

July 17, 2025

26-002

ADOPT FINDINGS - GRANT AN EXEMPTION FROM
COMPETITIVE BIDDING - AUTHORIZE USE OF THE
CONSTRUCTION MANAGER/GENERAL CONTRACTOR
(CMGC) ALTERNATIVE CONTRACTING METHOD FOR THE
DISTRICT WIDE KITCHENS MODERNIZATION PROJECT

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STRATEGIC THEME: Operational Excellence: Efficiency, Effectiveness, and Fiscal Sustainability

REPORT: The 2022 Bond Program includes funding for deferred maintenance, updating equipment, and improving facilities. As part of the 2022 Bond Program the College carried out an assessment of the food services needs across the district. The decline in enrollment across the district has left the existing food service provision out of sync with current needs. The work will address food service at all four campuses and there is a desire to have a consistent vision across the district.

The College has several critical needs related to the work going forward at multiple campuses:

- The service to students at the campuses must, to the maximum extent possible, continue unimpeded through the construction;
- Public, student, and staff safety must be protected in a complex, construction environment;
- Disruptions, delays, and unplanned events must be kept to an absolute minimum;

Because of the complexity of this project, Staff recommends that the Construction Manager/General Contractor (CM/GC) process be utilized. The CM/GC alternative contracting process

is authorized for procurement of construction services under ORS 279C.337 provided that the Local Contract Review Board (the Board of Directors for PCC under ORS 297A.060) approves an exemption from competitive bidding. Under the CM/GC contracting method:

- Prospective contractors are solicited prior to completion of the design phase pursuant to a competitive request for proposals (RFP) process, where selection is based upon criteria relating to the experience and expertise of the contractor rather than low bid.
- The contractor works with the owner and engineer during the design phase to develop the final design with the goals of improved constructability and value engineering, which results in fewer change orders and the ability to expedite the construction schedule. It also enables the contractor to be involved in development of the construction program, including implementation of the College's inclusivity goals. (Under the standard design/bid/build method, the design is completed before the project is bid, award is based upon low bid, and the contractor comes on board at that point.)
- 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. Execution of the GMP Amendment starts the construction phase of the project.

The CM/GC alternative contracting method is commonly used by public contracting agencies for complex projects such as the District Wide Kitchen Modernization Project.

The Construction Manager/General Contractor (CM/GC) form of contracting is a competitive request for a proposal process that requires the contractors to provide detailed information and examples from past projects that demonstrate how they are able to meet the criteria the college sets forth. One of the criteria is utilization of certified small business contractors and subcontractors. They have to demonstrate their commitment, prepare an outreach plan, share utilization from past projects, and their engagement has to be above and beyond the minimum of phone calls and emails. Using a CM/GC process allows for higher small business and apprenticeship training percentages. Without the CM/GC contracting process the college will have little to no input into the selection criteria of the subcontractors as the decision would be made solely on price.

In addition to use of certified small business contractors, the CM/GC contracting method allows the College to look at a contractor's history of promoting a diverse workforce and including respectful workplace programs on the jobsite.

There are also numerous other goals for inclusivity for various College and community stakeholders. Pre-apprenticeship participation and mentorship programs for small general contractors are all desired outcomes.

Findings:

ORS 279C.335(2), implementing ORS 279C.330, requires the Board to make certain findings in order to grant an exemption, as follows:

" (a) The exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts."

Finding: The requested exemption will not encourage favoritism or substantially diminish competition. The College will utilize a competitive RFP process to select the CM/GC firm. The procurement will be formally advertised with public notice. Full competition will be encouraged and all qualified contractors will be invited to submit a proposal. The award will be based upon an objective review and scoring of proposals by a qualified College review committee based on identified selection criteria. Once selected, the CM/GC will select subcontractors via competitive process in accordance with PCC Contracting Rules and as required by ORS 297C.337(3). This competitive process will include outreach to and solicitation of diverse and small contractors pursuant to the College's inclusivity goals.

