



# Board of Education

## Staff Report to the Board

**Board Meeting Date:** September 25, 2018

**Executive Committee Lead:**

Claire Hertz, Deputy Superintendent,  
Business & Operations

**Department:** Finance

**Presenter/Staff Lead:**

Emily Courtnage,  
Director, Purchasing & Contracting

**SUBJECT: Kellogg Middle School Project: Exemption from Competitive Bidding and Authorization for Use of Two-Step (Request for Qualifications/Invitation to Bid) Alternative Contracting Method**

### BACKGROUND

ORS 279C.335(2) authorizes the Contract Review 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 Board approve an exemption from low bid competitive bidding for the Kellogg Middle School Project and authorize staff to utilize a publicly advertised and fully competitive Request for Qualifications (RFQ) followed by Invitation to Bid (ITB) to contractors deemed qualified in the RFQ step (a "Two-Step" method). The Two-Step method was previously approved by the Board and utilized for the Faubion K-8/Concordia College of Education public improvement project.

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 Kellogg Middle School 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. As reflected therein, staff recommends using the Two-Step alternative contracting method for the Kellogg project, rather than the traditional single-step, low-bid procurement method. This project is not of the scale or complexity that would warrant the Construction Manager/General Contractor contracting method that the District has used for its high school modernizations, but it is crucial that the selected contractor be highly qualified and experienced in completing a public improvement project of this size on a critical schedule path.

### 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).

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### **PROCESS / COMMUNITY ENGAGEMENT**

The Public Contracting Rules require that the Contract Review Board conduct a public hearing prior to adoption of a Resolution exempting a public improvement project from competitive bidding. PPS-49-0145(4)(a). Notification of the public hearing must be published in a trade newspaper of general statewide circulation at least 14 days before the hearing. PPS-49-0145(4)(b). At the time of the Notice, copies of the Draft Findings must be made available to the public. PPS-49-0145(4)(c).

In compliance with these requirements, Purchasing & Contracting published a Notice of Public Hearing concerning the Kellogg Middle School exemption request on September 11, 2018 in the Business Tribune, the same Journal in which Purchasing & Contracting posts all required construction solicitation notices. Also on September 11, 2018, staff made the attached Draft Findings available to the public. Instructions for requesting copies of the Draft Findings are included in the Notice of Public Hearing.

At the public hearing, the District must offer an opportunity for any interested party to appear and present comment. PPS-49-0145(3)(d).

Adoption of the attached Resolution will not affect any other contract to which the District is a party nor effect any change in Public Contracting Rules or District policy.

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### **ALIGNMENT WITH EQUITY POLICY IMPLEMENTATION PLAN**

The Two-Step solicitation method will not affect the District's Equity in Public Purchasing & Contracting Policy or implementation path. The Request for Qualifications will be open and publicly advertised. Purchasing & Contracting 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.

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### **BUDGET / RESOURCE IMPLICATIONS**

The Two-Step 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, and proven track record, to successfully complete the project.

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### **NEXT STEPS / TIMELINE / COMMUNICATION PLAN**

A public hearing is scheduled for the September 25, 2018 Board Meeting. At that meeting, the Board will recess and convene as the Contract Review Board pursuant to ORS 279A.060 and District Policy 8.50.090-P. The Contract Review Board must offer an opportunity for any interested party to appear and present comment. After the public hearing, the Board will reconvene and vote on the attached Resolution.

Staff from the Office of School Modernization will be available at the September 25, 2018 Board Meeting and public hearing to respond to questions relating to the work described in the attached Resolution and Draft Findings.

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If this Resolution is adopted, staff in Purchasing & Contracting and the Office of School Modernization will prepare solicitation documents and issue a Request for Qualifications for a General Contractor for the Kellogg Middle School public improvement project.

