

MINUTES

REGULAR MEETING

Honorable Bernard C. "Jack" Young, President
Honorable Stephanie Rawlings-Blake, Mayor - **ABSENT**
Honorable Joan M. Pratt, Comptroller and Secretary
George A. Nilson, City Solicitor
Rudolph S. Chow, Director of Public Works
David E. Ralph, Deputy City Solicitor
S. Dale Thompson, Deputy Director of Public Works
Bernice H. Taylor, Deputy Comptroller and Clerk - **ABSENT**

Pursuant to Article VI, Section 1(c) of the revised City Charter effective July 1, 1996, the Honorable Mayor, Stephanie Rawlings-Blake, in her absence during the meeting, designated Mr. Henry Raymond, Director of Finance, to represent the Mayor and exercise her power at this Board meeting.

President: "The July 15, 2015 meeting of the Board of Estimates is now called to order. In the interest of promoting the order and efficiency of these hearings, persons who are disruptive to the hearing will be asked to leave the hearing room immediately."

City Solicitor: "We should also note for the record that the Finance Director, Henry Raymond, is sitting in for the Mayor in her absence."

Comptroller: "Yes, thank you."

MINUTES

President: "Thank you. I will direct the Board members attention to the memorandum from my office dated July 13, 2015, identifying matters to be considered as routine agenda items together with any corrections and additions that have been noted by the Deputy Comptroller. I will entertain a Motion to approve all of the items contained on the routine agenda."

City Solicitor: "Uh -- Mr. President, can I just ask a clarification before I make that motion? So, we had some discussion about the item on Page 17, uh -- Page 17, 4, and 5"

Comptroller: "4 and 5"

City Solicitor: "and uh -- the question was whether there is or isn't a protest pending. That matter appears on your non-routine agenda so we should, for the record, uh -- maybe separate that out from the routine agenda, and then call that question in the event that the protestant is here. Is that agreeable?"

Comptroller: "Yes, we can."

President: "Yeah, we can do that."

City Solicitor: "Ok, with that -- with that correction to the non-routine agenda -- to the routine agenda, I MOVE the approval of all items on the routine agenda."

Comptroller: "Second."

MINUTES

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

City Solicitor: "So, if we can just call that one item and see if the protestant is here."

* * * * *

MINUTES

Department of Real Estate - Second Amendment to Lease Agreement

ACTION REQUESTED OF B/E:

The Board is requested to approve and authorize execution of a Second Amendment to Lease Agreement between the Department of Public Works, Safety & Training Division, Tenant, at 3000 Druid Park Drive with approximately 7,000 sq. ft. of space. The 2nd Amendment to Lease Agreement extends the period of the agreement through March 31, 2016.

AMOUNT OF MONEY AND SOURCE:

<u>Annual Rent</u>	<u>Monthly Rent</u>
\$40,038.72	\$3,336.56

Account: 1001-000000-1901-191300-603013

BACKGROUND/EXPLANATION:

The original Lease Agreement was approved by the Board on October 1, 2004. The Department of Public Works, Safety & Training Division, is requesting a 12 month extension to their existing lease with two 5-year renewal options. All other conditions, provisions, and terms of the Lease Agreement dated May 4, 2005 will remain in full force and effect.

The Second Amendment to Lease Agreement is late because of administrative issues in the Department of Public Works.

UPON MOTION duly made and seconded, the Board approved and authorized execution of the Second Amendment to Lease Agreement between the Department of Public Works, Safety & Training Division, Tenant, at 3000 Druid Park Drive with approximately 7,000 sq. ft. of space.

MINUTES

EXTRA WORK ORDERS

* * * * *

UPON MOTION duly made and seconded,

the Board approved the

Extra Work Orders

as listed on the following pages:

2397 - 2402

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.

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 Transportation

1. EWO #001, \$80,700.00 - TR 14018, Material Testing 2014
Various Projects Citywide

\$ 108,620.00	-	Sabra Wang &	-	-
		Associates, Inc.		

2. TRANSFER OF FUNDS

<u>AMOUNT</u>	<u>FROM ACCOUNT/S</u>	<u>TO ACCOUNT/S</u>
\$130,063.18	9950-916029-9509	9950-907536-9508-2
HUR	Constr. Reserve -	Contingencies
	Materials & Compliance	Material Testing
	Testing	

This transfer will cover the deficit and fund the costs associated with Change Order No. 1 on Project TR 14018, Material Testing 2014 Various Projects Citywide with Sabra Wang & Associates, Inc.

3. EWO #002, \$272,517.24 - TR 14001, Reconstruction of Foot-ways
Citywide

\$1,240,838.00	\$0.00	Machado Constr.	180	-
		Co.	CCD	

This authorization will pay for additional work to be performed on the 2800 and 2900 blocks of Hamilton Avenue sidewalk and ADA ramps. It is heavily traveled by pedestrians and is also the main artery for vehicle traffic going into and out of the City. The compensable time extension of 180 consecutive calendar days is needed for the completion of the work. The contract expires June 16, 2015 with a new completion date of December 16, 2015.

MINUTES

EXTRA WORK ORDERS

Contract Awd. Amt.	Prev. Apprvd. Extra Work	Contractor	Time % Ext. Compl.
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Department of Transportation

4. TRANSFER OF FUNDS

<u>AMOUNT</u>	<u>FROM ACCOUNT/S</u>	<u>TO ACCOUNT/S</u>
\$322,907.68 GF (HUR)	9950-903550-9509 Constr. Reserve Neighborhood Street Reconstruction	9950-907447-9504-2 Contingencies - Reconstruction of Footways Citywide

This transfer will cover the deficit and fund the costs associated with Change Order No. 2 on Project TR 14001, Reconstruction of Footways Citywide with Machado Construction Co., Inc.

5. EWO #002, \$607,000.00 - TR 14009, Conduit System Reconstruction at Various Locations, Citywide

\$ 2,651,455.00	\$0.00	Highlander Con-	90	-
		tracting Co.		

This authorization will provide uninterrupted service for BGE to repair conduit systems for Contract TR 14009. This is necessary in order to avoid power failures and to provide continuity of duct banks for electric cabling and fiber-optic installations throughout Baltimore. A 90-day time extension is requested to continue the work and to allow time to award a new conduit contract. The new completion date will extend the period to October 29, 2015.

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 Transportation

6. TRANSFER OF FUNDS

<u>AMOUNT</u>	<u>FROM ACCOUNT/S</u>	<u>TO ACCOUNT/S</u>
\$667,700.00	9962-941002-9563	9962-909063-9562-2
Other	Constr. Reserve	Contingencies -
	Conduit Replacement	Conduit System
	Program	Reconstruction

This transfer will fund the costs associated with Change Order No. 2 on Project TR 14009, Conduit System Reconstruction at Various Locations Citywide with Highlander Contracting Co.

7. EWO #003, (\$100,950.23) - TR 10304, Resurfacing Highways at Various Locations Northeast, Sector 1

\$ 2,569,293.77	\$0.00	M. Luis Construc-	-	-
		tion Co., Inc.		

This authorization provides for payment of overrun items, deduction of amounts not needed due to underrun or not used items and to balance out the contract.

8. EWO #007, \$96,263.00 - TR 07309, Rehabilitation of Roadways Around East Baltimore Life Science Park Phase 1C

\$ 2,333,454.75	\$319,681.93	P. Flanigan &	-	-
		Sons, Inc.		

9. EWO #007, \$51,250.10 - TR 20350, Replacement of Frederick Ave. Bridge over Gwynns Falls & CSX RR

\$13,997,381.20	\$ 84,559.99	Joseph B. Fay Co.	-	-
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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>

Department of Transportation

10. TRANSFER OF FUNDS

<u>AMOUNT</u>	<u>FROM ACCOUNT/S</u>	<u>TO ACCOUNT/S</u>
\$40,892.50 Federal	9950-944002-9507 Reserve for Close- outs	
15,482.61 <u>MVR</u>	9950-903416-9507 Constr. Reserve Hawkins Point Rd. Bridge	
\$56,375.11	-----	9950-902412-9506-2 Contingencies - Frederick Ave. Bridge over Gwynns Falls

This transfer will fund the costs associated with Change Order No. 7 on Project TR 20350, Replacement of Frederick Avenue Bridge over Gwynns Falls & CSX RR with Joseph B. Fay Co.

11. EWO #008, \$109,918.56 - TR 20350, Replacement of Frederick Avenue Bridge over Gwynns Falls & CSX RR
-
- | | | | | |
|-----------------|--------------|-------------------|------|---|
| \$13,997,381.20 | \$135,810.09 | Joseph B. Fay Co. | 30 | - |
| | | | days | |

MINUTES

EXTRA WORK ORDERS

Contract Awd. Amt.	Prev. Apprvd. Extra Work	Contractor	Time % Ext. Compl.
12. EWO #009, \$796,016.02 - TR 20350, Replacement of Frederick Avenue Bridge over Gwynns Falls & CSX RR	\$13,997,381.20	\$245,728.65	Joseph B. Fay Co. 0 -

The authorizations will pay for the 30 days compensable time extension due to issues beyond the control of the contractor which impacted the project.

13. TRANSFER OF FUNDS

<u>AMOUNT</u>	<u>FROM ACCOUNT/S</u>	<u>TO ACCOUNT/S</u>
\$ 880,000.00	9950-944002-9507 Federal Reserve for Close-outs	
220,000.00	9950-903416-9507 MVR Constr. Reserve Hawkins Point Road Bridge	
\$1,100,000.00	-----	9950-902412-9506-2 Contingencies - Frederick Avenue Bridge over Gwynns Falls

This transfer will cover the deficit and fund the costs associated with Change Order Nos. 8 and 9 on Project TR 20350, Replacement of Frederick Avenue Bridge over Gwynns Falls and CSX RR with Joseph B. Fay Co.

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>

Department of Public Works/Office of Engineering & Construction

- | | | | | | |
|-----|---|----------------|--------------------|---|---|
| 14. | EWO #001, \$26,850.00 - SC 886R, Improvements to Sludge Blending Tanks at Patapsco Wastewater Treatment Plant | | | | |
| | <u>\$5,435,000.00</u> | - | | | |
| | | | Ulliman Schutte | - | - |
| | | | Construction, LLC | | |
| 15. | EWO #057, \$52,643.55 - WC 1164, Towson Finished Water Reservoir Cover and Miscellaneous Repairs | | | | |
| | <u>\$18,393,000.00</u> | \$1,103,575.78 | | | |
| | | | The Whiting-Turner | - | - |
| | | | Contracting Co., | | |
| | | | Inc. | | |

MINUTES

Law Department - Settlement Agreement and Release

ACTION REQUESTED OF B/E:

The Board is requested to approve and authorize execution of the Settlement Agreement and Release of the claim of Ms. Rachel Ham on behalf of her minor son, W.H., Plaintiff, against Officer Todd Murphy for alleged assault, battery, false arrest, false imprisonment, false light, and violations of provisions of the Maryland Declaration of Rights.

AMOUNT OF MONEY AND SOURCE:

\$65,000.00 - 1001-000000-2041-716700-603070

BACKGROUND/EXPLANATION:

On February 27, 2014, Officer Murphy observed W.H. put what appeared to be a bag of Controlled Dangerous Substance under concrete steps. When Officer Murphy approached W.H., he attempted to flee. Officer Murphy pursued W.H. on foot and apprehended him. Plaintiff alleged that Officer Murphy used excessive force. No Controlled Dangerous Substance was recovered from the scene. W.H. was eventually taken home and released to his parents who took him to the hospital where he was treated for his injuries.

As a result of the incident, Plaintiffs filed suit seeking \$2,000,000.00 in compensatory and \$2,000,000.00 in punitive damages for each claim (total of \$12,000,000.00 in compensatory damages and \$12,000,000.00 in punitive damages). Because of conflicting factual issues and objective injuries suffered by the Plaintiff, and given the uncertainties and unpredictability of jury verdicts, the parties propose to settle the matter for a total sum of \$65,000.00 in return for a dismissal of the litigation.

MINUTES

Law Department - cont'd

Based on a review of the facts and legal issues specific to this case, the Settlement Committee of the Law Department recommends that the Board approve the settlement of this case as set forth herein.

APPROVED FOR FUNDS BY FINANCE

UPON MOTION duly made and seconded, the Board approved and authorized execution of the Settlement Agreement and Release of the claim of Ms. Rachel Ham on behalf of her minor son, W.H., Plaintiff, against Officer Todd Murphy for alleged assault, battery, false arrest, false imprisonment, false light, and violations of provisions of the Maryland Declaration of Rights.

MINUTES

Department of Housing and - Third Amendment to Land
Community Development (DHCD) Disposition and Development
Agreement

ACTION REQUESTED OF B/E:

The Board is requested to approve and authorize execution of a Third Amendment to Land Disposition and Development Agreement (Third Amendment) with the Poppleton Development I, LLC for the Poppleton Redevelopment Project. The Board is further requested to authorize the Commissioner of the Department of Housing and Community Development to execute any and all documents to effectuate this transaction subject to review and approval for form and legal sufficiency by the Department of Law.

AMOUNT OF MONEY AND SOURCE:

N/A

BACKGROUND/EXPLANATION:

The Third Amendment provides the Developer with a six month extension in which to close on the properties in Phase 1A, with the option, at the sole discretion of the Commissioner of the DHCD, to allow for an additional six-month extension of the closing. The new date by which the closing must occur on Phase IA will be January 3, 2016. If an additional six months is granted, closing must take place no later than July 3, 2016.

The Third Amendment will provide the time necessary to complete the processing of the Tax Increment Financing (TIF) for Phase IA of the Development. At its June 15, 2015 meeting, the Baltimore City Council approved the required TIF legislation.

In 2005, the City awarded a development site in the Poppleton neighborhood to La Cite Development, LLC, which formed the entity Poppleton Development I, LLC (the Developer). The Agreement was approved by the Board on September 27, 2006. The Agreement called upon the City to acquire the remaining privately owned properties in the development site, clear the site of structures, and convey the property to the Developer. The Developer is to construct approximately 1,650 units of new rental and for sale housing and 100,000 square feet of commercial retail space (the Project) in multiple phases.

MINUTES

DHCD - cont'd

A First Amendment to the Agreement was approved on April 3, 2013. The First Amendment revised the list of properties to be conveyed, clarified the purchase price of properties, and revised the timetable and certain terms for the development of the Project.

The Second Amendment to the Agreement was approved on October 8, 2014. The Second Amendment extended the closing of Phase IA by nine months to July 3, 2015; revised the list of properties to be conveyed as part of Phase IA, moving five properties from Phase IB to Phase IA; and shifted the obligation to remove and cap all utilities and utility poles from the Phase I site area from the City to the Developer. The Developer will be paid \$550,000.00 for the utility work.

UPON MOTION duly made and seconded, the Board approved and authorized execution of the Third Amendment to Land Disposition and Development Agreement (Third Amendment) with the Poppleton Development I, LLC for the Poppleton Redevelopment Project.

MINUTES

Department of Housing and - Mortgage Release
Community Development

ACTION REQUESTED OF B/E:

The Board is requested to approve and authorize the release of a \$3,000.00 City-held mortgage granted to Carter A. Lawson and recorded in the Land Records of Baltimore City in Liber FMC 10083, Folio 283, for the property located at 2230 Linden Avenue.

AMOUNT OF MONEY AND SOURCE:

N/A

BACKGROUND/EXPLANATION:

On October 16, 2007, Mr. Lawson borrowed \$10,462.50, as a second position loan from the City as part of a Land Disposition Agreement approved by the Board on October 5, 2005, and recorded among the Land Records of Baltimore City in Liber FMC 8927, Folio 508 for the property known as 2230 Linden Avenue. Due to unforeseen circumstances, Mr. Lawson can no longer reside at 2230 Linden Avenue and was granted a short sale from his primary lender, M&T Bank. An offer has been received on the property for \$214,900.00 and has been accepted as a short sale by both Mr. Lawson and M&T Bank. Therefore, the DHCD is requesting the Board to approve a release of the second position City mortgage for \$3,000.00 in order to facilitate the proposed short sale.

MBE/WBE PARTICIPATION:

N/A

UPON MOTION duly made and seconded, the Board approved and authorized the release of \$3,000.00 City-held mortgage granted to Carter A. Lawson and recorded in the Land Records of Baltimore City in Liber FMC 10083, Folio 283, for the property located at 2230 Linden Avenue.

MINUTES

Department of Housing and - Land Disposition Agreement
Community Development

ACTION REQUESTED OF B/E:

The Board is requested to approve and authorize execution of a Land Disposition Agreement with EHM @ Harwood, LLC, Developer, for the sale of two City-owned vacant buildings located at 452 E. Lorraine Avenue and 423 Whitridge Avenue.

AMOUNT OF MONEY AND SOURCE:

\$ 5,000.00 - 452 E. Lorraine Avenue
5,000.00 - 423 Whitridge Avenue
\$10,000.00 - Purchase Price

BACKGROUND/EXPLANATION:

The properties will be purchased and renovated with a combination of public funds and grants. The Developer will receive approximately \$100,000.00 from the City of Baltimore through bond funds. The Developer will also receive a \$30,000.00 lead paint abatement grant from the DHCD, State of Maryland and a \$50,000.00 loan from the France-Merrick Foundation.

The project will consist of two City-owned buildings to be totally rehabilitated and returned to residential use as single family dwellings. When completed, the properties will be rented to low income tenants with disabilities at affordable rates.

The properties were journalized and approved for sale on June 27, 2011 and December 22, 2010, respectively.

MINUTES

DHCD - cont'd

STATEMENT OF PURPOSE AND RATIONALE FOR SALE BELOW THE PRICE DETERMINED BY THE APPRAISAL AND WAIVER VALUATION PROCESS:

Not applicable. The properties are being sold at the price in accordance with the Appraisal Policy of the City through the Waiver Valuation Process.

Pursuant to the provisions under the Baltimore City Code, Article 28 § 8-3, all terms and conditions of this agreement have been approved.

MBE/WBE PARTICIPATION:

The Developer will purchase the properties for a price that is less than \$50,000.00 and will receive City funds or incentives for the purchase or rehabilitation. Therefore, MBE/WBE is applicable.

UPON MOTION duly made and seconded, the Land Disposition Agreement with EHM @ Harwood, LLC was **WITHDRAWN**.

MINUTES

Mayor's Office of Human Services - Amendment to Agreement,
Renewal of Agreement,
Agreement, and Grant
Agreements

The Board is requested to approve and authorize execution of the Amendment to Agreement, Renewal of Agreement, Agreement, and Grant Agreements.

AMENDMENT TO AGREEMENT

1. **AIDS INTERFAITH RESIDENTIAL SERVICES, INC. \$1,385,650.00**

Account: 4000-494215-3573-327200-603051

On March 25, 2015, the Board approved an award in the amount of \$1,424,500.00. The amount of this award should have been \$1,385,650.00, which is a reduction of \$38,850.00. The Department is requesting the Board to approve the Amendment to Agreement, which will correct the amount awarded. The Department apologizes for this error, which was made at the administrative level. All other terms of the original agreement will remain in effect. The period of the Agreement is March 1, 2015 through February 28, 2018.

MWBOO GRANTED A WAIVER.

RENEWAL OF AGREEMENT

2. **ASSOCIATED CATHOLIC CHARITIES, INC. \$3,391,600.00**

Account: 1001-000000-3572-327206-603051

On January 28, 2015, the Board approved the agreement with Associated Catholic Charities, Inc. which allowed for the option to renew for two calendar year periods in the same amount. The original award was for \$3,391,600.00. The total amount of the award will be \$6,783,200.00. The Department would like to exercise the first option to renew. The terms of the award will remain the same. The organization will continue to provide shelter and supportive services to the homeless population of Baltimore at the Weinberg Housing Resource Center located at 600 Fallsway. The period of the renewal is July 1, 2015 through June 30, 2016.

MINUTES

Mayor's Office of Human Services - cont'd

AGREEMENT

3. AIDS INTERFAITH RESIDENTIAL SERVICES, INC. \$376,441.00

Account: 4000-490915-3573-333643-603051

The organization will use funds to provide housing assistance and supportive services to individuals or to families who have a family member with AIDS. AIDS Interfaith Residential Services, Inc. serves up to 10 clients at any point in time in their Don Miller housing site. The period of the Agreement is July 1, 2015 through June 30, 2016.

MWBOO GRANTED A WAIVER.

GRANT AGREEMENTS

4. HOUSE OF RUTH MARYLAND, INC. \$ 62,216.00

Account: 4000-480015-3571-333618-603051

The House of Ruth Maryland, Inc. will use the funds to operate an emergency shelter and provide rapid re-housing assistance. The organization will serve 200 clients and their children. The period of the Agreement is July 1, 2015 through June 30, 2016.

MWBOO GRANTED A WAIVER.

5. HOUSE OF RUTH MARYLAND, INC. \$234,756.00

Account: 5000-525615-3572-333718-603051

The House of Ruth Maryland, Inc. will use the funds to provide temporary shelter, meals, counseling and/or information and referrals to services. The organization will serve 200 women and their children who are homeless. The period of the Agreement is July 1, 2015 through June 30, 2016.

MWBOO GRANTED A WAIVER.

MINUTES

President: "Um -- the item on Page 17, items 4 and 5, House of Ruth."

City Solicitor: "Um -- is the protestant to that item from two weeks ago, whose name I think was Ms. Christine --"

Comptroller: "Ms. Flowers"

City Solicitor: "Flowers present here to argue on behalf of the protest?"

President: "I will entertain a MOTION."

City Solicitor: "Move to deny the protest and approve the item as submitted by the agency."

Comptroller: "Second."

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

* * * * *

A PROTEST WAS RECEIVED FROM KIM TRUEHEART FOR ITEM NOS 4 AND 5.

The Board of Estimates received and reviewed Ms. Trueheart's protest. As Ms. Trueheart does not have a specific interest that is different from that of the general public, the Board will not hear her protest.

Kim A. Trueheart

July 14, 2015

Board of Estimates
Attn: Clerk
City Hall, Room 204
100 N. Holliday Street,
Baltimore, Maryland 21202

Dear Ms. Taylor:

Herein is my written protest on behalf of the underserved and disparately treated citizens of the Baltimore City who appear to be victims of questionable management and administration within the various boards, commissions, agencies and departments of the Baltimore City municipal government.

The following details are provided to initiate this action as required by the Board of Estimates:

1. Whom you represent: Self
2. What the issues are:
 - a. Page 17, items #4 and #5 Mayor's Office Human Services (MOHS) – Grant Agreements, House of Ruth (\$62,216 and \$234,756), if approved:
 - i. The proceedings of this board often renew business agreements without benefit of clear measures of effectiveness to validate the board's decision to continue funding the provider of the city service being procured;
 - ii. The members of this board continue to fail to provide good stewardship of taxpayers' funds as noted by the lack of concrete justification to substantiate approval of actions presented in each weekly agenda;
 - iii. This board should immediately adjust the board's policy to ensure submissions to the board include measures of effectiveness in each instance where taxpayer funds have already been expended for city services;
 - iv. The outcomes for clients receiving services from the House of Ruth (HOR) are suspect, as I have had to assist over a half-dozen domestic violence victims since January 2015, who have been **DISCHARGED** from HOR programs with no discharge plan or options for continued shelter, thus leaving these victims no better off than when they entered the HOR program, homeless.
3. How the protestant will be harmed by the proposed Board of Estimates' action: As a citizen I have witnessed what appears to be a significant dearth in responsible and accountable leadership, management and cogent decision making within the various agencies and departments of the Baltimore City municipal government which potentially cost myself and my fellow citizens excessive amounts of money in cost over-runs and wasteful spending. Title 42 - The Public Health and Welfare, Chapter 119 - HOMELESS ASSISTANCE (§§ 11301 - 11489) Subchapter IV - HOUSING ASSISTANCE (§§ 11360 - 11408a), Part A - General Provisions (§§ 11360 - 11364), Section 11362 - Discharge coordination policy states:

Email: kimtrueheart@gmail.com

5519 Belleville Ave
Baltimore, MD 21207

“The Secretary may not provide a grant under this subchapter for any governmental entity serving as an applicant unless the applicant agrees to develop and implement, to the maximum extent practicable and where appropriate, policies and protocols for the discharge of persons from publicly funded institutions or systems of care (such as health care facilities, foster care or other youth facilities, or correction programs and institutions) in order to prevent such discharge from immediately resulting in homelessness for such persons.”

The Discharge coordination policy continues to be violated by HOR and causes significant harm to me and the homeless of Baltimore City.

4. Remedy I desire: The Board of Estimates should vote NO on these actions and direct the Inspector General to immediately conduct an inquiry into the practices of the House of Ruth.

I look forward to the opportunity to address this matter in person at your upcoming meeting of the Board of Estimates on July 15, 2015.

If you have any questions regarding this request, please telephone me at (410) 205-5114.

Sincerely,
Kim Trueheart, Citizen & Resident

5519 Belleville Ave
Baltimore, MD 21207

MINUTES

Mayor's Office of Human Services - cont'd

6. **COMMUNITY HOUSING ASSOCIATES, INC.** **\$ 16,725.00**

Account: 5000-525115-3573-333755-603051

Community Housing Associates, Inc. will use the funds to offset the cost of resident advocates who link low-income residents of permanent housing in the City to services that help them remain in their housing. The organization will serve approximately 250 clients. The period of the Agreement is July 1, 2015 through June 30, 2016.

7. **MOVEABLE FEAST, INC.** **\$128,858.00**

Account: 4000-490915-3573-333670-603051

Moveable Feast, Inc. will use the funds to offset the cost of providing supportive services to individuals or to families who have a family member with AIDS. The organization will serve 33,800 meals per year to eligible clients. The period of the Agreement is July 1, 2015 through June 30, 2016.

MWBOO GRANTED A WAIVER.

8. **UNITED MINISTRIES, INC.** **\$ 26,000.00**

Account: 5000-529116-3572-333760-603051

United Ministries, Inc. will use the funds to provide shelter and support services to the homeless of the City in their Earl's Place Transitional Housing program. The organization will serve approximately 30 clients. The period of the Agreement is July 1, 2015 through June 30, 2016.

APPROVED FOR FUNDS BY FINANCE

AUDITS REVIEWED AND HAD NO OBJECTION.

MINUTES

Mayor's Office of Human Services - cont'd

UPON MOTION duly made and seconded, the Board approved and authorized execution of the foregoing Amendment to Agreement, Renewal of Agreement, Agreement, and Grant Agreements.

MINUTES

Office of the State's Attorney (OSA) - Acceptance of Second
Year Funding

ACTION REQUESTED BY B/E:

The Board is requested to approve and authorize acceptance of the second year of funding from the State of Maryland, Department of Juvenile Services. The period of the funding is July 1, 2015 through June 30, 2016.

AMOUNT AND SOURCE OF FUNDS:

\$451,525.00 - 5000-504716-1150-118300-601001

BACKGROUND/EXPLANATION:

On July 16, 2014, the Board approved the original Intergovernmental Agreement between the Baltimore City State's Attorney's Office and the State of Maryland, Department of Juvenile Services in the amount of \$442,670.00. The Interdepartmental Agreement provided for this second year funding in the amount of \$451,525.00.

The funds are for the Immediate Charging Project which allows the OSA to expedite the charging process at the Baltimore City Juvenile Justice Center. The primary goal is to reduce case processing time between arrest and final disposition for Baltimore City youth. Funding covers the salaries of three full-time attorneys, and three part-time attorneys.

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

UPON MOTION duly made and seconded, the Board approved and authorized acceptance of the second year of funding from the State of Maryland, Department of Juvenile Services.

MINUTES

Mayor's Office on Criminal Justice - Grant Adjustment Notice

ACTION REQUESTED OF B/E:

The Board is requested to approve and authorize acceptance of the Grant Adjustment Notice (GAN) from the Governor's Office of Crime Control and Prevention for the "HYPE Coalition" grant, Award #MDSS-2015-1302. The GAN extends the period of the grant through August 31, 2015.

AMOUNT OF MONEY AND SOURCE:

\$0.00 - 5000-596915-2252-690700-600000

BACKGROUND/EXPLANATION:

On September 10, 2014, the Board authorized acceptance of the Grant Award for the "HYPE Coalition" grant in the amount of \$260,000.00. The grant funds a juvenile-based program that addresses high incidents of crime in Baltimore City and surrounding areas. The funds are used to track juvenile offenders by utilizing a security integration model of multi-agency collaboration with State and local law enforcement agencies, public safety agencies, and community partners. The grant funds will provide salary support, overtime, operating expenses, travel, and contractual services.

MBE/WBE PARTICIPATION:

N/A

APPROVED FOR FUNDS BY FINANCE

AUDITS NOTED THE TIME EXTENSION.

UPON MOTION duly made and seconded, the Board approved and authorized acceptance of the Grant Adjustment Notice from the Governor's Office of Crime Control and Prevention for the "HYPE Coalition" grant, Award #MDSS-2015-1302.

MINUTES

Department of Planning - Report on Previously
Approved Transfers of Funds

At previous meetings, the Board of Estimates approved Transfers of Funds 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. Today, the Board is requested to **NOTE 18** favorable reports by the Planning Commission on June 25, 2015 on Transfers of Funds approved by the Board of Estimates at its meetings on June 17 and June 24, 2015.

UPON MOTION duly made and seconded, the Board **NOTED** receipt of 18 favorable Reports on Transfers of Funds approved by the Board of Estimates at its meetings on June 17 and June 24, 2015.

MINUTES

Baltimore Police Department - Memorandum of Agreement

ACTION REQUESTED OF B/E:

The Board is requested to ratify a Memorandum of Agreement with the Baltimore Child Abuse Center. The period of the Memorandum of Agreement was July 1, 2014 through June 30, 2015.

AMOUNT OF MONEY AND SOURCE:

\$110,000.00 - 5000-597015-2021-212700-600000

BACKGROUND/EXPLANATION:

The Baltimore Child Abuse Center, will employ Forensic Interviewers to perform forensic interviews for all child sex offense cases referred by the Police Department. The Forensic Interviewers will conduct interviews with suspected victims of child sexual abuse/assault, their non-offending caretakers, and family members utilizing BCAC's approved interview protocols.

The Memorandum of Agreement is late because of the administrative process.

MBE/WBE PARTICIPATION:

N/A

APPROVED FOR FUNDS BY FINANCE

AUDITS REVIEWED AND HAD NO OBJECTION.

UPON MOTION duly made and seconded, the Board ratified the Memorandum of Agreement with the Baltimore Child Abuse Center.

MINUTES

Office of the Labor Commissioner - Side Letter

ACTION REQUESTED OF B/E:

The Board is requested to **NOTE** a receipt of the Side Letter which provides a one-time bonus for employees represented by the City Union of Baltimore (CUB).

AMOUNT OF MONEY AND SOURCE:

The FY 2016 budget concludes funding for this one-time bonus.

BACKGROUND/EXPLANATION:

Employees represented by CUB will receive a one-time bonus of \$450.00. This bonus fulfills the employer's obligation in accordance with Article 11: Rates of Pay, paragraph B of the FY 2014 - 2016 Memorandum of Understanding.

UPON MOTION duly made and seconded, the Board **NOTED** receipt of the Side Letter which provides the one-time bonus for employees represented by the City Union of Baltimore.

MINUTESDepartment of Transportation - Minor Privilege Permit Applications

The Board is requested to approve the following applications for a Minor Privilege Permit. The applications are in order as to the Minor Privilege Regulations of the Board and the Building Regulations of Baltimore City.

	<u>LOCATION</u>	<u>APPLICANT</u>	<u>PRIVILEGE/SIZE</u>
1.	1300 Thames Street	Block Street Apartments, LLC	One canopy 39'x9'
	Annual Charge:	\$737.10	
2.	4023 Eastern Avenue	4023 Eastern Avenue, LLC	One flat sign 12'x2'
	Annual Charge:	\$ 35.20	
3.	5904 York Road	The Senator Theater, LLC	One double face electric sign 2.833'x5.5'
	Annual Charge:	\$ 82.58	
4.	3610 Dillon Street	JFY Properties II, LLC	Canopy 315 sq. ft., vestibule 19 sq. ft.
	Annual Charge:	\$929.40	
5.	6638 Holabird Avenue	Mohammed Afzaal	Handicap ramp 21'x3'8"
	Application Fee:	\$ 25.00	

MINUTES

Department of Transportation - cont'd

	<u>LOCATION</u>	<u>APPLICANT</u>	<u>PRIVILEGE/SIZE</u>
6.	901 S. Ann Street	Ann Street Wharf, LLC	One bracket sign 48"x28"
	Annual Charge:	\$ 52.70	
7.	1400 Greenmount Avenue	1400 Greenmount, LLC	One set of steps 14' x 5'6", one handicap ramp 45' x 7'8"
	Application Fee:	\$ 50.00	
8.	1400 Greenmount Avenue	1400 Greenmount, LLC	Three canopies, one @ 11' x 5', one @ 22'8" x 5', and one 12' x 1'
	Annual Fee:	\$298.65	

Since no protests were received, there are no objections to approval.

There being no objection, the Board, UPON MOTION duly made and seconded, approved the Minor Privilege Permits.

MINUTES

Department of Transportation - Developers' Agreements

The Board is requested to approve and authorize execution of the various Developers' Agreements.

	<u>DEVELOPER</u>	<u>NO.</u>	<u>AMOUNT</u>
1.	CRITTENTON HILL, LLC	1369	\$104,318.21

Crittenton Hill, LLC would like to install new water service to their proposed new building located in the vicinity of West 32nd Street and Elm Avenue. The agreement will allow the organization to do its own installation in accordance with Baltimore City Standards.

A Performance Bond in the amount of \$104,318.21 has been issued to Crittenton Hill, LLC which assumes 100% of the financial responsibility.

2.	BREW HOUSE NO. 16, INC.	1399	\$ 20,200.00
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Brew House No. 16, Inc. would like to install new water service to their proposed construction located in the vicinity of 831 North Calvert Street. This agreement will allow the organization to do its own installation in accordance with Baltimore City Standards.

A Letter of Credit in the amount of \$20,200.00 has been issued to Brew House No. 16, Inc. which assumes 100% of the financial responsibility.

3.	CAIRNES LANE DEVELOPMENT, LLC	1403	\$155,874.00
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Cairnes Lane Development, LLC would like to install new water service to their proposed new building located in the vicinity of 3622 Cairnes Lane. This agreement will allow the organization to do its own installation in accordance with Baltimore City Standards.

MINUTES

Department of Transportation - cont'd

A Performance Bond in the amount of \$155,874.00 has been issued to Cairnes Lane Development, LLC which assumes 100% of the financial responsibility.

MBE/WBE PARTICIPATION:

City funds will not be utilized for the projects, therefore, MBE/WBE participation is not applicable.

UPON MOTION duly made and seconded, the Board approved and authorized execution of the foregoing Developers' Agreements.

MINUTES

Department of Transportation - Traffic Mitigation Agreement

ACTION REQUESTED OF B/E:

The Board is requested to approve and authorize execution of a Traffic Mitigation Agreement with Central Savings Bank Properties, LLC. The period of the agreement will commence upon Board of Estimates approval and termination will be deemed in writing by the Department of Transportation.

AMOUNT OF MONEY AND SOURCE:

\$11,512.03 - 9950-906082-9512-900000-490375

BACKGROUND/EXPLANATION:

Baltimore City Ordinance 11-529, approved on May 9, 2012, determined that a Traffic Impact Study was required for the Development. The Developer proposes to perform the Scope of Work for The Baltimore & Annapolis Railroad Company Liber F.M.C 6671 Folio 730 at 115 N. Charles Street (Ward 4, Section 1, Block 612 and 623, Lots 1, 2, and 14) constructing a Mixed Use Development with 7,500 sq. ft. of retail & commercial use and 28,926 sq. ft. of Multi-family residential with 24 residential units and 12,276 sq. ft. of low hazard storage. The Developer agrees to make a one-time contribution in the amount of \$11,512.03 to fund the City's multimodal transportation improvements in the Development's vicinity.

