



DATE: February 1, 2024
TO: Board of Commissioners
FROM: Kimberly Branam, Executive Director
SUBJECT: Report Number 24-07
Authorizing Settlement of Northwest Infrastructure LLC v. City of Portland, et. al.

BOARD ACTION REQUESTED AND BRIEF DESCRIPTION

Adopt Resolution No. 7521

This action by the Prosper Portland Board of Commissioners (Board) will authorize a settlement with Northwest Infrastructure LLC (NWI) related to a dispute regarding the procurement for demolition on the Broadway Corridor site in the River District Tax Increment Finance District.

STRATEGIC ALIGNMENT AND OUTCOMES

This action will allow Prosper Portland to avoid using taxpayer funds to settle the lawsuit or to pay for the legal expenses associated with defending against a non-meritorious lawsuit.

BACKGROUND AND CONTEXT

In 2016, Prosper Portland, in partnership with Portland Housing Bureau, acquired the 13.4-acre property located at 715 NW Hoyt Street in Portland’s Central City from the United States Postal Service (USPS Processing and Distribution Center). The acquisition and redevelopment of the property (Broadway Corridor), as called for in the Central City 2035 Plan, offers a unique opportunity for Prosper Portland and the City of Portland (City) to meet growth requirements – including private development, affordable housing, economic development, transportation, and open space goals – on a large, contiguous property in the middle of downtown and adjacent to one of Portland’s regional transit hubs.

As part of site preparation activities to prepare the Broadway Corridor site for redevelopment, on December 17, 2020, Prosper Portland issued a notice of intent to award the demolition of the former USPS Processing and Distribution Center to Northwest Demolition and Dismantling (NWDD), an Alaska Native-owned firm, and Raimore Construction, an African American-owned COBID-certified MBE/DBE firm; the firms partnered through a binding teaming agreement. While the NWDD/Raimore Construction team received the highest score from 13 out of 16 evaluators after three cycles of RFP submittal review by diverse panels, the other finalist, NWI, a local African American-owned firm (COBID-certified MBE/DBE firm) and its project partner Kiewit Corporation, protested the award of the contract to the NWDD/Raimore Construction team, alleging racial discrimination and other improprieties in the selection process.

Prosper Portland strongly disagrees with the allegations made by NWI, having conducted a thorough review which did not substantiate the allegations lodged by the protest. Each of Prosper Portland’s actions was taken in compliance with the RFP and Prosper Portland’s contracting rules, for legitimate reasons to ensure the selection of the best qualified contractor for the project.

After spending months trying to resolve this matter, Prosper Portland determined that it was in the public interest to cancel the RFP for this work to attempt to avoid costly, time-consuming litigation. After cancelling this RFP, Prosper Portland divided the scope of the demolition work into two new RFPs in spring of 2021, one of which ultimately led to an award of the work on the USPS site to the NWDD/Raimore team, and award of the other portion to NWI. The NWDD/Raimore Construction team has completed the work, reporting that 95 percent of the work performed on the project has been performed by COBID-certified disadvantaged enterprise and minority business enterprise firms, 70 percent of the workforce has been minority workers, and 20 percent of the workforce has been women.

On May 19, 2021, NWI filed a complaint against the City and Prosper Portland alleging various violations of federal law related to Prosper Portland’s decision to cancel the original RFP, claiming damages in the amount of \$5,500,000. On December 14, 2021, the Federal District Court granted the City’s and Prosper Portland’s Motion to Dismiss all claims, but also granted NWI’s leave to amend. Shortly thereafter, on January 12, 2022, NWI filed an amended complaint against Prosper Portland.

Prosper Portland maintains general liability and public officials and management liability insurance coverage through Glatfelter Insurance Group, and since 2021, its insurer has been providing Prosper Portland with a defense to the race discrimination claims raised against it in this lawsuit. Under the policy, the insurer controls the defense of the lawsuit, and if Prosper Portland wishes to have the benefits of the policy, it must allow the insurer to decide when and how to settle the lawsuit. The insurer has recently decided to settle the lawsuit, explaining:

The decision was made by the carrier to settle the above referenced matter on behalf of Prosper Portland for \$1.3 million in exchange for dismissal of the lawsuit and a complete release of all claims. This was a business decision to settle the case and should not be construed as an admission of liability or an admission that Prosper Portland engaged in discrimination. We are pleased to have been able to resolve this matter for Prosper Portland so it may redirect the time and resources that went into the defense of this litigation back to pursuit of its core mission of building an equitable economy.

Under the settlement, Prosper Portland’s insurer will pay NWI \$1,300,000, and in exchange, NWI will dismiss the lawsuit and release Prosper Portland from any claims related to the facts underlying the lawsuit. No evidence has been produced that Prosper Portland discriminated against NWI; rather NWI has relied solely on the fact that one of the three panels that reviewed the RFP responses gave NWI a one-point advantage over NWDD and on an inference of discrimination from the fact that it is an African American-owned firm that was not awarded this work, even though the work was awarded to the Alaska Native firm that partnered with another African American-owned firm.

Settlement decisions are not based entirely on whether a claim is meritorious. Prosper Portland and its insurer have incurred substantial expenses in the defense of the lawsuit to date, and they expected to spend as much or more through the end of a potential trial. As such, to avoid having to use taxpayer funds to pay for trial and associated legal costs out of pocket, staff recommends it is in the best interest of the Prosper Portland Board to accept the rationale provided by the insurer and authorize the settlement.

EQUITY IMPACT

There are no direct equity impacts to this proposed action.

COMMUNITY PARTICIPATION AND FEEDBACK

Staff did not conduct community participation specific to this action.

BUDGET AND FINANCIAL INFORMATION

Accepting the insurer’s decision to settle this lawsuit means that Prosper Portland will not expend any taxpayer funds to settle or to defend against this non-meritorious lawsuit.

RISK ASSESSMENT

There are two primary risks in authorizing the settlement: i) the size of settlement could be misconstrued as evidence of wrongdoing by the agency and impact public perception or ii) it could encourage future frivolous lawsuits regarding Prosper Portland’s RFP processes.

As a learning organization, Prosper Portland has sought ways to improve the agency’s RFP processes to minimize risk of future claims. Prosper Portland has addressed these risks by ensuring that panel members are free from real or perceived conflicts of interests and have the expertise to score technical responses to RFPs and have otherwise clarified Prosper Portland’s RFP processes.

ATTACHMENTS

- A. [Litigation Records](#)