phase, the owner and contractor negotiate and agree on a guaranteed maximum price ("GMP") and the construction schedule for the construction phase of the project. Execution of the GMP Amendment starts the construction phase of the project.

The D-B alternative contracting method is commonly used by public contracting agencies for complex projects or where there is a need for an accelerated project schedule projects such as the CLIMB Center Renovation Project.

The Design-Build (D/B) form of contracting is a competitive request for a proposal process that requires the contractors to provide detailed information and examples from past projects that demonstrate how they are able to meet the criteria the college sets forth. One of the criteria is the utilization of certified small business contractors and subcontractors. They have to demonstrate their commitment, prepare an outreach plan, share utilization from past projects, and their engagement has to be above and beyond the minimum of phone calls and emails. Using a D-B process allows for higher small business and apprenticeship training percentages. Without the D-B contracting process the College will have little to no input into the selection criteria of the subcontractors as the decision would

be made solely on price. In addition to the use of certified contractors, the D-B contracting method allows the College to look at a contractor's history of promoting a diverse workforce and including respectful workplace programs on the jobsite.

There are also numerous other goals for inclusivity for various College and community stakeholders. Pre-apprenticeship participation and mentorship programs for small general contractors are all desired outcomes.

Findings:

ORS 279C.335(2), implementing ORS 279C.330, requires the Board to make certain findings in order to grant an exemption, as follows:

" (a) The exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts."

Finding: The requested exemption will not encourage favoritism or substantially diminish competition. The College will utilize a competitive RFP process to select the D-B firm. The procurement will be formally advertised with public notice. Full competition will be encouraged and all qualified contractors will be invited to submit a proposal. The award will be based upon an objective review and scoring of proposals by a qualified College review committee based on identified selection criteria. Once selected, the Design Builder will select subcontractors via competitive process in accordance with PCC Contracting Rules and as required by ORS 297C.337(3). This competitive process will include outreach to and solicitation of certified small business pursuant to the College's goals.

The D-B process should increase competition by maximizing the opportunity for all interested contractors to participate in the project.

"(b) Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the contracting 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;"

Finding: Based on previous PCC Design-Build contracting processes, the College expects that a substantial number of contractors will be interested in the CLIMB Center Renovation project, and that there will be vigorous competition during the RFP process.

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

Finding: The estimated project budget is $4,000,000. The College has not conducted a detailed analysis of the operating costs, but expects that the improved design resulting from the Design-Builder's early participation during the design phase will substantially reduce long- term operating costs.

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

Finding: Bringing the Design-Builder on as the lead of the project and at the beginning of the design phase promotes an early team approach that leads to continuous value engineering and improved constructability review, resulting in an improved final design. This will reduce change orders and limit delays during the construction phase. This benefits the public through cost savings, provides "guaranteed" costs, and is more likely to result in timely delivery of the project.

The Design-Build process will also enable PCC to work with the contractor to maximize opportunities for participation by certified small businesses for subcontracting work. This will increase competition among subcontractors. The College's experience with past Design-Build contracts demonstrates that the College achieves higher small business utilization and subcontractor participation than it does through traditional contracting methods.

Overall, the public benefits of the Design-Build process include cost savings, better achievement of College community goals, and more timely delivery of the project due to fewer changes and disruptions.

"(D) Whether value engineering techniques may decrease the cost of the public improvement:"

Finding: Value engineering is a routine practice in public improvement projects regardless of procurement method. The Design/Build delivery method allows for the general contractor and subcontractors with specialized expertise and common

project goals to lead the value engineering process during the design phase, resulting in a more effective and efficient process as compared to value engineering by change order to a completed design. The inherent flexibility and openness of the Design/Build process allows the College to more easily change the design and scope of work as necessary to meet the project budget before the final design is fixed. This is not something that the traditional bid process offers.

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

Finding: The RFP process allows for review of contractor expertise not afforded in traditional procurement.

"(F) Any likely increases in public safety:"

Finding: The Design-Build process will enhance public safety because PCC will be able to consider the safety record of the contractors selected and because the contractor will be integral to planning the construction schedule and safety measures during the design phase.

