



Committee Members

Rita Moore, Chair
Paul Anthony
Amy Kohnstamm
Mike Rosen
Julia Brim-Edwards, *ex officio*

Finance, Audit and Operations Committee

Tuesday, November 21, 2017

3:00 pm
Mazama Conference Room

AGENDA

1. Tubman Health and Safety Update
2. Middle Schools Implementation Revised Cost and Funding Source and Authorization to use Construction Excise Tax Fund.
3. CMGC Exemption for Middle Schools Conversion Project
4. CMGC Exemption for Madison High School
5. Public Comment



Board of Education Informational Report

MEMORANDUM

Date: November 14, 2017

To: Board of Education

From: Mei Lee, CPA, and Chief Financial Officer

Subject: Middle Schools Implementation Revised Cost and Funding Sources

Purpose: To provide a revised cost estimate and funding option for Middle Schools Implementation.

Scope changes and Revised Cost Estimate: We have obtained a revised cost estimate for our Middle Schools Implementation. As an update to the September 2017 estimate, the financial resources needed to execute on this project plan total approximately \$20.5 million. The September cost estimate of \$10.8M has substantially increased by \$9.7M, of which approximately \$7.0M in costs are associated with the Tubman implementation and \$1.6M in relocating ACCESS from Rose City Park.

Changes in Expenditures

- | | |
|----------------------|---------------|
| 1) New Adds | \$5.4M |
| 2) Revised Costs | \$2.7M |
| 3) ACCESS net change | <u>\$1.6M</u> |

Net change from September 2017 cost estimate \$9.7M

Major Contributing items

- 1) \$2.0M - Tubman HVAC
\$2.0M - Tubman Foundation, Soldier Pier, and parking lot
\$1.0M - Tubman Fire sprinkler/alarm
- 2) \$1.2M - Contingency
\$0.8M - Tubman Roof
\$0.7M - Design/Misc.
- 3) <\$1.4M> - Humboldt cost discontinued
\$3.0M - Relocating from Rose City Park

Estimated Middle School Costs (revised estimate as of 11/13/2017)

Department	FY 17-18	Bond Compensable	FY 18-19	Total
Community Involvement & Public Affairs	\$ 191,000	\$ -	\$ -	\$ 191,000
Equity	40,000	-	230,000	270,000
Facilities & Asset Management	6,219,250	5,450,000	4,977,500	16,646,750
Information Technology	963,763	-	522,205	1,485,968
Nutrition Services	-	-	343,000	343,000
Office of Teaching & Learning	75,300	-	924,000	999,300
Transportation	-	-	550,000	550,000
Estimated Total Funds Required	7,489,313	5,450,000	7,546,705	20,486,018
Estimated Total Funds Required (in millions)	\$ 7.49	\$ 5.45	\$ 7.55	\$ 20.49

Funding Sources:

We have examined the current cost estimate with input from all affected departments and anticipate the following funding sources to implement this plan.

Estimated Funding Sources (in millions)	FY 17-18	Bond Compensable	FY 18-19	Total
General Fund Budgeted Amount	\$ 1.00	\$ -	\$ 1.44	\$ 2.44
Bond Compensable	-	5.45	-	5.45
Construction Excise Tax Fund (Fund - 404)	7.18	-	5.41	12.59
Estimated Total Funds Available	8.18	5.45	6.85	20.49
Estimated Total Funds Required	7.49	5.45	7.55	20.49

Estimated Funding Needed (surplus)	\$ (0.69)	\$ -	\$ 0.69	\$ -
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The Construction Excise Tax (CET) Fund is sourced from the School Construction Excise Tax collected by the City of Portland and is available for paying expenses related to new and expanded school facilities. FAM (Facilities and Asset Management) and IT capital improvement costs for the Middle School implementation will be covered by the CET fund.

\$5.45M has been identified as bond compensable capital improvements, of which \$5M would be utilized for the Tubman implementation in FY 17-18. \$1.44M has been budgeted for FY 18-19 out of the General Fund. Please see Exhibit A for detailed costs.

RESOLUTION No. _____

Authorizing Usage of Construction Excise Fund

The Superintendent recommends that the Board authorize the use of Construction Excise Fund (Fund 404) for capital improvement costs during the Middle School implementation at Tubman and Roseway Heights, and ACCESS relocation. The Board accepts this recommendation and by this resolution authorizes the Superintendent or his designee to utilize these funds.