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#### **ATTACHMENTS**

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

## **MEMORANDUM**

**Date:** August 29, 2018

**To:** Board of Education

**From:** Dan Jung  
Senior Director, Office of School Modernization

**Subject:** Draft Findings in Support of Alternative Contracting Method and Use of Two-Step Solicitation for Kellogg Middle School Project

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**REQUEST:** Staff requests that the Board of Education (Board), acting as the Local Contract Review Authority for the Portland Public School District (District), grant an exemption from the traditional Design-Bid-Build low-bid procurement process and approve the use of an Alternative Contracting Method for the construction of the Kellogg Middle School (the "Project"). Specifically, staff seeks to use a two-step solicitation process: First, staff will issue a Request for Qualifications (RFQ) to identify the most qualified firms. Second, those firms deemed qualified in the RFQ process will be invited to participate in an Invitation to Bid (ITB) (low bid) process to select the contractor for the Project.

**PROJECT SCOPE:** The Project includes, but is not limited to, construction of a new facility that will house the new Kellogg Middle School. Total Project budget is approximately \$59M including the 2017 voter approved bond funds. The cost of construction is estimated to be approximately \$45M of the overall budget. The Project schedule has targeted June 1, 2019 as the contract start for construction.

**CONSTRUCTION PLAN:** The Project will create a brand new, model middle school in Southeast Portland where one has not existed for over a decade. The Project team has engaged with the surrounding community throughout the planning and design process, with the aim of creating a new neighborhood-centered resource for students, parents and staff. The District's goal is that this new facility reflect its detailed framework for exemplary middle schools as a means to provide expanded options and stronger programs to more students. It will be important to utilize a construction firm with the following specific traits:

- Requisite expertise in constructing K-8 and middle school facilities
- Experience working with Oregon public contracting requirements
- An exemplary reputation for on-time delivery
- Employs staff with the requisite skills and experience to be successful in delivering a project of this size/complexity
- Employs staging and construction approaches that are sensitive to the surrounding residential neighborhood and community
- Experience working closely with architects and engineers with emerging building technologies

The conventional design-bid-build contracting methodology (DBB) that represents the basis of public improvement contracting in the State of Oregon would expose the District to a significant amount of risk based on the parameters of this project. DBB, which only considers the lowest priced bid that conforms to the bidding requirements, does not allow the District to consider any of

the following issues when selecting the most appropriate contractor:

1. Contractor has experience in projects of similar scope and scale which reduces the risk to the District for cost and schedule overruns due to lack of company resources
2. Contractor employs staff with the requisite experience base to be successful in delivering the project. Lack of requisite experience translates to additional risk to the District in the form of possible cost and schedule overruns or unacceptable quality outcomes.
3. Contractor has experience with public improvement requirements such as certified payroll reporting and prevailing wage contracting requirements with subcontractors.

PPS-49-0620 and ORS 279C.335 permits the PPS Board of Education to exempt specific projects from the competitive bidding requirements of PPS Public Contracting Rules and Oregon Revised Statute (ORS) 279C. To appropriately manage the critical needs within this project, PPS staff recommend use of the Two-Step RFQ/ITB Alternative Contracting Methodology. Through this selection process, a Request for Qualifications (RFQ) will be issued for the project utilizing qualitative criteria for selecting qualified contractors, including experience on similar projects, adequacy of equipment and physical plant, sources of supply, availability of key personnel, financial capacity, past performance, safety records, project understanding, proposed methods of construction, proposed milestone dates, references, service, and other matters that affect cost or quality. The RFQ process will be a publicly noticed, competitive process for interested contractors to submit qualifications. Contractors will be selected to propose bids based on the evaluation of their qualifications. Contractors deemed qualified under the RFQ process will be permitted to participate in an Invitation to Bid (ITB) process, wherein the qualified contractor who submits the lowest price bid will be selected.

Following are the staff's draft findings for the Board's consideration.

