

FINDINGS OF FACT AND CONCLUSION OF LAW FOR THE USE OF A CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC)

Before The Junction City School District Board of Directors

Summer 2018 ADA & Safety Upgrades Project

Except as specified for certain circumstances, the Oregon Revised Statutes (279C) require that the procurement of all public improvement contracts be based upon competitive bids. Public contracting agencies may exempt public improvement contracts from the requirements of competitive bidding, based on findings described in ORS 279C. For contracts that will be procured using the CM/GC methodology, the required findings are identified in ORS 279C.335. Pursuant to the requirements of ORS 279C.335 and ORS 279C.337, the following is a description of the proposed public improvement contract to be exempted from competitive bid, the proposed construction methodology (CM/GC), and the list of the required findings and the conditions and information regarding those findings.

The Project

- 1. Funding:** On May 17, 2016, the voters of the Junction City School District approved a \$14,635,000 bond levy to provide monies for improvements at all schools, including approximately \$4,000,000 State of Oregon Matching funds, \$2,898,499 premium funds, \$1,499,565 for Oaklea seismic grant, and \$2,383,858 for the ESCO energy and efficiency upgrades.
- 2. Scope and Schedule:** The Junction City School District's Summer 2018 ADA & Safety Upgrades Project will include the following; Oaklea Middle School will receive ADA and safety and security upgrades. Oaklea will have seismic work occurring parallel and come from separate funds. Laurel Elementary School will receive ADA and safety and security upgrades. Territorial Elementary School will receive ADA and safety and security upgrades. All three schools will have mechanical and energy efficiency system upgrades provided by the ESCO contract. These will be performed parallel to the ADA and safety and security upgrades and is already exempt from the CM/GC process due to statute. The projects are planned to be substantially completed in the summer prior to the start of the 2018 school year and ready for occupancy at the end of the 2018 summer.

Proposed Construction Methodology

1. The District proposes to use the construction manager/general contractor (CM/GC) alternative contracting methodology, as defined in ORS 279C.337, for the repairs and upgrades to the District schools. The CM/GC firm will be procured through a publicly advertised competitive RFP process, in conformance with the provisions of ORS 279C.337. The RFP and contractual documents for the CM/GC selection will describe the manner in which the competitive selection of subcontractors will occur. The procurement will be governed by the provisions of the Oregon Attorney General's Model

Public Contracts Rules. The intent is for the CM/GC to provide preconstruction services during the design process, to include: scheduling, constructability options and review, value engineering, cost-estimating, and related activities. At end of the design development phase, the CM/GC will provide the District with a guaranteed maximum price (GMP), within the District's construction budget, for the full contract value of the project repairs and upgrades. The CM/GC will perform the construction services for a negotiated fee set at the time of the GMP, and proposed as part of the competitive CM/GC selection process, and a separate negotiated preconstruction phase fee, also proposed as part of the CM/GC selection process.

2. Rationale for CM/GC. The District has multiple Summer 2018 projects to manage: ADA & Safety Upgrades, at Oaklea, Laurel, and Territorial; coordinating with the Seismic upgrades at Oaklea; and coordinating with the mechanical and energy efficiency upgrades at Oaklea, Laurel, and Territorial. The introduction of the CM/GC process will be beneficial, in terms of cost and operational efficiency, by the CM/GC participating in the design process and subsequent installation as well as coordination between the three campuses. The CM/GC will also be able, through value engineering and constructability review, assist in creating the most efficient method of delivering the project on budget and on time.

Use of the CM/GC process will likely result in additional substantial cost savings and public benefit:

