

PORT OF NEWPORT
MINUTES
September 29, 2009
SPECIAL MEETING

I. CALL TO ORDER

Commission President Ginny Goblirsch brought the special meeting of the Port of Newport Board of Commissioners to order on Tuesday, September 29, 2009, at 6:00 p.m., in the Port of Newport Conference Room, 600 SE Bay Boulevard, Newport, OR, the same being within the boundaries of the Port District.

Commissioners Present: Ginny Goblirsch, President; JoAnn Barton, Secretary, Don Mathews, Treasurer; and David Jincks, Assistant Secretary-Treasurer.

Commissioners Excused: Dean Fleck, Vice-President.

Port of Newport Management and Staff: Don Mann, General Manager; Patti Britton, Director of Finance; Pete Dale, Project Manager; Maureen Keeler, Special Projects Manager; and Patty Benjamin, Administrative Assistant.

Others: Dr. Dick Beemer, Pat Duggan, Mark Fisher, and Lee Fries, Newport residents; Mike Day, Joshua Dodson, and Glenn Schnaidt, Day CPM; Mariah Eades, Wild Planet Foods; Wayne Hoffman Midcoast Watersheds Council; Jim Lewis, gLAs Architects; Mathew Powell, Macpherson, Gintner & Diaz; and Steven Webster, Riverbend Marine Service.

II. CONTRACT REVIEW BOARD

A. Motion to Convene as the Port of Newport Contract Review Board.

Commissioner Barton moved, Mathews seconded, for the Port of Newport Board of Commissioners to convene as the Port of Newport's Local Contract Review Board at 6:01 p.m. and the motion passed 4-0.

B. Public Hearing. Chairman Goblirsch opened a public hearing for the Port of Newport Board of Commissioners, acting in its capacity as the Port of Newport's Local Contract Review Board, to review and discuss the findings of fact, and to hear and take testimony on creation of an exemption from competitive bidding requirements for a public improvement contract for the National Oceanic and Atmospheric Administration Marine Operations Center-Pacific Homeport Project.

General Manager Don Mann pointed out that copies of the findings of fact and the proposed resolution were available to the public, and introduced Project Manager Joshua Dodson, Day CPM. Dodson, who stated that the public hearing was in accordance with the law and that the public notice period had been satisfied.

C. Public Comment.

The general manager read an e-mail from Dianne Lancaster, Chief Procurement Officer, Oregon State Procurement Office, Department of Administrative Services. Ms. Lancaster had asked for and received a copy of the findings of facts and stated in her e-mail that, in her professional opinion and considering the project and circumstances, the RFP process and use of CM/GC services was the best way to go.

Wayne Hoffman, Midcoast Watersheds Council, spoke in opposition to exempting the NOAA Homeport Project from competitive bidding. He said the CM/GC process limited construction options to specific competencies and preferences in the companies selected. He said the CM/GC process did not have a good track record in Lincoln County, citing the Highway 20 project as one example and the Port's Terminal Renovation Project as another. He recommended separate contracts for the dock structures and onshore facilities.

Newport resident Mark Fisher urged the commission to see that the contracts were written in such a way that local businesses could compete for work on the project.

Steven Webster, Riverbend Marine Service, suggested that the CM/GC process and an exemption from competitive bidding might be opting for complexity rather than simplicity. He acknowledged that the timeline for design, permitting, and build out was uncomfortably short, but said the upland terrain at the site was for the most part level; the offshore area was predictable and previously undeveloped; the structures specified for the upland were generic; and the connecting piers followed the same model as those directly to the east. Therefore, in a construction market advantageous to

the diligent owner, Webster suggested that expeditious design, permitting, bidding, and letting might be surprisingly cost effective. He said he was confused by the concept of having a separate project manager to manage a construction manager, and referred to the concept as a “many layered onion”.

Pat Duggan, Newport resident, cited the terminal project, which she said had not gone out for bid and reflected a “lack of accountability” on competitive pricing and “unwillingness to have the numbers checked independently”, and said she hoped the Port would not repeat that same process. She felt it was “absolutely necessary” to have competitive bids to make sure the price was the best for the quality and type of work being done, and she hoped the exemption would not be allowed.

