

**PORTLAND DEVELOPMENT COMMISSION**

Portland, Oregon

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

**RESOLUTION NO. 7224**

**ADOPTING FINDINGS IN SUPPORT OF AND EXEMPTING THE  
CONVENTION CENTER HOTEL PARKING GARAGE PROJECT  
FROM COMPETITIVE BIDDING**

**WHEREAS**, by adoption of Resolution No. 3550, the Portland Development Commission (“PDC”) Board of Commissioners (“Board”) was established as the 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 requirement for competitive bidding upon LCRB approval of written findings;

**WHEREAS**, Mortenson Development was selected through a competitive Request for Proposals process by Metro to design and develop the Convention Center Hotel (“Hotel”);

**WHEREAS**, PDC staff proposes to enter into a Design Build Construction Agreement with Mortenson Development for the purpose of constructing a parking garage adjacent to and for the purpose of serving the Hotel and the Hotel guests (“Garage”);

**WHEREAS**, the Garage will be built on PDC-owned property at the northwest corner of NE 2<sup>nd</sup> Avenue and NE Holladay Street and will, upon completion, be a PDC-held asset under an easement and parking operations agreement with the Hotel operator;

**WHEREAS**, after due public notice, staff held a public hearing on May 6, 2016, to receive comments on the draft findings for the exemption for the Garage as required by ORS 279C.355(5) and LCRB Rule Part 4(II)(B)(2) and received no public response;

**NOW, THEREFORE, BE IT RESOLVED**, that based on approval of the Findings, the PDC Board acting as the LCRB hereby adopts the findings set forth in Exhibit A (“Findings Report”) in support of exempting the Garage from competitive bidding;

**BE IT FURTHER RESOLVED**, that that based on approval of the Findings Report, the LCRB hereby exempts the Garage from the competitive bidding requirements of ORS Chapter 279; and

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

Adopted by the Portland Development Commission on December 14, 2016

A handwritten signature in black ink that reads "Pam Micek". The signature is written in a cursive style with a large initial "P" and a long, sweeping underline.

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Pam Micek, Recording Secretary

**DATE:** December 14, 2016

**TO:** The PDC Board of Commissioners acting in its capacity as the Local Contract Review Board for PDC

**FROM:** Kimberly Branam, Executive Director

**SUBJECT:** Findings in Support of an Exemption from Competitive Low Bid Solicitation for the Design, Development, and Construction of the Convention Center Hotel Parking Garage at Block 49

**I. BACKGROUND AND CONTEXT**

The findings (“Findings”) herein support a resolution by the Portland Development Commission (“PDC”) Board of Commissioner (“Board”), acting as the PDC Local Contract Review Board (“LCRB”), exempting the Design Build Construction Agreement (“Construction Agreement”) for the design, development, and construction of the Convention Center Hotel Parking Garage Project (“Garage”) from the competitive bid process.

PDC owns the parcel known as Block 49 (the “Property”), located at the northwest corner of NE 2nd Avenue and NE Holladay Street in the Oregon Convention Center Urban Renewal Area (“OCC”). An aerial photograph of the Property and adjacent properties can be seen in Exhibit A of these Findings. The Property is being designed and developed concurrently with the adjacent Convention Center Hotel (“Hotel”) and, upon completion, will serve as the Garage for the Hotel. The Garage is expected to include a minimum of 375 reserved parking spaces for Hotel patrons and visitors, an approximate 19,000 square foot TriMet facility with 50 secured parking stalls and is being designed to support approximately 100,000 square feet of future office/residential space above the Garage. For several years, PDC has been working with Metro, Mortensen Development (“Mortensen”), and more recently the Hyatt Corporation, to develop the Garage in conjunction with the Hotel and enter into a Parking Operations and Valet Services Agreement for the Garage operations.

**Background on the Convention Center Hotel**

The Oregon Convention Center URA was formed in 1989 with the primary URA Plan goal of establishing “at least one headquarters hotel in the immediate vicinity of the Oregon Convention Center to capitalize on the convention center’s capacity.” Between 1991 and 2004, the PDC Board authorized acquisition of multiple properties as initial steps towards supporting development of a Convention Center hotel; this included acquisition of Block 49 and other properties in 1991 for a total of \$1,718,895.

