

# Memorandum

MIAMI-DADE  
COUNTY

**Date:** November 20, 2008

**To:** Honorable Chairman Bruno A. Barreiro  
and Members, Board of County Commissioners

**From:** George W. Burgess  
County Manager

**Subject:** Supplemental Information Regarding Bid Protests Filed by Tran Construction, Inc.  
for Project Nos. 20070645, 20070735 and 20070682 People's Transportation Plan  
(PTP) – Roadway Improvements

Supplement to  
Agenda Item No. 8P1LL

This supplemental information is being provided in regards to bid protests filed by Tran Construction, Inc. for the subject PTP Roadway Projects as listed below:

- Contract Award Recommendation in the Amount of \$1,202,229.21 to Acosta Tractors, Inc. for the People's Transportation Plan (PTP) Traffic Operational Improvements along SW 180 Street, from SW 147 Avenue to SW 137 Avenue, Located Within Commission District 9 (Project No: 20070735 PTP; Contract No: 20070735)
- Contract Award Recommendation in the Amount \$5,729,781.10 to Trans-Florida Development Corp. for the People's Transportation Plan (PTP) roadway improvements along SW 160 Street, from SW 147 Avenue to SW 137 Avenue, located within Commission District 9 (Project No: 20070682 PTP Contract No: 20070682)
- Contract Award Recommendation in the Amount of \$1,463,815.13 to General Asphalt Co., Inc. for the People's Transportation Plan (PTP) Roadway Improvements along SW 72 Avenue, from SW 40 Street to SW 20 Street, Located Within Commission District 6 (Project No: 20070645 PTP; Contract No: 20070645)

The aforementioned projects were scheduled for Committee review at the September 10, 2008 Transit Committee (TC); however, on August 29, 2008, a bid protest was filed with the Clerk of the Board by Tran Construction, Inc. for each of the three (3) subject projects. Tran Construction, Inc. had submitted the lowest bids for each of the projects, however, their bids were determined to be null and void in accordance with Section 10-3 of the Miami-Dade County Code due to the firm not holding the applicable required license(s).

On September 24, 2008, one bid protest hearing was held for the three (3) projects. The Hearing Officer issued his ruling on October 9, 2008, to the Clerk of the Board (attached) with the finding that Miami-Dade County acted in accordance with the applicable laws and denied the three (3) bid protests of Tran Construction, Inc. As a result of the findings, these contract awards are being resubmitted for Board approval.

  
Assistant County Manager



**Harvey Ruvin**  
CLERK OF THE CIRCUIT AND COUNTY COURTS  
Miami-Dade County, Florida

**CLERK OF THE BOARD OF COUNTY COMMISSIONERS**  
STEPHEN P. CLARK MIAMI-DADE GOVERNMENT CENTER

SUITE 17-202  
111 N.W. 1st Street  
Miami, FL 33128-1983  
Telephone: (305) 375-5126  
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October 9, 2008

Bill Chorba, Attorney  
5353 North Federal Highway, Suite 303  
Fort Lauderdale, Florida 33308

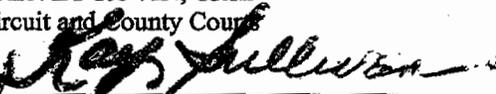
Re: Bid Protest – Project Nos. 20070645; 20070735; and 20070682  
(PTP) – Roadway Improvements

Dear Attorney Chorba:

Pursuant to Section 2-8.4 of the Code and Implementing Order 3-21, forwarded for your information is a copy of the Findings and Recommendation filed by the hearing examiner in connection with the foregoing bid protest which was held on September 24, 2008.

Should you have any questions regarding this matter, please do not hesitate to contact this office.

