

RESOLUTION NO. 5508

A RESOLUTION EXEMPTING THE RENOVATION OF THE ALBANY PUBLIC LIBRARY PROJECT FROM THE COMPETITIVE BIDDING PROCESS AND APPROVING AN ALTERNATE CONTRACTING METHOD, AND REPEALING RESOLUTION NO. 5492.

WHEREAS, Albany Municipal Code 2.66.060, Oregon Revised Statutes 279C.335, and Oregon Administrative Rules (OAR) 137-049-0600 through 137-049-0690 allow the City Council, acting as the Local Contract Review Board, to exempt a specific public improvement contract or class of public improvement contracts from competitive bidding requirements; and

WHEREAS, such exemption shall be based on the approval of findings submitted by the Contracting Agency seeking the exemption; and

WHEREAS, the exemption is for a single project, a specific need, to renovate an existing building for the new Albany Public Library, located at 2450 14<sup>th</sup> Avenue SE, Albany; therefore, granting the exemption will not provide a basis for other similar exemptions or any pattern of exemptions; and

WHEREAS, the City shall select an alternative contracting method that would be unlikely to diminish competition or result in favoritism, and would result in substantial cost savings; and

WHEREAS, the selection method to be utilized incorporates a two-step process, beginning with a formal competitive process advertising the Request for Qualifications (RFQ); followed by the Request for Proposals (RFP) to review the Contractor proposals for the construction of the Library Project, as prescribed by OAR 137-049-0645 through 137-049-0650; and

WHEREAS, the prequalification step process requires contractors to provide information about their firm's bonding capacity, contracting license, contracting practices, background and experience, key personnel, scheduling and site logistics, safety and security; and

WHEREAS, the process includes evaluating the qualifications proposals with the criteria, establishing a competitive range, requesting and evaluating proposals from the top three qualified proposers, and negotiating a contract with the firm offering the best overall value to the City considering price and qualifications; and

WHEREAS, for the reasons set forth in the attached written findings, Exhibit A, the alternate contracting method to renovate the Albany Public Library using the RFQ and RFP methods to select a contractor is in the best interest of the City; and

WHEREAS, the method will provide a range of contractors that are highly qualified by knowledge and experience to build the proposed design, suggest construction alternatives to the Project while meeting the current budgetary requirements; provide options for future expansions or construction phases; communicate effectively with the Library architect, Hennebery Eddy Architects, and the Project Manager, Scope Project Management; to achieve efficiencies and meet the projected construction schedule; and provide both short- and long-term savings for the City thus benefiting the public; and

WHEREAS, the City provided public notice and held a public hearing on November 5, 2007, before adoption of these findings in accordance with OAR 137-049-0630.

NOW, THEREFORE, BE IT RESOLVED, that each of the recitals set forth above are hereby adopted as findings of fact; and


BE IT FURTHER RESOLVED that the Albany City Council, acting as the Local Contract Review Board finds that it is unlikely that the exemption of this contract from competitive bidding will encourage favoritism in the awarding of public contracts or substantially diminish competition for public improvement contracts; and

BE IT FURTHER RESOLVED that the Albany City Council, acting as the Local Contract Review Board finds that the awarding of a public improvement contract under this exemption will result in substantial cost savings to the Contracting Agency; and


BE IT FURTHER RESOLVED that the City Council, acting as the Local Contract Review Board, finds that an RFQ and RFP alternative contracting method will be the best selection method to utilize to procure a contractor for the Albany Public Library Project; and

BE IT FURTHER RESOLVED that Resolution No. 5492 is hereby repealed.

DATED AND EFFECTIVE THIS 5TH DAY OF NOVEMBER 2007.

  
Council President

ATTEST:

  
City Clerk

# **CITY OF ALBANY**

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## **DRAFT FINDINGS**

### **EXEMPTION OF A PUBLIC IMPROVEMENT PROJECT FROM COMPETITIVE BIDDING REQUIREMENTS IN ACCORDANCE WITH ORS 279C.335 AND OAR 137-049-0600 THROUGH OAR 137-049-690**

#### **A. BACKGROUND**

The Findings herein support a resolution authorizing the City Council (Council) of the City of Albany (City) acting as the Local Contract Review Board (LCRB), to exempt the Albany Library Renovation project, a certain Public Improvement Contract (Contract), from the competitive bid requirements of the Public Contracting Code (Code), as defined in ORS 279A.005 and herein incorporated by reference, and in accordance with the authority granted it by ORS 279C.335(2) and as provided for by The Attorney General's Model Public Contracting Rules (Model Rules), herein incorporated by reference, and specifically OAR 137-049-0630 and proceed to advertise, evaluate responses, make awards, and administer the Contract through the use of Alternative Contracting Methods as defined in OAR 137-049-0600 through OAR 137-049-0690 and as more specifically defined herein.