MBE/WBE PARTICIPATION:

N/A

UPON MOTION duly made and seconded, the Board approved and authorized execution of the Traffic Mitigation Agreement with Central Savings Bank Properties, LLC.

MINUTES

Parking Authority of Baltimore City (PABC) - Expenditure of
Funds

ACTION REQUESTED OF B/E:

The Board is requested to approve an Expenditure of Funds to pay expenses related to structural repairs to the Market Center Garage (Garage).

AMOUNT OF MONEY AND SOURCE:

\$37,233.43 - 2075-000000-5800-408600-603016

BACKGROUND/EXPLANATION:

The PABC is charged with managing the City of Baltimore's parking assets, including the Market Center Garage, located at 221 North Paca Street, north of the Lexington Market (Market). On April 9, 2015, the trash hauler for the Market, Republic Services, was exiting the Garage from the Market's loading dock area to Jasper Street when the dumpster loaded on the back of the truck did not clear the posted 12' 8" maximum vehicle height.

As a result of the impact, structural damage was sustained to the brick veneer and concrete wall on the underside of the level one concrete and brick perimeter wall of the Garage. No employees or patrons of the Market, the Garage or the trash hauler, or members of the general public, were injured during this incident.

The PABC contacted Hoffmann Architects and Structural Restoration Services (SRS). Both of these firms have provided emergency on-call services to the PABC at other City garages. Hoffman Architects conducted the initial structural assessment and provided guidance for temporary shoring of the damaged area to protect the public from falling debris and to prevent further deterioration of the wall.

MINUTES

PABC cont'd

The temporary shoring was installed by the SRS. While the temporary shoring has forced the closing of the exit lane from the Market's loading dock area, it has not impacted any parking patrons of the Garage.

In order to repair the structural damage, the PABC is requesting the approval of an Expenditure of Funds to pay expenses in the amount of \$37,233.43. The funds will cover the expenses of Hoffman Architects for the initial assessment of the damage, the preparation of structural drawings necessary to obtain permits, and the cost of the temporary shoring and the permanent repairs as provided by the SRS, plus a 5% contingency, which has been estimated by the PABC. Expenses are as follows:

Date	Vendor	Amount	Description
05/22/2015	Hoffmann Architects	\$ 4,460.38	Arch. and Eng. Services
06/09/2015	Hoffmann Architects	\$ 3,446.97	Arch. and Eng. Service
04/20/2015	Structural Restoration Services	\$ 1,072.08	Temporary Shoring
06/13/2015	Structural Restoration Services	\$26,481.00	Permanent Repairs
	5% Contingency	\$ 1,773.00	
Total		\$37,233.43	

MINUTES

PABC - cont'd

The PABC is submitting a cost proposal from Structural Restoration Services for the permanent repair, at this time, because the work will not commence until the Expenditure of Funds is approved. The 5% contingency is expected to cover any unforeseen conditions in the damaged concrete.

The PABC expects that all of its expenses will be reimbursed in full, from CCMSI, upon completion of the work. CCMSI is the commercial liability insurance carrier for Republic Services, the trash hauler for the Market. The PABC formally opened a claim with the insurance adjustor on April 13, 2015.

MBE/WBE PARTICIPATION:

N/A

APPROVED FOR FUNDS BY FINANCE

AUDITS REVIEWED AND HAD NO OBJECTION.

UPON MOTION duly made and seconded, the Board approved the Expenditure of Funds to pay expenses related to structural repairs to the Market Center Garage.

MINUTES

Baltimore Development - Third Amendment to Disposition
Corporation (BDC) and Development Agreement

ACTION REQUESTED OF B/E:

The Board is requested to approve and authorize execution of a Third Amendment to Disposition and Development Agreement (Third Amendment) among the City, the Baltimore Center Associates Limited Partnership (BCA), and the Baltimore Center Garage Limited Partnership (BCG), for the property located on Development Areas 5 and 6 of the Inner Harbor Project I Urban Renewal Plan Area (Block 673, Lot 001).

AMOUNT OF MONEY AND SOURCE:

BCA and BCG will remit \$1,560,000.00 to the City to exercise the redemption rights in accordance with Section 5.6 of the Disposition and Development Agreement

BACKGROUND/EXPLANATION:

The City, the BCA, and the BCG are parties to the Disposition and Development Agreement (DDA) for the property located on Development Areas 5 and 6 of the Inner Harbor Project I Urban Renewal Plan Area. Commonly known as The Gallery and the Gallery Garage, the development on the site consists of hotel, retail, office, and garage uses (Development).

The Development is subject to a participation agreement wherein the City is entitled to receive a share of the net cash flow and other revenues related to the office, hotel, retail, and garage. Section 5.6 of the DDA provides the BCA and the BCG with the right to redeem this participation agreement at fair market value.

MINUTES

BDC - cont'd

This Third Amendment formally exercises this redemption right, sets the fair market value at \$1,560,000.00 based on three appraisals received by the parties, and upon payment being received by the City, releases the BCA and the BCG from further obligation relating to this participation agreement.

UPON MOTION duly made and seconded, the Third Amendment to Disposition and Development Agreement with the BCA, and the BCG, for the property located on Development Areas 5 and 6 of the Inner Harbor Project I Urban Renewal Plan Area (Block 673, Lot 001) was **DEFERRED** for one week.

MINUTES

Baltimore Development Corporation - Office Lease Agreement

ACTION REQUESTED OF B/E:

The Board is requested to approve and authorize execution of an Office Lease Agreement with Cloudleap Technologies, LLC, Tenant, for the rental of 141 sq. ft., in Suite A7 for the property known as Business Center @ Park Circle located at 2901 Druid Park Drive. The period of Agreement is for one year, effective upon execution of the lease and readiness of the premises.

AMOUNT OF MONEY AND SOURCE:

<u>Annual Rent</u>	<u>Monthly Installments</u>
\$3,000.00	\$250.00

BACKGROUND/EXPLANATION:

Cloudleap Technologies LLC, is a minority-owned Small Disadvantaged Business specializing in Information Technology Services. Areas of expertise include Web Application Design & Development (Java and .Net) Web Service Design & Development, Enterprise Integration, Cloud Architecture and Cloud-based Integration and more. The company has been in business since October 26, 2010.

The space is leased on an "As Is" basis and does not require the landlord to make any modifications. The tenant will be responsible for any improvements or build-out of the premises.

All other landlord services such as utilities, limited janitorial services, maintenance, and repairs to the premises are included in the initial base rent.

MINUTES

BDC - cont'd

In addition, the tenant is obligated to maintain and keep in force general public liability, contractual liability, and property damage insurance protection for the premises and name the City as additionally insured under said insurance policies.

MBE/WBE PARTICIPATION:

N/A

UPON MOTION duly made and seconded, the Board approved and authorized execution of the Office Lease Agreement with Cloudleap Technologies, LLC, Tenant, for the rental of 141 sq. ft., in Suite A7 for the property known as Business Center @ Park Circle located at 2901 Druid Park Drive.

MINUTES

Health Department - Expenditure of Funds

ACTION REQUESTED OF B/E:

The Board is requested to approve and authorize the purchase of gift cards as incentives for the HIV/STD Prevention Program.

AMOUNT OF MONEY AND SOURCE:

\$4,000.00 - 800 Rite Aid gift cards @ \$5.00 each

BACKGROUND/EXPLANATION:

Rite Aid gift cards will be distributed as incentives to help reduce the number of new HIV infections and improve the health of persons living with HIV/AIDS. The gift cards will also be used to enhance staff ability to attract those encountered to receive counseling and testing on the STD/HIV testing van.

The STD/HIV Prevention Program adheres to all policies associated with the usage of incentives and has sufficient procedures in place to address the safeguarding and accountability of incentives.

The Health Department adopted a consolidated policy for the purchase, distribution, and documentation of all incentive cards. The central tenets of this policy account for: 1) a single means of procuring all incentive cards through the Board of Estimates; 2) the documentation of each incentive card and its recipient; 3) a monthly reconciliation for all purchases that account for all distributed and non-distributed cards, and; 4) periodic internal reviews of programs' activity vis-a-vis the internal policy, which are to be shared with the Department of Audits.

MINUTES

Health Department - cont'd

This policy has been reviewed by both the Solicitor's Office and by the Department of Audits. Consistent with the original Board of Estimates approval, all requests for payment for the above incentive cards will be subject to the Department of Audits approval.

MBE/WBE PARTICIPATION:

N/A

APPROVED FOR FUNDS BY FINANCE

AUDITS REVIEWED AND HAD NO OBJECTION.

UPON MOTION duly made and seconded, the Board approved and authorized the purchase of gift cards as incentives for the HIV/STD Prevention Program.

MINUTES

Health Department - Agreements

The Board is requested to approve and authorize execution of the Agreements.

1. SISTERS TOGETHER AND REACHING, INC. \$110,000.00

Account: 4000-499015-3023-513200-603051

Sisters Together and Reaching, Inc. will identify and provide counseling, testing, and referral services to a minimum of 1,300 people of which 1,040 will be men, in order to identify new cases of HIV infection, and link all HIV positive cases to treatment and care. The organization will use education, recruitment, and retention strategies, using active street outreach, print and electronic media, and social networking strategies. The target population is African American men having sex with men (MSM) and their partners. The period of the Agreement is January 1, 2015 through December 31, 2015. The Agreement is late because budget revisions delayed processing.

2. BALTIMORE CITY BOARD OF SCHOOL COMMISSIONERS \$ 94,000.00

Account: 4000-427115-3080-294300-603051

The Baltimore City Board of School Commissioners will provide services to children in the Baltimore Infants and Toddlers Program who are determined eligible for preschool special education and related services. The period of the Agreement is July 1, 2014 through September 30, 2015. The Agreement is late because of a delay during the review and signature process at the Baltimore City Public School System.

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 foregoing Agreements.

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. Ritu Rana	930 N. Bradford St.	L/H	\$ 3,750.00

Funds are available in account no. 9910-908044-9588-900000-704040.

On April 24, 2013, the Board approved the acquisition of the leasehold interest in 930 N. Bradford Street for the amount of \$16,250.00 based on an independent appraisal report. The previous owner offered an appraisal report that valued the property at \$25,000.00. After negotiations, the parties agreed to settle the case for \$20,000.00. Therefore, the Board is requested to approve an additional \$3,750.00 in settlement of the case.

Dept. of Housing and Community Development (DHCD) - Rescission and Approval

2. Thomas D. Noeth	1910 Herbert St.	G/R	\$ 300.00
		\$36.00	

Funds are available in account no. 9910-910634-9588-900000-704040. Whole Block Demo Project.

The Board is requested to rescind the prior approval of February 4, 2015, for the purchase by condemnation of the \$36.00 ground rent interest in 1910 Herbert Street for \$300.00.

The Board is requested to approve redemption of the ground rent interest by applying to the Maryland Department of Assessments and Taxation to redeem the \$36.00 ground rent interest in 1910 Herbert Street for \$300.00.

MINUTES**OPTIONS/CONDEMNATION/QUICK-TAKES:**

<u>Owner(s)</u>	<u>Property</u>	<u>Interest</u>	<u>Amount</u>
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In the event that the application to the SDAT fails the DHCD requests the Board's approval to purchase the property interest in the above property by condemnation proceedings for an amount equal to or lesser than the option amounts.

UPON MOTION duly made and seconded, the Board approved the foregoing Payment of Settlement and the Rescission and Approval.

MINUTES

Office of the President - Governmental/Charitable
Solicitation Application

ACTION REQUESTED OF B/E:

The Board is requested to endorse a Governmental/Charitable Solicitation Application to be approved by the Baltimore Ethics Board. James Kraft wishes to solicit donations from local individuals and businesses to support the Baltimore City Historical Society. The period of the solicitation is upon Board approval to December 31, 2016.

AMOUNT OF MONEY AND SOURCE:

No general funds are involved in this request.

BACKGROUND/EXPLANATION:

Mr. Kraft has been elected as the President of the Baltimore City Historical Society (BCHS). The BCHS supports the preservation of historical landmarks in the City, including but not limited to the Peale Museum. The Historical Society also conducts many events and organizes programs throughout the year. These often come at little to no cost for the participants. In order to continue to provide educational, historical, and enriching experiences to the citizens of Baltimore, the Historical Society depends on the generous donations of individuals, corporations, and others who are dedicated to historical preservation and programming. In his role as President, Mr. Kraft is requesting permission to solicit donations on behalf of the Historical Society to support the aforementioned causes.

Donations will be solicited from local individuals and businesses. A potential donor list will be comprised of businesses and individuals that have a history of participating in activities related to the content matter or specific programs.

MINUTES

Office of the President - cont'd

Most of the individual and corporate entities fitting that description are not controlled donors. However, those potential donors who are controlled donors will not be targeted or singled out in any way and will be solicited, if at all, in the same manner as all other potential donors.

The Treasurer of the BCBS will be responsible for collecting and accounting any and all funds that are raised by Mr. Kraft. Donations and expenditures will be reviewed at monthly Board meetings.

Baltimore City Code Article 8, Section 6-26, prohibits solicitation or facilitating the solicitation of a gift. An exception was enacted in 2005 to permit certain solicitations that are for the benefit of an official governmental program or activity, or a City-endorsed charitable function or activity. Ethics Regulation 96.26B sets out the standards for approval, which includes the requirement that the program, function or activity to be benefited and the proposed solicitation campaign must be endorsed by the Board of Estimates or its designee.

UPON MOTION duly made and seconded, the Board endorsed the Governmental/Charitable Solicitation Application to be approved by the Baltimore Ethics Board. James Kraft wishes to solicit donations from local individuals and businesses to support the Baltimore City Historical Society. The President **ABSTAINED**.

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

- | | | | |
|----|--|---------------------|--------------------|
| 6. | <u>PROMEGA CORPORATION</u> | <u>\$273,000.00</u> | <u>Sole Source</u> |
| | Contract No. 08000 - DNA Consumables & Kits for the Police Department Crime Lab - Baltimore Police Department - Crime Lab - Req. No. R700097 | | |

Promega Corporation is the manufacturer of this system. They are the only provider of these products. This is the current system in use by the Baltimore City Police Department Crime Lab. The period of the award is September 4, 2015 through September 3, 2018. The above amount is the City's estimated requirement.

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 (e) (i) of the City Charter, the procurement of the equipment and/or service is recommended.

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|----|---|---------------------|----------------|
| 7. | <u>BIO-RAD LABORATORIES,</u> | | |
| | <u>DIAGNOSTIC GROUP</u> | <u>\$124,650.00</u> | <u>Renewal</u> |
| | Contract No. 08000 - HIV Test Kits - Health Department - P.O. No. P528070 | | |

On July 16, 2014, the Board approved the initial award in the amount of \$74,650.00. The award contained three 1-year renewal options. This renewal in the amount of \$124,650.00 is for the period July 16, 2015 through July 15, 2016, with two 1-year renewal options remaining. The above amount is the City's estimated requirement.

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

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| 8. | <u>GARTNER, INC.</u> | <u>\$ 90,400.00</u> | <u>Renewal</u> |
| | Solicitation No. 08000 - Executive Program Credential Service Agreement - Mayor's Office of Information Technology (MOIT) - Req. No. R653613 | | |

On July 30, 2014, the Board approved the initial award in the amount of \$85,200.00. The award contained two 1-year renewal options. This renewal in the amount of \$90,400.00 is for the continuation of access to research uniquely focused to enhance CIO productivity with access to strategic research and peer group networking that will assist MOIT in strategic planning, service improvements, and minimizing risk when implementing new initiatives. The period of the renewal is August 1, 2015 through July 31, 2016, with a one-year renewal option remaining.

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|----|--|---------------------|----------------|
| 9. | <u>GARTNER, INC.</u> | <u>\$ 26,400.00</u> | <u>Renewal</u> |
| | Solicitation No. 08000 - Gartner for IT Leaders Agreement - Mayor's Office of Information Technology (MOIT) - Req. No. R635622 | | |

On August 14, 2013, the Board approved the initial award in the amount of \$33,800.00. The award contained three 1-year renewal options. On July 30, 2014, the Board approved the Agreement and renewal in the amount of \$33,800.00. This second renewal in the amount of \$26,400.00 is for the continuation of access to Gartner, Inc.'s unique research database which will enhance the Mayor's Office of Information Technology in areas including, enterprise architecture, applications, network security, and risk management for key initiatives that will improve stability and further advance the City's network infrastructure. The period of the renewal is August 1, 2015 through July 31, 2016 with one-year renewal option remaining.

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

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| 10. BAYSTATE POOL SUPPLIES
OF BALTIMORE, INC. | \$ 25,000.00 | Renewal |
| Contract No. B50003663 - Swimming Pool Supplies and Tools -
Department of Recreation and Parks - P.O. No. P528166 | | |

On July 28, 2014, the City Purchasing Agent approved the initial award in the amount of \$4,965.76. The award contained two 1-year renewal options. On May 26, 2015, the City Purchasing Agent approved an increase in the amount of \$20,034.24. This renewal in the amount of \$25,000.00 is for the period July 28, 2015 through July 27, 2016, with one 1-year renewal option remaining. The above amount is the City's estimated requirement.

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| 11. TATE ENGINEERING SERVICES,
INC. | \$200,000.00 | Increase |
| Contract No. 08000 - Cleaver Brooks Boilers Maintenance -
Department of Public Works, Bureau of Water and Wastewater
- P.O. No. P516153 | | |

On January 26, 2011, the Board approved the initial award in the amount of \$70,000.00. Subsequent increases have been approved. This increase in the amount of \$200,000.00 is necessary for the continuity of required maintenance services and unexpected boiler repairs. The contract expires January 25, 2016.

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 (e) (i) of the City Charter, the procurement of the equipment and/or service is recommended.

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

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| 12. <u>FERGUSON ENTERPRISES, INC.</u> | \$ 50,000.00 | Extension |
| Contract No. B50001420 - Steel Pipes, Valves and Fittings -
Department of Public Works - P.O. No. P513535 | | |

On May 19, 2010, the Board approved the initial award in the amount of \$80,000.00. The award contained two 1-year renewal options. Subsequent actions and all renewals have been exercised. This extension in the amount of \$50,000.00 is necessary to cover the required parts and material until a new contract is in place. The period of the extension is August 31, 2015 through November 30, 2015. The above amount is the City's estimated requirement.

MWBOO GRANTED A WAIVER.

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| 13. <u>FIRST CALL</u> | | |
| P & J CONTRACTING CO., INC. | | |
| <u>SECOND CALL</u> | | |
| K & K ADAMS, INC. | \$ 0.00 | Extension |
| Contract No. B50001351 - Baltimore City Building Demolition
- Department of Housing and Community Development - P.O.
Nos. P513966 and P513967 | | |

On June 16, 2010, the Board approved the initial award in the amount of \$15,000,000.00. The award contained two 1-year renewal options. Both renewals have been exercised. An extension is required to complete the advertising and award of the new contract. This extension in the amount of \$0.00 is for the period July 10, 2015 through September 30, 2015. The above amount is the City estimated requirement.

MWBOO SET GOALS OF 27% MBE AND 10% WBE.

MINUTES

INFORMAL AWARDS, RENEWALS, INCREASES TO CONTRACTS AND EXTENSIONS

<u>VENDOR</u>	<u>AMOUNT OF AWARD</u>		<u>AWARD BASIS</u>
<u>Bureau of Purchases</u>			
WBE: Fallsway Trucking	10%	\$ 96,280.62	2.9%
Ball & Breckenridge Trucking, Inc.*	0	391,137.49	11.7%
Barbie's Recycling & Hauling, Inc.*	0	15,159.50	0.5%
	<u>10%</u>	<u>\$502,577.61</u>	<u>15.1%</u>

*These companies have been approved for MBE/WBE Participation.

MWBOO FOUND VENDORS IN COMPLIANCE.

- 14. 1ST CHOICE STAFFING, LLC
- ABACUS CORPORATION
- AMERICA ON DEMAND OF MD, INC.
- ARBOR E & T, LLC, d/b/a CARE RESOURCES
- TRUSTWORTHY STAFFING SOLUTIONS, LLC
- EXCEL STAFFING & PERSONNEL SERVICES, INC.
- DEPENDABLE NURSING SERVICES, LLC

\$ 0.00 Extension

Contract No. B50001026 - Provide Temporary Personnel - Citywide - P.O. Nos. Various

On July 29, 2009, the Board approved the initial award in the amount of \$5,000,000.00. The award contained two 1-year renewal options. Subsequent actions have been approved and both renewals have been exercised. This extension in the amount of \$0.00 is necessary to extend the contract while new solicitations can be advertised and awarded. The period of the extension is August 1, 2015 through January 31, 2016.

MWBOO SET GOALS OF 15% MBE AND 15% WBE.

MINUTES

INFORMAL AWARDS, RENEWALS, INCREASES TO CONTRACTS AND EXTENSIONS

<u>VENDOR</u>	<u>AMOUNT OF AWARD</u>	<u>AWARD BASIS</u>
---------------	------------------------	--------------------

Bureau of Purchases

- | | | |
|---|--------------|----------------------------------|
| 15. TIBURON,
INC. | \$453,825.00 | Second Amendment
to Agreement |
| Contract No. 08000 - Master Support Agreement - Mayor's
Office of Information Technology, Baltimore City Fire
Department and Baltimore City Police Department - Req. No.
R556325 | | |

The Board is requested to approve and authorize execution of the Second Amendment to Agreement with Tiburon, Inc. The period of the Second Amendment to Agreement is July 1, 2015 through June 30, 2016. On February 15, 2011, the Board approved the initial award in the amount of \$1,614,130.30. Subsequent actions have been approved. This Second Amendment to Agreement is necessary to add enhancements to Computer Aided Dispatch (CAD) system and to extend service for an additional year while the City negotiates a new contract with the vendor.

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 (e) (i) of the City Charter, the procurement of the equipment and/or service is recommended.

UPON MOTION duly made and seconded, the Board approved the Informal Awards, Renewals, Increases to Contracts and Extensions. The Board also approved and authorized execution of the Seconded Amendment to Agreement with Tiburon, Inc. (item no. 15). The Comptroller **ABSTAINED** on item no. 13, Ball & Breckenridge Trucking, Inc.

Bureau of the Budget and - Governmental/Charitable

MINUTES

Management Research (BBMR) Solicitation Application

ACTION REQUESTED OF B/E:

The Board is requested to endorse a Governmental/Charitable Solicitation Application for submission to the Board of Ethics of Baltimore City for Mr. Andrew Kleine, Ms. Kirsten Silveira, Ms. Emma Tessier, and Mr. Emmanuel Welsh to solicit businesses and organizations for donations of goods and services to help offset event costs for the 2015 OutcomeStat Conference. The period of the campaign will be effective upon Board approval through September 4, 2015.

AMOUNT OF MONEY AND SOURCE:

No General Funds are involved in this transaction.

BACKGROUND/EXPLANATION:

Baltimore City is committed to utilizing CitiStat and Outcome Budgeting to foster a culture of performance management and continuous service improvement. To build on this existing framework, the BBMR is initiating Baltimore City OutcomeStat to better align Outcome Budgeting and CitiStat. This initiative will use Turn-the-Curve thinking, a framework laid out in Mark Friedman's book, 'Trying Hard is Not Good Enough', to develop an organizational strategic plan that focuses on tracking results within the Mayor's seven Priority Outcomes – Better Schools, Safer Streets, Stronger Neighborhoods, Growing Economy, Innovative Government, Cleaner City, and Healthier City.

Members of Core Outcome Leadership Teams (COLT) have met numerous times over the last three months to develop a deeper understanding of the positive and negative factors influencing the City's performance in achieving success in its population-level outcomes.

MINUTES

BBMR - cont'd

The COLTs have begun the development of a strategic action plan with measurable targets for the goals within each outcome. The next step is to host a two-day conference in which COLTs will come together with stakeholders from the City's neighborhoods, local organizations, and public service communities to finalize the strategic plan, which will guide both the City's Fiscal 2017/18 budget process and quarterly Priority Outcome CitiStat meetings.

Baltimore City Code Article 8, Section 6-26, prohibits the solicitation or facilitating the solicitation of a gift. An exception was enacted in 2005 to permit certain solicitations that are for the benefit of an official governmental program or activity, or a City-endorsed charitable function or activity. Ethics Regulation 96.26B sets out the standards for approval, which includes the requirement that the program, function or activity to be benefited and the proposed solicitation campaign must be endorsed by the Board of Estimates or its designee.

UPON MOTION duly made and seconded, the Board endorsed the Governmental/Charitable Solicitation Application for submission to the Board of Ethics of Baltimore City for Mr. Andrew Kleine, Ms. Kirsten Silveira, Ms. Emma Tessier, and Mr. Emmanuel Welsh to solicit businesses and organizations for donations of goods and services to help offset event costs for the 2015 Outcome Stat Conference.

MINUTES**BOARDS AND COMMISSIONS**Prequalification of Contractors

1. In accordance with the Rules for Prequalification of Contractors, as amended by the Board on October 31, 1991, the following contractors are recommended:

Admiral Elevator Company, Inc.	\$ 5,211,000.00
Benfield Electric Co., Inc.	\$ 8,000,000.00
CB Flooring, LLC	\$ 76,824,000.00
Clark Construction Group, LLC	\$832,932,000.00
Dissen & Juhn, LLC	\$ 12,060,000.00
Harkins Builders, Inc.	\$175,923,000.00
Mid Atlantic Fountain Design & MFG Co.	\$ 1,500,000.00
Wohlsen Construction Company	\$174,060,000.00

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:

Peer Consultants, P.C.	Engineer
Ross Technical Services, Inc.	Engineer
Soil and Land Use Technology, 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

Department of General Services - On-Call Consultant Agreement

ACTION REQUESTED OF B/E:

The Board is requested to approve and authorize execution of an On-Call Architectural Design Services Contract with Manns Woodward Studios, Inc. for Project No. 1218. The period of the On-Call Agreement is effective upon Board approval for two years with an option to renew for two additional 1-year terms.

AMOUNT OF MONEY AND SOURCE:

\$2,000,000.00 - upset limit

Funds will be identified as tasks are processed.

BACKGROUND/EXPLANATION:

Various City agencies on a continuing basis, require architectural design services to modify, upgrade, or repair their facilities. Typically, the work involved is limited in scope and/or an urgent nature, which in either case should not be postponed until the customary Architectural Design selection process can be executed. Under these contracts, the calls for these services will be made as needs are identified. Fees will be based on actual payroll rates, not including overhead and burden, times a set multiplier. The payroll rate and the multiplier have been reviewed by the Department of Audits. The initial contract duration will be two years; however, projects that are started within the initial two-year period may continue beyond the two-year time frame until completion.

The Consultant was selected pursuant to the Architect and Engineering Awards Commission (AEAC) procedures under AEAC Project No. 1218.

MINUTES

Department of General Services - cont'd

MBE/WBE PARTICIPATION:

MBE: Setty & Associates International, PLLC	\$340,000.00	17%
WBE: Sugar Associates, LLC	\$200,000.00	10%

MWBOO FOUND VENDOR IN COMPLIANCE.

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

UPON MOTION duly made and seconded, the Board approved and authorized execution of the On-Call Architectural Design Services Contract with Manns Woodward Studios, Inc. for Project No. 1218. The President voted **NO**.

MINUTES

TRANSFER OF FUNDS

* * * * *

UPON MOTION duly made and seconded,

the Board approved

the Transfer of Funds

listed on the following pages:

2455 - 2457

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 voted **NO** on item no. 4.

MINUTES**TRANSFERS OF FUNDS**

<u>AMOUNT</u>	<u>FROM ACCOUNT/S</u>	<u>TO ACCOUNT/S</u>
<u>Baltimore Development Corporation</u>		
1. \$100,000.00	9910-925013-9600	9910-907106-9601
24 th Eco. Dev. Funds	Construction Reserve (Façade Improvements)	Baltimore Business Recovery

This transfer will provide funds to the storefront recovery grant program administered by the City of Baltimore Development Corporation in order to repair City businesses that were damaged during the civil unrest.

2. \$ 1,069.98	9910-906993-9600	9910-909460-9601
23 rd EDF	Constr. Reserve Inner Harbor Area	Inner Harbor
24,825.00	9910-902873-9600	9910-911103-9601
24 th EDF	Constr. Reserve Brownfields Incentive Fund	Brownfields Incentive Fund
7,186.00	9910-917016-9600	9910-907104-9601
24 th EDF	Constr. Reserve Holabird Industrial Park	W. Balto. Ind. & Coml. Dev.
\$ 33,080.98		

This transfer will provide funds to reimburse Baltimore Development Corporation for eligible capital expenses for the month ending May 31, 2015.

MINUTES

TRANSFERS OF FUNDS

<u>AMOUNT</u>	<u>FROM ACCOUNT/S</u>	<u>TO ACCOUNT/S</u>
<u>Department of Housing and Community Development</u>		
3. \$1,300,000.00	9910-922012-9587	
Gen. Funds Revenue	Whole Block	
	(Reserve) - Gen.	
	Funds	
\$ 575,000.00	-----	9910-915631-9588
		Whole Block -
		Demolition - Gen.
		Funds
<u>\$ 725,000.00</u>	-----	9910-910632-9588
\$1,300,000.00		Whole Block -
		Acquisition/Reloca-
		tion - Gen. Funds

This transfer will provide appropriations approved in the FY2014 Ordinance of Estimates supporting the Whole Block Demolition Program.

Department of General Services

4. \$2,400,000.00	9916-910932-9194	9916-911932-9197
5 th Public	Eastern Health	Eastern Health
Building Loan	Clinic Relocation	Clinic Relocation
	Reserve	Active
1,200,000.00	" "	" "
1 st Parks & Public		
<u>Facilities Loan</u>		
\$3,600,000.00		

This transfer will provide funds for the purchase of the property located at 1200 E. Fayette Street in order to relocate the Eastern Health Center from 620 N. Caroline Street to 1200 E. Fayette Street. The purchase of a new facility will upgrade the Center to a more modern facility and reduce the long-term costs.

MINUTES**TRANSFERS OF FUNDS**

<u>AMOUNT</u>	<u>FROM ACCOUNT/S</u>	<u>TO ACCOUNT/S</u>
<u>Department of Transportation</u>		
5. \$15,000.00 GF (HUR)	9950-905215-9514 Local Resurfacing Southwest	9950-906856-9514 Federal Resurfacing Highways South- west III

This transfer will cover the costs of prints and preliminary expenses and other related costs necessary to advertise the construction project TR 13306R, Federal Resurfacing Highways Southwest III, in the amount of \$15,000.00.

MINUTES

Department of Public Works - Ratification of Services

ACTION REQUESTED OF B/E:

The Board is requested to ratify the services and to approve payment of past due invoices for the Waterfront Partnership of Baltimore, Inc.

AMOUNT OF MONEY AND SOURCE:

\$8,279.25 - 2070-000000-5501-397210-603016

BACKGROUND/EXPLANATION:

Waterfront Partnership of Baltimore, Inc. provides cleaning and greening service to the Department, Eastern Avenue Pumping Station property, located at 751 Eastern Avenue, east of the Inner Harbor. The vendor has a one year agreement with two one year renewal options, in which both parties agreed on costs and services. Due to administrative oversight, funding was not requested for the second year of the contract. A Board request was submitted in February 2015 to pay past due invoices from September 2014 through January 2015. That request was approved on March 11, 2015 and the receipt was submitted for payment.

Additional services were provided for the period of February 2015 through May 2015. Due to time delays, the Department is requesting approval for payments through June 2015.

APPROVED FOR FUNDS BY FINANCE

AUDITS REVIEWED AND HAD NO OBJECTION.

UPON MOTION duly made and seconded, the Board ratified the services and approved payment of past due invoices for the Waterfront Partnership of Baltimore, Inc.

MINUTES

Department of Public Works/Office - Amendment No. 4 to
of Engineering & Construction Agreement

ACTION REQUESTED OF B/E:

The Board is requested to approve and authorize execution of Amendment No. 4 to the Agreement with Patton Harris Rust & Associates (PHRA)/HAZEN AND SAWYER, a Joint Venture (JV), for W.C. 1173, Design of Guilford Finished Water Reservoir Improvements. The original Agreement expires on September 14, 2015. The Amendment No. 4 extends the Agreement through March 14, 2016.

AMOUNT OF MONEY AND SOURCE:

\$178,555.61	- Baltimore City (38.70%)
269,355.98	- Baltimore County (58.38%)
13,472.41	- Howard County (2.92%)
\$461,384.00	

BACKGROUND/EXPLANATION:

Over the course of the design phases, additional engineer services were needed from a JV that was not part of the original scope of work.

The additional services included coordination with Loyola University to address temporary use of the triangular property adjacent to the Guilford Pumping Station and Guilford Reservoir during construction activities under W.C. 1120 and W.C. 1173.

Additional Community Outreach Services, development of contract documents for temporary use of Loyola University's Triangular Parcel of Land, Flow Metering, and Bypass Evaluation resulted in various Design revisions and revisions to the engineer's construction cost estimate to reflect design changes required to coordinate construction between the Guilford Reservoir Project and the Guilford Pumping Station, revisions to construction schedule to reflect construction coordination between the Guilford Finished Water Reservoir Project and the Guilford Water Pumping Station Rehabilitation Project, Additional Contingency Requirements Pertaining to the Performance Subsurface Exploration and the Refill of the existing Reservoir.

MINUTES

DPW/Office of Engineering & Construction - cont'd

MBE/WBE PARTICIPATION:

The Consultant will continue to comply with all terms and conditions of the M/WBE programs in accordance with Baltimore City Code, Article 5, Subtitle 28.

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

TRANSFER OF FUNDS

<u>AMOUNT</u>	<u>FROM ACCOUNT/S</u>	<u>TO ACCOUNT/S</u>
\$249,720.00	9960-910714-9558	
County Appro-	Constr. Reserve	
priations	Guilford Water	
	Reservoir Improv.	
350,280.00	" "	
Water Revenue		
Bonds		
<u>\$600,000.00</u>	-----	9960-903710-9557-900020-3
		Engineering

The funds are required to cover the costs of additional design for W.C. 1173, Guilford Finished Water Reservoir Cover.

UPON MOTION duly made and seconded, the Board approved and authorized execution of Amendment No. 4 to the Agreement with Patton Harris Rust & Associates/HAZEN AND SAWYER, a Joint Venture (JV), for W.C. 1173, Design of Guilford Finished Water Reservoir Improvements. 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.

MINUTES

Department of Public Works/ - Amendment No. 5 to Agreement
Office of Eng. & Constr. (DPW)

ACTION REQUESTED OF B/E:

The Board is requested to approve and authorize execution of Amendment No. 5 to Agreement with MWH/Louis Berger Water Services. Inc., a Joint Venture.

