

**MINUTES****REGULAR MEETING**

Honorable Bernard C. "Jack" Young, President  
Honorable Stephanie Rawlings-Blake, Mayor  
Honorable Joan M. Pratt, Comptroller and Secretary  
George A. Nilson, City Solicitor  
Alfred H. Foxx, Director of Public Works  
David E. Ralph, Deputy City Solicitor  
Ben Meli, Deputy Director of Public Works  
Bernice H. Taylor, Deputy Comptroller and Clerk

The meeting was called to order by the President.

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President: "I would direct the Board members attention to the memorandum from my office dated November 7, 2011 identifying matters to be considered as routine agenda items together with any corrections and additions that have been noted by the Deputy Comptroller. I would entertain a Motion to approve all of the items contained on the routine agenda."

City Solicitor: "Move the approval of all of the items on the routine agenda."

Comptroller: "Second."

President: "All those in favor say AYE. All opposed. The routine agenda has been adopted. Madam Mayor."

Deputy Comptroller: "Excuse me. I think we should move that Page 70, Item No. 1 to the routine."

President: "What is that page?"

Deputy Comptroller: "Page 70, Item No. 1."

## MINUTES

President: "We are going to move Page 70, no. 1 to the non routine agenda."

Mayor: "To the routine agenda."

President: "I mean to the routine agenda."

Mayor: "You have to do a new Motion right?"

President: "Yes. We need a new Motion. I entertain a Motion."

City Solicitor: "Move approval of all the items on the routine agenda."

Comptroller: "Second."

President: "All those in favor say AYE. All opposed NAY. The Motion carries."

Mayor: "That's it."

President: "That's it."

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**MINUTES****BOARDS AND COMMISSIONS****1. Prequalification of Contractors**

In accordance with the Rules for Qualification of Contractors, as amended by the Board on October 30, 1991, the following contractors are recommended:

A & A Tree Experts, Inc.	\$ 1,179,000.00
ACM Services, Inc.	\$ 1,500,000.00
Am-Liner East, Inc.	\$77,400,000.00
Allied Contractors, Inc.	\$46,377,000.00
CCP Construction Company, Inc.	\$ 8,000,000.00
Chereco Co., Inc.	\$ 3,528,000.00
CitiRoof Corporation	\$ 8,000,000.00
Dissen & Juhn, LLC. and Marine Asset Corporation	\$16,326,000.00
G & W Trucking Corporation	\$ 379,800.00
General Paving & Contracting, Inc.	\$ 4,968,000.00
Machado Construction Co., Inc.	\$ 8,000,000.00
Mobile Dredging & Pumping Co.	\$32,643,000.00
Olympus Painting Contractors, Inc.	\$ 8,802,000.00
Paniagua's Enterprises, Inc.	\$ 3,933,000.00
Spiniello Companies	\$81,000,000.00
Superior Reinforcing, Inc.	\$ 1,170,000.00

**2. Prequalification of Architects and Engineers**

In accordance with the Resolution Relating to Architectural and Engineering Services, as amended by the Board on June 29, 1994, the Office of Boards and Commissions recommends the approval of the prequalification for the following firms:

Development Facilitators, Inc.	Landscape Architects Engineer Land Survey
Narasimhan Consulting Services, Inc.	Engineer

There being no objections the Board, UPON MOTION duly made and seconded, approved the prequalification of contractors and architects and engineers for the listed firms.

**MINUTES****CITY COUNCIL BILL:**

11-0779 - An ordinance concerning the sale of property - 3323 Eastern Avenue for the purpose of authorizing the Mayor and City Council of Baltimore to sell, at either public or private sale, all its interest in certain property known as 3323 Eastern Avenue (Ward 26, Section 11, Block 6423, Lot 012) and no longer needed for public use; and providing for a special effective date.

**ALL REPORTS RECEIVED WERE FAVORABLE.**

UPON MOTION duly made and seconded, the Board approved bill 11-0779 and directed that the bill be returned to the City Council with the recommendation that it also be approved and passed by that Honorable Body. The President **ABSTAINED.**

**MINUTES**Baltimore Development Corporation - License Agreement**ACTION REQUESTED OF B/E:**

The Board is requested to approve and authorize execution of a license agreement with Central United Management, Ltd. Partnership. The period of the agreement is November 15, 2011 through November 15, 2012.

**AMOUNT OF MONEY AND SOURCE:**

N/A

**BACKGROUND/EXPLANATION:**

The license agreement will allow the organization to temporarily place a dumpster on City-owned property located at 210 N. Liberty Street.

Central United Management, Ltd. Partnership, as part of development team, American National, LLC, owns 100-104 W. Lexington Street and 106 W. Lexington Street.

The private property at 100 - 104 W. Lexington Street will be partially renovated and the first floor leased to a convenience store operator.

This license agreement will allow the convenience store operator to place a dumpster, necessary for its operations on City-owned property. The City-owned property is currently occupied by Central Parking. Central Parking's operations will be reduced by two parking spaces, but will not interrupt its operation.

**(FILE NO. 57238)**

UPON MOTION duly made and seconded, the Board approved and authorized execution of the license agreement with Central United Management, Ltd. Partnership.

**MINUTES**

Office of the State's Attorney - Acceptance of Grant Award

**ACTION REQUESTED OF B/E:**

The Board is requested to approve and authorize acceptance of a grant award from the Abell Foundation. The period of the grant award is January 1, 2012 through December 31, 2012.

**AMOUNT OF MONEY AND SOURCE:**

\$127,982.00 - 6000-602412-1150-118100-601009

**BACKGROUND/EXPLANATION:**

The Specialized Prostitution Diversion Program (SPDP) will help reduce the number of prostitution offences in Baltimore City by utilizing problem solving approaches to the issues of prostitution and its underlying causes. The Clinical Social Workers will work with the offenders to find job training, employment, housing and drug treatment programs. The SPDP will provide services to individuals involved in prostitution in order to enable them to become lawful, productive members of society.

**APPROVED FOR FUNDS BY FINANCE**

**AUDITS REVIEWED THE SUBMITTED DOCUMENTATION AND FOUND THAT IT CONFIRMED THE GRANT AWARD.**

UPON MOTION duly made and seconded, the Board approved and authorized execution of the acceptance of the grant award from the Abell Foundation.

## MINUTES

OPTIONS/CONDEMNATION/QUICK-TAKES:

<u>Owner(s)</u>	<u>Property</u>	<u>Interest</u>	<u>Amount</u>
<u>Department of Law - Payment of Settlement</u>			
1. Dwight Matthews (Prior Owner)	942 N. Chester St.	L/H	\$2,300.00

On May 26, 2010, the Board approved the acquisition of the leasehold interest in 942 N. Chester St., by condemnation for the amount of \$31,700.00. The prior owner of the property interest valued the property at \$48,250.00. The parties agreed to settle the action for \$34,000.00. Therefore, the Department is requesting the Board to approve payment of the balance in the amount of \$2,300.00.

Funds are available in account no. 9910-906416-9588-900000-704040.

UPON MOTION duly made and seconded, the Board approved and authorized the foregoing payment of settlement.

**MINUTES**

Mayor's Office of Human Services/ - Agreements  
Homeless Services Program

The Board is requested to approve and authorize execution of the various agreements. The period of the agreement July 1, 2011 through June 30, 2012.

1. **PATRICK ALLISON HOUSE, INC.** **\$ 32,340.00**

Account: 5000-529112-3572-333727-603051

The organization will provide housing and supportive services to approximately eight homeless men of Baltimore City. The funds will be used to offset the costs of providing services which include but are not limited to life skills education, counseling and employability training and support in recovery from drug or alcohol abuse.

**MWBOO GRANTED A WAIVER.**

2. **HEALTH CARE FOR THE HOMELESS, INC.** **\$200,186.00**

Account: 4000-490912-3573-333634-603051

The organization will operate a Convalescent Care Program and provide medical services to 25 homeless individuals of Baltimore City. Services will include but not be limited to casework and case management services, nursing care, linkages to community based services, mental health and addiction services.

**MWBOO GRANTED A WAIVER.**

3. **HEALTH CARE FOR THE HOMELESS, INC.** **\$ 25,000.00**

Account: 4000-490912-3573-333634-603051

The organization will collaborate with other service providers to provide necessary services to the underserved population: namely homeless individuals or individuals who are at risk of homelessness, medically fragile and persons with substance abuse or mental health issues.

**MWBOO GRANTED A WAIVER.**

## MINUTES

Mayor's Office of Human Services/ - cont'd  
Homeless Services Program

4. **MERCY MEDICAL CENTER, INC.** **\$ 89,869.00**

Account: 4000-480012-3571-333665-603051  
5000-523112-3571-333765-603051

The organization will hire a Case Manager and an Eviction Prevention Counselor to provide counseling and case management services to family units who are at risk of homelessness. Services will include but not be limited to prevention of tenant evictions via a range of intervention services including linkage to crisis services and substance abuse treatment programs.

**MWBOO GRANTED A WAIVER.**

5. **PROJECT PLASE, INC.** **\$228,479.00**

Account: 4000-490912-3573-333626-603051

The organization will hire the services of a registered nurse to work with homeless individuals with HIV/AIDS. Services will include but not be limited to performing medical interviews and assessments, making medical referrals and providing linkages, information, and treatment concerning the client's health needs.

**MWBOO GRANTED A WAIVER.**

6. **AT JACOB'S WELL, INC.** **\$ 57,183.00**

Account: 5000-529112-3572-333707-603051

The organization will provide 12 transitional shelter beds to homeless mentally ill men and women of Baltimore City. Services will include but not be limited to sleeping accommodations and case management services to help homeless individuals achieve stable permanent housing and as high level of economic self-sufficiency as possible.

**MWBOO GRANTED A WAIVER.**

**MINUTES**

Mayor's Office of Human Services/ - cont'd  
Homeless Services Program

7. **PUBLIC JUSTICE CENTER, INC.** **\$ 22,750.00**

Account: 5000-523112-3571-333739-603051

The organization will oversee and conduct a Tenant Advocacy Project to provide legal services and tenants' rights training to impoverished tenants and tenant organizations. The project will also assist in preventing unnecessary or unjust evictions and homelessness and improve substandard housing conditions.

8. **BON SECOURS OF MARYLAND FOUNDATION, INC.** **\$ 34,240.00**

Account: 5000-523112-3571-333709-603051

The organization will operate the Women's Resource Center and provide services to homeless women and HIV/AIDS infected women, their families and low-income women who are at risk of eviction. The organization will also hire a Case Manager who will provide emergency assistance, referrals and advocacy, domestic violence counseling, and parenting skills.

**MWBOO GRANTED A WAIVER.**

The agreements are late because of a delay at the administrative level.

**APPROVED FOR FUNDS BY FINANCE**

**AUDITS REVIEWED AND HAD NO OBJECTION.**

UPON MOTION duly made and seconded, the Board approved and authorized execution of the foregoing agreements

**MINUTES**Police Department - Grant Adjustment Notice**ACTION REQUESTED OF B/E:**

The Board is requested to approve acceptance of a grant adjustment notice from the United States Department of Justice, Office of Justice Programs, for the FY09. The grant adjustment notice extends the period of the grant through March 31, 2012.

**AMOUNT OF MONEY AND SOURCE:**

N/A

**BACKGROUND/EXPLANATION:**

On November 18, 2009, the Board approved a grant award agreement with the United States Department of Justice, Office of Justice Programs, for the FY09 "Baltimore City Juvenile Screening and Diversion Program". The program will reduce juvenile recidivism by offering diversion services for youth ages eight to seventeen arrested for nonviolent offenses in Baltimore City.

This item is late because materials were recently received by the Department.

**APPROVED FOR FUNDS BY FINANCE****AUDITS NOTED THIS NO-COST TIME EXTENSION.**

UPON MOTION duly made and seconded, the Board approved acceptance of a grant adjustment notice from the United States Department of Justice, Office of Justice Programs, for the FY09.

**MINUTES**

Health Department - Agreement

**ACTION REQUESTED OF B/E:**

The Board is requested to approve the sponsorship of the 2011 Caregiver and Grandparent Recognition Nominations Luncheon.

The Board is further requested to approve and authorize execution of an agreement with the MJ Harbor Hotel, LLC as well as authorize payment by Expenditure Authorization.

**AMOUNT OF MONEY AND SOURCE:**

\$2,435.73 - 4000-436111-3255-316200-607001

**BACKGROUND/EXPLANATION:**

The luncheon will be held on November 18, 2011 from 12:00 Noon to 3:00 p.m. The luncheon will recognize caregivers who care for an individual age 60 and older, a caregiver who is 60 and older caring for an individual, or a grandparent age 55 and older caring for a grandchild under 18 residing in Baltimore City.

**APPROVED FOR FUNDS BY FINANCE**

**AUDITS REVIEWED AND HAD NO OBJECTION.**

UPON MOTION duly made and seconded, the Board approved the sponsorship of the 2011 Caregiver and Grandparent Recognition Nominations Luncheon.

The Board further approved and authorized execution of the agreement with the MJ Harbor Hotel, LLC as well as authorized payment by Expenditure Authorization.

**MINUTES**

Health Department - Agreement

**ACTION REQUESTED OF B/E:**

The Board is requested to approve and authorize an agreement with InterGroup Services, Inc. (IGS). The period of the agreement is July 1, 2011 through February 29, 2012.

**AMOUNT OF MONEY AND SOURCE:**

\$494,959.94 - 4000-427711-3023-274404-603051

**BACKGROUND/EXPLANATION:**

The IGS will provide services associated with carrying out legislatively mandated functions of the Baltimore Eligible Metropolitan Area (EMA) Ryan White Part A Planning Council.

The IGS will provide technical assistance, research and administrative support for Planning Council functions and activities that include but are not limited to: staff support for clerical and professional expenses required by the Planning Council for the performance of required activities. In addition, the IGS will conduct a needs assessment and obtain input on community needs and priorities through public meetings, focus groups, and ad hoc panels. These services will assist the Planning Council in setting service priorities and developing the EMA's comprehensive plan for the organization and delivery of HIV-related services.

The agreement is late because of budget revisions.

**MWBOO GRANTED A WAIVER**

**APPROVED FOR FUNDS BY FINANCE**

**AUDITS REVIEWED AND HAD NO OBJECTION.**

UPON MOTION duly made and seconded, the Board approved and authorized execution of the agreement with InterGroup Services, Inc.

**MINUTES**

Health Department - Cooperative Agreement

**ACTION REQUESTED OF B/E:**

The Board is requested to approve and authorize a cooperative agreement with the U.S. Department of Justice, Office of Justice Programs (OJP). The period of the cooperative agreement is October 1, 2011 through September 30, 2014.

**AMOUNT OF MONEY AND SOURCE:**

\$2,200,000.00 - 4000-430512-5750-634100-601001

**BACKGROUND/EXPLANATION:**

The cooperative agreement with the OJP provides funds to support the Operation Safe Streets program.

The agreement is late because the Department was waiting for a budget account number.

**APPROVED FOR FUNDS BY FINANCE**

**AUDITS REVIEWED THE SUBMITTED DOCUMENTATION AND FOUND THAT IT CONFIRMED THE GRANT AWARD.**

UPON MOTION duly made and seconded, the Board approved and authorized execution of the cooperative agreement with the U.S. Department of Justice, Office of Justice Programs.

## MINUTES

Health Department - Agreements and Acceptance of a Grant Award

The Board is requested to approve and authorize execution of the various agreements and approve acceptance of a grant award. The period of the agreement is July 1, 2011 through June 30, 2012, unless otherwise indicated.

1. **UNIVERSITY OF MARYLAND, BALTIMORE** \$ 25,000.00  
**ADOLESCENT AND YOUNG ADULT CENTER (AYAC)**

Account: 5000-520112-3080-288900-603051

The organization will provide comprehensive reproductive health services and ensure that all patients have access to a contraception option(s) of their choice, emergency contraception, STI screening, diagnosis and management. In addition, the AYAC will provide screening for cervical cancer as well as HIV counseling, testing and treatment.

This item is being presented at this time because the agreement was just completed.

2. **ASSOCIATED BLACK CHARITIES, INC.** \$1,872,410.00  
**(ABC)**

Account: 4000-427911-3042-274401-603051 \$ 104,108.00  
4000-498711-3023-274402-603051 \$1,768,302.00

The organization will provide implementation and maintenance of fiscal accounting systems and practices, development and execution of annual contractual agreements, timely review and payment of requests for reimbursement by subgrantees. In addition, the ABC will prepare and submit comprehensive fiscal reports to the Department, monitor the fiscal components of service contracts through written documentation and provider site visits, and participate in meetings with Part A providers to address fiscal or contractual issues. The period of the agreement is July 1, 2011 through February 29, 2012.

**MINUTES**Health Department - cont'd

The agreement is late because of the delay in the award by the United States Department of Health and Human Services, Health Resources and Services Administration to the Department. The Board approved the acceptance of the notice of grant award on September 28, 2011.

**3. BALTIMORE HEALTHY START, INC. (BHS) \$337,600.00**

Account: 5000-530012-3080-595800-603051

The BHS will provide home visitation, case management, health education, and screening for perinatal depression. The BHS will also provide HIV/STD testing and counseling, in-home family planning, referrals for mental health and substance abuse treatment and referral for primary care and obstetric care to 150 women enrolled in the program.

The agreement is late because of the delays in budget revisions.

**MWBOO GRANTED A WAIVER****4. BRUCE SHAPIRO, MD \$ 11,132.00**

Account: 5000-585811-5750-668807-603051

Mr. Shapiro will coordinate and lead the evaluation team of professionals from varied backgrounds. He will provide other services that include medical input on various diagnosed conditions, family debriefing as to assessment results, identify children at risk for developmental delays and children that present with a high probability for a delay, and complete the Individualized Family Services Plan.

The agreement is late because it was recently received from the provider.

**AUDITS REVIEWED AND HAD NO OBJECTION.**

**MINUTES**

Health Department - cont'd

GRANT AWARD

**5. THE DEPARTMENT OF HEALTH & HUMAN  
SERVICES, CENTERS FOR DISEASE  
CONTROL AND PREVENTION**

**\$350,000.00**

Account: 4000-428512-3160-308400-601001

The grant funds will be used for the project entitled: Dating Matters Initiative in Baltimore. The goal of the program is to promote respectful, non-violent dating relationships among youth in high-risk urban communities by focusing on youth ages, 11 to 14. Two models of teen dating violence prevention (standard and comprehensive) will be implemented and evaluated to determine the effectiveness, feasibility, and sustainability of these approaches in high-risk urban communities. The project will cover five years and will include one year for planning and adaptation, and the remaining time will be dedicated to implementation and evaluation. The period of the grant award is September 1, 2011 through August 31, 2012.

**AUDITS REVIEWED THE SUBMITTED DOCUMENTATION AND FOUND THAT IT  
CONFIRMED THE GRANT AWARD.**

**APPROVED FOR FUNDS BY FINANCE**

UPON MOTION duly made and seconded, the Board approved and authorized execution of the foregoing agreements and approved acceptance of the grant award. The Comptroller **ABSTAINED** on Item No. 2.

**MINUTES**

Mayor's Office of Employment - Amendment to Agreement  
Development

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**ACTION REQUESTED OF B/E:**

The Board is requested to approve and authorize execution of an amendment to agreement with Second Chance, Inc. The amendment to agreement will extend the period of the agreement through December 31, 2011.

**AMOUNT OF MONEY AND SOURCE:**

N/A

**BACKGROUND/EXPLANATION:**

On May 25, 2011, the Board approved the original agreement for the period May 23, 2011 through October 31, 2011. This amendment to agreement will enable Second Chance, Inc. to complete Deconstruction Worker Level I on the job training for 12 eligible participants enrolled in the American Recovery and Reinvestment Act On the Job Training National Emergency program.

The amendment to agreement is late because the request to modify the program timeline was received late. The request to extend the term was due to an unanticipated slow recruitment process which delayed program start up. As a result the extension of the training end date is necessary to allow participants to complete the training.

**AUDITS NOTED THE TIME EXTENSION.**

UPON MOTION duly made and seconded, the Board approved and authorized execution of the amendment to agreement with Second Chance, Inc.

**MINUTES**Health Department - Ratification of Invoices**ACTION REQUESTED OF B/E:**

The Board is requested to ratify invoices and authorize payment to Observe, Inc. The invoices are for the period of August 2, 2010 through August 13, 2010.

**AMOUNT OF MONEY AND SOURCE:**

\$2,058.83 - Invoice BA512646006  
2,946.77 - Invoice BA512646007  
**\$5,005.60** - 5000-518610-3160-308500-603026

**BACKGROUND/EXPLANATION:**

On March 17, 2010, the Board approved the initial agreement of Observe, Inc. for a Licensed Clinical Social Worker (Certified Supervisor) for the Department in the amount of \$24,901.14. Subsequently, on March 26, 2010, Purchase Order P512646 was approved by the Bureau of Purchases.

On November 12, 2010, the Department requested a Change Order to increase the number of hours on the Purchase Order and the amount by \$12,451.00. The Department was advised at that time that \$3,664.29 remained on the PO and that a Change Order would exceed the number of hours at the rate quoted, and that the Department would need to request Board approval for the overage amount.

This request was delayed because the individual responsible for processing the invoices left City employment without completing the process. Subsequently upon learning of this lapse, it took several months to get correct invoices to submit to the Board.

**APPROVED FOR FUNDS BY FINANCE****AUDITS REVIEWED AND HAD NO OBJECTION.**

UPON MOTION duly made and seconded, the Board ratified the invoices and authorized payment to Observe, Inc.

**MINUTES**Health Department - Agreement**ACTION REQUESTED OF B/E:**

The Board is requested to approve and authorize execution of an agreement with Destiny's Place, Inc. The period of the agreement is September 1, 2011 through March 31, 2012.

**AMOUNT OF MONEY AND SOURCE:**

No City funds are involved.

**BACKGROUND/EXPLANATION:**

The organization will serve as Volunteer Station for the Senior Companion Program. Through a grant from the Corporation for National and Community Services, the Department sponsors the Senior Companion Program. The grant pays for 100% of the cost of Senior Companions to volunteer to assist special needs clients who want to remain in their homes. While the senior companions are on duty, the grant provides for their life insurance, transportation and other benefits.

The agreement is late because it was just finalized.

**APPROVED FOR FUNDS BY FINANCE**

UPON MOTION duly made and seconded, the Board approved and authorized execution of the agreement with Destiny's Place, Inc.

**MINUTES**Health Department - Revised Notice of Grant Award**ACTION REQUESTED OF B/E:**

The Board is requested to approve and authorize acceptance of a revised notice of a grant award (NGA) from the Maryland Department of Aging (MDoA) State Allocations for FY'11 and to authorize repayment to the MDoA. The period of the grant award was September 30, 2010 through September 29, 2011.

**AMOUNT OF MONEY AND SOURCE:**

(\$54,386.00) - 5000-587811-3044-273300-404001

**BACKGROUND/EXPLANATION:**

On May 4, 2011, the Board approved the original NGA in the amount of \$93,769.00.

This revised notice of grant award reflects an award of \$39,383.00 for FY'11. The Health Department was overpaid by \$54,386.00 and will return the overpayment to the Maryland Department of Aging. All other terms and conditions remain unchanged.

The revised NGA is late because it was just received.

**APPROVED FOR FUNDS BY FINANCE****AUDITS NOTED THE REVISION.**

UPON MOTION duly made and seconded, the Board approved and authorized acceptance of the revised notice of a grant award from the Maryland Department of Aging State Allocations for FY'11 and to authorize repayment to the MDoA.

**MINUTES**Health Department - Notification of a Grant Award**ACTION REQUESTED OF B/E:**

The Board is requested to approve and authorize acceptance of a Notification of a Grant Award (NGA) from the Maryland Department of Aging. The period of the NGA is July 1, 2011 through June 30, 2012.

