

City of St. Helens
RESOLUTION NO. 1973

A RESOLUTION ADOPTING FINDINGS TO UTILIZE DESIGN-BUILD AS AN
ALTERNATIVE PROCUREMENT METHOD FOR THE 2.0 MG RESERVOIR
REPLACEMENT PROJECT AND EXEMPTING PROJECT FROM COMPETITIVE
BIDDING REQUIREMENTS

WHEREAS, ORS Chapter 279C requires a competitive bidding process for Public Improvement Contracts, unless a statutory exception applies, a class of Contracts has been exempted from the competitive bidding process, or an individual Contract has been exempted from the competitive bidding process, in accordance with ORS 279C.335 and any applicable Contracting Agency administrative rules; and

WHEREAS, ORS 279.335(2) provides for alternatives to the competitive bidding requirement that otherwise applies to public contracting, upon the adoption of certain findings following a public process; and

WHEREAS, The City would like to use a Design-Build (DB) alternative contracting method for the 2.0 Million Gallon Reservoir Replacement Project (Project). Design-Build is defined in OAR 137-049-0610(6) as a procurement method that results in a Public Improvement Contract in which the construction Contractor also provides or obtains specified design services, participates on the project team with the Contracting Agency, and manages both design and construction. In this form of Contract, a single Person provides the Contracting Agency with all of the Personal Services and construction Work necessary to both design and construct the project; and

WHEREAS, Staff has determined that the City would realize significant benefits by using an alternative competitive bid process in selecting a firm to design and construction the new reservoir and it is unlikely that such exemption will encourage favoritism in the awarding of the public contract or substantially diminish competition for the public contract; and

WHEREAS, The City Council acts as the City of St. Helens Local Contract Review Board and finds that under ORS 279.335 it has authority to grant specific exemptions from the competitive bidding requirements based on the attached findings; and

WHEREAS, The City will invite prospective DB teams to submit competitive proposals in response to the City's Request for Proposals ("RFP"). A Selection Committee will select DB team based on an evaluation of the proposals received. The Selection Committee will include various members of City staff. The RFP process will be completed in accordance with the Alternative Contracting Methods requirements set forth in the Oregon Revised Statutes.

NOW, THEREFORE, THE CITY OF ST. HELENS RESOLVES as follows:

Section 1. In accordance with ORS279C.335 the contract for the 2.0 Million Gallon Reservoir Replacement is exempt from traditional competitive bidding.

Section 2. This exemption is supported by the draft findings attached in Exhibit A which

is incorporated herein by reference;

Section 3. This Resolution is effective immediately upon its adoption.

APPROVED AND ADOPTED by the City Council on February 15, 2023 by the following vote:

Ayes:

Nays:

Rick Scholl, Mayor

ATTEST:

Kathy Payne, City Recorder

Exhibit A

DRAFT FINDINGS FOR AN EXEMPTION FROM COMPETITIVE BIDDING CITY OF ST. HELENS, OREGON 2MG RESERVOIR REPLACEMENT

Oregon Revised Statue (ORS) 279C.300 requires competitive bidding of public works improvement contracts unless specifically excepted or exempted from competitive bidding under Oregon Revised Statue (ORS) 279C.335. St. Helens Municipal Code 2.04.120(4)(a) allows the construction of public improvements using a design/build construction method under a request for proposals. The determination to construct a project using a design/build construction method must be approved by the city council or designee, upon application of the solicitation agent, in which the solicitation agent submits facts that support a finding that the construction of the improvement under the proposed method is likely to result in cost savings, higher quality, reduced errors, or other benefits to the city of St. Helens. The City of St. Helens Local Contract Review Board (comprised of the City Council) may exempt a contract from competitive bidding under ORS 279C.335 based on two findings:

1. The exemption is unlikely to encourage favoritism in the awarding of the public improvement contract or substantially diminish competition for the public improvement contract.
2. Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the City of St. Helens.

Under St. Helens Municipal Code 2.04.120(4)(a), the City Council may exempt a particular contract from formal competitive requirements and shall consider:

1. If the proposed method is likely to result in cost savings,
2. If the proposed method is likely to result in higher quality,
3. If the proposed method is likely to result in reduced errors,
4. If the proposed method is likely to result in other benefits.

In exempting the public works improvement from competitive bidding under ORS 279C.335(2)(b), the Local Contract Review Board must consider the type, cost and amount of the contract and, to the extent applicable to the particular public improvement contract, all 14 items under ORS 279C.335(2)(b)(A-N).

