

City of St. Helens
RESOLUTION NO. 1995

A RESOLUTION DECLARING AN EMERGENCY AND AUTHORIZING AN
EXEMPTION FROM COMPETITIVE BIDDING REQUIREMENTS FOR
PROCUREMENT OF SERVICES TO UNDERGROUND UTILITIES AT THE
S 1ST STREET – ST. HELENS STREET INTERSECTION

WHEREAS, The City of St. Helens has identified the street and utility extensions project on the St. Helens Waterfront, including improvements to the S 1st Street – St. Helens Street intersection, as a catalyst for redevelopment of the prime riverfront property (former Boise Veneer Property) along the Columbia River; and

WHEREAS, Intersection improvements at S 1st Street and St. Helens Street include relocating overhead electrical services and overhead franchise utility facilities underground; and

WHEREAS, ORS Chapter 279C requires a competitive bidding process for Public Improvement Contracts, unless a statutory exception applies, a class of Contracts has been exempted from the competitive bidding process, or an individual Contract has been exempted from the competitive bidding process, in accordance with ORS 279C.335 and any applicable Contracting Agency administrative rules; and

WHEREAS, ORS 279.335(2) provides for alternatives to the competitive bidding requirement that otherwise applies to public contracting, upon the adoption of certain findings following a public process; and

WHEREAS, efforts to secure competitive proposals and competitive bids for the undergrounding of overhead utilities and/or electrical services at the intersection of S 1st Street and St. Helens Street using formal competitive procedures have been unsuccessful; and

WHEREAS, to ensure the improvements at the intersection of S 1st Street and St. Helens Street continue without further risk of costly delays and substantial risk of loss, damage, interruption of services, and threat to public health or safety; and

WHEREAS, ORS Chapter 279B permits exemptions to competitive bidding and allow an emergency expenditure to be made when the City Council determines by the passing a resolution that the public interest and necessity demand the immediate expenditure of public money to safeguard life, health or property; and

WHEREAS, The City Council may award a Contract as an Emergency Procurement without the use of competitive sealed Bidding or competitive sealed Proposals as authorized by ORS 279B.050(2) when the requirements of ORS 279B.080 and this rule are met; and

WHEREAS, the findings in Exhibit A to this Resolution address the criteria of ORS 279B.050(2):
a) The exemption is unlikely to encourage favoritism in awarding public improvement

contracts or substantially diminish competition for public improvement contracts; and

- b) Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the contracting agency; and

WHEREAS, City Staff will request bids from at least three construction firms licensed in the state of Oregon to perform the work under the emergency conditions as set forth in the Oregon Revised Statutes; and

WHEREAS, the City Council of the City of St. Helens acts as the local contract review board for the City, and in that capacity has authority to exempt certain contracts from the competitive bidding requirements of ORS Chapter 279C and to declare an emergency exists; and

NOW, THEREFORE, THE CITY OF ST. HELENS RESOLVES AS FOLLOWS:

- Section 1. The City hereby declares that an emergency exists;
- Section 2. In accordance with by ORS 279B.050(2) the contract for undergrounding overhead utilities at the S 1st Street-St. Helens Street intersection is hereby exempt from formal competitive bidding and is hereby authorized to be solicited by requesting bids from at least three construction firms;
- Section 3. This emergency and exemption is supported by the findings attached in Exhibit A which is incorporated by reference herein;
- Section 4. This Resolution is effective immediately upon its adoption.

APPROVED AND ADOPTED by the City Council on December 6, 2023 by the following vote:

Ayes: Sundeen, Gundersen, Hubbard, Scholl

Nays: None



Rick Scholl, Mayor

ATTEST:



Kathy Payne, City Recorder

EXHIBIT A

FINDINGS FOR A DECLARATION OF EMERGENCY AND AUTHORIZING AN EXEMPTION FROM COMPETITIVE BIDDING CITY OF ST. HELENS, OREGON UNDERGROUNDING UTILITIES AT THE S 1ST STREET - ST. HELENS STREET INTERSECTION

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.

Oregon Revised Statute (ORS) 279B.080 authorizes the head of a contracting agency, or a person designated under ORS 279A.075 (Delegation), to may make or authorize others to make emergency procurements of goods or services in an emergency, provided the contracting agency documents the nature of the emergency and describe the method used for the selection of the particular contractor.

St. Helens Municipal Code Chapter 2.04 Public Contracting Code, Section 120(7)(a) allows the construction of public improvements under emergency circumstances *“When an official with authority to enter into a contract on behalf of the city of St. Helens determines that immediate execution of a contract within the official’s authority is necessary to prevent substantial damage or injury to persons or property, the official may execute the contract without competitive selection and award or city council or city administrator approval, but, where time permits, the official shall attempt to use competitive price and quality evaluation before selecting an emergency contractor.”*

The determination to construct a project under emergency circumstances must be approved by the City Council or designee, upon application of the solicitation agent, in which the solicitation agent submits facts that support a finding that the construction of the improvement under the proposed method is likely to reduce the substantial risk of loss, damage, interruption of services, or threat to public health or safety. The City of St. Helens Local Contract Review Board (comprised of the City Council) 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.