**AMOUNT OF MONEY AND SOURCE:****Senior Center**

\$ 10,513.00	-	5000-535712-3024-268405-603051	Action in Maturity
3,030.00	-	5000-535712-3024-268401-603051	Allen Senior Ctr.
12,185.00	-	5000-535712-3024-268414-603051	Edward A. Myerberg
14,458.00	-	5000-535712-3024-268403-603051	Forest Park Center
7,092.00	-	5000-535712-3024-268409-603051	Greenmount Center
4,062.00	-	5000-535712-3024-268410-603051	Hatton Center
20,144.00	-	5000-535712-3024-268406-603051	Harford Center
3,186.00	-	5000-535712-3024-268407-603051	John Booth Center
10,000.00	-	5000-535712-3024-268408-603051	Oliver Senior Ctr.
10,154.00	-	5000-535712-3024-268411-603051	Sandtown-Winchester Center
8,000.00	-	5000-535712-3024-268404-603051	Senior Network
10,000.00	-	5000-535712-3250-268412-603051	Southwest Center
10,000.00	-	5000-535712-3250-268402-603051	Waxter Senior Center
6,444.00	-	5000-535712-3024-268413-603051	Zeta Senior Center
<b>\$129,268.00</b>			

**BACKGROUND/EXPLANATION:**

This NGA will allow the Health Department to provide funding for the indicated senior centers for program activities and services for senior center participants.

**APPROVED FOR FUNDS BY FINANCE**

**AUDITS REVIEWED THE SUBMITTED DOCUMENTATION AND FOUND THAT IT CONFIRMED THE GRANT AWARD.**

UPON MOTION duly made and seconded, the Board approved and authorized acceptance of the Notification of a Grant Award from the Maryland Department of Aging.

**MINUTES**Health Department - Notification of a Grant Award**ACTION REQUESTED OF B/E:**

The Board is requested to approve and authorize acceptance of a Notification of a Grant Award from the Department of Health and Human Services, Centers for Disease Control and Prevention (CDC), National Center for HIV, Viral, Hepatitis, STDs and TB Prevention. The period of the grant award is September 30, 2011 through September 29, 2012.

**AMOUNT OF MONEY AND SOURCE:**

\$149,700.00 - 4000-422612-3030-271500-404001

**BACKGROUND/EXPLANATION:**

This grant is being awarded to expand STD Surveillance. The program is now one of approximately 20 sites that receive STD Surveillance Network SSUN Funding. The funding pays for an epidemiologist who gathers the data from the STD electronic clinic record and coordinates with the CDC by participating on conference calls and attending the annual meeting. In addition, the grant pays for a Public Health Investigator who interviews persons with gonorrhea, from both private and public sources who are randomly assigned. The Public Health Investigator gathers risk information so that the risk behavior that contributes to gonorrhea transmission is better understood. This data is also managed by the epidemiologist and sent to the CDC.

The notification of grant award is late because it was just received.

**APPROVED FOR FUNDS BY FINANCE**

**MINUTES**

Health Department - cont'd

**AUDITS REVIEWED THE SUBMITTED DOCUMENTATION AND FOUND THAT IT  
CONFIRMED THE GRANT AWARD.**

UPON MOTION duly made and seconded, the Board approved and authorized acceptance of the Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for HIV, Viral, Hepatitis, STDs and TB Prevention.

**MINUTES**Health Department - Revised Notification of Award**ACTION REQUESTED OF B/E:**

The Board is requested to approve and authorize acceptance of a Revised Notification of Award (NoA) from the Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA). The revised NoA extends the period of the award through March 29, 2012.

**AMOUNT OF MONEY AND SOURCE:**

N/A

**BACKGROUND/EXPLANATION:**

On November 17, 2010 the Board approved acceptance of the original NoA in the amount of \$400,000.00, for the budget period September 30, 2010 through September 29, 2011.

This revised notice of award provides a six-month extension to close out the grant as well as approval to use current year unobligated funds in the amount of \$65,631.00 to support the no-cost time extension.

The revised NoA is late because it was just received on September 28, 2011.

**APPROVED FOR FUNDS BY FINANCE****AUDITS NOTED THE TIME EXTENSION.**

UPON MOTION duly made and seconded, the Board approved and authorized acceptance of a Revised Notification of Award from the Department of Health and Human Services, Substance Abuse and Mental Health Services Administration.

**MINUTES**Department of Recreation and Parks - Right-of-Entry Agreement**ACTION REQUESTED OF B/E:**

The Board is requested to approve and authorize execution of a right-of-entry agreement with the Loch Raven Improvement Association. The period of the agreement is effective upon Board approval for two months.

**AMOUNT OF MONEY AND SOURCE:**

N/A

**BACKGROUND/EXPLANATION:**

The Loch Raven Improvement Association (LRIA) is a non-profit community organization. The LRIA received a grant from the Baltimore Community Foundation and has hired a contractor to fabricate and install a neighborhood sign on park property located at Northern Parkway and Hillen Road.

The execution of this agreement will grant the LRIA and its contractor right-of-entry to install the sign and maintain it throughout its useful life.

UPON MOTION duly made and seconded, the Board approved and authorized execution of the right-of-entry agreement with the Loch Raven Improvement Association.

**MINUTES**

Department of Recreation and Parks - Grant Agreement

**ACTION REQUESTED OF B/E:**

The Board is requested to approve and authorize execution of a grant agreement with the Family League of Baltimore City (FLBC). The period of the agreement is July 1, 2011 through June 30, 2012.

**AMOUNT OF MONEY AND SOURCE:**

\$100,000.00 - 6000-678412-4803-11680(0-5)-600000

**BACKGROUND/EXPLANATION:**

The Department is the recipient of an Out of School Time grant award from the FLBC for FY'12. The funds will be utilized to support the After School Program at Robert C. Marshall Recreation Center. Activities funded by the grant will include sports, field trips, enrichment programs and academic instruction for program participants.

The grant agreement is late because of a delay in the receipt of the grant from the FLBC.

**APPROVED FOR FUNDS BY FINANCE**

**AUDITS REVIEWED THE SUBMITTED DOCUMENTATION AND FOUND THAT IT CONFIRMED THE GRANT AWARD.**

**(FILE NO.55358)**

UPON MOTION duly made and seconded, the Board approved and authorized execution of the grant agreement with the Family League of Baltimore City.

**MINUTES**

Space Utilization Committee - Lease Agreement

**ACTION REQUESTED OF B/E:**

The Board is requested to approve and authorize execution of a lease agreement with Messrs. Mark Fuller and Jacob Fuller, tenants, for the rental of the property known as 4809 Buck Schoolhouse Road, consisting of seven acres of farmland and a one-story dwelling. The period of the agreement is July 01, 2011 through June 30, 2012, with the option to renew for two additional one-year periods.

**AMOUNT OF MONEY AND SOURCE:**

<u>Annual Rent</u>	<u>Monthly Rent</u>
\$7,044.00	\$ 587.00

The rent will increase at a rate of 3% for each renewal year.

**BACKGROUND/EXPLANATION:**

The tenants will use the leased premises primarily for agricultural use, along with a one-story dwelling.

The tenants will be responsible for structural maintenance, utilities, maintenance and repairs, trash removal, fire insurance, real estate taxes, and snow removal.

The Space Utilization Committee approved this lease at its meeting on November 01, 2011.

**(FILE NO. 55328)**

UPON MOTION duly made and seconded, the Board approved and authorized execution of the with Messrs. Mark Fuller and Jacob Fuller, tenants, for the rental of the property known as 4809 Buck Schoolhouse Road, consisting of seven acres of farmland and a one-story dwelling.

**MINUTES**Space Utilization Committee - Amendment to Lease Agreement**ACTION REQUESTED OF B/E:**

The Board is requested to approve and authorize execution of an amendment to lease agreement with RWN-200 East Lexington Street, LLC, landlord, for the rental of a part of the property known as the Court Square Building, located at 200 E. Lexington Street, consisting of approximately 3,000 square feet, and known as Suite 100 and 101 for use by the Environmental Control Board (ECB), tenant.

**AMOUNT OF MONEY AND SOURCE:**

\$7,370.00 - 9916-903845-9197-910035-706063

**BACKGROUND/EXPLANATION:**

On August 10, 2011, the lease was approved and it included improvements totaling \$57,680.00. This amendment to lease will increase the amount for the improvements by \$7,370.00, making the total cost of improvements \$65,050.00 (not-to-exceed). The Environmental Control Board will use the lease space.

The lease agreement outlined that the landlord would perform improvements at the site and the City would reimburse the landlord. After the lease approval, additional improvements were needed due to changes in the Environmental Control Board's program. In addition, the landlord will clean and scotch guard the carpet within the leases premises. The cost of the improvements is the only change to the lease agreement. All other terms, conditions and provisions of the lease agreement, dated August 10, 2011 will remain in full force and effect.

The Space Utilization Committee approved this amendment to lease agreement on November 01, 2011.

**MINUTES**Space Utilization Committee - cont'd

UPON MOTION duly made and seconded, the Board approved and authorized execution of the amendment to lease agreement with RWN-200 East Lexington Street, LLC, landlord, for the rental of a part of the property known as the Court Square Building, located at 200 E. Lexington Street, consisting of approximately 3,000 square feet, and known as Suite 100 and 101 for use by the Environmental Control Board.

## MINUTES

Mayor's Office of Employment - TRANSFER OF LIFE-TO-DATE  
Development                      SICK LEAVE

The Board is requested to approve the transfer of LIFE-TO-DATE sick leave days from the listed City employees to the designated employee, Yvette Macon.

The transfer of sick leave days is necessary in order for the designated employee to remain in pay status with continued health coverage. The City employees have asked permission to donate the sick leave days that will be transferred from their LIFE-TO-DATE sick leave balances as follows:

<u>NAMES</u>	<u>DAYS</u>
Elaine Lee	5
Raymond Holmes	5
Lisa Christian	5
Amy Frost	3
Betty Yelity	1
Tyra Williams	1
Shaborah Wright	1
Deborah Harris	1
Lisa Cullings	<u>1</u>
<b>Total</b>	<b>23</b>

APPROVED FOR FUNDS BY FINANCE

THE LABOR COMMISSIONER RECOMMENDED APPROVAL.

UPON MOTION duly made and seconded, the Board approved the transfer of LIFE-TO-DATE sick leave days from the listed City employees to the designated employee, Yvette Macon.

**MINUTES**

Mayor's Office of Employment - Memorandum of Understanding  
Development (MOED)

**ACTION REQUESTED OF B/E:**

The Board is requested to approve and authorize execution of an memorandum of understanding with East Baltimore Development Inc. The period of the MOU is July 1, 2011 through June 30, 2012.

**ACTION REQUESTED OF B/E:**

\$ 77,984.00 - 6000-601412-6311-456000-406001

**BACKGROUND/EXPLANATION:**

Under this MOU, MOED will provide workforce services that enhance job readiness and employment outcomes to East Baltimore residents.

The MOU is late because additional time was required to reach a comprehensive understanding between the parties.

**APPROVED FOR FUNDS BY FINANCE**

**AUDITS REVIEWED AND HAD NO OBJECTION.**

UPON MOTION duly made and seconded, the Board approved and authorized execution of the memorandum of understanding with East Baltimore Development, Inc.

MINUTES

TRANSFERS OF FUNDS

\* \* \* \* \*

UPON MOTION duly made and seconded,

the Board approved

the Transfers of Funds

listed on the following page:

3738

SUBJECT to receipt of a favorable report

from the Planning Commission,

the Director of Finance having

reported favorably thereon,

as required by the provisions of the

City Charter.

The Mayor **ABSTAINED** on Item No. 1.

The President **ABSTAINED** on Item No. 2.

**MINUTES****TRANSFER OF FUNDS**

<u>AMOUNT</u>	<u>FROM ACCOUNT/S</u>	<u>TO ACCOUNT/S</u>
<u>Baltimore Development Corporation (BDC)</u>		
1. <b>\$235,000.00</b>	9910-904115-9600	9910-905829-9603
22 <sup>nd</sup> EDF	Constr. Res.	Westside Facade
	22 <sup>nd</sup> EDF	Improvement
	Westside Init.	

This transfer will provide funds for draw request no. 2 as per the grant agreement with the Downtown Partnership of Baltimore, approved July 2010, as amended to administer a Façade Improvement Grant Program for businesses and property owners in the Westside Initiative area.

Bureau of Water and Wastewater

2. \$ 50,000.00	9956-905233-9549	
Wastewater	Constr. Reserve	
Utility Fund	Wastewater Annual	
150,000.00	Improvements	
<u>County</u>		
<b>\$200,000.00</b>	-----	9956-906642-9551-
		900020-4, Site

The transfer of funds is required to cover the costs for procurement of property adjacent to the Back River Wastewater Treatment Plant.

**MINUTES**

Department of Housing and - Agreements  
Community Development

The Board is requested to approve and authorize execution of the various agreements:

**1. COLDSTREAM-HOMESTEAD-MONTEBELLO** **\$ 55,892.00**  
**COMMUNITY CORPORATION, INC. (CHM)**

Accounts: 2089-208911-5930-432726-603051	\$ 960.00
2089-208911-5930-432730-603051	\$ 960.00
2089-208911-5930-432735-603051	\$ 960.00
2089-208911-5930-432781-603051	\$ 960.00
2089-208911-5930-432783-603051	\$ 960.00
2089-208912-5930-432726-603051	\$ 7,825.00
2089-208912-5930-432730-603051	\$ 10,002.00
2089-208912-5930-432735-603051	\$ 4,915.00
2089-208912-5930-432781-603051	\$ 22,740.00
2089-208912-5930-432783-603051	\$ 5,610.00

The CHM will administer activities and coordinate citizen participation in the planning and implementation of community development activities in the CHM Urban Renewal area. The funds will be used to subsidize the CHM's operating expenses. The period of the agreement is July 1, 2011 through June 30, 2012.

**2. JOHNSTON SQUARE COMMUNITY** **\$ 27,791.00**  
**DEVELOPMENT CORPORATION, INC.**

Accounts: 2089-208912-5930-432926-603051	\$ 10,095.00
2089-208912-5930-432981-603051	\$ 11,566.00
2089-208912-5930-432983-603051	\$ 6,130.00

The organization will administer activities and coordinate citizen participation in the planning and implementation of community development activities in the Johnston Square community. The funds will be used to subsidize the organization's operating expenses. The period of the agreement is August 1, 2011 through July 31, 2012.

## MINUTES

DHCD - cont'd**3. BALTIMORE OFFICE OF PROMOTION  
AND THE ARTS, INC.****\$ 42,579.00**

Account: 2089-208912-5930-423230-603051

The agreement will provide funding for the BrightStARTS Workshop for Children Program. The BrightStARTS Program will provide free art instruction to children ages 6-18 with workshops in such areas as visual literacy and performing arts. Thirty-eight workshops will be held from October 2011 to June 2012 at various locations throughout Baltimore City. Professional artists who are experienced teachers will conduct the workshops. Since 1996, the focus of the program has included literacy. It has become a model arts educational program in Baltimore City, introducing under-served children to their heritage and to their own potential. The period of the agreement is July 1, 2011 through June 30, 2012.

On June 22, 2011 the Board approved the Resolution authorizing the Commissioner of the Department of Housing and Community Development (DHCD), on behalf of the Mayor and City Council, to file a Federal FY 2011 Annual Action Plan for the following formula programs:

1. Community Development Block Grant (CDBG)
2. HOME Investment Partnership Act (HOME)
3. Emergency Shelter Grant Entitlement (ESG)
4. Housing Opportunity for People with AIDS (HOPWA)

The DHCD began negotiating and processing the CDBG agreements effective July 1, 2011 and beyond, as outlined in the Plan, pending approval of the Resolution. Consequently, the agreements were delayed due to final negotiations and processing.

**MWBOO GRANTED A WAIVER.****APPROVED FOR FUNDS BY FINANCE****AUDITS REVIEWED AND HAD NO OBJECTION.**

**MINUTES**

DHCD - cont'd

UPON MOTION duly made and seconded, the Board approved and authorized execution of the foregoing agreements.

**MINUTES**

Department of Housing and        - Agreement  
Community Development (DHCD)

**ACTION REQUESTED OF B/E:**

The Board is requested to approve and authorize execution of an agreement with the Belair-Edison Neighborhoods, Inc. The period of the agreement is July 1, 2011 through June 30, 2012.

**AMOUNT OF MONEY AND SOURCE:**

\$ 5,257.00 - 2089-208911-5930-436891-603051  
26,500.00 - 2089-208912-5930-436872-603051  
4,000.00 - 2089-208912-5930-436883-603051  
10,000.00 - 2089-208912-5930-436881-603051  
54,150.00 - 2089-208912-5930-436891-603051  
**\$99,907.00**

**BACKGROUND/EXPLANATION:**

The agreement will provide Community Development Block Grant (CDBG) funds to subsidize the sub-grantee's operating expenses. Under the terms of the agreement, the sub-grantee will continue to provide homeownership counseling services to low and moderate-income persons. The sub-grantee will also work to facilitate economic development in the Belair-Edison Commercial Business District.

On June 22, 2011, the Board approved the Resolution authorizing the Commissioner of the Department of Housing and Community Development (DHCD), on behalf of the Mayor and City Council, to file a Federal FY 2011 Annual Action Plan for the following formula programs:

1. Community Development Block Grant (CDBG)
2. HOME Investment Partnership Act (HOME)
3. Emergency Shelter Grant Entitlement (ESG)
4. Housing Opportunity for People with AIDS (HOPWA)

The DHCD began negotiating and processing the CDBG agreements effective July 1, 2011 and beyond, as outlined in the Plan, pending approval of the Resolution. Consequently, the agreements were delayed due to final negotiations and processing.

## MINUTES

DHCD - cont'd

FOR FY 2011, MBE AND WBE PARTICIPATION GOALS FOR THE ORGANIZATION WERE SET ON THE AMOUNT OF \$16,801.00 AS FOLLOWS:

MBE: \$1,680.00

WBE: \$ 840.00

APPROVED FOR FUNDS BY FINANCE

AUDITS REVIEWED AND HAD NO OBJECTION.

UPON MOTION duly made and seconded, the Board approved and authorized execution of the agreement with the Belair-Edison Neighborhoods, Inc.

## MINUTES

Department of Housing and - Local Government Resolutions  
Community Development

The Board is requested to approve and authorize execution of the various local government resolutions.

The below listed organizations are applying to the State of Maryland's Community Legacy Program (CLP). A local government resolution of support is required by the State for all applications to the program for funding.

<u>Organization</u>	<u>Amount</u>
1. B&O RAILROAD MUSEUM, INC.	\$185,000.00 (CLP)

The B&O Railroad Museum, Inc., located at 901 W. Pratt Street, Baltimore, MD 21223, proposes the Repairing the B&O Railroad Museum Access Bridge Over Carey Street Project. The South Carey Street Bridge is the lifeline between the east and west ends of the campus. A bridge has been in this location since the 1830's, making it the oldest rail section in America that has been continually spanned by a railroad bridge. This bridge has been in its current form since the 1880's, with major repairs being performed in the 1950's. A 2005 engineering report performed by Century Engineering found that the bridge was in "fair" condition, but in dire need of repairs so that it will not fall into unstable or unsafe condition. Major structural issues that will be addressed will include repairing railings on the top of the bridge and installing a debris catcher, retrofitting bearing plates at the bottom of the bridge's columns, cleaning and repainting all structural steel, including the columns and repairing the bridge's drainage system.

Based on estimates supplied by the engineering firm and the museum's physical plant staff, the anticipated cost is \$240,000.00 of which \$20,000.00 is design, \$15,000.00 is site prep and \$205,000.00 is the actual construction costs to fully restore this structure and ensure that it is in solid working order for several generations.



## MINUTES

DHCD - cont'd

- b. City Arts Studio Lofts Project, located at 426-438 E. Oliver Street in the Greenmount West neighborhood of Baltimore will consist of eight units serving families below 80% AMI. TRF Development Partners, Homes for America and Jubilee Housing have created the award winning City Arts building on a formerly abandoned Baltimore City property located at 1500 Greenmount Ave. The City Arts building addresses both the community's long standing need for affordable housing and the growing demand to provide artist live-work space. City Arts Historic Towns is the next stage that is underway, which is adjacent to 1500 Greenmount site. The properties will serve 70-120% AMI.

TRF Development Partners' mission is to create wealth and opportunity for Baltimore families by investing in high quality housing that local residents can afford. TRF has invested over \$1,000,000,000.00 towards its wealth-building agenda for low- and moderate-income people and places through the strategic use of capital, knowledge and innovation.

UPON MOTION duly made and seconded, the Board approved and adopted the Local Government resolution.

**MINUTES**Department of Public Works - Easement Agreement**ACTION REQUESTED OF B/E:**

The Board is requested to approve and authorize execution of an easement agreement with BH Association, Inc.

**AMOUNT OF MONEY AND SOURCE:**

N/A

**BACKGROUND/EXPLANATION:**

BH Association, Inc. has entered into an agreement with Hanover Canton, LLC to sell the parcel of land at 3607 O'Donnell Street for the purposes of constructing approximately 440 rental dwelling units (but no more than 470 units), approximately 17,000 - 28,500 square feet of ground floor retail space (but no more than 30,000 square feet of retail space), and 650 garage parking spaces. As currently designed, a portion of the proposed development will encroach into two separate sanitary sewer easements currently benefiting the City.

A memorandum of understanding to allow Hanover Canton, LLC to build over two existing easements was approved by the Board of Estimates on August 17, 2011. However, should there be a need to relocate the sanitary line in the future, the City wishes to have an easement which adjoins the proposed apartment development on land owned by BH Association, Inc. in order to construct a new sanitary line.

UPON MOTION duly made and seconded, the Board approved and authorized execution of the easement agreement with BH Association, Inc.

**MINUTES**Department of Public Works - Expenditure of Funds**ACTION REQUESTED OF B/E:**

The Board is requested to approve and authorize an expenditure of funds to pay the National Association of Clean Water Agencies (NACWA). The period of the membership is October 1, 2011 through September 30, 2012.

**AMOUNT OF MONEY AND SOURCE:**

\$32,770.00 - 2070-000000-5541-399300-603022

**BACKGROUND/EXPLANATION:**

This expenditure of funds will pay a group membership fee with the NACWA. The NACWA provides a viable option for public agencies as Clean Water Act regulations and enforcement continues to expand, making the case for a new approach that lets municipalities act as the drivers for prioritizing compliance with existing and new Clean Water Act regulations. As the Department is faced with the Consent Decree, membership in the NACWA will enable its executives to be kept abreast of the latest changes and regulations related to Clean Water Act Compliance.

The current membership dues include a 4% increase from last year's amount of \$31,509.00.

**APPROVED FOR FUNDS BY FINANCE****AUDITS REVIEWED AND HAD NO OBJECTION.**

UPON MOTION duly made and seconded, the Board approved and authorized execution of the expenditure of funds to pay the National Association of Clean Water Agencies.

## MINUTES

EXTRA WORK ORDERS AND TRANSFERS OF FUNDS

\* \* \* \* \*

UPON MOTION duly made and seconded,

the Board approved the

Extra Work Orders and Transfers of Funds

listed on the following pages:

3750 - 3755

All of the EWOs had been reviewed and approved

by the

Department of Audits, CORC,

and MWBOO, unless otherwise indicated.

The Transfer of Funds was approved

SUBJECT to receipt of a favorable report

from the Planning Commission,

the Director of Finance having reported favorably

thereon, as required by the provisions

of the City Charter.