**These findings are supported by the following factors outlined in ORS 279C.335:**

1. **Finding Related to Favoritism and Competition:** It is unlikely that the requested exemption will encourage favoritism or substantially diminish competition. The District utilizes an RFQ process to select the qualified bidding firms. That procurement is formally advertised with public notice, and competition will be encouraged. The general contracting market is familiar with the RFQ process and generally accepts the Two-Step process as a standard delivery method. Many general contractors prefer and seek out a Two-Step process as it assures that only qualified bidders are selected to bid for the work. Contractors are evaluated based upon an identified selection criteria and contractors are afforded an opportunity to protest the process and the award. Once the pool of qualified contractors is determined, the project will be bid to the pool and competitively awarded to the lowest responsive bidder. All subcontracted scopes of work are awarded via a competitive public bid process within the construction market.

Staff therefore finds that the Two-Step process/low bid does not create favoritism nor limit competition.

2. **Finding Related to Cost Savings:** Through the use of Two-Step process to source credible firms for the bidding process, the risk to the District of using a contractor who "missed" elements of the cost during bidding is reduced. This translates to a more accurate "Bid Day" contract amount that reduces change orders during construction.
3. **In approving findings under ORS 279C.335 the contract review board shall consider the type, cost and amount of the contract, and to the extent applicable to the particular public improvement contract, the following:**

- **How many persons are available to bid.** The number of bidders will be determined by the number of qualified respondents to the RFQ.
- **The construction budget and the projected operating costs for the completed public improvement.** The construction budget for the Project is \$45M and the projected operating costs are yet to be determined.
- **Public benefits that may result from granting the exemption.** Selecting contracting firms with the highest qualifications ensures that bidders have the ability and performance history to successfully complete a project of this scope and complexity. This results in better utilization of voter approved funding and demonstrates good stewardship of public funds by PPS.
- **Whether value engineering techniques may decrease the cost of public improvement.** Value engineering during the design process minimizes errors in contract drawings and specifications, develops more constructible solutions to complex building issues, enhances the overall value of the building through better system selection, and allows for accurate scheduling and staff resourcing. There will be a third-party constructability review during design that will offer ways to reduce the potential for change orders, reduce the potential for delays, improve the coordination of design elements, and improve the quality of the building. Additionally, the RFQ process will occur prior to completion of the design documents. This will allow the project team to consider contractor qualification criteria before the final construction documents are completed, which may include schedule milestones, proposed methods of construction, and sources of supply which can improve the effectiveness of value engineering.
- **The cost and availability of specialized expertise that is necessary for the public improvement.** The challenge of completing a new, model school facility on a tight urban site, within a dense surrounding residential neighborhood, requires specific experience. It is important to utilize a general contractor that has demonstrated expertise in managing, scheduling and performing in these types of conditions in a satisfactory manner.
- **Any likely increase in public safety.** The Kellogg school site is located directly adjacent to single family residential development on two sides of the property and a busy, State-owned Hwy 26/Powell Boulevard, where a new classroom tower will be located. Utilizing safety and security protocols as a selection criterion will enhance the District's ability to provide a safe and secure construction site during the course of work.
- **Whether granting the exemption may reduce risks to the District or the public that are related to the public improvement.** The experience of other public contracting agencies in utilizing the Two-Step process has shown that it alleviates financial risk by minimizing delay and ensuring proper coordination and planning by ensuring selection of a qualified firm with a proven track record on similar projects.

