

**TIGARD-TUALATIN SCHOOL DISTRICT NO. 23J
RESOLUTION NO. 2324-04**

**RESOLUTION GRANTING AN EXEMPTION FROM COMPETITIVE BIDDING TO
AUTHORIZE THE USE OF A COMPETITIVE REQUEST FOR PROPOSALS
PROCESS THAT CONSIDERS BOTH THE CONTRACTOR'S QUALIFICATIONS
AND THE BID PRICE TO SOLICIT THE CONSTRUCTION CONTRACT FOR THE
FOWLER SEWER REPLACEMENT PROJECT**

WHEREAS, the Tigard-Tualatin School District No. 23J ("District") acts as the local contract review board for the District, and in that capacity, has authority to exempt certain contracts from the competitive bidding requirements of ORS Chapter 279C; and

WHEREAS, ORS 279C.335(2) provides a process for exempting certain contracts from competitive bidding and authorizes the selection of a contractor through the request for proposal ("RFP") process; and

WHEREAS, draft findings ("Findings") addressing competition, operational, budget and financial data, public benefits, specialized expertise required, market conditions, technical complexity, public safety and funding sources recommended by the District were available 14 days in advance of the public hearing on this Resolution; and

WHEREAS, the District determines that the **Fowler Sewer Replacement Project** should be constructed using a process that considers both the Contractor's qualifications and the bid price ("Qual + Bid").
NOW THEREFORE,

The District finds as follows:

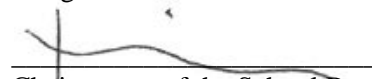
1. The District adopts the Findings set forth in Exhibit A to this Resolution.
2. The exemption of the Fowler Sewer Replacement Project contract from competitive bidding will promote competition and will not encourage favoritism, because the Contractor will be chosen by the request for proposals process using the Qual + Bid method.
3. The exemption of the Fowler Sewer Replacement contract from competitive bidding is likely to result in cost savings to the District, for the reasons set forth in the adopted Findings.

NOW, THEREFORE, IT IS HEREBY RESOLVED by the District as follows:

The contract for construction of the **Fowler Sewer Replacement Project** shall be exempt from competitive bidding and shall be selected by the use of a competitive Request for Proposal process that considers both the Contractor's Qual + Bid in accordance with the District's public contracting rules and the process described in the Findings.

This Resolution shall take effect on October 23, 2023.

ADOPTED this 23rd day of October, 2023, by the Tigard-Tualatin School District No. 23J.



Chairperson of the School Board
Tigard-Tualatin School District No. 23J

ATTEST:



Superintendent

**TIGARD-TUALATIN SCHOOL DISTRICT NO. 23J
RESOLUTION NO. 2324-04
EXHIBIT A**

FINDINGS OF FACT

**IN SUPPORT OF AN EXEMPTION FROM COMPETITIVE BIDDING TO
AUTHORIZE THE USE OF A COMPETITIVE REQUEST FOR PROPOSALS
PROCESS THAT CONSIDERS BOTH THE CONTRACTOR'S QUALIFICATIONS
AND THE BID PRICE TO SOLICIT THE CONSTRUCTION CONTRACT FOR THE
FOWLER SEWER REPLACEMENT PROJECT**

1. General

ORS 279C.335(2) permits a local contract review board to exempt contracts from traditional competitive bidding upon approval of findings of fact showing that an alternative contracting process is unlikely to encourage favoritism or diminish competition and that the process will result in cost savings to the School District. The Tigard-Tualatin School District ("District"), through its School Board, acts as the Local Contract Review Board ("LCRB") for the District.

ORS 279C.400 – ORS 279C.410 describe the Request for Proposals method of solicitation as an alternative to traditional competitive bidding. Pursuant to ORS 279C.410(8), a public Agency using the Request for Proposals method may award a contract to the responsible proposer "whose proposal is determined in writing to be the most advantageous to the contracting agency based on the evaluation factors set forth in the request for proposals and, when applicable, the outcome of any negotiations authorized by the request for proposals."

ORS 279C.330 defines "Findings" and identifies specific information to be provided as a part of the District justification. Under ORS 279C.335(5) a public hearing must be held before the findings are adopted, allowing an opportunity for interested parties to comment on the draft findings.

PURPOSE OF THESE FINDINGS: The Tigard-Tualatin School District will hold a public hearing as required by ORS 279C.335 and to consider the following findings with respect to the issue of whether Tigard-Tualatin School District Fowler Sewer Replacement Project ("Project"), as defined herein, should be exempt from competitive bidding to authorize the use of a competitive request for proposals process that considers both the contractor's qualifications and the bid price ("Qual + Bid") to solicit the construction contract to perform the mechanical upgrades.

2. Background

Tigard-Tualatin School District serves 11,466 students in 17 schools.

