

**FINDINGS OF FACT FOR THE USE OF
THE CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC)
CONTRACTING METHOD**

Before the Board of Directors of Enterprise School District #21

Regarding the 2020 Bond Projects

In November 2020, Enterprise School District #21 (hereafter referred to as “District”) approved general obligation bonds of \$4 million and received a grant from the Oregon School Capital Improvement Matching Program (OSCIM) of \$4 million, which provides a total budget of approximately \$8 million to cover the costs associated to improve safety, efficiency, and upgrade facilities. Planning and design is currently underway for the projects.

Construction activities will take place adjacent to and within the District’s existing public K-12 facilities. The improvements are primarily renovations of older buildings, dating from 1918, 1950, and 1960, with a high degree of unknowns in the existing buildings. Construction will occur during extremely volatile and uncertain economic conditions within the construction industry.

In consideration of these facts, an alternative method of construction should be considered; therefore under the Oregon Statutes and based upon the following findings, the District’s Board of Directors is authorizing the use of Construction Manager/General Contractor (CM/GC) method of construction contracting.

The guiding applicable statute is ORS 279C.335 which requires, with certain exemptions, that all public contracts be based on competitive bidding and be awarded to the lowest responsive and responsible bidder. ORS 279A.060, ORS 279C.335(2) and ORS 279.330 permit the District’s Board of Directors to act as the public contract review authority and to grant, under certain conditions and upon certain findings, specific exemptions from the requirement for competitive bidding.

This exemption excludes the Roof Replacement portion of the bond project, which will be released for competitive bidding in March 2021.

Finding of Fact

Use of the CM/GC method to construct the District’s bond projects will: (a) result in substantial costs savings and reduce risk to the District; (b) will allow the District to select a contractor with the specialized expertise required; (c) benefit the public by improving safety and coordination during construction; and (d) not encourage favoritism nor diminish competition.

Specific findings which substantiate these conclusions are as follows:

- 1. Finding:** The Board finds that the CM/GC method will result in substantial savings and reduced financial risk to the District. Reduced risk provides a significant value and potential savings.

- a. **Reduced Financial Risk:** The project will occur during challenging economic conditions within the construction industry. It would be very costly and disruptive if these economic conditions created undue risk and potentially negative financial impacts on the District's projects. Using the CM/GC process will allow the District to look deeply into the contractor's financial strength and eliminate participation by those companies' who do not have the financial strength to successfully complete the project.
 - b. **Guaranteed Maximum Price (GMP) establishes a maximum price prior to starting construction:** 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, the condition of the existing facilities, and the operational needs of the District by participating in the development of the design documents. With the CM/GC's participation in this phase of the project, they will offer suggestions for cost savings and improvements to the design. With the benefit of this knowledge, the CM/GC will be able to guarantee the maximum price paid by the District for the project.
 - c. **Fewer Change Orders:** When the CM/GC participates in the design process, fewer change orders will occur during the construction process. This is due to the CM/GC's better understanding of the owner's needs and the designer's intent. As a result, the project is more likely to be completed on time and on budget. In addition, fewer change orders reduce project management costs for both the District and the contractor.
 - d. **GMP Change Orders Cost Less:** The traditional Design-Bid-Build method typically results in contractors charging up to 15% mark-up on change orders. The CM/GC method applies predetermined mark-ups. The experience of the industry has been to establish the mark-up in the range of 5% to 10%.
 - e. **GMP Savings:** Under the CM/GC 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 actual costs and the GMP are returned to the District.
 - f. **Contractor Fee is Less:** Contracts with the CM/GC are designed to create a better working relationship between all parties resulting in reduced risk to the contractor. As a consequence, the overhead and profit fee is generally in the 3% to 5% range which is lower than the mark-up usually applied to traditional design-bid-build projects.
2. **Finding:** The Board finds that the CM/GC method is necessary to take advantage of specialized expertise of the contractor.
- a. **Specialized Project:** Utilizing the CM/GC process will allow the District to select a contractor who has a proven track record and capacity to successfully complete major renovations of historic buildings within operating educational facilities.
3. **Finding:** The Board finds that the CM/GC process will result in improving public safety during construction activities.
- a. Construction activities will take place adjacent to and within the District's existing public K-12 facilities. An intense and well-thought-out safety and coordination plan must be implemented to ensure members of the public, staff and students are kept safe and instructional activities are not disrupted. Utilizing the CM/GC process will

