

Date: September 1, 2011
To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners
From: Carlos A. Gimenez
Mayor 
Subject: Resolution for the Contract Award Recommendation for Construction Contract No.
2007-022 between, Odebrecht Construction Inc. and Miami-Dade County (Project No:
2007-022 ESP) for Strengthening the Existing Cargo Wharves I through VII

Agenda Item No. 8(Q)(1)(A)

Resolution No. R-684-11

RECOMMENDATION

It is recommended that this Board award, approve and authorize the execution of the Wharves Strengthening Program, Contract No. 2007-022, ("Contract") for Project No. 2007-022 ESP ("Project") to Odebrecht Construction, Inc. ("Odebrecht"), in the amount of \$57,120,637.81 for the strengthening of the Port's Wharves I-VII, as described in the County Mayor's Notice of Intent to Award dated July 14, 2011, and the Seaport's Memorandum dated July 8, 2011 attached thereto (attached collectively as Exhibit A).

SCOPE

The Port of Miami is located within District 5 – Commissioner Bruno A. Barreiro. The impact of this agenda item is countywide as the Port of Miami ("Port") is a regional asset and generates employment for residents throughout Miami-Dade County.

FISCAL IMPACT/FUNDING SOURCE

The fiscal impact will be approximately \$57,120,637.81, and is being funded from Florida Department of Transportation Funds, 2010-D Capital Acquisition Bonds and future Capital Assets Acquisitions Bonds or an alternative capital financing mechanism, as programmed within the 2010-11 Adopted Capital Budget, project numbers 647710 and 643560. Throughout the life of the asset, the average yearly maintenance cost would be approximately \$9,000. The funding source for the yearly maintenance will be Seaport operating revenues.

TRACK RECORD/MONITOR

Based upon the Department of Business Development, Odebrecht Construction, Inc. has not been awarded any contracts with the County within the last five years. However, based upon the Firm History Report provided by the Department of Business Development, Odebrecht-Tower-Community, Joint Venture, has been awarded one contract with the County for a total value of \$361,608,801.00 and Parsons/Odebrecht, Joint Venture has been awarded one contract with the County for a total value of \$342,278,032.15. There are two evaluations listed for Odebrecht-Tower-Community, JV, with a score of 3.6 out of a possible 4.0 points and one evaluation listed for Parsons/Odebrecht, JV with a score of 2.9 out of a possible 4.0 points. There are no evaluations listed in the Capital Improvement Information System (CIIS) for Odebrecht Contractors of Florida, Inc.

The Seaport Department staff members responsible for monitoring the Agreement are Juan Kuryla, Deputy Director, Gyselle Pino, Contracts Manager and Dorian K. Valdes, P.E., Assistant Director for Capital Development.

BACKGROUND

This multiphase improvement project consists of construction necessary for strengthening the existing Cargo Wharves I through VII, inclusive of the Wharf I Extension, to provide additional capacity to existing structures

to allow for a future dredged depth of -50 feet at mean lower water (MLLW). The work includes storm water drainage modifications and crane rail beam upgrades; replacement of utility service stations; and provision of temporary utilities and utility offsets necessary for accommodating the wharf strengthening construction.

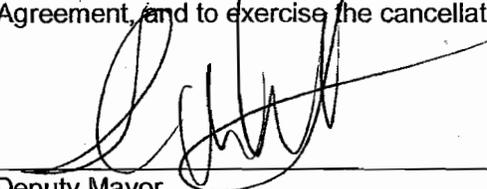
This Contract is recommended for award and approval pursuant to Section 2-8.2.7 of the Code of Miami-Dade County, the Economic Stimulus Ordinance. Under Section 2-8.2.7. of the Code of Miami-Dade County the Mayor has the authority to award the contract without prior Board approval, subject to latter ratification by the Board at the next available meeting unless a timely bid protest is filed. On July 20, 2011, the Clerk of the Board filed the Mayor's Intent to Award. On July 22, 2011 a timely bid protest was filed by the third lowest bidder, Dragados USA, Inc. ("Dragados") with the Clerk of the Board.

In accordance with the bid protest procedures codified in Section 2-8.4 of the Code of Miami-Dade County and Implementing Order 3-21, a hearing examiner was appointed, and a hearing was conducted on August 4, 2011. There was one issue cited by Dragados in its protest: that neither of the two lowest bidders, Odebrecht nor American Bridge Company ("American Bridge"), submitted responsive bids because each failed to submit their detailed subcontracting policies and procedures pursuant to the terms of the solicitation and Ordinance 97-35. The County Attorney's Office opposed the protest, finding and arguing that the bids of both Odebrecht and American Bridge are responsive. The County Attorney's memorandum in Opposition is attached as Exhibit B. In an opinion filed on August 10, 2011, (attached as Exhibit C), the Hearing Examiner denied the protest and concurred with the Mayor's Intent to Award the Contract to Odebrecht.

Based on the foregoing, it is recommended that the contract be awarded to Odebrecht, that the contract be approved, and that the County Mayor or the County Mayor's designee be authorized to execute the contract and all termination and renewal provisions therein.

DELEGATED AUTHORITY

The authority of the County Mayor or County Mayor's designee to execute and implement this contract is consistent with those authorities granted under the Code of Miami-Dade County. In accordance with Section 2-8.3 of the Miami-Dade County Code related to identifying delegation of Board authority, there are no authorities beyond those specified in the resolution which include the Mayor or designee to execute the Agreement, and to exercise the cancellation and renewal provisions.



Deputy Mayor

(EXHIBIT A)

Memorandum

MIAMI-DADE
COUNTY

Date: July 14, 2011
To: Christopher Agrippa
Transitional Chief
Clerk of the Board
From: Carlos A. Gimenez 
Mayor
Subject: Notification of Mayor's Intent to Award

CLERK OF THE BOARD
2011 JUL 20 AM 9:10
CLERK, CIRCUIT & COUNTY CLERK
MIAMI-DADE COUNTY, FLA.
#1

This memorandum is the formal notification of the Mayor's intent to award the Wharves Strengthening Program, Contract No. 2007-022, Project No. 2007-022 ESP to Odebrecht Construction, Inc., pursuant to Section 2-8.4 of the Code of Miami-Dade County, Implementing Order 3-21 governing bid protest procedures and the relevant bid documents. The accompanying memorandum presents the material terms of the contract award recommendation and has been subject to review and approval by the Office of Strategic Business Management, the County Attorney's Office and the Office of Capital Improvements.

Filing the attached contract award recommendation with the Clerk of the Board begins the three (3) day period in which to file a bid protest.

Attachment

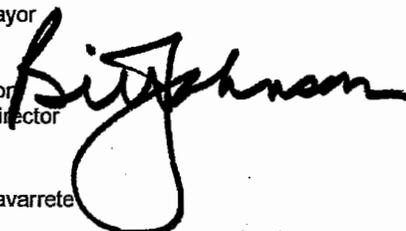
RECEIVED
2011 JUL 19 12:41
CAPITAL IMPROVEMENTS

227846

Memorandum 

Date: 7/8/2011

To: Honorable Carlos A. Gimenez
County Mayor

From: Bill Johnson
Seaport Director 

Attn: George Navarrete
Director
Office of Capital Improvements

Subject: Contract Award Recommendation for Wharves Strengthening Program - Project No.: 2007-022 ESP;
Contract No.: 2007-022 to, to Odebrecht Construction, Inc.

RECEIVED
 2011 JUL 19 12:41
 CAPITAL IMPROVEMENTS

Recommendation

This Recommendation for Award for Construction Contract No. 2007-022 between Odebrecht Construction, Inc. and Miami-Dade County has been prepared by the Miami-Dade Seaport Department and is recommended for approval pursuant to Section 2-8.2.7 of the Code of Miami-Dade County for a total contract amount of \$57,120,637.81.

Delegation of Authority - The authority of the County Mayor or County Mayor's designee to execute and implement this contract is consistent with those authorities granted under the Code of Miami-Dade County. Additional delegation of authorities requested for this contract are as follows:

The General Conditions for the Contract, Article 42, "Disputes," Section B states that any and all disputes shall be decided by the Contracting Officer. The contract stipulates that the Contracting Officer for this contract is the Director of the Miami-Dade Seaport Department and/or his/her designee.

The Contract Conditions for the Contract, Section 1.26 - "Owner Direct Purchase Procedures" includes language stipulating that the Owner, being exempt from sales tax, reserves the right to make direct purchases of various construction equipment, materials or supplies included in the Contractor's bid and/or contract.

Scope

PROJECT NAME: Wharves Strengthening Program

PROJECT NO: 2007-022 ESP

CONTRACT NO: 2007-022

PROJECT DESCRIPTION: This multiphase improvement project consists of construction necessary for strengthening the existing Cargo Wharves I through VII, inclusive of the Wharf I Extension, to provide additional capacity to existing structures to allow for a future dredged depth of -50 feet at mean low water. The work includes storm water drainage modifications and crane rail beam upgrades; replacement of utility service stations; and provision of temporary utilities and utility offsets necessary for accommodating the wharf strengthening construction.

