



STAFF REPORT

Meeting Type: City Council
Meeting Date: May 20, 2024
From: Jennifer Coker, Public Works Director
Subject: PUBLIC HEARING - Resolution 2024-12: Adopting Findings to Support an Exemption from Formal Invitation to Bid Process

DECISION TO BE MADE:

Whether to approve Resolution 2024-12, which would allow the Council, acting as the Local Contract Review Board (LCRB), to exempt certain contracts from the formal invitation to bid process for public improvement contracts pursuant to ORS 279C.335(2), based upon findings of benefit to the City.

PURPOSE / OBJECTIVE:

The objective of this exemption is to facilitate completion of the Sandy Clean Water Program wastewater upgrade projects to maintain compliance with the NPDES permit and build additional capacity; and to complete the Sandy Drinking Water Reinvestment Program upgrades to maintain reliable service and to assist in meeting compliance deadlines.

BACKGROUND / CONTEXT:

Oregon law requires contracting agencies to award contracts for public improvements via an Invitation to Bid (ITB) to the lowest responsible, responsive bidder. In certain circumstances, an agency may wish to consider other factors beyond the lowest price when selecting a contractor or may require an expedited procurement process to respond to restoring reliability of a drinking water or wastewater system asset. In these circumstances, an agency may exempt a contract or class of contracts from this process when the LCRB finds:

- a) An exemption is unlikely to encourage favoritism or substantially diminish competition in awarding public improvement contracts; and
- b) Awarding public improvement contracts under the exemption will likely result in substantial cost savings and other substantial benefits to the contracting agency.

If approved by Council, City staff intends to utilize procurement flexibility to secure a roster of up to three pre-qualified construction general contractors, with master service on-call construction contracts that may be used for drinking water or wastewater capital improvement projects, in a sum not to exceed \$5M per construction contractor over a duration of five years.

The City faces a large number of smaller construction projects required to maintain or increase capacity, maintain permit compliance, and respond to assets at the risk of failure. Additionally, the

ARPA grant requires all construction projects to have binding construction contracts by December 2024 in order to utilize these ARPA funds.

Given the volume of work, and relatively small associated dollar values, staff is concerned that each small project bid individually will not be attractive to qualified contractors who are at capacity with regional infrastructure projects. Without securing strong partnerships with qualified contractors, the City risks compliance failures, asset failures, and loss of grant funding and schedule delays if zero bids are received.

KEY CONSIDERATIONS / ANALYSIS:

- **Consistency:** The City took a similar approach for engineering on-call contracts, which was approved by the Council on December 18, 2023. This companion resolution allows for a similar process for construction contracts.
- **Construction Contractor Market:** This is a time of historic reinvestment in infrastructure, with many cities and utilities in the region embarking on billions of dollars of work. Certain cities are starting to see zero bids received for advertised construction projects, as the construction contractor market is at capacity and is unlikely to respond to some of the smaller projects Sandy has planned in the next few years. By securing a pool of qualified contractors on a master services on-call list, the City's construction projects bundled together are a larger, and more attractive prospect.
- **Expedited Schedule:** Staff estimates a schedule savings of approximately 50% per contract with the creation of the master services contracts, allowing rapid execution of the near-term projects in the Sandy Clean Waters and Drinking Water Reinvestment Program.
- **Risk Management:** Creating a qualified pool of construction contractors allows the City rapid access to contractors for unknown repairs that may emerge in the near future, and mitigates risks of lack of compliance or loss of service.
- **Maximizing Grant Funds:** The \$14.7 Million ARPA grant must have all construction contracts obligated by December 2024, and all projects completed by September 2026. With long lead item purchases and new immediate needs in the wastewater system and drinking water system, the master-services contracting tool will allow the team to customize projects to spend the remaining grant funds, and get construction completed by the grant deadline.

BUDGET IMPACT:

The purchases in question are included in the previously approved BN 24-25 budget and the capital improvement programs. Projects will be funded from the ARPA \$14.7 Million grant and the \$46M SRF loan number 3 for the Sandy Clean Waters Program; and Business Oregon loans secured for the Drinking water program improvements.

This resolution will authorize a total of three master services contracts for a not to exceed cumulative price of \$5 Million each, for a total maximum of \$15 Million, split between the Wastewater and Water utility funds. The City is not obligated to spend all these funds.

RECOMMENDATION:

Staff recommends adoption of Resolution 2024-12.

SUGGESTED MOTION LANGUAGE:

"I move to approve Resolution 2024-12."

LIST OF ATTACHMENTS / EXHIBITS:

- Resolution 2024-12
- Resolution 2024-12 Findings