

September 20, 2007

08-016

A RESOLUTION OF THE PORTLAND COMMUNITY COLLEGE BOARD OF DIRECTORS, ACTING AS THE LOCAL PUBLIC CONTRACT REVIEW BOARD, GRANTING AN EXEMPTION TO THE LOCAL PUBLIC CONTRACTING RULES OF PROCEDURE AND AUTHORIZING THE PRESIDENT OR HIS DESINGEE TO NEGOTIATE AND EXECUTE A DESIGN/BUILD FORM OF AGREEMENT WITH GERDING EDLEN DEVELOPMENT COMPANY LLC FOR THE CONSTRUCTION OF A NEW WASHINGTON COUNTY WORKFORCE TRAINING CENTER AND CLASSROOMS AT THE WILLOW CREEK TRANSIT STATION.

PREPARED BY: Randy McEwen, District Vice President

APPROVED BY: Dr. Preston Pulliams, District President

REPORT: PCC Public Contracting Rules of Procedure ("Rules") CCR.280 authorizes the Board to exempt certain contracts, including design-build contracts, from the requirement for competitive bidding pursuant to the Findings adopted under ORS 279C.330 and 279C.335. The statute requires the Board to hold a public hearing on the draft findings included in the Agenda Packet and adopt, modify, or reject the findings based upon the evidence and testimony at the hearing.

The Board has previously approved sale of the College's interest in the Capital Center at 18640 NW Walker Road in Hillsboro and replacing it with a facility that will better serve the College's current and future needs for this fast growing area. The Board has determined that the best site for a new facility is property currently owned by Tri-Met and located at the Willow Creek Transit Center adjacent to the Willow Creek Light Rail Station ("Willow Creek Facility").

The Board has expressed its desire that the Willow Creek Facility be a highly functional, energy efficient facility that

takes full advantage of and complements its location adjacent to the West Side Light Rail Line. Staff believes that the best method of delivering such a complex project is to negotiate a design-build form of contract with a developer with proven experience in the area.

Development of such a facility requires a developer with extensive and particular skills in the area of green and transit-oriented development. Gerding Edlen Development Company LLC (GED) is the preeminent developer of green and transit-oriented facilities and is uniquely qualified to develop and deliver the Willow Creek Facility. Because of this experience and expertise, staff believes that contracting with GED will best meet project goals in the most cost-effective manner.

In order to further ensure cost savings, discourage favoritism, and comply with the requirement that such exemptions not substantially diminish competition, the resolution requires that all construction work under the design-build contract, subcontracted by the general contractor, will be competitively procured and awarded to the lowest responsive and responsible bidder or to the responsible proposer whose proposal is determined to be most advantageous to the project.

RECOMMENDATION:

The Board:

1. Adopts the Draft Findings approving an exemption from competitive bidding under ORS 279C.330 and 279C.335 and the College's Public Contracting Rules of Procedure.
2. Authorizes and delegates to the President or his designee the authority to negotiate and execute a design-build contract with Gerding Edlen Development Company LLC to design and construct an approximately 100,000 square foot office building located on the property to be acquired from Tri-Met adjacent to the Willow Creek Light Rail Station. The construction phase will be contingent on securing the property for the project.
3. The design-build contract shall include a provision or provisions requiring that all construction work

subcontracted by the general contractor under the contract, be competitively procured and awarded either to the lowest responsive and responsible bidder or to the responsible proposer whose proposal is determined to be most advantageous to the project, as the developer and the College deem appropriate for the particular procurement.

DRAFT FINDINGS FOR RESOLUTION 08-016

RECITALS:

A. The Board of Directors of Portland Community College (the "College") is the Local Public Contract Review Board (the "Board") pursuant to ORS 279A.060.

B. PCC Public Contracting Rules of Procedure ("Rules") CCR.280 authorizes the Board to exempt certain contracts, including design-build contracts from the requirement for competitive bidding pursuant to the Findings adopted under ORS 279C.330 and 279C.335.

C. The Board has declared its intention to sell its interest in the Capital Center, 18640 NW Walker Road. The Capital Center is the current location of the Washington County Workforce Training Center and certain College administrative offices. The Board desires to replace the Capital Center with a facility that will better serve the College's current and future needs in this fast growing area within the College's jurisdictional boundary.

