

**RESOLUTION NO. 18-783-07**

**A RESOLUTION OF THE CITY OF JOHN DAY ADOPTING FINDINGS TO SUPPORT THE DESIGN-BUILD ALTERNATIVE CONTRACTING METHOD FOR THE CONSTRUCTION OF THE CITY GREENHOUSE PROJECT.**

WHEREAS, the John Day City Council (“Council”) acts as the local contract review board (the “LCRB”) for City of John Day (“City”); and

WHEREAS, pursuant to ORS 279C.335, Council held a public hearing on February 13, 2018, for purposes of taking comments on draft findings in support of exempting the contract for the construction of the greenhouse to be located at 60835 Hwy 26, John Day, Oregon 97485 (the “Project”) from competitive bidding, which findings are attached hereto as Exhibit A; and

WHEREAS, based on the findings contained in Exhibit A, Council desires to exempt the contract for the Project from competitive bidding and approve the design-build alternative contracting method.

NOW, THEREFORE, BE IT RESOLVED, by and through the Council meeting in regular session, the following:

1. Findings. The above-stated findings are hereby adopted. Council, acting as the LCRB, hereby adopts the findings contained in the attached Exhibit A.
2. Exemption. Pursuant to the findings contained in the attached Exhibit A, Council hereby exempts the Project from competitive bidding procedures and authorizes and approves the use of a competitive request for proposals in accordance with the design-build alternative contracting method.
3. Miscellaneous. All pronouns contained in this resolution and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word “or” is not exclusive. The words “include,” “includes,” and “including” are not limiting. The provisions of this resolution are hereby declared severable. If any section, subsection, sentence, clause, and/or portion of this resolution is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, subsection, sentence, clause, and/or portion will (a) yield to a construction permitting enforcement to the maximum extent permitted by applicable law, and (b) not affect the validity, enforceability, and/or constitutionality of the remaining portion of this resolution. This resolution may be corrected by order of the Council to cure editorial and/or clerical errors.

APPROVED, ADOPTED, AND MADE EFFECTIVE by the Council on February 13, 2018.

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Ron Lundbom, Mayor

ATTEST:

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Nicholas Green, City Manager

**Exhibit A. City of John Day  
Greenhouse Construction Project  
Findings in Support of Exemption from Competitive Bidding**

A. General.

1. Oregon public contracting rules outline competitive bidding requirements for public improvement construction projects in OAR 137-049-0130. Oregon law allows public agencies to consider alternative and innovative public improvement contracting methods that allow alternate construction delivery processes, including, without limitation, design-build, and for allowing considerations other than lowest bid. Under ORS 279C.335(2), a local contract review board may exempt certain contracts from the traditional competitive bidding methods by showing that an alternative contracting process is unlikely to encourage favoritism or diminish competition, and that it will likely result in substantial cost savings to the public agency. City of John Day (“City”) has prepared these findings to comply with ORS 279C requirements.

2. For the reasons set forth more fully below, the Project (as defined below) is proposed for design and construction through the design-build competitive selection process in accordance with ORS 279C.400. Design-build is a method of project delivery in which the owner executes a single contract with one entity to provide design and construction services. This approach ensures strong coordination between design and construction phases and minimizes potential changes that may result in cost overruns and delays. In addition, the design-build process is advantageous for the Project as it allows for faster and more timely mobilization of a contractor to the site to complete the work.

3. Design-build affords singular responsibility which, in turn, promotes early development of a team approach that allows continued value engineering and constructability review, reducing design and construction time. This translates into an increased likelihood of cost savings, reduces City’s administrative burden, and provides greater cost certainty throughout the Project. Notwithstanding the immediately preceding sentence, City’s selection of a contractor will be based on multiple criteria with price as one of many considerations. A public hearing and acceptance of these findings by the John Day City Council will be required prior to proceeding with advertisement for a design-build contractor.

B. Project Background.

1. City is seeking contractors to design and build an approximately 5,500 square foot greenhouse that will be located at 60835 Hwy 26, John Day, Oregon 97485 (collectively, the “Project”). The Project will include construction of the associated growing systems, including, without limitation, hydroponic grow systems, grow lights, mechanical systems, HVAC, and fertigation and peripheral equipment. The total budget for the Project is approximately \$400,000.00. City is seeking the highest qualified design-build contractor to design and construct an innovative greenhouse within the budget.

2. City proposes using the alternative contracting method under OAR 137-049-0600 to 137-049-0690 to select a design-build contractor. With this method, a design-build contractor will be selected based on a competitive Request for Proposals (“RFP”) process. The RFP will set forth selection criteria important to the overall success of the Project. Selection criteria will likely include, without limitation, project understanding and overall approach, experience and past performance with similar projects, engaging the public in the design process, specific technical features, capability of personnel assigned to the Project, communication, quality, safety, efficiency, schedule, cost, and/or innovation.

Proposals will be solicited through public advertisement and directly from interested and qualified contractors. City's evaluation team will evaluate the design-build contractor proposals and subsequently recommend approval to award a contract to the contractor that best meets all of City's evaluation criteria.

C. Findings – ORS 279C.335.

The following are findings for an exemption from the competitive bidding requirements in accordance with ORS 279C.335(2).

