

**PROSPER PORTLAND**

Portland, Oregon

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

**RESOLUTION NO. 7323**

**ADOPTING FINDINGS IN SUPPORT OF AND EXEMPTING THE 100  
MULTNOMAH DESIGN-BUILD CONTRACT WITH MORTENSON  
CONSTRUCTION, INC. FROM COMPETITIVE BIDDING**

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

**WHEREAS**, Oregon Revised Statutes (“ORS”) Chapter 279C and Prosper Portland’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, Inc., (“MDI”) was selected through a competitive Request for Proposals process by Metro to design and develop the Convention Center Hotel (“Hotel”) in the Oregon Convention Center and affirmed by Prosper Portland Board through Resolution No. 6942 on April 30, 2012;

**WHEREAS**, on December 14, 2016, the Prosper Portland Board through Resolution No. 7222 authorized amended terms for a 442-stall parking structure development agreement with MDI for the design and construction of a parking garage (“Garage”) on Prosper Portland-owned property at the northwest corner of NE 2<sup>nd</sup> Avenue and NE Holladay Street that will, upon completion, be a Prosper Portland-owned asset;

**WHEREAS**, terms approved through Resolution No. 7222 included design changes to the Garage attributable to the inclusion of superstructure to support the future development of an office building (“100 Multnomah”) above the Garage;

**WHEREAS**, on December 14, 2016, the Prosper Portland Board, acting as the LCRB, approved Resolution No. 7224 which exempted the Design Build contract with MDI from competitive bidding based on the selection of MDI through Metro’s competitive process and the integral connection between the delivery and operations of the Garage with the Hotel;

**WHEREAS**, Mortenson Construction, Inc. (“Mortenson Construction”), is the general contractor included as part of the development team led by MDI for both the Hotel and Garage projects, and is currently constructing the Garage with completed expected by August 2019;

**WHEREAS**, on February 14, 2018, the Prosper Portland Board, acting as the LCRB, approved Resolution No. 7263 which exempted a \$477,593 design contract with Mortenson Construction for pre-development services through Concept Plan for the Office Building from competitive solicitation process based on Mortenson’s Constructions unique knowledge of the design and engineering of the Garage and interrelationships with the design and engineering for the Office Building;

**WHEREAS**, on January 16, 2019, the Prosper Portland Board authorized amending the pre-development services contract with Mortenson Construction for 100 Multnomah through 50 percent design development and increasing the total contract amount to \$1,602,052.

**WHEREAS**, Prosper Portland staff proposes to enter into a Design-Build Contract with Mortenson Construction for the purpose of design and construction of 100 Multnomah; and

**WHEREAS**, after due public notice, staff held a public hearing to receive comments on the draft findings 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 Prosper Portland Board acting as the LCRB hereby adopts the findings set forth in Exhibit A (“Findings Report”) in support of exempting the Design-Build Contract from competitive bidding;

**BE IT FURTHER RESOLVED**, that that based on approval of the Findings Report, the LCRB hereby authorizes the executive director to execute the Design-Build Contract with Mortenson Construction, and such amendments thereto that do not increase Prosper Portland’s financial obligations or materially alter Prosper Portland risks, subject to approval for legal sufficiency; and

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

Adopted by the Prosper Portland Commission on July 10, 2019



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Pam Feigenbutz, Recording Secretary

**DATE:** July 10, 2019

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

**FROM:** Kimberly Branam, Executive Director

**SUBJECT:** Findings in Support of an Exemption from Competitive Low Bid Solicitation for a Design-Build Agreement for the Design and Construction of the 100 Multnomah Office Building at Block 49

**I. BACKGROUND AND CONTEXT**

The findings (“Findings”) herein support a resolution by the Prosper Portland Board of Commissioner (“Board”), acting as the Prosper Portland Local Contract Review Board (“LCRB”), exempting the Design-Build Agreement (“DBA”) for the design and construction of the 100 Multnomah Office Building Project (“100 Multnomah” or “Project”) from the low bid solicitation process.

Prosper Portland owns the parcel known as Block 49 (the “Property”), located at NE 1st Avenue and NE Multnomah 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. Prosper Portland is currently in the process of constructing a 442-space parking garage on the Property (“Garage”), which has been design and developed concurrently with the adjacent Convention Center Hotel (“Hotel”). Upon completion, the Garage will serve as the Garage for the Hotel. The Garage is expected to include a minimum of 375 parking spaces available on a first-priority basis for Hotel patrons and visitors, a 15,000 square foot TriMet security facility with 50 secured parking stalls, and has been designed to support approximately 100,000 square feet of future office/residential space above the Garage. For several years, Prosper Portland has been working with Metro, Mortenson Development, Mortenson Construction, and the Hyatt Corporation to develop the Garage in conjunction with the Hotel and enter into an Easement Agreement with Hyatt.

