



Board of Education

Staff Report to the Board

Board Meeting Date: November 15, 2022

Executive Committee Lead:
Nolberto Delgadillo, Chief Financial Officer

Department: Finance

Staff Lead:
Emily Courtnage,
Director, Purchasing & Contracting

SUBJECT: Jefferson High School Modernization Project: Exemption from Competitive Bidding and Authorization for Use of Construction Manager/ General Contractor Alternative Contracting Method

BACKGROUND

ORS 279C.335(2) authorizes the Board to exempt certain public improvement contracts or classes of contracts from the traditional design/bid/build competitive bidding (i.e., low bid) procurement process. Staff requests that the Contract Review Board approve an exemption from low bid competitive bidding for the Jefferson High School Modernization Project (“Jefferson Modernization Project”) and authorize staff to utilize the Construction Manager/ General Contractor (“CM/GC”) alternative contracting method procured by a fully competitive Request for Proposals process. The CM/GC method was previously approved and utilized for the Franklin, Roosevelt, Grant, Madison, Lincoln, and Benson High School Modernization Projects.

Per Oregon law, an exemption request and approval to use an alternative contracting method must be supported by the following findings: (1) The exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts, *and* (2) Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the contracting agency or the public. See ORS 279C.335(2).

A detailed description of the Jefferson Modernization Project and draft Findings of Fact (“Draft Findings”) supporting the exemption Resolution, as required by ORS 279C.335(2), are set forth in the attached Office of School Modernization staff memo.

RELATED POLICIES / BOARD GOALS AND PRIORITIES

District Policy 8.50.090-P designates the Board as the local government contract review board with authority to exempt certain public contracts or classes of contracts from the standard competitive bidding process otherwise required by the Public Contracting Rules, as per ORS 279C.335(2).

PROCESS / COMMUNITY ENGAGEMENT

Oregon law requires that the District conduct a public hearing, providing interested parties an opportunity to appear and present comment, prior to adoption of a Resolution exempting a public improvement project from competitive bidding. See ORS 279C.335(5). Notification of the public hearing must be published in a trade newspaper of general statewide circulation at least 14 days before the hearing. At the time of the Notice, copies of the Draft Findings must be made available to the public.

Purchasing & Contracting published a Notice of Public Hearing concerning the Jefferson Modernization Project exemption request on October 18, 2022 in the Business Tribune, the same Journal in which Purchasing & Contracting posts all required construction solicitation notices. Instructions for requesting copies of the Draft Findings were included in the Notice of Public Hearing.

A public hearing was held via teleconference on November 2, 2022. At that meeting, no attendees presented questions or comments.

ALIGNMENT WITH EQUITY POLICY IMPLEMENTATION PLAN

The CM/GC alternative contracting method is in alignment with the District's Equity in Public Purchasing & Contracting Policy and implementation plan. A benefit of the CM/GC method, as opposed to the standard design/bid/build low-bid contracting method, is the District's ability to include evaluation criteria in the RFP to help ensure selection of a prime contractor with strong commitment to use and demonstrated success in using Certified minority owned, women owned, service-disabled veteran owned, and emerging small businesses ("Certified businesses") subcontractors or partners. The District will award points for demonstration of a history of Certified business utilization and a substantive plan of outreach to, partnership with, and/or inclusion of Certified subcontractors.

The Request for Proposals will be open and publicly advertised. Purchasing & Contracting and Office of School Modernization will notify minority contracting communities about the solicitation and encourage Certified business participation. The selected contractor will be required to comply with the District's Workforce Equity and Career Learning requirements, as well as report on Certified business subcontractor utilization, during the course of the contract.

BUDGET / RESOURCE IMPLICATIONS

Careful coordination and scheduling will be essential to minimize disruptions to surrounding public areas and neighborhoods during construction. The CM/GC method allows the District to carefully screen firms to assure that the contractor chosen to work on the project has the necessary experience and qualifications to successfully work in such site conditions. Further, the CM/GC process results in reduced risks and potential cost savings by engaging the CM/GC early in the design process and incorporating the CM/GC's construction knowledge and experience in the design as it progresses, thus limiting design conflicts and construction challenges.

NEXT STEPS / TIMELINE / COMMUNICATION PLAN

If this Resolution is adopted, staff in Purchasing & Contracting and the Office of School Modernization will prepare solicitation documents and issue a Request for Proposal for a Construction Manager/General Contractor for the Jefferson Modernization Project.

ATTACHMENTS

- A. Resolution to Authorize Alternative Contracting Method**
- B. Office of School Modernization Staff Memo with Draft Findings**