



## PORTLAND PUBLIC SCHOOLS OFFICES OF SCHOOL MODERNIZATION & PURCHASING & CONTRACTING

**Date:** December 18, 2020  
**To:** School Board  
**From:** Emily Courtnage, Director, Purchasing & Contracting  
Marina Cresswell, Senior Director, School Modernization  
**Subject:** Roosevelt Phase 4 Solicitation Process and Response to Assertions in NW Labor Press Article

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This memo provides context and information about the Roosevelt Phase 4 Solicitation process and responds to factual inaccuracies in a December 2, 2020 article in the NW Labor Press (“High-bidding nonunion firm wins more Portland Public School Work”).

The Roosevelt Phase 4 project includes construction of a new classroom and Career & Technical Education addition to the modernized Roosevelt High School. The total project budget is approximately \$5 million.

The following key points are explained in detail below:

- This was a properly authorized, publicly advertised Request for Proposals process, in which price comprised only 40% of the written evaluation points.
- The District has converted each RFP evaluator’s raw point totals to ranks since 2014, at the formal recommendation of the auditors in the first Bond Performance Audit. The ranking process reduces the ability of one evaluator to skew results by employing wide point disparities.
- Todd Construction was the highest ranked proposer when written evaluation and presentation evaluation ranks were summed. It ranked first in the written evaluation and second in the presentation evaluation.
- The NW Labor Press article contained multiple misstatements of fact, detailed below.

### **The Roosevelt Phase IV Solicitation Process:**

#### **a. Use of Alternative Contracting Method (Request for Proposals)**

On June 11, 2020, staff brought to the Board a request to use an alternative contracting process - a publicly advertised and fully competitive request for proposals (RFP) process - for solicitation of this Roosevelt Phase 4 construction contract. Oregon public contracting law authorizes public agencies to exempt certain public improvement contracts from the traditional design/bid/build competitive bidding (low bid) procurement process. In the past, staff has sought exemptions to procure by CMGC contracting method (used for all high school modernization projects) and a two step request for qualifications followed by low bid process open only to prequalified bidders (used for Faubion and Kellogg), among others. As required by statute and our public contracting rules, staff brought the exemption request and resolution to the Board after preparation of findings in support of the resolution and advertised public hearing. The Board approved the resolution.

As stated in the exemption request, the project was “not of the scale or complexity that would warrant the Construction Manager/General Contractor contracting method . . . but it is crucial that the selected contractor be highly qualified and experienced in completing a public improvement project of this size on a critical path schedule.” As further explained in the staff findings in support of the resolution, the traditional design/bid/build process which results in award to the lowest priced responsive bid would not have allowed the District to consider such factors as relevant expertise in construction STEM or CTE facilities; utilization of staging and construction approaches sensitive to the occupied school facility and surrounding neighborhood; experience with projects of this size, scope, or complexity; project history with on-time delivery; and efforts to engage Certified Business (MBE, WBE, or ESB) subcontractors. The Request for Proposals process is an evaluation process, allowing points to be scored both for

price and other categories including experience, skill, key personnel, staging plans, safety records, business equity practices, references, etc.

#### **b. Request for Proposals Evaluation Criteria**

Purchasing & Contracting issued an RFP for the Roosevelt Phase 4 (RFP No. 2020-2770) on September 15, 2020. Proposals were due October 6, 2020. The Written Evaluation Criteria is detailed extensively over two pages of the solicitation and includes the following categories: Experience (25 points), Project Understanding and Delivery (25 points), Certified Business Participation Strategy (10 points), and Price Proposal (40 points). In the written evaluation, there were 100 points possible, and price comprised only 40% of those points. Office of School Modernization project team members developed draft criteria and points distribution, which were then reviewed and finalized by the OSM Director of Construction and the Senior Director of OSM.

The RFP explained the evaluation process and ranking of proposals in detail. It explained that after written proposals were evaluated, a competitive range of one or more proposers would be established, and those proposers would be invited to participate in an interview with the evaluation committee. The Interview Evaluation Criteria was worth 100 points and included Key Personnel Experience (35 points), Risk Management (35 points), and Collaborative Approach (30 points). After scoring the Interview Evaluation Criteria, the District would determine the winner by “sum[ming] the weighted Tier 1 total written evaluation rankings and the weighted Tier 2 total interview evaluation rankings to achieve a total rank per proposal.”

Twelve proposers responded to the solicitation. Two of those proposers were deemed “non-responsive.” Of the remaining ten, three were invited to participate in the interview/presentation evaluation after scoring of the Written Evaluation Criteria: Todd Construction, P&C Construction, and Swinerton Builders. During both phases of evaluation, there were three evaluators, all from the Office of School Modernization.

