

**PORTLAND DEVELOPMENT COMMISSION**

Portland, Oregon

**ACTING IN ITS CAPACITY AS THE  
LOCAL CONTRACT REVIEW BOARD**

**RESOLUTION NO. 7197**

**ADOPTING FINDINGS IN SUPPORT OF AND EXEMPTING THE 9101  
FOSTER ROAD PROJECT IN THE LENTS TOWN CENTER URBAN  
RENEWAL AREA FROM LOW-BID SOLICITATION**

**WHEREAS**, by adoption of Resolution No. 3550, the Portland Development Commission (“PDC”) Board of Commissioners (“Board”) was established as PDC’s Local Contract Review Board (“LCRB”) pursuant to state law;

**WHEREAS**, Oregon Revised Statutes (“ORS”) Chapter 279C and PDC’s LCRB Administrative Rules (“LCRB Rules”) generally require that all public improvement contracts shall be awarded on a low-bid basis;

**WHEREAS**, ORS 279C.335(2) and LCRB Rules Part 4(II)(B)(2) allow exemptions to the general requirements for low-bid solicitation upon LCRB approval of written findings;

**WHEREAS**, PDC staff proposes to directly negotiate a contract with Bremik Construction resulting in a Guaranteed Maximum Price agreement to perform construction and other services on the 9101 SE Foster Road Project (the “Project”); and

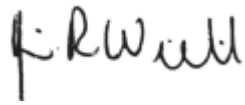
**WHEREAS**, after due public notice, PDC staff held a public hearing to receive comments on the draft Low Bid Exemption Findings (“Findings”) (see Exhibit A) for the exemption for the Project as required by ORS 279C.355(5) and LCRB Rule Part 4(II)(B)(2).

**NOW, THEREFORE, BE IT RESOLVED**, that the LCRB hereby adopts the Findings;

**BE IT FURTHER RESOLVED**, that based on adoption of the Findings, the LCRB hereby exempts the Project from the low-bid requirements of ORS Chapter 279 and the LCRB Rules and specifically approves the Project for the alternative contracting approach set forth in the Findings; and

**BE IT FURTHER RESOLVED**, that this resolution shall become effective immediately upon its adoption.

Adopted by the Portland Development Commission on June 8, 2016

A handwritten signature in black ink, appearing to read "G. Wiedrick". The signature is written in a cursive, somewhat stylized font.

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Gina Wiedrick, Recording Secretary

**DATE:** June 8, 2016  
**TO:** PDC Board of Commissioners acting in its capacity as PDC Local Contract Review Board  
**FROM:** Patrick Quinton, Executive Director  
**SUBJECT:** Findings in Support of Exemption from Low Bid Solicitation for the 9101 SE Foster Road Project

Oregon Revised Statutes (ORS) Chapter 279C.335(2) and PDC's Local Contract Review Board Administrative Rules (LCRB Rules), Part 4, Section II(B)(2) provide that the PDC Board acting in the authority of PDC's LCRB may exempt certain public improvement contracts from a competitive low bid process upon the LCRB making the following Findings:

- a. It is unlikely that such exemption will encourage favoritism in the awarding of a public contract or substantially diminish competition for the contract; and
- b. The awarding of public contract under the exemption is expected to result in substantial cost savings to the agency.

In making the Findings, the LCRB may consider the type, cost, and amount of the contract, the number of persons available to bid, value engineering techniques that may be applied to reduce the cost, and such other factors noted in ORS 279C.335(2)(b).

#### **1. No Favoritism or Diminished Competition**

Williams/Dame and Associates (WDA) was originally selected via a 2014 Request for Information, to perform the full development, a mixed-use project including market rate housing, affordable housing, and ground floor commercial space (Project). As the project financial returns, public benefits, and time commitments were refined and better understood, WDA decided not to proceed with the development beyond the design and permitting phase. There was no intent, nor any reasonable ability to foresee, that responsibility for Project completion would be transferred to PDC. As such, no contracts between WDA and their consultants or contractors were entered into or had terms arranged that premeditated a transfer of Project responsibility.

**Competitive Processes:** On September 22, 2015 WDA issued a Request for Proposals (RFP) to Colas Construction, Yorke & Curtis, Howard S. Wright, and Bremik Construction, Inc. (Bremik). The RFP requested proposals for both preconstruction and construction services. The RFP required an estimate of construction costs for the project, a summary schedule, list of previous similar projects and contact information for references, a statement of intent to comply with the PDC Equity Policy and examples of previous compliance, and the proposed staff. Proposals were due October 13, 2015 and all four general contractors were responsive. Based upon the responses, the two lower cost proposals from Bremik and Yorke & Curtis were more thoroughly vetted. Interviews were conducted and previous PDC compliance was checked. Ultimately, Bremik was chosen because they had more prior experience with PDC projects and with the PDC Equity Policy compliance as well as a more thorough cost estimate than Yorke & Curtis. In addition to complying with PDC's Equity Policy, Bremik will be required to bid competitively the majority of the Project construction. Mechanical, electrical, and plumbing (MEP) scopes have already been bid out according to PDC Equity Policy procedures.

