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MEMORANDUM

TO: Mark Roberts, Purchasing Agent, Senior
FROM: Ben Crego, Assistant County Attorney
DATE: August 4, 2020
RE: **Supplemental Litigation History Review for PNC2119546P1 Managing General Contractor for OMETS and BSO Crime Laboratory Combined Facility**

I reviewed the May 26, 2020 letter submitted on behalf of The Robins & Morton Group (“R&M”), the June 16, 2020 letter submitted in response on behalf of DPR Construction (“DPR”), and R&M’s supplemental documentation provided in response to the Broward County Purchasing Division’s July 24, 2020 request for additional information.¹ R&M identifies one (1) additional lawsuit involving DPR; and, in response DPR identifies an additional ten (10) lawsuits involving R&M. As you are aware, while cases may not present a substantial litigation related concern, litigation history is a matter of responsibility for the Evaluation Committee to ultimately decide upon.

1. Litigation History Related to DPR.

R&M identified one lawsuit captioned *Plaza Harbour Island Condominium Association Inc. v. Harbour Phase I Owners LLC*, et al., Case No. 15-CA-011176, filed in the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, involving claims against DPR for breach of an implied warranty, violation of the Florida Building Code, and negligent construction (“Plaza Harbour Case”). DPR, through its June 16, 2020 memorandum disputes the materiality of the Plaza Harbour Case. The Plaza Harbour Case should have been disclosed as material; however, the case does not present a substantial litigation related concern to the County.

The Standard Instructions to Vendors regarding litigation history requires the following from vendors:

All Vendors are required to disclose to the County all “material” cases filed, pending, or resolved during the last three (3) years prior to the solicitation response due date, whether such cases were brought by or against the Vendor, any parent or subsidiary of the Vendor, or any predecessor organization. Additionally, all Vendors are required to disclose to the County all “material” cases filed, pending,

¹ All nine (9) cases referenced in DPR’s initial submittal to the County were reviewed and evaluated by the undersigned prior to issuing the April 1, 2020 litigation history review memorandum.

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or resolved against any principal of Vendor, regardless of whether the principal was associated with Vendor at the time of the “material” cases against the principal, during the last three (3) years prior to the solicitation response.

A case is considered to be “material” if it relates, in whole or in part, to any of the following:

- i. A similar type of work that the vendor is seeking to perform for the County under the current solicitation;
- ii. An allegation of fraud, negligence, error or omissions, or malpractice against the vendor or any of its principals or agents who would be performing work under the current solicitation;
- iii. A vendor’s default, termination, suspension, failure to perform, or improper performance in connection with any contract;
- iv. The financial condition of the vendor, including any bankruptcy petition (voluntary and involuntary) or receivership; or
- v. A criminal proceeding or hearing concerning business-related offenses in which the vendor or its principals (including officers) were/are defendants.

The Plaza Harbour Case is “material” since it involves an allegation of fraud, negligence, error or omissions, or malpractice against the vendor related to a predecessor organization. Notwithstanding, DPR was dismissed with prejudice on December 26, 2017.

Although this case should have been disclosed, it does not present a substantial litigation related concern.

2. Litigation History Related to R&M.

In response to the R&M letter, DPR identifies an additional ten (10) lawsuits that were not disclosed by R&M. In its litigation history disclosure, R&M indicates that it only included “disputes and claims in excess of \$250,000, which have all been resolved.” However, the Standard Instructions to Vendors do not limit cases to any particular monetary threshold. Rather, any “material” case involving R&M that was filed, pending, or resolved during the last three years prior to the solicitation response due date should have been disclosed. As you can see in the chart below, eight (8) of the cases identified should have been disclosed as material but do not present a substantial litigation related concern to the County and two (2) cases were not material.

