



County of San Mateo

Inter-Departmental Correspondence

Department: COUNTY MANAGER

File #: 22-064

Board Meeting Date: 1/25/2022

Special Notice / Hearing: None
Vote Required: 4/5ths

To: Honorable Board of Supervisors

From: Michael P. Callagy, County Manager
Adam Ely, Project Development Unit Director

Subject: Design Build Authorization for the Navigation Center Project

RECOMMENDATION:

Adopt a resolution:

- A) Finding, pursuant to Section 22050 of the Public Contract Code, that there exists a continuing need to let an agreement for design and construction of the Navigation Center Project without competitive solicitation of proposals in order to address the existing COVID-19 Public Health Emergency and shelter crisis; and
- B) Finding that soliciting competitive proposals for the Navigation Center Project would be unavailing and would not produce an advantage, and that advertising for competitive proposals would be undesirable, impracticable, or impossible; and
- C) Authorizing and directing the County Manager, or designee, to execute an amendment or amendments to the agreement with XL Construction for design and construction services for the Navigation Center Project for an amount not to exceed \$51,250,000; and
- D) Authorizing the Director of the Project Development Unit, or designee, to issue change orders to the design-build agreement for the Navigation Center Project that increase the County's maximum obligation under the agreement by no more than ten percent in the aggregate, such that the maximum amount expended under the agreement shall not exceed \$56,375,000; and
- E) Establishing a budget of \$57,000,000 for the Navigation Center Project; and
- F) Authorizing the County Manager, or designee, or the Director of the Project Development Unit, or designee, to take all actions that are consistent with and/or necessary to implement and carry out the intent of this resolution, including execution of additional agreements.

BACKGROUND:

San Mateo County continues to face an unprecedented and growing shelter crisis with homelessness experienced in the County disproportionately by members of racial and other minority groups. In January 2022, the Board renewed its declaration that a shelter crisis exists in the County of San Mateo, authorizing the County Manager to take immediate and sustained action to address this crisis.

Further, in March of 2020, Governor Newsom declared a State of Emergency in response to COVID-19 and, that same month, the San Mateo County Health Officer, and the San Mateo County Director of Emergency Services, respectively, proclaimed a local health emergency and a local emergency throughout the County and the Board of Supervisor ratified and extended the local health emergency and local emergency, both of which remain in effect, along with the Governor's declaration.

The COVID-19 public health emergency remains a significant threat to the residents of San Mateo County, with approximately 1,692 new COVID-19 cases per day as of the writing of this report placing the County firmly in the Center for Disease Control's high level of community transmission category, and the pandemic has exacerbated the County's homelessness crisis, and it has disproportionately impacted those in the County experiencing homelessness and minority communities. The pandemic's far-reaching medical, social, and economic impacts have strained existing shelter capacity and increased the number of County residents who are, or risk of, experiencing homelessness. Individuals experiencing homelessness are at greater risk of community spread of COVID-19, and more likely to be significantly impacted by the virus.

The County is addressing the challenges posed by these concurrent emergencies through its Functional Zero vision for ending homelessness, the goal of which is to ensure that every County resident experiencing homelessness can be safely sheltered in an emergency shelter, or in temporary or permanent housing. Currently, the largest number of unsheltered individuals in the County reside in Redwood City. A substantial number of these individuals live in tents and on the street, and they face numerous daily challenges that heighten their COVID-19-related risks, including exposure to the elements; inability to socially distance; high stress levels; sleep deprivation; unsanitary surroundings; and lack of access to hygiene, medical care, and nutrition.

In response to this continuing local and regional crisis, the County has, among other things, provided resources through the County Rapid Rehousing Program, secured temporary non-congregate shelter at local hotels, developed alternative care sites for quarantine, and acquired and converted multiple hotels to interim and permanent housing.

Despite these efforts, the County still lacks sufficient beds to address the need. To meet this critical and emergent need, the County recently acquired from the City of Redwood City 2.5 acres of real property located at 275 Blomquist Street, with the intention to build a low barrier navigation center on the site. The navigation center model provides short-term housing, while also offering on-site a range of intensive safety-net and other housing, stability, and recovery focused case management services.

