Memorandum

MIAMI-DADE COUNTY

Date: April 6, 2010

Agenda Item No. 8(F)(1)(A)

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

From: George M. Burgess
County Manager

Subject: Settlement Agreement and Mutual Release of All Claims with Unitech Builders Corp.; GSA Contract No. AD0094

Recommendation

It is recommended that the Board of County Commissioners (the "Board") adopt the attached resolution, which approves the execution of a Settlement Agreement and Mutual Release of All Claims between Miami-Dade County and Unitech Builders Corp., in the amount of $247,598.00 for work performed in connection with the renovation of the South Dade Government Center. This settlement includes the negotiated amount for a claim in the amount of $192,348.00, and the release of liquidated damages erroneously assessed in the amount of $55,250.00. The attached proposed Settlement Agreement was prepared by General Services Administration (GSA) on behalf of the Office of Americans with Disabilities Act (ADA), and is recommended for approval.

Background

ADA competitively bid this ADA Barrier Removal project, which was awarded on June 22, 2005 in the amount of $2,720,159.92 to Unitech Builders Corp. (Contractor), the lowest responsive, responsible bidder. The original project duration was 450 calendar days, and the Contractor was issued a Notice to Proceed (NTP) to commence work on August 1, 2005. The original substantial completion date was October 25, 2006.

On October 12, 2006 via Resolution R-1202-06, Change Order No. 1 was approved by the Board of County Commissioners (BCC) extending the contract time to 630 calendar days and increasing the value to $3,372,369. This change order incorporated the County's request to increase the scope of work which included upgrading the area by creating narrower ADA compliant walkways, improving security lighting, waterproofing walls, and repairing damage to the landscaping caused by Hurricanes Katrina and Wilma in 2005.

Subsequent to achieving substantial completion on April 23, 2007, additional issues came to light and the Contractor continued to work at the request of the County. The above-mentioned issues included: a) the existing asphalt pavement had to be repaired and pit ladders needed to be removed and re-installed to achieve the appropriate clearance in accordance with the building code; b) in order to address problems in the ventilation system which affected the elevator shafts, and constantly overheating and triggering the fire alarm heat detector devices, louvers were installed to create the necessary air flow; c) In addition, two new trip breakers had to be installed so that the elevators could be brought down to the lower level, in case of a general power failure. These additional tasks were completed by January 20, 2009.

The Contractor's original claim for work performed between April 2007 and January 2009 totaled $319,674.00, and 348 calendar days. After months of negotiations between the Contractor and the County, ADA requested assistance from GSA to settle all pending claims. As a result, an agreement was reached to reduce the Contractor's claim to $247,598.00 and a time extension of 206 calendar days. The aforementioned settlement amount includes $192,348.00 in extra work performed, as well as $55,250.00 in release of liquidated damages erroneously assessed, although the Contractor continued performing work at the County's request.

This final settlement agreement has been prepared by GSA on behalf of ADA in an attempt to prevent the Contractor from filing a lawsuit against the County, and is submitted for consideration and approval. This final settlement agreement will adjust the original contract amount to $3,619,967.

Scope
This settlement agreement has County-wide impact.

Fiscal Impact/Funding Source
The amount of this settlement agreement will be funded through the Capital Outlay Reserve in the amount of $192,348.00, in addition to the balance already in the contract for a total of $247,598.00.

Track Record/Monitor
The monitoring agency is GSA, through Robert Stebbins, Jr., Manager, Construction Management Section.

Delegated Authority
This item authorizes the County Mayor or County Mayor's designee to execute the settlement agreement on behalf of the County.

Wendi J. Norris
Director, General Services Administration

MEMORANDUM
(Revised)

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

DATE: April 6, 2010

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

SUBJECT: Agenda Item No. 8(F)(1)(A)

Please note any items checked.

