



PROSPER
PORTLAND
Building an Equitable Economy

DATE: July 10, 2019
TO: Board of Commissioners
FROM: Kimberly Branam, Executive Director
SUBJECT: Report Number 19-32

Adopt Findings in Support of and Exempting the 100 Multnomah Design-Build Contract with Mortenson Construction, Inc. from Competitive Bidding and Authorize Entering into a Design-Build Contract with Mortenson Construction, Inc.

BOARD ACTION REQUESTED AND BRIEF DESCRIPTION

Adopt Resolutions No. 7323 and No. 7324

Staff are requesting the Prosper Portland Board of Commissioners (Board) take two actions at their July 10, 2019 meeting to further advance the design of 100 Multnomah, a proposed office building to be built adjacent on top of the seven-story, 442-space Convention Center Garage (Garage) that is currently under construction on the southwest corner of NE Multnomah Street and NE 2nd Avenue in the Oregon Convention Center tax increment finance (TIF) district (see a project summary in Attachment A):

1. Serving in its capacity as Prosper Portland's Local Contract Review Board (LCRB), the Prosper Portland Board will adopt Resolution No. 7322 in support of an exemption from the general rule of low-bid solicitation a Design-Build Contract with Mortenson Construction, Inc. (Mortenson Construction) for the design and construction of 100 Multnomah. If approved, the resolution will exempt the 100 Multnomah from the low-bid solicitation requirements in accordance with Oregon Revised Statutes (ORS) 279C.335. ORS 279C.335 and Prosper Portland's LCRB Administrative Rules (LCRB Rules) provide that the LCRB may exempt certain public contracts from the 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.
2. Should the LCRB approve Resolution No. 7323, staff will then request the Prosper Portland Board approve Resolution No. 7324, which would authorize a Design-Build Contract with Mortenson Construction, increasing Prosper Portland's investment by \$1,492,620 to complete 100 percent construction documents and permitting for 100 Multnomah. This increases the total Prosper Portland investment for design services for 100 Multnomah to \$3,094,672. The Design-Build Contract includes a \$52,252,538 preliminary budget for total construction costs for and contemplates that Prosper Portland and Mortenson Construction will agree upon the final budget (Contract Price) and final schedule upon completion of 75 percent construction documents subject to future Prosper Portland Board approval.

STRATEGIC PLAN ALIGNMENT AND OUTCOMES

Entering into the Design-Build Contract will enable Prosper Portland to complete the design, permitting, and construction of 100 Multnomah, an approximately 120,000 square foot, nine-story office building on top of the Prosper Portland-owned Garage. This initiative aligns with Prosper Portland goals for: (1) creating healthy, complete neighborhoods by contributing to the continued growth and tenancing of the Lloyd District and the Convention Center area as a mixed-use, transit-oriented employment center; and (2) supporting the agency's financial sustainability, since this will maximize the development of the property's air rights and provide an opportunity for Prosper Portland to participate in the financial benefits of developing the air rights.

BACKGROUND AND CONTEXT

Background. The Oregon Convention Center Urban Renewal Plan was adopted in 1989 with the primary 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." The 600-room Hyatt Regency Portland at the Oregon Convention Center (Hotel) is currently under construction and is anticipated to open in winter 2020. Through the Hotel design and development process, Prosper Portland, Metro, Mortenson Development, and Hyatt determined that the Hotel's parking needs would best be met through construction of a stand-alone parking structure on the adjacent 0.88 acre Prosper Portland property known as Block 49. Through Resolutions No. 7165 (February 10, 2016) and No. 7222 (December 14, 2016), the Prosper Portland Board authorized entering into a Parking Structure Development Agreement with Mortenson Development to construct a 442-stall, seven-story parking garage (Garage) on Block 49 for an amount not to exceed \$32,200,000 to support the development and operation of the adjacent Hotel. The cost of constructing the Garage included the foundation and superstructure within the Garage to support future development of an office tower above. The Garage is currently under construction and is anticipated to be completed in summer 2019.

During the Garage design and development process, the site was identified to have additional development capacity. Based on this, Prosper Portland directed Mortenson Development to prepare a preliminary plan to develop an approximately 100,000 square foot office building served by two additional levels of parking on top of the Garage. Mortenson Development completed this work and incorporated into the Garage design the systems and foundation superstructure necessary to support the proposed office building. On February 14, 2018, the Prosper Portland Board, acting as the agency's Local Contract Review Board (LCRB), approved Resolution No. 7263, which authorized entering into a Pre-Development Services Contract with Mortenson Construction for \$477,593 to complete Conceptual Design and associated cost estimate for 100 Multnomah and exempting the Contract from low-bid solicitation. Prosper Portland and Mortenson Construction subsequently entered into the Pre-Development Services Contract on July 12, 2018, with that work completed between July and December 2018.

