



Staff Analysis and Report to the Board

Board Meeting/Work Session Date: January 29, 2019
Senior Lead: Cynthia Le, Chief Financial Officer
Department Lead: Emily Courtnage, Director of Purchasing & Contracting
Staff Lead: Emily Courtnage, Director of Purchasing & Contracting

SUBJECT: Secure Schools Project: Exemption from Competitive Bidding and Authorization for Use of a Request for Proposals Alternative Contracting Method

I. BACKGROUND

The Office of School Modernization's District-wide security upgrades project ("Secure Schools Project") includes security upgrades at 88 schools District-wide, including design, procurement, installation, programming, and training for door/access control, public address speakers, video monitors, and infrastructure components such as cabling, switches, and data recorders. The Districts intends to issue three formal solicitations and three contracts, representing three roughly equal packages of schools with equivalent workloads, for this project.

ORS 279C.335(2) authorizes the Board to exempt certain public improvement contracts or classes of contracts from the traditional design/bid/build competitive bidding (i.e., low bid) procurement process that is the default under Oregon law for public improvement projects. Staff requests that the Board approve an exemption from low bid competitive bidding for the Secure Schools Project, and authorize staff to utilize a fully competitive Request for Proposals alternative contracting method that will take into account factors such as experience, expertise, and capacity in addition to cost.

An exemption request and approval to use an alternative contracting method must be supported by the following findings: (1) The exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts, *and* (2) 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 public. See ORS 279C.335(2).

A detailed description of the Secure Schools Project and draft Findings of Fact ("Draft Findings") supporting the exemption Resolution, as required by ORS 279C.335(2), are set forth in the attached Office of School Modernization staff memo.

II. RELATED POLICIES/BEST PRACTICES

District Policy 8.50.090-P designates the Board as the local government contract review board with authority to exempt certain public contracts or classes of contracts from the standard competitive bidding process otherwise required by the Public Contracting Rules, as per ORS 279C.335(2).

The use of a Request for Proposals ("RFP") process is in alignment with the District's Equity in Public Purchasing & Contracting Policy and implementation plan. A benefit of the RFP method, as opposed to the standard low-bid solicitation method, is the District's ability to include evaluation criteria in the RFP to help ensure selection of a prime contractor with strong commitment to use and demonstrated success in using Certified minority owned, women owned, service-disabled veteran owned, and emerging small

businesses (“Certified Businesses”) subcontractors or partners. The District will award points for demonstration of a history of Certified Business utilization and a substantive plan of outreach to, partnership with, and/or inclusion of Certified Business subcontractors.

The Request for Proposals will be open and publicly advertised. Purchasing & Contracting will notify minority contracting communities about the solicitation and encourage Certified Business participation.

III. FISCAL IMPACT

The Request for Proposals solicitation method allows the District to carefully screen firms to assure that the contractors chosen to work on the project have the specialized training, expertise, certifications, and capacity to successfully and safely complete the work within the District’s time constraints. Cost will also be evaluated in the RFP process, ensuring that proposers offer competitive pricing.

IV. COMMUNITY ENGAGEMENT; TIMELINE FOR IMPLEMENTATION/EVALUATION

The Public Contracting Rules require that the Contract Review Board conduct a public hearing prior to adoption of a Resolution exempting a public improvement project from competitive bidding. PPS-49-0145(4)(a). Notification of the public hearing must be published in a trade newspaper of general statewide circulation at least 14 days before the hearing. PPS-49-0145(4)(b). At the time of the Notice, copies of the Draft Findings must be made available to the public. PPS-49-0145(4)(c).

In compliance with these requirements, Purchasing & Contracting published a Notice of Public Hearing concerning the Secure Schools Project exemption request on January 11, 2019 in the Business Tribune, the same Journal in which Purchasing & Contracting posts all required construction solicitation notices. Also on January 11, 2019, staff made the attached Draft Findings available to the public. Instructions for requesting copies of the Draft Findings are included in the Notice of Public Hearing.

At the January 29 Board Meeting, the Board, acting as the Contract Review Board pursuant to ORS 279A.060, must offer an opportunity for any interested party to appear and present comment. PPS-49-0145(3)(d). Staff from the Office of School Modernization will be available to respond to questions relating to the work described in the attached Resolution and Draft Findings.