_____ **"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**

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

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

✓ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(F)(1)(A)
4-6-10

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE A SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF ALL CLAIMS WITH UNITECH BUILDERS CORP., IN THE AMOUNT OF $247,598.00, FOR WORK IN CONNECTION WITH THE RENOVATION OF THE SOUTH DADE GOVERNMENT CENTER; FOR AND ON BEHALF OF MIAMI-DADE COUNTY AND TO EXERCISE ANY AND ALL OTHER RIGHTS CONTAINED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by this reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the execution of a Settlement Agreement and Mutual Release of All Claims between Miami-Dade County and Unitech Builders Corp., for work performed in connection with the renovation of the South Dade Government Center, in substantially the form attached hereto and made a part thereof; and authorizes the County Mayor or County Mayor's designee to execute same for and on behalf of Miami-Dade County.

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 6th day of April, 2010. 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.

Hugo Benitez

SETTLEMENT AGREEMENT AND GENERAL RELEASE OF ALL CLAIMS

This Settlement Agreement and General Release of All Claims (the "Agreement") is made and entered as of this _____ day of _____ 20___, by and between Miami-Dade County, a political subdivision of the State of Florida (the "County"), and Unitech Builders Corp., a Florida Corporation whose principal place of business is 16155 SW 177 Avenue, B24 Miami FL, 33177.

RECITALS

WHEREAS, the County entered into a contract, dated June 22nd, 2005, (the "Contract") with Unitech Builders Corp. for the completion of Miami-Dade County's General Services Administration Project No. AD0094, comprised primarily of the renovation of the South Dade Government Center located at 10710 SW 211 Street, Miami, FL 33189 , in the aggregate amount of $2,720,159.92 (the "Project"); and

WHEREAS, there exist outstanding disputes regarding the remaining amount of money owed by the County to Unitech Builders Corp. for its work on the Project; and

WHEREAS, the County has previously paid $3,310,283.42 to Unitech Builders Corp., on account of Contractor's work on the Project; and

WHEREAS, the County and Unitech Builders Corp. wish to amicably settle all outstanding issues between the parties regarding the Project under the terms of this Agreement;

AGREEMENTS AND RELEASES

NOW THEREFORE, in consideration of the mutual covenants hereinafter set forth, the County and Unitech Builders Corp. agree as follows:

1. The Foregoing recitals are true and correct and made part of this Agreement.
2. Upon the payment of TWO HUNDRED FORTY SEVEN THOUSAND FIVE HUNDRED NINETY EIGHT DOLLARS ($247,598.00) to Unitech Builders Corp., receipt whereof is hereby acknowledged, Unitech Builders Corp., on behalf of the corporation and its officers, employees, subcontractors,

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materialmen, suppliers, including, but not limited to, and pass-through claims, successors, and assigns, does hereby forever release, acquit and discharge the County, its past, present and future employees, agents, servants, successors, heirs, executors, administrators and officers of and from any and all manner of action and actions, cause and causes of action, claims, liabilities, suits, debts, dues, sums of money, accounts, indemnities, guarantees, contributions, reckonings, bonds, bills, covenants, contracts, controversies, agreements, promises, variances, damages, injuries, judgments, executions, claims, expenses, attorneys' fees, compensation and all other damages now accrued or hereafter to accrue, including, without limitation, those accrued or hereafter to accrue, on account of, or in any way concerning, relating to, arising out of, or in any manner connected with the Project and the County's obligations and duties to Unitech Builders Corp. under the Contract thereto.

3. The following is a breakdown of all monies:

A) **Design Changes:** Changes to the design at the request of the County, as well as additional work by the Contractor at the request of the OADA.

Items	**Amount**
For additional work performed between April 2007 and January 2009. The Contractor continued to work on this project after substantial completion had been reached on April 23, 2007 at the request of the OADA in order to address concerns raised by the Miami-Dade County Building Department, as well as changes in the work identified as affecting the critical path. After months of negotiations between the Contractor and the County, an agreement was reached to reduce the Contractor's claim to $192,348.00.	$192,348.00

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B) **Liquidated Damages:** Release of liquidated damages wrongfully assessed to the Contractor by the OADA.

