



Legislation Details (With Text)

File #: 21-1168 **Version:** 1 **Name:** Resolution/Contract: Best, Best & Krieger, LLP for Small Cell Wireless Facility Permit Review Services
Type: Resolution **Status:** Adopted
File created: 8/2/2021 **In control:** Engineering
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Title: Dept/ Agency: Engineering
Action: ☒ Ratifying ☒ Authorizing ☐ Amending
Type of Service: Professional Services Contract
Purpose: To negotiate contracts and handle litigation matters related to Small Cell Wireless Facility Permits.
Entity Name: Best, Best & Krieger, LLP
Entity Address: 1800 K Street, NW, Suite 725, Washington, DC 20006
Contract Amount: Not to exceed \$150,000.00
Funding Source: Proceeds from applications received
Contract Period: September 1, 2021 through August 31, 2022
Contract Basis: ☐ Bid ☐ State Vendor ☒ Prof. Ser. ☐ EUS
☐ Fair & Open ☐ No Reportable Contributions ☐ RFP ☐ RFQ
☐ Private Sale ☐ Grant ☐ Sub-recipient ☐ n/a
Addition Information:
The funding source of this contract will come from the proceeds that the City receives from applications from telecommunication companies for the installation and deployment of wireless and any associated wireline facilities, including small wireless facilities and facilities associated with 5G deployments within the City's public right of way.

Sponsors: Council of the Whole

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Code sections:

Date	Ver.	Action By	Action	Result
10/20/2021	1	Municipal Council	Adopt	Pass

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deployments within the City's public right of way.

WHEREAS, the City of Newark, Department of Engineering (the "City"), is in need of Professional Legal Services to prepare legal documents and negotiate contracts with telecommunication carriers, as well as represent the City in any legal actions filed against the City pertaining to or resulting from installation and deployment of wireless and any associated wireline facilities, including in particular small wireless facilities and facilities associated with 5G deployments within the City's public rights of way (the "Professional Legal Services"); and

WHEREAS, Professional Legal Services are exempt from the requirements of public bidding pursuant to the Local Public Contracts Law, more specifically, N.J.S.A. 40A:11-5(1)(a)(i); and

WHEREAS, the City wishes to enter into a Professional Services Contract with Best, Best & Krieger LLP, located at 1800 K Street, NW, Suite 725, Washington, DC 20006, for an amount not to exceed One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00), to provide the Professional Legal Services for a period of one (1) year commencing on September 1, 2021 and terminating on August 31, 2022; and

WHEREAS, Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., requires that notice of the award of contracts for "Professional Services" without competitive bidding must be published in a local newspaper; and

WHEREAS, this contract is for an amount over \$17,500.00 and is being awarded pursuant to a "Non-Fair and Open Process" pursuant to N.J.S.A. 19:44A-20.5; and

WHEREAS, Best, Best & Krieger LLP, has completed and submitted a Business Entity Disclosure Certification, which certifies that Best, Best & Krieger LLP, has not made any reportable contributions to a political or a candidate committee in the City of Newark in the previous one (1) year prior to award, and that the contract will prohibit Best, Best & Krieger LLP from making any reportable contributions through the term of the contract; and

WHEREAS, the Municipal Council adopted the Contractor Pay-to-Pay Reform Ordinance, Newark, New Jersey Municipal Code § 2:4-22C, which forbids the award of a contract to a Business Entity, as defined therein, which has made or solicited political contributions to Newark Municipal Candidates and County of Essex Candidates, office holders having ultimate responsibility for the award of a contract; candidate committees of the aforementioned candidates; and political or political party committees of the City of Newark or County of Essex; and continuing political committees or political action committees regularly engaged in the support of the City of Newark Municipal or County of Essex Elections; and certain other political party or candidate committees, in excess of certain thresholds.