#### **B. STATUTORY AUTHORITY**

- I. **Local Contract Review Board - ORS 279A.060** - The Council is the LCRB for the City in accordance with ORS 279A.060 and has retained all authority to act in that capacity in accordance with all relevant provisions of the Code.
- II. **Model Rules Adopted - ORS 279A.065** - The Model Rules prepared by the Attorney General as required under ORS 279A.065 are currently the governing Rules of the LCRB for Public Contracting.
- III. **Exempted Contract - ORS 279C.335(2) and OAR 137-049-0630** - The Contract is a Public Improvement Contract as defined in ORS 279A.010(aa) and (bb). The Rule providing for this exemption shall supercede any previously adopted Rule of the LCRB providing exemptions for similar Contracts.

IV. **Exemption Criteria - ORS 279C.335(2)** provides that the LCRB may exempt certain Public Improvement Contracts from the competitive bidding requirement upon the following Findings:

- a. It is unlikely that such exemption will encourage favoritism in the award of Public Improvement Contracts or substantially diminish competition for Public Improvement Contracts; and
- b. The awarding of Public Improvement Contracts pursuant to the exemption will result in substantial cost savings to the public Contracting agency. In making such finding, the LCRB may consider the type, cost, amount of the Contract, number of persons available to bid, and such other factors as may be deemed appropriate.

V. **Exemption Requirements – ORS 279C.335(4)**

- a. **ORS 279C.335(4)(a)** Where appropriate, direct the use of alternate Contracting and purchasing practices that take account of market realities and modern practices and are consistent with the public policy of encouraging competition.
- b. **ORS 279C.335(4)(b)** Require and approve or disapprove written Findings by the Contracting agency that support the awarding of a particular Public Improvement Contract, without the competitive requirements of subsection (1) of this section. The Findings must show that the exemption of a Contract complies with the requirements of subsection (2) of this section.

VI. **Public Hearing– ORS 279C.335(5)**

- a. **Hearing Required ORS 279C.335(5)(a)** - Before final adoption of the Findings required by subsection (2) of this section exempting a Public Improvement Contract from the requirement of competitive bidding, a Contracting agency shall hold a public hearing.
- b. **Hearing Scheduled** – The Public Hearing required in (a) above has been scheduled for November 5, 2007, at 7:15 p.m., in the City Hall Council Chambers, 333 Broadalbin Street SW, Albany, Oregon 97321. All interested persons are invited to attend.
- c. **Notification Required ORS 279C.335(5)(b)** - Notification of the public hearing shall be published in at least one trade newspaper of general statewide circulation a minimum of 14 days prior to the hearing.
- d. **Notification Publication** – The date for publication of this notice is October 19, 2007, in the *Daily Journal of Commerce*, the *Albany Democrat-Herald* and on the City's Web page at <http://www.cityofalbany.net/finance/bids>. A copy of the draft written findings may also be reviewed between the hours of 8:00 a.m. and 5:00 p.m. at the City of Albany, Finance Department, 333 Broadalbin Street SW, Albany, Oregon.

e. **Public Comment ORS 279C.335(5)(c)** - The notice shall state that the public hearing is for the purpose of taking comments on the Contracting agency's Draft Findings for an exemption from the competitive bidding requirement. At the time of the notice, copies of the Draft Findings shall be made available to the public. At the option of the Contracting agency, the notice may describe the process by which the Findings are finally adopted and may indicate the opportunity for any further public comment.

f. **Time For Public Comment ORS 279C.335(5)(d)** - At the public hearing, the Contracting agency shall offer an opportunity for any interested party to appear and present comment.

VII. **Included Alternative Contracting Methods** – It is the intent of these Findings to provide an exemption for the Alternative Contracting Methods listed below and to provide, through the adoption of a Rule, the authority for the LCRB to direct their use on the Library Renovation Contract.

