



**APPROVAL OF ALTERNATE CONSTRUCTION CONTRACTING PROCEDURE,  
CONSTRUCTION MANAGER / GENERAL CONTRACTOR (CM/GC),  
FOR THE ARTS & COMMUNICATIONS MAGNET ACADEMY  
REPLACEMENT PROJECT**

### **POLICY ISSUE/SITUATION**

OAR 137-49-0620 and ORS 279C.335 permits the Beaverton School District Board of Directors to exempt specific projects from the competitive bidding requirements of ORS 279. Proposals from prospective CM/GC firms will include a competitive quote for their Fee for the Project. The selected CM/GC will provide the District with a Guaranteed Maximum Price (GMP) and a 100% Performance and Payment Bond for the work. Subcontract work will be competitively bid.

### **BACKGROUND INFORMATION**

The 2014 bond levy has allocated \$39,432,555 for the construction of a new building to replace the existing main school building and site improvements at the Arts & Communications Magnet Academy (ACMA). Negotiations with the architectural firm and other consultants have begun for design services and to prepare the Land Use permit application materials. The Performing Arts Center Building is to remain operational during the removal and new construction of the building and site improvements.

The complexities of demolition and new construction in a dense urban area; the requirement of maintaining the operations and access to an existing building and site; the requirement that the work be accomplished in 14 months due to student transportation and swing school availability, requires a negotiated contracting process using the CM/GC contracting method to fast track the construction of the project and to assure the smooth operation of a semi-occupied site. The School District will request proposals from general contractors and enter into a negotiated contract with the contractor selected to build the school. The contractor will then guarantee a maximum price for the construction of the school rather than the School District conducting the traditional competitive bidding procedure. The advantage of this process is that it allows a simultaneous design / construction phasing procedure that allows construction to begin before all of the design documents have been completed. This process will expedite the project and result in earlier

**District Goal:** WE Empower all students to achieve post-high school success.

The Beaverton School District recognizes the diversity and worth of all individuals and groups. It is the policy of the Beaverton School District that there will be no discrimination or harassment of individuals or groups based on race, color, religion, gender, sexual orientation, gender identity, gender expression, national origin, marital status, age, veterans' status, genetic information or disability in any educational programs, activities, or employment.

opening and use of the new school than the traditional procurement method.

Pursuant to ORS 279C.335(5), the District advertised a minimum of 14 days and held a Public Hearing on September 28, 2017 to provide an opportunity for any interested party to appear and comment on the findings (Attachment A). No interested parties chose to attend the Hearing other than District staff and no comments were offered.

The School Board, acting as the Local Contract Review Board, must approve particular findings supporting the use of this construction contracting procedure, pursuant to ORS 279C.335 (Attachment A).

## **RECOMMENDATION**

It is recommended that the School Board approve exemption of the Arts & Communications Magnet Academy (ACMA) construction contract from the competitive bidding requirement of 279C. 335(1), and approve use of the proposed CM/GC contracting procedure. Board approval to award the contract will be requested after receipt of the proposals.

BE IT RESOLVED that the Beaverton School Board of Directors (i) adopts and approves the findings of Attachment A, (ii) grants a specific exemption from competitive bidding requirements of ORS 279C.335(1), and approves and directs the use of the CM / GC Construction Contract process, for the construction of the new Arts & Communications Magnet Academy (ACMA) school and (iii) requires that the procurement be in accordance with the Attorney General Model Rules adopted under ORS 279A.065(3).

## ATTACHMENT A

### FINDINGS

#### ALTERNATE CONTRACTING PROCEDURE CM/GC CONSTRUCTION CONTRACT ARTS & COMMUNICATIONS MAGNET ACADEMY MAIN BUILDING REPLACEMENT & SITE IMPROVEMENTS PROJECT

- (a) *BSD Staff finds that this alternate contracting procedure is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts.*

The CM/GC will be selected through a competitive process in accordance with a Request for Proposals authorized by the Board of Directors. Pursuant to ORS 279C.360, a CM/GC solicitation will be advertised in the Daily Journal of Commerce, the Oregon Procurement Information Network, and the Beaverton School District procurement webpage in order to attract competitive proposals. The CM/GC proposals and interviews will be rated based on a predetermined list of criteria as required by ORS 279C.337 and the Attorney General's Model Contract Rules. The District will enter into a contract with the highest-ranking firm.

