CAO 2015-017

To: Michael Pounds

From: Yaneris Figueroa, Assistant City Attorney for the City of Coral Gables

Approved: Craig Leen, City Attorney for the City of Coral Gables

RE: Legal Opinion Regarding Use Of Existing Agreement With Metro-Express

Date: March 6, 2015

I reviewed the referenced Agreement, as well as the Commission's Resolution, as you requested. After consulting with Craig, I see no issues with using the existing Agreement to move forward with the City's sidewalk repair program as the Resolution contemplates the initial $1,343,811.00 as a "base bid" and the continuing work is covered by the Agreement. Indeed, the Agreement contemplates repairing of sidewalks and the City will use the Agreement to repair sidewalks. Accordingly, it is my opinion that you could move forward under the existing Agreement with Metro-Express.

Herbello, Stephanie

From: Leen, Craig
Sent: Friday, March 06, 2015 4:13 PM
To: Herbello, Stephanie
Cc: Chen, Brigette; Figueroa, Yaneris
Subject: FW: Citywide Construction of Street Improvements Invitation for Bid (IFB) 2013.07.10

Importance: High

Please place in opinion folder.

Craig E. Leen, City Attorney
Board Certified by the Florida Bar in
City, County and Local Government Law
City of Coral Gables
405 Biltmore Way
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Phone: (305) 460-5218
Fax: (305) 460-5264
Email: cleen@coralgables.com

From: Leen, Craig
Sent: Friday, March 06, 2015 4:12 PM
To: Figueroa, Yaneris; Pounds, Michael
Cc: Gomez, Diana; Kephart, Glenn
Subject: RE: Citywide Construction of Street Improvements Invitation for Bid (IFB) 2013.07.10
Importance: High

Pursuant to sections 2-584 and 2-201(e)(1) and (8) of the City Code, I adopt the Assistant City Attorney's opinion as a City Attorney Opinion. You may proceed.

Craig E. Leen, City Attorney
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From: Figueroa, Yaneris
Sent: Friday, March 06, 2015 12:08 PM
To: Pounds, Michael; Leen, Craig
Cc: Gomez, Diana; Kephart, Glenn
Subject: RE: Citywide Construction of Street Improvements Invitation for Bid (IFB) 2013.07.10

Good Afternoon Michael and Glenn,

I reviewed the referenced Agreement, as well as the Commission's Resolution, as you requested. After consulting with

Craig, I see no issues with using the existing Agreement to move forward with the City's sidewalk repair program as the Resolution contemplates the initial $1,343,811.00 as a "base bid" and the continuing work is covered by the Agreement. Indeed, the Agreement contemplates repairing of sidewalks and the City will use the Agreement to repair sidewalks. Accordingly, it is my opinion that you could move forward under the existing Agreement with Metro-Express.

Please let me know if you have any questions or concerns.

Best,
Yaneris Figueroa
Assistant City Attorney for the City of Coral Gables
405 Biltmore Way, 2nd Floor
Coral Gables, FL 33134
Office: (305) 722-8625
Fax: (305) 476-7795

From: Pounds, Michael
Sent: Wednesday, March 04, 2015 2:18 PM
To: Leen, Craig; Figueroa, Yaneris
Cc: Gomez, Diana; Kephart, Glenn
Subject: FW: Citywide Construction of Street Improvements Invitation for Bid (IFB) 2013.07.10

Craig:

Public Works has been using a continuing contract that the City has with Metro-Express, Inc., for its Citywide sidewalk repair and replacement program. The Metro-Express Contract was awarded in 2013 to do various street improvements including sidewalks. As you may remember the sidewalk repair and replacement program was approved by the Commission and has been underway since late last year. I have taken the position that the Metro-Express contract can be used for this purpose, although I believe it was never intended to be used for such a large project. I would like to issue additional purchase orders to allow Public Works to finish the sidewalk project using only Metro-Express in order to finish the sidewalk project as scheduled by the end of August 2015.

Mike Pounds
Chief Procurement Officer
City of Coral Gables
2800 SW 72nd Avenue
Miami, FL 33155
Phone (305) 460-5101

From: Gomez, Diana
Sent: Wednesday, March 04, 2015 10:30 AM
To: Pounds, Michael
Subject: RE: Citywide Construction of Street Improvements Invitation for Bid (IFB) 2013.07.10

Ok, please run it by Craig and ask for his opinion. If he agrees we have the authority to use, I am ok with continuing.

Diana M. Gomez
Finance Director
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dgomez@coralgables.com
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FX: 305.460.5376

From: Pounds, Michael
Sent: Wednesday, March 04, 2015 10:17 AM
To: Gomez, Diana
Subject: RE: Citywide Construction of Street Improvements Invitation for Bid (IFB) 2013.07.10

Diana:

I spoke to Glenn about the sidewalk program. He did acknowledge that the original intent was to hire another contractor for this project. However, according to Glenn, sidewalk construction has gone so well with Metro-Express that Public Works decided to use them for the remainder of the project, which is slated to be completed at the end of August, 2015.

