

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE: Proposed City Hall Delivery Method, Project and Schedule DEPARTMENT: City Manager's Office PRESENTED BY: Jesus Sanchez, Interim Public Works Director
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PROBLEM / ISSUE STATEMENT:

The City of Shoreline has been studying alternative approaches to design and construct a City Hall that will locate all of the City's departments, except Police, under one roof and centralize its services.

On January 21, 2005, staff presented to Council several delivery methods that could be used to construct the city hall. Under state law, RCW 35.22.620¹ and Chapter RCW 35.42.010 - 090, only two of the most common project delivery systems used on public works projects are available to the City of Shoreline. These are (1) the traditional design / bid / build and (2) the design-build / lease-to-own method.

This report discusses these two project delivery methods. It will identify the delivery process advantages and disadvantages of each option. Staff recommends the design-build / lease-to-own method for the following reasons:

- Collaborative approach to design;
- Positive budget control over project outcome;
- Guaranteed Lease Purchase Price early in development process;
- Increased delivery speed;
- Transfer all construction risk to the private sector;

FINANCIAL IMPACT:

No financial impact.

RECOMMENDATION:

This item is presented for Council review, questions, discussions, and direction. It is recommended that the Council authorize staff to proceed with the design-build/lease to own process for City Hall.

Approved By:

City Manager  City Attorney 

INTRODUCTION

This report presents an analysis of two project delivery systems available to the City of Shoreline in accordance RCW 35.42.010 – 090 for the construction of the proposed City Hall. The analysis focuses on a comparison of the traditional design / bid / build method and the design-build / lease-to-own method.

The design / bid / build approach has been the traditional system used for construction of public projects. The design-build / lease-to-own methodology is one alternative that has been introduced for use on public sector projects and is being used with increasing frequency and success.

DISCUSSION

The two project delivery systems that are available to the City of Shoreline for the construction of the proposed city hall are the following:

Design / Bid / Build (Traditional):

The design / bid / build method has historically been used on public works projects and is utilized by most public entities in Washington State. The regulations and procedures that apply to the contracting, design and construction phases are well developed. The public owner engages a design team that develops drawings and specifications for the facility. Once completed, the design package is bid and the lowest responsible bidder is awarded a contract for the construction. The public owner uses in-house staff and the architect, or engages the services of a professional construction manager, to manage the construction process.

Advantages	Disadvantages
<ul style="list-style-type: none">• Most public projects have been design / bid / build over the last several decades.	<ul style="list-style-type: none">• The project cannot be bid until after the project is completely designed.
<ul style="list-style-type: none">• The process is universally understood.	<ul style="list-style-type: none">• If the bids come in over budget, more time and money (often substantial) must be invested in redesign and re-bidding.
<ul style="list-style-type: none">• Roles of the owner, architect and contractor are clear.	<ul style="list-style-type: none">• Design suffers from a lack of budget & constructability review by contractors.
<ul style="list-style-type: none">• The owner has well defined requirements.	<ul style="list-style-type: none">• Lowest bidder awarded the project based on low hard bid; contractors look to errors and omission in design documents as a basis for change orders and to later claim additional money.
<ul style="list-style-type: none">• It is considered a “traditional and prudent” approach to project delivery.	<ul style="list-style-type: none">• The final cost of the project is not known until after the project has been completed and all claims settled.

	<ul style="list-style-type: none"> Qualifications of the contractor and accuracy of their bid estimate are secondary to price. The contractor may be marginally qualified. In order to obtain the low bid the contractor may hire low bid subs with whom he has little experience.
	<ul style="list-style-type: none"> Disputes over construction issues and costs between owner, architect, contractor, subs and suppliers are frequently difficult and expensive to resolve.

