

Date: March 22, 2016

FOR YOUR INFORMATION MEMO

To: Mayor and Members of City Council  
From: Harry Black, City Manager **HB**  
Subject: Smale Riverfront Park Procurement Issues

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In Nov 2015, I was made aware of possible issues related to the procurement activities associated with the Parks Department's building of the Smale Riverfront Park (SRP). I immediately asked the Chief Procurement Officer to fully review the matter in order to identify and mitigate any potential City exposure.

Attached is a memo I received yesterday detailing the findings and corrective measures.

What has occurred with the SRP project indicates that best business practices and transparency were not always put into practice. This resulted in limited levels of contractor competition and less than ideal fiscal management. As a result, the City has been potentially placed at risk, financially. As this matter evolves, we will be able to better quantify that risk.

Fortunately, the measures put in place as part of our ongoing procurement overhaul begun in Jan 2015 (see attached) would prevent a similar situation from happening now. Given the nature of the issues raised in this examination it is important to inform you of the findings and corrective actions.

Additionally, an independent audit of the Park Board and all related account spending is underway, with results expected in May.

We will keep you informed of additional steps taken to limit exposure to the City and improve procurement practices.

Attachments

March 21, 2016

**TO:** Harry Black, City Manager  
**FROM:** Patrick A. Duhaney, Chief Procurement Officer *PAJ*  
**SUBJECT:** Cincinnati Parks Board Procurement Matter

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Per your request, what follows is a summary of the Parks Board procurement and contracting practices/issues related to the Parks' Smale Riverfront Park (SMR) project.

### **Background and Rough Timeline**

On or around November 23, 2015, it came to my attention that the Cincinnati Parks Board had utilized an as-needed general building maintenance master agreement to construct a significant portion of the SMR project. Later, with the help of the Finance and Budget Departments it was identified that Parks utilized several other contingency maintenance and repair master agreements (MAs) to construct the Smale Riverfront (SMR) Park project<sup>1</sup>. These contracts were setup to cover the as-needed routine maintenance and repair needs of existing City buildings spanning various City departments and, as such, they were not structured for or put in place for new construction or renovation work of the scale and scope of the SMR Park project.

As a result, the City is inadequately and unsatisfactorily protected with respect to the performance bonds in place for the SMR Park project. Further, due to the inherent vagueness of the scope written in these various MAs, there is a great risk of potential scope gaps in terms of which MA contractor is culpable for a particular portion of the project's scope of work. This may lead to confusion and difficulty for the City in the event we need to identify which MA contractor is to be held accountable should any claim issues arise.

Shortly, after I became aware of these issues, I reached out to the Director of the Parks Board to setup a meeting to discuss my concerns in regards to the contracting process used for the SMR project. After a preliminary discussion over the phone regarding the matter, the Director of the Parks Board and myself agreed to setup a meeting to discuss this matter in greater detail.

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<sup>1</sup> Based on my research, it appears that the only portion of the SMR project not constructed through the use of as-needed/contingency maintenance and repair MAs was the construction of the Vine Street Fountains and Stairway Auger-Cast Piles. The contract for the aforementioned work, which was valued at approximately \$519,118, was procured in accordance with the Cincinnati Municipal Code (CMC) and established procurement policies.



However, due to scheduling conflicts, the Director of the Parks Board was unable to keep our initial meeting.

On Tuesday, December 2, 2015, immediately following our standing procurement review committee meeting, I briefed you on my findings and concerns. We discussed the importance of ensuring that the City be made whole to the maximum extent possible with respect to the performance bonding issues and the need to look deeper into the contracting practices of the Parks Board. From that meeting, I proceeded, under your direction, to identify the extent of the City's risk. I eventually met with the Parks Board staff on Thursday, December 10, 2015 to discuss the matter. Following that meeting, I reported back to you my findings and we decided on the following initial course of action:

1. Contacting the contractors in question in order to bring the performance surety to adequate levels; and
2. Adding the matter of the Parks Board contracting practices to scope of services of the audit firm currently charged with auditing the Parks Board and the Parks Foundation.

### **Procurement and Contracting Issues on the SMR Project**

With respect to the issue of inadequate performance bonds, a review of the 12 MAs utilized (See Attachment A) by the Parks Board over the years to construct the SMR Park project reveals that the total bonding in place is \$1,670,095.24<sup>2</sup>. In comparison, Parks Board spent \$14,852,548.74 on construction services against these MAs for the construction of the SMR project. This means that at least \$13,182,453.50<sup>3</sup> of the construction work performed with respect to this project was not bonded. This violates City Municipal Code (CMC 321-135) which requires performance surety of 100 percent of a contract for construction.

