

Collier supplemental report

Mendes, Bob (Council Member)

Sent: Wednesday, January 30, 2019 6:22 PM

To: Swann, Mark (Internal Audit)

Mark,

I want to give you a fair heads up that I disagree materially with your office's supplemental audit report about Collier in at least two regards:

1. Regarding whether work that is purely sidewalk work can be considered within the scope of the contract...

It is a firmly established rule of contract construction that examples can't override or subsume a general rule. The contract is clear that the scope covers paving, reconstructing roads and improving intersections: "Provide Construction, Engineering, and Inspection (CEI) and related services for Metro annual paving, State Aid paving, pavement preservation, roadway reconstruction and intersection improvement work..." After this clear description of the scope of services, the contract goes on to provide examples of some things that could be included. When sidewalks are mentioned in the examples, it talks about "associated" sidewalks "repairs". For the words "associated" and "repairs" to have any meaning in the contract, they simply must refer to sidewalk work that is being done in conjunction with or in aid of "Metro annual paving, State Aid paving, pavement preservation, roadway reconstruction and intersection improvement work."

In my view, to the extent that Collier was doing work on sidewalk only projects with no "associated" road repairs, paving, or planning, I just don't see how it can be read to be included in the scope of services.

2. No preponderance of evidence

As I mentioned at the last meeting, I think your office is applying a standard that is higher than preponderance of the evidence. At least in law, the meaning of the standard is that one outcome is more likely than not, and circumstantial evidence may always be used in deciding whether the standard has been met.

Here, there is clear circumstantial evidence to support a finding that preferential treatment was being provided. Collier people are working in Public Works in very close proximity to the people making decisions on contracts. Collier is a huge beneficiary of the PW contracts. The amount of Collier's work has been increasing dramatically in recent years. And we have clear evidence of people violating Metro's ethics standards. I presume you are balancing whether it is more likely, based on these facts and circumstances, that: (a) it is a complete coincidence that Collier (the company getting a ton of new work) is wining and dining key Metro PW employees while they are in the midst of getting the ton of new work; or (b) everyone making the decisions at PW is 110% not influenced in the slightest, consciously or unconsciously, by the wining and dining while PW is consolidating valuable work with Collier.

I would submit to you that it is counter-intuitive to conclude that (b) is the more likely scenario. This is quacking like a duck and needs to be called a duck.

I would urge your office to reconsider its position on these issues prior to the next Audit Committee meeting.

Bob

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