Items	**Amount**
Release of Liquidated Damages	$55,250.00
Total Items A and B	**$247,598.00**

4. The County and Unitech Builders Corp. agree that the date for final completion of the Project is April 28, 2008.
5. Unitech Builders Corp. agrees that all monies due it under, or in connection with, the work performed on the Project to accept $247,598.00, as full accord and satisfaction of all monies due it under or in connection with the contract documents and the work performed on the Project by Unitech Builders Corp., its subcontractors, materialmen and suppliers including, but not limited to, any pass-through claims have now been paid and satisfied.
6. Notwithstanding any other provision of this Agreement to the contrary, the County expressly reserves its rights with respect to:
   a. Require the repair or replacement of latent defects in the work to the extent provided by Florida law; and
   b. Enforce those provisions of the Contract, which specifically provide that they survive the completion of the work.
7. Unitech Builders Corp. hereto understands and acknowledges that this is a compromised settlement and a general release without any admission of liability or error or bad faith on the part of the County or any of its prior or present employees, agents, officers, attorneys, and representatives, and any such unlawful or erroneous conduct is hereby expressly denied.
8. Unitech Builders Corp. acknowledges that it has read this Agreement and understands it, before executing this document.
9. The parties agree that no provision of this Agreement shall be interpreted for or against any party because that party or its legal representative

drafted the provision.

10. Unitech Builders Corp. shall submit with the final payment request, for any Project where subcontractors have performed Work, a Final Release of Lien/Subcontractor's Statement of Satisfaction for each subcontractor marked as a final.

ATTEST:

FOR:
BOARD OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

HARVEY RUVIN
Clerk of the Court

CARLOS ALVAREZ
County Mayor

By: _____,
Clerk of the Board

By:

Signature

Signature

Witness

Unitech Builders, Corp.
By:
Anthony R. Gomez,
President

Witness

Signature

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MIAMI-DADE COUNTY
BOARD OF COUNTY COMMISSIONERS
OFFICE OF THE COMMISSION AUDITOR

Legislative Notes

Agenda Item:	**8(F)1(A)**
File Number:	**100360**
Committee(s) of Reference:	**Board of County Commissioners**
Date of Analysis:	**March 24, 2010**
Type of Item:	**Resolution**

Summary

This resolution approves the execution of a Settlement Agreement and Mutual Release of All Claims between Miami-Dade County and Unitech Builders Corp. (Unitech), totaling $247,598.00 for work performed in connection with the renovation of the South Miami-Dade Dade Government Center.

- This settlement includes the negotiated amount for a claim in the amount of $192,348.00, and the release of liquidated damages erroneously assessed in the amount of $55,250.00.
- On June 22, 2005, a contract award for the South Miami-Dade Government Center Americans with Disabilities Access Contract was awarded to Unitech.
- The Office of Americans with Disabilities Act Coordination (ADA) competitively bid this project.
- **The original project duration was 450 calendar days, and the Contractor was issued a Notice to Proceed (NTP) to commence work on August 1, 2005.**

The original substantial completion date was October 25, 2006.

On October 12, 2006, via Resolution R-1202-06, **Change Order No. 1** was approved by the Board of County Commissioners (BCC) extending the contract time to 630 calendar days and increasing the value to $3,372,369. This change order incorporated the County's request to increase the scope of work which included upgrading the area by creating narrower ADA compliant walkways, improving security lighting, waterproofing walls, and repairing damage to the landscaping caused by Hurricanes Katrina and Wilma in 2005.

Questions

1. Was this project originally engineered for ADA compliance?
2. Which department was responsible to ensure that the scope of work included ADA requirements?
3. Why weren't the additional issues mentioned in the accompanying background presented to the BCC earlier?

Comments

According to the Department of Small Business Development's History of Violations Report dated March 1, 2010, Unitiech has an **open** violation for failure to obtain DBD approval of workforce plan by 25% project completion for **Project No. AD0094** dated October 25, 2006.

Project No. AD0094 was awarded to Unitech with a 10% CWP goal which required two (2) persons be hired within the Designated Target Area. On October 15, 2006, Unitech was issued a Notice of Violation for failing to submit a CWP workforce plan. On June 22, 2007, Unitech was assessed a fine of $1500 per required CWP position (2) or $3,000.

During settlement negotiations with General Services Administration (GSA) staff, Unitech agreed to have GSA deduct the $3,000 from any funds that would be payable to them through the settlement, transferable to SBD.

The Office of Capital Improvements CIIS system only shows the one (1) contract above.

Prepared by: Michael Amador-Gil