

**EXHIBIT A
FINDINGS
FOR EXEMPTION FROM COMPETITIVE BIDDING AND
THE USE OF THE CONSTRUCTION MANAGER/GENERAL CONTRACTOR
(CM/GC) METHOD OF CONTRACTING FOR MOLALLA RIVER SCHOOL
DISTRICT MIDDLE SCHOOL REPLACEMENT PROJECT**

1. General

ORS 279C.335 (2) permits a local contract review board to exempt contracts from traditional competitive bidding upon approval of findings showing that an alternative contracting process is unlikely to encourage favoritism or diminish competition and that the process will result in substantial cost savings to the School District. The Molalla River School District (“District”), through its School Board, acts as the Local Contract Review Board (“LCRB”) for the District.

ORS 279C.400 – ORS 279C.410 describe the Request for Proposals method of solicitation as an alternative to traditional competitive bidding. Pursuant to ORS 279C.410 (8), a public Agency using the Request for Proposals method may award a contract to the responsible proposer “whose proposal is determined in writing to be the most advantageous to the contracting Agency based on the evaluation factors set forth in the request for proposals and, when applicable, the outcome of any negotiations authorized by the request for proposals.”

ORS 279C.330 defines “Findings” and identifies specific information to be provided as a part of the District justification. Under ORS 279C.335 (5) a public hearing may be held before the findings are adopted, allowing an opportunity for interested parties to comment on the findings.

PURPOSE OF THESE FINDINGS: The Molalla River School District will hold a public hearing as required by ORS 279C. 335 and makes the following findings with respect to the issue of whether MRSD Middle School Replacement Project, as defined herein, should be exempt from competitive bidding. The District seeks to utilize the CM/GC method of alternative method of contracting. The Findings apply to the CM/GC method of public improvement Projects described below, in accordance with ORS 279C.335 (2).

2. Background

The 70-year-old Molalla River Middle School building has failing heating and plumbing systems; lacks modern security, safety, and fire suppression systems; and the building does not adequately meet current educational standards with limited space for popular vocational programs and gymnasium space for student athletes, visitors, and families.

Health & Safety

The current Molalla River Middle School has outdated fire safety, electrical, and security systems. In addition, the school’s tile flooring contains asbestos, making it difficult to access HVAC piping below the floors. Only one portion of the building is air conditioned, resulting in poor air quality conditions throughout the school during wildfire season.

Inefficient Building Systems

The 70 year-old Molalla River Middle School building has aging building systems. On numerous occasions in the past several years, the school has been forced to close due to failing heating and plumbing systems leaking water into classrooms and hallways. In 2019, students attended school for a week in jackets due to no functioning heating system.

Education Spaces

Molalla River Middle School lacks adequate classroom space for in-demand vocational education courses. In addition, the current school infrastructure does not meet today's technology demands. The school's three gymnasiums are not large enough to meet student capacity and lack space for parents and community members to attend games or events.

School Closures

Three years ago, Molalla River Middle School students had to attend school with no heat or water in the building, and in December 2023 there was no school for two days due to a critical failure with the steam heating system that caused water to leak from the ceilings.

FINDINGS

SUMMARY FINDINGS

Use of the CM/GC process for the Molalla River Middle School Replacement Project complies with the criteria outlined in ORS 279C.335 (2):

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

SPECIFIC FINDINGS which substantiate the summary findings are as follows:

1. **The CM/GC will be selected through a competitive process in accordance with the qualifications-based selection process authorized by the District. Therefore, it is unlikely that the awarding of the construction contract for the Projects will encourage favoritism or substantially diminish competition. This finding is supported by the following:**
 - A. **SOLICITATION PROCESS:** Pursuant to ORS 279C.360, the CM/GC solicitation will be advertised at least once in the Oregonbuys eprocurement System.
 - B. **FULL DISCLOSURE:** To ensure full disclosure of all information, the Request for Proposals solicitation package will include:

- a. Detailed Description of the Projects
- b. Contractual Terms and Conditions
- c. Selection Process
- d. Evaluation Criteria
- e. Role of Evaluation Committee
- f. Provisions for Comments
- g. Complaint Process and Remedies Available

C. COMPETITION: As outlined below, the District will follow processes which maintain competition in the procurement of a CM/GC.

- a. The District anticipates that competition for this contract will be similar to that experienced in other Projects of this type. The competition will remain open to all qualifying proposers.
- b. The District has been communicating with the construction contracting community as well as the engineering consulting community about the CM/GC contracting method.
- c. The evaluation and solicitation process employed will be open and impartial. Selection will be made on the basis of final proposal scores derived from price and other components, which expand the ground of competition beyond price alone to include experience, quality, innovation factors, etc.
- d. The competitive process used to award subcontracts for all competitively bid construction work will be specified in the CM/GC contract and will be monitored by the District. The District will designate in the contract the proposed percentage of construction work that must be subcontracted and may not be self performed by the CM/GC.