- **Whether granting the exemption will affect the sources of funding for the public improvement.** This project is a part of the 2017 Bond Program. It is important to maximize the value of projects performed as a part of the bond. With a general obligation bond, the District is limited to a specific dollar amount for use to complete the bond projects. Once funding is depleted, any additional costs would have to be funded from the general fund, thus reducing operational funds for staff and other operational needs.
- **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.** The current market conditions have shown a dramatic increase in costs and amount of work available to contractors. The exemption will allow the District to engage the contracting community in advance of the bidding period to evaluate contractors' qualifications in managing schedule and procuring competitive sub-contractor bids in a highly active market.
- **Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement.** Due to the complexity of this project, careful coordination and scheduling will be essential so as not to impact the project milestones throughout the construction duration. The ability to carefully screen the contractor's successful performance history with this kind of project will significantly affect the project outcome as it relates to the schedule and cost of the project.
- **Whether the public improvement involves new construction or renovates or remodels an existing structure.** This improvement involves new construction.
- **Whether the public improvement will be occupied or unoccupied during construction.** The improvement will not be occupied during construction.
- **Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions.** The public improvement may require multiple phases of work. The exemption will allow the district to evaluate contractor's qualifications in successfully delivering multiple phased projects.
- **Whether the contracting agency, or has retained under contract, and will use contracting agency, 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 has retained under contract CBRE/Heery as the Bond Program Manager and Construction Manager. This consultant team has substantial experience in delivering projects using alternative contracting methods.



# Board of Education

## Staff Report to the Board

**Board Meeting Date:** September 25, 2018

**Executive Committee Lead:**  
Claire Hertz, Deputy Superintendent,  
Business and Operations

**Department:** Finance

**Presenter/Staff Lead:**  
Emily Courtnage,  
Director, Purchasing & Contracting

**SUBJECT: Benson Polytechnic 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 Benson Polytechnic High School Modernization Project (“Benson 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, and Lincoln High School Modernization Projects.

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 Benson 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



The Public Contracting Rules require that the Contract Review Board conduct a public hearing prior to adoption of a Resolution exempting a public improvement project from competitive bidding. PPS-49-0145(4)(a). Notification of the public hearing must be published in a trade newspaper of general statewide circulation at least 14 days before the hearing. PPS-49-0145(4)(b). At the time of the Notice, copies of the Draft Findings must be made available to the public. PPS-49-0145(4)(c).

In compliance with these requirements, Purchasing & Contracting published a Notice of Public Hearing concerning the Benson Modernization Project exemption request on September 11, 2018 in the Business Tribune, the same Journal in which Purchasing & Contracting posts all required construction solicitation notices. Also on September 11, 2018, staff made the attached Draft Findings available to the public. Instructions for requesting copies of the Draft Findings are included in the Notice of Public Hearing.

At the public hearing, the District must offer an opportunity for any interested party to appear and present comment. PPS-49-0145(3)(d).

Adoption of the attached Resolution will not affect any other contract to which the District is a party nor effect any change in Public Contracting Rules or District policy.

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### **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 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.

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### **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.

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### **NEXT STEPS / TIMELINE / COMMUNICATION PLAN**

A public hearing is scheduled for the September 25, 2018 Board Meeting. At that meeting, the Board will recess and convene as the Contract Review Board pursuant to ORS 279A.060 and

District Policy 8.50.090-P. The Contract Review Board must offer an opportunity for any interested party to appear and present comment. After the public hearing, the Board will reconvene and vote on the attached Resolution.

Staff from the Office of School Modernization will be available at the September 25, 2018 Board Meeting and public hearing to respond to questions relating to the work described in the attached Resolution and Draft Findings.

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 Benson Modernization public improvement project.

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## **ATTACHMENTS**

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



# Board of Education Informational Report

## MEMORANDUM

**Date:** September 10, 2018

**To:** Board of Education

**From:** Dan Jung, Senior Director of Office of School Modernization

**Subject:** Draft Findings in Support of Alternative Contracting Methodology/ Use of Construction Manager/General Contractor ("CM/GC") Method for the Benson Polytechnic High School Modernization Project

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## **INTRODUCTION**

Pursuant to ORS 279C.335, following are the staff recommended draft findings in support of an exemption from competitive bidding to utilize the Construction Manager/General Contractor ("CM/GC") method of procurement for the Benson Polytechnic High School Modernization Project ("Benson Modernization Project").