RECITAL

- A. Board Resolution No. 3833 approved the Construction Excise Tax (CET). The use of funds from this tax is limited to capital improvements to school facilities.
- B. Board Resolution No. 5451 directed the Superintendent to further develop an implementation plan for Roseway Heights and Harriet Tubman Middle Schools aligned to the working draft of the Middle Grades Framework, and following completion of that Framework, to open Roseway Heights and Harriet Tubman Middle Schools for the 2018-2019 school year.
- C. The Superintendent has determined that ACCESS will be relocated from Rose City Park to another location.
- D. Staff estimates Facilities and Asset Management costs at \$16.65M and IT capital improvement costs at \$1.48M.
- E. \$12.59M will come from the Construction Excise Fund. \$3M will come from restricted funds, the remainder from unrestricted funds.
- F. The future repayment plan to restricted funds will come from CET unrestricted funds.
- G. Bond compensable capital costs of \$5.45M will be funded from the 2017 Capital Bond.

RESOLUTION

- 1. The Board authorizes the Superintendent or his designee to utilize Construction Excise Funds for Middle School implementation and ACCESS relocation.
- 2. The Board authorizes the use of up to \$12.59M from the Construction Excise Tax Fund to facilitate this work effort.



Board of Education

Staff Report to the Board

Board Meeting Date: November 28, 2017

Executive Committee Lead:

Mei Lee, CFO

Department: Finance

Presenter/Staff Lead:

Emily Courtnage,
Director, Purchasing & Contracting

SUBJECT: Exemption from Competitive Bidding for Architectural, Engineering, and Construction Services for the 2017/18 Middle School Conversion Project

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 procurement process. Staff requests that the Contract Review Board approve an exemption from competition for the Middle School Conversion Project and authorize staff to directly appoint one or more architectural, engineering, and construction management firms to oversee and perform the required work on an expedited basis.

The standard competitive solicitation process required by public contracting rules will not allow completion of the work described in the attached Draft Findings in time for schools to open in August 2018. Although the District has already solicited, via competitive request for proposals (RFP) process, design firms for a new roof at Tubman and for middle school tenant improvements, the accelerated timeline and additional scope of the work (including addition of new HVAC system at Tubman that must be designed in conjunction with the roof) would require reissued or additional RFPs, a process which takes several weeks. Only after all architectural and design firms were selected and under contract, and designs fully completed (a months-long process), could the District issue Invitations to Bid to construction firms to select firms on a low-bid basis. Under this standard design/bid/build process, construction would likely not begin until late spring at the earliest, meaning that work could not be completed before the start of the 2018/19 school year. Thus, the only option to proceed with the Middle School Conversion Project work (including recently expanded scope) on an expedited schedule is to direct appoint firms after informally gauging availability, qualifications, and ability to complete the work by August 2018.

An exemption from competitive bidding 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 (a) substantial cost savings or the project is designated as a pilot project for which the agency intends to determine whether the alternative contracting method will result in cost savings, and (b) other substantial benefits to the contracting agency or the public. See ORS 279C.335.

A detailed description of the Middle School Conversion Project and draft Findings of Fact ("Findings") supporting the exemption Resolution, as required by OSR 279C.335(2), are set forth in the attached Facilities Department staff memo.

BOARD COMMITTEE REVIEW (IF APPLICABLE)

This exemption request was discussed at the November 21, 2017 meeting of the Finance, Audit, and Operations (FAO) Committee.

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 process otherwise required by the Public Contracting Rules.

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 published a Notice of Public Hearing concerning the Middle School Conversion Project exemption request on November 14, 2017 in the Business Tribune, the same journal in which Purchasing & Contracting posts all required solicitation notices. Also on November 14, 2017, staff made the attached 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.

ALIGNMENT WITH EQUITY POLICY IMPLEMENTATION PLAN

Opening, as soon as possible, two new middle schools for north and northeast Portland students who do not currently have access to an optimal middle school experience is in furtherance of the District's goals of providing an equitable education for all students.

The exemption may negatively affect the District's Equity in Public Purchasing & Contracting Policy and Business Equity Administrative Directive and particularly the aspirational goal that at least 18% of all contracting dollars in construction, architecture, engineering, and related services go to Certified minority owned, women owned, service-disabled veteran owned, and emerging small businesses ("Certified businesses"). The expedited schedule and expansion of scope requires appointment of a construction management or general contractor firm to oversee, subcontract, and manage all construction work, so there may be fewer opportunities for small businesses to contract directly with the District for this work. However, there will likely be numerous subcontracting opportunities and the Facilities Department staff can still encourage the selected firm(s) to utilize Certified subcontractors wherever possible. All prime

contractors and subcontractors will be required to report on Certified business subcontractor utilization during the course of the contract.