- 2.1 Costly errors and omissions change order reduction. Recent District experience with current and completed projects showed a lengthy Request for Information (RFI) process, change order requests (COR) attributable to design errors and omissions errors and omissions. This is not out of line with other public contracting agencies low-bid experiences with increased construction costs from change orders attributable to design errors and omissions. By bringing the CM/GC on board to work with the A/E and District during the design phase, these issues and costs will be reduced through better coordination of the development of the design documents and application of the CM/GC's construction expertise. A reduction in change orders should similarly reduce construction delays, which will also help the District contain costs.
- 2.2 Reduced change order markup. The general contractor (CM/GC) markup for change orders that do need to occur (e.g., owner requested items, unforeseen conditions not addressed in the GMP), will be compensated at the CM/GC's fee.
- 2.3 Optimal student and staff comfort – public benefit. In order to work efficiently and effectively over the Summer 2018 period, having one CM/GC working with the A/E during design, will result in a better understanding of the projects early in the process, and with the careful selection of subcontractors. The use of the CM/GC process will likely increase the probability that the work is completed efficiently with minimal disruption when the school is occupied.
- 2.4 Site and traffic coordination – public safety. There will be four separate sites for this project. Coordination will be necessary in the use of the buildings, some which will

be occupied during construction, as well as the use of the athletic facilities by the District and the community. Working on the project during design, the CM/GC will better be able to prepare, in coordination with the District, for providing safe access to buildings still in use. This will include efficient and safe site staging areas and site construction vehicle movement.

Findings

THE EXEMPTION WILL NOT SUBSTANTIALLY DIMINISH COMPETITION OR ENCOURAGE FAVORITISM

Finding: The CM/GC will be selected through a competitive process in accordance with a Request for Proposals authorized by the Board of Directors. Pursuant to ORS 279C.360, the CM/GC Request for Proposal (RFP) solicitation will be advertised in the Daily Journal of Commerce; in addition, the solicitation will be advertised in the Register Guard, the Oregon Procurement Information Network (ORPIN), as well as smaller localized trade publications. The CM/GC proposals and interviews will be rated based on a predetermined list of criteria as required by ORS 279C.337, and the Attorney General's Model Contract Rules. The District will enter into contract negotiations with the highest-ranking firm. Should negotiations fail, the District will have the right to negotiate with the second highest-ranking firm, or other options as permitted by statute.

Subcontractors will be competitively selected, as described above.

Potential CM/GC proposers will have an opportunity to comment on the solicitation documents, selection criteria and selection process.

THE EXEMPTION WILL LIKELY RESULT IN SUBSTANTIAL COST SAVINGS OR OTHER PUBLIC BENEFIT

Finding: As identified above, the granting of the CM/GC exemption for the Junction City School District Summer 2018 public improvement contract will likely result in substantial cost savings or other public benefit. (In the case of this proposed project, use of the CM/GC process will result in the likelihood of substantial cost savings and other public benefit). In making this finding, ORS 279C.335 (2)(b) requires the following issues to be considered:

(A) How many persons are available to bid;

Initial assessment has indicated that there is a substantial pool of qualified and experienced CM/GC contractors available to propose on the Junction City School District Summer 2018 project.

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

Analysis described above establishes that use of the CM/GC process will likely result in substantial cost savings, which can be used to ensure that a full and complete project scope is provided prior to the start of work. This could potentially provide savings for other bond eligible projects. Use of the CM/GC process will likely contribute to the efficient design, coordination, and execution at multiple school sites which will likely result in reduced operating costs.

(C) Public Benefits that may result from granting the exemption;

As identified above, use of the CM/GC process will likely result in more efficient and effective operational systems, thereby likely ensuring a safer and more environmentally comfortable learning environment for students and staff. The use of the CM/GC process will likely serve to reduce potential inconvenience for the public when accessing and using District athletic facilities during the construction period.

(D) Whether value engineering techniques may decrease the cost of the public improvement;

The CM/GC will become a part of the total project team with the responsibility of leading the “Value Engineering” process. The selected CM/GC will have considerable expertise and experience in comparable construction. That experience will be of great importance in determining the best use of the dollars available. With the early participation of the CM/GC, the development team, consisting of the District, the A/E, and the CM/GC, can render the most comprehensive evaluation of all factors that affect the cost, quality, scope and schedule for the project. As addressed above, expertise with multiple sites will likely result in reduced cost.

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

As addressed above, qualified firms are likely available to propose on the project. The competitive selection process will consider both CM/GC fee and the perceived ability of the CM/GC to lower construction cost. The ability to award the contract based upon qualifications as well as cost will also enable the District to select an experienced CM/GC contractor with the expertise to construct the project.