Of the 12 MAs used by Parks, 8 of them have expired and 4 of them are currently active. Looking at the 4 non-expired MAs utilized for the construction of the SMR Park (see highlighted portion of the table in light orange in Attachment A), the total bonding in place is \$843,908 compared to over \$11,522,797.52 ordered by Parks against those 4 MAs in question. Therefore, at least \$10,678,889.52<sup>4</sup> of the construction work performed under these MAs with respect to this project is not bonded. It is unlikely that the City will be able to require the holders of expired

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<sup>2</sup> This takes into account the total performance bond of all 12 MAs, including expired and current MAs.

<sup>3</sup> Please note that this number is significantly underestimated. The amount could be more because the MAs utilized by Parks for the SMR project are citywide agreements available to all departments to utilize. It is highly possible that if we took into account the other departments' spend on these Citywide MAs that the amount of SMR construction work that was or is not bonded would increase significantly. For calculation purposes, I restricted my analysis to Cincinnati Parks spend specifically for the SMR project.

<sup>4</sup> Please note that Universal Contracting, one of the holders of one of the MAs used by Parks, after being contacted by the City's Purchasing Division, has increased their bonding from \$513,805 to \$5,891,917.38. We are in the process of resolving the outstanding bonding issues with the other contractors that hold active MAs utilized on the SMR project.



MAs to up their performance bonds. We are currently working on resolving the outstanding bonding discrepancies with the holders of the MAs not expired.

The use of multiple general maintenance and repair MAs that lack the specificity of detailed project scope and specifications makes it difficult to know which portion of the SMR Park project is bonded. The bonding in place is more than likely piecemeal in that certain portions of the project may be bonded and other portions of the project may not be bonded. As it is currently set up, the City would have a difficult time ascertaining which portion of the project is bonded should any issues arise with respect to the construction work.

Also, since the Parks Board utilized these MAs in this manner, the City may ultimately have a difficult time identifying the contractor or contractor(s) responsible for any construction issues should they arise, since the project was not contracted to one general contractor. This is further complicated by the use of subcontractors who did not go through the City's standard subcontractor approval process.<sup>5</sup>

With respect to the Parks Foundation's support of the SMR Park project. If Parks Foundation monies were used toward construction work of the SMR Park, it is highly likely that those monies would be subject to the same performance bonding and procurement requirements as other improvements to City assets. The analysis provided in this memo does not account for any Parks Foundation money, as this information is currently unavailable to me and is within the sole control of the Parks Foundation. A detailed breakdown of what the Foundation's monies were used on and with which contractors, as it relates to the SMR Park project is needed as soon as possible in order for the City to get a better sense of any outstanding risks.

### **How the SMR project should have been procured?**

The SMR project should have been procured as a specific standalone project with the project's unique specifications incorporated in the bid documents (and ultimately in the contract of the firm awarded the project's contract). The project should have been procured using any of the following procurement methods allowed under the Chapter 321 of the Cincinnati Municipal Code (CMC) for procuring construction projects:

- The traditional Invitation to Bid (ITB) (i.e., Design-Bid-Build (DBB));
- A Request for Proposals (RFP); or
- Use of a two-step proposal procurement where the City issues a Request for Qualifications (RFQ) then short-lists firms based on qualifications to participate in a subsequent RFP phase, which is the process used for Construction Management at Risk (CMAR) and Design-Build (DB) procurements.

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<sup>5</sup> The City's subcontractor approval process serves the purpose of not only letting the appropriate City authorities approve the work and the cost of the work to be provided by subcontractors, but allows the City to verify that the subcontractors are not ineligible by the City and/or state or federal governments from working on publicly funded projects prior to authorizing the subcontractors' work on the project.



Any one of the aforementioned would have provided the City with more protection in terms of risk mitigation and bonding than the piecemeal approach of using multiple general maintenance and repair MAs used by the Parks Board for this project.

For example, on construction projects using the traditional ITB procurement method, the City typically has one contractor serve as the general contractor who carries the burden of being held accountable for the work of all the subcontractors. In this set up, if any issues arise regarding the construction work, the City only has to contact the general contractor regarding the issue. If the City is unsuccessful in working it out with the general contractor, the City then only has to call-in one warranty/guarantee/bond. As it stands now, the City may have difficulty determining which of the several MA contractors is ultimately responsible should any issues arise due to lack of scope specificity inherent in the MA form.

