

**DRAFT FINDINGS FOR AN EXEMPTION FROM COMPETITIVE BIDDING  
CITY OF ST. HELENS, OREGON  
CAMPBELL PARK SPORT COURTS INSTALLATION**

Oregon Revised Statute (ORS) 279C.300 requires competitive bidding of public works improvement contracts unless specifically excepted or exempted from competitive bidding under ORS 279C.335. The City of St. Helens 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 of St. Helens (City).

Under St. Helens Public Contract Code Section 2.04.110, the City may exempt a contract from competitive bidding upon the following findings:

1. The nature of the contract or class of contracts for which the special solicitation or exemption is requested;
2. The estimated contract price or cost of the project, if relevant;
3. Findings to support the substantial cost savings, enhancement in quality or performance or other public benefit anticipated by the proposed selection method or exemption from competitive solicitation;
4. Findings to support the reason that approval of the request would be unlikely to encourage favoritism or diminish competition for the public contract or class of public contracts, or would otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with the solicitation requirements that would otherwise be applicable under these regulations; and
5. A description of the proposed alternative contracting methods to be employed.

Under St. Helens Public Contract Code Section 2.04.110, the City may consider the type, cost, amount of the contract or class of contracts, number of persons available to make offers, and such other factors as it may deem appropriate.

Under St. Helens Public Contract Code Section 2.04.110, the City may approve a special procurement if the board finds that the request (i) is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts; and (ii) is reasonably expected to result in substantial cost savings to the city or the public or otherwise substantially promotes the public interest in a manner that could not be practicably

realized by complying with the requirements of the local contract review board rules without using an exemption.

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 St. Helens Local Contract Review Board will consider in its finding to exempt the Campbell Park Sport Court Installation Project (Project) from competitive bidding and to use a direct solicitation/negotiation method of delivery.

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

Campbell Park is a highly used 9.1-acre community park with recreation amenities. It has 2 reservable covered picnic shelters, handicap accessible restrooms, two lighted ballfields with bleacher seating and dugouts, a concession stand, playground equipment, 2 half-court basketball courts that commonly flood and four degraded tennis courts. It is the only park on the west side of Highway 30 despite there being a substantial portion of the City population located in that area. The park has not been improved in over a decade. The tennis courts are degraded. The courts have been identified as needing replacement for over 20 years. The amount of parking is inadequate to handle the parking needs of schedule youth baseball games. The park is in need of accessibility improvements.

The Project consists of replacing 4 tennis courts and 2 basketball courts with 2 tennis flex courts and 1 flex sport court, adding a picnic viewing area, improving natural stormwater facilities, expanding parking, and improving accessible access. The project includes substantial storm water improvement to prevent flooding. The new court surfaces will be shock absorbent and will reduce stress on knees, ankles and backs for users.

There are few bidders who can install the specialized court surfaces involved in the Project.

The City has unsuccessfully attempted to procure a contractor twice for this Project.

The City first advertised an Invitation to Bid (ITB) for the Project on August 13, 2020 with a closing date of September 3, 2020 at 2:00 PM. The ITB was advertised on the City's Bids and RFPs page of the City website and through 7 plan centers in Oregon and Washington. The City invited known potential bidders to Bid the ITB. Three sports court builders were called and send email notice inviting them to bid the Project on the same day as the ITB was published. Despite the advertisement and invitations, the City did not receive any bids.

The City then advertised the ITB for a second time on September 18, 2020, through October 15, 2020. The City increased the amount of advertisement by additional advertising in the Daily Journal of Commerce and the St. Helens Chronicle newspaper, along with the using the City website and the 7 plan centers. The City again contacted the known potential bidders who are

competent to install the specialized court surfaces and invited them to bid. Despite receiving several inquiries during the bidding process, no bidders submitted a bid for the ITB.

The City, after 2 failed attempts at the usual competitive bidding process, plans to select a contractor for the Project through a direct solicitation/negotiation method of delivery.

