



**SCHOOL
DISTRICT**

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Date: Wednesday, September 7, 2022

To: School Board

From: Mark Sybouts, Business Manager

A handwritten signature in black ink that reads "Mark".

RE: High School HVAC Construction Manager/General Contractor contract

Our Attorney for this project, Albright Kittell PC, reviewed the Findings of Fact previously presented. They state that the finding of fact are sufficient to meet the Local Contract Review Board's Rules; however, they also recommended adding two additional findings of fact per their attached letter.

The RFP for this was advertised August 10, 2022 in the Daily Journal of Commerce. There was a mandatory site visit August 17, 2022 and proposals were due August 29, 2022.

Five contractors showed up to the mandatory site visit, but only one submitted a proposal.

This project is on the Capital Improvement Plan for an estimated total cost of \$1,600,000 available through ESSER grants.

The proposal was opened by Paul Erlebach and myself on August 29, 2022. The proposal offered a Not-To Exceed amount for Pre-Construction Services of \$12,350 with any amount not used available for the project.

The Proposal evaluation Committee consisted of Paul Erlebach, Mark Sybouts and Ali Al-Dossary of KCL Engineering. The proposer, DSL Builders LLC, met all the requirements of the Request for Proposal and had excellent reference checks with prior entities and engineering firms for whom they had performed work.

Board Action required:

- A) Award contract to DSL Builders LLC for Construction Manager/General Contractor and that Pre-Construction services be authorized in the amount not to exceed \$12,350 to provide for project plan evaluation and preparation of a Guaranteed Maximum Price proposal for the High School HVAC upgrade project.

OR

- B) Reject all proposals.



Advising Tillamook County for over 40 years

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August 29, 2022

Mark Sybouts
marks@nknsd.org

Re: The Neah-Kah-Nie High School HVAC
Upgrade Project
- Using RFP procedures
- For a Construction Manager/General Contractor
- Findings of Fact

Hi Mark,

I have reviewed the "Proposed Findings Supporting an Exemption from Competitive Bidding Requirements and use of the Construction Manager/General Contractor Method of Procurement for Neah-Kah-Nie High School – HVAC Upgrade" (the Proposed Findings of Fact) relative to the Neah-Kah-Nie High School HVAC Upgrade Project (the High School HVAC Upgrade Project) and I have the following comments and suggestions:

1.0 General Background. As outlined in the Proposed Findings of Fact, all public contracts must be competitively-bid, unless the Neah-Kah-Nie School Board (the School Board), acting as Neah-Kah-Nie's Local Contract Review Board (the LCRB) makes findings of fact that support an exemption established under ORS 279C.335 and/or the Special Procurements and Exemptions from Competitive Bidding rules adopted by the School Board as its LCRB, by way of Code DJC-AR, originally adopted 1/14/15 and Revised/Reviewed 11/4/08; 3/17/15 and 10/10/16 (the Procurement and Exemption Rules).

2.0 The Proposed Findings of Fact. The Proposed Findings of Fact presents to the School Board, acting as Neah-Kah-Nie's LCRB the findings of fact that are sufficient, in my view, to support the extension with only one additional finding of fact being added to the document (described in Section 4.0 of this letter).

3.0 The Proposed Findings of Fact regarding competition and cost savings. ORS 279C.335(2)(a) is the "unlikely to encourage favoritism or substantially diminish competition" exception, and I do believe that the Proposed Findings of Fact are sufficient to meet the

exemption requirements on the competition issue. Further, ORS 279 C.335 (2)(b) is the significant cost savings exception, and, again, I do believe that the Proposed Findings of Fact are sufficient to meet the exemption requirements on the cost savings issue.

4.0 The LCRB's Procurement and Exemption Rules. The School Board, acting as the District's LCRB, as it must, did adopt these rules to govern the granting of a complete bidding exemptions, and established a fourteen-part series of project aspects which the LCRB must consider. The Proposed Findings of Fact show, in detail, how each of those aspects were considered and I do believe that they are sufficient to meet the LCRB's Rules in that regard.

5.0 The Request for Proposals Approach. The Proposed Findings of Fact proposes utilizing Request for Proposals (RFP's) approach to procure a Construction Manager/General Contractor (CM/GC) contract to undertake the High School HVAC Upgrade Project. I do believe that it would be helpful to add the following Finding of Fact for the RFP approach, as allowed under OAR 137-049-0640:

"The High School HVAC Upgrade Project should be conducted by way of a request for proposals approach because the uniqueness and technological complexity of the Project needs companies with sufficient equipment and personnel who have experience in such projects to successfully complete it, outweighing consideration of just price related factors associated with standard competitive bidding. Further, the ability to respond to the technical complexity of the Project as it evolves is best addressed by the selection of a CM/GC who would be involved in the Project's design at the start, on through to its completion."

6.0 The Selection of the CM/GC approach itself. I do not think that there are required findings of fact to be made before selecting the CM/GC exemption from competitive bidding, if all of the above-described Findings of Fact are adopted. However, I do not see that it would hurt. If the District wants to adopt such a finding of facts, I would suggest the following:

"The High School HVAC Upgrade Project requires that, from design to completion, a construction manager/general contractor be selected because it is a system-wide project that is both technologically challenging and complex. This individual or company would work with the District from start to finish because of the Project's uniqueness and it is subject to change, as it develops. Having one individual or company selected for this role gives the Project an important element of continuity that cannot be achieved comfortably any other way, while achieving cost savings and reducing the time necessary to complete the Project."

I will sign on the last page of the Findings of Fact, in the space provided for "Legal Counsel" once the Section 5.0 Finding of Fact (and possibly the Section 6.0 Finding of Fact) are

August 29, 2022

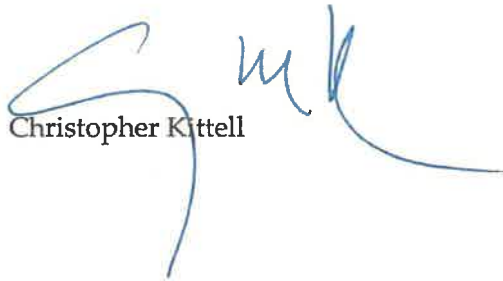
Page 3

added to the document.

Should you or the engineers need any further help from me, please let me know.

Sincerely,

ALBRIGHT KITTELL PC

A handwritten signature in blue ink, appearing to read 'C Kittell', with a long horizontal flourish extending to the right.

Christopher Kittell

CMK/hrt