

Memorandum



Date: October 19, 2010

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

From: George M. Burgess
County Manager 

Subject: Supplemental Information Regarding Bid Protest Filed by Trans Florida Development Corporation for the Project Entitled Roadway Widening Along SW 184 Street, from SW 137 Avenue to SW 147 Avenue (Project No: 20100394; Contract No: 20100394)

Supplement to
Agenda Item No. 8P1A

The subject Public Works Department (PWD) project was scheduled for the September 15, 2010 Transportation, Infrastructure and Roads Committee (TIRC); however, on August 30, 2010, a bid protest was filed with the Clerk of the Board (COB) by Trans Florida Development Corporation (Trans Florida).

Trans Florida, the second lowest bidder, protested that the lowest bidder, Williams Paving Company, Inc., should have been found non-responsive based on their subcontractor listing of J & M Pavement Markings, Certification #11945, to carry out the pavement marking scope of work on one of the Schedule of Intent (SOI) forms submitted to meet the 11% CSBE participation goal. While the company J & M Pavement Markings is not registered with Small Business Development (SBD) and the certification number provided is not a CSBE Certification, SBD has maintained that the submitted SOI form contained sufficient information for the proper identification of the registered CSBE firm, J & M Parking Lot Maintenance, Inc. (J & M). In their review process, SBD found that the certification number provided (#11945) belongs to J & M, which holds two (2) SBD certifications: CSBE Certification #1234 and Micro/SBE Certification #11945. Furthermore, SBD found that the name of the Company Principal listed on the SOI also corresponded to that of J & M's.

On September 22, 2010, a bid protest hearing was held, and the Hearing Officer filed his ruling the same day, denying the bid protest filed by Trans Florida and upholding the Manager's recommendation (Attached).

As such, it is therefore recommended that the subject project be awarded to the lowest responsive, responsible bidder, Williams Paving Company, Inc.


Assistant County Manager



MEMORANDUM

TO: LISTED DISTRIBUTION

DATE: September 7, 2010

FROM: Diane Collins, Acting Division Chief
Clerk of the Board Division

SUBJECT: Bid Protest – Project No. 20100394
Roadway Widening on SW 184th Street
from SW 137th Avenue and SW 147th
Avenue

Diane Collins

Pursuant to Section 2-8.4 of the Code and Implementing Order 3-21, Bid Protest Procedures, a bid protest was filed in the Clerk of the Board's Office on August 30, 2010, in connection with the foregoing Contract. The protest was filed by Attorney David Hazouri, representing Trans Florida Development Corporation.

A filing fee in the amount of \$5,000.00 was submitted with the bid protest.

If you have any questions pertaining to this protest, please contact my assistant in charge of bid protest procedures Fara C. Diaz at Ext. 1293.

DC/fcd
Attachments

DISTRIBUTION:

Honorable Mayor Carlos Alvarez (via email)
Board of County Commissioners (via email)
George Burgess, County Manager (via email)
Ysela Llort, Assistant County Manager (via email)
Hugo Benitez, Assistant County Attorney (via email)
Daniel Frastai, Assistant County Attorney (via email)
Charles Anderson, Commission Auditor
Miriam Singer, Director, Department of Procurement Management (via email)
Walter Fogarty, Department of Procurement Management (via email)
Esther Calas, P.E., Director, Public Works Department (via email)
John Renfrow, Director, Miami-Dade Water & Sewer Department (via email)
Penelope Townsley, Director, Small Business Development (via email)
Fernando Alonso, Miami-Dade Water & Sewer Department (via email)
Frank Aira, Contract Manager, Public Works Department (via email)
Gisela Cubeddu, Project Manager, Public Works Department (via email)

LAW OFFICES
SHUBIN & BASS
P R O F E S S I O N A L A S S O C I A T I O N

Via Hand Delivery

August 30, 2010

The Honorable Harvey Ruvin
Clerk of the Board of County Commissioners
Miami-Dade County
Stephen P. Clark Center, Suite 17-202
111 NW First Street
Miami, FL 33128-1905

