

PORTLAND DEVELOPMENT COMMISSION
Portland, Oregon

**ACTING IN ITS CAPACITY AS THE
LOCAL CONTRACT REVIEW BOARD**

RESOLUTION NO. 6652

**MAKING FINDINGS AND EXEMPTING FROM PDC LOCAL
CONTRACT REVIEW BOARD ADMINISTRATIVE RULES AN
AMENDMENT TO THE EXISTING WATERFRONT PARK
IMPROVEMENTS CONTRACT NO. 307009 WITH BROWN
CONTRACTING, INC. FOR CONSTRUCTION OF ODOR
CONTROL CIVIL WORK AT ANKENY PUMP STATION IN
WATERFRONT PARK**

WHEREAS, by adoption of Resolution No. 3550, the Portland Development Commission (“PDC”) Board of Commissioners (the “Board”) was established as a Local Contract Review Board (the “LCRB”) pursuant to state law;

WHEREAS, the LCRB established Local Contract Review Board Administrative Rules (the “LCRB Rules”), which have been amended from time to time and most recently on April 12, 2006 by Resolution No. 6310;

WHEREAS, ORS 279C.300 and the LCRB Rules require that all contracts for public improvements awarded must be based on competitive bidding to the lowest responsible bidder;

WHEREAS, ORS 279C.335 (2) and the LCRB Rules Part 1, Section III.C.1 allow the LCRB to exempt contracts from the competitive bidding requirements upon the making of certain findings in support of the exemption and a public hearing;

WHEREAS, after due notice, PDC held a public hearing on November 20, 2008, to receive comments on the draft findings for this exemption as required by ORS 279C.335 (5) and the LCRB Rules, and no one appeared at the hearing to object or offer comments and no written objections or comments were earlier received;

WHEREAS, on May 28, 2008, the Board adopted Resolution No. 6593 authorizing a competitively bid contract for the Waterfront Park Improvements Project to Brown Contracting, Inc. to construct improvements in Waterfront Park to accommodate Portland Saturday Market and other uses;

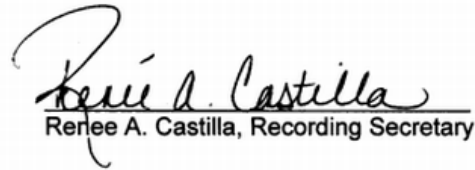
WHEREAS, the Bureau of Environmental Services requested assistance from PDC to provide construction services for odor control civil work at the Ankeny Pump Station located within the Waterfront Park Improvements Project to ensure this work was completed prior to opening of the Portland Saturday Market and to minimize impacts to the Greenway Trail; and

WHEREAS, the exemption of this contract amendment will not encourage favoritism in the awarding of public contracts, will not substantially diminish competition for the contracts, will result in substantial cost savings to PDC, and will meet other policy objectives.

NOW, THEREFORE, BE IT RESOLVED that the PDC Board of Commissioners, acting as the PDC Local Contract Review Board, hereby makes the findings attached hereto as Exhibit A in support of the exemption of an amendment to Contract No. 307009 with BROWN CONTRACTING, INC. from competitive bidding;

BE IT FURTHER RESOLVED that the PDC Board of Commissioners, acting as the PDC Local Contract Review Board, hereby orders the amendment adding the construction of the odor control civil work at Ankeny Pump Station to the existing Waterfront Park Improvements Project Contract No. 307009 with Brown Contracting, Inc. exempt from the competitive bidding requirements of ORS Chapter 279 and the PDC LCRB Rules; and

BE IT FURTHER RESOLVED that this resolution shall become effective immediately upon its adoption.


Renee A. Castilla, Recording Secretary

PORTLAND DEVELOPMENT COMMISSION
Portland, Oregon

DATE: December 1, 2008

TO: The PDC Board of Commissioners acting in its capacity as PDC Local Contract Review Board

FROM: Bruce A. Warner, Executive Director

REPORT No.: 08-134

SUBJECT: Draft Findings in Support of Exemption from Competitive Bidding for the Ankeny Wastewater Pump Station Odor Control Civil Work Amendment to the existing Waterfront Park Improvements Contract

A. BACKGROUND

The findings herein support a resolution by the Portland Development Commission (“PDC”) Board of Commissioners (“Board”), acting as the PDC Local Contract Review Board (“LCRB”), exempting the Ankeny Wastewater Pump Station Odor Control Civil Work (“Odor Control Civil Work”) from the competitive bidding process.

