



AGENDA*
Regular Commission Meeting
January 10, 2024
9:30 a.m.

The Board of Commissioners of the Port of Portland will hold its monthly meeting in the Chinook Room on the 8th floor of the Port of Portland Headquarters Building, located at 7200 N.E. Airport Way in Portland, Oregon 97218. The meeting will also be held virtually for those Commissioners, members of the public, presenters and staff unable to attend in person.

The meeting will be streamed live on the Port's website and YouTube channel.

Written public comments can be submitted via email at testimony@portofportland.com. If you wish to provide live testimony, you may do so in person, or you may send an email with your first and last name to testimony@portofportland.com and you will be provided with a link to testify via MS Teams. The deadline to sign up for live testimony via MS Teams is noon on the day prior to the Port of Portland Commission meeting.

Minutes

Approval of Minutes: Regular Commission Meeting – December 13, 2023

Executive Director

Approval of Executive Director's Report – December 2023

Public Comments

General Discussion

Impact Reduction Program

SHEREE TEMPLE

Action Item

1. EXEMPTION FROM COMPETITIVE BIDDING FOR PUBLIC IMPROVEMENT CONTRACT – SOUTH TERMINAL HEATING SYSTEM UPGRADE – PORTLAND INTERNATIONAL AIRPORT

ALAN DAKESSIAN

Requests approval of an exemption from competitive bidding requirements, enabling the Port of Portland to use a competitive request for proposals process to procure a public improvement contract for piping and control system construction services for the South Terminal Heating System Upgrade project at Portland International Airport.

**EXEMPTION FROM COMPETITIVE BIDDING FOR PUBLIC IMPROVEMENT CONTRACT –
SOUTH TERMINAL HEATING SYSTEM UPGRADE – PORTLAND INTERNATIONAL
AIRPORT**

January 10, 2024

Presented by: Alan Dakessian
Engineering Project Manager**REQUESTED COMMISSION ACTION**

This agenda item requests re-approval of an exemption from competitive bidding requirements, enabling the Port of Portland (Port) to use a competitive request for proposals (RFP) process to procure a public improvement contract for piping and control system construction services for the South Terminal Heating System Upgrade project at Portland International Airport (PDX).

SUMMARY OF REVISIONS

This second, revised request incorporates updates to the Findings in Support of an Exemption from Competitive Bidding (Findings) that the Port's Contract Review Board (CRB) previously approved in September 2023. After that exemption was granted, the Port issued an RFP and received two proposals. Both proposals significantly exceeded the Port's estimated cost and allocated budget for the project. Due to the magnitude of the discrepancy, Port staff determined that it was not in the Port's best interests to negotiate with either proposer. Instead, the Port elected to review the project scope and design and re-estimate the project to determine next steps.

After the review, Port staff concluded that the design was adequate and clearly reflected the scope of work. The re-estimate projected a construction cost of approximately \$6 million, versus the \$4 million originally estimated. The Port also determined that the scope of work for replacement of the heating, ventilation and air conditioning (HVAC) digital controllers, valued at \$0.5 million, could be deferred if necessary. The Port decided to re-issue the RFP to solicit new proposals. Because of changes to certain assumptions from the September 2023 Findings, revised Findings have been developed for CRB review.

These revised findings reflect the following changes:

- The estimated cost of construction has been raised to \$5.5 million.
- Replacement of the HVAC digital controllers is now a "Port option" in the cost proposal, allowing the Port to include that work if doing so is in the Port's best interests.
- The project schedule has been updated to reflect the time required to solicit new proposals.
- The project budget has been updated to reflect the allocation of contingency dollars to increasing the construction cost budget.

EXEMPTION FROM COMPETITIVE BIDDING FOR PUBLIC IMPROVEMENT CONTRACT – SOUTH TERMINAL HEATING SYSTEM UPGRADE – PORTLAND INTERNATIONAL AIRPORT

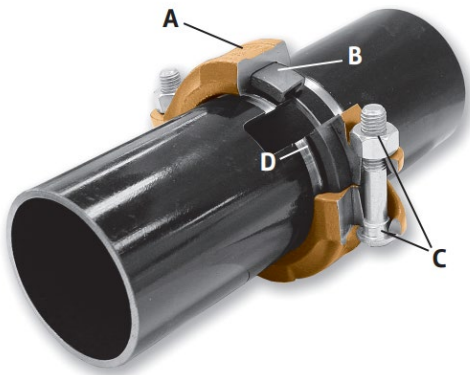
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The information presented below is repeated from the September 2023 Commission agenda item, with minimal updates to reflect the revisions summarized above.

