

RESOLUTION NO. 1764

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILSONVILLE ACTING AS THE LOCAL CONTRACT REVIEW BOARD MAKING FINDINGS, DETERMINATIONS AND CONCLUSIONS ALLOWING THE APPEAL OF DISQUALIFICATION BY PAUL BROTHERS, INC., FOR THE PUBLIC IMPROVEMENT CONTRACT FOR WILSONVILLE ROAD PHASE 4—LANDSCAPE IMPROVEMENTS; AND ALLOWING PAUL BROTHERS, INC., TO BID ON THIS PROJECT.

WHEREAS, the City Council, acting as the Local Contract Review Board ("Board"), has received from Paul Brothers, Inc., an appeal of disqualification from contract bidding on the City project entitled Wilsonville Road Phase 4—Landscape Improvements; and

WHEREAS, the Board has conducted a *de novo* hearing on the matter, at which time the appellant was afforded the opportunity to testify and present evidence; and

WHEREAS, the Engineering Department ("staff") has filed its Staff Report and Recommendations dated May 20, 2002, together with exhibits regarding this protest, which report and exhibits are hereby marked as record Exhibit A and Exhibits A-1 through A-4, respectively, attached hereto and incorporated by reference as if fully set forth herein; and

WHEREAS, the Board has received a memorandum from its Assistant City Attorney dated May 15, 2002, regarding the current legal standards for disqualification, which is marked record Exhibit B, attached hereto and incorporated by reference as if fully set forth herein; and

WHEREAS, the Board, having considered the entire record herein, recites:

1. In March 2002 the City of Wilsonville issued a Request for Statement of Qualifications ("SOQ") from firms to construct landscape improvements associated with the project known as the Wilsonville Road Phase 4—Landscape Improvements.

2. As authorized by ORS 279.039, the Board has authorized the City Engineer to adopt rules and procedures for the submission of applications for qualifications.

3. The Request for Qualifications ("RFQ"), attached as Exhibit A-1, provided that protest of any procedural or substantive terms and conditions shall be in writing and delivered to John Michael at the City of Wilsonville no later than May 3, 2002.

4. The City Engineer has adopted the Statement of Qualifications application form attached in Exhibit A-1.

5. No protests of the Request for Qualifications were received.

6. The appellant's Statement of Qualifications application is attached as Exhibit 4.

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

8. The City of Wilsonville sent a Notice of Disqualification to bid on the project to the appellant as set forth in Exhibit A-2, attached.

9. The appellant has filed a timely written appeal, attached as Exhibit A-3.

10. The RFQ specifies that the statement of qualification shall include recent examples of similar construction experience including "type, contract value, schedule, and any peculiarities that may be germane to this project". Exhibit A-1, p. 11.

11. The RFQ states that: "The City's purpose in using this process will be to determine the 'responsible bidders' for this project through an evaluation of the demonstrated ability to successfully complete projects of a similar type, complexity, size, scope (including continuous operation), budget, traffic conditions and schedule." Exhibit A-1, p 3.

12. The RFQ states that "the Respondent must demonstrate a minimum of three (3) consecutive years' experience as a general contractor in successfully executing work of the type specified." Exhibit A-1, p. 11.

13. The RFQ requests seven (7) categories of information and included rating criteria. Exhibit A-1, p. 6.

14. After carefully reviewing information submitted by Paul Brothers, Inc., and based on a finding of past unsatisfactory performance on a City project, resulting in the City's termination of a maintenance contract, the City's contracting officer determined that Paul Brothers, Inc., has not demonstrated the public works management and construction experience needed for the City's project, Exhibit A, pps. 3-9, and disqualified Paul Brothers, Inc., from bidding the project. Paul Brothers, Inc., appealed.

15. The Board heard testimony and received written evidence from Paul Brothers, Inc., concerning the points of termination by the City of its prior maintenance contract wherein Paul Brothers, Inc., justified not informing the City of each time Paul Brothers, Inc., was working in the public right-of-way as not being cost effective; that it wasn't its failure to properly wire the new tree plantings, but an exceptionally heavy wind storm that caused the irregular growth and loss of trees; that the pop-up sprinklers were not effective in watering over the growth height of surrounding plants due to design, causing many plants to die for lack of water, and Paul Brothers, Inc., had no responsibility as an experienced contractor to inform the City at the time of installation of the foreseeable defectiveness of the system because it simply had a duty to install and maintain as designed; and subsequently after the termination of the maintenance contract, Paul Brothers, Inc., claims it was not fully paid by the City and that it testified on behalf of Skyline Equipment and Utilities in Skyline's contract claim as Skyline's subcontractor and against the City, including the City's fraud counterclaim, solely because it had a duty to tell the truth.

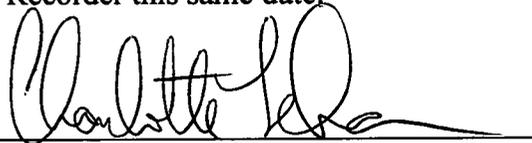
NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

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. The Board, having considered the entire record, and based upon the foregoing findings of fact, hereby determines and concludes that staff did not carry its burden of proof and that Paul Brothers, Inc., is qualified to bid on the Wilsonville Road Phase 4-Landscape Improvements Project.
3. The appeal of Paul Brothers, Inc., is allowed.

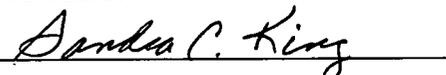
This resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 20th day of May, 2002, and filed with the Wilsonville City Recorder this same date.



CHARLOTTE LEHAN, MAYOR

ATTEST:



Sandra C. King, CMC, City Recorder

SUMMARY OF VOTES:

Mayor Lehan	No
Councilor Helser	Excused
Councilor Barton	Yes
Councilor Kirk	Yes
Councilor Holt	Yes