

RESOLUTION NO. 2024-06

**A RESOLUTION OF THE COUNTY COURT OF HARNEY COUNTY, OREGON,
ACTING AS THE HARNEY COUNTY LOCAL CONTRACT REVIEW BOARD
PURSUANT TO ORS 279A.060, ADOPTING FINDINGS AND APPROVING A SPECIAL
PROCUREMENT OF A DESIGN-BUILD CONTRACT FOR CONSTRUCTION OF THE
HARNEY COUNTY FAIRGROUNDS EVENT CENTER**

WHEREAS, Harney County owns and operates the Harney County Fairgrounds located at 69660 S. Egan in Burns, Oregon; and

WHEREAS, pursuant to ORS Chapter 565 the Harney County Court ("County Court") as the governing body for Harney County ("County") has appointed the Harney County Fair Board ("Fair Board") which advises the County Court on matters related to the Harney County Fairgrounds; and

WHEREAS, the County Court acts as the local contract review board (the "Board") for the County, and in that capacity has authority to exempt certain contracts from the competitive bidding requirements of ORS Chapter 279C; and

WHEREAS, OAR 137-049-0610(6) and OAR 137-049-0670 describe the Design-Build method of performing public improvement contracts as an alternative to traditional design-bid-build construction contracting methods; and

WHEREAS, ORS 279C.400 to 279C.410 and OAR 137-049-0650 describe competitive proposals ("RFP") as an alternative to the competitive bidding requirement generally applicable to public improvement contracts; and

WHEREAS, as required by ORS 279.335(2) the Board must make certain findings as defined in ORS 279C.330(2) ("Findings"), which address the criteria at ORS 279C.335(2)(a)-(b) and OAR 137-049-0630 in order to grant an exemption from the competitive bidding requirement for an alternative contract method for public improvement contracts; and

WHEREAS, pursuant to ORS 279C.335(4) and OAR 137-049-0630(7), the County ordered a public hearing to be held for the purpose of taking public comment on the draft findings in support of use of the Design-Build method and approval of the competitive proposal process as an exemption to competitive bidding; and

WHEREAS, pursuant to ORS 279C.335(5)(b), notice of the Board's draft findings was published more than fourteen days in advance of this public hearing; and

WHEREAS, the County Court, acting in its capacity as the Board, has reviewed the proposed findings and desires to proceed with authorizing the requested exemption for use of an alternative

contract method and exemption from the requirement for competitive bidding pursuant to the provisions of ORS 279C.335 and applicable regulations;

NOW, THEREFORE, IT IS HEREBY RESOLVED AND ORDERED AS FOLLOWS:

1. Findings Approved. The Findings in support of the requested Exemption, as prepared by Fair Board staff and set forth in Exhibit A attached hereto and incorporated herein by reference, are hereby approved and adopted.
2. Based on the Findings, the County Court, acting as the Harney County Contract Review Board, concludes that using the alternative contract delivery method (Design-Build) and authorizing procurement through competitive proposals ("RFP") will:
 - a. Neither encourage favoritism nor diminish competition, and
 - b. Likely result in substantial reductions in project costs to the County and public benefit.
3. Exemption Granted. Based upon the Findings set forth in the attached Exhibit A, the exemption from competitive building requirements to allow a competitive Design-Build method of contracting for the Harney County Fairgrounds Event Center is hereby granted.

This Resolution shall take effect upon adoption.

ADOPTED this 23rd day of FEB, 2024.

HARNEY COUNTY COURT



Bill Hart, County Judge

Excused Absence

Kristin Shelman, County Commissioner

Patty Dorroh

Patty Dorroh, County Commissioner

**HARNEY COUNTY
LOCAL CONTRACT REVIEW BOARD
FINDINGS FOR EXEMPTION
HARNEY COUNTY FAIRGROUNDS EVENT CENTER**

Introduction

The Harney County Fair Board (“Fair Board”) has requested that the Harney County Court (“County Court”), acting in its capacity as the Local Contract Review Board (the “Board”) for Harney County, approve use of a competitive Alternative Contracting method for the construction of the Harney County Fairgrounds Event Center (the “Project”).