D. SELECTION PROCESS: Other highlights of the selection process will include:

- a. A pre-proposal vendor conference will be announced and held. This conference will be open to all interested parties. During this pre-proposal conference, as well as any time prior to ten (10) days before the close of the solicitation, interested parties will be able to ask questions, request clarifications and suggest changes in the solicitation documents if such parties believe that the terms and conditions of the solicitation are unclear, inconsistent with industry standards, or unfair and unnecessarily restrictive of competition.
- b. The evaluation process will determine whether a proposal meets the screening requirements of the RFP, and to what extent. The following process will be used:
 - Proposals will be evaluated for completeness and compliance with the screening requirements of the RFP. Those proposals that are materially incomplete or non-responsive will be rejected.
 - Proposals considered complete and responsive will be evaluated to determine

if they meet and comply with the qualifying criteria of the RFP. If a proposal is unclear, the proposer may be asked to provide written clarification. Those proposals that do not meet all requirements will be rejected.

- Proposals will independently be scored by the voting members of the Evaluation Committee. Scores will then be combined and assigned to the proposals.
 - The Evaluation Committee will convene to select from the highest-scoring proposers, a finalist(s) for formal interviews.
 - The Evaluation Committee will conduct the interviews.
 - The Evaluation Committee will use the interview to confirm the scoring of the proposal and to clarify any questions. Based upon the revised scoring, the Evaluation Committee will rank the proposers, and provide an award recommendation.
 - The Molalla River School District will negotiate a contract with the top-ranked firm. If an agreement cannot be reached, the District will have the option to enter into an agreement with the second-ranked firm, and so forth.
- c. Competing proposers will be notified in writing of the selection of the apparent successful proposal and will be given seven (7) calendar days after receipt of the notice to review the RFP file and evaluation report at the District Office. Any questions, concerns, or protests about the selection process will be subject to the requirements of the OAR 137-249-0450, must be in writing, and must be delivered to the Molalla River School District within seven (7) calendar days after receipt of the selection notice. No protest of the award selection shall be considered after this time period.
- d. The contract achieved through this process will require the CM/GC to use an open competitive selection process to bid all components of the job. The CM/GC's general conditions and fee makes up 10-15% of the total cost, and will be evaluated as one of the scoring criteria. General Conditions, which include supervision, bonding, insurance, and mobilization, must be within the industry standard range of approximately 10%. The CM/GC's fee must be within the industry standard range of 3-5%. Since these amounts will be scored as part of the competitive RFP process, the entire dollar value of the Projects will be awarded through open competitive processes, at either the general contractor or subcontractor level.

2. **FINDING: The awarding of construction contract(s) for the Projects using the CM/GC method will likely result in substantial cost savings to the District. This finding is supported by the following information required by ORS 279C.335 (2) (b) and ORS 279C.330.**

A. OPERATIONAL, BUDGET, FINANCIAL DATA

- a. **BUDGET:** The District has a fixed budget available for the Project that cannot be exceeded. The completion date cannot be exceeded. Early reliable pricing provided by the CM/GC or other alternatively contracted contractor during the design phase will reduce the potential for time delays due to later discovery of higher-than-anticipated costs and consequent changes of direction.
 - b. **LONG TERM COSTS:** The Projects will require expertise regarding the constructability and long-term cost/benefit analysis of innovative design. That knowledge is best obtained directly from the construction industry. Many decisions will be required during the design process that will encompass immediate feedback on constructability and pricing. Under the traditional design-bid-build process, there is a high risk of increased change orders and schedule impacts for Projects of this size and complexity. Since there are significant costs associated with delay, time is of the essence. The CM/GC process will assist in providing a scope of work and constructible design that best meet the requirements of the Projects with significantly lower risk to the Projects costs. Involving the CM/GC during design will allow Projects risks to be addressed early and teamwork between the District, the design consultant, and the construction contractor (CM/GC) to minimize those risks.
 - c. **FEWER CHANGE ORDERS:** When the CM/GC participates in the design process, fewer change orders occur during Projects construction. This is due to the CM/GC's better understanding of the owner's needs and the architect's design intent. As a result, the Projects are more likely to be completed on time and within budget. In addition, fewer change orders reduce the administrative costs of Projects management for both the District and the contractor.
 - d. **GMP CHANGE ORDERS COST LESS:** The fewer CM/GC change orders discussed above will be processed at a lower cost under the GMP. The design-bid-build method typically results in the contractor charging 15% markup on construction change orders. The GMP method applies lower predetermined markups. The experience of the industry has been that the markup is in the range of 3-5%.
 - e. **SAVINGS:** Under the GMP method the District will enjoy the full savings, if actual costs are below the GMP. When the CM/GC completes the Projects, any savings between the GMP and the actual cost accrue to the District.
 - f. **CONTRACTOR'S FEE IS LESS:** Contracts with CM/GC's are designed to create a better working relationship with the contractor. As a consequence, the overhead and profit fee is generally in the 3-5% range, and the contractors indicate this is slightly lower than the fee anticipated on similar design-bid-build contracts.
- G. FUNDING SOURCE:** The District intends to fund the Project approved General Obligation Bond funds approved by the voters on May 24, 2024, Bond sale premiums, Oregon School Capital Improvement Matching (OSCIM) Grant funds and Bond interest earnings accrued through the life of the Bond.