AMOUNT OF MONEY AND SOURCE:

\$2,960,291.13
 319,265.55
 1,458,429.66
 660,423.75
\$5,398,410.08

Consent Decree Bucket

Account Number					Amount
9956 -	903645	- 9551	- 900020	- 603018	\$177,422.89
9956 -	903654	- 9551	- 900020	- 603018	169,136.56
9956 -	904623	- 9551	- 900020	- 603018	423,909.12
9956 -	905620	- 9551	- 900020	- 603018	549,929.38
9956 -	905644	- 9551	- 900020	- 603018	204,744.72
9956 -	906652	- 9551	- 900020	- 603018	166,774.25
9956 -	907643	- 9551	- 900020	- 603018	228,897.46
9956 -	907646	- 9551	- 900020	- 603018	149,230.18
9956 -	907651	- 9551	- 900020	- 603018	169,620.94
9956 -	918614	- 9551	- 900020	- 603018	297,903.62
9956 -	918616	- 9551	- 900020	- 603018	422,722.01
CD Tasks Total					\$2,960,291.13

MINUTES

DPW - cont'd

**IPF
BUCKET**

Account Number					Amount
2070 -	000000-	5601 -	398600	- 603018	\$58,325.49
2070 -	000000-	5601 -	613600	- 603018	36,609.48
2071 -	000000-	5601 -	398500	- 603018	64,248.03
2070 -	000000-	5601 -	398600	- 603018	99,782.87
2072 -	000000-	5181 -	390700	- 603018	60,299.67
IPF Total					\$319,265.54

**Office of Asset
Management
Bucket**

Account Number					Amount
2070 -	000000 -	5601 -	730222	- 603018	\$37,271.97
2071 -	000000 -	5601 -	730200	- 603018	37,271.97
2070 -	000000 -	5601 -	730000	- 603018	157,987.48
2071 -	000000 -	5601 -	730000	- 603018	157,987.48
2070 -	000000 -	5501 -	604302	- 603018	37,329.10
2070 -	000000 -	5501 -	604302	- 603018	37,329.10
2070 -	000000 -	5501 -	604302	- 603018	68,322.49
2070 -	000000 -	5501 -	601302	- 603018	68,322.49
2071 -	000000 -	5521 -	393204	- 603018	38,490.64
2071 -	000000 -	5521 -	393404	- 603018	38,490.64
2071 -	000000 -	5521 -	393204	- 603018	68,292.49
2071 -	000000 -	5521 -	393404	- 603018	68,322.49
2071 -	000000 -	5521 -	393204	- 603018	38,490.64
2071 -	000000 -	5521 -	393404	- 603018	38,490.64
2071 -	000000 -	5521 -	393204	- 603018	68,322.49
2071 -	000000 -	5521 -	393404	- 603018	68,322.49
2071 -	000000 -	5521 -	393204	- 603018	38,490.64
2071 -	000000 -	5521 -	393404	- 603018	38,490.64
2071 -	000000 -	5521 -	393704	- 603018	3,907.62
2071 -	000000 -	5521 -	393704	- 603018	3,907.62

MINUTES

DPW - cont'd

2071 -	000000 -	5521 -	393204	- 603018	3,907.62
2071 -	000000 -	5521 -	393404	- 603018	3,907.62
2071 -	000000 -	5521 -	393204	- 603018	68,322.49
2071 -	000000 -	5521 -	393404	- 603018	68,322.49
2071 -	000000 -	5521 -	398601	- 603018	76,981.28
2070 -	000000 -	5601 -	730222	- 603018	5,577.95
2071 -	000000 -	5601 -	730200	- 603018	5,577.95
2070 -	000000 -	5601 -	730222	- 603018	18,665.19
2071 -	000000 -	5601 -	730200	- 603018	18,665.19
2070 -	000000 -	5601 -	728800	- 603018	18,665.19
2071 -	000000 -	5601 -	128800	- 603018	18,665.19
2071 -	000000 -	5521 -	608504	- 603018	18,665.19
2071 -	000000 -	5601 -	393404	- 603018	18,665.19
OAM Total					\$1,458,429.66

**Water Program
Bucket**

Account Number					Amount
9960 -	905658	- 9557	- 900020	- 603018	\$225,343.90
9960 -	905659	- 9557	- 900020	- 603018	357,141.89
9960 -	908724	- 9557	- 900020	- 603018	41,831.56
9960 -	911610	- 9557	- 900020	- 603018	36,106.40
Water Total					\$660,423.75

Total Amendment

\$5,398,410.08

BACKGROUND/EXPLANATION:

On March 9, 2011, the Board approved the original Agreement, in the amount of \$11,837,080.95, with MWH Americas/Louis Berger Water Service, Inc., a Joint Venture, under project No. 1112, Wet Weather Consent Decree Compliance and Program Management Services for a period of three years ending on March 7, 2014.

MINUTES

DPW - cont'd

On December 19, 2012, the Board approved Amendment No. 1 in the amount of \$11,800,234.68. On March 5, 2014, the Board approved Amendment No. 2 to extend the period of the Agreement for one year through March 7, 2015 with no increase in the upset limit. On October 8, 2014, the Board approved Amendment No. 3 in the amount of \$6,469,599.67.

On January 14, 2015, the Board approved Amendment No. 4 extending the period of the Agreement for one year through March 8, 2016 with no increase in the upset limit.

This Amendment No. 5, in the amount of \$5,398,410.08, will provide funding, which was not funded through Amendment No. 4, for the fifth year of this of this contract through March 8, 2016, to allow the Joint Venture to continue to provide program management services for the Consent Decree and the Water Replacement Program and Maintenance with the implementation of the Utility Asset Management. This Amendment No. 5 will make the total upset limit amount for the Agreement \$35,505,325.38.

MBE/WBE PARTICIPATION:

The Consultant will continue to comply with all terms and conditions of the Minority and Women's Business Enterprise Program, in accordance with Baltimore City Code, Article 5, Subtitle 28.

APPROVED FOR FUNDS BY FINANCE

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

UPON MOTION duly made and seconded, the Board approved and authorized execution of Amendment No. 5 to the Agreement with MWH/Louis Berger Water Services. Inc., a Joint Venture.

MINUTES

Department of Transportation (DOT) - Funding Agreement

ACTION REQUESTED OF B/E:

The Board is requested to approve and authorize execution of a Funding Agreement with the Baltimore Gas and Electric Company (BGE).

AMOUNT OF MONEY AND SOURCE:

\$66,462.81 - 9950-902256-9508-000000-490375

BACKGROUND/EXPLANATION:

The Department of Transportation's contractor is currently working on Project TR 08310, STP 3057(4)N, BC 320-001-815, Central Avenue from Eastern Avenue to Madison Street. An Extra Work Order was requested to upgrade the original proposed work caused by failing BGE equipment and failing DOT infrastructure, as well as the needed upgrades to the electric services for down businesses. In order to expedite the process, the BGE and the DOT agreed to have the work done by the DOT's contractor, which will be funded by the BGE.

DBE PARTICIPATION:

N/A

APPROVED FOR FUNDS BY FINANCE

UPON MOTION duly made and seconded, the Board approved and authorized execution of the Funding Agreement with the Baltimore Gas and Electric Company.

MINUTES

RECOMMENDATIONS FOR AWARDS/REJECTION

* * * * *

On the recommendations of the City agency
hereinafter named, the Board,
UPON MOTION duly made and seconded,
awarded the formally advertised contracts
listed on the following pages:

2467 - 2475

to the low bidders meeting the specifications,
and rejected the bid as indicated
for the reasons stated.

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 Board **DEFERRED** items nos. 1, 2, 3, and 4
for one week.

MINUTES

RECOMMENDATIONS FOR AWARDS/REJECTIONS

Department of Public Works/Office of Eng. & Constr. (DPW)

1. W.C. 1295, Towson The Whiting-Turner \$6,979,000.00
 Generator and Main Contracting Co.,
 Substation Inc.

MWBOO SET GOALS OF 27% MBE AND 8% WBE.

MBE: Native Sons, Ltd.	\$2,000,000.00	28.65%
WBE: Plexus Installations, Inc.	\$ 500,000.00	7.16%
William T. King, Inc.	45,000.00	0.64%
Sunrise Safety Services, Inc.	15,000.00	0.21%
Total	\$ 560,000.00	8.01%

MWBOO FOUND VENDOR IN COMPLIANCE.

**A PROTEST WAS RECEIVED FROM BRADLEY ARANT BOULT CUMMINGS
 LLP COUNSEL REPRESENTING THE CIANBRO CORPORATION.**

**CORRESPONDENCE WAS RECEIVED FROM PASALE STEVENS LLC
 REPRESENTING THE WHITING TURNER CONTRACTING COMPANY IN
 RESPONSE TO THE PROTEST FILED BY CIANBRO CORPORATION.**

June 22, 2015

Board of Estimates
c/o Harriett Taylor
Clerk to the Board of Estimates
Room 204, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Re: Amended Protest of Award of Water Contract Number 1295 for Towson Generator and Main Substation
Protesting Party: Cianbro Corporation
Representing Protesting Party: Eric A. Frechtel, Esq., Bradley Arant Boult Cummings LLP

Dear Ms. Taylor:

This firm represents Cianbro Corporation (“Cianbro”), and submits this letter to protest the award of Water Contract Number 1295 for Towson Generator and Main Substation (the “Contract”) by the City of Baltimore (“Baltimore”) to The Whiting-Turner Contracting Company (“WT”). Cianbro has authorized me to represent it at the Board meeting on June 24, 2015.

On April 1, 2015, Baltimore publicly opened bids for the Contract. WT was the apparent low bidder with a total bid price of \$6,979,000.00. Cianbro was the apparent second low bidder with a total bid price of \$7,112,395.00. However, the Contract should be awarded to Cianbro because WT’s bid was not responsive to the bid requirements.

The reason for this protest is that WT’s bid is defective and non-responsive on its face. Specifically, in the following six (6) different places throughout WT’s bid various words and numbers have been whited out with no initial, signature, or explanation:

- (1) on the first page, something in the date of offer section is whited out and the word “April” is written to the right of the whited-out area;
- (2) in bid item 503, the total dollar amount of “15,000.00” is written on top of white-out;
- (3) in the “Total Bid” line, the word “nine” is written on top of white-out;
- (4) on the MBE/WBE and Prime Contractor’s Statement of Intent for Sunrise Safety Services, Inc., the “Subcontract percentage of total contract” is filled in with 0.21% written on top of white-out;

- (5) on the MBE/WBE and Prime Contractor's Statement of Intent for William T. King Inc., the "Subcontract percentage of total contract" is filled in with what appears to be 0.64% written on top of white-out, however the number "6" is malformed and not entirely clear; and, finally,
- (6) on the MBE/WBE Participation Affidavit, at the bottom of the first paragraph the total contract of "6,979,000.00" is written on top of white-out.

See enclosed copy of WT's bid (Exhibit A) – for ease of reference, each area whited out is clouded in red.

The Request for Proposals expressly authorizes the Board to reject bids which show any omissions or alterations to the form. *See* Standard Specifications 00 21 13.1 (incorporated into RFP, Vol. 1 of 2 at SP-1, § II, Item 3), 00 51 00.01 ("The award of the Contract, by the Board of Estimates, if it be awarded, will be made to the lowest pre-qualified responsive and responsible Bidder whose Bid ***complies with all the requirements prescribed***") (emphasis added).

Here, the Board should exercise its authority to reject WT's bid because the alterations on the face of the bid violate the instructions on the bottom of the MBE Statement of Intent page -- submitted, as required, with the RFP -- which state that "ANY CHANGES TO THE INFORMATION ON THIS FORM MUST BE INITIALED BY BOTH PARTIES." Ex. A at B-5 (emphasis in original). These instructions ensure that the Statement of Intent will accurately represent the subcontract price, and that the parties will meet the MBE participation goal. *See, e.g.,* Baltimore City Code Art. 5, § 28-48 (participation statement, including executed statements of intent, must specify, among other things, "the dollar value of each subcontract" and "any other information the Office requires to determine whether the contract goals have been satisfied").

This Board has rejected bids that failed to comply with this simple instruction, specifically, where contractors have whited out figures and failed to initial the change. Just a few months ago, in March 2015, the Board rejected the bid of plumbing contractor Robert Harrington on a project to replace water meters -- despite his providing the lowest bid -- where the Statement of Intent was whited out and dollar amounts changed without the required signatures. In that case, because the apparent low bid contained "white-outs" that were not initialed, the Board rejected the low bid and awarded the contract to the second low bidder, Metra. During the initial argument of that bid protest, the City Solicitor pointed out:

in terms of prior action by the Board when this . . . issue has been raised about changes being made on the Statement of Intent and the pages and the changes not being initialed the Board has ***consistently and on many occasions*** rejected those bids for that very reason.

Board of Estimates Minutes, Recommendations for Contract Awards/Rejections (hereinafter, "Board Minutes"), 782 (Mar. 18, 2015) (Ex. B).

In August 2013, the Board rejected a bid protest for the award of contract SC 877 ("Enhanced Nutrient Removal Process") where it was alleged the subcontract price was whited

out and changed without initialing the alteration. *See* Board Minutes at 3096-118 (Aug. 14, 2013) (Ex. C). In that protest, the evidence was unclear whether in fact, a change had been made to the bid form and, if so, when it was made. The Board ultimately rejected that protest, but the Board acknowledged that “if a document has a number that is crossed out and replaced by a different number,” the contractor is “typically require[d]” to initial that change. Ex. C at 3100.

In rejecting the Robert Harrington bid, the Board distinguished the “very different situation” in SC 877, because there, the Board had examined photocopied versions of the forms and subcontractors’ signatures. Board Minutes at 871 (Mar. 25, 2015) (Ex. D). In contrast, on the Robert Harrington bid, the Board noted, “you can clearly see the white outs and you can see the numbers, you can’t read every digit of the number replaced, but you can see that numbers were there previously and they were changed by Wite-Out.” *Id.* Following its clear precedent -- which it even recognized in rejecting the SC 877 protest -- the Board rejected Robert Harrington’s protest.

Indeed, the Board has rejected bids for similar failures to adhere to the instructions on the MBE Statement of Intent form. In 2009, the Department of Public Works found a bid non-compliant where the subcontract amount was changed but not initialed by both parties. *See* letter from Doreen Diamond, Contract Administrator, to Pizzagalli Construction Company, dated July 9, 2009 (attached to Supplemental Protest for SC 845 (Potapsco procurement), Board Minutes (Nov. 9, 2011)) (Ex. E). In addition, counsel in the SC 877 bid protest cited a bid that the Board rejected in 2011 because of the bidder’s “unilateral” changes to an MBE Statement of Intent form. Ex. C at 3102.

Here, the Board is faced with a similar situation as the Robert Harrington Bid, because WT has submitted original copies of bid forms where critical numbers were written on top of white-out. Unlike the SC 877 bid, there is no question that WT changed these numbers. *See* Ex. D at 873-74 (noting that unlike SC 877, “[y]ou can clearly see that prior numbers were there and you can tell from the documents that Wite-Out and the changes of those numbers occurred before all the signatures were put on the document.”).

Although the Board has discretion to reject a bid or waive “minor” or “technical” defects, the alterations in WT’s bid are major, material defects. Standard Specifications 00 51 00.01; Baltimore City Code Art. 5, § 28-14(b) (“At its discretion, the Board of Estimates may waive *minor* defects and errors in a bidder’s MBE or WBE submission.”) (emphasis added).

First, the change to the “Subcontract percentage of total contract” on the Statement of Intent forms and Participation Affidavit may no longer reflect the agreed-upon subcontract price. One of the main purposes of the form’s instructions is to prevent the contractor from roping its subcontractors into a preferred price. *See* Ex. D at 884 (“The rule has a purpose which is to avoid creating a situation where the ‘prime’ can basically jam . . . numbers down the throats of ‘subs’ which they really weren’t on board with, and we don’t know that they were on board because we don’t have those changes initialed.”). Further, the Board does not require a protestant to demonstrate that the subcontractors, in fact, did not agree to the final subcontract price. *See id.*

Second, the alterations to the total bid price and Item 503 on the bid form affect the total bid price, which is a critical factor for determining an award. When alterations and “white-outs” appear on the face of the bid with no initials or other indicia of the reasons for, or genesis and ratification of, the alteration, there can be no confidence that the bid is genuine. The altered bid should be rejected, and the contract should be awarded to the second lowest bidder if its bid is responsive. Thus, Baltimore should reject this defective bid from WT and should award the Contract to Cianbro.

Note that the principle of prohibiting such alterations on the face of a bid form is not unique to the City of Baltimore. Rather, it is the common practice. For example, in *Serenity Contracting Group, Inc. v. Borough of Fort Lee*, 703 A.2d 352 (N.J. Super. Ct. App. Div. 1997), the bid contained, among other alterations, “whited out, crossed out and handwritten changes” to the proposed contract price and bid amount. The public owner rejected the bid. 703 A.2d at 355. The rejection of the bid was upheld by the court reviewing the protest. Although the apparent low bidder attempted to argue that any alternation was “immaterial” and ought to be waived, the court found that even where a bid defect is non-material, “[i]t does not follow . . . that . . . the public entity must accept the bid.” 703 A.2d at 356. *See also, J.L. Manta, Inc. v. Braun*, 393 N.W.2d 490 (Minn. 1986) (alterations and erasures of bid price without initials).

The rules are clear: if the exigent and sometimes chaotic circumstances of the bid opening cause a bidder to make a last-minute alteration to the bid form, it must be initialed by the parties. None of the alterations or “white-outs” on WT’s bid are initialed; therefore, WT’s bid, including those on the MBE Statement of Intent, is out of compliance with the rules and should be rejected. Ex. D at 882, 884 (“[Y]ou have to follow the rules, as inconvenient and difficult as that may be.”).

If the Board of Estimates accepts WT’s bid, the fundamental fairness of the bid process will have been compromised. When bidders voluntarily incur the expense and effort to prepare and submit a bid, it is done so in reliance that the rules will be followed. When the rules are not followed, bidders’ confidence in the process is diminished and bidders will be unwilling to submit bids. In this particular case, Cianbro relied on the rules being followed. If WT’s bid is accepted, Cianbro, as the second low bidder, will be aggrieved and wrongfully deprived of this Contract for public construction.

As shown herein, the apparent award to WT is in violation of law, and is fundamentally unfair. Cianbro therefore requests that the Board reject WT’s bid and award the Contract to Cianbro as the qualified low bidder with a responsive bid.

Sincerely,



Eric A. Frechtel

Counsel for Cianbro Corporation

Enclosure

Exhibit A

(Whiting-Turner Contracting Company Bid)

4

3

2/1/15

WATER CONTRACT NO. 1295

III. BID OR PROPOSAL
A. RECEIPT OF ADDENDA

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
OFFICE OF ENGINEERING AND CONSTRUCTION
WATER CONTRACT NUMBER 1295

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

Bids Due March 11, 2015

DUPLICATE

Certified Check or Bank Cashier's Check or Bank Treasurer's Check or Bid Bond Equal to Two Percent (2%) of the Total Bid Submitted.

Days of Completion 625 Consecutive Calendar Days

Liquidated Damages \$900 per Calendar day

Made this 1ST day of APRIL 2015

By The Whiting-Turner Contracting Company
(Name)

300 East Joppa Rd., Baltimore, MD 21286
(Address)

The Bidder shall sign below to signify the following:

I/We have received Addendum Nos. #1 AND #2
for this Contract.

Bernard LaHatte, VICE PRESIDENT
Signature and Title

To The Board of Estimates of Baltimore City:

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.

ITEM NOS.	APPROXIMATE QUANTITIES	DESCRIPTION OF ITEMS AND PRICES BID (IN WRITTEN WORDS)	UNIT PRICE		AMOUNTS	
			DOLLARS	.CTS	DOLLARS	.CTS
501	50	CONTINGENT 6-INCH AGGREGATE FOR BASE COURSE AT <u>Twenty Dollars and No Cents</u> PER SQUARE YARD	<u>20</u>	<u>00</u>	<u>1,000</u>	<u>00</u>
502	75	CONTINGENT PLANT MIX ASPHALT PAVEMENT - 2" HMA SUPERPAVE 12.5 MM SURFACE COURSE AT <u>one hundred Fifty Dollars and No Cents</u> PER TON	<u>150</u>	<u>00</u>	<u>11,250</u>	<u>00</u>
503	75	CONTINGENT PLANT MIX ASPHALT PAVEMENT - 5" HMA SUPERPAVE 19.0 MM FOR LEVEL 2 FOR BASE COURSE AT <u>Two Hundred Dollars and No Cents</u> PER TON	<u>200</u>	<u>00</u>	<u>15,000</u>	<u>00</u>
		END OF CATEGORY NO. 5 NO ALTERNATES				

NOTE - THIS PROPOSAL SHALL BE FILED IN BY THE BIDDER WITH THE PRICES WRITTEN IN NUMERALS, AND THE EXTENSIONS SHALL BE MADE BY HIM, FOR COMPLETE FORM. THESE ITEMS SEE SPECIFICATIONS SPECIAL PROVISIONS, AND CONTRACT FORM.

SCHEDULE OF PRICES

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, 3a, 3b and 3f

Name of Prime Contractor: The Whiting-Turner Contracting Company

Name of MBE or WBE (circle one): *Indicate if self-performing.*

Sunrise Safety Services Inc 95-002928

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

Maintenance of Traffic

Materials/Supplies to be furnished by MBE or WBE:

Subcontract Amount: \$ 15,000.00 (If this is a requirement contract, the subcontract amount may be omitted; however, the subcontract percentage must be included.)

Subcontract percentage of total contract: 0.21 %
(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.

Doreen [Signature]
Signature of Prime Contractor (REQUIRED)

3/31/15
Date

Joshua Beatty
Signature of MBE or WBE (REQUIRED)
(Leave this line blank if self-performing)

03/30/15
Date

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

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, 3a, 3b and 3f

Name of Prime Contractor: The Whiting-Turner Contracting Company

Name of MBE or WBE (circle one): *Indicate if self-performing.*

William T. King Inc. 90-001516

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

Materials/Supplies to be furnished by MBE or WBE:

Subcontract Amount: \$ 45,000.00 (If this is a requirement contract, the subcontract amount may be omitted; however, the subcontract percentage must be included.)

Subcontract percentage of total contract 0.64 % (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]
Signature of Prime Contractor (REQUIRED)

3/31/15
Date

[Signature]
Signature of MBE or WBE (REQUIRED)
(Leave this line blank if self-performing)

3/19/15
Date

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

PART C: MBE/WBE PARTICIPATION AFFIDAVIT

The Undersigned authorized representative of Contractor does hereby make the following Affidavit: Contractor has read the Bidder Information and Instructions regarding the MBE/WBE Program. Contractor acknowledges the MBE goal of 27% and the WBE goal of 8% for this contract. Contractor has achieved the following participation:

MBE-\$ 2,000,000.00 or 28.16% and WBE-\$ 560,000.00 or 8.02% of the total contract amount which is \$ 6,979,000.00.

My firm has made good faith efforts to achieve the MBE and WBE participation goals for this contract. I understand that, if awarded the contract, my firm must submit to the Minority and Women's Business Opportunity Office (MWBOO) copies of all executed agreements with the MBE and WBE firms being utilized to achieve the participation goals and other requirements of Article 5, Subtitle 28 of the Baltimore City Code (2014 Edition). I understand that these documents must be submitted prior to the issuance of a notice to proceed.

I understand that, if awarded the contract, my firm must submit to the MWBOO canceled checks and any other documentation and reports required by MWBOO verifying payments to the MBE and WBE firms utilized on the contract.

I understand that, if I am awarded this contract and I find that I am unable to utilize the MBEs or WBEs identified in my Statements of Intent, I must substitute other certified MBE and WBE firms to meet the participation goals. I understand that I may not make a substitution until I have obtained the written approval of MWBOO.

I understand that, if awarded this contract, authorized representatives of the City of Baltimore may examine, from time to time, the books, records and files of my firm to the extent that such material is relevant to a determination of whether my firm is complying with the MBE and WBE participation requirements of this contract.

I do solemnly declare and affirm under the penalty of perjury that the contents of the foregoing Affidavit are true and correct to the best of my knowledge, information and belief.

The Whiting-Turner Contracting Company
Contractor Company Name

Bernard LaHatte
Signature

300 East Joppa Rd., Baltimore, MD 21286
Address

BERNARD LAHATTE, VICE PRESIDENT
Print Name and Title

Sworn and subscribed before me this 1st day of April, in the year 2015.

[Signature]
Notary Public

Exhibit B

(Relevant Excerpts from Board of Estimates Minutes,
Recommendations for Contract Awards/Rejections,
March 18, 2015)

MINUTES

RECOMMENDATIONS FOR CONTRACT AWARDS/REJECTIONSDept. of Public Works/Office of Eng. & Construction - cont'dTRANSFER OF FUNDS

<u>AMOUNT</u>	<u>FROM ACCOUNT/S</u>	<u>TO ACCOUNT/S</u>
3,184,415.00	-----	9960-910607-9557-6 Construction
191,065.00	-----	9960-910607-9557-9 Administration
<u>\$4,203,428.00</u>		

DEFERRED

The funds are required to cover the cost for the award of WC 1308R, AMI/R Urgent Need Metering Infrastructure Repairs and Replacement, Various Locations (Up to 2" Water Service).

A PROTEST WAS RECEIVED FROM R.E. HARRINGTON PLUMBING & HEATING.

President: "The first item on the non-routine agenda can be found on page 50 items 1 & 2, Department of Public Works, Office of Engineering and Construction, W.C. 1308R, Urgent Need Metering Infrastructure Repairs and Replacement Various Locations and the associated Transfer of Funds. Will the parties please come forward? Good Morning."

Mr. Shapiro: "Morning."

President: "Identify yourself."

Mr. Shapiro: "I am Art Shapiro, Chief of Engineering and Construction presenting contract W.C. 1308R. It's a -- the contract name is for AMI/AMR Urgent Need Metering Infrastructure. The project was advertised November 7, 2014, with bids received December 10, 2014. There were no addenda. The

MINUTES

Archer Western and the same exact thing happened and this Board awarded the contract. So, I would ask this Board --"

Mayor: "I'm sorry, can you give us the contract number again?"

Mr. Jones: "8-7-7."

Mayor: "And was it -- it was uh --"

Mr. Jones: "It was Back River Archer Western contract"

Mr. Smith: "8/14/2013 Sanitary Contract for Back Water"

City Solicitor: "And when you say the same thing happened in that instance, could you describe what happened in that instance?"

Mr. Jones: "There was some Wite-out put on uh -- a number and it wasn't initialed. There were no initials put beside it."

City Solicitor: "And was that question or issue raised before the Board?"

Mr. Jones: "Yes, I was here and um -- I think the Board waived that, which they have the right to do."

City Solicitor: "Are you quite certain that was specifically raised to the Board and the Board addressed the White-Out?"

Mr. Jones: "Yes, yes, yes, yes."

Director of Public Works: "May I ask a question? Did you bring this point up to us for today's contract in advance, so we can do the research as you are claiming now? Or are you just bringing it up now?"

MINUTES

Mr. Smith: "No, the, the protest that was made by the COO was to that point. Because that--"

Director of Public Works: "No, I am talking about the 8-77."

Mayor: "Talk into the mic sir."

Mr. Smith: "The protest that the COO made, the COO made a protest as well and that issue has been raised."

Director of Public Works: "I'm speaking for the specific S.C. 8-7-7 the specific incident that you bring up to us today. Was that brought up in this letter? No, I don't see that."

Mr. Smith: "It's not in the letter but, certainly it's a part of the Board's record."

Director of Public Works: "I understand but, we need time to research and so on that. Right -- You don't expect us to respond to that?"

Mr. Smith: "We expect just to present the issue to the Board for their consideration and we are sure that you would make the appropriate disposition."

Director of Public Works: "Okay."

City Solicitor: "It would be in the future and now, it would be better -- it would have been better had you brought that prior into our attention in the written protest, so that we could have done that research and be prepared to deal with it. As you asked

MINUTES

us to now, but because we are only hearing about this now it makes it difficult for us to give weight to your argument."

Mr. Smith: "Yes, we understand that, but it really deals with Mr. Solicitor to the impact of the situation as to whether or not it was a de minimis error or it's an error of um -- such magnitude that there should be a concern and therefore disqualification. So, we thought it would be in the best interest of the MBE/WBE to this uh -- make this clear as a precedent as to whether or not this has impact."

City Solicitor: "You do understand that, that in terms of prior action by the Board when this -- when the issue has been raised about changes being made on the Statement of Intent and the pages and the changes not being initialed the Board has consistently and on many occasions rejected those bids for that very reason."

Mr. Smith: "We are familiar --"

Comptroller: "Can I?"

City Solicitor: "So, you're and you are familiar with that fact, that historical fact. What you're saying now that there was this one occasion in 2013 when the issue was White-out and the Board did not reject that particular bid, per your recollection."

Mr. Jones: "Yes."

Exhibit C

(Relevant Excerpts from Board of Estimates Minutes,
Recommendations for Contract Awards/Rejections,
August 14, 2013)

MINUTES

RECOMMENDATIONS FOR CONTRACT AWARDS/REJECTIONSBureau of Water & Wastewater - cont'd

This transfer of funds is needed for the award of SC 877, Enhanced Nutrient Removal Process at the Back River Wastewater Treatment Plant.

President: The second item on the non-routine agenda can be found on Pages 40 and 41, Recommendation for Contract Awards and Rejections, Items 11 and 12. Will the parties please come forward?"

Mr. Thomas Corey: "Good morning, Mr. President, Members of the Board, I'm Thomas Corey, Chief of the Minority and Women's Business Opportunity Office. Uh -- I'm here to uh -- present the findings of uh -- that we made on, SC, uh -- contract SC 877. We found, uh -- in favor, of uh -- of, uh -- I think um it's Archer Western on this item. The argument by American Infrastructure is that there is a change in the contract amount on two Statement of Intent forms. Uh -- we were not able to determine if there was an actual change or a strikeout that would require two initials of that particular dollar amount. We typically would look at the dollar amount on the Statement of Intent form and if someone has uh -- struck through, put a line through one amount and written another, we would require that there be initials by both parties. In this instance, the allegation is that there was Wite-Out used, or some other technique used to put over a previous number. We can't make the

MINUTES

determination from the documents when we read. That would be something that we would, that we would hesitate to say that the company has done this. We have no way to know if it did happen, why did it happen, did it happen while they were signing the documents, or after the documents, that's just a determination we're not in a position to make, so, uh -- we reject the recommendation American Infrastructure is making."

President: "Okay."

Eliot C. Schaefer, Esq., Alexander & Cleaver: "Mr. President, Members of the Board, my name is Eliot Schaefer with Alexander & Cleaver, representing the American Infrastructure PC Construction Joint Venture. I have members of the joint venture here with me, as well today. Um, we are requesting today that the Board reject the Procurement Officer's recommendation that the Sanitary Contract 877, be rejected, or be awarded to Archer Western. The recommendation is arbitrary, capricious and violates the law because Archer Western submitted two defective, non-responsive Statements of Intent and a defective non-responsive participation affidavit. Archer Western's bid was materially deficient on its face and cannot be corrected, and therefore it must be thrown out. The Baltimore City Code and the explicit instructions on the solicitation are clear and require that all bids include an executed Statement of Intent

MINUTES

form. In capitalized, bolded and italicized letters at the bottom of the form, the instructions explicitly state that any changes to the information on this form must be initialed by both parties. It's readily apparent from the original Statement of Intent that was submitted by Archer Western for Apex Petroleum Corporation and Manuel Luis that the prices reflected on the forms were inserted and changed after the subs executed the contract. You can see on the Apex Petroleum form that there is clearly a white out or a mark underneath the line, which indicates the, the price was changed."

City Solicitor: "And I'm sorry, how is it that you were able to tell that that change occurred after the form was signed?"

Mr. Schaefer: "On the original document, you can tell that there was a Wite-Out the line where the, the, the sub-contract amount is entered. It was whited out or it wasn't -- wasn't clear; it wasn't on the original, on the original form. So it shows that it was covered up, whited out, done something that."

City Solicitor: "Are you able to tell whether that whiting out and that correction, if you will, was done before or after the form was signed by the general and the sub-contractor?"

Mr. Schaefer: "We do, based on the face of the form, we cannot tell that though."

City Solicitor: "Do you have any other independent information

MINUTES

from the sub-contractor or scientific analysis or technical analysis that would answer that question?"

Mr. Schaefer: "We do not have that."

Mr. David Worzikowski: "My name is David Worzikowski. I'm here for PC Construction Company. I just would point out that, um, I'm not sure if I understand the um, the relevance of when, obviously the intent of the rule and the statement on the form means that there be no change. The fact that we don't know when the change was made, it is clear that there was a change and it was not initialed."

City Solicitor: "If, if we don't know when the, the amount that ultimately appeared on top of a white-out, I'm assuming for the moment, not having seen the document, if we don't know when that amount appeared, whether it appeared before or after the signatures, we don't know whether there was a change. A change clearly means a change after the document has been signed by the general and the sub. I, I assume, I take it, this document was signed by the general and the sub. It was only changed if the amount was altered after those signatures were placed there and I gather that you all don't know whether that occurred after or before the signatures were placed there."

Mr. Corey: "I might add, we're not clear that there's a change."

MINUTES

City Solicitor: "That's what I'm saying. It's only a change if, if the numbers are altered after the document is signed. If it's, if, if the white out is done and the amount is put in before the document is signed, there's no change."

Mr. Schaefer: "Eliot Schaefer with Alexander & Cleaver. Um, it doesn't specifically state that. It says any changes to the form. If there were changes, there's no, there's no, there's no requirement that it be done after the execution, before the execution. A change to a form is a change to a form, whether executed before or not. If there is evidence that any document."

City Solicitor: "We have a disagreement. I mean, I, to me the thing that's got to be changed is the document that has been signed. If that document, with the signatures on it, has been changed, and that change is not concurred in, expressly by the two signers, then that's a change and we would have a real problem here but we don't know that that occurred in this instance."

Mr. Worzikowski: "Is that your position then, that if a document has a number that is crossed out and replaced by a different number, uh, then, because you don't know when that cross-out replacement was made?"

City Solicitor: "Well, uh, in that instance, we would typically require that they initial that."

MINUTES

Mr. Corey: "That's right, we require."

City Solicitor: "On the face of the alteration of the document.

Mr. Worzikowski: "So, what is the difference in the modern time, where obviously Wite-Out exists, what would prevent anybody from whitening out any number and writing in another number?"

City Solicitor: "Well, we, well we wouldn't, for example, let's say there's a number that was written in in pencil, if there was an erasure, and that was corrected and a different number was put in, and the document bore the signatures at the bottom, we would not view that as a change. I wouldn't anyway. Unless somebody, unless somebody established to me that the erasure occurred after the signature by the parties and without the knowledge of one of the signing parties. If you had, if you had, here today the sub-contractor who subscribed to that document and the sub-contractor said "I didn't concur that change, that was put on after my signature", then that would be a different situation."

Mr. Schaefer: "Eliot Schaefer, with Alexander & Cleaver. But it is the burden of the bidder to submit executed signed documents."

City Solicitor: "Yes, but, it's the bidder of the protest to sustain a protest."

Mr. Schaefer: "Correct, correct. But with respect to the

MINUTES

second document, we'll talk to, the Manuel Luis Construction document, the number one million two hundred forty-eight thousand four o five, the eight on the document clearly looks like it was changed. It looks like it was a three originally, written out with an eight. It was written over and this, this, exact situation was dealt with in, uh, previously by the, the, um, DPW SC 845 in 2011. That was the exact same situation where a, a, number was written over and the bid was deemed non-responsive, and, the the reason the prime appeared to submit what contained appeared, appeared, to be a unilateral price change, and there were no corresponding initials on that document. In that case, the Procurement Officer deemed that bid non-responsive and it could not be cured, and that's because the procurement process has policy and procedures that must be followed. Uh, the rules are here for, to apply to all bidders, they're drafted to insure fairness and competitiveness in uh the procurement process. On the capitalized, italicized and bolded on the bottom of this document "Any changes to the information on this form must be initialed by both parties". That did not happen here. It was a blatant violation of the rules and Archer Western did not submit a, a, a Statement of Intent form that, complied with, with the Article 5, uh -- Section? Uh -- subtitle 28, or the, or the uh, the explicit directions, the

MINUTES

explicit instructions of the solicitation."

