



DATE: March 12, 2014
TO: Board of Commissioners acting in its capacity as the PDC Local Contract Review Board
FROM: Patrick Quinton, Executive Director
SUBJECT: Report Number 14-13
Waiving and Exempting Potential Bond Requirement for the Pacific Northwest College of Art, Portland Mercado, LLC, and Z. Haus, LLC, Projects

BOARD ACTION REQUESTED

Adopt Resolution No. 7046

ACTION DESCRIPTION

This action by the Portland Development Commission (PDC) Local Contract Review Board (LCRB) will waive any potential requirement to secure a performance bond and exempt any potential requirement to secure a payment bond for the Pacific Northwest College of Art (PNCA), Portland Mercado, LLC, and Z. Haus, LLC, projects (collectively, the Subject Projects).

BACKGROUND AND CONTEXT

By previous action, the PDC Board of Commissioners (Board) has approved a lease and loans for each of the Subject Projects through Resolution Nos. 7032, 7044, and 7043.

Oregon Revised Statutes (ORS) 279.380 necessitates the securing of performance and payment bonds in the case of a public improvement contract, unless waived or exempted. While PDC's General Counsel does not believe that these provisions apply to the Subject Projects, PDC has been unable to obtain official assurances that the Subject Projects are not covered by the statute. Since there are significant penalties for failure to comply with the statutory requirements in the event of non-compliance, General Counsel recommends that the PDC LCRB waive and exempt these bond requirements, for the reasons outlined below, as a precautionary measure to protect PDC in the event these requirements were later found to apply.

ORS 279C.290(1) provides for waiver of the performance bond and exemption of the payment bond upon action by a local contract review board. Resolution No. 3550 designates the PDC Board the PDC LCRB. PDC's LCRB rules provide for waiver of the performance bond and exemption of the payment bond under Part 1 (III)(C)(1)(g).

MITIGATING CIRCUMSTANCES AND MEASURES

A performance and payment bond is designed to 1) protect the owner in the case a project is not completed and 2) provide relief for subcontractors that are not paid and that cannot record a lien against public property.

With regard to the Subject Projects, PDC, tenants, and subcontractors may look to the reliability of the general contractors for purposes of project completion and payment, including Howard S. Wright (PNCA), Bremik Construction (Portland Mercado, LLC), and Pacific Crest Construction (Z. Haus, LLC).

Subcontractors will be put on notice so that each may make an individual determination of general contractor reliability for future payments.

A waiver and exemption of the bond requirement equates to a cost savings for the Subject Projects. Such cost savings are important where the tenant is a nonprofit with limited resources or where projects are located in parts of the city that require a financial incentive.

EFFECT ON THE SUBJECT PROJECTS

If the PDC LCRB grants a bonding exemption, each of the Subject Projects will save approximately 0.5 to 1.5 percent in total contract costs associated with the cost of performance and payment bonds. The bond cost varies with the underwriting of the particular contractor. In the case of PNCA, the estimated savings is approximately \$210,000; the Portland Mercado, LLC, project savings are estimated to be approximately \$20,000; and the Z. Haus, LLC, project savings are estimated to be approximately \$8,600.

ALTERNATIVE ACTIONS

The PDC LCRB may choose not to approve this bond exemption for the Subject Projects or any individual project within the set.