

RESOLUTION NO. 5267-16

A RESOLUTION ADOPTING FINDINGS IN SUPPORT OF A SPECIAL PROCUREMENT; AUTHORIZING DIRECT NEGOTIATION OF A CONTRACT FOR BUILDING OFFICIAL, PLAN REVIEW, AND INSPECTION SUPPORT SERVICES; AND MAKING A BUDGET TRANSFER IN THE BUILDING FUND

WHEREAS, the City adopted its public contracting rules pursuant to Oregon Revised Statutes (ORS) 279A.010 et seq.; and

WHEREAS, the City Council is designated as the Local Contract Review Board for the City of Tualatin, pursuant to ORS 279A.060 and Tualatin Municipal Code (TMC) Chapter 1-21; and

WHEREAS, ORS 279B.085 and TMC 1-21-090 authorize the City Council to authorize a special procurement upon a public hearing and adoption of certain written findings; and

WHEREAS, the City published notice of the public hearing in the *Oregonian*; and

WHEREAS, ORS 294.463 allows the Council to authorize transfers of appropriations within a fund or between funds; and

WHEREAS, in order to remain in compliance with Oregon Budget Law it is necessary to transfer appropriations within the Building Fund.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

Section 1. The Council approves the special procurement for Building Official, Plan Review and Inspection Support Services Contract.

Section 2. The City Manager is authorized to use a direct negotiation process to select the contractor for the Building Official, Plan Review and Inspection Support Services Contract and enter into an agreement with the selected contractor to perform the work.

Section 3. The special procurement and authorization for direct negotiation is based on the following findings:

A. Nature of the Contract. The nature of the contract is a direct negotiation contract with Clair Company, Inc. to provide Building Official, Plan Review, and Inspection Support Services for the City of Tualatin for an interim period, while the City is recruiting to fill three positions within the Building Division.

In October 2015, following an unforeseen employee resignation in the Community Development Department Building Division, the City entered into a Personal Services Contract with the Clair Company to provide Building Official Services through February 2016, during the recruitment period for a replacement

of the vacant position. Two additional unforeseen employee resignations occurred in the Building Division in December 2015. The City amended the October 2015 contract in December 2015 to allow for the Clair Company to provide temporary inspection and plan review staffing during the recruitment period for the three positions in the Building Division. Given the projected length of the recruitment period, the possible need for additional plan review services to meet customer service expectations and the need for seamless service in the Building Division, a direct negotiation contract with Clair Company to extend the length of their service and the "not to exceed" maximum payment is needed.

B. Estimated Cost. The estimated contract cost is up to \$200,000. The actual cost will be dependent on the length of the staff recruitment period and the need for any additional plan review services, based on plan review workload demand.

C. Substantial Cost Savings. This process will produce a cost savings because the City has been using the Clair Company for building, plan review, and inspection services. Bringing in another service provider through a competitive bidding process would require disruption of current services during a period of significant short-staffing. It would require a substantial time commitment for a different provider to become familiar with the City's Building Official, Plan Review and Inspection service processes and needs. The City would need to pay a different provider the time to become as familiar with the City's personnel, policies and procedures. Extending the current contract would result in a substantial cost savings, given the disruption and "start-up" costs that would be required to replace the current consultant with a new provider.

The Building Division is currently experiencing a heavy workload, given the uptick in the economy and the presence of substantial vacant industrial and commercial land within the City. There is the periodic need to spend extra time to address complex customer issues, as well as keep up with current workload. The current service provider is familiar with the complex projects underway in the City and is therefore providing the service in a time-efficient manner, making use of the City's existing staff resources to quickly address customer concerns as they arise and quickly make decisions that result in more certainty for customers and staff. This efficiency not only results in substantial cost savings, but it also results in time savings for the customer over the long-term.

D. The exemption is unlikely to encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts, or would otherwise substantially promote the public interest in a manner that could not be practicably be realized by complying with the solicitation requirements that would otherwise be applicable.

(1) Favoritism is defined as “selection based on friendship or factors other than merit.” “Encourage” is defined as “promoting the growth and development.” Granting an exemption for these services will be unlikely to encourage favoritism because this is a single contract exemption that is the result of unforeseen vacancies in Building Division staffing. The selection of the current service provider was not based on favoritism, but on an arms-length negotiation that resulted from several employee vacancies within the Building Division. This special procurement opportunity is limited to a single contract and therefore does not encourage the awarding of public contracts founded on favoritism or other similar factors excluding merit. Moreover, this particular contract has a limited pool of qualified applicants because the services require licensing by the Oregon Building Codes Division. The proposed contractor has the proper licensing.

(2) The terms and conditions of the contract will be the result of “arms-length” contract negotiations and the contract will be reviewed and approved by the Assistant City Manager, City Attorney and City Manager. During the contract period, the provider will be required to comply with all City policies, procedures and contract provisions. These requirements are the same as if the provider was competitively selected through a competitive process, and thus, the City will not be engaging in favoritism in the execution of the contract documents.

(3) The City’s need for the contract exemption is the result of unique circumstances surrounding the vacancy of three positions within the Building Division. Because this service would not be procured without this unique circumstance, it is unlikely that this exemption will encourage favoritism in the awarding of public contracts in the future when the circumstance of staff vacancies is not a factor.

(4) The public interest is best promoted by providing seamless building official, plan review and inspection support services to the City’s customers. Exempting this contract extension from complying with the solicitation requirements would result in uninterrupted services to the Building Division’s customers at a time of high demand and volume for building services.

E. Proposed Contracting Method. The proposed contracting method is a Direct Negotiation contract.

F. Estimated Contract Execution. The proposed contract will be negotiated and executed within two weeks of Council approval.

Section 4. The Council authorizes the transfer of existing appropriations from the Building Fund - Personal Services to the Building Fund - Material and Services, in the amount of \$125,000.

Section 5. This resolution is effective upon adoption.

INTRODUCED AND ADOPTED this 22nd day of February, 2016.

CITY OF TUALATIN OREGON

BY  _____
Mayor

APPROVED AS TO LEGAL FORM

BY  _____
City Attorney

ATTEST

BY  _____
City Recorder