

DATE: June 8, 2016
TO: Board of Commissioners acting in its Capacity as the PDC Local Contract Review Board
FROM: Patrick Quinton, Executive Director
SUBJECT: Report Number 16-37
Adopting Findings in Support of and Exempting the 9101 SE Foster Road Project in the Lents Town Center Urban Renewal Area from Low-Bid Solicitation

BOARD ACTION REQUESTED

Adopt Resolution No. 7197.

BACKGROUND AND CONTEXT

This action by the Portland Development Commission (PDC) Board of Commissioners (Board), acting as the PDC Local Contract Review Board (LCRB), will adopt Resolution No. 7197 that exempts construction of the 9101 SE Foster Road project (Project) from the standard competitive bid process.

PDC owns the parcels collectively known as 9101 Foster (the Property), located at the corner of SE Foster Road and 92nd Avenue in the Lents Town Center Urban Renewal Area (URA). An aerial photograph of the Property and Project can be seen in Attachment A. The Project has been designed by Hacker Architecture, with value engineering assistance from Construction Manager/General Contractor (CM/GC), Bremik Construction, Inc. (Bremik). The Project consists of 38 market-rate units, 16 affordable units, 8,992 square feet of commercial space, and 32 surface and tuck-under parking stalls.

Findings: Oregon Revised Statutes (ORS) Chapter 279C.335(2) and PDC's LCRB Administrative Rules (LCRB Rules), Part 4, Section II(B)(2) provide that the PDC Board, acting in the authority of PDC's LCRB, may exempt certain public improvement contracts from a competitive low bid process upon the LCRB making the following Findings:

- a) It is unlikely that such exemption will encourage favoritism in the awarding of a public contract or substantially diminish competition for the contract; and
- b) The awarding of public contract under the exemption is expected to result in substantial cost savings to PDC.

In making the findings, the LCRB may consider the type, cost, and amount of the contract, the number of persons available to bid, value engineering techniques that may be applied to reduce the cost, and such other factors noted in ORS 279C.335(2)(b).

1. No Favoritism or Diminished Competition

Williams/Dame and Associates (WDA) was originally selected via a 2014 Request for Interest, to perform the full development of the Project. As the Project financial returns, public benefits, and time commitments were refined and better understood, WDA decided not to proceed with the development beyond the design and permitting phase. There was no intent, nor any reasonable ability to foresee,

that responsibility for Project completion would be transferred to PDC. As such, no contracts between WDA and their consultants or contractors were entered into or had terms arranged that premeditated a transfer of Project responsibility.

Competitive Processes: On September 22, 2015, WDA issued a Request for Proposals (RFP) to Colas Construction, Yorke & Curtis, Howard S. Wright, and Bremik. The RFP requested proposals for both preconstruction and construction services, required an estimate of construction costs for the project, a summary schedule, list of previous similar projects and contact information for references, a statement of intent to comply with the PDC Equity Policy and examples of previous compliance, and the proposed key personnel. All four general contractors provided responsive proposals by the due date of October 13, 2015. Based upon the responses, WDA more thoroughly vetted the two lower cost proposals from Bremik and Yorke & Curtis. The two firms were then interviewed by WDA, who also checked their previous PDC compliance. Ultimately, Bremik was chosen due to their prior experience with PDC projects, experience with the PDC Equity Policy, and thorough cost estimate.

Specialized Expertise: The Project is being designed with pre-construction VE assistance from Bremik, and consequently they are the only entity capable to enter into the CM/GC Contract to construct the Project and also provide construction guarantees that the Project will be completed as designed. In addition to complying with PDC's Equity Policy, Bremik will be required to bid competitively the majority of the Project construction. Mechanical, electrical, and plumbing (MEP) scopes have already been bid out according to PDC Equity Policy procedures.

Given the short timelines in which construction bids are prepared, it is unlikely that another contractor would acquire the same amount of specialized knowledge of the Project as the team already available, nor work as efficiently and effectively as Bremik will work with the Project's lead architect, Hacker Architecture.

Because the Project is unique, these findings will not be applicable to other PDC-awarded construction contracts.

2. Substantial Cost Savings

In a typical "low bid" project, the contractor is not responsible for design problems. By having the general contractor engaged during the design process, design delays and constructability issues should be kept to a minimum.

As outlined above, Bremik's CM/GC obligation to build the Project creates an opportunity for significant cost and time savings. Benefits include: improved project staging, earlier commencement of construction, integrated planning, and value engineering between designers and contractors from the beginning of the Project. Since Bremik's construction crew is already involved in the Project design, substantial cost savings are also anticipated in not requiring a separate contractor to review or second-guess the construction drawings.

At the completion of the design, Bremik is to deliver a lump-sum contract for Project construction cost and schedule. Once the lump-sum price is determined, Bremik bears all construction and schedule risk.

The CM/GC contract has enabled WDA to quickly and efficiently generate and analyze several iterations to best meet permit requirements with limited available funds. WDA also coordinated the design firm with the construction contractor to consider alternative means and methods of construction and optimize cost savings. Maintaining the existing relationship between architect and contractor for this Project will result in efficiencies of design, value engineering, and cost estimation, and will reduce overhead expenses. This delivery method reinforces the architect-contractor accountability which is expected to reduce costly change orders and claims.