BACKGROUND

The Terminal Expansion South program installed a mechanically joined (or coupled) piping system (see picture below) in the 1990s and early 2000s to distribute hot water to HVAC equipment for use in heating the facility. The couplings at the piping joints have been failing due to age and the use of materials that are not suitable for the heating application. When a coupling fails it creates a leak that can cause damage to the facility, as well as to Port and tenant property and equipment. Repairs are costly and generally require shutdowns that can impact comfort in the facility. In extreme cases, a leak can damage critical equipment, impacting airport operations.



- A: Housing
- B: Gasket
- C: Bolts and Nuts
- D: Groove on Pipe

PROJECT SUMMARY

This project includes the following key scopes of work:

- Installation of a new system of valves and hose connection points in the main piping located in the South utility tunnel to allow the contractor to drain and work on portions of the hot water piping system while leaving the rest of the system operational.
- Removal and replacement of drywall and other materials to provide access into the shafts that contain the vertical piping risers.
- Modifications to ceilings to provide access to the overhead piping.
- Removal of all mechanical couplings on piping, valves and fittings (tees, elbows, etc.).

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- Welding all connections on piping, valves and fittings.
- Re-insulation of all exposed piping.
- Replacement of selected heating control valves that are beyond their useful life.
- At the Port's option, replacement of HVAC digital controllers that are beyond their useful life.

EXEMPTION FROM COMPETITIVE BIDDING

With limited exception under Oregon law, public agencies must deliver public improvement projects by selecting contractors based upon competitive bid, often referred to as the design-bid-build (DBB, or “low bid”) method. Using a competitive bid process, a public improvement contract is awarded to the responsive bidder that submits the lowest-priced bid.

Oregon law also allows a public agency's CRB to grant an exemption from competitive bidding requirements, allowing the agency to award public improvement contracts using an alternative contracting method. Alternative contracting methods allow public agencies to consider factors in addition to price when selecting a contractor, such as experience, qualifications, safety and small business participation.

The Port has successfully used alternative contracting methods on numerous projects, including the PDX Parking Additions and Consolidated Rental Car Facility project and the Ground Source Heat Pump project.

Port staff considered multiple available contracting methods to deliver this project, including traditional low bid and Construction Manager/General Contractor (CM/GC). As discussed in more detail in the Findings in Support of an Exemption from Competitive Bidding (Findings) that are attached as Exhibit A, this project includes high-risk work in occupied/operational spaces within the airport. This includes removal of walls for access to shafts and cutting and welding of steel pipe. For primarily these reasons, Port staff recommends the use of an alternative contracting method to deliver this project, to help ensure that a qualified contractor safely and capably performs this critical work.

Specifically, the Port intends to conduct a competitive RFP procurement to select a contractor to deliver this project. Despite using an RFP instead of a low bid solicitation, the Port plans to award a traditional Port public improvement contract rather than an alternative form of contract such as CM/GC or design-build. Conducting an RFP will allow the Port to select the contractor based on various criteria, such as:

- The proposer's project management, safety and scheduling approaches to ensure timely and safe delivery.
- Cost, based on a fixed price.

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- The proposer’s corporate and individual qualifications and experience.
- Shared prosperity, including the proposer’s small business participation plan and social equity considerations.

As discussed in the revised Findings, this selection process is considered unlikely to encourage favoritism in awarding the contract or to substantially diminish competition for the contract. It would also likely result in substantial cost savings and other substantial benefits to the Port. Notice of the re-solicited RFP would be advertised publicly and posted on the Port’s online vendor contracting portal.

After public notice, and as required under Oregon law, the Port held a second public hearing on January 5, 2024, to take comments on the revised draft Findings. The final Findings attached to this agenda item summarize the results of the hearing. The Port now seeks the Commission’s approval of the revised Findings, acting in its capacity as the Port’s CRB. The Port also requests that the CRB grant an exemption from competitive bidding to allow the Port to procure the project public improvement contract using an RFP.

