



COUNCIL RESOLUTION No. 25-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANZANITA, OREGON, ADOPTING FINDINGS AND GRANTING EXEMPTION FROM COMPETITIVE BIDDING FOR CLASSIC STREET CONSTRUCTION PROJECT AND TO AUTHORIZE SOLICITATION BY MEANS OF A COMPETITIVE REQUEST FOR PROPOSALS THAT CONSIDERS QUALIFICATION AND BID PRICE

WHEREAS, the Manzanita City Council acts as the local contract review board for the City of Manzanita (the “City”), and in that capacity, has authority to exempt certain contracts from the competitive bidding requirements of ORS Chapter 279C; and

WHEREAS, ORS 279C.335(2) provides a process for exempting certain contracts from competitive bidding and authorizes the selection of a contractor through the request for proposal (“RFP”) process; and

WHEREAS, draft findings (“Findings”) addressing competition, operational, budget and financial data, public benefits, value engineering, specialized expertise required, market conditions, technical complexity, public safety and funding sources recommended by the City were available 14 days in advance of the public hearing on this Resolution; and

WHEREAS, the City Council determines that the contract for the Classic Street Construction Project, which is described in more detail in Exhibit A to this Resolution, should be solicited pursuant to a competitive RFP process that considers qualifications as well as bid price.

Now, Therefore, the City Council resolves as follows:

Section 1: The City Council adopts the Findings set forth in Exhibit A to this Resolution.

Section 2: The exemption of the contract for the Classic Street Construction Project from competitive bidding will promote competition and will not encourage favoritism because the contractor will be chosen by a competitive request for proposal process that considers qualifications and price.

Section 3: The exemption of the contract for the Classic Street Construction Project from competitive bidding is likely to result in substantial cost savings and other substantial benefits to the City.

Introduced and adopted by the City Council on **February 5, 2025**.

This resolution is effective on **February 5, 2025**.

Kathryn Stock, Mayor

ATTEST:

Leila Aman, City Manager/ City
Recorder

CITY OF MANZANITA
RESOLUTION NO. 25-03
EXHIBIT A

FINDINGS OF FACT

**IN SUPPORT OF AN EXEMPTION FROM COMPETITIVE BIDDING TO AUTHORIZE
THE USE OF A COMPETITIVE REQUEST FOR PROPOSALS PROCESS THAT
CONSIDERS BOTH THE CONTRACTOR'S QUALIFICATIONS AND THE BID PRICE
TO SOLICIT THE CONSTRUCTION CONTRACT TO BUILD WATER,
STORMWATER, ROAD RECONSTRUCTION IMPROVEMENTS, INCLUDING A
PEDESTRIAN PATHWAY AND TRAFFIC CALMING INFRASTRUCTURE WHICH
WILL SUPPORT RESIDENTIAL HOUSING DEVELOPMENT**

1. General

ORS 279C.335(2) permits a local contract review board to exempt contracts from traditional competitive bidding upon approval of findings of fact showing that an alternative contracting process is unlikely to encourage favoritism or diminish competition and that the process will result in cost savings to the City of Manzanita (the "City"). The City, through its City Council, acts as the Local Contract Review Board ("LCRB") for the City.

ORS 279C.400 – ORS 279C.410 describe the Request for Proposals method of solicitation as an alternative to traditional competitive bidding. Pursuant to ORS 279C.410(8), a public Agency using the Request for Proposals method may award a contract to the responsible proposer "whose proposal is determined in writing to be the most advantageous to the contracting agency based on the evaluation factors set forth in the request for proposals and, when applicable, the outcome of any negotiations authorized by the request for proposals."

ORS 279C.330 defines "Findings" and identifies specific information to be provided as a part of the City's justification. Under ORS 279C.335(5) a public hearing must be held before the findings are adopted, allowing an opportunity for interested parties to comment on the draft findings.

PURPOSE OF THESE FINDINGS: The City will hold a public hearing as required by ORS 279C.335 and to consider the following findings with respect to the issue of whether the construction contract for construction of water, stormwater, and associated infrastructure in support of residential housing development ("Project"), as defined herein, should be exempt from competitive bidding to authorize the use of a competitive request for proposals process that considers both the contractor's qualifications and the bid price ("Qual + Bid") to solicit the construction contract to build the Project.

