

# McMinnville School District #40

Code: DJC-AR(2)  
Revised/Reviewed: 6/08/15  
Orig. Code: DJC-AR(2)

## Bidding Requirements -- Public Improvement Contracts

### 1. Definitions.

- a. "Public Improvement Contract" shall be as defined in Resolution No. 05-1415.
- b. "Offeror" shall mean an individual or firm proposing or bidding on a public improvement contract.
- c. "Construction Manager/General Contractor (CM/GC)" is an alternative form of procurement that results in a contract with a construction manager/general contractor who undertakes project team involvement with design development; provides constructability reviews; provides value engineering, scheduling, estimating and subcontracting services; establishes a "Guaranteed Maximum Price" (GMP) to complete the work; acts as general contractor; holds all subcontracts, self-performs portions of the work as may be allowed under the contract; coordinates and manages the building process; provides general contractor expertise; and acts as a member of the project team along with district staff, architects, engineers and other contractors. CM/GC also refers to a contractor under this form of contract, sometimes known as the "construction manager at risk." The GMP is the total maximum price provided to the district by the CM/GC, and accepted by the district, that includes all reimbursable costs of and fees for completion of the work, as defined by the contract, except for material changes in the scope of work. The GMP may also include particularly identified contingency amounts.
- d. "Design Build Contract" is an alternative form of procurement that results in a contract that provides or obtains specified design services, participates on the project team with the district, and manages both design and construction. In a design build contract, a single person or firm provides all of the services necessary to both design and construct the project.

### 2. Eligibility for Public Improvement Contracts.

**Construction Contracts.** The district shall not consider a party's offer to do work as a contractor unless that party has a current, valid certificate of registration issued by the Construction Contractors Board.

**Landscape Contracts.** The district shall not consider a party's offer to do work as a landscape contractor unless that party has a current valid landscape contractor's license issued by the State Land Contractor's Board.

**Effect of Noncompliance.** The district shall deem invalid an offer received from a party that fails to comply with this requirement.

### 3. Pre-offer Conferences.

The district may require offerors to attend pre-offer conferences for the purpose of explaining procurement requirements to obtain information or to conduct site inspections.

Attendance at pre-offer conferences may be required as a condition of making an offer. An offer made by a party that fails to attend the mandatory pre-offer conference shall be rejected as non-responsive.

Statements made by a district representative at the pre-offer conference do not modify or change the solicitation document and are not binding upon the district.

4. Method of Soliciting for a Public Improvement Contract.

Public improvement contracts shall be solicited as provided in the district's public contracting rules (Resolution 05-1415).

5. Alternative Contracting Methods.

From time to time the district may wish to enter into alternative contracting methods for the construction of public improvements. Those alternative contracting methods should primarily include the construction manager/general contractor method and/or design/build method. The following sets forth procedure to use with respect to these alternative contracting methods.

- a. Contracts for the construction of public improvements using a design/build or construction manager/general contractor construction method shall be awarded under a request for proposals. The determination to construct a project using a design/build or construction manager/general contractor construction method must be approved by the district's Contract Review Board upon facts in support of findings that the construction of the improvement under the proposed method is likely to result in cost savings, higher quality, reduced errors or other benefits for the district.
- b. Before final adoption of the findings, the Local Contract Review Board must hold a public hearing. Notice of the public hearing must be published in at least one trade newspaper of general statewide circulation a minimum of 14 days before the hearing. The notice shall state that the public hearing is for the purpose of taking comments on the district's draft findings for an exemption from the competitive bidding requirement. At the time of the notice, copies of the draft findings shall be made available to the public. At the option of the district, the notice may describe the process by which the findings are finally adopted and may indicate the opportunity for any further public comment. At the public hearing, the contracting agency shall offer an opportunity for any interested party to appear and present comment. If the district is required to act promptly due to circumstances beyond the district's control that do not constitute an emergency, notification of the public hearing may be published simultaneously with the district's solicitation of contractors for an alternative public contracting method, as long as responses to the solicitation are due at least five days after the meeting and approval of the findings.

In addition to the provisions in the District's Public Contracting Rules or in these policies, public improvement contracts procured pursuant to these rules shall comply with ORS 279C.400 and 279C.410, relating to competitive proposals.