Services to be performed include, but are not necessarily limited to: earthwork and excavation; sawcutting and demolition of pavement; verification of existing buried structure location and disposition; grading and compaction; furnishing and placing limerock base and asphalt pavement; on-site utilities work,

including electric, water, and communications services; stormwater collection and conveyance systems; demolition and construction and selective demolition of existing structures and fixtures (i.e., fenders, bollards, etc.); furnishing and installing steel sheet piling, including pre-drilling as necessary; furnishing and installing socketed steel pipe king piles, including pre-drilling, casing, and placement of tremie concrete; placing granular soil and tremie concrete backfill between existing structure and new bulkhead; furnishing and installing structural steel bracing for bulkhead construction and steel pipe bearing piles; furnishing, fabricating, and installing miscellaneous steel for bulkhead construction; furnishing and installing cast-in-place concrete bulkhead cap beam and fascia, double corrosion protected grouted soil anchors, new bollards, fenders, and associated hardware; and other ancillary tasks associated with the primary scope of work.

PROJECT LOCATION: Port of Miami

PROJECT SITES:	SITE #	LOCATION 1	DIST	ESTIMATE	T-S-R
	#76679	1015 N AMERICA WY	5	\$51,712,498.81	54-05-42
	#76683	1015 N AMERICA WY	5	\$5,408,139.00	54-05-42
	Total:			\$57,120,637.81	

PRIMARY COMMISSION DISTRICT: District 5 Bruno A. Barreiro

APPROVAL PATH: Mayor's Authority Economic Stimulus Plan

USING DEPARTMENT: Port of Miami

MANAGING DEPARTMENT: Port of Miami

Fiscal Impact / Funding Source

FUNDING SOURCES:	SOURCE	PROJECT NUM	SITE #	AMOUNT
	FDOT Funds	647710	#76679	\$547,883.00
	Seaport Bonds/Loans	643560	#76683	\$5,408,139.00
	Seaport Bonds/Loans	647710	#76679	\$51,164,615.81
	Total Funding:			\$57,120,637.81

OPERATIONS COST IMPACT / FUNDING: Throughout the life of the asset, there are no impacts on operating costs as this is an infrastructure improvement project.

MAINTENANCE COST IMPACT / FUNDING: Throughout the life of the asset, the average yearly maintenance cost would be approximately \$9,000. The funding source is Seaport revenues.

LIFE EXPECTANCY OF ASSET: The life expectancy is approximately 75 years.

PTP FUNDING: No

GOB FUNDING: No

6

ARRA FUNDING: No

CAPITAL BUDGET PROJECTS:

CAPITAL BUDGET PROJECT # - DESCRIPTION	AWARD ESTIMATE
647710- DREDGE III BULKHEAD STRENGTHENING Book Page:88 Funding Year: Adopted Capital Budget Book for FY 10-11, FY 2011-12 Funds (Seaport Bonds/Loans)	\$23,864,000.00
647710- DREDGE III BULKHEAD STRENGTHENING Book Page:88 Funding Year: Adopted Capital Budget Book for FY 10-11, FY 2012-13 Funds (Seaport Bonds/Loans)	\$12,305,615.81
647710- DREDGE III BULKHEAD STRENGTHENING Book Page:88 Funding Year: Adopted Capital Budget Book for FY 10-11, FY 2010-11 Funds (FDOT Funds)	\$505,000.00
647710- DREDGE III BULKHEAD STRENGTHENING Book Page:88 Funding Year: Adopted Capital Budget Book for FY 10-11, FY 2011-12 Funds (FDOT Funds)	\$42,883.00
647710- DREDGE III BULKHEAD STRENGTHENING Book Page:88 Funding Year: Adopted Capital Budget Book for FY 10-11, FY 2010-11 Funds (Seaport Bonds/Loans)	\$14,995,000.00
643560- GANTRY BERTH REINFORCEMENTS Book Page:81 Funding Year: Adopted Capital Budget Book for FY 10-11, FY 2011-12 Funds (Seaport Bonds/Loans)	\$1,000,000.00
643560- GANTRY BERTH REINFORCEMENTS Book Page:81 Funding Year: Adopted Capital Budget Book for FY 10-11, FY 2012-13 Funds (Seaport Bonds/Loans)	\$4,408,139.00

CAPITAL BUDGET PROJECTS TOTAL: \$57,120,637.81

PROJECT TECHNICAL CERTIFICATION REQUIREMENTS:

The Prime Contractor shall have a minimum of fifteen (15) years recent and relative experience in Marine Construction, having completed a minimum of two (2) prior similar projects requiring construction of similar marine structure types.

BID PACKAGES ISSUED: 53

BIDS RECEIVED: 6

ORIGINAL CONTRACT PERIOD: 960 Days. Excludes Warranty Administration Period

TOTAL CONTRACT PERIOD: 960 Days. Excludes Warranty Administration Period

CONTINGENCY PERIOD: 96 Days.

IG FEE INCLUDED IN BASE CONTRACT: No

ART IN PUBLIC PLACES: No

BASE ESTIMATE: \$60,095,698.00 Revised Base Estimate: \$69,041,166.00

BASE CONTRACT AMOUNT: \$50,549,237.00

CONTINGENCY ALLOWANCE (SECTION 2-8.1 MIAMI DADE COUNTY CODE):	TYPE	PERCENT	AMOUNT	COMMENT
	Infrastructure	10%	\$5,054,923.70	

PERMIT FEES : \$1,516,477.11 3.00%

**TOTAL DEDICATED
ALLOWANCE:** \$1,516,477.11

TOTAL AMOUNT: \$57,120,637.81

Track Record / Monitor

**SBD HISTORY OF
VIOLATIONS:** None

EXPLANATION: The project was advertised on March 30, 2011. Six bids were received on May 18, 2011. Five bids were found compliant with the Community Small Business Enterprise (CSBE) measures and subsequently opened. The bids received ranged between approximately \$51.63 Million and \$68.05 Million (excluding allowance accounts). The lowest bid, in the amount of \$51,631,054, was submitted by American Bridge Company, a non-local firm. The second lowest bid, in the amount of \$55,449,964, was submitted by Odebrecht Construction, Inc., a local firm. Since both bids were within 10% of each other, the Local Preference process applied. Therefore, in accordance with the Code of Miami-Dade County, Chapter 2, Article I, Section 2-8.5, Seaport Department requested a Best and Final Bid from both firms to be submitted on May 31, 2011. Two bids were received and subsequently opened. Odebrecht Construction, Inc. submitted a bid in the amount of \$50,549,237 and American Bridge Company submitted a bid in the amount of \$50,787,209. Odebrecht Construction, Inc. was found to be the lowest responsive and responsible bidder.

The base estimate included within the Request to Advertise (RTA) of \$60,095,698, was revised upward to \$69,041,166 during the bidding period. The revised estimate included a significant adjustment to bulkhead construction costs to account for potential standby time, equipment depreciation, opportunity cost, and labor cost allocation due to more restrictive phasing necessary to accommodate Seaport operations. In addition, anticipated costs for drainage improvements and crane beam modifications were similarly modified. Finally, in response to questions raised by potential bidders as outlined in Addenda 2 through 4, additional bid line items and revised unit quantities were included as risk mitigating factors (to establish competitive payment rates). Therefore, the revised base estimate, \$69,041,166, is 14.88% above the original base estimate. As a result, the Best & Final bid submitted by Odebrecht Construction, Inc. is 26.78% below the revised base estimate and 15.89% below the original base estimate. For reference purposes, the bid tabulation shows the original base estimate as a lump sum price and the revised base estimate in various line items, which is representative of the bid form. The RTA included a contract duration of 1000 calendar days. Prior to the advertisement of the project, it was reduced to 960 calendar days to accommodate the future dredging project.

The bids were reviewed by Seaport staff and the apparent low bidder, Odebrecht Construction, Inc. was found to be responsive and responsible to all bid requirements. Furthermore, HDR Engineering, Inc. (HDR), the Engineer of

Record, reviewed the bids and provided a written statement, in which HDR attested that the low bid was reasonable based on competitive market conditions and that the bid was well balanced. The construction cost estimate prepared by HDR was based on typical construction material costs, rates of production, and assumption of markup and profit. As a budgetary number, this estimate conservatively did not account for willingness for select members of the contracting community to assume additional schedule risk, opportunity costs, or reduced margins, which is indicative of the increased competition in the industry, which has played a role in the receipt of lower bid prices on other similar projects in the marketplace. At the Seaport's request, Odebrecht Construction, Inc. provided written confirmation on June 6, 2011 that their firm will provide the required services included in the Bid Documents for the price provided in their Best and Final bid.

As part of the award process, Seaport staff compiled information regarding Odebrecht Construction, Inc.'s prior experience with the County. It was concluded that Odebrecht Construction, Inc. has no prior experience with the County within the last five years; however, information was sought for the firm's former name, Odebrecht Contractors of Florida, Inc. and its Joint Venture with The Tower Group, Inc. and Community Asphalt Corp. and its Joint Venture with Parsons. Although there are no evaluations listed in the Capital Improvement Information System (CIIS) for Odebrecht Contractors of Florida, Inc., there are two evaluations listed for Odebrecht-Tower-Community, JV, with a score of 3.6 out of a possible 4.0 points and one evaluation listed for Parsons/Odebrecht, JV with a score of 2.9 out of a possible 4.0 points. In addition, Odebrecht Construction, Inc.'s principal has indicated 18 years experience as a general contractor in construction work similar to the work for this contract. Finally, Seaport staff reviewed the business references included in Odebrecht Construction, Inc.'s bid package and deemed their experience for projects similar in size and complexity satisfactory. Therefore, the Seaport Department recommends this contract be awarded to Odebrecht Construction, Inc.

