

PORTLAND COMMUNITY COLLEGE - BOARD OF DIRECTORS  
12000 S.W. 49th Avenue - Portland, OR 97219

**MINUTES**  
**BOARD OF DIRECTORS BUSINESS MEETING**  
Downtown Center, Rose Room  
July 17, 2013

**BOARD ATTENDANCE**

Board Members Present:

Chair Denise Frisbee, Vice Chair Deanna Palm, Jim Harper, Ken Madden, Gene Pitts,  
Kali Thorne-Ladd

**CALL TO ORDER**

Chair Frisbee called the business meeting to order at 8:19 am and invited all present to introduce themselves.

**APPROVAL OF THE MINUTES**

The June 20, 2013 minutes were approved as published. Harper/Pitts

**APPROVAL OF THE AGENDA**

The agenda was approved as published. Pitts/Palm

**SWEARING IN OF ELECTED OFFICIALS**

Swear in Board Members

Dr. Jeremy Brown swore Director Ken Madden as the newest board member to the Board of Directors.

Elect Chair and Vice Chair

Director Harper moved to nominate Chair Frisbee as a second term chair to continue the good work she is doing, seconded by Palm.

Director Pitts moved to nominate Vice Chair Deanna Palm to serve as a second year term, seconded by Harper.

Swear in Chair and Vice Chair

Dr. Jeremy Brown swore in the Chair and Vice Chair to their new terms.

**ADJOURN BUSINESS MEETING**

The Board of Directors adjourned to Executive Session at 8:29 AM.

## **EXECUTIVE SESSION**

The Board of Directors convened an executive session to discuss in accordance with ORS 192.660 (2), (a) Employment of a Public Official, (d) Labor Negotiation, (e)-Real Property Transactions, (f) Information Exempt from Public Disclosure (Attorney-Client Privilege), and (h) Litigation at 8:35 AM, adjourning at 10:00 AM.

## **RECONVENE BUSINESS MEETING**

The Business Session reconvened at 10:17 AM.

## **BUSINESS MEETING**

Chair Frisbee noted that representatives were present from Integra Telecom in regards to Resolution 14-010. She asked for a motion to remove Resolution 14-010 from the Consent Agenda. Motion was made by Director Pitts, with a second by Director Ladd.

Director Pitts proposed approval of Resolutions 14-001 through 14-013, excluding Resolution 14-010. The motion passed unanimously. Pitts/Palm

## **PUBLIC COMMENT**

Public Comment on Resolution 14-010: Accept Proposal and Award Contract for Metropolitan Area Network Connectivity, Local Exchange, Carrier Services, and Internet Connectivity and Service

Chair Frisbee invited Walt Duddington from Integra Telecom to make public comment. Before he presented to the Board, Chair Frisbee stated that the board should not be seen as a second line of appeals or a Board of Appeals. She stated that they do recognize that there has been a long working relationship with Integra Telecom and appreciate his time today. She continued by stating that there has been some conversation about the process, and the role of the board is to ensure that the process was appropriate. At this point the Directors are comfortable with the process. We will ask the college attorney, Mr. Jeffery Condit, to address the board also, as the Directors will be looking to him for guidance.

Walt Duddington stated that he is with Integra Telecom and worked on the RFP for the metropolitan area network RFP. He sent an email, apologizing for the late notice, because of the change in the meeting date. He distributed hard copies of the email, including the scoring. A few comments for the record are that PCC and Integra have been partners for more than a decade, including charitable events. A lot of Integra employees attended PCC; he even met his wife in a writing class at Sylvania. He noted that Integra has been locally headquartered since 1996. The name Integra predates the original company, the Oregon Graduate Center, which is the genesis of the company. There are just fewer than 1,000 employees in Oregon and just fewer than 2,000 company-wide.

Mr. Duddington stated that in terms of relief, he appreciates the Directors taking this item off the Consent Agenda, so that some consideration and thought could be given to the process. He recounted parts of the email including scoring of the RFP for Integra Telecom and TW Telecom. He noted that in order to file a protest that it has to follow the statutes and can be only related to whether the process was followed. During the RFP process, including the oral presentation, according to the RFP the pricing could not change and it applied to every proposer. Had that not been the case, Integra would have perhaps opted to change their price at that time. He contended that the procurement department at PCC acknowledged that the other vendor was allowed to change their price, but the committee was instructed not to let the adjusted price influence the decision (scoring). Mr. Duddington claims that this event did not follow the process, even after explicit instructions about no change of price was allowed. He also states that the process was necessarily tainted at that point in the oral presentation. With this in mind, he filed the protest with the offer of a reasonable remedy, which would be to allow Integra to revise its pricing and the protest was denied.

