

POLICY & PLANNING COMMITTEE MEETING

THURSDAY, OCTOBER 20, 2016

10:00 a.m.

**WILLIAM M. LEHMAN MDX BUILDING
3790 NW 21ST STREET
MIAMI, FLORIDA 33142**

SUMMARY MINUTES

Attendees:

Policy & Planning Committee Members

Arthur J. Meyer, Chair

Alfredo L. González, Esq., Vice Chair

MDX Board Members

Louis V. Martinez, Esq. MDX Chair

Shelly Smith Fano, MDX Vice Chair

Leonard Boord

Vincent Brown

Maurice A. Ferré

Javier L. Vázquez, Esq.

Cliff Walters

Absent Committee Members

Maritza Gutiérrez

Rick Rodriguez Pina

James Wolfe

Staff

Javier Rodriguez, Executive Director

Carlos Zaldivar, General Counsel

Marie Schafer, Deputy Executive Director /CFO

Juan Toledo, P.E., Deputy Executive Director/Director of Engineering

Helen Cordero, Manager of Procurement & Contract Administration

Francine Steelman, Associate General Counsel

Maria Luisa Navia Lobo, Board/Executive Secretary

Consultants

Albert Sosa, HNTB – GEC-A

CALL TO ORDER

Committee Chair, Arthur J. Meyer called the Policy & Planning Committee meeting to order. Ms. Navia Lobo called the roll and announced a quorum was present.

DECLARATION OF VOTING CONFLICTS

- Potential Conflict of Interest Report

No conflicts were declared

PUBLIC COMMENT

No Public Comment

ACTION ITEMS

- A) Approval of Summary Minutes
Policy & Planning Committee Meeting of March 22, 2016

Mr. Gonzalez moved to approve the Summary Minutes. Ms. Smith Fano seconded the motion. The motion was unanimously approved.

Mr. Zaldivar requested that action items IV. B and IV. C be addressed together because the items involved the same legal matter.

- B) MDX Procurement/Contract No.: MDX 15-12, Legal Representation in Civil Action Brought Against MDX

- Endorsement to remove Contract Amount cap due to pending matter related to litigation in Circuit Court (Case No. 15-04267 CA 23) involving a bid protest filed by Munilla Construction Management, LLC d/b/a MCM.

- C) MDX Procurement/Contract No.: MDX 16-03, Legal Representation in Civil Action Brought Against MDX

- Endorsement to remove Contract Amount cap due to pending matter related to litigation in Circuit Court (Case No. 16-1946-CA-01) involving a bid protest filed by Munilla Construction Management, LLC d/b/a MCM

Mr. Zaldivar read both action items into the record. He explained that both cases are being handled by attorney Kirk De Leon with the firm De Leon & De Leon, P.A. The cases involve litigation filed against MDX by MCM. Based on the procedural status of both cases, staff is requesting that the contract amount cap be removed. The contract will continue to be closely managed to ensure cost control and budget compliance.

MCM 1:

MCM filed a civil action against the Authority in circuit court. On July 17, 2015, Judge Thomas granted MDX's Motion to Dismiss the Complaint with prejudice. MCM filed an appeal on the granted Motion to Dismiss, which was heard by the Third District Court of Appeal on February 29, 2016. A decision from the Court of Appeal was granted upholding the Motion to Dismiss.

MDX filed a Motion for Attorney Fees that was denied by Judge Thomas with instructions to incorporate the fee claim in the appeal. MDX filed an appeal on the denied Motion for Attorney Fees, which remains pending. MDX's fee claim is based on a statutory right to attorney's fees by the prevailing party. Initial Brief has been filed.

MCM 2:

MCM filed a protest of the contract award for MDX Procurement/Contract Number ITB-16-01

In addition to filing the protest, MCM also filed an Emergency Injunction Motion to stop the award of the contract to the successful bidder. In the response Emergency Motion, the Honorable Judge Jose M. Rodriguez determined that MDX may proceed with their procurement process; however he also ordered that MDX could not take any action that would prejudice MCM's rights under the pending Motion for Injunction until that motion was heard. The parties agreed to stay the execution of the contract until the scheduled hearing of MCM's Motion on March 28, 2016. After significant discovery and a four day injunction trial MDX's award of the contract to the lowest, responsive, and responsible bidder was affirmed by Judge Rodriguez.

MDX filed a Motion for Attorney Fees and a hearing was held on September 20, 2016. Judge Rodriguez denied the Motion. MDX intends to appeal this ruling.

Mr. Gonzalez moved to endorse the removal of contract amount cap for MDX 15-12 and MDX 16-03. Ms. Smith Fano seconded the motion. The motion was unanimously endorsed.

D) MDX Procurement/Contract No.: MDX 17-01, Legal Representation in Potential Appeal of Final Judgment Against MDX

- Authorization for Executive Director to enter into a contract with a highly experienced appellate attorney to provide consultation to the current trial attorneys in preserving the record for appeal; and to lead all appellate efforts against a potential Final Judgment in the case, Electronic Transaction Consultants Corporation (ETCC) v. MDX, (Case No. 12-46272 CA 40)
- Authorization for the Executive Director to compensate other law firms for the time expended in the review of case materials, providing opinions and time spent discussing the appellate process.

