

FOR CONSIDERATION

July 23, 2009

TO: The Directors

FROM: Dennis M. Mullen

SUBJECT: New York City (New York County) -- Moynihan Station Civic and Land Use Improvement Project

REQUEST FOR: Authorization to Enter into Contracts with ATC Associates Inc. and Ismael Leyva Architects, PC in Connection with: the Remediation of Hazardous Materials; the Relocation of the United States Postal Service; and the Implementation of Interim Uses within the Farley Post Office Building

BACKGROUND

In March 2007, pursuant to ESDC Director authorization, ESDC acquired from the United States Postal Service (“USPS”) the James A. Farley Post Office Building and Annex (collectively, “Farley”), located on the Manhattan superblock between Eighth and Ninth Avenues and 31st and 33rd Streets. As part of the acquisition (and as also authorized by the Directors), ESDC and USPS entered into: (1) a Development Agreement and Interim Lease (the “Interim Lease”) pursuant to which USPS leased back approximately 900,000 SF of space at Farley from ESDC on an interim basis; and (2) a Lease Agreement which permits USPS to continue to use approximately 250,000 SF within Farley on a long-term basis (the “Permanent Lease”).

Pursuant to the Interim Lease: (a) ESDC and USPS targeted October 2009 as the point at which USPS would downsize its space at Farley; and (b) ESDC and USPS set aside \$10,000,000 of the acquisition price into an escrow “Remediation Account” to be applied by ESDC against the cost of remediation of hazardous materials at Farley.

In order to accommodate USPS space reductions, pursuant to the Interim Lease: (i) ESDC and USPS are negotiating the location, design, and fit-out of the downsized space to be retained by USPS; and (ii) ESDC is to remediate hazardous materials at Farley, including in the space to be utilized by USPS. Accordingly, ESDC requires the expertise of consultants to create requisite remediation and demolition/fit-out plans.

REMEDICATION

In 2006, as part of a Moynihan project approved by the ESDC Directors, remediation plans had been fully designed and bid to the trades, but no implementation contracts were signed and no remediation was done. Those remediation plans were designed by ATC Associates Inc.

(“ATC”), which, at that time, was retained by the designated private developer (“Related/Vornado”). ATC has offices nationwide and is expert in environmental consulting and testing, including specifically in connection with hazardous material remediation. In 2006, ATC performed a full survey of Farley, and substantive changes to the 2006 plans are not anticipated. Accordingly, Moynihan staff recommends that the most efficient path to create remediation plans for Farley would be for ESDC to directly retain ATC to update the plans that were completed in 2006.

ESDC Directors are requested to authorize ESDC to enter into a contract with ATC, in an amount not to exceed \$150,000, inclusive of: (i) \$37,000 for preparation of revised remediation bid documents and management of the bid process; (ii) \$100,000 for oversight of the abatement process and related air monitoring; and (iii) a 10% contingency.

DEMOLITION AND FIT-OUT

Also in 2006, as part of the then-approved Moynihan project, plans for the design and fit-out of USPS space had been completed by Ismael Leyva Architects, PC (“ILA”; again, on behalf of Related/Vornado). ILA has substantial experience in the design of unique commercial space worldwide, and in 2006 innovatively addressed the technical and aesthetic requirements of the Project and of the USPS. Accordingly, Moynihan staff recommends that the most efficient path to create such plans for Farley would be for ESDC to directly retain ILA to revise the plans that were completed in 2006.

There will be material changes to design and fit-out of the USPS space. In 2006, it was anticipated that USPS would make as many as seven “swing” moves between its full 900,000 SF interim space and its eventual “permanent” 250,000 SF. The current plan is for USPS to “swing” once, to consolidated space on the first and fourth floors of Farley. This would provide cost savings to the Moynihan train hall construction budget.

Therefore, ESDC Directors are requested to authorize ESDC to enter into a contract with ILA, in an amount not to exceed \$875,000 to prepare demolition and fit-out bid documents, as set forth above, inclusive of management of the bid process and a 10% contingency.

