



SPOKANE
PUBLIC FACILITIES
DISTRICT

February 01, 2024

**Subject: Appeal Re: Design-Build Project Application Denial
Spokane Public Facilities District (SPFD) Arena Refresh**

Dear PRC and CPARB,

We are writing this letter to appeal the decision of the State of Washington Project Review Committee (PRC) to deny the use of (Progressive Design Build) for the above referenced project. We believe the decision for denial was based on arbitrary measures and not based solely on the criteria outlined in RCW 39.10.280.

Based upon the feedback in the letter from the PRC dated January 30th, 2024, the application evaluation sheets, and panelist's comments during the PRC meeting held on January 26th, it appears that the major basis for denial was the shortened procurement phase. **During the application review period, we received no questions regarding this topic, which afforded no opportunity to be responsive or adaptive in our approach. If asked we could have reconsidered our procurement schedule and worked with the PRC to find a solution.**

We disagree with the items outlined in your denial letter and offer the following responses.

1. Project does not have an appropriate schedule and is not flexible.

Minimum project or procurement schedule durations are not part of project approval criteria listed in RCW 39.10.280.

2. Project schedule does not leave a reasonable amount of time to outreach which creates a barrier for small firms to participate.

The schedule is not part of the project approval criteria listed in RCW 39.10.280 but is often an acceptable rationale for using alternative project delivery methods. However, as addressed in our application and in our presentation, outreach to PDB teams in the Spokane region was conducted and the feedback is that trade partners, diverse, small, and other types of business are already engaged with these potential teams. We received an indication from the primes that putting together an Inclusion Plan with the help of the local APEX office was not going to be a barrier or an issue for this project.

3. *Selection process is missing all the entities required for solicitation and schedule does not support the ability to be inclusive.*

Our application presented our schedule and included all the required steps as outlined in RCW 39.10.320. We addressed in our application and in the presentation the project's approach to being inclusive and requiring an Inclusion Plan with DB proposals. The ability to be inclusive is determined and scored as part of the selection of the DB team. In our experience, DB is the most effective approach to being inclusive and provides the greatest opportunity for DBs to contract with diverse and small businesses. Without the use of the delivery method, we are concerned the inclusion of small and diverse business will be even more negatively impacted.

4. *Team lacks legal counsel experienced in alternative delivery to assist in the development of the DB contract terms and conditions.*

Legal counsel is not listed as criteria and grounds for project approval in RCW 39.10.280. Experience in PDB delivery was demonstrated in our org chart and with the assistance of our Owner's Representative, Hill international, a firm with substantial experience in the project delivery method and DBIA contract terms and conditions. Additionally, if the panel would have asked the question about legal counsel, they would have heard that we are represented by Hawley Troxell (formerly Witherspoon Kelly) with a proven history of alternative public works contracting including several PDB and DB projects in the last 5 years.

Regarding the concern with our procurement timeline and to address the comment as to why SPFD did not apply for PRC approval sooner:

- The funding for the project was approved in December 2023 concurrent with standard SPFD end of year budgeting policy. As such, the project could not be submitted to the PRC until the January 25th, 2024, session. SPFD does not enter into project procurement prior to having secure lines of funding.
- As submitted in our application and discussed in the PRC meeting, the project has a critical construction window of three months (June through August). Opening after this window will have fiscal impacts not just for the PFD but lost revenue for the region as events held in the Veterans Memorial Arena support many local businesses.
- This project needs to be constructed during the summer of 2024. The SPFD is replacing the retractable seating in the arena during this window and as such is already losing revenue. Postponing to summer of 2025 would double the loss, and impact to SPFD's operations would be significant.
- The schedule critical path is not driven by the construction of the Tennant Improvement, but rather the permitting process. The critical permitting window is based on the proposed energy code update scheduled to be implemented in March. The Spokane AEC industry is forecasting an increase in permitting duration of 6-8 weeks. As such, we would need to get a Design Builder under contract by early April.

- One approach to schedule reduction was to minimize the requirement for the SOQ to a single sided A3 (11x17) and shorten the SOQ response period. Hill International reached out to over a dozen AEC practitioners to promote early teaming and received responses from multiple teams that given the A3 format, 5 business days was sufficient.

It was never the intent to be exclusive. On the contrary, we felt broadcasting the project to a broad list of our AEC practitioners would allow more outreach for teams prior to release of the RFQ.

We would like to add that based upon the feedback in the application evaluation sheets, we see some arbitrary and inconsistent comments that do not align with the RCW requirements. It should be noted that during panel deliberation, the panel chair stopped the dialogue and reminded the other members of the panel that they need to vote solely on the state statute and not infer any personal bias to the project. (***PRC Panel comments in Bold Italic***)

1. ***Did not evaluate a schedule, appeared not planned out. Leaves zero time for outreach.*** Our entire presentation was about our very clearly identified schedule. We have been doing outreach on this project since SPFD board approval of funds in December.
2. ***Owner is leaning on resources APEX and OMWBE.*** We understood the purpose of these organizations was to help educate owners. As such, SPFD has been working with APEX on best practices for not just this project, but for future projects and internal hiring practices. The SPFD procurement team reached out to APEX soon after funding approval and project delivery selection.
3. ***No outreach events for further inclusion opportunities.*** Over the past year, our Owner Advisor, Hill International has assisted in two outreach sessions, one in Spokane and one in the Tri-cities. They have two individuals in the regional DBIA who are working with both local chapters to coordinate future outreach. Hill International is also contracted with another owner, Benton County (on their 4th PDB project) who is utilizing the same inclusion process that they are implementing with SPFD and has received commendation from the PRC for their inclusion approach.
4. ***Schedule does not support the ability to be inclusive.*** We provide in our procurement RFP a subcontract and inclusion tracking form for Design Builders to use when onboarding sub-contractors and sub-consultants. Our schedule does not eliminate these subs from being considered on teams by the Design Builder.
5. ***No design opportunity for inclusion.*** Design Build contractors will be able to team with whatever design firm they choose. Our scoring criteria benefits those teams. This comment is incorrect.

As RCW 39.10.300 directs, a project is well positioned to use design build if:

- (1) The total project cost is over \$2,000,000 and where:
 - (a) The construction activities are highly specialized, and a design-build approach is critical in developing the construction methodology; **or**
 - (b) The projects selected provide opportunity for greater innovation or efficiencies between the designer and the builder; **or**
 - (c) Significant savings in project delivery time would be realized.


We clearly demonstrated in our application and presentation that construction activities are highly specialized with tight permitting and construction windows, combined with working concurrently with another project in an occupied operating facility. This will require experienced contractors to work as an integrated unit which requires the teams to be innovative and creative in construction means and methods. Additionally, time for delivery is critical and without the teams working under one contract, SPFD's operations will be significantly impacted, resulting in loss of revenue and loss of functionality of critical SPFD infrastructure.

We feel strongly that the denial of this project was unfounded. We believe we have demonstrated the importance of using (progressive) design-build and that it is the appropriate and most effective contracting method to deliver this project without significant delays and costs to the community and the Spokane taxpayers. We respectfully request you overturn this denial.

If the Board and Committee agree with our appeal, we would kindly ask for an expedited review by February 20th. As mentioned above, this project has a tight schedule and past that date, the SPFD will be forced to utilize traditional bidding which we don't feel is ideal for this project.

Sincerely,

SPOKANE PUBLIC FACILITIES DISTRICT



Stephanie Curran
CEO