BID OPEN DATE: 5/20/2011
BID BOND EXPIRES: 11/16/2011
BID VALID UNTIL: 11/16/2011
ESTIMATED NOTICE TO PROCEED: 7/29/2011
PRIME CONTRACTOR: Odebrecht Construction, Inc.
COMPANY PRINCIPAL: Gilberto Neves
COMPANY QUALIFIERS: Yvonne Meyer
COMPANY EMAIL ADDRESS: ymeyer@odebrecht.com
COMPANY STREET ADDRESS: 201 Alhambra Circle, Suite 1400
COMPANY CITY-STATE-ZIP: Coral Gables, FL 33134
YEARS IN BUSINESS: 18

PREVIOUS CONTRACTS Based upon the Department of Small Business Development, Odebrecht Construction,

WITH COUNTY IN THE LAST FIVE YEARS:

Inc. has not been awarded any contracts with the County within the last five years.

However, based upon the Firm History Report provided by the Department of Small Business Development, Odebrecht-Tower-Community, Joint Venture has been awarded one contract with the County for a total value of \$361,608,801.00 and Parsons/Odebrecht, Joint Venture has been awarded one contract with the County for a total value of \$342,278,032.15.

SUB CONTRACTORS AND SUPPLIERS (SECTION 10-34 MIAMI DADE COUNTY CODE):

- CSA International, Inc.
- Clearwater Marine Construction Inc.
- Ebsary Foundation Co.
- G-T Construction Group, Inc.
- Overnight Success, Inc.
- People's Plumbing & Mechanical, Inc.
- Roberts Traffic Marking Corp.
- Virginia Harbor Services, Inc.
- Tru-Steel Corp.
- Vector Construction Group, Inc.
- V.I. Electrical Contractor, Inc.

MINIMUM QUALIFICATIONS EXCEED LEGAL REQUIREMENTS:

Yes The Prime Contractor shall have a minimum of fifteen (15) years recent and relative experience in Marine Construction, having completed a minimum of two (2) prior similar projects requiring construction of similar marine structure types.

STANDARD PAYMENT AND PERFORMANCE BOND:

Yes

REVIEW COMMITTEE:

MEETING DATE: 11/10/2010 SIGNOFF DATE: 11/10/2010

APPLICABLE WAGES: (RESOLUTION No. R-54-10)

Yes

REVIEW COMMITTEE ASSIGNED CONTRACT MEASURES:

	<u>TYPE</u>	<u>GOAL</u>	<u>ESTIMATED VALUE</u>	<u>COMMENT</u>
CSBE	8.22%		\$4,570,662.01	
CWP	13.10%	11		Number of new hires

MANDATORY CLEARING HOUSE:

Yes

CONTRACT MANAGER NAME / PHONE / EMAIL:

Maria H. Cerna 305-347-4916 MCerna@miamidade.gov

PROJECT MANAGER NAME / PHONE / EMAIL:

Dorian K. Valdes, PE 305-347-4802 valded@miamidade.gov

Background

BACKGROUND:

The purpose of this project is to accommodate the future -50' dredging project, which strengthening improvements are needed on our bulkheads between Wharves I and VII. The existing bulkheads were constructed over a 20-year period (1984 through 2004), and were originally designed for channel water depths ranging from 42' and 46' below mean sea level (MSL).

BUDGET APPROVAL
FUNDS AVAILABLE:


OSBM DIRECTOR

6/10/11
DATE

APPROVED AS TO LEGAL
SUFFICIENCY:

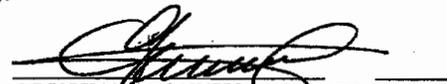

COUNTY ATTORNEY

6/14/11
DATE

CAPITAL IMPROVEMENTS
CONCURRENCE:


OCI DIRECTOR

6/14/11
DATE


ASSISTANT COUNTY MANAGER DATE
6/14/11

CLERK DATE

DATE

(EXHIBIT B)

**CLERK OF THE
BOARD OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA**

DRAGADOS USA, INC.

In re: Bid Protest – Project No. 2007-
022 ESP Wharves Strengthening Program

Petitioner,

vs.

MIAMI-DADE COUNTY, FLORIDA,

Respondent.

**MIAMI-DADE COUNTY'S MOTION TO DISMISS AND
MEMORANDUM IN OPPOSITION TO THE BID
PROTEST FILED BY DRAGADOS USA, INC.**

Simply because Odebrecht Construction, Inc. ("Odebrecht") and American Bridge Company ("American Bridge") failed to submit written subcontracting policies and procedures with their bid packages – written subcontracting policies and procedures which are not even a material requirement of the solicitation at issue – Dragados USA, Inc. ("Dragados") asks that the Odebrecht and American Bridge bids be declared non-responsive, and that the County be forced to pay nearly \$8 million more to complete a construction project at the Port of Miami. More specifically, based solely on this purported omission, Dragados protests the Mayor's ("County") recommendation for award to Odebrecht of Construction Contract No. 2007-022 ("Contract") to be awarded pursuant to ITB Project No. 2007-022 ESP Wharves Strengthening Program ("ITB") for construction work needed to strengthen wharves for future dredging to negative 50 foot depth berths (the "Project) at the Port of Miami ("Port").

Under Florida law, there is a very strong public policy in favor of saving tax dollars and awarding public contracts to the low bidder, which is exactly what the County seeks to do here.

Florida law dictates that local governments have wide discretion in awarding contracts. Accordingly, to overturn a public contract award, especially to the low bidder, Dragados must demonstrate that the County acted fraudulently, arbitrarily, illegally or dishonestly. Dragados cannot meet its heavy burden to overturn the recommended award, particularly where the premise of the protest is based on an attempt to change the specifications of the ITB to incorporate terms which are not actually in the ITB. The ITB does not state anywhere that a bid will be non-responsive if the written statement of subcontracting policies and procedures is not included in the bid package submitted on the bid opening date.

And even if the ITB had such language, the ITB provides: "MDC reserves the right to waive any informalities or irregularities in any bid, to reject any or all Bids and/or to extend the bidding period." ITB at 6 (page 6 is attached at Tab 1 hereto for reference). This provision is consistent with Florida case law. Thus, a failure to include the written subcontracting procedures would constitute a minor bidding irregularity that could be waived by the County because (1) the bids submitted by Odebrecht and American Bridge gave adequate assurance to the County that the Project would be completed at the price quoted, and (2) waiving the requirement gave neither firm a competitive advantage over Dragados or any other bidder because the only determinative factor in awarding the Contract was price.

Finally, current County law requires only that a bidder submit its written subcontracting policies and procedures as a condition of award, not as a condition of responsiveness. See Miami-Dade County Code, § 2-8.8 (attached at Tab 2). Odebrecht has done so. Consequently, Odebrecht complied with the terms of the ITB and the law. The County acted legally, not illegally, fraudulently, dishonestly or arbitrarily, in recommending the award to Odebrecht.

Accordingly, Odebrecht's bid remains the lowest responsive bid, and this protest should be dismissed, or if not dismissed, denied.

BACKGROUND

The Project consists of construction necessary for strengthening the existing Cargo Wharves I through VII on the southeast side of the Port, inclusive of the Wharf I Extension, to provide additional capacity to existing structures to allow for a future dredged depth of negative 50 feet at mean low water. It is critical to the Port that the work begins promptly and be completed timely. The work includes storm water drainage modifications and crane rail beam upgrades; replacement of utility service stations; and provision of temporary utilities and utility offsets necessary for accommodating the wharf strengthening construction.

Services to be performed under the Contract include: earthwork and excavation; sawcutting and demolition of pavement; verification of existing buried structure location and disposition; grading and compaction; furnishing and placing limerock base and asphalt pavement; on-site utilities work, including electric, water, and communications services; stormwater collection and conveyance systems; demolition and construction and selective demolition of existing structures and fixtures (i.e., fenders, bollards, etc.); furnishing and installing steel sheet piling, including pre-drilling as necessary; furnishing and installing socketed steel pipe king piles, including pre-drilling, casing, and placement of tremie concrete; placing granular soil and tremie concrete backfill between existing structure and new bulkhead; furnishing and installing structural steel bracing for bulkhead construction and steel pipe bearing piles; furnishing, fabricating, and installing miscellaneous steel for bulkhead construction; furnishing and installing cast-in-place concrete bulkhead cap beam and fascia, double corrosion

protected grouted soil anchors, new bollards, fenders, and associated hardware; and other ancillary tasks associated with the primary scope of work.

The project was advertised on March 30, 2011 with the issuance of the initial ITB. The non-technical specifications portion of the final ITB is attached at Tab B to Dragados's Intent to Protest filed on July 22, 2011. While the ITB is quite lengthy, as noted above the ITB provides: "MDC reserves the right to waive any informalities or irregularities in any bid, to reject any or all Bids and/or to extend the bidding period." ITB at 6.