allow the District to select a contractor who has the sensitivity and experience to safely and successfully work in close proximity and in direct coordination with ongoing activities.

4. **Finding:** The Board finds that there will be no impact to the funding source as a result of this exemption.

The District's funding source for this project will remain the same whether accomplished through a traditional design-bid-build process or through the CM/GC process. No adverse impact on the funding source will occur as a result of this exemption.

5. **Finding:** The Board finds that competition will not be inhibited nor will favoritism be encouraged as a result of this exemption. The CM/GC will be selected through a competitive negotiation process in accordance with the cost and qualification-based process authorized by the District's Board of Directors.

a. **Solicitation Process:** Pursuant to ORS 279C.400 the CM/GC Request for Proposal (RFP) solicitation will be advertised in local and regional publications of general and industry specific circulation.

b. **Full Disclosure:** To ensure full disclosure of information, the RFP will include the following information:

- i. Detailed Description of the Project
- ii. Contractual Terms and Conditions
- iii. Selection Process
- iv. Evaluation Criteria
- v. Role of the Evaluation Committee
- vi. Provision for Comments
- vii. Complaint Process and Remedies

c. **Selection Process:** Highlights of the selection process will include:

- i. During the pre-proposal period, interested parties will, at any time prior to seven (7) business days before the close of the solicitation, be able to ask questions and request clarifications if they believe that any of the terms and conditions of the solicitation are unclear, inconsistent with industry standards or unfair and unnecessarily restrictive of competition.
- ii. Sealed proposals will be submitted to the District's Superintendent at a time specified in the advertisements.
- iii. The following evaluation process will be used:
 1. Proposals will be evaluated for completeness and compliance with the requirements of the RFP.
 2. Proposals considered complete and responsive will be evaluated to determine if they meet 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 the requirements will be rejected.

3. Proposals will be independently scored against predetermined criteria by the voting members of the Evaluation Committee. Scores will be combined and assigned to each proposal.
 4. The Evaluation Committee may convene to select from the highest ranked proposals a finalist(s) for interviews.
 5. The Evaluation Committee may conduct interviews.
 6. The Evaluation Committee may use the interview to confirm the scoring of the proposal and to clarify questions. Based on the revised scoring, the Evaluation Committee will rank the proposals and provide an award recommendation.
 7. The District and legal counsel 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 on.
- iv. Competing CM/GC firms 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 or concerns about the selection process must be delivered to the District's Superintendent within seven (7) calendar days after receipt of the selection notice. No protest of the award selection shall be considered after this time period.
 - v. The contract achieved through this process will require the CM/GC to use an open and competitive selection process for all components of the project.
- 6. Finding:** The Board finds that there will be no adverse impact on the operation, financial or budget if this exemption is provided. Whether this project is secured through a traditional design-bid-build method or through the CM/GC process, the operational, financial and budgetary impact will be the same – other than the potential savings mentioned in the Finding #1. More importantly, there will be no adverse impact on operations, financial or budgetary data through the use of the CM/GC process.

Conclusion of Findings of Fact

It is in the best interest of the Enterprise School District #21 to utilize the CM/GC project delivery method. The CM/GC method will (a) result in substantial costs savings and reduce risk to the District; (b) will allow the District to select a contractor with the specialized expertise required; (c) benefit the public by improving safety and coordination during construction; and (d) not encourage favoritism or diminish competition.