## **PROJECT DESCRIPTION**

The 2017 Health, Safety, and Modernization Bond includes funding to begin the full modernization of Benson Polytechnic High School. The buildings require major improvements and upgrades to optimize the school's operational and learning environments. The Benson Modernization Project includes, but is not limited to, seismic retrofit, hazardous material abatement, mechanical/electrical/plumbing upgrades, structural reinforcing, on-site storm water management, building additions, and informational technology improvements as well as new interior partitions, architectural finishes, and site/landscaping improvements.

The project will address many challenges and require careful planning and coordination during the design and construction phases to complete them effectively and efficiently. Detailed budget and schedule controls are essential to the project's success. It will be important to utilize a construction firm with the following specific traits:

- Ability to provide a complete project within the District's budget for each project.
- The requisite expertise in renovating historically significant facilities.
- An exemplary reputation for on-time delivery with an aggressive timeline.
- Supervisory staff experienced working in and around occupied facilities and/or tight urban constraints.
- Innovative approaches to unique opportunities and unforeseen conditions.
- An understanding of the importance of an integrated project team.
- Experience working closely with architects and engineers with emerging technology such as Building Information Modeling and Blue Beam Software.

## Benson Polytechnic Modernization: Alternative CM/GC Contracting Method

- Ability and commitment to advise the District on the state of the current market and engage the local subcontracting community in support of the District's Equity in Public Purchasing and Contracting and Student Career Learning programs.

### **THE CM/GC ALTERNATIVE CONTRACTING METHOD**

The CM/GC alternative contracting process is authorized for procurement of construction services under ORS 279C.337 provided that the Local Contract Review Board approves an exemption from competitive bidding. Under the CM/GC contracting method:

- The contractor is solicited early in the design phase pursuant to a competitive Request for Proposals ("RFP") process wherein selection is based upon evaluation of factors relating to the experience and expertise of the contractor rather than lowest bid.
- The contractor works with the owner and architect to develop the final design with the goals of improved constructability and value engineering, which results in fewer change orders and the ability to expedite the construction schedule. Under the standard design/bid/build (low bid) method, the design is completed before the project is bid and the contractor brought on board.
- During the design phase, the owner and contractor negotiate and agree on a guaranteed maximum price ("GMP") and the construction schedule for the construction phase of the project.
- Unlike traditional design-bid-build procurement, the CM/GC project delivery method allows for construction to begin before design is complete (via Early Work Amendments), reducing the overall project schedule.

CM/GC is the commonly used alternative contracting method by local governments for large, complex projects such as major expansions and remodels of existing buildings like the Benson Modernization Project.

### **FINDINGS**

Following are the factors for consideration under ORS 279C.335 (2), followed by the Staff's findings in *italics*.

“(a) The exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts.”

*The requested exemption will not encourage favoritism or substantially diminish competition. The District will utilize a competitive RFP process to select the*

Benson Polytechnic Modernization: Alternative CM/GC Contracting Method

*CM/GC firm for the project. That procurement is formally advertised with public notice and disclosure of the planned Alternative Contracting Method. Full competition will be encouraged and all qualified contractors will be invited to submit proposals. The award will be based upon an objective review and scoring of proposals by a qualified District review committee based on identified selection criteria. Once selected, the CM/GC will select subcontractors via competitive bid process in accordance with PPS Public Contracting Rules and applicable statutes. As required by the District's Equity in Public Purchasing and Contracting policies, this competitive process will include outreach to and solicitation of certified minority owned, women owned, service-disabled veteran owned, and emerging small business contractors ("Certified businesses"). The process will therefore provide for vigorous competition and provide the opportunity for all interested large and small contractors to participate in the bidding for the project.*

"(b) 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 state agency that seeks the exemption or, if the contract is for a public improvement described in ORS 279A.050 (3)(b), to the contracting agency or the public. In approving a finding under this paragraph, the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board shall consider the type, cost and amount of the contract and, to the extent applicable to the particular public improvement contract or class of public improvement contracts, the following:"

"(A) How many persons are available to bid;"

*Based on previous PPS construction contracts, staff anticipates that three to five firms will propose on the Benson Modernization Project. The Lincoln and Madison Modernization CM/GC RFPs in 2018 received three proposals each.*