B. PUBLIC BENEFITS

- a. **TIME SAVINGS:** Use of CM/GC or other alternative contracting methods will allow construction work to commence relatively rapidly on some portions of the work while design continues on the remaining portions. This will shorten the overall duration of the construction and provide for completion of the Projects by the due date. It becomes critical to maintain both the schedule and budget of these Projects that the coordination of the District personnel and their facilities be fully evaluated and understood, and that construction work proceeds throughout with all necessary care given to the safety security of the Districts students and personnel.
- b. **COST SAVINGS:** The Projects will benefit from the active involvement of a CM/GC contractor or other alternative contracting method during the design process in the following ways:
 - The contractor's input regarding the constructability and cost-effectiveness of various alternatives will guide the design toward the most economic choices.
 - Consideration of the specific equipment available to the contractor will allow the designer to implement solutions that utilize the capacity of that equipment.
 - The contractor will be able to provide current and reliable information regarding the cost of materials that are experiencing price volatility and the availability of scarce materials.
 - The contractor will also be able to order materials while design is being completed in order to avoid inflationary price increases and provide the lead-time that may be required for scarce materials.
- c. **GUARANTEED MAXIMUM PRICE (GMP) ESTABLISHES A MAXIMUM PRICE PRIOR TO COMPLETION OF DOCUMENTS:** The CM/GC will be able to obtain a complete understanding of the District's needs, the architect's design intent, the scope of the Projects, and the operational needs of the individual School Projects by participating in the construction document phase. With the CM/GC participating in this phase they will be able to offer suggestions for improvement and make suggestions that will reduce costs. With the benefit of this knowledge, the CM/GC will also be able to guarantee a maximum price to be paid by the District for constructing the Projects.

C. VALUE ENGINEERING

WITH THE DESIGN-BID-BUILD PROCESS: If the District were to utilize the design-bid-build method, the contractor would not participate in this evaluation. In conducting value engineering under the design-bid-build approach, a value engineering consultant is hired to participate in the design and cost evaluation process. This process adds extra costs and administrative complications, without providing the same benefits of early contractor

participation.

WITH CM/GC: The CM/GC process offers a unique opportunity for value engineering that is not possible through the design-bid-build process. An essential part of each construction Projects is the value engineering evaluation. Value engineering is the means used to determine the best Projects design that meets the needs and priorities of the owner, within the owner's budget. Value engineering is done most effectively by a team consisting of the owner, architect, consultants, and the contractor. When the contractor participates, the team can render the most comprehensive evaluation of all factors that affect the cost, quality, and schedule of the Projects.

The CM/GC method has the benefit of:

- the ability to set the schedule
- the ability to sequence work; and
- commitment from the contractor to implement the design within the schedule and budget.

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

- D. **SPECIALIZED EXPERTISE:** Early selection of the CM/GC creates more informed, better-quality decision making by the Projects construction team. A more efficient construction team saves the District money.

The construction Projects are highly complex because that involve significant construction over a short, mandated period of construction. Use of a CM/GC in conjunction with the team approach will result in a better coordinated Projects, speedy completion, and minimize disruption to operations. The CM/GC clarifies several critical variables valuable to the Projects design. The CM/GC: guarantees the maximum price (GMP) to complete the Projects; determines the construction schedule; establishes the sequence of work; is contractually bound to implement the final Projects design within the GMP; and participates as an essential member of the Projects design and construction team.

Several benefits of participation by the CM/GC on this Projects will be realized: developing the design documents to reflect the best work plan that accommodates the District, the design team, and contractor; the best grouping of the bid packages that will help insure better trade coverage; the most efficient construction staging area on 2022 Bond Projects; the most cost effective route through the campus and buildings for the various utilities; and to help in adjusting the work plan when the needs change along the way. This component cannot be addressed by the usual design/bid/build method of construction because the usual method is skewed towards the lowest bidder.

