



Board Meeting Date: October 2, 2018

Executive Committee Lead:
Claire Hertz, Deputy Superintendent,
Business and Operations

Department: Finance

Presenter/Staff Lead:
Emily Courtnage,
Director, Purchasing & Contracting

SUBJECT: Lead Paint Stabilization Project: Exemption from Competitive Bidding and Authorization for Use of an Indefinite Delivery/ Indefinite Quantity Alternative Contracting Method

BACKGROUND

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. Staff requests that the Contract Review Board approve an exemption from low bid competitive bidding for the Lead Paint Stabilization Project and authorize staff to utilize the Indefinite Delivery/ Indefinite Quantity (“ID/IQ”) alternative contracting method procured by a fully competitive Request for Proposals process followed by competitive bidding on select portions of the work. The ID/IQ method was previously approved and utilized for the District-wide Cold Water Fixture and Partial Pipe Replacement Project.

The ID/IQ contracting process begins with issuance of a publicly advertised, competitive Request for Proposals. Through the RFP process, the District will select and contract with several qualified and available contractors to compete for specific lead paint stabilization work packages. After qualified ID/IQ contractors are selected and under contract, staff will issue a series of Requests for Job Order Proposals organized by project phases and hazard priority rankings. ID/IQ contractors selected through the RFP process will be able to submit bids on one or more Job Order Proposals, based on a time and materials, not to exceed cost basis. The District will issue a Work Authorization to the lowest bidder on each Job Order Proposal.

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 Lead Paint Stabilization 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.

RELATED POLICIES / BOARD GOALS AND PRIORITIES

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).

PROCESS / COMMUNITY ENGAGEMENT

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 Lead Paint Stabilization Project exemption request on September 18, 2018 in the Business Tribune, the same Journal in which Purchasing & Contracting posts all required construction solicitation notices. Also on September 18, 2018, 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 public hearing, the District must offer an opportunity for any interested party to appear and present comment. PPS-49-0145(3)(d).

Adoption of the attached Resolution will not affect any other contract to which the District is a party nor effect any change in Public Contracting Rules or District policy.

ALIGNMENT WITH EQUITY POLICY IMPLEMENTATION PLAN

The ID/IQ alternative contracting method is in alignment with the District's Equity in Public Purchasing & Contracting Policy and implementation plan. A benefit of the ID/IQ method, as opposed to the standard design/bid/build low-bid contracting method, is the District's ability to include evaluation criteria in the RFP to help ensure selection of prime contractors 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 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. The selected contractors will be required to comply with the District's Workforce Equity and Career Learning requirements, as well as report on Certified business subcontractor utilization, during the course of the project.

BUDGET / RESOURCE IMPLICATIONS

Unlike a traditional design/bid/build procurement, in which a contract is awarded to the qualified low bidder, the RFP for this project will allow the District to review and evaluate the experience and qualifications of Proposers based on a number of factors: Project management and lead paint stabilization expertise and certifications; experience with commercial and/or institutional

multiple site or multiple campus projects undertaken with the same client over one or more phases of design and construction; workplace safety record; available labor capacity; and hourly labor rates. The RFP process also allows price-discovery and competitive evaluation of hourly rates, ensuring competitively priced Job Order Proposals.

NEXT STEPS / TIMELINE / COMMUNICATION PLAN

A public hearing is scheduled for the October 2, 2018 Board Meeting. At that meeting, the Board will recess and convene as the Contract Review Board pursuant to ORS 279A.060 and District Policy 8.50.090-P. The Contract Review Board must offer an opportunity for any interested party to appear and present comment. After the public hearing, the Board will reconvene and vote on the attached Resolution.

Staff from the Office of School Modernization will be available at the October 2, 2018 Board Meeting and public hearing to respond to questions relating to the work described in the attached Resolution and Draft Findings.

If this Resolution is adopted, staff in Purchasing & Contracting and the Office of School Modernization will prepare solicitation documents and issue a Request for Proposals for qualified and available Proposers eligible to bid on Lead Paint Stabilization Project work packages.