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<p>1. <i>The Robins & Morton Group v. Sentry Services, Inc.</i>, et al. Case No. 3:17-cv-30046-MGM, U.S. District Court, District of Mass. (Springfield Division).</p>	<p>Breach of Contract case brought by R&M against a subcontractor, pending within 3 years prior to this solicitation, related in whole or in part to a similar type of work that the vendor is seeking to perform for the County under the current solicitation. This case should have been disclosed as material but does not present a substantial litigation related concern to the County.</p>
<p>2. <i>The Robins & Morton Group v. Aries Building Systems, LLC</i>, Case No. 2017-77004, District Court of Harris County, Texas.</p>	<p>Breach of contract case brought by R&M against a subcontractor/manufacturer, pending within 3 years prior to this solicitation, related in whole or in part to a similar type of work that the vendor is seeking to perform for the County under the current solicitation. This case should have been disclosed as material but does not present a substantial litigation related concern to the County.</p>
<p>3. <i>Deborah Jones v. Longview Medical Center, et al.</i> Case No. 2015-2275-CCL2, Gregg County, Texas.</p>	<p>Negligence case involving R&M as a Defendant and Third Party Plaintiff. This case should have been disclosed as material but does not present a substantial litigation related concern to the County.</p>
<p>4. <i>Hart Mechanical Contractors, Inc. v. Robins & Morton Corp. d/b/a Robins & Morton Group, et al.</i> Case No. CACE 18-028770, Broward County Florida, Circuit Court.</p>	<p>Breach of contract and indebtedness case involving R&M as a Defendant. R&M was dismissed from this case on July 10, 2019. This case should have been disclosed as material but does not present a substantial litigation related concern to the County.</p>
<p>5. <i>A and A Sheetmetal v. Robins & Morton Corp. d/b/a Robins & Morton Group, et al.</i> Case No. CACE 18-027500, Broward County, Florida, Circuit Court.</p>	<p>Breach of contract and indebtedness case involving R&M as a Defendant. R&M was dismissed from this case on July 10, 2019. This case should have been disclosed as material but does not present a substantial litigation related concern to the County.</p>
<p>6. <i>Roxanne Carter v. Central Florida Site Development, et al.</i> Case No. 2017-CA-000840-0, Orange County, Florida, Circuit Court.</p>	<p>Premises liability case involving R&M as a Defendant. R&M was dismissed from this case on August 12, 2019. This case should have been disclosed as material but does not present a substantial litigation related concern to the County.</p>

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<p>7. <i>SSP, Inc. v. DK Hayden Construction, et al.</i> Case No. 2019CP1005777, Charleston County, South Carolina, Court of Commons Pleas.</p>	<p>Breach of contract claim involving R&M as a Defendant. The Complaint does not contain any allegations against R&M. This case is not material and was dismissed on May 27, 2020.</p>
<p>8. <i>Ferguson Receivables, LLC v. National Fire Protection, LLC, et al.</i> Case No. 2019-CP-10-4825, Charleston County, South Carolina, Court of Commons Pleas.</p>	<p>Breach of contract claim for payment by a subcontractor against R&M as contractor. The case was dismissed approximately two months after being filed. This case should have been disclosed as material but does not present a substantial litigation related concern to the County.</p>
<p>9. <i>Steadfast Insurance Company v. Plumbing Systems Inc. et al.</i> Case No. 2017 CA 000066, Escambia County, Florida, Circuit Court.</p>	<p>Negligent supervision of construction, negligent construction, and breach of implied warranty of workmanship claims against R&M as Defendant. This case was dismissed on May 1, 2018. This case should have been disclosed as material but does not present a substantial litigation related concern to the County.</p>
<p>10. <i>Ramon Ortiz, et al. v. The Robins & Morton Group, et al.</i> Case No. 2015C102215, Bexar County, Texas</p>	<p>Construction case involving R&M as a Defendant. This case was resolved as to R&M more than three (3) years prior to the solicitation response due date. R&M was not obligated to disclose this case as material.</p>

Please advise if you require any additional information.

Sincerely,

Ben Crego
Assistant County Attorney