- E. **PUBLIC SAFETY:** All work must be coordinated to avoid safety and security risks to the students, faculty, and the general public and to ensure efficiency in construction. The coordination between the District, designer and the CM/GC will assure coordination of

work and consideration for the safety of vehicular and pedestrian paths crossed by the Projects. In addition, CM/GC contracting of the Projects will ensure that public safety and security is being effectively managed in a “fast track” mode to minimize delays.

- F. IMPACT ON SOURCES OF FUNDING:** Granting the exemption from competitive bidding will not affect funding sources for this Project.
- G. MARKET CONDITIONS:** As well as the multitude of construction market factors that exist today in Oregon (e.g., competition of other Projects, environmental issues that limit construction materials, variable bid market, high unemployment, etc.), the difficulty in establishing the best work sequence complicates our ability therefore, to accurately estimate the cost of this Projects. The economy today makes it necessary for many contractors to bid for jobs for which they might not be qualified. Alternative contracting methods will be more likely to result in a more experienced and better suited contractor for the particular Projects than the usual complete procurement. The complexities which need to be addressed to accomplish the tasks are not well served by the usual competitive procurement. The lowest bidder may not be the best suited for the particular Projects.
- H. TECHNICAL COMPLEXITY:** Technical expertise will be required for environmental management, quality management, scheduling, estimating, meeting sustainable facilities standards and guidelines, and ensuring energy efficiency. The complexity and scheduling issues discussed in the Background section above will require special expertise. However, the Projects will draw upon existing skills and capabilities available in the construction community, as the Projects presents overall challenges similar to those faced on many public works Projects. Specialized skills will be required of the CM/GC to negotiate and price multiple options and schedule complex tasks. A high level of coordination among the District and all the design and construction entities is required and facilitated by the CM/GC approach.
- I. FUNDING SOURCES:** The District intends to fund the Project from approved General Obligation Bond approved by the voters on May 24, 2024, Bond sale premiums, OSCIM Grant funds and Bond interest accrued through the life of the Bond.
- J. RENOVATION:** The public improvements of constructing a new replacement middle school will include renovation of specified fields and grounds as promised in the Bond and required by local authorities.
- K. OCCUPANCY:** The public improvement will be unoccupied during construction.
- L. SINGLE PHASE:** It is the intent of Molalla River School District to construct the Project under a single phase of construction.
- M. PROJECT MANAGER:** Molalla River School District will enlist the assistance of OTAK CPM as Owners Representative and Project Managers for this public improvement contract. Molalla River School District will enlist Jeff Condit, Miller Nash LLP to assist the District with legal counsel and legal enforcement of the public improvement contract.

RESOLUTION 2024-2025.006.

RESOLUTION GRANTING EXEMPTION FROM COMPETITIVE BIDDING FOR CONSTRUCTION OF MOLALLA RIVER SCHOOL DISTRICT (MRSD) MIDDLE SCHOOL REPLACEMENT PROJECT BY MEANS OF A CONSTRUCTION MANAGER/GENERAL CONTRACTOR AND AUTHORIZING SELECTION BY REQUEST FOR PROPOSALS

WHEREAS, the Molalla River School District (“District”) acts as the local contract review board for the District, and in that capacity has authority to exempt certain contracts from the competitive bidding requirements of ORS Chapter 279C; and

WHEREAS, ORS 279C.335(2) provides a process for exempting certain contracts from competitive bidding and authorizes the selection of a contractor through the request for proposal (“RFP”) process; and

WHEREAS, findings (“Findings”) addressing competition, operational, budget and financial data, public benefits, value engineering, specialized expertise required, market conditions, technical complexity, public safety and funding sources recommended by the District were available 14 days in advance of the public hearing on this Resolution: and

WHEREAS, the District determines that MRSD Middle School Replacement Project should be constructed by a CM/GC. NOW THEREFORE,

The District finds as follows:

1. The District adopts the Findings set forth in Exhibit A to this Resolution.
2. The exemption of the CM/GC contract from competitive bidding will promote competition and will not encourage favoritism, because the CM/GC will be chosen by the request for proposals process, and the major portion of the construction work will be performed by subcontractors chosen by competitive bidding.
3. The exemption of the CM/GC contract from competitive bidding is likely to result in substantial cost savings to the City, for the reasons set forth in the adopted Findings.

NOW, THEREFORE, IT IS HEREBY RESOLVED by the District as follows:

The contract for construction of MRSD Middle School Replacement Project by a Construction Manager/General Contractor for a Guaranteed Maximum Price is exempt from competitive bidding, and the CM/GC shall be selected by the Request for Proposal method in accordance with the District’s public contracting rules and the process described in the Findings.

This Resolution shall take effect on _____.

ADOPTED this ____ day of _____, 2024, by the MOLALLA RIVER School District.

Chairperson of the School Board
Molalla River School District

ATTEST:

School Board Recorder