Price scoring is completed not by evaluators, but by Purchasing & Contracting staff, because it is a purely objective process based on simple calculations: The lowest bid price is given the full maximum point amount for price, while the subsequent bid prices are given a percentage based on the percentage variation from the low bid. For example: The low bid is \$1000. The next lowest bid is \$1500. Assuming the point value for price is 10 points, the low bid would receive the full 10 points, while that next lowest bidder would receive 66.67% ( $1000/1500=.6667$ ) of the point value, or 6.67 points.

#### **District’s Use of Evaluator Rankings**

The Roosevelt Phase 4 solicitation document explained how proposals would be ranked:

##### **4.2.1 Ranking of Proposals**

Evaluations will be scored by rank. The highest-ranked proposal will be determined as follows:

- a) Each evaluator will assign a ranking to each proposal, based on the total score he or she awarded each proposal based on the evaluation criteria points.
- b) The proposal to which the evaluator awarded the most points will receive an Evaluator Final Rank of 1. The proposal to which the evaluator awarded the second most points will receive an Evaluator Final Rank of 2, and so forth.
- c) The District will then sum the Evaluator Final Ranks for each proposal. The proposal with the lowest total final rank (the sum of all Evaluator Final Ranks) will be ranked first. The proposal with the second lowest final rank will be ranked second, and so on. The proposal with the highest final rank will be ranked last.

The District began converting raw scores to ranks in the RFP evaluation process in 2014, based on a recommendation in the first Bond Performance Audit (See Portland Public Schools Bond Construction Program: Performance Audit #1, June 2014, by Hirsh and Associates (“Audit”) - Recommendation #11). There, the auditors noted that use of raw points from each evaluator “does allow one rater to theoretically skew the total points assigned by giving no points to one firm and highest points to their preferred firm, potentially resulting in the selection of a firm that is not preferred by the majority. To eliminate this problem, various public agencies are using an alternative scoring methodology that results in ranking firms, by rater, in order of preference and assigning one point for the highest ranked firm and 2 points for the second highest firm and so on. The firm with the lowest total points would be selected.” (Audit at page 47) The District adopted this process immediately and has used it for all requests for

proposals, whether bond funded or not, since May 2014. The simple example below shows how ranking avoids skew that may result from evaluator bias:

		Company 1	Company 2	Company 3	Company 4
<b>Evaluator A</b>	points	80	85	95	75
	rank	3	2	1	4
<b>Evaluator B</b>	points	80	75	90	85
	rank	3	4	1	2
<b>Evaluator C</b>	points	70	80	85	80
	rank	4	2	1	2
<b>Evaluator D</b>	points	100	45	55	50
	rank	1	4	2	3
	<b>Total points</b>	330	285	325	290
	<b>Total rank</b>	11	12	5	11

In this example, Evaluator D has a bias or very strong preference for a particular company and employs very wide point spreads to get her favored result. When points are used to select the company, the result is that Evaluator D was able to single-handedly skew the results toward Company 1, which did not rank in the top two for any of the other three evaluators. When ranks are used to select the company, the result is that Company 3 is the highest ranked and the winner. Company 3 was ranked in the top two for all four evaluators and better represents the consensus view of the evaluators.

### **Results of Roosevelt Phase 4 RFP Evaluation**

After written evaluation by three evaluators of ten proposers, the top three ranked proposers were selected for the presentation stage. Evaluator scores and rankings of the three top proposers were as follows:

		Todd Construction	Swinerton Builders	P&C Construction
<b>Evaluator A</b>	points	91.4	89.3	87.8
	rank	1	2	3
<b>Evaluator B</b>	points	85.4	88.3	87.3
	rank	3	1	2
<b>Evaluator C</b>	points	85.9	72.3	84.6
	rank	1	4	2
	<b>Total points</b>	262.7	249.9	259.7
	<b>Total rank</b>	5	7	7

Todd Construction was highest ranked as well as received the highest point total in the written evaluation. Evaluator scores and rankings for the interview/presentation stage were as follows:

		Todd Construction	Swinerton Builders	P&C Construction
<b>Evaluator A</b>	points	65	63.5	62
	rank	1	2	3
<b>Evaluator B</b>	points	70	50	90
	rank	2	3	1
<b>Evaluator C</b>	points	50	89.75	91.75
	rank	3	2	1
	<b>Total points</b>	185	203.25	243.75
	<b>Total rank</b>	6	7	5

P&C Construction ranked and scored highest in the presentation evaluation. The combined final evaluation scores are as follows:

	Todd Construction	Swinerton Builders	P&C Construction
<b>Written Evaluation Points (300 points available)</b>	262.8	249.8	259.7
<b>Presentation Evaluation Points (300 points available)</b>	185	203.2	243.7
<b>Total Points</b>	447.8	453.1	503.4
<b>Written Evaluation Rank</b>	5	7	7
<b>Presentation Evaluation Rank</b>	6	7	5
<b>Written Eval Weighted Rank</b>	2.5	3.5	3.5
<b>Presentation Eval Weighted Rank</b>	3	3.5	2.5
<b>Total Weighted Ranking</b>	5.5	7	6

Todd Construction narrowly outranked P&C Construction and was declared the winning proposer. Note that Swinerton Builders, the proposer referenced in the NW Labor Press article, would not have won the solicitation regardless of whether scores or ranks were used to select the winner.