Mr. Zaldivar stated that Members had been briefed of the current status of the case during the Shade Meeting that occurred in late August 2016, prior to the 4th mediation. The Executive Director and the General Counsel are anticipating that a significant judgment would be entered against MDX in this case. In order to prepare for an appeal, Staff conducted research to seek out the most effective appellate attorneys in Miami-Dade County. After the research was conducted, Staff contacted numerous attorneys to determine interest, relevant expertise and whether there were any conflicts of interest. Staff interviewed several appellate attorneys and five (5) were forwarded documents related to the case.

On September 27, 2016, a Shade Meeting was held to discuss current settlement strategies and legal expenditures. During the meeting, the Board directed Staff to engage an experienced appellate attorney to work with Weiss Serota to preserve the record for appeal, review the matter from an alternate perspective and lead an appellate effort, if necessary.

As a result of prior research conducted, Staff recommends engaging Rodolfo Sorondo of Holland Knight (H&K). Mr. Sorondo is a former appellate judge for the Third District Court of Appeals (Miami) and now, as a partner at H&K, leads the Appellate Practice Group. Mr. Sorondo has agreed to an hourly rate of \$680.00, which represents a 20% discount from his normal hourly rate of \$850.00; and he will be the only attorney engaged until a Final Judgment is entered. If a Final Judgment is entered, the hourly rate for all other H&K attorneys will be discounted by 20%. Mr. Sorondo's rate would be highest rate in the contract.

Staff is recommending that MDX enter into a contract with H&K to immediately engage Mr. Sorondo's appellate services. Although no Final Judgment has been entered, the additional time would be advantageous as Mr. Sorondo could consult with the trial attorneys, familiarize himself with the case, and provide guidance in the preservation of the record for appellate review. In addition, in order to prepare for an appeal, Mr. Sorondo will review the entire record, including discovery, and will be in a position to provide a separate perspective on the matter.

In addition, Staff is requesting authorization to compensate the other attorneys for their time in reviewing the materials forwarded, providing opinions and discussing the appellate process. The compensation for each attorney varies depending on the respective hourly rate and amount of time dedicated to the review. Mr. Rodriguez and Mr. Zaldivar entertained questions from Members.

Mr. Martinez moved to authorize the Executive Director to enter into contract with Rodolfo Sorondo of Holland Knight and authorization to compensate the other attorneys for their time in reviewing the materials forwarded. Ms. Smith Fano seconded the motion. The motion was unanimously endorsed.

E) Endorsement of Revisions to MDX Property Acquisition Policy and MDX Delegation of Authority Policy

Mr. Zaldivar read the agenda item into the record. He explained the proposed revisions to the MDX Delegation of Authority Policy and the MDX Property Acquisition Policy are intended to consolidate all of the policies and provisions related to acquisition of property into the Property Acquisition Policy. Additionally, the proposed revisions to the MDX Property Acquisition Policy also include guidance for Business Damage Claims and Relocation Assistance and minor revisions for settlement authority. Mr. Boord requested a report of negotiated acquisition settlements for MDX projects. Mr. Zaldivar entertained questions from Members.

Mr. Gonzalez moved to endorse revisions to the Property Acquisition and Delegation of Authority policies. Ms. Smith Fano seconded the motion. The motion was unanimously endorsed.

DISCUSSION ITEM

A) Teaming Restriction in MDX Procurement Process

Mr. Rodriguez informed Members that at the August Operations Committee meeting an extensive discussion was held related to the teaming restrictions enforced in the MDX Procurement Process. The discussion was initiated by the disqualification of two proposers in a Procurement process due to violation of this provision. Members' opinions and preferences on this matter varied and therefore the Chair of the Operations Committee deferred this item to the Policy & Planning Committee for further discussion and consensus.

Ms. Cordero stated the intent of the provision is to ensure fair competition between firms and obtain overall best value to MDX. This procurement process allowed a firm that submits a bid as a "Prime Firm" to also participate on another bidding team as a Subcontractor. When participating as a Subcontractor, however, that Prime Firm cannot be used to satisfy the qualifications of a Prime Firm. In this way, a Prime Firm that does not win may still obtain work if they are participating in another proposal meeting MDX's goal of providing work to as large a pool as possible.

The provision allows as many opportunities as possible to subcontractors that are not Prime Firms to participate in the Procurement Process in an effort to help small/local businesses obtain work and providing maximum flexibility to the Prime Firms to put together the most qualified and cost

effective team. This allowance also accounts for subcontractors that may provide specialized services and/or cases where limited qualified firms may be available for the required services.

Mr. Rodriguez clarified that bidders may only submit one Bid Package. Participation by a Bidder as a Subcontractor in another Bidder's team may only be accepted for work where the qualifications of the firm as a Subcontractor will not be used to meet the minimum Pre-Qualification Requirements for the Prime Firm.

ANNOUNCEMENTS

- Board of Directors Meeting, 10/25/16, 4:00 p.m., William M. Lehman MDX Building
- Joint Budget & Finance and Operations Committee Meeting, 11/15/16, 11:00 a.m. William M Lehman MDX Building
- Board of Directors Meeting, 12/9/16, 4:00 p.m., William M. Lehman MDX Building

ADJOURNMENT

The meeting was adjourned by Committee Chair, Mr. Meyer Minutes prepared by Maria Luisa Navia Lobo, MDX Board Secretary.