Item No. 3 has been **DEFERRED** for one week. The President

**ABSTAINED** on Items No. 1, 2, 4, and 5.

## MINUTES

EXTRA WORK ORDERS

<u>Contract</u>	<u>Prev. Apprvd.</u>	<u>Time</u>	<u>%</u>
<u>Awd. Amt.</u>	<u>Extra Work</u>	<u>Contractor</u>	<u>Ext. Compl.</u>

Bureau of Water and Wastewater

1. EWO #025, \$119,567.84 - S.C. 852R, Denitrification Filters & Related Work for the Enhanced Nutrient Removal Facilities at Patapsco Wastewater Treatment Plant  

\$115,688,000.00	\$1,135,324.64	Fru-Con Construction, LLC	0	39
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2. EWO #002, \$ 57,868.10 - W.C. 1184, Replacement of Freight Elevators at Montebello Plant 1 and 2  

\$1,319,635.00	\$ 0.00	Elevator Control Service	0	40
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3. EWO #030, \$570,000.00 - W.C. 1198, Urgent Need Work Infrastructure Rehabilitation Various Locations  

\$10,473,325.00	\$11,675,767.82	Spiniello Companies	0	88
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4. EWO # 004, \$ 40,788.30 - S.C. 878, Repair & Replacement of Existing Sanitary Sewers at Various Locations  

\$2,893,528.30	\$ 71,102.18	R.E. Harrington Plumbing & Heating	0	68
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5. EWO #003, \$ 59,106.62 - S.C. 878, Repair & Replacement of Existing Sanitary Sewers at Various Locations  

\$2,893,528.30	\$ 11,116.25	R.E. Harrington Plumbing & Heating	0	68
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**MINUTES****EXTRA WORK ORDERS**

Contract	Prev. Apprvd.		Time	%
<u>Awd. Amt.</u>	<u>Extra Work</u>	<u>Contractor</u>	<u>Ext.</u>	<u>Compl.</u>

Department of General Services

6. EWO #003, \$ 84,237.00 - Project 617 2000 Race Street -  
Environmental Remediation

\$ 307,717.00	\$ 22,842.00	Environmental Resources Management	-	-
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7. **TRANSFER OF FUNDS**

<u>AMOUNT</u>	<u>FROM ACCOUNT/S</u>	<u>TO ACCOUNT/S</u>
\$ 30,000.00	9916-901840-9194	9916-902840-9197
	Motor Vehicle Revenue	MVR
<u>80,000.00</u>	9916-901840-9194	9916-902840-9197
	General Funds	General Funds

**\$110,000.00**

Under an agreement with the City, Environmental Resources Management has been providing environmental and regulatory consultant services to the Department of General Services and the Law Department to comply with U.S. Environmental Protection Agency requirements. The Environmental Protection Agency has required additional work from the City and assistance from the Environmental Resource Management is needed to provide the work.

Department of Transportation

8. EWO #004, \$483,116.68 - PB 09828R, Renovations to the Benton  
Building, Floors 5 & 7 and 6400 Pulaski Highway

\$1,706,000.00	\$ 47,247.46	JA Argetakis Contracting Co., Inc.	-	-
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## MINUTES

EXTRA WORK ORDERS

Contract	Prev. Apprvd.	Time	%
<u>Awd. Amt.</u>	<u>Extra Work</u>	<u>Contractor</u>	<u>Ext. Compl.</u>

9. TRANSFER OF FUNDS

<u>AMOUNT</u>	<u>FROM ACCOUNT/S</u>	<u>TO ACCOUNT/S</u>
\$300,000.00	9950-917001-9507	9950-903742-9508-2
MVR	Constr. Reserve	Contingencies
	Highway Federal	Benton Building
		Renovation

This transfer will partially fund the costs relating to expenditure authorization request no. 4 to project PB 09828R, Renovations to the Benton Building Floors 5 and 7.

**MINUTES**

Parking Authority for - Maintenance Agreement for  
Baltimore City (PABC) Revenue Control Equipment

**ACTION REQUESTED OF B/E:**

The Board is requested to approve and authorize execution of a maintenance agreement with Scheidt & Bachmann USA, Inc. (S&B) for the revenue control equipment at 16 parking facilities managed by the PABC. The period of the agreement is effective November 01, 2011 for two years.

**AMOUNT OF MONEY AND SOURCE:**

<u>Year 1</u>	<u>Year 2</u>	<u>Account Nos.</u>	<u>Locations</u>
\$ 25,931.00	\$ 25,931.00	2075-000000-2321-407200-603016	(Arena)
\$ 25,931.00	\$ 25,931.00	2075-000000-2321-407700-603016	(Baltimore)
\$ 25,931.00	\$ 25,931.00	2075-000000-2321-408200-603016	(Caroline)
\$ 25,931.00	\$ 25,931.00	2075-000000-2321-408750-603016	(Fayette)
\$ 25,931.00	\$ 25,931.00	2075-000000-2321-408300-603016	(Fleet & Eden)
\$ 25,931.00	\$ 25,931.00	2075-000000-2321-407400-603016	(Franklin)
\$ 11,067.00	\$ 11,067.00	2076-000000-2321-254200-603016	(JFB Lot)
\$ 25,931.00	\$ 25,931.00	2075-000000-2321-407500-603016	(Lexington)
\$ 25,931.00	\$ 25,931.00	2075-000000-2321-407900-603016	(Little Italy)
\$ 25,931.00	\$ 25,931.00	2075-000000-2321-407100-603016	(Market)
\$ 25,931.00	\$ 25,931.00	2075-000000-2321-407000-603016	(Marriott)
\$ 25,931.00	\$ 25,931.00	2075-000000-2321-407600-603016	(Penn Stat.)
\$ 25,931.00	\$ 25,931.00	2076-000000-2321-253900-603016	(Redwood)
\$ 25,931.00	\$ 25,931.00	2075-000000-2321-408100-603016	(St. Paul)
\$ 25,931.00	\$ 25,931.00	2075-000000-2321-407300-603016	(Water)
\$ 25,931.00	\$ 25,931.00	2076-000000-2321-254000-603016	(West)
<b>\$400,032.00</b>	<b>\$400,032.00</b>		

**BACKGROUND/EXPLANATION:**

On November 10, 2004, the Board approved a three-year Maintenance Agreement with S&B that was in effect for 3 years and covered the revenue control equipment that was installed at the time at 9 facilities. On May 28, 2008, the Board approved a second three-year Maintenance Agreement with S&B and covered the revenue control equipment that was installed at the time at 15 facilities. Since that time, the PABC has installed S&B equipment at one additional facility. The Board is requested to approve a two-year maintenance agreement for the equipment installed at the 16 facilities.

**MINUTES**

PABC - cont'd

This equipment has made a significant contribution to the substantial increases in revenue that the PABC has experienced during the past seven years. The PABC is pleased with the function of the equipment and the service provided by (S&B) to date. This maintenance agreement will ensure the continued function of the equipment.

**APPROVED FOR FUNDS BY FINANCE.**

**AUDITS REVIEWED AND HAS NO OBJECTION.**

**THIS IS A SOLE SOURCE CONTRACT THAT CANNOT BE SEGMENTED.  
THEREFORE, THE MBE/WBE PROGRAM IS NOT APPLICABLE.**

**(FILE NO. 55987)**

UPON MOTION duly made and seconded, the Board approved and authorized execution of the maintenance agreement with Scheidt & Bachmann USA, Inc. for the revenue control equipment at 16 parking facilities managed by the PABC.

**MINUTES**Bureau of Solid Waste - Polystyrene Recycling Agreement**ACTION REQUESTED OF B/E:**

The Board is requested to approve and authorize execution of a polystyrene recycling agreement with Dart Care, LLC (DART). The period of the agreement is six months from the Notice to Proceed, with an option at the City's sole discretion to renew the agreement for an additional six months, on the same terms and conditions.

**AMOUNT OF MONEY AND SOURCE:**

N/A

**BACKGROUND/EXPLANATION:**

This agreement will allow City residents to drop off polystyrene materials at the Northwest Citizen's Convenience Center and Mechanical Street Sweeping Facility located at 2840 Sisson Street. The Dart Care, LLC will collect and haul away the polystyrene materials from the facility for recycling. Dart Care, LLC will provide a container for the collection of the polystyrene materials.

Dart Care, LLC, at its own expense, at least twice monthly, and at times chosen by the City and agreeable to DART, will haul away the polystyrene materials. DART must haul away polystyrene materials within 48 hours of written notice if collected materials exceeds the container capacity. DART will provide monthly reports to the City of the estimated amounts of polystyrene materials that have been collected from the facility and recycled by Dart Care, LLC.

UPON MOTION duly made and seconded, the Board approved and authorized execution of the polystyrene recycling agreement with Dart Care, LLC.

**MINUTES**Bureau of Solid Waste - Memorandum of Understanding**ACTION REQUESTED OF B/E:**

The Board is requested to approve and authorize execution of a memorandum of understanding with the Memorial Baptist Church of Baltimore City, Inc.

**AMOUNT OF MONEY AND SOURCE:**

<u>Total Payment</u>	<u>Annual Payment</u>
\$30,000.00	\$3,000.00

No City funds will be expended. Memorial Baptist Church will pay the City \$30,000.00 over the course of ten years at a rate of \$3,000.00 per year.

**BACKGROUND/EXPLANATION:**

The Memorial Baptist Church of Baltimore City, Inc. will pay tipping fees incurred from a church-affiliated demolition project in January 2009.

From January 22, 2009 through January 24, 2009, Memorial Baptist's demolition contractor, Baltimore Pile Driving and Marine Construction, delivered 1,137 tons of debris to the Quarantine Road Landfill. In accordance with the City's non-profit program, the first 100 tons delivered were free of charge, and the remainder was subject to a discount tipping fee at a rate of \$60.00 per ton.

In light of the fact that Memorial Baptist Church of Baltimore, Inc. demolished two buildings on behalf of the Department of Housing and Community Development and because Memorial Baptist seeks to resolve a lien against its property by Baltimore Pile Driving and Marine Construction, resulting from unpaid tipping fees, a memorandum of understanding between the City and the Memorial Baptist Church of Baltimore, Inc. has been formulated whereby the Church makes restitution in the amount of \$30,000.00 and the City, in turn will transfer the outstanding

**MINUTES**Bureau of Solid Waste - cont'd

bill attributed to Baltimore Pile Driving to Memorial Baptist Church of Baltimore City, Inc., thus permitting Baltimore Pile Driving and Marine Construction disposal privileges at the Quarantine Road Landfill to be resolved.

UPON MOTION duly made and seconded, the Board approved and authorized execution of the memorandum of understanding with the Memorial Baptist Church of Baltimore City, Inc.

**MINUTES**

Department of Finance/ - Correction  
Office of Risk Management

**ACTION REQUESTED OF B/E:**

The Board is requested to approve a correction to the account number for the employment contract with Mr. Thomas Kallio.

**AMOUNT OF MONEY AND SOURCE:**

N/A

**BACKGROUND/EXPLANATION:**

On October 6, 2011, the Board approved an employment contract with Mr. Thomas Kallio for the position of Industrial Hygienist. Inadvertently the source of funds was incorrect. The account number submitted was 2043-000000-1531-170100-603018. The correct account number is 2043-000000-1531-169900-603018.

**APPROVED FOR FUNDS BY FINANCE**

UPON MOTION duly made and seconded, the Board approved and authorized execution of the correction to the account number for the employment contract with Mr. Thomas Kallio.

**MINUTES**

Department of Transportation - Agreement

**ACTION REQUESTED OF B/E:**

The Board is requested to approve and authorize execution of a Design Engineering Agreement for the Sisson Street Bridge with the CSX Transportation. The agreement is effective upon Board approval and will continue until both parties have agreed to the final bridge design.

**AMOUNT OF MONEY AND SOURCE:**

N/A

**BACKGROUND/EXPLANATION:**

The agreement between the CSX Transportation, Inc. and the City is for the construction of a bridge to permit vehicular traffic to pass on Sisson Street over B&O railroad tracks and for the B&O Railroad to maintain a water utility on the bridge.

The City will be responsible for design engineering work for the reconstruction of the Sisson Street Bridge and pay 25% of the cost, plus 100% of any non-necessary design engineering costs, while CSXT will pay for 75% of any and all costs under the agreement, CSXT's legal responsibility may not exceed \$1,000,000.00.

UPON MOTION duly made and seconded, the Board approved and authorized execution of the Design Engineering Agreement for the Sisson Street Bridge with the CSX Transportation.

**MINUTES**

Department of General Services/ - Memorandum of Understanding  
Department of Transportation and Right-of-Entry Agreement

**ACTION REQUESTED OF B/E:**

The Board is requested to approve and authorize execution of the memorandum of understanding (MOU) with Blue Water Baltimore, Inc. and right-of-entry agreement.

1. **BLUE WATER BALTIMORE, INC.** **\$300,000.00**  
**MEMORANDUM OF UNDERSTANDING**

Account: 9950-907743-9514-900020-703044

The purpose of the MOU is to establish a framework by which the City will provide matching funds, in-kind and technical assistance to the organization in connection with "Creating Blue Neighborhoods and Alleys in the City of Baltimore." This funding will help finance improvements in the City's storm water management goals and associated federal requirements. The total cost of this project is \$375,000.00 of which \$75,000.00 will be in-kind (\$45,000.00 from the Department of Transportation and \$30,000.00 from the Department of Public Works). The period of the agreement is effective upon Board approval for three years, unless otherwise terminated pursuant to the terms of the MOU.

2. **TRANSFER OF FUNDS**

<u>AMOUNT</u>	<u>FROM ACCOUNT/S</u>	<u>TO ACCOUNT/S</u>
\$100,000.00	9950-917001-9507	
MVR	Const. Res. Highway Federal	
200,000.00	9950-902106-9528	
Other	Const. Res. Canton Industrial Park	
<u>\$300,000.00</u>	-----	9950-907743-9514-2 Contingencies Blue Water Neighborhoods

**MINUTES**DGS/DOT - cont'd

This transfer will fund the cost related to the MOU with Blue Water Baltimore, Inc. in connection with "Creating Blue Neighborhoods and Alleys in the City of Baltimore". A cash contribution of \$200,000.00 will come from the Department of Public Works account 9958-903090-9520.

**3. BLUE WATER BALTIMORE, INC.  
RIGHT-OF-ENTRY AGREEMENT**

**N/A**

Blue Water Baltimore, Inc. desires to enter the property owned by the City for the purpose of monitoring stormwater quality and quantity and to elevate construction techniques. The property consists of the alleys within the Butcher's Hill and or Patterson Park communities. The period of the agreement is October 1, 2011 through September 30, 2012, with two additional one-year renewal periods at the sole discretion of the City.

The memorandum of understanding and right-of-entry agreement are late because of the negotiation with the grantor.

UPON MOTION duly made and seconded, the Board approved and authorized execution of the memorandum of understanding with Blue Water Baltimore, Inc. and right-of-entry agreement. The Transfer of Funds was approved, SUBJECT to the receipt of a favorable report from the Planning Commission, the Director of Finance having reported favorably thereon, in accordance with the provisions of the City Charter.

**MINUTES**Department of Transportation - Conduit Lease Agreement**ACTION REQUESTED OF B/E:**

The Board is requested to approve and authorize execution of a conduit lease agreement with TCG, Maryland, A New York General Partnership (Lessee). The period of the agreement is October 1, 2011 through December 31, 2012 with one automatic 1-year renewal option.

**AMOUNT OF MONEY AND SOURCE:**

To be determined.

**BACKGROUND/EXPLANATION:**

TCG, Maryland, A New York General Partnership is requesting to lease conduit space in the City's Conduit System. The lessee is a new user and this is their first request to lease space in the City's Conduit System. The lessee's initial linear footage installation is unknown.

The agreement is late because it was recently finalized.

Any and all linear footage installed will be billed semi-annually at a rate of \$0.95 per linear foot.

**(FILE NO. 56533)**

UPON MOTION duly made and seconded, the Board approved and authorized execution of the conduit lease agreement with TCG, Maryland, A New York General Partnership.

**MINUTES**

Department of Transportation - Site Access Agreement

**ACTION REQUESTED OF B/E:**

The Board is requested to approve and authorize execution of a site access agreement with Exxon Mobil Corporation. The period of the agreement is effective upon Board approval for one year or upon completion of the activities, whichever occurs first.

**AMOUNT OF MONEY AND SOURCE:**

N/A

**BACKGROUND/EXPLANATION:**

The site access agreement is to grant permission to Exxon Mobil to enter the property known as the former Baltimore Terminal located at 1200 South Haven Street. Entry will be granted to permit a consultant hired on behalf of the Department of Transportation, to perform surveying, geotechnical sampling, and other work as part of the planned road expansion in the area.

UPON MOTION duly made and seconded, the Board approved and authorized execution of the site access agreement with Exxon Mobil Corporation.

**MINUTES**Department of Transportation - Agreement**ACTION REQUESTED OF B/E:**

The Board is requested to approve and authorize execution of an agreement with Johnson, Mirmiran & Thompson (JMT), for Project No. 1162, On-Call Consultant Services for Reconstruction and Resurfacing Project. The period of the agreement is effective upon Board approval for two years or until the upset limit is reached, whichever occurs first. The City has an option to renew for one additional year under the same terms and conditions.

**AMOUNT OF MONEY AND SOURCE:**

\$1,000,000.00 - upset limit

**BACKGROUND/EXPLANATION:**

The Department has negotiated and procured the consulting agreement approved by the Office of Boards and Commissions and Architectural and Engineering Awards Commission and now desires to utilize the services of the JMT.

The cost of services rendered will be on actual payroll rates not including overhead and burden times a set multiplier. The payroll rates and multiplier have been reviewed by the Department of Audits.

The JMT will assist the Transportation Engineering and Construction Division in engineering design services to include, but are not limited to, on-site project support, GIS support and tasks for various Capital Improvement Projects.

**MBE/WBE PARTICIPATION:**

<b>MBE:</b>	EBA Engineering, Inc.	\$100,000.00	10.00%
	JK Datta Consultants, Inc.	100,000.00	10.00%
	RJM Engineering, Inc.	100,000.00	10.00%
		<u>\$300,000.00</u>	<u>30.00%</u>

**MINUTES**Department of Transportation - cont'd

<b>WBE:</b> Albrecht Engineering, Inc.	\$ 50,000.00	5.00%
Phoenix Engineering, Inc.	<u>40,000.00</u>	<u>4.00%</u>
	\$ 90,000.00	9.00%

**AUDITS NOTED THIS ON-CALL AGREEMENT AND WILL REVIEW TASK ASSIGNMENTS.**

UPON MOTION duly made and seconded, the Board approved and authorized execution of the agreement with Johnson, Mirmiran & Thompson, for Project No. 1162, On-Call Consultant Services for Reconstruction and Resurfacing Project.

**MINUTES**Department of Transportation - Agreement**ACTION REQUESTED OF B/E:**

The Board is requested to approve and authorize execution of an agreement with KCI Technologies, Inc., (KCI) for Project No. 1162, On-Call Consultant Services for Reconstruction and Resurfacing Project. The period of the agreement is effective upon Board approval for two years or until the upset limit is reached, whichever occurs first. The City has an option to renew for one additional year under the same terms and conditions.

**AMOUNT OF MONEY AND SOURCE:**

\$1,000,000.00 - upset limit

**BACKGROUND/EXPLANATION:**

The Department has negotiated and procured the consulting agreement approved by the Office of Boards and Commissions and Architectural and Engineering Awards Commission and now desires to utilize the services of the KCI.

The cost of services rendered will be on actual payroll rates not including overhead and burden times a set multiplier. The payroll rates and multiplier have been reviewed by the Department of Audits.

The KCI will assist the Transportation Engineering and Construction Division in engineering design services to include, but are not limited to, on-site project support, GIS support and tasks for various Capital Improvement Projects.

**MBE/WBE PARTICIPATION:**

<b>MBE:</b>	AB Consultants, Inc.	\$ 70,000.00	7.00%
	J.K. Datta Consultants, Inc.	40,000.00	4.00%
	EBA Engineering, Inc.	80,000.00	8.00%
	Prime Engineering, Inc.	80,000.00	8.00%
		<u>\$270,000.00</u>	<u>27.00%</u>

**MINUTES**

Department of Transportation - cont'd

**WBE:** Carroll Engineering, Inc.                      \$ 90,000.00                      9.00%

**AUDITS NOTED THIS ON-CALL AGREEMENT AND WILL REVIEW TASK ASSIGNMENTS.**

UPON MOTION duly made and seconded, the Board approved and authorized execution of the agreement with Whitman, Requardt & Associates, LLP, for Project No. 1161, On-Call Construction Management Services. The President voted **NO** on this Item.

**MINUTES**Department of Transportation - Agreement**ACTION REQUESTED OF B/E:**

The Board is requested to approve and authorize execution of an agreement with Whitman, Requardt & Associates, LLP, for Project No. 1161, On-Call Construction Management Services. The period of the agreement is effective upon Board approval for three years, or until the upset limit is reached whichever occurs first, with an additional one-year option to extend.

**AMOUNT OF MONEY AND SOURCE:**

\$2,000,000.00 - upset limit

**BACKGROUND/EXPLANATION:**

The Department has negotiated and procured the consulting agreement approved by the Office of Boards and Commissions and Architectural and Engineering Awards Commission and now desire to utilize the services of the consultant.

The cost of services rendered will be on actual payroll rates not including overhead and burden times a set multiplier. The payroll rates and multiplier have been reviewed by the Department of Audits.

The consultant will assist the Transportation Engineering and Construction Division in managing various Capital Improvement Projects. The responsibilities will include constructability review of construction contract documents, addressing contractor request for information, change orders and claim analysis and inspection.

**MBE/WBE PARTICIPATION:**

<b>MBE:</b>	EBA Engineering, Inc.	\$180,000.00	9.00%
	Kumi Construction Management Corporation	180,000.00	9.00%
	Sabra, Wang & Associates, Inc.	<u>180,000.00</u>	<u>9.00%</u>
		\$540,000.00	27.00%

## MINUTES

Department of Transportation - cont'd

<b>WBE:</b> MCS Consulting, Inc.	\$ 60,000.00	3.00%
Phoenix Engineering, Inc.	<u>120,000.00</u>	<u>6.00%</u>
	\$180,000.00	9.00%

**AUDITS NOTED THIS ON-CALL AGREEMENT AND WILL REVIEW TASK ASSIGNMENTS.**

UPON MOTION duly made and seconded, the Board approved and authorized execution of the agreement with Whitman, Requardt & Associates, LLP, for Project No. 1161, On-Call Construction Management Services.

## MINUTES

INFORMAL AWARDS, RENEWALS, INCREASES TO CONTRACTS AND EXTENSIONS

VENDOR	AMOUNT OF AWARD	AWARD BASIS
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Bureau of Purchases

## 1. POINT DEFIANCE AIDS

PROJECTS/NASEN	\$10,000.00	Renewal
Solicitation No. 06000 - Clinical Supplies - Health Department - Req. No. P5157419		

On November 10, 2010, the Board approved the initial award in the amount of \$7,200.00. The award contained two 1-year renewal options. On June 28, 2011, the Board approved an increase in the amount of \$12,350.00. This renewal in the amount of \$10,000.00 is for the period November 10, 2011 through November 09, 2012, with one 1-year renewal remaining.

## 2. AGM CONTAINER

CONTROLS, INC.	\$29,095.00	Low Bid
Solicitation No. B50001272 - Portable Wheelchair Lift - Baltimore Convention Center - Req. No. R585870		

## 3. KIDSMART SOFTWARE

COMPANY	\$28,993.25	Agreement
Solicitation No. 08000 - Software License Support, Hosting, and Training - Mayor's Office of Employment Development - Req. No. R585350		

The Board is requested to approve and authorize execution of a Case Manager License and Access Agreement with Kidsmart Software Company. The period of the agreement is October 1, 2011 through September 30, 2012.