SCHEDULE

Preliminary design	August 2021 – December 2021
Design	January 2022 – August 2023
CRB approval (exemption from competitive bidding)	January 10, 2024
Commission approval (award public improvement contract)	March 13, 2024
Construction	April 2024 – April 2026

BUDGET

Public improvement contract (construction)	\$5,500,000
Other contracted work (e.g., exposing existing conditions during design and allowance for environmental remediations)	\$285,000
Personal services contract (design)	\$350,000
Port staff and contracted services	\$1,335,000
Contingency	\$1,120,000
Total budget	\$8,590,000

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The contingency, representing 13% of the project cost, is considered reasonable given the risk profile for the project and the complexity of the work site.

The project costs will be funded by the Airline Cost Center, which is composed primarily of revenues from the Port's commercial airline service business lines.

EXECUTIVE DIRECTOR'S RECOMMENDATION

The Executive Director recommends that the following resolutions be adopted:

BE IT RESOLVED, That the Port of Portland Commission, in its capacity as the Port of Portland Contract Review Board, approves the findings set forth in the attached Exhibit A, "Findings in Support of an Exemption from Competitive Bidding: South Terminal Heating System Upgrade Project," dated January 5, 2024; and

BE IT FURTHER RESOLVED, That the Port of Portland Commission, in its capacity as the Port of Portland Contract Review Board, specifically exempts from competitive bidding the public improvement contract for the South Terminal Heating System Upgrade project, consistent with the terms presented to the Commission.

**FINDINGS IN SUPPORT OF AN
EXEMPTION FROM COMPETITIVE BIDDING
PDX South Terminal Heating System Upgrade**

Exemption Number: 202310451

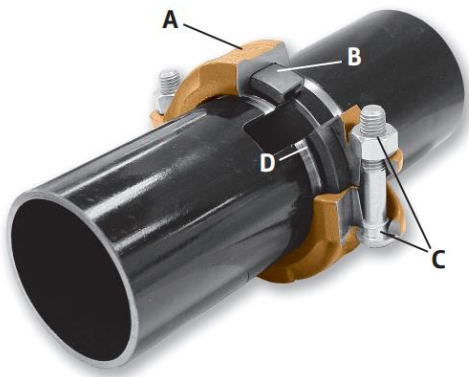
Date of Draft Findings: December 22, 2023

Date of Final Findings: January 5, 2024

Date and time of Public Hearing: January 5, 2024 and Time: 2:00 PM

1 PROJECT BACKGROUND

The Portland International Airport (PDX) Terminal Expansion South (TES) program in the 1990's and early 2000's installed a mechanically joined (or coupled) piping system to distribute hot water to HVAC equipment for use in heating the facility (see Photo #1 below). The couplings at the piping joints have been failing due to age and the use of materials that are not suitable for the heating application. When a coupling fails, it creates a leak which can cause damage to the facility, as well as to Port of Portland and tenant property and equipment. Repairs are costly and generally require shutdowns which impact comfort in the facility. In extreme cases, a leak can damage critical equipment, impacting airport operations.



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Photo #1: Mechanical Coupling (*courtesy of Gruvlok*)

The same type of pipe coupling was used in the PDX Terminal Expansion North (TEN) program in the 1990's. A similar project to address the North side of PDX was successfully completed in 2019.

2 PROJECT DESCRIPTION

The project elements include, but are not necessarily limited to:

- Installation of a new system of valves and hose connection points in the main piping located in the utility tunnel to allow the contractor to drain and work on portions of the hot water piping system while leaving the rest of the system operational.

- Removal (and replacement) of sheetrock and other materials to provide access into the shafts that contain the vertical piping risers.
- Modifications to ceilings to provide access to the overhead piping.
- Removal of all mechanical couplings on piping, valves, and fittings (tees, elbows, etc.).
- Welding all connections on piping, valves, and fittings.
- Re-insulation of all exposed piping.
- Replacement of heating control valves that are beyond their useful life.
- As an option exercisable in the Port's discretion, replacement of HVAC digital controllers that are beyond their useful life.

Most of this work will occur in areas that are open to the public (mostly on the enplaning level) and within secure areas that support airport operations (mostly on the deplaning level). The work involves torch cutting and welding of steel pipe which requires hot-work permits and special safety precautions to minimize the risk of injury to staff and the public, and the risk of starting a fire in the terminal.