- a. **OAR 137-049-0645** - Requests for Qualifications (RFQ)
- b. **OAR 137-049-0650** - Requests for Proposals (RFP)

## C. FINDINGS

City staff issues the following Draft Findings in support of the exemption and in accordance with the statutory authority described above:

### 1. **Favoritism or Diminished Competition - ORS 279C.335(2)(a)**

The granting of this exemption will not encourage favoritism or diminish competition for the Contract. Advertisements of the Request For Qualification (RFQ) shall be publicly advertised and open to all legally qualified and responsible Contractors. Though the competition may be based on, or partly on, factors other than cost, there will still be competition through the RFQ and RFP in terms of the evaluation criteria and rating system.

### 2. **Substantial Cost Savings and Greatest Value – ORS 279C.335(2)(b)**

- a. **Contractors** - It is a well established fact that the lowest bid received under the competitive bidding requirements of the Code does not always result in the lowest cost or greatest value for the Contracting agency at project close out. The Alternative Contracting methods herein proposed for use on the City of Albany's Library Renovation project will help to minimize the cost and produce the greatest value for the City by competitively selecting the most qualified Contractor to perform the work. This will be accomplished by permitting consideration of factors in addition to cost, including, but not limited to, the organizational and scheduling competencies of the Contractor, the competence and experience of the Contractor's personnel assigned to perform the work, the

financial solvency of the Contractor, the length of time the Contractor has been licensed and bonded to perform similar Contracts, the Contractor's performance on Contracts of similar scope and complexity, references from other Owners for whom the Contractor has performed work on similar Contracts, the reputation and track record of the Contractor that directly affect the quality and quantity of sub-Contractors willing to provide sub bids to the Contractor or provide priority service to the Contractor, the Contractor's history of completing similar Contracts on time and on budget, the Contractor's safety record on similar projects, and the Contractor's history of litigation related to similar Contracts.

- b. **Other Considerations** – The use of these Alternative Contracting Methods on the specified project will foster a cooperative relationship between the City, Contractor, and Architect by permitting negotiations in various forms. The negotiations process will enlist the expertise of the Contractor and combine it with that of the Architect and Owner in reducing costs and completing the work within the established budget through Value Engineering, by providing mechanisms to more closely monitor actual costs, and by increasing the understanding of the Library Renovation project that is technically complex, especially in terms of the structural modifications required to carry the load of the book stacks, subject to market fluctuations, and funded through sources that are not flexible at the upper end. This close cooperation in the Value Engineering process is essential to delivering the greatest value to the City and the public while maintaining the schedule and budget established for the project. Merely reducing the construction cost is not sufficient. The Life Cycle Cost, programmatic effectiveness, safety, environmental health, efficiency of operation, and sustainability of the facility must be considered and provided for on a limited budget.

3. **Market Realities and Modern Practices – ORS 279C335(4)(a)**

This competitive model meets the criteria of ORS 279C.335(4)(a) by taking into consideration market realities and modern practices that are consistent with the public policy of encouraging competition based on the terms of the evaluation criteria and rating system.

4. **Appropriate Alternate Contracting Practice- ORS 279C.335(4)(a)**

The Oregon State Legislature recognized the potential effectiveness of the use of Alternative Contracting Methods as provided for in ORS 279C.335 and ORS 279C.400-410 by including provisions in the Code for their adoption and use. The State's Attorney General, in formulation and adoption of the Model Rules, OAR 137-049-0600 through OAR 137-049-069,0 also recognized the effectiveness of alternative Contracting methods and that the effectiveness is dependent upon Contract administration by knowledgeable individuals. It is the intent of the City to employ or Contract for the services of competent, knowledgeable individuals to supervise all aspects of selected Alternative Contracting Methods, and to comply fully with the requirements of the Code and the LCRB's adopted Rules. For those reasons, we find

that employment of these Alternative Contracting methods would be “appropriate” in accordance with ORS 279C.335(4)(a) and, therefore, “directing” their use is a required option for the LCRB when conditions of a Public Improvement Contract so indicate.

**5. Compliance - ORS 279C.335(4)(b)**

In accordance with the requirements of ORS 279C.335(4)(b), these Findings are in complete compliance with the requirements of ORS 279C.335(2).

**D. RECOMMENDATION**

Adopt the Findings of Fact herein contained as a Rule of the Local Contract Review Board permitting the use of the Alternative Contracting Methods herein named and described and, at the discretion of the LCRB, direct their use on the Albany Library Renovation project.