If the project was procured correctly using the aforementioned example, the City would have a more contiguous performance bond that would cover the entire breadth of the project, including the supplies and services<sup>6</sup>. In addition, the performance bond would have come into effect following official acceptance of the project by the City and remain in effect for a period of one year following official acceptance (CMC 321-135). As it is now, the project bonding is piecemealed with some portions of the project being covered by a performance bond and other portions not being covered. Furthermore, the expiration date of the multiple bonds currently in place on the project vary significantly, which may be problematic should claims arise.

A project of such scale and magnitude as the SMR Park project should always be competitively procured and never done under a contracting mechanism, such as orders issued against MAs, that evades the public light. Where it stands now, since this project was not competitively bid, it is not transparent as to how these contractors were chosen to provide these services and if the price paid for the work was the most advantageous for taxpayers. If it had been procured correctly, the City would have publicly advertised the project, sent email notices to all registered vendors, including SBEs and M/WBEs, in the commodity code, allowed time for questions from the vendor community, received and opened bids/proposals, and vetted the bidders/proposers and their respective bids/proposals to ensure that the City received best value for public dollars while maximizing inclusion.

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<sup>6</sup> As it is now, since the MA for landscape maintenance is not subject to bonding by itself, the supplies and services performed by the landscape maintenance MA holder for this project are not bonded. It is important to note that if the appropriate procurement procedures were used, the services and supplies provided by landscape maintenance MA holder used on this project would have been included in the bond for the entire project. Reason being is that landscape maintenance by itself is not subject performance bonding requirements. However, landscape supplies and services in conjunction with a construction project would have been covered under the performance bond of the contractor ultimately awarded the project's contract.



It is important to add that any Parks Foundation monies to be used toward the construction of any City asset is subject to the same procurement and bonding requirements as prescribed by Chapter 321 of the CMC. This also includes any professional services used to design the project or to oversee the project's construction.

### **Actions Taken Thus Far to Rectify the Issue**

To date, the City has taken the following actions to rectify the issue at hand (in no particular order):

- Added the matter of the Parks Board contracting practices to scope of services of the audit firm currently charged with auditing the Parks Board and the Parks Foundation;
- Required the MA holder with the largest discrepancy in terms of initial performance bond amount in comparison to actual spend on the SMR project to increase their bonding to adequate levels;
- Identified which MAs were utilized by the Parks Board for the proliferation of this project;
- Deactivated the MAs in question in the City's financial system to prevent any transactions from being processed against the contracts until outstanding issues are resolved;
- Created a pilot program to revamp the City's contracting process for as-needed maintenance and repair work to ensure appropriate approvals are gathered prior to proceeding with any work;
- Train City staff, including Parks Board employees, on appropriate use of contingency maintenance and repair MAs; and
- Activated new tools in the financial system that put stricter controls in place to ensure the agreements are used more appropriately going forward.

### **SMR Issue in Light of Procurement Reform**

As you know, we have made significant progress in revamping and improving the City's procurement processes. With the Mayor's and Council's support, the City's procurement code, Chapter 321, was substantially overhauled to reflect greater authority of the Chief Procurement Officer, as well as to reflect current best practices with respect to competitive procurements.

Furthermore, under your leadership, we have overhauled the procurement process by centralizing all of the City's buyers under the Chief Procurement Officer in the Division of Purchasing, created a reporting structure where the Chief Procurement Officer now has a dotted line relationship and standing weekly meetings with the City Manager to discuss procurement related issues (in fact it was at one of these meetings where I brought this matter to your attention), and instituted a Department Purchasing Liaison Program. We have reissued and created a host of new policies (e.g., Administrative Regulation No. 62 and 23) and manuals which apply to all City Departments, including the Parks Board, and we are currently training all City employees that touch the procurement process on these new policies.



In light of these changes, I find it highly doubtful that a project of such a scale and magnitude, as the Smale project, could be procured in such a manner today. Even if the policies and various review and approval procedures that have been created were ignored, we have put in place stop gaps in the financial system to serve as an electronic backstop to prevent unauthorized spend.



