

RESOLUTION NO. 2162

A RESOLUTION OF THE CITY COUNCIL ACTING AS THE LOCAL CONTRACT REVIEW BOARD MAKING FINDINGS, DETERMINATIONS AND CONCLUSIONS DENYING THE APPEAL OF DISQUALIFICATION BY JIM SMITH EXCAVATING, INC., FOR THE 2009 REHABILITATION AND RECONSTRUCTION PROGRAM PROJECT

WHEREAS, the City Council, acting as the Local Contract Review Board, has received one protest of disqualification from contract bidding on the City project as set forth below. The Engineering Division ("Staff") has filed its Staff Report and Recommendations dated March 18, 2009, together with exhibits regarding this protest, which report and exhibits are hereby marked as record Exhibit A and Exhibits A-1 through A-10, respectively, attached hereto and incorporated by reference as if fully set forth herein; and

WHEREAS, the City Council, acting as the Local Contract Review Board, has received a memorandum from its Assistant City Attorney dated February 11, regarding statutory presumptions, which is marked record Exhibit B, attached hereto and incorporated by reference as if fully set forth herein; and

WHEREAS, the City Council, acting as the Local Contract Review Board, finds and recites:

1. In December 2008 Staff issued a Request for Statement of Qualification ("SOQ") from firms to construct infrastructure improvements associated with the project known as the 2009 Rehabilitation and Reconstruction Program Project.

2. As authorized by ORS 279A.050, the City Council acting as Local Contract Review Board has authorized the City Engineer to adopt rules and procedures for submitting proposals for qualifications.

3. The City Engineer has adopted the SOQ application form attached as Exhibit A-3 and SOQ Addendum #1 as Exhibit A-4.

4. The Request for Qualifications ("RFQ") attached as Exhibit A-2, provided that protest of any procedural or substantive terms and conditions shall be in writing and delivered to Staff at the City of Wilsonville no later than January 13, 2009.

5. No protests of the procedural or substantive terms and conditions of the RFQ were received.

6. Jim Smith Excavating's SOQ application is attached as Exhibit A- 5.

7. The City Engineer selection team disqualified the respective proposer for the reasons as set forth in the Staff report attached as Exhibit A.

8. The City of Wilsonville sent a Notice of Disqualification to bid on the major project as set forth in Exhibit A-9, attached.

9. In accordance with ORS 279C.445, any respondent is procedurally required to file in writing an appeal of disqualification of the Notice of Disqualification, no later than 5:00 pm on January 13, 2009. Exhibit A-2, p. 7.

10. Jim Smith Excavating, Inc. has petitioned the Local Contract Review Board to review their disqualification for bid on 2009 Reconstruction and Rehabilitation Program project ("major project"), as set forth in Exhibits A-5, A-6, A-7, A-8, A-9 and A-10, attached.

11. Jim Smith Excavating has filed a written appeal within the required days and otherwise has met the procedural appeal requirements.

12. The RFQ specifies that the SOQ shall provide "...examples of previous infrastructure reconstruction projects within existing residential subdivisions of similar scope, type, contract value and schedule..." Exhibit A-2, p. 9.

13. The RFQ specifies that the SOQ shall include "At least three (3) projects successfully completed within the last three (3) years must have been for contract amounts of \$800,000 or more for local government agencies...". Exhibit A-2, p. 10.

14. The RFQ states that: "The City of Wilsonville needs to replace aging and failing infrastructure in three existing residential subdivisions and to realign an existing sanitary sewer main on City property in advance of future improvements."

"The City's purpose in using this process will be to determine the 'lowest responsible' bidder for this project through an evaluation of the demonstrated ability to successfully complete projects of a similar type, complexity, size, scope, budget, conditions and schedule." Exhibit A-2, p. 3.

15. The RFQ states that statements submitted "Selection will be based on qualifications demonstrated on projects of similar type, complexity, size, scope (including continuous operation), budget, conditions and schedule." Exhibit A-2, p. 5.

16. The RFQ requests seven (7) categories of information and included rating criteria. Exhibit A-2, p. 5.

17. After carefully reviewing the information submitted by Jim Smith Excavating, Inc., in its SOQ (Exhibit A-5), Staff noted the following:

- A. Out of ten (10) projects listed, none were public works projects.
- B. Out of ten (10) projects listed, none appeared to approach the similar type, complexities, conditions, schedule involved in the City's major project.
- C. Of the ten (10) private projects constructed by Jim Smith Excavating, Inc., three were 'minor' as they were less than \$500,000; four were 'medium' as they were between

\$500,000 and \$1,000,000; and three approached 'major' project status or greater than \$1,000,000. Exhibit A-5.

D. Based on these findings, Staff determined that Jim Smith Excavating, Inc. did not demonstrate the level of recent public works management construction experience needed for the City's project. Exhibit A-8.

18. The supplemental information submitted by Jim Smith Excavating, Inc., (Exhibit A-6), does not provide any additional evidence of recent public works management experience from the construction firm.

19. A measure of the ability of a particular firm to adequately perform the duties and responsibilities on public works projects is to be on the pre-qualified contractors list for public works projects for the State of Oregon. State of Oregon records indicate, at the time Jim Smith Excavating filed its SOQ with the City, they were in fact not on the 'approved' State of Oregon list dated January 13, 2009 and attached as Exhibit A-11.

20. On February 20, 2009 Jim Smith Excavating received state prequalification approval.

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

The City Council, acting as the Local Contract Review Board, makes the following findings, determinations, and conclusions:

1. The findings recited above are incorporated herein as if fully set forth.
2. By letter dated January 07, 2009, the City of Wilsonville gave notice and opportunity to appeal the disqualification of SOQ application for the public improvement project.

3. By letter dated January 09, 2009, Appellant Jim Smith Excavating, Inc. exercised its rights to appeal and have timely filed a protest of disqualification and have had an opportunity to be heard de novo in this matter.

4. Based on the information submitted in the SOQ and supplemental information supplied, the City finds that Jim Smith Excavating, Inc. has not demonstrated the necessary level of Public Works Management and Construction Experience in major projects needed for the 2009 Reconstruction and Rehabilitation Program project.

5. The construction of the major public works projects known as 2009 Reconstruction and Rehabilitation Program requires experience in major construction and major construction coordination in a shortened time frame, and as such require extensive, proven public works management and construction experience.

6. Given the constraints and demands of the project and the need for demonstrated complex public works management and construction experience, the City Council concludes it would not be prudent to accept applications for SOQ from Jim Smith Excavating, Inc. applicant whom has less than the required necessary experience.

7. Based upon the forgoing recitals and findings, and pursuant to ORS 279C.375 (3), the City Council, acting as Local Contract Review Board, determines that the appellant has not sufficiently demonstrated that it has the expertise and a satisfactory record of performance to constitute the kind and level of qualifications desired by the city and to qualify Appellants Jim Smith Excavating, Inc. in bidding on the 2009 Reconstruction and Rehabilitation Program project.

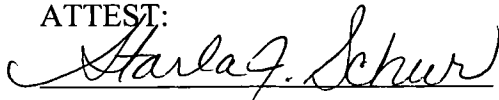
8. The Appellant Jim Smith Excavating, Inc. protest is denied.

9. This resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular Council meeting thereof this 18th day of February, 2009, and filed with the Wilsonville City Recorder this same date.


TIM KNAPP, MAYOR

ATTEST:



Starla J. Schur, CMC, Deputy City Recorder

SUMMARY OF VOTES:

Mayor Knapp	Yes
Councilor Kirk	Excused
Councilor Núñez	Yes
Councilor Ripple	Excused
Councilor Hurst	Yes