BUDGET / RESOURCE IMPLICATIONS

Direct appointment of firms will allow the District to proceed immediately with design and construction to meet the schedule requirements of the School Board and public. This alternative contracting method will result in substantial time savings. The effect on cost is less known. However, there are definite advantages to having design and construction firms on board at the same, allowing the construction to begin concurrently with design and allowing for incorporation of the construction firms' knowledge, experience, and findings in the design as it progresses, possibly reducing later design changes and related time delays and increased costs.

NEXT STEPS / TIMELINE / COMMUNICATION PLAN

A public hearing is scheduled for the November 28, 2017 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 Facilities Department will be available at the November 28, 2017 Board Meeting and public hearing to respond to questions relating to the work described in the attached Resolution and Findings.

If the Resolution is approved, staff will immediately begin outreach to design and construction management firms to determine those best qualified to manage and complete the work on the required timeline and at lowest possible cost/best value.

ATTACHMENTS

- A. Resolution to Authorize Exemption from Competitive Procurement**
- B. Facilities Department Staff Memo with Draft Findings**

RESOLUTION NO. ____

Middle School Conversion Project: Exemption from Competitive Bidding

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 procurement process otherwise required by the Public Contracting Code and Rules upon certain findings.
- C. The District intends to complete the Middle School Conversion Project, including opening two new middle schools and related reconfiguration of buildings that will convert to K-5 programs or otherwise change programs or populations due to middle school reconfiguration, by August 2018.
- D. Staff has determined that completion of the Middle School Conversion Project by August 2018 requires an exemption from competitive procurement. This determination is supported by draft Findings of Fact ("Findings") presented to the Board pursuant to ORS 279C.335.
- F. These Findings specify the scheduling, operational, and logistical advantages gained through use of direct appointment of one or more design, construction management, and construction firms as soon as possible.
- G. On November 14, 2017, the District issued a public notice in the Business Tribune announcing the District's intent to seek an exemption from competitive procurement. 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.
- H. The Board held a public hearing on the draft findings on November 28, 2017.
- I. Staff recommends approval of the exemption from competitive procurement of design, engineering, construction management, and construction firms for the Middle School Conversion Project.

RESOLUTION

- 1. The Board hereby exempts the Middle School Conversion Project from competitive procurement under ORS 279C.110, 279C.120, and 279C.335 and related PPS Public Contracting Rules. The Board approves utilization of a direct appointment 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 directly appoint design, engineering, construction management, and construction firms for the Middle School Conversion Project.

M. Lee



Board of Education Informational Report

MEMORANDUM

Date: November 14, 2017

To: Board of Education

From: Jerry Vincent, Chief Operating Officer

Subject: Draft Findings in Support of Alternative Pilot Project Procurement and Contracting Methodology for Architectural, Engineering, and Construction Services for the 2017/2018 Middle School Conversion Project.

INTRODUCTION:

Following are the staff recommended draft findings in support of an exemption from formal competitive procurement under ORS 279C.110, 279C.120, and 279C.335 for procurement of architectural, engineering, construction management, and construction services for the 2017/2018 Middle School Conversion Project.

PROJECT DESCRIPTION:

Per the School Board's recent direction, the District's Facilities Department has been tasked with opening multiple middle school sites in Portland for the start of the August 2018 School Year. The buildings selected for middle schools require major improvements and upgrades to optimize each school's operational and learning environments. The Middle School Conversion Project will also require improvements and upgrades at other school buildings that are converting to K-5 programs or otherwise changing programs or populations due to reconfiguration. The Middle School Conversion Project includes, but is not limited to, hazardous material abatement, roof replacement, mechanical/electrical/plumbing upgrades, structural reinforcing, storm water management, and informational technology improvements as well as new interior partitions, architectural finishes, and site/landscaping improvements.

These projects have many challenges, and the acceleration of the design and construction phases will make it particularly challenging to complete the work effectively and efficiently in the required timeframe. It will be important to utilize construction and design firms with the following specific traits:

- Ability to provide a complete project within the District's budget and time constraint for the project.
- The requisite expertise in renovating historically significant facilities.
- An exemplary reputation for on-time delivery with an extremely aggressive timeline.
- Supervisory staff experienced working in and around occupied facilities and/or tight urban constraints.
- An understanding of the importance of an integrated project team.

