

City of Lincoln City

Council Communication

Exemption From Competitive Bidding for Wastewater Plant Improvements

Meeting Date: 1/12/2026
Department: Public Works
Secondary Dept:
Approval: Daniel Hunter
Strategic Priority: Infrastructure

Primary Staff Contact: Stephanie Reid
Email: sreid@lincolncity.org
Secondary Contacts:
Estimated Time: 10 minutes

Question:

Should the City Council authorize an exemption to the competitive bidding process for the Wastewater Treatment Plant Septage Acceptance Station and the Grit Decanter Station?

Staff Recommendation:

Staff Recommends the City Council authorize an exemption to the competitive bidding process for the Wastewater Treatment Plant Septage Acceptance Station and the Grit Decanter Station.

Authority:

Exemptions are allowed under ORS 279C.335 (2) providing the agency seeking an exemption follow the required procedures including preparing findings for the exemption.

Subject to subsection (4)(b) and (c) of this section, the Director of the Oregon Department of Administrative Services, a local contract review board or, for contracts described in [ORS 279A.050 \(Procurement authority\)](#) (3)(b), the Director of Transportation may exempt a public improvement contract or a class of public improvement contracts from the competitive bidding requirement of subsection (1) of this section after the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board approves the following findings that the contracting agency submits or, if a state agency is not the contracting agency, that the state agency that is seeking the exemption submits:

(a)

The exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts.

(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;*
- (B) *The construction budget and the projected operating costs for the completed public improvement;*
- (C) *Public benefits that may result from granting the exemption;*
- (D) *Whether value engineering techniques may decrease the cost of the public improvement;*
- (E) *The cost and availability of specialized expertise that is necessary for the public improvement;*
- (F) *Any likely increases in public safety;*
- (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;*
- (H) *Whether granting the exemption will affect the sources of funding for the public improvement;*
- (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;*
- (J) *Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement;*
- (K) *Whether the public improvement involves new construction or renovates or remodels an existing structure;*
- (L) *Whether the public improvement will be occupied or unoccupied during construction;*
- (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***
- (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.*

- (c) *As an alternative to the finding described in paragraph (b) of this subsection, if a contracting agency or state agency seeks an exemption that would allow the contracting agency or state agency to use an alternative contracting method that the contracting agency or state agency has not previously used, the contracting agency or state agency may make a finding that identifies the project as a pilot project for which the contracting agency or state agency intends to determine whether using the alternative contracting method actually results in substantial cost savings to the contracting agency, to the state agency 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. The contracting agency or state agency shall include an analysis and conclusion regarding actual cost savings, if any, in the evaluation required under [ORS 279C.355 \(Evaluation of public improvement projects not contracted by competitive bidding\)](#).*
- (3) *In making findings to support an exemption for a class of public improvement contracts, the contracting agency or state agency shall clearly identify the class using the class's defining characteristics. The characteristics must include a combination of project descriptions or locations, time periods, contract values, methods of procurement or other factors that distinguish the limited and related class of public improvement contracts from the agency's overall construction program. The agency may not identify a class solely by funding source, such as a particular bond fund, or by the method of procurement, but shall identify the class using characteristics that reasonably relate to the exemption criteria set forth in subsection (2) of this section.*
- (4) *In granting exemptions under subsection (2) of this section, the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board shall:*
- (a) *If appropriate, direct the use of alternative contracting methods that take account of market realities and modern practices and are consistent with the public policy of encouraging competition.*
- (b) *Require and approve or disapprove written findings by the contracting agency or state agency that support awarding a particular public improvement contract or a class of public improvement contracts, without the competitive bidding requirement of subsection (1) of this section. The findings must show that the exemption of a contract or class of contracts complies with the requirements of subsection (2) of this section.*
- (c) *Require a contracting agency or state agency that procures construction manager/general contractor services to conduct the procurement in accordance with model rules the Attorney General adopts under [ORS 279A.065 \(Model rules generally\)](#) (3).*
- (5) *Intentionally left blank —Ed.*

- (a) *A contracting agency or state agency may hold a public hearing before approving the findings required by subsection (2) of this section and before the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board grants an exemption from the competitive bidding requirement for a public improvement contract or a class of public improvement contracts.*
- (b) *Notification of a proposed exemption under subsection (2) of this section must be published in at least one trade newspaper of general statewide circulation a minimum of 14 days before the date on which the contracting agency intends to take action to approve or disapprove the exemption.*
- (c) *The notice must state that in response to a written request, the contracting agency or state agency will hold a public hearing for the purpose of taking comments on the draft findings for an exemption from the competitive bidding requirement.*
- (d) *If the contracting agency or state agency conducts a public hearing, the contracting agency or state agency shall offer an opportunity for any interested party to appear and comment.*
- (e) *If a contracting agency or state agency must act promptly because of circumstances beyond the agency's control that do not constitute an emergency, notification of the proposed exemption may be published simultaneously with the agency's solicitation of contractors for the alternative public contracting method, as long as responses to the solicitation are due at least five days after the agency intends to take action to approve or disapprove the proposed exemption.*
- (6) *The purpose of an exemption is to exempt one or more public improvement contracts from competitive bidding requirements. The representations in and the accuracy of the findings, including any general description of the resulting public improvement contract, are the bases for approving the findings and granting the exemption. The findings may describe anticipated features of the resulting public improvement contract, but the final parameters of the contract are those characteristics or specifics announced in the solicitation document.*
- (7) *A public improvement contract awarded under the competitive bidding requirement of subsection (1) of this section may be amended only in accordance with rules adopted under [ORS 279A.065 \(Model rules generally\)](#).*
- (8) *A public improvement contract that is excepted from the competitive bidding requirement under subsection (1)(a), (c), (d), (e), (f) or (g) of this section is not subject to the exemption requirements of subsection (2) of this section. [2003 c.794 §103; 2003 c.794 §§104,105a; 2005 c.103 §§12,13,14; 2005 c.625 §§58,59,60; 2007 c.70 §§69,70,71; 2007 c.764 §§14,15,17; 2013 c.522 §8; 2021 c.127 §1; 2021 c.630 §49a]*

Council Options:

City Council may authorize an exemption to the competitive bidding process for the Wastewater Treatment Plant Septage Acceptance Station and the Grit Decanter Station based on the draft findings.

City Council may authorize an exemption to the competitive bidding process for the Wastewater Treatment Plant Septage Acceptance Station and the Grit Decanter Station based on modifications to the draft findings.

City Council may disagree with the findings and direct staff to procure contracts under the competitive bidding process.

Potential Motions:

Move to approve the exemption to the competitive bidding process for the Wastewater Treatment Plant Septage Acceptance Station and the Grit Decanter Station based on the draft findings.

Move to authorize an exemption to the competitive bidding process for the Wastewater Treatment Plant Septage Acceptance Station and the Grit Decanter Station changes to the draft findings.

Move to reject the draft findings and direct staff to procure contracts under the competitive bidding process.

Attachments:

Exemption Public Notice
Draft Findings