

RESOLUTION 1940

RESOLUTION 1940 GRANTING BIDDING EXEMPTION, AUTHORIZING CONSTRUCTION OF THE BEND HIGH MODERNIZATION BY MEANS OF A CONSTRUCTION MANAGER/GENERAL CONTRACTOR AND AUTHORIZING SELECTION BY REQUEST FOR PROPOSALS

WHEREAS, ORS Chapter 279A authorizes the School District’s Board of Directors to designate itself as the public contract review boards for the School District, and

WHEREAS, the Board of Directors of Administrative School District #1, Bend La Pine Schools, has designated itself as the public contract review board for the School District, and in that capacity has authority to exempt certain contracts from the competitive bidding requirements of ORS Chapter 279C, and

WHEREAS, ORS 279C.335(2) provides for a process for exempting certain public improvement contracts from competitive bidding and the School District’s Model Procurement Rules authorize the selection of a contractor through the CM/CG process as set forth in DJ-AR 49-0600, and

WHEREAS, the School District Board of Directors determines that the Bend High School Modernization should be constructed by a CM/GC.

The School District Board of Directors finds as follows:

1. The School District Board of Directors adopts the specific findings of fact set forth above.
2. The exemption of the CM/GC contract from competitive bidding will promote competition and will not encourage favoritism because the CM/GC will be chosen by the request for proposals process, and the major portion of the construction work will be performed by subcontractors chosen by competitive bidding.
3. The exemption of the CM/GC contract from competitive bidding will result in substantial cost savings to the School District, for the reasons set forth in the findings above.
4. The exemption of the CM/GC contract also appears to be in the best interest of the School District in that the use of the CM/GC process will permit the School District to complete the construction within a GMP and within a reasonable time with minimum redesign effort.

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

The contract for construction of the Bend High Modernization by a Construction Manager/General Contractor for a Guaranteed Maximum Price is exempted from competitive bidding, and the Construction Manager/General Contractor shall be selected by the Request for Proposal method in accordance with the School District’s Model Procurement Rules, DJ-AR 49-0650, and the process described in the above findings.

Moved by Amy Tatom

Second by Shirley Olson

Yes votes 6 No votes 0



Chair



Vice Chair

Janet Bojanowski

Board Secretary

Dated this 13th day of December, 2022

**FINDINGS OF FACT FOR THE USE OF
THE CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC)**

Before the Administrative School District #1, Bend La Pine Schools Board of Directors

Administrative School District #1)	Findings of Fact
For the)	Conclusion of Law
Bend High School Modernization)	

SITUATION

On November 8, 2022, the voters of Administrative School District #1 – Bend La Pine Schools approved a \$249,729,668 bond levy of which \$178,678,126 was set aside for the design and construction to rebuild and renovate Bend Senior High School. The project includes constructing multiple new buildings and additions along with renovating existing buildings and reconstructing fields, parking lots, sidewalks and other aspects of the site. The project is anticipated to be constructed in three phases over approximately six years while the school remains occupied. Due to the schedule and complexity of construction, the on-site occupation of the building by students and staff during construction, and the critical timing of construction to meet the delivery schedule, the Facility Development Office is recommending that the School District use the Construction Manager/General Contractor (CM/GC) with a Guaranteed Maximum Price (GMP) construction delivery method. The use of this delivery method requires a specific exemption from the standard competitive bid process for a general contractor that allows the use of this alternative contracting method be granted by the Board.

The guiding applicable statutes are: ORS 279C.300 which requires, with certain exceptions, that all public improvement contracts be based on competitive bidding and, under ORS 279C.375, be awarded to the lowest responsive and responsible bidder. ORS 279A.050 and ORS 279A.060 permit the Board of Directors of the School District to act as the public contract review authority and to grant, under certain conditions, specific exemptions from the requirement for competitive bidding pursuant to ORS 279C.335(2) and ORS 279C.330. The Bend La Pine Public Schools Model Procurement Rules allow for alternative contracting methods, DJ-AR.

FINDINGS OF FACT

The School District makes the following findings regarding use of the CM/GC alternative contracting method for the above-referenced public improvement contract:

FINDING #1 – CM/GC WILL NOT DIMINISH COMPETITION NOR ENCOURAGE FAVORITISM

Finding: It is unlikely that the use of the CM/GC alternative contracting method will encourage favoritism, or substantially diminish competition, in the awarding of this public improvement contract.

FINDING #2 – CM/GC WILL RESULT IN SUBSTANTIAL COST SAVINGS

Finding: Use of the CM/GC alternative contracting method will result in substantial cost savings to the School District.

Information regarding the following was considered in justification of the School District’s conclusion in reaching these findings:

1. Operational, Budget and Financial Data

Operational Data:

The CM/GC will be selected through a competitive process in accordance with a Request For Proposals (RFP) process authorized by the Board of Directors, pursuant to OAR137- 49-0650. Competition will not be inhibited nor will favoritism be encouraged.