"(G) Whether granting the exemption may reduce risks to the contracting agency . . . or the public that are related to the public improvement;"

Finding: Utilizing a Design-Build contract allows for the College to engage in early work agreements that give more insight and site verification of unforeseen conditions to the Architects, Contractors and District, as well as expediting the construction schedule by starting early work during the design phase.

"(H) Whether granting the exemption will affect the sources of funding for the public improvement:"

Finding: This project will be funded by the 2022 Bond Program. There will be no impact on this funding source due to the Design-Build process.

"(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:"

Finding: Because the Design/Build process appoints the contractor at the beginning of the design, the College is able to take advantage of market prices by facilitating early purchase of

certain project elements, if needed. The essential added value of the Design/Build process is the real time market job costing from projects around the Portland market and the West Coast. This knowledge allows the contractor and architect time to discuss the approach to less costly complementary or alternative items. For example, the contractor may provide early input that it is less expensive but equally advantageous. If the College bid this contract traditionally, after design completion, the College may not receive this timely cost saving input and would have to make an adjustment in the field, which would cost time and maybe only save a percentage of funds.

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

Finding: The Design-Build process will help deliver a successful CLIMB Center Renovation project. One of the biggest advantages of the Design-Build method is the ability to coordinate all technical work before construction. Being able to apply best practices with the Design team, College and the Contractor will make for a better product within the budget constraints.

As already described above, the areas of technical complexity include:

1. Multiple components of the project happening at one time.

2. Aggressive schedule to meet desire to avoid extending the lease on the Capitol Park Building.

3. Budget constraints

4. Ability to meet Board goals for small business contracting and apprentice utilization

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

Finding: This is renovation of an existing building which must remain operational during the renovation.

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

Finding: CLIMB will remain in use and there is desire to minimize the impact on building occupants.

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

Finding: During the design phase the contractor and the College will develop a project schedule which may include multiple phases of construction.

"(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."

Finding: The College's Office of Planning & Capital Construction has extensive experience in implementing successful Design-Build contracting processes, including the successful projects from the 2008 & 2017 Bond Programs and the current projects funded by the 2022 Bond Program. The District's outside legal counsel, Dun Carney LLP, has extensive experience with the Design-Build alternative contracting methods and has represented other public agencies on multiple Design-Build projects.

Ultimate Finding: For these reasons, use of the Design-Build Alternative Contracting Method for the CLIMB Project is likely to result in substantial cost savings and deliver other significant public benefits as compared to use of the standard/bid/build process within the meaning of ORS 279C.335(2)(b).

Notice was published in at least one trade newspaper of general statewide circulation a minimum of 14 days prior to the hearing. A copy of that notice is attached hereto as Exhibit "A" and incorporated by this reference.

The Findings above have been considered by the Board and are adopted and approved.

Based upon the approved Findings, and the use of the Design-Build process as the manner of selecting the construction contractor for the project, it is unlikely that an exemption of the construction contract from the competitive bidding requirements of the public contracting statutes will encourage favoritism in the

awarding of a public contract for the Project, or substantially diminish competition for public contracts of like nature.

Based upon the approved Findings, the awarding of the construction contract for this Project using the alternative method of Design-Build pursuant to an exemption under ORS 279C.335(2) will likely result in substantial cost savings and other substantial benefits to the College.

The College is granted an exemption under ORS 279C.335(2 from the competitive bidding requirements of ORS 279C.335(1) for the construction contract for the Project, and directs that the College may utilize the Design-Build method as the alternative contract method, provided the College also remains permitted, at the College's discretion, to use traditional bidding for any aspect of the Project pursuant to ORS 279C.335(1).

For any contract utilizing the Design-Build method of procurement, the procurement shall be in accordance with the Attorney General Model Rules adopted under ORS 179A.065

RECOMMENDATION: That the Board of Directors, acting as the Local Contract Review Board for the College, after consideration of the above factors, adopt findings (a) and (b) above and grant an exemption from competitive bidding for the CLIMB Center Renovation Project construction contract to authorize the use of a Design-Build alternative contracting method for the project. Funding for this project will be from the 2022 Bond Program.