Mr. Corey: "I don't find that argument particularly persuasive, because in my daily work, I sometimes start out writing one number wrong and I correct it in the middle of that number. That's not a change to a document, it's just the way it happens to the, the, placing the number on the particular document. So, if what he's saying, that argument doesn't seem to hold any water to me."

Mr. Schaefer: "That's still a change, if you change--"

Mr. Corey: "That's not a change if it's being done on the document at the same time. It's a change after the document is executed, and somebody comes after it."

Deputy Comptroller: "Mr. Corey, uh, in reviewing the MBE Statement of Intent form from Archer for Manuel Luis Construction, as well as for Apex, by the sub-contract percentage, there is, uh, a typed note that says "As of 10:30 A.M. 6/12/13, includes bid item 402."

Mr. Corey: "Yes."

Deputy Comptroller: "And that's by the percentage. That appears after the date that each of these forms were executed by the contractor and the subs. So, I'm curious about that and why that appears, because it looks like it pertains to the percentage amount, which would then suggest that there's a

MINUTES

change in the percentage amount and possibly in the dollar amount, and it's not clear to me."

Mr. Corey: "Well, I don't know what, I saw those things, and but I don't know what that relates to. We look at the document in terms of what's printed in these other lines in the signature. What that means, I don't know what that means."

Deputy Comptroller: "I, I --"

Mr. Corey: "Who put it there -- whether that means the bidder put it there or I don't know, it's not--"

Deputy Comptroller: "Clearly after the date that it was signed by the MBE or the WBE. It says 4/17/13 for Manuel Luis Construction that it was executed and for Apex, it's signed on 6/11/13."

Mr. Corey: "Right."

Deputy Comptroller: "But it has this notation and it's right by the percentage and it seems that there was some type of change, and I'm, I'm, perplexed as to again, I don't know what it means specifically but there clearly is a date right here."

Mr. Corey: "It's on both documents, I won't disagree with that, but I don't know what it means. We looked at the dollar figure and percentages, and there's a change there. When there, that particular type-written notation was on the document, we don't have any idea what it meant, but we clearly didn't see it."

MINUTES

Deputy Comptroller: "It's after the date, and it's beside the line that says for the percentage, so it does."

Mr. Corey: "I understand that."

Deputy Comptroller: "Suggest something has happened on 6/12/13 at 10:30 A.M."

Mr. Corey: "Then you ask me to guess what happened?"

Deputy Comptroller: "I understand, but the question is there's I think there's something and it's worthy of review considering that it is after the date that the sub signed and the day after the date that the contractor signed the forms."

Mr. Corey: "There are certain assumptions we're not willing to make because they belong out of direction."

Deputy Comptroller: "Well."

City Solicitor: "Is this something, Madam Deputy Comptroller, are you looking at a document that was submitted with the protest, because I'm, I don't have a copy or at least I don't."

Deputy Comptroller: "I, I, Yes it was. It was submitted with the protest from Alexander & Cleaver yesterday and it should have been with what the Board sent out."

City Solicitor: "Is it Exhibit 1 or Exhibit 2?"

Deputy Comptroller: "I, let me, let me pass it down for you if I may and if you look back to the MBE Statement of Intent form and the WBE Statement of Intent form, right there, Mr. Nilson."

MINUTES

Mr. Schaefer: "Eliot Schaefer with Alexander & Cleaver. It is clearly uncertainty with, with the amounts that were entered on here. I think that, uh, they're in a position to, to, there uh, uh, guessing, assuming that information was correct, there's enough contradictory information on the face of the Statement of Intent form with the date, with the cross-out, with the letter being overwritten, that it, it's certainly questionable whether there was a change in, a change to the Statement of Intent form after it was executed."

Lorenzo Bellamy: "Mr. President, Members of the Board, Lorenzo Bellamy, Alexander & Cleaver. Also, just, just to reiterate, there is no discretion allowed by either this Board or Mr. Corey in terms of what should be signed or what a change is. It clearly states that any change to the information on this form must be initialed by both parties. I mean, Period. There's no discretion allowed here. There's enough uncertainty as Mr. Eliot articulated from Mr. Corey is not sure exactly what numbers are changed; he's even admitted that sometimes he makes changes, or strike-outs, or changes to the numbers and that is material and cannot be cured."

Mr. Corey: "I didn't say I made changes. I said during the course of executing the document, I may mis-write a number, but a change occurs to the document only after it's executed by the

MINUTES

parties. That is our definition of change with regard to this."

City Solicitor: "Let me ask you a question with regard to the percentage of the total contract. So, that's, that is a percentage, I guess, that can only be calculated at the time a bid is submitted. Is that right?"

Mr. Schaefer: "I'm sorry."

City Solicitor: "The sub-contract percentage of total contract is a number that can only be ascertained at the time the bid is finalized and submitted. Is that right?"

Mr. Schaefer: "Yes."

City Solicitor: "So what do you do, what would you do in a situation if that percentage deviated or was inaccurate given the sub-contract amount, and let's take the one I'm looking at here, which is uh -- Luis Construction. So, the amount is \$1,248,405.00, and this indicates, with the notation a 0.48. What would happen if a \$1,248,405.00 actually was 0 -- 0.40 percent, not .48 percent?"

Mr. Corey: "We would investigate that and it would be investigated by both offices, the Comptroller's office is very, they're very good at bringing something like that to our attention if we don't catch it, and so if that percentage deviated significantly, significantly from the dollar amount, then we would have no recourse but to find the bidder non-

MINUTES

compliant because there's an inconsistency there between the percentages and the dollar amount. We didn't find that in this. We didn't find."

City Solicitor: "Okay. Okay, alright."

Mr. Schaefer: "Eliot Schaefer with Alexander & Cleaver. This contract, it's, it's a, it's a large contract."

City Solicitor: "Yes, it is. That's why you're all here."

Mr. Schaefer: "There is definitely question as to the responsiveness of Archer Western. It's, it's too important of a contract. Our client, the American Infrastructure/PC Construction Joint Venture, their, their contract, their bid complied with all aspects of the law. They had their documents executed properly; their documents, while they were a more expensive contract, a more expensive bid, the submission by Archer Western clearly is non-responsive and with the size of this contract, the value of the contract, it shouldn't be awarded when there's this much questionable information."

City Solicitor: "And since you just made that statement, um -- so on the, on the Part B documents submitted by your client, um, are you saying, that in the case of your client, percentages were inserted before the signatures of both the sub-contractor and the general contractor, and if so, how do we know that?"

Mr. Schaefer: "I, I don't have that information, when, when the

MINUTES

documents were executed by."

City Solicitor: "Is it your understanding that um, it is generally the case that the um, sub-contract percentage figure is inserted typically, or often, on the day the bids are due? Because that's the day that your client decides what bid to put in, typically."

Mr. Barry Tucker: "Sometimes we, uh."

President: "Can you - can you state--."

Barry Tucker: "Barry Tucker with American Infrastructure. If, if we received a quote from a minority contractor and there's no, uh, in the competitiveness, there's no uh, other minority that's, that may be more competitive, there may be a change or a submission on bid, but before bid day versus a non-bid day."

President: "Anybody else?"

Mr. Schaefer: "No, we just request the entire bid be deemed, the Archer Western bid be deemed non-responsive and request the Board to reject the Procurement Officer's arbitrary and capricious decision because of the changed Statement of Intent forms."

Deputy Comptroller: "I have one another question. You just said that you may make a change some time before date, bid day or, I'm sorry that you might make a change on the amount before bid date or um, on the bid date. Would you have it initialed at

MINUTES

that point, if you made a change?"

City Solicitor: "Time sensitive? Could you live with a deferral of one week?"

Mr. Schaefer: "Um, I think a change whenever made, would need to be initialed. That's my understanding. The policy announced today, I think, the that Wite-Out change is not considered a change. Is not, I think, following on the Comptroller's earlier question the issue about the date that the form was signed, and what, what, what's clear because of the percentage comment, it indicates that the form was signed before the number was changed, whether or not the percentage is impacted, um, I don't know what exactly current policy is about that. Um, we're not really arguing that that the percentage is the issue, here. The change in the percentage; it's that the date the form was signed, it's obviously been changed since that date; uh the dollar amount. Whether um -- the Board is now accepting and the department is now accepting uh -- changes by Wite-Out, um, that's a new issue."

City Solicitor: "Who has the original document that we're looking, that we're talking about here?"

Mr. Corey: "It's probably in the agency."

Deputy Comptroller: "The agency."

City Solicitor: "Pardon me in the agency?"

MINUTES

Mr. Corey: "Yes, it's probably in the agency."

City Solicitor: "I mean, you can't, these documents don't indicate Wite-Out or, I mean I'm hearing you all talk about a whited out document that I have, that none of us has seen. I'm going to ask the agency, uh, what would be the implications of a one-week deferral of the Board's decision?"

Rudy Chow, Head of Bureau of Water and Wastewater: "Rudy Chow, I'm the Bureau Head for Water and Wastewater. This particular contract was bid on once already and particularly we are also facing a deadline from the State that's stated on our permit. Uh, the way it is right now, we are already on a very tight schedule, so a deferral of one week would not be uh --favorable. I would not recommend that."

City Solicitor: "Well, well, are you saying that a delay of one week and Board action a week from now would throw you out of compliance, whereas proceeding right now you would be in compliance?"

Mr. Chow: "We are already in danger of non-compliance."

City Solicitor: "Okay, how close are you to. . ? I hear you."

Mr. Chow: "Talkin' about days. In the overall contract."

City Solicitor: "Pardon me."

Mr. Chow: "We're talkin' about days."

President: "Mr. Foxx?"

MINUTES

Director of Public Works: "Uh, the uh, the agency has a deadline to complete the project and get it in uh, and get it functional. I'm not -- I think the deadline is in December 2016."

Mr. Chow: "That's correct."

Director of Public Works: "December of 2016. Since this had been bid out earlier, and was, uh, and we had to go back and re-bid, the uh, quite some time, months as a matter of fact has been eaten up in that process. Uh, they, uh, we, we would like to proceed on with this contract so that we can get it out and get construction underway."

City Solicitor: "Could, could I ask, could I ask one of the representatives of the protesting -- um, how much difference is there between your client's bid and the Archer bid, how much higher or lower was your client's bid?"

Mr. Schaefer: "You have the numbers there?"

City Solicitor: "Round numbers will do."

Mr. Schaefer: "The difference is about \$15 million."

City Solicitor: "Fifteen?"

Mr. Schaefer: "Yes."

Mayor: "Meaning yours is \$15 million higher than the bid that we're recommending?"

Mr. Schaefer: "Yes. Give them the numbers."

MINUTES

Mayor: "I can't hear you."

City Solicitor: "Ready for a Motion?"

Mr. Schaefer: "Yes, the numbers that I have. . ."

President: "I'll give them a chance to say something first."

City Solicitor: "Yes. Absolutely."

Mr. Schaefer: "The Archer Western bid was \$263 million; the A.I./PC Joint Venture was \$278 million. Uh, but it has been the practice and precedent of, of, procurement officers to throw out. . ."

City Solicitor: "I understand."

Mr. Schaefer: "To throw out the Statements of Intent when, when there's evidence of changes on the forms."

Mr. Bellamy: "Mr. Solicitor, Lorenzo Bellamy again. You know you made a comment about how important this is and you know this one-week deferment. I think that because of the size of this contract, the size of this work and the interests of the citizens of Baltimore, and what the City is trying to accomplish, I don't see a one-week deferral, uh I think it would give Mr. Corey a chance to actually review this document again and to answer, maybe, some of his outstanding questions, about whether or not, he, "is this a change or not a change". He has questions about it, we have questions about it; he's not sure, we, we, believe that, that were changes."

MINUTES

President: "I'll entertain the Motion."

Mr. Arnold M. Jolivet, Maryland Minority Contractors

Association: "But, I haven't been heard."

President: "Oh, you filed a protest?"

Mr. Jolivet: "I did send a protest."

Deputy Comptroller: "He, he did. He did."

President: "Okay. I'm sorry. You were standing on this side, so I don't know. You should have been standing on that side, so you threw me off."

Mr. Jolivet: "Move back over here, maybe he if you don't want me on his side."

President: "Go ahead."

Mr. Schaefer: "I have one last statement. Eliot Schaefer, Alexander & Cleaver. The uh, the A.I./PC bid is still under the engineer's estimate, so it is still below that threshold."

President: "Uh, okay."

Mr. Jolivet: "Mr. President, one final, one final. . ."

Mr. Foxx: "That's not an accurate statement. It's not."

(Inaudible)

Mr. Jolivet: "Mr. President, one final, and I briefly alluded, to the question is, as I stated in my communications, is that I think that this contract, with regard to, I, I appeared before this Board when this identical contract was first got the

MINUTES

permission to advertise, and if you may recall, I stated at the time that it was incumbent upon the City's MWBOO to place, to set and place sub-goals on the contract, and Mr. Corey was here, uh, I pointed out that in 2007, we found, uh, the City found, that prime contractors were unnecessarily excluding African-American MBE subs, so therefore, we specially amended the ordinance to authorize MWBOO to establish and place sub-goals for each one of the enumerated minority groups, uh, benefiting from the ordinance in each contract over \$1 million dollars, construction and engineering. I am just concerned here that, our failure to put the sub-goals in this contract, 200, it was expected and projected initially, that the contract would bid for anywhere from \$200 to \$300 million, and it came in substantially lower. But nevertheless, my point is, you didn't set sub-goals. As a result of not setting sub goals, we find that, again, there is a tremendous substantial unacceptable imbalance in the amount of the sub-contracts going to African-American MBEs versus non-African-American MBE's and I think it's insulting when, when, when we have a situation in Baltimore, where African-American MBEs make up literally 90% of all the City certified MBEs and on this contract, the African-American MBEs received only \$10 million dollars and the non-African-American, one other group, received \$38 million dollars. That's

MINUTES

an imbalance that's certainly not proper, and not right, and so I'm asking the Board -- while I'm not asking the Board to reject the bids -- I think it would be proper for the Board to send the contract back to Mr. Corey's office and ask the contractor to re-do its MBE, because under the current submission, the terrific, unacceptable imbalance in the amount of MBE subs going, er, dollars going to African-Americans versus MBE dollars going to other minorities, it's just not fair. It's just an unacceptable imbalance here, and I hope that this also would teach us a lesson, where in future contracts of this kind, that Mr. Corey will find a way to set sub-goals because it's been proven, over the years, that in the absence of setting sub-goals, that almost invariably, the contractor excludes the minority, uh, the African-American minorities, and I say to you again, I feel think is unacceptable. I've talked to Mr. Corey about this, uh, many times. Unfortunately, he's agreed with me in principle, but I can never get him to set the sub-goals as the ordinance provides, and Mr. President, I would ask as a condition of awarding this contract, if the Board in its wisdom, decides to award, that the condition would be that the contractor be put on notice that in further awarding of other sub-contracts, that in and of further awarding of sub-contracts, African-American sub-contractors would get a fair and equal

MINUTES

opportunity to be awarded them, because right now we're being cheated uh, unnecessarily and unacceptably. I just, I, I'm very, very much perturbed that in 2013 we can have a contract in the operations of our minority program that are supposed to help and support and include African-Americans that we can award a contract that in fact excludes African-Americans. I don't think it's acceptable, and I would ask this Board in making this award, assuming they make the award, that they would remedy this situation. It's unfair and unacceptable."

President: "I entertain the Motion."

City Solicitor: "I move that we deny the protest filed by Alexander & Cleaver on behalf of its client, and accept the recommendation of the agency to award to a low bidder."

Director of Public Works: "Second."

President: "All those in favor, say "Aye".

"Aye."

President: "All opposed, "Nay".

City Solicitor: "Will you accept the Motion of Mr. Jolivet's?"

President: "Yeah, okay."

City Solicitor: "I move that we deny the protest of Mr. Jolivet. The assessment of sub-goals is in the discretion of MWBOO there are \$47 million dollars in MBE work on this contract. I hear Mr. Jolivet saying that's not enough in his view of that ended

MINUTES

up going to African-American minorities. I don't think that alone is enough um -- to take the action that he's suggested, so I move that we deny his protest."

Director of Public Works: "Second."

President: "All those in favor, say AYE. Aye."

President: "All opposed, say "NAY". The Motion carries."

Clerk's Note: During the temporary absence of the Comptroller, during the discussion of this item, prior to the Motion and the Vote, the Deputy Comptroller sat on behalf of the Comptroller.

Exhibit D

(Relevant Excerpts from Board of Estimates Minutes,
Recommendations for Contract Awards/Rejections,
March 25, 2015)

MINUTES

RECOMMENDATIONS FOR CONTRACT AWARDS/REJECTIONSDepartment of Public Works/Office of Eng. & Construction - cont'd

The funds are required to cover the cost for the award of W.C. 1309R, AMI/R Urgent Need Metering Infrastructure Repair and Replacement, Various Locations (3" Larger Water Service).

President: "The um, first two items on the non-routine agenda, we are going to hear both since they're the same arguments, um - - is on Page 46, Items 1 and 2, Department of Public Works, Office of Engineering and Construction, WC 1308R, Urgent Need Metering Infrastructure Repairs and Replacements, and on Page 47, um, Item 3 and 4, Department of Public Works, Office of Engineering and Construction, WC 1309R, Urgent Need Metering Infrastructure Repair and Replacements. Will the parties please come forward? You can start."

Mr. Shapiro: "Good morning. My name is Art Shapiro, I'm the Chief of Engineering and Construction with the Department of Public Works and I'm presenting contract WC 1308R for consideration. It's for AMI and AMR urgent need metering infrastructure services."

MINUTES

Ah, the bids were taken on December 10, 2014 and the, there were three bids received. The low bid was from R.E. Harrington \$2.699 million; um, and the second low bid was from Metra Industries for \$3.184 million. There was a issue with uh, the bid documents, which uh, urged the Office of Engineering and Construction to stand by its original recommendation for award to the second low bid, Metra Industries."

Ms. Schevitz: "Pam Schevitz, Minority Women's Business Opportunity Office. We reviewed two bids for this contract. Uh, R.E. Harrington Plumbing and Heating was determined to be non-compliant because the Statement of Intent forms had been changed and it was not initialed by both parties. Metra Industries was also reviewed and we determined them to be compliant with the 15 percent MBE and the four percent WBE participation. Um -- last week it was brought up about um -- as part of the protest about Sanitary Contract 877. Um -- it should be noted that the main difference between the bids that were submitted for WC 1308R and Sanitary Contract 877 is that all of the information that was submitted on the Statement of Intent was a copy with the original bid on the Sanitary Contract 877.

MINUTES

With uh -- 1308R, the Statement of Intent actually included um, actual Wite-Out on the form, as well as copied information, as well as original information. So, there is a distinct difference between Sanitary Contract 877 as well as 1308R, insofar as the submission of the Statements of Intent."

City Solicitor: "A question with regard to the 1308 um, Form B's - so were you able to actually see and identify the white outs on the Form B's?"

Ms. Schevitz: "Yes. You could actually see and feel the white outs. You could actually feel the back of it where it was imprinted with the actual numbers that had been changed on the sub-contract dollar amount."

City Solicitor: "So, you could see both the numbers that were submitted and the numbers that had been whited out?"

Ms. Schevitz: "You could feel that there was actual Wite-Out, yes."

City Solicitor: "And could you -- did, did you, did you try to read the numbers on the Wite-Out that were whited out?"

MINUTES

Ms. Schevitz: "You could see that there was changes under the actual document, yes."

City Solicitor: "Thank you."

Edward Smith, Jr.: "Thank you very much, Mr. President, um -- and thank you, Mr. City Solicitor for allowing me to uh -- file as a, ah person who could participate as a lobbyist."

City Solicitor: "Absolutely."

Mr. Smith: "I do appreciate it. Um -- as you can see, Mr. President, and um -- Madam Mayor, um -- we sent in on March 23rd, a letter."

Mayor: "Talk right into the microphone."

Mr. Smith: "Yes I will, I will try to do that."

Mayor: "You have to do more than try because we're recording this."

Mr. Smith: "Yes, I understand that. I used to sit in the position and said the same thing, Madam Mayor. So, I can appreciate it. Thank you very much. Um -- let me um -- indicate um -- to you, that um -- there is no way to um -- as the City Solicitor on 877 indicated, when Mr. Corey came before the

MINUTES

uh -- Board and said that uh there's no way that we can tell when that particular Wite-Out was put on because I still have not heard from the um -- the young lady to my right, that there were in fact numbers which were changed, which were struck out and other numbers inserted on those Form B's. Uh -- and I listened for that very carefully and could not hear it. I also note that in 8-7-7 um -- this Board in fact um -- approved the contract uh, that was issued at that time with Wite-Out, and the questions were asked by the City Solicitor, the same questions that were asked, other than the question as to whether or not you could see that there were any changes. We would submit to you that if you look at the forms themselves, that there were no changes on those forms, uh, and that my letter is an indication of that proposition. In addition to that, there was some question, I think from Mr. Chow, as to whether or not um -- you in fact did make a, um -- deviation from the former decision to in any instance not allow Wite-Outs in these proceedings. Ah, we brought in all of our 'subs' they sat in those chairs and --."

MINUTES

President: "I'm sorry. Go ahead."

Mr. Smith: "-- that's alright, Mr. Chairman. I understand."

President: "I thought it was off."

Mr. Smith: "That's okay. Um, thank you very much -- and they sat in those chairs, and we all agreed and they sit in those chairs today, that there were no numbers changed in what they were to receive as a result of their contracts. That was an affirmative proffer and acceptance by this Board. Uh -- last night at approximately 7:52, I received a call to have them all here and present today, um -- which was surprising. But, nevertheless uh -- the company and Mr. Harrington was able to prevail upon them to come here today to say the same thing that they said a week ago in these proceedings, and that is that there was no changes in the amounts that they would receive as a result of the contracts in 1308, and they are here to say the same thing with affidavits today, as you have requested. Um -- that being the case that um -- being the case that um -- that there was absolutely nothing untoward about what occurred, the words of I think, Judge, Justice O'Connor, are kind of rolling in my head, and have been since I left these proceedings last week, when she said 'Discrimination in the construction industry

MINUTES

is like a cancer in the blood on the society', um, and I think that when you look at what has occurred, uh, Mr. Harrington, who is the low bidder by almost \$500,000.00, it would be ill I think, of the City, to expect that the taxpayer should pay an additional \$500,000.00 uh, for Wite-Outs when not only the spirit, but the intention of the legislature, uh -- the legislation in this case, is squarely before this Board. Um -- Mr. Chairman, I don't mean to be um -- vociferous. I don't mean to be controversial. Ah -- but I do mean to expect justice for Mr. Harrington and for the 'subs' who are here. Uh -- moreover, I think that um, one of the things that has been overlooked here is that when um, the -- when last week it was indicated that there was no, um -- in the Metra bid, there was nothing that was untoward, that was just not the case. Um, once again, by the very documents which this agency had before it, it saw that on the Adams um -- instruments that Mr. Adams was in fact, not a provider for anything other than services and that there's a 25 percent MBE qualification that was put on these forms. Am I speaking in the microphone, Madam Mayor?"

Mayor: "Um-uhm."

MINUTES

Mr. Smith: "Okay, great. Ah, so I want to make sure that I'm heard on that issue. I thank you very much for the opportunity to be heard."

President: "Thank you."

City Solicitor: "Mr. uh --"

President: "Madam Comptroller."

Comptroller: "It appears that we need to be consistent, because, uh -- Mr. Nilson, in the Minutes of August 14, 2013, you stated that if the other party has knowledge of the change and concurs, you said it is okay, and the 'subs' that were here last week, they stood up and they were in agreement. So, it appears that it should be okay."

City Solicitor: "Madam, Madam Comptroller, I never said, and the Board never ruled, that if the 'subs' said it's okay it's okay. Here --"

Comptroller: "Let me read it, can I read it? It says here on August the 18th, August 14, 2013 on Page 3101, 'City Solicitor: Well, we well we wouldn't for example, let's say that there's a number that was written in pencil, if there was an erasure and that it was corrected and a different number was put in, and the document bore the signatures at the bottom, we would not view that as a change."

MINUTES

I wouldn't anyway, unless somebody, unless somebody established to me that the erasure occurred after the signature of the parties and without the knowledge of one of the signing parties. If, if you had, if you had here today, the sub-contractor who subscribed to the document, and the sub-contractor said I didn't concur that change that was put on after my signature that would be a different situation.'"

City Solicitor: "Well yes, but the first situation was talking about an erasure that occurred before the sub-contractor signed the document."

Comptroller: "But, how do we know?"

City Solicitor: "Which, which -- well in that case, a case a year and a half ago, we, we were not able to determine that there was a change because unlike these documents, which are originals and you can see the Wite-Out, a year and a half ago all the documents were photocopies and you could not tell whether there was a change and if you assumed there was a change, you couldn't tell when it occurred."

Comptroller: "But you could because --"

President: "Let him finish then you can finish."

MINUTES

City Solicitor: "On the basis, those were the facts before the Board, on which the Board ruled a year and a half ago. It's different in this situation because I have inspected, as have I think, other members of this Board, the original documents submitted, and you can clearly see the white outs and you can see the numbers, you can't read every digit of the number replaced, but you can see that numbers were there previously and they were changed by Wite-Out. That's a very different situation from what we had a year and a half ago, and the nature of the documents with the signatures of the 'subs' being photocopied signatures, not original signatures. Director Chow and I have looked at these, at these um -- original forms extensively, and we have them with us today. Um -- they make it clear that there was a change and all of the circumstances make it clear that those changes were made after the photocopied signatures of the 'subs' were put on the documents."

Comptroller: "But on 8-7--"

Mayor: "Madam Comptroller--"

City Solicitor: "-- the documents --"

President: "Hold up--hold-- up."

Comptroller: "Okay."

MINUTES

Mayor: "--I just want to clarify what's being said, in the origin - in the case that was referenced in 2013, the whole thing was photocopied. So, there's no original, there was no, as far as I understand, there was no ink and then photocopy, it was all photocopy."

City Solicitor: "That's correct."

Mayor: "On the, on the form that we're talking about, on the form that's before us today, there was a photocopied document. One of the critical things that was included on the photocopy was a signature. So, the signature existed on the previous document.. On top of that photocopy, which included the signature, there's Wite-Out, and there's no ink signature that accompanies that Wite-Out. So, there's no, there's, there's clearly the original document that was photocopied, including the signature and then an edit."

Comptroller: "I understand that, however on the Statement of Intent for 8-77, there's a signature of June 11, 2013 but then there is another notation that says 'As of 10:30 a.m. on June the 12th', there's a change. So, there was a change after the-- the signatures because the signature has June the 11th and on, and on this document, you can take a look at it, Mr. Nilson --."

MINUTES

City Solicitor: "I've seen the document. I know what you're talking about. Yes, and the Deputy Comptroller raised that to the Board and the Board found that that was not the kind of change that persuaded them to come to a different conclusion."

Mr. Smith: "I, I still remember the echoing of your words when this matter was taken up a year and a half ago, um in another contract involving an outfit. You asked whether or not it was subject to scientific evaluation on the form. Ah, the answer to that of course was 'No, it wasn't' and the conclusion was that if you could not tell it, and did not have it evaluated scientifically, then the naked eye, it seems to me, one could say was not enough. So, I'm wondering what the difference is between now and then."

City Solicitor: "Be -- because here, as Madam Mayor has just said, and as I said previously, you can clearly see the Wite-out on these documents, which was not the case a year and a half ago."

MINUTES

You can clearly see that prior numbers were there and you can tell from the documents that that Wite-out and the changes of those numbers occurred before all the signatures were put on the document."

Comptroller: "But Mr.--"

Mr. Smith: "And the bottom line is that nothing has changed with respect to the sub-contractors. Thank you, sir."

Comptroller: "Also, Mr. Nilson, no one looked at the original documents of 8-77 because you asked for a deferral and the um, and it was said that it was time sensitive, so we did not look at the original documents to see."

City Solicitor: "Well, I think we were told what the original documents showed."

Comptroller: "We didn't look at the original documents."

City Solicitor: "Well that's because time --."

Comptroller: "You asked, you asked for a deferral and we did not look at the originals."

City Solicitor: "I, I asked if deferral it was possible --"

Comptroller: "Yes."

City Solicitor: "-- and the DPW said no --"

Comptroller: "Right."

MINUTES

City Solicitor: "--because of consent decree time requirements. So, we acted without the original documents, but we have since gone back since these gentlemen raised 8-77 and looked at those original documents and they, basically they are all photocopies, they are not originals. You cannot tell, just as you couldn't a year and a half ago, whether a change had been made, and if so when it had been made. That remains the same as it was a year and a half ago."

Director Public Works: "And I believe that we do have both of those documentations here 13-08 and 8-77."

City Solicitor: "And, and I might add just with regard to the 'subs' so for the 'subs' to say, we're okay with the numbers, these are our numbers, we're good with them is not sufficient because we, this, we have a consistent history of not allowing folks to come forward on or after the bid, or after the bid and saying, 'oh, I'm cool, let me initial those documents' or 'Let me tell you I'm cool with those numbers'."

Mr. Smith: "Well why were they--"

The num, the, the M-W-BOO law requires, and the documents require, that that be determined before they are submitted. They have to be submitted in a way that they are not changed and where, either by signatures or

MINUTES

initialing it's clear on the documents, as they are submitted on bid due date, that everybody is on board, in writing with those numbers."

President: "Okay, I'm, I'm going to say one thing --."

City Solicitor: "And, and to come in --."

President: "I want to say one thing before we go any further. Um -- until I recognize you, please don't speak out. I would ask that you not do that. So, you're speaking now."

Mr. Dashiell: "If I'm being recognized?"

President: "Yes. Yes."

Mr. Dashiell: "Ah -- Mr. President, Madam Mayor, my name is Robert Fulton Dashiell. I represent R.E. Harrington on 1309R and inasmuch as the President recognized accurately that the issues are the same, I thought I would chime in at this point and give you the benefit of at least my two cents on the matter. Ah -- number one, yes, you can show, uh, you can see that there was a number there prior to the white out. Number two, you cannot show from the white out that the number that was there before is different from the number that was there afterward. You cannot tell that, I don't care what you look at. For all we know, you could be looking at a correction, a re-statement of the number; but let me say, let me say, let me say more than that because, because somehow we get lost."

MINUTES

This is a minority business participation program. This is, this is not, you know, you know, flip a coin. I, I got to make a confession here because I started this whole squibble business. Mr. Nilson, you remember on contract number 845 Frucon, which since became my client, by the way. But, I started this whole Frucon business, I came before this Board and said that a scratch out without an initial is wrong because you couldn't tell that there had been an agreement. You know what? I'm going to confess something to you. I was wrong. Let me tell you why I was wrong. I was wrong because I was not aware at the time what the real industry practice is, and every 'sub' will tell you this: the real industry practice that has been known to the City, from going all the way back to Shirley Williams, is that frankly all these forms are signed in blank. That's the real deal. Every single one of these forms is signed in blank, and not, and not to evade or, or, or to evade or avoid the MBE requirement, but as a necessity, and here is why. If I'm going to give you a price to do hauling, I'm not going to read through 70 pages of drawings and specifications just to tell you that I'm going to charge you \$50 an hour to haul; or \$10 a load, or \$15 a cubic yard.

MINUTES

I'm going to give you my price list and I'm going to let you choose which services you want and which certified services you're going to include, and you fill the form out. That's exactly how it's done. Every one of these 'subs' here, including the president of the association, will tell you that's exactly the way it's done, and that's the way it's always been done. Why's it been done that way for the 'prime' contractor side? Because the form requires a statement of percentage which cannot be calculated until all of the other numbers are in place. Nobody's riding around with a truckload of MBEs in the trunk of their car, saying 'Sign this form after I calculate my percentage', it's just not done that way. So it is in fact disingenuous, it is disingenuous, it is disingenuous to throw a bid out because a form was changed after a signature was put on it, when in fact the signature was put on it when the form was blank in the first place. That's the truth of the matter."

President: "Madam Mayor."

Mr. Dashiell: "That is the truth of the matter."

MINUTES

President: "After you finish, the Mayor's going to respond."

Mr. Dashiell: "I'm done."

Mayor: "The challenge is that it seems disingenuous to, to, to fight to establish a rule, and then when it doesn't work for your client, say that the rule was wrong."

Mr. Dashiell: "Well, Madam Mayor, uh -- what's wrong is not to admit that you're wrong when you are, and, and, and I'll be honest with you. This is probably not the first time in my life I've been wrong. It's probably not, but it's not the first time, this Board hasn't been nearly consistent as Mr. Nilson professes. The fact, the fact of the matter is prior to 845 there was no rule. Prior to my argument on 845, this rule didn't exist."

Mayor: "But if I may --"

Mr. Dashiell: "Yes Ma'am --"

Mayor: "Mr. Dashiell, because, because we care, and I hope I'm speaking for all of us, about the compliance uh -- with the uh -
- MBE/WBE regulations, because we care about inclusion, it's my understanding that since the previous time when the contract against, I mean the, when Mr. Harrington had the apparent low

MINUTES

bid but was rejected because of a mistake, it was my understanding that my office worked with his team to make sure that they understood all of the um, how to fill out the forms, what was acceptable, what wouldn't be accepted, so that we wouldn't be in this place of having, of what we're saying, of what you're saying is a technicality that should be overlooked. Um -- so we wouldn't be in this place again. We went, we worked, it's my understanding that we worked with the team to say 'this is how it's done, this is what's acceptable', 'this is what is not acceptable', 'this is what you need to put in', because we don't, because we want to see him be successful."

Mr. Dashiell: "Well, Madam Mayor what happened here, and this was, and this was to facilitate the City's interest in, in providing the low bid. What really happened here was that on the day of the bid, Mr. Harrington, just like a lot of prime contrac- bidders do, received a last minute quotation which had the effect of lowering its bid price. These ladies, they are on the way out the door the bid -- with no changes, no Wite-Out, no anything, he comes in with a lower price because, because at the end of the day there's supposed to be at least a presumption that if you're the low bidder you might get awarded a contract.

MINUTES

That's true in almost every other jurisdiction. So, so, what he, he, he calls into his staff and says 'I've got a lower bid', they're on their way out the door. That's why the change was made at the last minute. It wasn't because of their -- and they appreciate your work. It wasn't so much a mistake, it was their effort to try to make sure they submitted a competitive bid which happened to be in this case, the low bid by almost a million dollars on my contract, five hundred thousand dollars on, on Mr. Smith's contract. We, we, and Mr., Madam Mayor, there's nobody in this universe that cares more about minority participation than the people standing at this podium, particularly me. I've been doing this almost 40 years. Almost 40 years I've been dedicated to this. The original program was written for the City by me. The, the first ordinance was drafted by the City, with all due respect to the former President, was drafted by me. Nobody's spent more time doing this than me. I organized the minority contractors association, so I, so the notion that I don't care or that I'm changing because I've got a client that says something different, is, is, is wrong.

MINUTES

That, that's really not true, and I know you're not suggesting it, but it really isn't true. I changed because I was wrong. I changed because the industry practice is exactly as I described it. I changed because I got seven contractors here who are going to lose a lot of money from not awarding the contract to a certified minority firm. That's the thing that really gets me. We've taken the purpose of the law and turned it on its head. It wasn't supposed to be about technicalities, it was supposed to increase minority participation. That's what it was supposed to do."

President: "Joan?"

Comptroller: "So, Mr. Nilson, why did we ask the 'subs' to come down today? What was the purpose?"

City Solicitor: "Well, we've actually learned a good deal from Mr. Dashiell about what happened here, um, so I suppose we don't need to hear that from the 'subs.' What happened here is um, the contractor took previously signed documents, made alterations of them at the time of the bid, changed information on them, and while that may be pragmatically what they need to do or what they had to do in this case, in doing so they violated the requirement of the Form B, which says information can't be changed."