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

*The construction budget and expected operating budget are set forth above in the project description. The current construction market in Portland is extremely busy and has limited resources. Having a CM/GC on board early is essential to mitigating escalation costs and workforce availability issues. The District has not conducted a detailed analysis of the operating costs, but expects that the improved design and particularly the energy efficiency improvement will reduce long-term operating cost. Having a contractor on board during the design phases will help improve the design of the buildings including operating cost impacts such as energy efficiency.*

Benson Polytechnic Modernization: Alternative CM/GC Contracting Method

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

*Bringing the CM/GC on during the design phase promotes an early team approach that leads to continuous value engineering and improved constructability review, resulting in an improved final design. This will reduce change orders and limit delays during the construction phases. This benefits the public through cost savings, provides "guaranteed" costs, and is more likely to result in timely delivery of the project.*

*The CM/GC process promotes time savings that translate to cost savings by bringing the contractor on board early in these projects to assess the existing conditions that remain unknown in the traditional bidding process.*

*Under a CM/GC process, the District can execute an Early Work agreement to allow work to proceed prior to design completion. The District, Architect, and Contractor gain more knowledge and confidence in the final design as they move through design development and will be able to accurately price more of the GMP.*

*Unlike a traditional design/bid/build procurement, an RFP allows the District to be able to review the resumes of the Project Manager, Superintendent, and Subcontractors who will make up the proposed GC's project team, ensuring the selected firm has the necessary experience and expertise, including the City of Portland permitting process.*

*The RFP process also ensures award to General Contractors with the financial strength to perform the project. The District is able to perform a more in-depth financial health review of all RFP proposers. It is imperative that the GC can financially withstand the obligations of building over \$6-9 million worth of labor, materials, and equipment between each invoice payment.*

*In the traditional Design/Bid/Build low bid process, the District awards to the lowest responsible bidder. The low bid process would make the Benson Modernization Project vulnerable by potentially awarding the bid to a General Contractor who does not have the correct personnel, the tailored building profiles, or the financial strength to perform the startup and maintenance of these modernization projects.*

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

*Value engineering is a routine practice in public improvement projects regardless of procurement method. The CM/GC delivery method allows for the general contractor and subcontractors with specialized expertise and common project goals to participate in the value engineering process during the design phase,*

Benson Polytechnic Modernization: Alternative CM/GC Contracting Method

*resulting in a more effective and efficient process as compared to value engineering by change order to a completed design. The inherent flexibility and openness of the CM/GC process allows the District to more easily change the design and scope of work as necessary to meet the project budget before the final design is fixed. This flexibility during design development is not something that the traditional bid process offers.*

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

*The RFP process allows for review of contractor expertise not afforded in traditional procurement. The Benson Polytechnic High School Modernization Project is very complex and requires a general contractor with specialized expertise due to the complexity of the school. For example, Benson Polytechnic has a mix of historic renovation, demolition and new construction, all in a tight construction schedule on an occupied site.*

"(F) Any likely increases in public safety:"

- a) *Demolition has to be performed by an experienced subcontractor. The traditional Design/Bid/Build process mandates that the lowest bid demolition contractor is awarded the bid, with no detailed evaluation of their experience or safety record. Maintaining safe movement of the roadway, bicycle, and pedestrian traffic is critical.*
- b) *Traditional bidding pushes the Architect and the District to designate the laydown area (i.e., space that has been cleared for the temporary storage of equipment and supplies) in the plans so all contractors bid on the same laydown and staging scheme. If the traditional bid contractor's actual staging and laydown post bid changes the design, it will cost the project time and contingency money to correct.*
- c) *The CM/GC contract allows time for the GC to pull extended noise and work hour permits during the design phase before construction begins. Noise and construction work hours permits take two months to obtain. The Contractor has to canvas the neighborhood and provide a schedule of the noise dates and extended work hours to the City of Portland. If this process is not carefully completed, the permits could be appealed to the City Council. The traditional*

