

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 paving, repair and maintenance work performed by both PBOT and Portland Parks and Recreation.

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.

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 paving and repair as well as 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 paving and repair as well as 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 paving and repair as well as 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 paving and repair as well as 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.

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