

SEASIDE SCHOOL DISTRICT 10
Clatsop County, Oregon
1801 S Franklin Street
Seaside, Oregon 97138

Exhibit I
3/21/17

Resolution #8 - 2016-2017

RESOLUTION GRANTING EXEMPTION FROM COMPETITIVE BIDDING FOR CONSTRUCTION OF 2017 GO BOND PROJECT BY MEANS OF A CONSTRUCTION MANAGER/GENERAL CONTRACTOR AND AUTHORIZING SELECTION BY REQUEST FOR PROPOSALS

WHEREAS, the Seaside 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, draft 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 the **Seaside School District 10 2017 GO Bond 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 District, for the reasons set forth in the adopted Findings.

THEREFORE, BE IT RESOLVED THAT the Board of Directors of the Seaside School District approves

The contract for construction of **Seaside School District 10 2017 GO Bond 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.

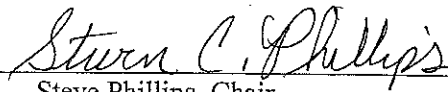
This Resolution shall take effect on March 21, 2017.

ADOPTED this twenty-first day of March, 2017, by Seaside School District 10.

Attest:



Signed:



Steve Phillips, Chair
Board of Directors

EXHIBIT A

FINDINGS OF FACT FOR EXEMPTION FROM COMPETITIVE BIDDING AND USE OF THE CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC) METHOD OF CONTRACTING FOR SEASIDE SCHOOL DISTRICT 10 2017 GO BOND PROJECTS

1. General

ORS 279C.335(2) permits a local contract review board to exempt contracts from traditional competitive bidding upon approval of findings of fact 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 Seaside 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 must be held before the findings are adopted, allowing an opportunity for interested parties to comment on the draft findings.

PURPOSE OF THESE FINDINGS: The Seaside 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 Seaside School District 2017 GO Bond Project (“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 of Facts apply to the CM/GC method of public improvement Project described below, in accordance with ORS 279C.335(2).

2. Background

The Seaside School District serves 1,550 students across South Clatsop County through four schools. Three of the four schools are at or near sea level and under significant threat in event of a tsunami.

A committee of staff and community members spent 2015-16 studying the district’s existing school facility needs, projected enrollment growth and bond measure options and costs. The bond measure would pay for \$99.7 million of the Project.

As part of the bond measure approved in the November 2016 election cycle the following projects are planned:

- Close three obsolete buildings in the tsunami inundation zones;
- Combine two elementary schools at an existing location. Expand the existing location to accommodate the new population; and,

- Develop a new state-of-art campus to include a new middle school and new high school.

The District is also scheduled to receive \$4.0 million in matching funds from the State of Oregon.

The two funding sources for the Project will provide better teaching and learning environments, safer and more secure facility, more efficient use of space, and address a lack of natural light in teaching spaces where possible.

The nature of this Project will require strategic planning, complicated scheduling, clear and concise accounting and documentation between the funding sources, and critical coordination of construction and target value design integrated with necessary safety measures. This Project will be at a higher risk and have a high level of technical complexity due to:

- a) work in a coastal environment,
- b) expertise and understanding of deep foundation systems necessary to build a safe structures in this environment,
- c) significant schedule constraints with security and safety concerning children occupying portions of the sites during the construction,
- d) need for complex phasing, and
- e) budget limitations that require close monitoring of these Project' budget. Therefore, it becomes critical to maintain both the schedule and budget of this Project.

In consideration of these facts, an alternate method of construction of these public improvements should be considered. Therefore, the following findings support an exemption from competitive bidding and the use of the Request for Proposal for Construction Manager/General Contractor services as an alternative method of construction contracting.

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 prior to completion of the design phase pursuant to a competitive request for proposals process where selection is based upon evaluation of factors relating to the experience and expertise of the contractor rather than low 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 fewer change orders and the ability to expedite the construction schedule. Under the standard design/bid/build method, the design is completed before the project is bid and the contractor brought on board.
- At the end of 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.
- Generally, execution of the GMP Amendment starts the construction phase of the project.

- Early work, such as site demolition and preparation can occur prior to completion of the design phase under an Early Work Amendment, which also helps to expedite the construction schedule as compared to the standard design/bid/build method.

CM/GC is the commonly used alternative contracting method by local governments for large, complex projects such as major expansions and remodels of the campus like the Seaside School District 2017 GO Bond Projects.

FINDINGS OF FACT

SUMMARY FINDINGS

Use of the CM/GC process for the "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 Project that could not otherwise be obtained.

SPECIFIC FINDINGS which substantiate the summary findings are presented below. Items in quotation marks are direct quotations from the referenced ORS where applicable.