A CM/GC Contract may be authorized, if one or more of the following types of benefits are reasonably demonstrated in the written findings:

- a. Time Savings. The public improvement has significant schedule ramifications, such that concurrent design and construction are necessary in order to meet critical deadlines and

shorten the overall duration of construction. Operational and financial data may be considered that show significant savings or increased opportunities for generating revenue as a result of early completion, as well as less disruption to public facilities as a result of shortened construction periods;

- b. **Cost Savings.** Early contractor input during the design process is expected to contribute to significant cost savings. Value engineering, building systems analysis, life cycle costing analysis and construction planning may be considered that lead to cost savings. Any special factors influencing this analysis should be considered, including high rates of inflation, market uncertainty due to material and labor fluctuations or scarcities, and the need for specialized construction expertise due to technical challenges;
- c. **Technical Complexity.** The public improvement presents significant technical complexities that are best addressed by a collaborative or team effort between the district, design professionals and contractor, in which the contractor will assist in addressing specific project challenges through pre-construction services. The need for contractor input on issues such as operations of the facility during construction, tenant occupancy, public safety, delivery of an early budget or GMP, financing, historic preservation, difficult remodeling projects and projects requiring complex phasing or highly coordinated scheduling may be considered.

A Design Build Contract may be authorized, if one or more of the following types of benefits are reasonably demonstrated in the written findings:

- a. **Full Integration.** Obtaining, 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. **Value Engineering.** Integrating 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. **Risk Reduction.** Reducing 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. **Project Time.** Shortening project time as construction activity, including, but not limited to, 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 or phased projects;
- e. **Collaborative Problem Solving.** Obtaining 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.

## 6. Request for Proposals.

Source selection by an alternative contracting method will be by a request for proposals. A request for proposals shall contain:

- a. **General Information.**
- b. **Identification of the public improvement project, including the character of the work, applicable plans, specifications and other contract documents;**
- c. **Notice of any pre-offer conference including:**
  - (1) The date, time and location;
  - (2) Whether pre-offer conference attendance will be mandatory or voluntary; and

- (3) A notice that statements made by representatives of the district at the pre-offer conference are not binding upon the district unless confirmed by written addendum.
- d. The deadline for submitting mandatory prequalification applications and the class or classes of work for which offerors must be prequalified, if prequalification is a requirement;
- e. The name and title of the person designated for receipt of offers and the contact person, if different;

Instructions and information concerning the form and submission of offers, including the address of the office where offers must be delivered, any bid or proposal security requirements, and any other required information or special information, i.e., whether offers may be submitted by facsimile;

- f. The date, time and place of opening;
- g. Instructions for submitting bid security, as required by law.
- h. The date and time of closing, after which the district will not accept offers. This time shall be not less than five days after the date of the last publication of the advertisement and if feasible, a fourteen-day solicitation period should be used. If the invitation to bid may result in a contract with contract price greater than \$100,000, the district shall designate a time of closing consistent with first tier subcontractor disclosure requirements and shall require payment and performance bonds as required by law.
- i. The office where the specifications for the work may be reviewed;
- j. A statement that each proposer submitting a bid in response to an invitation to bid must identify whether the proposer is a “resident bidder.”
- k. If the contract is for a public work subject to ORS 279C.800 to 279C.870 or the Davis Bacon Act (40 U.S.C. 276a), a statement that no offer will be received or considered unless the offer contains a statement by the offeror as a part of its offer that: “Contractor agrees to be bound by and will comply with the provisions of ORS 279C.840 or 40 U.S.C. 276a”;
- l. A statement that an offer for a contract will not be received or considered unless the offeror is registered with the Construction Contractors Board, or is licensed by the State Landscape Contractors Board;
- m. A statement of whether a contractor or a subcontractor under the contract must be licensed under ORS 468A.720 regarding asbestos abatement projects;
- n. Contractor’s certification that all subcontractors performing construction work described in ORS 701.005(2) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence work under the contract;
- o. Contractor’s certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4);
- p. How offerors will be notified of addenda and how addenda will be made available;
- q. When applicable, instructions and forms regarding first tier subcontractor disclosure requirements for bidders, as set forth in ORS 279C.
- r. The anticipated solicitation schedule, deadlines, evaluation process, and protest process;
- s. Evaluation criteria, including the relative value applicable to each criterion, will be used to determine the responsible proposer or proposers with the best responsive proposal or proposals, along with the process that will be used to determine acceptability of the work. Examples of evaluation criteria include price or cost, quality of a product or service, past performance, management, capability, personnel qualification, prior experience, compatibility, reliability, operating efficiency, expansion potential, experience and availability of key personnel, adequacy of equipment or physical plant, safety record, financial wherewithal,

