



PORTLAND PUBLIC SCHOOLS OFFICE OF SCHOOL MODERNIZATION

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To: Board of Education

From: Marina Cresswell
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Subject: Draft Findings in Support of Alternative Contracting Method and Use of Construction Manager/General Contractor Method for Jefferson High School Modernization Project

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 Jefferson High School Modernization (the “Project”). Specifically, staff seeks to use a Construction Manager/General Contractor (“CM/GC”) to select the contractor (“Proposer”) for the Project.

PROJECT DESCRIPTION: The 2020 School Improvement Bond includes funding to renovate Jefferson High School to allow for full modernization of the facility. The buildings require major improvements and upgrades to optimize the school’s operational and learning environments. The Jefferson High School Modernization Project includes, but is not limited to, seismic retrofit, hazardous material abatement, mechanical/electrical/plumbing upgrades, structural reinforcing, onsite storm water management, building additions, and informational technology improvements, as well as new interior partitions, architectural finishes, and site/landscaping improvements. The total project budget is \$311M, from the 2020 voter approved bond funds. The cost of construction is estimated to be approximately \$220M of the overall budget. The Project schedule has targeted early 2024 as the approximate start date for Project-related construction.

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 the project – cost overruns take away funds from other, necessary bond-funded projects;
- An exemplary history of on-time delivery with an aggressive timeline – the facilities to be

developed by the project must be delivered in a timely manner due to program and enrollment needs;

- Company and staff skills and experience with projects of this size, scope and complexity – relevant project experience lowers the risk of cost and schedule overruns due to better understanding of project needs, availability of appropriate company resources for size and complexity;
- Ability and commitment to in-depth and innovative approaches in engaging the local subcontracting community in support of the District's Equity in Public Purchasing and Contracting programs;
- Utilization of staging and construction means and methods that are sensitive to the occupied school facility, site and surrounding residential neighborhood – construction work will be occurring around occupied facilities and tight urban constraints;
- Flexibility and creativity in addressing unique opportunities and unforeseen conditions – existing infrastructure often provides unexpected challenges with a short timeline for resolution; and
- An understanding of the importance of a collaborative and tightly integrated project team.

CM/GC ALTERNATIVE CONTRACTING METHOD: 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 above qualities when selecting the most appropriate contractor. 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, expertise, and project approach 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 modernizations involving existing buildings and sites like the Jefferson High

School Modernization Project.

FINDINGS: Following are the factors for consideration under ORS 279C.335 (2), in **bold**, followed by staff's findings.

“(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 Request For Proposal (“RFP”) process. That procurement is formally advertised with public notice and disclosure of the planned Alternative Contracting Method. Full competition will be encouraged and this competitive process will include significant staff outreach to and solicitation of certified minority owned, women owned, service-disabled veteran owned, and emerging small business contractors (“Certified Businesses”) in accordance with the District’s values and policies. The general contracting market is familiar with the CM/GC process and accepts it as a standard, and often preferred, delivery method. The award will be based upon review and scoring of submitted proposals through identified selection criteria, by a diverse District review committee representing a broad range of experience and qualifications. Once selected, the CM/GC will select subcontractors via competitive process in accordance with Oregon Attorney General Model Rules and required by statute. The process will therefore provide for vigorous competition and provide opportunity for all interested large and small contractors to participate in 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.”

Through the use of the CM/GC process to ensure successful Proposers are experienced with the scope, scale and unique qualities of the Project, the District limits its risk of changes to the final contract amount due to incomplete or inaccurate bid estimates.

“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 District CM/GC procurements, it is reasonable to anticipate between three to five firms will propose on the Jefferson High School Modernization Project. The construction community has already expressed significant interest in the Project, and staff began performing outreach several months ago. The District has received three to four proposals on each of its

last three CM/GC procurements for high school modernizations.

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

The construction budget is set forth above in the project description. The projected operating costs are yet to be determined. The current construction market in Portland is extremely busy and has limited resources. Having a CM/GC under contract 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 improvements will reduce long-term operating cost. Having a contractor onboard during the design phases will help improve the design of the buildings including operating cost impacts such as energy efficiency.

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

A CM/GC RFP allows the District to review the resumes and references of the Proposer's project team, ensuring the selected Proposers have the necessary experience, expertise, and community-centric approach to address the Project's unique needs. In a traditional design-bid-build procurement, the District awards to the lowest responsible bidder regardless of the above factors. This process would increase risk for the Project, the District, and the community by potentially awarding the bid to a contractor who does not have the qualifications, knowledge or experience to successfully complete the Project.