Design-Build / Lease-To-Own:

The design-build / lease-to-own approach is available to public entities by way of RCW 35.42.010 - 090. This public-private project delivery method allows for a collaborative design process while shifting the responsibility and risk for construction to the developer entity. In general terms, this process is similar to a "turn key" project. The City selects the best qualified development team through a competitive process which usually includes a developer, builder, and architect. The City provides general specifications, quality levels, and building performance requirements. The developer then provides a guaranteed Lease Purchase Price (sometimes "LLP") at which the City can buy out the lease. This is comparable to a guaranteed maximum price ("GMP") that is provided for design-build projects under RCW 39.10 (an alternative public works statute that is not available to the City of Shoreline because our population is less than 70,000). The selected developer proceeds with the construction, and delivers a finished product. The lease term commences and typically the developer is paid the Lease Purchase Price financed by the developer itself; or by a facilitating non-profit that issues bonds; or by a trustee's issuance of Certificates of Participation ("COPs") which are the equivalent of bonds. On occasion cities will issue general obligation bonds to pay the lease purchase price. The developer entity can be an integrated firm that includes in-house development, design and construction capabilities, or it can be several firms that have combined resources to deliver these services.

The City would issue a Request for Qualifications (RFQ) followed by a Request for Proposals (RFP) outlining its requirements and acceptable terms for the City Hall project. In response to the RFP, each developer would propose how it would fulfill the City's requirements, budget and the financing structure.

Advantages

Disadvantages

<ul style="list-style-type: none"> The process is greatly simplified as there is one point of responsibility for design and construction of the project. 	<ul style="list-style-type: none"> Lacks wide spread familiarity and acceptance by the public sector; however, over \$750,000,000 in Washington State projects have been suc-
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	cessfully completed since 1996.
<ul style="list-style-type: none"> The architect works under or in partnership with the contractor, which allows for accurate & timely budgeting as design evolves; this eliminates claims for additional costs due to design errors. 	<ul style="list-style-type: none"> Requires a different contractual and management approach.
<ul style="list-style-type: none"> Public owners are able to competitively select the best "package deal" for design and construction with a single entity, the developer. 	<ul style="list-style-type: none"> Selecting the right development team and establishing early rapport is important.

<ul style="list-style-type: none"> The developer guarantees a Lease Purchase Price fairly early in the design development phase (30% drawings) and assumes the risk of project cost overruns. 	<ul style="list-style-type: none"> It is important for the owner to establish sound performance and delivery expectations in writing up front
<ul style="list-style-type: none"> The developer may select the delivery approach that best suits the project without having to hard bid to the lowest subcontractor(s). 	
<ul style="list-style-type: none"> The owner retains significant control through a collaborative preparation of "performance-based" design documents combined with a favorable design / build development agreement. 	
<ul style="list-style-type: none"> Because its developer fee is set early in the process, the developer has no disincentive to consider life-cycle cost factors and to exceed minimal quality standards i.e. durable materials, energy efficient equipment, low maintenance systems based upon owner criteria, etc. 	
<ul style="list-style-type: none"> The design-build process and integration of the project team enhances communication and expedites the delivery process. The builder can hire good subcontractors with whom it has established long term trust and coordination. 	

The design-build, lease-to-own delivery approach has been used for numerous Washington State projects including King County's King Street Center, Issaquah District Courthouse and Goat Hill Office projects, highway interchange and water main improvements in Issaquah, Washington State's Tumwater Office Project, Harborview's

401 Broadway Building, the Redmond City Hall, and four University of Washington projects.

Process and Steps:

Prior to selection of the developer significant progress towards the following three steps is complete or in process:

- **Create a Basic Vision of the Project**
- **Oversee Concepts / Design**
- **Establish Project Objectives / Program**

Simultaneously:

- **Issue a Request for Qualifications / Rank & Shortlist**
- **Issue a Request for Proposals / Rank & Select Developer**

Using a combined RFQ and RFP process to select a developer should take approximately four (4) months. During this time, the City will continue to address concepts, objectives and project vision. The RFP will solicit the competing developers' perspective and approach to these issues. A public participation / open house evening will be scheduled during this period to inform the community about current approaches / processes and to solicit community input.