Sincerely,  
HARVEY RUVIN, Clerk  
Circuit and County Courts

By   
Kay Sullivan, Director  
Clerk of the Board Division

KS:fed

Attachment

cc: George Burgess, County Manager (via email)  
Hugo Benitez, Assistant County Attorney (via email)  
Miriam Singer, Director, Dept. of Procurement Management (via email)  
Walter Fogarty, DPM (via email)  
Esther Calas, Director, Public Works Department (via email)  
Frank Aira, P.E., CFM, Manager, Contracts, Public Works Department (via email)  
Harpal S. Kapoor, Director, Transit Department (via email)  
Henry T. Loudon, President, Tran Construction, Inc. (via facsimile)  
Felix Acosta, Acosta Tractors, Inc. (via US mail)  
Jose Fernandez, Community Asphalt, Inc. (via US mail)  
Sam LoBue, Downrite Engineering Corp (via US mail)  
Raul Gonzalez, H & R Paving, Inc. (via US mail)  
Morton Myrick, Pavex Corporation d/b/a Ranger Construction South (via US mail)  
Jose Rodriguez, Williams Paving Co., Inc. (via US mail)  
James Eason, The Redland Company, Inc. (via US mail)  
Miguel A. Jimenez, Budget Construction, Inc. (via US mail)  
Jorge Pulles, Construct Group, Corp. (via US mail)  
Andres Correa, Solution Construction, Inc (via US mail)  
Victor Lowry, Soares Da Costa, LLC (via US mail)  
Carlos Petersen, Development and Communication Group of Florida (via US mail)  
Jose M. Sanchez, Horizon Contractors, Inc. (via US mail)  
Jose Mario Alvarez, JVA Engineering Contractors, Inc. (via US mail)  
Jorge Paz, Kailas Corp. (via US mail)  
Richard Gonzalez, Quality Paving, Corp. (via US mail)  
Humberto Lorenzo, H & J Asphalt, Inc. (via US mail)  
Robert Rodriguez, Conquest Engineering Group Company (via US mail)

**DOUTHIT LAW, LLC**  
**12550 Biscayne Blvd.**  
**Suite 500**  
**North Miami, FL 33181**  
**(305) 893-0110 (305) 893-7499 Fax**

CLERK OF THE BOARD

2008 OCT -9 PM 3:38

CLERK, BRUCE & COUNTY COURTS  
DADE COUNTY, FLA.  
#1

October 8, 2008

TO: Clerk of the Board  
FROM: Marc Anthony Douthit, Esq.  
RE: Bid Protests 20070645, 20070682, 20070735

**MEMORANDUM OPINION**

This matter came before this Hearing Officer on the Bid Protests of Tran Construction, Inc. (Tran) protesting Miami-Dade County's Recommendation of Award of Project 20070645 to General Asphalt, Inc.; Award of Project 20070682 to Trans-Florida Development Corp.; and Award of Project 20070735 to Acosta Tractors, Inc. all dated August 26, 2008.

Tran filed a single Bid Protest incorporating all three projects on August 29, 2008 pursuant to Sections 2-8.3 and 2-8.4 of the Miami-Dade County Code. No objections as to the timeliness or the validity of the Protest has been filed by any party and on its face, the Bid Protest appears to comply with the relevant provisions of the Miami-Dade County Code. The parties have stipulated that the relevant facts and issues that are applicable to each of the individual projects would apply to all three. As such, all three Bid Protests have been heard and argued simultaneously.

Specifically, the parties have stipulated to the following facts:

1. Tran Construction was the lowest bidder on the project.
2. Tran was and is a State Certified General Contractor
3. The Bid Protest was timely filed.

The Bid Protest raised two (2) points for consideration at the hearing:

1. A State-Certified General Contractor as defined Pursuant to *Chapter 489.105(3)(a), Florida Statutes (2008)*, is unlimited in the services it can perform statewide.
2. The Solicitations recognized that a State General Contractor's License was sufficient.

Miami-Dade County argues that the qualifications required to be a responsible bidder are clearly set forth in the bid documents and Tran's failure to have a Miami-Dade County Certification in either General Building, General Engineering, Paving Engineering or other category as applicable under Chapter 10 of the Miami-Dade Code was fatal to Tran's bid and that it is the nature of the work that determines the license that is required.

Henry Loudon, the Principal for Tran testified that Tran had performed work in Miami-Dade County on similar projects without any complications or problems. He further testified that he had attempted to obtain one of the Miami-Dade County Certifications set forth in the Solicitation for Bid, but failed the exam. However, as a state certified General Contractor, he and his company were more than qualified to perform the work solicited under the three bid solicitations.

Tran has argued that under *Florida Statute, Section 489.105(3)(a)*, a general

contractor is unlimited in the type of work that it can perform and as such it is qualified to perform the work in question. Tran further argues that Florida Statute Section 489.103 creates an exemption for specific types of certifications required to perform work on bridges, roads, streets, highways, or railroads, and services incidental thereto. It is undisputed that the work in question falls under the categories subject to the exemption language of *Section 489.105, Florida Statutes*.

Tran further argues that the Solicitation for Bid and Specifications and Contract Documents (collectively "Bid Documents") are ambiguous as to the actual requirements needed by a bidder and that any such ambiguity should be construed against Miami-Dade County. Specifically, the language of the Solicitation for Bids states the requirement for the Miami-Dade Contractor's Certification, but the Specifications and Contract Documents in section 16, make holding the Certification an alternative to a license provided for under *Florida Statute, 489.115*. As such, Tran has argued that it holds a license in the appropriate category under *Section 489.115* and therefore it meets the qualifications required under the Bid Documents.

