

## **RESOLUTION NO. 2371**

### **A RESOLUTION EXEMPTING IMAGINATION STATION PLAYGROUND EQUIPMENT REPLACEMENT PROJECT PUBLIC IMPROVEMENT CONTRACT FROM COMPETITIVE BIDDING IN ACCORDANCE WITH ORS 279C.335(2) AND TMC 2.24.190.**

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

1. Staff has determined that the City would realize significant benefits by utilizing an alternative competitive process in selecting a contractor to manage and construct the project;
2. 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.
3. The City Council for the City of Troutdale acts as the Troutdale Local Contract Review Board (Troutdale LCRB) pursuant to the Troutdale Municipal Code (TMC).
4. The notice was duly provided to the public pursuant to ORS 279C.335 regarding the proposed alternative contracting process by publishing a notice in the Daily Journal of Commerce, a trade newspaper of general statewide circulation, on February 13, 2017.
5. ORS Chapter 279C requires findings as basis for granting an exemption, and the City made copies of the draft findings available at the time of the notice, and at the City Council meeting of February 28, 2017.
6. The City held a public hearing on February 28, 2017 on whether to create an exemption to the requirement imposed by ORS Chapter 279C that public improvement contracts be competitively bid.
7. The City Council, acting in its capacity as the Troutdale LCRB, determined that construction of the Imagination Station playground equipment replacement project may be best accomplished through a Design Build selection process.
8. 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, ACTING AS THE LOCAL CONTRACT REVIEW BOARD FOR THE CITY OF TROUTDALE**

Section 1. In accordance with ORS 279C.335(2), the public improvement contract for the Imagination Station playground equipment replacement project is hereby exempted from the traditional competitive bidding process, and qualifies for procurement as a Design Build selection process delivery through the competitive proposal process.

Section 2. This exemption is supported by findings, which are incorporated as Attachment A.

Section 3. The City Staff is directed to utilize the Design Build selection process and that through a competitive proposal process, in accordance with TMC 2.24.180, qualitative factors such as contractor's experience, resources and reputation will be thoroughly considered, and where the City will be permitted to negotiate with one or more proposers to select a contractor that is in best interests of the City.

Section 4. This resolution is effective immediately upon its adoption.

**YEAS: 7  
NAYS: 0  
ABSTAINED: 0**

  
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Casey Ryan, Mayor  
3/2/2017  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Sarah Skroch, City Recorder  
Adopted: February 28, 2017

**DRAFT FINDINGS FOR AN EXEMPTION FROM COMPETITIVE BIDDING  
CITY OF TROUTDALE, OREGON  
PLAYGROUND EQUIPMENT REPLACEMENT/IMAGINATION STATION**

Oregon Revised Statute (ORS) 279C.300 requires competitive bidding of public works improvement contracts unless specifically excepted or exempted from competitive bidding under Oregon Revised Statute (ORS) 279C.335. The City of Troutdale City Council, acting as Local Contract Review Board, may exempt a contract from competitive bidding under ORS 279C.335 based on two findings:

1. The exemption is unlikely to encourage favoritism in the awarding of the public improvement contract or substantially diminish competition for the public improvement contract.
2. Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the City.

Under City of Troutdale Local Contract Review Rule (Rule) 2.24.190, the City may exempt a particular contract from formal competitive requirements and shall consider:

1. The exemption is unlikely to encourage favoritism in the awarding of the public improvement contract or substantially diminish competition for the public improvement contract.
2. Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the City.

In exempting the public works improvement from competitive bidding under ORS 279C.335(2)(b), the Local Contract Review Board must consider the type, cost and amount of the contract and, to the extent applicable to the particular public improvement contract, all 14 items under ORS 279C.335(2)(b)(A-N).

This document presents information the City of Troutdale Local Contract Review Board will consider in its finding to exempt the Playground Equipment Replacement/Imagination Station Project (Project) from competitive bidding and to use a Design-Build (DB) method of delivery.