Mike Day, Day CPM Services, explained that the CM/GC process is an exemption to the design/bid/build process but still ensures a competitive sub-contracting bidding process. He said he understood that outreach to local sub-contractors was very important to the commission and the community, and the RFP specifically addressed that. He added that the over-water pier portion of the project would be competitively bid as a package to marine contractors; however, the CM/GC contractor would have oversight and management of the overall project to coordinate logistics of the marine work along with the upland work. Day acknowledged that the project schedule was extremely aggressive and the deadlines were critical for NOAA and the Port. He said there would be value in bringing a CM/GC on board to partner with the design team to deliver a fast track schedule, along with the design and procurement of sub-contractors. He concluded by assuring the Port that the competitive bid process would be managed and thoroughly scrutinized in terms of the procurement of the sub-contracting work, should the CM/GC process be approved.

Dr. Dick Beemer, Newport resident, echoed what Mark Fisher said about local businesses competing for work on the project, and said he thought the CM/GC would provide the best opportunity to utilize local sub-contractors.

A discussion followed about the new Oregon Coast Community College (OCCC) campuses, which had been a competitive bid project, rather than CM/GC. The new college facility was ready for occupancy in July 2009. Day CPM had been the owner’s representative/project manager for OCCC, as well. Joshua Dodson, Day CPM, said that some of the contractors on that project were from Tualatin, OR and Vancouver, WA, and brought their own sub-contractors, so “hard bid” did not necessarily make it easier to provide jobs for the local community.

Referring to the OCCC project, Jim Lewis, gLAs Architects, said his firm became involved in the project more than four years ago, which allowed for a very comfortable period of time to focus on construction documents. In addition to the difference in time line, Lewis said another difference in the NOAA and OCCC projects was that the Port had to commit to a lease rate before any of the designs were completed, so a CM/GC partner willing to provide a Guaranteed Maximum Price (GMP) early in the process would bear some of the cost responsibility. Bidding the project out in pieces, Lewis said, could result in “overshooting” and a huge financial problem for the Port.

Commissioner Jincks spoke in favor of the CM/GC process because of the critical timeline. He said the Port had no choice but to move ahead aggressively and there simply wasn’t time for the traditional design/bid/build scenario. Noting Webster’s reference to the simplicity of level ground at the NOAA site, he said that actually played in favor of the CM/GC process. He added that there was no comparison between the NOAA project and the renovation of the terminal because issues with the Pasley and with mitigation had interfered with the CM/GC process.

Commissioner Mathews said he was also in favor of the CM/GC process. He added that he appreciated Hoffman’s comments about the Highway 20 project but “we can’t go back now” and, looking at the selection process and schedule, “we need this process to make it happen.”

Commission President Goblirsch said she had sat in on many discussions with Day CPM about various scenarios and options, but supported the CM/GC process because of the timeline and higher likelihood of hiring local labor.

Commissioner Jincks asked Joshua Dodson, Day CPM, to speak to the difference between a project manager and a construction manager. Dodson said the project manager was the owner’s representative. Those clients were often public agencies, so the owner representative/project manager’s role was to manage, develop, monitor, and protect the public’s “monetary war chest”, with construction being only a portion of that scope. He added that the owner representative/project manager’s job started before the project was developed and lasted until after the project was done, with the interest being solely on the owner; whereas, the construction manager dealt with only the construction portion of the project.

Commissioner Barton noted that the owners of the NOAA project were actually the citizens of the port district, and the goal was to get as much value as possible for them. She then asked for clarification of how competitive bidding fit into the CM/GC process.

Joshua Dodson, Day CPM, explained the history of the CM/GC method in the State of Oregon, stating that it was developed by a coalition of architects, contractors, owner's representatives, and state and local officials as an alternate method of contracting, so that public agencies would not be restricted to the "hard bid" method and required to select the lowest responsive and responsible bidder. Instead, with the CM/GC process, the agency is able to hire a contractor who enters into a preconstruction contract to work with the project manager, owner, and architects towards a GMP, with the goal of getting the most value for the money available in accordance with the time and complexity of the project. Mike Day, Day CPM, added that the CM/GC essentially manages the bidding process, in that they receive competitive bids but can refuse them if the contractor is not responsive and responsible or the subcontractors are not qualified to do the work. There is also a post-bid evaluation. He said the process was transparent and public record so the contractors know exactly what bid packages they are bidding to and what the criteria and scope is, so they are all given a fair opportunity to bid the work. Day added that local outreach and participation is an absolute criterion of the RFP process for solicitation for the CM/GC and a criterion for scoring qualified CM/GC contractors. In conclusion, he said those CM/GC contractors that are sophisticated and understand the process will be well aware of the importance of reaching out to the local community.