Upon selection of the developer and its team:

- **Prepare a Predevelopment Budget & Schedule**

The predevelopment budget will call out the City cash requirements to pay the developer's architect, engineer(s), and other consultants through schematic design and design development to actual execution of all closing documents. The most important documents are the lease, development agreement, and financing documents. The developer will receive no consideration or development fees for its efforts during this period. Its pre-development time and efforts are at risk. However, the developer's consultants are paid for their time and efforts towards this project. Since the City owns the property upon which the facility will be constructed, the developer cannot make use of this work product with another user – and therefore is not burdened with the risk that the City ultimately fails to authorize execution of the lease. All work product during this period would become property of the City in the event the project does not proceed. This is the total development risk exposure that the City undertakes.

- **Determine the Market Demand for any Private Sector Uses of the Project**
- **Manage the Collaborative Pre-development Process**

Managing the collaborative pre-development process is the heart of this public-private approach to project delivery. Here, the development team, working collaboratively with City staff, finalize project and budget objectives. Schematic design and design development evolves, with ongoing budgetary feedback. This is where collaborative deci-

sions are made to assure the right project at the right price for the City. At approximately 30% design development documentation, the developer will be able to identify a guaranteed Lease Purchase Price. Unless the City makes substantial changes thereafter, this LPP will be used for final documents. The developer will assume the risk to deliver the project for the LPP. If the project runs over that LPP, it will be the developer's responsibility to fund the shortfall.

Public participation can and should continue during the collaborative pre-development process. After selection of the developer and the developer team, early in the schematic design phase, we recommend a public meeting outlining alternative design approaches – a design charrette, so to speak. This can be repeated one or two more times, where the developer and City officials hold additional public meeting(s) offering further opportunity for community feedback. That community input process must be complete by the time 30% design development documentation and the LPP is presented.

- **Project Development Process Overview:**

There are three primary legal documents that will memorialize the overall delivery approach for the City Hall project. (1) a Ground Lease, by which the City will lease its newly acquired real property to the developer, (2) a Development Agreement describing with particularity the plans, specifications, terms and conditions under which the Project will be constructed; and, (3) a Project Lease, by which the City will lease back the real property with the completed City Hall site improvements. A Ground Lease would not be required if the developer (rather than the City) initially owns the property.

- **The Ground Lease Summary:**

If a Ground Lease is used, the City will lease the parcel of land determined for the new City Hall site. The Ground Lease does reserve the City's right to continue to use and occupy existing building on site at no cost during construction and development of new City Hall on the remainder of the site. During this time, the developer will pay the City a nominal sum (i.e., \$100.00) for a fixed 20-25 year lease term. The Ground Lease requires the developer to indemnify the City against any liability associated with the use of the lease portion of property and requires the developer to keep the property insured.

- **Development Agreement Summary:**

Under the Development Agreement, the developer agrees to develop, manage and oversee the design, entitlement and construction phases of the project. The City will have final approval on all construction drawings and detailed specifications prior to construction. The developer will warrant delivery of the project for a fixed price at a time certain. The developer will be responsible for selecting and managing consultants, for obtaining all permits for construction of the project, and for managing a guaranteed maximum price construction contract. This construction contract shall provide for the payment of prevailing wages, for the construction of the project according to attached plans and specifications, and for warranties against defects in construction or materials.

- **The Project Lease Summary:**

Only after substantial completion of the project does the City lease the newly constructed City Hall and associated site improvements back from the developer. At this point, the terms of the Project Lease will take effect. The City has no obligation to make Project Lease payments until the project is delivered pursuant to the terms of the Development Agreement. Therefore, until the project is delivered pursuant to the terms of the Development Agreement, all construction risk resides with the developer. "Substantial Completion" is a specifically defined term in the documentation, providing that all elements of the project are complete, that the project is ready to occupy, and that all systems are properly functioning (except minor punch list items that do not effect occupancy or use).