**I. BACKGROUND / NATURE OF THE PROJECT**

Columbia Park was purchased from Multnomah County in 1992 utilizing general obligation bond funds. A park has been planned for that area since 1979, but it wasn't until 1992 that funds were available for the purchase. The park is 19.9 acres in size and is located west of Reynolds High School. The main entrance is on SW Cherry Park Road, but there are several walkways that access the site through the surrounding neighborhoods.

Columbia Park is the home of "Imagination Station," a large adventure playground structure that was built by hundreds of volunteers. The cost for materials was supplied by a combination of donations and City funds. On April 9, 2016, a portion of Imagination Station was destroyed by fire.

In addition to the play structure, the park contains a soccer field, three baseball diamonds, open recreation areas, covered and open picnic areas, six acres of wooded area with trails, public restrooms, and a concession facility operated by Reynolds Little League Association during their baseball season. The City's Parks and Facilities Office and Shop are located on the west side of the park off of SW 18th Street.

The City is a thriving and growing community of 16,000 people located on Interstate 84 in the eastern part of the Portland metropolitan area. The City of Troutdale is committed to active, healthy living with an emphasis on the reduction of childhood obesity. To help achieve those objectives, the City plans to replace Imagination Station as it is approaching the end of its useful life. The City wants the replacement equipment to provide a fun, challenging and imaginative play experience while encouraging users to be as active as possible. The City prefers equipment that allows dynamic play; a hybrid system that honors the existing theme of the original Imagination Station layout and design with some post and deck elements as well as free standing pieces would be preferred.

The Project is scheduled for completion in 2017 in order to have the Project available for public use during the next season of expected good weather, has an estimated construction cost of \$400,000 and generally includes the following work:

1. Design a play area.
2. Supply equipment and build the design, if selected.

A design-build contract is one in which a single entity designs and constructs a public improvement. Design-build contracts shall only be used if City staff has the expertise and experience to administer a design-build contract. It is believed that City staff and its consultants have the necessary experience and expertise to successfully utilize this contracting method. The design-build process is used to:

- a. Obtain through a design-build team, engineering design, plan preparation, value engineering, manufacturing, construction engineering, construction, quality control and required documentation as a fully integrated function with a single point of responsibility.
- b. Integrate value engineering suggestions into the design phase, as the construction contractor joins the project team early with design responsibilities under a team approach, with the potential of reducing contract changes.
- c. Reduce the risk of design flaws, misunderstandings and conflicts inherent in construction contractors building from designs in which they have had no opportunity for input, with the potential of reducing contract claims.
- d. Shorten project time as construction activity (early submittals, mobilization, subcontracting and advance work) commences prior to completion of a "biddable" design, or where a design solution is still required (as in complex projects); or
- e. Obtain innovative design solutions through the collaboration of the contractor and manufacturer, which would not otherwise be possible if the contractor had not yet been selected.

The City plans to select a Design-Builder for the Project through responses to a Request for Proposals (RFP), possibly followed by presentation/interviews of top ranked Proposers. The City plans to advertise the RFP for selection of a DB firm in March 2017 with the Design-Builder being under contract by April, 2017. This is a public improvement project and, as such, the installation contractor must be a licensed Contractor in good standing in the state of Oregon.

## **II. SUMMARY OF FINDINGS**

With regard to ORS 279C.335, the City of Troutdale Local Contract Review Board has considered the following in its decision to exempt the Project from competitive bidding and use the DB method of delivery:

### **1. The exemption is unlikely to encourage favoritism in the awarding of the public improvement contract or substantially diminish competition for the public improvement contract.**

Analysis: The City will select the Design-Builder through a competitive process that fosters competition and focuses on qualifications and delivering best value to the City with disregard to favoritism. The City will issue a RFP in a manner that will attract competition from qualified firms through advertisement in the Daily Journal of Commerce and local newspaper, and posting on the City's web site.

