

March 20, 2003

03-080

ADOPT FINDINGS – GRANT A CLASS EXEMPTION
FROM COMPETITIVE BIDDING REQUIREMENTS AND
AUTHORIZE USE OF ALTERNATIVE CONTRACTING
METHODS FOR THE REMAINING 2000 BOND PROGRAM
CAPITAL IMPROVEMENT PROJECTS

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REPORT: In November 2000, voters approved general obligation bond authority for certain capital improvements ("2000 Bond Program") for Portland Community College (PCC). Oregon public contracting law, ORS 279, requires the use of the low competitive bid method for public improvement projects, which all of the 2000 Bond Program is considered to be, unless an exemption to the low bid method is taken pursuant to ORS 279.015(2). The PCC Board has previously exempted three different 2000 Bond Program projects: the new Southeast Center, a Build-out at the Capital Center, and all Cascade Campus projects, from the low competitive bidding method and authorized the use of the alternative contracting method of Requests for Proposals for a Construction Manager/General Contractor (RFP-CM/GC).

Use of the RFP-CM/GC alternative contracting method has worked very well for the three projects already undertaken and the benefits have been numerous, particularly in relation to the College's MWESB Program aspirations. It would be beneficial to be able to continue to utilize this method when appropriate for specific projects, as well as to be able to utilize other alternative contracting methods, such as the standard RFP method, or even the RFP-Design Build method. Rather than having to request exemptions for each

2000 Bond Program contract, the law allows that a contract class exemption can be granted for all of the remaining 2000 Bond Program work. Staff would then determine which alternative contracting method was best suited to a specific project, the standard RFP, the RFP-CM/GC, the RFP-Design/Build, or even a low bid method. It is not the intention of this proposed class exemption to select one Contractor for the entire remaining 2000 Bond Program. No matter what competitive method is used, the Board would still award every contract and authorize all expenditures for the remaining 2000 Bond Program projects, in accordance with current Board policy. The efficiency gained would be that specific exemptions would not have to be granted by the Board for each project solicitation prior to its issuance.

The continued utilization of RFP based alternate contracting methods will also allow the College to select contractors who have skill at programs and have demonstrated positive results that encourage and utilize MWESB certified firms. The College has previously determined that it is in the public interest to provide contracting opportunities for qualified MWESB firms, and for participation by women and minority individuals as apprentices learning construction trades in the work that the College is undertaking in the 2000 Bond Program. Using RFP based alternative contracting methods will allow the College to evaluate past performance and proposed programs for utilization of those contractors who participate in the process and to select the firm that best supports the aspirations of the College.

An exemption to the low competitive bid method may be granted either for a specific contract or class of contracts, upon adoption of appropriate findings. PCC utilizes the Attorney General's model rules for public contracting, including OAR 137-040-510 through 0590. These provisions of the model rules allow as an exemption to the low bid method, alternative contracting methods, i.e. request for proposals (RFP) including design-build and construction manager/ general contractor (CMGC). The use of alternative contracting methods allows PCC to consider factors other than mere cost in selecting a successful contractor. The Southeast Campus CM/GC contract was for approximately \$15 million and the Cascade Campus contract was for approximately \$43 million. Given the complexity of these projects, the amount of dollars involved, and the time

requirements (and in the case of the Cascade Campus the need to proceed with construction with the least disruption to the students) the use of alternative contracting methods for these projects was appropriate and has been successful.

Given the PCC experience with alternative contracting methods and the amount, complexity and critical time requirements of 2000 Bond Program work remaining, it is recommended that the PCC Board exempt, as a class of contracts, the remaining 2000 Bond Program capital improvement work from the low competitive bid method and authorize the use of RFP alternative methods of contracting. This would allow the use of alternative contracting methods for the 2000 Bond Project work at primarily the Rock Creek and Sylvania Campuses (approximately \$24 million and \$27 million, respectively). In order to utilize alternative contracting methods for the remaining 2000 Bond Program, it is recommended that the Board exempt such work as a class of contracts. Below are appropriate findings in support of such an exemption.

Findings:

The Board of Directors, acting in their capacity as the PCC Local Contract Review Board, finds that the remaining 2000 Bond Program capital improvement work should allow for the use of alternate contracting methods, as described in OAR 137-040-0510 through 0590. Pursuant to ORS 279.015(2) and (6); and OAR 137-040-0530, the Board makes the following findings in support of the exemption of the remaining 2000 Bond Program work from the low competitive bid method and in lieu of low competitive bid, allows the use of RFP alternative contracting methods.

a. The Use of Alternative Contracting Methods Will Not Result in Favoritism or Diminish Competition (ORS 279.015(2)(a))

