



Board of Education Informational Report

MEMORANDUM

Date: March 20, 2018

To: Finance, Audit, and Operations Committee

From: Emily Courtnage, Director of Purchasing & Contracting

Subject: Student Proposal and Pilot Project: Menstrual Hygiene Products in Schools

In January 2017, during the public comment period of a Board meeting, a student leader requested that the District provide menstrual hygiene products for student use in school bathrooms. Board members asked Finance Division staff to explore the associated costs.

After contacting suppliers for cost estimates and gathering data on female student enrollment and numbers of female or gender-neutral bathrooms in schools, I worked with Ryan Dutcher and Pradeep Raju to create a cost model with several variables, including:

- provision via affixed dispensers or no dispensers
- provision at no cost or at variable cost to students
- provision at high schools only or also at middle schools and K-8 schools

Our model included several assumptions: (1) Percentage of dispensers requiring replacement yearly, (2) percentage of product waste or theft, and (3) approximate per student annual usage.

In addition, we surveyed principals, assistant principals, and school secretaries to obtain feedback on the proposal. Feedback was very positive, although we heard some concern about possible vandalism or misuse at the middle school level in particular. Our Facilities staff also shared concerns, based on prior District experience, about potential vandalism of coin dispensers.

On March 23, 2017, we presented our model to the Board's Budget and Operations ("B&O") Committee, and Grant High School students presented their request for provision of menstrual hygiene products in high schools and middle schools at no cost to students. The members of the B&O Committee asked the students to pilot the provision of products at one or more schools and then report back the following year with a district-wide proposal.

In May 2017, Purchasing & Contracting purchased \$750 worth of pads and tampons, using a Costco rebate coupon from May 2016 emergency bottled water purchases. We provided the products to Grant HS students for a pilot project at Grant to test assumptions regarding waste/misuse, vandalism, and usage.

Grant HS students Kate and Zoe led the pilot project at Grant, with provision of products in all female student bathrooms from December 4, 2017 through the middle of March 2018. They stocked the product in each bathroom weekly, using small plastic baskets for dispersal, and

kept detailed data on usage. From this data, we are better able to approximate likely usage and District-wide costs.

The Grant HS students leading this effort will present to the FAO Committee their pilot project findings and their proposal for supplying pads and tampons in all District high schools, at no cost to students, without affixed dispensers.

Estimated annual costs of their proposal are as follows:

Projected Annual Menstrual Hygiene Usage and Costs

Year	Approx. Female HS Student Enrollment	Yearly Usage Per Student	Avg. Cost Per Unit	Total
1	6850	26	\$0.136	\$24,722
2	6987	26	\$0.136	\$25,206
3	7127	26	\$0.136	\$25,700
4	7269	26	\$0.136	\$26,204

*Assumptions include 2% YoY enrollment increase and an annual investment of \$500 for plastic bins to hold product.



Board of Education

Staff Report to the FAO Committee

Committee Meeting Date: April 3, 2018

Executive Committee Lead:
Jim Scherzinger, Chief Financial Officer

Department: Finance

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

SUBJECT: Lincoln High School Modernization Project: Exemption from Competitive Bidding and Authorization for Use of Construction Manager/ General Contractor (CM/GC) 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 Lincoln High School Modernization Project and authorize staff to utilize the 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, and Madison 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 Lincoln High School Modernization Project and draft Findings of Fact ("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

Where an exemption from competitive bidding on a public improvement contract is sought, the Public Contracting Rules require that the Contract Review Board conduct a public hearing prior

to adoption of an exemption Resolution. 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 will publish a Notice of Public Hearing concerning the Lincoln High School exemption request 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 will be 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.

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.

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 the FAO Committee approves moving this exemption request to the full Board, a public hearing will be scheduled and advertised for the April 24, 2018 Board meeting. At that meeting, the Board will 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 vote on the attached Resolution.

Staff from the Office of School Modernization will be available at the April 24, 2018 Board Meeting and public hearing to respond to questions relating to the work described in the attached Resolution and Findings.