D. The College jointly owns the Capital Center with the Oregon University System (OUS), which has also determined to sell its interest in the Capital Center. OUS desires and is able to vacate the Capital Center on a shorter time frame than PCC. In order to maximize the sale value of the Capital Center, time is of the essence for PCC to develop and occupy a replacement facility.

E. The Board has determined that the best site for a new facility is property currently owned by Tri-Met and located at the Willow Creek Transit Station, adjacent to the Willow Creek Light Rail Station ("Willow Creek Facility"). Tri-Met has expressed its willingness to sell the property to PCC. The facility will be up to 100,000 square feet in size.

F. The Board desires that the Willow Creek Facility be a highly functional, energy efficient facility that takes full advantage of and complements its location at the Transit Center and West Side Light Rail Line. The Board believes that the best method of delivering such a complex project is to negotiate a design-build form of contract with a developer with proven experience with such developments.

G. Development of such a facility requires a developer with extensive and particular skills in the area of green, energy efficient, transit-oriented development. Gerding Edlen Development Company LLC (GED) is a regional and national leader in the development of green and transit-oriented facilities and is thus particularly qualified to develop and deliver the Willow Creek Facility. In addition, GED has experience relevant to the Willow Creek facility working on transit-related developments with Tri-Met. Because of this experience and expertise, staff recommends that direct negotiation of a design-build contract with GED will best meet project goals in the most timely and cost-effective manner.

H. In order to further ensure cost savings, discourage favoritism, and comply with the requirement that such exemptions not substantially diminish competition, staff recommends that the Board require that all construction work subcontracted by the general contractor will be competitively procured.

FINDINGS:

1. The exemption granted in the Resolution 08-016 is based upon the following findings pursuant to ORS 279C.335(2):

a. The Board finds that this contract exemption is unlikely to encourage favoritism in the award of public contracts or substantially diminish competition because GED is particularly qualified to deliver the Willow Creek Facility project, and because this exemption is contingent upon a requirement that all construction work subcontracted by the general contractor under the design-build contract will be competitively procured either through an invitation to bid (price-based) or a request for proposals (qualifications based) competitive process.

b. The Board further finds that allowing this contract exemption will result in substantial cost savings to the College, because contracting with a particularly qualified designer-builder such as GED will result in a project that meets the Board's goals for quality with fewer changes and more expeditious project delivery. In addition, GED has a proven track record of developing similar projects on time and on budget. Finally, it will reduce the potential for complex litigation through a fully integrated design-build agreement with a single point of responsibility.

3. In making the above findings, the Board considered the following specific findings pursuant to ORS 279C.330:

a. Operational, budget, and financial data: The Willow Creek Facility is proposed to be located on property currently owned by Tri-Met adjacent to the Willow Creek Transit Center off SW 185 in Hillsboro Oregon. The College is currently in discussions with Tri-Met to obtain the necessary government and regulatory approvals, including FTA approval, to acquire the property for the project. This will ensure high visibility and maximum transportation flexibility for the College's students, clients, faculty and staff. Given the location of the facility, the College's commitment to sustainability, and to reduce long term operating costs and environmental impacts, the College has determined to design and construct the facility to obtain a Leadership in Energy and Environmental Design ("LEED") Silver or higher certification from U.S. Green Building Council. Accomplishing these project goals requires a careful and sophisticated design that complements and enhances the operation of the Transit Center, minimizes parking taken out of service, and ensures that the various elements do not conflict.

The Facility is proposed to be approximately 100,000 square feet in size and would contain classrooms and offices. The Facility would house programs currently operating out of the Capital Center, including Workforce

Development, Computer Continuing Education, Customized Workforce Training and Community Education. It would also house additional PCC programs, including GED Testing, CNA Training and Skills Lab, Medical Assisting and Small Business Management. Finally, space would be leased to additional educational and government users, such as the Oregon Institute of Technology, the Oregon Employment Division, and Vocational Rehabilitation, tenants that would complement and provide synergies with the College's workforce development and educational programs on site. The estimated cost of the project (in 2006 dollars) is \$33 to \$35 million.

