

PROSPER PORTLAND

Portland, Oregon

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

RESOLUTION NO. 7334

**ADOPTING FINDINGS IN SUPPORT OF AND EXEMPTING THE
CONSTRUCTION OF THE UNITED STATES POSTAL SERVICE INTERIM
RETAIL RELOCATION TENANT IMPROVEMENTS FROM A LOW-BID
SELECTION PROCESS**

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 construction contracts shall be awarded pursuant to a low-bid selection process (“competitive bidding”);

WHEREAS, ORS Chapter 279C.335(2) and LCRB Rules, Part 4(II)(B)(2) allow exemptions to the general requirement for competitive bidding upon the LCRB making certain findings;

WHEREAS, Prosper Portland is engaged with the United States Postal Service (“USPS”) in discussions for the relocation of its retail operations at 715 NW Hoyt Street, Portland, Oregon (“Property”) in order to enable the demolition of the existing processing and distribution center on the Property;

WHEREAS, USPS representatives have indicated agreement in principle regarding relocation of USPS’ retail operations to space within the existing parking structure on the Property that is adjacent to USPS’ existing retail space (“Interim Facility”);

WHEREAS, Prosper Portland staff determined the optimal approach to relocate and implement tenant improvements at the Interim Facility is through the Construction Manager/General Contractor delivery method;

WHEREAS, after due public notice, staff held a public hearing to receive comments on the draft findings for the exemption of the Interim Facility as required by ORS Chapter 279C.335(5) and LCRB Rule, Part 4(II)(B)(2)(c); and

WHEREAS, no one attended the public hearing and no public comments were received on the draft findings.

NOW, THEREFORE, BE IT RESOLVED, the Prosper Portland Board acting as the LCRB hereby adopts the findings set forth in Exhibit A (the “Findings Report”);

BE IT FURTHER RESOLVED, that based on approval of the Findings Report, the LCRB hereby exempts the Interim Facility from competitive bidding requirements of ORS Chapter 279C and the LCRB Rules and specifically approves the Interim Facility for the alternative contracting approach set forth in the Findings Report; and

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

Adopted by the Prosper Portland Commission on August 14, 2019



Pam Feigenbutz, Recording Secretary

Findings Report

DATE: August 14, 2019

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

FROM: Kimberly Branam, Executive Director

SUBJECT: Findings in Support of an Exemption from Competitive Low Bid Solicitation for the construction of a new USPS Retail Post Office retail facility (“**Project**”)

BACKGROUND AND CONTEXT

In 2016, Prosper Portland (“**Prosper**” or “**Owner**”) acquired the 13.44-acre site of the main USPS operations (“**Property**”) in Portland from the USPS. The Property address is 715 NW Hoyt Street, Portland OR 97209. The acquisition and redevelopment of the Property, as called for in the Central City 2035 Plan, offers a once-in-a-generation opportunity for Prosper and the City to meet growth requirements—including private development together with affordable housing, economic development, transportation, and open space goals—on a large, contiguous property in the middle of downtown and adjacent to Portland’s regional transit hub. Development of the Property can absorb a substantial share of the approximately 21,500 new households and 42,500 new jobs projected to be added to the Central City by 2035. The redevelopment of the Property could house approximately 2,400 new households and 4,000 jobs, supported by approximately \$40 million invested for infrastructure.

Currently, the retail post office serving the northwest quadrant of Downtown Portland is operating in the ground floor of the main building on the Property. That retail post office must be relocated into the ground floor of the adjacent 3-story parking structure before any demolition and subsequent redevelopment of the Property can occur. The new post office facility (“**Facility**”) will occupy all of the vacant bulk mail processing facility located at the eastern end of the parking structure and will also occupy a portion of the ground floor parking area, for a total of approximately 15,000 square feet.

Prosper is coordinating all of the necessary design and engineering for these improvements, and, given the unique nature of the purpose of the Facility, will be coordinating closely with USPS staff on design, approvals, and construction. Although final agreement has not been reached with USPS regarding the Facility, and substantial variance is possible as a design is developed and refined, Prosper Portland staff expects the estimated construction budget is \$3,750,000. Staff believes it is important that the contract be awarded no later than October 1, 2019 to allow meaningful engagement for all necessary parties during the design process.