The RFP will attract Proposers having the specialized knowledge, capacity, and skills for the Project from within the state and Pacific Northwest. The City believes a sufficient number of design-build firms are available to respond to the RFP.

With respect to favoritism, the City will take prescriptive measures to assure an open competition. Strict adherence to pre-defined scoring criteria that are included in the RFP will be followed. Scoring criteria will be based on past experience and performance of the design-build firm and project personnel; the proposed design for the Project; approach for managing installation; the offered warranty; and consideration of a detailed budget for all aspects of the Project. Review of proposals and scoring will be performed by City staff with an outside reviewer sitting on the panel. All reviewers shall follow the pre-defined scoring criteria.

Finding: The process used by the City to select the Design-Builder and the availability of multiple firms to propose makes the exemption unlikely to encourage favoritism in the awarding of the public improvement project or substantially diminish competition for the public improvement contract.

### **2. Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the City.**

Analysis: The Project includes construction of a new playground equipment area, under a tight budget and under a tight timeframe. A reduction in design costs and a reduction in construction costs are likely and the exemption provides other substantial benefits to the

City as regards meeting the tight schedule and completing necessary work within the narrow window.

Awarding the Project under the exemption allows the construction team members of the Design-Builder to participate during design to conduct investigations, embed construction work and sequencing into the documents, and develop contingency plans that adequately address risks. The work can be conducted in collaboration with the designer and City staff to assure the City's interests are addressed. The benefits to the City under the DB delivery method include reduced changed condition claims and lower construction cost contingencies.

The exemption from competitive bidding and use of the DB delivery method allows the City to have the contractor identify logistics and costs for evaluation, and the benefit of real-time construction costing. The DB method promotes better collaboration with the contractor during design that will result in increased public and City staff safety through increased vetting of construction means and methods.

Use of design-build delivery has not only substantially reduced the overall project implementation schedules, which provides cost savings under escalating market conditions, but it also provides cost savings related to overall professional design services. Historically, engineering design services for a similar type project as that of the City's ranges from 10 to 20% of the construction cost. In a design-build delivery, final bidding documents and bidding support services are not required, and the levels of design details and specifications are greatly reduced as a result of close coordination between the designer and contractor. As a result, design-build projects have realized engineering design services in the range of 7 to 17% of the construction cost.

Finding: Awarding the project under the exemption provides opportunity for cost savings and provides other substantial benefits to the City. The exemption provides a collaborative work approach under the DB delivery method to be used with the contractor involved in the Project design. This provides opportunity to prepare well-planned work sequences.

Additionally, substantial benefits of using the DB delivery method include increased safety of the public and City staff and better ability to control the impact that current market conditions have on construction costs.

### **III. RESPONSE TO ITEMS UNDER ORS 279C.335(2)(b)**

In approving the finding under ORS 279C.335(2)(b), the Local Contracting Review Board must consider the type, cost and amount of the contract and, to the extent applicable to the particular public improvement contract 14 items outlined in ORS 279C.335(2)(b)(A-N). Information considered by the Local Contract Review Board related to each of these requirements follows:

(A) How many persons are available to bid:

Information considered by the Local Contract Review Board: The RFP will attract Design-Builders having the specialized knowledge, capacity, and skills for the Project from within the state, and the Pacific Northwest. The City believes there are a sufficient number of DB firms available to respond to the RFP.

(B) The construction budget and the projected operating costs for the completed public improvement:

Information considered by the Local Contract Review Board: The estimated construction cost for the project is \$400,000.

(C) Public benefits that may result from granting the exemption:

Information considered by the Local Contract Review Board: Benefits to the public will result from the collaborative work approach under the DB delivery method. The project is expected to cost less due to value engineering. The collaborative approach to design and construction under the DB delivery method better assures that the project is ready for use by the public when the weather improves. This will foster and advance the City's commitment to active, healthy living with an emphasis on the reduction of childhood obesity.