Six bids were received on May 18, 2011. Five bids were found compliant with the Community Small Business Enterprise (CSBE) measures and subsequently opened. The bids received ranged between approximately \$51.63 Million and \$68.05 Million. The lowest bid, in the amount of \$51,631,054, was submitted by American Bridge, a non-local firm: *See Bid Tabulation* (attached at Tab 3). The second lowest bid, in the amount of \$55,449,964, was submitted by Odebrecht, a local firm. *Id.* In contrast, and quite significantly, the bid of Dragados was substantially higher, coming in at \$58,261,727.00. *Id.*

Since the two lowest bids were within 10% of each other, the Local Preference Ordinance applied. Therefore, in accordance with the Code of Miami-Dade County, Section 2-8.5, the County requested a Best and Final Bid from both Odebrecht and American Bridge to be submitted on May 31, 2011. Two bids were received and subsequently opened. Odebrecht submitted a bid in the amount of \$50,549,237 and American Bridge submitted a bid in the amount of \$50,787,209. Because Odebrecht submitted the lowest bid, it was found to be the lowest responsive and responsible bidder. Again, both the Odebrecht and American Bridge bids are nearly \$8 million less than the bid of Dragados.

DISCUSSION

It is well settled law that a public body has wide discretion in awarding a contract for a public service and that discretion cannot be overturned absent a finding of "illegality, fraud, oppression or misconduct." *Liberty County v. Baxter's Asphalt & Concrete, Inc.*, 421 So. 2d 505, 507 (Fla. 1982). As such, "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); *Miami-Dade County v. Church & Tower, Inc.*, 715 So. 2d 1084, 1089-90 (Fla. 3rd DCA 1998). "Even where a public entity makes an erroneous decision over which reasonable persons may disagree, the exercise of its discretion in soliciting and accepting bids should not be interfered with absent a showing of dishonesty, illegality, fraud, oppression or misconduct." *City of Cape Coral v. Water Services of America, Inc.*, 567 So. 2d 510, 513 (Fla. 2d DCA 1990).

Further, the burden of proof in a bid protest proceeding rests with the protester, Dragados, not the County or Odebrecht. See *GTech Corp. v. State Dept. of the Lottery*, 737 So. 2d 615, 619 (Fla. 1st DCA 1999) ("The burden is on the party protesting the award of the bid to establish a ground for invalidating the award.").

Moreover, "**there is a strong public policy in favor of awarding contracts to the low bidder, and an equally strong public policy against disqualifying the low bidder for technical deficiencies which do not confer an economic advantage on one bidder over another.**" *Intercontinental Props., Inc. v. State Dep't of Health & Rehabilitative Servs.*, 606 So. 2d 380, 387 (Fla. 3d DCA 1992) (emphasis added). Stated another way, there is a "very strong public interest in favor of saving tax dollars in awarding public contracts." *Id.* at 386.

Here, the County did not act illegally, fraudulently, capriciously or arbitrarily. Indeed, in recommending award to the lowest responsive and responsible bidder, Odebrecht, the County acted completely consistent with Florida law governing competitive bidding of contracts.

I. As a Factual Matter, the ITB Did Not State that a Bid Shall Be Deemed Non-Responsive if a Bidder Failed to Include It's Subcontracting Policies and Procedures with Its Bid

While the ITB did state "[a]s part of its bid each bidder shall also provide a detailed written statement of [the bidder's] policies and procedures for awarding subcontracts (Dade County Ordinance 97-35)," the ITB did not state that the failure to do so would make the bid non-responsive, and the ITB did not state that it incorporated the terms of County Ordinance 97-35, an Ordinance which expired under its own terms, and was materially amended and superseded more than a decade ago.¹ The provision also does not even expressly require that the policies and procedures be submitted in the bid package. Nonetheless, Dragados seeks to have the provision be read to mean that a bid shall be non-responsive if the policies and procedures are not submitted in the bid package by seeking to incorporate the terms of a long superseded and expired Ordinance incorporated into the ITB.

Even if one were to do so, however, one would also note that the Ordinance, enacted in 1997, specifically states in Section 5 of the Ordinance: "This ordinance shall stand repealed five (5) years from its effective date." *See* Intent to Protest, Tab C at 3. If Dragados wants to argue that the parenthetical reference to Ordinance 97-35 somehow incorporates the terms of that Ordinance into the ITB, Dragados cannot pick and choose which parts of the Ordinance are

¹ *See* Ordinances 91-124, 98-159 & 02-121 (Amending the Cade County Code to require the provision of written subcontracting policies and procedures as a condition of award and deleting the language providing that the failure to provide the policies with the bid would make the bid non-responsive. (Attached collectively at Tab 4).

incorporated. Plainly, under its own terms, the Ordinance is no longer in effect. In short, Dragados's attempt to vary the specifications of the ITB, and current Miami-Dade County Code, based on a parenthetical reference to Ordinance 97-35 in the ITB is meritless, if not frivolous.

Notably, the Ordinance that actually currently is in effect, Miami-Dade County Code Section 2-8.8 states that the provision of written subcontracting policies and procedures is a condition of award, not a matter of responsiveness. Odebrecht has complied with that requirement, and the terms of the ITB.

II. The Submission of the Subcontracting Policies and Procedures Is an Issue of Responsibility Not Responsiveness, and the Terms of the ITB Cannot Transform an Issue of Responsibility Into one of Responsiveness

The submission of the written subcontracting policies and procedures is an issue of bidder responsibility, not bidder responsiveness. Solicitation requirements for information relating to a bidder's financial condition, capability, business procedures, experience and past performance pertain to a bidder's responsibility. *See Coach Constr. Co. v. FDOT*, 361 So. 2d 184, 187 (Fla. 1st DCA 1978) (reasoning that a bidder's responsibility relates to "the honesty and integrity of the bidder necessary to a faithful performance of the contract upon his skill and business judgment, his experience and his facilities for carrying out the contract, His previous conduct under other contracts, and the quality of his previous work . . .").

The identification of subcontracting information – which the submission of written subcontracting policies and procedures clearly is – goes to the bidder's ability to perform the contract and, thus, relates to bidder responsibility, not responsiveness. Accordingly, the failure of Odebrecht and American Bridge to submit written subcontracting policies and procedures with their bid does not render their bids nonresponsive. *See Matter of: CDM Federal Programs Corp.*, B- 249022, 1992 WL 186992, at *2 (Comp. Gen. 1992) (Tab 5) ("Generally, a

requirement that a bidder list subcontractors in its bid involves a matter of responsibility because it relates to the agency's need to evaluate the subcontractor's qualifications or the bidder's ability to meet equal employment opportunity and minority business requirements."); *see also Matter of: Hughes Georgia, Inc.*, B- 244936, B- 244936.2, 91-2 CPD 457, 1991 WL 251277 (Comp. Gen. 1991) (Tab 6) (holding that submission of list of potential subcontractors relates to issues of bidders' responsibility); *Matter of: Consolidated Group*, B- 220050, 86-1 CPD P 21, 1986 WL 69171 (Comp. Gen. 1986) (Tab 7) (holding that list of proposed subcontractors required by solicitation was not intended for evaluation purposes, but related to contract administration and the offeror's responsibility); *Matter of: Gelco Servs., Inc.*, B-253376, 93-2 CPD P 163, 1993 WL 376637, at *5 (Comp. Gen. 1993) (Tab 8) (holding that principal purpose of a sub-subcontractor list is to assist the agency in determining whether a prospective bidder is capable of performing the contract work and, as such, submittal and completion of a sub-subcontractor list involves an issue pertaining to bidder responsibility). Since the identification of subcontractor information is an issue of bidder responsibility, such information may be submitted any time prior to award, as current Miami-Dade County law allows. *See id.* & Miami-Dade County Code § 2-8.8.

Moreover, "[t]he terms of a solicitation cannot convert a matter of responsibility into one of responsiveness." *Matter of: Great Lakes Dredge & Dock Company*, B-290158, 2002 CPD P 100, 2002 WL 1316190 *2 (Comp. Gen. 2002) (Tab 9), *citing Integrated Prot. Sys., Inc.*, B-254457.2, B-254457.3, Jan. 19, 1994, 94-1 CPD ¶ 24 at 3; *Norfolk Dredging Co.*, B-229572.2, Jan. 22, 1988, 88-1 CPD ¶ 62 at 3. In *Great Lakes* the solicitation documents concerned navigation improvements for New York Harbor and were issued by the Army Corps. of Engineers. *Id.* *1. The work involved the dredging and disposal of rock and non-rock materials from navigation channels. *Id.* The solicitation documents provided that "permits demonstrating

that the chosen disposal site(s) is legal to operate on or before the date of the bid opening must accompany the bid package, or the bid will be considered non-responsive and rejected.” *Id.* The first lowest bidder was deemed non-responsive on other grounds, but the second lowest bidder was deemed by the Contracting Officer to be responsive, even though permits did not accompany the bidder’s bid package showing that the proposed disposal site was legal to operate on or before the bid opening date. *Id.* at *2. The third lowest bidder appealed this finding, and asserted that the second lowest bidder’s bid should be deemed non-responsive and rejected for failure to include the permits required by the terms of the solicitation. The Comptroller General denied the protest, holding that whether or not permits were submitted demonstrating that a proposed disposal site was legal to operate on the date of bid opening concerned the performance of the contract, and was thus a matter of responsibility, despite the terms of the solicitation stating that a bid would be rejected without such permits. *Id.*

Here, a bidder’s written subcontracting policies and procedures concern the performance of its contract, making the submission of those procedures a matter of responsibility. In this protest, Dragados seeks to turn that issue of responsibility into one of responsiveness, simply because, in its view, the ITB incorporated language from an expired and superseded ordinance which stated that a bid shall be deemed non-responsive if the written subcontracting policies and procedures were not included with a bid package on the bid submission date. Under the authority above, even if the ITB expressly stated that the failure to submit the subcontracting policies and procedures would make a bid non-responsive, the bids of Odebrecht and American Bridge would be responsive because that hypothetical requirement in the ITB would be an impermissible requirement attempting to convert an issue of responsibility into one of responsiveness.