2. Background

The City received a grant from the State of Oregon to construct necessary infrastructure in order to support 120 units of affordable housing currently in the development pipeline, and additional housing development anticipated in the south eastern section of the City's Urban Grown Boundary ("UGB") commonly referred to as the Highlands. Currently, there is not sufficient fire flow/pressure to serve the land within the City's UGB, including the site of the proposed affordable housing. Knowing this issue was coming, the City has been exploring options to expedite the construction of this expanded water line along Classic Street. This expansion would divide a very large looped water system, creating two smaller linked loops, increasing available water flow to meet current/future fire flow standards for the entire UGB, including the area where the 120 units are proposed. The Project will also provide a critical redundancy increasing resiliency within the City's water system.

Secondly, the Project will include a storm drainage component. The absence of a storm water connection for Classic Street leads to flooding and erosion issues on what has become a very critical transportation connection. Flooding not only poses a safety hazard for drivers and pedestrians, but it also hinders the overall functionality and longevity of the travel way. Construction of a storm water system will allow the current storm basin to flow in two separate directions and connect to the recently completed storm line constructed in Dorcas Lane which intersects with Classic Street. The Project provides another viable step toward full reconstruction of the roadway.

Finally, the Project will include a pedestrian pathway along Classic Street and traffic calming measures on Classic Street, including some crossings at intersections. The Project will require a full road reconstruction of Classic Street requiring structures to be built on the eastern side of the road to ensure long term roadway stability. Additionally increasing pedestrian and bicycle safety on Classic Street is the top project in the city's recently adopted Transportation System Plan (TSP). The Project will include a pedestrian pathway on the east side of the Right of Way.

The priority of this Project is to provide necessary water infrastructure to unlock affordable housing in the UGB and allow for new housing development consistent with the new SB 406 Oregon's Middle Housing Rules.

The nature of the Project requires a level of knowledge and experience working with construction on public projects with significant slope issues, unique soil conditions, and retaining walls (these issues are described in greater detail below). The Project will be at a higher risk and have a higher level of technical complexity due to the slope issues, soil conditions, the proximity of construction area to homes and heavily-trafficked rights of way, and an adjacent commercial construction project. Additionally, the Project is funded by a grant from the Oregon Business Development Department and, therefore, is subject to completion deadlines and budget limitations that require close monitoring of the Project schedule and budget. It is critical to maintain both the schedule and budget of the Project.

In consideration of these facts, an alternate method of construction of these public improvements should be considered. Therefore, the following findings support an exemption from competitive bidding and the use of the Request for Proposal based upon Qual+Bid as an alternative method of construction contracting.

There are slope issues of concern that will be documented in the Construction Documents and are currently shown in the 60% Plans, which include existing topographic data as well as proposed improvements. The existing topography features steep slopes on portions of the east and west side of Classic Street. There are homes, private backyards, a public street, and other public and private items such as fences, small retaining walls, and landscaping on the slope to the east and above the slope. The nature of the slope conditions are further described in the Geotechnical Report, prepared by Pali Consulting on 12/20/2024, which is attached to these findings.

The unique soil conditions are described in two Geotechnical Reports. Both reports are attached to these findings, including a report prepared by Carlson Geotechnical on 8/16/2024 and a report prepared by Pali Consulting on 12/20/2024. The native soil conditions found in much of the Project area is loose sand. The sand creates construction challenges including such activities as trenching, shoring, compacting, and retaining.

Retaining walls will be needed to stabilize slopes in some locations along Classic Street. The retaining walls will be installed in sandy ground conditions.

FINDINGS OF FACT

SUMMARY FINDINGS

Use of the Qual+Bid process for the Project complies with the criteria outlined in ORS 279C.335(2):

1. It is unlikely the exemption will encourage favoritism or substantially diminish competition. The request for proposals selection process will be competitive based upon relevant selection criteria including qualifications and bid price and will open to all interested proposers as described in the findings below. As further described in these findings, the City will host a public pre-proposal meeting in which prospective proposers can see the Project and ask questions. To ensure fairness, any answers given will be provided in writing to all prospective proposers and other planholders.
2. The exemption could result in substantial cost savings to the City. Also, value will be added to the Project, via reduction in Project risks, that could not otherwise be obtained by ensuring a qualified contractor that is experienced with construction of like projects under similar conditions.

