

FINDINGS IN SUPPORT OF AN ALTERNATE CONTRACTING PROCESS FOR AN ENERGY SAVINGS PERFORMANCE CONTRACT IN 5 COUNTY-OWNED BUILDINGS

1. GENERAL

The Oregon Legislative Assembly encourages public agencies to consider alternative and innovative contracting methods, other than low bid, that take into account market realities. Pursuant to ORS 279.015, a local Public Contract Review Board (PCRB) may exempt certain contracts from traditional bidding by showing that an alternative contracting process is unlikely to diminish competition and that an alternative process will result in cost savings to the public agency.

The Department of County Assets, Facilities and Property Management Division (FPM) of Multnomah County Oregon (County) proposes to solicit contractor proposals and enter into an agreement with a Qualified Energy Service Company to improve energy conservation, efficiency and generation in County-owned buildings using an Energy Savings Performance Contracting (ESPC) method.

2. BACKGROUND

Multnomah County (the County) delivers a variety of public services through its portfolio of facilities. The Department of County Assets, Facilities and Property Management Division supports the Departments and Programs operating out of these facilities with ongoing maintenance and capital improvements. The portfolio currently contains 131 owned and leased facilities, and the County manages energy consumption on 69 of them through monthly utility bills. Of those, 40 facilities have an integrated Building Automation System (BAS) installed that controls approximately 2,900,000 Square Feet of space, or 80% of the County's Gross Building Area.

The County has elected to solicit a partnership with a Qualified Energy Service Company (ESCO) to assist with energy conservation goals. More specifically, the County has identified 5 facilities that reflect an accurate cross-section of its core services, operating practices, and unique challenges. These 5 facilities comprise about 680,000 Gross Square Feet, or 20% of the entire portfolio. Each of these facilities is on the BAS. The spaces are used for detention, outpatient medical care, general office space, and public purpose library. The County seeks to evaluate an ESCOs proposal for Energy Conservation Measures utilizing industry best practices and advancements in technology.

Oregon Revised Statutes (ORS 279.015) and Public Contract Review Board Rule (PCRB 49-0600 to 49-0690) provide a means of contracting other than the traditional

competitive low-bid process for public agencies. A local Public Contract Review Board may exempt certain public contracts or classes of public contracts from the competitive bidding requirements upon approval of findings submitted by the public contracting agency seeking exemption.

3. FINDINGS

FPM is a local public contracting agency and submits the following findings to support this request for an exemption from the bidding requirements pursuant to ORS 279, so that FPM may issue a Request for Proposals (RFP) using an ESPC method as defined by the State of Oregon (OAR 125-249-0600 to 125-249-0690) as an alternative contracting process.

A. Operational, Budget and Financial Data

Issue: The County owns 69 facility buildings and structures where it pays approximately \$6 million a year in utility costs. Due to decades of capital improvement projects, large decreases in County utility use and cost will be difficult to achieve due to the increasing use of electrical appliances and equipment, aging and energy- inefficient facilities, and historically rising public utility rates. For example, the City of Portland (Water Bureau) has one of the highest rates in the United States due to the cost of improving its combined sewer system.

Response: The ESPC method will solicit proposals to improve energy conservation, efficiency and generation in County-owned buildings. Conservation efforts will reduce the demand for energy, by decreasing heat gain and loss through improvements to building envelopes (e.g. roofs, walls, windows and doors) and by using building automation systems to monitor, schedule and trouble-shoot building mechanical and electrical systems. Efficiency efforts will improve the use of energy where required for heating, ventilation, air-conditioning and electrical equipment, by installing high-efficiency equipment, variable volume controls, and variable speed controls. Generation efforts will provide energy that uses renewable sources either directly through ownership of alternative generation facilities or indirectly through the purchase of energy generated using renewable sources.

B. Public Benefit

Issue: Proposed improvements in County-owned buildings will address two goals of FPM utility management: reduced costs and reduced greenhouse gas emissions. Item A above describes the need to reduce energy costs. The 2009 Climate Action Plan establishes goals to reduce greenhouse gas emissions and to increase waste stream diversion.

Response: In contrast to the low-bid process for contractor selection, the ESPC method provides for early contractor involvement to collaborate with the County

to establish effective working relationships, identify problem areas, and develop economical solutions. The ESPC is a multi-step process whereby the awarded contractor (1) performs an energy audit of buildings in the facility portfolio, (2) recommends projects to improve building energy performance, and (3) executes those projects approved by the County. The multi-step process encourages continual collaboration, cooperation and feedback between the contractor and County during all stages of the work. ESPC also allows the County to review and control costs at every step.

C. Value Engineering

Issue: The traditional contracting process requires projects be fully identified and completely described prior to solicitation, with possible alternate additions or deductions. Thus, value-engineering prior to solicitation does not include the selected contractor. Furthermore, value-engineering with the contractor after solicitation may disadvantage the County due to cost additions or deletions that would not be obtained under a competitive bidding process.

Response: The ESPC method allows the selected contractor to recommend Energy Conservation Measures, Energy Efficiency Measures, and Energy Generation Measures. The contractor would base its recommendations on value-engineering after contract award. Contractor recommendations would include project descriptions, cost estimates, guaranteed energy savings, and forecast payback time. Recommendations may include alternatives and options so the County may make informed decisions about constructability issues, cost-saving changes, value enhancements, cost-benefits, and good practices. The County will approve those recommendations that fit its long- and short-range goals, strategies and tactics for the management of its facility portfolio (such as building disposition, operation consolidation, and building systems lifetime expectancy).