II. Allowing Odebrecht or American Bridge to Correct the Purported Irregularity after Bid Opening Would Not Provide Either Bidder a Material Advantage Not Shared by Other Bidders

In determining whether a specific noncompliance constitutes a substantial and hence non-waivable irregularity, the courts have applied two criteria -- first, whether the effect of a waiver would be to deprive the municipality of its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements, and second, whether it is of such a 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.

Robinson Electrical Co., Inc. v. Dade County, 417 So. 2d 1032, 1034 (Fla. 3rd DCA 1982).

Under *Robinson Electrical*, the failure of Odebrecht and American Bridge to include their written subcontracting policies and procedures with their bid packages on the bid opening date was a waivable irregularity, assuming it is an irregularity in the first place.

First, the failure of Odebrecht and American Bridge to include their subcontracting policies and procedures did not, and could not, deprive the County of its assurance that the Contract would be entered into, performed, and guaranteed according to the ITB's requirements. Indeed, both firms signed all the required forms and affidavits, took no exception to any of the ITB's technical specifications, and provided the bid bond required by the ITB. Consequently, the County was assured that the Contract would be completed at the price quoted.

Second, the failure of Odebrecht and American Bridge to submit their written subcontracting policies and procedures did not place either firm at an advantage over Dragados, nor did it undermine the competitive process in the bid at issue. The recommended award pursuant to the ITB was made to the lowest responsive, responsible bidder. Since Dragados submitted its subcontracting policies and procedures with its bid, neither Odebrecht nor American Bridge was aware of those policies at the time those two firms submitted their bids.

Accordingly, there is no way, as a matter of common sense, that either firm gained any advantage in the competitive process. Simply put, the submission of the policies had nothing to do with the price quoted by any of the bidders, the sole determinative factor in the award of the Contract.

Dragados attempts to create an aura of competitive disadvantage by asserting that its subcontracting policies and procedures were placed in the public domain, and that it considers them confidential. Regardless of whether that assertion is true, that has nothing to do with the whether or not it had an advantage in this competitive process, the award of the Contract pursuant to this ITB. That is the only competitive process at issue in this protest, and allusions to market prejudice are irrelevant.

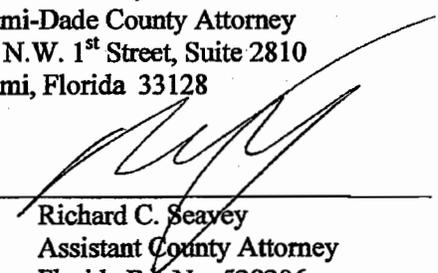
CONCLUSION

WHEREFORE, for the reasons described above, the County respectfully requests the Hearing Examiner dismiss or deny the protest and fully affirm the County Mayor's recommended contract award.

Respectfully submitted,

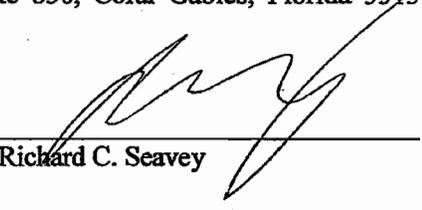
R. A. CUEVAS, JR.
Miami-Dade County Attorney
111 N.W. 1st Street, Suite 2810
Miami, Florida 33128

By: _____


Richard C. Seavey
Assistant County Attorney
Florida Bar No. 529206
Telephone: (305) 375-3325
Facsimile: (305) 375-5634
E-mail: Seavey@miamidade.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via Federal Express and PDF this 2^d day of August 2011 to: Michael J. Kurzman, Esq., Siegfried, Rivera, Lerner, De La Torre & Sobel, P.A., 8211 West Broward Blvd., Suite 250, Plantation, Florida 33324 (counsel for Dragados USA, Inc.); and Miguel A. De Grandy, Esq., Miguel De Grandy, De Grandy P.A., 800 Douglass Road, Suite 850, Coral Gables, Florida 33134 (counsel for Odebrecht Construction, Inc.).



Richard C. Seavey

EXHIBIT 1

Pursuant to Section 10-33.02 of the Code of Miami-Dade County, Florida, "a contractor who fails to meet an established CSBE goal shall submit a CSBE Make-Up Plan for approval of the [Small Business Development ("SBD")] Director. A Make-up Plan and a corresponding Schedule of Intent Affidavit must be submitted as part of any bid or proposal submitted for future contracts at the time of bid or proposal submittal." Failure to include the required Schedule of Intent Affidavit with bids or proposals for any future contracts shall result in the submittal being deemed nonresponsive. **To verify whether your company has a CSBE make-up requirement**, please refer to the SBD webpage at <http://www.miamidade.gov/sba/reports-goal-deficit.asp>. For questions regarding this requirement, contact Penelope Townsley, SBD Director at 305-375-3131.

All bids and forms required in conjunction with the bid shall be submitted on the forms provided by MDC and must be submitted in **DUPLICATE**, within a sealed envelope. All required forms for the submission of bids are included in the Bid Documents Volume I. All blank spaces for bid prices must be filled in ink, in figures and if required, in words as well. In the event of any discrepancy in the entries for the price extension of any item, the unit price as shown in figures shall govern. The sealed envelope shall be bearing on the outside the name of the Bidder, his address, the number of the project for which the bid is submitted and the date of the bid opening.

Bid Security must accompany each Bid and must be in an amount of not less than five percent of the highest Total Bid Price. Bids may not be revoked nor withdrawn for 180 days after the Bid opening date. **MDC reserves the right to waive any informalities or irregularities in any bid, to reject any or all Bids and/or to extend the bidding period.**

Miami-Dade County's "Cone of Silence", section 2-11.1(t) of the Code of Miami-Dade County, approved by the Board of County Commissioners, specifically prohibits communication in regard to this bid solicitation with County staff except as allowed by the code. The period covered by the "Cone of Silence" is defined in the code.

Bidders must file a copy of any written communication with the Clerk of the Board, which shall be available to any person upon request. MDC shall respond in writing and file a copy with the Clerk of the Board, which shall be made available to any person upon request. Written communications may also be in the form of e-mail addressed to Maria H. Cerna at sprfi@miamidade.gov, with a copy to the Clerk of the Board at clerkbcc@miamidade.gov.

This project is funded in part by the Florida Department of Transportation.

EXHIBIT 2

Sec. 2-8.8. - Fair subcontracting practices.

(1)

Policy. It is the policy of this County to promote diversity in the use of Subcontractors on Miami-Dade County projects and to allow opportunities for subcontracting to as many qualified Subcontractors as possible.

(2)

Definitions. As used in this section:

(a)

The term **bid** means a quotation, proposal, letter of interest or offer by any bidder in response to any kind of invitation, request or public announcement to submit such quotation, proposal, letter of interest or offer for a contract.

(b)

The term **contract** means an agreement proposed by County or Public Health Trust staff, or approved by the County Commission or Public Health Trust in any of the following classes:

(1)

Procurement of goods and services not included in the classes 2, 3 and 4 below;

(2)

Construction of a public improvement;

(3)

Professional services subject to Section 287.055, Florida Statutes, and Section 2-10.4 of the Code of Miami-Dade County; or

(4)

Other professional services including but not limited to accounting, legal, health care, consulting and management services.

(5)

Contract does not mean an agreement to purchase, lease or rent real property, grant licenses, permits or franchises, operate concessions, or make grants.

(d)

The term **local** means having headquarters located in Miami-Dade County or having a place of business located in Miami-Dade County from which the contract or subcontract will be performed.

(e)

The term **subcontract** means an agreement between a bidder and a subcontractor to perform a portion of a contract.

(f)

The term **Subcontractor** means a business independent of a bidder which may agree with the bidder to perform a portion of a contract.

(3)

Standards for awarding subcontracts. The County encourages bidders to adopt policies and procedures which:

(a)

Notify the broadest number of local Subcontractors of the opportunity to be awarded a subcontract;

(b)

Invite local Subcontractors to submit bids in a practical, expedient way;

(c)

Provide local Subcontractors access to information necessary to prepare and formulate a subcontracting bid;

(d)

Allow local Subcontractors to meet with appropriate personnel of the bidder to discuss the bidder's requirements; and

(e)

Award subcontracts based on full and complete consideration of all submitted proposals and in accordance with the bidder's stated objectives.