To expedite construction in response to the COVID-19 public health emergency and related shelter crisis, the proposed San Mateo County Navigation Center (Navigation Center) will consist of an array of prefabricated modular units. The Center will provide 240 studio shelter units, 168 of which will have private restrooms. The Center will also include a shared dining area, open spaces, an electric commercial training kitchen to serve residents, a community center, and programming space for the provision of on-site counseling, vocational training, and other services. The project targets Leadership in Energy and Environmental Design (LEED) certification, all-electric design, and carbon neutrality.

On October 5, 2021, the Board unanimously approved proceeding with the Navigation Center Project, finding that the project would qualify as “a low barrier navigation center” within the relevant provisions of the California Government Code and determining that the project is therefore categorically exempt from the California Environmental Quality Act (CEQA). The County subsequently filed a Notice of Exemption pursuant to CEQA.

The Navigation Center project target budget is \$57,000,000 (or an estimated cost of \$233,600 per studio unit), and will be drawn from a combination of state, County, and philanthropic funds. The County has been awarded \$46,091,860 in State Project Homekey funds for the capital project, as well as a \$9,230,400 in operating subsidy through Project Homekey 2.0. John Sobrato, continuing his extraordinarily generous support for less fortunate in San Mateo County, has donated \$5,000,000 to the County as a philanthropic project partner. The County has allocated \$2,571,802 of County general funds to the project and will allocate addition funds as necessary to complete the project within the approved budget.

Pursuant to the terms of the grant award, Homekey funds for this project must be expended within eight months of the date of award, project construction must be completed within twelve months of award, and occupancy must be achieved within fifteen months of award. This timeframe is in recognition of the concurrent pandemic and shelter crises faced by our state and County.

Project design began June 2021 and site preparation, and soil importation preparation began December 2021. Staff anticipates that general construction of the project will begin no later than April 15, 2022 and that the project will be completed by end of 2022, with occupancy shortly thereafter.

This resolution authorizes an amendment(s) to the agreement with XL Construction for installation of the Navigation Center; establishes the project’s formal budget; and makes findings, based on the COVID-19 public health emergency, the existing shelter crisis, and the mandated timeline for completion of the Navigation Center project, in support of the sole source procurement of construction services for the Navigation Center project.

DISCUSSION:

Under California law, the design-build project procurement method is “a project delivery process in which both the design and construction of a project are procured from a single entity.” Cal. Pub. Contract Code § 22161(c). The law provides that a California local government agency “may procure design-build contracts for public works projects in excess of one million dollars (\$1,000,000), awarding the contract to either the low bid or the best value . . .” Cal. Pub. Contract Code § 22162 (a). Here, staff recommends utilization of the design-build delivery method due to the need for, *inter alia*, faster delivery of the project; a reliable, achievable, and coordinated project schedule; early cost certainty; and a single point of accountability and responsibility for construction of the accelerated design. Considering this, the existing COVID-19 public health emergency and shelter crisis, and the authorities set forth below, staff recommends that the Board authorize a design-build agreement with XL Construction (XL) for an amount not to exceed \$51,250,000 for construction of the Navigation Center, without compliance with the otherwise-applicable competitive project procurement process.

On June 14, 2021, the County entered into an agreement with XL pursuant to which XL has provided preconstruction services for the Navigation Center. The agreement was subsequently amended pursuant to authorized board action to include further design development, coordination, site preparation, soil importation, and long-lead item procurement. Programming has been completed; construction documents are nearing completion; sub-contractor bidding is underway; and core trade-partners have been onboarded. Based on, *inter alia*, the anticipated award value of trade

subcontracts, preconstruction work completed, general conditions, general requirements, bonds, insurance, taxes, and allowances, the guaranteed maximum price for construction of the San Mateo County Navigation Center will be established in an amount not to exceed \$51,250,000.

Waiver of Competitive Bidding Pursuant to Section 22050 of the Public Contract Code

Section 22050 of the Public Contract Code provides that “[i]n the case of an emergency, a public agency, pursuant to a four-fifths vote of its governing body, may repair or replace a public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts.” To take action to waive competitive bidding here, the Board must find that the building of the Navigation Center is necessary to respond to an emergency and that the emergency will not permit a delay resulting from a competitive solicitation for bids to do this work.