V. BOARD OPTIONS WITH ANALYSIS


If the Board adopts the Resolution to Authorize an Alternative Contracting Method, staff in Purchasing & Contracting and the Office of School Modernization will prepare solicitation documents and issue, in sequence, three Requests for Proposals for the three packages of schools.

If the Board does not adopt the Resolution to Authorize an Alternative Contracting Method, staff will proceed with the design/bid/build low bid (“Invitation to Bid”) procurement process. Staff will need to procure a design firm to fully design the work at each school before seeking low bids for each scope. This low bid procurement process may result in additional costs and delay.

VI. STAFF RECOMMENDATION

Staff recommends that the Board adopt the Resolution to Authorize an Alternative Contracting Method.

VII. I have reviewed this staff report and concur with the recommendation to the Board.



Guadalupe Guerrero
Superintendent
Portland Public Schools

January 24, 2019
Date

ATTACHMENTS

- A. Resolution to Authorize an Alternative Contracting Method
- B. Office of School Modernization Staff Memo with Draft Findings

PPS District Priorities FY 2018-19

1. *Set a clear Vision and Strategic Plan*
 2. *Create equitable opportunities and outcomes for all students*
 3. *Build management and accountability systems and structures*
 4. *Allocate budget, funding and resources focused on improving outcomes for students*
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Board of Education Informational Report

MEMORANDUM

Date: January 11, 2019

To: Board of Education

From: Dan Jung, Senior Director, Office of School Modernization

Subject: Draft Findings in Support of Alternative Procurement and Contracting Methodology for Design and Construction Services for the Secure Schools Project

INTRODUCTION:

Following are the staff recommended draft findings in support of an exemption from low bid procurement under ORS 279C.335 for procurement of design and construction services related to the security integration/electrical scopes of the Office of School Modernization's Secure Schools Project. This exemption request and recommendation to use an alternative contracting method applies to three contracts, which will be procured using Request for Proposal solicitations.

PROJECT DESCRIPTION:

Per the May 2017 voter approved Bond, the Office of School Modernization was tasked with improving student and staff safety at District schools. The scope will include security upgrades at 88 schools District-wide, which will be divided into three roughly equal packages of schools. The District intends to issue three solicitations and three contracts for this work.. Breaking the scope into three packages with approximately equivalent workloads will give the District flexibility to complete work equitably and at a faster pace, while minimizing risks associated with contractors' staffing capacities, quality of work, and safety of work. The nature of the work requires specialized training and certification as well as working extensively inside and around school buildings during the school day. The Secure School Project's security integration/electrical scopes of works include, but are not limited to, design, procurement, installation, programming, and training for door access control, public address speakers, video monitors, and infrastructure components such as cabling, switches and data recorders.

These projects have many challenges, and with the inherent urgency of the work, it will be important to utilize construction firms with the following specific traits, in addition to cost consideration:

- Ability to provide a complete project within the District's time constraint for the project. Staffing levels and capabilities will be critical for successful on-time completion of this work.

- The requisite expertise in designing, installing, programming, and troubleshooting technologies in compliance with the District's Security Design Guidelines and Standards.
- Recent and relevant experience with these technologies and their integration with existing IT infrastructure and systems.
- An exemplary reputation for on-time delivery with an extremely aggressive timeline, while maintaining excellent safety practices.
- Supervisory staff experienced working in and around occupied educational facilities.

The traditional low-bid award practice will jeopardize delivery of a complete, high quality, safely implemented, on-time project. A Request for Proposals process will allow evaluation of proposer experience and qualifications in addition to price, resulting in a higher likelihood that all work will be completed on time and with quality construction materials and methods.

FINDINGS:

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

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

The decision to and public interest in improving student and staff security within an aggressive timeframe requires careful selection of contractors with expertise appropriate for the District's Security Design Guidelines and Standards, successful history of working in occupied facilities, and appropriate staffing to complete the work on time. Granting an exemption in these circumstances will not have an ongoing impact on the District's public improvement contracting in terms of favoritism or diminished competition. Experienced firms have expressed that because of the complexity of the bid process with multiple days of pre-bid site walks, they are hesitant to put in the time and effort to bid against competitors that have less expertise or relevant experience and will likely provide a lower bid in a low bid award scenario. Therefore, we believe evaluation of qualifications will bring about additional competition. Through the Request for Proposals solicitation process, the District will allow firms to demonstrate availability, qualifications, and ability to complete the project as scheduled, in addition to providing cost information.