The scoring break-down indicated that Integra won on the written evaluation (1<sup>st</sup> phase). He maintained because TW was allowed to change its pricing during the oral evaluation and the entire scoring changed and Integra lost by 1 point. He stated that the proper process was clearly not followed and it was tainted at that point. Integra feels they have not received a satisfactory explanation of how that was allowed. After the protest in which Integra asked for a clarification, it only led them to assume that if the pricing was not to be revised in the oral round and if any revised pricing was submitted by TW Telecom was not considered then the only pricing that should have been utilized in the contract award was the pricing submitted in the written RFP responses. The first response we received from PCC procurement staff was that it was subject to negotiation with TW Telecom. This led him to believe that the possibility of the prohibited changed price could be the final awarded pricing. When PCC procurement staff members were pressed for clarification, the response was that the position was understood and the issue would not be discussed further. The response seemed to indicate that the revised pricing would be utilized in the contract, the tainted revised pricing.

In short of a judicial remedy, Integra was present to ask the board to send this back to procurement to follow the process. At the least, if not completely striking the evaluation in the oral phase and awarding the contract to Integra, then to reopen the oral phase and allow Integra to present revised pricing. Integra does not want to pursue judicial action, which is the only other route. In conclusion, he asked the board to reopen, at a minimum, the oral phase and allow pricing to be scored again.

Chair Frisbee, again, stated that the Directors would not get into response and evaluation. The Chair noted that is the final college decision. The Director's typically do not get involved in the process what so ever. The problem with involving the board is that everyone would file a protest.

She did ask Jeff Condit, college legal counsel, to join the Directors at the table to give his take on the process. Mr. Condit stated that as is usual when the College receives a protest, they contact Miller Nash to work through the issues of the protest. This protest was reviewed with staff before a final decision was made to deny the protest. Staff determined that revised pricing on one element was submitted during oral interview. This was a procedural error, but staff properly instructed the reviewing body to not consider the revised pricing when they were rescoring proposals based on the interviews. Mr. Condit explained that way the written proposal is scored, the highest ranked proposals move on to the oral interviews. Based upon the responses at the interview, the proposals are rescored and based upon that score a contract is awarded.

Procurement staff confirmed that the members of the evaluation committee understood that they were not to consider the revised pricing when rescoring the proposals. The members confirmed that they did not take the revised pricing into consideration, but rescored based upon other questions and comments that happened in the interview process. The members independently rank the proposals, so there was no collaboration about the revised score.

Mr. Condit also responded to the concern that the contract was based upon the revised pricing. Mr. Condit confirmed with procurement staff that the contract will be based upon the pricing as proposed in the original proposal and not on the revised pricing, and that any difference in the total contract price will be based upon services selected, not based upon the revised pricing submitted by TW Telecom during their interview.

Mr. Condit concluded by noting that accepting the revised pricing was a procedural violation, and that College has two choices at that point: Attempt to correct the procedural violation as the College did, or reject all bids and start over. The latter would be a significant expense and cause delay in implementation of the contract. Mr. Condit stated that Integra's suggested solution that it be allowed to submit revised pricing and that both proposals be rescored based upon the revised pricing would compound the procedural error and could lead to protests by other proposals. Staff and the committee firmly believe that the final decision was not based upon the revised pricing, and that the process was therefore in substantial compliance with the RFP. All involved may be required to testify under oath and would be able to do so.

Chair Frisbee believes the process was correctly followed, and that the revised pricing was not the deciding factor. She asked for a motion to approve Resolution 14-010.

Director Palm moved to approve Resolution 14-010 and the second was made by Director Madden.

Director Frisbee thanked Mr. Duddington for his presentation and stated that the role of the Board of Directors is to be confident that the process was followed, as they are. She stated the Board recognizes the difficulty in supporting our partnerships.

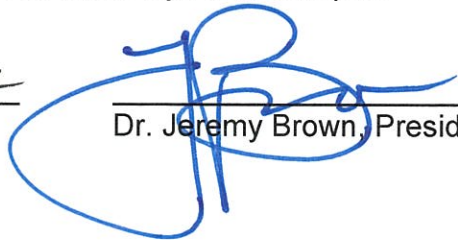
## ADJOURNMENT OF BUSINESS SESSION

There being no further business, the meeting adjourned at 10:35 AM.

## NEXT MEETING

The next business meeting of the Portland Community College Board of Directors will be held on August 15, 2013 at 7:30 PM at the Sylvania Campus.

  
Denise Frisbee, Board Chair

  
Dr. Jeremy Brown, President

Prepared by:

  
Jeannie Moton, Assistant to Board of Directors

Minutes approved on August 15, 2013