For these projects, the traditional design/bid/build (low bid) process will not allow for project completion by August 2018. The design/bid/build process would require multiple steps: One or more requests for proposals (RFPs) to select architectural and engineering firms, completion of design for all aspects of the Project, followed by one or more invitations to bid (ITBs) to select construction firms on a low bid basis. The design phase alone would require several months. To complete the described work on time and with quality construction materials and methods, the School Board must allow for direct appointment of one or more architectural firms, engineering firms and construction management firms to oversee and perform the improvements and upgrades.

FINDINGS:

Following are the factors that must be considered before granting an exemption 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 decision to and public interest in opening middle schools by August 2018 has created a unique set of circumstances requiring prompt action. Granting an exemption in these unique circumstances will not have an ongoing impact on the District's public improvement contracting in terms of favoritism or diminished competition. Further, the District will award contracts to contractors, designers, and engineers based solely on their experience and proven ability to deliver the project on time and at lowest possible cost/best value. The District will approach several firms to gauge availability, qualifications, and ability to complete the project by August 2018.

"(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."

Or

"[I]f a contracting agency or state agency seeks an exemption that would allow the contracting agency or state agency to use an alternative contracting method that the contracting agency or state agency has not previously used, the contracting agency or state agency may make a finding that identifies the project as a pilot project for which the contracting agency or state agency intends to determine whether using the alternative contracting method actually results in substantial cost savings to the contracting agency, to the state agency or, if the contract is for a public improvement

described in ORS 279A.050 (Procurement authority) (3)(b), to the contracting agency or the public."

The District is seeking to forgo the normal competitive bidding and procurement process and instead directly appoint one or more highly qualified firms, including a construction management firm, allowing the District to jump start design and construction work as soon as possible to meet the schedule demands of the School Board and the public. The primary goal of this pilot project process is the ability to deliver the project by August 2018, which would not be possible under traditional procurement requirements and processes. The District has not used this process previously and proposes that this project be designated a "pilot project" to determine whether the use of this method results in both time savings and substantial cost savings. This pilot project process will allow the project to proceed immediately with design and construction, which is the only way to put the project schedule on track for completion in August 2018. This process may save operating costs by allowing the middle schools to reopen in the August 2018 school year, instead of delaying until 2019 or later.

"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 construction contracting experience, Staff anticipates that between three to seven firms will be interested in proposing to work on the Middle School Conversion Project.

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

The construction and operating budget is approximately \$20,486,000.00. The current construction market in Portland is extremely busy and has limited resources. Getting design, construction management, and construction firms on board immediately is essential to completing the project on schedule and ensuring workforce availability. Having contractors on board during the accelerated design phases will help improve the design of the buildings. This will also allow contractors to begin work as early as possible, concurrent with the design process, which is essential to completing the project per the desired schedule.

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

The greatest benefit of the pilot project process will be providing time savings that translate into cost savings by bringing the design and construction firms on

board immediately. The construction management firm will be able to assess the existing conditions that remain unknown and begin construction work as early as possible to complete the project on time.

"(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 pilot project delivery method will allow for the contractor and subcontractors with specialized expertise and common project goals to participate in the value engineering process during the design, 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 pilot project 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 pilot project process allows for review of contractors', designers', and engineers' expertise not afforded in traditional procurement. The Middle School Conversion project is very complex and requires a construction management firm, general contractor(s), and designer(s) with specialized expertise due to the complexities of the schools and the aggressive timeline. Construction on Tubman will begin while the design is ongoing, and the work at the other schools will have to be completed in a very short window by August, 2018. It will be crucial to have the contractor involved for project phasing and scheduling to complete this work on time.

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

- a) The scope of work for the largest project in the pilot is primarily related to public safety, including a brand new roof that is seismically braced, new HVAC system with a High Efficiency Particulate Arrestance (HEPA) filtration system, and soldier piles for increased in-ground stability of portions of the building. All projects will receive some form of Americans with Disabilities Act (ADA) improvements.*
- b) Bringing the contractors on during the design phase will provide the contractors with clear, upfront knowledge of project constraints and an early opportunity to assess the sites and 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 pilot project 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 staging and laydown coordination.*
- c) Site safety and work hours.*
- d) Use of highly qualified subcontractors.*
- e) The pilot project contract will expedite the construction schedule by allowing early work concurrent with design, which is critical for completing this project on schedule.*

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

There will be no impact on the funding source of these projects due to the pilot project process used for Construction and Design firms.

"(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 pilot project process will appoint the construction management firm immediately, the CM will be able to take advantage of market labor availability by facilitating early contracting of certain project elements, as needed. The essential added value of the pilot project process is the ability to start on construction work as soon as scope has been defined. This knowledge allows the contractor and architect time to complete the project within required timeline.

