

EXHIBIT 1

FINDINGS IN SUPPORT OF AN SOLE SOURCE PROCUREMENT FOR BUILDING AUTOMATION SYSTEM

1. GENERAL

The State of Oregon has enacted rules for all public agencies that are designed to provide fair and open competitive procurement of Goods and Services in order to achieve the best value of public funds. Due to proprietary protections afforded by public policy (patents and copyrights) as well as substantial technical considerations, certain Goods and Services have unique standing in the marketplace. The Public Procurement Rules, adopted by Multnomah County and conforming to Oregon law, anticipate these market realities. Pursuant to ORS 279.015, a local Public Contract Review Board (PCRB) may exempt certain contracts from competitive procurement provided the public interest is best served and allow certain Sole Source Procurements.

The Department of County Management, Facilities and Property Management Division (FPM) of Multnomah County, Oregon (County) proposes to utilize *Sole-Source Procurements* (PCRB Rule 47-0275) to continue to purchase Building Automation System (BAS) system maintenance and training services from Siemens Building Technologies Inc., (SBT) for an additional five years in order to maintain the BAS currently in place. Major additions and/or expansions will be separately procured by a fair, open and competitive process

2. BACKGROUND

FPM is responsible for the acquisition, construction, improvement, operation, maintenance, and disposition of the facilities that house County operations and offices. The County currently owns over 70 facilities and endeavors to operate them in the most resource efficient manner possible. The fulfillment of these goals has lead FPM to establish a highly functioning BAS with the end goal of completing a county-wide system. Upon making the decision to implement a BAS for Multnomah County, FPM and County agencies conducted a fair and open competition to acquire the services, training and equipment needed for a BAS in full knowledge that doing so required a long term commitment of many years to the technology of the successful proposer. In 1989, with these parameters clearly in mind, an open competitive request for proposals was conducted that attracted several outstanding and qualified proposers. The competition culminated with a contract awarded to Siemens Building Technologies Inc. as the most responsive and most advantageous to the County. The work of building the County-wide BAS began with this contract. The County BAS has grown both in functionality and coverage, continued through a series of multi-year extensions of the contract with SBT, each citing PCRB 47-0275.

Today, FPM uses the SBT BAS in more than 40 County-owned and occupied buildings, reducing energy demand (conservation), improving energy utilization (efficiency), and converting rooftop solar energy (generation), fulfilling the three strategies FPM uses to achieve the twin goals of energy use and greenhouse gas emissions reduction. The SBT BAS is a critical component of monitoring and actuating performance of these critical building systems. In several facilities, SBT BAS also monitors water use, another resource benefiting from a higher level management that leads to sustainability.

The SBT BAS includes sensors and actuators (e.g. Direct Digital Controls) that monitor, control and trouble-shoot the major mechanical and electrical building systems consuming energy. These major systems include heating, cooling and ventilating, as well as electric power and lighting systems. In addition to monitoring and controlling the energy consuming building systems, the SBT BAS provides critical central, all-hour monitoring and control of critical safety systems providing fire and security alarms including their annunciation systems.

By automatically and continually monitoring and adjusting these delivery systems, the SBT BAS enables FPM to optimize the use of internal and external staff. A single County engineer, acting from a centralized location, is able to instantaneously adjust a building's air handling system so that heating is provided when and where it is needed and reduced when and where there are diminished requirements. This critical BAS functionality enables operators to quickly adjust system outputs to changing conditions as they occur. BAS also provides all-hour central alarm reporting of abnormalities or system malfunctions and initiates automatic system response, reset and correction. FPM uses the SBT BAS to set and reset temperatures, schedule operations, and monitor electrical and fuel usage. FPM currently manages American Recovery and Reinvestment Act of 2009 (ARRA) funded projects that require specific SBT BAS reporting. The current BAS is in operations in over 40 County facilities consisting of over 2.5 million square feet. SBT is under contract to supply and install the BAS in the East County Courthouse currently under construction.

The proposed contract renewal will provide professional consultation, technical support and replacement parts for the existing BAS over another five (5) year term. The original contract with SBT was awarded pursuant to a formal competitive RFP for a five year period starting in 1989. Each five year renewal has been based on PRCB rule 47-0275 and granted by the Multnomah County Board of Commissioners. While previous renewals included expansion of the BAS into new facilities, the current Exemption request is **only** for the maintenance and operation of the current BAS configuration (including the Multnomah East County Courthouse). Therefore, the estimated amount of the contract extension has been lowered to \$936,000 from the expiring 5 year extension amount of \$2,029,000.

