

**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
BROADWAY FIELD SOFTBALL IMPROVEMENTS**

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 Broadway Field Softball Improvements 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

Seaside School District currently serves 1,512 students, K-12 in 2 schools.

The district has entered into a 2021 Resolution Agreement with the U.S Department of Education, Office of Civil Rights to resolve compliance concerns noted in OCR case #10-19-1122 regarding equity of facilities for softball team sport at the Broadway Field sports complex.

December 2021, the district engaged consultants to provide analysis and recommendations to the District Board on options to fulfill the resolution agreement terms. In January 2022, the District board approved the solution of building a new softball field would be in the best interest of the District, student athletes and the community at large over the long term.

Over the next 14 months, the District collaborated with multiple jurisdictions having authority, public and private stakeholders, multiple community public engagement activities and multiple public hearings, on November 14, 2022, City of Seaside City Council unanimously approved siting of the new softball improvements at the Broadway Field complex.

In December 2022, the District was advised by City planners a public Type 2 land use process would be required to obtain approval to construct the new improvements.

April 04, 2023, project was presented to Planning Commission, held a public hearing on the application. Received APPROVAL of Conditional Use Permit by commission.

The District formed a design advisory committee comprised of stakeholders, City staff, District sports coaching staff, student athletes and community members to participate in design progression reviews and feedback to District to inform the design and project scope documents and operational criteria. Unique and specialized scopes include:

- Demolition of existing site storage structures and adding underground utilities
- Relocation of the Hersche Family Training Center – Pole building relocation
- Specialized LED sports field LED lighting and electrical systems
- Specialized sports field turf and ball retention and safety netting systems

Procurement of the improvements initially engaged the use of the Intermountain Educational Service District cooperative purchasing agreement with Field Turf / Beynon Sports used throughout the state of Oregon. The cooperative purchasing terms of the agreement comply with the public procurement process and allow for District to realize volume discounts built into the pricing structure of the agreement. This project does have some very unique factors that are not common to the typical scopes of the agreement.

On June 22, 2023, the Field Turf team advised the District that their underwriting terms would not allow them to perform scope of work related to the relocation of the Hersche Family Training Center, along with their initial estimate value provided that was well overbudget.

This condition changed the District's ability to utilize the cooperative purchasing agreement terms for the whole project. The District and consultants quickly evaluated other forms of procurement available ("Emergency" procurement method, traditional design-bid-build and a negotiated format of CMGC) taking into consideration factors of additional cost from the Design teams, schedule of the improvements, construction logistics and safety along with strategy to provide the District with the best value and be in the best interest of the District. The consultant team is recommending the use of a CMGC process.

The nature of this Project requires 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 has a higher risk and has a high level of technical complexity due to the relocation scope of the Hersche Family Training facility. Continuous coordination with the Sunset Empire Parks & Recreation District will be required due to significant schedule performance constraints and with security and safety concerning children and public visiting and using the adjacent areas of

Broadway Field complex during much of the construction. Project will require complex phasing and contains budget limitations that require close monitoring of the Project budget. Therefore, it is 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.

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 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, 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 qualified 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, safety, 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 may 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 non-mandatory 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 may 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 Seaside 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 intended 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 intended 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 7-10%. The CM/GC's fee must be within the industry standard range of 3-6%. 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.

2. 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. OPERATIONAL, BUDGET, FINANCIAL DATA

- a. **BUDGET:** The District has a fixed budget available for the "Project" that shall not be exceeded. The projected completion date shall not 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 subsequent changes of direction.
- b. **LONG TERM COSTS:** The Project will require expertise regarding the constructability and long-term cost/benefit analysis of innovative design features. That knowledge is best obtained directly from the construction industry. Many decisions will be required during the design value engineering process that will encompass need for 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 clarifying a scope of work and constructible final design that best meet the requirements of the Project with significantly lower risk to the Project costs. Involving the CM/GC to review the design will allow Project risks to be identified and addressed and build collaborative environment 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 review 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 are 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 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% (or more) 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 3-6%.
- 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 3-6% 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 budgeted allocations from the District capital improvements fund 400.

B. PUBLIC BENEFITS

- 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 evaluation continues on the remaining portions. This will shorten the overall duration of the construction and provide for completion of the Project on schedule. 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 and security of the public and 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 market information regarding the cost of materials that are experiencing price volatility, the availability of scarce materials and skilled trade labor availability.
 - The contractor will also be able to order materials while design is being completed 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 design development phase and construction document phase. With the CM/GC participating in these phases, 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.

C. 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 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 and manage the schedule;
- the ability to sequence work in most beneficial & safe manner; 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.

- D. **SPECIALIZED EXPERTISE:** 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, the most cost effective logistics 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, 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.

- F. **MARKET CONDITIONS:** 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, skilled labor volatility, 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 qualified 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.

- G. **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 Project will draw upon existing skills and capabilities available in the construction community, as the Project 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.

