Homeword

February 10, 2025

Julie Flynn
Montana Department of Commerce
Montana Housing, Community Housing

Brenda Beckett
Billings Community Development Division
Billings Planning & Community Services Department

RE: LB Lofts & Laurel Gardens – General Contractor Procurement Process Modification Request

Dear Montana Department of Commerce and Billings Community Development Division,

We are writing to request approval of an alternative to the public sealed bid General Contractor procurement method often required by the Montana Department of Commerce (MDOC). We are requesting to be allowed to use a Request for Proposal process for procurement of the General Contractor. We are requesting this approval at this phase of the LB Lofts and Laurel Gardens project because we believe an alternative method would be significantly advantageous for the successful implementation of this project. Nothing about market conditions has significantly improved since we last made these requests for the Baatz Block Apartments in Great Falls and our Creekside rehabilitation in Missoula. We have seen the lingering global COVID effects, the ongoing challenges of labor shortages, and ongoing talk of tariffs and embargoes have negative impacts on construction and project costs and will continue to have ongoing negative impacts for years to come. The executive branch changes at the Federal level are creating further uncertainties with interest rates, equity pricing and cost of goods, as well as investor appetites for new projects.

Even before the global pandemic, a procurement process using a public sealed bid with the requirement of selecting the lowest qualified bidder was not entirely appropriate method of procurement for the construction industry environment in Montana. Montana, as a largely rural state, does not have the depth of qualified General Contractors (GCs) to make this procurement method result in the lowest cost and good-quality construction project. When GCs are busy, as they are all across Montana, they do not need to work the extra 40 to 80 hours required to provide a good competitive bid. They have sufficient work in their pipelines already to keep them busy for two to three years. When subcontractors are busy, they do not sharpen their pencils to provide competitive numbers that would give the reason a good, quality GC would select their bid. If they respond at all, they throw together an inexact bid with few details, and add a significant buffer to their number because a) they are already too busy and don’t really know how they could get the job done on the desired schedule, so they don’t care if the GC selects them and b) if they do get selected, overtime and premium pay are the only way they are going to come close to meeting the schedule.

This issue was well illustrated over the last four plus years:

- On our Creekside project Homeword hired a General Contractor using the approved procurement process. Our GC has been able to work closely with the design team on how to prepare the bid documents for subcontractors and move toward our fixed available funding to renovate the project. Creekside is a rehabilitation project and scopes of work can be modified and handled via operations if necessary. We are creating unit pricing and allowance, working closely on the relocation planning. None of this work could be done accurately without a GC on board during the design phase.

- At Baatz Block Apartments, where the approved RFP process was used, we had five General Contractors, including four local Great Falls GCs, respond to the ad and submit a proposal. Of those five respondents, four confirmed they would not have participated in a public sealed bid process that would have had to occur four to five months after the RFP could happen; public sealed bids require extremely detailed plans and specifications where RFPs require only schematics and high-level scoping documents. The RFP process still results in a more accurate price because the GC is intimately familiar with the construction documents and design intent. The added benefit is that the GC can include the project in their work pipeline, allowing for adequate resources and capacity to meet the schedule.
- At Junegrass, a 138 rental home project we are doing in Kalispell, there are no HOME or other restrictive funding sources other than Housing Tax Credits. The General Contractor was selected through an interview process, largely because they had performed well on two past projects with Homeword and GMD, the Managing General Partner. With the GC on board early, we were able to accurately assess the cost impacts of building into the hillside with a stepped foundation vs. grading the site flatter and using large retaining walls to create a flatter building pad. The savings to build into the hillside was approximately one and a half million dollars (6.5% of the project hard costs), plus an estimated 6 weeks of construction time. Without the early involvement of the GC, we would have been unable to accurately estimate the cost savings to fully analyze that option.
- At Trinity, in Missoula, where the GC was selected through a Request For Proposals (RFP) with a follow-up interview process, the GC was selected early enough in the process to result in over $2,000,000 in savings while not reducing the quality of the project, because the people who design the project, architects and engineers, were able to consult with those who actually do the work and build the project. The process was still open and fair – any GC could respond to the RFP; it was advertised all over the state and posted on the plan exchanges. Once selected, the GC could schedule the project into their timeline and bid out to subcontractors earlier to get competitive pricing and get the project on their schedules.
- At Hearthstone in Anaconda, again only one GC responded to the public sealed bid. Local Butte GCs were too busy to even bother bidding, as were Missoula GCs. Local subs were also too busy to bid. The result was a non-local GC, and subs that all had to travel to get to the work, increasing the cost of the project with travel, lodging and per diem expenses.
- At Alpenglow in Whitefish, only one GC responded to the open public bid. Local Kalispell GCs were too busy to even bother bidding. Local subs were also too busy to bid. The result was a non-local GC, and subs that all had to travel to get to the work, increasing the cost of the project with travel, lodging and per diem expenses.
- At Bluebunch in Livingston, the initial bids came in more than 200% over budget: Livingston is a small town and had no local GCs, and few local subs with the capacity or bonding capability to even bid the job. The nearest sizable market is Bozeman, where the contractors were then (and are now) so busy they are scheduling jobs out a year or more into the future. The two responding GCs for the re-bid were located in Valier (near Kalispell) and Great Falls. Subs that responded to these GCs requests for bids were limited and no local subs had the bonding capacity to bid, so all their bids were increased with travel and lodging costs.

We are happy to provide you with additional information/documentation on any of these projects if needed.