project understanding, proposed milestone dates, proposed methods of construction, sources of supply, references and warranty provisions. Evaluation factors need not be precise predictors of actual future costs and performance, but to the extent possible, such factors shall be reasonable estimates based on information available to the district; treat all proposals equitably and recognize that public policy requires that public improvements be constructed at the least overall cost to the district.

- (1) In CM/GC Contract, factors may also include the ability to respond to the technical complexity or unique character of the project, analyze and propose solutions or approaches to complex project problems, coordination of multiple disciplines, the time required to commence and complete the improvement, and related matters that affect cost or quality.
- (2) In a Design Build Contract, factors may also include design professional qualifications, specialized experience, preliminary design submittals, technical merit, design builder team experience and related matters that affect cost or quality.

## 7. Contract Provisions.

All contracts for public improvements shall include, at minimum, the following provisions:

- a. All warranties, insurance and bonding requirements, that the Purchasing Manager deems appropriate for the project;
- b. All applicable statutorily required contract provisions, including but not limited to, ORS 279.505(1), ORS 279C.505(2), ORS 279C.510(1), ORS 279C.510(2), ORS 279C.515, ORS 279C.520, 279C.525, ORS 279C.530, ORS 279C.540, ORS 279C.545, ORS 279C.830 and ORS 279C.840;
- c. A provision indicating whether the contractor can assign, sell, dispose or otherwise transfer its rights or can delegate its duties under the contract without prior written approval from the district; and
- d. Whether the district is willing to negotiate terms and conditions or allow submission of revised proposals following discussions, provided that the specific terms and conditions that are subject to negotiation or discussion shall be identified, and offerors shall be authorized to propose alternative terms and conditions in lieu of the terms and conditions identified as authorized for negotiation or discussion. The evaluation and discussion or negotiation process must be described, including how any competitive range will be established.

## 8. Discussions and Negotiations; Cancellation

**Clarifications.** In evaluating bids or proposals, the district may seek information from an offeror to clarify the bid or proposal. An offeror must submit written and signed clarifications and such clarifications shall become part of the bid or proposal.

**Negotiation.** If the solicitation did not permit negotiation, the district may nonetheless negotiate with the highest ranked proposer, but only:

- a. The statement of work; or
- b. The contract price as it is affected by negotiating the statement of work.
- c. If the district proceeds with discussions or negotiations, the district shall establish a negotiation team tailored for the acquisition.

Cancellation. Nothing in this subsection shall restrict or prohibit the cancellation of the procurement at any time.

9. Competitive Range for Alternative Contracting Proposals

After opening of proposals for an Alternative Contracting Method, the district will evaluate all proposals in accordance with the evaluation criteria set forth in the request for proposals. After evaluation, the district will determine and rank the proposers in the competitive range.

The district may increase the number of proposers in the competitive range if the evaluation of proposals establishes a natural break in the scores of proposers indicating a number of proposers greater than the initial competitive range are closely competitive, or have a reasonable chance of being determined the best proposer after the evaluation of revised proposals submitted in accordance with the process described in this rule.

The purchasing manager shall provide written notice to all proposers identifying proposers in the competitive range. A proposer that is not within the competitive range shall be given notice of that proposer's right to protest the district's evaluation and determination of the competitive range in accordance with these policies.

After the protest period provided in accordance with these policies expires, or after the Purchasing Manager has provided a final response to any protest, whichever date is later, the district may either:

- a. Provide written notice to all proposers in the competitive range of its intent to award the contract to the highest ranked proposer in the competitive range. After the protest period provided in accordance with these rules expires, or after the purchasing manager has provided a final response to any protest, whichever date is later, commence final contract negotiations with the highest ranked proposer in the competitive range; or
- b. Engage in discussions with proposers in the competitive range and accept revised proposals from them, and, following such discussions and receipt and evaluation of revised proposals, conduct negotiations with the highest ranked proposer following evaluation of revised proposals.