**Background on the Convention Center Hotel and Garage**

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 2004 and 2016, Prosper Portland partnered with Metro – the owner and operator of the Oregon Convention Center – to accomplish this goal. In 2012, Metro issued a competitive Request for Proposals

(RFP) for a development team to build, own, and operate a private Convention Center Hotel (Metro RFP 13-2115 dated May 2012). This process was endorsed by the Prosper Portland Board through Resolution No. 6942. The Metro Council selected the Mortenson Development, Inc. (“MDI”) team, which includes Mortenson Construction, Inc. as the general contractor. This selection was supported by Prosper Portland through Resolution No. 6964 in September 2012. Metro subsequently entered into a binding Development and Financing Agreement with MDI for the construction of the 600-room Hyatt Regency Portland at the Oregon Convention Center.

Through the Hotel design and development process, Prosper Portland, Metro, MDI, and Hyatt determined that the Hotel's parking needs would best be met through construction of a stand-alone parking structure on the adjacent 0.99 acre Prosper Portland property known as Block 49. Through Resolutions No. 7165 (February 2016) and Nos. 7222 and 7224 (December 2016), the Prosper Portland Board of Commissioners authorized entering into a Parking Structure Development Agreement with MDI for the purpose of constructing a \$32.2 million, 442-stall, seven story parking Garage on Block 49 to support the development and operation of the adjacent Hotel. Resolution No. 7224, also adopted by the Prosper Portland Board in December 2016, adopted the findings exempting the Garage construction from competitive low-bid solicitation. Prosper Portland partnered with MDI to deliver the Garage because MDI had been selected by Metro through a competitive process and development and operation of the Garage is integral and necessary to support the adjacent Hotel and must be delivered and ready for operation concurrent with the opening of the Hotel. The most suitable way to accomplish this was for MDI to be responsible for delivery of both the Hotel and Garage and to proceed with integrated staging and sequencing of construction. Construction of the Garage and Hotel are underway, as construction of the Garage began in early 2018 and is anticipated to be completed and operational by August 2019.

### **Background on the 100 Multnomah Office Building**

During the Garage design and development process, the Property was identified to have additional development capacity beyond the Garage and development of that air rights capacity would provide public benefits. Based on this, Prosper Portland directed MDI to prepare a preliminary plan to develop an approximately 100,000 square foot office building on top of the Garage. MDI completed this work and incorporated into the Garage design the systems and foundation superstructure necessary to support the proposed office building. This superstructure was included in the scope and cost of the Garage approved by the Prosper Portland Board in Resolution No. 7222. Similarly, application materials submitted by MDI and Hyatt Regency and reviewed as part of the City's Land Use and Design Review approval processes considered the future office tower (Land Use Review #15-274415 and Design Advice Review #14-194555).

Prosper Portland advanced the design of the Project through Conceptual Design through a \$477,593 Pre-Development Services Agreement with Mortenson Construction. The award of the Pre-Development contract to Mortenson Construction through a Contract-Specific Special Procurement was supported by the Prosper Portland Board through Resolution No. 7263 in February 2018. With Conceptual Design now completed, Prosper Portland desires to advance the Project through design and construction through a DBA with Mortenson Construction.

### **Scope of Services**

Through the DBA, Mortenson Construction will agree to design, permit, entitle, construct, and complete the 100 Multnomah office building. The design phase includes preparation of Schematic Design; Design Development; Construction Documents and Specifications; Cost Estimates; LEED certification; and Design Advice Request and Design Review submittals and presentations. The total construction cost is currently estimated to be \$56.8 million. The DBA provides for Prosper Portland and Mortenson Construction to agree to the Contract Price which will be implemented through a Change Order. Of the \$56.8 million total construction cost, Mortenson Construction is anticipated to incur approximately \$2.5 million in design and preconstruction costs prior to the determination of a final Contract Price to construct the building.

## II. FINDINGS

Oregon Revised Statutes (“ORS”) Chapter 279C.335(2) and Prosper Portland’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 and other substantial benefits 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. **No Favoritism or Diminished Competition**

Mortenson Construction is the general contractor on the MDI team selected by Metro (and their partners) via the open and competitive 2012 Request for Proposals to develop and construct the Convention Center Hotel. The Hotel and Garage are currently under construction by Mortenson Construction and are anticipated to be completed by late 2019. The selection of the MDI team was supported by the Prosper Portland Board through Resolution No. 6964 in September 2012. The Prosper Portland Board subsequently approved Resolutions Nos. 7165, 7166, and 7167 in February 2016 to authorize the terms of a Parking Structure Development with MDI for the design, development, and construction of the Garage, and Resolution No. 7263 in February 2018 to authorize a Pre-Development Services Agreement with Mortenson Construction for Conceptual Design of the Project.

Given multiple phase nature of the public improvements envisioned at Block 49, and Mortenson Construction’s experience with design and ongoing construction of the Garage and Conceptual Design of the Project, Mortenson Construction is best positioned and particularly suited to carry forward the design and construction of the Project on top of the Garage. Prosper Portland’s intended use of Mortenson Construction as the Design-Builder for the Project gives rise to no favoritism on this Project nor does it encourage favoritism on any other project. Similarly, Prosper Portland’s use of Mortenson Construction on the Project is a finite commitment and will have no bearing on the opportunity for other contractors to bid on and compete for any other prospective Prosper Portland project.