Oregon Revised Statutes (ORS 279.015) and Public Contract Review Board Rule (PCRB 47-0275) provides for Sole Source Procurement under certain circumstances

and for specific reasons that best serve the public interest. A Public Contract Review Board (PCRB) may exempt certain public contracts (or classes of public contracts) from the competitive bidding requirements after a public hearing and the approval of findings submitted by the public contracting agency seeking an exemption.

3. SOLE SOURCE PROCUREMENTS

The Multnomah County Board of Commissioners has the authority to act as a PCRB. Pursuant to the requirements of ORS 279, FPM submits the following findings to support this request for an exemption from competitive bidding requirements and allow FPM to use a Sole Source Procurement Rule (47-0275) to enter into a five (5) year contract renewal with Siemens Building Technologies Inc. for professional consultation, technical support and replacement parts for the existing County Building Automation Systems. Of the 200-250 open contracts for services that FPM administers over a year's time, only three (3) are Sole Source contracts. These contracts are for (1) Door Locks (Schlage); (2) Fire Alarm Control Panels (Notifier); and this (3) Building Automation Systems (SBT). All three of these extended Sole Source contracts address County-wide requirements to standardize, integrate and coordinate essential building operations (security, safety and control). The BAS also interfaces with the Notifier fire alarm systems.

4. PROPOSED FINDINGS: PCRB RULE 47-0275

(1) "The County may award a Contract for Goods or Services without competition when it is determined that the Goods or Services, or class of Goods or Services, are available from only one source. Such determination shall be made by the CPCA Manager for Procurements under \$150,000. For all other Procurements the determination shall be made by the Board. The determination shall be made based on Written findings that shall include, where applicable, findings"...

47-0275 (1)(a) "That the efficient utilization of existing Goods requires the acquisition of compatible Goods or Services"

During the long course of the contracts with SBT, the County has steadily increased the reach of BAS into the array of County facilities and has reached the current level of 40 buildings. This represents a 40% increase of capacity in the 5 years of the expiring contract extension. The East Multnomah County Courthouse is currently being constructed with a BAS provided by Siemens under sub-contract to the electrical sub-contractor and will be connected to the County system.

Building Automation Systems are software and electronics characterized by Proprietary System Integrity as a defining feature. Contemporary BAS features both software and electronic systems. While there are often several vendors

providing BAS, each system is highly integrated with proprietary software and equipment that restricts or inhibits connectivity to competitor systems even with “translators” and “gateways” are provided to facilitate communication. There are many practical as well as strictly proprietary reasons for this restrictive market. The optimum time for open competition is prior to the installation of the system. That is to say the best decision points for selecting a BAS vendor is (1) at the time of the decision to invest in a BAS or (2) upon the completion of the economic and practical life cycle of the BAS in place. At this time neither of these two conditions exists.

In 1989, a fair and open competition led to the selection of the SBT BAS; and, neither the economic nor the practical life-cycle of the existing BAS has been reached. Only SBT Equipment will deliver 100% functionality of the considerable County investment in the existing SBT BAS.

- “Forward and Backward Compatibility” - SBT is the only supplier of hardware and software that is 100% compatible with all their (SBT) previous versions. All of the operational equipment installed under the original contract of 1989 remains 100% functional today. Much of this equipment will not interface with hardware and/or software provided by other vendors and would have to be replaced. As equipment is replaced due to wear or failure, the SBT BAS is and will remain 100% compatible with the replacements and upgrades.
- “Interface Compatibility” - SBT is the only supplier of hardware and software that is 100% functional with all existing hardware and software in the existing BAS. Although equipment and software from other suppliers may be installed, a “gateway” translator must be purchased in order for the devices to interface with any “new” non-SBT based software. Currently, no “gateway” translators are available that provide 100% compatibility and at least some degree of functionality of the system will be lost. The cost of replacing the lost functionality is avoided by maintaining the integrity of the SBT BAS.
- The proposed Sole Source Procurement seeks to secure system maintenance and training services from SBT to maintain the functionality of the BAS to its highest level.