MINUTES

So, Mr. Dashiell has, has spared all the 'subs' of having to confirm what he's just related to. Now, Mr. Dashiell's then, so we then have a situation where --."

Mr. Dashiell: "That's not what I said, Mr. Nilson. Let me say something, let me say something further. The prices ultimately weren't changed because every one of these 'subs' submitted a unit price. The only thing that got changed was the aggregate. The amount that they're going to get paid for the unit has not changed, and that's what they're here to say."

City Solicitor: "The -- the number on the form changed --"

Mr. Dashiell: "Yes --"

City Solicitor: "-- clearly."

Mr. Dashiell: "Yes."

City Solicitor: "--and that's clearly contrary to the form and it, and I don't even, I don't know for sure the history, but it's very possible that the, that the specific requirement on the form that any changes must be initialed is a consequence of the case that you argued successfully in the other direction four years ago.

MINUTES

So, we make the rules based on what happens, you have to follow the rules, as inconvenient and difficult as that may be in situations like this where the rules weren't followed. So, you, you know you may think we're being a slave to the rules. The rule has a purpose which is to avoid creating a situation where the 'prime' can basically jam -- and I know you're saying that's not true here -- can jam numbers down the throats of 'subs' which they really weren't on board with, and we don't know that they were on board because we don't have those changes initialed."

President: "Comptroller?"

City Solicitor: "--I, I say the easy way to do it - so if you've got a situation where there's a last minute change and you've got a bunch MBE and WBE 'subs', you need to have them with you so that when you make the changes, they can initial."

Mr. Dashiell: "That's what I just said. You want them, you want somebody to ride around with them in the back of the pickup or the trunk of the car? Mr. Mr. Nilson--"

City Solicitor: "It, it's a big contract -- there are big contracts --"

Mr. Dashiell: "-- Look, Mr. Nilson--."

MINUTES

City Solicitor: "-- and you know what the bid dates are, so there are other ways of dealing with this problem."

Mr. Dashiell: "Mr. -- Mr. Nilson, yes there are and frankly I'm working with your office to change that. You, you know what I suggested four years ago that would change it today -- modifying the bidder affidavit to add a clause that simply says that 'I certify under note, under oath, that the minority participation is true and accurate as submitted.' That's all, that's all and stop playing this game about last minute changes; stop forcing a square peg into a round hole because it's not working and it's, it's, it's taking the purpose of the program and it's turning it on its head."

City Solicitor: "We understand that, but you can't change the rules in mid-game, okay? So, we have had conversations internally about changing the line that appears on the Form B's and about addressing the practicalities of the prospect, of the process, we will do that and we will be delighted to have your input on it, but we, but that's the next game. We cannot change the rules now in mid-stream."

MINUTES

Mr. Dashiell: "Mr. Nilson, you talk about changing rules-- when you bid a public contract, you have an expectation of award if you're the low bidder, not if you're not the low bidder. Anybody who bids higher than R.E. Harrington has no reasonable expectation of being awarded anyway, so you're not changing the rules for anybody. The fundamental rule is low bidder is supposed to win. That is the fundamental rule."

City Solicitor: "Low bidder compliant with the rules - and that's the way the MWBOO program has always been run, and we happen to have a rule that you disagree with, and we're going to take a look at it. But, again it's like you can't play the first half of the game and then changes the rules at half-time because you don't like the way the game's going."

Mr. Dashiell: "Mr. Nilson, you, you, you know we, we could, we could debate this for a long time --"

City Solicitor: "-- We could --"

Mr. Dashiell: "-- about how consistent your position has been; how consistent your advice to the Board on one matter or another. But, the bottom line here is you've got a low bidder, a

MINUTES

certified minority firm and a cost of a million and a half dollars lower than the next highest bidder, with all the 'subs' saying that they're agreeing with the price on bid day, not afterward, but on bid day, that's what you're saying here today. And instead of trying to find a way, instead of trying to find a way to, to enhance the minority business program by increasing minority participation, instead of trying to find a way to save the City a million and a half dollars, what you're sitting here doing is uttering phrases that says 'we got to be consistent to a rule.'

City Solicitor: "Har -- Harrington submitted a bid, another bid on another contract that's before us today that's clean - 1330 - no violation that we can discern, so it's possible."

President: "Madam Mayor.--Did you have something to say?"

Comptroller: "I, I, I understand what you said, but, the bid that he's complying with has nothing to do with what he's talking about today. And again, you know, Mr. Nilson, you said that if the other parties had knowledge and they concur, that it's okay. That's, that's what's in the Minutes."

City Solicitor: "Respectfully, you're taking the words out of context."

Comptroller: "No, it's in writing."

MINUTES

City Solicitor: "Like Mr. Dashiell, maybe I misspoke a year and a half ago."

Comptroller: "Okay. It's in writing. That's what you said."

City Solicitor: "He admits to making mistakes, but I don't, I don't think that in context you're accurately using my words--"

Comptroller: "I just read it."

Mayor: "But reading it doesn't mean that it's being read in the right context, and that the challenge I have is the notion that we're not trying to fight for, ah, minority participation. That's why we work with -- unless I'm wrong. My, my team told me that that they tried to work with you on technical, on making sure that there was a technical, making sure that you had adequate uh, technical capacity to get in the bids correctly."

Mr. Harrington: "Good morning, ah -- Good morning. Ah -- Bobby Harrington, President R.E. Harrington Plumbing. Yes, on bid day we did make a few changes but --"

Mayor: "That's not what I asked. My, my understanding, and again, I could be wrong, is that my team worked with you since the last time we had this issue."

Mr. Harrington: "No ma'am."

MINUTES

Mayor: "Nobody worked with you?"

Mr. Harrington: "No ma'am."

Director Public Works: "No, may I?"

Mayor: "Mhmm."

Director Public Works: "Now remember 1308, well 1307, 1308, 1309, 1310 -- this is the third round of bidding, third round. Now in previous two times, our team and M-W-BOO along with others has sat down."

Mr. Harrington: "Who? Sat down with who? Not me. Who? You sat down --."

Director Public Works: "Somebody from your team."

Mr. Harrington: "No. No sir. No sir."

Director Public Works: "So you're saying that we have never advised you in terms of proper way of filling out the forms, of helping you and guiding you as far as submitting a 'clean bid?'"

Mr. Harrington: "No sir. Not from - I don't know who he talked to, he didn't talk to me -- so --"

Mayor: "Mr. Chow, do you know, do you know who from your team sat down --?"

Mr. Harrington: "I'm being honest. If you could give me a name."

Director Public Works: "Tom Corey, the previous MBE Officer he sat down with R.E. Harrington."

MINUTES

Mr. Harrington: "No sir. No sir."

Director Public Works: "Not from R.E. Harrington?"

Mr. Harrington: "No sir, never heard from Mr. Corey. Nobody."

City Solicitor: "Well, well let me just say, and I know this is not totally germane to today, to this moment, but we are about to have a new MWBOO director. He's, I think everybody will be excited um, to meet him, and to see his qualifications, and I can tell you that person's first order of business is going to be to address this situation, to hear from Bob, to hear from you and to work with you so that we don't have these problems recurring again because we see them right now with um, a number, not all of your contracts, because the one today, the other one, 1330 has already been approved on the routine agenda. So, we don't want to have you back here regularly. We don't want this to become a chronic problem, so we will work with you to make sure this doesn't happen again. And to help address the reality that Bob Dashiell has very candidly talked about -- about what happens on bid day -- which is not -- what happens on bid day is not what the requirements, it does not match the requirements that we legitimately impose um, for this program. So we've got to make reality and the requirements match in the future, so we'll work hard to do that."

MINUTES

President: "Any more closing arguments? Identify yourself."

Mr. Jones: "Ah, Pless B. Jones, Sr., President of Maryland Minority Contractors Association here on behalf of Robert Harrington Plumbing. I've listened to everything that was said, and the M-BOO office should be an advocate for MBEs but we have never gotten that. Everybody here, except for Ms. Pratt, was arguing how they should not give the job to Robert. She's the only one who said 'Look, this is the reason why it should be given to him'. We should not have to come here each week; look people get pregnant and make mistakes, okay? Sometimes they get pregnant two or three times, okay? --"

City Solicitor: "Sometimes it's not a mistake."

Mr. Jones: "-- But they don't throw 'em away, okay? He, he is a certified MBE for 25 years. Mr. Young, you talk about you want minorities to get jobs, you talk about you want jobs in the community, that's what he do. He had, what three jobs that you bid that day? Four jobs he bid that day, all going in at the same time, all of them going in at the same time. It seems to me that in order to save the City a million and a half

MINUTES

dollars, he is the low bidder - what's the purpose of not giving to him? Only because you don't want him to have them? Okay?"

Mayor: "I think that's a mischaracterization."

Mr. Jones: "Well, just let me speak, just let me have my piece because that's what I see. Now, I'm not going to bite my tongue to nobody, okay? Robert Harrington was down here a year and a half ago when he was low bidder on \$10 million dollars' worth of work, okay? He was MBE short by maybe two percent or three percent, because somebody, he had it going in, somebody told him they were certified, they wasn't, that cut his MBE by two or three percent. The next, second, bidder was short too - by one percent or percent and a half, but they gave it to him."

City Solicitor: "Shouldn't have. Typically if, if there are two bidders, and they're both short because of that kind of problem, they would both be non-compliant."

Mr. Jones: "He wasn't non-compliant. You all didn't make him non-compliant because - you made Robert non-compliant. I'm here to represent the MBE community, and if this is what we're going to get today, then I just don't know what to do - except do like 'Jollie' and take to the streets."

MINUTES

City Solicitor: "I, I would --"

Mr. Jones: "Jollie, Jolivet said, 'Let's go march'. You know--"

City Solicitor: "I would, as I think I said before, I would invite you and Bob and whoever else you want to --"

Mr. Jones: "I'm not talking about tomorrow. I've been told too many things about tomorrow. I'm talking about this bid today."

City Solicitor: "Okay."

Mr. Jones: "-- We have been denied too many times to be denied again today."

Ms. Schevitz: "Can I say something?"

President: "Excuse me, excuse me --"

Ms. Schevitz: "Pam Schevitz."

Mr. Jones: "I had the floor. I had the mic. He reached his hand on the mic."

President: "Alright, finish up, Mr. um, Pless, Jones."

Mr. Jones: "Thank you sir, Mr. President. You know, I think that we need to do something today. This Board needs to show up today, okay? Not tomorrow. Not what we are going to talk about."

MINUTES

We've been to too many outreaches and all this for years. What we get nothing but a few crackers, okay? Today, we have a gentleman here that is low bidder on really four bids. Two that's on the Board right now, and the Board needs to do something about it right now. Thank you."

Ms. Schevitz: "Excuse me, I'm sorry."

Ms. Schevitz: "Pam Schevitz, Minority Business Opportunity Office. I just want to say that we have been very consistent with our rulings in determining non-compliance and compliance, whether the bidder, the prime bidder is an MBE, or a non-MBE, and we apply the same rules across the board when we're dealing with bids. So, to say that we're ruling differently than an MBE when the 'prime' is an MBE or not an MBE, I, I take offense to that."

Mr. Dashiell: "If I, may, Mr. President, they have ruled differently on the issue of what a supplier is. Listen, this was a footnote in Mr. Smith's argument. But, I heard somebody say that, that Metra is compliant. Metra isn't compliant. K Adams is a diesel fuel supplier. On everybody's bid, he's listed in that section of the form as a supplier; he's not listed as a sub-contractor."

MINUTES

But, yet we heard last week that we regard that as a service. I mean, that means that everybody who's selling something can, can, can be providing a service. Mr., Mr. Adams is here. He will tell you that he's only submitted a price as a supplier; he will tell you that that's all he does. He doesn't perform any work on the job-site. He doesn't do anything. He brings the oil in and he leaves it wherever they tell him to leave it, whether it's in a storage facility or the back of a truck, wherever they tell him to leave it, that's where he leaves it, and he's always been placed as a supplier, and Metra and everybody else listed him. There's a separate section on the form for suppliers. He's not listed on top where you can claim 100 percent credit; he's listed under the supplier section."

President: "Pam, you have something to say?"

Ms. Schevitz: "As far as the fuel oil, I would like to say also that we have consistently used fuel oil companies as a service company, like a fueling service. In fact Mr. Jones here was awarded a contract as a prime contractor where he used a fuel oil company for seven percent of a 10 percent WBE participation rule, goal, and we considered it as a service. We did not apply the 25 percent supply limit to the contract, just like we did here."

MINUTES

President: "Okay. You have something to say, Miss?"

Ms. Letke: "My name is Kim Letke. I'm the WBE listed on the contract. I think the facts show that the MBEs all agreed that the numbers have not changed, and that there might have been some Wite-Out done. The Board has consistently made an opinion on different contracts, on the face of the contracts, whether or not they were within a certain limit of service vs. not service. Uh -- and if there's two problems with the first low bidder and the second low bidder, then you should either throw the whole thing out and re-bid it or you should give it to Mr. Harrington because the second bidder is going to have the same problem with a challenge from Mr. Harrington because he's going to challenge K&K Adams Fuel. But face the facts that they simply clearly, all the sub-contractors agree with the dollar value; the percentage is correct; nobody initialed the Wite-Out, which is a minor error, and this Board has consistently, um, worked with those contractors - the same with Welsh Construction on their contract - and other contracts."

MINUTES

They've worked with them, you can work with Mr. Harrington, and if you can't see the first one, then the second one has a second problem."

President: "Madam Mayor."

Mayor: "Thank you. Um -- I want to reiterate the fact that number one, I fight every day to save-- to be effective and efficient and to use the taxpayers' money in the most effective and efficient way. So, the fact that uh -- that it was done incorrectly, and uh -- stands to cost us a million and a half dollars more, it pains me. Because I know that we work very hard to, as I said, be effective and efficient with taxpayer money. Additionally, we work very hard to make sure that we provide, that we make a way to provide opportunity for local business, for women-owned business and for minority-owned business. The challenge is that if the -- if Metra had come here and submitted the same form, Mr. Dashiell, you and your team would tell us that we need to reject it for the same reason, for the exact same reason that you've said consistently, because the form wasn't right."

MINUTES

But, because your client did it, now it's our problem and we don't care about minority businesses and it's just not true. It's a rule that we have used but we can differ on whether it's consistent or not, but you know you've said it, they've said it, they submitted something that was wrong - that was, that was, changed. I would like for, I would have liked for nothing more than for that change to have been uh, documented correctly so we wouldn't be in this position. And the last time something like this happened I said the same thing. But it pains me because I know that this represents local jobs, but the answer isn't to ignore it and to pretend like it didn't happen, or to pretend like, pretend like if the situation were reversed, that you wouldn't be saying the same thing. We have, there has to be some consistency. You know if Metra came and submitted that you would be telling us that we can't accept it."

President: "This is going to be the last um, argument, so who's going to make it? No, I'm saying, is there any more closing arguments as relates to both of these issues before the Board?"

Mr. Dashiell: "Let, let me say one thing in response to what Madam Mayor just, just said. This is not an issue of integrity on the part of you or the City.

MINUTES

I, I recognize that there is a rule, but I also recognize that, 'consistency is the hobgoblin of little minds.' The fact of, the fact of the matter is we have to keep in mind the ultimate objective here and who is harmed. Metra isn't harmed by an award to somebody who bid a half million dollars lower than them. They didn't, they didn't submit a bid expecting to win if they were half a million dollars higher than the low bidder. We, the purpose here, the purpose of the program is minority participation. That's the purpose of the program, and that's what we're losing - we're not only losing the sub-contractor participation, but we're losing the valuable work that Harrington would perform with his own forces, and I differ with Ms. Pam --, Ms. Schevitz and the whole program that 'says minority prime contractors are the same as non-minority prime contractors.' That's simply not true. It's never been established that way in the law, and it's not true as a matter of practice, because every other 'sub' that Harrington uses is also going to be minority well above the 10 percent or 15 percent, and, and I defy you ever to have a non-minority prime contractor who ever gives you more than the minimum required.

MINUTES

So, there is a difference, there is a difference to the overall achievement of minority program, there is a difference of minority participation. It's not a matter of integrity, Madam Mayor, it's a matter of simply doing what is right. If it's right today, do it today. If we didn't do it right tomorrow, we can't fix tomor -- we can't fix yesterday and tomorrow is not here yet. Today really is the only day we have - do what's right today. Let's not be bound by what Dashiehl says or anybody - you know what's right. Okay, so I was wrong -- brand me, tar and feather me, do whatever you want, but don't throw away the minority program simply because somebody who didn't have a right to the contract bid and said they're in compliance, and that's just wrong, that's just wrong. I, I, I'm sorry I'm emotional, but it's just so wrong."

President: "Mr. Jones."

Mr. Jones: "Pless Jones, Maryland Minority Contractors Association. I, I submit to uh, Madam Mayor, President of the City Council, and Comptroller, Ms. Pratt, is that this Board has the right to reject bids or the right to award bids, whichever is in the best interest of the City. In this case, the best interest of the City and the best interest of the minority community."

MINUTES

So you all have that right to do what you want to do that's in the best interest of the City. Robert made a mistake before, yes he did. Whatever Bob Dashiells said happen before, yes it did. Whatever happened on 877, yes that happened. But, you all have the right, and the law is on your side, to do the best thing for the City, this case saving the City a million and a half, you all can do this today, and also helping the minority community. Thank you."

President: "Thank you. Anyone else? I entertain a Motion."

City Solicitor: "Um -- I'm going to MOVE that we reject both bid protests um -- without going into all the reasons other than to say that we have rules that are governing now and it's important that we follow them. It's also important that we re-visit those rules and, if you want to make as a condition of the Motion, that the MWBOO office and the Law Department and others come together with recommendations around the subject within 30 days, I think that would be appropriate."

Director Public Works: "Second."

President: "All those in favor, say AYE."

President: "All opposed, nay."

MINUTES

Comptroller: "Nay. I vote NO because by Mr. Nilson's testimony, I don't see the difference between an erasure and a white-out and by your testimony you said that there was an erasure and it was corrected and a different number was put in and the document with the signatures at the bottom, that you would not view that as a change, and if the 'subs' concur, it would be okay, so I vote No."

President: "The Motion carries."

* * * * *

Exhibit E

(Relevant Excerpts from Board of Estimates Minutes,
Recommendations for Contract Awards/Rejections,
November 9, 2011)

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

MWBOO GRANTED A WAIVER

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,

DOREEN DIAMOND
CONTRACT ADMINISTRATOR

Cc: DPW-Office of Compliance



PASCALE STEVENS LLC
ATTORNEYS AT LAW



HOWARD S. STEVENS
Writer's Direct Dial: 443.863.5758
Writer's Email: HStevens@PascaleStevens.com

July 7, 2015

Board of Estimates
Mayor and City Council of Baltimore City
Attn: Ms. Harriett Taylor, Clerk
Room 204, City Hall
Baltimore, Maryland 21202

Re: Contract: Towson Generator and Main Substation
DPW Contract No. 1295
Bid Date: April 1, 2015
Responding Party: The Whiting-Turner Contracting Company

To the Honorable President and Members of the Board of Estimates,

This office is counsel to The Whiting-Turner Contracting Company ("Whiting-Turner") with regard to the protest filed by Cianbro Corporation ("Cianbro") on the above referenced Contract solicitation (the "Contract"). This letter is Whiting-Turner's response to Mr. Eric A. Frechtel, Esq.'s June 22, 2015 letter on behalf of Cianbro, which is captioned as an "Amended Protest of Award" of the Contract.

Whiting-Turner strongly disagrees with the entire contents of Cianbro's letter, and respectfully urges the Board to DENY the protest, and award the Contract to Whiting-Turner as the responsible and responsive bidder with the lowest Contract price. The thrust of Cianbro's protest is, simply put, that the City should reject *any bid* on an absolute basis if it has correction fluid (i.e. "white out") or any other alteration on a bid submission form, if the area in question is not initialed by the bidder, and in the case of an MBE/WBE Participation Affidavit, not initialed by the bidder and the subcontractor. Cianbro seems to equate *any* use of correction fluid on a bid submission as "violation of law" and an abuse of "fundamental fairness" in the "sometimes chaotic" bid process. However, in this case by urging a complete rejection of any use of correction fluid regardless of ambiguity or any other defect, Cianbro would have the Board accept its higher contract price as legally warranted and mandated even though to do so would negate the Board's sound discretion to waive "minor defects and errors." Cianbro's arguments are neither supported by fact nor prior decisions of this Board upon which Cianbro's arguments rely, and as such, the arguments should be rejected.

In support of its arguments, Cianbro identifies six (6) locations on Whiting-Turner's bid where it is apparent on the face of the document that correction fluid was used to replace prior markings. Those six places are identified as the (1) first page of the Contract in the "date of offer" section, (2) in

Re: Contract: Towson Generator and Main Substation
DPW Contract No. 1295
Bid Date: April 1, 2015

bid item 503 in the extended unit price column, and (3) on the "Total Bid" line, where the word "nine" is written over correction fluid; (4) on the "MBE/WBE and Prime Contractor's Statement of Intent" for Sunrise Safety Services, Inc. ("SSSI") where it appears that correction fluid was used in the "percentage of total contract" space; (5) on the "MBE/WBE and Prime Contractor's Statement of Intent" for William T. King, Inc. ("WTKI") where it appears that correction fluid was used in the "percentage of total contract" space; and (6) on the "MBE/WBE Participation Affidavit" where it appears that correction fluid was used in the "total contract" value space.

The first item is in the Contract date section, however, Cianbro provides no legal or substantial basis for the Board to adopt the argument that the use of correction fluid in this location should make Whiting-Turner's bid defective and non-responsive. The strongest wording that Cianbro is able to conjure is that "something in the date of offer section is whited out" even though it is clear to Cianbro and to any other reader that the word "April" is written in the space in question and stands alone, without confusion. Cianbro does not argue that the alteration creates any ambiguity on the face of the Contract offer, nor does Cianbro argue that the clearly legible section that reads "1st day of April 2015" fails to comply "with all of the requirements prescribed" for the bid. Instead, the clear statement by Cianbro that the word "April" appears in this area without any ambiguity stands in strong contrast to Cianbro's arguments that focus on the Board's prior rejection of the Robert Harrington bid, where illegibility was an issue. In the *Robert Harrington* matter, the language quoted by Cianbro clearly indicates that the Board "[could not] read every digit of the number replaced". Here, there is no such concern, nor is any such concern asserted.

The second item is the apparent use of correction fluid on the extended price column of Bid Item 503. In the extended price column for Bid Item 503 it is clear that the characters "15,000" and "00" are entered into the two squares that were provided for this item. The result is an Item Price of \$15,000.00, which is the mathematical equivalent of the approximate quantities of 75 multiplied times the unambiguous price of "Two Hundred Dollars and No Cents" per ton. Here, as with Cianbro's item (1), there is no ambiguity or illegibility alleged with regard to any of the numbers or alphanumeric characters that are used in the blanks provided for Bid Item 503. Further, the resulting price of \$15,000.00 is the correct, mathematical result of multiplying 75 times \$200.00 per ton of the specified material. Thus, whatever information or markings that may have been in the blank space on the form *prior* to use of the correction fluid is immaterial, since the final bid pricing of \$15,000.00 is clearly legible and mathematically correct. The use of correction fluid in this location does not call any pricing into question, nor does it raise any basis for undercutting the City's confidence that the bid is "genuine" as Cianbro stretches to suggest, and the argument should be rejected.

The third item raised by Cianbro is the apparent use of correction fluid on the "Total Bid" line where the word "nine" has been written over correction fluid, making the amount of "Six Million Nine Hundred Seventy-two Thousand and no cents" clearly legible. It is noted that this amount, in words, is consistent with the amount stated in numerical form both in the "Unit Price" and the "Amounts" columns, and as with the first item (the month of "April" written over correction fluid)

Re: Contract: Towson Generator and Main Substation
DPW Contract No. 1295
Bid Date: April 1, 2015

Cianbro provides no explanation as to why this correction should result in the rejection of Whiting-Turner's bid. Instead, Cianbro's letter is silent and merely relies upon the use of correction fluid *per se* without any other explanation as the basis for the proposed rejection.

The fourth and fifth items raised by Cianbro are the apparent use of correction fluid on the percentage calculation sections for both SSSI's and WTKI's "MBE/WBE and Prime Contractor's Statement of Intent" forms. In support of its argument here Cianbro cites two specific instances where the Board has rejected bids on the basis that a "subcontract price was whited out". See, e.g., Cianbro's letter at the bottom of page 3 and 4. Here, the support for Cianbro's protest does not speak the facts of these particular issues, and as such, Cianbro's arguments must fail. In each instance cited by Cianbro the Board rejected offers where "critical" subcontract pricing appeared to be altered without being initialed by both the bidder and the MBE/DBE Subcontractor. See e.g., Cianbro letter at p.2 ¶3 ("Just a few months ago, the Board rejected the bid of a plumbing contractor Robert Harrington [...] where the Statement of Intent was whited out and dollar amounts changed without the required signatures."); see also, Cianbro letter at p.3, ¶2 ("In 2009, the Department of Public Works found a bid non-compliant where the subcontract amount was changed by not initialed by both parties...").

Unlike the situations relied upon by Cianbro where the *subcontract price* appeared to be altered with the use of correction fluid without any acknowledgement by the contractor and subcontractor, here the subcontract prices of \$15,000.00 for SSSI's pricing and \$45,000.00 for WTKI's pricing are clean, unaltered, original, and perfectly legible. The pricing does not appear on a space where correction fluid was used and there is no indication that the pricing for either subcontractor is not a true reflection of the pricing for their respective portions of the Project work. Instead, just as with item (2) above, the area of the MBE Intent forms identified by Cianbro are spaces for resulting calculations. The percentage values that are written over correction fluid are *dependent* values that can only be derived once the final Contract price is derived by Whiting-Turner. Any modification to the percentage calculation, whether to correct a mathematical error or to merely erase a stray mark, does not impact the *actual* subcontract price that has been set forth, and here those subcontractor prices are original and unaltered.

Aside from the above grounds, which in and of themselves substantiate denial of Cianbro's protest, there are other considerations which support a bidding contractor's decision not to share its subcontract percentages with a subcontractor. Particularly, disclosure of the actual percentage of the subcontractor's price in relation to the entire contractor's intended bid *in advance* of the bid submission could result in collusion or other non-competitive practices, which would violate applicable law. This is because any subcontractor that knows what percentage its subcontract price comprises of a total offer could easily disclose that information to other bidding contractors in advance of the bid submission in order to provide another bidder a competitive edge. In what Cianbro's letter characterizes as a "sometimes chaotic" process, all it would take is a simple phone call from one subcontractor to another "favored" bidding contractor to provide a competitive – and highly illegal – edge. For this reason alone changes to percentage calculations should be guarded by the bidding

Re: Contract: Towson Generator and Main Substation
DPW Contract No. 1295
Bid Date: April 1, 2015

contractor with strict confidentiality and scrutiny, even if correction fluid is required to adjust a final percentage calculation, and the percentages themselves should not be initialed by the subcontractor before submission.

The final item addressed by Cianbro is item (6), which highlights the use of correction fluid on the "total contract price" line of the *Part C: MBE/WBE Participation Affidavit*. The legible value in this space is "6,979,000.00", which is the same value shown in the extended "Total Bid" price previously identified as item (3), above. Here, like in other instances identified by Cianbro the use of correction fluid resulted in a legible number and the number itself is consistent with other portions of the contract where the "Total Bid" price is required. Again, where the bidding process can often be "chaotic" it should not be surprising that correction fluid may be used from time to time out of necessity to correct a value on a contractor's bid form. There is no valid basis for construing the use of correction fluid here as anything other than a "minor" matter which in the sound discretion of the Board should be deemed immaterial and waived where there is no ambiguity or other defects present.

In summary, Cianbro has called to the Board's attention six areas of the Contract form where writing appears over correction fluid. The highlighted areas clearly state that the offer is dated the "1st day of April 2015", that the extended bid price for Item 503 is "\$15,000.00", that SSSI and WTKI will each participate in ".021%" and "0.64%" (respectively) of the total contract work, and that Whiting-Turner's extended Total Bid price is "\$6,979,000.00", both in words and in numbers. On these items Cianbro has not alleged there is any ambiguity or confusion and on these items, there can be no dispute as to what words or amounts are intended.

Here, the use of correction fluid yielded a completely legible and responsive document, which is free from any ambiguity or illegible characters. Here, the use of correction fluid should be viewed for what it is – a tool used prior to the submission of the bid to remove any ambiguous or stray markings so as to avoid a basis for a bid protest or rejection of the offer. However, if a decision by the Board is required on these issues, then the use of correction fluid in each of these instances should be deemed merely a "minor defect or error" within the meaning of the Baltimore City Code, which does not impact the validity of the Bid itself, and which should be absolutely waived within the sound discretion of the Board. Regardless of why the correction fluid was used, Cianbro's reliance on prior decisions of this Board where *subcontract amounts* were altered without being co-initialed are not relevant here, since the subcontract amounts are clearly original and not written over correction fluid, and the other areas in question are mathematical sums only.

Cianbro does not call into question any other concerns other than these modifications. There is no allegation that any of the areas in question create ambiguity with regard to Whiting-Turner's Contract pricing, or that the Bid, as submitted, is enforceable in accordance with its terms. The areas in question are completely and unequivocally legible and are otherwise devoid of any extraneous information that requires this Board to use discretion to determine what Whiting-Turner actually intended.

Page 5
July 7, 2015

Re: Contract: Towson Generator and Main Substation
DPW Contract No. 1295
Bid Date: April 1, 2015

For the above reasons, Whiting-Turner respectfully urges that Cianbro's bid protest must be denied and the Board approve the Department of Public Works recommendation of award to Whiting-Turner per its agenda.

Very truly yours,



Howard S. Stevens

Cc: Mr. W. Michael Mullen, Esq. Baltimore City Office of Law
Mr. Rudolph Chow, Director, Department of Public Works
Ms. Tonorah Houston-Burgee
Ms. Shari Montgomery
Mr. Bernard LaHatte
Mr. Andrew Scherer
Mr. Christopher Collins
Mr. Daniel W. China, Esq.
Mr. Eric A. Frechtel, Esq.

MINUTES

RECOMMENDATIONS FOR CONTRACT AWARDS/REJECTIONS

DPW - cont'd

2. TRANSFER OF FUNDS

<u>AMOUNT</u>	<u>FROM ACCOUNT/S</u>	<u>TO ACCOUNT/S</u>
\$9,475,437.08	9960-907713-9558	
County Appro-	Constr. Res.	
riations	Towson Finished	
85,792.92	Water Reservoir	
Water Revenue	" "	
<u>Bonds</u>		
\$9,561,230.00		
\$ 697,900.00	-----	9960-909728-9557- 900020-2 Extra Work
1,046,850.00	-----	9960-909728-9557- 900020-3 Engineering
418,740.00	-----	9960-909728-9557- 900020-5 Inspection
6,979,000.00	-----	9960-909728-9557- 900020-6 Construction
418,740.00	-----	9960-909728-9557- 900020-9 Administration
\$9,561,230.00		

The funds are required to cover the cost of the award for WC 1295, Towson Generator and Main Substation.

MINUTES

RECOMMENDATIONS FOR CONTRACT AWARDS/REJECTIONS

DPW - cont'd

3. W.C. 1230, Pretty The Whiting-Turner \$2,214,600.00
 Boy Dam Reservoir Contracting Co.,
 Gatehouse Facility Inc.
 Improvements

MWBOO SET GOALS OF 19% MBE AND 1% WBE.

MBE: Horton Mechanical Contractors, Inc.	\$ 87,000.00	3.92%
Native Sons, Ltd.	186,500.00	8.42%
Roane's Rigging & Transfer Company, Inc.	<u>148,000.00</u>	<u>6.68%</u>
	\$ 421,500.00	19.02%
WBE: EASE Painting and Construction, Inc.	\$ 25,000.00	1.13%

MWBOO FOUND VENDOR IN COMPLIANCE.

A PROTEST WAS RECEIVED FROM BRADLEY ARANT BOULT CUMMINGS COUNSEL REPRESENTING THE CIANBRO CORPORATION.

CORRESPONDENCE HAS BEEN RECEIVED FROM PASALE STEVENS LLC REPRESENTING THE WHITING TURNER CONTRACTING COMPANY IN RESPONSE TO THE PROTEST FILED BY CIANBRO CORPORATION.



Eric A. Frechtel
Direct: (202) 719-8249
Fax: (202) 719-8349
efrechtel@babc.com

June 22, 2015

Board of Estimates
c/o Harriett Taylor
Clerk to the Board of Estimates
Room 204, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Re: Amended Protest of Award of Water Contract Number 1230 for Prettyboy Dam Reservoir Gatehouse Facility Improvements
Protesting Party: Cianbro Corporation
Representing Protesting Party: Eric A. Frechtel, Esq., Bradley Arant Boult Cummings LLP

Dear Ms. Taylor:

This firm represents Cianbro Corporation (“Cianbro”), and submits this letter to protest the award of Water Contract Number 1230 for Prettyboy Dam Reservoir Gatehouse Facility Improvements (the “Contract”) by the City of Baltimore (“Baltimore”) to The Whiting-Turner Contracting Company (“WT”). Cianbro has authorized me to represent it at the Board meeting on June 24, 2015.

On March 18, 2015, Baltimore publicly opened bids for the Contract. WT was the apparent low bidder with a total bid price of \$2,214,600.00. Cianbro was the apparent second low bidder with a total bid price of \$3,430,918.00. However, the Contract should be awarded to Cianbro because WT’s bid was not responsive to the bid requirements.

The reason for this protest is that WT’s bid is defective and non-responsive on its face. Specifically, in the following three (3) different places throughout WT’s bid various words and numbers have been whited out with no initial or signature:

- (1) on the first page, something in the date of offer section is whited out and the word “March” is written to the left of the whited-out area;
- (2) in bid item 405, the total dollar amount of “2,400,000” is written on top of white-out; and,

- (3) on the MBE/WBE and Prime Contractor's Statement of Intent for Horton Mechanical Contractors, Inc., the "Subcontract percentage of total contract" is filled in with 3.93% written on top of white-out.

See enclosed copy of WT's bid (Exhibit A) – for ease of reference, each area whited out is clouded in red.

The Request for Proposals expressly authorizes the Board to reject bids which show any omissions or alterations to the form. *See* Standard Specifications 00 21 13.1 (incorporated into RFP, Vol. 1 of 2 at SP-1, § II, Item 3), 00 51 00.01 ("The award of the Contract, by the Board of Estimates, if it be awarded, will be made to the lowest pre-qualified responsive and responsible Bidder whose Bid ***complies with all the requirements prescribed***") (emphasis added).

Here, the Board should exercise its authority to reject WT's bid because the alterations on the face of the bid violate the instructions on the bottom of the MBE Statement of Intent page -- submitted, as required, with the RFP -- which state that "ANY CHANGES TO THE INFORMATION ON THIS FORM MUST BE INITIALED BY BOTH PARTIES." Ex. A at B-5 (emphasis in original). These instructions ensure that the Statement of Intent will accurately represent the subcontract price, and that the parties will meet the MBE participation goal. *See, e.g.,* Baltimore City Code Art. 5, § 28-48 (participation statement, including executed statements of intent, must specify, among other things, "the dollar value of each subcontract" and "any other information the Office requires to determine whether the contract goals have been satisfied").