The annual user fees are for user accounts to cover hosting, security, back-up, upgrades, maintenance and user support. The KidSmart Company is the sole provider of the software that has been used by case managers for various youth programs throughout the Mayor's Office of Employment Development. The renewal of the licenses along with the software training and support are necessary for the continuity of the program.

## MINUTES

INFORMAL AWARDS, RENEWALS, INCREASES TO CONTRACTS AND EXTENSIONSVENDOR AMOUNT OF AWARD AWARD BASISBureau of Purchases

The agreement is late due to delays in negotiating the agreement with the vendor.

- |   |                    |                |
|---|--------------------|----------------|
| 4. <u>MOORE MEDICAL, INC.</u>   | <u>\$20,020.00</u> | <u>Renewal</u> |
| Solicitation No. B50001621 - Assorted Syringes - Health Department - Req. No. P515328 |                    |                |

On November 10, 2010, the Board approved the initial award in the amount of \$17,208.24. The award contained two 1-year renewal options. This renewal in the amount of \$20,020.00 is for the period November 10, 2011 through November 9, 2012, with one 1-year renewal option remaining.

- |  |                    |                |
|--|--------------------|----------------|
| 5. <u>CITIZENS PHARMACY</u>  | <u>\$14,545.65</u> | <u>Renewal</u> |
| Solicitation No. B50001685 - Nicotine Patches - Health Department - Req. No. P515418 |                    |                |

On November 17, 2010, the Board approved the initial award in the amount of \$14,545.65. The award contained two 1-year renewal options. This renewal in the amount of \$14,545.65 is for the period November 17, 2011 through November 16, 2012, with one 1-year renewal option remaining.

- |  |                      |                 |
|--|----------------------|-----------------|
| 6. <u>JESCO, INC.</u>  | <u>\$ 900,000.00</u> | <u>Increase</u> |
| Solicitation No. 08000 - OEM Parts and Service for John Deere Equipment - Department of General Services, Fleet Management - P514285 |                      |                 |

On July 11, 2007, the Board approved the initial award in the amount of \$600,000.00. Subsequent actions have been approved. An increase is necessary due to the higher than anticipated demand for parts and service under this contract. This increase in the amount of \$900,000.00 will make the award amount \$2,850,000.00.

## MINUTES

INFORMAL AWARDS, RENEWALS, INCREASES TO CONTRACTS AND EXTENSIONS

VENDOR	AMOUNT OF AWARD	AWARD BASIS
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Bureau of Purchases

It is hereby certified that the above procurement is of such a nature that no advantage will result in seeking nor would it be practical to obtain competitive bids. Therefore, pursuant to Article VI, Section 11 (d)(i) of the City Charter, the procurement of the equipment and/or service is recommended.

- |  |              |          |
|--|--------------|----------|
| 7. BELTWAY INTERNATIONAL, LLC.   | \$343,569.00 | Increase |
| Solicitation No. B50001927 - Tandem Axle Tractors and Lowboy Trailer - Department of General Services - Req. No. R587753 |              |          |

On May 18, 2011, the Board approved the initial award to Beltway International, LLC in the amount of \$242,880.00 and The Chesapeake Supply & Equipment Co. in the amount of \$47,579.00. This increase is necessary to purchase three additional tractors. This increase in the amount of \$343,569.00 will make the total award amount for Beltway International, LLC. \$586,449.00. The contract will expire on May 17, 2012.

**MWBOO GRANTED A WAIVER.**

- |   |                     |          |
|---|---------------------|----------|
| 8. DEPENDABLE RELIABLE SERVICE  | \$ 35,000.00        |          |
| PERSONAL TOUCH HOME AIDES   |                     |          |
| OF BALTIMORE, INC.  | 45,320.00           |          |
| PB HEALTH HOME CARE   | 29,283.00           |          |
| AGENCY, INC.  | <u>\$109,603.00</u> | Increase |
| Solicitation No. B50000747 - Provide In-Home Personal Care/ Homemaker Services - Health Department - P.O. Nos. P510684, P510613 and P510614 |                     |          |

On November 26, 2008, the Board approved the initial award in the amount of \$505,000.00. Subsequent actions have been approved. An increase is necessary to accommodate additional clients. This increase in the amount of \$109,603.00 will make the award amount \$1,308,810.00.

**MWBOO GRANTED A WAIVER.**

## MINUTES

INFORMAL AWARDS, RENEWALS, INCREASES TO CONTRACTS AND EXTENSIONS

VENDOR	AMOUNT OF AWARD	AWARD BASIS
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<u>Bureau of Purchases</u>		
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9. B-CYCLE, LLC	\$ 0.00	Exclusive Negotiating Privilege Agreement
Solicitation No. B50001663 - Bike Sharing System - Department of Transportation - Req. Nos. Various		

The Board is requested to approve and authorize execution of an exclusive negotiating privilege agreement with B-Cycle, LLC. The period of the agreement is effective upon Board approval for 180 days.

On December 8, 2010, the Board opened the proposal for Solicitation No. B50001663, Bike Sharing System. Two proposals were received and scored by the Evaluation Committee. The highest scored proposal from Alta Bicycle Share was found to be non-compliant by MBWOO. The Board requested to approve this exclusive negotiating privilege agreement with B-Cycle, LLC, prior to a final contract. No award is recommended at this time.

MBE/WBE PARTICIPATION:

MWBOO set goals of 4% MBE and 4% WBE.

**MBE:** Broughton Construction, LLC 4.00%

**WBE:** Waterfront Technologies, Inc. 4.00%

**MWBOO FOUND VENDOR IN COMPLIANCE.**

**(FILE NO. 57210)**

President: "Madam Mayor."

Mayor: "Thank you Mr. President. This morning the Board of Estimates approved an Exclusive Negotiating Agreement between the City and B-Cycle, sorry. A company that specializes in bike

## MINUTES

sharing. They do this all across the nation. Bike sharing concepts has been very popular around the world. Having started in Europe in cities like in Paris and in London. In North America, bike sharing systems operate in Washington DC, Minneapolis, Boston, Denver and in Montreal. Today's Board of Estimates approval brings Baltimore one step closer to operating a successful bike share program in the City. I want to thank the Board of Estimates for approving the Exclusive Negotiating Privilege with B-Cycle. We are certainly proud to partner with B-Cycle. It's a distinguish leader of successful bike sharing programs in progressive cities and by bidding on an alternative transportation system that is already in the City which includes, the Charm City Circulator, the new bike lanes, hybrid car charging stations as well as Zipcar, we are creating stronger communities a more livable, walkable communities where neighborhoods can grow. So, I want to thank you all. I am looking forward to it. I just got back into cycling myself, so I am hoping to get out there. Thank you very much."

## MINUTES

INFORMAL AWARDS, RENEWALS, INCREASES TO CONTRACTS AND EXTENSIONS

VENDOR	AMOUNT OF AWARD	AWARD BASIS
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Bureau of Purchases

## 10. LIFESTAR RESPONSE

OF MARYLAND, INC.	\$159,000.00	Renewal
Solicitation No. 06000 - Emergency Medical Technician - Health Department - P.O. No. P515287		

On November 5, 2008, the Board approved the initial award in the amount of \$95,000.00. The award contained four 1-year renewal options. Subsequent actions have been approved. This renewal in the amount of \$159,000.00 is for the period November 10, 2011 through November 9, 2012, with one 1-year renewal option remaining.

It is hereby certified that the above procurement is of such a nature that no advantage will result in seeking nor would it be practical to obtain competitive bids. Therefore, pursuant to Article VI, Section 11 (d)(i) of the City Charter, the procurement of the equipment and/or service is recommended.

**MWBOO GRANTED A WAIVER.**

11. FERGUSON ENTERPRISES, INC.	\$ 25,000.00	
SNAP-ON INDUSTRIAL DIV.		
OF IDSC HOLDINGS	100,000.00	
FASTENAL COMPANY	200,000.00	
HILTI, INC.	25,000.00	
MILL SUPPLY COMPANY, INC.	200,000.00	
SUBURBAN SALES & RENTAL		
CENTER, INC.	120,000.00	
APPLIED INDUSTRIAL		
TECHNOLOGIES, INC.	100,000.00	
	<b>\$770,000.00</b>	Increase
Solicitation No. B50001746 - Hand and Power Tools and Related Hardware - Req. Nos. Various - Agencies Various		

On February 2, 2011, the Board approved the initial award in the amount of \$450,000.00. The award contained three 1-year renewal options. Additional funds are needed to meet the

## MINUTES

INFORMAL AWARDS, RENEWALS, INCREASES TO CONTRACTS AND EXTENSIONS

<u>VENDOR</u>	<u>AMOUNT OF AWARD</u>	<u>AWARD BASIS</u>
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Bureau of Purchases

City's ongoing requirements under this contract. This increase in the amount of \$770,000.00 will make the award amount \$1,220,000.00.

**MWBOO GRANTED A WAIVER.**

UPON MOTION duly made and seconded, the Board approved the foregoing informal awards and increases and Extensions to Contracts. The Mayor **ABSTAINED** on Item No. 2.

**MINUTES****TRAVEL REQUESTS**

<u>Name</u>	<u>To Attend</u>	<u>Fund Source</u>	<u>Amount</u>
<u>Office of the President of the City Council</u>			
1. Lester Davis	Small Group Media Training Workshop New York, NY Nov. 15 - 15, 2011 (Reg. Fee \$995.00)	Gen. Funds	\$1,093.00

The Department has paid the cost of transportation in the amount of \$98.00 and the registration fee in the amount of \$995.00 with a City issued credit card assigned to Mr. Hosea T. Chew.

Baltimore Police Department

2. Dominick J. Griffin	Investigative	Gen.	\$2,128.00
Justin M. Stinnett	Travel	Funds	
	Los Angeles, CA		
	Nov. 14 - 17, 2011		

The Department is requesting \$150.00 for the cost of a rental vehicle.

A rental vehicle is required for investigators to travel from the airport to various locations for interview purposes per Administrative Manual 240-8.

**AM-240-8**

If official City business at the event site will require extensive inspection trips, tours, or other unusual but necessary land travel, the Board of Estimates must approve funds for such expenses in advance of the trip.

The Board, UPON MOTION duly made and seconded, approved the travel request. The President **ABSTAINED** on Item No. 1.

MINUTES

RECOMMENDATIONS FOR CONTRACT AWARDS/REJECTIONS

\* \* \* \* \*

On the recommendations of the City agencies

hereinafter named, the Board,

UPON MOTION duly made and seconded,

awarded the formally advertised contracts

listed on the following pages:

3779 - 3780

to the low bidders meeting the specifications,

or rejected bids on those as indicated

for the reasons stated.

The Transfers of Funds were approved

SUBJECT to receipt of favorable reports

from the Planning Commission,

the Director of Finance having reported favorably

thereon, as required by the provisions

of the City Charter.

The President **ABSTAINED** on Item No.1

## MINUTES

RECOMMENDATIONS FOR CONTRACT AWARDS/REJECTIONSBureau of Water and Wastewater

1. SC 845, Nitrification Filters and Related Work for the ENR at Patapsco Wastewater Treatment Plant **REJECTION** - On August 10, 2011, the Board received and opened four bids for SC 845. All bidders were found to be non-responsive. The Department of Public Works, Bureau of Water and Wastewater requests the Board reject all bids as being in the best interest of the City. Permission to advertise will be requested at a later date.

**A LETTER OF PROTEST HAS BEEN RECEIVED FROM FRU-CON CONSTRUCTION, LLC.**

**A LETTER OF PROTEST HAS BEEN RECEIVED FROM PC CONSTRUCTION COMPANY.**

Deputy Comptroller: "I would also like to announce that the Board received a protest for Page 70 item 1. The recommendation to the Board is to reject all bids. Accordingly the Board did receive the protest and consider them however; the Board will not hear the protest today."

Bureau of Purchases

- |                   |                   |               |
|-------------------|-------------------|---------------|
| 2. B50002137, Ten | Altec Industries, | \$ 212,029.00 |
| Wheel Truck with  | Inc.              |               |
| A Flatbed Crane   |                   |               |

**MWBOO GRANTED A WAIVER**



# HARRIS JONES & MALONE, LLC

2423 MARYLAND AVENUE  
SUITE 100  
BALTIMORE, MARYLAND 21218

LISA HARRIS JONES  
DIRECT DIAL: (410) 366-1500  
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November 1, 2011

Honorable Members of Baltimore City Board of Estimates  
100 Holliday, Suite 204  
Baltimore, Maryland 21202

Stephanie Rawlings-Blake, Mayor  
Joan Pratt, Comptroller  
Bernard "Jack" Young, President City Council  
George Nilson, City Solicitor  
Alfred Foxx, Director, Public Works

c/o Harriett Taylor, Secretary/Deputy Comptroller

Re: Sanitary Contract #845/PC Construction Company

Dear Board Members:

We recognize and acknowledge your policy against hearing protests over recommendations for rejection of bids and that such a recommendation is before you in connection with the above referenced procurement. Nonetheless, we urge you to consider the option of making award to the low bidder, our client, which you have previously elected to utilize in situations where, as here, all of the bidders have been deemed non-compliant.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Lisa Harris Jones', written in a cursive style.

Lisa Harris Jones

# RIFKIN, LIVINGSTON, LEVITAN & SILVER, LLC

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November 1, 2011

## **VIA HAND DELIVERY**

Ms. Harriet Taylor, Deputy Comptroller  
Secretary  
Baltimore City Board of Estimates  
City Hall  
100 N. Holliday Street, Suite 204  
Baltimore, Maryland 21202

RE: **BID PROTEST**  
**Department of Public Works ("DPW")**  
**Sanitary Contract No. 845**  
**Nitrification and Related Work**  
**Patapsco Wastewater Treatment Plant**

This law firm represents Fru-Con Construction, LLC ("Fru-Con"), the lowest responsive and responsible bidder for DPW Sanitary Contract No. 845 (the "Contract" or "SC845"). The purpose of this letter is to protest (1) DPW's recommendation that that Board of Estimates ("Board") should reject all bids, and (2) DPW's determination that Fru-Con's bid is non-responsive as a result of untidy penmanship on a Statement of Intent that was signed prior to bid submission.

Fru-Con requests the Board instruct DPW to investigate whether there indeed was a "change" to the terms of the agreement between Fru-Con and an MBE firm, Top Roofing, Inc. ("Top Roofing"), as DPW apparently believes. If DPW finds upon such investigation that there was no "change" – rather, that the Statement of Intent contains imperfect penmanship – DPW should recommend award to Fru-Con, the lowest responsive and responsible bidder.

**I. Executive Summary**

On August 10, 2011, bids were opened on SC No. 845. Fru-Con's bid was approximately 1.3% (or approximately \$1.2M) higher than the low bidder. On August 16, 2011, DPW determined that Fru-Con's MBE/WBE Forms were compliant with the requirements. (Exh. A).

Two months later, however, DPW questioned the MBE/WBE and Prime Contractor's Statement of Intent ("Part B") between Fru-Con and Top Roofing. DPW looked closely at the second digit of the "Subcontract Amount" and found an imperfection in the penmanship. An image of the relevant portion of the Statement of Intent which was included in the original bid, appears as follows:

Name of Prime Contractor: Fru-Con Construction, LLC  
Name of MBE or WBE: Top Roofing, Inc.  
Brief Narrative Description of the Work/Service to be performed by MBE or WBE:  
Roofing work  
Materials/Supplies to be furnished by MBE or WBE:  
roofing materials, fasteners, nails, shingles, misc wood  
supplies for roofing work  
Subcontract Amount: \$ 1,000,325.00 (If this is a requirements contract, the subcontract amount may be omitted; however, the subcontract percentage must be included.)  
Subcontract percentage of total contract: 1.1 %

MWBOO became concerned about the presence of this untidy second numeral "0" and wondered if it was supposed to be the numeral "3" in the subcontract amount of \$1,000,325.00. Sworn affidavits, attached to this document, prove that Fru-Con and Top Roofing, by their top-level officials, agreed to the subcontract amount of \$1,000,325.00 prior to submission of the bid, which included Statement of Intent. The MBE, Top Roofing, should not lose this subcontract merely because the handwriting was untidy.

Thomas Cox, the owner of Top Roofing, followed a practice whereby MBE/WBEs and prime bidders routinely sign their Statements of Intent in advance. Both parties—the MBE/WBE and the prime bidder—expect the MBE/WBE to give its subcontract quote on bid day. Both parties also expect the prime bidder to fill out the Statement of Intent according to the agreement before bid submission.

As is more fully explained below, the practice of signing the Statements of Intent prior to completion of the subcontract amount allows MBE/WBEs to compete on equal footing with non-

MBE/WBEs. All subcontractors wait until the last minute so they can base their quotes on the best prices from their suppliers, who offer those prices at the last minute (sometimes literally) before bid submission. On the other hand, City officials are rightfully concerned about this practice because, in rare instances on other procurements, other contractors have used the blank forms to make false statements.<sup>1</sup>

The MBE firm should not be harmed simply because the City suspects a mistaken second digit – “3” – was written over with heavy ink so that the intended “0” is accurately shown. Fru-Con and Top Roofing agreed, pre-bid, to the subcontract amount of \$1,000,325. This amounts to 1.1% of Fru-Con’s total contract price subject to MBE goals. Imperfect penmanship by Fru-Con’s employee should not prevent award of the contract to Fru-Con and award of the subcontract to Top Roofing.

#### **a. Events Leading To Bid Submission**

Several weeks prior to bid submission, Top Roofing’s President, Mr. Cox, had talked to Fru-Con representatives regarding the roofing items that Top Roofing might quote to Fru-Con. Mr. Cox had similar discussions with other prospective contractors that were potential bidders on the prime contract. (See Affidavit of Thomas Cox, attached as **Exh. F**).

On the morning of bid opening, August 10, 2011, Thuc Nguyen, a Fru-Con estimator, spoke in a telephone call with Melva Jenkins, Vice-President of Operations at Top Roofing. She offered Fru-Con a subcontract quote of \$1,000,325 for certain components of roofing work within the scope of SC845. (See Ms. Jenkins’ Affidavit, attached as **Exh. B**). Mr. Nguyen made detailed notes on the Telephone Bid sheet including details of the components of work and amount quoted by Top Roofing. (See Mr. Nguyen’s Affidavit, attached as **Exh. C**). Ms. Jenkins followed up the verbal quote in typewritten letters from Top Roofing dated August 10, 2011.

Meanwhile, in the minutes prior to bid submission, Michael Fischer, Fru-Con Vice-President of Operations, spoke by cell phone to Benjamin Johns, a Fru-Con staffer who was sitting in his car at a parking garage near City Hall. Mr. Fischer told Mr. Johns to fill in the subcontract amount of \$1,000,325 for the roofing work and Mr. Johns wrote in this amount. It was at this moment when the final bid price was decided, so Mr. Fischer was in a position to tell Mr. Johns that Top Roofing’s quote of \$1,000,325 represented 1.1% of Fru-Con’s total price (subject to the MBE/WBE goals.) Mr. Johns filled in the percentage “1.1%” as the “subcontract percentage” to complete the requirements of the Statement of Intent. This is supported by the sworn affidavits of Mr. Johns and Mr. Fischer, attached as **Exhs. D** and **E**, respectively.

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<sup>1</sup> See *Jay Dee/Mole Joint Venture v. Mayor of Baltimore*, 725 F. Supp. 2d 513 (D. Md. 2010), where the City rescinded the contract award when it was discovered that prime bidder had completed the Statement of Intent – which had been signed in blank in advance – in a manner that misrepresented the scope of work and dollar value of various MBE/WBE quotes.

The subcontract amount was hand-written by Mr. Johns. Within seconds of mistakenly beginning to write a “3,” Mr. Johns corrected the numeral to the intended “0.” A few minutes later, Mr. Johns delivered Fru-Con’s bid with “\$1,000,325.00” expressed, although inartfully, as the Subcontract Amount on the Statement of Intent.

Prior to bid submission at 11:00 am on August 10, Top Roofing and Fru-Con were – and remain – in agreement about their mutual assent to a subcontract in the amount of \$1,000,325 for certain roofing work.

**b. Fru-Con and Top Roofing Followed Routine Practices For Their Statement of Intent.**

It is helpful to describe the background whereby bidders comply with the requirement to submit the Statement of Intent to subcontract between an MBE/WBE and a prime contractor. For years, prime bidders have been required to award a percentage of their subcontract work to MBE/WBEs or else request a waiver where, despite good faith efforts, they were not able to achieve the MBE/WBE goals. Until recent years, bidders were not required to identify the names of the MBE/WBEs to which the successful bidder would actually award the subcontract—rather, bidders merely promised to achieve the goal.

Problems arose, among other reasons, because primes might rely on a subcontract quote to a certain MBE/WBE if the bidder is successful. After bid opening, however, the successful bidder might disavow any such agreement. The successful bidder might only let the subcontract to the MBE/WBE if it (the MBE/WBE) accepted less favorable subcontract terms, to put it mildly. It seemed appropriate to provide MBE/WBEs with protection from such nefarious practices.

To address this problem, bidders must now furnish the names of the intended MBE/WBEs, a description of the scopes of work for each MBE/WBE, and the subcontract dollar amount. These agreements are expressed in a Statement of Intent. The Statement of Intent must be submitted along with the bid, or else the bid must be rejected as non-responsive.<sup>2</sup>

The Statement of Intent Form provides spaces for the signatories to indicate the date of execution. Neither the Statement of Intent form, nor the specifications for SC845, prohibits execution of the Statement of Intent at the same moment as the parties conclude their negotiations about scope of work or dollar amount.

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<sup>2</sup> On information and belief, the low bidder on SC845 failed to submit a Statement of Intent covering millions of dollars of subcontract work supposedly intended for some unidentified MBE/WBE. It undermines procurement integrity if, after bid opening and public disclosure of the bids, the low bidder is in a position to elect to accept the contract by suddenly producing a Statement of Intent to meet the MBE/WBE goals. The potential harm is easy to illustrate: suppose the low bidder suddenly did not want the contract now that the other bids are revealed, the bidder would simply not produce the Statement of Intent in hopes of getting its improvident bid rejected.

The Statement of Intent Form does not provide a space for the MBE/WBE to authorize, or consent to letting, the prime to fill in the subcontract amount. The Statement of Intent Form could be revised, for instance, so the MBE/WBE could simply check a box stating: "The MBE/WBE authorizes the prime to write in the amount of the subcontract and the percentage of total contract on the Statement of Intent, provided the prime expresses those amounts strictly in accordance with the subcontract quote to be furnished by Mr./Ms. \_\_\_\_\_ prior to bid submission."

To accommodate the requirement for signatures on the Statements of Intent, Top Roofing and Fru-Con followed the standard step-by-step practice to assure that (a) the parties agreed to the same description of the scope of work and the subcontract amount, (b) Top Roofing executed the Statement of Intent early enough so that Fru-Con, as a practical matter, could submit the Statement of Intent along with the timely bid, and (c) Top Roofing was protected against the risk of bid shopping .

The prime bidder is expected to complete the Form properly, including a statement showing the percentage that the MBE/WBE subcontractor represents out of the total dollar value of the prime bid. It is not until the last minute that the prime bidder is in a position to calculate the "subcontract percentage of the total contract." Finally, the prime submits the Statement of Intent—with the correct information on the Form as previously executed—along with the bid.

This routine arrangement is reasonable under the circumstances. For starters, MBE/WBEs deserve the same opportunities as non-MBE/WBE subcontractors. All subcontractors want to wait until the last minute before submitting quotes. This is for two reasons: (1) this is time when suppliers offer subs their lowest prices for materials, and (2) subcontractors do not want to be victimized by prime contractors that might engage in "bid shopping" (*i.e.*, the prime might disclose the early quotes to other subs in hopes of getting lower quotes immediately prior to submission of the bid).