When Public Works discussed this project initially with the Commission last October, they mentioned in their agenda memo using Metro Express for this project, and that "they may procure the services of an additional contractor." At the February 24, 2015 Meeting, Public works provided an update to the Commission and noted in their agenda memo that Metro Express has multiple crews working on the project and that project goals were on target. Based on these 2 communications with the Commission, they have been made aware that only Metro Express is being used for this project.

In addition, as mentioned above the projected is scheduled for completion in August 2015, leaving very little time left for another contractor to work on this project after we bid out this job, and execute a contract. Optimistically, we could issue a Notice to Proceed in June, leaving potentially less than 3 months prior to the scheduled completion of the project. It may be wise to continue with the current approach of using one contractor, because of the limited time remaining on the construction schedule. When we first discussed this issue, I did not realize how far long they were on this project and their construction timetable.

Although I believe the contract was never meant for such a large project. I do believe the project can be done legally under the continuing contract with Metro-Express, but I will ask Craig his opinion on using this contract. Given the factors mentioned above and if the contract can be legally used, I would recommend allowing Public Works to continue to use Metro-Express and the issuance of a new PO to pay Metro-Express for their services on the sidewalk project.

Mike Pounds
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2800 SW 72nd Avenue
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Phone (305) 460-5101

From: Gomez, Diana
Sent: Tuesday, March 03, 2015 4:58 PM
To: Pounds, Michael
Subject: RE: Citywide Construction of Street Improvements Invitation for Bid (IFB) 2013.07.10

Ok, please try and have that happen as soon as possible.

Diana M. Gomez
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From: Pounds, Michael
Sent: Tuesday, March 03, 2015 4:56 PM
To: Gomez, Diana
Subject: RE: Citywide Construction of Street Improvements Invitation for Bid (IFB) 2013.07.10

Diana:

I plan to talk to Glenn about it as well.

Mike Pounds
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2800 SW 72nd Avenue
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Phone (305) 460-5101

From: Gomez, Diana
Sent: Tuesday, March 03, 2015 4:47 PM
To: Pounds, Michael
Subject: FW: Citywide Construction of Street Improvements Invitation for Bid (IFB) 2013.07.10

Mike,
Let me know how you think we need to proceed... perhaps we can ask the City Attorney for an opinion as to whether or not we can use the current contract?

Also, we need to discuss with Cathy once we know what our recommendation is.

Let me know ASAP.

Diana M. Gomez
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From: Kephart, Glenn
Sent: Monday, March 02, 2015 10:05 AM
To: Pounds, Michael
Cc: Pino, Ernesto; Gomez, Diana
Subject: Re: Citywide Construction of Street Improvements Invitation for Bid (IFB) 2013.07.10

Hopefully we can interpret that there's enough flexibility to utilize existing contract. We have discussed with commission multiple times that we would be using the existing metro contract for this program. We even included a discussion of specific amount they are charging and that this is a very competitive price. commission also discussed that they are pleased with quality and progress. If we have to go back to clarify or ask them to modify contract or waive procurement code, we could do that but I hope that is not required. However, we must not slow the program down or stop.

Sent from my iPhone

On Feb 27, 2015, at 3:22 PM, Pounds, Michael <mpounds@coralgables.com> wrote:

> Let's talk about this on Monday.

Mike Pounds
Chief Procurement Officer
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2800 SW 72nd Avenue
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Phone (305) 460-5101

From: Gomez, Diana
Sent: Friday, February 27, 2015 5:21 PM
To: Pounds, Michael; Kleiman, Keith
Cc: Ingersoll, Kenneth
Subject: RE: Citywide Construction of Street Improvements Invitation for Bid (IFB) 2013.07.10

I agree. The attached actually reads like we only possibly intended to use them for $1.3M for other specific needs and not the sidewalk program (only $114k for sidewalks is listed). We need to have them go out to bid or do some kind of piggyback taken to City Commission for authorization over our $600k piggyback authority.

Please advise them ASAP so that the program is not delayed.

Diana M. Gomez
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PH: 305.460.5275
FX: 305.460.5376

From: Pounds, Michael
Sent: Friday, February 27, 2015 9:40 AM
To: Gomez, Diana; Kleiman, Keith
Cc: Ingersoll, Kenneth
Subject: Citywide Construction of Street Improvements Invitation for Bid (IFB) 2013.07.10

The authority to use this contract for sidewalks is evidenced in the highlighted documents. However, I believe that it was never the intent to do large projects ($2 million citywide sidewalk program) with this contract.

Mike Pounds
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