

February 19, 2009

09-053

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 TO NEGOTIATE AND EXECUTE A CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC) FORM OF AGREEMENT WITH FORTIS CONSTRUCTION FOR THE SEISMIC UPGRADE AND BUILDING RENOVATION FOR THE WILLAMETTE BLOCK BUILDING.

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REPORT: PCC Public Contracting Rules of Procedure CCR.280 authorizes the Board to exempt certain contracts, including Construction Manager/General Contractor contracts from the requirement for competitive bidding pursuant to the Findings adopted under ORS 279C.330 and ORS 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 authorized the purchase of the Willamette Block Building from the University of Oregon (BR 09-033). This authorization came after due diligence studies performed on behalf of PCC by SERA Architects. These studies provided information on the seismic condition of the building and the suitability of the building to be renovated with tenant improvements to suit PCC's programmatic goals for the use of the building.

PCC also contracted with SERA to perform a due diligence study that determined that the design and construction of needed seismic and tenant improvements could be completed in time to move the Financial

Services Department (FSD) from the Capital Center by the end of the current lease on December 31, 2009. This will allow the FSD to move its operation efficiently during the academic break with minimal disruption of services. The current lease provides a 30-day "penalty holdover" period (thru January 2010) for PCC's occupancy, for which the monthly rent is double the current rate (\$2 per sq. ft. per month, or \$120,000 per month) plus utility charges of approximately \$20,000 per month. This penalty feature was inserted at Beaverton Schools' request to ensure that PCC vacated the Capital Center by the December deadline.

In order to design and construct improvements to the Willamette Building, the Board authorized BR 09-048 which allows the President or his designee to contract with SERA Architects for the design of seismic upgrades and tenant improvements. At that time staff expressed the intention to immediately begin the planning and design effort necessary to meet the needed timeline, and that this effort would require the engagement of a general contractor to provide critical input on construction requirements required to meet the timeline.

In late January Beaverton Schools advised the College that its plans had changed, and that it was possible for PCC to extend its Capital Center lease beyond 31 December 2009. College staff agrees that some short extension might be warranted (assuming the extension is on non-penalty terms) to provide flexibility. Staff also thinks, however, that the original "fast track" approach is warranted so that the College completes its move out of the Capital Center in a timely manner. In doing so, the College will avoid the costs of operating three sites (Willow Creek, Capital Center, and Willamette Building) when only two are needed; since 50% of the College's current occupants in the Capital Center will move to Willow Creek during Fall 2009.

Throughout the due diligence phases of this project SERA Architects had been subcontracting the services of Fortis Construction for cost estimating, scheduling and constructability review. It is in the public interest to capture this knowledge and enter a Construction Manager/General Contractor (CMGC) form of agreement with Fortis Construction. Such a contract will allow the

project to be "fast tracked" with three different phases. This means that the designers of the project will provide the contractor with the information necessary to perform only parts of the work in a specific sequence with limited sets of design drawings. Phase 1 will allow for non-structural demolition of the building, *i.e.*, interior walls and spaces. Phase 2 will be the structural demolition and reconstruction work necessary to upgrade the building to a safer seismic system. Phase 3 will be the construction of the tenant improvements.

Development of the phased changes necessary to completely move FSD by December 31, 2009 does not allow for a traditional bid project. Contracting with Fortis Construction using the CMGC form of contract will allow PCC to capture Fortis Construction's familiarity and efficiently complete the project.

In order to further ensure cost savings, discourage favoritism and comply with ORS requirement that such exemptions not diminish competition, the resolution requires that all construction work subcontracted by the CMGC contractor be competitively procured and awarded to the lowest responsive and responsible proposer or to the responsible proposer whose submission 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 297C.335 and the College's Public Contracting Rules and Procedures.
2. Authorizes and delegates to the President or his designee the authority to negotiate and execute a Construction Manager General Contractor contract with Fortis Construction Company to construct seismic and tenant improvements to the Willamette Building.

