



AGENDA REQUEST & STAFF REPORT

MEETING DATE: October 14, 2024

SUBJECT: Public Hearing regarding Civil and Environmental Consultants, Inc. (CEC) Protest of Document No. 2024-759 Notice of Intent to Award a contract for the Landfill Siting Consultant Services – Phase 3 to Parametrix, Inc.

BACKGROUND:

In 2019, the Board of County Commissioners approved the County's Solid Waste Management Plan. One of the primary objectives identified in the Plan is the siting of a new landfill in Deschutes County to replace Knott Landfill which is projected to reach capacity in 2031

In June, 2021, a Request for Qualifications for the initial portion (Phase 1) of the Landfill Siting project was issued to develop a list of qualified firms for the Landfill Siting Consultant Project. Six firms submitted Statements of Qualifications and three firms were invited to provide presentations to the Landfill Siting Group in September, 2021. After presentations, the Landfill Siting Group developed a Request for Proposals which was released to the three short-listed firms as a final step in the selection process. Parametrix consistently received the highest scoring throughout the evaluation process and was awarded the contract. A scope of work for the initial Landfill Siting Consultant Project was completed, which includes the following major tasks:

- Review and refine site screening criteria developed by the County to date
- Apply site screening criteria to develop a short list of candidate sites for detailed evaluation
- Facilitate and provide stakeholder and public outreach, input and communication
- Review and develop pathway for State and local agency entitlement and permitting process

In June of 2023, Parametrix, through a Sole Source Procurement, was awarded the Landfill Siting Consultant Services Phase 2 contract to continue through the technical evaluation of the short list candidate sites. The Phase 2 work culminated with the Board of County Commissioners acceptance of the Solid Waste Advisory Committee's recommendation to move forward with the negotiations of a purchase agreement for the Hooker Creek "Moon

Pit" site in Deschutes County.

Request for Proposals for Landfill Siting Consulting Services – Phase 3

In order to procure the services needed for the next activities required in the siting process, in July, 2024, a Request for Proposals (RFP) for Landfill Siting Consulting Services – Phase 3 was released which includes the following major tasks:

- Provide technical assistance in the preparation and submittal of permitting documents and applications necessary for the development and operation of a new MSW landfill in Deschutes County
- Provide technical assistance in the preparation and submittal of documents and applications necessary for land use authorizations and entitlements
- Facilitating outreach to elected officials, land use authorities, regulatory and permitting agencies, and other interested parties
- Providing public outreach and coordination

A copy of the RFP is attached hereto. The Solid Waste Department received two formal proposals in response to the RFP. The responding companies were Parametrix, Inc. and Civil & Environmental Consultants, Inc. (CEC). The department also received a letter from another firm that expressed their regret for their inability to respond due to capacity constraints due to prior engagement of a similar nature. Copies of the two proposals received in response to the RFP are attached hereto.

A Landfill Siting Review Committee was created to review the proposals submitted in response to the RFP. The review committee consisted of a total of five (5) representatives from the Solid Waste, Roads, and Legal Departments. Parametrix received the highest scoring from all five members of the committee during the evaluation process and is being recommended for award of the contract. A copy of the scoring summary for the selection process is attached.

Proposal Review and Notice of Intent to Award Contract

Based on the review of the responses by the Committee, the unanimous selection recommendation was for Parametrix. Even if the cost component of the review was removed, Parametrix was the overall preference of the committee, and it was the individual preference of 3 of the reviewers, with one tie and one reviewer preferring the CEC proposal.

On September 16, 2024, the Board considered the recommendation of the Committee at a regularly scheduled meeting. The Board voted 3-0 to approve Document No. 2024-079. Thereafter, on September 20, 2024, Deschutes County received a formal protest from CEC of the Notice of Intent to Award, Document No. 2024-759. A copy of the protest letter is attached hereto.

In accordance with ORS 279B.405 and .410, the CEC protest is before the Board for consideration.

LEGAL CRITERIA:

1. ORS 279B.405

ORS 279B.405(4) states that the contracting agency (the Board) shall consider a protest if it is timely filed and contains the following:

- (a)** Sufficient information to identify the solicitation that is the subject of the protest;
- (b)** The grounds that demonstrate how the procurement process is contrary to law or how the solicitation document is unnecessarily restrictive, is legally flawed or improperly specifies a brand name;
- (c)** Evidence or supporting documentation that supports the grounds on which the protest is based; and
- (d)** The relief sought.

All four of the above criteria must be met. CEC's protest contains sufficient information to identify the solicitation that is the subject of the protest. However, CEC has not challenged the solicitation document as unnecessarily restrictive, legally flawed or as improperly specifying a brand name. Nor has CEC presented grounds to demonstrate that the procurement process is contrary to law. The Board must decide if CEC has met ORS 279B.405(4)(b).