(4)

Reporting of subcontracting policies and procedures: For all contracts in which a bidder may use a Subcontractor, prior to contract award, the bidder shall provide a detailed statement of its policies and procedures for awarding subcontracts. Failure to provide the required statement shall preclude the bidder from receiving the contract. The County Manager shall include language in the specifications of applicable County contracts for the provision of such a statement. The foregoing notwithstanding, those contracts otherwise subject to this subsection advertised for bid after July 5, 1997 on which bids were opened before January 31, 1998 whose specifications do not include language implementing this subsection, may be awarded as provided in such specifications subject to the awardee supplying the statement of subcontracting policy required hereby.

(Ord. No. 97-35, § 1, 5-6-97; Ord. No. 98-31, § 1, 2-19-98; Ord. No. 98-124, § 1, 9-3-98; Ord. No. 98-159, §§ 1, 2, 11-5-98; Ord. No. 02-121, §§ 1, 2, 7-9-02)

EXHIBIT 3

BID TABULATION - WHARVES STRENGTHENING PROGRAM
 PROJECT CONTRACT NO. 2007-022 BSP
 BID OPENING - MAY 20, 2011

ITEM NO.	DESCRIPTION	TOTAL	UNIT	QTY	UNIT PRICE	TOTAL	BIDDERS		UNIT PRICE	COST	UNIT PRICE	COST	UNIT PRICE	COST
							Amertec Bridge Company	Oldemont Construction, Inc.						
DIVISION 1 - GENERAL REQUIREMENTS														
1	General Requirement		LS	1	\$6,500,000.00	\$6,500,000.00	\$829,000.00	\$829,000.00	\$2,368,784.00	\$2,368,784.00	\$2,815,190.00	\$2,815,190.00	\$6,130,000.00	\$6,130,000.00
2	Mobilization		LS	1	\$4,200,000.00	\$4,200,000.00	\$5,235,920.00	\$5,235,920.00	\$4,500,000.00	\$4,500,000.00	\$5,637,000.00	\$5,637,000.00	\$10,550,000.00	\$10,550,000.00
DIVISION 2 - STEEL CONSTRUCTION														
3	Site Demolition - pvc lined per linear foot of project		LF	618	\$88.26	\$540,000.00	\$148.00	\$90,464.00	\$113.00	\$700,370.00	\$208.00	\$1,272,544.00	\$200.00	\$1,232,600.00
4	Condition, Verification, Excavation for The Beds (including all excavation, shoring, dewatering, backfilling, compaction) or other mechanical activities to facilitate the work		EA	10	\$100,000.00	\$1,000,000.00	\$4,800.00	\$48,000.00	\$6,700.00	\$67,000.00	\$9,000.00	\$90,000.00	\$40,000.00	\$400,000.00
5	Granular Fill (Controlled Recycled) between existing and Proposed Sheet Pile, per linear foot, along wharf, of installed bulkhead		LF	5288	\$208.33	\$1,100,000.00	\$450.00	\$2,376,000.00	\$130.00	\$686,400.00	\$110.00	\$580,800.00	\$150.00	\$792,000.00
6	Concrete Fill (unreinforced) between existing and Proposed Sheet Pile, per linear foot, along wharf, of installed bulkhead		LF	8380	\$887.12	\$7,415,200.00	\$190.00	\$1,592,000.00	\$373.00	\$3,109,440.00	\$270.00	\$2,262,600.00	\$300.00	\$2,526,000.00
7	30-inch Steel Pipe Piles - Casted (includes furnishing and installing lead, and BDA, Rebar for 3 piles) Wharf 1 - 28 piles		EA	28	\$25,664.00	\$715,292.00	\$17,800.00	\$498,400.00	\$21,000.00	\$588,000.00	\$23,085.00	\$646,380.00	\$20,000.00	\$560,000.00
8	Casted Steel Sheet Pile (PA 3026-700) - Includes installation, including temporary bracing and clamps, cutoff penetrations, if any. Per linear foot, along wharf, of installed bulkhead		LF	1154	\$4,116.12	\$4,779,000.00	\$4,336.00	\$5,003,744.00	\$4,800.00	\$5,539,200.00	\$5,130.00	\$5,920,020.00	\$3,800.00	\$4,436,200.00
9	Casted Steel Sheet Pile (PA 3626-700) - Includes installation, including temporary bracing, and clamps, cutoff penetrations, if any. Per linear foot, along wharf, of installed bulkhead		LF	2534	\$4,834.25	\$12,250,000.00	\$4,039.00	\$10,217,088.00	\$5,000.00	\$12,670,000.00	\$5,235.00	\$13,316,170.00	\$4,230.00	\$10,769,200.00
10	Casted Steel Sheet Pile (A572-60) - Includes installation, temporary bracing and clamps, cutoff penetrations, if any. Per linear foot, along wharf, of installed bulkhead		LF	1893	\$3,894.47	\$7,280,000.00	\$2,304.00	\$4,367,968.00	\$3,000.00	\$5,676,000.00	\$3,370.00	\$6,365,640.00	\$2,500.00	\$4,725,000.00
11	Water Service - Includes trenching, equipment and piping, testing, installation, testing, after repair		EA	19	\$17,681.2	\$330,000.00	\$18,400.00	\$349,600.00	\$15,000.00	\$285,000.00	\$18,500.00	\$351,500.00	\$20,000.00	\$380,000.00
12	King Pile Splice (PA 3026-700) - material, labor and equipment, per linear ft installed, for advancing socket and King pile tip		LF	15	\$1,580.00	\$23,700.00	\$6,400.00	\$96,000.00	\$1,420.00	\$21,300.00	\$1,500.00	\$22,500.00	\$5,700.00	\$85,500.00
13	King Pile Splice (PA 3626-700) - material, labor and equipment, per linear ft installed, for advancing socket and King pile tip		EA	33	\$2,900.00	\$84,200.00	\$420.00	\$13,860.00	\$980.00	\$32,340.00	\$842.00	\$27,900.00	\$270.00	\$84,900.00
14	King Pile Splice (PA 3626-700) - material, labor and equipment, per linear ft installed, for advancing socket and King pile tip		EA	33	\$2,900.00	\$84,200.00	\$420.00	\$13,860.00	\$980.00	\$32,340.00	\$842.00	\$27,900.00	\$270.00	\$84,900.00
15	Site Demolition - pvc lined per linear foot of project		LS	1	\$1,091,720.00	\$1,091,720.00	\$1,500,000.00	\$1,500,000.00	\$1,600,000.00	\$1,600,000.00	\$1,600,000.00	\$1,600,000.00	\$1,725,000.00	\$1,725,000.00
16	Asphalt Concrete Paving (includes subgrade, preparation and base)		LS	1	\$350,000.00	\$350,000.00	\$502,200.00	\$502,200.00	\$1,300,000.00	\$1,300,000.00	\$533,000.00	\$533,000.00	\$830,000.00	\$830,000.00
17	Partial Paving (includes subgrade, preparation and base)		LS	1	\$35,000.00	\$35,000.00	\$70,000.00	\$70,000.00	\$100,000.00	\$100,000.00	\$66,500.00	\$66,500.00	\$75,000.00	\$75,000.00
18	Partial Paving (includes subgrade, preparation and base)		EA	433	\$9,900.00	\$4,284,700.00	\$10,230.00	\$4,434,230.00	\$7,000.00	\$3,017,000.00	\$11,600.00	\$5,014,800.00	\$5,700.00	\$2,462,100.00
19	Cont. Deduction (includes survey & reporting)		EA	123	\$800.00	\$98,400.00	\$760.00	\$93,500.00	\$670.00	\$82,410.00	\$681.00	\$83,760.00	\$800.00	\$98,400.00

The list contains the Bid Results as submitted on the Bid Summary Data. The ranking does not represent the lowest responsive and responsible bidder.