- a) "The exemption 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 the Request for Proposal (RFP) selection process authorized by the District. Therefore, it is unlikely that the awarding of the construction contract for the Project 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 Daily Journal of Commerce, and in as many additional issues of publication as the District may determine.
- B. FULL DISCLOSURE:** To ensure full disclosure of all information, the Request for Proposals solicitation package will include:
 - a. Detailed Description of the Project
 - 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 may 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 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 137-0 49-0450, must be in writing, and must be delivered to the Seaside 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 Project will be awarded through open competitive processes, at either the general contractor or subcontractor level.
- 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:"**

FINDING: The awarding of construction contract(s) for the Project 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. "How many persons are available to bid;"

Based on previous experience in the State, a typical CM/GS RFP of this size and complexity will result in roughly 5-7 interested bidders. The actual number of bids received are typically lower but a minimum of 3 bids are anticipated.

B. "The construction budget and the projected operating costs for the completed public improvement;"

- 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 Project 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 Project 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 Project with significantly lower risk to the Project' costs. Involving the CM/GC during design will allow Project 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 project 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 Project is more likely to be completed on time and within budget. In addition, fewer change orders reduce the administrative costs of project management for both the District and the contractor.
- d. **GMP (Guaranteed Maximum Price) 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 Project, 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 Project will be funded by the sale of general obligation bonds, and State of Oregon match funds.

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

- a. **TIME SAVINGS:** Use of CM/GC as an alternative contracting method 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 Project by the due date. It becomes critical to maintain both the schedule and budget of this Project 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 District's students and personnel.
- b. **COST SAVINGS:** The Project 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 Project, and the operational needs of the Project 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 Project.

D. "Whether value engineering techniques may decrease the cost of the public

improvement;"

- a. **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.
- b. **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 project is the value engineering evaluation. Value engineering is the means used to determine the best project 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 project.

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 project's scope and design evolve that has greater value for the owner, and is not likely to be the same project created by the design-bid-build method.

E. "The cost and availability of specialized expertise that is necessary for the public improvement;"

Early selection of the CM/GC creates more informed, better quality decision making by the Project's construction team. A more efficient construction team saves the District money.

The construction Project is highly complex because they 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 Project, speedy completion, and minimize disruption to operations. The CM/GC clarifies several critical variables valuable to the Project design. The CM/GC: guarantees the maximum price (GMP) to complete the Project; determines the construction schedule; establishes the sequence of work; is contractually bound to implement the final Project design within the GMP; and participates as an essential member of the Project design and construction team.

Several benefits of participation by the CM/GC on this Project 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 2017 GO Bond Project; 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.

F "Any likely increases in public safety;"

All work must be coordinated to avoid safety and security risks to the students, employees, 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 Project. In addition, CM/GC contracting of the Project will ensure that public safety and security is being effectively managed in a "fast track" mode to minimize delays.

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) Site coordination with City and County.
- b) Site staging and laydown coordination.
- c) Site safety and work hours.
- d) The establishment of the GMP will provide a complete project within the District's budget.
- e) CM/GC contract allows for the District to engage in early work agreements that give more insight and site verification of unforeseen conditions to the Architects, Contractors and District, as well as expediting the construction schedule by starting early work during the design phase.

H. "Whether granting the exemption will affect the sources of funding for the public improvement;"

The District intends to fund the Project with the sale of general obligation bonds providing the available funds of \$99,700,000 as provided from the 2016 Bond Election last November, and a \$4,000,000 State of Oregon matching grant. The CM/GC process, therefore, has no impact on the funding sources.

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;"

As well as the multitude of construction market factors that exist today in Oregon (e.g., competition of other Project, 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 Project. 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 this Project than the usual competitive 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 this particular Project.

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

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 Project will draw upon existing skills and capabilities available in the construction community, as the Project present overall challenges similar to those faced on many public works Project. 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.

K. "Whether the public improvement involves new construction or renovates or remodels an existing structure;"

The Project involves a combination of remodel and renovation of existing facility, as well as, expansion and development of a new campus for the District.

L. "Whether the public improvement will be occupied or unoccupied during construction;"

Portions of the Seaside Heights Elementary School will be occupied during the remodel and expansion phases. The new middle school and high school will be developed separate from existing operations.

M. "Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions; and"

The Project currently anticipates a complex phased approach to develop the site and then construct the buildings.

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 Seaside School District is supported by The District's outside legal counsel, Miller Nash Graham & Dunn LLP and DAY CPM Services as Owner's Representative/ Bond Program Manager. Both firms have extensive expertise and experience with CM/GC process.