### **c. Post-Bid Submission Events**

As noted, by DPW's letter dated August 16, 2011, Fru-Con's bid, including the Statements of Intent for 17 MBE/WBEs, was deemed compliant with the bidding requirements for SC845. MBE/WBE Participation Forms were compliant with the requirements, including the Statement of Intent between Top Roofing and Fru-Con. This notice of compliance has not been rescinded.

In October, doubts arose about the validity of the Top Roofing Statement of Intent apparently because the subcontract amount was written – with the consent of Top Roofing – on bid submission date but *after* Top Roofing and Fru-Con had executed the Statement of Intent.

This doubt arose from imperfection in the penmanship of the second digit of the subcontract amount. DPW was concerned that the subcontract amount might not exactly reflect what both Top Roofing and Fru-Con intended and, if so, why that "change" in amount was not

initialed by the parties. In contrast, as shown by the affidavits of the individuals involved, there was no doubt on the parties' part.

**II. DPW's Policy Justification For Rejection Of All Bids Is Harmful to MBE/WBE Firms And Is Not In The Best Interest Of The City.**

On Monday, October 31, 2011, the Board of Estimates' draft agenda included an agenda item for SC845, which read as follows:

On August 10, 2011, the City received and opened four bids for SC 845. All of the bidders were found to be non-responsive. the Department of Public Works, Bureau of Water and Wastewater requests the Board reject of all bids in the best interest of the City. Permission to advertise will be requested at a later date.

There has been no formal explanation of the reason for this abrupt recommendation to reject all bids. By rejecting all bids, the City risks awarding SC845 to a higher-priced vendor, significantly delaying project completion, and harming the ability of MBE/WBEs to compete for subcontracts.

Apparently, DPW is going to require all MBE/WBE Statements of Intent must be signed by the bidder and MBE/WBE firm *after* the intended subcontract amount is entered and the percentage of total bid is written on the Statement of Intent.

For some time now, it has been the industry standard for bidders to acquire blank Statements of Intent, signed by MBE/WBE firms, and subsequently fill in amounts and scopes of work agreed to by both parties. An abuse of this practice occurred in the case of Sanitary Contract No. 839R. As described in the U.S. District Court decision in *Jay Dee/Mole Joint Venture v. Mayor of Baltimore*, 725 F. Supp. 2d 513 (D. Md. 2010), a low bidder falsely represented the scope of work and subcontract amount on a pre-signed Statement of Intent.

In that case, the low bidder, Jay Dee/Mole Joint Venture ("JDM"), inaccurately represented on the Statements of Intent the scope of work and subcontract amount quoted by two MBE/WBE firms. The City awarded the contract to JDM on the condition that executed MBE/WBE subcontracts would be submitted within 30 days. JDM failed to enter into a subcontract with one of the MBEs firms, rendering JDM in violation of the contract terms.

The problem in *Jay Dee/Mole* was described as follows:

JDM's bid was submitted in bad faith--that is, JDM knew it had not reached a meaningful agreement with either K-O or R&R at the time of its bid submission--thereby undermining the integrity of both the competitive bidding process and the City's M/WBE laws.

...

JDM had demanded subcontract terms--requiring R&R to provide large amounts of materials and equipment--which R&R never contemplated or agreed to at the time the Statement of Intent was filed with JDM's bid. One of two inferences must be drawn from that action: either JDM lacked an actual, meaningful agreement with R&R at the time the Statement of Intent was filed (because JDM understood the "agreement" to mean one thing and R&R reasonably understood it to mean something materially different), or JDM and R&R did reach an agreement but JDM later used its leverage as the contract awardee to try to strong-arm R&R into accepting new terms.

*Id.* at 521-22, 527.

It appears that the City is concerned that such a situation could occur again. Perhaps such concerns underlie Addendum No. 2 to another DPW contract, Contract No. SC851, "Painting Rehabilitation of Elevated Water Tank & Lox Tanks at the Patapsco Wastewater Treatment Plant." On October 19, 2011, DPW issued this Addendum including a letter to bidders that stated the following:

Please adhere closely to the following instructions when completing and submitting Form Part B:

1. **IT IS NOT ACCEPTABLE FOR AN MBE OR WBE FIRM TO SIGN A BLANK FORM PART B FOR LATER COMPLETION BY THE PRIME CONTRACTOR.**
2. If it is necessary to change information on a Form B after it is completed and signed, including the computation of the "Percentage of Total Contract", EACH CHANGE MUST BE INITIALED.
3. An altered form may result in rejection of the entire bid.

A revised copy of the Part B: MBE/WBE and Prime Contractor's Statement of Intent is enclosed. Larger type has been added to call attention to the requirement for putting initials next to ALL post-signature changes.

DPW seems poised to change its longstanding administrative policy regarding the Statements of Intent.<sup>3</sup> It is one thing for the City, going forward, to establish a new policy that "it is not acceptable for an MBE or WBE firm to sign a blank Form Part B for later completion by

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<sup>3</sup> Fru-Con does not anticipate favorable results from the City's new policy that requires bidders to fill in the subcontract amount and percentage prior to execution. MBE/WBE firms will need to execute final Statements of Intent -- including their subcontract amount -- prior to the day of bid opening. This means that the final price submitted by MBE/WBE firms will be exposed, allowing non-MBE/WBE firms to significantly underbid these prices without MBE/WBE firms having the ability to submit lower, more competitive prices prior to bid opening. In addition, prime bidders' total prices will be exposed to dozens of MBE/WBEs -- prior to bid submission -- as soon as the prime shows the MBE/WBE the percentage that the MBE/WBE's quote represents of the prime's total contract price. This could lead to troublesome results for both MBE/WBEs and prime bidders.

the prime contractor.” It is another thing for the City to introduce this new policy, retroactively, where the MBE/WBE and the prime mutually assented to the terms of the Statement of Intent.

This new prohibition will deny MBEs the same opportunity to compete for subcontracts as non-MBE/WBEs. All subcontractors, MBE/WBEs and non-MBE/WBEs alike, fear the risk that if they provide a final subcontract quote too soon, a bidder can “shop” the bid around and see if other subcontractors would offer to do the work at a lower price. All subcontractors, MBE/WBEs and non-MBE/WBEs, want to be free to revise quotes and work scopes at the last minute when their suppliers provide updated pricing and the prime is putting together its final bid. By rejecting all bids for SC845 and requiring a new round of bids conforming with this new policy concerning Statements of Intent, the ability of MBE/WBE firms to compete for subcontract work on SC845R will be greatly reduced.<sup>4</sup>

The Board similarly runs the risk of awarding the Contract at a higher price than that which Fru-Con is currently offering, and delaying completion in the amount of time that a new round of procurement will take. It is in the best interest of the City to award the contract to Fru-Con, the lowest responsive and responsible bidder, who has also met the Contract’s MBE/WBE participation goals.

### **III. Fru-Con’s Bid Is Responsive Because No Term Was Changed On The Statement Of Intent.**

Insofar as DPW determines that Fru-Con’s bid is non-responsive because of the Statement of Intent, it is wrong. Fru-Con’s bid conforms in all material respects to the requirements contained in the invitation for bids. See COMAR 21.01.02.01B(78). At worst, the imperfect penmanship on the Statement of Intent would constitute a minor defect in Fru-Con’s MBE submission that the Board may waive at its discretion pursuant to Balt. City Code Art V, § 28-14(b).

DPW’s determination, apparently, is based on its belief that Fru-Con improperly “changed” one numeral of the subcontract amount on the Statement of Intent. In fact, no such “change” occurred: Fru-Con did not change or alter its commitment to subcontract with Top Roofing, should the City execute the Contract with Fru-Con.

It should be noted that the Statement of Intent is not a contract itself. Imperfect penmanship on the Statement of Intent amounts to a *mistake in the terms of the bid*, similar to a case where a number on a bid’s schedule of prices is unclear or unspecified. By analogy with State procurement, where a bid contains a typographical or transpositional mistake, and the intended correction of the mistake is clearly evident on the face of the bid documents, that

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<sup>4</sup> Fru-Con understands that the City intends to begin electronic bidding procedures in the near future. As a result, this new policy will become superfluous in that Statements of Intent will likely be submitted electronically and will not be “signed” by the MBE/WBE firm in any way. It does not make sense for DPW to institute a new requirement that DPW will quickly abandon as soon as electronic bidding begins.

correction may be made. *See, e.g., Flipflo Construction, Inc.*, MSBCA No. 2320, 6 MSBCA ¶528 at 7 (2003); COMAR 21.05.02.12C.

The intended subcontract amount is clear from the face of the Statement of Intent. The percentage of the total bid amount available for MBE/WBE participation indicated on the Statement of Intent, which is “1.1%,” means there is only one reasonable interpretation of the unclear numeral. The amount \$1,000,325 is 1.06% (or 1.1% rounded-up) of \$94,576,271, which was the amount of Fru-Con’s bid excluding Item Nos. 402-408 and 418 pursuant to the City’s Q&A instructions.<sup>5</sup>

If the amount on the Statement of Intent were construed as \$1,300,325, this amount would equal 1.37% (or 1.4% rounded-up) of the total bid amount available for MBE/WBE participation. The intended amount of MBE/WBE participation indicated on the Statement of Intent is amenable to *only* one reasonable interpretation. The mistake must be corrected and the bid is responsive.

In addition, Fru-Con indicated on Part C, the “MBE/WBE Participation Affidavit,” an MBE participation amount of \$16,311,817.00. This total MBE participation amount *only* corresponds with an amount of \$1,000,325 committed to Top Roofing. If the Top Roofing Statement of Intent were to indicate \$1,300,325, Fru-Con’s Part C would indicate a total of \$16,611,817.00 worth of MBE participation, which it does not. The intended correction is obvious from both the Statement of Intent and Part C.

As recently explained by the Court of Appeals in an analogous situation, *John L. Mattingly Constr. Co. v. Hartford Underwriters Ins. Co.*, 415 Md. 313, 326-327 (2010) (internal citations and quotations omitted):

Maryland adheres to the principle of the objective interpretation of contracts. Our task in determining the meaning of a contract is necessarily focused on the four corners of the agreement. When the clear language of a contract is unambiguous, the court will give effect to its plain, ordinary, and usual meaning, taking into account the context in which it is used. In contrast, a contract is ambiguous if it is subject to more than one interpretation when read by a reasonably prudent person. If the contract is ambiguous, the court must consider any extrinsic evidence which sheds light on the intentions of the parties at the time of the execution of the contract.

Determining whether language in a contract is susceptible to more than one meaning requires an examination of “the character of the contract, its purpose, and the facts and circumstances of the parties at the time of execution.” *Pacific Indem. Co. v. Interstate Fire & Casualty Co.*, 302 Md. 383, 388 (1985).

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<sup>5</sup> It appears that all bidders correctly calculated their MBE/WBE percentages based on this calculation.

The terms of the Statement of Intent can only be read as \$1,000,325 for two reasons. First, as discussed above, the Statement of Intent is unambiguous because there is only one reasonable interpretation when read by a reasonably prudent person. The percentage shown on the Statement of Intent corresponds to \$1,000,325—not \$1,300,325.

Second, if the Board were to consider the Statement of Intent ambiguous, the Board could consider extrinsic evidence in order to determine the meaning of the ambiguous subcontract amount. In this case, Top Roofing's written quote evidences the amount agreed to between the parties and the affidavits of the individuals involved demonstrate that the parties agreed to \$1,000,325.00

Either way, the Statement of Intent must be read as \$1,000,325.00. There is no other reasonable interpretation of the subcontract amount shown on the Statement of Intent.

**IV. Fru-Con's Bid Was Submitted In Good Faith And Reflects A Meaningful Agreement With Top Roofing.**

As described above, the flaw in Jay Dee/Mole's bid for SC852R exhibited one of two flaws exhibiting a lack of good faith: (1) either the prime had not reached a "meaningful agreement" with the subcontractor, or (2) the prime attempted to use "leverage" to negotiate more favorable terms after bid opening with the subcontractor.

Neither of these flaws apply to Fru-Con and Top Roofing. First, Fru-Con and Top Roofing had an actual meaningful agreement with Top Roofing at the time the Statement of Intent was filed because the parties both had a mutual understanding as to the terms of the intended subcontract. The terms offered by Top Roofing were accepted, without alteration, by Fru-Con.

Second, Fru-Con has never sought to change the terms of the agreement. It is true that where acceptance of a subcontract offer substantially varies the terms of the offer, the supposed acceptance is really a counter-offer. *See Pavel Enters. v. A. S. Johnson Co.*, 342 Md. 143, 163 (1996). However, the subcontract "acceptance" here was not a variation at all. In fact, it was a "mirror image" of the terms offered by Top Roofing.

To hold that Fru-Con's bid is not responsive as a result of the sloppy correction of a single digit to match the agreement reached between the parties would be both arbitrary and detrimental to the best interest of the City.

**V. Conclusion and Relief Requested**

The Board of Estimates should call upon DPW to more fully analyze the issues arising

out of this procurement. DPW should evaluate whether the MBE/WBE and prime acted fairly in their method of filling out the Statement of Intent Forms. If so, the contract should be awarded to Fru-Con.

As DPW will observe, the MBE signed the Statement of Intent early on and authorized the prime to fill in the blanks later on. The MBE agreed to give its subcontract quote on bid day with the understanding that the prime would accurately fill in the subcontract amount. The MBE called in (and later faxed) its subcontract quote, and the prime wrote the agreed upon amount on the pre-signed Statement of Intent. The MBE and prime, Top Roofing and Fru-Con, agreed on the deal and consented to this procedure, mostly to accommodate the City's requirements for submission of the Statement of Intent along with the bid.

DPW properly determined that Fru-Con's bid was responsive and compliant with the MBE/WBE requirements in August. In October, however, DPW set forth new rules. DPW decided all bids are non-responsive based, apparently, on these new rules about timing for completion of the Forms for "Statements of Intent."

It is unfair to apply the new rules retroactively to SC845, especially without giving the MBE, Top Roofing, a reasonable opportunity to provide details prior recommending hasty action of the Board of Estimates. DPW may conclude that MBEs, going forward, must execute the Statements at the same time as the Forms are filled out. Maybe DPW needs to provide more protection against for MBEs against the problems where prime bidders -- in bad faith -- misstate the subcontract amounts quoted.

Top Roofing and Fru-Con do not have such problems and do not need any such protection. On the facts presented in this case, the MBE and prime agreed to a subcontract amount for certain opportunity to enter the roofing subcontract.

Fru-Con's bid is responsive. The imperfect penmanship on the Statement of Intent is, at worst, a minor defect in Fru-Con's MBE submission that the Board may waive at its discretion pursuant to Balt. City Code Art. V, § 28-14(b). The Board should allow MBE/WBEs to continue to enjoy the same ability as non-MBE/WBEs to submit subcontract quotes at the last possible minute prior to bid opening. For the reasons set forth above, the Board should award Sanitary Contract No. 845 to Fru-Con, the lowest responsive and responsible bidder for the Contract.

Very truly yours,



Scott A. Livingston

Enclosures

cc: Leslie S. Winner, Esq., Department of Law (via email to [leslie.winner@baltimorecity.gov](mailto:leslie.winner@baltimorecity.gov))

CITY OF BALTIMORE  
STEPHANIE RAWLINS-BLAKE, Mayor



DEPARTMENT OF PUBLIC WORKS  
CONTRACT ADMINISTRATION  
1105 Abel Wolman Municipal Building  
Baltimore, Maryland 21202

CERTIFIED MAIL: 7010-1870-0003-1305-2585

August 16, 2011

Fru-Con Construction, LLC  
4310 Prince William Pkwy., Suite 200  
Woodbridge, VA 22192

**RE: S.C. 845-Nitrification Filters and Related Work for the Enhanced Nutrient Removal  
Facilities at the Patapsco Wastewater Treatment Plant**


To Whom It May Concern:

Bids were opened on August 10, 2011 for the above mentioned project. The City of Baltimore Minority and Women's Business Opportunity Office has found your bid to be in Compliance with Article 5 Section 28 of the Baltimore City Code.

To further your proposal, we are forwarding herewith, two (2) copies of the Work Capacity Statements, along with an extra copy for your file. These forms must be fully completed and returned to this office within five (5) days of receipt.

Please contact the Office of Contract Administration at (410) 396-4041 should you have any questions regarding this requirement.

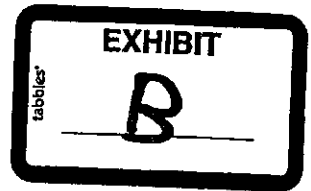
Sincerely,

  
LATONIA WALSTON  
CONTRACT ADMINISTRATOR II

Enclosures

cc: Misrak Shiferaw  
File

Visit Our Website @ [www.baltimorecity.gov](http://www.baltimorecity.gov)



**AFFIDAVIT OF MELVA JENKINS**

1. I, MELVA JENKINS, am over the age of 18 and competent to testify as to the facts herein stated.
2. I am Vice President of Operations at Top Roofing, Inc. ("Top Roofing"). My responsibilities include estimation and project management. In that role, I regularly develop estimates for roofing projects. On average, I prepare between 20 and 30 bids per month, in the approximate range of \$50,000 to \$1,500,000.
3. I have worked in the roofing business for over 20 years, starting as a Laborer.
4. Top Roofing is certified as a Minority Business Enterprise ("MBE") by the Baltimore City Minority and Women's Business Opportunity Office ("MWBOO") for work including roofing, carpentry and sheetmetal. Top Roofing's MWBOO Certification Number is 00-003887.
5. In July and August 2011, I reviewed the plans and specifications for Baltimore City Department of Public Works Sanitary Contract No. 845 ("SC845") with a focus on roofing work.
6. After reviewing the plans and specifications for SC845, I discussed SC845 with Thomas Cox, Top Roofing's owner and President. Mr. Cox and I decided to compete for the roofing work in SC845.
7. On the morning of August 10, 2011 -- the date of bid opening -- I had a phone call with Thuc Nguyen, an Estimator at Fru-Con Construction, LLC ("Fru-Con"). I gave Mr. Nguyen Top Roofing's price for the roofing work contained in SC845. I described to Mr. Nguyen three separate components of work comprising Top Roofing's bid: (1) Metal Roof Panels (\$507,800); (2) Metal Wall Panels/Sidings (\$120,000); and (3) Built-up Asphalt Roofing

(\$372,525). After describing the various scopes of work, I confirmed the total bid amount as \$1,000,325. During this phone call, I told Mr. Nguyen that I would follow up with a written quote.

8. Following the phone call, I sent Fru-Con a written quote indicating the same prices identified during my phone call with Mr. Nguyen. A copy of this written quote is attached as **Exhibit 1** to this Affidavit.

9. I expected Fru-Con to complete and submit a "Part B" Statement of Intent reflecting this quote if Fru-Con decided to award a subcontract to Top Roofing.

10. In recent days, I reviewed a copy of the "original" Statement of Intent submitted with Fru-Con's bid for SC845. I believe it shows the pre-bid agreement between Top Roofing and Fru-Con that Top Roofing would perform the roofing work on SC845 for \$1,000,325 if Fru-Con was awarded the contract. This amount has remained constant and was never changed.

I solemnly affirm under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge, information, and belief.

Dated: 10/28/11

Melva Jenkins  
Melva Jenkins

STATE OF Maryland:

COUNTY OF Baltimore City

I, Dan C Harris, a Notary Public, in and for the State and County aforesaid, do hereby certify that **Melva Jenkins** who is personally known to me as (or proven by the oath of credible witnesses to be) the person named in the foregoing Affidavit bearing date on the 28th day of October, 2011, and hereto annexed, personally appeared before me in said State and County, and acknowledged the same to be his act and deed, and that it was executed for the purposed therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal this 28th day of October, 2011.

My commission expires: 1/18/2014

Dan C Harris  
Notary Public



## Top Roofing Inc

5406 Morelio Road  
Baltimore, Maryland 21214  
Ph. 443-253-4523  
Fax 410-426-4031

To: Fru-Con Construction

August 10, 2011

Attn: Estimating

Project Name: Patapsco WWTP

Metal Roof (approx total 32,300 sq. ft.)

We propose to provide material, labor, supervision and insurance to complete the following scope of work as described below:

- Furnish and install ATAS Standing Seam metal roofs as per project specifications according to manufacturer guidelines
- All associated gutter, downspouts and related accessories
- All standard manufacturer's details necessary to obtain manufacturer's warranty for total roofing system as per project specifications provided.

All of the above tasks will be performed in a workmanlike manner for the sum of:

\$ 507,800.00

Five Hundred Seven Thousand Eight Hundred Dollars

Please do not hesitate to contact me should you have questions or concerns.

Respectfully submitted,

Melva Jenkins / Estimator  
Ph - 443-708-2007  
Fax - 443-759-8118  
Cell - 443-609-7223

Tom Cox / Estimator  
Ph - 443-253-4523  
Fax - 410-426-4031

# Top Roofing Inc

5406 Morello Road  
Baltimore, Maryland 21214  
Ph. 443-253-4523  
Fax 410-426-4031

To: Fru Con Construction

August 10, 2011

Attn: Estimating

Project Name: Patapsco WWTP

Metal Wall Panels (approx total 6,000 sq. ft.)

We propose to provide material, labor, supervision and insurance to complete the following scope of work as described below:

- Furnish and install ATAS metal wall panels as per project specifications according to manufacturer guidelines
- All associated accessories
- All standard manufacturer's details necessary to obtain manufacturer's warranty for total wall panel system as per project specifications provided.

All of the above tasks will be performed in a workmanlike manner for the sum of:

\$ 120,000.00

One Hundred Twenty Thousand Dollars

Please do not hesitate to contact me should you have questions or concerns.

Respectfully submitted,

Melva Jenkins / Estimator

Ph - 443-708-2007

Fax - 443-759-8118

Cell - 443-609-7223

Tom Cox / Estimator

Ph - 443-253-4523

Fax - 410-426-4031

# Top Roofing Inc

5406 Morello Road  
Baltimore, Maryland 21214  
Ph. 443-253-4523  
Fax 410-426-4031

To: Fru-Con Construction  
Attn: Estimating  
Project Name: Patapsco WWTP  
BUR (approx total 51,000 sq. ft.)

August 10, 2011

We propose to provide material, labor, supervision and insurance to complete the following scope of work as described below:

- Furnish and install Firestone BUR as per project specifications according to manufacturer guidelines.
- All standard manufacturer's details necessary to obtain manufacturer's warranty for total roofing system as per project specifications provided.

All of the above tasks will be performed in a workmanlike manner for the sum of:

**\$ 372,525.00**

**Three Hundred Seventy Two Thousand Five Hundred Twenty Five Dollars**

Please do not hesitate to contact me should you have questions or concerns.

Respectfully submitted,

Melva Jenkins / Estimator  
Ph - 443-708-2007  
Fax - 443-759-8118  
Cell - 443-609-7223

Tom Cox / Estimator  
Ph - 443-253-4523  
Fax - 410-426-4031



**AFFIDAVIT OF THUC NGUYEN**

1. I, THUC NGUYEN, am over the age of 18 and competent to testify as to the facts herein stated.

2. I am an Estimator at Fru-Con Construction, LLC ("Fru-Con").

3. In my role as an Estimator, I was responsible for soliciting and compiling bid prices from potential subcontractors, including those that bid on roofing work within the scope of Baltimore City Department of Public Works Sanitary Contract No. 845 ("SC845").

4. A few days before bid opening for SC845, I spoke with Thomas Cox, the owner and President of Top Roofing, Inc. ("Top Roofing"). Mr. Cox instructed me to speak with his Vice President of Operations, Melva Jenkins.

