

## **RESOLUTION NO. 1897**

### **A RESOLUTION CREATING AN EXEMPTION FROM COMPETITIVE BIDDING REQUIREMENTS IMPOSED BY ORS CHAPTER 279C TO ALLOW THE CITY TO SOLE SOURCE THE CONSTRUCTION OF STORM SEWER IMPROVEMENTS ASSOCIATED WITH TYSON'S PLACE SUBDIVISION**

#### **THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:**

1. Under ORS 279C.335(1), local public agencies are required to competitively bid all public improvement contracts except where the specific public improvement contract is exempted from that bidding requirement by statute or by an exemption created by a local contract review board.
2. The City Council for the City of Troutdale acts as the Troutdale Local Contract Review Board (Troutdale LCRB).
3. The City gave appropriate statutory notice by publishing a notice in the Daily Journal of Commerce, a trade newspaper of general statewide circulation, on July 9, 2007.
4. The City made copies of the draft findings available at the time of the notice.
5. The City held a public hearing on July 24, 2007 on whether to create an exemption to the requirement imposed by ORS Chapter 279C that public improvement contracts be competitively bid.
6. The City Council, acting in its capacity as the Troutdale LCRB, determined that it would be appropriate to have the ability to sole source one or more public improvement contracts for the construction of storm sewer improvements associated with Tyson's Place subdivision to the developer or contractor doing the work on the private development.
7. The Troutdale LCRB found that the exemption from the terms of ORS Chapter 279C is:
  - a. Unlikely to encourage favoritism in the awarding of public improvement contracts; or
  - b. Unlikely to substantially diminish competition for public improvement contracts; and

- c. The award of public improvement contracts under the exemption will result in cost savings to the City.


**NOW THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE**

Section 1. The draft findings (Attachment 1) are hereby adopted.

Section 2. The City Administrator is hereby authorized to sole source the construction of storm sewer improvements associated with Tyson's Place subdivision to the developer or contractor doing the work on the private development.

Section 3. This resolution is effective immediately upon its adoption.

**YEAS: 5  
NAYS: 0  
ABSTAINED: 0**

  
Paul A. Thalhoffer, Mayor  
July 25, 2007  
Date

  
Debbie Stickney, City Recorder

**Adopted: July 24, 2007**

**DRAFT FINDINGS  
AND  
BACKGROUND SUPPORTING  
A PROPOSED EXEMPTION FROM  
COMPETITIVE BIDDING REQUIREMENTS FOR ONE OR MORE PUBLIC  
IMPROVEMENT CONTRACTS FOR THE CONSTRUCTION OF STORM SEWER  
IMPROVEMENTS ASSOCIATED WITH TYSON'S PLACE SUBDIVISION**

**A. Introduction**

Under the terms of ORS 279C.335(2), a local contract review board has authority to exempt a public improvement contract from the competitive bidding requirements imposed by ORS 279C.335(1). If it does so, it must be able to make the following findings:

1. That the exemption is unlikely to encourage favoritism in the awarding of public improvement contracts; or
2. substantially diminish competition for public improvement contracts; and
3. that award of public improvement contracts under the exemption will result in substantial cost savings to the contracting agency.

Under the terms of ORS 279C.330 the term "Findings" as used in ORS 279C.335 is defined as the justification for an agency's conclusion that a public improvement contract otherwise covered by the competitive bidding requirement should be exempt from that requirement.

Under the terms of ORS 279C.330, "Findings" include information (to the extent the information may be relevant) to eight topic areas or issues:

1. Operational, budget and financial data;
2. Public benefits;
3. Value engineering;
4. Specialized expertise required
5. Public safety;
6. Market conditions;
7. Technical complexity; and
8. Funding sources.

These eight topic areas may not all be relevant or pertinent to the ability of a city to make the three findings noted above as to a particular exemption but it seems clear that state law, administrative rule and case law make it obligatory that the local contract review board at least look at and determine whether the eight topics are supportive of the findings or are irrelevant. Thus, the City looked to the topic areas, determined which were relevant and then made other observations based on its assumptions and experience to support making the findings.