- (b) *BSD Staff finds that awarding a public improvement contract for this project through the CM/GC method will likely result in substantial cost savings and other substantial benefits to the District.*

**In making this finding, staff have considered the type, cost, and amount of the contract and, to the extent applicable to the contract, the following:**

- A. Findings related to how many persons are available to bid:** Staff finds that granting this alternative contracting procedure will not unreasonably limit the number of firms available to bid, since procurement will be through a publicly-advertised request for proposals.
- B. Findings related to the construction budget and the projected operating costs for the completed public improvement:** Staff finds that the ability to select firms based on the firm's performance history will positively affect the project outcome as it relates to cost by providing feedback on the design development phase and participating in the construction document phase of the design process. With the CM/GC participating in these phases they will be able to offer suggestions for improvement and make recommendations that will reduce costs. With the benefit of this knowledge, the CM/GC will also be able to guarantee a maximum price the District will pay to construct the project, which may result in savings accruing to the District.
- C. Findings related to public benefits that may result from granting the exemption:** Staff finds that the ability to select firms based on the firm's performance history will significantly affect the project outcome as it relates to schedule. It is critical that the school be completed on time. Due to the unique restrictions of the site, we believe that utilizing the CM/GC method will reduce the project challenges inherent with maintaining operations and access to the existing Performing Arts Center building while replacing the main building including the integration of the two structures on the same site and related site improvements. The CM/GC process allows the CM/GC to inform and recommend the best practices in sequencing of work based on their early involvement in the project. This early involvement with the CM/GC will result in a better product and safer access for students, staff and the general public during construction.

- D. Findings related to whether value engineering techniques may decrease the cost of the public improvement:** Staff finds that granting this alternate contracting procedure will provide the most comprehensive team evaluation of all factors that affect the cost, quality, and schedule of the project, which may decrease the cost of the improvement. The CM/GC process offers a unique opportunity for value engineering that is not as effective through the design-bid-build process, since the general contractor does not have the opportunity to suggest cost savings measures during the design process. An essential part of each construction project is the value engineering evaluation, which is the means used to determine the best project design that meets the needs and priority of the Owner, within the Owner's budget and schedule constraints. Value engineering is done most effectively by a team consisting of the Owner, Architect, Consultants, and the CM/GC during design development and construction document completion.
- E. Findings related to the cost and availability of specialized expertise that is necessary for the public improvement:** Staff finds that granting this alternate contracting procedure will significantly affect the project outcome as it relates to specialized expertise. Due to the anticipated fast-track project schedule, unique site constraints, utility related restrictions, and the requirement to maintain operations and access to an existing building, it is important to have a general contractor who understands the project complexity, has the proven ability to manage these types of projects, and who can help to develop construction documents to attract the qualified and appropriate subcontractors to perform the work. The request for proposal process will help ensure the selected CM/GC has the specialized expertise necessary for fast-track school construction.
- F. Findings related to any likely increases in public safety:** Staff finds that the ability to select firms based on the firm's performance history and experience in working on a semi-occupied site will allow the District to select a contractor with a demonstrated record of safety.
- G. Findings related to whether granting the exemption may reduce risks to the contracting agency, the state agency or the public that are related to the public improvement:** Staff finds that granting this alternate contracting procedure will reduce safety risks by allowing early involvement of the contractor in planning for site usage and coordination of access to the existing building.
- H. Findings related to whether granting the exemption will affect the sources of funding for the public improvement:** Not applicable. Staff finds that granting this exemption will have no effect on funding sources for the project.
- I. Findings related to 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:** With the multitude of construction market factors that exist today in Oregon (e.g. completion of other projects, environmental issues that limit construction materials, shortage of qualified craftsman, inflation, etc.), establishing the best work sequence is crucial to accurately estimating the cost and schedule implications of this project. Staff therefore finds that selecting a firm through the CM/GC process allows the District the advantage of working with a CM/GC who has knowledge of market conditions and experience in finding the best people qualified for this fast-track work, and to provide accurate estimates for subcontracts. In addition, the CM/GC may plan for early procurement of goods and services where

shortages, inflation, or other market conditions could increase costs under the traditional design-bid-build method.

- J. Findings related to whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement:** Staff finds that granting this exemption will allow the School District to accept proposals only from contractors who have demonstrated considerable experience in delivering projects of similar complexity successfully.
- K. Findings related to whether the public improvement involves new construction or renovates or remodels an existing structure:** This project involves demolition of an existing structure while maintaining utilities to another building, new construction, and the integration of buildings and new site improvements. All of these factors involve a significant design element where the CM/GC's pre-construction input will prove valuable.
- L. Findings related to whether the public improvement will be occupied or unoccupied during construction:** The Performing Arts Center (PAC) building and the west side site improvements including the bus lane and parking north of the PAC will remain during construction. These areas will be used for arranged performances during the school year and will be semi-occupied. Due to the added complexity of maintaining building operations and access to a semi-occupied structure, the CM/GC process will allow the District to select proposals from contractors who have demonstrated experience in the successful delivery of projects of similar complexity.
- M. Findings related to whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions:** Staff finds that the project will have multiple phases of construction work to allow the project team to best address the site-related and schedule constraints, rendering CM/GC contracting (and the CM/GC's early input on these phasing issues) desirable.
- N. Findings related to 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:** Staff will rely on their own experience, having successfully used the CM/GC method on many other large projects in the current and prior bond programs. In addition, architectural, engineering, and planning consultants with experience in alternative contracting will be retained for professional services. The District also relies upon outside legal counsel, appointed by the School Board to provide construction contracting legal advice. The combined expertise and experience of such staff, consultants, and professionals will oversee developing the alternative contracting method and its implementation including negotiating, administering, and enforcing the terms of the CM/GC contract.