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY, THAT:

1. The Mayor of the City of Newark and/or his designee, the Director of the Department of Engineering, are hereby authorized and directed on behalf of the City of Newark to enter into and execute a contract with Best, Best & Krieger LLP, 1800 K Street, NW, Suite 725, Washington, DC 20006, to prepare legal documents and negotiate contracts with telecommunication carriers, as well as represent the City in any legal actions filed against the City pertaining to or resulting from

installation and deployment of wireless and any associated wireline facilities, including in particular small wireless facilities and facilities associated with 5G deployments within the City's public rights of way, for a period of one (1) year commencing on September 1, 2021 and terminating on August 31, 2022, for an amount not to exceed One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00).

2. Pursuant to the Federal Communications Commissions (FCC) regulations and under the Law, the City is entitled to recover reasonable costs incurred by the City to review applications received from telecommunication carriers for the installation and deployment of wireless and any associated wireline facilities, including in particular small wireless facilities and facilities associated with 5G deployments within the City's public rights of way.

3. The funding for this contract shall come from the proceeds that the City receives from the applications received by the City from telecommunication companies for the installation and deployment of wireless and any associated wireline facilities, including in particular small wireless facilities and facilities associated with 5G deployments within the City's public rights of way.

4. This contract is awarded without competitive bidding as a "Professional Service" in accordance with N.J.S.A. 40A:11-5(a)(i) of the Local Public Contracts Law because the performance of the service required will be performed by someone who is a licensed engineer in the State of New Jersey.

5. This contract is awarded pursuant to the Non-Fair and Open Procedures of the State Pay-to-Play Law, N.J.S.A. 19:44A-20.5 and pursuant to the provisions of the Local Public Contracts Law, N.J.S.A. 40A:11-5(1)(a)(i) and is in compliance with the Pay-to-Play Reform Ordinance, Newark, New Jersey, Municipal Code §2:4-22C.

6. This is an open-ended contract to be used as needed during the term of the contract. Thus, for any and all expenditures against this contract, a certification of the availability of sufficient funds, as required by N.J.A.C. 5:30-5.5(b)(2), shall be executed before a contractual liability is incurred each time work is requested from the Account Code Line set up by the Director of the Department of Finance under the Department of Engineering's budget.

7. A copy of the Political Contribution Disclosure Form and the Determination of Value letter are attached and shall be placed on file with the resolution in the Office of the City Clerk.

8. Best, Best & Krieger LLP, has completed and submitted a Business Entity Disclosure Certificate, which shall be placed on file with the resolution in the Office of the City Clerk, certifying that Best, Best & Krieger LLP has not made any reportable contributions to a political or a candidate committee in the City of Newark in the previous one (1) year, and the contract will prohibit Best, Best & Krieger LLP from making reportable contributions through the term of the contract.

9. This contract is ratified from September 1, 2021 until the date of adoption of this authorizing resolution.

10. A copy of the fully executed contract herein authorized shall be filed in the Office of the City Clerk by the Director of the Department of Engineering and shall be made available for public inspection.

11. There shall be no advance payments made against this contract in accordance with N.J.S.A. 40A:5-16.

12. A notice of this action shall be published in the newspaper authorized by law to publish a legal advertisement and as required by law within ten (10) days of the adoption of this resolution.

STATEMENT

This Resolution ratifies and authorizes the Mayor of the City of Newark and/or his designee, the Director of the Department of Engineering to enter into and execute a Professional Services Contract with Best, Best & Krieger LLP, located at 1800 K Street, NW, Suite 725, Washington, DC 20006, to prepare legal documents and negotiate contracts with telecommunication carriers, as well as represent the City in any legal actions filed against the City pertaining to or resulting from installation and deployment of wireless and any associated wireline facilities, including in particular small wireless facilities and facilities associated with 5G deployments within the City's public rights of way, for a period of one (1) year commencing on September 1, 2021 and terminating on August 31, 2022, for an amount not to exceed \$150,000.00.