In order to assure that this exemption does not encourage favoritism or substantially diminish competition, a well-defined, competitive procedure will be followed. First, the remaining 2000 Bond Program projects will all be formally advertised in the Portland Daily Journal of Commerce, the State VIP website, and the PCC Solicitations website, in order to maximize exposure and interest. Market

conditions are good and it is anticipated that many of the contractors who would bid the work under the traditional low competitive bid method will compete in a qualifications-based RFP process. Second, several different or several types of contractors may be used for the various subprojects, as appropriate. Third, an Evaluation Committee will be formed who will review the contractors' proposals in detail, conduct interviews if necessary, and recommend to the President a qualified contractor based on specific evaluation criteria provided in the RFP. The Committee will not include any person with an affiliation or conflict with any proposing contractor. Fourth, the evaluation criteria shall include considerations of the contractors' background, references, experience, capacity, personnel, client relations, schedule, adherence, quality control, problem and solution identification, overhead rate/fee, and MWESB sub-contractor and workforce diversity utilization. Fifth, scoring systems will be utilized to help quantify the Committee's review of each criterion on a contractor-by-contractor basis. The consideration of these performance and cost criteria is important from a public benefit and public safety perspective, and will not encourage favoritism or diminish competition.

Upon completion of the initial contractor evaluation process for each of the various projects, the Committee may in its discretion, and pursuant to the administrative rules, negotiate certain terms and conditions of the contract (including but not limited to price) with the apparent best proposer. The Committee may decide simply to recommend the best proposer without negotiation. However, if negotiation is implemented, and the negotiations fail with the apparent best proposer, the Committee may either recommend the apparent best proposer based on the original proposal or move to negotiations with the next apparent best proposer. This process will continue until the Committee is prepared to recommend one of the proposers to the Board as the best final proposer for the respective work.

b. The Use of Alternative Contracting Methods Will Result In Substantial Cost Savings (ORS 279.015(2)(b))

The use of a qualifications-based RFP process will result in substantial cost savings to the remaining 2000 Bond Program capital improvement work. The use of alternative contracting methods allows for the opportunity to utilize, as

part of the RFP process, economic incentives or disincentives to reflect PCC's purposes related to time of completion, safety or other public contracting objectives, including total least cost mechanisms, such as life cycle costing. Further, if the CM/GC alternative contracting method is employed, pursuant to OAR 137-040-0570 through 0590, it allows for a guaranteed maximum price ("GMP") whereby a total Contract Price is provided in the design phase in order to assist PCC in determining whether the work is within the budget and allowing for design changes during preliminary design rather than after final design is completed. This approach allows for substantial cost savings and increased efficiency. Because the selection process is competitive and price will be a factor, proposers will have every incentive to offer the lowest, most competitive rates and GMP possible. In addition, PCC may negotiate with the successful proposer, in accordance with OAR 137-040-0540, until an acceptable price is reached. This will help define and contain 2000 Bond Program costs. Because there are limited bond funds available to PCC it is important that contract prices be carefully considered and, if desirable, negotiated up front by PCC and the best proposer selected, based upon stated qualifications, in order to avoid excessive change orders and other unanticipated costs or expenses of the work. It is also critical to allocate bond funds between the subprojects to ensure that elements of the bond program, regardless of their start date, and coordinated pricing will assist in meeting this requirement. The additional factors below further indicate that the use of the qualifications-based RFP process will help secure the overall best price for the work.

c. Appropriate Alternate Contracting Methods Will Be Used (ORS 279.015(6))

A qualifications-based process for selecting contractors for the remaining 2000 Bond Program work will utilize a RFP alternative contracting method (PAR 137-040-0510 through 0590). These methods take into account innovative contracting methods and allow flexibility in both Proposal and Contract negotiations. PCC has previously utilized the alternative contracting method of CM/GC on public improvement projects for Cascade Campus and the Southeast Center Campus Project. The alternative contracting methods selection process, as set forth in OAR 137-040-0550 is competitive and contractors will be selected based not only on price but also on their ability to best

complete and coordinate appropriate aspects of the remaining 2000 Bond Program work. The qualifications-based RFP approach is widely used and recognized as one of the preferred alternative approaches where, as here, the work is large, complex and time-constrained. In addition, large construction and remodeling projects are often targeted for the RFP process (rather than the low bid process) because of the intricacies of working within an existing structure while coordinating construction of new facilities.

d. Most Capable Contractor

There are considerable uncertainties and complexities associated with the remaining 2000 Bond Program work as a result of the level of coordination required, and the tight time line for completion. Because of these uncertainties and complexities, the opportunity to select the best overall contractors, considering many factors, will help anticipate and avoid problems and, as a result, realize substantial cost and schedule savings over the traditional low bid procedure where bid price is the only factor. The qualifications-based RFP process will allow PCC to give appropriate weight to the contractors who are not only reasonably priced, but also the most skilled, capable, and experienced in performing new construction, extensive remodeling and other required improvements; in performing the work within the required construction schedule; in delivering facilities that are attractive and functional as demanded by PCC and the community; and in meeting other broad objectives of the Board, such as MWESB utilization and workforce diversity.

e. Time Restrictions

Timely completion and coordination of the remaining 2000 Bond Program work is essential. It is essential that the work be completed in stages, with completion of subprojects timed so that the new college buildings will be opened and the remodeling will be completed on time to meet the needs of PCC. This may create a tight time line for completion of the work, but certainly a manageable one for competent contractors who are capable of properly planning and managing the work. It also creates the need for diligent coordination of the various subprojects.

