



MEMORANDUM

TO: Mayor and Council

FROM: Howard S. Lazarus, P.E., PWLF, Director, Public Works Department
Rosie Truelove, Capital Contracting Officer

CC: Marc A. Ott, City Manager
Robert D. Goode, Assistant City Manager
Elaine Hart, Chief Financial Officer
Gordon Bowman, Assistant City Attorney

DATE: January 22, 2016

SUBJECT: Request for Ratification
CA150000004 ADA Sidewalk and Ramp Improvements 2015 Group #16 City Wide
CA150000005 ADA Sidewalk and Ramp Improvements 2015 Group #17 City Wide
Muniz Concrete & Contracting, Inc. (Muniz)

PURPOSE: This memorandum provides supporting information for a request from the Public Works Department for the ratification of payments made to Muniz for work performed, on direction from the City, of non-specified items of the subject contracts. The Request for Council Action is scheduled for the agenda of February 4, 2016 meeting of the City Council.

BACKGROUND: The Public Works Department (PWD) utilizes an indefinite delivery/indefinite quantity (ID/IQ) contract for construction of sidewalk and related improvements. Indefinite Delivery/Indefinite Quantity contracts provide for an indefinite quantity of services for a fixed time, usually an initial term with extension options. They are used when the City cannot determine, above a specified maximum, the precise quantities of supplies or services that will be required during the contract period. The City issues work assignments in accordance with the contract for individual service requirements. The Indefinite Delivery/Indefinite Quantity contract method allows for the City to have flexibility to add projects as needs and priorities arise or change. As each project location is further defined, a specific work assignment is provided to the contractor who will complete the scope of work for the unit prices included in the contract. The Group 16 and 17 ADA Sidewalk & Ramp Improvements contracts provide for the construction of sidewalks, ramps, driveways, retaining walls, handrails, striping, shoulder widening, bus stop ADA upgrades, sidewalk repairs, and associated construction. The scope of each Project is limited to the specified items of sidewalk and streetscape work and items reasonably associated with the contract's scope of work or reasonably necessary to complete the intent of the Project.

DISCUSSION: At the request of the Austin Convention Center Department (ACCD), PWD managed the construction of ADA compliant sidewalks adjacent to the Convention Center. The ID/IQ contracts were employed as they presented the least intrusive approach to ACCD operations. As part of the project, ACCD sought to install information kiosks at the main entrance on the southern (Cesar Chavez Street) side of the building. The PWD Project Manager brought the request to install the kiosks to the attention of senior Public Works leadership, who concurred that the subsurface and related utilities work was incident to construction. In addition to the kiosks, the existing marquee needed to be relocated to provide the best use of the new pedestrian space, so ACCD sought to have a new marquee placed over the main Cesar Chavez entrance rather than relocate the old marquee. Installation of the kiosks and the new marquee simultaneously with the completion of the sidewalks was important to ACCD, so PWD obtained pricing for the marquee and authorized installation under the ID/IQ contract. The requests were processed to incorporate changes in the subcontracting Compliance Plan. While the removal of the existing marquee can be considered incidental to the sidewalk work, the installation of a new marquee and the kiosks should have been bid separately, but on direction from the City, the Contractor had already sourced the items and they were ready for delivery when the situation was discovered – it would have been much more costly for the City to reverse the process and start over under a separate procurement.

The current process states that once a project is identified for an ID/IQ contract, the process is to create a purchase order in the financial system and then issue a notice to proceed allowing the contractor to begin work. These controls ensure that funding is in place and the scope of work is consistent with the approved contract. While this approach has been adopted and has proven to be effective, in the case of incorporating the kiosks and marquee scopes of work the notice to proceed was issued prior to the creation of the purchase order.

At the time the purchase order was requested, it was discovered through the internal control systems that the installation of a new marquee and kiosks were not a scope of work included in the contract. Upon further discussion, the decision was made for the Contractor to complete the installation of the items because they were already sourced and ready for delivery. Under Section 271.153 of the Texas Local Government Code, a contractor is entitled to payment for change orders that it is directed to perform by a local governmental entity. The ratification of this action would approve the payment of the non-specified items in the scope of the contract.

ACTION TAKEN: PWD and the Capital Contracting Office have re-evaluated the existing process and controls in place, including staff training, to ensure the proper use of ID/IQ contracts. The internal controls have been reemphasized by the Capital Contracting Office, and the PWD Director has addressed this matter with the affected staff and has issued a directive to ensure the process is complied with in the future.

The request for Council consideration incorporates these scope elements (attached) on a one-time basis, and has no additional cost impact to the City. The funds for this work were previously approved and are available in the capital budget of ACCD and this action is not adding any additional funding or authorization to the referenced contracts.