



Oregon

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TO: House Committee On Consumer Protection and Government Efficiency

FROM: Dianne Lancaster
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SUBJECT: Information on Alternative Public Improvement Procurement Methods

INTRODUCTION

For the record, I am Dianne Lancaster, Chief Procurement Officer for Oregon state agencies. State Procurement Policy is part of the Chief Financial Office at the Department of Administrative Services (DAS.)

Today, I am sharing information about public improvement (construction) procurement processes beyond the “default” standard of lowest bid. I will identify policy reasons for these alternative methods; what makes one method different from another, and how these different methods are being used by contracting agencies.

1. Background: Challenges in public construction include -

- High dollar values
- Highly visible to the public
- Sometimes controversial – e.g. prisons, mental health facilities
- Highly complex – known and unknown issues, e.g. ODOT Capitol Mall “T” Building
- High penalty for failure – e.g. owner risks cost overruns, delays, quality issues
- Unique laws and procedures – state, local, federal

2. Current Statutory Policy: Public improvement contracts must be based on competitive bidding (Design-Bid-Build), except as exempted from bidding requirements. (See ORS 279C.300 & ORS 279C.335). Contracting agencies shall make every effort to construct public improvements at the least cost to the contracting agency. (See ORS 279.305).

Public improvement contracts may be exempted from competitive bidding by the Director of the Oregon Department of Administrative Services, a local contract review board or by the Director of the Oregon Department of Transportation for highway projects, after approval of findings, public notice and public hearing. “Findings” means the justification for a contracting agency

decision to use the alternate procurement method. “Findings” are typically based on information regarding operational, budget and financial data, public benefits, value engineering, public safety, specialized expertise required, market conditions, technical complexity and funding sources. (See ORS 279C.330).

Once the exemption is granted, the alternative procurement is performed using a request for proposals process (RFP). Rather than least cost, the contract is awarded on the basis of criteria such as firm qualifications, key personnel experience, and value-added proposals or commitments related to the specific project. Price is one factor, but not the only one. The RFP process is commonly used in procurements for professional services and information technology.

3. Comparison of Methods:

- **Statutory Standard: Design-Bid-Build**
 - Three process phases, a slower process and risk is largely on the owner.
 - Owner manages a contract with Designer of plans, specifications, and supervision.
 - Owner manages a contract with Builder who builds to the Design.
 - Pros: the method favored by state policy, well understood by industry, established in law, common to insurance and bonding agencies.
 - Cons: Owner manages 2 contracts with different objectives and low bid may not be best value: Value engineering is not informed by Builder, estimating issues and change orders are expected, and it is generally most litigated.
 - Reasons to choose: state law favors the method, owner controls design, it is best for simple projects with known site conditions, cost is lowest at first and subcontractors are publicly named within hours of bid submissions. Example: North Capitol Mall Office Building

- **Alternative: Construction Manager/General Contractor (CM/GC)**
 - Team concept among Owner, Designer, and Contractor.
 - Concurrent phases save time, promote best value selection & value engineering.
 - Owner has less control over quality but more support from team; risk and quality control are shared.
 - Pros: The professional team includes the Contractor and generally results in earlier knowledge of full costs; more comprehensive value engineering; faster delivery, fewer change orders, and may result in cost savings.
 - Cons: Owner still manages 2 contracts and bears design adequacy risk. There is no firm price at CM/GC selection and subcontractor selection process can be a controversial issue.
 - Reasons to choose: high technical complexity, known & unknown site conditions, schedule constraints, complex phasing, budget constraints and Guaranteed

Maximum Price (GMP), value engineering potential and risk mitigation potential. Examples: Department of Corrections Eastern Oregon Correctional Institute; ODOT Capitol Mall “T” Building, Multnomah County East County Courthouse.¹

- **Alternative: Design-Build**
 - Owner has one contract with a Designer-Builder, the team has clear outcomes.
 - Concurrent phases save time with best value selection, value engineering and no shifting of responsibility between a Designer and Builder.
 - Owner has less control over quality. Risk is on the Design Builder.
 - Pros: A faster, more cost effective proposal of design and pricing with earlier knowledge of costs; allows for innovation, defined risk and less litigation.
 - Cons: Requires earlier owner decisions and is a newer process.
 - Reasons to choose: fast track, budget constraints, complex project values or site, and innovative projects. Example: War Memorial at Department of Veterans Affairs.

- **Other Alternatives:** The CM/GC and Design-Build are common alternatives, but there are other unique or hybrid methods that can be allowed under the exemption process, such as “A + B” which adds certain bidder evaluation criteria to a competitive bid process, or **Energy Savings Performance** contracts.

SUMMARY

The Oregon Public Procurement Code favors least-cost competitive bidding for public improvements at state and local government levels. The exemption process allows contracting agencies to use an alternate procurement method when the agency can justify the choice through “findings” presented in a public hearing. The alternate method used is a Request for Proposal process which allows best value criteria to be scored along with price to determine contract award.

Thank you for your time. I would be happy to answer questions.

¹ Brian Smith, Multnomah County Procurement Director, could not attend today, but he offered the East County Courthouse as an example of alternate contracting – “CM/GC allows us more flexibility to choose a firm based on their fit with the rest of our project team, and I believe, greater alignment with the County’s values. It is my belief that this helped support excellent project delivery of our East County Courthouse. On that project, change orders were limited to 17 even with the discovery of hidden conditions at the job site, and the addition of a data center. By engaging in early cost estimates and constructability testing, the contractor was able to meet project objectives, deliver a new courthouse within the GMP, and even return over \$150K back to the project from the contractor contingency. They were also able to exceed their MWESB utilization goal and deliver the project with 33.2% participation. Their ability to do this is a direct result of being able to work with us as an owner and figure out innovative ways to deliver on our values – in this case MWESB utilization.”

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