

PROPOSED FINDINGS
PURSUANT TO ORS 279C.335 AND OAR 137-049-0610, -0620, -0630, -0645, -0650, -0670
BY THREE RIVERS SCHOOL DISTRICT BOARD OF DIRECTORS FOR
THREE RIVERS SCHOOL DISTRICT FOR THE THREE RIVERS SCHOOL DISTRICT BIO-
MASS BOILER PROJECT 2010

Three Rivers School District Board of Directors for Three Rivers School District (“the Board”), sitting as a local contract review board for Three Rivers School District pursuant to a designation filed with the Three Rivers School District Board of Directors.

On May 17, 2010 Three Rivers School District (“the District”) requested an exemption from the competitive bidding requirements of ORS Chapter 279C.335(1) pursuant to ORS 279C.335(2) for a specified project, known as the Three Rivers School District Bio-Mass Boiler Project 2010 (“the Project”) by the District to enable it to utilize an alternative contracting method. The specific alternative contracting method which Three Rivers School District wishes to utilize is a two-stage contractor selection process consisting of:

- (a) a request for qualifications (“RFQ”) to identify contractors who are highly qualified by experience, personnel and other resources to perform the Project in accordance with the District’s needs; and
- (b) an invitation to bid (“ITB”) in accordance with the competitive bidding standards and procedures of the Oregon Public Contracting Code, for which the potential bidders are limited to those contractors that have been pre-selected through the RFQ process.

The Board, having considered the evidence at the public hearing concerning this request, finds:

- 1. The District is a common school district organized and existing under the laws of the state of Oregon.
- 2. The Board is the local contract review board for the District.
- 3. On or about May 18, 2010, the District will issue an RFQ for the Project, and will thereafter issue an ITB for the Project to the potential bidders who have been pre-selected through the evaluation of responses to the RFQ.
- 4. The District has the funds necessary to complete the Project.
- 5. Substantial cost savings to the District and thereby to the Public could be realized by ensuring that the contractor retained for the Project is highly qualified to perform work of that nature, which is reasonably calculated to:
 - (a) produce savings in the District’s costs for project management;
 - (b) reduce the number and complexity of requests for information and requests for clarification generated by the contractor during the course of the Project;
 - (c) reduce the number, complexity and dollar amount of change order requests generated by the contractor during the course of the Project;
 - (d) streamline the process for submission and approval of shop drawings;

- (e) improve the efficiency and accuracy of the commissioning of the Project, whereby the system is subjected to a functional performance test by an independent third party to confirm that the system functions and performs in accordance with the approved design;
 - (f) simplify the close-out process for the Project by reducing the number and magnitude of “punch list” items requiring correction by the contractor; and
 - (g) reduce post-completion deficiencies in the operation of the system, which in turn will reduce the burden on the District of processing warranty claims.
6. All of the factors identified above as items 5(a) through 5(g) are also reasonably calculated to compress the time required for the Project and to reduce the risk of schedule overruns through increased contractor efficiency and accuracy. Allowing the Project to be completed in the shortest possible time will produce additional savings for the District and the Public through reductions in utility expenditures, savings in overhead and related Project costs, and avoiding duplication of expenditures.
 7. The use of the RFQ / ITB approach as an alternative contracting method would allow the District to reduce the risk of selecting an underqualified or minimally-qualified contractor for the Project which can be an incident of the “pure” competitive-bid process, yet would provide the District with the least-cost benefit of competitive bidding during the second stage of the selection process. This would permit the District to realize the maximum benefit from the already-completed design documents for the Project.
 8. Operational, budget and financial data - The project is being performed as an energy conservation project funded by AARA Federal Stimulus Grant. The Project budget is critical in determining the energy savings components of the funding sources and will need to have very detailed pre- and post-project accounting. Because of requirements and limitations imposed by the funding sources, it is essential that cost overruns be minimized. For the reasons cited in Findings 5 and 6 above, it is reasonable to anticipate that selection and retention of a highly-qualified contractor will substantially improve the prospects of adhering to the Project budget.
 9. Public benefits will be realized through the costs savings described above.
 10. Value engineering – It is reasonable to anticipate that utilizing a highly qualified contractor will produce beneficial engineering and construction design changes during the course of the Project. A highly qualified contractor selected in the manner contemplated by these Findings is more likely to recognize opportunities for value engineering, to be able to effectuate those opportunities, and to participate appropriately in the calculation of the cost impacts of such changes.
 11. Specialized expertise required - Specialized expertise in mechanical and control systems is required for the Project, to reduce the risk of cost and schedule overruns through increased contractor efficiency and accuracy. Enhancing its ability to select a highly-qualified contractor with the requisite specialized expertise is the primary goal of the District’s use of the RFQ / ITB alternative contracting methodology.
 12. Public safety – Public safety considerations are not a significant factor for the Project or the means of awarding the contract.