This document presents information the City of St. Helens City Council (Local Contract Review Board) will consider in its finding to exempt the 2MG Reservoir Replacement Project (Project) from competitive bidding and to use a Design-Build (DB) method of delivery.

I. BACKGROUND / NATURE OF THE PROJECT

The existing 2.0 Million Gallon Reservoir, located at 35259 Pittsburg Road, is the oldest of the four reservoirs that serve St. Helens. The reservoir is a partially buried, concrete tank with a panelized domed metal roof. The concrete wall and floor structure is over 94 years old and over the years has experienced localized spalling and cracking to be expected with the age of the structure. Over the past several years, the reservoir has also experienced increasing leakage.

In 2008, the reservoir was inspected, and the floor joints and several locations of the wall were identified for repair. In 2009, the caulking in the expansion joints was replaced, and the portions of the wall where leaks had been identified were removed and replaced.

While the repairs made in 2009 made some improvement in the leakage, the reservoir continued to experience a relatively high leakage rate of over 16,000 gallons per day. Because of its hydraulic connection to the adjacent 2.5 Million Gallon Reservoir, it was advantageous to preserve the life of the 2.0 MG Reservoir for as long as possible. Coating was selected as the most cost-effective solution to address the leakage and extend the life of the structure.

In April 2017, the reservoir's entire interior surface was finally lined with a coating system which began with a 20-mil application of the Reactamine 760 coating product which was overlaid with a non-woven geo-textile fabric which was fastened to the reservoir's concrete surface with 316 stainless steel threaded bolts. A final coating of the Reactamine 760, designed to be applied at a minimum of 60 mils, was applied directly to the fabric and over the bolts to form a monolithic leak-proof barrier inside the reservoir.

However, after the installation, the membrane system exhibited severe leakage of approximately 74,000 gallons per day. After multiple repairs and testing, the leakage rate of the reservoir has remained at a steady 44,000 gallons per day. The reservoir has been taken offline.

In 2021, the City hired a forensic engineering consultant to make recommendations for repair. The recommendations received from the forensic engineer was to:

- (1) remove the liner system completely, enhance integrity of concrete surface with an epoxy coat or parge coat and apply a waterproofing membrane, or
- (2) abandon the existing structure and construct a new structure within the existing.

The City's updated Water Master Plan has identified a water storage deficit for St. Helens with the reservoir offline.

Because of the extreme age and poor condition of the concrete, and because the prior attempt at extending the life of the current tank has failed, staff believes that the best course of action is to abandon the existing structure and construct a new structure within the existing structure's footprint. It is believed that the design-build procurement process to design and build a new reservoir facility to replace the existing reservoir will meet the current operational needs at the best possible value to the City of St. Helens because the project will be benefitted by having a single point of contact capable of providing engineering and construction services; the reservoir is a critical part of the City's water infrastructure; the integration of value engineering under a design-build contract reduces the potential for contract changes, design and construction flaws, and conflicts between owner-designer-contractor; the design-build will shorten the project timeline and allow the City to put the reservoir in service faster; and better collaboration and innovative design solutions through collaboration between the contractor and design team.

The Project has an estimated construction cost of \$1.8 Million Dollars, and generally includes the following work:

1. New Reservoir, located at 35259 Pittsburg Road.

A design-build contract is one in which a single entity designs and constructs a public improvement. Design-build contracts can only be used if City staff and City consultants have the expertise and experience to administer a design-build contract. It is believed that City staff and its consultants have the necessary experience and expertise to successfully utilize this contracting method. The design-build process is used to:

- a. Obtain through a design-build team, engineering design, plan preparation, value engineering, construction engineering, construction, quality control and required documentation as a fully integrated function with a single point of responsibility.
- b. Integrate value engineering suggestions into the design phase, as the construction contractor joins the project team early with design responsibilities under a team approach, with the potential of reducing contract changes.
- c. Reduce the risk of design flaws, misunderstandings and conflicts inherent in construction contractors building from designs in which they have had no opportunity for input, with the potential of reducing contract claims.
- d. Shorten project time as construction activity (early submittals, mobilization, subcontracting and advance work) commences prior to completion of a "biddable" design, or where a design solution is still required (as in complex projects); or
- e. Obtain innovative design solutions through the collaboration of the contractor and design team, which would not otherwise be possible if the contractor had not yet been selected.

The City plans to select a Design-Builder for the Project through a two-step process; consisting of responses to a Request for Proposals (RFP) followed by interviews of top ranked Proposers. The City plans to advertise the RFP for selection of a DB firm in 2023 with the Design-Builder being under contract by May 2023. This is a public improvement project and, as such, design-builders must be a licensed Contractor in good standing in the state of Oregon.