Since 2004, PDC has partnered with Metro – owners and operators of the Oregon Convention Center – to pursue efforts to build a hotel in support of the Oregon Convention Center URA Plan

and the region. More recently, in May 2012, Metro issued a Request for Proposals (RFP) for a privately-owned 600-room Convention Center hotel on properties adjacent to the Oregon Convention Center as potential sites for hotel development. Prior to the RFP release, the PDC Board expressed support for Metro's RFP for a Convention Center hotel and, through Resolution No. 6942, authorized the Executive Director to enter into direct negotiations with the selected developer. As part of this action, PDC indicated a potential loan commitment to support Hotel development as well as the value of PDC property (financing terms and conditions to be determined). Through the RFP process, Metro ultimately selected Mortenson Development (Mortenson), with local developer StarTerra LLC, for the hotel development, with the PDC Board approving Metro's selection through Resolution No. 6964 in September 2012.

In June 2014, Metro Council approved a final development agreement with Mortenson for the hotel development, allowing the project to proceed to the design and pre-construction planning phase. In August 2014, the PDC Board, through Resolution No. 7072, authorized the sale of PDC-owned property, Block 47, to the east of the identified hotel site for integration into the hotel design and development, to Mortenson for \$1,300,000. With commencement of design, PDC also entered into discussions with Mortenson and Metro regarding placement of the Garage on Block 49.

In March 2015, PDC entered into a pre-development services agreement with Mortenson in the amount of \$300,000 for the design development of the Garage. Mortenson has completed this scope of work and the funds have been fully expended.

In February 2016, after Metro resolved legal disputes and announced their intention to move forward with hotel development and financing, PDC authorized three agreements required to build the hotel. Resolution No. 7165 authorized the terms for a Design and Construction Agreement with Mortenson for the Garage construction. Resolution No. 7166 authorized the terms of an Easement Agreement with Hyatt for the use of the Garage for hotel parking. Resolution No. 7167 authorized the terms of a Parking Operations and Valet Services Agreement with Hyatt. Additional detail on these agreements are provided below.

Upon completion, Mortenson intends to sell the Hotel to Hyatt Corporation (Hyatt), which will ultimately manage the Hotel.

#### **Agreements Executed by PDC**

The PDC Board authorized the terms for the development, use, and operations of the Garage through Resolution Nos. 7165, 7166, and 7167 to provide several public objectives, by i) supporting the yet-to-be-built 600-room Hotel by providing required parking facilities, ii) creating a long-term revenue stream to PDC in the form of valet and other parking income, and iii) providing ground floor space and parking to TriMet for critical agency operations. The three agreements are outlined below:

**Parking Structure Development Agreement between Mortenson and PDC.** This is the primary contract under which Mortenson agrees to design, develop, permit, entitle, construct, and complete the Garage. Exhibit A to Resolution No. 7165 provides the significant terms and conditions of the Parking Structure Construction Agreement; the most notable are:

- Current estimated project cost is not to exceed \$32,200,000 which includes a \$1,260,604 design build contingency. The TriMet sale will reduce PDC's cost by approximately \$9,000,000 resulting in a net cost to PDC of approximately 23,200,000.
- From the estimated \$32,200,000, approximately \$1,400,000 of design and preconstruction costs will be incurred prior to the determination of a final Garage cost and Lump Sum Contract Price for Mortenson to construct the Garage.
- Given the critical need for the hotel and Garage to maintain a coordinated construction schedule, the full amount of construction funds will be funded into escrow prior to the start of construction.

**Easement Agreement between PDC and Hyatt.** Exhibit A to Resolution No. 7166 provides the significant terms and conditions of the Easement Agreement; the most notable are:

- Hyatt grants to PDC the parking entitlements required to build the Garage.
- PDC grants to Hyatt the right to use 375 stalls on a first priority basis.
- PDC requires Hyatt to provide valet services for the hotel at rates comparable to other valet hotel services in the market.

**Parking Operation and Valet Services Management Agreement.** This agreement provides the terms under which PDC will contract for Garage operations and management. Approximately one year after opening, the Garage Net Operating Income is estimated at approximately \$1,850,000 with annual cash flow after debt service of approximately \$500,000. Exhibit A to Resolution No. 7167 provides the significant terms and conditions of the Parking Operation and Valet Services Management Agreement.

## II. 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 the 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 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, and such other factors as may be deemed appropriate.

**1. Awarding of the Contract to Mortenson is Unlikely to Encourage Favoritism or Diminished Competition**

Mortenson was selected by Hyatt because Mortenson is the builder of the hotel and the garage/hotel are integrated – particularly with regard to design and operation. Consequently, while Mortenson is best suited to perform the work, PDC's intended use of Mortenson for the garage gives rise to no favoritism on this project nor does it encourage favoritism on any other project. Similarly, PDC's use of Mortenson on the garage is a finite commitment and will have no bearing on the opportunity for other contractors to bid on (compete for) any other prospective PDC project.