- **Lease-to-Own Summary:**

At the end of the term of the lease, the City will own fee simple title to the land, the City Hall and all other site improvements. During the lease, the City will effectively have complete control of the land, the City Hall and all other site improvements. Therefore, there is a legal distinction, but not an operational distinction. By paying the Lease Purchase Price (which declines over time as lease payments are made, similar to a home mortgage) the City has the option to "close out" or "pay off" the Project Lease obligations (such as COPs) and obtain fee simple title to the land, the City Hall and all other site improvements.

- **Brief Elected Officials / Ongoing Updates**

City officials will have ongoing insight into the budget consequences of various development and design decisions. These decisions will be communicated to the Shoreline City Council on an ongoing basis.

As can be seen, such an approach offers the City of Shoreline distinct advantages over the traditional design / bid / build delivery method. Most important:

1. **Increased delivery speed;**
2. **Potential cost reductions;**
3. **Significant reduction of development and construction risk; and,**
4. **Positive control over project outcome.**

Risk Transfer:

One of the strongest attractions to using a design-build / lease-to-own development strategy is the transfer of project risks to those in the best position to manage that risk. The primary benefits include:

- There is a single point of responsibility for design and construction of the project.
- The architect and contractor work on behalf of or in partnership with the developer, which eliminates claims for additional costs due to design and construction errors.

- The developer agrees upon a guaranteed Lease Purchase Price ("LPP") early in the design development phase of the process and is responsible for cost overruns.
- If project expenses exceed the LPP, it will be the developer's responsibility to fund the shortfall.
- The development agreement will include a defined schedule identifying the anticipated substantial completion date. Failure to meet the schedule delivery requirements may result in liquidated damages to the developer.
- Finally, the development agreement will incorporate detailed drawings and specifications identifying the project requirements. Failure to meet those requirements would result in a failure to achieve substantial completion. There is very strong motivation for the developer to comply with the detailed drawings and specifications.

PUBLIC PARTICIPATION

A design-build / lease-to-own approach is easily structured in such a way as to enhance public participation and review. Moreover, final project decisions can be explained to the community in terms of priorities and budget impacts.

After selection by way of a competitive procurement, the developer and its team will embark upon a collaborative pre-development process of entitlement, design, and budgeting. Because the general contractor (and its major sub-contractors) work in concert with the design team, there exists rapid and ongoing budget feedback with regard to design decisions. Weekly or bi-weekly meetings attended by development team and City staff assures constant monitoring of budget projections. This is a fundamental advantage of this delivery process over the design-bid-build process.

As indicated above, the City and the developer are in a position to host open houses / forums where public participation is welcomed. This process can be as broad and encompassing as City officials desire. Public input can be identified, listed, prioritized, and budget impacts can be quantified.

Because the pre-development phase is collaborative between the City of Shoreline and the developer and because the developer is being paid a fee for its development expertise, the developer has no inherent resistance to changes, enhancements, etc. during the public participation process. Public participation does not impact profit or risk until the developer delivers its Lease Purchase Price. Possible budget impacts from citizen suggestions are identified and communicated to City officials. City officials make the ultimate decisions. Moreover, City officials will be able to demonstrate with some specificity how budget impacts informed their final decisions.

LEGAL

Hugh Spitzer, bond counsel with Foster Pepper, advises that the City can utilize the design-build / lease-to-own delivery and procurement available under RCW Chapter 35.42. Financing options available include market rate financing available to the design-build developer, Certificates of Participation (COPs) or utilization of IRS Rule 63-20 tax-exempt bonds.

RECOMMENDATION

This item is presented for Council review, questions, discussions, and direction. It is recommended that the Council authorize staff to proceed with the design-build / lease-to-own process for City Hall.