On January 16, 2019, the Prosper Portland Board approved Resolution No. 7299 to authorize the next design phase necessary to achieve approval by the Portland Design Commission by advancing the design through schematic design and 50 percent design development. The authorization increased the agency's commitment in 100 Multnomah to \$1,602,052; this work is now nearly complete.

Design-Build Contract. A Design-Build Contract is a project delivery system used in the construction industry in which the design and construction services are contracted by a single entity known as the design-build contractor. The benefits of a Design-Build Contract include integrating design, constructability, and cost estimating; incorporation of value engineering into the design process from

the outset; enhanced communications between the design and construction teams; and a single point of contact and responsibility for cost, schedule, and delivery.

A Design-Build Contract with Mortenson Construction is proposed as an alternative to low-bid contracting for 100 Multnomah. Mortenson Construction is part of the team competitively selected by Metro – owners and operators of the Oregon Convention Center – for the development and construction of the Hyatt Regency at the Oregon Convention Center Hotel (Hotel). Mortenson Construction was selected to construct the Garage as the guaranteed delivery of the Garage concurrent with the Hotel was essential. As noted above, Prosper Portland subsequently contracted with Mortenson Construction for pre-development services for 100 Multnomah through 50 percent design development. Through the experience of designing and constructing the Garage, and the pre-development design of 100 Multnomah, Mortenson Construction and its associated team members have gained intimate knowledge of the design and engineering of the combined structures, and is uniquely suited to continue to the coordinated design, permitting, and construction. Selecting Mortenson Construction as the design-builder for 100 Multnomah gives no rise to favoritism or diminished competition and will result in substantial cost savings or other substantial benefits including as described in the findings attached to Resolution No. 7322.

The Design-Build Contract includes \$1,492,620 for design-build services including preparation of architectural designs and specifications for 100 percent development, 75 percent construction documents, and 100 percent construction documents. This increases the total Prosper Portland investment for design services for 100 Multnomah to \$3,094,672.

The Design-Build Contract is a lump sum contract which anticipates that Prosper Portland and Mortenson Construction will agree upon a Contract Price for construction of 100 Multnomah upon completion of the 75 percent construction documents and specifications. The Contract Price and final schedule will be agreed upon through a Change Order to the Design-Build Contract which will require approval by the Prosper Portland Board.

Other major terms of the Design-Build Contract include:

- The Design-Build Contract can be assigned by Prosper Portland with written approval by Mortenson Construction;
- The Design-Build Contract can be terminated by Prosper Portland with a \$250,000 payment to Mortenson Construction for authorization to use the work product; and
- In the event Mortenson Construction does not deliver 100 Multnomah by the substantial completion date, liquidated damages will be assessed at a rate of \$5,000 per day up to a maximum of \$250,000.

Current Design, Preliminary Budget, and Schedule. As authorized by the Prosper Portland Board in January 2019, the Contract with Mortenson Construction has been amended and 100 percent schematic design and 25 percent design development have been completed. The building program includes approximately 120,000 gross square feet of office space with direct elevator access from the garage to 100 Multnomah. The one and a half floors (approximately 100 parking spaces) that had been included in the Concept Plan have been eliminated so that no new vehicular parking is being provided.

The Preliminary Budget for the total construction cost of 100 Multnomah at 100 percent schematic design is approximately \$52,200,000, a reduction of approximately \$4,600,000 from the concept plan design as the building program has been reduced.

A Type III Land Use Review application has been submitted to the City of Portland and a Design Review Hearing with the Portland Design Commission is scheduled for July 11, 2019.

The current schedule anticipates the following major milestones for the scope of work included in the proposed Design-Build Contract:

- Completion of 50% Design Development by July 2019;
- Completion of 100% Design Development by August 2019; and
- Completion of 75% Construction Documents and submission of a building permit package by November 2019.

Subject to future Prosper Portland Board approval, construction of 100 Multnomah can begin by June 2020 and be completed by May 2022.

Oregon Structural Specialty Code. Both the Garage and the Office Building have been designed according to the 2014 Oregon Structural Specialty Code (OSSC). As staff discussed at the January 16, 2019 Prosper Portland Board meeting, the State of Oregon is planning to adopt the 2019 OSSC effective October 1, 2019, with a three-month phase-in period. During the three-month phase-in period, applicants submitting for permits can choose to comply with either the 2014 or 2019 code. For permit applications submitted prior to December 31, 2019 under the 2014 OSSC, the City of Portland will lock in those code provisions and review the application and issue building permits according to those requirements. This revised code adoption has been a significant consideration in staff's timing and efforts to submit for permits prior to December 31, 2019.