This Board has rejected bids that failed to comply with this simple instruction, specifically, where contractors have whited out figures and failed to initial the change. Just a few months ago, in March 2015, the Board rejected the bid of plumbing contractor Robert Harrington on a project to replace water meters -- despite his providing the lowest bid -- where the Statement of Intent was whited out and dollar amounts changed without the required signatures. In that case, because the apparent low bid contained "white-outs" that were not initialed, the Board rejected the low bid and awarded the contract to the second low bidder, Metra. During the initial argument of that bid protest, the City Solicitor pointed out:

in terms of prior action by the Board when this . . . issue has been raised about changes being made on the Statement of Intent and the pages and the changes not being initialed the Board has ***consistently and on many occasions*** rejected those bids for that very reason.

Board of Estimates Minutes, Recommendations for Contract Awards/Rejections (hereinafter, "Board Minutes") at 782 (Mar. 18, 2015) (Ex. B).

In August 2013, the Board rejected a bid protest for the award of contract SC 877 ("Enhanced Nutrient Removal Process") where it was alleged the subcontract price was whited out and changed without initialing the alteration. *See* Board Minutes at 3096-118 (Aug. 14, 2013) (Ex. C). In that protest, the evidence was unclear whether in fact, a change had been made to the bid form and, if so, when it was made. The Board ultimately rejected that protest, but the Board

acknowledged that “if a document has a number that is crossed out and replaced by a different number,” the contractor is “typically require[d]” to initial that change. Ex. C at 3100.

In rejecting the Robert Harrington bid, the Board distinguished the “very different situation” in SC 877, because there, the Board had examined photocopied versions of the forms and subcontractors’ signatures. Board Minutes at 871 (Mar. 25, 2015) (Ex. D). In contrast, on the Robert Harrington bid, the Board noted, “you can clearly see the white outs and you can see the numbers, you can’t read every digit of the number replaced, but you can see that numbers were there previously and they were changed by Wite-Out.” *Id.* Following its clear precedent -- which it even recognized in rejecting the SC 877 protest -- the Board rejected Robert Harrington’s protest.

Indeed, the Board has rejected bids for similar failures to adhere to the instructions on the MBE Statement of Intent form. In 2009, the Department of Public Works found a bid non-compliant where the subcontract amount was changed but not initialed by both parties. *See* letter from Doreen Diamond, Contract Administrator, to Pizzagalli Construction Company, dated July 9, 2009 (attached to Supplemental Protest for SC 845 (Potapsco procurement), Board Minutes (Nov. 9, 2011)) (Ex. E). In addition, counsel in the SC 877 bid protest cited a bid that the Board rejected in 2011 because of the bidder’s “unilateral” changes to an MBE Statement of Intent form. Ex. C at 3102.

Here, the Board is faced with a similar situation as the Robert Harrington Bid, because WT has submitted original copies of bid forms where critical numbers were written on top of white-out. Unlike the SC 877 bid, there is no question that WT changed these numbers. *See* Ex. D at 873-74 (noting that unlike SC 877, “[y]ou can clearly see that prior numbers were there and you can tell from the documents that Wite-Out and the changes of those numbers occurred before all the signatures were put on the document.”).

Although the Board has discretion to reject a bid or waive “minor” or “technical” defects, the alterations in WT’s bid are major, material defects. Standard Specifications 00 51 00.01; Baltimore City Code Art. 5, § 28-14(b) (“At its discretion, the Board of Estimates may waive *minor* defects and errors in a bidder’s MBE or WBE submission.”) (emphasis added).

First, the change to the “Subcontract percentage of total contract” on the Statement of Intent form may no longer reflect the agreed-upon subcontract price. One of the main purposes of the form’s instructions is to prevent the contractor from roping its subcontractors into a preferred price. *See* Ex. D at 884 (“The rule has a purpose which is to avoid creating a situation where the ‘prime’ can basically jam . . . numbers down the throats of ‘subs’ which they really weren’t on board with, and we don’t know that they were on board because we don’t have those changes initialed.”). Further, the Board does not require a protestant to demonstrate that the subcontractors, in fact, did not agree to the final subcontract price. *See id.*

Second, the alteration to Item 405 on the bid form affects the total bid price, which is a critical factor for determining an award. When alterations and “white-outs” appear on the face of the bid with no initials or other indicia of the reasons for, or genesis and ratification of, the alteration, there can be no confidence that the bid is genuine. The altered bid should be rejected,

and the contract should be awarded to the second lowest bidder if its bid is responsive. Thus, Baltimore should reject this defective bid from WT and should award the Contract to Cianbro.

Note that the principle of prohibiting such alterations on the face of a bid form is not unique to the City of Baltimore. Rather, it is the common practice. For example, in *Serenity Contracting Group, Inc. v. Borough of Fort Lee*, 703 A.2d 352 (N.J. Super. Ct. App. Div. 1997), the bid contained, among other alterations, “whited out, crossed out and handwritten changes” to the proposed contract price and bid amount. The public owner rejected the bid. 703 A.2d at 355. The rejection of the bid was upheld by the court reviewing the protest. Although the apparent low bidder attempted to argue that any alternation was “immaterial” and ought to be waived, the court found that even where a bid defect is non-material, “[i]t does not follow . . . that . . . the public entity must accept the bid.” 703 A.2d at 356. *See also, J.L. Manta, Inc. v. Braun*, 393 N.W.2d 490 (Minn. 1986) (alterations and erasures of bid price without initials).

The rules are clear: if the exigent and sometimes chaotic circumstances of the bid opening cause a bidder to make a last-minute alteration to the bid form, it must be initialed by the parties. None of the alterations or “white-outs” on WT’s bid are initialed; therefore, WT’s bid, including those on the MBE Statement of Intent, is out of compliance with the rules and should be rejected. Ex. D at 882, 884 (“[Y]ou have to follow the rules, as inconvenient and difficult as that may be.”).

If the Board of Estimates accepts WT’s bid, the fundamental fairness of the bid process will have been compromised. When bidders voluntarily incur the expense and effort to prepare and submit a bid, it is done so in reliance that the rules will be followed. When the rules are not followed, bidders’ confidence in the process is diminished and bidders will be unwilling to submit bids. In this particular case, Cianbro relied on the rules being followed. If WT’s bid is accepted, Cianbro, as the second low bidder, will be aggrieved and wrongfully deprived of this Contract for public construction.

As shown herein, the apparent award to WT is in violation of law, and is fundamentally unfair. Cianbro therefore requests that the Board reject WT’s bid and award the Contract to Cianbro as the qualified low bidder with a responsive bid.

Sincerely,



Eric A. Frechtel
Counsel for Cianbro Corporation

Enclosure

Exhibit A

(Whiting-Turner Contracting Company Bid)

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

DUPLICATE

CITY OF BALTIMORE
DEPARTMENT OF PUBLIC WORKS
OFFICE OF ENGINEERING & CONSTRUCTION

THE COMPLETE (ORIGINAL)
CONTRACT BOOK
DUPLICATE

PROPOSAL NUMBER
INCLUDED
BID ENVELOPE

CONTRACT NUMBER WC 1230

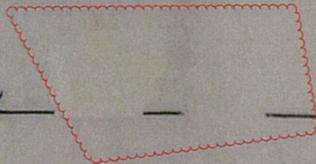
III. BID OR PROPOSAL

March 18
~~February 11, 2015~~

Check or Bank Cashier's Check or Bank Treasurer's Check or Bid Bond Equivalent (____%) of the Total Bid Submitted.

Completion 520 Consecutive Calendar Days

Damages \$2,100 per Calendar day

18 day of March  2015

Whiting-Turner Contracting Company
(Name)

Toppa Rd. Baltimore, MD 21286
(Address)

Sign below to signify the following:

Addendum Nos. 1, 2, 3, 4

Bernard LaVotto, Vice President

ITEM NOS.	APPROXIMATE QUANTITIES	DESCRIPTION OF ITEMS AND PRICES BID (IN WRITTEN WORDS)	UNIT PRICE		AMOUNTS	
			DOLLARS	.CTS	DOLLARS	.CTS
401	LUMP SUM	IMPROVEMENTS TO THE DAM SLIDE GATE SYSTEMS AT <u>One Million four hundred Eleven Thousand Six hundred fifty and ⁰⁰/₁₀₀ dollars</u> LUMP SUM	LUMP SUM		<u>1,411,650</u>	
402	LUMP SUM	IMPROVEMENTS TO THE DAM DISCHARGE PIPING SYSTEMS AT <u>Three Hundred Sixty-nine thousand Four hundred and ⁰⁰/₁₀₀ dollars</u> LUMP SUM	LUMP SUM		<u>369,400 00</u>	
403	LUMP SUM	CONTINGENT ALTERNATE SLIDE ANCHORAGE - FLANGE DRILLING AT <u>Twenty-thousand Two Hundred and ⁰⁰/₁₀₀ dollars</u> LUMP SUM	LUMP SUM		<u>20,200 00</u>	
404	LUMP SUM	CONTINGENT ALTERNATE GATE ANCHORAGE - FLANGE ADAPTER <u>Twenty-one Thousand and ⁰⁰/₁₀₀ dollars</u> LUMP SUM	LUMP SUM		<u>21,000 00</u>	
405	4	CONTINGENT SOLIDS REMOVAL FROM GATE CHAMBER <u>Six hundred and ⁰⁰/₁₀₀ dollars</u> CUYD	<u>600</u> CUYD	<u>00</u>	<u>2,400 00</u>	
		END OF CATEGORY NO. 4	NO ALTERNATES			

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, 3a and 3f

Name of Prime Contractor: The Whiting-Turner Contracting Company

Name of MBE or ~~WBE~~ (circle one): Horton Mechanical Contractors, Inc.

Brief Narrative Description of the Work/Service to be performed by MBE or ~~WBE~~
Water/Wastewater Treatment Services

Materials/Supplies to be furnished by MBE or WBE:

Subcontract Dollar Amount: \$ 87,000 (If this is a requirements contract, the subcontract dollar amount may be omitted; however, the subcontract percentage must be included.)

Subcontract percentage of total contract: 3.93 %

(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]
Signature of Prime Contractor (REQUIRED)

3/18/15
Date

[Signature]
Signature of MBE or ~~WBE~~ (REQUIRED)

03/18/15
Date

Rodney L. Horton, Vice President

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

PART D: MBE/WBE PARTICIPATION AFFIDAVIT

The Undersigned authorized representative of Contractor does hereby make the following Affidavit: Contractor has read the Bidder Information and Instructions regarding the MBE/WBE Program. Contractor acknowledges the MBE goal of XX% and the WBE goal of XX% for this contract. Contractor has achieved the following participation:

MBE-\$ 421,500 or 19.03 % and WBE-\$ 25,000 or 1.13 %
of the total contract amount which is \$ 2,214,600.

My firm has made good faith efforts to achieve the MBE and WBE participation goals for this contract. I understand that, if awarded the contract, my firm must submit to the Minority and Women's Business Opportunity Office (MWBOO) copies of all executed agreements with the MBE and WBE firms being utilized to achieve the participation goals and other requirements of Article 5, Subtitle 28 of the Baltimore City Code (2014 Edition). I understand that these documents must be submitted prior to the issuance of a notice to proceed.

I understand that, if awarded the contract, my firm must submit to the MWBOO canceled checks and any other documentation and reports required by MWBOO verifying payments to the MBE and WBE firms utilized on the contract.

I understand that, if awarded this contract and I find that I am unable to utilize the MBEs or WBEs identified in my Statements of Intent, I must substitute other certified MBE and WBE firms to meet the participation goals. I understand that I may not make a substitution until I have obtained the written approval of MWBOO.

I understand that, if awarded this contract, authorized representatives of the City of Baltimore may examine, from time to time, the books, records and files of my firm to the extent that such material is relevant to a determination of whether my firm is complying with the MBE and WBE participation requirements of this contract.

I do solemnly declare and affirm under the penalty of perjury that the contents of the foregoing Affidavit are true and correct to the best of my knowledge, information and belief.

The Whiting-Turner Contracting Company
Contractor Company Name

Bernard LaHatte
Signature

300 E. Joppa Rd., Baltimore, MD 21286
Address

Bernard LaHatte - Vice President
Print Name and Title

Sworn and subscribed before me this 18th day of March, in the year 2015.

[Signature]
Notary Public

Exhibit B

(Relevant Excerpts from Board of Estimates Minutes,
Recommendations for Contract Awards/Rejections,
March 18, 2015)

MINUTES

RECOMMENDATIONS FOR CONTRACT AWARDS/REJECTIONS

Dept. of Public Works/Office of Eng. & Construction - cont'd

TRANSFER OF FUNDS

<u>AMOUNT</u>	<u>FROM ACCOUNT/S</u>	<u>TO ACCOUNT/S</u>
3,184,415.00	-----	9960-910607-9557-6
		Construction
191,065.00	-----	9960-910607-9557-9
<u>\$4,203,428.00</u>		Administration

DEFERRED

The funds are required to cover the cost for the award of WC 1308R, AMI/R Urgent Need Metering Infrastructure Repairs and Replacement, Various Locations (Up to 2" Water Service).

A PROTEST WAS RECEIVED FROM R.E. HARRINGTON PLUMBING & HEATING.

President: "The first item on the non-routine agenda can be found on page 50 items 1 & 2, Department of Public Works, Office of Engineering and Construction, W.C. 1308R, Urgent Need Metering Infrastructure Repairs and Replacement Various Locations and the associated Transfer of Funds. Will the parties please come forward? Good Morning."

Mr. Shapiro: "Morning."

President: "Identify yourself."

Mr. Shapiro: "I am Art Shapiro, Chief of Engineering and Construction presenting contract W.C. 1308R. It's a -- the contract name is for AMI/AMR Urgent Need Metering Infrastructure. The project was advertised November 7, 2014, with bids received December 10, 2014. There were no addenda. The

MINUTES

Archer Western and the same exact thing happened and this Board awarded the contract. So, I would ask this Board --"

Mayor: "I'm sorry, can you give us the contract number again?"

Mr. Jones: "8-7-7."

Mayor: "And was it -- it was uh --"

Mr. Jones: "It was Back River Archer Western contract"

Mr. Smith: "8/14/2013 Sanitary Contract for Back Water"

City Solicitor: "And when you say the same thing happened in that instance, could you describe what happened in that instance?"

Mr. Jones: "There was some Wite-out put on uh -- a number and it wasn't initialed. There were no initials put beside it."

City Solicitor: "And was that question or issue raised before the Board?"

Mr. Jones: "Yes, I was here and um -- I think the Board waived that, which they have the right to do."

City Solicitor: "Are you quite certain that was specifically raised to the Board and the Board addressed the White-Out?"

Mr. Jones: "Yes, yes, yes, yes."

Director of Public Works: "May I ask a question? Did you bring this point up to us for today's contract in advance, so we can do the research as you are claiming now? Or are you just bringing it up now?"

MINUTES

Mr. Smith: "No, the, the protest that was made by the COO was to that point. Because that--"

Director of Public Works: "No, I am talking about the 8-77."

Mayor: "Talk into the mic sir."

Mr. Smith: "The protest that the COO made, the COO made a protest as well and that issue has been raised."

Director of Public Works: "I'm speaking for the specific S.C. 8-7-7 the specific incident that you bring up to us today. Was that brought up in this letter? No, I don't see that."

Mr. Smith: "It's not in the letter but, certainly it's a part of the Board's record."

Director of Public Works: "I understand but, we need time to research and so on that. Right -- You don't expect us to respond to that?"

Mr. Smith: "We expect just to present the issue to the Board for their consideration and we are sure that you would make the appropriate disposition."

Director of Public Works: "Okay."

City Solicitor: "It would be in the future and now, it would be better -- it would have been better had you brought that prior into our attention in the written protest, so that we could have done that research and be prepared to deal with it. As you asked

MINUTES

us to now, but because we are only hearing about this now it makes it difficult for us to give weight to your argument."

Mr. Smith: "Yes, we understand that, but it really deals with Mr. Solicitor to the impact of the situation as to whether or not it was a de minimis error or it's an error of um -- such magnitude that there should be a concern and therefore disqualification. So, we thought it would be in the best interest of the MBE/WBE to this uh -- make this clear as a precedent as to whether or not this has impact."

City Solicitor: "You do understand that, that in terms of prior action by the Board when this -- when the issue has been raised about changes being made on the Statement of Intent and the pages and the changes not being initialed the Board has consistently and on many occasions rejected those bids for that very reason."

Mr. Smith: "We are familiar --"

Comptroller: "Can I?"

City Solicitor: "So, you're and you are familiar with that fact, that historical fact. What you're saying now that there was this one occasion in 2013 when the issue was White-out and the Board did not reject that particular bid, per your recollection."

Mr. Jones: "Yes."

Exhibit C

(Relevant Excerpts from Board of Estimates Minutes,
Recommendations for Contract Awards/Rejections,
August 14, 2013)

MINUTES

RECOMMENDATIONS FOR CONTRACT AWARDS/REJECTIONSBureau of Water & Wastewater - cont'd

This transfer of funds is needed for the award of SC 877, Enhanced Nutrient Removal Process at the Back River Wastewater Treatment Plant.

President: The second item on the non-routine agenda can be found on Pages 40 and 41, Recommendation for Contract Awards and Rejections, Items 11 and 12. Will the parties please come forward?"

Mr. Thomas Corey: "Good morning, Mr. President, Members of the Board, I'm Thomas Corey, Chief of the Minority and Women's Business Opportunity Office. Uh -- I'm here to uh -- present the findings of uh -- that we made on, SC, uh -- contract SC 877. We found, uh -- in favor, of uh -- of, uh -- I think um it's Archer Western on this item. The argument by American Infrastructure is that there is a change in the contract amount on two Statement of Intent forms. Uh -- we were not able to determine if there was an actual change or a strikeout that would require two initials of that particular dollar amount. We typically would look at the dollar amount on the Statement of Intent form and if someone has uh -- struck through, put a line through one amount and written another, we would require that there be initials by both parties. In this instance, the allegation is that there was Wite-Out used, or some other technique used to put over a previous number. We can't make the

MINUTES

determination from the documents when we read. That would be something that we would, that we would hesitate to say that the company has done this. We have no way to know if it did happen, why did it happen, did it happen while they were signing the documents, or after the documents, that's just a determination we're not in a position to make, so, uh -- we reject the recommendation American Infrastructure is making."

President: "Okay."

Eliot C. Schaefer, Esq., Alexander & Cleaver: "Mr. President, Members of the Board, my name is Eliot Schaefer with Alexander & Cleaver, representing the American Infrastructure PC Construction Joint Venture. I have members of the joint venture here with me, as well today. Um, we are requesting today that the Board reject the Procurement Officer's recommendation that the Sanitary Contract 877, be rejected, or be awarded to Archer Western. The recommendation is arbitrary, capricious and violates the law because Archer Western submitted two defective, non-responsive Statements of Intent and a defective non-responsive participation affidavit. Archer Western's bid was materially deficient on its face and cannot be corrected, and therefore it must be thrown out. The Baltimore City Code and the explicit instructions on the solicitation are clear and require that all bids include an executed Statement of Intent

MINUTES

form. In capitalized, bolded and italicized letters at the bottom of the form, the instructions explicitly state that any changes to the information on this form must be initialed by both parties. It's readily apparent from the original Statement of Intent that was submitted by Archer Western for Apex Petroleum Corporation and Manuel Luis that the prices reflected on the forms were inserted and changed after the subs executed the contract. You can see on the Apex Petroleum form that there is clearly a white out or a mark underneath the line, which indicates the, the price was changed."

City Solicitor: "And I'm sorry, how is it that you were able to tell that that change occurred after the form was signed?"

Mr. Schaefer: "On the original document, you can tell that there was a Wite-Out the line where the, the, the sub-contract amount is entered. It was whited out or it wasn't -- wasn't clear; it wasn't on the original, on the original form. So it shows that it was covered up, whited out, done something that."

City Solicitor: "Are you able to tell whether that whiting out and that correction, if you will, was done before or after the form was signed by the general and the sub-contractor?"

Mr. Schaefer: "We do, based on the face of the form, we cannot tell that though."

City Solicitor: "Do you have any other independent information

MINUTES

from the sub-contractor or scientific analysis or technical analysis that would answer that question?"

Mr. Schaefer: "We do not have that."

Mr. David Worzikowski: "My name is David Worzikowski. I'm here for PC Construction Company. I just would point out that, um, I'm not sure if I understand the um, the relevance of when, obviously the intent of the rule and the statement on the form means that there be no change. The fact that we don't know when the change was made, it is clear that there was a change and it was not initialed."

City Solicitor: "If, if we don't know when the, the amount that ultimately appeared on top of a white-out, I'm assuming for the moment, not having seen the document, if we don't know when that amount appeared, whether it appeared before or after the signatures, we don't know whether there was a change. A change clearly means a change after the document has been signed by the general and the sub. I, I assume, I take it, this document was signed by the general and the sub. It was only changed if the amount was altered after those signatures were placed there and I gather that you all don't know whether that occurred after or before the signatures were placed there."

Mr. Corey: "I might add, we're not clear that there's a change."

MINUTES

City Solicitor: "That's what I'm saying. It's only a change if, if the numbers are altered after the document is signed. If it's, if, if the white out is done and the amount is put in before the document is signed, there's no change."

Mr. Schaefer: "Eliot Schaefer with Alexander & Cleaver. Um, it doesn't specifically state that. It says any changes to the form. If there were changes, there's no, there's no, there's no requirement that it be done after the execution, before the execution. A change to a form is a change to a form, whether executed before or not. If there is evidence that any document."

City Solicitor: "We have a disagreement. I mean, I, to me the thing that's got to be changed is the document that has been signed. If that document, with the signatures on it, has been changed, and that change is not concurred in, expressly by the two signers, then that's a change and we would have a real problem here but we don't know that that occurred in this instance."

Mr. Worzikowski: "Is that your position then, that if a document has a number that is crossed out and replaced by a different number, uh, then, because you don't know when that cross-out replacement was made?"

City Solicitor: "Well, uh, in that instance, we would typically require that they initial that."

MINUTES

Mr. Corey: "That's right, we require."

City Solicitor: "On the face of the alteration of the document."

Mr. Worzikowski: "So, what is the difference in the modern time, where obviously Wite-Out exists, what would prevent anybody from whitening out any number and writing in another number?"

City Solicitor: "Well, we, well we wouldn't, for example, let's say there's a number that was written in in pencil, if there was an erasure, and that was corrected and a different number was put in, and the document bore the signatures at the bottom, we would not view that as a change. I wouldn't anyway. Unless somebody, unless somebody established to me that the erasure occurred after the signature by the parties and without the knowledge of one of the signing parties. If you had, if you had, here today the sub-contractor who subscribed to that document and the sub-contractor said "I didn't concur that change, that was put on after my signature", then that would be a different situation."

Mr. Schaefer: "Eliot Schaefer, with Alexander & Cleaver. But it is the burden of the bidder to submit executed signed documents."

City Solicitor: "Yes, but, it's the bidder of the protest to sustain a protest."

Mr. Schaefer: "Correct, correct. But with respect to the

MINUTES

second document, we'll talk to, the Manuel Luis Construction document, the number one million two hundred forty-eight thousand four o five, the eight on the document clearly looks like it was changed. It looks like it was a three originally, written out with an eight. It was written over and this, this, exact situation was dealt with in, uh, previously by the, the, um, DPW SC 845 in 2011. That was the exact same situation where a, a, number was written over and the bid was deemed non-responsive, and, the the reason the prime appeared to submit what contained appeared, appeared, to be a unilateral price change, and there were no corresponding initials on that document. In that case, the Procurement Officer deemed that bid non-responsive and it could not be cured, and that's because the procurement process has policy and procedures that must be followed. Uh, the rules are here for, to apply to all bidders, they're drafted to insure fairness and competitiveness in uh the procurement process. On the capitalized, italicized and bolded on the bottom of this document "Any changes to the information on this form must be initialed by both parties". That did not happen here. It was a blatant violation of the rules and Archer Western did not submit a, a, a Statement of Intent form that, complied with, with the Article 5, uh -- Section? Uh -- subtitle 28, or the, or the uh, the explicit directions, the

MINUTES

explicit instructions of the solicitation."

Mr. Corey: "I don't find that argument particularly persuasive, because in my daily work, I sometimes start out writing one number wrong and I correct it in the middle of that number. That's not a change to a document, it's just the way it happens to the, the, placing the number on the particular document. So, if what he's saying, that argument doesn't seem to hold any water to me."

Mr. Schaefer: "That's still a change, if you change--"

Mr. Corey: "That's not a change if it's being done on the document at the same time. It's a change after the document is executed, and somebody comes after it."

Deputy Comptroller: "Mr. Corey, uh, in reviewing the MBE Statement of Intent form from Archer for Manuel Luis Construction, as well as for Apex, by the sub-contract percentage, there is, uh, a typed note that says "As of 10:30 A.M. 6/12/13, includes bid item 402."

Mr. Corey: "Yes."

Deputy Comptroller: "And that's by the percentage. That appears after the date that each of these forms were executed by the contractor and the subs. So, I'm curious about that and why that appears, because it looks like it pertains to the percentage amount, which would then suggest that there's a

MINUTES

change in the percentage amount and possibly in the dollar amount, and it's not clear to me."

Mr. Corey: "Well, I don't know what, I saw those things, and but I don't know what that relates to. We look at the document in terms of what's printed in these other lines in the signature. What that means, I don't know what that means."

Deputy Comptroller: "I, I --"

Mr. Corey: "Who put it there -- whether that means the bidder put it there or I don't know, it's not--"

Deputy Comptroller: "Clearly after the date that it was signed by the MBE or the WBE. It says 4/17/13 for Manuel Luis Construction that it was executed and for Apex, it's signed on 6/11/13."

Mr. Corey: "Right."

Deputy Comptroller: "But it has this notation and it's right by the percentage and it seems that there was some type of change, and I'm, I'm, perplexed as to again, I don't know what it means specifically but there clearly is a date right here."

Mr. Corey: "It's on both documents, I won't disagree with that, but I don't know what it means. We looked at the dollar figure and percentages, and there's a change there. When there, that particular type-written notation was on the document, we don't have any idea what it meant, but we clearly didn't see it."

MINUTES

Deputy Comptroller: "It's after the date, and it's beside the line that says for the percentage, so it does."

Mr. Corey: "I understand that."

Deputy Comptroller: "Suggest something has happened on 6/12/13 at 10:30 A.M."

Mr. Corey: "Then you ask me to guess what happened?"

Deputy Comptroller: "I understand, but the question is there's I think there's something and it's worthy of review considering that it is after the date that the sub signed and the day after the date that the contractor signed the forms."

Mr. Corey: "There are certain assumptions we're not willing to make because they belong out of direction."

Deputy Comptroller: "Well."

City Solicitor: "Is this something, Madam Deputy Comptroller, are you looking at a document that was submitted with the protest, because I'm, I don't have a copy or at least I don't."

Deputy Comptroller: "I, I, Yes it was. It was submitted with the protest from Alexander & Cleaver yesterday and it should have been with what the Board sent out."

City Solicitor: "Is it Exhibit 1 or Exhibit 2?"

Deputy Comptroller: "I, let me, let me pass it down for you if I may and if you look back to the MBE Statement of Intent form and the WBE Statement of Intent form, right there, Mr. Nilson."

MINUTES

Mr. Schaefer: "Eliot Schaefer with Alexander & Cleaver. It is clearly uncertainty with, with the amounts that were entered on here. I think that, uh, they're in a position to, to, there uh, uh, guessing, assuming that information was correct, there's enough contradictory information on the face of the Statement of Intent form with the date, with the cross-out, with the letter being overwritten, that it, it's certainly questionable whether there was a change in, a change to the Statement of Intent form after it was executed."

Lorenzo Bellamy: "Mr. President, Members of the Board, Lorenzo Bellamy, Alexander & Cleaver. Also, just, just to reiterate, there is no discretion allowed by either this Board or Mr. Corey in terms of what should be signed or what a change is. It clearly states that any change to the information on this form must be initialed by both parties. I mean, Period. There's no discretion allowed here. There's enough uncertainty as Mr. Eliot articulated from Mr. Corey is not sure exactly what numbers are changed; he's even admitted that sometimes he makes changes, or strike-outs, or changes to the numbers and that is material and cannot be cured."

Mr. Corey: "I didn't say I made changes. I said during the course of executing the document, I may mis-write a number, but a change occurs to the document only after it's executed by the

MINUTES

parties. That is our definition of change with regard to this."

City Solicitor: "Let me ask you a question with regard to the percentage of the total contract. So, that's, that is a percentage, I guess, that can only be calculated at the time a bid is submitted. Is that right?"

Mr. Schaefer: "I'm sorry."

City Solicitor: "The sub-contract percentage of total contract is a number that can only be ascertained at the time the bid is finalized and submitted. Is that right?"

Mr. Schaefer: "Yes."

City Solicitor: "So what do you do, what would you do in a situation if that percentage deviated or was inaccurate given the sub-contract amount, and let's take the one I'm looking at here, which is uh -- Luis Construction. So, the amount is \$1,248,405.00, and this indicates, with the notation a .048. What would happen if a \$1,248,405.00 actually was 0 -- 0.40 percent, not .48 percent?"

Mr. Corey: "We would investigate that and it would be investigated by both offices, the Comptroller's office is very, they're very good at bringing something like that to our attention if we don't catch it, and so if that percentage deviated significantly, significantly from the dollar amount, then we would have no recourse but to find the bidder non-

MINUTES

compliant because there's an inconsistency there between the percentages and the dollar amount. We didn't find that in this. We didn't find."

City Solicitor: "Okay. Okay, alright."

Mr. Schaefer: "Eliot Schaefer with Alexander & Cleaver. This contract, it's, it's a, it's a large contract."

City Solicitor: "Yes, it is. That's why you're all here."

Mr. Schaefer: "There is definitely question as to the responsiveness of Archer Western. It's, it's too important of a contract. Our client, the American Infrastructure/PC Construction Joint Venture, their, their contract, their bid complied with all aspects of the law. They had their documents executed properly; their documents, while they were a more expensive contract, a more expensive bid, the submission by Archer Western clearly is non-responsive and with the size of this contract, the value of the contract, it shouldn't be awarded when there's this much questionable information."

City Solicitor: "And since you just made that statement, um -- so on the, on the Part B documents submitted by your client, um, are you saying, that in the case of your client, percentages were inserted before the signatures of both the sub-contractor and the general contractor, and if so, how do we know that?"

Mr. Schaefer: "I, I don't have that information, when, when the

MINUTES

documents were executed by."

City Solicitor: "Is it your understanding that um, it is generally the case that the um, sub-contract percentage figure is inserted typically, or often, on the day the bids are due? Because that's the day that your client decides what bid to put in, typically."

Mr. Barry Tucker: "Sometimes we, uh."

President: "Can you - can you state--."

Barry Tucker: "Barry Tucker with American Infrastructure. If, if we received a quote from a minority contractor and there's no, uh, in the competitiveness, there's no uh, other minority that's, that may be more competitive, there may be a change or a submission on bid, but before bid day versus a non-bid day."

President: "Anybody else?"

Mr. Schaefer: "No, we just request the entire bid be deemed, the Archer Western bid be deemed non-responsive and request the Board to reject the Procurement Officer's arbitrary and capricious decision because of the changed Statement of Intent forms."

Deputy Comptroller: "I have one another question. You just said that you may make a change some time before date, bid day or, I'm sorry that you might make a change on the amount before bid date or um, on the bid date. Would you have it initialed at

MINUTES

that point, if you made a change?"

City Solicitor: "Time sensitive? Could you live with a deferral of one week?"

Mr. Schaefer: "Um, I think a change whenever made, would need to be initialed. That's my understanding. The policy announced today, I think, the that Wite-Out change is not considered a change. Is not, I think, following on the Comptroller's earlier question the issue about the date that the form was signed, and what, what, what's clear because of the percentage comment, it indicates that the form was signed before the number was changed, whether or not the percentage is impacted, um, I don't know what exactly current policy is about that. Um, we're not really arguing that that the percentage is the issue, here. The change in the percentage; it's that the date the form was signed, it's obviously been changed since that date; uh the dollar amount. Whether um -- the Board is now accepting and the department is now accepting uh -- changes by Wite-Out, um, that's a new issue."

City Solicitor: "Who has the original document that we're looking, that we're talking about here?"

Mr. Corey: "It's probably in the agency."

Deputy Comptroller: "The agency."

City Solicitor: "Pardon me in the agency?"

MINUTES

Mr. Corey: "Yes, it's probably in the agency."

City Solicitor: "I mean, you can't, these documents don't indicate Wite-Out or, I mean I'm hearing you all talk about a whited out document that I have, that none of us has seen. I'm going to ask the agency, uh, what would be the implications of a one-week deferral of the Board's decision?"

Rudy Chow, Head of Bureau of Water and Wastewater: "Rudy Chow, I'm the Bureau Head for Water and Wastewater. This particular contract was bid on once already and particularly we are also facing a deadline from the State that's stated on our permit. Uh, the way it is right now, we are already on a very tight schedule, so a deferral of one week would not be uh --favorable. I would not recommend that."

City Solicitor: "Well, well, are you saying that a delay of one week and Board action a week from now would throw you out of compliance, whereas proceeding right now you would be in compliance?"

Mr. Chow: "We are already in danger of non-compliance."

City Solicitor: "Okay, how close are you to. . ? I hear you."

Mr. Chow: "Talkin' about days. In the overall contract."

City Solicitor: "Pardon me."

Mr. Chow: "We're talkin' about days."

President: "Mr. Foxx?"

MINUTES

Director of Public Works: "Uh, the uh, the agency has a deadline to complete the project and get it in uh, and get it functional. I'm not -- I think the deadline is in December 2016."

Mr. Chow: "That's correct."

Director of Public Works: "December of 2016. Since this had been bid out earlier, and was, uh, and we had to go back and re-bid, the uh, quite some time, months as a matter of fact has been eaten up in that process. Uh, they, uh, we, we would like to proceed on with this contract so that we can get it out and get construction underway."

City Solicitor: "Could, could I ask, could I ask one of the representatives of the protesting -- um, how much difference is there between your client's bid and the Archer bid, how much higher or lower was your client's bid?"

Mr. Schaefer: "You have the numbers there?"

City Solicitor: "Round numbers will do."

Mr. Schaefer: "The difference is about \$15 million."

City Solicitor: "Fifteen?"

Mr. Schaefer: "Yes."

Mayor: "Meaning yours is \$15 million higher than the bid that we're recommending?"

Mr. Schaefer: "Yes. Give them the numbers."

MINUTES

Mayor: "I can't hear you."

City Solicitor: "Ready for a Motion?"

Mr. Schaefer: "Yes, the numbers that I have. . ."

President: "I'll give them a chance to say something first."

City Solicitor: "Yes. Absolutely."

Mr. Schaefer: "The Archer Western bid was \$263 million; the A.I./PC Joint Venture was \$278 million. Uh, but it has been the practice and precedent of, of, procurement officers to throw out. . ."

City Solicitor: "I understand."

Mr. Schaefer: "To throw out the Statements of Intent when, when there's evidence of changes on the forms."

Mr. Bellamy: "Mr. Solicitor, Lorenzo Bellamy again. You know you made a comment about how important this is and you know this one-week deferment. I think that because of the size of this contract, the size of this work and the interests of the citizens of Baltimore, and what the City is trying to accomplish, I don't see a one-week deferral, uh I think it would give Mr. Corey a chance to actually review this document again and to answer, maybe, some of his outstanding questions, about whether or not, he, "is this a change or not a change". He has questions about it, we have questions about it; he's not sure, we, we, believe that, that were changes."

MINUTES

President: "I'll entertain the Motion."

Mr. Arnold M. Jolivet, Maryland Minority Contractors

Association: "But, I haven't been heard."

President: "Oh, you filed a protest?"

Mr. Jolivet: "I did send a protest."

Deputy Comptroller: "He, he did. He did."

President: "Okay. I'm sorry. You were standing on this side, so I don't know. You should have been standing on that side, so you threw me off."