II. SUMMARY OF FINDINGS

With regard to ORS 279C.335, the City of St. Helens Local Contract Review Board shall consider the following in its decision to exempt the Project from competitive bidding and use the DB method of delivery:

1. The exemption is unlikely to encourage favoritism in the awarding of the public improvement contract or substantially diminish competition for the public improvement contract.

Proposed Analysis: The City will select the Design-Builder through a competitive process that fosters competition and focuses on qualifications and delivering best value to the City with disregard to favoritism. The City will issue a RFP in a manner that will attract competition from qualified firms through advertisement in the Daily Journal of Commerce and local newspaper, and posting on the City's web site.

The RFP will attract Proposers having the specialized knowledge, capacity, and skills for the Project from within the state and Pacific Northwest. A sufficient number of design-build firms are available to respond to the RFP.

With respect to favoritism, the City will take prescriptive measures to assure an open competition. Strict adherence to pre-defined scoring criteria that are included in the RFP will be followed. Scoring criteria will be based on experience of the design-build firm and project personnel; understanding of the technical and work requirements for the Project; approach for managing and minimizing Project risks; approach to safety; and consideration of professional design and/or construction management support costs or fees. Review of proposals and scoring will be performed by City staff. All reviewers shall follow the pre-defined scoring criteria.

Proposed Finding: The process used by the City to select the Design-Builder and the availability of multiple firms to propose makes the exemption unlikely to encourage favoritism in the awarding of the public improvement project or substantially diminish competition for the public improvement contract.

2. Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the City of St. Helens.

Proposed Analysis: The Project includes construction of a new Reservoir, located at 35259 Pittsburg Road. A reduction in design costs and a reduction in construction costs are likely and the exemption provides other substantial benefits to the City as regards meeting the schedule and completing necessary work to allow the City to regain its storage capacity in a timely manner.

Awarding the Project under the exemption allows the construction team members of the Design-Builder to participate during design to conduct required exploratory investigations, embed construction work and sequencing into the documents, and develop contingency plans that adequately address risks. The work can be conducted in collaboration with the designer and City staffs to assure the City's interests are addressed. Work by the contractor during design may have similar cost to the additional engineering effort required under competitive bidding. However, the benefits to the City are substantially greater under the DB delivery method the exemption provides. The benefits include reduced changed condition claims, reduced risk of additional time to achieve adequate water storage, and lower construction cost contingencies.

The exemption from competitive bidding and use of the DB delivery method allows the City to have the contractor identify logistics and costs for staging and sequencing for the evaluation, and the benefit of real-time construction costing. The DB method promotes better collaboration with the contractor during design that will result in increased public and City staff safety through increased vetting of construction means and methods. This will also reduce the risk of additional time under which water storage deficiencies could

endanger public safety. While the cost of these benefits was not quantified, they are considered to be substantial.

Use of design-build delivery has not only substantially reduced the overall project implementation schedules, which provides cost savings under escalating market conditions, but it also provides cost savings related to overall professional engineering services. Historically, engineering design services for a similar type project as that of the City's ranges from 10 to 11% of the construction cost. In a design-build delivery, final bidding documents and bidding support services are not required, and the levels of design details and specifications are greatly reduced as a result of close coordination between the designer and contractor. As a result, design-build projects have realized engineering design services in the range of 7 to 9% of the construction cost.

Proposed Finding: Awarding the project under the exemption provides an opportunity for cost savings and provides other substantial benefits to the City. The exemption provides a collaborative work approach under the DB delivery method to be used with the contractor involved in the Project design. This provides an opportunity to prepare well-planned work sequences that reduce the risk of additional storage shortages. This benefit could reduce risks to public safety. In addition, the DB delivery method will facilitate meeting an aggressive schedule to place the new reservoir into use and address the water storage shortfall.

Additionally, substantial benefits of using the DB delivery method include increased safety of the public and City staff and better ability to control the impact that current market conditions have on construction costs.

III. RESPONSE TO ITEMS UNDER ORS 279C.335(2)(b)

In approving the finding under ORS 279C.335(2)(b), the Local Contracting Review Board must consider the type, cost and amount of the contract and, to the extent applicable to the particular public improvement contract the 14 items outlined in ORS 279C.335(2)(b)(A-N). Information considered by the Local Contract Review Board related to each of these requirements follows:

(A) How many persons are available to bid:

Information to be considered by the Local Contract Review Board: The RFP will attract Design-Builders having the specialized knowledge, capacity, and skills for the Project from within the state, and the Pacific Northwest. A sufficient number of DB firms are available to respond to the RFP.

