

**TIGARD-TUALATIN SCHOOL DISTRICT 23J  
RESOLUTION NO. 1718-04**

**RESOLUTION GRANTING EXEMPTION FROM COMPETITIVE BIDDING FOR  
CONSTRUCTION OF 2017 BOND PROJECT, TIGARD HIGH SCHOOL MODERNIZATION  
PROJECT, BY MEANS OF A CONSTRUCTION MANAGER/GENERAL CONTRACTOR  
(CM/GC) AND AUTHORIZING SELECTION BY REQUEST FOR PROPOSALS**

WHEREAS, the Tigard-Tualatin School District No. 23J ("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, public benefits, value engineering, specialized expertise required, market conditions, technical complexity, public safety and existing site/soil conditions recommended by the District were available 14 days in advance of the public hearing on this Resolution;

WHEREAS, the District determines that the **Tigard High School Modernization 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 this 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 this contract from competitive bidding is likely to result in substantial benefit to the District, for the reasons set forth in the adopted Findings.

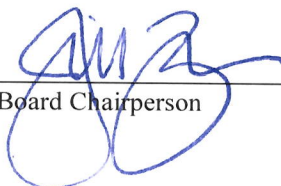
NOW, THEREFORE, IT IS HEREBY RESOLVED by the District as follows:

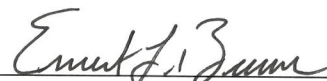
The contract for **Tigard High School Modernization Project** by a means of Construction Manager/General Contractor services (CM/GC) for a Guaranteed Maximum Price is exempt from competitive bidding, and the CM/GC shall be selected by the Request for Proposal method in accordance with the District's public contracting rules and the process described in the Findings.

This Resolution shall take effect on 8/14/17.

ADOPTED this 14<sup>th</sup> day of August, 2017, by the Tigard-Tualatin School District No. 23J.

**ATTEST:**

  
\_\_\_\_\_  
Board Chairperson

  
\_\_\_\_\_  
Ernest L. Brown, Clerk of the Board

**TIGARD-TUALATIN SCHOOL DISTRICT NO. 23J  
RESOLUTION NO. 1718-04  
EXHIBIT A**

**FINDINGS OF FACT**

**For Exemption from Competitive Bidding and Use of the Construction  
Manager/General Contractor (CM/GC) Services of Contracting for**

**TIGARD HIGH SCHOOL  
MODERNIZATION PROJECT**

**1. General**

ORS 279C.335(2) permits a local contract review board to exempt public improvement projects from traditional competitive bidding upon approval of Findings of Fact (“Findings”) showing that an alternative contracting process is unlikely to encourage favoritism or diminish competition and that the process will result in substantial benefit to the School District. The Tigard-Tualatin 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 Tigard-Tualatin School District will hold a public hearing as required by ORS 279C.335 and makes the following Findings of Fact with respect to whether Tigard High School Modernization Project (“Project”), as described herein, should be exempt from competitive bidding.**

**The District seeks to utilize CM/GC Services, an alternative method of contracting, based on the Findings of Facts presented herein.**

**2. Background**

Tigard-Tualatin School District currently serves 12,534 students in 17 schools.

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 for \$291 million, passed in November 2016, will pay for the Project.

The scope of this Bond project includes replacing approximately 40% of the existing school with a new classroom wing, a new art and technology wing, new and expanded Commons, a new PE/Athletics wing, replacement of the Auxiliary Gym and boys and girls locker room facilities, relocation of Administration, related site improvements, expansion and upgrades to security and access control systems, and roof replacement and improvements. The estimated cost for this work is between \$47,000,000 – \$51,000,000.

The modernization work outlined above will address each of the key goals of the November 2016 Bond measure:

- Rebuild aging schools as it will replace the 1952 portion of Tigard High School, (one of the oldest in Tigard-Tualatin School District)
- Accommodate needs of existing and projected student enrollment
- Improve safety and security
- Create 21st century learning opportunities
- Protect the community's investment in existing facilities

This Project will require phased construction around existing, occupied spaces and careful coordination with the District. These dynamic elements will require strategic planning, complicated scheduling, a deep understanding about existing building systems, critical coordination of construction and target value design, all integrated with necessary safety measures for students, staff, construction personnel and the public who will access and/or use this space during construction.