13. Market conditions - Current market conditions are a concern. The construction industry in the region is depressed. Due to the lack of available work, many contractors who lack the specialized expertise required for the Project may nevertheless attempt to bid the Project. In a competitive-bid process lacking the rigorous pre-selection contemplated by these Findings, the District could be forced to award the contract for the Project to a minimally-qualified contractor who (whether deliberately or by oversight) underestimated the costs of the Project. This in turn would deprive the District and the public of the benefits described in the preceding Findings, and would increase the risk of delays, costs overruns and deficiencies in work quality.
14. Technical complexity – Because of the District’s needs for a properly-functioning and integrated system, as well as the performance criteria imposed by the funding sources, the Project must be built to exacting specifications and must function in accordance with design standards. The funding sources mandate that the Project system be subjected to a functional performance test by an independent third party to confirm that the system functions and performs in accordance with the approved design. Utilizing a highly qualified contractor selected in accordance with these Findings will help to ensure the Project is built in accordance with the applicable specifications and will improve the efficiency and accuracy of the commissioning of the Project.
15. Funding sources – See Finding 8 above.
16. The District has agreed to engage consultants from Willamette Education Service District and R&W Engineering, Inc. who have substantial training and experience, so that the District will have the resources knowledgeable in use of the RFQ and other alternative contracting methods, so as to ensure that using the RFQ / ITB alternative contracting method for the Project will result in appropriate savings and other benefits to the District and to provide the ability and capacity to manage the Project.
17. The District will utilize a two-step solicitation process. The District anticipates using the RFQ and ITB approach to choose the contractor in the fairest and most competitive selection process possible from the qualified contractor companies in the contract area. The RFQ will be formally advertised with public notice and disclosure that the ITB selection method will be utilized. Competition will be encouraged. The award to the contractor chosen by the District from among the potential bidders pre-selected through the RFQ process will be made based upon the lowest responsive bid received by the District, and an opportunity will be provided to protest the award in accordance with Oregon law.
19. The District anticipates that the minimum requirements for prospective contractor applicants shall include:
 - (a) Substantial experience of the key individuals who comprise the team for the contractor, with a clear identification of the roles to be completed, the relevant qualifications and experiences with installation of systems similar to the Project;
 - (b) Substantial relevant experience with the construction of projects of similar size and complexity;
 - (c) A clear description of the overall approach to ensure the Project’s schedule is met; and
 - (d) A review of three projects of similar size and complexity and references of owner’s representatives and architects on each of the prior projects.

Based upon the findings set forth above, the Board, sitting as the local contract review board for the District on its request for exemption from the public contracting rules under ORS 279C.335(2), concludes:

1. Notice of public hearing was published in at least one trade newspaper of general statewide circulation a minimum of 14 days prior to the hearing.
2. A copy of the notice is attached hereto as Exhibit "A" and incorporated by this reference.
3. At the public hearing, the Board gave an opportunity for any interested party to appear and present comment.
4. Based upon the notice to the public, and the use of the two-step RFQ / ITB process as the manner of selecting the proposed contractor for the Project, it is unlikely that an exemption from the competitive bidding requirements of the public contracting statutes will encourage favoritism in the awarding of a public contract for the Project, or substantially diminish competition for public contracts of the like nature.
5. It is reasonably anticipated that the awarding of a public contract using the alternative method of RFQ / ITB pursuant to an exemption under ORS 279C.335(2) will result in a substantial cost saving to the District by increasing the efficiency and accuracy of the contractor's performance of its work on the Project, by reducing the District's administrative costs and burden for the Project, and by reducing the time required for completion of the Project, which will allow the District to occupy the premises with minimum impact on the educational programs or operations of the District and realize energy savings in the shortest time possible.
6. The District is granted an exemption under ORS 279C.335(2) from the competitive bidding requirements of ORS 279C.335(1) for the Project, so that it can utilize the RFQ / ITB method as the alternative contract method.

DATED this May 17, 2010.

**THREE RIVERS SCHOOL DISTRICT
BOARD OF DIRECTORS**

By: _____
Its Chairperson

By: _____
Its Vice-Chairperson