1. ORS 279C.335(2)(a) – Unlikely to Encourage Favoritism or Substantially Diminish Competition. The design-build contractor selected through a competitive selection process will provide both design and general contracting services. No reduction of competition is expected since the proposed process is open to the same contractors that would have participated in the traditional bidding method. Uniform evaluation criteria will be used in the selection of the design-build contractor. Favoritism will not play a role in the selection of the design-build contractor. The selection will be conducted through an open and advertised RFP process in accordance with the procedures outlined under ORS 279C.400 to ORS 279C.470 for competitive proposals and OAR 137-049-0600 to 137-049-0690. All qualified firms will be invited to submit proposals. City will publish a notice on City's website and in the *Daily Journal of Commerce* in order to provide project information to all interested contractors. A team will perform the evaluation in an effort to minimize the effects of any unconscious individual bias. All qualified firms will be able to participate in an open, competitive selection process. Rather than being diminished, competition will be expanded to include qualifications as well as price.

2. ORS 279C.335(2)(b) – Likely to Result in Substantial Cost Savings. The design-build contracting method has the potential for achieving significantly more features for City's investment through involvement of the contractor in the detailed planning and design phase of the Project. By having the contractor available to prepare the design, the contractor is able to review the specific system needs identified by City, propose cost saving revisions, and ensure the constructability of the Project so that costly change orders are less likely. Selection of a contractor possessing the necessary expertise and experience in the specialized field of greenhouse design and construction is likely to result in substantial cost savings to City. Cost savings will be realized because City can select a well-organized, experienced greenhouse contractor, which will result in fewer change orders and, in turn, reduced staff time to design, negotiate, and administer any changes. Using an experienced and skilled contractor will optimize the design and construction aspects and help minimize problems associated with construction of a unique facility. Thus, it will help City avoid additional costs that would otherwise be associated with resolving such problems; provided, however, nothing contained herein will be construed to require City award a contract to the lowest responsive and responsible bidder. The following factors under ORS 279C.335(2)(b) support the conclusion that it is reasonable to expect substantial cost savings:

1. Persons Available to Bid. At least four firms have expressed interest in the Project. A publicly advertised competitive procurement process will be utilized to select the qualified contract.

2. Operational; Budget; Financial Data. The budget for the work to be performed under the design-build contract for the Project is \$400,000.00. The projected operating costs for the completed greenhouse are \$150,000.00 per year.

3. Public Benefits. The public will benefit from a cost-effective design-build approach resulting in an innovative design and expeditious construction that will maximize the benefit of the Project. The public will also benefit from having an experienced contractor implement the Project, resulting in high quality work and lower ongoing operating costs.
4. Schedule. City desires that the design work be complete by May 2018 and construction begin on or shortly after July 2018 with completion by September 2018.
5. Value Engineering. Value engineering can be fully integrated throughout the design-build process since the same contractor who is responsible for design is also responsible for constructing the Project. Collaboration during final design between City staff and the contractor team will incorporate a continuous value engineering process to consider innovative approaches while targeting costs meeting City's construction budget.
6. Specialized Expertise. City needs to select a contractor on this Project that has specialized expertise designing and constructing greenhouse facilities. The contractor must be competent in developing construction plans and specifications and providing the specialized construction required to complete a high quality and efficient greenhouse. This mix of expertise cannot be adequately evaluated in a sealed bid process, but can be better evaluated through a RFP process. Utilizing the competitive bid process cannot guarantee selection of the best qualified contractor to perform this work. Traditional methods of prequalification are unsuited to the specialized nature of this Project, particularly when design and construction documents have not been developed.
7. Public Safety. There is no likely increase in public safety.
8. Funding. Granting the exemption will not affect the sources of funding for the Project.
9. Market Conditions. The Project is a moderate sized job that, under the current conditions, more experienced and qualified contractors may seek. No negative impact is expected as a result of the use of the RFP selection process. It is expected that there will be an adequate number of competitors available to propose on this Project. The design-build method avoids the cost in time and money involved in performing field investigations sufficient to design the system, designing a biddable package, ordering equipment with long lead times, followed by construction. A traditional bid process runs the risk of obtaining bids that exceed the project budget. The project needs can be sufficiently defined in the RFP document, such that a traditional design-bid-build approach, expected to be significantly more expensive for City, would be unnecessary.
10. Technical and Planning Complexity. Capability in planning the work will be crucial. Timely completion of the work will be required of the contractor. Innovative planning that will further improve the construction schedule and on-site conditions will be required. The RFP process allows City to consider the proposer's experience and expertise in this type of work, sensitivity to safety, legal, and operational issues, similar projects, and the qualifications of its project manager and support team.
11. New Construction; Occupation. The Project involves new construction. The greenhouse will not be occupied during construction.
12. Single Phase Construction. The Project will require a single phase of construction work.

13. Personnel. City will use City's personnel, consultants, and attorneys to assist in developing the alternative contracting method that City will use to award the greenhouse construction project contract and help negotiate, administer, and enforce the terms of the public improvement contract.

D. Summary. A contractor who has experience with these types of projects provides many benefits to City. The use of an RFP process will not diminish competition or result in favoritism, and is likely to result in cost savings to City and, most importantly, completion of a quality project on schedule and on budget, while allowing City to better manage its resources with limited staff. Notwithstanding anything contained herein to the contrary, City reserves the right to select a contractor whose proposal will best serve City's interests, taking into account various considerations including, without limitation, experience, capability, and expertise.