CEC's protest letter sets forth several factors on which it states the County did not give sufficient weight to its proposal. These include scheduling, fieldwork, number of borings, cultural resources and public outreach. CEC states that its proposal is not comparable to that of Parametrix when considering scope of work and cost. CEC requests additional review and consideration of its proposal. The Board must decide if CEC has met ORS 279B.405(4)(c).

2. ORS 279B.410

ORS 279B.410 states, in relevant part:

(1) A bidder or proposer may protest the award of a public contract or a notice of intent to award a public contract, whichever occurs first, if:

- (a)** The bidder or proposer is adversely affected because the bidder or proposer would be eligible to be awarded the public contract in the event that the protest were successful; and
- (b)** The reason for the protest is that:

- (A)** All lower bids or higher ranked proposals are nonresponsive;
- (B)** The contracting agency has failed to conduct the evaluation of proposals in accordance with the criteria or processes described in the solicitation materials;
- (C)** The contracting agency has abused its discretion in rejecting the protestor's bid or proposal as nonresponsive; or
- (D)** The contracting agency's evaluation of bids or proposals or the contracting agency's subsequent determination of award is otherwise in violation of this chapter or ORS chapter 279A.

(2) The bidder or proposer shall submit the protest to the contracting agency in writing and shall specify the grounds for the protest to be considered by the contracting agency.

The Board must consider whether the stated reasons for CEC's protest are cognizable under ORS 279B.410(1)(b) and whether CEC has specified the grounds for the protest in accordance with the statute. CEC's protest letter does not allege that Parametrix's proposal is nonresponsive, nor that the County failed to evaluate the proposals in accordance with the RFP materials. The County did not reject CEC's bid/proposal as nonresponsive. CEC has not alleged that the County's evaluation of proposals is "otherwise in violation" of ORS 279B or ORS 279A.

3. ORS 279B.060(8)

ORS 279B.060(8) provides discretion to the Board in evaluating proposals submitted in response to an RFP. It states that a contracting agency (the Board) may evaluate proposals on any of the following bases:

- (a)** An award or awards based solely on the ranking of proposals;
- (b)** Discussions leading to best and final offers, in which the contracting agency may not disclose private discussions leading to best and final offers;
- (c)** Discussions leading to best and final offers, in which the contracting agency may not disclose information derived from proposals submitted by competing proposers;
- (d)** Serial negotiations, beginning with the highest ranked proposer;
- (e)** Competitive simultaneous negotiations;
- (f)** Multiple-tiered competition designed to identify, at each level, a class of proposers that fall within a competitive range or to otherwise eliminate from consideration a class of lower ranked proposers;

(g) A multistep request for proposals requesting the submission of unpriced technical submittals, and then later issuing a request for proposals limited to the proposers whose technical submittals the contracting agency had determined to be qualified under the criteria set forth in the initial request for proposals; **or**

(h) A combination of methods described in this subsection, as authorized or prescribed by rules adopted under [ORS 279A.065 \(Model rules generally\)](#).

The Board exercised its discretion to evaluate the two proposals based solely on the ranking of proposals, consistent with ORS 279B.060(8)(a).

BUDGET IMPACTS:

The Solid Waste Department has included \$2,700,000 in the FY24/25 budget for the next stage of the procurement and permitting process. Of the budgeted amount, \$1,200,000 was budgeted specifically for the anticipated calendar year costs for consultant services for Phase 3 of the Landfill Siting process. The overall project development is anticipated to cost between \$50-60 million to procure, permit, develop and commence operation in 2030.

RECOMMENDED MOTIONS:

The Board has several options at the conclusion of the staff presentation and CEC protest. The Board may:

- Hold the oral and written record open and continue the hearing to a date certain
- Close the oral record and hold the written record open to a date certain
- Close both the oral and written record and set a date certain for deliberations
- Close both the oral and written record and begin deliberations

If the Board decides to deny the protest, staff will prepare a proposed Order Denying Protest for Board signature. No revisions to Document No. 2024-759 will be necessary.

If the Board decides to grant the protest, staff will prepare a proposed Order for Board signature, which Order will include withdrawal of Document No. 2024-759. The Board's order granting the protest may direct dissemination of a new RFP for Landfill Siting Facilities - Phase 3, or it may decide based on information presented in the protest and at the public hearing to reconsider acceptance of the recommendation of the committee and approve a new Notice of Intent to Award Contract.

ATTENDANCE:

Tim Brownell, Director of Solid Waste

Stephanie Marshall, Deschutes County Senior Assistant Legal Counsel