**2. The Awarding of the Contract to Mortenson will Likely Result in Substantial Cost Savings**

As outlined above, Mortenson's obligation to design and build the Garage in tandem with the Hotel creates a unique opportunity for significant cost and time savings through innovative construction planning and management. These innovations include improved project staging, incremental completion of design and commencement of construction, integrated planning and value engineering between designers and contractors from the beginning of the Project. Since Mortenson's construction crew will already be on-site, substantial cost savings are also anticipated because a separate contractor will not be required to mobilize and demobilize to complete construction of the Garage.

The design/build delivery method will enable PDC to quickly and efficiently generate and analyze several iterations to best meet permit requirements and limited funds available. It also integrates the design firm with the construction contractor to consider alternative means and methods of construction and optimize cost savings. Allowing one team to both design and construct the 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 Construction Agreement with Mortenson also provides the advantage of a single point of responsibility, clear definition of the construction outcome, cost containment, reduced change orders, minimal physical, staging or scheduling conflicts between the Hotel and the Garage construction, and fast-track design and construction. 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 Construction Agreement.

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

At the completion of the design, Mortenson is to deliver a Lump-Sum contract price for the Garage construction cost and schedule. Once the lump-sum price is determined, Mortenson

bears all construction and schedule risk and, in the event Mortenson does not deliver per the agreement, liquidated damages apply.

**III. 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 6, 2016. No public comments or public testimony was received.

**IV. RECOMMENDATION**

PDC staff recommends that the LCRB adopt a resolution (1) making the Findings to authorize PDC to exempt the Construction Agreement from a competitive low bid solicitation process and (2) finding that Mortensen is a design/build sole source for the Garage and that the Construction Agreement should be awarded to Mortensen.

**ATTACHMENTS**

- A. Contract terms per PDC Board Resolution 7222

## ATTACHMENT A

### Contract Terms from PDC Board Resolutions 7222

#### PARKING STRUCTURE DEVELOPMENT AGREEMENT (PDC AND MORTENSON)

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| Significant<br>Terms:  | <ol style="list-style-type: none"><li>1. <b>Design Development.</b> PDC and Mortenson shall work together to prepare and agree on preliminary budgets, schedule and scope documents.</li><li>2. <b>Final Documents.</b> Upon completion of 50 percent Construction Documents, PDC and Mortenson work together to complete and agree to Final Budget, Final Schedule and Final Scope Documents which will be used to develop the Lump Sum Contract Price currently estimated at \$32,200,000. This effort will cost up to \$1,200,000 when added to the \$300,000 already incurred brings the total to \$1,500,000 at risk until the Lump Sum Contract Price is established.</li><li>3. <b>Lump Sum Contract.</b> Upon completion and agreement of Final Documents, Mortenson shall enter into a Lump Sum Contract to construct the Parking Garage. Mortenson shall guaranty construction costs and schedule once the Lump Sum Contract has been executed.</li><li>4. <b>Payments.</b> Payments made on a monthly basis per work completed, processed by title company with independent third-party inspection and verification for work performed. Retainage of 5% shall be withheld from each draw until receipt of substantial completion and certificate of occupancy.</li><li>5. <b>PDC Policies.</b> Mortenson shall comply with PDC Business Equity, Workforce Equity and Green Building policies.</li><li>6. <b>No Termination for Convenience.</b> PDC must provide notice to proceed with garage construction simultaneous with the closing of the Hotel Construction Loan. PDC may only stop construction or terminate the agreement in the event Mortenson uncured event of default.</li><li>7. <b>Self-Help Rights.</b> Mortenson shall have the right to complete the Parking Garage in the event of a PDC default.</li></ol> |
| Conditions to<br>be resolved<br>prior to<br>moving<br>forward: | <ol style="list-style-type: none"><li>1. Mortenson contract with Hyatt fully executed.</li><li>2. Parking Easement Agreement fully executed.</li><li>3. Mutual agreement on final form of Parking Structure Development Agreement.</li><li>4. Third-party review of preliminary designs and budget.</li><li>5. Confirmation that the commencement date for the Parking Garage construction allows for simultaneous completion of the Parking Garage and Hotel.</li><li>6. Confirmation the PDC and TriMet funds required for garage construction have been irrevocably allocated to the garage project and placed in escrow.</li><li>7. Completion of contract with TriMet.</li><li>8. Written confirmation of availability of permanent financing and/or receipt of forward commitment from permanent lender.</li></ol>   |