3 ALTERNATE CONTRACTING METHODS; EXEMPTIONS FROM COMPETITIVE BIDDING

3.1 Under Oregon's Public Contracting Code (the "Code"), public agencies generally must procure public improvement contracts using competitive sealed bidding, awarding the contract to the lowest responsible bidder.¹ However, the Code also embraces alternate contracting methods for complex public improvement projects, enabling agencies to select contractors based on factors in addition to price.

3.2 A stated policy goal of the Code is to: "[p]rovide a public contracting structure that can take full advantage of evolving procurement methods as they emerge within various industries, while preserving competitive bidding as the standard for public improvement contracts unless otherwise exempted."² Similarly, the Port's Contracting Rules promulgated under the Code are intended to: "maximize the Port's flexibility in adjusting its contracting procedure to the specific circumstances of each procurement, and to ensure that the Port receives the maximum benefit from the public funds expended on public contracts."³

3.3 Under the Code, when appropriate, an agency's local contract review board (CRB) may direct the use of alternate contracting methods that "take account of market realities and modern practices and are consistent with the public policy of encouraging competition."⁴

3.4 An agency's CRB directs the agency to use an alternate contracting method by granting an exemption from competitive bidding.⁵ In granting the exemption the CRB must require and approve or disapprove written "findings"⁶ that support the award of the contract without the competitive bidding requirement.⁷ The findings must show that the exemption of the contract complies with the requirements set forth below under "Findings."⁸

¹ ORS 279C.335(1); ORS 279C.375(1)

² ORS 279A.015(6)

³ Port Contracting Rule A.015

⁴ ORS 279C.335(4)(a)

⁵ ORS 279C.335(2)

⁶ "Findings" means the justification for a conclusion that an agency, in seeking an exemption from competitive bidding, reaches based on the considerations set forth in this document under the heading "Findings." ORS 279C.330(2)

⁷ ORS 279C.335(4)(b)

⁸ ORS 279C.335(4)(b)

4 PROPOSED PROCUREMENT METHOD

4.1 For the reasons discussed above and as further explained below, for this project Port staff propose to use an open, competitive Request for Proposals (RFP) procurement process to select a contractor and award a public improvement contract. Notice of the RFP would be advertised publicly and posted on the Port's online vendor bidding portal. The Port may also solicit proposals directly from firms the Port believes are qualified to perform the work.

4.2 A team administered by the Port's Contracts and Procurement department will review and score proposals based on evaluation criteria set forth in the RFP. The RFP evaluation criteria will allow the Port to consider factors in addition to price when selecting the contractor, such as experience, qualifications, safety, and small business participation.

5 PROJECT DELIVERY METHOD

As of the issuance of these Findings, Port staff anticipate awarding a lump-sum public improvement contract for the work, including liquidated damages as a consequence of contractor delay. However, as provided under the Code, the final parameters of the contract will be those characteristics or specifics announced in the solicitation document.⁹

6 FINDINGS

6.1 Under the Code, the Port's Contract Review Board (the "CRB") may exempt a public improvement contract from competitive bidding upon approval of findings submitted by Port staff which justify the exemption. The two required findings are underlined below, with supporting information following each:

6.1.1 The exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts.

a) To avoid any real or perceived favoritism in awarding the contract, a diverse panel of no fewer than five Port employees will be selected to evaluate and score all proposals. This process will be overseen by Port Contracts & Procurement professionals to ensure that there are no conflicts of interest or favoritism in the evaluation.

b) There are multiple mechanical contracting firms that are qualified to perform the work. Depending on market conditions at the time the RFP is issued, Port staff anticipate receiving in the range of three to five proposals.

6.1.2 Awarding the contract under the exemption will likely result in substantial cost savings and other substantial benefits to the agency.

The CRB is required to consider the type, cost, and amount of the contract in considering this finding.¹⁰ The current budget estimate for the project is in the range of \$8.6 million. A lump-sum public improvement contract is anticipated. The current budget for the cost of construction is \$5.5 million. Approximately \$1.0 million of the project budget is allocated to the costs of Port project administration, including project and construction management, engineering, inspection and maintenance during the construction phase. It is reasonable to assume that an unqualified or inexperienced contractor would require additional oversight and effort. This could increase that cost by 10 – 25% or \$100,000 - \$250,000.