CLERK OF THE BOARD
2010 AUG 30 PM 3:35
CLERK, CIRCUIT & COUNTY COURTS
DADE COUNTY, FLA.
#1

**Re: Intent to Protest Recommendation of Award:
Project No. 20100394, Roadway Widening along SW 184th Street**

Dear Mr. Ruvin:

This correspondence is transmitted to you pursuant to Section 2-8.4 of the Code of Miami-Dade County and Implementing Order 3-21, and shall serve as our Notice of Intent to Protest, on behalf of our client Trans Florida Development Corp. ("Trans Florida"), the County's August 25, 2010 Recommendation of Award for the above-referenced project ("Recommendation"). A true and correct copy of the Recommendation is attached as Exhibit "A." Trans Florida's Notice of Intent to Protest is being timely filed within three business days of issuance of the Recommendation, and is accompanied with the requisite filing fee of \$5000.00 payable to the Clerk of the Board.

Trans Florida intends to protest this Recommendation because the contract is proposed to be awarded to Williams Paving Company, Inc. ("Williams"), which submitted a manifestly non-responsive bid and therefore should have been immediately eliminated from this competitive procurement. Specifically, as set forth in both the County's Advertisement for Bids and the Bid Documents, this project established a mandatory goal of 11% for Community Small Business Enterprise ("CSBE") sub-contractors. Pursuant to Section 1.02.A of the Bid Documents, each bidder was required to submit a Schedule Of Intent Affidavit ("SOI Affidavit") specifically identifying the CSBE corporations that would be utilized to achieve the 11% requirement. The SOI Affidavit executed and submitted by Williams, dated June 11, 2010 and filed with your office as part of its own bid package, identified "J & M Pavement Marking" as one of its two, proposed CSBE corporation sub-contractors. Williams further identified this entity's County-issued CSBE

certification number as "11945." A true and correct copy of Williams' SOI Affidavit for that entity is attached as Exhibit "B."

However, as of the bid submittal date, neither the corporation name "J & M Pavement Marking" nor the certification number "11945" appeared anywhere on the County's list of approved, CSBE firms. To this date, neither a corporation by that name nor the cited certification number appears on the County's official CSBE list. (In fact, a thorough search of the state's Division of Corporation records reveals only a "J & M Pavement Markings," albeit plural: An expired fictitious name registered to a non-CSBE firm located in Central Florida.)

A true and correct copy of the entire document file ("File Copy") maintained by the County's Department of Small Business Development ("SBD") regarding this procurement is attached as Exhibit "C." This 166-page File Copy was produced for and delivered to a representative of Trans Florida on August 27, 2010, pursuant to a Public Records Act Request to the director of SBD. Upon delivery to Trans Florida, the director's secretary stated that the File Copy was "complete." Nowhere in the File Copy is there any acknowledgment that "J & M Pavement Marking" is a non-existent or uncertified CSBE company.

A corporation that either does not exist and/or is not CSBE-certified cannot perform any work and cannot be utilized by Williams to try to meet the mandatory, 11% sub-contractor participation required on this project. Pursuant to Section 1.02A and Miami-Dade County Code, Williams' bid submittal should have been deemed non-responsive upon delivery and its bid rejected at once. To the contrary, however, the County administration allowed Williams' bid to continue in this procurement process and to be recommended for contract award. In this respect, the County's action was in contravention of the Miami-Dade County Code and its own, well-established bid procedures, and therefore was improper and illegal.

Given the fact that Trans Florida was the next-lowest responsive and responsible bidder, Trans Florida should have received a proper recommendation of award for this project.

Sincerely,



David Hazouri
For the firm

Enclosures

cc: Robert A. Cuevas, Jr., County Attorney
Aquilino Melo, Trans Florida Development Corp.

SHUBIN & BASS, P.A.

Williams Paving Co., Inc.
Southeastern Engineering Contractors, Inc.
Atlantic Civil, Inc.
Acosta Tractors, Inc.
American Engineering & Development Corp.
Central Florida Equipment Rentals, Inc.
Community Asphalt Corp.
General Asphalt Co., Inc.
Globetec Construction, LLC
Gonzalez & Sons Equipment Inc.
H & R Paving, Inc.
Horizon Contractors, Inc.
Lanzo Construction Co. Florida
Marks Brothers, Inc.
Metro Express, Inc.
Pavex Corp. d/b/a Ranger Construction South
The Redland Company, Inc.