DRAFT FINDINGS FOR RESOLUTION 09-053

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 (the Rules) CCR 280 authorizes the Board to exempt certain contracts, including Construction Manager General Contractor contracts from the requirement for competitive bidding pursuant to the Findings adopted under ORS 297C.330 and 279C.335.
- C. The College is leasing space from Beaverton School District at the Capital Center to house a number of College programs, including the Financial Services Department. The current lease expires on December 31, 2009 at which time all PCC programs shall be required to be relocated.
- D. The College owns a property, the Willamette Building, which is slated to become the home of Financial Services, Human Resources, Affirmative Action, Institutional Effectiveness, Enrollment Services and portions of Community Education. To accommodate these programs and departments the Willamette Building will need to be seismically upgraded and have tenant improvements made to house these programs and departments.
- E. "Fast tracking" is a building technique where designs and drawings are completed in phased sequences which allow the work to begin on the earlier phases while the later phases are still under design.
- F. By "fast-tracking" the Willamette Building seismic and tenant improvement work so as to be completed in December 2009 the Financial Services Department can move directly from the Capital Center to the Willamette Building and avoid a costly interim move. This does not allow for standard design/bid/build contracting and is better suited to the CMGC contracting method.
- G. Because of their already in-depth knowledge of the project, development of the Willamette Building "fast track" project will be greatly enhanced by adding Fortis Construction as the CMGC contractor. Staff recommends direct negotiation of a Construction Manager General Contractor with Fortis Construction.
- H. In order to further ensure cost savings, discourage favoritism and comply with ORS requirements that such exemptions not diminish competition, the resolution requires that all construction work subcontracted by the CMGC contractor 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.

FINDINGS:

1. Staff recommends the approval of Resolution 09-053 based upon the following findings pursuant to ORS 279C.335(2):
  - a. Staff finds that this contract exemption is unlikely to encourage favoritism in the award of public contracts or substantially diminish competition. Fortis Construction is particularly qualified to deliver the Willamette Building project because of the knowledge they have already about the building and with the understanding of how this project can meet the short timelines. In addition, all work sub-contracted by the contractor under the Construction Manager General Contractor contract will be procured either through an invitation to bid (price based procurement) or a request for proposal (qualification based procurement) process.
  - b. Staff feels that approval of this contract exemption will result in substantial cost savings to the College because the College will avoid the substantial expenses related to extending the current lease and missing the Winter break window. In addition, the Construction Manager General Contractor form of contract is the preferred form of contract for a "fast track" project because it permits the contractor to participate in the early design of the project and use the contractor's expertise to help value engineer the project for the lowest cost.
2. In making the above findings, staff considered the following specific findings pursuant to ORS 279.330:
  - a. Operational, budget, and financial data: The Willamette Building facility is an approximate 40,000 SF facility in downtown Portland between 2<sup>nd</sup> and 3<sup>rd</sup> avenues and Yamhill and Taylor streets. The building is planned to be renovated to house multiple PCC functions that include Financial Services, Human Resources, Affirmative Action, Institutional Effectiveness, Enrollment Services and portions of Community Education. Acquisition and renovation of the facility will be funded by the recently approved 2008 Bond measure.
  - b. Public Benefits: The chief public benefit of granting the exemption and contracting with Fortis Construction is the ability to "fast track" the construction and move the tenants in an effective and efficient manner with minimal disruption to the district and its students. There are other public benefits as well. Yamhill and Taylor carry the MAX tracks east and west, respectively, and allow superb public access to this new location. Most of the PCC programs listed above are housed in existing spaces on

College campuses. Moving them to the Willamette Building will free up these spaces for other college programs and future bond work.

- c. Value Engineering: Use of the Construction Manager General Contractor process will enable greater control over the budget and the schedule by integrating value engineering into the design phases of the building because the contractor, designer and PCC are participating as a team.
- d. Specialized expertise required: The Board desires that the Willamette Building facility be seismically upgraded and renovated timely enough for Financial Services to avoid an interim move. Fortis Construction, because of their involvement with PCC's and SERA's due diligence and feasibility studies, has special knowledge of the building's seismic upgrade needs and how to "fast track" this particular project.
- e. Public Safety: Fortis Construction is an experienced contractor with an excellent safety record. Many of their projects have been in occupied buildings in the busy downtown area and they will bring this expertise to this project.
- f. Market conditions: The construction market in Portland is particularly favorable to owners in the current economy because of a slowdown in development projects. A Construction Manager General Contractor contract with an experienced contractor like Fortis Construction "fast tracking" the project will allow taking advantage of these market conditions.
- g. Technical complexity: Under a standard competitive bidding process there is no way of assuring that the low-bid contractor will have the expertise and experience to "fast track" a large project like this. In addition, the drawings and specifications normally associated with competitive bid projects would require too long for the designers to produce and PCC would lose its window of opportunity to move quickly.
- h. Funding sources: This project will be paid for from the 2008 General obligation bond passed by voters in November, 2008.