As stated in Report No. 08-135, PDC, upon approval by the Board, intends to enter into an Intergovernmental Agreement (“IGA”) with the Bureau of Environmental Services (“BES”) to fund the Odor Control Civil Work in the amount of approximately \$1.2 million located within the existing Waterfront Park Improvement Project (“Waterfront Park Project”), which has been underway since July 2008. The Waterfront Park Project was competitively bid, and the resulting \$7.9 million contract (the “Waterfront Park Contract”), authorized by the Board pursuant to Resolution No. 6593, was awarded to Brown Contracting, Inc. (the “Waterfront Park Contractor”) in May 2008.

The principal project goal of the Odor Control Civil Work is to install subsurface vent pipe, utility lines and vaults prior to completion of finished surface work set forth under the Waterfront Park Contract. BES intends by separate competitively bid project in summer of 2009 to “build out” the Odor Control facility to include installation of all mechanical, electrical, filter media and other work necessary for a fully functional system. The benefit of completing the Odor Control Civil Work now as part of the Waterfront Park Project is:

- a) All subsurface Odor Control Civil Work will be in-place prior to the finish work underway with the Waterfront Park Project – thus not requiring ripping out finish work at a later date;
- b) All subsurface Odor Control Civil Work will be completed by the same date as the Waterfront Park Project under a very tight timeline – thus not disrupting any future use of Waterfront Park by Portland Saturday Market or the busy Greenway Trail; and

- c) There are efficiencies with utilizing a single contractor already mobilized on-site, familiar with the challenging subsurface conditions – thus not requiring separate mobilization and coordination between two separate overlapping contractors working at a very constrained site.

Incorporated herein is Report Number 08-70 to the Board of Commissioners, dated May 28, 2008, relating to the BES IGA and Contract Amendment Expenditure Authorization for the Odor Control Civil Work at Waterfront Park.

B. STATUTORY REQUIREMENTS

Oregon Revised Statutes (“ORS”) 279A.050(1) and 279C.335 and the Portland Development Commission Local Contract Review Board Administrative Rules (“LCRB Rules”) Part 1(III)(C)(1) provide that the LCRB may exempt certain public contracts from the competitive bidding requirements upon the following findings:

1. It is unlikely that such exemption will encourage favoritism in the awarding of the contract or diminish competition for the contract; and
2. The awarding of the public contract by exemption will result in substantial cost savings to the agency.

ORS 279C.335(2)(b) provides that in making the finding in item 2 above, the LCRB may consider the type, cost and amount of the contract, the number of persons available to bid, and such other factors as may be deemed appropriate.

C. FINDINGS

In accordance with the statutory requirements set forth above, PDC staff makes the following findings in support of the exemption.

1. Appropriate Contracting Practices Will be Used

Amending an existing contract, initially competitively bid falls squarely within the criteria of ORS 279C.335 (7) and Part 1 (VI)(A)(2) of the Board Local Contract Review Board Rules provided the Commission approves the expenditure authority. The Waterfront Park Project was competitively bid in the spring of 2008 and in May 2008 the Commission approved the expenditure authority for that work. Adding the Odor Control Civil Work by amendment to the Waterfront Park Contract will increase the total cost of the existing Waterfront Park Project by approximately sixteen percent (16%).

The use of an amendment to an existing contract is a favored approach where there is need to optimize schedule, maintain single responsibility for overlapping work, reduce costs and avoid disruption at a construction site. A single contract will likely best manage the work sequencing, staging, schedule and ultimately cost to best respond to the tight completion schedule and any unforeseen changes encountered.

In addition, BES and PDC staff determined upon completion of final design of the Odor Control Civil Work in September 12, 2008 by West Yost Engineers, that there was simply not sufficient time for either the BES or PDC to prepare, advertise, bid and award a competitive low bid project and still meet the critical project timeline for opening of Waterfront Park for Portland Saturday Market set for February 27, 2009.

2. Substantial Cost Savings; No Favoritism; No Diminished Competition

Substantial Cost Savings

PDC in coordination with BES has negotiated a lump sum price with the Waterfront Park Contractor for the Odor Control Civil Work that has resulted in a substantial cost savings, equitable risk transfer and separate liquidated damages if work is not completed by February 26, 2008. The Waterfront Park Contractor will be responsible for all work sequencing between the two projects and is fully aware of the existing very challenging subsurface conditions at the site, the reroute of the greenway trail (open during construction through a portion of the site) and working under and around the Burnside Bridge, the BES Pump Station and the seawall.

In addition, substantial cost savings will be realized using the Waterfront Park Contractor to include; reduced mobilization costs as the general, civil and other subcontractors are already on-site with equipment ready to initiate the work; ability efficiently re-sequence the Waterfront Park work with the new Odor Control Work on a very constrained site; efficiencies in purchasing materials and rental of equipment to efficiently complete the work; and, ability to complete all work within a very tight timeline.

