

IMPACT STATEMENT

Legislation title: Authorize a class exemption to implement Job Order Contracting for asphalt repair and concrete work. (Ordinance)

Contact name: Lester Spitler, Chief Procurement Officer

Contact phone: 503-823-1095

Presenter name: Lester Spitler, Chief Procurement Officer

Purpose of proposed legislation and background information:

The purpose of this Ordinance is to authorize a class exemption to implement Job Order Contracting for asphalt repair and concrete work. In order to authorize a class exemption, City Council must approve findings that support the use of an alternative procurement and contracting delivery model for the projects covered under the class exemption. The projects covered under this exemption will be projects between \$5,000 and \$1,000,000 and for concrete work performed by PBOT in the public right-of-way; concrete flatwork performed by Portland Parks and Recreation not in the public right-of way; and asphalt repair and maintenance work performed by PBOT in the public right-of-way.

Procurement Services requests that Council limit the pool of competition for this class exemption to firms that are certified with the State Certification Office of Business Inclusion and Diversity (COBID) as one or more of the following: disadvantaged business enterprise; minority-owned business enterprise; women-owned business enterprise, emerging small business; and service-disabled veteran business enterprise (D/M/W/ESB/SDVBE).

The alternative procurement and contracting methodology being proposed is a form of job order contracting (JOC). JOC is a delivery method for construction and repair/maintenance projects that establishes contracts with multiple contractors for each category of work where the pricing is established by a third-party consultant. Contractors respond to the solicitation by proposing an adjustment factor to the pre-established pricing to cover overhead, profit and other related costs. Once contracts are awarded, the bureaus using them can schedule projects out in advance using the pricing without having to go through a solicitation and contract for every job. This model is transparent, auditable and encourages high quality of work and collaboration between the City and the awarded contractors. A benefit to the contractors is that, as long as they perform quality work, they can reasonably expect to continue to perform work in their category throughout the life of the contract. Being able to plan ahead and forecast work through this model will allow the contractors to develop relationships with the City and understand the intricacies of administering a City contract. It should also allow them the ability to forecast resource planning and grow their capacity throughout the life of the contract.

No revenues will be impacted by this legislation.

This legislation does not change existing City policy.

Financial and budgetary impacts:

There is no direct budgetary impact based on this legislation.

Community impacts and community involvement:

The City of Portland has a core goal and objective to increase opportunities for COBID certified firms. The subject exemption aligns with this goal and results in a significant public benefit because all of the work resulting from this exemption and the resulting solicitation will be performed by COBID certified firms, thus helping the awarded firms increase their capacity and develop strong working relationships with the City. It also provides

the awarded firms experience working on City projects that they may not have had the opportunity to work on, if this exemption isn't approved.

Procurement Services has conducted outreach to various contractor associations that support COBID certified firms to notify and inform potential contractors that the City is in the process of implementing this model. Procurement Services, with help from our third-party consultant, has conducted specific trainings for firms that have expressed interest in responding to this solicitation and that perform asphalt repair and concrete work. The list of interested firms continues to grow and Procurement Services will conduct a couple more trainings to ensure that interested COBID certified contractors are comfortable responding to the solicitation and administering the contract, if awarded.

No known person or group will be testifying.

Budgetary Impact Worksheet

Does this action change appropriations?

- YES: Please complete the information below.
- NO: Skip this section

Fund	Fund Center	Commitment Item	Functional Area	Funded Program	Grant	Sponsored Program	Amount

EXHIBIT A

Portland City Code, Section 5.34.830 allows City Council, acting as the Local Contract Review Board, to authorize a class exemption for certain types of projects from the competitive low bid requirement. In order to authorize a class exemption, City Council must approve findings that support the use of an alternative procurement and contracting delivery model for the projects covered under the class exemption.

The projects covered under this exemption will be projects between \$5,000 and \$1,000,000 and for concrete work performed by PBOT in the public right-of-way; concrete flatwork performed by Portland Parks and Recreation not in the public right-of way; and asphalt repair and maintenance work performed by PBOT in the public right-of-way.

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The alternative procurement and contracting methodology being proposed is a form of job order contracting (JOC). JOC is a delivery method for construction and repair/maintenance projects that establishes contracts with multiple contractors for each category of work where the pricing is established by a third-party consultant. Contractors respond to the solicitation by proposing an adjustment factor to the pre-established pricing to cover overhead, profit and other related costs. Once contracts are awarded, the bureaus using them can schedule projects out in advance using the pricing without having to go through a solicitation and contract for every job. This model is transparent, auditable and encourages high quality of work and collaboration between the City and the awarded contractors. A benefit to the contractors is that, as long as they perform quality work, they can reasonably expect to continue to perform work in their category throughout the life of the contract. Being able to plan ahead and forecast work through this model will allow the contractors to develop relationships with the City and understand the intricacies of administering a City contract. It should also allow them the ability to forecast resource planning and grow their capacity throughout the life of the contract.

