



City Council Agenda Report
Meeting Date: November 15, 2016
Department: City Manager

SUBJECT:

AUTHORIZATION OF DESIGN-BUILD CAPITAL PROJECT DELIVERY METHOD

RECOMMENDED ACTION(S):

1. Introduce for first reading an Ordinance entitled: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKE FOREST, CALIFORNIA, AMENDING CHAPTER 3.13 OF THE LAKE FOREST MUNICIPAL CODE TO AUTHORIZE USE OF THE DESIGN-BUILD PROJECT DELIVERY METHOD; and
 2. Adopt a Resolution entitled: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAKE FOREST, CALIFORNIA, ESTABLISHING A CONFLICT OF INTEREST POLICY COVERING DESIGN-BUILD PROJECTS; and
 3. Authorize the design-build delivery method for construction of the single level parking deck at the Lake Forest Civic Center.
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EXECUTIVE SUMMARY:

State law allows public agencies to procure construction services using a design-build method instead of the more traditional design-bid-build process utilized in the construction of many public projects. Staff is recommending the City Council approve a design-build process for the construction of the single deck parking structure at the Lake Forest Civic Center Site. The remainder of the Civic Center construction will be delivered utilizing the traditional design-bid-build process.

To utilize the design-build process, state law specifies certain requirements and processes the City needs to follow. The two main requirements are specific steps to be followed during the procurement process as well as requiring the City to adopt a Conflict-of-Interest Policy Covering Design-Build Projects ("Policy"). Implementing these items would provide the City flexibility relative to the construction of the parking deck at the future Lake Forest Civic Center project as well as any future capital projects for which the process is deemed appropriate. Importantly, however, the design-bid-build process would remain the City's primary and preferred method to deliver capital projects.

The Lake Forest Municipal Code (“LFMC”) currently restricts the City’s ability to use design-build for City public works projects by requiring the sole use of the design-bid-build project delivery method. The proposed Ordinance would amend the LFMC to permit the use of the design-build process. However, the introduction of the Ordinance and adoption of this Resolution and Policy does not obligate the City to use this process for all future projects. The City would be able to use the design-build method if it was determined that utilizing this process would be beneficial including, but not limited to, reduced costs or an shortened construction period. Staff recommends the introduction of the proposed Ordinance and adoption of the proposed resolution to effectuate the adoption of the design-build method for capital projects.

Staff also recommends specifically using the design-build procurement method for the construction of the single level parking at the Civic Center. As discussed in the Civic Center Update, Bernards, the City’s Construction Manager, has scheduled construction in three phases: site development, parking deck, and civic center campus (i.e., buildings, landscaping and hardscape). There is a five month gap projected to occur between the completion of site development and the start of the civic center campus. Utilizing the design-build process would generate time savings to enable parking deck construction to occur immediately following the completion of site development work. This timing would avoid the complexity and additional construction management costs presented by building the parking deck and civic center campus simultaneously. Avoiding periods of construction inactivity also mitigates potential cost escalations and negates the potential of losing construction management continuity.

BACKGROUND:

Design-build services combine professional design services and construction services into a single contract with one vendor or team of vendors. This method has been popular in private sector construction for decades, but is still relatively new in the public sector. With the passage of AB598 in 2001, the design-build process became available to public agencies for the first time. The legislature subsequently passed other bills dealing with design-build. The most recent law was SB785, which amended Public Contract Code section 22160 *et seq.* authorizing the City to utilize the design-build project delivery method for certain statutorily designated projects. This legislation was effective January 1, 2015, and repealed most of the existing legislation regarding design-build for public agencies and replaced them with a single statute applicable to local agencies. One of the requirements of this statute is that public agencies that use a design-build process are now required to develop guidelines for a specifically related conflict of interest policy.

Staff proposes a design-build process for the construction of the single deck parking structure only at the Lake Forest Civic Center site based on a recommendation from the construction manager for the project. This process was used by the City of Newport Beach for its parking structure with favorable results. A resolution adopting a Policy would need to be approved by the City Council to be in compliance with SB785. The other requirements of SB785 will be incorporated into the ensuing procurement and selection process.