Mr. Jolivet: "Move back over here, maybe he if you don't want me on his side."

President: "Go ahead."

Mr. Schaefer: "I have one last statement. Eliot Schaefer, Alexander & Cleaver. The uh, the A.I./PC bid is still under the engineer's estimate, so it is still below that threshold."

President: "Uh, okay."

Mr. Jolivet: "Mr. President, one final, one final. . ."

Mr. Foxx: "That's not an accurate statement. It's not."

(Inaudible)

Mr. Jolivet: "Mr. President, one final, and I briefly alluded, to the question is, as I stated in my communications, is that I think that this contract, with regard to, I, I appeared before this Board when this identical contract was first got the

MINUTES

permission to advertise, and if you may recall, I stated at the time that it was incumbent upon the City's MWBOO to place, to set and place sub-goals on the contract, and Mr. Corey was here, uh, I pointed out that in 2007, we found, uh, the City found, that prime contractors were unnecessarily excluding African-American MBE subs, so therefore, we specially amended the ordinance to authorize MWBOO to establish and place sub-goals for each one of the enumerated minority groups, uh, benefiting from the ordinance in each contract over \$1 million dollars, construction and engineering. I am just concerned here that, our failure to put the sub-goals in this contract, 200, it was expected and projected initially, that the contract would bid for anywhere from \$200 to \$300 million, and it came in substantially lower. But nevertheless, my point is, you didn't set sub-goals. As a result of not setting sub goals, we find that, again, there is a tremendous substantial unacceptable imbalance in the amount of the sub-contracts going to African-American MBEs versus non-African-American MBE's and I think it's insulting when, when, when we have a situation in Baltimore, where African-American MBEs make up literally 90% of all the City certified MBEs and on this contract, the African-American MBEs received only \$10 million dollars and the non-African-American, one other group, received \$38 million dollars. That's

MINUTES

an imbalance that's certainly not proper, and not right, and so I'm asking the Board -- while I'm not asking the Board to reject the bids -- I think it would be proper for the Board to send the contract back to Mr. Corey's office and ask the contractor to re-do its MBE, because under the current submission, the terrific, unacceptable imbalance in the amount of MBE subs going, er, dollars going to African-Americans versus MBE dollars going to other minorities, it's just not fair. It's just an unacceptable imbalance here, and I hope that this also would teach us a lesson, where in future contracts of this kind, that Mr. Corey will find a way to set sub-goals because it's been proven, over the years, that in the absence of setting sub-goals, that almost invariably, the contractor excludes the minority, uh, the African-American minorities, and I say to you again, I feel think is unacceptable. I've talked to Mr. Corey about this, uh, many times. Unfortunately, he's agreed with me in principle, but I can never get him to set the sub-goals as the ordinance provides, and Mr. President, I would ask as a condition of awarding this contract, if the Board in its wisdom, decides to award, that the condition would be that the contractor be put on notice that in further awarding of other sub-contracts, that in and of further awarding of sub-contracts, African-American sub-contractors would get a fair and equal

MINUTES

opportunity to be awarded them, because right now we're being cheated uh, unnecessarily and unacceptably. I just, I, I'm very, very much perturbed that in 2013 we can have a contract in the operations of our minority program that are supposed to help and support and include African-Americans that we can award a contract that in fact excludes African-Americans. I don't think it's acceptable, and I would ask this Board in making this award, assuming they make the award, that they would remedy this situation. It's unfair and unacceptable."

President: "I entertain the Motion."

City Solicitor: "I move that we deny the protest filed by Alexander & Cleaver on behalf of its client, and accept the recommendation of the agency to award to a low bidder."

Director of Public Works: "Second."

President: "All those in favor, say "Aye".

"Aye."

President: "All opposed, "Nay".

City Solicitor: "Will you accept the Motion of Mr. Jolivet's?"

President: "Yeah, okay."

City Solicitor: "I move that we deny the protest of Mr. Jolivet. The assessment of sub-goals is in the discretion of MWBOO there are \$47 million dollars in MBE work on this contract. I hear Mr. Jolivet saying that's not enough in his view of that ended

MINUTES

up going to African-American minorities. I don't think that alone is enough um -- to take the action that he's suggested, so I move that we deny his protest."

Director of Public Works: "Second."

President: "All those in favor, say AYE. Aye."

President: "All opposed, say "NAY". The Motion carries."

Clerk's Note: During the temporary absence of the Comptroller, during the discussion of this item, prior to the Motion and the Vote, the Deputy Comptroller sat on behalf of the Comptroller.

Exhibit D

(Relevant Excerpts from Board of Estimates Minutes,
Recommendations for Contract Awards/Rejections,
March 25, 2015)

MINUTES

RECOMMENDATIONS FOR CONTRACT AWARDS/REJECTIONSDepartment of Public Works/Office of Eng. & Construction - cont'd

The funds are required to cover the cost for the award of W.C. 1309R, AMI/R Urgent Need Metering Infrastructure Repair and Replacement, Various Locations (3" Larger Water Service).

President: "The um, first two items on the non-routine agenda, we are going to hear both since they're the same arguments, um - - is on Page 46, Items 1 and 2, Department of Public Works, Office of Engineering and Construction, WC 1308R, Urgent Need Metering Infrastructure Repairs and Replacements, and on Page 47, um, Item 3 and 4, Department of Public Works, Office of Engineering and Construction, WC 1309R, Urgent Need Metering Infrastructure Repair and Replacements. Will the parties please come forward? You can start."

Mr. Shapiro: "Good morning. My name is Art Shapiro, I'm the Chief of Engineering and Construction with the Department of Public Works and I'm presenting contract WC 1308R for consideration. It's for AMI and AMR urgent need metering infrastructure services."

MINUTES

Ah, the bids were taken on December 10, 2014 and the, there were three bids received. The low bid was from R.E. Harrington \$2.699 million; um, and the second low bid was from Metra Industries for \$3.184 million. There was a issue with uh, the bid documents, which uh, urged the Office of Engineering and Construction to stand by its original recommendation for award to the second low bid, Metra Industries."

Ms. Schevitz: "Pam Schevitz, Minority Women's Business Opportunity Office. We reviewed two bids for this contract. Uh, R.E. Harrington Plumbing and Heating was determined to be non-compliant because the Statement of Intent forms had been changed and it was not initialed by both parties. Metra Industries was also reviewed and we determined them to be compliant with the 15 percent MBE and the four percent WBE participation. Um -- last week it was brought up about um -- as part of the protest about Sanitary Contract 877. Um -- it should be noted that the main difference between the bids that were submitted for WC 1308R and Sanitary Contract 877 is that all of the information that was submitted on the Statement of Intent was a copy with the original bid on the Sanitary Contract 877.

MINUTES

With uh -- 1308R, the Statement of Intent actually included um, actual Wite-Out on the form, as well as copied information, as well as original information. So, there is a distinct difference between Sanitary Contract 877 as well as 1308R, insofar as the submission of the Statements of Intent."

City Solicitor: "A question with regard to the 1308 um, Form B's - so were you able to actually see and identify the white outs on the Form B's?"

Ms. Schevitz: "Yes. You could actually see and feel the white outs. You could actually feel the back of it where it was imprinted with the actual numbers that had been changed on the sub-contract dollar amount."

City Solicitor: "So, you could see both the numbers that were submitted and the numbers that had been whited out?"

Ms. Schevitz: "You could feel that there was actual Wite-Out, yes."

City Solicitor: "And could you -- did, did you, did you try to read the numbers on the Wite-Out that were whited out?"

MINUTES

Ms. Schevitz: "You could see that there was changes under the actual document, yes."

City Solicitor: "Thank you."

Edward Smith, Jr.: "Thank you very much, Mr. President, um -- and thank you, Mr. City Solicitor for allowing me to uh -- file as a, ah person who could participate as a lobbyist."

City Solicitor: "Absolutely."

Mr. Smith: "I do appreciate it. Um -- as you can see, Mr. President, and um -- Madam Mayor, um -- we sent in on March 23rd, a letter."

Mayor: "Talk right into the microphone."

Mr. Smith: "Yes I will, I will try to do that."

Mayor: "You have to do more than try because we're recording this."

Mr. Smith: "Yes, I understand that. I used to sit in the position and said the same thing, Madam Mayor. So, I can appreciate it. Thank you very much. Um -- let me um -- indicate um -- to you, that um -- there is no way to um -- as the City Solicitor on 877 indicated, when Mr. Corey came before the

MINUTES

uh -- Board and said that uh there's no way that we can tell when that particular Wite-Out was put on because I still have not heard from the um -- the young lady to my right, that there were in fact numbers which were changed, which were struck out and other numbers inserted on those Form B's. Uh -- and I listened for that very carefully and could not hear it. I also note that in 8-7-7 um -- this Board in fact um -- approved the contract uh, that was issued at that time with Wite-Out, and the questions were asked by the City Solicitor, the same questions that were asked, other than the question as to whether or not you could see that there were any changes. We would submit to you that if you look at the forms themselves, that there were no changes on those forms, uh, and that my letter is an indication of that proposition. In addition to that, there was some question, I think from Mr. Chow, as to whether or not um -- you in fact did make a, um -- deviation from the former decision to in any instance not allow Wite-Outs in these proceedings. Ah, we brought in all of our 'subs' they sat in those chairs and --."

MINUTES

President: "I'm sorry. Go ahead."

Mr. Smith: "-- that's alright, Mr. Chairman. I understand."

President: "I thought it was off."

Mr. Smith: "That's okay. Um, thank you very much -- and they sat in those chairs, and we all agreed and they sit in those chairs today, that there were no numbers changed in what they were to receive as a result of their contracts. That was an affirmative proffer and acceptance by this Board. Uh -- last night at approximately 7:52, I received a call to have them all here and present today, um -- which was surprising. But, nevertheless uh -- the company and Mr. Harrington was able to prevail upon them to come here today to say the same thing that they said a week ago in these proceedings, and that is that there was no changes in the amounts that they would receive as a result of the contracts in 1308, and they are here to say the same thing with affidavits today, as you have requested. Um -- that being the case that um -- being the case that um -- that there was absolutely nothing untoward about what occurred, the words of I think, Judge, Justice O'Connor, are kind of rolling in my head, and have been since I left these proceedings last week, when she said 'Discrimination in the construction industry

MINUTES

is like a cancer in the blood on the society', um, and I think that when you look at what has occurred, uh, Mr. Harrington, who is the low bidder by almost \$500,000.00, it would be ill I think, of the City, to expect that the taxpayer should pay an additional \$500,000.00 uh, for Wite-Outs when not only the spirit, but the intention of the legislature, uh -- the legislation in this case, is squarely before this Board. Um -- Mr. Chairman, I don't mean to be um -- vociferous. I don't mean to be controversial. Ah -- but I do mean to expect justice for Mr. Harrington and for the 'subs' who are here. Uh -- moreover, I think that um, one of the things that has been overlooked here is that when um, the -- when last week it was indicated that there was no, um -- in the Metra bid, there was nothing that was untoward, that was just not the case. Um, once again, by the very documents which this agency had before it, it saw that on the Adams um -- instruments that Mr. Adams was in fact, not a provider for anything other than services and that there's a 25 percent MBE qualification that was put on these forms. Am I speaking in the microphone, Madam Mayor?"

Mayor: "Um-uhm."

MINUTES

Mr. Smith: "Okay, great. Ah, so I want to make sure that I'm heard on that issue. I thank you very much for the opportunity to be heard."

President: "Thank you."

City Solicitor: "Mr. uh --"

President: "Madam Comptroller."

Comptroller: "It appears that we need to be consistent, because, uh -- Mr. Nilson, in the Minutes of August 14, 2013, you stated that if the other party has knowledge of the change and concurs, you said it is okay, and the 'subs' that were here last week, they stood up and they were in agreement. So, it appears that it should be okay."

City Solicitor: "Madam, Madam Comptroller, I never said, and the Board never ruled, that if the 'subs' said it's okay it's okay. Here --"

Comptroller: "Let me read it, can I read it? It says here on August the 18th, August 14, 2013 on Page 3101, 'City Solicitor: Well, we well we wouldn't for example, let's say that there's a number that was written in pencil, if there was an erasure and that it was corrected and a different number was put in, and the document bore the signatures at the bottom, we would not view that as a change."

MINUTES

I wouldn't anyway, unless somebody, unless somebody established to me that the erasure occurred after the signature of the parties and without the knowledge of one of the signing parties. If, if you had, if you had here today, the sub-contractor who subscribed to the document, and the sub-contractor said I didn't concur that change that was put on after my signature that would be a different situation.'"

City Solicitor: "Well yes, but the first situation was talking about an erasure that occurred before the sub-contractor signed the document."

Comptroller: "But, how do we know?"

City Solicitor: "Which, which -- well in that case, a case a year and a half ago, we, we were not able to determine that there was a change because unlike these documents, which are originals and you can see the Wite-Out, a year and a half ago all the documents were photocopies and you could not tell whether there was a change and if you assumed there was a change, you couldn't tell when it occurred."

Comptroller: "But you could because --"

President: "Let him finish then you can finish."

MINUTES

City Solicitor: "On the basis, those were the facts before the Board, on which the Board ruled a year and a half ago. It's different in this situation because I have inspected, as have I think, other members of this Board, the original documents submitted, and you can clearly see the white outs and you can see the numbers, you can't read every digit of the number replaced, but you can see that numbers were there previously and they were changed by Wite-Out. That's a very different situation from what we had a year and a half ago, and the nature of the documents with the signatures of the 'subs' being photocopied signatures, not original signatures. Director Chow and I have looked at these, at these um -- original forms extensively, and we have them with us today. Um -- they make it clear that there was a change and all of the circumstances make it clear that those changes were made after the photocopied signatures of the 'subs' were put on the documents."

Comptroller: "But on 8-7--"

Mayor: "Madam Comptroller--"

City Solicitor: "-- the documents --"

President: "Hold up--hold-- up."

Comptroller: "Okay."

MINUTES

Mayor: "--I just want to clarify what's being said, in the origin - in the case that was referenced in 2013, the whole thing was photocopied. So, there's no original, there was no, as far as I understand, there was no ink and then photocopy, it was all photocopy."

City Solicitor: "That's correct."

Mayor: "On the, on the form that we're talking about, on the form that's before us today, there was a photocopied document. One of the critical things that was included on the photocopy was a signature. So, the signature existed on the previous document.. On top of that photocopy, which included the signature, there's Wite-Out, and there's no ink signature that accompanies that Wite-Out. So, there's no, there's, there's clearly the original document that was photocopied, including the signature and then an edit."

Comptroller: "I understand that, however on the Statement of Intent for 8-77, there's a signature of June 11, 2013 but then there is another notation that says 'As of 10:30 a.m. on June the 12th', there's a change. So, there was a change after the-- the signatures because the signature has June the 11th and on, and on this document, you can take a look at it, Mr. Nilson --."

MINUTES

City Solicitor: "I've seen the document. I know what you're talking about. Yes, and the Deputy Comptroller raised that to the Board and the Board found that that was not the kind of change that persuaded them to come to a different conclusion."

Mr. Smith: "I, I still remember the echoing of your words when this matter was taken up a year and a half ago, um in another contract involving an outfit. You asked whether or not it was subject to scientific evaluation on the form. Ah, the answer to that of course was 'No, it wasn't' and the conclusion was that if you could not tell it, and did not have it evaluated scientifically, then the naked eye, it seems to me, one could say was not enough. So, I'm wondering what the difference is between now and then."

City Solicitor: "Be -- because here, as Madam Mayor has just said, and as I said previously, you can clearly see the Wite-out on these documents, which was not the case a year and a half ago."

MINUTES

You can clearly see that prior numbers were there and you can tell from the documents that that Wite-out and the changes of those numbers occurred before all the signatures were put on the document."

Comptroller: "But Mr.--"

Mr. Smith: "And the bottom line is that nothing has changed with respect to the sub-contractors. Thank you, sir."

Comptroller: "Also, Mr. Nilson, no one looked at the original documents of 8-77 because you asked for a deferral and the um, and it was said that it was time sensitive, so we did not look at the original documents to see."

City Solicitor: "Well, I think we were told what the original documents showed."

Comptroller: "We didn't look at the original documents."

City Solicitor: "Well that's because time --."

Comptroller: "You asked, you asked for a deferral and we did not look at the originals."

City Solicitor: "I, I asked if deferral it was possible --"

Comptroller: "Yes."

City Solicitor: "-- and the DPW said no --"

Comptroller: "Right."

MINUTES

City Solicitor: "--because of consent decree time requirements. So, we acted without the original documents, but we have since gone back since these gentlemen raised 8-77 and looked at those original documents and they, basically they are all photocopies, they are not originals. You cannot tell, just as you couldn't a year and a half ago, whether a change had been made, and if so when it had been made. That remains the same as it was a year and a half ago."

Director Public Works: "And I believe that we do have both of those documentations here 13-08 and 8-77."

City Solicitor: "And, and I might add just with regard to the 'subs' so for the 'subs' to say, we're okay with the numbers, these are our numbers, we're good with them is not sufficient because we, this, we have a consistent history of not allowing folks to come forward on or after the bid, or after the bid and saying, 'oh, I'm cool, let me initial those documents' or 'Let me tell you I'm cool with those numbers'."

Mr. Smith: "Well why were they--"

The num, the, the M-W-BOO law requires, and the documents require, that that be determined before they are submitted. They have to be submitted in a way that they are not changed and where, either by signatures or

MINUTES

initialing it's clear on the documents, as they are submitted on bid due date, that everybody is on board, in writing with those numbers."

President: "Okay, I'm, I'm going to say one thing --."

City Solicitor: "And, and to come in --."

President: "I want to say one thing before we go any further. Um -- until I recognize you, please don't speak out. I would ask that you not do that. So, you're speaking now."

Mr. Dashiell: "If I'm being recognized?"

President: "Yes. Yes."

Mr. Dashiell: "Ah -- Mr. President, Madam Mayor, my name is Robert Fulton Dashiell. I represent R.E. Harrington on 1309R and inasmuch as the President recognized accurately that the issues are the same, I thought I would chime in at this point and give you the benefit of at least my two cents on the matter. Ah -- number one, yes, you can show, uh, you can see that there was a number there prior to the white out. Number two, you cannot show from the white out that the number that was there before is different from the number that was there afterward. You cannot tell that, I don't care what you look at. For all we know, you could be looking at a correction, a re-statement of the number; but let me say, let me say, let me say more than that because, because somehow we get lost."

MINUTES

This is a minority business participation program. This is, this is not, you know, you know, flip a coin. I, I got to make a confession here because I started this whole squibble business. Mr. Nilson, you remember on contract number 845 Frucon, which since became my client, by the way. But, I started this whole Frucon business, I came before this Board and said that a scratch out without an initial is wrong because you couldn't tell that there had been an agreement. You know what? I'm going to confess something to you. I was wrong. Let me tell you why I was wrong. I was wrong because I was not aware at the time what the real industry practice is, and every 'sub' will tell you this: the real industry practice that has been known to the City, from going all the way back to Shirley Williams, is that frankly all these forms are signed in blank. That's the real deal. Every single one of these forms is signed in blank, and not, and not to evade or, or, or to evade or avoid the MBE requirement, but as a necessity, and here is why. If I'm going to give you a price to do hauling, I'm not going to read through 70 pages of drawings and specifications just to tell you that I'm going to charge you \$50 an hour to haul; or \$10 a load, or \$15 a cubic yard.

MINUTES

I'm going to give you my price list and I'm going to let you choose which services you want and which certified services you're going to include, and you fill the form out. That's exactly how it's done. Every one of these 'subs' here, including the president of the association, will tell you that's exactly the way it's done, and that's the way it's always been done. Why's it been done that way for the 'prime' contractor side? Because the form requires a statement of percentage which cannot be calculated until all of the other numbers are in place. Nobody's riding around with a truckload of MBEs in the trunk of their car, saying 'Sign this form after I calculate my percentage', it's just not done that way. So it is in fact disingenuous, it is disingenuous, it is disingenuous to throw a bid out because a form was changed after a signature was put on it, when in fact the signature was put on it when the form was blank in the first place. That's the truth of the matter."

President: "Madam Mayor."

Mr. Dashiell: "That is the truth of the matter."

MINUTES

President: "After you finish, the Mayor's going to respond."

Mr. Dashiell: "I'm done."

Mayor: "The challenge is that it seems disingenuous to, to, to fight to establish a rule, and then when it doesn't work for your client, say that the rule was wrong."

Mr. Dashiell: "Well, Madam Mayor, uh -- what's wrong is not to admit that you're wrong when you are, and, and, and I'll be honest with you. This is probably not the first time in my life I've been wrong. It's probably not, but it's not the first time, this Board hasn't been nearly consistent as Mr. Nilson professes. The fact, the fact of the matter is prior to 845 there was no rule. Prior to my argument on 845, this rule didn't exist."

Mayor: "But if I may --"

Mr. Dashiell: "Yes Ma'am --"

Mayor: "Mr. Dashiell, because, because we care, and I hope I'm speaking for all of us, about the compliance uh -- with the uh -
- MBE/WBE regulations, because we care about inclusion, it's my understanding that since the previous time when the contract against, I mean the, when Mr. Harrington had the apparent low

MINUTES

bid but was rejected because of a mistake, it was my understanding that my office worked with his team to make sure that they understood all of the um, how to fill out the forms, what was acceptable, what wouldn't be accepted, so that we wouldn't be in this place of having, of what we're saying, of what you're saying is a technicality that should be overlooked. Um -- so we wouldn't be in this place again. We went, we worked, it's my understanding that we worked with the team to say 'this is how it's done, this is what's acceptable', 'this is what is not acceptable', 'this is what you need to put in', because we don't, because we want to see him be successful."

Mr. Dashiell: "Well, Madam Mayor what happened here, and this was, and this was to facilitate the City's interest in, in providing the low bid. What really happened here was that on the day of the bid, Mr. Harrington, just like a lot of prime contrac- bidders do, received a last minute quotation which had the effect of lowering its bid price. These ladies, they are on the way out the door the bid -- with no changes, no Wite-Out, no anything, he comes in with a lower price because, because at the end of the day there's supposed to be at least a presumption that if you're the low bidder you might get awarded a contract."

MINUTES

That's true in almost every other jurisdiction. So, so, what he, he, he calls into his staff and says 'I've got a lower bid', they're on their way out the door. That's why the change was made at the last minute. It wasn't because of their -- and they appreciate your work. It wasn't so much a mistake, it was their effort to try to make sure they submitted a competitive bid which happened to be in this case, the low bid by almost a million dollars on my contract, five hundred thousand dollars on, on Mr. Smith's contract. We, we, and Mr., Madam Mayor, there's nobody in this universe that cares more about minority participation than the people standing at this podium, particularly me. I've been doing this almost 40 years. Almost 40 years I've been dedicated to this. The original program was written for the City by me. The, the first ordinance was drafted by the City, with all due respect to the former President, was drafted by me. Nobody's spent more time doing this than me. I organized the minority contractors association, so I, so the notion that I don't care or that I'm changing because I've got a client that says something different, is, is, is wrong.

MINUTES

That, that's really not true, and I know you're not suggesting it, but it really isn't true. I changed because I was wrong. I changed because the industry practice is exactly as I described it. I changed because I got seven contractors here who are going to lose a lot of money from not awarding the contract to a certified minority firm. That's the thing that really gets me. We've taken the purpose of the law and turned it on its head. It wasn't supposed to be about technicalities, it was supposed to increase minority participation. That's what it was supposed to do."

President: "Joan?"

Comptroller: "So, Mr. Nilson, why did we ask the 'subs' to come down today? What was the purpose?"

City Solicitor: "Well, we've actually learned a good deal from Mr. Dashiell about what happened here, um, so I suppose we don't need to hear that from the 'subs.' What happened here is um, the contractor took previously signed documents, made alterations of them at the time of the bid, changed information on them, and while that may be pragmatically what they need to do or what they had to do in this case, in doing so they violated the requirement of the Form B, which says information can't be changed."

MINUTES

So, Mr. Dashiell has, has spared all the 'subs' of having to confirm what he's just related to. Now, Mr. Dashiell's then, so we then have a situation where --."

Mr. Dashiell: "That's not what I said, Mr. Nilson. Let me say something, let me say something further. The prices ultimately weren't changed because every one of these 'subs' submitted a unit price. The only thing that got changed was the aggregate. The amount that they're going to get paid for the unit has not changed, and that's what they're here to say."

City Solicitor: "The -- the number on the form changed --"

Mr. Dashiell: "Yes --"

City Solicitor: "-- clearly."

Mr. Dashiell: "Yes."

City Solicitor: "--and that's clearly contrary to the form and it, and I don't even, I don't know for sure the history, but it's very possible that the, that the specific requirement on the form that any changes must be initialed is a consequence of the case that you argued successfully in the other direction four years ago."

MINUTES

So, we make the rules based on what happens, you have to follow the rules, as inconvenient and difficult as that may be in situations like this where the rules weren't followed. So, you, you know you may think we're being a slave to the rules. The rule has a purpose which is to avoid creating a situation where the 'prime' can basically jam -- and I know you're saying that's not true here -- can jam numbers down the throats of 'subs' which they really weren't on board with, and we don't know that they were on board because we don't have those changes initialed."

President: "Comptroller?"

City Solicitor: "--I, I say the easy way to do it - so if you've got a situation where there's a last minute change and you've got a bunch MBE and WBE 'subs', you need to have them with you so that when you make the changes, they can initial."

Mr. Dashiell: "That's what I just said. You want them, you want somebody to ride around with them in the back of the pickup or the trunk of the car? Mr. Mr. Nilson--"

City Solicitor: "It, it's a big contract -- there are big contracts --"

Mr. Dashiell: "-- Look, Mr. Nilson--."

MINUTES

City Solicitor: "-- and you know what the bid dates are, so there are other ways of dealing with this problem."

Mr. Dashiell: "Mr. -- Mr. Nilson, yes there are and frankly I'm working with your office to change that. You, you know what I suggested four years ago that would change it today -- modifying the bidder affidavit to add a clause that simply says that 'I certify under note, under oath, that the minority participation is true and accurate as submitted.' That's all, that's all and stop playing this game about last minute changes; stop forcing a square peg into a round hole because it's not working and it's, it's, it's taking the purpose of the program and it's turning it on its head."

City Solicitor: "We understand that, but you can't change the rules in mid-game, okay? So, we have had conversations internally about changing the line that appears on the Form B's and about addressing the practicalities of the prospect, of the process, we will do that and we will be delighted to have your input on it, but we, but that's the next game. We cannot change the rules now in mid-stream."

MINUTES

Mr. Dashiell: "Mr. Nilson, you talk about changing rules-- when you bid a public contract, you have an expectation of award if you're the low bidder, not if you're not the low bidder. Anybody who bids higher than R.E. Harrington has no reasonable expectation of being awarded anyway, so you're not changing the rules for anybody. The fundamental rule is low bidder is supposed to win. That is the fundamental rule."

City Solicitor: "Low bidder compliant with the rules - and that's the way the MWBOO program has always been run, and we happen to have a rule that you disagree with, and we're going to take a look at it. But, again it's like you can't play the first half of the game and then changes the rules at half-time because you don't like the way the game's going."

Mr. Dashiell: "Mr. Nilson, you, you, you know we, we could, we could debate this for a long time --"

City Solicitor: "-- We could --"

Mr. Dashiell: "-- about how consistent your position has been; how consistent your advice to the Board on one matter or another. But, the bottom line here is you've got a low bidder, a

MINUTES

certified minority firm and a cost of a million and a half dollars lower than the next highest bidder, with all the 'subs' saying that they're agreeing with the price on bid day, not afterward, but on bid day, that's what you're saying here today. And instead of trying to find a way, instead of trying to find a way to, to enhance the minority business program by increasing minority participation, instead of trying to find a way to save the City a million and a half dollars, what you're sitting here doing is uttering phrases that says 'we got to be consistent to a rule.'

City Solicitor: "Har -- Harrington submitted a bid, another bid on another contract that's before us today that's clean - 1330 - no violation that we can discern, so it's possible."

President: "Madam Mayor.--Did you have something to say?"

Comptroller: "I, I, I understand what you said, but, the bid that he's complying with has nothing to do with what he's talking about today. And again, you know, Mr. Nilson, you said that if the other parties had knowledge and they concur, that it's okay. That's, that's what's in the Minutes."

City Solicitor: "Respectfully, you're taking the words out of context."

Comptroller: "No, it's in writing."

MINUTES

City Solicitor: "Like Mr. Dashiell, maybe I misspoke a year and a half ago."

Comptroller: "Okay. It's in writing. That's what you said."

City Solicitor: "He admits to making mistakes, but I don't, I don't think that in context you're accurately using my words--"

Comptroller: "I just read it."

Mayor: "But reading it doesn't mean that it's being read in the right context, and that the challenge I have is the notion that we're not trying to fight for, ah, minority participation. That's why we work with -- unless I'm wrong. My, my team told me that that they tried to work with you on technical, on making sure that there was a technical, making sure that you had adequate uh, technical capacity to get in the bids correctly."

Mr. Harrington: "Good morning, ah -- Good morning. Ah -- Bobby Harrington, President R.E. Harrington Plumbing. Yes, on bid day we did make a few changes but --"

Mayor: "That's not what I asked. My, my understanding, and again, I could be wrong, is that my team worked with you since the last time we had this issue."

Mr. Harrington: "No ma'am."

MINUTES

Mayor: "Nobody worked with you?"

Mr. Harrington: "No ma'am."

Director Public Works: "No, may I?"

Mayor: "Mhmm."

Director Public Works: "Now remember 1308, well 1307, 1308, 1309, 1310 -- this is the third round of bidding, third round. Now in previous two times, our team and M-W-BOO along with others has sat down."

Mr. Harrington: "Who? Sat down with who? Not me. Who? You sat down --."

Director Public Works: "Somebody from your team."

Mr. Harrington: "No. No sir. No sir."

Director Public Works: "So you're saying that we have never advised you in terms of proper way of filling out the forms, of helping you and guiding you as far as submitting a 'clean bid?'"

Mr. Harrington: "No sir. Not from - I don't know who he talked to, he didn't talk to me -- so --"

Mayor: "Mr. Chow, do you know, do you know who from your team sat down --?"

Mr. Harrington: "I'm being honest. If you could give me a name."

Director Public Works: "Tom Corey, the previous MBE Officer he sat down with R.E. Harrington."

MINUTES

Mr. Harrington: "No sir. No sir."

Director Public Works: "Not from R.E. Harrington?"

Mr. Harrington: "No sir, never heard from Mr. Corey. Nobody."

City Solicitor: "Well, well let me just say, and I know this is not totally germane to today, to this moment, but we are about to have a new MWBOO director. He's, I think everybody will be excited um, to meet him, and to see his qualifications, and I can tell you that person's first order of business is going to be to address this situation, to hear from Bob, to hear from you and to work with you so that we don't have these problems recurring again because we see them right now with um, a number, not all of your contracts, because the one today, the other one, 1330 has already been approved on the routine agenda. So, we don't want to have you back here regularly. We don't want this to become a chronic problem, so we will work with you to make sure this doesn't happen again. And to help address the reality that Bob Dashiell has very candidly talked about -- about what happens on bid day -- which is not -- what happens on bid day is not what the requirements, it does not match the requirements that we legitimately impose um, for this program. So we've got to make reality and the requirements match in the future, so we'll work hard to do that."

MINUTES

President: "Any more closing arguments? Identify yourself."

Mr. Jones: "Ah, Pless B. Jones, Sr., President of Maryland Minority Contractors Association here on behalf of Robert Harrington Plumbing. I've listened to everything that was said, and the M-BOO office should be an advocate for MBEs but we have never gotten that. Everybody here, except for Ms. Pratt, was arguing how they should not give the job to Robert. She's the only one who said 'Look, this is the reason why it should be given to him'. We should not have to come here each week; look people get pregnant and make mistakes, okay? Sometimes they get pregnant two or three times, okay? --"

City Solicitor: "Sometimes it's not a mistake."

Mr. Jones: "-- But they don't throw 'em away, okay? He, he is a certified MBE for 25 years. Mr. Young, you talk about you want minorities to get jobs, you talk about you want jobs in the community, that's what he do. He had, what three jobs that you bid that day? Four jobs he bid that day, all going in at the same time, all of them going in at the same time. It seems to me that in order to save the City a million and a half

MINUTES

dollars, he is the low bidder - what's the purpose of not giving to him? Only because you don't want him to have them? Okay?"

Mayor: "I think that's a mischaracterization."

Mr. Jones: "Well, just let me speak, just let me have my piece because that's what I see. Now, I'm not going to bite my tongue to nobody, okay? Robert Harrington was down here a year and a half ago when he was low bidder on \$10 million dollars' worth of work, okay? He was MBE short by maybe two percent or three percent, because somebody, he had it going in, somebody told him they were certified, they wasn't, that cut his MBE by two or three percent. The next, second, bidder was short too - by one percent or percent and a half, but they gave it to him."

City Solicitor: "Shouldn't have. Typically if, if there are two bidders, and they're both short because of that kind of problem, they would both be non-compliant."

Mr. Jones: "He wasn't non-compliant. You all didn't make him non-compliant because - you made Robert non-compliant. I'm here to represent the MBE community, and if this is what we're going to get today, then I just don't know what to do - except do like 'Jollie' and take to the streets."

MINUTES

City Solicitor: "I, I would --"

Mr. Jones: "Jollie, Jolivet said, 'Let's go march'. You know--"

City Solicitor: "I would, as I think I said before, I would invite you and Bob and whoever else you want to --"

Mr. Jones: "I'm not talking about tomorrow. I've been told too many things about tomorrow. I'm talking about this bid today."

City Solicitor: "Okay."

Mr. Jones: "-- We have been denied too many times to be denied again today."

Ms. Schevitz: "Can I say something?"

President: "Excuse me, excuse me --"

Ms. Schevitz: "Pam Schevitz."

Mr. Jones: "I had the floor. I had the mic. He reached his hand on the mic."

President: "Alright, finish up, Mr. um, Pless, Jones."

Mr. Jones: "Thank you sir, Mr. President. You know, I think that we need to do something today. This Board needs to show up today, okay? Not tomorrow. Not what we are going to talk about."

MINUTES

We've been to too many outreaches and all this for years. What we get nothing but a few crackers, okay? Today, we have a gentleman here that is low bidder on really four bids. Two that's on the Board right now, and the Board needs to do something about it right now. Thank you."

Ms. Schevitz: "Excuse me, I'm sorry."

Ms. Schevitz: "Pam Schevitz, Minority Business Opportunity Office. I just want to say that we have been very consistent with our rulings in determining non-compliance and compliance, whether the bidder, the prime bidder is an MBE, or a non-MBE, and we apply the same rules across the board when we're dealing with bids. So, to say that we're ruling differently than an MBE when the 'prime' is an MBE or not an MBE, I, I take offense to that."

Mr. Dashiell: "If I, may, Mr. President, they have ruled differently on the issue of what a supplier is. Listen, this was a footnote in Mr. Smith's argument. But, I heard somebody say that, that Metra is compliant. Metra isn't compliant. K Adams is a diesel fuel supplier. On everybody's bid, he's listed in that section of the form as a supplier; he's not listed as a sub-contractor."

MINUTES

But, yet we heard last week that we regard that as a service. I mean, that means that everybody who's selling something can, can, can be providing a service. Mr., Mr. Adams is here. He will tell you that he's only submitted a price as a supplier; he will tell you that that's all he does. He doesn't perform any work on the job-site. He doesn't do anything. He brings the oil in and he leaves it wherever they tell him to leave it, whether it's in a storage facility or the back of a truck, wherever they tell him to leave it, that's where he leaves it, and he's always been placed as a supplier, and Metra and everybody else listed him. There's a separate section on the form for suppliers. He's not listed on top where you can claim 100 percent credit; he's listed under the supplier section."

