

## **RESOLUTION No. 6632**

### Harrison Park School Conversion Project: Exemption from Competitive Bidding and Authorization for Use of a Request for Proposals Alternative Contracting Method

#### **RECITALS**

- A. The Board of Directors of Portland Public Schools ("District") is the Local Public Contract Review Board ("Board") pursuant to ORS 279A.060.
- B. ORS 279C.335(2) authorizes the Board to exempt certain public contracts or classes of contracts from the standard competitive bidding process otherwise required by the Public Contracting Code and Rules upon certain findings.
- C. In a duly and legally held election on November 3, 2020, general obligation bonds were approved by a majority of the qualified voters of Portland Public Schools voting at the election ("2020 Capital Improvement Bonds").
- D. The District intends to begin the Harrison Park School Conversion Public Improvement Project ("Harrison Park Project") as part of the 2020 Capital Improvement Bond work.
- E. Staff has determined that use of the Request for Proposals ("RFP") alternative contracting method is the preferred method of delivery for the complex Harrison Park Project. This determination is supported by draft Findings of Fact ("Draft Findings"), attached hereto as Exhibit A, and presented to the Board pursuant to ORS 279C.335.
- F. These Draft Findings specify the cost savings and design, scheduling, operational, safety, and logistical advantages gained through use of the Request for Proposals alternative contracting method.
- G. On December 16, 2022, the District issued a public notice in the Business Tribune announcing the District's intent to utilize the RFP alternative contracting method for the Harrison Park Project. The notice was issued in compliance with ORS 279C.335 and the PPS Public Contracting Rules. The Draft Findings were made available for public review and comment on the date of publication.
- H. The District held a public hearing on the Draft Findings on January 3, 2023.
- I. The Superintendent recommends approval of the exemption from Competitive Bidding and approval of the RFP alternative contracting method for solicitation of the Harrison Park Project.

#### **RESOLUTION**

- 1. The Board hereby adopts the Draft Findings in support of use of the RFP alternative contracting method for the Harrison Park Project ("Findings").
- 2. The Board hereby exempts the Harrison Park Project from competitive bidding requirements as provided in ORS 279C.335 and PPS Public Contracting Rules -49-0600 through PPS-49-0690. The exemption is based upon the Findings pursuant to ORS 279C.335(2).
- 3. Pursuant to these Findings and decision, the Superintendent or his designee is hereby authorized to conduct an RFP alternative contracting process for the Harrison Park Project.

## Exhibit A

### Draft Findings in Support of Alternative Contracting Method and Use of Request for Proposals Solicitation for Harrison Park Middle School Conversion Phase 2 Project

#### REQUEST

Staff requests that the Board of Education (“Board”), acting as the Local Contract Review Authority for the Portland Public School District (“District”), grant an exemption from the traditional Design-Bid-Build low-bid procurement process and approve the use of an Alternative Contracting Method for the construction of Harrison Park Middle School Conversion Phase 2 Project (the “Project”). Specifically, staff seeks to use a Request for Proposal (RFP) solicitation process. Staff will issue an RFP that will include both qualifications criteria and a lump sum cost proposal to select the contractor (“Proposer”) for the Project.

#### PROJECT DESCRIPTION

The 2020 School Improvement Bond includes funding to convert Harrison Park K-8 school to a middle school. The building requires significant improvements to meet the current Middle School Education Specifications and to optimize the school’s operational and learning environments. Conversion of Harrison Park to a middle school will include full replacement of the failing mechanical system; classroom, gym, restroom and locker room improvements; informational technology improvements; and site/landscaping improvements. Phase 1, which included improvements to the front entry, administrative office, cafeteria, and exterior spaces, was completed in 2022 as a low-bid procurement because the scope of work could be completed during summer recess. Phase 2 will be a substantially more complex, and invasive, phase of work that will require school year as well as summer work in order to complete the work as quickly as possible, and is still anticipated to take roughly two years. This work will include hazardous material abatement, mechanical/electrical/plumbing upgrades, information technology installations, new interior partitions, architectural finishes, and landscaping. The construction cost is expected to be in the \$20-\$25M range. Funding will come from the 2020 Bond funds set aside for Capacity, Mechanical, Security, ADA, and SPED (for specific scopes of work) and Program Contingency (for any remaining Capacity-related work that cannot be covered by currently available Capacity funds). The Project schedule has targeted June 2023 for start of Project-related construction.