ATTACHMENTS

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



Board of Education Informational Report

MEMORANDUM

Date: September 14, 2018

To: Board of Education

From: Dan Jung
Senior Director, Office of School Modernization

Subject: Recommended Draft Findings in Support of Alternative Contracting Methodology/ Use of Indefinite Delivery/Indefinite Quantity (“ID/IQ”) Method for the Portland Public Schools (“District”) Lead Paint Stabilization Work

INTRODUCTION

At the request of the District, from November 2016 to April 2017, a third-party consultant performed a lead paint condition assessment at 94 district properties. The purpose of the assessment was to identify interior and exterior painted/varnished finishes that are in poor (deteriorated) condition and may present a lead hazard. Paint and varnish conditions were assessed using the US Department of Housing and Urban Development (HUD) Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing. The consultant prepared Lead Paint Condition Assessment Reports for all sites that included a summary of findings, recommendations, deteriorated paint/varnish table, and field drawings identifying deteriorated paint and varnish locations. The results of the assessment identified over 930,000 square feet of painted or varnished surfaces that are in a deteriorated condition and need to be addressed. Thereafter, District Facilities and Asset Management department (FAM) staff, in consultation with CBRE/HEERY Project Manager, and third-party consultant PBS Engineering and Environmental, developed a detailed response plan and hazard matrix to prioritize the stabilization of all deteriorated paint/varnish locations identified.

The response plan outlines a four-phase implementation strategy, based on a hazard priority ranking that was developed using the data included in the assessment reports. All sites and locations were ranked in priority based on HUD assessment guidelines. A draft response plan was presented to the Senior Director, Office of School Modernization on May 23, 2018 for review.

PROJECT DESCRIPTION

Areas noted in the assessment reports will be repaired and painted to stabilize the peeling, chipping, chalking, or cracking paint. In most cases, only areas of deterioration will be painted to

address the hazard. This approach addresses the areas of most urgent concern and is consistent with the intent of the 2017 Bond.

Priority Ranking

A priority ranking spreadsheet has been developed using the data included in the assessment reports. Sites were ranked based on the HUD assessment guidelines that consider age of occupants in classrooms and common areas (age six or younger) and location of paint deterioration (accessible to children, above or below 5 feet). Additional considerations employed for ranking include amount of damage as a ratio of deterioration to total square footage of the building and whether paint chips were present in soil.

NOTE: HUD guidelines specifically address and prioritize locations with children 6 years of age and younger. PPS has expanded this guidance to include any classroom or common area with Pre-Kindergarten (PK) programs through second grade to account for use of space changes and co-location of programs.

Due to the scale of the project, the scope of work has been broken into four phases (Phase I-IV). Each phase was then further broken down into priority groups. A total of nine priority groups have been developed. Schools within each group have been prioritized based on the priority ranking system discussed in Section II above.

Work will be implemented in the following order:

Phase-I

Pre-Kindergarten (PK) through second grade classrooms and common areas on building interiors with deteriorated paint surfaces below 5-feet.

PRIORITY 1

PK-2 locations where the above discussed priority-ranking spreadsheet rated a site in the highest categories on the weighted rating system.

PRIORITY 2

PK-2 locations at eleven sites with pre-kindergarten programs not included in Group 1. Six of these sites have PK and K-2 grade locations that will be addressed. Five sites have PK locations at the site, but no K-2 locations (ie., daycare programs at High Schools, Head Start programs at a non-school site).

PRIORITY 3

PK-2 locations where the above discussed priority-ranking spreadsheet rated a site as mid-range on the weighted rating system for a building interior.

PRIORITY 4

PK-2 locations where the above discussed priority-ranking spreadsheet rated a site as low-range on the weighted rating system for a building interior.

Phase-II

Exterior accessible areas with deteriorated paint or paint chips in soil frequented by pre-Kindergarten (PK) through second grade students.

PRIORITY 1

Sixty-two sites as ordered by the weighted rating system for building exterior.