A. SOLICITATION PROCESS: Pursuant to ORS 279C.360, the CM/GC solicitation will be advertised at

least twice in the Daily Journal of Commerce.

- B. FULL DISCLOSURE: To ensure full disclosure of all information, the RFP solicitation package will include:
1. Detailed Description of the Project
 2. Contractual Terms & Conditions
 3. Selection Process
 4. Evaluation Criteria
 5. Role of Evaluation Committee
 6. Provisions for Comments
 7. Complaint Process and Remedies Available
- C. SELECTION PROCESS: Other highlights of the selection process will include:
1. A pre-proposal vendor conference will be announced and held. This conference will be open to all interested parties. During this pre-proposal conference, as well as any time prior to ten (10) days before the close of the solicitation, interested parties will be able to ask questions, request clarifications and suggest changes in the solicitation documents if such parties believe that the terms and conditions of the solicitation are unclear, inconsistent with industry standards, or unfair and unnecessarily restrictive of competition.
 2. Sealed proposals will be submitted to the Main Office Reception at the Education Center at 520 NW Wall Street, Bend, Oregon and opened publicly at the time specified in the advertisements.
 3. The evaluation process will determine whether a proposal meets the screening requirements of the RFP, and to what extent. The following process will be used:
 - a. Proposals will be evaluated for completeness and compliance with the screening requirements of the RFP. Those proposals that are materially incomplete or non-responsive will be rejected.
 - b. Proposals considered complete and responsive will be evaluated to determine if they meet and comply with the qualifying criteria of the RFP. If a proposal is unclear, the proposer may be asked to provide written clarification. Those proposals that do not meet all requirements will be rejected.
 - c. Proposals will be independently scored by the voting members of the Selection Committee. Scores will then be combined and assigned to the proposals.
 - d. If the Selection Committee chooses to conduct interviews, the Selection Committee will convene to select a group of finalists from the highest-scoring proposers for formal interviews.
 - e. The Selection Committee will conduct the interviews.
 - f. The Selection Committee will use the interview to confirm the scoring of the proposal and to clarify any questions. Based upon the revised scoring, the Selection Committee will rank the proposers.
 - g. The Facilities Development Office will negotiate a contract for Phase 1 (pre-construction services) with the top-ranked firm. If an agreement cannot be reached, the School District will have the option to enter into an agreement with the second-ranked firm, and so forth, or cancel the solicitation.
 - h. A guaranteed maximum price (GMP) will be negotiated after the 100% Design Development phase and before the 100% Construction Documents design phase of the Project. The GMP will be present to the School District Board of Directors for approval.
 4. Competing proposers will be notified in writing of the selection of the apparent successful proposal and will be given seven (7) calendar days after receipt of the notice to review the RFP file and evaluation report at the office of Facilities Development. Any questions or concerns about the selection process will be subject to the requirements of the School District's Model Procurement Rules, and OAR 137- 49-0450, must be in writing, and must be delivered to the School Districts' Deputy Superintendent within seven (7) calendar days after receipt of the

selection notice. No protest of the award selection shall be considered after this time period.

Budget and Financial Data:

The contract achieved through the CM/GC process will require the CM/GC to use an open competitive selection process to bid all components of the job. The CM/GC's overhead and fee makes up 10-15% of the total cost, and will be evaluated as one of the scoring criteria. Overhead, which includes supervision, bonding, insurance, and mobilization, must be within the industry standard range of approximately 10%. The CM/GC's fee must be within the industry standard range of 3-5%. Since these amounts will be scored as part of the competitive RFP process, the entire dollar value of the project will be awarded through open competitive processes, at either the general contractor or subcontractor level. The CM/GC process also provides these additional benefits:

(a) FEWER CHANGE ORDERS: When the CM/GC participates in the design process, fewer change orders occur during project construction. This is due to the CM/GC's better understanding of the owner's needs and the architect's design intent. As a result, the project is more likely to be completed on time and within budget. In addition, fewer change orders reduce the administrative costs of project management for both the School District and the contractor. The phased demolition of parts of the existing building and campus while maintaining system functionality and coordinating new construction will be complex. The use of a CM/GC will allow for early procurement of materials, improved cost-estimating, logistics coordination, and should reduce the overall quantity of change orders due to unforeseen circumstances. Prior to construction the CM/GC will assist the design team in developing the schedule, cost estimate, and select materials.

(b) GMP CHANGE ORDERS COST LESS: The reduced number of CM/GC change orders discussed above are processed at a lower cost under the GMP. The design-bid-build method typically results in the contractor charging 15% markup on construction change orders. The GMP method applies a lower predetermined markup. The experience of the School District has been that the markup is in the range of 3-5%.