As noted in the Recitals, the College jointly owns the Capital Center with the Oregon University System (OUS), which has also determined to sell its interest in the Capital Center. OUS desires and is able to vacate the Capital Center on a shorter time frame than PCC. Any sale of the Capital Center would therefore have to include a lease-back or delayed closing pending PCC's relocation to the Willow Creek Facility, which has the potential for reducing developer interest and thus the sale price. In order to maximize the sale value of the Capital Center, time is of the essence for PCC to develop and occupy a replacement facility. Use of a design-build contract will shorten project time as construction activity can commence prior to completion of a biddable design and provide flexibility to deal with the design solutions. Use of a developer with a proven team also reduces the risk of design flaws, misunderstanding, re-design delays, and conflict as result of the input of the developer and contractor in the design process. Use of the design-build alternative contracting method will also reduce the potential for complex litigation through a fully integrated design-build agreement with a single point of responsibility. Finally, exemption for competitive procurement to obtain a design-builder would reduce project time by several months.

b. Public Benefits: The chief public benefit of granting the exemption and contracting with an experienced developer under a design build agreement is more expeditious completion of the project, which will provide a vastly superior learning environment and significantly better transportation alternatives to students and clients of the College. Expeditious completion will also benefit the taxpayers by enabling the College to maximize its ability to sell the current Capital Center. The exemption also puts in place a development team that has a proven track record of quality design, solid financing and good project management. The active transit center uses around the site further require that the project be appropriately designed and tightly managed both in term of schedule and to minimize the footprint of construction impacts.

c. Value engineering: Use of the design-build process will enable greater control over the budget by integrating value engineering suggestions into the design phase because the contractor and designer are participating as part of a team.

d. Specialized expertise required: The Board desires that the Willow Creek Facility be a highly functional, "green," energy efficient facility that takes full advantage of and complements its location adjacent to the West Side Light Rail Line at the Willow Creek Transit Center. This will result in long term energy savings, reduced or mitigated traffic congestions, increased access, and a better learning environment for College students. Contracting with a developer with GED's unique experience in delivering such projects will ensure that these goals are met in the best and most cost effective way.

GED's experience in these areas is unmatched by any other developer. GED is a nationally recognized developer of sustainable, transit oriented developments. It has developed twelve projects that have obtained LEED certification. These projects include several educational and institutional projects similar to the proposed Willow Creek Facility, including: OHSU's Center for Health and Healing (Platinum); Pacific University's Burlingham Hall (Gold), PSU's School of Engineering (Gold); and PSU's Broadway Housing (Silver). It also includes such diverse structures as the Gerding Theatre at the Armory (Platinum) and condominium developments such as the Meriwether (Gold) and the Henry (Gold). GED is currently pursuing LEED certification for an additional 24 projects, including two phases of Pacific University's Health Professions Campus (Gold) and some student housing.

In addition to being the recognized leader in green building design, nearly all of GED's work is transit oriented. In 2005-2006, GED worked with Oregon Clinic, PDC and Tri-Met to construct a 100,000 square foot medical office building and structured parking garage located at the Gateway Transit Center. Like Willow Creek, the property was originally owned by Tri-Met, so GED had to work through many of the same difficult issues presented at Willow Creek, such as working with the FTA to allow sale of the property, accommodating existing transit center functions such as bus circulation and parking, and accommodating transit drop offs. This project finished on time and on budget and achieved a LEED Gold certification. Other similar transit oriented projects include Collins Circle at SW 18th and Jefferson, a mixed use, mixed income, development on property originally owned by Tri-Met, and Pacific University's Health Professions Campus, an academic and clinic facility located adjacent to a light rail station in downtown Hillsboro.

Given the particular program needs at Willow Creek and GED's particular expertise, experience, and track record at meeting such needs, the Board finds that an invitation to bid or an alternative competitive process would be a waste of time and College resources.

e. Public safety: Obtaining the services of an experienced developer will reduce the possibility of construction defects that could later create safety problems. GED expertise at developing transit oriented projects will also minimize potential safety conflicts arising from the construction of the project at the transit center.

f. Market conditions: A design build contract with an experienced contractor such as GED will give the College the ability to maintain its schedule, thereby minimizing problems with construction material price increases and improve its ability to market the Capital Center. Overall market risk is reduced.

g. Technical complexity: Under the standard competitive bidding process, there is no way of assuring that a contractor selected solely on a low-bid basis has the necessary experience and expertise to perform the work for such a large, complex, specialized project. In addition, construction of a new office/classroom building at an operating transit center adds another level of unique technical complexity to this project.

h. Funding sources: This Project is proposed to be paid for from current operating monies, state bond funds, Capital Center sale proceeds, and/or a 2008 general obligation bond. Authorizing this contract will better enable the College to budget its resources for this and other projects.