To better understand the code and timing implications, Prosper Portland contracted with structural engineering firm KPFF Consulting Engineers to provide a third-party evaluation of this code change. The design team and third-party structural engineer have determined that the revised code will have a significant impact on the building design, likely resulting in the reduction of one floor (or approximately 20,000 square feet) from the building. Based on this information, Prosper Portland has continued to advance the design of the building in accordance with the 2014 OSSC. Authorizing the Design-Build Contract and completion of design work through construction documents and permitting will enable a building permit package to be submitted prior to December 31, 2019. This timing will lock in the building permit review and approval under the 2014 OSSC. Construction will need to begin within 12 months of issuance of the building permit.

Tenancing and Financing Strategy. Staff is currently pursuing three tenancing and financing strategies:

1. Private tenancing for lease through broker marketing by Capacity Commercial Group;
2. Public tenancing, including potential partnership between Prosper Portland and other public agencies; and
3. Sale of building design and air rights through broker marketing.

With regard to private tenancing, eight potential tenants have inquired about leasing all or a portion of the building; no Letters of Intent have been signed to date. The brokers report most tenants in the marketplace are seeking space that is existing or under construction and available within 12 months. As discussed at the January 16, 2019 Prosper Portland Board meeting, staff anticipates most leasing activity will occur after 100 Multnomah has been approved by the Portland Design Commission, which provides greater clarity on timing and cost of completion.

For public sector tenancing, Prosper Portland staff have been conducting direct outreach to public partners to discuss tenancing scenarios. These discussions are ongoing and no Letters of Intent have been signed to date.

Regarding marketing the property for sale, Capacity Commercial Group is marketing the property to identify development partners willing to purchase the design work product and air rights and pursue full development to completion.

EQUITY IMPACT

Prosper Portland has a compelling interest to ensure that the agency's owned and sponsored projects provide opportunities for State of Oregon Certified firms (Minority-Owned, Women-Owned, Disadvantaged, and Emerging Small Businesses, or M/W/D/ESBs). Prosper Portland has established a 20 percent utilization goal for professional services costs and a 20 percent utilization goal for a project's hard construction costs. For the professional services design work currently underway, Prosper Portland anticipates Mortenson Construction will award 22 to 24 percent to M/W/D/ESBs.

Prosper Portland staff are in the process of preparing a Racial Equity Impact Assessment for this project to better understand any potential racial disparities and to advance racial equity and inclusion.

COMMUNITY PARTICIPATION AND FEEDBACK

In accordance with ORS 279.335(5) and LCRB Rules, Part 4(II)(B)(2), Prosper Portland published a 14-day notice of the intent to waive low-bid contracting on January 4, 2019. A public hearing was held on January 18, 2019, and the public was afforded the opportunity to request and provide written comments on the findings, and Prosper Portland received no public comments in response.

100 Multnomah has been publicly discussed as part of Prosper Portland's actions related to the Garage construction for several years, including as part of the Portland Design Commission's consideration and approval of the Hotel and Garage design. Prosper Portland staff and the Mortenson Construction design team have made two presentations to the Go Lloyd Board; public comments during those discussions and presentations expressed support for maximizing development on the site and pursuing a mixed-use project above the Garage. In May 2019, the Go Lloyd Board and Lloyd Enhance Services District submitted a letter to the Portland Design Commission expressing support for 100 Multnomah.

BUDGET AND FINANCIAL INFORMATION

There are no direct financial impacts from the LCRB action.

Entering into the Design-Build Contract will increase Prosper Portland's financial commitment to design services for 100 Multnomah to \$3,094,672. The fiscal year (FY) 2019-20 Oregon Convention Center Adopted Budget includes \$1,500,000 in FY 2019-20 which is available to fund the \$1,492,620 in design services included in the Design-Build Contract (see Attachment B).

Based on preliminary estimates, the total construction costs of 100 Multnomah are estimated to be approximately \$52,200,000. Prosper Portland does not have the financial resources to fund full construction. Concurrent with this next phase of design work, staff will continue to examine tenanting and financing scenarios which could include seeking private financing based on the strength of committed credit tenants, public tenanting using public and/or private financing, or sale of the design product and air rights and/or structuring a partnership with a financial and development partner.

RISK ASSESSMENT

Regarding the LCRB action, not approving this action and instead pursuing a competitive selection could result in selection of a different design-build team. The risks associated with this include higher costs, schedule delays, program reductions due to code changes, and construction defect risks, as more particularly described in the Findings.

The primary risk of approving this action and entering into the Design-Build Contract is that 100 Multnomah may be determined to not be financially feasible due to cost increases and inability to secure leasing commitments, financing, and/or a development partner. To mitigate these risks, the current cost estimate includes approximately \$6,600,000 in design and construction contingencies and Prosper Portland has hired an office broker to market 100 Multnomah for lease and for sale and has hired a real estate advisor to provide advice on market conditions and trends, office lease rates, and structuring a partnership with a financial and development partner.