D. Specialized Expertise

Issue: The traditional contracting process does not require contractors to demonstrate specific experience and expertise in energy savings performance contracting work. A low bid does not provide an opportunity to obtain the most qualified contractor with the specialized expertise needed for this work.

Response: The ESPC method selects a contractor, in part, based upon its qualifications to design and construct improvements to County-owned facility buildings and structures that result in reduced energy costs and greenhouse emissions. The ESPC cost model is a factor in selecting an ESPC contractor, but less important than overall contractor qualifications and specialized expertise. The County will benefit by using a contractor with established experience in providing this type of approach, executing similar projects, and incorporating sustainable practices. The ESPC method allows the County to select a

contractor with the best comparable experiences that are supported by references from previous clients.

E. Public Safety

Issue: Most authorized work would occur in occupied buildings during hours where safe public access in full compliance with ADA is required. Other work may occur in secure buildings (e.g. detention facilities) where detainee, employee and public safety are equally important. In all cases, the contractor will perform work in accordance with OR-OSHA safety regulations. The traditional process would not necessarily allow the contractor to negotiate changes in building operation or use to accommodate construction work, reduce contractor liability, and control public risk.

Response: The ESPC method is a team approach that provides for a high level of responsibility and visible adherence to public safety. The solicitation will require the contractor to show evidence that its construction safety practices are at the highest level of integrity and success, including material delivery and staging, trade sequencing and construction methodologies, and construction-related injuries and time lost. Contractor performance on prior projects to reduce issues related to construction safety, provide close site controls, and related risk reduction may be considered in the selection process, unlike the low-bid process.

F. Market Conditions

Issue: The traditional process establishes costs at the time of the low-bid proposal, based upon the work identified and described in the solicitation. The traditional process requires change orders to modify design, specification or construction modifications to the awarded contract. The change order process may be slow to respond to conditions and be costly to the County.

Response: The ESPC method allows close monitoring of the construction market to take advantage of improving products and changing costs. The contractor may time purchases to take advantage of market conditions or modify specifications to reflect changes in market conditions. The contractor will inform the County of current market conditions, labor and material availability, and construction methodologies that may reduce design and construction time and cost. The contractor may also fast-track portions of the work while detailing other portions that require longer lead times for building design, material delivery, or installation work. Timing the market for various aspects of design and construction may result in cost savings and ultimately keep the work on schedule. These fast-track options and benefits are not readily available under the traditional low-bid process.

G. Technical Complexity

Issue: The project requires technical expertise and experience in the design and construction of energy-savings measures for public agencies. Expertise in sustainable design, procurement and construction will be an integral part of the contract due to existing County goals, policies and practices. The contractor will work with several authorities having jurisdiction, because the facility buildings and structures are located throughout the County.

Response: The ESPC method enables the County to competitively select a contractor that has the necessary competence to deal with the technical complexities of guaranteed energy savings work. The contractor will provide quality workmanship, dependable performance, fair and reasonable pricing, and efficient project management. Under a low-bid process, the technical competence of the contractor is not considered as an element of the award.

H. Funding Sources

Issue: County funds are limited due to the current economic environment and demands for deferred building maintenance. The County owns several buildings that are small and not energy-efficient, originally designed for other uses, and costly to operate and maintain. However, many of those facilities have building systems, equipment and components that have yet to reach their design lifetime when they would be scheduled for replacement.

Response: The ESPC method as defined by the State of Oregon provides that contractor guaranteed energy savings are used to payback contractor costs over a fixed period of time. In the ESPC model, the County has no cost other than that due to contract procurement and management. As a result, County-owned buildings will increase energy conservation, efficiency and generation for no significant cost. Actual savings to the County bottom line will not occur until after the energy savings payback the contractor costs.

4. COMPLETION AND COST SAVINGS

Consistent with Oregon law, alternative contracting process must be unlikely to encourage favoritism or diminish competition, yet will result in substantial cost savings. Based on the following, the ESPC method will accomplish both.

A. Unlikely to Encourage Favoritism or Diminish Competition

The County RFP for ESPC work is an open competitive process. The selection criteria will consider the contractor team qualifications; key personnel abilities; project approach description; sustainable practices; minority, women, and emerging small business participation; workforce training; and financial cost

model. The County will further assess contractors with regard to their ability to demonstrate the expertise and experience necessary to meet proposal criteria with respect to previous experience in similar projects for similar clients. Competition will not be diminished, because the County will award a contract based upon a competitive process.

B. Will Result in Substantial Cost Savings

The contractor will provide updated value engineering, cost estimates and schedule forecasts throughout the design and construction process. The engineering, estimates and forecasts will assist the County to review scope, time and cost issues in addition to making final decisions to authorize specific contractor recommendations. The ESPC method allows more flexibility to develop, evaluate, and implement recommendations with a positive impact on construction time and cost. The County anticipates substantial cost savings from this approach because decisions will be made in a cost effective and informed manner. Progress reviews will be frequent and building-specific, which should result in fewer design corrections or construction change orders. The ESPC method includes guaranteed energy savings that pay back contractor costs over time, which is not possible with traditional low-bid work.

5. SUMMARY

To improve energy conservation, efficiency and generation in County-owned buildings, an Energy Savings Performance Contracting (ESPC) method as defined by the State of Oregon is valid alternative contracting process. Contractor selection through an RFP for ESPC services will not diminish competition nor not show favoritism, but will result in cost savings to the County. The special need to develop recommendations and approve work after contract award requires a process inconsistent with the traditional low-bid model. Therefore, FPM recommends this exemption request is justified, is in accordance with Oregon law, and is in the best interest of the County.