(D) Whether value engineering techniques may decrease the cost of the public improvement:

Information considered by the Local Contract Review Board: The DB delivery method builds in innovation, constructability, and real-time cost estimating during development of the design; all of which are core parts of value engineering techniques. In an effort to decrease cost of the Project, value engineering will be conducted early in design development. The review will be led by City staff and the DB firm participating. The DB team can provide realistic determination of costs and constructability issues that will allow cost-benefit decisions to be made by a team of City staff, design engineer, and contractor working in a partnership to decrease the cost of the project.

(E) The cost and availability of specialized expertise that is necessary for the public improvement

Information considered by the Local Contract Review Board: Construction of the Project requires specialized designers and contractors that have experience designing and building park play structures. Construction firms and subcontractors with this expertise are available in the Pacific Northwest.

The cost and availability of specialized expertise necessary for public improvement is not impacted by an exemption from competitive bidding and use of the DB method of delivery. However, procurement of the DB firm based on qualifications, understanding of the Project, and approach leads to the City retaining the most qualified firm for the Project.

(F) Any likely increases in public safety

Information considered by the Local Contract Review Board: It is important to construct the Project in a manner to ensure safe working conditions for the contractor, neighbors, and the public that could be affected by the Project.

The DB procurement method allows historical safety performance and commissioning work on similar projects to be considered as a selection criteria. It also permits the City to work closely with the contractor to ensure that the design and work sequences include appropriate safety measures, that the contractor understands the City's safety concerns, and that the contractor will take appropriate steps to address them. The DB method promotes better collaboration with the Contractor during design to result in increased public and City staff safety through increased vetting of construction means and methods.

(G) Whether granting the exemption may reduce risks to the contracting agency or the public that are related to the public improvement.

Information considered by the Local Contract Review Board: In a traditional design-bid-build approach, the engineer develops the work plan, however, communicating the information to the contractors during the bid phase can be challenging due to the level of detail needed. However, the use of the DB method enables the contractor to fully understand the project during the design phase, develop a work plan with the engineer and City staff, and mitigate risk associated with design and construction of the play equipment. Furthermore, the reduction in project uncertainty with having the contractor involved during design translates into cost savings to the City in the form of reduced contingency.

The partnering relationship provided through DB delivery will provide opportunity for the City to work with the Contractor to ensure safety measures are followed and revised if needed to reduce risks to the public.

(H) Whether granting the exemption will affect project funding sources.

Information considered by the Local Contract Review Board: The Project funding source will not be impacted by an exemption from competitive bidding and use of the DB method of delivery.

(I) Whether granting the exemption will better enable the City to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement.

Information considered by the Local Contract Review Board: Recently, the bidding market for public works projects has been impacted significantly as a result of increased commercial construction across the country and specifically in the Pacific Northwest. A shortage of skilled craftsmen and laborers and a demand for building materials has equated to a substantial (30% to 40%) rise in construction costs. Even when historical cost data and reliable sources are used, engineering and pre-construction cost estimates for building trades and labor have proven to be inaccurate in a traditional delivery method without real time construction pricing. Using a DB method, benefit-cost decisions can be made using real-time construction costs to keep the Project within budget. Both suppliers and sub-trade

work can be procured early to eliminate price uncertainty and lessen the impact of price escalation during the construction period. Furthermore, DB affords the ability and time to adjust the project budget during design when true pricing is understood such that the Project is designed at or below budget.

The DB method provides flexibility to reduce the impact of market conditions, specifically through schedule acceleration. This savings in time lessens the impact of the price increases occurring in the current market conditions. For these reasons, granting an exemption to competitive bidding will better enable the City to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement.

(J) Whether granting the exemption will better enable the City to address the size and technical complexity of the public improvement

Information considered by the Local Contract Review Board: At least four characteristics of the project lead to its technical complexity and the requirement for a Design-Builder with adequate capacity: 1) building a complex new play structure, 2) working in proximity to the rest of Columbia Park 3) the limited time available to complete the work 4) and the complexities involved in meeting safety and accessibility standards.