The project will address many challenges and require careful planning and coordination during the design and construction phases to complete these scopes effectively and efficiently. Detailed budget and schedule controls are essential to the project’s success. It will be important to utilize a construction firm with the following specific traits:

- **Company and staff skills and experience with projects of this size, scope and complexity** – relevant project experience lowers the risk of cost and schedule overruns due to better understanding of project needs, availability of appropriate company resources for size and complexity;
- **Experience with phasing, staging, and construction means and methods that are sensitive to occupied facilities and surrounding residential neighborhoods** – construction work will be occurring within occupied facilities and tight urban constraints;
- **An exemplary history of on-time delivery with an aggressive timeline** – the facilities to be developed by the project must be delivered in a timely manner due to program and enrollment needs;
- **Ability and commitment to in-depth engagement of the local subcontracting community in support of the District’s Equity in Public Purchasing and Contracting programs;**
- **Flexibility and creativity in addressing unique opportunities and unforeseen conditions** – existing infrastructure often provides unexpected challenges with a short timeline for resolution; and
- **An understanding of the importance of a collaborative and tightly integrated project team.**

#### ALTERNATIVE CONTRACTING METHOD

The conventional design-bid-build contracting methodology (DBB) that is considered competitive bidding under Oregon Revised Statute (ORS) 379C, and therefore represents the basis of public improvement contracting in the State of Oregon, would expose the District to a significant amount of risk based on the parameters of this project. DBB, which only considers the lowest priced bid that conforms to the bidding requirements, does not allow the District to consider any of the above qualities when selecting the most

appropriate contractor. An alternative contracting process is authorized for procurement of construction services under ORS 279C.335, provided that the Board of Education, acting as the local contract review board, approves an exemption from competitive bidding. To appropriately manage the critical needs within this project, PPS staff recommend use of an open and competitive Request for Proposals methodology. Under this Request for Proposals contracting method:

- Contractors will be solicited with a competitive Request for Proposals (RFP) process that utilizes both qualitative and cost criteria for selecting a qualified contractor.
- Qualitative criteria may include prior successful experience with similar project issues; adequacy of equipment and labor; sources of supply; availability of key personnel; financial capacity; past performance; safety records; project understanding and approach; proposed methods of construction; proposed milestone dates; references; commitment to and successful history of engaging Certified Business subcontractors and a diverse workforce; and other matters that affect cost, quality, schedule or other District needs.
- Cost criteria will be addressed by submission of a lump sum cost proposal as part of the RFP response.
- The RFP process will be a publicly noticed, competitive process allowing all interested contractors to submit proposals. A contractor will be selected based on the scored evaluation of their qualifications and cost proposal.

The Request for Proposals utilizing both qualification criteria and a lump sum cost proposal has been successfully used by the District on prior large, complex projects, including the bond-funded Kellogg Middle School replacement project.

## FINDINGS

Following are the factors for consideration under ORS 279C.335 (2), in bold, followed by staff's findings.

“(a) The exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts.”

The requested exemption will not encourage favoritism or substantially diminish competition. The District will utilize a competitive Request for Proposal (“RFP”) process. That procurement is formally advertised with public notice and disclosure of the planned Alternative Contracting Method. Full competition will be encouraged and this competitive process will include significant staff outreach to and solicitation of certified minority owned, women owned, service- disabled veteran owned, and emerging small business contractors (“Certified Businesses”) in accordance with the District’s values and policies. The general contracting market is familiar with the RFP process and accepts it as a standard, and often preferred, delivery method. The award will be based upon review and scoring of submitted proposals through identified selection criteria, by a diverse District review committee representing a broad range of experience and qualifications. The lump sum cost proposal component will encourage the same vigorous competition of a design-bid-build procurement methodology and provide opportunity for all interested contractors to participate in bidding for the project, while recognizing that quality is a critical component of cost.

“(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 (3)(b), to the contracting agency or the public.”

Through the use of the RFP process to ensure successful Proposers are experienced with the scope, scale and unique qualities of the Project, the District limits its risk of changes to the final contract amount due to incomplete or inaccurate bid estimates.

“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;”

Based on previous District RFP construction procurements, it is reasonable to anticipate between four to six firms will propose on the Harrison Park Middle School Conversion Project. PPS staff have been performing outreach for several months and several firms have expressed interest, particularly if the work is procured through an RFP process that recognizes qualitative criteria in addition to cost.