31

BID TABULATION - WHARVES STRENGTHENING PROGRAM
 PROJECT CONTRACT NO. 2007-022 ESR
 BID OPENING - MAY 20, 2011

ITEM NO.	DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL	Original Engineer's Estimate (GFA)		Revised Engineer's Estimate		BIDDERS																															
						10/31/2010	5/9/2011	American Bridge Company	Qadiri Construction, Inc.	Dingden USA, Inc.	GLP Construction Corporation	RCC CONTRACT JV																													
DIVISION 3 - CONCRETE																																									
19	Cast-in-Place Bulkhead Cap and Trench, per linear foot, along wharf	L/F	5,281	\$2,749.69	\$14,580,000.00	\$1,590.00	\$8,256,790.00	\$1,470.00	\$7,763,070.00	\$955.00	\$5,096,165.00	\$1,425.00	\$7,225,423.00	\$678.00	\$3,580,518.00																										
20	Cast-in-Place Bracing Structures	EA	14	\$86,428.57	\$1,210,000.00	\$87,200.00	\$882,200.00	\$129,000.00	\$1,806,000.00	\$70,000.00	\$982,000.00	\$75,000.00	\$1,050,000.00	\$9,361.00	\$131,034.00																										
21	Cast-in-Place Quay Rail Beams	EA	67	\$13,060.00	\$875,000.00	\$15,680.00	\$1,050,560.00	\$15,600.00	\$1,055,200.00	\$18,600.00	\$1,246,200.00	\$17,350.00	\$1,162,250.00	\$12,600.00	\$854,540.00																										
22	Cast-in-Place Water Stations	EA	19	\$3,684.21	\$69,999.99	\$6,870.00	\$130,530.00	\$4,500.00	\$85,500.00	\$7,100.00	\$132,900.00	\$3,800.00	\$72,000.00	\$34,682.00																											
24	Cast-in-Place Elevated Stations	EA	19	\$2,500.00	\$47,500.00	\$6,230.00	\$120,000.00	\$4,900.00	\$93,100.00	\$4,250.00	\$80,750.00	\$1,500.00	\$28,500.00	\$1,325.00	\$25,175.00																										
25	Adhesive Anchor in Existing Cap	L/S	1	\$472,000.00	\$472,000.00	\$153,000.00	\$153,000.00	\$180,000.00	\$180,000.00	\$123,200.00	\$123,200.00	\$180,000.00	\$180,000.00	\$145,250.00																											
26	Concrete Spill Repair (Patched)	CP	1,000	\$300.00	\$300,000.00	\$480.00	\$480,000.00	\$520.00	\$520,000.00	\$124.00	\$124,000.00	\$380.00	\$380,000.00	\$421.00	\$421,000.00																										
27	Pile Repair Type 2 (Patched)	EA	17	\$14,000.00	\$238,000.00	\$10,500.00	\$178,500.00	\$15,000.00	\$255,000.00	\$3,100.00	\$52,700.00	\$22,700.00	\$365,400.00	\$409,224.00																											
28	Pile Repair Type 3 (Patched)	EA	3	\$15,000.00	\$45,000.00	\$13,890.00	\$41,670.00	\$12,000.00	\$36,000.00	\$38,200.00	\$113,200.00	\$113,200.00	\$126,000.00	\$28,090.00	\$84,177.00																										
DIVISION 18 - SPECIALTIES																																									
29	100 Ton Bolts - Provide 17, Install 16	EA	17	\$7,058.82	\$120,000.00	\$2,800.00	\$47,600.00	\$1,000.00	\$17,000.00	\$44,200.00	\$75,000.00	\$147,000.00	\$10,000.00	\$170,000.00	\$49,187.00	\$89,179.00																									
30	150 Ton Bolts - Provide 81, Install 76	EA	81	\$6,790.12	\$550,000.00	\$2,800.00	\$230,800.00	\$3,000.00	\$240,000.00	\$343,000.00	\$97,400.00	\$781,400.00	\$8,425.00	\$662,435.00	\$424,339.00																										
31	Paints and Install New Fenders, Including Mounting Hardware	EA	52	\$23,137.00	\$1,203,200.00	\$34,400.00	\$1,790,800.00	\$30,000.00	\$1,560,000.00	\$54,000.00	\$2,808,000.00	\$2,808,000.00	\$1,872,000.00	\$334,420.00	\$1,738,984.00																										
32	Rebar and Rebar End Fixing Fenders including New Mounting Hardware	EA	19	\$10,500.00	\$199,500.00	\$16,040.00	\$304,760.00	\$20,000.00	\$380,000.00	\$10,500.00	\$201,400.00	\$13,000.00	\$247,000.00	\$7,695.00	\$146,204.00																										
33	Remove and Reinstall Existing Fenders including New Mounting Hardware	EA	13	\$790.00	\$9,000.00	\$6,340.00	\$76,080.00	\$8,000.00	\$96,000.00	\$36,800.00	\$441,600.00	\$8,800.00	\$105,600.00	\$7,965.00	\$35,580.00																										
DIVISION 16 - ELECTRICAL																																									
Electrical Services - Includes trenching, conduit and equipment installation, testing, and site repair.													EA	19	\$4,738.84	\$90,000.00	\$17,250.00	\$323,950.00	\$11,500.00	\$218,500.00	\$27,233.00	\$517,807.00	\$29,500.00	\$560,500.00	\$16,981.00	\$322,639.00															
BAASE BID TOTAL																																									
Name: Amount as shown on the Bid Form																																									
PERCENTAGE BIDDER (1/300%) BASED ON BID FORM TOTAL																																									
CONTRACTOR ALLOWANCE (0% OF BASE BID)																																									
DEDICATED ALLOWANCE FOR PERMITS (5% OF BASE BID)																																									
GRAND TOTAL (BASE BID PLUS ALLOWANCE ACCOUNTS)																																									

The list contains the Bid Results as submitted on the Bid Submittal Date. The ranking does not represent the lowest responsive and responsible bidder.

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EXHIBIT 4



**Miami-Dade Legislative Item
File Number: 982695**

File Number: 982695
Version: 0

File Type: Ordinance
Reference: 98-124

Status: Adopted
Control: County Commission

File Name: ORDINANCE RELATING TO FAIR SUBCONTRACTING PRACTICES

Introduced:
9/9/1998

Requester: NONE

Cost:

Final Action: 9/3/1998

Agenda Date: 9/3/1998 **Agenda Item Number:** 5C

Notes: THIS IS FINAL VERSION AS ADOPTED. (ALSO SEE 982174)

Title: ORDINANCE AMENDING SECTION 2-8.8 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA, RELATING TO FAIR SUBCONTRACTING PRACTICES; ALLOWING FOR THE PROVISION OF SUBCONTRACTING POLICIES AND PROCEDURES PRIOR TO CONTRACT AWARD; DELETING THE PROVISION HOLDING NONCOMPLIANT BIDS NONRESPONSIVE; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

Indexes: SUBCONTRACTOR **Sponsors:** Natacha Seijas Millan, Prime Sponsor

Sunset Provision: Yes **Effective Date:** 9/18/1998

Expiration Date: 11/17/1998

Registered Lobbyist: None Listed

Legislative History

Acting Body	Date	Agenda Item	Action	Sent To	Due Date	Returned	Pass/Fail
County	9/9/1998		Assigned	Thomas T.			

Attorney

Ronzetti

Board of
County
Commissioners

9/3/1998 5C

Adopted as
amended

P

REPORT:

Chairperson Margolis expressed concern that bid procedures were not uniform for all county departments. County Manager Merrett Stierheim advised that staff was currently reviewing the RFP and RFQ process and invited input from the members of the Board. County Manager Stierheim noted the foregoing ordinance would reduce the number of bids rejected for failure to include the bidder's subcontracting policies and procedures at the time of submittal. Following discussion as to whether or not the foregoing ordinance would adversely impact minority subcontractors and result in bid-shopping, it was moved by Commissioner Souto that the foregoing ordinance be deferred to the next meeting and referred to workshop. This motion was seconded by Commissioner Ferguson and upon being put to a vote, passed by a vote of 6-5. (Commissioners Barreiro, Carey, Millan, Reboredo and Sorenson voted no) (Commissioners Morales and Alonso were absent) Commissioner Carey requested that the County Manager implement a check list of all documents required to be included as part of all bid packages. Commissioner Ferguson asked that all bid documents submitted with bids be reviewed when this matter was reviewed at the workshop. Commissioner Millan inquired how many contracts were rejected and from what departments because they failed to include the document in question. She also inquired how many bid protests were a result of the current policy. Following further discussion, Commissioner Miguel Diaz de la Portilla changed his vote on the previous motion to workshop the foregoing ordinance to "NO" whereupon the motion failed by a vote of 5-5. The Board by motion duly made, seconded and carried adopted the foregoing ordinance as amended to sunset in sixty days, and expressed its intent to hold a workshop on the overall issues of bid documents.

Legislative Text

TITLE

ORDINANCE AMENDING SECTION 2-8.8 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA, RELATING TO FAIR SUBCONTRACTING PRACTICES; ALLOWING FOR THE PROVISION OF SUBCONTRACTING POLICIES AND PROCEDURES PRIOR TO CONTRACT AWARD; DELETING THE PROVISION HOLDING NONCOMPLIANT BIDS NONRESPONSIVE; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

BODY

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF DADE COUNTY, FLORIDA:

Section 1. Section 2-8.8 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 2-8.8. Fair Subcontracting Practices.

(4) Reporting of Subcontracting Policies and Procedures. For all contracts in which a bidder may use a subcontractor, >>prior to contract award,<< the bidder shall provide a detailed statement of its policies and procedures for awarding subcontracts. The county manager shall include language in the specifications of applicable county contracts for the provision of such a statement. [[Any bid which does not provide such a statement shall be considered nonresponsive.]]

Section 2. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 3. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Metropolitan Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 4. This ordinance shall become effective fifteen (15) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

Section 5. This ordinance shall stand repealed sixty (60) days from its effective date.