SHUBIN & BASS, P.A.

5



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
Fax: (305) 375-2484

September 22, 2010

David Hazouri, Esq.
Shubin & Bass, P.A.
46 S.W. 1st Street, 3rd Floor
Miami, Florida 33130

Re: Bid Protest – Project No. 20100394
Roadway Widening on SW 184th Street from SW 137th Avenue and SW 147th Avenue

Dear Mr. Hazouri:

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 hearing held on September 22, 2010.

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 *Diane Collins*
Diane Collins, Acting Division Chief
Clerk of the Board Division

DC/fcd
Attachments

cc: Honorable Carlos Alvarez, Miami-Dade County Mayor (via email)
George Burgess, County Manager (via email)
Ysela Llorc, Assistant County Manager (via email)
Hugo Benitez, Assistant County Attorney (via email)
Daniel Frastai, Assistant County Attorney (via email)
Miriam Singer, Acting Director, DPM (via email)
Walter Fogarty, Department of Procurement Mgt. (via email)
Esther Calas, P.E., Director, Public Works Department (via email)
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Fernando Alonso, Miami-Dade Water & Sewer Dept. (via email)
Frank Aira, Contract Manager, Public Works Dept. (via email)
Giisela Cubeddu, Project Manager, Public Works Dept. (via email)
Alejandro Vilarello, P.A. (via email)
All Bidders

CLERK OF THE BOARD

2010 SEP 22 AM 11:36

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

HARVEY RUVIN, CLERK OF THE BOARD

TRANS FLORIDA DEVELOPMENT
CORPORATION,

Petitioner,

v.

MIAMI-DADE COUNTY,

Respondent.

BID PROTEST

RE: PROTEST OF
RECOMMENDATION OF
AWARD FOR PROJECT
NO. 20100394

**IN THE MATTER OF THE BID PROTEST RELATED TO PROJECT
NO. 20100394, ROADWAY WIDENING ALONG SW 184th STREET
FILED BY TRANS FLORIDA DEVELOPMENT CORPORATION**

This matter came before me as hearing examiner on Wednesday, September 22, 2010, pursuant to Section 2-8.4 of the Code of Miami-Dade County, on the bid protest filed by Trans Florida Development Corporation ("Trans Florida") challenging Miami-Dade County's ("the County") decision to recommend award of the contract for the above referenced project to Williams Paving Company (hereinafter "Williams Paving"). For the reasons set forth below, the bid protest is denied and I recommend that the contract be awarded to Williams Paving, the lowest responsive and responsible bidder.

FINDINGS OF FACT

1. The County received several bids for the Project. According to the bid documents, the bidder was required to submit a Schedule of Intent Affidavit (SOI) in one envelope marked Envelope "A" and the remainder of the bid submittal was to be enclosed in a second envelope marked Envelope "B." Envelope "A" is opened and the SOI is then reviewed by the County's Small Business Development department ("SBD") for a preliminary compliance review.
2. According to the bid documents, the County reserved the right to waive informalities and irregularities. Furthermore, within 48 hours of bid submittal, bidders were allowed to cure correctable defects on the SOI.
3. Williams Paving's SOI was reviewed by SBD and was found to be in compliance with the bid documents. However, in the SOI under the heading "The undersigned intends to perform the following work in connection with the above contract:" was inserted the following: "J & M Pavement Markings." Next to this information a certification number was included. Under the heading "Type of CSBE work to be performed by Subcontractor" the following was written: "Pav. Markings." Underneath was the name and signature of the President, Mr. Jose Gonzalez.
4. While there isn't a company registered with SBD by the name of J & M Pavement Markings, there is a CSBE certified company by the name of J & M Parking Lot. The

president of that company is Jose Gonzalez. The certification number listed in the SOI does belong to that company and that company only, although it is for another type of SBD certification, a Micro SBE certification. And that company does perform pavement markings.