**Attachment A**

B & J ELECTRICAL CO., INC.	Misc. Electrical Repairs	141R025120	No, but deactivated	\$255,103.00	\$2,533,245.28
UNIVERSAL CONTRACTING CORP	General Bldg Maintenance	141R015087	No, but deactivated	\$513,805.00	\$6,354,472.38
Prus Construction Co.	Repair of Sdwls, Drvwys, Crb, Cncrte Strctrs	151R005119	No, but deactivated	\$75,000.00	\$1,193,100.00
Forevergreen Landscape Co.	Landscape Maintenance	141R005467	No, but deactivated	\$0.00	\$1,441,979.86
Imbus Roofing	Roof Repair	101R015062	Yes	\$50,000.00	\$67,326.00
Prus Construction Co.	Repair of Sdwls, Drvwys, Crb, Hllsde Strwys in R/W	091R005015	Yes	\$30,000.00	\$55,000.00
FOREVERGREEN LANDSCAPE CO	Landscape Maintenance	111A001397	Yes	\$0.00	\$23,000.00
B & J ELECTRICAL CO., INC.	Misc. Electrical Repairs	091R015120	Yes	\$238,293.00	\$67,000.00
Little Miami Construction Co LLC	Repair of Sdwls, Drvwys, Crb, Cncrte Strctrs	101R005119	Yes	\$75,000.00	\$3,055,952.25
Prus Construction Co.	Repair of Sdwls, Drvwys, Crb, Cncrte Strctrs	081R005119	Yes	\$75,000.00	\$29,000.00
Glenwood Electric Inc	Misc. Electrical Repairs	111R025120	Yes	\$257,894.24	\$20,152.97
THE FRED B. DEBRA COMPANY	Maintenance and Repair of HVAC	101R035097	Yes	\$100,000.00	\$12,320.00

Date: February 8, 2016

FOR YOUR INFORMATION MEMO

To: Mayor and Members of City Council  
From: Harry Black, City Manager **HB**  
Subject: Procurement Reform Timeline

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Since my arrival, the Administration has aggressively pursued improvements in the City's procurement function in order to enhance command and control, competition and opportunities for inclusion in contracting.

What follows is a detailed, comprehensive timeline of these efforts.

As opportunities are identified, additional improvements will be made. We will keep you informed of subsequent actions going forward. The support and direction you have provided has been invaluable, and is appreciated.

**Procurement Timeline**

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|------------------------------|---|
| <b>January 2015</b>          | Memorandum issued revoking delegated authority of MSDGC Director to sign documents, including contracts, pertaining to the WWIP on behalf of the City of Cincinnati.  |
| <b>January-February 2015</b> | Implemented improvements to contract tracking database B2GNow led by Department of Public Services and City Manager's Office.   |
| <b>February 20, 2015</b>     | Issued Administrative Regulation No. 62 requiring City Manager Review and Approval of Bids, RFPs/RFQs, and Contracts in excess of \$50,000 prior to release.  |
| <b>February 27, 2015</b>     | Issued Administrative Regulation No. 63 requiring City Manager Review and Approval of Fleet Purchases.  |
| <b>March 2015</b>            | Procurement Plan and Procurement Forecast documents required of department directors each fiscal year.  |
| <b>April 2015</b>            | Formed Procurement Review Team. Procurement Review Team has met at least weekly since inception to discuss specific procurement solicitations and procurement related issues giving the Chief Procurement Officer access to the City Manager to discuss procurement and contracting related issues. |



<b>April 2015</b>	Executed funding agreement with Management Partners to analyze the City's procurement process and create a plan to implement improvements. Scope consisted of:
	<ul style="list-style-type: none"> <li>➤ Obtain relevant background information. Confirm types of procurement and organization units currently involved in the process.</li> <li>➤ Analyze Current Operations. Interview key staff, prepare process maps, review organization and staffing, approach to planning and managing work.</li> <li>➤ Conduct research, benchmarking and prepare performance metrics. Confirm improvement targets with management.</li> <li>➤ Prepare and conduct Improvement Work Out.</li> <li>➤ Support Implementation. Prepare draft Implementation Action Plan.</li> </ul>
<b>May 4, 2015</b>	Appointed Patrick A. Duhaney as Chief Procurement Officer over the Division of Purchasing.
<b>May 5, 2015</b>	Revised Administrative Regulation No. 62, City Manager Review and Approval of Bids, RFPs/RFQs, and Contracts Prior to Release as follows:
	<ul style="list-style-type: none"> <li>➤ Add amendments, work/task orders, change orders or similar methods issued against contracts under the oversight of the City Manager.</li> <li>➤ Bring MSDGC Procurement Section under the authority of the Chief Procurement Officer and merge it into the Division of Purchasing.</li> <li>➤ Required a competitive process for assigning work (i.e., task orders) to contractors that have Master Agreements for Professional Services either through equitable rotation or an abbreviated proposal process.</li> </ul>
<b>May 12, 2015</b>	Administrative de-coupling of MSD and GCWW in order to pursue business opportunities for each entity and lessen the financial burden on ratepayers.
<b>May-June 2015</b>	Interviews conducted with City staff to understand and map procurement functions and roles within each City department.
<b>July-August 2015</b>	Created procurement process maps.