The RFP process also allows us to identify some construction items that might have unreasonably and unusually long lead times, and purchase those ahead of time. Electrical gear continues to be challenging, especially for projects being built in less populated communities. At Junegrass, the gear was ordered in May of 2022 and arrived in August of 2024. At Crowley, the gear was ordered in July 2022; the last pieces of equipment arrived in August of 2023. These are construction materials that used to have a lead time of 6 to 12 weeks. Anything we can do to get a head start on long lead items only benefits the project, and ultimately the residents. There is no benefit to having buildings sitting there 95% complete, but unable to be occupied because they can't be connected to the power grid.

The construction industry has not recovered from the pandemic impacts and has not solved the labor shortage crisis. Some industry experts indicate that the US needs an additional 501,000 workers in the construction industry to balance supply and demand. Fortunately, with a larger market, there are more General Contractors and Subcontractors in Billings that would have the staff capacity, management capabilities, and bonding capacity to do a project of the size of LB Lofts and Laurel Gardens. There is also a larger pool of local subcontractors with the capacity and bonding availability. A public sealed bid process means that the selected GC does not know they have been selected for the work until the permits are ready to issue and the project is ready to begin. That just won't work in the current construction climate. Quality Billings General Contractors currently are scheduling work for the winter of 2025 through the Spring of 2026. By the time this project could go to bid using a bid process, contractors would be unable to start until summer or fall of 2025, potentially a year or more after this project needs to start. To be successful, this project needs to have a General Contractor selected within the next two months to get in their pipeline for 2025.

As we understand it, there are no federal regulations prohibiting the procurement of the General Contractor by an RFP process and engaging them in the project early in the design process. Several federal agencies (along with some state agencies) have recognized the clear benefits of this type of procurement. Homeword, as the Grantee/Sponsor and a CHDO with over 29 years of experience in development, is not a government agency and should not be required to comply with state procurement requirements designed for government agencies and government projects.

If MDOC approves the use of the procurement by RFP, our process would allow for public and equal competition:

- The Requests for Proposals will be advertised in the local newspaper, uploaded to the Montana Plans Exchange, uploaded to the Montana Department of Transportation DBE Quote Request, and disseminated as widely as possible to share the opportunity with Section 3 businesses and individuals. The RFP would identify all evaluation factors and their relative importance. All responses to the RFP will be considered to the maximum extent practical, and the evaluation results documented and provided to the HOME Program Staff;
- There will be a written method for conducting technical evaluations of the RFP responses and for identifying a list of respondents to be interviewed;
- Three to five (depending on the number of respondents) respondents will be interviewed and their responses to project specific questions further evaluated;
- A contract(s) will be awarded to the General Contractor whose qualifications, experience, capacity and knowledge of the project type is most advantageous to the project, with price estimates and all other HOME, HTF and LIHTC required factors considered. The contract will not be signed until such time as the project has received the authorization to use grant funds from HUD/participating jurisdictions. A Notice of Intent to Award the Contract will be issued to allow the GC to feel secure in scheduling the work, with the required conditional statements.

We are requesting approval to use this Federally allowed procurement method for the general contractor for LB Lofts and Laurel Gardens due to the challenging and significantly disadvantageous results on several recent Homeword projects that used the sealed bid method for procurement as detailed above. We also believe it is critical that the GC selected show past success in constructing multi-family residential projects.Per the CFR Section 200.320(c)(1), the sealed bid method is feasible and the preferred method of procuring construction if the conditions listed below apply. We believe the following conditions **do not apply** to the current bidding climate in Montana, especially with ongoing COVID impacts on the overall market:

(ii) – ***two or more*** *responsible bidders are willing and able to* ***compete effectively*** *for the business;*
(iii) – *the procurement lends itself to a firm fixed price contract price and the selection of the successful bidder* ***can be made principally on the basis of price****.*

We believe strongly, based on recent experiences, that we will not receive two or more bids that are effectively competitive. Recent bids have shown that we may get only one bid, and even two bids are unlikely to be effectively competitive, as the General Contractors and Subcontractors are too busy to spend adequate time bidding when they have no room in their schedules for the next six to twelve months. The busy construction conditions, increasing skilled labor shortage and ongoing COVID impacts to the overall construction market have proven that we cannot expect multiple **competitive** bids from **responsible** General Contractors and Subcontractors. Their staffing availability prevents them from being competitive, as they simply do not have the ability to hold qualified staff available to start sealed bid projects within a reasonable timeframe after bids are opened. Their schedules are already filled with negotiated and invited bid contracts – contractors in this busy market need to be able to plan for projects far in advance of sealed bid openings, and the most experienced and qualified contractors are too busy to bid on projects that will need to begin shortly after the bid opening. This is the feedback from multiple bidders that have elected not to submit bids on recent projects.

The CFR Section 200.318(g) states *"the non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions."* Having a contractor on board during design allows for real time value engineering and construction cost estimates to maintain the feasibility of the project while not increasing architectural and engineering fees. This is a benefit to the project ensuring our limited funding resources are being used efficiently and not wasted covering inflated bid amounts and additional services in our current market.

In summary, it is our understanding that the intent of a public, sealed bid process is twofold: 1) to ensure a fair, equitable, and competitive bidding process and 2) to ensure that there is no collusion between the grantee and the general contractor and that the price is appropriate and the lowest possible for the work. In leaner times, the competitive aspect of the public sealed bid process was also expected to drive down prices. We believe that, in today's construction industry environment, the public sealed bid process achieves none of these goals. The quality GCs do not need to compete for work. They have more than enough as it is. Forcing projects in today's construction climate to use the public sealed bid process ultimately increases costs, reduces quality, and lengthens the construction schedule. The proposed process meets the intent without the negative impacts of a public sealed bid process.

Thank you for your consideration,

Heather McMilin, Homeword Project Development Director