Benson Polytechnic Modernization: Alternative CM/GC Contracting Method

*design/bid/build process doesn't allow enough time for permitting before construction.*

- d) Bringing the CM/GC on board during the design phase will provide the CM/GC with clear, upfront knowledge of project constraints and an early opportunity to collaborate with the design team on the work sequencing, staging, and site access.*

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

*The CM/GC process will mitigate risks as described above and listed below:*

- a) Coordination with Portland Parks & Recreation, Multnomah County, TriMet, PBOT, ODOT, City of Portland, and all other relevant agencies.*
- b) Site coordination regarding District leases or other facility partnerships or agreements.*
- c) Site staging and laydown coordination.*
- d) Site safety and work hours.*
- e) Use of a highly qualified demolition company.*
- f) The establishment of the GMP will provide a complete project within the District's established budget.*
- g) A CM/GC contract allows for the District to engage in Early Work Agreements for early work that will allow architects, contractors, and the District to gain more insight and site verification of unforeseen conditions. Early Work Agreements may also expedite the construction schedule by allowing early work during the design phase.*

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

*There will be no impact on the funding of these projects due to the CM/GC process.*

"(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:"

*Because the CM/GC process appoints the general contractor early into the design, we are able to take advantage of market prices by facilitating early purchase of certain project elements, if needed. An essential added value of the CM/GC process is real time market job costing from projects around the Portland market and the West Coast. This knowledge allows the GC and architect time to discuss the less costly complementary or alternative items.*



## Benson Polytechnic Modernization: Alternative CM/GC Contracting Method

*For example, the GC may provide early input that it is less expensive but equally advantageous to use Concrete Masonry Units (CMU) block for the exterior walls of a new gym building versus a tilt wall or cast-in-place wall, thus saving the District time and money. If the District bids this contract traditionally, after design completion, the District may not receive this timely cost saving input and would have to make an adjustment in the field, which would cost time and may only save a smaller percentage of funds.*

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

*The CM/GC process will help deliver a successful Benson Modernization Project. One of the biggest advantages of the CM/GC method is the ability to coordinate all technical work before construction. Being able to apply best practices with the Design teams, District and the Contractor will make for a better product within the budget constraints.*

*As already described above, the areas of technical complexity include:*

- a. Historically significant building*
- b. School occupied construction site*
- c. Traffic management*
- d. Potential time delays in permitting*
- e. Challenging site conditions and footprint*
- f. Intergovernmental agreements and lease agreements*
- g. Compliance with Portland Public Schools' Equity in Public Purchasing and Contracting Policy 8.50.095-P and related initiatives*

*In the CM/GC process, the contractor's awareness of complicated technical issues arising during the design process facilitates advance problem-solving. Thus, the risks are better understood and addressed early on in the process, resulting in greater mitigation of financial and schedule risks.*

"(K) Whether the public improvements involve new construction or renovate or remodel an existing structure;"

*This project will involve renovating current Benson Polytechnic High School buildings and will also include several additions. Procuring a contractor with experience in both new construction and renovation is critical.*

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

*The current plan is to complete the Benson Modernization Project in a phased, occupied three year building construction timeline.*

## Benson Polytechnic Modernization: Alternative CM/GC Contracting Method

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

*At this time, we are planning on three phases of construction work for the Benson Modernization Project.*

"(N) Whether the contracting agency or state agency has, or 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 or state 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's Office of School Modernization has department staff, as well as the design team consultants under contract, that have the necessary expertise with the CM/GC contracting method to develop and effectively utilize the CMGC method for the Benson Modernization Project. The District's outside legal counsel has extensive experience with both the CM/GC alternative contracting method and prior district CM/GC contract.*

### **CONCLUSION**

For the reasons stated above, these draft findings support an exemption from competitive bidding under ORS 279C.335 to utilize the CM/GC alternative contracting process for the Benson Modernization Project.