The actual solicitation method will be a formal Request For Proposals (RFP) where we would ask contractors to fill out questionnaires that speak to their experience and qualifications. Price would also be a factor, but not the only criteria for award.

Below are the findings that need to be addressed and approved by City Council for the class exemption to be effective:

- (a) The exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts.*

This exemption will not encourage favoritism nor diminish competition. Procurement Services has performed outreach to COBID certified firms that perform concrete and asphalt repair work and has garnered a significant amount of interest. We expect there to be competition amongst the certified firms that we have engaged.

(b) Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the contracting agency or the state agency that seeks the exemption or, if the contract is for a public improvement described in ORS [279A.050 \(Procurement authority\)](#) (3)(b), to the contracting agency or the public. In approving a finding under this paragraph, the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board shall consider the type, cost and amount of the contract and, to the extent applicable to the particular public improvement contract or class of public improvement contracts, the following:

(A) How many persons are available to bid;

Procurement Services has conducted outreach and has identified a significant pool of COBID certified firms that are interested and intend to respond to the RFP.

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

Since there will be multiple projects completed under the contracts awarded from this exemption and the resulting solicitation, this finding does not apply.

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

The City of Portland has a core goal and objective to increase opportunities for COBID certified firms. The subject exemption aligns with this goal and results in a significant public benefit because all of the work resulting from this exemption and the resulting solicitation will be performed by COBID certified firms, thus helping the awarded firms increase their capacity and develop strong working relationships with the City. It also provides the awarded firms experience working on City projects that they may not have had the opportunity to work on, if this exemption isn't approved.

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

JOC won't necessarily result in value engineering according to the traditional definition, but we do expect it to decrease the cost of the public improvement projects that will be executed under the resulting contracts. JOC is a more collaborative process between the City and contractors and is expected to result in less change orders on projects because of the way the pricing is established and the process in which projects are executed.

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

We are piloting this approach on a small subset of public improvement projects that the City has forecasted in the future. We are focusing on asphalt repair and concrete work, neither of which require specialized expertise.

(F) Any likely increases in public safety;

Although safety is a core value of every project, JOC will not increase public safety more so than other delivery models.

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

One of the major benefits of JOC is the schedule efficiencies associated with it as a delivery model. We believe that JOC will reduce or eliminate delays that are associated with the traditional low-bid approach and will enable PBOT and Portland Parks and Recreation to execute more work with greater schedule certainty.

(H) Whether granting the exemption will affect the sources of funding for the public improvement;

Not applicable.

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

Granting this exemption will better enable the City to control the impact that market conditions will have on the cost and time necessary to complete the forecasted projects. As described above, JOC is a model where there is a pre-established catalog of unit prices for the work that the City is looking to contract for. Contractors awarded JOC contracts will propose an adjustment factor to cover overhead, profit and other related costs. By having a pool of contractors and pre-established pricing, JOC will help ensure that the City is able to complete work despite market conditions.

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

Not applicable.

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

The work contemplated under this exemption is for several small to medium sized projects in the areas of asphalt repair and concrete work.

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

Not applicable.

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

The work contemplated under this exemption is for several small to medium sized projects in the areas of asphalt repair and concrete work.

(N) Whether the contracting agency or state agency has, or has retained under contract, and will use contracting agency or state agency 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 contracting agency or state agency will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract.

The City conducted a Request for Proposals last Fall to engage and hire a third-party consultant to help implement JOC. The consultant firm, Gordian Group, has been on contract since January to develop the catalog of prices as well as the necessary solicitation and contract documents so that the City can implement this model. The Chief Procurement Officer also has experience with this model from previous positions elsewhere.

Additionally, Procurement Services has conducted outreach to various contractor associations that support COBID certified firms to notify and inform potential contractors that the City is in the process of implementing this model. Procurement Services, with help from Gordian Group, has conducted specific trainings for firms that have expressed interest in responding to this solicitation and perform asphalt repair and concrete work. The list of interested firms continues to grow and Procurement Services will conduct a couple more trainings to ensure that interested COBID certified contractors are comfortable responding to the solicitation and administering the contract, if awarded.

ORDINANCE No.