The technical complexity of the project requires a Design-Builder that can manage all aspects of work. The DB process will allow the City to acquire a highly qualified contractor with adequate staffing for the site supervision needed as opposed to a minimally staffed contractor secured through award to the lowest responsive, responsible competitive bidder. As a result, it is more likely that the DB firm can address the technical complexities and schedule limitations of the Project more effectively, in part because of its qualifications and in part because it will have the opportunity to propose a project approach with adequate staff.

(K) Whether the public improvement involves new construction or renovates or remodels an existing structure.

Information considered by the Local Contract Review Board: The Project involves construction of a new play area installation. Using a DB method, the construction contractor is part of the Project team early on, involved in field investigation and design coordination; thereby reducing the risk of discovering unknown conditions and damaging existing infrastructure.

(L) Whether the public improvement will be occupied or unoccupied during construction

Information considered by the Local Contract Review Board: During construction the nearby park facilities will be occupied. The DB method provides adequate time to plan the work and staging areas for construction to avoid issues with use of the nearby areas.

(M) Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions

Information considered by the Local Contract Review Board: Construction will most likely be completed in a single phase. However, the work involves several elements, which will require well-planned work sequences. The DB delivery method facilitates selection of these key team members early in the process and allows the contractor an opportunity to develop a work plan that provides the best value to the City.

(N) Whether the City has, or has retained under contract, and will use city personnel, consultants and legal counsel that have necessary expertise and substantial experience in alternative contracting methods to assist in developing the alternative contracting method that the City will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract

Information considered by the Local Contract Review Board: The City has experience using design-build delivery, will use specialized advisor services when necessary and the law firm of Jordan Ramis for legal counsel support for the Project.

Possible areas where specialized advisors with specific expertise may be hired or utilized include for exempting the Project from competitive bidding, for preparing the RFP for securing the DB firm through a competitive process, for overseeing the work of the DB firm during initial design and price development, and for providing assistance during negotiation of the terms, conditions, scope, and pricing for final design, permitting, and construction.

In addition, Jordan Ramis, PC's attorneys act as general and special counsel for local governments (counties, cities, and special purpose districts) throughout Oregon. They provide advice on public contracting, design and construction litigation, property issues (including negotiation, acquisition, and condemnation), insurance coverage and defense, public meetings, public records, finance, system development charges, utility ratemaking, telecommunications, environmental and natural resources, energy, government ethics for public officials, franchise fees and privilege taxes, and other matters associated with conducting government affairs. They have provided legal counsel to municipal clients on a number alternative delivery projects including the use of design-build and CM/GC.

## **II. SUMMARY OF DESIGN-BUILD BENEFITS TO THE CITY**

The City is seeking to utilize the DB delivery model to realize cost savings and other project delivery benefits as stated within this findings document. These savings and benefits are expected to be significant. The use of DB will promulgate the following benefits for the City:

- Will allow the City a simple and inexpensive procurement process that can be completed in a relatively short timeframe, thus allowing the City to expedite contracting with both a designer and contractor to immediately begin project implementation.
- Will allow schedule acceleration while leveraging the collaboration advantages (e.g., early contractor involvement, value engineering and value construction) provided by DB, thereby reducing project costs.

- Will allow the City to more effectively manage the Project through one contract administration with the Design-Builder.
- Will allow the City to allocate errors, omissions, and performance risks to one entity (i.e., the Design-Builder) rather than incurring risk responsibility through traditional design-bid-build.
- Will allow the City to remain directly involved in both the design and construction processes for enhanced coordination.
- Will allow the City more effective input into scope, features, and operational aspects of the design.
- Will allow the City flexibility to complete the Project at or below the City's budget (i.e., design and construct to-budget).