

DATE: March 20, 2017

TO: Board of Trustees

FROM: Marilyn Kappenberg

SUBJECT: EMERGENCY CONSTRUCTION/CHANGE OF WORK ORDERS

The question has arisen concerning the exception to the bidding process and the legality of a change of work orders involving the existing contract for the installation of bollards.

At the last Board Meeting (February 2017), the trustees discussed and acknowledged the dangerous existing conditions as evident by the accidents (total of 6) involving automobiles crashing into the surrounding walls of the Library. Three estimates were previously received for the installation of 20 bollards, one to be placed in front of each large cement block. At this meeting the Trustees did make a motion to award the contract to Concrete Impression, the lowest bidder. I was told to begin the project as soon as possible.

The morning after the Board Meeting I informed Concrete Impressions (the lowest bidder) to begin the work. He immediately ordered the necessary materials. Two days later the contractor came to the Library to make arrangements to begin the work.

After inspecting the sidewalk Concrete Impressions informed me that one bollard in front of each cement block would not adequately protect the building or more importantly anybody on the front sidewalk as there was too much space between each bollard. This would allow automobiles to easily pass between each one. Ten (10) more bollards were needed to adequately protect the building and patrons on the sidewalk. Based on the original cost estimate for each bollard (\$400.00) the installation of 10 more bollards would total an additional cost of \$4,000.00. The entire cost of the project is \$12,000.

I immediately e-mailed each trustees asking for permission to proceed with a change of work order. Four of the five Trustees agreed to the change of work order because of the dangerous conditions seriously affecting the safety of the public. This project can be completed under the

original contract without further bidding or the need to seek additional proposals either as a declared emergency or a general change of work orders.

NYS General Municipal Law regarding Public Contracts

Emergency Purchase

In compliance with General Municipal Law 103, proposals for the installation of 20 bollards were taken and the original contract was awarded to the lowest bidder. However, additional work can be allowed with no additional bidding or need to seek proposal under NYS General Municipal Law 103-4, "Emergency Purchase"

"An emergency purchase is the need for the procurement of goods and services arising out of an accident or other unforeseen occurrence or condition whereby circumstances affecting public buildings, public property, the life, health, safety or property of the inhabitants of a political subdivision are involved" (103-4 of NYS General Municipal Law). Proposals need not be taken and the work can begin immediately.

Our Library Attorney reviewed the issue and fully agrees that under this law there is no need to further seek proposals for additional work for the installation of additional bollards as this can be considered an emergency purchase. We can proceed with the installation of additional bollards under the original public contract with Concrete Impressions. When there is a serious danger posed to the public NYS does allow for emergency purchases such as this one.

Change of Work Order

Additional work under an existing public contract can also be completed through a general "Change of Work Order" without violating NYS Procurement Laws.

"Change Orders may be issued without competitive bidding as to details and minor particulars of a public project, but no important general change may be made which so varies from the original plan or is of such importance as to constitute a new undertaking" (NYS Comptroller's Decision Public Contract 123, Article 5-a Section 30).

I was able to speak directly to a representative from the NYS Office of NYS Comptroller and explained the situation. He stated that NYS does allow for a "Change of Work Orders" provided it does not significantly change the type or scope of the work contracted to be done (i.e. building a brick wall instead of installing bollards as provided in the original contract would not qualify for the change of work order.) Adding 10 bollards does not significantly change the scope of the original project. However, he did add that it is most important to carefully document the reason or reasons for the "Change of Work Orders" and to always closely follow the advice of the Library Attorney.