Where, as here, there are uncertainties and complexities associated with the work, there is potential for delays if qualified and competent contractors are not selected.

Delays could be extraordinarily disruptive to students, and financially devastating because they could cause costly work interruptions and upset the scheduling and cost balance between the subprojects. Shut down and start up costs would be extensive, and failure to meet the schedule could expose the 2000 Bond Program remaining work to lengthy delays. The specific timing and coordination issues involved include, but are not limited to, the following:

- i. The work must be completed on appropriate dates, within a coordinated overall schedule. Even with the slightly expedited RFP process, this will require the selected contractors to complete their work between the award dates and the completion dates for each subproject. Completion dates are typically driven by the schedule of instruction.
- ii. Schedule conditions may change (discussed in Section "f" below), requiring a flexible, adaptable schedule and contractors, and the ability to allocate resources between subprojects as needed.
- iii. The current practice of exempting projects on a project-by-project basis creates the need to add six weeks to every project in order to secure Board approvals for each specific exemption. Exempting the remaining projects as a class will expedite this process while still allowing the Board final approval/ ratification authority of each and every contract award.

f. Site Conditions and Challenges

The nature of the work, along with the complexities that will be encountered, require the use of a qualifications-based RFP process. Negotiated arrangements with the most capable, reasonably-priced contractors will minimize or eliminate problems before they occur, will protect PCC from unforeseen cost increases, and may allow PCC to realize savings from creative solutions and value engineering to problems that will be identified up front. The specific site factors that warrant a qualifications-based RFP process include:

- i. Comprehensive coordination and scheduling of construction activities will be vital given the ongoing and extensive construction and remodeling activities. Moreover, the selected contractors will have to carry out their operations in a unique environment where PCC and the community all have an interest in ensuring that the remaining 2000 Bond Program work is well coordinated.
- ii. Projects completed will be at multiple buildings, and PCC requires consistency among all buildings, specifically for highly specialized projects: upgrading of HVAC, electrical, lighting, fire/life safety, and data/communication infrastructure systems, and new school construction.
- iii. The nature of the work is specialized due to the extensive and complex subprojects involved. The successful completion of the work is dependent on the skill and experience of the selected contractors in performing such work.
- iv. All college buildings must be attractive and functional and it is essential that the selected contractors have the requisite skills and experience to aid in design and to deliver college buildings that meet these needs.
- v. The work carries with it considerable schedule, construction and scope risks. Given the complexities of the work, and the need to coordinate scheduling of the work in order to complete construction by the specified dates poses challenges. In addition, the scope of the work could be significantly altered if hidden site conditions are encountered as work proceeds on each of the subprojects. The qualifications-based RFP process will help identify these risks, understand them up front, and determine a method for handling them when and if they arise. It will also help identify the right contractors who can offer a reasonable price and commit to timely delivery of a quality

product, all the while meeting other objectives of the Board.

g. Further Findings in Support of Alternative Contracting Methods for the Remaining 2000 Bond Program Work

The utilization of RFP based alternative contracting methods, as provided in OAR 137-040-0510 through 0590, for the remaining 2000 Bond Program work, allows the selection of contractors with the skills and experience to handle the technical complexities of the work, and allows for proper scheduling, coordination and sequencing of the work in a manner that will be least disruptive to PCC, its students and the community at large. The use of RFP based alternative contracting methods allows for consideration of qualifications of contractors other than pricing; to ensure selection of contractors, pursuant to appropriate evaluation criteria, that can successfully complete the work in a manner that will be time efficient and least disruptive to the ongoing school activities on the respective campuses.

Finally, using RFP based alternative contracting methods will also provide the College tools with which to evaluate Contractors' MWESB commitment and prior results. By assessing their past and present MWESB outreach and utilization results, we can reduce the risk of unacceptable outcomes while maximizing project MWESB opportunity and participation.

RECOMMENDATION:

It is recommended that the Board of Directors, acting in their capacity as the PCC Local Contract Review Board, adopt the above findings and grant an exemption from the low competitive bid method for the remaining 2000 Bond Program work, as a class of contracts, and in lieu of competitive low bid, authorize the use of RFP alternative contracting methods, as set forth in OAR 137-040-0510 through 0590. The specific form of contracting for the work, including appropriate RFP alternative contracting methods, will be decided by staff upon consideration of which method shall best serve the interests and needs of PCC. The Board will continue to approve/ratify contractor selections.

Director McKinney moved to approve Resolutions 03-067 through 03-081 by consent agenda and it passed unanimously.