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

The CM and Design firms selected quickly through the pilot project process will help deliver a successful Middle School Conversion Project. One of the biggest advantages of the pilot project process is the ability to coordinate all technical work before construction and begin on construction prior to design completion. Being able to apply best practices with the Design, Engineering, Contractor, and District teams will make for a better product within the budget and time constraints.

As described above, the areas of technical complexity include historically significant buildings, traffic management, potential time delays in permitting, and hallenging site conditions and footprint.

In the pilot project 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;"

These projects will involve new construction and renovations at multiple school sites throughout the district. Procuring contractors, designers, and engineers with experience in both new construction and renovation is critical.

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

One school site with the most significant scope of work will not be occupied during construction, allowing construction to begin immediately during normal business hours. Other school sites will begin construction in off-hours, during school breaks, and/or coordinate with the site administration for tolerance/safety levels of activity. This will be difficult to coordinate but is necessary to ensure project completion by August 2018.

"(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 a stacked phase of construction and design work all sites. This will allow for the completion of the project in the timeframe required by the Board.

"(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 Facilities Department has staff that have the necessary expertise with construction contracting methods to develop and effectively manage the work of the Middle School Conversion Project. The District's outside legal counsel, Miller Nash Graham & Dunn LLP, has extensive experience with construction contracting.

CONCLUSION:

For the reasons stated above, the draft findings support an exemption from competitive bidding under ORS 279C to utilize a pilot project process for design and construction firms for the Middle School Conversion Projects.



Board of Education

Staff Report to the Board

Board Meeting Date: December 19, 2017

Executive Committee Lead:
Mei Lee, CFO

Department: Finance

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

SUBJECT: Madison 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 Madison 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, and Grant 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 Madison 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.

BOARD COMMITTEE REVIEW (IF APPLICABLE)

This exemption request was presented and discussed at the November 21, 2017 meeting of the Finance, Audit, and Operations (FAO) Committee. [The FAO Committee approved the presentation of the request to the full Board.]

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 published a Notice of Public Hearing concerning the Madison High School exemption request on **DATE** in the Business Tribune, the same Journal in which Purchasing & Contracting posts all required construction solicitation notices. Also on **DATE**, staff made the attached 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.

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

A public hearing is scheduled for the December 19, 2017 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 December 19, 2017 Board Meeting and public hearing to respond to questions relating to the work described in the attached Resolution and 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 Madison High School Modernization public improvement project.

ATTACHMENTS

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

RESOLUTION NO. ____

Madison 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 Madison High School Modernization Public Improvement Project ("Madison 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 Madison 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 Madison 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 Madison Modernization Project.

RESOLUTION

1. The Board hereby exempts the Madison 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 Madison Modernization Project.

M. Lee

DRAFT



Board of Education Informational Report

MEMORANDUM

Date: November 7, 2017

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 Madison 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 Madison High School Modernization Project ("Madison Modernization Project").

PROJECT DESCRIPTION

The 2017 Health, Safety, and Modernization Bond includes funding to renovate Madison 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 Madison Modernization Project includes, but is not limited to, hazardous material abatement, mechanical/electrical/plumbing upgrades, structural reinforcing, onsite storm water management, athletic fields, 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.

- 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 Engagement 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 Madison 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

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 Oregon Attorney General Model Rules and required by statute. 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, it is reasonable to anticipate between three to seven firms will propose on the Madison High School Modernization Project. A CM/GC RFP in 2016 received 3 proposals. Additional outreach efforts after that RFP were completed by staff and changes to the RFP evaluation criteria have been incorporated which staff expects will increase participation in the Madison RFP.

"(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 onboard 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 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;"

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 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 Madison 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,

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 Madison 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 Madison High School Modernization Project is very complex and requires a general contractor with specialized expertise due to the complexity of the school. For example, Madison has a mix of historic renovation, demolition and new construction, all in a tight construction schedule.

"(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 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 (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 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 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:

- 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) 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 GC and architect time to discuss the less costly complementary or alternative items.

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 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 Madison 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. Traffic management*
- c. Potential time delays in permitting*
- d. Challenging site conditions and footprint*
- 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*

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 will involve renovating Madison High School and will 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;"

Madison High School will not be occupied during construction. All students, staff, and community members will be relocated to the Marshall Campus during the construction phase.

"(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 a single phase of construction work for Madison High School.

"(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 Madison 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 contract.

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 Madison Modernization Project.