President: "Pam, you have something to say?"

Ms. Schevitz: "As far as the fuel oil, I would like to say also that we have consistently used fuel oil companies as a service company, like a fueling service. In fact Mr. Jones here was awarded a contract as a prime contractor where he used a fuel oil company for seven percent of a 10 percent WBE participation rule, goal, and we considered it as a service. We did not apply the 25 percent supply limit to the contract, just like we did here."

MINUTES

President: "Okay. You have something to say, Miss?"

Ms. Letke: "My name is Kim Letke. I'm the WBE listed on the contract. I think the facts show that the MBEs all agreed that the numbers have not changed, and that there might have been some Wite-Out done. The Board has consistently made an opinion on different contracts, on the face of the contracts, whether or not they were within a certain limit of service vs. not service. Uh -- and if there's two problems with the first low bidder and the second low bidder, then you should either throw the whole thing out and re-bid it or you should give it to Mr. Harrington because the second bidder is going to have the same problem with a challenge from Mr. Harrington because he's going to challenge K&K Adams Fuel. But face the facts that they simply clearly, all the sub-contractors agree with the dollar value; the percentage is correct; nobody initialed the Wite-Out, which is a minor error, and this Board has consistently, um, worked with those contractors - the same with Welsh Construction on their contract - and other contracts."

MINUTES

They've worked with them, you can work with Mr. Harrington, and if you can't see the first one, then the second one has a second problem."

President: "Madam Mayor."

Mayor: "Thank you. Um -- I want to reiterate the fact that number one, I fight every day to save-- to be effective and efficient and to use the taxpayers' money in the most effective and efficient way. So, the fact that uh -- that it was done incorrectly, and uh -- stands to cost us a million and a half dollars more, it pains me. Because I know that we work very hard to, as I said, be effective and efficient with taxpayer money. Additionally, we work very hard to make sure that we provide, that we make a way to provide opportunity for local business, for women-owned business and for minority-owned business. The challenge is that if the -- if Metra had come here and submitted the same form, Mr. Dashiell, you and your team would tell us that we need to reject it for the same reason, for the exact same reason that you've said consistently, because the form wasn't right."

MINUTES

But, because your client did it, now it's our problem and we don't care about minority businesses and it's just not true. It's a rule that we have used but we can differ on whether it's consistent or not, but you know you've said it, they've said it, they submitted something that was wrong - that was, that was, changed. I would like for, I would have liked for nothing more than for that change to have been uh, documented correctly so we wouldn't be in this position. And the last time something like this happened I said the same thing. But it pains me because I know that this represents local jobs, but the answer isn't to ignore it and to pretend like it didn't happen, or to pretend like, pretend like if the situation were reversed, that you wouldn't be saying the same thing. We have, there has to be some consistency. You know if Metra came and submitted that you would be telling us that we can't accept it."

President: "This is going to be the last um, argument, so who's going to make it? No, I'm saying, is there any more closing arguments as relates to both of these issues before the Board?"

Mr. Dashiell: "Let, let me say one thing in response to what Madam Mayor just, just said. This is not an issue of integrity on the part of you or the City."

MINUTES

I, I recognize that there is a rule, but I also recognize that, 'consistency is the hobgoblin of little minds.' The fact of, the fact of the matter is we have to keep in mind the ultimate objective here and who is harmed. Metra isn't harmed by an award to somebody who bid a half million dollars lower than them. They didn't, they didn't submit a bid expecting to win if they were half a million dollars higher than the low bidder. We, the purpose here, the purpose of the program is minority participation. That's the purpose of the program, and that's what we're losing - we're not only losing the sub-contractor participation, but we're losing the valuable work that Harrington would perform with his own forces, and I differ with Ms. Pam --, Ms. Schevitz and the whole program that 'says minority prime contractors are the same as non-minority prime contractors.' That's simply not true. It's never been established that way in the law, and it's not true as a matter of practice, because every other 'sub' that Harrington uses is also going to be minority well above the 10 percent or 15 percent, and, and I defy you ever to have a non-minority prime contractor who ever gives you more than the minimum required.

MINUTES

So, there is a difference, there is a difference to the overall achievement of minority program, there is a difference of minority participation. It's not a matter of integrity, Madam Mayor, it's a matter of simply doing what is right. If it's right today, do it today. If we didn't do it right tomorrow, we can't fix tomor -- we can't fix yesterday and tomorrow is not here yet. Today really is the only day we have - do what's right today. Let's not be bound by what Dashiell says or anybody - you know what's right. Okay, so I was wrong -- brand me, tar and feather me, do whatever you want, but don't throw away the minority program simply because somebody who didn't have a right to the contract bid and said they're in compliance, and that's just wrong, that's just wrong. I, I, I'm sorry I'm emotional, but it's just so wrong."

President: "Mr. Jones."

Mr. Jones: "Pless Jones, Maryland Minority Contractors Association. I, I submit to uh, Madam Mayor, President of the City Council, and Comptroller, Ms. Pratt, is that this Board has the right to reject bids or the right to award bids, whichever is in the best interest of the City. In this case, the best interest of the City and the best interest of the minority community.

MINUTES

So you all have that right to do what you want to do that's in the best interest of the City. Robert made a mistake before, yes he did. Whatever Bob Dashiells said happen before, yes it did. Whatever happened on 877, yes that happened. But, you all have the right, and the law is on your side, to do the best thing for the City, this case saving the City a million and a half, you all can do this today, and also helping the minority community. Thank you."

President: "Thank you. Anyone else? I entertain a Motion."

City Solicitor: "Um -- I'm going to MOVE that we reject both bid protests um -- without going into all the reasons other than to say that we have rules that are governing now and it's important that we follow them. It's also important that we re-visit those rules and, if you want to make as a condition of the Motion, that the MWBOO office and the Law Department and others come together with recommendations around the subject within 30 days, I think that would be appropriate."

Director Public Works: "Second."

President: "All those in favor, say AYE."

President: "All opposed, nay."

MINUTES

Comptroller: "Nay. I vote **NO** because by Mr. Nilson's testimony, I don't see the difference between an erasure and a white-out and by your testimony you said that there was an erasure and it was corrected and a different number was put in and the document with the signatures at the bottom, that you would not view that as a change, and if the 'subs' concur, it would be okay, so I vote **No.**"

President: "The Motion carries."

* * * * *

Exhibit E

(Relevant Excerpts from Board of Estimates Minutes,
Recommendations for Contract Awards/Rejections,
November 9, 2011)

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

MWBOO GRANTED A WAIVER

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,

DOREEN DIAMOND
CONTRACT ADMINISTRATOR

Cc: DPW-Office of Compliance



PASCALE STEVENS LLC
ATTORNEYS AT LAW



HOWARD S. STEVENS
Writer's Direct Dial: 443.863.5758
Writer's Email: HStevens@PascaleStevens.com

July 7, 2015

Board of Estimates
Mayor and City Council of Baltimore City
Attn: Ms. Harriett Taylor, Clerk
Room 204, City Hall
Baltimore, Maryland 21202

Re: Contract: Water Contract No. 1230 for Prettyboy Dam Reservoir
Gatehouse Facility Improvements
Bid Date: March 18, 2015
Responding Party: The Whiting-Turner Contracting Company

To the Honorable President and Members of the Board of Estimates,

This office is counsel to The Whiting-Turner Contracting Company ("Whiting-Turner") with regard to the protest filed by Cianbro Corporation ("Cianbro") on the above referenced Contract solicitation (the "Contract"). This letter is Whiting-Turner's response to Mr. Eric A. Frechtel, Esq.'s June 22, 2015 letter on behalf of Cianbro, which is captioned as an "Amended Protest of Award" of the Contract.

Whiting-Turner strongly disagrees with the entire contents of Cianbro's letter, and respectfully urges the Board to DENY the protest, and award the Contract to Whiting-Turner as the responsible and responsive bidder with the lowest Contract price. The thrust of Cianbro's protest is, simply put, that the City should reject *any bid* on an absolute basis if it has correction fluid (i.e. "white out") or any other alteration on a bid submission form, if the area in question is not initialed by the bidder, and in the case of an MBE/WBE Participation Affidavit, not initialed by the bidder and the subcontractor. Cianbro seems to equate *any* use of correction fluid on a bid submission as "violation of law" and an abuse of "fundamental fairness" in the "sometimes chaotic" bid process. In this case, by urging a complete rejection of any use of correction fluid, Cianbro would have the Board accept its offer on the Contract – a price more than 50% higher than Whiting-Turner's – as legally warranted and mandated even though to do so would negate the Board's sound discretion to waive "minor defects and errors." Cianbro's arguments are neither supported by fact nor by prior decisions of this Board upon which Cianbro's arguments rely, and as such, the arguments should be rejected.

In support of its arguments, Cianbro identifies three (3) locations on Whiting-Turner's bid where it is apparent on the face of the document that correction fluid was used to replace prior markings. Those three places are identified as the (1) first page of the Contract in the "date of offer"

Re: Contract: Water Contract No. 1230 for Prettyboy Dam Reservoir
Gatehouse Facility Improvements
Bid Date: March 18, 2015

section, (2) in bid item 405 in the extended unit price column, and (3) on the “MBE/WBE Participation Affidavit” where it appears that white out was used in the “percentage of total contract” space.

The first item raised is in the Contract date section, however, Cianbro provides no legal or substantial basis for the Board to adopt the argument that the use of correction fluid should make Whiting-Turner’s bid defective and non-responsive. The strongest wording that Cianbro is able to conjure is that “something in the date of offer section is whited out”. Here, it is clear to Cianbro and to any other reader that the word “March” is written in the space in question and stands alone, without confusion. Cianbro does not argue that the alteration creates any ambiguity on the face of the Contract offer, nor does Cianbro argue that the clearly legible section that reads “18 day of March 2015” fails to comply “with all of the requirements prescribed” for the bid. Instead, the clear statement by Cianbro that the word “March” appears in this area without any ambiguity stands in strong contrast to Cianbro’s arguments that focus on the Board’s prior rejection of the Robert Harrington bid, where illegibility was an issue. In the *Robert Harrington* matter, the language quoted by Cianbro evidences that the Board “[could not] read every digit of the number replaced”. Here there is no such concern nor is any such concern asserted.

The second item is the apparent use of correction fluid on the extended price column of Bid Item 405. In the extended price column for Bid Item 405 it is clear that the characters “2,400” and “00” are entered into the two squares that were provided for this item.¹ The result is an Item Price of \$2,400.00, which is the mathematical extension of the approximate quantities of “4” multiplied times the unambiguous price of “Six Hundred and No/00 dollars” (\$600.00) per cubic yard. Here, as with Cianbro’s item (1) there is no ambiguity or illegibility alleged with regard to any of the numbers or alphanumeric characters that are used in the blanks provided for Bid Item 405. Further, the resulting price of \$2,400.00 is the correct mathematical result of multiplying 4 times \$600.00. Thus, whatever information or markings that may have been in the blank space on the form *prior* to use of the correction fluid is immaterial, since the final extended bid pricing of \$2,400 is clearly legible and mathematically correct. The use of correction fluid in this location does not call any pricing into question, nor does it raise any basis for undercutting the City’s confidence that the bid is “genuine” as Cianbro stretches to suggest, and the argument should be rejected.

The third item raised by Cianbro is the apparent use of correction fluid on the percentage calculation section for Horton Mechanical Contractors, Inc.’s (“Horton”) “MBE/WBE and Prime Contractor’s Statement of Intent” form. In support of its argument here Cianbro cites two specific instances where the Board has rejected bids on the basis that a “subcontract price was whited out”. See, e.g., Cianbro’s letter at the bottom of page 2. Here, the support for Cianbro’s protest does not

¹ Is noted that Cianbro’s protest letter erroneously says the dollar amount is “2,400,000” however, since Cianbro does not allege that there is ambiguity as to whether the number as written should be two thousand four hundred dollars, as opposed to two million, four hundred thousand dollars, we assume that this is merely a typographical error in the protest letter itself.

Re: Contract: Water Contract No. 1230 for Prettyboy Dam Reservoir
Gatehouse Facility Improvements
Bid Date: March 18, 2015

speak to the facts of this particular issue, and as such, Cianbro's arguments must fail. In each instance cited by Cianbro the Board rejected offers where "critical" subcontract pricing appeared to be altered without being initialed by both the bidder and the MBE/DBE Subcontractor. *See e.g.*, Cianbro letter at p.2 ¶3 ("Just a few months ago, the Board rejected the bid of a plumbing contractor Robert Harrington [...] where the Statement of Intent was whited out and dollar amounts changed without the required signatures."); *see also*, Cianbro letter at p.3, ¶2 ("In 2009, the Department of Public Works found a bid non-compliant where the subcontract amount was changed by not initialed by both parties...")

Unlike the situations relied upon by Cianbro where the *subcontract price* appeared to be altered with the use of correction fluid without any acknowledgement by the contractor and subcontractor, here the subcontract price of \$87,000.00 for Horton's pricing is clean, unaltered, original, and perfectly legible. The value of 3.93% is a dependent value that can only be derived once the final Contract price is derived by Whiting-Turner. The pricing does not appear on a space where correction fluid was used, and there is no indication that the pricing of \$87,000 is not a true reflection of Horton's pricing for the Project work. Instead, just as with item (2) discussed above the area of the form under scrutiny is a space for a calculation that is derived from other figures in the form. As a percentage calculation the resulting figure is a mathematical calculation that results from the static subcontract price of \$87,000, and a potentially changing final contract price, which in this case was finalized as \$2,214,600. Any modification to the percentage calculation, whether to correct a mathematical error or to merely erase a stray mark, does not impact the *actual* subcontract price that has been agreed to for the Work, and here that price is unaltered.

Aside from the above grounds, which in and of themselves substantiate denial of Cianbro's protest, there are other considerations which support a bidding contractor's decision to not share anticipated subcontract percentages with a subcontractor. Particularly, disclosure of the actual percentage of the subcontractor's price in relation to the entire contractor's intended bid *in advance* of the bid submission could result in collusion or other non-competitive practices, which would violate applicable law. This is because any subcontractor that knows what percentage its subcontract price comprises of a total offer could easily disclose that information to other bidding contractors in advance of the bid submission in order to provide another bidder a competitive edge. In what Cianbro's letter characterizes as a "sometimes chaotic" process, all it would take is a simple phone call from one subcontractor to another "favored" bidding contractor to provide a competitive – and highly illegal – edge. For this reason alone, changes to percentage calculations should be guarded by the bidding contractor with strict confidentiality and scrutiny, even if correction fluid is required to adjust a final percentage calculation, and the percentages themselves should not be initialed by the subcontractor before submission.

Re: Contract: Water Contract No. 1230 for Prettyboy Dam Reservoir
Gatehouse Facility Improvements
Bid Date: March 18, 2015

In summary, Cianbro has called to the Board's attention three areas of the Contract form where writing appears over correction fluid. With regard to the date section of the Contract offer Cianbro's letter merely identifies a place where "something" was covered with white out, but Cianbro's own letter confirms that the legible word in this area is "March." The second item – Bid Item 405 – highlights a space on the form where a mathematical computation is written. The value of \$2,400 is clear and legible, and it is the resulting value when the estimated quantities and unit prices are multiplied. The third item is also a mathematical result, which like item 2 above, is derived from two original and unaltered contract values. On these items Cianbro has not alleged there is any ambiguity or confusion and on these items, there can be no dispute as to what words or amounts are intended.

Here, the use of correction fluid yielded a completely legible and responsive document, which is free from any ambiguity or illegible characters. Here, the use of the correction fluid should be viewed for what it is – a tool used prior to the submission of the bid to remove any ambiguous or stray markings so as to avoid a basis for a bid protest or rejection of the offer. However, if a decision by the Board is required on this issue, then the use of correction fluid in each of these instances should be deemed merely a "minor defect or error" within the meaning of the Baltimore City Code, which does not impact the validity of the Bid itself, and which should be absolutely waived within the sound discretion of the Board. Regardless of why the correction fluid was used, Cianbro's reliance on prior decisions of this Board where *subcontract amounts* were altered without being co-initialed is not relevant since the subcontract amounts are clearly original and not written over correction fluid. Here only the bid date, and two mathematical results, have been written over correction fluid.

Cianbro does not call into question any other concerns other than these modifications. There is no allegation that any of the areas in question create ambiguity with regard to Whiting-Turner's Contract pricing, or that the Bid as submitted is enforceable in accordance with its terms. The areas in question are completely and unequivocally legible and are otherwise devoid of any extraneous information that requires this Board to use discretion to determine what Whiting-Turner actually intended.

For the above reasons, Whiting-Turner respectfully urges that Cianbro's bid protest must be denied and the Board approve the Department of Public Works recommendation of award to Whiting-Turner per its agenda.

Very truly yours,



Howard S. Stevens

Page 5
July 7, 2015

Re: Contract: Water Contract No. 1230 for Prettyboy Dam Reservoir
Gatehouse Facility Improvements
Bid Date: March 18, 2015

Cc: Mr. W. Michael Mullen, Esq. Baltimore City Office of Law
Mr. Rudolph Chow, Director, Department of Public Works
Ms. Tonorah Houston-Burgee
Ms. Shari Montgomery
Mr. Bernard LaHatte
Mr. Andrew Scherer
Mr. Christopher Collins
Mr. Daniel W. China, Esq.
Mr. Eric A. Frechtel, Esq.

MINUTES

RECOMMENDATIONS FOR CONTRACT AWARDS/REJECTIONS

DPW - cont'd

4. TRANSFER OF FUNDS

<u>AMOUNT</u>	<u>FROM ACCOUNT/S</u>	<u>TO ACCOUNT/S</u>
\$1,941,177.19	9960-910300-9558	
Water Revenue	Constr. Res.	
Bonds	Meter Replacement	
1,317,936.81	" "	
Counties		
\$3,259,114.00		
\$ 221,460.00	-----	9960-910301-9557-2
		Extra Work
221,460.00	-----	9960-910301-9557-3
		Engineering
468,718.00	-----	9960-910301-9557-5
		Inspection
2,214,600.00	-----	9960-910301-9557-6
		Construction
132,876.00	-----	9960-910301-9557-9
\$3,259,114.00		Administration

The funds are required to cover the cost of the award for WC 1230, Pretty Boy Dam Gatehouse Facility Improvements.

MINUTES

RECOMMENDATIONS FOR CONTRACT AWARDS/REJECTIONS

Department of Public Works/Office of Engineering & Construction

- 5. SC 942, Assessment & Repairs of Small Diameter Sanitary Sewer Mains & Laterals Spiniello Companies \$10,573,300.00

MWBOO SET MBE GOALS OF 23%, SUB-GOALS OF 20% FOR AFRICAN AMERICANS (AA), 3% HISPANIC AMERICAN (HA), WBE GOALS OF 4%.

	<u>Dollar Amount</u>	<u>Percentage</u>
MBE:		
AA: CCTV Master, LLC.	\$1,820,000.00	17.2%
AA: Shekinah Group, LLC.	296,000.00	2.8%
HA: Machado Construction Co., Inc.	316,000.00	3.0%
	<u>\$2,432,000.00</u>	<u>23%</u>
WBE: R&R Contracting Utilities, Inc.	\$ 423,000.00	4%

6. TRANSFER OF FUNDS

<u>AMOUNT</u>	<u>FROM ACCOUNT/S</u>	<u>TO ACCOUNT/S</u>
\$13,956,756.00	9956-903569-9549	
Wastewater Revenue Bonds	Constr. Reserve On-Call Sanitary	
\$ 1,057,330.00	-----	9956-907855-9551-2 Extra Work
1,057,330.00	-----	9956-907855-9551-3 Design
744,000.00	-----	9956-907855-9551-5 Inspection

MINUTES

RECOMMENDATIONS FOR CONTRACT AWARDS/REJECTIONS

Department of Public Works/Office of Engineering & Construction

10,573,300.00	-----	9956-907855-9551-6 Construction
<u>524,796.00</u>		9956-907855-9551-9 Administration
\$13,956,756.00		

The funds are required to cover the cost of SC 942, Assessment and Repair Small Diameter Sewers and Laterals.

Department of Public Works/Dept. of Recreation and Parks

- 7. RP 14832, Stony Run Pedestrian Bridges Allied Contractors Inc. \$971,875.00

MWBOO SET GOALS OF 5% MBE AND 2% WBE.

	<u>Dollar Amount</u>	<u>Percentage</u>
MBE: JM Murphy Enterprises, Inc.	\$50,000.00	5.14%
WBE: William T. King, Inc.	\$17,500.00	1.80%
S&L Trucking, LLC	<u>2,484.00</u>	<u>0.25%</u>
	\$19,984.00	2.05%

MWBOO FOUND VENDOR IN COMPLIANCE.

Department of General Services (DGS)

- 8. GS 13812, Appellate Judges' Chambers at Courthouse East **REJECTION** - On April 29, 2015, the Board opened two bids for the subject project. The bids were beyond the acceptable cost range for the project. The Court is assessing whether it wishes to perform this project at this time.

MINUTES**RECOMMENDATIONS FOR CONTRACT AWARDS/REJECTIONS**Department of General Services (DGS)

9. GS 14838, Building Stabilization at 109-111 N. Howard Street
REJECTION - On April 1, 2015, the Board opened one bid for the subject project. The bid was beyond the acceptable cost range for the project. The DGS and the Baltimore Development Corporation are currently evaluating whether to rebid the project.
10. GS 15807, Structural Repairs to Four Firehouses
REJECTION - On June 10, 2015, the Board opened one bid. The bid was beyond the acceptable cost range for the project. The DGS intends to rebid this project.
11. GS 15813, MECU Building Envelope Improvements
REJECTION - On June 10, 2015, the Board opened one bid. The bid was beyond the acceptable cost range for the project. The DGS intends to rebid this project.

Bureau of Purchases

12. B50004006, Windows & Trusses Cleaning Services
AAA National USA, Inc. \$61,970.00

(Baltimore Convention Center)

MWBOO SET GOALS OF 0% MBE AND 0% WBE.

MINUTES

RECOMMENDATIONS FOR CONTRACT AWARDS/REJECTIONS

AWARD PREVIOUSLY APPROVED ON JUNE 10, 2015 UPON SUCCESSFUL PROTEST

(The required documents including the award amount, MWBOO Participation, and Transfer of Funds are submitted for the Board's approval of the amount of the award the transfer of funds.)

Department of Transportation

- 13. TR 15013, Resurfacing Highways & Various Locations - Southwest Sector P. Flanigan & Sons, Inc. \$1,988,807.70

This award was previously approved on June 10, 2015 upon successful protest. The required documents including the award amount, MWBOO Participation, and Transfer of Funds are submitted for the Board's approval in the amount of \$1,988,807.70 and the transfer of funds. On Wednesday, April 15, 2015, the Board opened two bid for the subject contract. Bid ranged from a low of \$1,988,807.70 to a high of \$2,972,571.50. The low bid submitted by P. Flanigan & Sons, Inc. is 18.66% over the Engineer's Estimate of \$1,676,124.25. P. Flanigan & Sons, Inc. was deemed non-compliant by MWBOO because the bidder did not achieve the WBE goal. After hearing the protest by P. Flanigan & Sons, Inc., the Board of Estimates approved the award of the contract to P. Flanigan & Sons, Inc.

The Department of Transportation accordingly submits the contract amount and the transfer of funds for the Boards approval.

MBE SET GOALS OF 20% MBE AND 7% WBE.

	<u>Dollar Amount</u>	<u>Percentage</u>
MBE: Priority Construction Corp.	\$387,900.00	19.5%
Powell's Trucking Co.	10,000.00	0.5%
	<u>\$397,900.00</u>	<u>20.0%</u>

MINUTES

RECOMMENDATIONS FOR CONTRACT AWARDS/REJECTIONS

Department of Transportation - cont'd

	<u>Dollar Amount</u>	<u>Percentage</u>
WBE: River Transport, Inc.	\$ 12,000.00	0.6%
Fallsway Construction Co., Inc.	8,000.00	0.4%
William T. King, Inc.	2,000.00	0.1%
B&J Sweeping & Sons, Inc.	9,300.00	0.5%
	<u>\$ 31,300.00</u>	<u>1.6%</u>

Bidder did not achieve the WBE goals.

MWBOO FOUND VENDOR IN NON-COMPLIANCE.

14. TRANSFER OF FUNDS

<u>AMOUNT</u>	<u>FROM ACCOUNT/S</u>	<u>TO ACCOUNT/S</u>
\$1,988,807.70	9950-905215-9514	
State Constr.	Local Resurfacing	
Reserve	Southwest	
298,321.16	9950-903550-9509	
GF (HUR)	Constr. Reserve	
<u>\$2,287,128.86</u>	Neighborhood Street	
	Reconstruction	
\$1,988,807.70	-----	9950-910223-9514-6
		Struc. & Improv.
198,880.77	-----	9950-910223-9514-5
		Inspection
99,440.39	-----	9950-910223-9514-2
<u>\$2,287,128.86</u>		Contingencies -
		Resurfacing High-
		Ways at Various
		Locations, South-
		west Sector III

This transfer will fund the costs associated with Award of Project TR 15013, Resurfacing Highways at Various Locations, Southwest Sector III with P. Flanigan & Sons, Inc.

MINUTES**TRAVEL REQUESTS**

<u>Name</u>	<u>To Attend</u>	<u>Funds</u>	<u>Amount</u>
<u>Office of Civil Rights & Wage Enforcement</u>			
1. Kisha A. Brown Susan Randall	Annual Equal Employment Opportunity Commission/ FEPA Training Conference Atlanta, GA August 3 - 6, 2015	General Fund	\$1,795.00

Mayor's Office Information Technology

2. Samantha Luckhardt	ESRI Users Conference San Diego, CA July 19 - 24, 2015	General Fund	\$1,782.78
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The airfare in the amount of \$579.00 was prepaid by a City-issue procurement card assigned to Mr. Jerome Mullen. The amount of funds to be disbursed to Ms. Luckhardt is \$1,203.78.

Health Department

3. Dawn O'Neill Olivia Farrow	MACo Summer Conference Ocean City, MD Aug. 12 - 15, 2015 (Reg. Fee \$285.00 ea.)	General Funds	\$2,978.92
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The subsistence rate for this location is \$264.00 per day. The hotel cost is \$314.00 per night plus taxes of \$32.97 per night. The Department is requesting additional subsistence of \$50.00 per day for the hotel balance. The registration fees were prepaid using a credit card assigned to Whitney Tantleff. The disbursement to Ms. O'Neill and Ms. Farrow will be \$1,204.46 each.

MINUTES**TRAVEL REQUESTS**

<u>Name</u>	<u>To Attend</u>	<u>Funds</u>	<u>Amount</u>
<u>Department of Recreation and Parks</u>			
4. Katherine Brower	The New York Times Cities for Tomorrow Conference New York, NY Jul. 18 - 21, 2015 (Reg. Fee \$495.00)	General Funds	\$ 724.00

Ms. Brower's train fare in the amount of \$149.00 and the registration fee in the amount of \$495.00 were pre-paid using a City-issued credit card assigned to Mr. Kenn L. King. Therefore, Ms. Brower will be disbursed \$80.00 for food and incidental expenses.

Ms. Brower is leaving on July 18, 2015, and will cover her lodging at her own expense.

Baltimore City Council

5. Kara Kunst	Maryland Association of Counties Summer Conference 2015 Ocean City, MD Aug. 12 - 15, 2015 (Reg. Fee \$285.00)	Elected Official Expense Account	\$1,494.18
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The subsistence rate for this location is \$264.00 per night. The cost of the hotel is \$275.00 per night. The hotel taxes are \$28.875 per night and an automatic safe convenience fee of \$1.50 per night.

The Department is requesting additional subsistence of \$11.00 per day for the hotel and \$40.00 per day for meals and incidentals. The registration fee in the amount of \$285.00 was pre-paid on a City-issued credit card assigned to Mr. Hosea Chew. Ms. Kunst will be disbursed \$1,209.18.

MINUTES**TRAVEL REQUESTS**

<u>Name</u>	<u>To Attend</u>	<u>Funds</u>	<u>Amount</u>
<u>Circuit Court</u>			
6. Angela Lowry	NADCP 21 st Annual	BJA FY15	\$7,608.95
Penny George	Drug Court Training	Adult Drug	
Gary Alsup	Conference	Court	
Gregg Solomon	Washington, D.C.	Discretionary	
Kara Anderson	July 27 - 30, 2015	Grant	
	(Reg. Fee \$700.00 ea.)		

The registration fee for each attendee was prepaid using EA000167511. The disbursement to each attendee will be \$821.79.

Department of Housing and Community Development

7. John D. Evans	ESRI User Conference	General	\$1,584.10
	San Diego, CA	Funds	
	July 19 - 24, 2015		

The Department has secured complimentary registration worth \$1,695.00.

UPON MOTION duly made and seconded, the Board approved the foregoing travel requests. The President **ABSTAINED** on item no.

5.

MINUTES

PERSONNEL MATTERS

* * * * *

UPON MOTION duly made and seconded,

the Board approved

all of the Personnel matters

listed on the following page:

2480

All of the Personnel matters have been approved

by the EXPENDITURE CONTROL COMMITTEE.

The contract has been approved

by the Law Department

as to form and legal sufficiency.

MINUTESDepartment of General Services

	<u>Hourly Rate</u>	<u>Amount</u>
1. SHAQUITA GAUSE	\$27.37	\$54,074.00

Account: 1001-000000-7340-721700-601009

.Her duties will include, but are not limited to overseeing scheduling, inspection and administration and completion of major construction projects. In addition, she will be responsible for consulting with technical staff, consultants, contractors and other City agencies for completion of major construction for buildings, reviewing and evaluating construction schedules, analyzing and handling potential delays and claims, and recommending appropriate actions. She will schedule and conduct pre-construction and progress meetings, assist in coordinating and processing of payments to contractors and recommend solutions to problems arising during construction. This is a 4% increase in the hourly rate from the previous contract period. The period of the Agreement is effective upon Board approval for one year.

Bureau of Budget Management Research2. Create the following 10 positions:

Classification: Assistant State's Attorney
 Job Code: 01962
 Grade: 929 (\$64,600.00 - \$103,200.00)
 (4 Positions)
 Position No.: to be assigned by BBMR

Classification: Community Coordinator
 Job Code: 81442
 Grade: 090 (\$44,858.00 - \$54,520.00)
 (6 Positions)
 Position No.: to be assigned by BBMR

Costs: \$801,264.00 - 1001-000000-1151-117900-601001

MINUTES**PROPOSALS AND SPECIFICATIONS**

1. Department of Public Works/
Office of Engineering &
Construction - SC No. 887R, Upgrade of the
SCADA System for the Pumping
and Metering Stations
BIDS TO BE RECV'D: 08/19/2015
BIDS TO BE OPENED: 08/19/2015

2. Department of Public Works/
Office of Engineering &
Construction - SC No. 919, Improvements to
Sanitary Sewers in the Outfall
Sewershed
BIDS TO BE RECV'D: 08/26/2015
BIDS TO BE OPENED: 08/26/2015

3. Department of Public Works/
Office of Engineering &
Construction - SC No. 937, Improvements to
Sanitary Sewers in HR07A and
along Chesterfield Ave. in
Herring Run Sewershed
BIDS TO BE RECV'D: 08/19/2015
BIDS TO BE OPENED: 08/19/2015

4. Department of Public Works/
Office of Engineering &
Construction - WC No. 1173R, Guilford
Finished Water Reservoir
Improvements
BIDS TO BE RECV'D: 09/09/2015
BIDS TO BE OPENED: 09/09/2015

5. Department of Transportation - TR 13306R, Resurfacing Highways
at Various Locations, Southwest,
Sector III
BIDS TO BE RECV'D: 08/12/2015
BIDS TO BE OPENED: 08/12/2015

MINUTES**PROPOSALS AND SPECIFICATIONS** - cont'd

There being no objections, the Board, UPON MOTION duly made and seconded, approved the above-listed Proposals and Specifications to be advertised for receipt and opening of bids on the date indicated.

MINUTES

A PROTEST WAS RECEIVED FROM MS. KIM TRUEHEART FOR ALL ITEMS ON THE AGENDA.

The Board of Estimates received and reviewed Ms. Trueheart's protest. As Ms. Trueheart does not have a specific interest that is different from that of the general public, the Board will not hear her protest.

Kim A. Trueheart

July 14, 2015

Board of Estimates
Attn: Clerk
City Hall, Room 204
100 N. Holliday Street,
Baltimore, Maryland 21202

Dear Ms. Taylor:

Herein is my written protest on behalf of the underserved and disparately treated citizens of the Baltimore City who appear to be victims of questionable management and administration within the various boards, commissions, agencies and departments of the Baltimore City municipal government.

The following details are provided to initiate this action as required by the Board of Estimates:

1. Whom you represent: Self

2. What the issues are:

a. Pages 1 - 86, City Council President and members of the Board of Estimates, BOE

Agenda dated July 15, 2015, if acted upon:

i. The proceedings of this board often renew business agreements without benefit of clear measures of effectiveness to validate the board's decision to continue funding the provider of the city service being procured;

ii. The Baltimore City School Board of Commissioners routinely requires submissions for board consideration to include details of the provider's success in meeting the objectives and/or desired outcomes delineated in the previously awarded agreement;

iii. The members of this board continue to fail to provide good stewardship of taxpayers' funds as noted by the lack of concrete justification to substantiate approval of actions presented in each weekly agenda;

iv. This board should immediately adjust the board's policy to ensure submissions to the board include measures of effectiveness in each instance where taxpayer funds have already been expended for city services;

v. In the interest of promoting greater transparency with the public this board should willing begin to include in the weekly agenda more details which it discusses in closed sessions without benefit of public participation.

vi. Lastly this board should explain to the public how, without violating the open meeting act, a consent agenda is published outlining the protocols for each week's meeting prior to the board opening its public meeting.

3. How the protestant will be harmed by the proposed Board of Estimates' action: As a citizen I have witnessed what appears to be a significant dearth in responsible and accountable leadership, management and cogent decision making within the various agencies and

Email: kimtrueheart@gmail.com

5519 Belleville Ave
Baltimore, MD 21207

departments of the Baltimore City municipal government which potentially cost myself and my fellow citizens excessive amounts of money in cost over-runs and wasteful spending.

4. Remedy I desire: The Board of Estimates should immediately direct each agency to include measures of effectiveness in any future submissions for the board's consideration.

I look forward to the opportunity to address this matter in person at your upcoming meeting of the Board of Estimates on July 1, 2015.

If you have any questions regarding this request, please telephone me at (410) 205-5114.

Sincerely,
Kim Trueheart, Citizen & Resident

5519 Belleville Ave
Baltimore, MD 21207

MINUTES

President: "There being no more business before this Board, the Board will recess until bid opening at 12 noon. Thank you."

* * * * *

MINUTES

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

BIDS, PROPOSALS, AND CONTRACT AWARDS

Prior to the reading of bids received today and the opening of bids scheduled for today, the Clerk announced that **THERE WERE NO ADDENDA** issued extending the dates for receipt and opening of bids. There were no objections.

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

Bureau of Purchases - B50004091, Computer Desktops,
Laptops and Tablets

DALY Computers
Brite Computers
Applied Technology Services
HCGI Hartford, Inc.
EN NET
Lucille Maud Corporation
Business Services
USC Canterbury Corp.
Digicon Corporation
Star Computer Supply
Brekford Corp

MINUTES

Bureau of Purchases - B50004138, Valve Maintenance
Trailer System

Maryland Industrial Trucks, Inc.

* * * * *

There being no objections, the Board, UPON MOTION duly made and seconded, adjourned until its next regularly scheduled meeting on Wednesday, July 22, 2015.


JOAN M. PRATT
Secretary