



COUNCIL RESOLUTION No. 15-2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ACTING AS THE LOCAL CONTRACT REVIEW BOARD, ADOPTING FINDINGS AND ALLOWING THE USE OF THE BEST VALUE CONSTRUCTION CONTRACTING METHOD FOR THE WASHINGTON STREET AREA IMPROVEMENTS PROJECT.

WHEREAS the city adopted Public Contracting Rules (PCRs) by Resolution 52-2022 to be in effect as of June 30, 2022, and

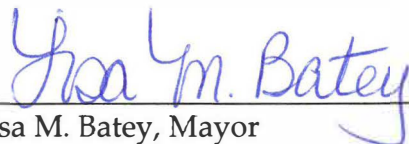
WHEREAS the best value construction form of alternative bidding is allowed per PCR 10.105.C; and

WHEREAS the use of a best value construction bid process for the Washington Street Area Improvements project complies with PCR 10.105.C; and

Now, Therefore, be it Resolved by the City Council of the City of Milwaukie, Oregon, acting as the Local Contract Review Board for the City of Milwaukie, that the Findings in the attached Exhibit A are adopted pursuant to the authority granted to the board by Milwaukie Municipal Code (MMC) Chapter 3.05.030, to allow the use of the best value construction bid process for the Washington Street Area Improvements project.

Introduced and adopted by the City Council on **March 7, 2023**.

This resolution is effective immediately.



Lisa M. Batey, Mayor

ATTEST:

APPROVED AS TO FORM:



Scott S. Stauffer, City Recorder



Justin D. Gericke, City Attorney

EXHIBIT A

FINDINGS IN SUPPORT OF ALTERNATIVE CONTRACTING METHOD FOR THE WASHINGTON STREET AREA IMPROVEMENT PROJECT

Introduction

Use of Alternative Contracting methods, such as Best Value Construction, is made possible under ORS Chapter 279C, which permits certain contracts or classes of contracts to be exempt from competitive public bidding under strict procedural safeguards. Like other alternative contracting methods, Best Value Construction has significantly different legal requirements than a typical lowest bid method.

Pursuant to ORS 279C.335, 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. The Oregon Attorney General's Model Public Contract Rules provide for public notice and opportunity for public comment on draft findings in favor of an exemption before final adoption.

Under ORS 279C.330, "findings" means the justification for a contracting agency conclusion that includes, but is not limited to, information regarding:

- Operational, budget, and financial data;
- Public benefits;
- Value engineering;
- Specialized expertise required;
- Public safety;
- Market conditions;
- Technical complexity; and
- Funding sources.

Findings

Operational, Budget, and Financial Data

The Washington Street Area improvements Project has elements of construction that have been identified in the Safe Access for Everyone (SAFE) Program, the Street Surface Maintenance Program (SSMP), the Water Master Plan, and the Wastewater Master Plan. The funds have been bonded and are required to be spent within three years. The Best Value

Construction procurement method allows the city to request a bid schedule to provide unit cost and then a proposal to identify contractor's qualifications to meet the requirements of the project. In addition to bid item price, this process considers the long-term costs and benefits and can include criteria with qualitative, technical, and sustainable aspects in determining an award decision. These criteria could be the reasonableness of the bid, estimated construction timeline, the contractor's history of work and their business relationships.

Public Benefit

The project will be built with a qualified contractor that has prior experience with projects of similar size and complexity. This allows for a better final product to benefit the public. The procurement process still requires contractors to submit a bid that will count for 65% of the points. The remaining 35% of the points will be based on qualifications. The Best Value Construction method allows for an award based on consideration of both a competitive bid (price) and qualifications of the contractor.

Value Engineering

The Best Value Construction process looks at past performance and experience to minimize risk. The contractor in their qualification proposal can submit ideas, value engineering options, and construction methods that provide cost savings that could be incorporated into the construction contract. The benefits of value engineering are not available with only the low bid process.

Specialized Expertise Required

The Spring Creek culvert construction at Washington Street and 27th Avenue requires the in-water work to be completed within a very short timeframe between July 15 to August 31 and must meet all Oregon Department of Fish and Wildlife permit requirements. The contractor ultimately selected will be well qualified in culvert and in-water construction.

The Best Value Construction selection process is based on price and qualifications. The City will benefit by acquiring a Best Value Construction, that allows qualifications to be part of the process to selecting a contractor with established experience and specialized expertise to manage this project. A low bid process does not provide an opportunity to evaluate qualified contractors with the specialized expertise needed for the project.

Public Safety

The Best Value Construction process will allow the contractor to provide qualifications on how they have demonstrated a safe construction site throughout the project and maintained public safety. A low bid process does not give this option.

Market Conditions

The Best Value Construction contracting process is a modern construction delivery method used by both public and private organizations. Best Value Construction allows for the

consideration of additional value a contractor may offer in concert with their bid price to determine the bid that delivers the best long-term benefits and value for the project.

Technical Complexity

The project has significant technical complexities that will be best addressed through qualifications and a team approach. The project is technically complex due to the culvert construction work that is adjacent to an historically significant site. For this project, culvert construction work must be completed within the required in-water work period without compromising the adjacent historic infrastructure. Washington Street is classified as a collector road and traffic will need to be detoured around the site if road closure is required.

Funding Sources

Funding for this project will come from the 2023 to 2028 Capital Improvement Plan (CIP) and the 2023-2024 Biennium Budget adopted by City Council on June 7, 2022. Best Value Construction process uses competitive bid process with a qualification element.

Summary

After careful consideration, the City has found the Best Value Construction method more appropriate than a traditional low bid process to meet the overall project objectives for the Washington Street Area Improvements Project.