Memorandum

MIAMI-DADE COUNTY

Date: April 7, 2009

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

Agenda Item No. 12(A)(2)

From: George M. Burgess
County Manager

R. A. Cuevas, Jr.
County Attorney

Subject: Resolution Approving Settlement of Bid Protests by Metro Express, Inc. Relating to Drainage Improvement Projects (RPQ No.s 20060438 and 20070516) and Future County Contracting and Authorizing the County Mayor or County Mayor's Designee to Take All Necessary Action to Effectuate the Settlement Agreement

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Recommendation

It is recommended that the Board of County Commissioners (BCC) approve the attached resolution approving settlement of Bid Protests by Metro Express, Inc. (Metro) relating to Drainage Improvement Projects (RPQ No.s 20060438 - CICC 7360-0/08 and 20070516 - CICC 7360-0/08) and future County contracting, and authorizing the County Mayor or County Mayor's designee to take the necessary action to effectuate the settlement agreement.

The Public Works Department (PWD) did not recommend award of the aforementioned projects to Metro, the lowest bidder, because Metro had been issued 24 Notices of Violations (NOVs) pursuant to the Community Small Business Enterprise (CSBE) and Responsible Wages and Benefits Programs. As a result in September 2007, Metro filed bid protests on these projects. In meetings prior to the Protest Hearings with PWD, SBD, and the County Attorney's Office, Metro agreed to withdraw their bid protests and voluntarily refrain from bidding on all County contracts for a period of one (1) year.

In order to allow the County to proceed with the awarding the contracts that were pending and bid by Metro, the parties agreed that the effective date of Metro's preclusion from County contracts would commence on April 11, 2008. Since that time, the parties continued to negotiate the other provisions of the settlement and the County continued to investigate other potential issues regarding Metro's responsibility to ensure that the settlement resolved all outstanding issues. On December 30, 2008 Metro transmitted the executed settlement that is before the Board today. The County elected to move forward with this Settlement as it accomplished the same goal as had the County sought a one (1) year debarment. Except, unlike a debarment, this settlement still requires the makeup of the outstanding goal deficit and still precludes Metro from participation in County contracts until they have undergone additional training so that future violations can be avoided.

Metro has complied with this agreement and has refrained from participating in the 5 drainage contracts (estimated at $13.4 million) let by PWD since April 2008. Additionally, Metro did release its protest to Project No. 20070516, and that project was awarded for much needed drainage improvements which have since been completed. Upon execution of this agreement, PWD will finalize the rejection of all bids and re-advertise the Palm Springs Phase V Drainage Project (PWD Project No. 20060438). Additionally, all violations except for the pending CSBE make-up have been cured.

Background

Metro has accumulated 24 NOVs on file dated between July 2002 and June 2006, issued pursuant to the CSBE and Responsible Wages and Benefits Programs. The NOVs include: failing to meet CSBE Subcontractor Goal (one (1) occasion which resulted in a make-up requirement of $398,840.00); failure to submit CSBE Monthly Utilization Report (two (2) occasions); underpayment of employees (two (2) occasions); submittal of inaccurate payrolls (ten (10) occasions, two (2) which resulted in underpayment of employees); misclassification of employees (one (1) occasion which resulted in documented underpayment of employees); failure to post wages at the job site (seven (7) occasions); and failure to respond to payroll audit (one (1) occasion).

Metro and the County concur in a voluntary suspension of new contracting with the County by Metro for a period of one-year (1) which commenced on April 11, 2008 and ends on April 10, 2009. This measure in conjunction with additional training by appropriate County departments to address, teach, assist and train Metro (and its employees) to comply with the issues addressed in the NOVs, will re-establish the County's confidence in Metro as a "responsible bidder". Upon the fulfillment of the terms and conditions of this Agreement, the Couny will allow Metro to bid on County contracts,

The Agreement does not constitute an admission of wrongdoing or guilt by Metro regarding the issues raised in the NOVs and shall not be used against Metro for that purpose now and for all time by the County, inclusive of its departments and its BCC. Rather, this is a good faith attempt by the County and Metro to resolve once and for all any concerns the Parties may have with regards to the matters contained in the Agreement.