Authorize a class exemption to implement Job Order Contracting for asphalt repair and concrete work.
(Ordinance)

The City of Portland ordains:

Section 1. The Council finds that:

1. The Portland Plan, adopted in 2012 by Resolution 36918, includes a Framework for Equity to guide plan implementation and improve City operational and business practices, support actions that promote accountability, close disparity gaps and increase community engagement in civic activities.
2. The City's Racial Equity Goals and Strategies, adopted in 2015 by Resolution 37144, directed bureaus to implement a racial equity lens to end racial disparities within city government. One of the stated goals is greater opportunities in contracting.
3. Disadvantaged, Minority-owned, Women-owned, Emerging Small, and Service-disabled Veteran Business Enterprises (D/M/W/ESB/SDVBE or COBID certified firms) face great challenges in competing on the open market with larger, more established contractors to perform work for the City of Portland.
4. A class exemption for Job Order Contracting for asphalt repair and concrete work will facilitate opportunities for COBID certified firms to win contracts and build capacity through this delivery model. Contractors awarded agreements from the resulting solicitation will be able to build relationships with the City bureaus and gain a better understanding of the administrative requirements of contracting with the City.
5. ORS 279A.100 provides that the State Public Contracting Code may not be construed to prohibit the City from engaging in public contracting practices designed to promote affirmative action goals, policies or programs.
6. Portland City Code, Section 5.34.820 allows for an exemption to the competitive bidding requirement for public improvement contracts. Portland City Code, Section 5.34.830 includes findings that need to be addressed to exempt a class of public improvement contracts pursuant to the requirements of ORS 279C.335(3).

NOW, THEREFORE, the Council directs and authorizes:

- a. the Bureau of Revenue and Financial Services, Procurement Services Division to implement Job Order Contracting for asphalt repair and concrete projects estimated to cost between \$5,000 and \$1,000,000 and to limit the pool of contractors to COBID certified firms; and
- b. A class exemption based on the findings attached as Exhibit A.

Passed by the Council:

Mayor Ted Wheeler

Prepared by: Lester Spitler

Date Prepared: April 12, 2019

Mary Hull Caballero
Auditor of the City of Portland
By

Deputy

Agenda No. 385

This document was substituted

Item Type: Ordinance No. _____

with a revised version. See final

document: 189489

Council Meeting Date: May 1, 2019

Title: Authorize a class exemption to implement Job Order Contracting for asphalt repair and concrete work (Ordinance)

AGENDA TYPE

CONSENT REGULAR TIME CERTAIN Start Time: _____ Item 1 of 1

Total amount of time needed for presentation, testimony and discussion (Regular and Time Certain): 15 Minutes

INTRODUCED BY: Mayor Wheeler

COMMISSIONER / AUDITOR APPROVAL

Mayor - Finance & Administration - Wheeler _____
 Position 1/ Utilities - Fritz _____
 Position 2/ Works - Fish _____
 Position 3/ Affairs - Hardesty _____
 Position 4/ Safety - Eudaly _____
 City Auditor - Hull Caballero _____

Digitally signed by Michelle Plambeck
Date: 2019.04.23 11:56:10 -07'00'

BUREAU APPROVALS

Bureau: OMF/CAO
 OMF/CAO: Tom Rinehart Digitally signed by Tom Rinehart
Date: 2019.04.17 11:49:57 -07'00'
 Bureau Approval: Jennifer Cooperman Digitally signed by Jennifer Cooperman
Date: 2019.04.16 16:01:33 -07'00'

Prepared By: Lester Spitler

Date Prepared: April 16, 2019

1) Is a completed Impact Statement attached? Yes

2) Does the item amend the budget? Yes No
 If yes, **Budget Office** Approval

3) Is the item a Code ordinance? Yes No
 If yes, **Auditor Office** Approval

4) Is this item a contract, code, easement, franchise, comp plan or Charter? Yes No
 If yes, **Attorney Office** Approval

5a) Is item a Portland Policy Document or Administrative Rule? Yes No

5b) If yes, is the City Policy/Admin Rule directive in the ordinance or resolution? Yes

ACTION TAKEN:

CLERK USE: DATE FILED 4/23/19

Mary Hull Caballero
Auditor of the City of Portland

By: Karla Moore-Love Digitally signed by Karla Moore-Love
Date: 2019.04.23 13:52:51 -07'00'
Deputy

FOUR-FIFTHS AGENDA

- 1. Fritz
- 2. Fish
- 3. Hardesty
- 4. Eudaly
- Wheeler

COMMISSIONERS VOTED AS FOLLOWS:

	YEAS	NAYS
1. Fritz		
2. Fish		
3. Hardesty		
4. Eudaly		
Wheeler		