### **Substantial Cost Savings and Other Substantial Benefits**

The public’s interest, including cost savings, risk management, and efficiency, are best served by contracting with Mortenson Construction, the firm responsible for the design and construction of the Garage over which the Project is to be built.

Mortenson Construction and its associated team members, including structural engineer Lund Opsahl, are already under contract to Prosper Portland to design and construct the Garage. Through that design process, Mortenson Construction prepared preliminary plans for the Project and incorporated the design features and foundation superstructure necessary to support the Project into the Garage. Through this experience, Mortenson has gained intimate knowledge of the design and engineering of the Garage; understands the design and structural relationships between the Garage and Project; and is uniquely situated to continue to the coordinated design, design review approvals, and permitting in a cost-effective manner.

The design/build delivery method will enable Prosper Portland to quickly and efficiently generate and analyze several design iterations to best meet Design Review, permitting, and budget requirements. This method 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 also enforces the architect-contractor accountability which is expected to reduce costly change orders and claims. This is especially critical given the multiphased nature of constructing the Garage and Project.

Conducting a competitive solicitation process to select a new construction partner to manage a design/build contract will likely increase cost and create significant risks for Prosper Portland including:

- Apart from cost and schedule efficiencies, one of the key benefits of the design-build method is the minimization of Owner/Architect/Contractor claims; this exemption request preserves this approach by seamlessly integrating design and construction of the Garage and Project, thereby localizing risks with one firm;
- A new design/build construction team would require additional time and expense to become familiar with and knowledgeable of the Garage design and structural relationships between the Garage and Project; the Project might encounter difficulty and delays in advancing the design and receiving Design Review approval; and
- A new design/build construction team may encounter challenges with permitting and beginning construction on the Project relative to closing out the permitting and receiving a Certificate of Completion for the Garage.

These risks, individually and collectively, represent potential cost increases and schedule delays contrary to the delivery of the Project in a responsible, efficient, and cost-effective manner. Given the interrelationships between the Garage and project, and the multiphase approach to construction in which the Garage will provide the foundation and superstructure to support the Project, contracting with Mortenson Construction will streamline the design and approval process and ensure a single point of responsibility for design, schedule, cost, and construction outcomes. Prosper Portland intends to retain a third-party construction cost estimator during the design process to validate these cost efficiencies, review cost proposals, and potentially identify other savings.

To implement Prosper Portland's Social Equity Policy, Prosper Portland has a compelling interest to ensure that Prosper Portland 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 a project's professional services costs and also for hard construction costs. Mortenson Construction has demonstrated the capacity to meet and exceed these goals on the following projects:

- Achieved 24 percent M/W/D/ESB utilization on construction of the AC Marriott Hotel which was a Prosper Portland sponsored project.
- With construction of the Garage approximately 50 percent complete, Mortenson Construction has achieved 21 percent utilization so far;
- For the Conceptual Design phase of the Project, Mortenson has achieved 20.4 percent utilization.

Based on Mortenson's commitment to and proven results regarding both professional services and hard construction costs, Prosper Portland anticipates Mortenson will continue to take all reasonable

and necessary steps to provide opportunities for Certified Firms and achieve Prosper Portland's social equity goals.

**III. PUBLIC HEARING**

In accordance with ORS 279C.335(5) and the LCRB Rules, Part 4(II)(B)(2), Prosper Portland published notice of the required public hearing which was held on January 18, 2019.

**RECOMMENDATION**

Prosper Portland staff recommends that the LCRB adopt resolutions (1) making the Findings and authorizing the Executive Director to exempt the Design-Build Agreement from competitive low bid solicitation process; and (2) finding that Mortenson Construction is a design/build sole source for the 100 Multnomah office building and that the Design-Build Agreement should be awarded to Mortenson Construction.

**ATTACHMENTS**

- A. Site Map
- B. Conceptual renderings of 100 Multnomah Office Building

**ATTACHMENT A**

**Site Map**

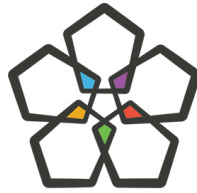




**ATTACHMENT B**

**Conceptual Rendering of 100 Multnomah Office Building**





**PROSPER  
PORTLAND**  
Building an Equitable Economy

**RESOLUTION NO. 7323**

**RESOLUTION TITLE:**

ADOPTING FINDINGS IN SUPPORT OF AND EXEMPTING THE 100 MULTNOMAH DESIGN-BUILD CONTRACT WITH MORTENSON CONSTRUCTION, INC. FROM COMPETITIVE BIDDING

Adopted by the Prosper Portland Commission on July 10, 2019

PRESENT FOR VOTE	COMMISSIONERS	VOTE		
		Yea	Nay	Abstain
<input checked="" type="checkbox"/>	Chair Gustavo J. Cruz, Jr.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Alisha Moreland-Capua MD	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Francesca Gambetti	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Peter Platt	<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"/>

Consent Agenda                       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 Prosper Portland Commission and as duly recorded in the official minutes of the meeting.*

**Date:**

July 12, 2019

**Pam Feigenbutz, Recording Secretary**