SPECIFIC FINDINGS which substantiate the summary findings are as follows:

1. **The Contractor will be selected through a competitive process in accordance with the qualifications-based selection process authorized by the City that will include bid price. Therefore, it is unlikely that the awarding of the construction contract for the Project will encourage favoritism or substantially diminish competition. This finding is supported by the following:**
 - A. **SOLICITATION PROCESS:** Pursuant to ORS 279C.360, the Qual+Bid solicitation will be advertised at least once in the Daily Journal of Commerce, and in as many additional issues of publication as the City may determine.
 - B. **FULL DISCLOSURE:** To ensure full disclosure of all information, the Request for Proposals solicitation package will include:
 - a. Detailed Description of the Project
 - b. Contractual Terms and Conditions
 - c. Selection Process

- d. Evaluation Criteria
- e. Role of Evaluation Committee

- f. Provisions for Comments
- g. Complaint Process and Remedies Available

C. COMPETITION: As outlined below, the City will follow processes which maintain competition in the procurement of a Qual+Bid Contractor.

- a. The City anticipates that competition for this contract will be similar to that experienced in other Projects of this type. The competition will remain open to all qualifying proposers.
- b. The City has been communicating with the construction contracting community as well as the engineering consulting community about the Qual+Bid contracting method.
- c. The evaluation and solicitation process employed will be open and impartial. Selection will be made on the basis of final proposal scores derived from qualifications, price and other components, which expand the ground of competition beyond price alone to include experience, quality, innovation factors, etc.

D. SELECTION PROCESS: Other highlights of the selection process will include:

- a. The RFP will include specific submittal requirements associated with relevant skills, experience, scheduling, and capacity deemed necessary for the Project. The submittal requirements will be developed by City staff and its technical and legal representatives. The Request for Proposals will also include select criteria, a description of how proposals will be evaluated, and the relative weighting of the items to be scored.
- b. The City will hold a pre-proposal meeting. This meeting will be open to all interested parties. During this pre-proposal meeting, as well as any time prior to ten (10) days before the close of the solicitation, interested parties will be able to ask questions, request clarifications and suggest changes in the solicitation documents if such parties believe that the terms and conditions of the solicitation are unclear, inconsistent with industry standards, or unfair and unnecessarily restrictive of competition.

- b. The evaluation process will determine whether a proposal meets the screening requirements of the RFP, and to what extent. The following process will be used:
 - Proposals will be evaluated for completeness and compliance with the screening requirements of the RFP. Those proposals that are materially incomplete or non-responsive will be rejected.

- Proposals considered complete and responsive will be evaluated to determine if they meet and comply with the qualifying criteria of the RFP. If a proposal is unclear, the proposer may be asked to provide written clarification. Those proposals that do not meet all requirements will be rejected.
 - Proposals will independently be scored by the voting members of the Evaluation Committee. Scores will then be combined and assigned to the proposals.
 - The bid price will be one of the factors that is considered as part of the evaluation.
 - The Evaluation Committee may convene to select from the highest-scoring proposers, a finalist(s) for formal interviews.
 - The Evaluation Committee will conduct the interviews.
 - The Evaluation Committee will use the interview to confirm the scoring of the proposal and to clarify any questions. Based upon the revised scoring, the Evaluation Committee will rank the proposers, and provide an award recommendation.
 - The City will negotiate a contract with the top-ranked firm. If an agreement cannot be reached, the City will have the option to enter into an agreement with the second-ranked firm, and so forth.
- c. Competing proposers will be notified in writing of the selection of the apparent successful proposal. Any questions, concerns, or protests about the selection process will be subject to the requirements of the OAR 137-049-0450, must be in writing, and must be delivered to the City within seven (7) calendar days after receipt of the selection notice. No protest of the award selection shall be considered after this time period.

2. FINDING: The awarding of construction contract(s) for the Project using the Qual+Bid method will likely result in substantial cost savings to the City. This finding is supported by the following information required by ORS 279C.335(2)(b) and ORS 279C.330.