As noted, the Governor has declared an emergency related to the COVID-19 pandemic and the County Health Officer has declared a local health emergency and the County Director of Emergency Services has proclaimed a local emergency, both of which actions have been ratified and extended by the Board of Supervisors. Moreover, the Board of Supervisors has declared a shelter crisis. Considering the significant and disparate impacts of the COVID-19 public health emergency and the shelter crisis on the residents of the County who are experiencing homelessness, the Navigation Center project is a necessary response to these circumstances to protect and enhance public health and safety.

Moreover, it took several months to identify a location for this project, to apply for and secure public funding, to develop design criteria, and to coordinate with charitable contributors. The need to immediately move the Navigation Center project forward is so acute that the delay that would result from competitive solicitation of this work (which staff estimates would take 4-6 months) would be unacceptable, considering the critical need to move the project forward and the timelines to complete the project to comply with government funding requirements.

Therefore, considering these existing emergency circumstances and the need for rapid action to address them, staff concludes that the Board may waive competitive bidding for the design and construction work for the Navigation Center project pursuant to Section 22050 of the Public Contract Code and continue to award the contract for this work to XL Construction.

Competitive Bidding Unavailing (*Graydon* Analysis)

In addition to the foregoing, California law recognizes an exception to otherwise-applicable competitive bidding requirements where “competitive proposals would be unavailing or would not produce an advantage and the advertisement for competitive bids would thus be undesirable, impractical, or impossible.” *Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal. App. 3d 631, 635-636. See also *SG Blocks Inc. v. Hola Community Partners* (E.D. Cal. 2021) 2021 WL 736440, at *12 (holding that competitive bidding is not necessary where it “would not have resulted in any advantage to the [public agency] in its efforts to maximize benefit to the public”).

Here, competitive proposals would be unavailing and would not produce an advantage and advertising for competitive bids would be undesirable or impractical. As discussed above, the Navigation Center is needed to address the COVID-19 emergency and the shelter crisis. Compliance with the otherwise applicable competitive process for design-build contracts would be unavailing in that it would not allow the County to effectively address these emergency circumstances.

Further, as discussed, the Homekey funds that the State of California awarded for the San Mateo County Navigation Center must be expended within eight months of the grant award and the Navigation Center construction must be completed within twelve months. It is not possible to meet these extraordinarily accelerated timelines or to otherwise address the underlying emergency while adhering to the otherwise applicable competitive bidding requirements. Expending the time that would be necessary to meet those requirements would likely result in the County failing to meet the mandated timelines for expending Homekey funds and for completing the project, which could, in turn, jeopardize the County's access to these funds, and this could result in further substantial delay in completing the project.

Moreover, XL and its architect have unique experience successfully designing and building similar navigation centers to address homelessness in neighboring jurisdictions, including their recent highly successful completion of a prefabricated modular-based navigation center in Mountain View. XL is the last construction vendor to have been competitively awarded a ground-up preconstruction and construction services agreement with the County of San Mateo. In addition, XL's cost estimates for the Navigation Center project are consistent with the County's internal estimates for the project and with rates charged in previous competitively priced projects. Furthermore, the PDU has engaged independent cost estimating consultants to review XL's cost estimates for the project and these consultants have confirmed the reasonableness of XL's estimates.

Finally, the coordination with the County's philanthropic partners, who will be contributing approximately ten percent of the cost of the project, has advanced to this point with an understanding that XL will be providing design-build services for the project. The project would be unable to proceed on the same timelines and in the same configuration if a contractor besides XL were to be selected for the work.

Given the foregoing, staff has concluded that the County may waive the competitive process procurement process for the agreement with XL Construction, and amendments, thereto for the Navigation Center Project.

County Counsel has reviewed and approved the resolution as to form.

FISCAL IMPACT:

The Navigation Center project will be funded from a combination of Federal, State, County, and philanthropic monies. The County has been awarded \$46,091,860 in State Project Homekey funds for the capital project, as well as a \$9,230,400 in operating subsidy through Project Homekey 2.0. John Sobrato has donated \$5,000,000 to the County as a philanthropic project partner. The County has allocated \$2,571,802 of general funds to the project and will make additional allocations as necessary to complete the project.