Phase-III

PRIORITY 1

3rd-12th grade classrooms and common areas on building interiors with deteriorated paint surfaces at K-5, K-8, and K-12 buildings.

PRIORITY 2

6th-12th grade classrooms and common areas on building interiors with deteriorated paint surfaces at Middle School and High School buildings.

Phase-IV

PRIORITY 1

Exterior accessible areas with deteriorated paint or paint chips in soil not frequented by children age six and under at K-5, K-8, and K-12 buildings.

PRIORITY 2

Exterior accessible areas with deteriorated paint or paint chips in soil at sites without children age six and under, including Middle Schools, High Schools, and Administration Buildings.

The project will require approximately two to three years to complete, subject to adjustment based on labor availability in the marketplace. The 2017 Bond has allocated approximately \$16.6 million for the lead paint stabilization project.

Staff cannot determine the precise scope of work for the stabilization of paint/varnish in all locations identified due to:

- Initial assessment was via a visual survey, whereas actual testing of lead containing paint/varnish is needed in many circumstances before scope is finalized
- Continued change of site and specific school use for Pre-K through 2nd grade classes that change priority locations on an annual basis
- Constantly changing paint/varnish conditions from original assessment due to age of facilities and decades of deferred maintenance

As a result, it is not possible to utilize a traditional design-bid-build construction contracting method, which presumes a predetermined scope of work with clear limits of extent.

Staff therefore recommends an alternative form of contracting, Indefinite Delivery/Indefinite Quantity (“ID/IQ”), for the Fixture/Partial Pipe Replacement Project.

ALTERNATIVE CONTRACTING METHOD

A public agency Local Contract Review Board under Oregon Revised Statutes (ORS) 279C.337 may approve an exemption from traditional competitive bidding, provided that specific findings are made to justify the exemption. ORS 279C.337 allows the District Board to convene as a Local Contract Review Board and hold a public hearing for the purposes of approving an alternative contracting method. District Board meetings may serve as the public hearing.

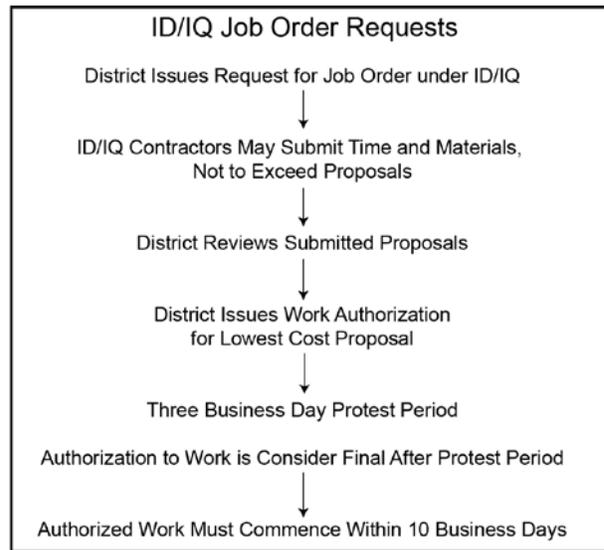
An ID/IQ contracting method is useful when a public agency cannot predetermine the precise scope of work that it will require during the contract period. An ID/IQ specifies a number of base years with renewal options for additional years (as specified in the procurement and resulting contract) to accomplish work beyond what are initially determined, thereby reducing project delays.

The ID/IQ does not authorize work. The ID/IQ allows the District to establish a pool of qualified and available Proposers, through a Request for Proposals (RFP) process, who are then awarded ID/IQ contracts of equal maximum value. The ID/IQ contract value will be up to, but no more than, \$16.5M (the estimated project budget for labor and materials). Contractors with fully executed ID/IQ contracts are then entitled to informally submit competing Job Order Proposals for lead paint stabilization work issued by the District during the contract term. The Job Orders may require up to three years for completion. The District issued Requests for Job Order Proposals will include:

- Site specific scopes of work as conditions allow;
- District painting specifications;
- Assessment location maps; and
- LRRP certification; and
- An established period to conduct site assessments prior to submission of Job Order Proposals.