Background

The operating budget for the Fairgrounds depends primarily on revenue generated by the annual County Fair, and to a lesser extent on other special and recurring events which organizations and individuals choose to host at the Fairgrounds. These events require that the Fairgrounds provide facilities that are safe, attractive and suitable for multiple uses, in order to maximize the type and scale of events that can be hosted.

The Project entails demolition of existing structures at the Harney County Fairgrounds (“Fairgrounds”), which were constructed in the 1950s and are now in a state of disrepair and not well suited for hosting public events. Replacing these structures with a new pre-engineered metal Building (“PEMB”) and adjacent accessory structures for use as an Event Center will provide the County with new facilities that are modern, attractive, and designed and scaled to meet community needs in a way that maximizes revenue generating activities.

The Fair Board is currently in the pre-design phase for the construction of the Project. The Project will require tight schedule adherence to resolve issues that could impact timely completion. The time required to complete the design, obtain bids from qualified subcontractors, and order the equipment/materials required will compress the time available for construction. The scope of work for the Project includes:

Design/Project Management

- Architectural/Structural/MEP Design
- Civil Design
- Third Party Testing

Site Development

- | | | |
|--------------------|-------------|--------------|
| • Project Controls | • Survey | • Demolition |
| • Excavation | • Utilities | • Septic |

Foundation

- Footing
- Egress Walk Doors
- Slab
- Overhead Doors
- Building Erection

MEP

- Mechanical
- Primary Power
- Plumbing
- Fire Sprinklers
- Electrical

Interior Construction

- ADA Requirements
- Interior Finishes

The total available funding for the Project at is \$5.5 million. Funding for the Project comes from federal, state and local sources. The Fair Board received a \$1,000,000 American Rescue Plan Act (“ARPA”) federal allocation in February 2022, of which the Fair Board has allocated \$792,000 for the Project. These funds must be fully obligated by December 31, 2024 and fully expended by December 31, 2026. Funding also includes \$4,720,000 in state funds, allocated by the Oregon Legislature for the Project through HB 5202 (2022) and HB 5506 (2023). In addition, the Fair Board anticipates that an additional funds from the proceeds from the sale of lottery bonds will or may later become available for the Project.

The provisions of law applicable to public improvement contracting, ORS Chapter 279C and OAR Chapter 137 Division 49, identify Design-Build as an alternative contracting method and provide detailed procedures for the procurement process when an exemption to competitive bidding is authorized. In accordance with ORS 279C.335, the County Court, acting in its capacity as the Board, may authorize use of the Design-Build alternative contracting method through competitive proposals as an exemption for public improvement projects when justified as prescribed in the public contracting code.

Responsibilities of the Design-Build Firm

In the design phase, the Design-Build firm will provide the design and construction documents required to obtain permits and competitive bids, development of construction schedules, bid packaging, cost estimating, and the review of design documents from the standpoint of value, long lead procurements, design feasibility, constructability and establishing a negotiated cost or bid for the work prior to the start of the construction phase.

In the pre-construction phase, the Design-Build firm will coordinate the competitive bid process and material procurement process for all work with full oversight and participation by the Fair Board. The Design-Build firm will provide a written recommendation to the Fair Board for each subcontract. Upon approval from the Fair Board (and, as required by statute or County Ordinance and/or policy, the County Court) the Design-Build firm will execute a contract with the approved subcontractor or subcontractors.

In the Construction phase, the Design-Build firm will be responsible for the construction of the Project, including scheduling of materials procurement, delivery and all the work completed by their employees and by subcontractors. The Design-Build firm will be responsible to complete the project on schedule, within budget and at, or above, the quality defined in the specifications prepared by the Fair Board.