Public/Private Real Estate Development Efficient Project Delivery

Presented to:
Shoreline City Council

Presented by:
William Angle
Vice President, Government Services

January, 2007

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Why Are We Here?

- Future City Hall / Civic Center Challenge
- Present an overview and distinguish between alternative project delivery methods:
 1. Traditional Design-Bid-Build
 2. Alternative Design-Build / Lease-to-Own
- Both methods are available to the City of Shoreline
- Discussion of Advantages & Disadvantages



Traditional Design-Bid-Build

Advantages

- Commonly used for public works projects
- Process universally understood
- Roles of public owner, architect, and general contractor are clear
- Created in the 1930s-1940s to:
 - Avoid corruption
 - Foster competition
- Least expensive debt financing



Traditional Design-Bid-Build

Disadvantages

- Difficult to manage / cumbersome
- Slow
 - Protracted development cycles
 - Long delivery times
- Change orders common and expensive
- Final project costs known only at end
- Private sector rarely uses this approach, for these very reasons



Design-Build / Lease-to-Own

Advantages

- Procurement process allows City to consider factors in addition to price
- Enhanced communication
- Simplified process / single point of responsibility
- Development contract incorporates all design and construction elements
- Guaranteed Maximum Price (“GMP”)



Design-Build / Lease-to-Own

Advantages Continued

- Appropriate alignment of of incentives and disincentives
- Collaborative design and budgeting process eliminates change orders
- Transfer of construction risk to private sector



Design-Build / Lease-to-Own

Disadvantages

- Greater “belt & suspenders” upfront effort
- Selecting right developer / developer team is very important
- Requires a different contractual and management approach
- Lacks widespread familiarity
- However, over \$750,000,000 in Washington State projects since 1996
 - Every project on time or early
 - Every project on budget or under



Comparison – Financing

Design-Bid-Build

- General Obligation Bonds (G.O. Bonds)
- Voter approved bonds
- Non-voted approved bonds
- Bonds are tax exempt
- Cheapest Debt
- Prevailing Wage Project

Design-Build / Lease-to-Own

- RCW 35.42.010-220
- Certificates of Participation
- 63-20 bonds
- Debt is tax exempt
- May be 5-10 basis points higher
- Prevailing Wage Project



Process & Steps Timeline (Flow Chart)

- Create a basic vision / Establish project objectives
- Issue a Request for Qualifications / Rank & Shortlist
- Issue a Request for Proposals / Rank & Select Developer
- Prepare a predevelopment budget and schedule
- Manage the collaborative predevelopment process
 - Schematic design
 - Design development
 - Public participation
- Transfer construction risk to private sector
- Brief City officials / Ongoing updates



Public Participation

- Design-Build / Lease-to-Own enhances public participation
- Collaborative pre-development period is ideal for hosting public participation forums
- Citizen input and ideas can be prioritized and budget impacts quantified
- Developer has no reason to resist – its interests are aligned with City interests until GMP
- City officials make ultimate project decisions
- City officials will be able to demonstrate how budget impacts informed their decisions
- Citizens will know and understand



King Street Center



- **\$78 million project delivered under budget and on time with an extreme fast track delivery schedule;**
- 23 year flat NNN rate at \$18.50 / s.f.
- Project will be conveyed to King County at the end of the lease / finance term;
- **King County saved at least \$20 million;**
- Awards include:
 - EPA Energy Star Label (2001)
 - LEEDS Gold Certification (2004)
 - BOMA sponsored TOBY award (2005)
- Angle structured project deal

Issaquah District Courthouse



- \$5.9 million project utilizing Certificate of Participation (COP) tax exempt financing.
- Delivered on budget under an ultra fast track delivery schedule.
- Award winning design.
- Construction loan privately financed.
- **At retirement of the bonds, ownership of the facility will transfer without cost to King County.**
- Angle structured project deal.