INTERIM USE

The USPS downsizing of space will result in a substantial reduction in the amount of rent that USPS pays to ESDC, as permitted by the Interim Lease. Accordingly, ESDC is planning for this eventuality by: (i) reducing Farley operating costs wherever possible; and (ii) preparing to introduce interim uses in Farley (specifically designed to not conflict with train hall construction). The USPS relocation and the remediation contemplated by the Interim Lease also constitute pre-requisites to optimal interim uses of Farley by ESDC. ESDC currently is examining Farley and applicable codes to establish what may constitute viable interim uses. ATC and ILA also will analyze the remediation, demolition, and fit-out necessary for interim uses.

FUNDING

The total of \$1,025,000 proposed for both the ATC and the ILA contracts would be funded in the first instance from existing Moynihan operating accounts, inclusive of the remainder of acquisition/operating funds granted to ESDC by the Port Authority of New York and New Jersey ("PA"). The total budget for demolition, abatement, and fit-out is estimated to be less than \$20,000,000 (inclusive of ATC/ILA work). Pursuant to the terms of the Interim Lease, the \$10,000,000 Remediation Account will be expended to cover these costs after ESDC has expended the first \$5,000,000 of remediation costs. ESDC will advance the "first" (and "last", as necessary) \$5,000,000 of this overall budget via, initially, MSDC operating accounts, subject to and conditioned upon prompt reimbursement by existing Multi-Modal commitments or other Federal funding sources. In other words, ESDC will make initial payments only (the pre-requisite to Federal reimbursement), but then the MSDC operating accounts will be "made whole" by the Federal reimbursement.

GENERAL

Pursuant to State Finance Law Sections 139-j and 139-k and the Corporation's policy related thereto, staff has: (a) considered ATC's and ILA's ability to perform the services provided for in the proposed contract; and (b) consulted the list of offerers determined to be non-responsible bidders and debarred offerers maintained by the New York State Office of General Services. Based on the foregoing, staff considers ATC and ILA to be responsible.

ENVIRONMENTAL REVIEW

The acquisition of Farley was the subject of an environmental review performed by ESDC as the lead agency. An Environmental Impact Statement ("EIS") was prepared pursuant to the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations for the New York state Department of Environmental Conservation. A SEQRA Findings Statement was adopted by the Directors on August 14, 2006. The activities in this request for authorization have been addressed in the EIS and the Findings Statement, and therefore, no further environmental review is required in connection with this request.

AFFIRMATIVE ACTION

ESDC's non-discrimination and affirmative action policy will apply to this initiative. ESDC has established a project goal of 20% Minority/Women-owned Business Enterprise contractor and/or subcontractor participation during the development of the Project, which includes the preconstruction and construction phases, and an overall goal of 25% minority and female workforce participation during construction.

REQUESTED ACTIONS

The Directors are requested to authorize ESDC to: (1) enter into a contract with ATC in an amount not to exceed \$150,000 to perform the work related to remediation described above;

and (2) enter into a contract with ILA in an amount not to exceed \$875,000 to perform the demolition and fit-out work described above; and (3) make a determination of responsibility with respect to each of ATC and ILA.

RECOMEMDATION

Based on the foregoing, I recommend approval of the requested actions.

ATTACHMENTS

Resolutions

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New York (New York County) -- Moynihan Station Civic and Land Use Improvement Project -- Authorization to Enter into Contracts with ATC Associates Inc. and Ismael Leyva Architects, PC in Connection with: the Remediation of Hazardous Materials; the Relocation of the United States Postal Service; and the Implementation of Interim Uses within the Farley Post Office Building

RESOLVED, that based on the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation (the "Materials"), the Corporation hereby finds ATC Associates Inc. ("ATC") to be responsible; and be it further

RESOLVED, that based on the Materials, the Corporation hereby finds Ismael Leyva Architects, PC ("ILA") to be responsible; and be it further

RESOLVED, that in accordance with the Materials, the Corporation be, and hereby is, authorized to enter into a contract with ATC, with an aggregate limit of \$150,000; and be it further

RESOLVED, that in accordance with the Materials, the Corporation be, and hereby is, authorized to enter into a contract with ILA, with an aggregate limit of \$875,000; and be it further

RESOLVED, that the Chairman and Chief Executive Officer-Designate, or his designee(s) be, and each of them hereby is, authorized and directed, in the name and on behalf of the Corporation, to execute and deliver any and all documents and to take all actions as may be necessary or proper to carry out the foregoing.

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