The sanitary sewer pipe at Fowler Middle School built in 1973 is corroded and in need of replacement. A portion of the existing pipe crosses Summer Creek and is particularly vulnerable because it is partially submerged in the creek and the banks are eroded around concrete pipe

supports. This project's exterior work will replace and move the pipe out of the stream. Work in or near the stream is considered sensitive lands work. Interior work will tear up floors and finish work to replace several sections of corroded pipe within the building.

Construction Excise Tax will fund this project. Work is expected to be conducted during the summer of 2024.

The nature of this Project will require strategic planning, complicated scheduling, clear and concise accounting, and critical coordination of construction and target value design integrated with necessary safety measures. The project will be governed by significant schedule constraints to enable all construction to be completed by Fall 2024. Therefore, it becomes critical to maintain both the schedule and budget of this Project.

In consideration of these facts, an alternate method of construction of these public improvements should be considered. Therefore, the following findings support an exemption from competitive bidding and the use of the Request for Proposal based upon Qual+Bid as an alternative method of construction contracting.

FINDINGS OF FACT

SUMMARY FINDINGS

Use of the Qual+Bid process for the Project complies with the criteria outlined in ORS 279C.335(2):

1. It is unlikely the exemption will encourage favoritism or substantially diminish competition. The request for proposals selection process will be competitive based upon relevant selection criteria including qualifications and bid price and will be open to all interested proposers as described in the findings below.
2. The exemption could result in substantial cost savings to the District. The District has found several areas in which substantial cost savings to the District might be achieved. Also, value will be added to the Project that could not otherwise be obtained by ensuring a qualified contractor that is experienced with this type of site work on sensitive lands along with short summer deadlines to abate materials and replace sewer lines within the building.

SPECIFIC FINDINGS which substantiate the summary findings are as follows:

1. **The Contractor will be selected through a competitive process in accordance with the qualifications-based selection process authorized by the District that will include bid price. Therefore, it is unlikely that the awarding of the construction contract for the Project will encourage favoritism or substantially diminish competition. This finding is supported by the following:**

- A. SOLICITATION PROCESS:** Pursuant to ORS 279C.360, the Qual+Bid solicitation will be advertised at least once in the Daily Journal of Commerce, and in as many additional issues of publication as the District may determine.
- B. FULL DISCLOSURE:** To ensure full disclosure of all information, the Request for Proposals solicitation package will include:
- a. Detailed Description of the Project
 - b. Contractual Terms and Conditions
 - c. Selection Process
 - d. Evaluation Criteria
 - e. Role of Evaluation Committee
 - f. Provisions for Comments
 - g. Complaint Process and Remedies Available
- C. COMPETITION:** As outlined below, the District will follow processes which maintain competition in the procurement of a Qual+Bid Contractor.
- a. The District anticipates that competition for this contract will be similar to that experienced in other Projects of this type. The competition will remain open to all qualifying proposers.
 - b. The District has been communicating with the construction contracting community as well as the engineering consulting community about the Qual+Bid contracting method.
 - c. The evaluation and solicitation process employed will be open and impartial. Selection will be made on the basis of final proposal scores derived from qualifications, price and other components, which expand the ground of competition beyond price alone to include experience, quality, innovation factors, etc.
- D. SELECTION PROCESS:** Other highlights of the selection process will include:
- a. A pre-proposal vendor conference will be announced and held. This conference will be open to all interested parties. During this pre-proposal conference, as well as any time prior to ten (10) days before the close of the solicitation, interested parties will be able to ask questions, request clarifications and suggest changes in the solicitation documents if such parties believe that the terms and conditions of the solicitation are unclear, inconsistent with industry standards, or unfair and unnecessarily restrictive of competition.
 - b. The evaluation process will determine whether a proposal meets the screening requirements of the RFP, and to what extent. The following process will be used:
 - Proposals will be evaluated for completeness and compliance with the screening requirements of the RFP. Those proposals that are materially incomplete or non-responsive will be rejected.

- Proposals considered complete and responsive will be evaluated to determine if they meet and comply with the qualifying criteria of the RFP. If a proposal is unclear, the proposer may be asked to provide written clarification. Those proposals that do not meet all requirements will be rejected.
 - Proposals will independently be scored by the voting members of the Evaluation Committee. Scores will then be combined and assigned to the proposals.
 - The bid price will be one of the factors that is considered as part of the evaluation.
 - The Evaluation Committee will convene to select from the highest-scoring proposers, a finalist(s) for formal interview(s).
 - The Evaluation Committee may conduct an interview(s).
 - The Evaluation Committee will use the interview to confirm the scoring of the proposal and to clarify any questions. Based upon the revised scoring, the Evaluation Committee will rank the proposers, and provide an award recommendation.
 - The Tigard-Tualatin School District will negotiate a contract with the top-ranked firm. If an agreement cannot be reached, the District will have the option to enter into an agreement with the second-ranked firm, and so forth.
- c. Competing proposers will be notified in writing of the selection of the apparent successful proposal and will be given seven (7) calendar days after receipt of the notice to review the RFP file and evaluation report at the District Office. Any questions, concerns, or protests about the selection process will be subject to the requirements of the OAR 137-049-0450, must be in writing, and must be delivered to the Tigard-Tualatin School District within seven (7) calendar days after receipt of the selection notice. No protest of the award selection shall be considered after this time period.