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

Information to be considered by the Local Contract Review Board: The estimated construction cost for the project is \$_____.

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

Information to be considered by the Local Contract Review Board: Benefits to the public will result from the collaborative work approach under the DB delivery method. The project is expected to cost less due to value engineering. It will be safer in that the DB firm will address the best manner in working near the other storage tank, and, since water storage plays a significant role in protecting public safety, it will protect the other resources of the City and the public, thereby maintaining significant public benefits as a source of needed water in an emergency.

The collaborative approach to design and construction under the DB delivery method better assures that the water shortage will be eliminated as soon as possible. This better assures that the benefits to the public provided by reliable water storage are maintained.

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

Information to be considered by the Local Contract Review Board: The DB delivery method builds in innovation, constructability, and real-time cost estimating during development of the design; all of which are core parts of value engineering techniques. In an effort to decrease cost of the Project, value engineering will be conducted at about 30% design development. The review will be led by City staff, outside experts (as needed), and the DB firm participating. The DB team can provide realistic determination of costs and constructability issues that will allow cost-benefit decisions to be made by a team of City staff, design engineer, and contractor working in a partnership to decrease the cost of the project.

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

Information to be considered by the Local Contract Review Board: Construction of the Project requires specialized designers and contractors that have experience designing and building large storage tanks. Construction firms and subcontractors with this expertise are available in the Pacific Northwest.

The cost and availability of specialized expertise necessary for public improvement is not impacted by an exemption from competitive bidding and use of the DB method of delivery. However, procurement of the DB firm based on qualifications, understanding of the project, and proposed approach leads to the City retaining the most qualified firm for the project.

(F) Any likely increases in public safety:

Information to be considered by the Local Contract Review Board: It is important to construct the Project in a manner to ensure safe working conditions for the contractor, the neighbors, and the public that could be affected by the Project. A shorter design/build

time will address the City's water storage deficiency more quickly than a traditional design-bid-build procurement method.

The DB procurement method allows historical safety performance and commissioning work on similar projects to be considered as a selection criteria. It also permits the City to work closely with the contractor to ensure that the design and work sequences include appropriate safety measures, that the contractor understands the City's safety concerns, and that the contractor will take appropriate steps to address them. The DB method promotes better collaboration with the Contractor during design to result in increased public and City staff safety through increased vetting of construction means and methods, and reduced risk of situations that could endanger public health.

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

Information to be considered by the Local Contract Review Board: In a traditional design-bid-build approach, the engineer develops the work plan, however, communicating the information to the contractors during the bid phase can be challenging due to the level of detail needed. However, the use of the DB method enables the contractor to fully understand the project during the design phase, develop a work plan with the engineer and City staff, and mitigate risks associated with large tank building. Furthermore, the reduction in project uncertainty with having the contractor involved during design translates into cost savings to the City in the form of reduced contingency.

The partnering relationship provided through DB delivery will provide opportunity for the City to work with the Contractor to ensure safety measures are followed and revised if needed to reduce risks to the public.

(H) Whether granting the exemption will affect project funding sources:

Information to be considered by the Local Contract Review Board: The Project funding source will not be impacted by an exemption from competitive bidding and use of the DB method of delivery.

(I) Whether granting the exemption will better enable the City to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement:

Information to be considered by the Local Contract Review Board: Recently, in 2022, the bidding market for public works projects has been impacted significantly as a result of increased commercial construction across the country and specifically in the Pacific Northwest. A shortage of skilled craftsmen and laborers, shortages of building materials, increased inflation and rising interest rates have resulted in a 14% rise in construction costs. Even when historical cost data and reliable sources are used, engineering and pre-construction cost estimates for building trades and labor have proven to be inaccurate in a traditional delivery method without real time construction pricing. Using a DB method, benefit-cost decisions can be made using real-time construction costs to keep the Project

within budget. Both suppliers and sub-trade work can be procured early to eliminate price uncertainty and lessen the impact of price escalation during the construction period. In addition, under DB an owner is afforded the flexibility of awarding early construction work packages (e.g., site/civil work, foundation work, etc.) prior to design completion of the overall project. Furthermore, DB affords the ability and time to adjust the project budget during design when true pricing is understood such that the Project is designed at or below budget.