Statutory Requirements

Pursuant to ORS 279C.335(2), County Court, acting in its capacity as the Board, has authority to exempt the Project from procurement through competitive bidding upon application from the Fair Board and approval of the Fair Board's findings that granting the exemption:

1. is unlikely to substantially diminish competition for public contracts and is unlikely to encourage favoritism in awarding those contracts, and
2. will likely result in substantial cost savings or other substantial benefits to the Fair Board. In approving a finding under this paragraph, the Board "shall consider the type, cost, and amount of the contract" and the following factors, to the extent that they apply to the contract or class of contracts at issue:
 - 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 public improvement;
 - E. The cost and availability of specialized expertise that is necessary for 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 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 the necessary expertise and substantial experience in alternative contracting methods to assist in developing the alternative contracting method improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract.

In authorizing an exemption, the relevant statutes require that the Board shall “[i]f appropriate, direct the use of alternative contracting methods that take account of market realities and modern practices and are consistent with the public policy of encouraging competition.”

Findings

1. Competition and Favoritism (ORS 279C.335 (2)(a)):

Authorizing use of a competitive Design-Build method for the Project under an exemption from the competitive bidding requirements of ORS 279C.335 is unlikely to either encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts.

Competition.

Design-Build project delivery mandates the use of best-value contractor selection, which uses a combination of price-based and non-price-based selection criteria, in lieu of low-bid procurement. The proposed open, competitive selection process is open to the same contractors that would have participated in the traditional bidding method. The proposed Design-Build 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

This procurement is expected to attract ample bidding competition. Procurement will be conducted through an open and advertised RFQ process in accordance with the procedures for competitive proposals outlined under ORS 279C.400 to ORS 279C.470 and OAR 137-049-0600 to 137-049-0690. As with a competitive bid solicitation, the County will publish the RFQ on the County’s website and in a trade journal of statewide circulation and a local newspaper in order to provide project information to all interested contractors. All qualified firms will be invited to submit proposals. The selection of a Design-Build contractor will be based on their qualifications and approach to design and construction. The use of best-value contractor selection ensures that the contract is awarded to the qualified proposer who provides the best combination of quality and

price in meeting the County's minimum specified performance requirements. Rather than being diminished, competition will be expanded to include qualifications as well as price.

Favoritism

Favoritism will not play a role in the selection of the Design-Build contractor. The Design-Build contractor selected through a competitive selection process will provide both design and general contracting services. Best-value selection will be based on the criteria set out in the RFQ, including the proposer's qualifications and experience; project approach and management plan; work plan and proposed delivery schedule; staffing plan and cost control measures; proposal design and conformance with the County's specified performance requirements; proposed price; and other factors specific to the Project. Proposals are evaluated based on quality and price, including alternative technical concepts, and the best-value proposer is awarded the contract. A team will perform the evaluation in an effort to minimize the effects of any unconscious individual bias.

Favoritism is likewise unlikely to result by virtue of construction sub-contracting. The solicitation will include requirements pursuant to federal, state and applicable local public contracting code to ensure fair and open competition for subcontractors and/or sub-consultants. The Design-Build contractor will have adequate time to prepare bid packages and review/analyze bids received from subcontractors. The work which is subcontracted will be awarded to the lowest responsive bidder. This bid process will not result in favoritism.

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

The Design-Build contracting method has the potential for achieving significantly more features for the County's investment through involvement of the Design-Build contractor in the detailed planning and design phase of the Project. By having the contractor available to prepare the design, the contractor is able to review the specific system needs identified by the County, propose cost saving revisions, and ensure the constructability of the Project so that costly change orders are less likely. Selection of a contractor possessing the necessary expertise and experience in the specialized field of PEMB design and construction is likely to result in substantial cost savings to the County. Cost savings will be realized because the County can select a well-organized, experienced Design-Build contractor, which will result in fewer change orders and, in turn, reduced staff time to design, negotiate, and administer any changes. Using an experienced and skilled contractor will optimize the design and construction aspects and help minimize problems associated with construction of a unique facility. Thus, the Design-Build method will help the County avoid additional costs that would otherwise be associated with resolving such problems; provided, however, nothing contained herein will be construed to require the County award a contract to the lowest responsive and responsible bidder. The following factors under ORS 279C.335(2)(b) support the conclusion that it is reasonable to expect substantial cost savings:

A. Persons available to bid.

There should be no reduction in the number of persons/firms available to bid under the competitive proposals process versus the competitive bid process. As with a competitive bid solicitation, the RFQ will be advertised on the County's website and in a trade journal of statewide circulation and a local newspaper. All qualified Design-Build contractors will be eligible to submit proposals. The Fair Board anticipates response from multiple qualified proposers, situated both locally and from larger markets. The use of Design-Build method will maximize the number of potential respondents capable of submitting a responsive proposal.