(c) SAVINGS: Under the GMP method the School District will enjoy the full savings if actual costs are below the GMP. When the CM/GC completes the project, any savings between the GMP and the actual cost accrue to the School District.

(d) CONTRACTOR'S FEE IS LESS: Contracts with CM/GC's are designed to create a better working relationship with the contractor. As a consequence, the overhead and profit fee is generally in the 3-5% range, and contractors indicate this is slightly lower than the fee anticipated on similar design-bid-build contracts.

2. Public Benefits

Early selection of the CM/GC creates more informed, better quality decision making by the project construction team. A more efficient construction team saves the District money and provides other public benefits. The CM/GC method will reduce financial risk to the School District. Reduced risk provides a significant value and potential savings.

THE CM/GC CONTRACTING METHOD ESTABLISHES A MAXIMUM PRICE PRIOR TO COMPLETION OF DOCUMENTS: The CM/GC will be able to obtain a complete understanding of the School District's needs, the architect's design intent, the scope of the project, and the operational needs of the students, teachers, and administration of the school by participating in the design development phase. With the CM/GC participating in this phase they will be able to offer suggestions for improvements and make suggestions that will reduce costs. With the benefit of this knowledge, the CM/GC will also be able to guarantee a maximum price to be paid by the School District for constructing the project.

3. Value Engineering

The CM/GC process offers a unique opportunity for value engineering that is not possible through the design-bid-build process.

- A. VALUE ENGINEERING AND CM/GC PARTICIPATION IN THE DESIGN PROCESS: An essential part of each construction project is the value engineering evaluation. Value engineering is the means used to determine the best project design that meets the needs and priorities of the owner, within the owner's budget. Value engineering is done most effectively by a team consisting of the owner, architect, consultants, and the contractor. When the contractor participates, the team can render the most comprehensive evaluation of all factors that affect the cost, quality, and schedule of the project.
- B. VALUE ENGINEERING WITH THE DESIGN-BID-BUILD PROCESS: If the School District were to utilize the design-bid-build method the contractor would not participate in this evaluation, hence, value engineering would be conducted without the benefit of:
- The ability to set the schedule;
 - The ability to sequence work; and
 - Commitment from the contractor to implement the design within the schedule and budget.

Through integrated participation, a project scope and design evolve that has greater value for the owner, and is not likely to be the same project created by the design-bid-build method.

4. Specialized Expertise Required

The construction project is highly complex because it involves construction on an existing school site while the building is in use. Use of a CM/GC in conjunction with the team approach will result in a better coordinated project, speed completion, and minimize disruption to operations. The CM/GC: guarantees the maximum price to complete the project; determines the construction schedule; establishes the sequence of work; is contractually bound to implement the final project design within the GMP; and participates as an essential member of the project design and construction team. Several benefits of participation by the CM/GC on this project will be realized: developing the design documents to reflect the best work plan that accommodates both the School District and contractor; the best grouping of the bid packages that will help insure better trade coverage; the most efficient construction staging area on the school campus; the most cost effective route through campus and buildings for the various utilities; and help with adjusting the work plan when the needs change along the way.

5. Public Safety

Because the site is in use during the construction process, safety is of critical importance. By being involved in all phases of the project, including the design and construction, understanding the structural peculiarities of the existing building, and knowing the scope and technical complexity of the project, the CM/GC will be able to provide a safe environment for the students, teachers, and school administration throughout the entire project.

6. Market Conditions

The School District's ability to accurately estimate the cost of this project is complicated by the multitude of construction market conditions that exist today in Oregon (e.g., competition of other projects, environmental issues that limit construction materials, shortage of qualified craftsman, etc.), as well as the difficulty in establishing the best work sequence. Because the project has a limited budget, it is essential to reduce the risk of cost overruns.

7. Technical Complexity

A CM/GC is necessary to manage the complex design and construction of this project, as well as the on-site occupation of the building by students and staff and the critical timing of construction to meet delivery schedules. Each of the three construction phases of the project will require partial demolition of the existing building and site while maintaining functionality of the overall school and essential services throughout the duration of the project. Due to construction timelines on each phase it's anticipated this project will be completed over approximately six years which will be challenging logistically have many impacts on facility operations. In working with a CM/GC and staff the schedule for the work can be determined to minimize the impact to the operation of the school and still meet the anticipated completion date of August, 2028.

8. Funding Sources

The School District's voters approved a \$249,729,668 bond levy of which \$178,678,126 was set aside for the design and construction of the Bend High Modernization.

CONCLUSIONS OF LAW

Use of the CM/GC process for the Bend High School Modernization complies with the criteria outlined in ORS 279C.335(2), including the factors in ORS 279C.330:

1. It is unlikely the exemption will encourage favoritism or substantially diminish competition. The selection process will be fair and open to all interested proposers as established within above findings.
2. The exemption will result in substantial cost savings to the School District. Also, value will be added to the project that could not otherwise be obtained.