Under St. Helens Municipal Code 2.04.120(7)(a), the City Council may exempt a particular contract from formal competitive requirements and shall consider:

1. If the proposed method is likely to prevent substantial damage or injury to persons or property.

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 City Council (Local Contract Review Board) will consider in its finding to declare an emergency and to exempt the undergrounding of overhead utilities at the S 1st Street-St. Helens Street intersection (Project) from formal competitive bidding and to use the Emergency Procurement method where the City may award a contract without using normal competitive procurement processes.

I. BACKGROUND / NATURE OF THE PROJECT

The City of St. Helens began construction on the first phase of the Riverfront Connector Plan with the extension of water, sewer, storm drain, power, and streets along S 1st Street, Strand Street, Cowlitz Street, and the former Boise Veneer. This first phase of the project will serve as a catalyst for the redevelopment of the prime riverfront property in St. Helens along the Columbia River.

Improvements at S 1st Street and St. Helens Street intersection, the gateway intersection into the St. Helens Riverfront District, will make a safer intersection by making the intersection a 4-way stop and provide safer multimodal connectivity for the community to the proposed Riverwalk project, historic downtown, existing pathway/trail connections, and Columbia View Park area as a community gathering place and event space. The intersection improvements will include a full rebuild into a concrete intersection, curb bulb outs, stormwater planters, site furnishings, and eventually a gateway arch.

The relocation of all overhead utilities underground as part of the intersection improvements necessitated further design by the City's consultant, Kittelson & Associates, to accommodate both new and existing franchise utilities in the intersection. The benefit of delaying the project to accommodate all interested parties is to prevent the cutting and trenching through the new intersection following construction. However, this delay is costly because it has necessitated reopening the

partially demolished intersection back to traffic with temporary traffic controls in place cost over \$25,000 per month for every month of closure in addition to \$63,245 required to secure the intersection. The continuing monthly charges are unnecessarily increasing the overall cost of the project.

Because of the critical location of the intersection and the temporary nature of the traffic control devices, it is necessary to expedite securing a contract to complete the undergrounding of the utilities at the intersection. Attempts to secure bid and proposals using formal competitive procedures were met with either no bids received or unreasonably high-priced cost proposals.

The Project has an estimated cost of \$_____, and generally includes the following work: Undergrounding overhead power lines at the intersection, including working with a private electrical contractor to underground the electrical services currently connected to the overhead power lines, after the main power lines have been relocated underground; construction of conduit and vaults provided by franchise utilities (Columbia River PUD, Lumen, Comcast, LS Networks, and Fatbeam); and reconstruction of driveway approaches and sidewalk replacement associated with the work within existing survey limits.

The City plans to directly solicit quotes from a minimum of three licensed contractors in good standing in the state of Oregon and will select a contractor based on the lowest responsive quote received.

II. SUMMARY OF FINDINGS

With regard to ORS 279C.335, the City of St. Helens Local Contract Review Board shall consider the following in its decision to exempt the Project from competitive bidding and use the Emergency Procurement method:

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.

Proposed Analysis: The City will select the Contractor through an abbreviated competitive process that fosters competition based on receiving directly solicited quotes and selecting the lowest responsive quote received from a minimum of three licensed contractors in good standing in the state of Oregon. This method will bring help expedite the project, delivering best value to the City without favoritism.

Proposed Finding: The proposed process to be used by the City to select the Contractor and the availability of multiple contractors to solicit 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 of St. Helens.

Proposed Analysis: The Project includes relocating overhead utilities underground at the S 1st St - St. Helens St intersection. An expedited process to secure quotes for the work are likely and the exemption provides other substantial benefits to the City as regards meeting the overall schedule of September 2024, allowing the work at the intersection move forward which will save the City over \$25,000 in monthly delays and temporary traffic control maintenance.

The exemption from competitive bidding and use of the Emergency Procurement method allows the City to save substantial costs in staff time and costs associated with conducting additional and multiple formal competitive public bid process. This will also reduce the risk of additional time under which the intersection remains unfinished and limit the time the public must navigate the temporary traffic conditions. While the cost of these benefits was not quantified, they are considered to be substantial.

Use of Emergency Procurement will also substantially reduce the overall project implementation schedule, which provides cost savings under escalating market conditions.

Proposed Finding: Awarding the project under Emergency Procurement provides an opportunity for cost savings and provides other substantial benefits to the City, including increasing public safety. The exemption allows City staff to expedite the project by securing direct quotes in a shorter time span which will reduce costly project delays and help the project be completed in a timely manner. This benefit also reduces risks to public safety.

Additionally, substantial benefits of using the Emergency Procurement 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 the 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 to be considered by the Local Contract Review Board: City staff will directly solicit a minimum of three quotes from licensed contractors in good standing in the state of Oregon.

