

RESOLUTION NO. 2415

A RESOLUTION PURSUANT TO TMC 2.24.190 CREATING AN EXEMPTION FROM COMPETITIVE BIDDING REQUIREMENTS FOR A PUBLIC IMPROVEMENT CONTRACT TO INSTALL THE REMAINING SEGMENT OF THE ROGERS CIRCLE TO SPECTRO WATER MAIN LOOP, CIP WA-040

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 April 23, 2018, and the Gresham Outlook, a local newspaper, on April 24, 2018.
4. The City held a public hearing on May 8, 2018 regarding an exemption to the requirement imposed by ORS Chapter 279C that public improvement contracts be competitively bid.
5. The City Council, acting in its capacity as the Troutdale LCRB, determined that it would be appropriate to have the ability to sole source a public improvement contract for the construction of a water main improvement associated with and adjacent to the OK Express site development to the developer or contractor doing the work on the private development.
6. 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 a public improvement contract 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.

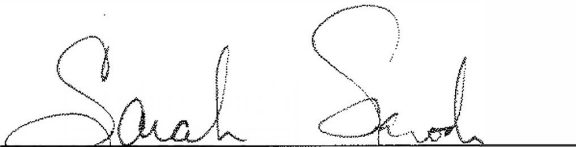
Section 2. The City Administrator is hereby authorized to sole source the construction of water main improvements associated with and adjacent to the OK Express site development to the developer or contractor doing the work on the private development.

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

YEAS: 7
NAYS: 0
ABSTAINED: 0



Casey Ryan, Mayor
Date: May 10, 2018



Sarah Skroch, City Recorder
Adopted: May 8, 2018

**DRAFT
FINDINGS AND
BACKGROUND SUPPORTING
A PROPOSED EXEMPTION FROM
COMPETITIVE BIDDING REQUIREMENTS FOR A PUBLIC IMPROVEMENT
CONTRACT FOR THE CONSTRUCTION OF WATER MAIN IMPROVEMENTS
ASSOCIATED WITH AND ADJACENT TO THE OK EXPRESS SITE DEVELOPMENT**

ATTACHMENT 1

A. Introduction

Under the terms of ORS 279C.335(2) and TMC 2.24.190, 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 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 \$100,000, 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. Under the Troutdale Municipal Code, that threshold for formal competitive bidding is \$50,000. 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 that a particular public improvement contract that would benefit from an approach other than the formal competitive bidding process is that for the construction of a certain water main associated with and adjacent to the OK Express site development, in and around an area where a private developer is having construction work done on other public and private infrastructure. The City would like to have the ability to "sole source" the City's construction work to the contractor doing the work for 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.

- Functionality of the subject water main; which benefits multiple industrial properties in the vicinity of the work (the public) by improving water quality, flow, and reliability; will be achieved much sooner. The OK Express development intends to commence construction in the immediate future. If the City were to pursue this water main as a separate project, it may be several years before the project is completed due to the substantial time and effort required for design, preparation of contracting documents, and project management that would be required of the City's limited staff that are presently fully occupied with other projects and duties.
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 safety patrolling and protecting the combined sites.
 6. Market conditions. The current bidding climate is unfavorable for owners and public agencies. Development and construction in the Portland metropolitan area is currently extremely active. The City has received relatively few bids on other projects in recent weeks (including a project that received only one bid in late April), and the permitting activity in the City indicates that Contractors are very busy. In such circumstances, bid prices for City projects tend to be notably higher when let for bids on their own as contractors are not as motivated to win smaller projects. In some cases, the City may receive no bids at all in this bidding climate. Additionally, the availability of common construction materials can become strained during periods of increased construction activity, increasing prices for those materials, especially for smaller scale projects. Combining the subject water main work with the OK Express project, which includes other similar water main work, allows both parties to benefit from purchasing larger quantities of those materials, presumably at a better price, and ensures that the City can engage a qualified contractor to complete the work timely at a reasonable price.
 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. However, the OK Express water system work connects directly to the water system work that is the subject of this exemption. The coordination of design and construction by separate engineers and contractors would introduce complexity in the design and construction process, which can be avoided by having the same engineer and contractor design and construct the project, respectively.
 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 some contractors do not typically bid on public-only 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 then be a larger universe of contractors. Finally, if this exemption is authorized, the contractor that will perform the work will be based on the fact that he is doing similar work adjacent to this water main, and that would apply to any qualified contractor the OK Express developer selected to perform his work. The developer selected his contractor based on a privately managed competitive bid process. The City is not therefore favoring any particular contracting company on the basis of who that contractor is.