(F) Any likely increases in public safety;

As addressed above, the CM/GC will assist to develop a construction methodology and schedule that will likely reduce public risk and inconvenience during construction. The CM/GC will likely ensure the ability of public emergency professionals to better access the athletic facilities and existing site during construction.

(G) Whether granting the exemption may reduce risks to the contracting agency or the public that are related to the public improvement;

The CM/GC process includes the contractor in the design process and results in a guaranteed maximum price (GMP) that is within the project budget, thereby reducing the risk to the District for design errors and omissions that would result in increased cost under the design-bid-build method of contracting. Establishing a GMP at mid-design

process ensures the final design will be within the District's budget, and will likely not need to be redesigned, thereby reducing the risk of compromising the project schedule.

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

The exemption will have not affect on the funding source.

(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;

Construction activity is increasing in the Willamette Valley, attributable to an improved economy, including a considerable number of successful school improvement bonds. Other school districts with bond construction projects have seen recent inflationary increases, which, based on the number and size of bonds, does not look like it will abate in the near future. Obtaining a GMP at mid-design process will better enable the District to mitigate the cost of inflationary cost increases beyond that point.

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

As addressed above, the mutli-site complexity of this project is one of the primary reasons for using the CM/GC process.

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

The project is primarily renovating existing structures and will be occurring on occupied sites visited by students and community members during construction. The complexity of this construction overall (as opposed to whether it is renovation or new construction) is one of the primary reasons for using the CM/GC process.

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

The public improvement will take place at Oaklea Middle School, Laurel Elementary School, and Territorial Elementary School. While Oaklea will shut down for the summer, the remaining facilities will be partially occupied during the summer to accommodate regular District functions. As addressed above, the use of the CM/GC process will likely better serve to provide for the safe and efficient use of the open facilities for activities.

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

The summer work will include one phase, but across multiple campuses. Multi-site construction coordination is more efficient and cost-effective if provided under the CM/GC contract, as opposed to separately procured public improvement contracts.

(N) Whether the contracting agency 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 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 be using consultants and legal counsel with substantial experience with CM/GC to assist the staff in developing and administering the CM/GC contracting method and documents.

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CONCLUSIONS OF LAW

The above “Findings” demonstrate that the CM/GC process for the construction of the Summer 2018 ADA & Safety Upgrades Project complies with the requirements of ORS 279C.335(2) for exemption of the project from competitive bidding.

PROPOSED RESOLUTION

RESOLUTION GRANTING EXEMPTION FROM COMPETITIVE BIDDING, AUTHORIZING CONSTRUCTION OF JUNCTION CITY SCHOOL DISTRICT’S SUMMER 2018 ADA & SAFETY UPGRADES PROJECT BY MEANS OF A CONSTRUCTION MANAGER/GENERAL CONTRACTOR AND AUTHORIZING SELECTION BY REQUEST FOR PROPOSAL

WHEREAS, the Board of Directors of the Junction City School District is the Local Contract Review Board for the District and in that capacity has authority to exempt certain contracts from competitive bidding requirements of 279C, and

WHEREAS, the Board has provided appropriate public notice, and held a public meeting, to hear comment on a proposed CM/GC contract exemption for the Summer 2018 ADA & Safety Upgrades Project; and

WHEREAS, the Board has determined that the Summer 2018 ADA & Safety Upgrades Project should be constructed by a CM/GC.

The Board finds as follows:

1. The Board adopts the specific “Findings of Fact” set forth above.
2. The “Findings” show that an exemption of competitive bidding for the project complies with the requirements of ORS 279C.335(2) and the Attorney General’s Model Contract Rules 137-049-0630 (2) for exemption of the project from competitive bidding.

NOW, THEREFORE, the Board of Directors resolves as follows:

The contract for the construction of the Junction City School District’s Summer 2018 ADA & Safety Upgrades Project by a Construction Manager/General Contractor is exempted from competitive bidding, and the District may use the CM/GC process, in which case, the CM/GC shall be selected by a Request for Proposals method in accordance with the Attorney General’s Model Contract Rules and the process described in the above findings.