The CM/GC process should increase competition by maximizing the opportunity for all interested large, small, and/or diverse contractors to participate in the project.

"(b) Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the contracting agency that seeks the exemption. In approving a finding under this paragraph, 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:

(A) How many persons are available to bid;"

Finding: Based on previous PCC CM/GC contracting processes, the College expects that a substantial number of contractors will be interested in the District Wide Kitchen Modernization project, and that there will be vigorous competition during the RFP process.

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

Finding: The estimated project budget is \$5,000,000. The College has not conducted a detailed analysis of the operating costs, but expects that the improved design resulting from the CM/GC's early participation during the design phase will substantially reduce long- term operating cost.

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

Finding: Unlike a traditional design/bid/build procurement, an RFP process allows the District to review the qualification of the proposed GC's project team, ensuring the selected firm(s) has experience and expertise in development of education and related facilities, including the required Washington County & City of Portland permitting process. This is important to ensure that the selected contractor has the experience and capacity to build and renovate complex facilities on an operating college campus.

Bringing the CM/GC on during the design phase also promotes an early team approach that leads to better communication, continuous value engineering, and improved constructability review, which results in an improved final design and, consequently, a more streamline construction process. The College's past experience with the CM/GC process has been that this reduces change orders and limits delays during the construction phase. The College also expects that the CM/GC team approach will also allow better monitoring by PCC staff to ensure that the Project stays within budget.

The CM/GC process will also enable PCC to work with the contractor to maximize opportunities for participation by emerging small businesses for subcontracting work. This will increase competition among subcontractors. The College's experience with past CM/GC contracts demonstrates that the College achieves higher small business utilization and subcontractor participation than it does through traditional contracting methods.

Enhanced teamwork and early participation in the planning process by the Contractor through the CM/GC process will also allow the College to identify multiple internship opportunities for students where appropriate, and create 'learning lab' opportunities as part of the design and construction process.

Overall, the public benefits of the CM/GC process include cost savings, better achievement of College community goals, and more timely delivery of the project due to fewer changes and disruptions.

"(D) Whether value engineering techniques may decrease the cost of the public improvement:"

Finding: Value engineering is a routine practice in public improvement projects regardless of procurement method. The CM/GC delivery method allows for the general contractor to participate in the value engineering process during the design phase, resulting in a more effective and efficient process as compared to value engineering via change orders to a completed design. The inherent flexibility and team approach of the CM/GC process allows the College to more easily change the design and scope of work as necessary to meet the project budget before the final design is fixed. This is not something that the traditional bid process offers. Value engineering may or may not decrease the contract sum but it will improve the College's ability to be able to manage the project within the budget and will reduce extra-cost change orders and the costs associated with the attendant project delay. PCC also expects to be able to take advantage of reduced engineering and other professional consultant service fees as a result of this more streamlined CM/GC approach.

"(E) The cost and availability of specialized expertise that is necessary for the public improvement:"

Finding: The District Wide Kitchen Modernization Project is a complex project and requires a contractor with the expertise and experiences to construct the project while the rest of the buildings remain in use by staff and students, and that understands the particular needs of the College in terms of construction management and project delivery times. The RFP process allows for review of contractor expertise and the particular expertise of the contractor's proposed team not afforded by a low-bid procurement.

"(F) Any likely increases in public safety:"

Finding: The CM/GC process will enhance public safety because PCC will be able to consider the safety record of the contractors selected and because the CM/GC will be integral to planning the construction schedule and safety measures during the design phase. Because the buildings, and the adjacent PCC buildings, will be occupied and open to the public throughout the Project, this public safety benefit is particularly important.

"(G) Whether granting the exemption may reduce risks to the contracting agency . . . or the public that are related to the public improvement;"

Finding: The scope and magnitude of the work requires long-term planning and scheduling around the college's academic calendar. The public interest will be best served by establishing a construction methodology that encompasses that capability over the duration of the Program. Directly involving the contractor in development of these key plans during the design phase will result in a more realistic, achievable, and expeditious schedule.

