



**CITY OF MILWAUKIE**

*"Dogwood City of the West"*

**Resolution No. 123-2016**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ACTING AS THE LOCAL CONTRACT REVIEW BOARD, ADOPTING FINDINGS TO ALLOW ALTERNATIVE CONTRACTING FOR THE KELLOGG CREEK BRIDGE (#22142) REPLACEMENT PROJECT.**

**WHEREAS**, the City of Milwaukie adopted Public Contracting Rules by Resolution 101-2011 and amended by Resolution 82-2013; and

**WHEREAS**, the Construction Manager/General Contractor form of alternative contracting is allowed per Public Contracting Rule 10.105.A; and

**WHEREAS**, the use of Design-Build for the Kellogg Creek Bridge (#22142) Replacement Project complies with Public Contracting Rule 10.105.A; and

**WHEREAS**, pursuant to ORS 279C.335(1) and Public Contracting Rule 10.110, a local contract review board may exempt specific contracts from traditional, competitive bidding by showing that an alternative contracting process is unlikely to encourage favoritism or diminish competition and will result in cost savings and other substantial benefits to the public agency; and

**WHEREAS**, pursuant to ORS 279C.335(2), a local contract review board must adopt certain findings in order to exempt the public improvement contract from competitive bidding; and

**WHEREAS**, a public hearing has been noticed, pursuant to Public Contracting Rule 10.110.D and ORS 279C.335(5), and held wherein an opportunity was offered for any interested party to appear and comment on the draft findings,

**Now, Therefore, be it Resolved** that the City Council, acting as the Local Contract Review Board for the City of Milwaukie hereby adopts findings attached as Exhibit A, pursuant to the authority granted the Board by Milwaukie Municipal Code Chapter 3.05, Local Contract Review Board, to allow the use of the Design-Build alternative contracting method for the Kellogg Creek Bridge (#22142) Replacement project.

Introduced and adopted by the City Council on 12/6/16.

This resolution is effective on 12/6/16.

Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

  
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Scott S. Stauffer, City Recorder  
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Jordan Ramis, City Attorney

**EXHIBIT A**  
**FINDINGS FOR AN EXEMPTION FROM COMPETITIVE BIDDING**  
**CITY OF MILWAUKIE, OREGON**  
**KELLOGG BRIDGE REPLACEMENT**

Oregon Revised Statute (ORS) 279C.300 requires competitive bidding of public works improvement contracts unless specifically excepted or exempted from competitive bidding under Oregon Revised Statute (ORS) 279C.335. The City of Milwaukie Local Contract Review Board 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 Milwaukie.

Under City of Milwaukie Public Contracting Rule (Rule) 10.110, the City may exempt a particular contract from formal competitive requirements and shall consider:

1. The nature of the project.
2. Estimated cost of the project, if applicable.
3. Narrative description of the cost saving anticipated and reasons formal competitive would be inappropriate.
4. Alternative contracting practice to be employed.
5. Estimated date by which it would be necessary to let the contract, if applicable.

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 Milwaukie Local Contract Review Board will consider in its finding to exempt the Kellogg Bridge Replacement Project (Project) from competitive bidding and to use a Design-Build (DB) method of delivery.

**I. BACKGROUND / NATURE OF THE PROJECT**

In November and December 2015, weather events caused severe damage to the existing Kellogg Bridge. Heavy rain caused damage to the footings of the bridge. The bridge, under an emergency exemption, was temporarily fixed to allow traffic. The bridge acts as the exit for the nearby waste treatment plant. The Milwaukie Riverfront Park, including the local boat ramp, was temporarily closed due to flood damage to the footing of the bridge. While temporary repairs have been made, the bridge cannot be repaired in a manner that makes economic sense. The bridge at the southern approach suffered major damage in the undermining of the wing walls and approach structures. The bridge that was built in the 1950's had no support other than spread footings, and an ODOT report indicated up to 31 inches of scour putting the footings 31 inches

above the streambed. The bridge was not designed to seismic standards and the soil is sensitive to seismic events. Bridges typically are designed for a 75 year life and a limited in-water-work-window exists.