Job Order Proposals for the ID/IQ contract will be on a time and materials, not to exceed basis. ID/IQ Contractors can submit proposals in response to one or more Requests for Job Order Proposals, all under the same contract. The District will issue a Work Authorization to the lowest cost Proposer. The Work Authorization is considered final after a protest period of three business days.

The diagrams below illustrate the ID/IQ contracting method.



Pursuant to ORS 279C.335, the following are the Staff recommended draft findings in support of an exemption from traditional competitive bidding to utilize the ID/IQ contracting method for the Lead Paint Stabilization Work.

DRAFT FINDINGS

Following are the factors for consideration under ORS 279C.335 (2), followed by the Staff's draft 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 requested exemption will not encourage favoritism or substantially diminish competition. The District will utilize a competitive Request for Proposals (RFP) process for the Lead Paint Stabilization Work. The District will award an ID/IQ contract to all proposers in the competitive range. The RFP is formally advertised with public notice and disclosure of the planned Alternative Contracting Method. Full competition will be encouraged and all qualified Proposers will be invited to submit proposals. The ID/IQ contract award will be based upon an objective review and scoring of proposals by evaluation committee based on selection criteria identified in the RFP. ID/IQ Contractors will then be entitled to informally submit competing Job Order Proposals in response to District-issued Requests for Job Order Proposals. ID/IQ contractors can compete for several work packages all under the same contract. As required by the District's Equity in Public Purchasing and Contracting policy, the evaluation criteria will include outreach to and a plan for utilization of Certified Businesses.

"(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. 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;”

It is reasonable to anticipate between five to ten firms will propose on the Lead paint Stabilization Work based on prior contracting experience and the estimated project budget. The District will conduct outreach to encourage small to medium sized firms to form partnerships with larger firms and submit partner proposals in response to the RFP.

“(B) The construction budget and the projected operating costs for the completed public improvement;”

The construction budget and expected operating budgets are set forth above in the project description. District Office of School Modernization (OSM) staff intends to issue several Requests for Job Order Proposals organized by the priority matrix and phases. Organization of the work packages by school clusters and priorities introduces project efficiency requiring teams of contracted labor to focus on a limited geographic area and on a set number of school sites. The OSM project managers will therefore only need to manage school access for limited school cluster based teams. Managing no more than five to eight teams by school cluster allows for greater planned coordination with facilities operations managers (FAM) who are themselves organized by school cluster. Planned coordination of school access and job orders by school cluster will reduce impacts to daily school operations that could otherwise result in disruption-related costs.

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

Unlike a traditional design/bid/build procurement, the Request for Proposal process for this project allows the District to review and evaluate the experience and qualifications of Proposers based on a number of factors including project management and lead paint stabilization expertise; experience with commercial and/or institutional multiple site or multiple campus projects undertaken with the same client over one or more phases of design and construction; workplace safety record; available labor capacity; and hourly labor rates.

The RFP allows the District to perform a more in-depth financial health review of all RFP Proposers and offer contracts to highly qualified and experienced Proposers with capacity to complete the work within the District’s timeline.

The RFP process also allows price-discovery and competitive evaluation of hourly rates, ensuring competitively priced Proposals.

“(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 inherent flexibility of the ID/IQ process allows the District to limit the number of potential scope increase through a cost-benefit analysis of service level need, thus decreasing the overall project cost.

Value engineering during all phases of the work could therefore decrease the estimated project budget of \$16.6M. The structure of the ID/IQ contract, with a series of Requests for Job Order Proposals and ensuing Work Authorizations, would allow the District to adjust work packages without the need for issuing contract amendments.