If the exemption Resolution is approved, 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 Lincoln High School Modernization public improvement project.

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: March 13, 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 Lincoln High School Modernization Project.

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 Lincoln High School Modernization Project.

PROJECT DESCRIPTION

The 2017 Health, Safety, and Modernization Bond includes funding to renovate Madison, Lincoln, and Benson High Schools to allow for full modernization of the facilities. The buildings require major improvements and upgrades to optimize each school's operational and learning environments. The Lincoln Modernization project includes, but is not limited to, new building construction, hazardous material abatement, mechanical/electrical/plumbing systems, seismic resiliency, onsite storm water management, athletic fields, information technology improvements, 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.
- The requisite expertise of providing construction services in the Central City of Portland on a small urban site with multiple constraints and challenges.
- 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.
- Ability and commitment to advise the District on the state of the current market.
- Ability and commitment to 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 if needed.

CM/GC is the commonly used alternative contracting method by local governments for large, complex projects such as major expansions, remodels, and rebuilds of existing buildings. This procurement method was previously approved by the Board for the Roosevelt, Franklin, Grant, and Madison high school projects.

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 CM/GC firm for each 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 Oregon Attorney General Model Rules and as required by statute. As required by the District's Equity in Public Purchasing and Contracting Policy, 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, it is reasonable to anticipate between three to five firms will propose on the Lincoln High School Modernization Project. CM/GC Requests for Proposals in 2016 (for Grant HS) and 2018 (for Madison HS) resulted in three proposals each. A number of general contractors have already expressed interest in the upcoming RFP for the Lincoln project.

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

The complete project budget is \$187,000,000 as set forth in the May 2017 voter approved bond measure. The construction budget will be determined during design in coordination with the CM/CG contractor through review and analysis by the integrated project team. 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 lower than average costs due to efficiencies in new construction and highly efficient energy performance. This is due in part to requirements of the LEED (Leadership in Energy and Environmental Design) Gold certification criteria mandated by the District for this project. Including the contractor during design will help ensure more efficient and integrated building systems.

"(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 provides time savings that translate to cost savings by bringing the contractor on board early in the project 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 if needed to maintain schedule. 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 more accurately price the GMP.

Unlike a traditional design/bid/build procurement, an RFP allows the District 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. This practice makes the Lincoln High School Modernization Project vulnerable by potentially awarding the contract to a General Contractor who does not have the correct personnel, the tailored building profiles, experience working in the city center, or the financial strength to perform the startup and maintenance of this project.

"(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, 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.

Value engineering will likely not decrease the contract sums of the Lincoln High School Modernization Project, but it will reduce extra-cost change orders and the costs associated with the attendant project delay.

"(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 Lincoln High School Modernization Project is complex and requires a general contractor with specialized expertise due to the complexities of the site and project scope. Construction will occur adjacent to the existing school building, which will be occupied by the Lincoln program until the new building is completed. The small urban site is logistically demanding. A strong safety record will be important.

"(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 crew is awarded the bid, with no detailed evaluation of their experience or safety record. Maintaining a safe environment on site is critical to student and staff safety as the Lincoln program will remain on site throughout construction.*
- b) Traditional bidding pushes the Architect and the District to designate the laydown area (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 changes the design, it will cost the project time and contingency money to correct. This concept is critical for Lincoln due to the highly constrained urban location. A*

CM/GC partner will be able to best plan for construction activities during design, thus minimizing changes and additional costs.

- 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 is not carefully done, the permits could be appealed to the City Council. The traditional design/bid/build process doesn't allow enough time for permitting before construction.*
- d) Bringing the CM/GC on 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:

- e) Coordination with TriMet, PBOT, ODOT, City of Portland, and all other relevant agencies.*
- f) Site coordination regarding District leases or other facility partnerships or agreements.*
- g) Site staging and laydown coordination.*
- h) Site safety and work hours.*
- i) Use of a highly qualified demolition company.*
- j) The establishment of the GMP will provide a complete project within the District's established budget.*
- k) 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. The essential added value of the CM/GC process is the real time market job costing from projects around the Portland market and the West Coast. This knowledge allows the CM/GC and architect time to discuss the less costly complementary or alternative items.