In addition, the CM/GC process allows the contractor to discover and help address complicated technical issues during the document design process, which facilitates advanced problem-solving. The risks are better understood and are addressed early in the process, reducing financial and schedule risks as a result.

"(H) Whether granting the exemption will affect the sources of funding for the public improvement:"

Finding: This project will be funded by the 2022 Bond Program. There will be no impact on this funding source due to the CM/GC process.

"(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:"

Finding: Because the CM/GC process results in the selection of the general contractor early in the design phase, the College is better able to take advantage of market prices by facilitating early purchase of certain project elements. The essential added value of the CM/GC process is the real time market job costing from projects around the Portland market and the West Coast.

This knowledge allows the contractor and architect time to consider less costly complementary or alternative items.

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

Finding: This project is complex and will require careful planning and coordination to reduce the impact on users of the current buildings and parking lots. One of the biggest advantages of the CM/GC method is the ability to coordinate all technical work before the start of construction and more accurately establish a construction schedule. Being able to apply best practices as a team will make for a better product within the budget constraints.

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

Finding: This is a renovation of an existing building that will remain in use during the project. Renovating structures is typically much more complex than greenfield development because there are always surprises, sometimes unpleasant, once the project is underway. Conducting such work on an operating campus significantly increases that complexity. Use of the CM/GC process will ensure that the selected contractor has the experience and expertise to do the job.

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

Finding: The building will remain occupied during the work.

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

Finding: The project will be completed in a single phase.

"(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."

Finding: The College's Office of Planning & Capital Construction has extensive experience in implementing successful CM/GC contracting processes, including the successful projects from the 2008 & 2017 Bond Program and the current projects funded by the 2022 Bond Program. The District's outside legal counsel, Dunn Carney LLP, has extensive experience with the CM/GC alternative contracting methods and has represented other public agencies on multiple CM/GC projects.

Ultimate Finding: For these reasons, use of the CM/GC Alternative Contracting Method for the District Wide Kitchen Modernization Project is likely to result in substantial cost savings and deliver other significant public benefits as compared to use of the standard/bid/build process within the meaning of ORS 279C.335(2)(b).

Notice was published in at least one trade newspaper of general statewide circulation a minimum of 14 days prior to the hearing. A copy of that notice is attached hereto as Exhibit "B" and incorporated by this reference.

The Findings above have been considered by the Board and are adopted and approved.

Based upon the approved Findings, and the use of the Construction Manager/General Contractor process as the manner of selecting the construction contractor for the Project, it is unlikely that an exemption of the construction contract from the competitive bidding requirements of the public contracting statutes will encourage favoritism in the awarding of a public contract for the Project, or substantially diminish competition for public contracts of like nature.

Based upon the approved Findings, the awarding of the construction contract for this Project using the alternative method of Construction Manager/General Contractor pursuant to an exemption under ORS 279C.335(2) will likely result in substantial cost savings and other substantial benefits to the College.

The College is granted an exemption under ORS 279C.335(2) from the competitive bidding requirements of ORS 279C.335(1) for the construction contract for the Project, and directs that the College may utilize the Construction Manager/General Contractor method as the alternative contract method, provided the College also remains permitted, at the College's discretion,

to use traditional bidding for any aspect of the Project pursuant to ORS 279C.335(1).

For any contract utilizing the Construction Manager/General Contractor method of procurement, the procurement shall be in accordance with the Attorney General Model Rules adopted under ORS 179A.065.

RECOMMENDATION: That the Board of Directors, acting as the Local Contract Review Board for the College, after consideration of the above factors, adopt findings (a) and (b) above and grant an exemption from competitive bidding for the District Wide Kitchen Modernization Project construction contract to authorize the use of a CM/GC alternative contracting method for the project. Funding for this project will be from the 2022 Bond Program