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

The challenge of managing a specialized paint stabilization project over multiple campuses and over one or more phases of design and construction is significant. The project requires all firms performing the work to have a Lead-Based Paint Renovation License and all personnel working on the project to have taken a Lead-Based Paint Renovator training course. All work must conform to the Environmental Protection Agency's Lead Paint Renovation, Repair, and Painting (RRP) rules and guidelines. The RFP process allows for review of Proposer expertise not afforded in traditional design/bid/build (low bid) procurement.

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

The alternate procurement method will increase public safety for 94 schools because it will ensure:

- *That the contracted firm and employees hold Lead Paint specific certifications;*
- *That the contracted firm has knowledge of engineering controls and lead safe work methods to protect staff and students from potential environmental hazards;*
- *That there is extensive coordination with facilities administration, custodial and maintenance staff; and*
- *That there is careful coordination with third-party environmental testing labs.*

It is not possible to utilize a traditional design/bid/build procurement method, which presumes a predetermined scope of work with clear limits of extent. The ID/IQ allows Contractors to accomplish work as needed to reduce likely sources of lead paint hazards and in conformance with EPA guidelines thus increasing public safety.

"(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 ID/IQ contracting method will provide the District with the ability to secure contracts with several qualified and experienced contractors with capacity to tackle one or more work packages, thus reducing the likelihood of delays in the work.

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

There will be no impact on the funding of this project due to the ID/IQ process.

"(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 RFP will allow the District to understand the market conditions in terms of available labor capacity and lock in hourly labor rates prior to issuance of Requests for Job Order Proposals under ID/IQ contracts. In so doing, the District can control the impact of market conditions on the project.

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

The Lead Paint Stabilization Work implements a District-wide deteriorated lead paint response plan at 94 sites. Reduction of lead paint hazards is technically complex as it involves several variables including:

- *Firm and employee Lead Paint specific certifications;*
- *Knowledge of engineering controls and lead safe work methods;*
- *Constantly changing conditions due to age of facilities and decades of deferred maintenance; and*
- *Extensive coordination with facilities administration, custodial and maintenance staff; and*
- *Coordination with third-party environmental testing labs.*

Project work must occur during periods of limited school access: Evenings, weekends, and days when schools are not in session. The project work also requires time sensitive coordination with a third party Lead Paint Analytical Labs to ensure conformance with EPA lead paint stabilization guidelines.

The RFP will allow the District to select Proposers who possess demonstrated technical expertise to complete a complex, multi-campus environmental work. The traditional design/build/bid procurement method by comparison offers no assurance that a lowest bidding contractor possesses qualifications or capacity to address the size and complexity of the Lead Paint Stabilization Work.

"(K) Whether the public improvement involves new construction or renovates or remodels an existing structure;"

This project will renovate portions of interior and exterior painted surfaces within 94 existing structures to reduce lead paint hazards. The Request for Proposal process, with evaluation of qualifications, capacity, and experience, will ensure that ID/IQ Contractors have the expertise and capacity to undertake work at as few as eight schools and as many as 94 schools.

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

The Lead Paint Stabilization Work will require construction during times of limited occupancy of the 94 sites. The Request for Proposal process will ensure that ID/IQ Contractors possess an established history of maintaining job site safety.

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

The Lead paint Stabilization Work utilizes four phases of work as described above.

"(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 will staff the project with several senior level project managers and third party consultants to manage the full scope of the Formal Solicitation contracts. Staff assigned to this position is expected to involve the coordination and oversight between multiple sites with challenging schedules and unique situations where deep technical knowledge, expertise and experience are essential.

The District's outside legal counsel has extensive expertise with alternative contracting methods. The District's Purchasing & Contracting, FAM, and Office of School Modernization staff have significant experience utilizing alternative contracting methods, including ID/IQ processes

For these reasons, use of the ID/IQ Alternative Contracting Method for the Lead Paint Stabilization Work is likely to result in substantial cost savings as compared to use of the traditional design/bid/build process within the meaning of ORS 279C.335(2)(b).

CONCLUSION

For the reasons stated above, the draft findings support an exemption from competitive bidding under ORS 279C.335 and utilization of the ID/IQ alternative contracting process for the Lead Paint Stabilization Work.