It might be helpful to note that Swinerton Builders is a welcome partner to the District. Swinerton has performed other work for the Office of School Modernization, including a tenant improvement contract performed over Summer 2020 at Roosevelt as part of the Roosevelt Phase 4 project.

#### **Additional Information Not Specific to the Solicitation**

The NW Labor Press article also included comments regarding Todd Construction's compliance with prevailing wage rate laws.

It was stated in the article that Todd Construction has a previous prevailing wage rate violation and current Bureau of Labor and Industries (BOLI) investigations (some of which are investigations of separate subcontractor firms, not Todd Construction itself). Prevailing wage compliance investigations are a complaint-driven process, with complaints typically arising from individuals who believe they have been paid incorrectly, or from union representatives on behalf of an individual or group of individuals. BOLI does not publicly identify contractors under investigation or provide

violation information, even to other public agencies. While it is possible that there are ongoing investigations, the District has no means to verify the existence or merit of those investigations.

BOLI does publish on its website a list of contractors who are debarred from performing public works contracts. The list is reviewed on a regular basis by OSM, including prior to contract execution. The list does not include Todd Construction or the subcontractors from Todd Construction's current PPS project, the Kellogg Middle School Replacement project.

The District complies with all owner requirements of the prevailing wage rate laws, including the requirement that owners collect certified payroll reports. BOLI does not require owners to ensure that contractors are correctly paying prevailing wage rates. The Office of School Modernization does, however, review certified payrolls for prevailing wage payment issues and will report those issues to BOLI if found.

### **Responses to Specific NW Labor Press Assertions About this Solicitation**

1. Assertion: "Todd's bid was the highest of those listed, \$280,000 higher than the bid submitted by union-signatory Swinerton Builders."

Response: This is partially incorrect as well as misleading. Todd's proposed price was not the highest price; several proposers proposed higher prices. Todd's price was the second lowest of the three firms selected for the presentation stage of evaluation: Swinerton (\$4,302,105), Todd (\$4,571,000), P&C (\$4,988,000). Further, this was an RFP process, not an Invitation to Bid (low bid, design/bid/build) process. Several other factors besides price were considered. Price comprised only 40% of the written evaluation points.

2. Assertion: "Of the three firms selected as finalists, not only was Todd the high bidder, but PPS evaluators had also given it the lowest rating."

Response: This is incorrect. Todd did not propose the highest price, as noted above. Todd had a rank of 1 in the written evaluation; it was the highest ranked proposer of the 10 responsive proposers.

3. Assertion: "How is this possibly legal? ... What happened to lowest responsible bidder?"

Response: This was a properly authorized and fully legal RFP process, not an Invitation to Bid (low bid, design/bid/build). The Board properly authorized an alternative contracting process on June 11, 2020 through an exemption process, findings, public hearing, and resolution. The exemption process is authorized by Oregon statute, the Attorney General's Model Rules, and PPS public contracting rules.

4. Assertion: "[In the presentation evaluation] each of the three evaluators thinks a different one of the three finalists is the best, and there's no consensus."

Response: This is incorrect. At the presentation evaluation, P&C Construction was ranked highest by two of the evaluators and Todd was ranked highest by one of the evaluators. Evaluators bring different expertise and perspectives to the evaluation and don't always agree. This is normal, and this is why we always have at least three evaluators.

5. Assertion: "When you combine rankings from a group of 10 bidders and rankings from a group of 3 bidders, a slightly less favorable ranking from a single evaluator in the first round can kill a bidder's chances."

Response: This is incorrect. The conversion from scores to rankings greatly reduces the ability for one evaluator to significantly skew the results.

6. Assertion: "Swinerton, for example, was hurt in the final calculation because Evaluator C rated it fourth in the first tier, below a bidder that was eliminated. PPS third graders know that you can't place fourth out of three contestants, but that's exactly the kind of result generated in the final stage of PPS' construction procurement process."

Response: While we believe it makes sense to leave first tier/written evaluation rankings intact in the final calculation (just as we'd leave scores intact if we used raw scores), the Purchasing & Contracting department years ago analyzed the effects of re-ranking the companies that make it to the second (presentation) stage so that each evaluators' ranks would be recalculated based only on the three companies selected for interview. (So, for example, Evaluator C's ranking of Swinerton as 4th best in the written evaluation would be converted to 3rd best). However, our analysis showed that it was extremely rare that doing so would influence the outcome. In fact, here, doing so would not have changed the outcome; Todd Construction would still have won.