The elevated level of technical complexity of this Project is due to the amount of phased renovation, demolition and replacement work (including existing structural, mechanical, electrical, IT, fire alarm and security systems) and the safety and security constraints of having students, staff and community continue to occupy and use the school for most of the duration of construction. The budget limitations will require close and on-going monitoring of construction costs. For project success, it will be critical to have contractor/construction expertise to monitor, inform and maintain the trifecta of key construction issues: safety, budget and schedule (including phasing) throughout this Project.

In consideration of these facts, an alternate method of construction procurement for this Project, a public improvement project for the District, is proposed for exemption from selecting a contractor based upon the lowest bid. The following findings support the proposed exemption from competitive bidding and the use of a Request for Proposal (RFP) for Construction Manager/General Contractor (CM/GC) Services as an alternate method of construction contracting for this Project.

## 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. **Competition will not be diminished:** It is unlikely this exemption will encourage favoritism or substantially diminish competition. The Request For Proposals selection process will be competitive based upon relevant selection criteria and will open to all interested proposers as described in the findings below.
2. **Substantial cost savings will be achieved.** 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 under the standard design-bid-build process.

**SPECIFIC FINDINGS, WHICH SUPPORT 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 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, as well as in the District Bond website, and in as many additional issues of the 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 architectural/engineering community about the use of the CM/GC contracting method for this project.

- 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 qualifications, price and other components, which expand the ground of competition beyond price alone to include experience, quality, innovation, 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. The CM/GC contract will comply with the subcontractor competition requirements in ORS 279C.337.

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

- a. A mandatory Pre-Proposal Conference and Site Tour 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 five (5) business 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:
  - i. 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.
  - ii. 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.
  - iii. Proposals will independently be scored by the voting members of the Evaluation Committee. Scores will then be combined and assigned to each proposal.
  - iv. The Evaluation Committee will convene to select from the highest-scoring proposers, a finalist(s) for formal interviews.
  - v. The Evaluation Committee will conduct the interviews with the short-listed proposers.
  - vi. 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.
  - vii. The Tigard-Tualatin 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 proposer 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 137-049-0450, must be in writing, and must be delivered to the Tigard-Tualatin 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%. If Sub-Guard is used on this project, the costs associated with this program are to be included as part of the GC's fee. 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 and/or subcontractor level.

**2. The awarding of a construction contract for the Project using CM/GC method would offer the District time critical construction expertise and value to the Project. This finding is supported by the following information required by ORS 279C.335(2)(b) and ORS 279C.330.**

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

The Tigard High School Modernization Project is highly complex because it involves phased abatement, demolition and replacement of existing facilities, including building systems (structural, mechanical, electrical, IT, fire alarm and security) that will need to be relocated, reconnected, phased and in some cases upgraded to maintain the functionality of existing spaces that will continue to be occupied during and/or following construction

This exemption will allow the District to proactively seek construction and constructability expertise during the design process, well in advance of the standard competitive bid timeline, to address the complexities of existing conditions, phased construction, an occupied site (on-going school operations during construction) and to help inform the best decisions on behalf of the District. Value will be added to the Project, via early and time-critical construction expertise, that could not otherwise be obtained to the same depth, duration or quality.

- a. **COORDINATION:** Use of a CM/GC in conjunction with the team approach will result in a better coordinated Project and will minimize disruption to operations. By having the CM/GC part of the project team early, the CM/GC will have time to fully evaluate and understand the existing facilities and systems, along with the intended design direction prior to start of construction. This information will inform design direction, phasing plans, site logistics and safety and security measures during construction.
- b. 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. By utilizing the Request For Proposal selection process, which allows the District to consider factors such as experience and expertise in addition to price, the District will ensure that the selected CM/GC will be competent to handle this complexity.

The CM/GC would help assess the best grouping of the bid packages that will help insure better trade coverage, better pricing, the most efficient construction staging area on the 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 selection is typically based on the lowest bidder.