ATTACHMENTS

- A. Project Summary
- B. Oregon Convention Center Financial Summary

Project Summary

Project Name: 100 Multnomah Office Building

Description: Approximately 120,000 gross square foot, 9-story office building

Location: Southwest corner of NE Multnomah Street and NE 2nd Avenue

URA: Oregon Convention Center Urban Renewal Area

Current Phase: 50% design development and Design Review Hearing

Next Milestone: 75% Construction Documents and Contract Price

Completion Target: November 2019



Oregon Convention Center Financial Summary

**Financial Summary
 Five-Year Forecast**

<u>Convention Center URA Fund</u>	<u>Revised 2 FY 2018-19</u>	<u>Adopted FY 2019-20</u>	<u>Forecast FY 2020-21</u>	<u>Forecast FY 2021-22</u>	<u>Forecast FY 2022-23</u>	<u>Forecast FY 2023-24</u>
Resources						
Beginning Fund Balance	35,045,366	8,704,863	2,160,347	3,264,514	11,945,365	12,571,990
Revenue						
Fees and Charges	7,678	6,074	4,998	4,998	-	-
Interest on Investments	414,596	342,612	271,832	81,695	64,186	50,536
Loan Collections	1,056,264	551,871	561,754	611,172	611,173	1,231,114
Other Debt	-	-	-	8,000,000	-	-
Property Sales	6,616,000	-	-	-	-	-
Rent and Property Income	2,616,656	4,156,000	5,831,000	5,831,000	5,831,000	5,831,000
Total Revenue	10,711,194	5,056,557	6,669,584	14,528,865	6,506,359	7,112,650
Total Resources	45,756,560	13,761,420	9,119,931	17,793,379	18,451,724	19,684,640
Requirements						
Administration						
A00027-Debt Management-CNV	12,621	12,121	12,121	12,121	12,121	12,121
Administration Total	12,621	12,121	12,121	12,121	12,121	12,121
Economic Development						
Traded Sector						
A00541 Loan Manufacturing GEN	1,000	-	-	-	-	-
Business Lending						
A00206-BL-General-CNV	150,000	150,000	150,000	150,000	150,000	-
Economic Development Total	151,000	150,000	150,000	150,000	150,000	-
Housing						
A00168-Affordable Housing-CNV	4,538,572	549,653	-	-	-	-
Housing Total	4,538,572	549,653	-	-	-	-
Infrastructure						
Transportation						
A00521-Sullivan's Crossing Bridge-CNV	-	2,000,000	-	-	-	-
Infrastructure Total	-	2,000,000	-	-	-	-
Property Redevelopment						
Commercial Property Lending						
A00363-CPRL-General-CNV	500,000	500,000	500,000	500,000	500,000	-
Real Estate Management						
A00306-910 NE MLK Building-CNV	15,909	27,022	27,022	27,022	27,022	27,022
A00307-Frmr B&K Car Rental-CNV	7,000	13,500	13,500	13,500	13,500	13,500
A00309-Inn at Conv Ctr Mgmt-CNV	2,049,957	3,992,150	1,992,150	1,992,150	1,992,150	1,992,150
A00310-Block 49-CNV	-	1,113,000	1,113,000	1,113,000	1,113,000	1,113,000
A00312-Real Estate Mgmt-CNV	5,000	-	-	-	-	-
A00584-100 Multnomah-CNV	70,329	10,000	10,000	-	-	-
Real Estate Redevelopment						
A00310-Hotel Garage Operations-CNV	-	10,000	10,000	10,000	10,000	10,000
A00584-100 Multnomah-CNV	1,700,000	1,500,000	-	-	-	-
Real Estate Disposition						
Redevelopment Strategy						
A00298-Eco District-CNV	2,500	-	-	-	-	-
A00311-Project Development-CNV	400,000	416,206	1,000,000	1,000,000	1,000,000	-
A00437-Hotel Garage-CNV	25,444,354	-	-	-	-	-
Redevelopment Grants						
A00585-Prosperity Investment Program (PIP)	100,000	100,000	100,000	100,000	100,000	100,000
Property Redevelopment Total	31,095,049	7,681,878	4,765,672	4,755,672	4,755,672	3,255,672
Total Program Expenditures	35,797,242	10,393,652	4,927,793	4,917,793	4,917,793	3,267,793
Personnel Services	243,482	370,770	382,121	382,668	397,985	374,850
Total Fund Expenditures	36,040,724	10,764,422	5,309,914	5,300,461	5,315,778	3,642,643
Interfund Transfers - Indirect Charges	1,010,973	546,651	545,503	547,553	563,956	544,116
Contingency	8,704,863	2,450,347	3,264,514	11,945,365	12,571,990	15,497,881
Total Fund Requirements	45,756,560	13,761,420	9,119,931	17,793,379	18,451,724	19,684,640