Green River Community College



- 22,600 s.f. facility.
- **Development and purchase deal structure.**
- State Treasurer sells COPs on behalf of Green River Community College.
- Phase I at full capacity by 2007.
- College applying for \$20 Million for Phase II.
- Angle structured deal.



Broadway Office Properties

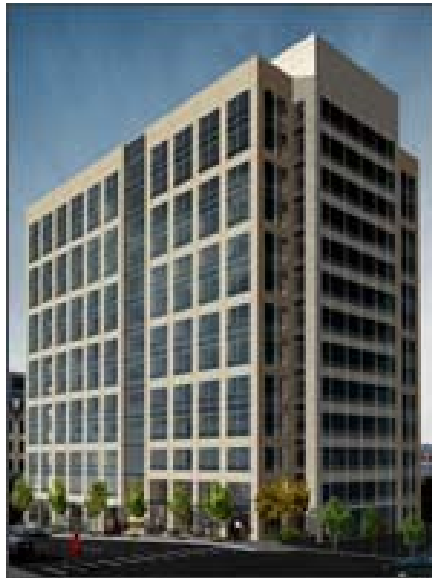


- **401 Broadway (aka Pat Steel Building)** is a \$62 million project delivered ahead of schedule and \$1.8 million under budget.
- 156,800 square foot office building, with a three level underground parking garage containing 298 parking spaces.
- **Office Development of the Year award (2004) by the National Association of Industrial and Office Properties (NAIOP).**
- Offices / Clinics for Harborview Medical Center.
- Project will be conveyed to King County at the end of the lease / finance term.
- Angle structured project deal.

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KC Office Building at Goat Hill



- This is the second of two phases. The first phase was a parking garage with almost 700 stalls. The second phase is an office tower of approximately 300,000 s.f., anticipated to be LEEDs Silver Certified.
- **These facilities were constructed on King County property. Together they were developed by means of a Design-Build lease / leaseback-to-own deal structure.**
- The procurement methodology utilized an innovative RFQ / RFP formula, looking at best value as the ultimate criteria for selection.
- Angle structured project deal.



Redmond Community Properties



- \$39 million project to construct a new City Hall and 530 space parking facility for The City of Redmond, Washington.
- **Cost savings from the financial structure helped justify the construction of a building sized to accommodate the City of Redmond's projected office needs for the next 20 years.**
- The building was constructed on land leased from the City of Redmond; and the completed project will be leased to the City for the term of the debt.
- At retirement of the bonds, ownership of the facility will transfer without cost to the City of Redmond.



Tumwater Office Properties



- **\$57 million project delivered two months early; \$1.2 million dollars savings returned to State.**
- 207,000 square foot, four story, class A office building in Tumwater, Washington. Surface parking lots will accommodate approximately 770 parking spaces.
- The building will be leased to the State of Washington housing Department of Corrections & Department of Transportation.
- Project will be conveyed to State of Washington at the end of the lease / finance term.

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Benefits

- **Approval Authority:** Local government maintains complete control and approval authority
- **Timeliness:** Projects can be delivered much more quickly
- **GMP:** Guaranteed maximum price
- **Development Risks appropriately shared**
 - Interest rate / Finance risks
 - Lease-up risk
 - Development / Construction risks are shifted to the private sector



Benefits

- **Flexibility:** Deal appropriate trade-offs regarding budget, schedule, and quality
- **Ultimate Ownership**
 - Public ownership at the end of the financing term
- **Development & Market Expertise**
 - Design-build coordinator
 - Negotiated Contracts
- **Project Appropriate Incentives and Disincentives**



Benefits

- Open Book: Open book and subject to audit
- Avoids
 - Delays
 - Changes
 - Claims
 - Litigation



Conclusion

- Projects have included:
 - Office Buildings, Municipal Facilities
 - Parking Garage, Student Housing
- Washington State Projects = \$750 million Design-Build / Lease-to-Own projects since 1995
- Projects delivered:
 - On Time
 - On Budget
 - Minimal Risk