## **B. Background.**

Public improvement contracts for construction, repair or maintenance are an on-going part of municipal service to its residents. In Troutdale, city staffing levels do not allow for staff to perform all construction, maintenance or repair work to these types of public improvements and, as a result most significant public improvement projects (i.e., with costs of greater than \$5,000) are generally performed by outside contractors.

Under the terms of state law (ORS 279C.335(1)), where the cost of a public improvement contract involving streets or rights-of-way could be greater than \$50,000, the bidding must be done in a formal competitive fashion, unless the local contract review board opts to create an exemption from that requirement and is able to make the showing necessary to create such an exemption. Although there are good reasons for promotion of such a formal competitive bidding process for larger projects, the competitive bidding process itself is a complex, time-consuming and expensive one for the City. As such, with certain public improvement projects it makes greater sense for the City to look to and consider alternative contracting approaches rather than the formal statutory process to get certain particular projects or work done.

Troutdale believes one or more public improvement contracts that would benefit from an approach other than the formal competitive bidding process are those for the construction of certain storm sewer improvements associated with Tyson's Place subdivision, in and around an area where a private developer is having construction work done on private infrastructure. The City would like to have the ability to "sole source" the City's construction work to the contractor doing the work on the private development. The work itself would still be subject to the requirements of the State's prevailing wage laws and bond requirements for public improvement projects.

## **C. Findings.**

The City believes that five (5) of the eight (8) factual criteria listed in ORS 279C.330 may be relevant to the Local Contract Review Board's ability to make the three (3) findings required of it by ORS 279C.335(2). Three (3) criteria - Value Engineering; Special Expertise; and Funding Sources - were not seen as relevant.

1. Operational, Budget and Financial Data. The City has limited funds to do the variety of tasks expected of it by its citizens, including those relating to public improvements. Costs for preparing a formal construction bid for smaller projects can amount to a significant percentage of the over-all cost of the project. By avoiding the formal bidding process, those costs could be saved and applied to the actual construction work.
2. Public benefit. The public benefits in a number of ways from the City's ability to use a 'sole source' approach in this project. There is a time savings from the avoidance of the formal process, the cost savings resulting from 'economies of scale' (i.e., purchases of larger quantities of construction material common to both the public/private portions of the project), savings from avoidance of certain

'start-up', mobilization, and other duplicated costs that often result if there are two separate contractors instead of one and finally, the benefit of having better coordination that will undoubtedly occur if there is just one contractor working on a project as opposed to two or more.

3. Value engineering. Irrelevant to the consideration.
4. Specialized expertise required. Irrelevant to the consideration.
5. Public safety. Public safety would be enhanced by the combination of the projects as a result of the ability to better coordinate the construction activities, including flagging and safety patrolling and protecting the combined sites.
6. Market conditions. Although possibly not a significant factor, it is nonetheless likely that certain market factors involving raw materials - the price of oil or steel - should be considered as a factor in granting this exemption. For example, the price of asphalt used in street construction is a function of the price of oil and, thusly, of the market forces that impact that commodity. As is obvious from recent (somewhat dramatic) increases in the price of oil, the rise in price has then been reflected in both the price and availability of asphalt. That, in turn has the possibility of adding unanticipated costs to the final price-tag of public projects. The authority to sole source a construction project - and the time savings that result there from - may benefit the City should it find itself in a period where the cost of raw or finished materials is creeping upward and "time is money."
7. Technical complexity. The work for which this contract is created is not necessarily technically complex *per se* other than that which might be encountered on public improvement projects of similar size. Nonetheless, if the City is combining its construction work with that which a private developer is doing and the combination of the two projects would result in some complexities, it may be able to access a contractor which would not otherwise bid on smaller public projects like the one contemplated here or which, if it did, would result in a greater per unit cost on the public side of the project.
8. Funding sources. Irrelevant to the consideration.

The Council also believes that having an exemption that will allow for the use of a general contractor being used by a private developer will tend to enhance the opportunity for diversity in both number and type of contractors being used by the City on public improvement projects. As a result, the possibility of favoritism in the award of public improvement contracts within the City is diminished.

Further the increase in number of possible contractors which would then be available for combined city / private developer projects will not only not diminish competition but very likely increase it since there may be then a larger universe of contractors from which the City can choose.