5. On the morning of August 10, 2011, I had a phone call with Ms. Jenkins. Ms. Jenkins gave me Top Roofing's prices for the three scopes of roofing work contained in SC845. Ms. Jenkins confirmed the total bid amount as \$1,000,325, which was comprised of three components of work: (1) Metal Roof Panels (\$507,800); (2) Metal Wall Panels/Sidings (\$120,000); and (3) Built-up Asphalt Roofing (\$372,525). Ms. Jenkins confirmed each scope of work and the pricing of each as I read them back to her. I documented the results of this phone call on the "Telephone Bid" form attached to this Affidavit as **Exhibit 1**.

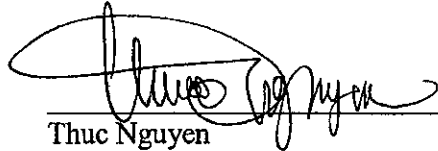
6. Ms. Jenkins followed up our phone call with a written quote. This written quote is attached to this Affidavit as **Exhibit 2**.

7. Top Roofing's quote was added to a spreadsheet with other final subcontract quotes for review by Michael Fischer, Fru-Con's Vice President.

8. Top Roofing's final subcontract quote of \$1,000,325 was the lowest quote received from all potential roofing subcontractors for SC845.

I solemnly affirm under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge, information, and belief.

Dated: 10/24/2011

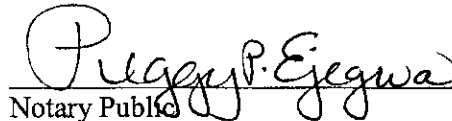
  
Thuc Nguyen

STATE OF Virginia:

COUNTY OF Prince Williams:

I, Peggy Patricia Ejegwa, a Notary Public, in and for the State and County aforesaid, do hereby certify that **Thuc Nguyen** who is personally known to me as (or proven by the oath of credible witnesses to be) the person named in the foregoing Affidavit bearing date on the 24<sup>th</sup> day of October, 2011, and hereto annexed, personally appeared before me in said State and County, and acknowledged the same to be his act and deed, and that it was executed for the purposed therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal this 24<sup>th</sup> day of October, 2011.

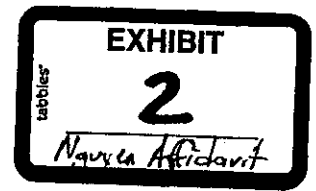
  
Notary Public

My commission expires: 8/31/2015

Peggy Patricia Ejegwa  
NOTARY PUBLIC  
Commonwealth of Virginia  
Reg. # 7392439  
My Commission Expires 8/31/2015







## Top Roofing Inc

5406 Morello Road  
Baltimore, Maryland 21214  
Ph. 443-253-4523  
Fax 410-426-4031

To: Fru-Con Construction

August 10, 2011

Attn: Estimating

Project Name: Patapsco WWTP

Metal Roof (approx total 32,300 sq. ft.)

We propose to provide material, labor, supervision and insurance to complete the following scope of work as described below:

- Furnish and install ATAS Standing Seam metal roofs as per project specifications according to manufacturer guidelines
- All associated gutter, downspouts and related accessories
- All standard manufacturer's details necessary to obtain manufacturer's warranty for total roofing system as per project specifications provided.

All of the above tasks will be performed in a workmanlike manner for the sum of:

\$ 507,800.00

Five Hundred Seven Thousand Eight Hundred Dollars

Please do not hesitate to contact me should you have questions or concerns.

Respectfully submitted,

Melva Jenkins / Estimator  
Ph - 443-708-2007  
Fax - 443-759-8118  
Cell - 443-609-7223

Tom Cox / Estimator  
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# Top Roofing Inc

5406 Morello Road  
Baltimore, Maryland 21214  
Ph. 443-253-4523  
Fax 410-426-4031

To: Fru Con Construction

August 10, 2011

Attn: Estimating

Project Name: Patapsco WWTP

Metal Wall Panels (approx total 6,000 sq. ft.)

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- Furnish and install ATAS metal wall panels as per project specifications according to manufacturer guidelines
- All associated accessories
- All standard manufacturer's details necessary to obtain manufacturer's warranty for total wall panel system as per project specifications provided.

All of the above tasks will be performed in a workmanlike manner for the sum of:

**\$ 120,000.00**

**One Hundred Twenty Thousand Dollars**

Please do not hesitate to contact me should you have questions or concerns.

Respectfully submitted,

Melva Jenkins / Estimator

Ph - 443-708-2007

Fax - 443-759-8118

Cell - 443-609-7223

Tom Cox / Estimator

Ph - 443-253-4523

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Baltimore, Maryland 21214  
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To: Fru-Con Construction  
Attn: Estimating  
Project Name: Patapsco WWTP  
BUR (approx total 51,000 sq. ft.)

August 10, 2011

We propose to provide material, labor, supervision and insurance to complete the following scope of work as described below:

- Furnish and install Firestone BUR as per project specifications according to manufacturer guidelines.
- All standard manufacturer's details necessary to obtain manufacturer's warranty for total roofing system as per project specifications provided.

All of the above tasks will be performed in a workmanlike manner for the sum of:

**\$ 372,525.00**

**Three Hundred Seventy Two Thousand Five Hundred Twenty Five Dollars**

Please do not hesitate to contact me should you have questions or concerns.

Respectfully submitted,

Melva Jenkins / Estimator  
Ph - 443-708-2007  
Fax - 443-759-8118  
Cell - 443-609-7223

Tom Cox / Estimator  
Ph - 443-253-4523  
Fax - 410-426-4031



**AFFIDAVIT OF BENJAMIN JOHNS**

1. I, BENJAMIN JOHNS, am over the age of 18 and competent to testify as to the facts herein stated based on my personal knowledge of the facts.

2. I am an Assistant Project Manager at Fru-Con Construction, LLC ("Fru-Con").

3. On August 10, 2011, Mr. Jeffrey Tedder and I served as "bid runners," assigned to submitting, on behalf of Fru-Con, our bid for Baltimore City Department of Public Works Sanitary Contract No. 845 ("SC845").

4. I was given numerous bid documents including "Part B" Statements of Intent for the MBE/WBEs with which Fru-Con intended to award subcontracts. Fru-Con's Vice-President, Mr. Michael Fischer, partially filled in some blanks on the Statements of Intent with blue ink; namely, the "Work/Service to be performed" and "Materials/Supplies to be furnished." The blanks for "Subcontract Amount" and "Subcontract percentage of total contract" were not filled in.

5. Mr. Tedder and I arrived at the parking garage near City Hall on the morning of August 10, 2011, and called Mr. Fischer. As is routine in bidding on Baltimore City contracts, the Statements of Intent could only be completed immediately prior to bid submission – set for 11:00 a.m. in the case of SC845 – because it is not until the last minute that Fru-Con is in a position to determine the *final* total contract price for the whole project.

6. As is routine in these situations, Mr. Fischer read out the amounts to be entered on each bid form, and we handwrote the numbers on "Part B" Statements of Intent for each of the MBE/WBE subcontractors. I completed the "original" Statements of Intent, while Mr. Tedder completed the "duplicate" Statements of Intent.

7. For the roofing subcontractor, Top Roofing, Inc. ("Top Roofing"), Mr. Fischer said the subcontract amount was "one million, three-hundred twenty-five dollars" (\$1,000,325).

8. While Mr. Fischer read the number over the phone, I simultaneously completed the "Subcontract Amount" blank on the Statement of Intent. When I got to the second digit, I hastily wrote the top half of a "3." I mistakenly thought Mr. Fischer was going to state that the subcontract amount would be "one million, three-hundred twenty-five *thousand* dollars."

9. The top half of the "3" never became a full "3." Halfway through writing the digit, I realized my near mistake and finished writing the intended "0" over the top half of the "3." The heavy ink on the top part of the zero merely reflects my imperfect penmanship to make sure the subcontract amount was exactly as Mr. Fischer stated, "one million, three-hundred twenty-five dollars."

10. In order to confirm this amount, I recited the number "one million, three-hundred twenty-five dollars" and Mr. Fischer confirmed this amount.

11. My imperfect penmanship did not change Fru-Con's intention to enter into a subcontract with Top Roofing in the amount of \$1,000,325.

12. Mr. Fischer then told us that Top's subcontract amount was "one-point-one percent" (1.1%) of Fru-Con's total contract. I handwrote "1.1" on the "Subcontract percentage of total contract" blank of the Top Roofing Statement of Intent.


13. A photocopy of the "original" Top Roofing Statement of Intent is attached to this Affidavit as **Exhibit 1**.

14. I double-checked the "duplicate" Statements of Intent completed by Mr. Tedder for accuracy. Mr. Tedder simultaneously double-checked my "original" copies.

15. After sealing the bid documents in an envelope, we submitted the bid prior to the 11:00 a.m. deadline for bid submission.

I solemnly affirm under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge, information, and belief.

Dated: 10.24.2011

  
\_\_\_\_\_  
Benjamin Johns

STATE OF Virginia:

COUNTY OF Prince William:

I, Peggy Patricia Ejegwa a Notary Public, in and for the State and County aforesaid, do hereby certify that **Benjamin Johns** who is personally known to me as (or proven by the oath of credible witnesses to be) the person named in the foregoing Affidavit bearing date on the 24<sup>th</sup> day of October, 2011, and hereto annexed, personally appeared before me in said State and County, and acknowledged the same to be his act and deed, and that it was executed for the purposed therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal this 24<sup>th</sup> day of October, 2011.

  
\_\_\_\_\_  
Notary Public

My commission expires: 08/31/2015

**Peggy Patricia Ejegwa**  
NOTARY PUBLIC  
Commonwealth of Virginia  
Reg. # 7392439  
My Commission Expires 8/31/2015





SANITARY CONTRACT NO. 845

**PART B: MBE/WBE AND PRIME CONTRACTOR'S  
STATEMENT OF INTENT**

COMPLETE A SEPARATE FORM FOR EACH MBE AND WBE NAMED IN THIS  
BID.

(Make additional copies of this form as needed.)

**PART A: INSTRUCTIONS MUST BE REVIEWED BEFORE COMPLETING THIS  
FORM, WITH PARTICULAR ATTENTION PAID TO SECTIONS 2, 6a, AND 6a.**

Name of Prime Contractor: Fri-Con Construction, LLC

Name of MBE or WBE: Top Roofing, Inc

Brief Narrative Description of the Work/Service to be performed by MBE or WBE:

Roofing work

Materials/Supplies to be furnished by MBE or WBE:

roofing materials, fasteners, nails, shingles, misc wood  
supplies for roofing work

Subcontract Amount: \$ 1,000,325.00 (If this is a requirements  
contract, the subcontract amount may be omitted; however, the subcontract percentage  
must be included.)

Subcontract percentage of total contract: 1.1 %

(If MBE sub-goals apply, please indicate the sub-goal covered by  
this Statement of Intent.)

African American..... 0 % Asian American... 0 %  
Hispanic American.... 0 % Native American . 0 %

The undersigned Prime Contractor and subcontractor agree to enter into a contract  
for the work/service indicated above for the dollar amount or percentage indicated to meet  
the MBE/WBE participation goals, subject to the prime contractor's execution of a  
contract with the City of Baltimore. The subcontractor is currently certified as an MBE or  
WBE with the City of Baltimore Minority and Women's Business Opportunity Office to  
perform the work described above.

Signature of Prime Contractor (REQUIRED)  
Michael R. Fischer, Vice President

July 13, 2011  
Date

Signature of MBE or WBE (REQUIRED)

July 1, 2011  
Date

ANY CHANGES TO THE INFORMATION ON THIS FORM MUST BE INITIALED BY BOTH  
PARTIES



**AFFIDAVIT OF MICHAEL FISCHER**

1. I, MICHAEL FISCHER, am over the age of 18 and competent to testify as to the facts herein stated.

2. I am Vice President at Fru-Con Construction, LLC ("Fru-Con").

3. I was responsible for selecting subcontractors with relation to Fru-Con's bid for Baltimore City Department of Public Works Sanitary Contract No. 845 ("SC845")

4. On August 10, 2011, I provided Messrs. Benjamin Johns and Jeffrey Tedder with bid documents including "Part B" Statements of Intent for the MBE/WBE firms Fru-Con intended to subcontract with. I completed the blanks on the Statements of Intent for "Work/Service to be performed" and "Materials/Supplies to be furnished" in blue ink. The blanks for "Subcontract Amount" and "Subcontract percentage of total contract" were not filled in. Messrs. Johns and Tedder were instructed to travel to Baltimore with the bid documents, where they would complete the blanks pursuant to my instructions before submitting the bid.

5. On August 10, 2011, I accepted a subcontract bid from Top Roofing, Inc. ("Top Roofing") in the amount of \$1,000,325 for roofing work on SC845. Fru-Con and Top Roofing never agreed upon any subcontract amount other than \$1,000,325.

6. Once Messrs. Johns and Tedder had arrived in Baltimore, I instructed them to complete the "Part B" Statement of Intent for Top Roofing with the agreed-upon amount of "one million, three-hundred twenty-five dollars" (\$1,000,325). I re-read the intended subcontract amount as "one-zero-zero-zero-three-two-five" in order to clarify the digits I intended to include on the Statement of Intent.

7. Mr. Johns recited the number "one million, three-hundred twenty-five dollars" to me over the phone in order to confirm its accuracy.

8. I next instructed Messrs. Johns and Tedder to complete the “Subcontract percentage of total contract” blank with the amount of “one-point-one percent” (1.1%).

9. After providing Messrs. Johns and Tedder with all of the bid information to be completed on the various forms – including the Top Roofing Statement of Intent – I instructed them to submit the “original” and “duplicate” bids prior to the 11:00 a.m. deadline.



**AFFIDAVIT OF THOMAS COX**

1. I, THOMAS COX, am over the age of 18 and competent to testify as to the facts herein stated.
2. I am the owner and President of Top Roofing, Inc. ("Top Roofing").
3. Top Roofing is certified as a Minority Business Enterprise ("MBE") by the Baltimore City Minority and Women's Business Opportunity Office ("MWBOO") for work including roofing, carpentry and sheetmetal. Top Roofing's MWBOO Certification Number is 00-003887.
4. In August 2011, I reviewed the plans and specifications for Baltimore City Department of Public Works Sanitary Contract No. 845 ("SC845") with a focus on roofing work.
5. After reviewing the plans and specifications for SC845, I discussed SC845 with Melva Jenkins, Top Roofing's Vice President of Operations. Ms. Jenkins and I decided to compete for the roofing work in SC845.
6. A few days before the August 10, 2011 bid opening for SC845, Thuc Nguyen, and Estimator at Fru-Con Construction, LLC, contacted me regarding a subcontract opportunity for roofing work on Baltimore City Department of Public Works Sanitary Contract No. 845 ("SC845"). I instructed Mr. Nguyen to contact Ms. Jenkins directly to discuss a quote from Top Roofing.
7. On August 9, 2011, Ms. Jenkins and I discussed the various scopes of roofing work in SC845 at length in order to assist her in preparing a bid. Ms. Jenkins identified three distinct components of work: (1) Metal Roof Panels (\$507,800); (2) Metal Wall Panels/Sidings (\$120,000); and (3) Built-up Asphalt Roofing (\$372,525). The total amount of the subcontract bid was \$1,000,325.

8. I approved these amounts and instructed Ms. Jenkins to contact Mr. Nguyen to submit Top Roofing's subcontract bid.

9. When Ms. Jenkins submitted Top Roofing's subcontract quote, I signed a blank "Part B" Statement of Intent and sent it to Fru-Con. I expected Fru-Con to complete and submit a "Part B" Statement of Intent reflecting this quote if Fru-Con decided to award a subcontract to Top Roofing.

10. In recent days, I reviewed a copy of the "original" Statement of Intent submitted with Fru-Con's bid for SC845. I believe it evidences the pre-bid agreement between Top Roofing and Fru-Con that Top Roofing would perform the roofing work on SC845 for \$1,000,325 if Fru-Con was awarded the contract.

I solemnly affirm under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge, information, and belief.

Dated: 10-28-11

Thomas Cox  
Thomas Cox

STATE OF Maryland:

COUNTY OF Baltimore City

I, Ann C. Harris, a Notary Public, in and for the State and County aforesaid, do hereby certify that **Thomas Cox** who is personally known to me as (or proven by the oath of credible witnesses to be) the person named in the foregoing Affidavit bearing date on the 28<sup>th</sup> day of October, 2011, and hereto annexed, personally appeared before me in said State and County, and acknowledged the same to be his act and deed, and that it was executed for the purposed therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal this 28<sup>th</sup> day of October, 2011.

My commission expires: 1/18/2014

Ann C. Harris  
Notary Public



**HJM** **HARRIS JONES & MALONE, LLC**

2423 MARYLAND AVENUE  
SUITE 100  
BALTIMORE, MARYLAND 21218

LISA HARRIS JONES  
DIRECT DIAL: (410) 366-1500  
FAX NUMBER: (410) 366-1501  
lisa.jones@mdlobbyist.com

Honorable Members of the Baltimore City Board of Estimates  
100 Holliday, Suite 204  
Baltimore, Maryland 21202

Bernard "Jack" Young, President  
Stephanie Rawlings-Blake, Mayor  
Joan Pratt, Comptroller  
George Nilson, City Solicitor  
Alfred Foxx, Director Public Works

c/o Harriett Taylor, Secretary/Deputy Comptroller

Re: PC Construction Company/Supplemental Protest/SC #845

Dear Board Members:

As you know, this office represents PC Construction Company (PC). You know, too, that PC submitted the lowest price for the above referenced procurement (the "Contract") but nonetheless, like the other three bidders, was held not to have submitted a bid responsive to the Contract's M/WBE participation requirements.

PC's deficiency was its inadvertent failure to include previously executed Statement of Intent (Form B) for the Artis Group, one of its minority subcontractors. The details relating to that omission are set forth in the affidavit of PC's senior estimator, Alan Parent, attached hereto as **Exhibit 1**. The events attested to by Mr. Parent were first reported to the City by letter dated 8/26/11 from PC senior vice-president Kevin McCarthy to Shirley Williams, chief, MWBOO, and Board Member Foxx (**Exhibit 2**). Along with his letter Mr. McCarthy submitted a letter from the Artis Group which confirmed the facts relating to its intended participation. A copy of the Artis Group letter is attached hereto as **Exhibit 3**. A copy of the original Form B for the Artis Group, **Exhibit 4**, was submitted to the City on August 31, 2011. Notwithstanding the recommendation from Public Works that you reject all bids, consistent with your past practice where, as here, all of the bids have been found non-compliant and the price offered by the erstwhile low bidder is significantly below the City cost estimate, we request that award be made to PC, the low bidder.

There is nothing whatsoever to support the specter of concern raised in a footnote by Frucon that acceptance of PC's bid in these circumstances would give future bidders the opportunity to avoid responsibility for bids they determine "improvident" after other bids are revealed. Nobody has suggested, and nobody could seriously suggest, that PC's bid, bond and commitment to the City's requirements were not enforceable against PC because of accidental omission of its Artis Group Part B form. Notwithstanding the fact that the intent to include the Artis Form B at \$4.5 million is demonstrated by the PC Bid-Day Closeout form (**Exhibit 5**), which was printed at 10:53 a.m. on bid day, we acknowledge that the pre-bid existence of that Form B cannot be verified from within the bid documents submitted. We, thus, consistent with past practice, invoke your good judgment and sound discretion rather than immutable legal principle to support our request for award of the Contract.

Should you elect not to award to PC, we would urge you to reject Frucon's protest. Three of the Form B's submitted in the Frucon bid were defective. As shown in **Exhibits 6 and 7**, (copies of Form B's made from the original bid), Frucon failed to execute the Form B for two of its WBE's, Haines Industries, Inc., and Rowen Concrete, Inc., respectively. In addition, the Form B submitted for Top Roofing, Inc., one of Frucon's MBE's, contained an unverified reduction in the amount to be paid to the MBE. Frucon offered no explanation or justification for its failure to sign the Haines and Rowen Form B's.

It is well settled that no credit will be given for participation indicated by a Form B on which the dollar amount has been altered without the initials of the M/WBE. PC was painfully made aware of that fact when its bid was rejected on SC 1160 (**Exhibit 8**). Recognizing the fatal effect of an un-initialed change in the scope of work or the amount to be paid to an MBE or WBE, Frucon maintains that what appears on the Top Form B is not a change of the numerical symbol for the word "three" to that for the word "zero" but rather, "imperfect penmanship." Frucon's disingenuous assertion brings to mind the adage, "who are you going to believe, me or your lying eyes"? Even Ray Charles can see that the "3" was overwritten to change it to "0" (**Exhibit 9**).<sup>1</sup> That the stated percentage of MBE participation reconciles with \$1,000,325 is immaterial. The issue is that there is no way "from the face of the statement of intent" to verify that Top agreed to that figure rather than the unaltered \$1,300,325. See **Jay-Brant Gen. Contractors, B-274986, Jan. 10, 1997, 97-1 CPD para. 17 at 4** (employee statement attesting to submission of original bid bond is insufficient to establish submission of original bond); **P.W. Parker, Inc., B-190286, Jan. 6, 1978, 78-1 CPD para. 12 at 3** (evidence from surety, with substantial interest in procurement, cannot be considered independent evidence).

Nor would the fact that Frucon's mistake may have been the product of ill-conceived requirements for documenting M/WBE participation excuse or justify its failure to demonstrate "on the Form B" that Top had agreed to what Frucon wrote. If those requirements were so onerous, ill-conceived or designed inevitably to lead to mistake Frucon should have lodged its complaint at the time of the pre-bid conference. It would be manifestly unfair to PC to deny it leniency in light of its low bid (by approximately \$1,000,000) and documented commitment and

---

<sup>1</sup> Apparently both of Frucon's runners had "penmanship" problems. Jeffrey Tedder who, according to Mr. Johns, filled out the duplicate statement of intent as Mr. Johns was filling in the original, made the exact same mistake on the duplicate (**Exhibit 10**) as Mr. Johns did on the original and *changed it in exactly the same manner*. (See Johns' affidavit, Frucon Exhibit D.)

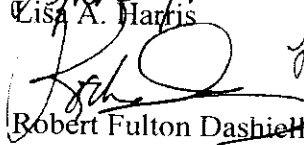
**HARRISJONES & MALONE, LLC**

intent to comply with all requirements, but allow Frucon to prove by extraneous evidence from interested parties, after bid opening, the "intended" meaning of its bid documents.