Bringing the CM/GC on during the design phase promotes an early team partnering approach that leads to continuous cost and constructability review, and a better collaboration between design and construction, resulting in an improved final design. The District, Architect, and Contractor gain more knowledge and confidence in the final design as they move through design development and are able to more accurately price the final construction cost. This also reduces change orders and limits delays during the construction phases. This benefits the public through cost savings, provides more early cost certainty, and is more likely to result in timely delivery of the project.

Under a CM/GC process, the District can execute an Early Work agreement to allow construction work to proceed prior to design completion. This allows the District to utilize the CM/GC to fully investigate existing conditions prior to completion of design. In the traditional bidding process, these conditions would not be determined until the start of construction, which significantly lengthens the construction schedule if designs need to be modified to address unexpected conditions. Construction time savings translate to both schedule and cost savings for the Project.

The CM/GC RFP process also ensures award to Proposers 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 CM/GC can financially withstand the obligations of expending over \$6-9 million worth of labor, materials, and equipment between each monthly

invoice payment. The CM/GC process encourages smaller contractors to partner with larger contractors to provide the smaller contractors with growth-enabling experience while still demonstrating financial stability as partnered Proposers.

"(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 procurement process 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, resulting in a more cost-effective and efficient process as compared to attempting to reduce cost by change order in construction. The inherent flexibility and openness of the CM/GC process allows the District to more effectively change the design and scope of work as necessary to meet the project budget before the final design is fixed, while ensuring that the CM/GC agrees with and supports the changes.

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

The CM/GC RFP process allows for review of contractor expertise not afforded in traditional procurement. High school modernization projects are very complex and require a general contractor with specialized expertise due to the complexity of the construction types. While the final design is not yet known at this time, the Jefferson High School Modernization Project may include a mix of historic renovation, demolition and new construction, all in a tight construction schedule on an occupied site. Even all new construction will require a unique variety of specialized spaces and systems, such as theaters, kitchens, construction shops, dance floors, science classrooms, and complex mechanical, security and sound systems.

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

The CM/GC process, by bringing the contractor on board during design, provides the CM/GC with clear, upfront knowledge of project constraints prior to construction, and an early opportunity to collaborate with the design team on the work sequencing, staging, and site access. This significantly improves public safety during demolition, hazardous material abatement, construction adjoining occupied areas, and routing of pedestrian, bicycle, and vehicle traffic during construction.

"(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 reduce risks to the District and the public through selection of a qualified and experienced contractor, inclusion of the contractor in the design phase, and the use of a negotiated GMP. It will reduce risks of: unforeseen conditions; permitting delays;

inappropriate material or system selections during design; lack of labor availability; material procurement delays; safety hazards in demolition, traffic management, and construction; schedule overruns; cost overruns; and poor construction quality.

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

There will be no impact on the funding of the Project if the exemption is granted.

"(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;"

The current market conditions have shown a dramatic increase in material supply costs and availability, as well as a competitive contractor labor market. The exemption will allow the District to execute construction contracts early, at defined costs, to ensure Project prioritization in contractor labor scheduling and cost. Early execution of contracts will also allow for flexible modification of design elements to address market variabilities in product costs; better understanding of labor market conditions related to specific construction materials; and contractor ability to purchase long lead materials early to avoid potential schedule delays.

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

Granting the exemption will help deliver a successful Jefferson High School Modernization Project. One of the biggest advantages of the CM/GC process is the ability to coordinate work in areas of technical complexity prior to the start of construction. Such areas of technical complexity in the Project will include: historically and culturally significant buildings; active school use of the overall site; dense surrounding urban fabric; complex land use permitting requirements; challenging site footprint; community partnership and lease agreements; and District and community desire to maximize Certified Business participation. In the CM/GC process, the contractor's awareness of complex technical issues arising during the design phase facilitates advance problem-solving. Potential technical issues are addressed early in the process, resulting in improved mitigation of cost and schedule risks.

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

The final design of the Jefferson High School Modernization Project is not known at this time but will likely involve a mix of renovation and new construction. 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 final design, and therefore potential occupancy, of the Jefferson High School Modernization Project is not known at this time but will likely involve a multi-year, phased approach to construction with occupancy of buildings in areas adjacent to where construction is occurring.

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

The final design, and therefore specific phasing, of the Jefferson High School Modernization Project is not known at this time but it is anticipated to require a multi-year, phased approach to construction. The exemption will allow the district to evaluate the contractor's qualifications in successfully delivering multiple phased projects.

"(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 CM/GC method for the Jefferson High School Modernization Project. The District's outside legal counsel, Miller Nash Graham & Dunn LLP, has extensive experience with both the CM/GC alternative contracting method and prior District CM/GC contracts.

CONCLUSION: For the reasons stated above, the draft findings support an exemption from competitive bidding under ORS 279C.335 to utilize the CM/GC alternative contracting method for the Jefferson High School Modernization Project.