The DB method provides flexibility to reduce the impact of market conditions, specifically through schedule acceleration. This savings in time lessens the impact of the price increases occurring in the current market conditions. For these reasons, granting an exemption to competitive bidding will better enable the City 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 City to address the size and technical complexity of the public improvement:

Information to be considered by the Local Contract Review Board: At least four characteristics of the project lead to its technical complexity and the requirement for a Design-Builder with adequate capacity: 1) building a large, new Reservoir, located at 35259 Pittsburg Road. 2) working in proximity to the existing storage tank 3) working in proximity to neighboring residences, and 4) the need to have a new tank in operation as quickly as safely possible.

The technical complexity of the project requires a Design-Builder that can manage all aspects of work. The DB process will allow the City to acquire a highly qualified contractor with adequate staffing for the site supervision needed as opposed to a minimally staffed contractor secured through award to the lowest responsive, responsible competitive bidder. As a result, it is more likely that the DB firm can address the technical complexities and schedule limitations of the project more effectively, in part because of its qualifications and in part because it will have the opportunity to propose a project approach with adequate staff.

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

Information to be considered by the Local Contract Review Board: The Project involves construction of a new Reservoir, located at 35259 Pittsburg Road., near existing City infrastructure. Using a DB method, the construction contractor is part of the Project team early on, involved in field investigation and design coordination; thereby reducing the risk of discovering unknown conditions and damaging existing infrastructure.

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

Information to be considered by the Local Contract Review Board: During construction the nearby residences will be occupied, and City staff may be required to visit the other existing storage tank. The DB method provides adequate time to plan the work and staging areas for construction to avoid issues with the residences and any work in the nearby facility.

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

Information to be considered by the Local Contract Review Board: Construction will most likely be completed in a single phase. However, the work involves several elements, which will require well-planned work sequences. The DB delivery method facilitates selection of these key team members early in the process and allows the contractor an opportunity to develop a work plan that provides the best value to the City.

(N) Whether the City has, or has retained under contract, and will use city 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 City will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract

Information to be considered by the Local Contract Review Board: The City has experience using design-build delivery, will use specialized advisor services when necessary and the law firm of Jordan Ramis for legal counsel support for the Project.

Possible areas where specialized advisors with specific expertise may be hired or utilized include for exempting the Project from competitive bidding, for preparing the RFP for securing the DB firm through a competitive process, for overseeing the work of the DB firm during initial design and guaranteed maximum price development, and for providing assistance during negotiation of the terms, conditions, scope, and pricing for final design, permitting, and construction.

In addition, Jordan Ramis, PC's attorneys act as general and special counsel for local governments (counties, cities, and special purpose districts) throughout Oregon. They provide advice on public contracting, design and construction litigation, property issues (including negotiation, acquisition, and condemnation), insurance coverage and defense, public meetings, public records, finance, system development charges, utility ratemaking, telecommunications, environmental and natural resources, energy, government ethics for public officials, franchise fees and privilege taxes, and other matters associated with conducting government affairs. They have provided legal counsel to municipal clients on a number of alternative delivery projects including the use of design-build and CM/GC.

II. SUMMARY OF DESIGN-BUILD BENEFITS TO THE CITY

The City is seeking to utilize the DB delivery model to realize cost savings and other project delivery benefits as stated within this findings document. These savings and benefits are expected to be significant. The use of DB will promulgate the following benefits for the City:

- Will allow the City a simple and inexpensive procurement process that can be completed in a relatively short timeframe, thus allowing the City to expedite contracting with both a designer and contractor to immediately begin project implementation.
- Will allow schedule acceleration while leveraging the collaboration advantages (e.g., early contractor involvement, value engineering and value construction) provided by DB, thereby reducing project costs.
- Will allow the City to more effectively manage the Project through one contract administration with the Design-Builder.
- Will allow the City to allocate errors, omissions, and performance risks to one entity (i.e., the Design-Builder) rather than incurring risk responsibility through traditional design-bid-build.
- Will allow the City to remain directly involved in both the design and construction processes for enhanced coordination.
- Will allow the City more effective input into scope, features, and operational aspects of the design.
- Will allow the City flexibility to complete the Project at or below the City's budget (i.e., design and construct to-budget).
- Will allow the City to utilize both negotiated and competitive selection of key suppliers and subcontractors through "open book" GMP to deliver best-value for the City (both in terms of Project construction costs and long-term operating costs).

It is the recommendation of Staff that the City Council adopt and make the findings as set forth above and exempt the 2MG Reservoir Replacement Project (Project) from competitive bidding and to use a Design-Build (DB) method of delivery under a competitive RFP.