The settlement agreement between Miami-Dade County and Metro stipulates that:

1. Metro shall not bid, propose, or otherwise participate on any new contracts with the County as either prime contractor or subcontractor for one year which shall be deemed to have commenced on April 11, 2008 (the date when Metro agreed to suspend proposing on new County contracting as a result of the NOVs) and ending on April 10, 2009 ("Recusal Period").
2. Metro shall withdraw its remaining bid protest for RPQ No. 20060438 Palm Springs Phase V.
3. Metro officers, managers and directors shall attend one training session provided by the Department of Small Business Development (SBD) to better aid Metro in its future compliance with the County's Responsible Wages and Benefits Program and CSBE Program.
4. At the completion of the Recusal Period and if Metro fully complies with the Agreement, the County agrees not to consider (and adversely hold as a basis for not awarding to Metro future contracts for any past performance issues related to compliance when reviewing the responsibility of Metro to perform on any bids) any NOV issued to Metro prior to the effective date of the agreement in considering Metro's responsibility to perform future work for the County.
5. Upon the execution of the Agreement, all pending NOVs against Metro, except for the $78,035.05 pending CSBE make-up, shall be deemed closed and resolved amicably and through the mutual efforts and cooperation of the Parties.

Therefore, for the reasons stated above, it is recommended that the BCC approves the attached resolution approving Settlement Agreement of Bid Protests by Metro relating to the Drainage Improvements Projects RPQ No.s 20060438 and 20070516 and future County contracting.

Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: April 7, 2009

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 12(A)(2)

Please note any items checked.

_____ **"4-Day Rule" ("3-Day Rule" for committees) applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Bid waiver requiring County Mayor's written recommendation**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **Housekeeping item (no policy decision required)**

✓ **No committee review**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 12(A)(2)
4-7-09

RESOLUTION NO. _____

RESOLUTION APPROVING SETTLEMENT OF BID PROTESTS BY METRO EXPRESS, INC. RELATING TO DRAIN IMPROVEMENT PROJECTS AND FUTURE COUNTY CONTRACTING; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO TAKE ALL NECESSARY ACTION TO EFFECTUATE THE SETTLEMENT AGREEMENT

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum and documents, copies of which are incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the terms and conditions of the settlement of the bid protest as to the terms and conditions specified in the Settlement Agreement in substantially the form attached hereto and authorizes the County Mayor or County Mayor's designee to take all necessary action to effectuate said Settlement Agreement.

The foregoing resolution was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 7th day of April, 2009. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Oren Rosenthal

CLERK OF THE
BOARD OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

In re: Bid Protests for RPQ No. 20060438 Palm Springs Phase V – Drainage Improvement and Project No. 200070516 Drainage Improvement Project Multiple Sites GOB No. 70020	**SETTLEMENT AGREEMENT**

WHEREAS, the above bid protests were commenced by Metro Express, Inc. ("Metro") in connection with the above referenced contracts for the provision of contracting services to Miami-Dade County (the "County")(collectively the "Parties"); and,

WHEREAS, since 2002, Metro has been issued 24 Notices of Violations ("NOVs") pursuant to the Community Small Business Enterprise ("CSBE") and Responsible Wages and Benefits Programs which include 'Failing to Meet CSBE Subcontractor Goal' (one occasion which resulted in a makeup requirement of $398,840); 'Failure to Submit CSBE Utilization Report' (two occasions); 'Underpayment of Employees' (two occasions); 'Submittal of Inaccurate Payrolls' (ten occasions, 2 which resulted in underpayment of employees); Misclassification of employees (one occasion which resulted in documented underpayment of employees), 'Failure to Post Wages at the Job Site' (seven occasions); and 'Failure to respond to Payroll Audit' (one occasion); and,

WHEREAS, Metro has disputed most if not all of these N.O.V.s, denies that it was in violation (as is apparent by the filing of its protests), and the N.O.V.s only

appear for illustrative purposes of this Settlement Agreement, but the Parties agree that the specific citing to these N.O.V.s shall not be used against Metro (now or in the future) and most importantly, shall not be used and are not contemplated by the County to be used as a basis for the Board of County Commissioners not ratifying these Agreement.