2. FINDING: The awarding of construction contract(s) for the Project using the Qual+Bid method will likely result in substantial cost savings to the District. This finding is supported by the following information required by ORS 279C.335(2)(b) and ORS 279C.330.

A. **PERSONS AVAILABLE TO BID.** Based upon our outreach to the contracting community, the District does not expect that the pool of interested contractors will be materially affected by this process.

B. OPERATIONAL, BUDGET, FINANCIAL DATA

- a. **BUDGET:** The District has a fixed budget available for the “Project” that cannot be exceeded. The completion date cannot be exceeded.
- b. **SAVINGS:** Under the Qual+Bid method the District will enjoy the savings associated with competitive bidding in an active market because price will be one of the evaluation factors.
- c. **FUNDING SOURCE:** The Project will be funded by Construction Excise Tax.

C. PUBLIC BENEFITS: The District will benefit from QUAL+BID by ensuring that the selected contractor has a complete understanding of the District’s needs, the architect’s design intent, the scope of the Project, and the operational needs of the Project and that has experience in constructing this type of project.

D. VALUE ENGINEERING: The QUAL+BID process will ensure that the selected contractor has experience and qualification to suggest alternatives or improvements that will save District funds while achieving the future goals of the project.

E. SPECIALIZED EXPERTISE: Selection of a contractor using a QUAL+BID framework will ensure that the selected contractor will have the experience and expertise to construct the project. The consideration of the bid price as a factor in the selection will ensure that the District obtains this expertise at the best price. The construction Project is highly complex because it involves significant and specialized construction over a short-mandated period of construction.

F. PUBLIC SAFETY: All work must be coordinated to avoid safety and security risks to students, employees, and the public as well as ensure efficiency in construction. The coordination between the District, designer and an experienced QUAL+BID contractor will assure coordination of work and consideration for the safety of vehicular and pedestrian paths crossed by the Project. In addition, QUAL+BID contracting of the Project will ensure that public safety and security is being effectively managed by a qualified contractor.

G. REDUCTION OF RISK TO THE CONTRACTING AGENCY AND THE PUBLIC. Intricate projects with very tight timelines can present risks to a contracting agency through contractors that are not familiar with or have little experience with the construction, sequencing or installation of complicated technical components over tight deadlines. Consideration of experience and expertise through a request for proposals process will ensure that the Project will be handled by a contractor who understands these issues and has experience addressing them.

H. SOURCE OF FUNDING. The District intends to fund the project with Construction Excise Tax. Use of the Qual+Bid RFP process will not affect this funding source.

I. **MARKET CONDITIONS:** As well as the multitude of construction market factors that exist today in Oregon (e.g., competition of other Projects, environmental issues that limit construction materials, variable bid market, lack of skilled workers, etc.), the difficulty in establishing the best work sequence complicates our ability therefore, to accurately estimate the cost of this Project. The economy today makes it necessary for many contractors to bid for jobs for which they might not be qualified. Alternative contracting methods will be more likely to result in a more experienced and better suited contractor for this Project than the usual competitive procurement. The complexities which need to be addressed to accomplish the tasks are not well served by the usual competitive procurement. The lowest bidder may not be the best suited for this particular Project.

J. **TECHNICAL COMPLEXITY:** Technical expertise will be required for quality management, scheduling, estimating, and to successfully access areas that have significant hinderances due to existing conditions. The complexity and scheduling issues discussed in the Background section above will require special expertise. However, the Project will draw upon existing skills and capabilities available in the construction community, as the Project presents overall challenges similar to those faced on many public works Project. A high level of coordination among the District and all the design and construction entities is required and facilitated by an experienced contractor. As noted above, the request for proposals method of selection will enable the District to ensure that the selected QUAL+BID has the necessary skills and experience to address this technical complexity.

K. **NEW CONSTRUCTION/RENOVATION/OCCUPATION STATUS.** As noted above, the Project is a major repair to an existing facility that may be occupied during construction, requiring a contractor with expertise in school and public construction safety measures.

L. **PHASING.** The Project will be constructed in one phase.

M. **DISTRICT EXPERTISE.** District staff has substantial expertise with construction. In addition, Staff's consultants OTAK CPM and Miller Nash Graham & Dunn LLP have years of experience with alternative contracting methods, including selection by competitive requests for proposal.