

**DATE:** May 8, 2013  
**TO:** Board of Commissioners acting in its capacity as the PDC Local Contract Review Board  
**FROM:** Patrick Quinton, Executive Director  
**SUBJECT:** Report Number 13-14  
Making Findings in Support of and Exempting the Dawson Park Improvement Project from Competitive Bidding

**BOARD ACTION REQUESTED**

Adopt Resolution No. 7002

**ACTION DESCRIPTION**

This action by the Portland Development Commission (PDC) Local Contract Review Board (LCRB) will make findings (Findings) in support of an exemption from the general rule of competitive low bid solicitation for the Dawson Park Improvements Project (Project) along with the requisite findings to support the LCRB in determining that such exemption is appropriate for the Project in accordance with Oregon Revised Statutes (ORS) 279C.335.

ORS 279C.335 and PDC's LCRB Administrative Rules (LCRB Rules) provide that the LCRB may exempt certain public contracts from the low competitive bidding process upon the LCRB making the following Findings:

1. It is unlikely that such exemption will encourage favoritism in the awarding of a public contract or substantially diminish competition for the contract; and
2. The awarding of public contract under the exemption will result in substantial cost savings to the agency.

As noted in the Findings (Exhibit A to the Resolution), a Best Value Guaranteed Maximum Price contract solicitation (BV-GMP) is proposed as an alternative to low bid contracting for the Project, and is intended to be done as a pilot.

**BACKGROUND AND CONTEXT**

Dawson Park is owned by the Portland Bureau of Parks and Recreation (PP&R) and is one of the 24 historically significant parks in the city. The two-acre park was acquired by PP&R in 1921 and is located in Northeast Portland within the Interstate Corridor Urban Renewal Area (URA).

Under various intergovernmental agreements between PDC and PP&R, PP&R has completed all necessary design, engineering, and permitting activities and PDC intends to coordinate all necessary procurement activities and construction administration services for the Project.

The scope of the Project includes selected demolition, playground, walkways, splash pad, children's play area, irrigation, electrical lighting, and other related civil, utilities and landscape work. Design work for the Project has been completed and the construction cost is estimated at \$1.775 million.

In making the request to use alternative contracting methods, PDC staff carefully reviewed the standard competitive low bid solicitation process and determined that many factors including, but not limited to, project complexity, schedule, overall project cost, and social equity goals would be met best with a BV-GMP Contract approach.

Staff evaluated other alternative public contracting methods including Construction Manager/General Contractor, Design Build, and multi-step selection that are typically deployed at the beginning of the design and engineering phase. Because design has already been completed for the Project, those other methods are not appropriate for the Project.

Public agencies in California and Minnesota have used the BV-GMP Contract approach as an innovative method of selecting a general contractor using a request for proposals (RFP) process on the basis of best value according to objective criteria. Upon selection, PDC and the general contractor would negotiate and enter into a Guaranteed Maximum Price Contract (GMP Contract). The BV-GMP Contract approach compares the strengths, weakness, risks, performance, and price of each proposal in determining the best overall value, and then locks in the Project cost with the GMP Contract.

PDC has not used the BV-GMP Contract approach before and requests that the Project be considered a pilot project (Pilot Project) within the meaning of ORS 279C.335(2)(c). If the exemption is approved by the LCRB, solicitation will occur in spring and summer 2013 with construction work anticipated to start in fall 2013 and to reach final completion in late spring 2014, with final closeout and acceptance extending through August 2014.

#### **COMMUNITY AND PUBLIC BENEFIT**

The BV-GMP approach enables contracting agencies, such as PDC, to more effectively screen bidders and use an evaluation process that is fair and balanced to select a contractor who presents less risk and is more likely to deliver the best overall value for the agency and the public. PDC can consider various factors in the selection process, such as past performance, staffing capabilities, and local economic benefits, including jobs and materials. This enables PDC to support positive societal impacts that provide local benefits to the community through the contracting work.

The final project is also likely to be higher quality when it is delivered by a well-qualified contractor and its subs. And by using the BV-GMP form of contract, PDC can reduce cost overruns and work scope changes and claims.

#### **PUBLIC PARTICIPATION AND FEEDBACK**

In accordance with ORS 279C.335(5) and the LCRB Rules, Part 4(II)(B)(2), on March 6, 2013 PDC published the 14-day notice of the required public hearing, which was held on March 20, 2013, and opportunity to provide written comments on the Findings. No one attended the public hearing and no public comments were received on the draft Findings.

#### **BUDGET AND FINANCIAL INFORMATION**

This action is not expected to have an adverse financial impact on budget. As noted in the Findings, an evaluation will be made as to any cost savings, once the project is completed.

#### **RISK ASSESSMENT**

The highly technical aspects of the BV-GMP RFP may make evaluation and scoring difficult. This can be mitigated by an RFP with clear instructions on proposal requirements and selection criteria as well as by a qualified team of RFP proposal reviewers.

The costs and time necessary for contractors to respond to the RFP, prepare detailed cost information, engage in selection interviews, and undertake negotiations may limit the potential pool of proposers. However, PDC will provide targeted outreach to contractors and subcontractors to help attract proposers. If too few or no qualified proposals are received, PDC can choose to use a traditional low bid method or a sole source direct contract.

This is the first time PDC will use the BV-GMP contracting method project and therefore has some inherent risk, so it is proposed as a Pilot Project. Its success or failure will be monitored and a review provided to the Board acting as the LCRB within 30 days of final project acceptance.

#### **ALTERNATIVE ACTIONS**

The LCRB can choose not to approve the Findings or the alternative contracting exemption and instruct PDC to use the traditional low bid contract for construction.

#### **ATTACHMENTS**

None