

RESOLUTION NO. 4943

A RESOLUTION TO EXEMPT SEWER LATERAL REPLACEMENT PROJECTS, RAIN DRAIN SEPARATION PROJECTS, EXPLORATORY EXCAVATION PROJECTS, AND SERVICE AND INSTALLATION PROJECTS FROM THE REQUIREMENT TO PROVIDE PERFORMANCE AND PAYMENT BONDS

WHEREAS, the Oregon Revised Statutes 279.029 requires that contracts are covered by a 100% Performance and Payment Bond; and

WHEREAS, the Oregon Revised Statutes 279.033 allows the local contract review board to exempt certain contracts or classes of contracts from the requirement that a good and sufficient bond be furnished to assure performance of the contract and payment of obligations incurred in the performance; and

WHEREAS, the exemption of certain contracts or classes of contracts from the requirement that a good and sufficient bond be furnished will allow those projects to be completed in an expedited manner; and

WHEREAS, the sewer lateral replacement projects, rain drain separation projects, service abandonment and installation projects, and exploratory excavation often require a quick response; and

WHEREAS, exemption of these projects from bonding requirements will save approximately 2.5% of project costs, and

WHEREAS, the risks associated with exempting these classes of contracts represents only a small risk to the City.

NOW, THEREFORE, BE IT RESOLVED that the recitals above are supported by the staff report dated February 18, 2004, and presented to Council at the February 25, 2004, Council meeting, which, by this reference, is incorporated herein; and

BE IT FURTHER RESOLVED that the City Council, acting as the Local Contract Review Board, hereby exempts from the requirement that a good and sufficient bond be furnished to assure performance of the contract and payment of obligations incurred, the classes of contract set forth below so long as each contract, in question, calls for payment in the amount of \$10,000 or less and does not call for the use of subcontractors. The classes of contracts to which this exemption apply are:

- Sewer Lateral Replacement Projects
- Rain Drain Separation Projects
- Exploratory Excavation Services
- Service Abandonments and Installations

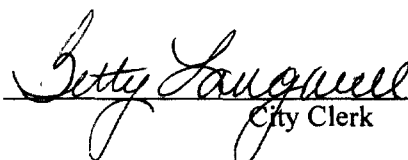
BE IT FURTHER RESOLVED that this resolution shall take effect immediately upon passage by the Council and approval by the Mayor.

DATED AND EFFECTIVE THIS 25TH DAY OF FEBRUARY 2004.

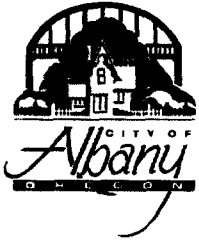


Council President

ATTEST:



City Clerk



TO: Albany City Council

VIA: Steve Bryant, City Manager
Diane Taniguchi-Dennis, P.E., Public Works Director **DS/D**

FROM: Mark Shepard, P.E., City Engineer
Angelia Sousa, Public Works Permit Specialist

DATE: February 18, 2004, for February 25, 2004, City Council Meeting

SUBJECT: Request for Exemption from Performance and Payment Bond on Specific Classes of Contracts.

Action Requested:

Staff requests that Council, acting as the Local Contract Review Board, adopt the attached resolution exempting the following classes of contracts from the requirement of providing a Performance and Payment Bond:

- Sewer Lateral Replacement Projects
- Rain Drain Separation Projects
- Exploratory Excavations Services
- Service Abandonments and Installations

These projects are characterized as small projects most often under \$10,000 in value. They are often of an emergency nature or require a quick response. These construction projects are generally completed within a couple of days.

Discussion:

Oregon Revised Statutes (ORS) 279.029 requires that contractors provide a 100% Performance and Payment Bond for public contracts. The Performance and Payment Bond assures payment to subcontractors, material suppliers, and workers. It also provides the City with assurance that the project will be completed as specified. If a contractor defaults on a project, the City can file a claim on the bond to get the project completed. This works well for standard capital improvement project contracts. These projects are of a higher dollar value, take several months to complete, and present a higher risk to the City. The Performance and Payment Bond is the customary mechanism to reduce risk.

Sewer Lateral Replacements projects, Rain Drain Separation projects, and Pothole Services are usually completed for less than \$10,000. These projects are generally completed within a few days. The Sewer Lateral Replacement projects are often an emergency situation to restore sewer service for lines that have failed. Because of these projects' lower dollar value and short construction duration, there are several advantages and efficiencies that can be realized if these projects were exempt from the bonding requirements.

An exemption from bonding can be made by Council, acting as the Local Contract Review Board. ORS 279.033 allows the local contract review board to exempt certain contracts or classes of contracts from the requirement for bonds to be furnished to assure performance of the contract and payment of obligations.

An exemption will save the City money by reducing the time and cost to contractors to obtain the bonds. In order to obtain a bond, contractors must pay bonding companies a fee. This fee is usually 2.5% of the contract price. This cost is usually included in the contractor's price to perform the work. If the bonding requirement is eliminated on these projects, it is estimated that the savings will be reflected in the contract prices the City gets for these projects.

An exemption will also allow the City to have a quicker response time for these projects without the bonding requirement. It adds two to three days for a contractor to get the proper bonding documentation to the City. An exemption would also streamline the administration of these small repetitive projects. With an exemption from bonding requirements, staff will not have to track and administer the bonds. Staff time can be devoted to project delivery rather than administrative duties.

Unpaid labor and material suppliers cannot lien public projects. The Performance Bond requirement exists, in part, to make sure they have a sum of money to claim against in the event that the general contractor becomes insolvent or fails or refuses to pay. By limiting this exemption to contracts of \$10,000 or less wherein no subcontractors are expected, the risk to laborers or material suppliers is minimized. If no subcontractors are hired, the persons performing the work will be the ordinary employees of the contractor and their entitlement to wages should be protected through existing state wage laws. In contracts of this size, and of the classes envisioned, it is also unlikely that there will be substantial material costs and hence, material providers who could be put at risk.

The City would assume some risk if an exemption from bonding is approved. The City could be faced with a situation in which a contractor abandons an incomplete project. However, this risk is relatively low. The projects are completed in short time frames, and the City does not pay for the work until it is accepted. In the past four years, the City has not had any of the local contractors performing these projects abandon them uncompleted or unacceptable. Also, staff will still have the ability to require bonding on any of these projects should it be deemed appropriate due to contract scope, project value, or past performance issues with contractors.

Therefore, staff recommends that Council acting as Contract Review Board to exempt the following classes of contracts:

- Sewer Lateral Replacement Projects
- Rain Drain Separation Projects
- Exploratory Excavations Services
- Service Abandonments and Installations

Budget Impact:

The exemption waiving the need for a Performance and Payment Bond will save approximately 2.5% on these classes of projects. This results in an annual savings of approximately \$10,500. This savings can be directly applied to completing more projects. Following is a summary of the project classes and the estimated savings for each:

Contract Class	Annual Budget	Bond Cost (2.5%)	Comments
Sewer Lateral Replacement	\$250,000	\$6,250	Approximately 3 additional sewer lateral replacement projects can be done for \$6,250.
Rain Drain Separation	\$150,000	\$3,750	Approximately 4 additional rain drain separation projects can be completed for \$3,750.
Exploratory Excavation	\$20,000	\$500	
Total	\$420,000	\$10,500	

AMS:kw

Attached: Resolution