In response to a specific inquiry by the Hearing Officer, the parties agreed that the Bid Documents were comprised of both the Solicitation for Bids and the Specifications and Contract Documents. It should be noted that the language in the Solicitation for Bids that sets forth the requirements of the Miami-Dade County Certification is set forth in bold type and is displayed prominently on the first page of the document. While it does appear that the Specifications and Contract Documents creates an alternative qualification, this does not make the language of the Solicitation for Bids meaningless. A bidder could meet the requirement by simply holding a Miami-Dade County

Certification or if they have an appropriate license under *Section 489.115*, they must also have the Miami-Dade County Certification.

It appears from the evidence presented that there are differences between the substantive information required for a General Contractor, licensed pursuant to Florida Statutes and the substantive information required for a entity or individual who has a Miami-Dade County Certification as provided for in Section 10 of the Miami-Dade County Code. There are separate examination requirements and given the fact that the Principal for Tran was unsuccessful in his first attempt to qualify for the license, there are apparently different areas of expertise covered on the exam.

In support of its position, Tran cites the case of *Envirogenics Systems Company v. City of Cape Coral*, 529 So.2d 279 (Fla. 1988), for the proposition that since this work is exempted by *Section 489.103, Florida Statutes*, no further certifications are required. *Envirogenics* involves the question of interpretation of the language in this Statute as to whether it is limited to work that pertains only to utility work that is ancillary to a transportation project. *Envirogenics at 280*. Here it is undisputed that the work would otherwise qualify under the exemption, but nothing in *Envirogenics* prohibits Miami-Dade County from placing its own requirements on a bidder performing work on a project that falls into a statutorily exempt category. Indeed, it is Miami-Dade County's position, that the exemption actually places the responsibility for determining the qualifications of a bidder on a project on the County and that it is not limited to the qualifications under *Florida Statute, 489.115*.

*Section 255.20, Florida Statutes*, specifically allows Miami-Dade County to place certification requirements on a contractor if they desire to do so. In its use of the word

"may", Section 255.20 gives Miami-Dade County the latitude to impose its own requirements. From the clear language of the Solicitation for Bids, Miami-Dade County has expressed its desire and intent to place such a certification requirement on the bidders of these projects.<sup>1</sup>

It has not been asserted by Tran that Miami-Dade County was not within its authority to impose such a requirement on the bidders of the projects and further, the issue of whether this certification was an absolute requirement was not raised by Tran during the time period between the Solicitation for Bids and the date for the opening of the bids.<sup>2</sup>

#### FINDINGS

Based upon the review of the applicable Florida Statutes, the Miami-Dade County Code, the Case law provided by the parties and the exhibits and testimony presented at the hearing, I do not find that the action of Miami-Dade County in determining that Tran did not meet the requirements of the Bid Documents was arbitrary, capricious and not otherwise comporting with the law as applied in this case. Miami-Dade County was entitled to place such a requirement on the bidders for the projects and the failure on the part of Tran to have the required Certification was fatal to its bid. The language of the

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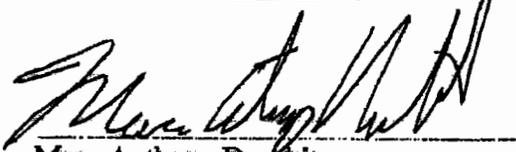
<sup>1</sup>Miami-Dade County raised the issue of the applicability of Section 255 for the first time at the Hearing. Tran, after inquiry did not challenge the right of Miami-Dade County to raise this issue. It should be noted that even if Tran had objected to Miami-Dade County's right to raise this issue, the Hearing Officer has the authority to apply all laws which may be applicable to a particular issue even in the absence of a specific reference by the parties.

<sup>2</sup>Henry Loudon, the Principal for Tran testified that tran did not attend the Pre-Bid meetings, nor did they make inquiry to Miami-Dade County about the certifications prior to the submission of their bid.

Bid Documents was clear and any ambiguity that may have existed was not material enough to invalidate the bid process or to disadvantage any bidder to the extent that the bid process was unfair to any party.

The determination of Miami-Dade County is upheld and the Bid Protest of Tran is DENIED.

Submitted this <sup>9<sup>th</sup></sup> day of October, 2008 at Miami-Dade County, Florida.



Marc Anthony Douthitt  
Hearing Officer