B. The construction budget and operating costs for the completed public improvement.

The Project will result in efficient demolition of existing structures and design and manufacturing of a PEMB designed to meet the County's specifications, as well as efficient interior construction and mechanical and electrical systems that are appropriate for our climate and thus minimizing operational costs. The progressive design build format allows for direct consultation during design with the contractor that will be performing the work. This opportunity fosters value engineering discussions which improve efficiency to construction methods and can alter the end product by fully considering constructability challenges. Additionally, the Design-Build process may further reduce operational cost through the use of life cycle analysis to assist in the selection of mechanical and electrical systems, finishes and equipment.

The constructed Project will be developed to match available funding, which currently totals \$5.4 million. While this constitutes a fairly modest public improvement project, the Project itself is technically complex due to Project specific circumstances including site specific conditions, budget restrictions and tight construction schedules. Design-Build method is a recommended contracting methodology for complex construction procurements that is expected to mitigate the risk of budget overrun by shifting performance risk from the County to the contractor.

Additionally, there are many, less tangible, cost savings that may be realized. Some of these less-tangible savings include: reduced County staff resources dedicated to the Project, a Project team that works more cohesively, shorter design and construction timelines, and less impact to the public.

C. Public benefits that may result from granting the exemption.

The Design-Build method provides the most public benefit and opportunities for cost savings, including a budget, internal resources, risk allocation, clear project goals, reduced delivery time, better feedback, single source of responsibility, enhanced innovations, partnering, early knowledge of project cost, integration of design and construction and the GMP are identified.

The Design-Build contracting method is an alternative to the design-bid-build or “low-bid” process, whereby the County’s selection of a construction contractor is not only based on price but other factors such as time, qualifications, or a contractor’s approach to the project work.

The Design-Build delivery method is managed through a single entity: a Design-Builder. It also implies that the builder can provide a turn-key process, starting from preliminary concepts through the construction of the project, but correspondingly includes anything in between. This consists of all design, engineering, and municipal submittals. This delivery method is, in the true sense of the phrase, a one-stop shop where the County delegates all responsibilities to the Design-Builder.

The Design-Build method is likely to ensure that the Project progresses on time, ensuring that available funding is fully utilized. This project is funded in part 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 construction of the Fairgrounds Event Center 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.

Otherwise, the primary public benefit of the Design-Build delivery method is more expeditious and cost-effective completion of the Project. The Design-Build process provides for better collaboration to ensure the Project will be completed on time, on budget and at, or above, the quality described in the construction documents.

D. Whether value engineering techniques may decrease the cost.

Because the Design-Build firm is responsible for providing or obtaining the design, the Design-Build firm can identify and implement design solutions, customize project sequencing, and propose equipment and methods most viable to the existing conditions and the allotted budget. All of these beneficial actions by the Design-Build firm will improve value, expedite construction, and in turn eliminate potential change orders.

The benefits of value engineering are allowed for use as a part of the best value process, but only after design and bidding are completed limiting decisions to a short time period to determine if the project can move forward financially.

E. The cost and availability of specialized expertise that is necessary.

Prefabricated metal buildings and the associated foundation are specialized in design and construction. Efficient construction requires specialized knowledge in all of the trades required to design and erect this type of structure.

Only through a process where qualifications and competitiveness exist can the County weigh, evaluate and select the type of expertise needed to address the technical complexities of this public improvement project.

F. Any likely increases in public safety.

Prefabricated metal buildings and the associated foundation are specialized in design and construction. Efficient construction requires specialized knowledge in all of the trades required to design and erect this type of structure. Only through a process where qualifications and competitiveness exist can the County weigh, evaluate and select the type of expertise needed to address the technical complexities of this public improvement project.