A. PERSONS AVAILABLE TO BID. Based the City's outreach to the contracting community, the City does not expect that the pool of interested and qualified contractors will materially affected by this process.

B. OPERATIONAL, BUDGET, FINANCIAL DATA

- a. **BUDGET:** The City has a fixed budget available for the Project that cannot be exceeded. Furthermore, the completion date cannot be exceeded.
- b. **SAVINGS:** Under the Qual+Bid method, the City will enjoy the savings associated with competitive bidding in an active market because price will be one of the evaluation factors.
- c. **FUNDING SOURCE:** The Project is funded primarily by a grant from the Oregon Business Development Department with some limited funds from the City.

C. PUBLIC BENEFITS The City will benefit from QUAL+BID by ensuring that the selected contractor has a complete understanding of the City's needs, the scope of the Project and the unique risks of the Project posed by both slope issues and unique soil/subsurface conditions, and that has experience in constructing this type of project under similar conditions, budget constraints, and time constraints.

D. VALUE ENGINEERING. The QUAL+BID process will ensure that the selected contractor has the experience and qualifications to construct the Project and to suggest alternatives or improvements that will save City funds while achieving the goals of the Project.

E. SPECIALIZED EXPERTISE: Selection of a contractor using a QUAL+BID framework will ensure that the selected contractor has the experience and expertise to construct the Project. The consideration of the bid price as a factor in the selection will ensure that the City obtains this expertise at the best price.

The construction Project is complex because it involves unique slope issues and soil conditions as well as a strict adherence to budget and schedule requirements.

F. PUBLIC SAFETY: All work must be coordinated to avoid safety and security risks to the general public and to ensure efficiency in construction. The coordination between the City, Engineer, and an experienced and qualified contractor will assure coordination of work and consideration for the safety of vehicular and pedestrian traffic crossed by the Project. In addition, QUAL+BID contracting of the Project will ensure that public safety and security is being effectively managed by a qualified contractor.

G. REDUCTION OF RISK TO THE CONTRACTING AGENCY AND THE PUBLIC. The unique soil conditions and slope issues associated with this Project create risk to the City that would be increased by retaining a contractor that is not familiar, or has little experience, with construction of this type at a project site with similar soil conditions. Consideration of experience and expertise through a request for proposals process will ensure that the Project will be constructed a contractor who understands the unique Project risks and conditions and has experience addressing them.

H. SOURCE OF FUNDING. The City will fund the Project with grant funds. Use of the Qual+Bid RFP process will not affect this funding source.

I. MARKET CONDITIONS: As multitude of construction market factors exist today in Oregon: competition with other projects, a variable bid market, inflation, and uncertainty regarding future tariffs and policy impacts on the labor market. Additionally, the City, and many of its local contractors, are geographically isolated from larger construction markets in the Portland metro area and the I-5 corridor. Given the market conditions and the smaller construction market on the Oregon Coast, generally, the City anticipates that contractors may bid for jobs for which they might not be qualified. Alternative contracting methods will be more likely to result in a more experienced and better suited contractor for this Project than the usual competitive procurement. The complexities which need to be addressed for this Project are not well served by the usual competitive procurement as the lowest bidder may not be the best suited for this particular Project.

J. TECHNICAL COMPLEXITY: Technical expertise will be required for managing slope issues, working in unique soil conditions and scheduling. The complexity and scheduling issues discussed in the Background section above will require special expertise. A high level of coordination among the City and all the engineering and construction entities is required and will be best achieved by retaining an experienced contractor. As noted above, the request for proposals method of selection will enable the City to ensure that the selected contractor has the necessary skills and experience and capacity to address this technical complexity.

K. NEW CONSTRUCTION/RENOVATION/OCCUPATION STATUS. The Project involves new construction, but will take place adjacent to a major connecting roadway that intersects with a main street, requiring a contractor with expertise in traffic calming and safety measures. Construction of the Project will result in impactful right of way closures.

L. PHASING. The Project will be constructed in one phase.

M. CITY EXPERTISE. City staff and its consultant engineering representatives have substantial expertise with construction. In addition, the City's legal representation, Miller Nash LLP, has years of experience with alternative contracting methods, including selection by competitive requests for proposal.