## **II. SUMMARY OF FINDINGS**

With regard to ORS 279C.335 and St. Helens Public Contract Code Section 2.04.110, the City of St. Helens Local Contract Review Board has considered the following in its decision to exempt the Project from competitive bidding and use the direct solicitation/negotiation 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: There are a very limited number of contractors who are qualified and competent to install the court surfaces that are central to the Project.

The City has already twice followed a full and open competition for the Project. Despite expanding advertisement and specifically inviting competent contractors to bid, no bids have been received.

The City will attempt to approach 3 known bidders having the specialized knowledge, capacity, and skills for the Project from within the state and Pacific Northwest. They will be invited to directly negotiate with the City. This process will maximize the chance at acquiring a reasonable and competitive price for the Project. The City will proceed to continue to negotiate with the most favorable bidder, and will continue to seek a bidder until an acceptable negotiated amount can be established.

Finding: The City finds that favoritism will not be encouraged, nor will competition be substantially diminished by using a direct solicitation/negotiation method of delivery. Competition has been maximized by making multiple attempts to use the traditional procurement method. Multiple potential contractors will be solicited.

### **2. Awarding a public improvement contract under the exemption will likely result in substantial benefits to the City of St. Helens.**

Analysis: The courts have needed to be replaced for over 20 years. The courts currently suffer from a flooding problem that impact the courts and the public's ability to use the courts. The Project needs to be completed within the timeframe allowed by the state grant which is funding a majority of the project. The Project consists of replacing 4 tennis courts and 2 basketball courts with 2 tennis flex courts and 1 flex sport court, adding a picnic viewing area, improving natural stormwater facilities, expanding parking, and improving accessible access. The project includes substantial storm water

improvement to prevent flooding. The new court surfaces will be shock absorbent and will reduce stress on knees, ankles and backs for users. The Project benefits the City by improving its amenities to its residents, improving access to the amenities, and will expand service to an underserved portion of the community, all while providing a safer court surface for users.

Finding: Awarding the Project under the exemption provides substantial benefits to the City. The exemption will allow the needed improvement to be built. The public will receive increased services and a safer park user experience.

### **III. RESPONSE TO ITEMS UNDER ORS 279C.335(2)(b) AND ST. HELENS PUBLIC CONTRACT CODE SECTION 2.04.110**

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: There are a limited number of contractors known to be qualified to install the court surfaces involved in the Project

(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 approximately \$187,000.

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

Information considered by the Local Contract Review Board: Public amenities will be improved. Public amenities will be increased. Public access will be increased. Storm water will be managed. Parking availability will be increased. Places to relax and picnic will be increased. Safer court surfaces will be installed.

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

Information considered by the Local Contract Review Board: Not applicable.

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

Information considered by the Local Contract Review Board: There are limited contractor who can install the court surfaces involved in the Project.

(F) Any likely increases in public safety

Information considered by the Local Contract Review Board: Safer court surfaces will be installed. Accessibility improvements will be installed.

(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: The court surfaces are in need of immediate replacement because of degrading over time. The project will replace the current surfaces with a safer surface. The new court surfaces will be shock absorbent and will reduce stress on knees, ankles and backs for users. The project will reduce risks to the public. A safer park reduces risks to the City.

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

Information considered by the Local Contract Review Board: According to the state grant administrator, the Project funding source will not be impacted by an exemption from competitive bidding and use of the direct solicitation/negotiation 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: Not applicable

(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: The City will be able to directly approach those who are most technically competent at installing the specialized court surfaces involved in the Project.

(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 both new and renovated construction.

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

Information considered by the Local Contract Review Board: The areas subject to construction will not be available for public use until approved and accepted.

(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.

(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 substantial experience procuring construction, 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 securing the bidders, for overseeing the work of the selected contractor during price development, and for providing assistance during negotiation of the terms, conditions, scope, and pricing for 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 of alternative delivery projects including the use of sole source, design-build and CM/GC.