**Specialized Expertise:** Given that the Project is being designed with pre-construction value-engineering assistance from Bremik, they are the only entity capable to enter into the Construction Manager/General Contractor (CM/GC) Contract to construct the Project and also provide construction guarantees that the Project will be completed as designed.

Given the short time lines in which construction bids are prepared, it is unlikely that another contractor would acquire the same amount of specialized knowledge of the Project as the team already available, nor work as efficiently and effectively as Bremik will work with the Project's lead architect, Hacker Architecture.

Because the project is unique, these findings will not be applicable to other PDC-awarded construction contracts.

## **2. Substantial Cost Savings**

In a typical "low bid" project, the contractor is not responsible for design problems. By having the general contractor engaged during the design process, design delays and constructability issues should be kept to a minimum.

As outlined above, Bremik's CM/GC obligation to build the Project creates an opportunity for significant cost and time savings. Benefits include: improved project staging, earlier commencement of construction, integrated planning, and value engineering between designers and contractors from the beginning of the Project. Since Bremik's construction crew is already involved in the Project design, substantial cost savings are also anticipated in not requiring a separate contractor to review and second-guess the construction drawings.

At the completion of the design, Bremik is to deliver a lump-sum contract for Project construction cost and schedule. Once the lump-sum price is determined, Bremik bears all construction and schedule risk.

The CM/GC contract has enabled WDA to quickly and efficiently generate and analyze several iterations to best meet permit requirements with limited available funds. WDA also coordinated the design firm with the construction contractor to consider alternative means and methods of construction and optimize cost savings. Maintaining the existing relationship between architect and contractor for this Project will result in efficiencies of design, value engineering, and cost estimation, and will reduce overhead expenses. This delivery method reinforces the architect-contractor accountability which is expected to reduce costly change orders and claims.

The CM/GC structure with Bremik also provides a clear definition of the construction outcome, cost containment, reduced change orders, and minimal conflicts. These outcomes are unlikely if PDC were to competitively bid the project and will be reflected in the final agreed upon lump-sum contract price as required per the CM/GC contract.

### **I. PUBLIC HEARING**

In accordance with ORS 279C.335(5) and the LCRB Rules, Part 4(II)(B)(2), PDC published notice of the required public hearing which was held on May 27, 2016. No public comments or public testimony was received.

### **II. RECOMMENDATION**

PDC staff recommends that the LCRB adopt a resolution (1) adopting the Findings to authorize PDC or PDC's assignee to exempt the Project from a competitive low bid solicitation process and (2) directing staff to negotiate a Guaranteed Maximum Price contract with Bremik.

**RESOLUTION NO. 7197**

**RESOLUTION TITLE:**

ADOPTING FINDINGS IN SUPPORT OF AND EXEMPTING THE 9101 FOSTER ROAD PROJECT IN THE LENTS TOWN CENTER URBAN RENEWAL AREA FROM LOW-BID SOLICITATION

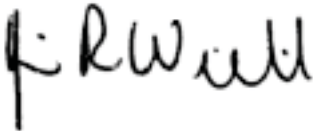
Adopted by the Portland Development Commission Local Contract Review Board on June 8, 2016

| PRESENT FOR VOTE   | COMMISSIONERS                  | VOTE                                |                          |                          |
|--|--------------------------------|-------------------------------------|--------------------------|--------------------------|
|  |                                | Yea                                 | Nay                      | Abstain                  |
| <input checked="" type="checkbox"/>  | Chair Tom Kelly                | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <input checked="" type="checkbox"/>  | Commissioner Gustavo Cruz, Jr. | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <input checked="" type="checkbox"/>  | Commissioner Aneshka Dickson   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <input checked="" type="checkbox"/>  | Commissioner Mark Edlen        | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <input checked="" type="checkbox"/>  | Commissioner William Myers     | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> Consent Agenda <input checked="" type="checkbox"/> Regular Agenda |                                |                                     |                          |                          |

**CERTIFICATION**

**The undersigned hereby certifies that:**

*The attached resolution is a true and correct copy of the resolution as finally adopted at a Board Meeting of the Portland Development Commission and as duly recorded in the official minutes of the meeting.*

|   |                                  |
|---|----------------------------------|
|  | <b>Date:</b><br><br>June 9, 2016 |
| <b>Gina Wiedrick, Recording Secretary</b>   |                                  |