- August 3, 2015** Appointed Gerald Checco as Interim MSD Director. He was made permanent in October 2016.
- September 2015** 3-day workshop with City employees, led by Management Partners, to overhaul current procurement process and procedures. Workshop participants recommended 9 strategies to the Procurement Review Team to streamline and centralize the procurement process.
- September 8, 2015** Issued memorandum requiring all professional service agreements (PSAs) and master service agreements, and their subject task orders, to be reviewed and approved by the Chief Procurement Officer prior to the City Manager's signature. The Chief Procurement Officer is to ensure that all proper approvals have been secured, the scope is in line with the procurement solicitation, and that the contract is in line with City laws and policies as it relates to procurement.
- October 1, 2015** Implemented policy to transition from heavy use of contract employees to full time employees in MSD to control costs and save ratepayer money.
- October 14, 2015** Revised Administrative Regulation No. 62, City Manager Review and Approval of Bids, RFPs/RFQs, and Contracts Prior to Release to incorporate additional oversight and to clarify that only the City Manager, or in a specific situation, as delineated in the CMC, the Chief Procurement Officer, may sign procurement related contracts that bind the City.
- October 22, 2015** Issued Memorandum to Mayor and City Council to provide guidance on inquiries from vendors or individuals seeking to do business with the City in order to avoid an appearance of impropriety.
- October 25, 2015** Executed Service Level Agreement between MSDGC and the Division of Purchasing to move MSDGC Procurement Section and staff under the Division of Purchasing's Table of Organization (TO). The staff moved to Centennial II in November 2015. All of the City's Buyers now report to one central authority.
- November 6, 2015** Issued FYI Memorandum to Mayor and City Council regarding MSDGC Master Service Agreements and the path forward to ensure the process for assigning work to contractors will be more equitable, transparent, competitive, and inclusive.
- November 10, 2015** Created Purchasing Liaison Program to assist in ensuring uniformed procurement standards and practices throughout the City. Purchasing liaisons are required to go through mandatory procurement training and are held accountable to upholding procurement standards via their annual performance review.



- November 12, 2015** Issued FYI Memorandum to Mayor and City Council outlining the Administration's requested changes to the procurement code (CMC Chapter 321) that would assist with ongoing efforts to revamp and improve the City's procurement process.
- November 17, 2015** Launched Vendor Open Data Portal making the City's Purchasing Procurement Opportunities and Contract Awards, and all supporting information, easily available on the City's website.
- December 2015** City Council approved the revision to the procurement code (CMC Chapter 321) to come in effect on January 1, 2016.
- January 4, 2016** Revised Administrative Regulation No. 62, City Manager Review and Approval of Bids, RFPs/RFQs, and Contracts Prior to Release to incorporate additional oversight.
- January 4, 2016** Revised Administrative Regulation No. 23, Policy Guidelines & Minimum Requirements for Professional and Nonstandard Services to incorporate new procurement process and procedures. This was the first revision of the City's professional services and/or nonstandard services procurement policies in 20 years.
- January 5, 2016** Issued FYI Memorandum to Mayor and City Council announcing the adoption of a Vendor Debarment Policy in accordance with CMC 321-153. This is the first time that the City had a clear policy and procedures for vendor debarment.
- January 8, 2016** City Manager met with Division of Purchasing staff and Department Purchasing Liaisons to explain direction and expectations as it relates to procurement going forward for the City.
- January 15, 2016** Announced MSD will issue RFP for services to treat Little Miami sludge at an adjacent site as opposed to hauling across the City, representing an environmentally friendly and cheaper option.
- January 21, 2016** Completed the Climate Assessment of MSD which includes a series of action items to improve operations.
- January 29, 2016** Issued FYI Memorandum to Mayor and City Council announcing the adoption of Multiple Award Contracting policy setting clear standards and making the process for ordering against these contracts more equitable and transparent for the thousands of vendors, including M/WBEs and SBEs, providing supplies and services to the City of Cincinnati. This is the first such policy in the City's history.
- January 29, 2016** Issued FYI Memorandum to Mayor and City Council announcing adoption of a new RFP Manual clearly articulating the new vision for procurement to be more responsible, accountable, disciplined,

professional, competitive, and inclusive. This manual represents the first substantial overhaul of the City's RFP process in almost a decade.

**February 3, 2016**

Held Purchasing Liaison Kickoff meeting, led by the Purchasing Division to train Department Purchasing Liaisons. Purchasing Liaisons received a brief introduction to the changes in procurement and instruction on their roles in the procurement process and in the financial system.