The old bridge will be replaced. The construction will need to be coordinated with the main sewage line transporting sewage to the Kellogg sewage treatment facility due to its proximate location. The South bank of the river needs to be stabilized. The Project is currently permitted and those permits require a removal/fill permit to remove the existing bridge and temporary riprap within a 2-year period of which 18 months remains to complete all of the required work. To achieve this deadline will require the project to be fast tracked in order that plans are in place to allow the necessary in-water work to occur during the allowed in-water work window.

The Project is scheduled for completion in the next 18 months, has an estimated construction cost of \$2,550,000, and generally includes the following work:

1. Build a new Kellogg Bridge.
2. Stabilize the South bank.
3. Demolition of the old bridge
4. Removal of all temporary stabilization materials.
5. Reconstruction of the sewer facility within the area.

Pursuant to City of Milwaukie Public Contracting Rule 10.105B, a design-build contract is one in which a single entity designs and constructs a public improvement. Design-build contracts shall only be used if City staff has 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 reviewing 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 late 2016 with the Design-Builder being under contract by the end of January 2017. 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 Milwaukie Local Contract Review Board has considered 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.**

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 construction costs or fees. Review of proposals and scoring will be performed by City staff with an outside reviewer sitting on the panel. All reviewers shall follow the pre-defined scoring criteria.

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 Milwaukie.**

Analysis: The Project includes construction of a new bridge during a narrow in-water work window, under a tight budget, all while working in proximity to the main sewer line into the treatment facility and maintain a critical access to the treatment facility and boat launch. A reduction in design costs and a reduction in construction costs are likely and

the exemption provides other substantial benefits to the City in regard to meeting the 18 month schedule and completing necessary work within the narrow in-water work window.

Awarding the Project under the exemption allows the construction team members of the Design-Builder to participate during design to conduct exploratory investigations required, 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 staff to assure the City's interests are addressed. Work by the contractor during design may have similar costs 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 sewage treatment disruption, 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 treatment plant disruptions that could result in discharge permit violations that endanger public health, significant fines, and economic losses to the business community if closing a reach of the river to recreation and fishing is required. 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.

Finding: Awarding the project under the exemption provides 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 opportunity to prepare well-planned work sequences that reduce the risk of treatment plant and/or park disruptions. This benefit could result in substantial cost savings associated with economic losses to the business community if a disruption due to construction work resulted in a treatment plant disruption or closing a reach of the river to recreation and fishing. In addition, the DB delivery method will facilitate meeting the aggressive scheduling constraints created by the permits and the in-water work window.

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 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 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 considered by the Local Contract Review Board: The estimated construction cost for the project is \$2.55 million.

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

Information 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 main sewage line, and, since wastewater treatment plays a significant role in protecting public health and aquatic life in the Kellogg Creek and the Willamette River, it will protect these resources of the City, thereby maintaining significant public benefits as a source of recreation and fishery.

The collaborative approach to design and construction under the DB delivery method better assures that uninterrupted treatment is provided throughout construction. This better assures that the benefits to the public provided by reliable wastewater treatment are maintained.

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

Information 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 the point of about

30% design development. The review will be led by City staff, outside experts (as needed), and with 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 considered by the Local Contract Review Board: Construction of the Project requires specialized designers and contractors who have experience designing and building bridges and who understand the importance of minimizing disruptions to the treatment plant process and compliance with all existing permits. Construction firms and subcontractors with this expertise are highly 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 approach leads to the City retaining the most qualified firm for the project.

(F) Any likely increases in public safety

Information 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, neighbors, and public that could be affected by the Project.

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 discharge permit violations 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 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 risk associated with bridge building while avoiding plant interruption when implementing the improvements. 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 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 considered by the Local Contract Review Board: Recently, 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 and a demand for building materials has equated to a substantial (30% to 40%) 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 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 new bridge across Kellogg Creek, 2) working in proximity to the existing main sewage line into the plant 3) the limited 18 months

available to complete the work 4) the limited access and staging area available 5) the limited availability of access to existing facilities and the need to maintain those accesses 6) and the limited in-water work window.

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 considered by the Local Contract Review Board: The Project involves construction of a new bridge 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 considered by the Local Contract Review Board: During construction the nearby facilities will be occupied. The DB method provides adequate time to plan the work and staging areas for construction to avoid issues with 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 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, including the in-water work. 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 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 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).