"(B) The construction budget and the projected operating costs for the completed public improvements;"

The estimated construction cost is set forth above in the project description. The District has not yet conducted a detailed analysis of the operating costs, but expects that the new mechanical system will provide energy efficiency improvements and reduce future operating costs. Given the invasive nature and unpredictability of the proposed large-scale infrastructure improvements, having an experienced contractor on the Project will help minimize unexpected increases in construction costs.

"(C) Public benefits that may result from granting the exemption;"

An RFP process allows the District to review the resumes and references of the Proposer's project team, ensuring the selected Proposers have the necessary experience, expertise, and stakeholder-centric approach to address the Project's unique needs. In a traditional design-bid-build procurement, the District awards to the lowest responsible bidder regardless of the above factors. This process would increase risk for the Project, the District, and the community by potentially awarding the bid to a contractor who does not have the qualifications, knowledge or experience to successfully complete the Project.

"(D) Whether value engineering techniques may decrease the cost of the public improvement;"

Value engineering is a routine practice in public improvement projects regardless of procurement method. The selection of an experienced contractor through the RFP process will provide additional opportunities to decrease costs with the contractor's knowledgeable implementation of material submittals, phasing plans, labor allocation and other means and methods.

"(E) The cost and availability of specialized expertise that is necessary for the public improvement;"

The RFP process allows for review of contractor expertise not afforded in traditional procurement. The Harrison Park Middle School Conversion Phase 2 project will require an extensive renovation and invasive infrastructure improvements on a tight schedule, including periods where the site is occupied. Through the RFP process, a contractor can be selected that demonstrates expertise in managing, scheduling and performing successfully in these types of conditions.

"(F) Any likely increases in public safety;"

The existing site is located in an established residential area and will be occupied for periods of the construction. The use of the RFP process allows the District to request a contractor's safety protocols and history as part of the selection criteria. Selection of a contractor with strong protocols and history for the Project will help improve public safety during demolition, hazardous material abatement, construction in occupied areas, and routing of pedestrian, bicycle, and vehicle traffic around construction site access.

"(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;"

The RFP process will reduce risks to the District and the public through selection of a qualified and experienced contractor. It will improve scheduling, planning and coordination of the Project, thereby reducing financial, schedule, and safety risks.

"(H) Whether granting the exemption will affect the sources of funding for the public improvement;"

There will be no impact on the funding of the Project if the exemption is granted.

"(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;"

The exemption will not change the District's ability to control cost and schedule impacts of current market conditions.

"(J) Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement;"

Granting the exemption will help deliver a successful Harrison Park Middle School Conversion Phase 2 project. Due to the technical complexity of the Project, careful coordination, staging and scheduling will be essential to project success. The RFP process will allow the District to choose a contractor who demonstrates successful performance history with these types of project challenges, and better enable the District to address the technical complexity.

"(K) Whether the public improvements involve new construction or renovate or remodel an existing structure;"

The Project will involve renovation of an existing structure. Procuring a contractor with experience in complex renovations of occupied structures involving facility infrastructure is critical.

"(L) Whether the public improvements will be occupied or unoccupied during construction;"

Staff anticipate that work will need to take place without pause across two years in order to maintain working systems for occupancy while minimizing the duration of a disruptive construction schedule. This means the site will be occupied for any portions of the renovation that occur during the school year.

"(M) Whether the public improvements will require a single phase of construction work or multiple phases of construction work to address specific project conditions;"

The Harrison Park Middle School Conversion Phase 2 project may include some limited phasing, where the contractor will be off-site, in order to minimize disruptions during the school year. However, this potential for phasing will depend on the selected contractor's proposed construction schedule. Phasing will primarily occur as sub-phasing within the scope of work, to implement scope to completion on specific areas of the building before moving on to the next areas. The exemption will allow the District to evaluate the contractor's qualifications in successfully delivering projects with complex schedules or multiple phases.

"(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;"

The District's Office of School Modernization and Purchasing & Contracting department have department staff that have the necessary expertise with the proposed alternative contracting method to develop and effectively utilize the RFP method for the Harrison Park Middle School Conversion Phase 2 project.

## CONCLUSION

For the reasons stated above, the draft findings support an exemption from competitive bidding under ORS 279C.335 to utilize the proposed RFP contracting method for the Harrison Park Middle School Conversion Phase 2 project.