

RESOLUTION NO. 5569-21

A RESOLUTION ADOPTING FINDINGS IN SUPPORT OF AN EXEMPTION FROM COMPETITIVE BIDDING AND AUTHORIZING THE CITY MANAGER TO CONDUCT A DESIGN-BUILD CONTRACT FOR THE OPERATIONS CENTER SOLAR PROJECT.

WHEREAS, the Council is designated as the Local Contract Review Board, (the Board) under ORS 279A.060 and City Public Contracting Rules in TMC 1-21;

WHEREAS, ORS 279C.335 and TMC 1-21-090 authorizes the exemption of public contracts relating to goods and services from the requirements of competitive bidding upon the making of certain findings;

WHEREAS, the City has needs to procure services to design and build an addition to the City's existing solar array on its Operations Center roof;

WHEREAS, the most cost-effective and efficient way to procure such services is through a Design-Build Contract, which requires exemption from the normal competitive bidding process;

WHEREAS, the City intends to conduct a competitive Design-Build Contract selection process;

WHEREAS, the Council finds that the alternative contracting method known as Design-Build Contracting is the most advantageous, expeditious, and cost effective method for construction of the Operations Roof Solar Project; and

WHEREAS, the City published notice of the public hearing in the *Daily Journal of Commerce* a minimum of fourteen days prior to the hearing date.

BE IT RESOLVED BY THE CITY COUNCIL, SITTING AS THE LOCAL CONTRACT REVIEW BOARD, OF THE CITY OF TUALATIN, OREGON, that:

**Section 1.** The Council exempts from competitive bidding the contract for the Design-Build Contract for the Operations Solar Project and authorizes the City Manager to conduct a Request for Proposal process to select the Design-Build Contractor.

**Section 2.** The contract exemption is based on the following findings:

**A. The Nature of the Contract.** The nature of the contract is a Design-Build Contract for the Operations Center Solar Roof Project. The Operations Center Solar Roof Project is a proposed project to combine a new solar array to an existing solar array on the City's Operations Center Roof.

**B. Estimated Cost of the Contract.** The estimated cost of the Design-Build Contract is approximately \$93,000.00

**C. Exemption will result in substantial cost savings to the City.** Use of a traditional design and subsequent "low bid" construction contracting method would subject

the City to increased risk of late delivery, substantial complexities, and higher costs. The traditional method would require the City to conduct two separate contracts; the first for a design profession to design the electrical and support components and second for actual construction. Having two separate contracts will result in higher costs and increased risks from the need to competitively bid separate construction contracts, coordinate the contractors, and ensure cooperative communications between the contractors on the job site. This creates a greater likelihood for significant construction issues to arise, including the risk of late identification of design or construction flaws for the project.

The Design-Build contracting method provides opportunities for cost saving in a variety of ways. Having the same contractor both design and build the Project allows for increased efficiency and the final product will be sure to function as appropriately designed. The coordination of the design and construction activities allows the City to have a well-designed and constructed product that will have fewer potential problems in the long-term of the operations of the solar array.

**a. Time Savings.** The Design-Build delivery approach enhances the opportunities to minimize the project time, while enhancing coordination. Under Design-Build Contract, design and construction can be coordinated. By coordinating design and construction, the duration of the Project construction is reduced. Also, the design collaboration between the designer, the City, and the construction portion of the Project will provide efficiency coordination of work.

**b. Cost Savings.** The Design-Build process provides coordination of the design and construction activities to provide opportunities for cost savings. System options and real-time cost estimates provided by the Design-Build throughout the constructability reviews will aid the Project and allows the City to make informed cost-benefit decisions.

**c. Technical Complexity and Market Conditions.** Technical input is needed from in order to effectively design and construct the project. This Project requires the new solar array to work efficiently and effectively with the existing system. A coordinated design and construction plan also needs to be developed to minimize errors in design and construction and enhance predictability of the system into the future. The Design-Build Contract approach is the best method to address the complexities of the project and coordinate the technical input and construction through a "team approach."

**e. Funding.** The funding allocated for this project is \$93,000 and is part of the Tualatin City Services Green Energy budget designed to meet state energy requirements. The Design-Build process will provide the necessary predictability for the whole project and ensures the project budget is not spent on the individual design or construction components. The Design-Build Contract method provides greater cost controls for limited budgets and therefore benefits the City. The team approach, the schedule, the value analysis, and design and constructability reviews provide the ultimate in effective cost analysis. It is critical, and also consistent with the spirit of collaboration encouraged throughout the process that everyone on the Project Team works towards a budget of which they can take ownership.

**D. The Exemption Is Not Likely To Encourage Favoritism Or Substantially Diminish Competition.** "Favoritism" is defined as "selection based on friendship or factors other than merit." "Encourage" is defined as "promoting the growth and development." Granting a contract specific exemption for the contract will be unlikely to encourage favoritism

because this is a single contract that will be procured through a competitive selection process.

The Design-Build contract will be open to all interested and experienced providers. Although the contractor for the Project will not be selected based upon a traditional design and subsequent "low bid" construction method, the provider will be selected through a competitive "Request for Proposals" (RFP) process. Nothing in the RFP process limits the potential number of bidders. In addition, a selection committee will evaluate the responses, and conduct interviews.

The selection criterion for the Design-Build contractor includes factors related to similar project experience, project approach, financial stability, safety, and price. Selection will be based on scoring of responses, with the proposer with the highest overall score receiving the award.

The terms and conditions of the construction contract will be the result of "arms-length" contract negotiations, will require that subcontractors be obtained under a competitive process, and must be reviewed and approved by the City Manager and City Attorney prior to execution.

As a result, the exemption from the requirement of competitive bidding is unlikely to encourage favoritism in the awarding of the improvement contracts or substantially diminish competition for public improvement contracts.

**E. The Proposed Contracting Method.** The proposed contracting method is a Request for Proposal process to select a Design-Build Contractor.

**F. The Estimated Contract Let Date.** The estimated contract let date is October 25, 2021

**Section 3.** The City Manager is authorized to conduct a Request for Proposals process to select a Design-Build Contractor. The City Manager is also delegated the authority to award and execute the contract.

**Section 4.** This resolution is effective upon adoption.

INTRODUCED AND ADOPTED this \_\_\_\_\_ day of September, 2021.

CITY OF TUALATIN, OREGON

BY \_\_\_\_\_  
Mayor

APPROVED AS TO FORM

ATTEST:

BY \_\_\_\_\_  
City Attorney

BY \_\_\_\_\_  
City Recorder