⁹ ORS 279C.335(6)

¹⁰ ORS 279C.335(2)(b)

To the extent applicable, the CRB must also consider the following additional factors in considering this finding.¹¹ Where applicable, Port staff has provided the following supporting information:

- a) *How many persons are available to bid.*
 - There are over a dozen mechanical contractors in the local market that are qualified to perform the work.
- b) *The construction budget and the projected operating costs for the completed public improvement:*
 - The construction budget for this contract is \$5.5 million. The project will reduce current operating costs by eliminating the need to repair leaks. These ongoing costs are in the range of \$20,000/year.
- c) *Public benefits that may result from granting the exemption:*
 - Using an RFP, proposers may offer alternative designs or methods to reduce cost and risk. In a low bid procurement, the bidders would simply price the design as shown in the bid documents (i.e. plans and specifications).
- d) *Whether value engineering techniques may decrease the cost of the public improvement:*
 - By utilizing an RFP, the Port will encourage proposers to offer alternative methods that may reduce the project's cost. Contract negotiations may result in some cost reductions via value engineering.
- e) *The cost and availability of specialized expertise that is necessary for the public improvement.*
 - There is a large difference between performing work on a new building or construction site, and working on an existing facility that is occupied and in operation. While there are contractors in the market for both situations, the RFP will allow the Port to confirm that the selected contractor has expertise in existing building retrofit situations.
- f) *Any likely increases in public safety.*
 - See response to the factor immediately below.
- g) *Whether granting the exemption may reduce risks to the Port or the public that are related to the public improvement.*
 - The project entails a significant risk of personal injury or property damage to PDX and its occupants, including the traveling public, Port and tenant staff, and the contractor's staff. The potential range of cost to the Port for damages caused by the contractor due to a lack of qualifications or experience is quite large due to the risk of a flood or fire in addition to personal injury. While the contract will require a performance bond and liability insurance, the Port could still be exposed to large costs for managing and recovering from a loss event. The Port and its tenants could also be burdened with significant consequential damages, such the cost of flight delays. By vetting the proposers' qualifications for this type of work, their experience, and their safety record, Port staff believe the risk of loss will be greatly reduced.

¹¹ ORS 279C.335(2)(b)

- h) *Whether granting the exemption will affect the sources of funding for the public improvement.*
 - Granting the exemption will not affect the sources of funding for the public improvement.
- i) *Whether granting the exemption will better enable the Port to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement.*
 - Current market conditions are not a factor. The exemption should not affect the cost or time to complete the work.
- j) *Whether granting the exemption will better enable the Port to address the size and technical complexity of the public improvement.*
 - Using an RFP will enable the Port to award the contract to a contractor that is qualified to handle the project complexities stated above.
- k) *Whether the public improvement involves new construction or renovates or remodels an existing structure.*
 - The project involves modifications to existing equipment.
- l) *Whether the public improvement will be occupied or unoccupied during construction.*
 - PDX will remain fully occupied and operational during construction.
- m) *Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions.*
 - Work that impacts large portions of the facility will be performed from mid-May through September to limit the impact on comfort conditions. It is anticipated that this will require the work to be broken down into two phases.
- n) *Whether the Port has, or has retained under contract, and will use Port 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 Port will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract:*
 - Existing Port Procurement, Engineering and Construction staff have the expertise and experience to manage an RFP process to solicit a construction contract. No additional outside staff are required.

7 PUBLIC HEARING

7.1 Under the Code, before the Port's CRB approves the Findings proposed above and before granting the exemption from competitive bidding, the Port must hold a public hearing to allow the Port to take comments on the draft findings for an exemption from the competitive bidding requirement.¹² Notice of draft findings summarizing the requested exemption from competitive bidding was advertised in compliance with the Code's notice requirements, and a public hearing was held on January 5, 2024 to allow interested parties to appear and present comments on the proposed exemption. No members of the public attended the hearing, and no comments were received.

¹² ORS 279C.335(5)

8 SUMMARY

Port staff find that the proposed exemption from competitive bidding:

a) is unlikely to encourage favoritism in awarding the contract or substantially diminish competition for the contract, and

b) will likely result in substantial cost savings and other substantial benefits to the Port. As a result, Port staff conclude that the proposed exemption from competitive bidding is consistent with the Code's stated policy of embracing alternate contracting methods when appropriate. Port staff recommends that the public improvement contract for this project be exempted from the Code's competitive bidding requirement.