

RESOLUTION NO. 1905

A RESOLUTION EXEMPTING CERTAIN BRAND NAME ITEMS FROM COMPETITIVE BIDDING REQUIREMENTS

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. The City is preparing to advertise for bids for the Sanitary Sewer Collection SCADA (Supervisory Control and Data Acquisition) System project.
2. During the design, City staff determined that it is beneficial to the project to have three components of the SCADA system limited to one specific brand.
3. Section 2.24.210B of the Troutdale Municipal Code (TMC) allows the City Council to grant exemptions from the prohibition on specifying a product by brand name in procurement processes, based upon particular findings. The Council concludes that:
 - a. An exemption allowing specification of Siemens Milltronics ultrasonic transducers is warranted because it is unlikely to encourage favoritism or substantially diminish competition in the awarding of public improvement contracts, this is the only brand known to be of the quality desired, and it would result in efficient utilization of existing equipment due to compatibility with same (as defined in Section 2.24.250 of the TMC).
 - b. An exemption allowing specification of Siemens Milltronics ultrasonic controllers is warranted because it is unlikely to encourage favoritism or substantially diminish competition in the awarding of public improvement contracts, this is the only brand known to be of the quality desired, and it would result in efficient utilization of existing equipment due to compatibility with same (as defined in Section 2.24.250 of the TMC).
 - c. An exemption allowing specification of Allen-Bradley programmable logic controllers is warranted because it is unlikely to encourage favoritism or substantially diminish competition in the awarding of public improvement contracts and would result in efficient utilization of existing equipment due to compatibility with same (as defined in Section 2.24.250 of the TMC).

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. In accordance with Section 2.24.210B of the Troutdale Municipal Code, the following items are exempt from competitive procurement procedures during the construction of the Sanitary Sewer Collection SCADA System project and any contemplated future purchases:

- a. Siemens Milltronics ultrasonic transducers.
- b. Siemens Milltronics ultrasonic controllers.
- c. Allen-Bradley programmable logic controllers.

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

YEAS: 7
NAYS: 0
ABSTAINED: 0



Paul A. Thalhofer, Mayor
October 11, 2007

Date



Debbie Stickney, City Recorder

Adopted: October 9, 2007

**DRAFT FINDINGS
AND
BACKGROUND SUPPORTING
A PROPOSED EXEMPTION FROM
COMPETITIVE BIDDING REQUIREMENTS FOR CERTAIN BRAND NAME
PRODUCTS**

A. Introduction

Under Section 2.24.210B of the Troutdale Municipal Code (TMC), the City Council (acting as the local contract review board) has the authority to exempt certain brand name products from the competitive bidding requirements imposed by ORS 279C.345(1). Such an exemption must be based on one or more of the following findings:

1. It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts.
2. The specification of a product by brand name or mark, or the product of a particular manufacturer or seller, would result in substantial cost savings to the contracting agency.
3. There is only one manufacturer or seller of the product of the quality required.
4. Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies.

The term "compatible" is not defined in the ORS, but Section 2.24.250(B) of the TMC states:

"Compatible" means a product capable of being used efficiently and effectively with existing equipment, supplies, tools, parts, and/or employee training.

Under the terms of ORS 279C.330, the term "Findings" as used in ORS 279C.345 is defined as the justification for an agency's conclusion that a brand name product otherwise covered by the competitive bidding requirement should be exempt from that requirement. "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 any of the four 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.

Specifications for public works contracts do not typically specify products by brand name. If brand names are necessary for clarity, the wording "or approved equal" is added in order to comply with the requirements of ORS 279C.345(2). However, in select cases a specific brand may be desired due to factors such as compatibility with existing equipment or past experience with the desired product and/or competitor products. The City believes that the Sanitary Sewer Collection SCADA System would benefit from specifying three brand name components: Siemens Milltronics ultrasonic transducers, Siemens Milltronics ultrasonic controllers, and Allen-Bradley programmable logic controllers.

C. Findings.

The City believes that six of the eight factual criteria listed in ORS 279C.330 may be relevant to the Local Contract Review Board's ability to make three of the four findings of which one or more are required by Section 2.24.210B of the TMC. Two criteria - Market Conditions and Funding Sources - were not seen as relevant.

1. Operational, Budget and Financial Data. The City has the potential to save time and/or money by specifying products that are compatible with existing equipment. The desired brands are already in use at the City, and are therefore compatible with existing equipment, supplies, tools, parts, and/or employee training.
2. Public benefit. The public benefits fiscally by potential savings due to compatibility with existing equipment. There are also potential operational benefits of specifying the Siemens Milltronics products, since that is the only brand known to be of the quality desired. Specifying the three brand name products is unlikely to encourage favoritism or substantially diminish competition in the awarding of public improvement contracts, since the products will be equally available to all potential bidders on the Sanitary Sewer Collection SCADA System project.
3. Value engineering. By specifying brand name products, the City acknowledges that the opportunity for value engineering may be reduced.
4. Specialized expertise required. Since the desired brand name products are already in use, City staff will be able to apply their expertise to the products specified in the new SCADA system.

5. Public safety. Public safety may be enhanced by specifying the Siemens Milltronics products, since that is the only brand known to be of the quality desired. Based on the experience of City staff, using other brands may result in operational issues. The ultrasonic transducers and controllers are important for avoiding sanitary sewer overflows.
6. Market conditions. Irrelevant to the consideration.
7. Technical complexity. By allowing "approved equal" products, City staff may be required to evaluate alternate products and determine equivalency with the desired products. This process could prove to be technically complex.
8. Funding sources. Irrelevant to the consideration.

Based on the above criteria, the following findings can be made:

- a) An exemption allowing specification of Siemens Milltronics ultrasonic transducers is warranted because it is unlikely to encourage favoritism or substantially diminish competition in the awarding of public improvement contracts, this is the only brand known to be of the quality desired, and it would result in efficient utilization of existing equipment due to compatibility with same (as defined in Section 2.24.250 of the TMC).
- b) An exemption allowing specification of Siemens Milltronics ultrasonic controllers is warranted because it is unlikely to encourage favoritism or substantially diminish competition in the awarding of public improvement contracts, this is the only brand known to be of the quality desired, and it would result in efficient utilization of existing equipment due to compatibility with same (as defined in Section 2.24.250 of the TMC).
- c) An exemption allowing specification of Allen-Bradley programmable logic controllers is warranted because it is unlikely to encourage favoritism or substantially diminish competition in the awarding of public improvement contracts and would result in efficient utilization of existing equipment due to compatibility with same (as defined in Section 2.24.250 of the TMC).