The CM/GC structure with Bremik also provides a clear definition of the construction outcome, cost containment, reduced change orders, and minimal conflicts. These outcomes are unlikely if PDC were to competitively bid the Project and will be reflected in the final agreed upon lump-sum contract price as required per the CM/GC contract. This is attested to by Will Dann, principal at Hacker Architecture, as noted in a letter dated May 16, 2016, and attached to these findings as Attachment B.

COMMUNITY AND PUBLIC BENEFIT

Should the PDC Board, acting as the LCRB, approve the Findings, PDC will be able to move the Project forward towards completion and fulfill its commitments and larger investment strategy in the Lents Town Center URA.

PUBLIC PARTICIPATION AND FEEDBACK

In accordance with ORS 279C.335(5) and the LCRB Rules, Part 4(II)(B)(2), PDC published notice of the required public hearing which was held on May 27, 2016. No public comments or public testimony were received.

BUDGET AND FINANCIAL INFORMATION

There are no direct financial impacts from the LCRB approving these proposed actions. However, by approving direct contracting with Bremik, the PDC Board is making a commitment toward a contracting approach that has implications for the Lents Town Center URA fund and budget. PDC staff will likely request authorization of a financing package for construction of the Project during the August 10, 2016, PDC Board meeting.

RISK ASSESSMENT

There are no material risks associated with adopting this resolution. As noted, PDC staff will return to the PDC Board at their August 10, 2016, meeting seeking additional authorizations to include funding and execution of a CM/GC for construction of the Project.

ALTERNATIVE ACTIONS

1. The LCRB can choose not to approve the findings in their current condition and instruct PDC to gather additional evidence.
2. The LCRB can choose not to approve the findings and instruct PDC to use the traditional low-bid contracting process for construction.
3. The LCRB can choose not to approve the findings and instruct PDC to discontinue the contracting process altogether.

ATTACHMENTS

- A. Project Summary
- B. Letter from Architect

PROJECT SUMMARY

Project Name: 9101 SE Foster Road
Description: 0.63-acre vacant parcel
Location: Northwest corner of the intersection of SE 92nd Avenue and Foster Road
URA: Lents Town Center
Current Phase: Development Design & Permitting
Next Milestone: Construction Start
Completion Target: December 2017



9101 Foster CMGC Contractor

Will Dann <wdann@hackerarchitects.com>

 You replied to this message on 05/16/2016 11:26 AM.

Sent: Mon 05/16/2016 10:30 AM

To: Thier, William

Cc: Garrett Martin

Will:

We strongly recommend that PDC engage the current contractor, Bremik Construction, for the construction of the Lents Town Center Parcel 3 project. Bremik's continued participation is the most cost effective and efficient way to complete the project and is likely to result in the highest quality. To understand why it is the best path forward from both a budget, schedule and quality point of view I want to summarize their participation to date:

- Bremik joined the project at the end of Schematic Design.
- Performed the following cost estimates:
 - Schematic Design, with related Value Engineering (VE) Review
 - 50% Design Development, with related VE Review
 - 100% Design Development, with related VE Review
 - 100% Construction Document Review, with related VE Review
- Attended approximately 10 project Meetings, monitoring scope, schedule, cost, and providing constructability advice.
- Managed Mechanical, Electrical, Plumbing and Fire Sprinkler (MEPFS) sub-contractor selection process
- Facilitated MEPS sub-contractor constructability, Value Engineering Workshops and Reviews
- Participated in Building Envelope Workshop with Envelope Consultant
- Performed general and on-going constructability Reviews
- Provided Permit check sheet assistance.

The CMGC process is highly collaborative. The Architect and CMGC work together to develop the systems and details. As both the Architect and CMGC share in the liability for performance, we collaborate on finding the most cost effective ways to accomplish the quality appropriate for the project.

The input the CMGC gives is not generic. The solutions are customized to the experience and capabilities on the particular CMGC and their pool of subcontractors. As CMGC in this case Bremik has leveraged their relationship with subcontractors to inform the design, detailing, and specifications for much of the MEP portion of the project. Additionally, the CMGC guides the Architect to develop the documents to support their bid packages thereby making the bids more competitive, and reducing the risk for change orders. The subcontractors they have reached out to during the preconstruction phase include qualified MWESB subcontractors, helping to prepare them for the project, and insuring that the equity goals are achieved.

Bremik has collaborated with us to reduce the project cost. Their deep knowledge of the project that has allowed them to reduced contingencies for unknowns and teased out expensive details. They have

a vested interest in completing the project within the estimated costs they have projected. Bidding the project at this point is likely to add costs, because any other contractor will not have the same commitment to the budget, understanding of the project, or opportunity to inform the design. The delay of the project due to the competitive bidding process will add additional escalation and is likely to push construction start further into the wet months of the year.

Please keep the team intact by retaining Bremik. Thank you.

Best wishes,

Will

William Dann

AIA
Principal

Hacker

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