FINDINGS

Oregon Revised Statutes (“**ORS**”) Chapter 279C.335(2) and Prosper’s Local Contract Review Board Administrative Rules (“**LCRB Rules**”), Part 4, Section II(B)(2) provide that Prosper’s Board of Commissioners, acting as Prosper’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 will, to the extent it believes applicable to the public improvement contract, 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 other factors noted in ORS 279C.335(2)(b).

No Favoritism or Diminished Competition

The contractor selection will be accomplished by issuing a competitive Request for Proposals (“RFP”) with best value selection criteria to seek a Construction Manager/General Contractor (“CM/GC”) delivery method for the Project. Any general contractor may respond to the RFP, which will include a set of the conceptual floor plans for the Project. Among other things, the RFP will require:

- a proven track record of project completion, including involvement during the design process to provide advice and expertise on issues such as constructability, value-engineering, and schedule;
- 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 Prosper’s Business and Workforce Equity Policies.

The contractor selection process will include: an evaluation of the proposals by committee, negotiations with the most qualified, responsive and responsible bidder to enter into a pre-construction services contract, and subsequent negotiations to establish and enter into a Guaranteed Maximum Price (“GMP”) contract for the delivery of the Project following the performance of preconstruction services and collaboration with the design team. The LCRB should find that the alternative contracting process neither results in favoritism nor diminished competition.

Substantial Cost Savings

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

1. The Project will take place in an existing and operating public parking structure. Coordination between the Owner, the parking structure operator, and the Contractor is necessary to minimize any conflicts during construction. In a low-bid process, the Contractor price is based on the information provided in the Construction Documents, leaving the Owner at risk of change orders due to existing conditions that can’t be shown on the Documents. In a CM/GC process, the Owner has the ability to meet with the Contractor and review these conditions and allocate risk before the contract price is established through a preconstruction services agreement. This process will likely result in cost savings to Prosper and the public.
2. All of the existing structures on the Property were constructed under USPS supervision, thereby avoiding any City of Portland permitting and approvals processes. Therefore, while the original construction plans are available for reference, a reliable set of as-built plans documenting the

construction are not available. In a low-bid process, the Contractor price is based on the information provided in the Construction Documents, leaving the Owner at risk of change orders due to discovered conditions and existing conditions that were not reflected in the Documents. As noted above, the Owner has the ability to meet with the Contractor in a CM/GC process and review these conditions and allocate risk before the contract price is established. This process will likely result in cost savings to Prosper and the public.

3. The Project is further complicated by the continued operation, during the entire construction period, of the adjacent retail post office. This will add 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. The work taking place adjacent to an occupied retail space, a part of which is open to the public on a 24/7 basis, and the use of which requires truck deliveries on a daily basis.
 - b. The work requiring modifications to an existing parking ramp to add new enclosed space.

The selected Contractor (and subcontractors) will need to limit impacts to the existing Post Office, including noise, dust, and protecting customers and the public. In addition, the Contractor will need to limit impacts to customers of the parking structure. The Contractor will need to put measures in place, such as additional dust containment and temporary traffic control, which falls under means and methods and not typically shown on the Construction Documents. In addition, the Contractor may need to modify the construction schedule to limit disruptions to adjacent post office operations. 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 CM/GC contract process allows Prosper to meet with the Contractor before the GMP is established to discuss and mitigate for these and other risks, leading to fewer change orders and a 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), Prosper published notice of the required public hearing on July 5, 2019. The hearing was held on July 16, 2019. No public comment or public testimony was received.

RECOMMENDATION

Staff recommends that the LCRB adopt a resolution to accept the Findings and authorize the use of an RFP to select a CM/GC rather than award the tenant improvement contract through a low-bid process.



**PROSPER
PORTLAND**
Building an Equitable Economy

RESOLUTION NO. 7215

RESOLUTION TITLE:

ADOPTING FINDINGS IN SUPPORT OF AND EXEMPTING THE CONSTRUCTION OF THE UNITED STATES POSTAL SERVICE INTERIM RETAIL RELOCATION TENANT IMPROVEMENTS FROM A LOW-BID SELECTION PROCESS

Adopted by the Prosper Portland Commission on August 14, 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 type="checkbox"/>	Commissioner Alisha Moreland-Capuia MD	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Commissioner Francesca Gambetti	<input 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"/>
<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 Prosper Portland Commission and as duly recorded in the official minutes of the meeting.

Pam Feigenbutz, Recording Secretary

Date:

August 20, 2019