Very truly yours



Lisa A. Harris



Robert Fulton Dashiell

Attorneys for PC Construction  
Company

1

AFFIDAVIT OF ALAN R. PARENT

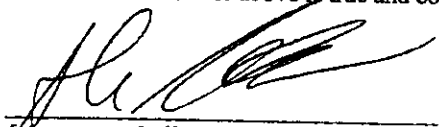
State of Vermont  
County of Chittenden

NOW COMES Alan R. Parent, and hereby deposes and states the following:

1. I am a Senior Estimator at PC Construction Company; I reside at 478 Georgia Middle Road, Georgia, Vermont. I was responsible on the morning of August 10, 2011 ("Bid Day") for making sure that PC Construction's bid for the City of Baltimore S.C. 845, Patapsco Wastewater Treatment Plant ENR Modifications, included all of the MBE/WBE forms properly filled in and executed by PC Construction and by each of our qualifying subcontractors.
2. That morning, I was in constant communication with our team in Baltimore that was actually delivering the bid to the City. Once PC Construction had reached agreement on scope and price with each of our MBE and WBE participants, including the Artis Group, it was my intention and responsibility to make sure that our Form C showed accurate numbers and percentages for our MBE and WBE participation, and that our bid package included a completed and executed Form B for each of our MBE and WBE participants.
3. Our system for providing our bid turn-in team with all the appropriate information and documentation is a three ring binder. This binder has all the proper documentation for all the MBE and WBE companies or vendors that we think we may do business with on bid day. This book is tabbed appropriately and made simple so the team, under time pressure, can take the appropriate form, remove it from the binder and place it in the bid package.
4. On Bid Day, I worked from a list of scopes and MBE and WBE bidders that I and other members of our estimating and management team had finalized that morning, which showed each of the actual subcontractors and vendors, with that subcontractor or vendor's amount to be carried, pursuant to agreement with each MBE and WBE participant. It was also my responsibility to be sure that the totals and percentages for our MBE and WBE participation were correctly stated in our Part C form submitted on Bid Day.
5. PC received a quote from the Artis Group, a certified and qualified MBE, on the morning of Bid Day to furnish and install reinforcing steel for the project on a unit price basis, and we agreed that Artis would perform that scope for at least \$4.5 million.
6. *Exhibit I* to this Affidavit is a true and correct copy (this copy partially redacted because of commercially sensitive information unrelated to the issue now before the City, but the unredacted copy has been submitted to the City separately) of PC Construction's Bid-Day Close-Out form, printed at 10:53 AM, prior to delivery of PC Construction's bid to the City. *Exhibit I* shows PC Construction's final list that morning of MBE and WBE participants with whom we had agreements, and the amount to be carried for each.
7. I made sure on the morning of Bid Day that PC Construction's bid package included a Form C that showed the total amounts for PC Construction's MBE and WBE participation precisely as stated on *Exhibit I* (\$16,659,000 and \$5,950,000 respectively). I further made sure that the percentages of our price for total MBE and WBE participation were correctly stated, matching the percentages stated on *Exhibit I* (17.8 % and 6.4 % respectively). Finally, I successfully made sure that nearly all of the Part B forms, each precisely matching the

numbers and percentages stated on *Exhibit I* for each of PC Construction's MBE and WBE participants were included in our bid package submitted that morning.

8. However, I made what should be recognized as a simple human error of failing to make sure that Artis Group's Part B form was also included in our bid package. That this was simply and plainly a mistake is obvious from the fact that the Artis Group was on our list at exactly \$4,500,000, and we had an executed Part B form with Artis to submit that morning, and our intent to submit the Artis Group Part B form is clearly demonstrated by *Exhibit I*, an internal document prepared and printed that morning in the ordinary course of our business, prior to submission of our bid. It is also plainly demonstrated from the way that all of the *Exhibit I* names and numbers, including the amount for the Artis Group's participation, precisely match the Exhibit C that we included with our bid.
9. We just missed inclusion of that one form, because of that plain human mistake.
10. It is my hope that the City recognizes the human error in our efforts to turn in a complete, proper, and competitive bid for the SC 845 project. While attempting to submit a cost effective bid with the appropriate efforts in minority participation, an important form was accidentally and inadvertently forgotten from being turned in.
11. All of the above is true and correct to my personal knowledge, information and belief.

  
[signature of affiant]

Alan R. Parent  
478 Georgia Middle Road  
Georgia, VT 05468

Subscribed and sworn to before me, this 4th day of November, 2011.

[Notary Seal:]

  
[signature of Notary]

Marybeth Prager, NOTARY PUBLIC

My commission expires: February 10, 2015.



**CONSTRUCTION**

AT PC WE GO ABOVE AND BEYOND ON EVERY JOB, PERIOD.

2

August 26, 2011

Shirley Williams, Chief  
Minority and Women's Business Opportunity Office  
Baltimore City Law Department  
100 N. Holiday Street  
Suite 101  
Baltimore, MD 21201

Alfred H. Foxx, Director  
Department of Public Works  
600 Abel Wolman Municipal Bldg  
Baltimore, MD 21202

Re: S.C. 845  
Nitrification Filters and Related Work for Enhanced Nutrient Removal Facilities at Patapsco Wastewater Treatment Plant

Dear Ms. Williams and Mr. Foxx:

I am writing on behalf of PC Construction Company ("PC Construction") to respond to correspondence dated August 16, 2011 from the Department of Public Works, Office of Contract Administration ("DPW") indicating that the Minority and Women's Business Opportunity Office ("MWBOO") has made a finding of non-compliance regarding the bid submitted by PC Construction for this project. PC Construction respectfully requests that, in light of the detailed circumstances described below, MWBOO reconsider its initial finding of non-compliance regarding our bid submitted on August 10, 2011 for this project, and that DPW accept and recommend PC Construction for award of this important project.

We ask for your thoughtful consideration to honor our low bid and not penalize the City as well as PC Construction for what was an honest mistake in our submission. We request that you determine and recommend to the Board of Estimates that failure to include the form in the actual bid submission was, in these particular circumstances, minor and not material. PC Construction's bid was the lowest responsive and responsible bid submitted for the project, and was intended to be submitted in compliance with all bid requirements, including Article 5 Section 28 of the City Code, and substantively met all requirements notwithstanding the single oversight as discussed below.

**A. Of the Reasons Listed in the August 16 Letter for MWBOO's Finding of Non-Compliance, One Was Unclear and the Other Has Been Cured**

1. Reason 1 given in the non-compliance letter merely makes an observation about the bid process, and does not assert any basis of non-compliance.

The August 16, 2011 letter providing notice to PC Construction of MWBOO's finding of non-compliance stated two reasons for the finding. The first reason appears merely to state a fact about the bid submitted by PC Construction Company. Certain line items were deducted from the total amount bid for the contract in PC Construction's calculation of the portion of work committed for MBE/WBE participation. This was just as instructed by DPW in Addendum 3 issued to all bidders prior to the bid. There does not appear to be any suggestion that this could or would constitute non-compliance by PC Construction with Article 5 Section 28 of the City Code, nor would there be any basis for such a suggestion.

Shirley Williams, Chief  
Alfred H. Foxx, Director  
August 26, 2011  
Page 2

2. Reason 2 does not state a basis for a determination of non-compliance.

The second reason given was that Aaron's Concrete Pumping ("Aaron's"), one of the WBE subcontractors submitted by PC Construction, "is not in good standing with the Maryland Department of Assessments and Taxation." This cannot be the basis to find PC Construction's bid non-compliant. First, Aaron's was (and actually remains) listed by the City of Baltimore and MWBOO as a certified WBE subcontractor for the scope of work it will perform for PC Construction on this project. If Aaron's owed taxes to the state, this fact was neither known by, nor available to, PC Construction prior to submission of our bid. Second, there is no provision anywhere in Article 5 Section 28 of the City Code that inclusion in a general contractor's bid submission of a subcontractor would render a bid non-compliant because that subcontractor owed money to the state. If such a subcontractor were somehow "not in good standing" with a state tax authority, the general contractor and the WBE should be given an opportunity to cure the issue.

In fact, it is our understanding that MWBOO wrote to Aaron's requiring that the subcontractor cure the concern and provide its certificate of good standing to MWBOO to continue the process in this project as a certified WBE subcontractor, and that Aaron's obtained and provided the certificate as required. A copy is attached here as Exhibit 1.

**B. MWBOO and the City Should Accept PC Construction's Bid as Compliant Despite the Failure to Include a Part B Form From Artis Group, One of Our MBE Subcontractors**

PC Construction substantially did comply with Article 5 Section 28 of the Baltimore City Code in preparing and submitting the bid for this project. PC Construction reached agreements with five MBE's and two WBE's for scopes of work for the project. PC Construction made certain that each of these seven subcontractors to be used on the project were in fact certified by MWBOO prior to bid opening. Each was certified for the specific work that each would perform on the project. The MBE agreements and the WBE agreements exceeded the percentages of work required for each of the categories, specifically as follows:

MBE's	\$16,659,000	representing 17.8 % of the total bid contract price (as adjusted per Addendum # 3, question # 26)
WBE's	\$5,950,000	representing 6.4 % of the total bid contract price (as adjusted per Addendum # 3, question # 26)

These dollars and percentages were correctly stated on the Part C Affidavit submitted with our bid. Unfortunately, as PC Construction began to realize only when discussing this matter on the telephone with Ms. Williams of MWBOO on August 18, 2011, it does appear that the documents submitted with our bid prior to opening failed to include a Part B Statement of Intent for the Artis Group. The Artis Group was one of the five MBE subcontractors with which PC Construction had an agreement, and which was carried in PC Construction's bid. Artis Group's scope of work was to install reinforcing steel for the project, consistent with its MBE certification for that type of work, and the amount of its subcontract was to be \$4,500,000. That the parties intended this and that the missing Part B form for Artis Group resulted merely from PC Construction's very human mistake is demonstrated by the following:

Shirley Williams, Chief  
Alfred H. Foxx, Director  
August 26, 2011  
Page 3

(1) In the attached letter from Sherman Artis of the Artis Group (copy attached as Exhibit 2), the subcontractor confirms its agreement prior to bid to participate in the project with PC Construction as set forth above;

(2) Artis Group was listed in the summary spreadsheet that was prepared for internal use by PC Construction the morning of the bid and was printed at 10:53 that morning, just minutes before the time when bids were submitted for opening by the City. On that spreadsheet (copy attached for confidential consideration as Exhibit 3), each of the other six MBE and WBE participants for which PC Construction submitted Part B forms is listed along with the scopes and precise dollar amounts and percentages of total contract that were stated in the Part B forms that we did submit. The Artis Group was listed just as the other six as a MBE, and with the amount of \$4,500,000. Including the Artis Group at that amount, the grand totals and percentages for MBE and WBE participants on PC Construction's internal spreadsheet precisely matched the figures that were stated in PC Construction's submitted Part C Affidavit. And this internal bid-time PC Construction spreadsheet lists no subcontractors other than the Artis Group and the other MBE and WBE participants for which Part B forms were actually submitted with PC Construction's bid.

(3) PC Construction submitted a Part C summary form that listed totals and percentages for MBE and WBE participation that were precisely correct (and consistent with Exhibit 3, PC Construction's final internal bid summary) including the Artis Group at \$4,500,000, and precisely \$4,500,000 in error without the Artis group's participation. There is no rational or logical explanation for this wide discrepancy other than the simple failure to include the Artis Group Part B form in the submitted bid package.


(4) PC Construction filled out the Part C, MBE/WBE Participation Affidavit correctly and completely. The amount of MBE/WBE participation promised in the Affidavit exceeds the minimum requirements of the Invitation for Bid. The Affidavit demonstrates, and the City therefore can comfortably determine and conclude from the bid itself, that PC Construction intended to be bound by the requirements of the MBE Ordinance and the Invitation for Bid.

#### C. Conclusion

The bottom line here is a simple human mistake was made as we have documented, but that error did not, in the least, compromise our compliance with the intent of Article 5 Section 28. The participation goals were met for the bid, MBE and WBE companies have been afforded opportunities and have earned their participation in this project, and PC Construction is the fair and clear low bidder. Just recognizing this simple fact and allowing us to move quickly toward everything required for notice to proceed will mean that all the hard work of the people involved to get to this point, and who are ready to go to work on this important, time sensitive project, will not have gone to waste.

We respectfully ask for your consideration and look forward to your response.

Sincerely,



Kevin B. McCarthy  
Senior Vice President



# *The Artis Group, Inc.*

3

August 22, 2011

To whom it may concern,

The Artis Group quoted the supply and install of concrete reinforcing for the Patapsco WWTP #845. We were told on bid day that our quotation would be used and that we were named by PC Construction as one of their Minority Businesses. We understood that there was approximately 3,400 tons of rebar on the project making our estimated project value \$4.5 million.

We can confirm a verbal agreement with PC Construction for, at least, the amount of work previously stated. We would appreciate due consideration of PC Construction's request for the Board of Estimates to waive the minor error of the omission of one MBE form and reconsider the decision to render PC Construction's bid to be non-compliant.

The Artis Group and PC Construction are eager to team on this project to provide the City of Baltimore the best quality, low cost option for the construction of the Patapsco WWTP #845 project.

Sherman Artis  
The Artis Group, Inc.- CEO



**CONSTRUCTION**

AT PC WE GO ABOVE AND BEYOND ON EVERY JOB, PERIOD.

4

August 31, 2011

Latonia Walston  
City of Baltimore  
Department of Public Works  
Contract Administration  
1105 Abel Wolman Municipal Building  
Baltimore, MD 21202

Re: S.C. 845  
Nitrification Filters and Related Work for Enhanced Nutrient Removal Facilities at Patapsco  
Wastewater Treatment Plant

Dear Ms. Walston:

In follow-up to PC Construction Company's letter of August 26, 2011 to Shirley Williams and Alfred Foxx, and in further response to your letter dated August 16, 2011, enclosed please find two copies of a "Part B: MBE/WBE and Prime Contractor's Statement of Intent" between PC Construction Company and The Artis Group. Please call me with any questions at 802-651-1334. Thank you again for your assistance in the matter.

Sincerely,

Jeffrey A. Garner  
Project Executive

Enclosures

cc: Shirley Williams, Minority and Women's Business Opportunity Office (via e-mail)  
Alfred H. Foxx, Department of Public Works (via e-mail)

**PART B: MBE/WBE AND PRIME CONTRACTOR'S  
STATEMENT OF INTENT**

COMPLETE A SEPARATE FORM FOR EACH MBE AND WBE NAMED IN THIS  
BID.

(Make additional copies of this form as needed.)

PART A: INSTRUCTIONS MUST BE REVIEWED BEFORE COMPLETING THIS  
FORM, WITH PARTICULAR ATTENTION PAID TO SECTIONS 2, 6a, AND 6c.

Name of Prime Contractor: PC Construction Company

Name of MBE or WBE: The Artis Group

Brief Narrative Description of the Work/Service to be performed by MBE or WBE:

INSTALLATION OF REINFORCING STEEL

Materials/Supplies to be furnished by MBE or WBE:

Subcontract Amount: \$ 4,500,000 (If this is a requirements  
contract, the subcontract amount may be omitted; however, the subcontract percentage  
must be included.)

Subcontract percentage of total contract: 4.8 %

(If MBE sub-goals apply, please indicate the sub-goal covered by  
this Statement of Intent.)

African American..... % Asian American..... %

Hispanic American..... % Native American..... %

The undersigned Prime Contractor and subcontractor agree to enter into a contract  
for the work/service indicated above for the dollar amount or percentage indicated to meet  
the MBE/WBE participation goals, subject to the prime contractor's execution of a  
contract with the City of Baltimore. The subcontractor is currently certified as an MBE or  
WBE with the City of Baltimore Minority and Women's Business Opportunity Office to  
perform the work described above.

Signature of Prime Contractor (REQUIRED) Andrew S. Martin Date June 15, 2011  
Sr. Vice Pres.

Signature of MBE or WBE (REQUIRED) \_\_\_\_\_ Date August 9, 2011

ANY CHANGES TO THE INFORMATION ON THIS FORM MUST BE INITIALED BY BOTH  
PARTIES.

00300-24

PIZZAGALLI CONSTRUCTION COMPANY BID DAY CLOSE-OUT ("BIDDAY" Version 9), 04-01-97  
 Estimate No. 12797  
 Project: Palapoco WWTP ENR Mods (SC #946)  
 Date: 10-Aug-11 10:53:44 AM

Builder's Risk Rate per \$100  
 Project Duration in Years (PC Estimate)  
 Project Duration in Years (Total Allowed Duration)  
 Liability Insurance Rate  
 Pollution Liability Insurance Rate per \$1000  
 Gross Receipts Tax Rate per Year

Spec. Section	Description	Carried in Base Bid	Revised Amount	Adjustment	MBE SUB	AMOUNT	%	WBE SUB	AMOUNT	%
	GENERAL CONDITIONS									
	LICENSED PLANT OPERATORS									
	ADJUST OSHA/181 AIR TO \$0.83/MH									
	SALES TAX									
	ADD FOR TOWER CRANE BASES									
	DEMOLITION									
	SITE REMEDIATION									
	EARTHWORK-UTILITIES									
	AGGR. MATERIALS (Except Rd. Base)							Comer	2,000,000	2.14%
	DISPOSE HAZARDOUS SOIL									
	MISC FROM PILE ITEMS (See Unit Prices)				WTM	6,600,000	6.89%			
	DEWATERING									
	STEEL SHEET PILING									
	PRECAST STRUCTURES									
	HDPE LINES & PRECAST DUCT BANKS									
	SITE SUB									
	UTILITIES SUB									
	ELECTRICAL SITE WORK									
	ROADS/WALKS-MISC (See Unit Prices)									
	SITE IMPROVEMENTS									
	LANDSCAPE/SEED/ROD									
	CONCRETE									
	REBAR/MESH/ACCESSORIES (MAT'L)									
	REBAR LAB. ( TNS @ 1.7TH)				ACT	4,600,000	4.82%			
	FORM LINER/VAPOR BARRIER									
	STONE RUBBING @ .06 MM/SF									
	BEAM FORMING/SHORING									
	CONCRETE PUMPING									
	READY-MIXED MAT.									
	CONC. SUB							Acorn's	3,680,000	4.23%
	STRUCTURAL PRECAST									
	PRECAST PANELS									
	MASONRY									
	METAL FRP - MAT'L									
	METAL FRP - LABOR									

Confidential Commercial Information  
 Not to be Publicly Disclosed

5

LIGHT GAUGE STEEL TRUSSES							
ROUGH CARPENTRY							
FINISH CARP. & CASEWORK							
HDPE EMBEDMENT LINER							
CAULKING							
INSULATION							
ROOFING & ACCESS							
PRECAST ROOF PANELS							
METAL SIDING - w/ Roofing							
FIRE/ROOFING							
HM/TP/WOOD DOORS & HRDWR (M)							
H.M.-WD DRS.-HDWR (LAB)							
O.H. & COILING DRS./MANWAY MAT'L							
ALUM. DRS.-WINDOWS-GLASS							
DRYWALL & ACOUSTICAL							
CERAMIC TILE							
RESILIENT/CHEM RESIST. FLOORING							
PAINTING							
SPECIALTIES (MAT'L)							
SPECIALTIES (LAB.)							
LAB FURNITURE & EQUIPMENT							
				Fin/00	3,661,000	3.81%	
ELEVATORS							
ELECTRIC EQUIPMENT CART							
CRANES & HOISTS							
MECHANICAL							
P.R.E.-NEGOTIATED MECHANICAL EQUIP.				MECH/0	2,810,000	3.12%	
MECHANICAL INSULATION							
ELECTRICAL				Elect	188,000	0.20%	
I & C							
UNIT PRICE ITEMS:							
418, 417, 419, 420, 804, 701-709							
201, 202, 301 THROUGH 304							
413, 415 CONCRETE/REINFORCING							
418-CONTINGENT STEEL SHEETING I.I.F.							
409-HD STEEL PIPE PILES							
411-MECHANICAL SCREW ANCHORS							
412-36" DIA DRILLED SHAFT PILES							
5x5-PAVING, WALKS & CURBS							
Totals					\$16,669,000		\$5,950,000

Adjusted Cost  
 Builders Risk Amount  
 Liability Insurance Amount  
 Pollution Liability Amount  
 Gross Receipts Tax Amount  
 P & P Bond Amount (\$6.00 per Thousand)  
 Bond Premium for Project Duration > 24 Mos.  
 Bond Premium for Project Duration > 36 Mos.

Sub Total		MBE GOAL (17%)	WBE GOAL(6%)
OH & P		\$ 15,878,726	\$ 5,804,266
Total Bid Amount		MBE	WBE
Adjusted Total	\$125,128,000	\$16,859,000	\$5,950,000
		17.84%	6.37%

Confidential Commercial Information  
 Not to be Publicly Disclosed

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**PART B: MBE/WBE AND PRIME CONTRACTOR'S  
STATEMENT OF INTENT**

COMPLETE A SEPARATE FORM FOR EACH MBE AND WBE NAMED IN THIS  
BID.

(Make additional copies of this form as needed.)

PART A: INSTRUCTIONS MUST BE REVIEWED BEFORE COMPLETING THIS  
FORM, WITH PARTICULAR ATTENTION PAID TO SECTIONS 2, 6a, AND 6c.

Name of Prime Contractor: Fru-Con Construction LLC

Name of MBE or WBE: Rowan Concrete, Inc.

Brief Narrative Description of the Work/Service to be performed by MBE or WBE:

Supply of Radiant materials

Materials/Supplies to be furnished by MBE or WBE:

Radiant manufacturers and delivery

Subcontract Amount: \$ 387,000.00 (If this is a requirements  
contract, the subcontract amount may be omitted; however, the subcontract percentage  
must be included.)

Subcontract percentage of total contract: 0.4 %

(If MBE sub-goals apply, please indicate the sub-goal covered by  
this Statement of Intent.)

African American..... N/A % Asian American... N/A %

Hispanic American.... N/A % Native American... N/A %

The undersigned Prime Contractor and subcontractor agree to enter into a contract  
for the work/service indicated above for the dollar amount or percentage indicated to meet  
the MBE/WBE participation goals, subject to the prime contractor's execution of a  
contract with the City of Baltimore. The subcontractor is currently certified as an MBE or  
WBE with the City of Baltimore Minority and Women's Business Opportunity Office to  
perform the work described above.

Signature of Prime Contractor (REQUIRED)  
Michael R. Fischer, Vice President

August 10, 2011

Date

[Signature]  
Signature of MBE or WBE (REQUIRED)

8/9/2011  
Date

ANY CHANGES TO THE INFORMATION ON THIS FORM MUST BE INITIALED BY BOTH  
PARTIES.

8

CITY OF BALTIMORE

SHEILA DIXON, Mayor



DEPARTMENT OF PUBLIC WORKS

CONTRACT ADMINISTRATION  
1105 Abel Wolman Municipal Building  
Baltimore, Maryland 21202

CERTIFIED MAIL RECEIPT NO. 7008 3230 0001 9601 3212

July 9, 2009

Pizzagalli Construction Company  
50 Joy Drive  
South Burlington, VT 05403

RE: WC 1160 – Montebello Plant 2 Finished Water Reservoir Cover

Dear Sir or Madam:

On July 2, 2009 the City of Baltimore Minority and Women's Business Opportunity Office (MWBOO) found your bid submission package for WC 1160 Montebello Plant 2 Finished Water Reservoir Cover to be non-compliant. The reason stated was: On Part C, Statement of Intent form the subcontract amount has been changed but is not initialed by both the Prime Contractor and WBE Subcontractor. The Department of Public Works does not recommend contract awards to firms whose bids do not comply with, Article 5 Section 28 of the Baltimore City Code.

If you require further clarification of this decision, please contact the Department of Public Works' Office of Compliance at (410) 396-8497. As a courtesy, your firm will be contacted by the Office of Contract Administration prior to the recommendation to award this contract.

Sincerely,

A handwritten signature in cursive script that reads "Doreen Diamond".

DOREEN DIAMOND  
CONTRACT ADMINISTRATOR

Cc: DPW-Office of Compliance





**PART B: MBE/WBE AND PRIME CONTRACTOR'S  
STATEMENT OF INTENT**

COMPLETE A SEPARATE FORM FOR EACH MBE AND WBE NAMED IN THIS  
BID.

(Make additional copies of this form as needed.)

**PART A: INSTRUCTIONS MUST BE REVIEWED BEFORE COMPLETING THIS  
FORM, WITH PARTICULAR ATTENTION PAID TO SECTIONS 2, 6a, AND 6c.**

Name of Prime Contractor: Fru-Con Construction, LLC

Name of MBE or WBE: Tap Roofing, Inc

Brief Narrative Description of the Work/Service to be performed by MBE or WBE:

Roofing work

Materials/Supplies to be furnished by MBE or WBE:

roofing materials, fasteners, nails, shingles, Misc wood  
supplies for roofing work

Subcontract Amount: \$ 1,000,325.00 (If this is a requirements  
contract, the subcontract amount may be omitted; however, the subcontract percentage  
must be included.)