- c. **SAFETY:** All work must be coordinated to avoid safety and security risks to the students, employees (TTSD and construction), and the general public, to ensure efficiency in construction. All construction must be coordinated to ensure safety and security. The coordination between the District, the design team and the selected CM/GC will assure coordination of work and necessary care for the safety of vehicular and pedestrian paths crossed by the Project, throughout the phases of the project. With the

CM/GC services on board during design, rather than at the completion of construction documents, safety and security will have been considered and more thoroughly planned long before construction begins, which will effectively minimize delays.

- d. **PHASED CONSTRUCTION DURING OCCUPANCY:** A CM/GC participating on this Project would provide timely assistance and support to the development of the design and the design documents to reflect the best phasing plan to accommodate existing and to be constructed infrastructure, safety and occupancy considerations and the most suitable approach to construction.
- e. **MARKET CONDITIONS:** As well as the multitude of construction market factors that exist today in Oregon (e.g., competition of and with other projects, environmental issues that limit construction materials, variable bid market, low unemployment, etc.), the difficulty in establishing the best work sequence complicates our ability to accurately estimate the cost of this Project. The economy today allows for many contractors to bid for jobs for which they might not be qualified. CM/GC Services, an alternative contracting method, will be more likely to result in a more experienced and better suited contractor for this Project than the usual competitive/low bid procurement. The complexities, which need to be addressed to accomplish this Project, are not well served by the usual competitive procurement.
- f. **TECHNICAL COMPLEXITY:** Technical expertise will be required for phased occupancy abatement, demolition and construction, as well as for quality management, scheduling, estimating and project means and methods. The complexity and scheduling issues discussed in the Background section above will require special expertise. Utilizing CM/GC services, the Project would be able to draw upon existing skills and capabilities available in the CM/GC construction community and, potentially, subcontractors. 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. As noted above, the Request For Proposal method of selection will enable the District to ensure that the selected CM/GC has the necessary skills and experience to address this technical complexity.

## **B. 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 subcontractors 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. This 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. Because the contractor participates during the design phase, the CM/GC process will assist in providing a scope of work, constructible design and phasing solutions that best meet the requirements of the Project with significantly lower risk to the Project' costs. Involving the CM/GC during design will also allow Project risks to be addressed early and teamwork between the District, the design consultants, 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, the existing building and the architectural and engineering team's 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 time and costs of project management for both the District and the contractor.

- d. **GMP CHANGE ORDERS COST LESS:** CM/GC change orders 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. Industry trends for CM/GC mark-ups on change orders are typically in the range of 3-5%.
- e. **POTENTIAL 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. Consequentially, the overhead and profit fee is generally in the 3-5% range. This is slightly lower than the fee anticipated on similar design-bid-build contracts.
- g. **FUNDING SOURCES:** The District intends to fund the Project with the sale of general obligation bonds from the available funds of \$291,315,000, as provided from the 2016 Bond Election in November 2016.

### C. ADDITIONAL PUBLIC BENEFITS

- a. **TIME SAVINGS:** The 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 is completed the remaining portions. This will allow for an advanced start on construction, especially in comparison to the standard design-bid-build duration, and supporting the completion of the Project by the due date.
- b. **MAXIMIZE START OF CONSTRUCTION/WEATHER WINDOW:** This exemption will allow the District to begin work on site during summer, maximizing the dry weather window for abatement, demolition and site preparation. The standard design-bid-build schedule would extend the start date for these activities into early fall. GRI, the District's Geotechnical engineer, states in their draft Geotechnical Report dated June 13, 2017 "Earthwork can be completed most economically during the dry summer months, typically extending from June to mid-October." Tigard High School's site, composed of unconsolidated beds of silt and silty sand, are extremely sensitive to moisture content and subgrade disturbance. Site work completed in advance of wet weather conditions will save the district money and time.
- c. **COST SAVINGS:** The Project will benefit from the active involvement of a CM/GC contractor during the design process in the following ways:
  - i. The contractor's input regarding the constructability and cost-effectiveness of various alternatives will guide the design toward the most economic choices.
  - ii. Consideration of the specific equipment available to the contractor will allow the designer to implement solutions that utilize the capacity of that equipment.
  - iii. 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.
  - iv. 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.
- d. **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. VALUE ENGINEERING**

- 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 and committed through construction 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. 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.
  - i. 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 or product created by the design-bid-build method.