DISCUSSION:

Public agencies have traditionally used a design-bid-build approach for public projects. This is a process wherein one firm is initially awarded the design services contract and subsequent to the completion of design, the public agency bids out the construction portion of the project. As noted above, beginning in 2001 with the passage of AB598, the option of design-build became available to public agencies. Using the design-build process incorporates both the design and construction services into a single contract. Based on information from both the private and public sector there are several advantages in using the design-build process. Some of the advantages may include:

- A single point of accountability as the same firm is responsible for both the design and construction of the facility
- Fewer change orders
- Fewer claims
- Reduced delivery time as design and construction can overlap
- Higher quality construction work
- Greater cost certainty
- Lower project cost.

To be eligible to use the design-build process a project must meet both of the following criteria under the new law:

- Only projects in excess of \$1,000,000 may be procured using design-build.
- Only projects for the construction of a building or buildings and improvements directly related to the construction of a building or buildings may be procured using design-build.

With the approval of SB785, effective January 1, 2015, there are several requirements for public agencies that choose to utilize a design-build process for construction projects. These requirements include adoption of a Conflict-of-Interest Policy ("Policy") and following certain steps during procurement.

The use of this procurement process requires the creation of bridging documents created by a certified and registered design professional setting forth the scope and estimated price of the project. The statutes also mandate a two-step RFQ-RFP process wherein local agencies prequalify (or short list) proposers through a Request for Qualifications (“RFQ”) process. After evaluation of the qualifications through the RFQ process, the public agency issues a Request for Proposals (“RFP”) to the firms or teams that met the minimum qualifications as set by the public agency.

SB785 also requires agencies to develop guidelines for a conflict of interest policy. This policy would address a Proposer that is: (1) unable or potentially unable to render impartial assistance or advice to the City; (2) whose objectivity in performing the contract work is or might be otherwise impaired; and, (3) that has an unfair competitive advantage. The proposed Policy addresses the responsibilities of the City as required by State law as well as contractors that may propose on City design-build projects. This policy would apply to design-build vendors as well as design-build teams that submit a proposal to the City for any projects that meet the criteria of the legislation.

Staff recommends adoption of an Ordinance amending the LFMC to permit the use of the new statutory design-build authorization under the Public Contract Code section 22160 *et seq.* for City public works projects. An ordinance amending Chapter 3.13 of the LFMC related to Public Projects – Bidding Procedures is presented for introduction and first reading.

Staff worked with the City Attorney to develop the proposed Policy, its associated Resolution, and the proposed Ordinance amending the LFMC. Adoption of this Resolution and Policy by City Council would allow staff the option to use the design-build process with the single deck parking structure and any future projects that meet the criteria of the statute. The Ordinance would provide the municipal code foundation to use the design-build process.

As discussed in the Civic Center Update, Bernards, the City’s Construction Manager, has scheduled construction in three phases: site preparation, parking deck, and civic center campus (i.e., buildings, landscaping and hardscape). There is a five month time window projected to occur between the completion of site preparation and the start of the civic center campus.

Utilizing the design-build process would generate time savings to enable parking deck construction to occur immediately following the completion of site development work. This timing would avoid the complexity and additional construction management costs presented by building the parking deck and civic

center campus simultaneously. Bernards estimates that an additional full-time Project Superintendent would be required to oversee the parking deck construction at an approximate cost of \$125,000. Should there be an extended period of construction inactivity, Bernards would reassign the Senior Project Manager, Project Engineer, and Project Coordinator to other jobs. Once construction restarted, the City may face a loss of management continuity because some team members may no longer be available for the City's job. Based on prior experience managing design-build projects, Bernard's believes that a specialized parking firm will provide greater efficiencies in design and construction costs.

Based on the above, staff recommends the City Council introduce an ordinance allowing the use of the design-build method, adopt the resolution related to potential conflicts as required by law, and specifically authorize staff to use the design-build delivery method for the single deck parking structure at the Lake Forest Civic Center Project.

FISCAL IMPACT:

There are minimal fiscal impacts associated with the recommended action.

ATTACHMENTS:

1. Proposed Resolution 2016-____, approving the Conflict of Interest Policy
2. Proposed Ordinance amending Chapter 3.13 of the Lake Forest Municipal Code

Initiated By: Glynis Litvak, Management Analyst
Submitted By: Keith D. Neves, Deputy City Manager/Director of Finance
Approved By: Robert C. Dunek, City Manager