For example, the CM/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 bid 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 Lincoln High School 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. On-site safety plan for students and staff during construction*
- b. Traffic management*
- c. Potential time delays in permitting*
- d. Challenging site conditions on the Central City*
- e. Intergovernmental agreements and lease agreements*
- f. Compliance with Portland Public Schools' Equity in Public Purchasing and Contracting Policy 8.50.095-P and related initiatives (all projects)*

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 and greater mitigation of financial and schedule risks are the result.

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

This project involves the replacement of Lincoln High School with new construction and potential renovation work. Procuring contractors with experience in both new construction and renovation is critical.

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

The Lincoln High School program will remain in the current building while the new school is constructed on the existing track and field, adjacent to the west. The small site area and constraints of the city center require careful planning for both the safety of staff and students and the efficiency of conducting the work on an occupied site. The District will have the benefit of a CM/GC on board early during design to plan for these complexities.

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

We are planning two phases of work for the Lincoln project. The first phase will be to construct the new school building on the current track and field. Once completed, the District will move the Lincoln program in to the new building for the start of the following school year. The existing building will then be demolished and a new track and field built in its place. Having a CM/GC on board early will help in the planning and execution of both phases of work.

"(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 Lincoln 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. The Office of School Modernization has reviewed previous CM/GC projects and will be applying lessons learned and improved methods of project execution for upcoming CM/GC projects.

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 process for the Lincoln High School Modernization Project.

RESOLUTION NO. ____

Lincoln High School Modernization Project: Exemption from Competitive Bidding and Authorization for Use of the Construction Manager/General Contractor (CM/GC) Alternative Contract Method

RECITALS

- A. The Board of Directors of Portland Public Schools ("District") is the Local Public Contract Review Board ("Board") pursuant to ORS 279A.060.
- B. ORS 279C.335(2) authorizes the Board to exempt certain public contracts or classes of contracts from the standard competitive bidding process otherwise required by the Public Contracting Code and Rules upon certain findings.
- C. The District intends to complete the Lincoln High School Modernization Public Improvement Project ("Lincoln Modernization Project") as part of the 2017 Capital Improvement Bond work.
- D. Staff has determined that use of the Construction Manager/General Contractor ("CM/GC") alternative contracting method is the preferred method of delivery for the complex Lincoln Modernization Project. This determination is supported by draft Findings of Fact ("Findings") presented to the Board pursuant to ORS 279C.335.
- F. These Findings specify the cost savings and design, scheduling, operational, safety, and logistical advantages gained through use of the CM/GC process.
- H. On **DATE**, the District issued a public notice in the Business Tribune announcing the District's intent to utilize the CM/GC Alternative Contracting Method for the Lincoln Modernization Project. The notice was issued in compliance with ORS 279C.335 and the PPS Public Contracting Rules. The Findings were made available for public review and comment on the date of publication.
- I. The Board held a public hearing on the draft findings on **DATE**.
- J. Staff recommends approval of the exemption from Competitive Bidding and approval of the CM/GC alternative contracting method for solicitation and completion of the Lincoln Modernization Project.

RESOLUTION

1. The Board hereby exempts the Lincoln Modernization Project from competitive bidding requirements as provided in ORS 279C.335 and PPS Public Contracting Rules PPS-49-0145. The Board approves utilization of the CM/GC Alternative Contracting Method as described in the Draft Findings.
2. The exemption granted in Section 1 of this Resolution is based upon the Findings pursuant to ORS 279C.335(2), which the Board adopts and incorporates by reference into this Resolution.

3. Pursuant to these findings and decision, the Superintendent or his designee is hereby authorized to conduct a CM/GC alternative contracting process for the Lincoln Modernization Project.

J. Scherzinger

DRAFT