“(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.”

For this aggressively scheduled project, Portland Public Schools needs to know the work will be done by contractors with expertise appropriate for the District's Security Design Guidelines and Standards, including hardware, software, programming, and certifications. Work will be conducted throughout the school year and during the school day, and contractors' experience working in occupied educational facilities is a key factor to the success of this safety-critical work. In addition to cost, proposers will be required to show their proposed schedule and staffing, which will allow the District to review proposers' assumptions and reduce risk to budget and schedule. This process is expected to minimize unknowns and change orders that could come about when contracting with firms that have less relevant experience and expertise.

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 required certifications and conversations with certified firms, it is reasonable to anticipate between three and six firms will propose on the Secure Schools Project.

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

The construction and operating budget for this project is approximately \$8,909,000. The current construction market in Portland is extremely busy and has limited resources. Having multiple interested bidders for these three RFP packages is essential to completing the project on schedule and dealing with workforce availability issues.

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

Selecting contractors on the basis of qualifications and expertise as well as price will provide the best opportunity for high quality security improvements, installed in a safe manner during the school year and occupied school day, with the least risk to both cost and schedule.

"(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. An RFP process will ensure that the contractor and subcontractors will have sufficient experience and knowledge to effectively and responsibly participate in the value engineering process.

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

The RFP process will allow for a thorough evaluation of qualifications, expertise, history of working in occupied facilities, and appropriate staffing to complete the work on time, not afforded in traditional low bid procurement. The Secure Schools Project requires contractors with specialized expertise due to the complexities of the schools and the tight timeline. For example, work may be occurring on as many as eight schools simultaneously, during occupied hours.

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

- a) *All scopes of work in the Secure Schools Project have the primary focus of improving public safety. The major scopes of work are designed to secure our schools' perimeters and enhance our mass communication ability.*
- b) *Contracting with security firms that are highly experienced and knowledgeable will help align the Secure Schools Project goals with the best resources available to implement the work.*

"(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 process of evaluating qualifications and other criteria will provide PPS with an opportunity to review proposers' cost and scope assumptions and reduce risk prior to contract award. It will also afford us the opportunity to review proposers' planned staffing levels and capabilities, and minimize risk to on-time delivery of the project. Finally, it will allow us to assess proposers' familiarity with the needs of students and adults in occupied spaces and whether each proposer is in a good position to meet these needs. This will help us avoid schedule delays.

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

There will be no impact on the funding source of these projects due to this exemption.

"(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:"

Granting the exemption will make these competitive procurements more appealing to qualified bidders and will increase the likelihood that PPS receives proposals from firms that are able to dedicate the necessary resources.

"(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 make these competitive procurements more appealing to those firms that have the recent and relevant experience necessary to address the size and technical complexity of this work. Additionally, with the proposers' experience and expertise factors in contract award, detailed information on these subjects will be provided to PPS.

The areas of technical complexity include:

- a. Specialized security systems technology and equipment*
- b. Design and installation of low voltage wiring*
- c. Integrating new equipment with an existing IT infrastructure, both at the school and District level*
- d. Security equipment programming and testing*

In the qualifications based process, the contractor's awareness of complicated technical issues facilitates problem-solving. Thus, the risks are better understood and addressed early on in the process. Greater mitigation of financial and schedule risks are the result.

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

These projects will involve renovations at multiple school sites throughout the district. Procuring contractors with staffing levels and capabilities to perform at multiple schools simultaneously is critical.

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

Although some work will occur when school is out of session for the summer, the majority of the work will take place during the school year and during school hours. Procuring contractors with experience working in occupied buildings, and an ability to maintain a safe environment, is critical.

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

Each school will experience a single phase of construction work for the security integration/electrical scopes. Work will occur at multiple sites simultaneously.

"(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 has department staff that have the necessary expertise with construction contracting methods to develop and effectively manage the work of the Secure Schools Project. The District's outside legal counsel, Miller Nash Graham & Dunn LLP, has extensive experience with construction contracting.

CONCLUSION:

For the reasons stated above, the draft findings support an exemption from competitive bidding under ORS 279C.335 to utilize a qualifications based evaluation process for contractors for the Secure Schools Project.