WHEREAS, the County believes that these violations are sufficient to establish that Metro is not a responsible vendor for the provision of services in the above referenced contracts and Metro disputes this "belief"; and,

WHEREAS, Metro contends that these violations are minor in nature and are either inaccurate (i.e. did not occur) or have been cured and do not call into question their responsibility or raise their conduct to a level which would classify Metro as non "responsible" bidder in accordance to the County's Ordinance, rules, and regulations; and,

WHEREAS, Metro and the County now wish to amicably settle the pending bid protests and all their differences related to these NOVs and re-establish the County's confidence in Metro as a "responsible bidder" so as to allow Metro to contract with the County upon the fulfillment of the terms and conditions of this Agreement; and,

WHEREAS, Metro and the County believe that a voluntary suspension of new contracting with the County by Metro for a period of one-year which commenced on April 11, 2008 and ends on April 10, 2009 in conjunction with additional training by appropriate County departments to address, teach, assist and train Metro (and its employees) to comply with the issues addressed in the NOVs; and,

WHEREAS, this Agreement does not constitute an admission of wrongdoing or guilt by Metro regarding the issues raised in the NOVs and shall not be used against Metro for that purpose now and for all time by the County, inclusive of its

departments and its Board of Commissioners; but rather, this is a good faith attempt by the County and Metro to resolve once and for all any concerns the Parties may have with regards to the matters contained in this Agreement.

THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED HEREIN, AND OTHER VALUABLE CONSIDERATION (THE SUFFICIENCY OF WHICH IS STIPULATED TO BY THE PARTIES), IT IS HEREBY STIPULATED AND AGREED, by and between the Parties, that:

1. Metro its principals, and qualifying agents shall not bid, propose, or otherwise participate on any new contracts with the County as either prime contractor or subcontractor for one year which shall be deemed to have commenced on April 11, 2008 (the date when Metro agreed to suspend proposing on new County contracting as a result of the NOVs) and ending on April 10, 2009. ("Recusal Period"). Any bids or proposals submitted by Metro for contracts with the County during this period (except those awarded contracts already in existence) shall be considered null and void and shall not be considered by the County. This Recusal Period shall not affect any contracts Metro currently has with the County.

2. Metro shall withdraw its remaining bid protest for RPQ No. 20060438 Palm Springs Phase V – Drainage Improvement and by its execution of this Agreement hereby withdraws any remaining bids and releases any claim it may have to the award of any pending County contracts including, but not limited to, Projects 2007-0572; 2007-0573; 2007-0593 and 2007-0659. The Clerk of the Board of Miami-Dade County shall refund the three thousand dollar ($3,000) bid protest fee to Metro upon its withdrawal of its protest pursuant to this Agreement.

3. Metro officers, managers and directors shall attend one training session provided by the Department of Small Business Development (the "SBD") to better aid Metro in its future compliance with the County's Responsible Wages and Benefits Program and CSBE Program. SBD shall coordinate in good faith the scheduling of these training sessions so that the same may occur on mutually agreed dates and times.

4. At the completion of the Recusal Period and if Metro fully complies with this Agreement, the County agrees not to consider (and adversely hold as a basis for not awarding to Metro future contracts for any past performance issues related to compliance when reviewing the responsibility of Metro to perform on any bids) any NOV issued to Metro prior to the effective date of this agreement in considering Metro's responsibility to perform future work for the County. Notwithstanding the foregoing, nothing in this Agreement shall relieve Metro of its existing obligation to make-up $78,035.05 in CSBE goals on any future County contract. The County and Metro agree to work mutually and in good faith to verify the accuracy of this amount.

5. Upon the execution of this Agreement, all pending NOVs against Metro shall be deemed closed and resolved amicably and through the mutual efforts and cooperation of the Parties. Moreover, any payments due Metro for existing contracts, shall be made forthwith and without delay upon the execution of this Agreement, including but not limited to payments due under Project # 2006-0150, Requisition #12..

6. This Agreement constitutes a complete and exhaustive expression by the Parties of the settlement agreed to by them, and may not be changed orally.

7. This Agreement may be signed in counterparts which, when taken together, shall be deemed one and the same document.

8. This Agreement shall not become effective unless approved by the Board of County Commissioners of Miami-Dade County.

9. Venue in the event of litigation arising under this Agreement shall be in a court of competent jurisdiction in Miami-Dade County Florida.

WHEREFORE, THE Parties hereby execute this Agreement this ____day of ____, 2008 as reflected below and agree to be bound by its terms and conditions.

Delio G Trasobares, Pres

Metro Express Inc. by:

Delio Trasobares, its President

_____

Miami-Dade County by:

[ ]

Approved as to Form and

Legal Sufficiency: _____

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