All elements of the Odor Control Civil Work are similar to the Waterfront Park Project civil work, so procedures to streamline implementation of the work, including submittal review, permit and special inspection, geotechnical, are all currently in place. A separate, competitively bid contract that would likely start in Spring of 2009 would require additional start up costs, loss of efficiencies, longer completion period, impact to the Portland Saturday Market and Greenway Trail and most importantly require ripping out new work completed under the Waterfront Park Project in combination significantly impacting schedule, public use disruption and adding additional cost.

The sum of all the actions above, have and will result in substantial cost savings over the traditional low bid process.

No Favoritism and No Diminished Competition

The Waterfront Park Contractor was selected through an open and competitive bid process. Adding the Odor Control Civil Work, which is similar to the work being performed under the Waterfront Park Contract, to the competitively solicited Waterfront Park Contract will not likely encourage favoritism or diminish competition in the awarding of public contracts. The additional Odor Control Civil Work recommended to be amended into the Waterfront Park Contract will use existing competitive subcontractors and meet a variety of other objectives to include

opportunities for M/W/ESB and Workforce Training and Hiring. The net result is a finding of no favoritism and no diminished competition.

3. Other Information

LCRB Part 1(III)(C)(1) requires other information for an exemption to occur, including a description of the nature of the project, the estimated cost of the project, and the estimated date for letting the contracts. The Odor Control Civil Work consists of the installation subsurface vent pipe, utility lines and vaults associated with the construction of the BES Odor Control Facility. The total estimated cost of the Odor Control Civil Work is \$1,279,970. Additional general background information on the BES Odor Control Facility and the BES IGA is contained in Report No. 08-135, which is incorporated herein.

Upon approval of the exemption by the LCRB and Board approval of the BES IGA and Board authorization of the expenditure for the Odor Control Civil Work at Waterfront Park, an amendment will be entered into under the Waterfront Park Contract with a Notice To Proceed anticipated to be on December 3, 2008. All work will be Substantially Complete by February 26, 2008, a sum of 85 calendar days.

D. PUBLIC HEARING

Before final adoption of these findings, and before an exemption can become effective, ORS 279C.335 (5) and LCRB Part 4(II)(B)(2) require notice of and an opportunity to comment at a public hearing before the Commission. Commission staff therefore published notice of a hearing on November 6 and November 13, 2008 and held a public hearing on November 20, 2008. The following is a list of the hearing attendees and a summary of the comments they offered: No attendees participated at the public hearing and no written public comments were received by Commission Staff.

E. CONTRACT TERMS AND CONDITIONS

A standard form of Contract Amendment will be used along with specific tailored work requirements. All other existing conditions as set forth under the Waterfront Park Contract will remain unchanged and include, among other things, provisions for construction management, construction standards and requirements, insurance, warranties, indemnification, payment and performance bonds, and compliance with the Commission's policies of M/W/ESB and Workforce Training and Hiring. The Contract Amendment form will be approved by PDC General Counsel.

G. RECOMMENDATION

Commission staff recommends adoption of a resolution exempting the Odor Control Civil Work from the competitive bidding requirements and authorizing the use of an Amendment to the existing Waterfront Park Improvements project.

Lew Bowers, Acting Development Director

Kevin Brake, Development Project Coordinator

PDC

PORTLAND DEVELOPMENT COMMISSION

Resolution Number 6652

TITLE: MAKING FINDINGS AND EXEMPTING FROM PDC LOCAL CONTRACT REVIEW BOARD ADMINISTRATIVE RULES AN AMENDMENT TO THE EXISTING WATERFRONT PARK IMPROVEMENTS CONTRACT NO. 307009 WITH BROWN CONTRACTING, INC. FOR CONSTRUCTION OF ODOR CONTROL CIVIL WORK AT ANKENY PUMP STATION IN WATERFRONT PARK

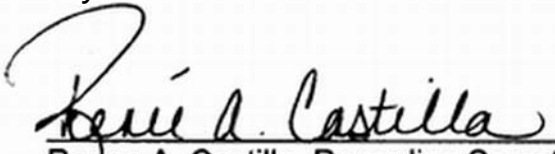
Adopted by the Portland Development Commission Land Contract Review Board
on December 1, 2008.

PRESENT FOR VOTE	COMMISSIONERS	VOTE		
		Yea	Nay	Abstain
<input checked="" type="checkbox"/>	Charles Wilhoite, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Scott Andrews	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Bertha Ferrán	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	John Mohlis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Vacant	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Consent Agenda		<input checked="" type="checkbox"/> Regular Agenda		

Certification

The undersigned hereby certifies that:

The attached resolution is a true and correct copy of the resolution as finally adopted at a Board Meeting of the Portland Development Commission and duly recorded in the official minutes of the meeting.


Renee A. Castilla, Recording Secretary

Date: December 10, 2008