5. Trans Florida argued that "in derogation of the County's own Code and bid procedures the Department of Small Business Development unilaterally substituted a CSBE-certified subcontractor on Williams' behalf" and that as a result the County's actions were "arbitrary and capricious." Clearly that is not the case. The County acted well within its authority by waiving this irregularity as the bid documents clearly provide for. While the name of the company is J & M Parking Lot, not J & M Pavement Markings, this is clearly an irregularity that the County could waive. The SOI listed the president of J & M Parking Lot, the certification number used belongs to one company only: J & M Parking Lots, and there is no company called J & M Pavement Markings, so it couldn't have been any other company. Furthermore, pavement markings is the actual work that J & M will perform and as a result the irregularity is waivable.

6. Envelope "B" which was submitted along with envelope "A" included the full name of J & M Parking Lot so it is clear from the bid documents, without even having to consult the bidder, who the intended subcontractor was. In fact, even if the County wanted to contact the bidder it could have done so since the bid documents provide that the bidder is allowed to cure correctable defects. In addition, these opportunities are available to all bidders not just Williams Paving, in other words they are not receiving an advantage or opportunity not afforded to others.

7. According to Florida case law, while a bid containing a material variance is generally unacceptable, "not every deviation from the invitation is material." Robinson Electrical Co. v. Dade County, 417 So.2d 1032, 1034 (Fla.3d DCA 1982).

8. In Robinson the Court stated that "in determining whether a specific noncompliance constitutes a substantial and hence nonwaivable irregularity, the courts have applied two criteria- first whether the effect of the waiver would be to deprive the municipality of its assurance that the contract will be entered into, performed and guaranteed according to its specific requirements, and second whether it is of such nature that its waiver would adversely affect competitive bidding by placing a bidder in a



position of advantage over other bidders or by otherwise undermining the necessary common standard of competition." To the extent that it may be considered an irregularity that half of the name of the subcontractor was incorrect this is clearly not a material irregularity and is waivable. Under the first part of the test the fact that there was an error in part of the name but the remainder of the information pointed to that company and no other does not in any way deprive the County of any assurance that the contract with Williams Paving would be entered into, performed and guaranteed according to its specific requirements.

9. Under the second part of the test, the fact the part of the name was incorrect does not in any way adversely affect competitive bidding by placing a bidder in a position of advantage. Williams Paving has not received any treatment, advantage or opportunity that is not available to other bidders. There is simply no indication that the irregularity of having written part of the name wrong undermines competition in any way whatsoever.

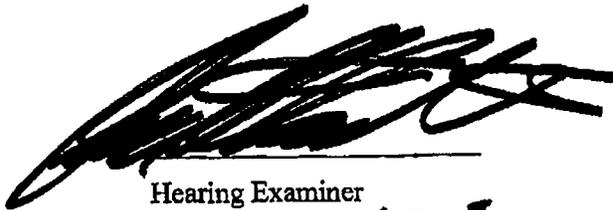
10. The Courts have held that "the authority to correct mistakes alleged after bid opening but prior to bid award is vested in the procuring agency, and because the weight to be given the evidence in support of an asserted mistake is a question of fact, we will not disturb an agency's determination concerning bid correction unless it is unreasonable." See Matter of Prudent Technologies, B-401736.3, 2009 CPD P 254, 2009 LW 4690431 (Comp. Gen.).

11. Furthermore, in Florida "a public body has wide discretion in soliciting and accepting bids for public improvements and its discretion, when based on an honest exercise of this discretion, will not be overturned by a court even if it may appear erroneous and even if reasonable persons may disagree." *Eng'g Contractors Ass'n of S. Florida v. Broward County*, 789 So.2d 445, 450 (Fla. 4th DCA 2001). As a result, "the hearing officer's sole responsibility [in reviewing a protest] is to ascertain whether the agency acted fraudulently, arbitrarily, illegally, or dishonestly." *Dep't of Transp. V. Groves-Watkins Constructors*, 530 So.2d 912, 914 (Fla.1988).

12. I find that the County's actions in recommending award to Williams Paving were not fraudulent, arbitrary, illegal or dishonest.

RECOMMENDATION

13. For these reasons, I recommend that the bid protest filed by Trans Florida be denied and that the award be made to Williams Paving, the lowest responsive responsible bidder.



Hearing Examiner

SENIOR JUDGE

RACHAEL STEINHARDT

Date

9/22/2010