Subcontract percentage of total contract: 1.1 %

(If MBE sub-goals apply, please indicate the sub-goal covered by  
this Statement of Intent.)

African American.....	<u>21%</u> %	Asian American...	<u>0%</u> %
Hispanic American....	<u>0%</u> %	Native American .	<u>0%</u> %

The undersigned Prime Contractor and subcontractor agree to enter into a contract  
for the work/service indicated above for the dollar amount or percentage indicated to meet  
the MBE/WBE participation goals, subject to the prime contractor's execution of a  
contract with the City of Baltimore. The subcontractor is currently certified as an MBE or  
WBE with the City of Baltimore Minority and Women's Business Opportunity Office to  
perform the work described above.

Signature of Prime Contractor (REQUIRED)  
Michael R. Fischer, Vice President

July 13, 2011  
Date

Signature of MBE or WBE (REQUIRED)  
Thomas G. ... President

July 1, 2011  
Date

**ANY CHANGES TO THE INFORMATION ON THIS FORM MUST BE INITIALED BY BOTH  
PARTIES**

10

31  
SANITARY CONTRACT NO. 845

NOTE: NO INFORMATION OTHER THAN THAT INCLUDED IN OR ATTACHED TO THIS ORIGINAL BID DOCUMENT (WHERE SUCH ATTACHMENT IS PERMITTED) WILL BE USED IN DETERMINING AWARD.

NOTICE TO BIDDERS

CITY OF BALTIMORE  
DEPARTMENT OF PUBLIC WORKS  
BUREAU OF WATER AND WASTEWATER

THE COMPLETE (ORIGINAL)  
CONTRACT BOOK AND  
DUPLICATE OF BID OR  
PROPOSAL MUST BE  
INCLUDED IN THE  
BID ENVELOPE

CONTRACT NUMBER 845

III. BID OR PROPOSAL

Bids Due June 29, 2011

**DUPLICATE**

Certified Check or Bank Cashier's Check or Bank Treasurer's Check or Bid Bond Equal to Five Percent (5%) of the Total Bid Submitted.

Days of Completion 942 Consecutive Calendar Days

Liquidated Damages \$20,000 per Calendar day

Made this 10th day of August 20 11

By Fru-Con Construction, LLC

(Name)

4310 Prince William Parkway, Suite 200, Woodbridge, VA 22192

(Address)

The Bidder shall sign below to signify the following:

I/We have received Addendum Nos. 1, 2, 3, 4  
for this Contract.

  
Signature and Title

To The Board of Estimates of Baltimore City: Michael R. Fischer, Vice President

I/We the undersigned Contractor, have familiarized myself/ourselves with the Requirements and Stipulations of the Contract Documents, and the site of the proposed work, and fully understand and appreciate the extent and character of the work to be done under the Contract.

SAFETY CONTRACT NO. 66

**PART B: MBE/WBE AND PRICE CONTRACTOR'S  
STATEMENT OF INTENT**

COMPLETE A SEPARATE FORM FOR EACH MBE AND WBE NAMED IN THIS

BID.  
(Make additional copies of this form as needed.)

PART A: INSTRUCTIONS MUST BE REVIEWED BEFORE COMPLETING THIS  
FORM, WITH PARTICULAR ATTENTION PAID TO SECTIONS 2, 6a, AND 6c.

Name of Prime Contractor: Pro-Con Construction, LLC  
Name of MBE/WBE: Pro-Con Construction, LLC

Brief Narrative Description of the Work/Service to be performed by MBE/WBE:  
Refrigerator work

Materials/Supplies to be furnished by MBE/WBE:  
refrigerator, freezer, milk, shingles, misc wood

Subcontract Amount: \$1,800,325.00 (If this is a lump-sum

contract, the subcontract amount may be omitted; however, the subcontract percentages  
must be included.)

Subcontract percentages of total contract: 1.1 %

(If MBE/WBE sub-grants supply, please indicate the sub-grant covered by  
this Statement of Intent.)

African American: 25 % Asian American: 0 %  
Hispanic American: 10 % Native American: 0 %

The undersigned Prime Contractor and subcontractor agree to enter into a contract  
for the work/service indicated above for the dollar amount or percentage indicated to meet  
the MBE/WBE participation goals, subject to the prime contractor's satisfaction of a  
contract with the City of Baltimore. The subcontractor is currently certified as an MBE or  
WBE with the City of Baltimore Minority and Women's Business Opportunity Office to  
perform the work described above.

Signature of Prime Contractor (Required): [Signature] Date: July 18, 2011  
Name of Prime Contractor: Pro-Con Construction, LLC

Signature of MBE or WBE (Required): [Signature] Date: July 4, 2011  
Name of MBE or WBE: Pro-Con Construction, LLC

ANY CHANGES TO THE INFORMATION ON THIS FORM MUST BE INITIALED BY BOTH  
PARTIES.

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November 8, 2011

## **VIA HAND DELIVERY**

Ms. B. Harriette Taylor, Deputy Comptroller  
Deputy Comptroller and Secretary  
Baltimore City Board of Estimates  
City Hall  
100 N. Holliday Street, Suite 204  
Baltimore, Maryland 21202

RE: **BID PROTEST of PC Construction Company  
Department of Public Works ("DPW")  
Sanitary Contract No. 845  
Nitrification and Related Work  
Patapsco Wastewater Treatment Plant**

Dear Ms. Taylor:

This law firm represents Fru-Con Construction, LLC ("Fru-Con"), the lowest responsive and responsible bidder for DPW Sanitary Contract No. 845 (the "Contract" or "SC845"). The purpose of this letter is to respond to a "Supplemental Protest" submitted by PC Construction Company ("PC") on the morning of November 8, 2011 concerning SC845.

In its Supplemental Protest, PC makes two assertions:

1. Award may be made to PC, despite PC's failure to submit Statements of Intent indicating that PC met the MBE goal; and
2. Fru-Con's bid is "defective" and ineligible for award.

Both of PC's arguments are without merit.

**1. PC's Bid Is Non-Responsive And Ineligible For Award.**

PC is ineligible because its bid did not include Statements of Intent indicating sufficient MBE participation to meet SC845's goal. PC asserts "[n]obody has suggested, and nobody could seriously suggest, that PC's bid, bond and commitment to the City's requirements were not enforceable against PC." This statement is incorrect.

First, PC's supposed "commitment" to Artis Group is not enforceable against PC. Balt. City Code, Art. V, § 28-48(e) sets forth,

During the term of the contract, any unjustified failure to comply with the levels of certified business enterprise participation **identified in the bid** is a material breach of contract.

Because PC's supposed commitment to Artis Group was not identified in the bid, PC will not have committed a material breach of contract if PC decides not to utilize Artis Group after award of the contract. PC would be free to choose any firm it wishes to perform the work it now claims Artis Group was intended to perform. Suppose a non-MBE firm offers to perform the same work for \$500,000 less than Artis Group. PC could elect to use that non-MBE firm and PC would not be in material breach of contract since PC made no commitment to Artis Group in its bid.

Even if PC argues that it is bound to meet the MBE goal by way of its Part C MBE/WBE Participation Affidavit, PC is now at liberty to "bid shop" various MBE firms against one another in order to achieve an additional \$4,500,000. For example, PC could ask another certified MBE (e.g., Interlock Steelworkers, Inc.) to provide a larger quantity of installed reinforcing steel than Artis Group agreed to prior to bid opening. Preventing this sort of post-bid opening "bid shopping" is the very purpose of the Statement of Intent.

Further, should PC decide tomorrow that it no longer wants SC845, PC could escape action against its bid bond because its bid is non-responsive. *See Baltimore v. De Luca-Davis Constr. Co.*, 210 Md. 518 (1956) (City may not recover penal sum against a non-responsible bidder ineligible for award).

**2. Fru-Con's Bid Is Responsive And Eligible For Award.**

Let me turn now to PC's second argument – that Fru-Con's bid is "defective." PC makes several allegations, namely that there was a "change" to Fru-Con's Statement of Intent to subcontract with Top Roofing, Inc. in the amount of \$1,000,325. As Fru-Con noted in its November 1, 2011 Protest, there was no such "change" to the Form. Similarly, there was no "alteration" or "unverified reduction" to the amount, as alleged by PC.

PC claims that rejection of its bid (under PC's prior name, "Pizzagalli Construction") for Contract No. WC1160 warrants rejection of Fru-Con's bid for SC845. Interestingly, PC fails to attach a copy of the Statement of Intent that led to rejection of its bid for WC1160. PC's Statement of Intent for WC1160 *did*, in fact, evidence a change to the amount shown, and left in doubt the terms, if any, to which the MBE and prime bidder mutually assented.

PC argues that the absence of Fru-Con signatures on two Statements of Intent renders these Statements of Intent "defective," despite the signatures of the MBE/WBE firms. Fru-Con's inclusion of these Statements of Intent in a fully-executed bid evidence Fru-Con's intent to be bound by the representations of the Statements of Intent. Fru-Con has sufficiently evidenced this intent elsewhere in the bid, Fru-Con's bid is responsive and Fru-Con will be required to enter subcontracts with the indicated MBE/WBE firms for the amounts and scopes of work listed. *See, e.g., Daisy Concrete, Inc. of Maryland*, MSBCA No. 2338, 6 MSBCA ¶532 (2003).

### 3. Conclusion

As discussed above, Fru-Con remains the lowest responsible and responsive bidder for SC845. The Board of Estimates should award SC845 to Fru-Con in the best interest of the City.

Very truly yours,

A handwritten signature in black ink, appearing to read "Scott A. Livingston", followed by a handwritten "MAM" in the right margin.

Scott A. Livingston

cc: George S. Nilson, City Solicitor (via hand delivery)  
Leslie S. Winner, Esq., Department of Law (via hand delivery)

**BOARD OF ESTIMATES  
12:00 NOON BID OPENING**

**BIDS TO BE RECEIVED: 11/09/11**

				Bid Bond/ Check Amount	
1.	GEN. SVCS.	GS 11830	Greyhound Station - Demolition	<b>2%</b> If Bid Is Over \$100,000.00	
2.	TRANS	TR 11311	Harbor Connector Water Taxi Dock - <b>Federal</b>	<b>2%</b> If Bid Is Over \$100,000.00	
3.	PURCH	B50001886	Vehicle leasing	<b>FIXED AMOUNT</b> <b>\$5,001.00</b>	
4.	PURCH	B50001894	Telecommunication Improvement & Procurement Project ( <b>Price</b> )		
5.	PURCH	B50002157	Auction Services	<b>FIXED AMOUNT</b> <b>\$5,000.00</b>	
6.	PURCH	B50002175	2012 Sport Utility Vehicles	<b>2%</b> If Bid Is Over \$100,000.00	

**ADDENDA FOR: 11/09/11**

1.	GEN. SVCS.	PB 10828	Repairs to the Northwest Transfer Station	11/16/2011
----	---------------	----------	---	------------

*Type*

*B50001886  
B50001894  
B50002157  
B50002175*

**REC'D: 11/09/11**

**OPENING DATE:** **OPENED:** 11/09/11

[illegible]

## Bids Pck'd Up By

## MINUTES

RECOMMENDATIONS FOR CONTRACT AWARDS/REJECTIONSDepartment of Transportation

3. TR 10317, Safe Machado Construction \$2,681,929.00  
 Routes to School, Co., Inc.  
 Grant Year A, B,  
 C, & D

DBE: Machado Construction, Co., Inc. \$536,388.00 20%

4. TRANSFER OF FUNDS

<u>AMOUNT</u>	<u>FROM ACCOUNT/S</u>	<u>TO ACCOUNTS:</u>
\$2,700,097.52	9950-917001-9507	
Federal	Const. Res.	
	Highways Federal	
250,024.38	" "	
MVR		
<u>\$2,950,121.90</u>		
\$2,681,929.00	-----	9950-913702-9506-6
		Structure and
		Improvements
134,096.45	-----	9950-913702-9506-5
		Inspections
134,096.45	-----	9950-913702-9506-2
		Contingencies
<u>\$2,950,121.90</u>		Safe Routes to School

This transfer will cover the costs associated with the award of Contract No. TR 10317, Safe Routes to School assigned to Machado Construction, Co., Inc.

**MINUTES**

Bureau of Purchases - Acceptance of Technical Proposal,  
Opening of Price Proposal, and  
Return of Unaccepted Proposal

**ACTION REQUESTED OF B/E:**

The Board is requested to approve acceptance of the technical Proposals for Solicitation B50001894, Telecommunication Improvement & Procurement Project (TIPP) from IBM who achieved the minimum technical score, and open their envelope containing the price and Minority and Women's Business Enterprise submittals.

The Board is further requested to return unopened the price and M/WBE submittals for the following proposal which did not achieve the minimum score:

TelephoNET Corporation

**BACKGROUND/EXPLANATION:**

Vendors were solicited by posting on CitiBuy and advertising in local newspapers. The two technical proposals received were opened on May 25, 2011. The technical proposals were reviewed by the Evaluation Review Committee and it was determined that IBM achieved the minimum technical score.

UPON MOTION duly made and seconded, the Board approved acceptance of the technical Proposals for Solicitation B50001894, Telecommunication Improvement & Procurement Project from IBM who achieved the minimum technical score, and open their envelope containing the price and Minority and Women's Business Enterprise submittals. The Board further approved the return of the unopened price and M/WBE submittals for the following proposal which did not achieve the minimum score:

TelephoNET Corporation

**MINUTES**

Department of Planning - Baltimore City Public Schools Capital  
Improvement Program for FY 2013-2018

**ACTION REQUESTED OF B/E:**

The Board is requested to approve the Baltimore City Public School System's (BCPSS) Capital Improvement Program (CIP) for FY 2013-2018 in the amount of \$641,535,000.00.

**AMOUNT OF MONEY AND SOURCE:**

The total request for FY 2013 is \$107,603,000.00, of which \$16,744,000.00 is City General Obligation (G.O.) bond funds, \$76,466,000.00 is State funds, and \$14,393,000.00 is other funds.

**BACKGROUND/EXPLANATION:**

Annually the BCPSS must submit an updated and detailed CIP for the upcoming fiscal year and the forthcoming five fiscal years to the State of Maryland. On October 3, 2011, the BCPSS submitted its FY 2013-2018 Capital Improvement Program for FY 2013-2018. This CIP submission receives approval from the Board of School Commissioners, the City of Baltimore Planning Commission, Board of Finance and the Board of Estimates.

The requested funding will provide resources to create an educational environment that encourages the highest caliber of teaching, learning, and facility utilization. The Board of Estimates' support of this plan will assist the BCPSS' efforts to provide enhanced learning environments as it continues to improve educational opportunities for the children of Baltimore City.

UPON MOTION duly made and seconded, the Board approved and the Baltimore City Public School System's Capital Improvement Program for FY 2013-2018 in the amount of \$641,535,000.00.

**MINUTES**

Board of Finance - Baltimore City Public School System  
 Capital Improvement Program,  
 FY 2013 - 2018

---

**ACTION REQUESTED OF B/E:**

The Board is requested to endorse the Baltimore City Public School System (BCPSS) fiscal year 2013-2018 Capital Improvement Program (CIP).

**BACKGROUND/EXPLANATION:**

Procedures for administration of the school capital program require that the BCPSS submit annually an updated detailed capital program for the upcoming year and ensuing five fiscal years to the State Interagency Committee on School Construction. As a condition of receiving State school construction aid, the BCPSS is required to submit the CIP by the end of November of each year.

This action requires approval of this program by the appropriate local governing body. As a condition of gaining approval of this local government, a review process has been established that includes the School Board, Planning Commission, Board of Finance, and the Board of Estimates, to serve as the means by which the Mayor will support and endorse the program.

The Board of Finance, at a scheduled meeting on October 24, 2011 considered and endorsed the FY2013-18 CIP totaling \$641,535,000.00. The CIP includes \$101,744,000.00 in City bond funds and \$539,791,000.00 in State funds. Annual program distributions are as follows:

**BCPSS Fiscal Year 2013 - 2018**  
**Capital Improvement Plan (\$000)**

Source/FY	2013	2014	2015	2016	2017	2018	Total
State	76,466	82,000	121,000	106,248	94,770	60,000	539,791
City	16,744	17,000	17,000	17,000	17,000	17,000	101,744
<b>Total</b>	<b>93,210</b>	<b>99,000</b>	<b>138,000</b>	<b>123,248</b>	<b>111,077</b>	<b>77,000</b>	<b>641,535</b>

**MINUTES**

UPON MOTION duly made and seconded, the Board approved and authorized execution of the endorsed the Baltimore City Public School System fiscal year 2013-2018 Capital Improvement Program. The Mayor **ABSTAINED.**

**MINUTES**

Bureau of Water and Wastewater - Task Assignment

**ACTION REQUESTED OF B/E:**

The Board is requested to approve the assignment of Task No. 010 to Rummel, Klepper & Kahl, LLP, under on-call project 1120R, WC 1198 and SC 871, Inspection Services.

**AMOUNT OF MONEY AND SOURCE:**

\$ 50,889.36 - 9956-911411-9551-900020-705032  
50,889.35 - 9960-903682-9557-900020-705032  
**\$101,778.71**

**BACKGROUND/EXPLANATION:**

Rummel, Klepper & Kahl, LLP will provide field inspection services on utility contracts WC 1198 and SC 871.

**MWBOO FOUND VENDOR IN COMPLIANCE**

**AUDITS REVIEWED AND FOUND THE BASIS FOR COMPENSATION CONSISTENT WITH CITY POLICY.**

**THE TRANSFER OF FUNDS REQUIRED TO COVER THE COST OF THE ACCOUNT DEFICIT, ADDITIONAL INSPECTION AND CONSULTANT TASKS AND ADDITIONAL ANTICIPATED EXTRA WORK FOR WC 1198, INFRASTRUCTURE REHABILITATION AT VARIOUS LOCATIONS WAS APPROVED ON OCTOBER 26, 2011.**

UPON MOTION duly made and seconded, the Board approved and authorized execution of the assignment of Task No. 010 to Rummel, Klepper & Kahl, LLP, under on-call project 1120R, WC 1198 and SC 871, Inspection Services. The President **ABSTAINED**.

**MINUTES**Bureau of Water and Wastewater - Agreement**ACTION REQUESTED OF B/E:**

The Board is requested to approve and authorize execution of an agreement with Moffatt & Nichol, for Project No. 1154.1, On-Call Storm Water Study and Engineering Design Services. The agreement is effective upon Board approval for three years or until the upset limit is reached, whichever occurs first.

**AMOUNT OF MONEY AND SOURCE:**

\$1,500,000.00 - upset limit

**BACKGROUND/EXPLANATION:**

To improve the City's aging storm drain system, the Storm Water Engineering Office requires on-call engineering services to modify, upgrade and repair the storm water drain systems. The work involved is of an urgent nature and requests are made on an as-needed basis. The cost of services rendered will be on a not-to-exceed negotiated price for each task assigned. The payroll rates and multiplier for each task will be reviewed by the Department of Audits and MWBOO for compliance with the original agreement.

The consultant has been approved by the Office of Boards and Commission and Architectural Engineering and Award Commissions.

**MBE/WBE PARTICIPATION:**

<b>MBE:</b>	Findling, Inc.	\$ 75,000.00	5.00%
	Sabra, Wang & Associates, Inc.	180,000.00	12.00%
	EBA Engineering, Inc.	150,000.00	10.00%
		<u>\$405,000.00</u>	<u>27.00%</u>
<b>WBE:</b>	Constellation Design Group, Inc.	\$135,000.00	9.00%

**APPROVED FOR FUNDS BY FINANCE**

**AUDITS NOTED THIS ON-CALL AGREEMENT AND WILL REVIEW TASK ASSIGNMENTS.**

**MINUTES**

BW&WW - cont'd

UPON MOTION duly made and seconded, the Board approved and authorized execution of the agreement with Moffatt & Nichol, for Project No. 1154.1, On-Call Storm Water Study and Engineering Design Services. The President **ABSTAINED**.

MINUTES

PERSONNEL MATTERS

\* \* \* \* \*

UPON MOTION duly made and seconded,

the Board approved

all of the Personnel matter

listed on the following page:

3789

All of the Personnel matters have been approved

by the EXPENDITURE CONTROL COMMITTEE.

All of the contracts have been approved

by the Law Department

as to form and legal sufficiency.

The President **ABSTAINED.**

## MINUTES

PERSONNELCity Council

	<u>Hourly Rate</u>	<u>Amount</u>
1. CHRISTINE MULDOWNEY	\$19.23	\$20,000.00

Account: 1001-000000-1000-106500-601009

Ms. Muldowney will continue to work as a Contract Services Specialist. She will provide constituent services for Councilman Curran. She will also be responsible for attending community meetings, answering constituent questions, following through to investigate and respond to constituent concerns and advising Councilman Curran on community issues and assisting in the development of public forums and hearings on matters of interest to the community. The period of the agreement is effective upon Board approval for one-year.

**MINUTES****PROPOSAL AND SPECIFICATION**

There being no objections, the Board, UPON MOTION duly made and seconded, approved the following Proposals and Specifications to be advertised for receipt and opening of bids on the dates indicated:

- |                                |   |  |
|--------------------------------|---|--|
| 1. Department of Public Works/ | - | RP 10854RR, Luckman Park                   |
| Department of Recreation and   |   | Site Improvements                          |
| <u>Parks</u>                   |   | <b>BIDS TO BE RECV'D:12/14/2011</b>        |
|                                |   | <b><u>BIDS TO BE OPENED:12/14/2011</u></b> |

**CONGRATULATIONS**

President: "On another note because we recess. I would like to congratulate you Madam Mayor and you Deputy Comptroller on your win. Madam Comptroller on your General Election win. I am looking forward to us working together to move the City forward. So again, congratulations."

Comptroller: "Thank you."

Mayor: "Thank you."

\* \* \* \* \*

## MINUTES

CLERK: "The Board is now in session for the receiving and opening of bids."

Prior to the reading of bids received today and the opening of bids scheduled for today, the Clerk announced that the following agencies had issued an Addendum extending the dates for receipt and opening of bids on the following contract. There were no objections.

Department of General Services - PB 10828, Repairs to the  
Northwest Transfer Station  
**BIDS TO BE RECV'D:11/16/2011**  
**BIDS TO BE OPENED:11/16/2011**

## MINUTES

Thereafter, UPON MOTION duly made and seconded, the Board received, opened and referred the following bids to the respective departments for tabulation and report:

Department of General Services - GS 11830, Greyhound Station  
- Demolition

P&J Contracting Co.  
K&K Adams, Inc.  
Potts & Callahan

Department of Transportation - TR 11311, Harbor Connector  
Water Taxi Dock - Federal

McLean Contracting Company

Bureau of Purchases - B50001886, Vehicle leasing

ACME Auto Leasing, LLC  
Allstate Leasing  
Enterprise Fleet Management  
NextCar

Bureau of Purchases - B50001894, Telecommunication  
Improvement & Procurement  
Project (Price)

IBM

Bureau of Purchases - B50002157, Auction Services

Express Auction Services, Inc.  
Global Force Auctions Group  
Goel Services

Bureau of Purchases - B50002175, 2012 Sport Util-  
ity Vehicles

Chapman Auto Group  
Hertrich Fleet Services, Inc.  
Criswell Chevrolet, Inc.

**MINUTES**

There being no objections, the Board UPON MOTION duly made and seconded, the Board adjourned until its next regularly scheduled meeting on Wednesday, November 16, 2011.

JOAN M. PRATT  
Secretary