Steven Webster, Riverbend Marine Service, said he was not necessarily opposed to the CM/GC process but felt there was a "watershed" between the type of contractor or pool of contractors the RFP would attract, versus the contractors that would not show up because of the format but would show up if it were design/bid/build. Mike Day, Day CPM, said 27 contractors who work in the CM/GC arena had attended the pre-bid conference the previous week, along with subcontractors and vendors from about 70 different firms, so he felt there would be a good representation of qualified contractors that could work in a collaborative partnership with the Port, the architectural team, and the agencies, and deliver the project on schedule. He added that the risks that go with design/bid/build would be extraordinary with the NOAA project, simply because of the extremely aggressive schedule and the severe penalties if that schedule was not met. General Manager Don Mann added that the scoring process in choosing a CM/GC would include scoring for using local subcontractors. Day emphasized that the mandate to use local vendors would not provide a guarantee but work can be packaged in such a way that it maximizes the opportunity for participation by local subcontractors, so the bond money is reinvested in the community. A brief discussion followed about using the port's web site to provide bulletins and updates on the project.

D. Motion to Accept the Findings of Fact.

Commissioner Jincks moved to accept the Findings of Fact in support of exempting the National Oceanic and Atmospheric Administration Marine Operations Center-Pacific Homeport Project from the traditional formal competitive bidding process as provided within ORS 279C.335(2). Commissioner Mathews seconded the motion and it passed 4-0.

E. Motion to Instruct Staff to use the Request for Proposals Method of Solicitation.

Commissioner Barton moved to instruct staff to use the Request for Proposal method of solicitation as provided in ORS 279C.400-ORS279C.410, and that this method be used as the alternative to traditional formal competitive bidding to allow for the use of the Construction Manager/General Contractor (CM/GC) process for this project. Commissioner Mathews seconded the motion and it passed 4-0.

F. Appoint CM/GC Selection Committee.

Joshua Dodson, Day CPM, recommended that the selection committee for the CM/GC RFP should include General Manager Don Mann, Port Projects Manager Pete Dale, two port commissioners, one member from KPFF Consulting Engineers, one member from gLAs Architects, and one member from Day CPM. It was the consensus of the commission that the selection committee should also include a member of the public. Commissioners Jincks and Mathews volunteered to work with the General Manager to identify a public person to serve on the committee and have a recommendation by the end of the week. Commissioners Jincks and Barton also volunteered to serve on the selection committee, with Commissioner Goblirsch as alternate.

G. Close Public Hearing

Commissioner Barton moved, Jincks seconded, to close the public hearing. The motion passed 4-0 and the meeting returned to special session at 6:55 p.m.

III. NEW BUSINESS

A. Resolution 7-2009, Exempting Contract from Competitive Bidding.

Commissioner Mathews moved to approve Resolution 7-2009 exempting the NOAA MOC-P Project from competitive bidding. Commissioner Jincks seconded the motion and it passed 4-0.

IV. OTHER

There was nothing under other business.

V. PUBLIC COMMENT

Mariah Eades, manager of Wild Planet Foods, said he was looking forward to working with the port on finding a new location for Wild Planet Foods, which is currently located at Port Dock 2. Commissioner Jincks said he would volunteer to work with the general manager on a new location for Wild Planet, and Commissioner Barton said the issue was a priority.

VI. UPCOMING MEETINGS/EVENTS

- A. Port Special Meeting, October 7, 6:00 p.m. Purpose: Adopt Master Bond Declaration and Resolution for the NOAA MOC-P Homeport Project
- B. Pacific Coast Congress of Harbormasters & Port Managers, October 6-9, Bremerton, WA
- C. Pacific Northwest Waterways Annual Meeting, October 13-15, Vancouver, WA
- D. Fishermen's Forum, October 14, 8:30-9:30 a.m.
- E. Port Commission Work Session and Regular Meeting, October 27, 6:00 p.m.

VII. ADJOURNMENT

There being no further business to come before the special meeting of the Port of Newport Board of Commissioners, the meeting was adjourned at 7:00 p.m.

ATTEST

Ginny Goblirsch, President

David Jincks, Asst. Secretary-Treasurer