

# BEAM CONSTRUCTION & MANAGEMENT, LLC

*A limited liability company*

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May 4, 2005

## BY HAND DELIVERY

Portland Development Commission  
Attention: General Counsel  
222 NW 5th Avenue  
Portland, OR 97209

Re: RFP #04-05 Protest

Dear General Counsel:

I am Bradley J. Malsin of Beam Construction and Management Company and head of the Beam Development Team (Beam Development) which submitted a proposal in response to your Request for Proposals # 04-05 for the Burnside Bridgehead Mixed-Use Redevelopment Project. Our proposal was responsive to the RFP and was one of the three finalists. We have responded to all requests for additional information from the PDC. The PDC convened an Evaluation Committee pursuant to the RFP. That evaluation committee found Beam's proposal best complied with the RFP and the evaluation committee unanimously recommended the selection of Beam Development.

On Wednesday, April 27, 2005, the PDC convened a public meeting at which members of the public voiced overwhelming support for the Beam Development proposal. Nevertheless, without any further deliberation, and contrary to the recommendation of the EvaluationC and the will of the public, the commissioners voted to award the project to Opus Northwest. The PDC did not issue any written decision, and gave no official indication as to its reasons for selecting Opus Northwest. Public comments by PDC Commissioners indicate, however, that PDC Commissioners somehow determined that Opus Northwest was the best choice for this project. Inasmuch as the basis for this determination has not been evidenced by a written decision, we request the PDC provide us with copies of all meeting minutes, notes, emails, correspondence and other materials relevant to the decision rendered and we reserve the right to expand the basis of our protest after we have had an opportunity to review those materials.

With this letter, Beam Development formally protests the selection of Opus Northwest pursuant to section XI.K of the RFP. Beam Development specifically protests the PDC's award of this project to Opus Northwest, and not to Beam Development. In addition, Beam Development protests the following actions and decisions of the PDC:

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1. The PDC Commissioners, with the exception of Bertha Ferrán, failed to fully disclose pre-existing relationships with members of the proposing teams and their employees or sub-contractors until the evening of April 27, 2005. Without benefit of discovery, Beam Development cannot know the specifics of these relationships, but published news accounts indicate a wide range of relationships including a consultant employed by both the PDC and a commissioner who worked for Opus Northwest on this RFP and an opportunity for financial gain by a commissioner should Opus be selected. This relationship improperly favored Opus Northwest, and thus adversely affected Beam Development.
2. PDC changed the selection process without notification to Beam Development. Specifically, during the course of the RFP, the selection process was changed by modifying the roles and responsibilities of the Executive Director and the Evaluation Committee during the process. This adversely affected Beam Development because Beam Development received the unanimous recommendation of the Evaluation Committee which, under the original process, would have either been endorsed or rejected by the Executive Director acting alone.
3. PDC changed the evaluation criteria and employed unstated evaluation criteria, contrary to the RFP and applicable law. Specifically, all members of our development team were considered during evaluation of our financial capacity; however, when considering team development capacity, the Evaluation Committee was directed to consider only my personal real estate experience. This same analysis was not applied to the Opus team whose lead developer Bruce Woods has resigned from Opus. This adversely affected Beam Development by denying it a fair and known evaluation process and the opportunity to submit information responsive to the unstated and modified evaluation criteria.
4. PDC failed to provide objective definition of or a process for determining "good design", failed to abide by the Evaluation Committee's recommended best design, and failed to conduct any objective or public design review. These failures affected Beam Development by denying it the opportunity to remedy any perceived or stated design flaws during the subsequent re-submittal periods.
5. PDC failed to review the proposals and make award of the RFP under the "Evaluation Criteria" stated in their published Request for Developer Proposals #04-05 (Page 20). This failure affected Beam Development by unfairly denying Beam credit for meeting and exceeding the criteria set forth in the RFP.
6. PDC Commissioners selected Opus Northwest for the apparent reason that it requires the lowest public subsidy. This was an abuse of discretion in that PDC does not know the amount of public subsidy required by Opus Northwest, as disclosed in the PDC Press Release dated April 27, 2005. This abuse of discretion adversely affected Beam because, in truth, the required public subsidy for the two proposals is not known and available information indicates no appreciable difference in required public subsidy between the proposals of Beam Development and Opus Northwest.
7. PDC Commissioners failed provide written explanation for their decision. PDC also conducted discussions and made decisions outside a public meeting contrary to the Oregon Public Meetings Law (ORS 192.610-192.710). These omissions and these private deliberations adversely affected Beam Development by providing no public record of the information relied upon to award the project to Opus Northwest. Beam Development was denied any opportunity to address the commissioners concerns and/or correct the commissioners' apparent misimpressions.

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8. PDC failed to enforce the restrictions on communication under Section D of the RFP throughout the proposal selection process. Following discovery and review of the requested documents, Beam Development will be in a position to completely describe the improper communications between PDC and Opus. Beam Development was unfairly affected and aggrieved because it was not provided access to PDC Commissioners, Staff and members of the Evaluation Committee equal to the access allowed to Opus.

Given the short period of time allowed for filing of protests, and the fact that we have not yet been allowed to review documents in PDC's possession relevant to this protest, we are reserving the right to identify and file additional protests at a future date, or raise additional matters and grounds in any subsequent appeal.

Sincerely,

Bradley J. Malsin, President  
Beam Construction and Management  
Beam Development Team