

PORTLAND DEVELOPMENT COMMISSION

Portland, Oregon

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

RESOLUTION NO. 7220

**ADOPTING FINDINGS IN SUPPORT OF AND EXEMPTING THE NELSON
SUITES 20-40-50 TENANT IMPROVEMENT PROJECT 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 of Oregon 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 use a Best Value and Guaranteed Maximum Price general contractor selection process resulting in solicitation for construction services through a competitive Request For Proposals process to perform construction and other services on the Nelson Suite 20-40-50 Tenant Improvement Project (the “Project”); and

WHEREAS, after due public notice, 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 based on approval of the Findings, the LCRB hereby exempts the Project from low-bid solicitation;

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 November 9, 2016

A handwritten signature in cursive script, appearing to read "Anne Crispino-Taylor".

Anne Crispino-Taylor, Recording Secretary

DATE: November 9, 2016
TO: The PDC Board of Commissioners acting in its capacity as PDC Local Contract Review Board
FROM: Kimberly Branam, Executive Director
SUBJECT: Findings in Support of an Exemption from Competitive Low Bid Solicitation for the Nelson Suites 20-40-50 Tenant Improvement Project (the “Project”)

BACKGROUND AND CONTEXT

The former Nelson Building site (the “Project Site” or “Site”) was purchased by PDC in 2011. The 1.22 acre site is located at 8411 N. Denver in the Kenton neighborhood of North Portland. It is bound on the north by N. Argyle Street, on the south by N. Willis Boulevard and on the east by N. Interstate Avenue. The site is within the Interstate Corridor Urban Renewal Area (URA) and consists of a group of six connected one-story industrial /office structures, referred to as “Suites,” and a recently improved corner parking lot and food cart pod.

Spartek, the current tenant in Suite 40 is planning to vacate this space in January 2017. Figure Plant, the current tenant in Suites 10 and 30, is looking to expand into unoccupied Suite 20, Suite 40 and move from a Temporary Use Permit to a fixed term lease in Suite 50. The Project, designed by Merryman Barnes Architects (the Architect), includes of a complete interior demolition and remodel of vacant Suite 20 into new office and printing spaces; a large fire-rated roll up door between Suites 30 and 40; utility and structural upgrades for a new tenant-furnished paint booth in Suite 40; and lighting and finish upgrades in Suites 40 and 50. The construction budget for the Project is \$250,000. At the completion of this Project, this property is expected to be 100 percent leased and PDC will be involved in adding employment opportunities in the Interstate Corridor URA and growing a Portland-based business.

PDC is coordinating the necessary design and engineering for these modifications. Documents are expected to be submitted to the City of Portland Bureau of Development Services for permitting in November 2017. PDC intends to coordinate all necessary procurement activities and construction administration services for the Project.

FINDINGS

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 PDC’s Board of Commissioners, acting in the authority of PDC’s Local Contract Review Board (LCRB), may exempt certain public improvements 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 completion for the contract; and
- b. The awarding of public contract under the exemption will 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).

No Favoritism or Diminished Competition

The contractor selection for the Project will be accomplished by issuing a competitive Request for Proposal (RFP) with best value selection criteria. Any general contractor may respond to the Best Value RFP. The Best Value RFP will require, among other things, competitive subcontracting, optimal schedule completion, inclusion opportunities for Minority, Women, and Emerging Small Business and Disadvantaged Business Enterprise firms, and demonstrated ability to comply with PDC's Business and Workforce Equity Policies. The contractor selection process includes: evaluation of the proposals by committee and negotiations with the most qualified, responsive and responsible bidder to establish a Guaranteed Maximum Price (GMP) contract. The LCRB should find that the alternative contracting process neither results in favoritism nor diminished competition.

Substantial Cost Savings

A GMP contract will likely result in cost savings over a low-bid contract due to several project-specific factors:

1. The Project takes place in existing warehouse buildings that have no as-built documentation. The Architect is creating the Construction Documents based on their field measurements and visual observations of existing materials and conditions, but there are several Project areas the Architect has limited access to until demolition is complete. In a low-bid process the Contractor price is based on the information provided in the Construction Documents, leaving PDC (the Owner) at risk of change orders due to discovered conditions and existing conditions that can't be shown on the Documents. There have been four previous low-bid projects at this site (excluding reroofing projects) ranging from mechanical upgrades to tenant improvements to fire/life safety upgrades. Total change order amounts for these low-bid projects have ranged from 12% to 60% increase over the original contract price due in large part to unforeseen conditions and permit required revisions. In a GMP process, the Owner has the ability to meet with the Contractor, review the project and identify likely risks then allocate risks to either Owner or general contractor before the contract price is established. This negotiation process will likely result in cost savings to PDC and the public.
2. The GMP process allows the Owner to select a Contractor based on both experience and cost as opposed to cost alone. During previous demolition scopes at this site, general contractors have discovered unexpected and unconventional construction methods, some with structural impacts that needed to be corrected immediately; hazardous materials that needed to be removed; and existing code deficiencies that needed to be corrected in order to get inspector approval.

Selecting a Contractor who has demonstrated experience working in older buildings with similar scale and scope and who can anticipate likely constructability issues during contract negotiations may be better positioned to accurately price the assessed risks of the Project, resulting in fewer change orders and schedule impacts and therefore cost savings.

3. The Project, albeit a smaller tenant improvement, has some additional complexity that increases the Owner risk of selecting a contractor based solely on cost rather than the best value approach which evaluates cost along with contractor's previous experience. Two project specific risks are:
 - a. Working in an occupied building.
 - b. Modifications to load-bearing walls adjacent to occupied spaces.

The selected Contractor (and subcontractors) will need to limit impacts to the existing tenants, including noise, dust, and protecting existing finishes. This is especially true with the two new openings in structural walls adjacent to occupied suites.

The Contractor will need to put measures in place, such as additional dust containment, which falls under means and methods and is not typically shown on the Construction Documents, and temporary structural supports, which may require the contractor to hire an engineer, adding to project complexity. In addition, the Contractor may need to modify the construction schedule to limit disruptions to adjacent tenant production schedules. These impacts can be difficult to define in the Construction Documents and may be missed in the low-bid process, leading to change orders. A GMP contract process allows us to sit down with the Contractor before the GMP price is established and mitigate for these and similar risks, leading to fewer change orders and lower overall cost.

The cumulative effect of these savings is expected to be substantial.

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 on October 21, 2016. The hearing was held on November 7, 2016. No public comment or public testimony was received.

RECOMMENDATION

PDC staff recommends that the LCRB adopt a resolution making the Findings and authorizing the PDC to exempt the Project from the competitive low bid solicitation process in favor of using a BV-GMP Contract approach.

RESOLUTION NO. 7220

RESOLUTION TITLE:

ADOPTING FINDINGS IN SUPPORT OF AND EXEMPTING THE NELSON SUITES 20-40-50
TENANT IMPROVEMENT PROJECT FROM LOW-BID SOLICITATION

Adopted by the Portland Development Commission on November 9, 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 Mark Edlen	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Alisha Moreland-Capuia MD	<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 checked="" type="checkbox"/>	Commissioner Gustavo J. Cruz, Jr.	<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.

	<p>Date:</p> <p>November 10, 2016</p>
<p>Anne Crispino-Taylor, Recording Secretary</p>	