Harney County maintains an ongoing commitment and focuses on risk management and safe work practices. 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.

The proposed Design-Build method minimizes risk to the County by assigning the lion's share of cost and performance risk to the Design-Build contractor.

Whether granting the exemption reduces risks to the County or the public as described 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 the sources of funding.

The Project is funded largely by ARPA funds and state funds allocated by the Oregon Legislature for the Project through HB 5202 (2022) and HB 5506 (2023). The use of a competitive proposal process is allowable under the requirements of both funding sources. Authorizing the exemption will therefore not affect the sources of funds.

I. 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 Design-Build delivery method has been a design and construction delivery method used by both public and private organizations for numerous years. Proposers are required to present the required qualifications and project experience. This includes knowledge of the latest construction techniques and products. The team will inform the County of current market

conditions, labor and materials availability, and construction methodologies. This can be incorporated into proposals and design and reduce construction time and costs.

The increased availability of and need for technical expertise, value engineering, or other types of specialized expertise, as well as a need to investigate the compatibility, experience, and availability of contractors require that certain public improvement contracts be awarded based upon an evaluation of several criteria, rather than simply cost.

In the current economic environment where there is rapidly increasing materials cost Design/Build can present a significant advantage because there is no delay between the design and build phases required by the traditional design/bid/build process. Also, through the design/build process, you typically reach a fixed price more quickly and avoid the risk of having to rebid the project with a new design because the first round of bids came in too high.

J. Whether granting the exemption will better address the technical complexity of the project.

The Project has significant technical complexities which are best addressed by a specialty contractor with installation & design expertise. Collaboration between a designer and contractor familiar with the requested work and County personnel familiar with the type of build project implementation will be necessary for the pre-construction phase.

K. Whether new construction or renovates or remodels an existing structure.

The Project is for demolition and replacement of existing structures with a new PEMB structure. The Project will result in a construction of a new Event Center.

L. Whether the public improvement will be occupied or unoccupied during construction.

The site will be occupied during construction. However, the existing structures and the replacement PEMB building will not be occupied 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.

The Project will likely be completed in several phases (demolition and construction). Project phasing is compatible with Design-Build Project Delivery.

N. Public and private personnel assigned to project.

The County's project management team working on this project is well equipped to manage the complexities of a Design-Build construction process, consisting experienced and qualified Fair Board members and County staff with successful Design-Build experience. However, while the Fair Board consists of members of the community with substantial experience in

construction contracting, all Board members have full-time jobs outside of their roles on the Fair Board. This necessarily limits the personnel resources available to manage the work intensive a traditional Design-Bid-Build procurement. The Design-Build method significantly reduces demands on Fair Board and County staff, enabling delivery of this Project using existing personnel resources.

The Design-Build delivery method contracts with a single entity, the design-builder, to design and construct a project. The collaborative approach, construction schedule, value analysis, and plan presentation all provide effective cost analysis options. It is critical, and also consistent with the spirit of collaboration encouraged throughout the process that everyone on the project management team works towards a budget of which they can take ownership.

E. Conclusion

Based on the foregoing, the findings outlined above justify the proposed exemption and use of the Design-Build Alternative Contracting Method. The use of this process will not diminish competition or result in favoritism and should result in overall cost savings to the County. The primary difference when considering the Design-Build delivery method is that Design-Build includes both design and construction under one contract whereas traditional methods include separate contracts.

The County will benefit from streamlined decision-making, accelerated progress, and an overall heightened development experience. The clear advantages of the Design-Build delivery method are:

1. A project delivery approach that results in the best value, least risk and most likely opportunity to acquire the needed specialized experience to complete the Project within existing funding deadlines.
2. The close relationship between designer and contractor, which allows real-time schedule, cost updates, and interventions, which further allows for thoughtful decision making throughout the entire project.
3. The insight and coordination of the Design-Builder into all of the systems and assemblies to avoid timely (and most of the time, costly) changes and interpretations.