47-0275 (1)(d) “Other findings that support the conclusion that the Goods or Services are available from only one source”

Other findings are as follows:

a. Asset Maintenance

Issue: MAINTAINING THE COUNTY BAS The County owns over 70 building facilities and structures where it pays over \$4 million a year in energy bills, plus another \$1.5 million a year in water and waste charges. After decades of implementing successful improvement projects along with enhanced operation

and maintenance protocols, further large decreases in County energy usage and greenhouse gas emissions reductions will be difficult to achieve in a cost-effective and rational manner without the use of extensive of BAS.

Response: The Sole Source Procurement will allow FPM to negotiate a new 5-year contract with SBT, which has successfully furnished, installed, programmed, modified, and upgraded BAS equipment and components in County buildings since 1989. The County has invested several million dollars and many years developing, installing and programming this BAS into a highly operational and efficient asset for the County. SBT recently partnered with FPM to collect about \$1,000,000 of federal funds and \$340,000 of Energy Trust of Oregon incentives to upgrade and install BAS into the current configuration of 40 County buildings. Discontinued use of the SBT BAS will create serious challenges with regard to the reporting and compliance requirements of these grants. To date SBT has maintained a 100% operational system utilizing 100% of existing and paid for equipment and the proposed contract renewal will extend this record.

At this time, changing the BAS maintenance and training contractor will cause otherwise avoidable operational disruptions, component conflicts, and additional staff training and management time and expense.

b. Public Benefit

Issue: SUSTAINABILITY Proposed improvements in County-owned buildings will address two goals of FPM utility management: (1) reduced utility costs and (2) reduced greenhouse gas emissions. The 2009 Climate Action Plan, adopted by the County, establishes goals to reduce greenhouse gas emissions and to increase waste stream diversion.

Response: Maintaining 100% functionality of the existing BAS helps to maximize these crucial public policy goals. FPM will buy goods and services on a “requirements basis.” In the past, FPM has successfully negotiated for federal General Services Administration (GSA) pricing, which is the lowest available pricing from SBT. Basic contract requirements will include training, components, with maintenance, warranty, and post-warranty as needed. A Sole Source Procurement also allows the County to review and control costs at every step from contract negotiation and at all times during the duration of the contract.

One of the valuable benefits of a County wide BAS is the collection of baseline data. The Federal government has funded the program that produces this baseline data and has one year of compliance and reporting remaining. Continued use of the SBT BAS assures compliance with these Federal programs.

Accurate measures of the performance of individual building systems require operation under a variety of conditions that manifest over time. For example:

measuring the range of heating season energy consumption is only possible after collecting usage data over several seasons. The ability to accurately forecast the range of energy use as a parameter of decision making is invaluable. Altering the functionality of the system will alter the results for new seasons as they occur. There will be no reliable means to measure the magnitude of the alteration thus the data collected prior to the altered functionality is skewed. Creating a baseline will have to begin anew. This baseline data is a key component of the Federally-funded ARRA program.

c. Public Safety Benefits

Issue: Most BAS monitoring and trouble-shooting occurs in buildings where public and employee safety is a prerequisite and during hours where safe public access in full compliance with the Americans with Disabilities Act (ADA) is required. Other BAS monitoring functionality occurs in secure buildings (e.g. detention facilities) where detainee, employee and public safety are equally important.

Response: In all cases, the fully functioning BAS is critical to safety. The SBT BAS has been fully integrated with the existing fire detection-alarm system and security systems.

5. SUMMARY

In 1989 and as a result of a fair and open competition, FPM selected SBT to furnish, install, program, operate and maintain a BAS in County facilities. The original contract was for a period of 5 years which was renewed for 5 additional years in 1994 (Order 94-49), in 2000 (Order 99-109), and again in 2005 (Order 05-209) and for two years in 2009 (Order B05-209). FPM currently uses the BAS daily in 40 County-owned facilities with over 2.5 million square feet, constituting a substantial investment in materials, programming, and training. The new contract would be for materials, equipment and training necessary for the maintenance, warranty, and post warranty of the existing system.

FPM has negotiated with SBT in the past to receive federal General Services Administration (GSA) pricing, which is the lowest available pricing from SBT. A Sole Source Procurement with SBT will allow FPM to remotely operate, monitor and trouble-shoot environmental and lighting controls in County facilities utilizing a cost-effective and common database structure. To improve energy conservation, efficiency and generation in County-owned buildings, a Sole Source Procurement is the preferred alternative contracting process. This will result in cost savings to the County and preservation of valuable assets. Therefore, FPM recommends approval of this Sole Source Procurement.