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

Information to be considered by the Local Contract Review Board: The estimated construction cost for the project is \$_____.

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

Information to be considered by the Local Contract Review Board: Benefits to the public will result from the work at the intersection being completed and fully reopened under the improved conditions for the travelling public within the project timeline. Public safety will also be benefited because the work at the intersection cannot be completed until all of the overhead utilities have been relocated underground. After permanent work has been completed at the intersection, the public will benefit from a safer intersection.

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

Information to be considered by the Local Contract Review Board: No value engineering techniques are considered for the project because it will be fully designed prior to receiving quotes; however City staff always engages the contractor on how the project can be constructed more efficiently at a greater savings to the City.

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

Information to be considered by the Local Contract Review Board: Construction of the Project requires a licensed electrical contractor to perform the work of relocating electrical services underground after the main power lines are moved underground. Licensed electrical contractors 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 Emergency Procurement method. Procurement of these services will be from the lowest responsive quote solicited for the work.

(F) Any likely increases in public safety:

Information to be 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, the neighbors, and the public that could be affected by the Project. Currently, the intersection is in a transitional state, which has created safety issues at the intersection, with increases in the prevalence of crashes, near misses, risky driver behavior, and hazardous worker exposures during the periods of time when traffic control measures are being put in place, maintained, or removed from the roadway.

The Emergency Procurement method will allow the work to move quickly forward, allowing for full buildout of the intersection after the overhead utilities are relocated underground, and creating permanent traffic control and traffic calming measures which will provide for the safe and efficient movement of vehicles, bicyclists, and pedestrians (including persons with disabilities in accordance with the Americans with Disabilities Act).

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

Information to be considered by the Local Contract Review Board: The Emergency Procurement method for relocating overhead utilities at the intersection underground will not have an impact on risks to the City or the Public because the work will still be performed under the City's standard public improvement contract.

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

Information to be 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 Emergency Procurement 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 to be considered by the Local Contract Review Board: The bidding market for public works projects in 2023 have 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, shortages of building materials, increased inflation and rising interest rates have resulted in a 24% rise in construction costs since 2022. Even when historical cost data and reliable sources are used, construction cost estimates for building trades and labor have proven to be inaccurate without real time construction pricing. Using the Emergency procurement method allows the City to get the project out earlier using real-time construction costs to keep the Project within budget.

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

Information to be considered by the Local Contract Review Board: A main characteristic of the project in regard to its technical complexity is coordination. The exemption will not have an impact on the technical complexity of the public improvement.

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

Information to be considered by the Local Contract Review Board: The public improvement will relocate existing overhead utilities underground and will involve construction of new conduits and vaults for new underground utilities. The site is currently in a transitional state and has been excavated prior to reopening to traffic so the risk of discovering unknown conditions and damaging existing infrastructure is minimal.

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

Information to be considered by the Local Contract Review Board: During construction the intersection will be closed to thru traffic. Traffic will be routed per the approved traffic control plans for the site, which are already in place.

(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 to be considered by the Local Contract Review Board: Construction will most likely be completed in a single phase. However, the work involves several elements that will require additional work which will not be a part of this contract. This includes moving utility poles off the site after the undergrounding is complete.

(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 to be considered by the Local Contract Review Board: The City has experience using emergency procurement delivery, and will use specialized advisor services when necessary and the law firm of Jordan Ramis for legal counsel support for the Project. The City has also contracted with Kittelson & Associates, engineering consultant, to assist on the project during review of quotes, review of contract, and to assist with permitting, and construction administration.

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 emergency procurements.

II. SUMMARY OF EMERGENCY PROCUREMENT BENEFITS TO THE CITY

The City should declare an emergency due to the failure of the normal competitive process to identify an appropriate contractor, the current temporary traffic control measures in place at the project site, and the continuing unnecessary monthly costs to the City that will continue to accumulate until the work is done. The City should utilize the emergency procurement model to minimize the substantial risk of loss, damage, interruption of services, and threat to public health or safety at the S 1st Street-St. Helens intersection. The savings and benefits are expected to be significant. The use of the emergency procurement method will allow the City to restore essential services to the public in the shortest amount of time, and will promulgate the following benefits for the City:

- Will allow the City a simple and inexpensive procurement process that can be completed in a short timeframe, thus allowing the City to expedite contracting with contractor to immediately begin project implementation.

- Will allow schedule acceleration which will allow the City to complete the reconstruction of the intersection while not incurring further delay costs, thereby reducing overall project costs.
- Will allow the City to lock in better prices for the project that reflect the City's budget more accurately.

It is the recommendation of Staff that the City Council adopt and make the findings as set forth above and exempt the Undergrounding Utilities at the S 1st Street - St. Helens Street Intersection (Project) from competitive bidding and to use a Emergency Procurement method of delivery by directly soliciting a minimum of three quotes from qualified, licensed contractors in good standing in the State of Oregon.