1 Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

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**Miami-Dade Legislative Item
File Number: 983645**

File Number: 983645 **File Type:** Ordinance **Status:** Adopted as amended
Version: 0 **Reference:** 98-159 **Control:**
File Name: ORDINANCE RELATING TO FAIR SUBCONTRACTING PRACTICES **Introduced:** 1/23/1998
Requester: NONE **Cost:** **Final Action:** 11/5/1998
Agenda Date: 11/5/1998 **Agenda Item Number:** 5B
Notes: THIS IS FINAL VERSION AS ADOPTED. (also see 982979) **Title:** ORDINANCE AMENDING ORDINANCE NO. 98-124 RELATING TO FAIR SUBCONTRACTING PRACTICES; PROVIDING FOR 5 YEAR SUNSET PROVISION; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE
Indexes: SUBCONTRACTOR **Sponsors:** Natacha Seijas Millan, Prime Sponsor
Sunset Provision: Yes **Effective Date:** 11/15/1998 **Expiration Date:** 11/14/2003
Registered Lobbyist: None Listed

Legislative History

Acting Body	Date	Agenda Item	Action	Sent To	Due Date	Returned	Pass/Fail
Board of County Commissioners	11/5/1998	5B	Adopted as amended				P

REPORT: The Board adopted the ordinance as amended to reflect that the issue of responsiveness would be deleted and require that the detailed statement of

the bidders policies and procedures for awarding subcontracts be submitted prior to the award of the bid, otherwise, if not submitted at that time the bidder would not be entitled to received the bid award

County Attorney 1/23/1998

Assigned

R. A. Cuevas, Jr.

Legislative Text

TITLE

ORDINANCE AMENDING ORDINANCE NO. 98-124 RELATING TO FAIR SUBCONTRACTING PRACTICES; PROVIDING FOR 5 YEAR SUNSET PROVISION; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

BODY

WHEREAS, on September 3, 1998 this Board enacted Ordinance No. 98-124, entitled ORDINANCE AMENDING SECTION 2-8.8 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA, RELATING TO FAIR SUBCONTRACTING PRACTICES; ALLOWING FOR THE PROVISION OF SUBCONTRACTING POLICIES AND PROCEDURES PRIOR TO CONTRACT AWARD; DELETING THE PROVISION HOLDING NONCOMPLIANT BIDS NONRESPONSIVE; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE WHEREAS, this Board wishes to extend the time period during which Ordinance No. 98-124 is effective, NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF DADE COUNTY, FLORIDA:

Section 1. Section 1 of Ordinance No. 98-124 amending Section 2-8.8 of the Code of Miami-Dade County, Florida, is hereby further amended to read as follows: 1

Sec.2-8.8 Fair Subcontracting Practices

(4) Reporting of Subcontracting Policies and Procedures. For all contracts in which a bidder may use a subcontractor, prior to contract award, the bidder shall provide a detailed statement of its policies and procedures for awarding subcontracts. >> Failure to provide the required statement shall preclude the bidder from receiving the contract.<<

Section 2. Section 5 of Ordinance No. 98-124 is hereby amended to read as follows:

Section 5. This ordinance shall stand repealed [[sixty (60) days]] >>five (5) years << from its effective date.

Section 3. If any section, subsection, sentence, clause or provision of this ordinance is

held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 4. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any Sunset provision, shall become and be made a part of the Code of Metropolitan Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 5. This ordinance shall become effective ten (10) days after the date of enactment.

1 Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

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**Miami-Dade Legislative Item
File Number: 021541**

File Number: 021541 **File Type:** Ordinance **Status:** Adopted
Version: 0 **Reference:** 02-121 **Control:** County Commission
File Name: REMOVE SUNSET PROVISIONS OF O-97-35, O-98-124, O-98-159 **Introduced:** 5/23/2002
Requester: NONE **Cost:** **Final Action:** 7/9/2002
Agenda Date: 7/9/2002 **Agenda Item Number:** 4H

Notes: Title: ORDINANCE REPEALING SUNSET PROVISIONS OF ORDINANCE NOS. 97-35, 98-124 AND 98-159 TO MAKE PERMANENT THE REQUIREMENT OF SECTION 2-8.8 OF THE CODE OF MIAMI-DADE COUNTY THAT FOR ALL CONTRACTS WHERE A BIDDER MAY USE A SUBCONTRACTOR THE BIDDER PROVIDE PRIOR TO AWARD A STATEMENT OF ITS POLICIES AND PROCEDURES FOR SELECTION OF SUBCONTRACTORS; PROVIDING SEVERABILITY, INCLUSION IN CODE AND EFFECTIVE DATE

Indexes: NONE **Sponsors:** Natacha Seijas, Prime Sponsor

Sunset Provision: No **Effective Date:** **Expiration Date:**

Registered Lobbyist: None Listed

Legislative History

Acting Body	Date	Agenda Item	Action	Sent To	Due Date	Returned	Pass/Fail
Board of County Commissioners	7/9/2002	4H	Adopted				P
Ways and Means	6/11/2002	2B	Forwarded to BCC without				

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Committee			recommendation by the Chairperson due to lack of quorum		
Board of County Commissioners	6/4/2002	13A	Adopted on first reading	7/9/2002	P
County Attorney	5/23/2002		Assigned	R. A. Cuevas, Jr.	

Legislative Text

TITLE

ORDINANCE REPEALING SUNSET PROVISIONS OF ORDINANCE NOS. 97-35, 98-124 AND 98-159 TO MAKE PERMANENT THE REQUIREMENT OF SECTION 2-8.8 OF THE CODE OF MIAMI-DADE COUNTY THAT FOR ALL CONTRACTS WHERE A BIDDER MAY USE A SUBCONTRACTOR THE BIDDER PROVIDE PRIOR TO AWARD A STATEMENT OF ITS POLICIES AND PROCEDURES FOR SELECTION OF SUBCONTRACTORS; PROVIDING SEVERABILITY, INCLUSION IN CODE AND EFFECTIVE DATE

BODY

WHEREAS, this Board included sunset provisions in Ordinance Nos. 97-35, 98-124 and 98-159 requiring bidders for contracts in which a bidder may use a subcontractor to provide, prior to award, a statement of their policies and procedures for selection of subcontractors; and

WHEREAS, this Board wishes to make permanent the requirement of Section 2-8.8 of the Code of Miami-Dade County for submission of such a statement prior to award, NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, as follows:

Section 1. Section 5 of Ordinance No. 97-35, and Section 5 of Ordinance No. 98-124 are hereby repealed.

Section 2. Section 2 of Ordinance No. 98-159 is hereby amended to read as follows:1

Section 2. Section 5 of Ordinance No. 98-124 is hereby amended to read as follows:

Section 5. This ordinance [[shall stand repealed five years from its effective date]]

>>does not contain a sunset provision<<.

Section 3. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 4. It is the intention of this Board, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 5. This ordinance shall become effective 10 days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board..

Section 6. This ordinance does not contain a sunset provision.

1 Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double bracketed<< constitute the amendment proposed, remaining provisions are now in effect and remain unchanged.

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EXHIBIT 5

B- 249022, 1992 WL 186992 (Comp.Gen.)

COMPTROLLER GENERAL

*1 Matter of: CDM Federal Programs Corporation

June 23, 1992

Paul Shnitzer, Esq., Crowell & Moring, for the protester.

Henry J. Gorczycki, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Whether a low bidder will not be able to perform the contract with the supplier listed on the bid does not concern bid responsiveness, but rather relates to bidder responsibility, which is not subject to General Accounting Office review absent a showing of bad faith or fraud by the agency, or that definitive responsibility criteria may have been misapplied.

DECISION

CDM Federal Programs Corporation protests the award to Metcalf and Eddy Services, Inc. under invitation for bids (IFB) No. DACW09-91-B-0011 issued by the Department of the Army, South Pacific Division, Corps of Engineers, for the operation and maintenance of the Stringfellow Pretreatment Plant, Riverside, California, and Richmond Mutual Water Company, Los Alamitos, California. CDM argues that Metcalf's apparent low bid should be rejected because it allegedly cannot meet a material requirement of the IFB.

We dismiss the protest.

The Corps of Engineers issued the IFB on July 15, 1991, and opened bids on August 29. Metcalf submitted the low bid of \$9,070,858 and CDM submitted the second low bid of \$9,695,135. The IFB required continued use of the current water treatment facilities and equipment, which are owned by Calgon Carbon Corporation, until other equipment can be substituted. The IFB also required bidders to list their carbon manufacturer/supplier.^[FN1] Metcalf's bid listed Northwestern Carbon as its carbon manufacturer/supplier.

On September 10, CDM protested to the Corps of Engineers, alleging that since Calgon only permits use of Calgon carbon in Calgon-owned equipment, and since Metcalf is required to use the Calgon equipment until replacement equipment is operational, Metcalf would not be able to operate the Calgon equipment because Metcalf's bid proposed to use Northwestern supplied carbon. CDM thus argued that Metcalf's bid could not fulfill the requirements of the IFB and should be rejected.^[FN2]

On May 27, 1992, the Corps of Engineers denied CDM's protest, finding that Metcalf's bid was responsive and Metcalf was responsible. The Corps of Engineers found that Metcalf's bid obligated Metcalf to procure use of Calgon's

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facilities and equipment until Metcalf replaced them. Furthermore, the Corps of Engineers determined that if Metcalf needed to use Calgon carbon while using Calgon's equipment, then the IFB permitted Metcalf to supplement its carbon manufacturer/supplier list within 15 days of award. CDM protested the Corps of Engineers decision to our Office on June 10. CDM essentially argues that either Metcalf's bid is nonresponsive because it did not list Calgon as a manufacturer/supplier of carbon, or, alternatively, that Metcalf is nonresponsive because it will not be able to operate the Calgon facilities and equipment with Northwestern carbon.

*2 A bid is responsive as submitted when it offers to perform the exact thing called for in the IFB, and acceptance of the bid will bind the contractor to perform in accordance with all the IFB's material terms and conditions. Stay, Inc., B-237073, Dec. 22, 1989, 89-2 CPD ¶ 586. Unless something on the face of the bid either limits, reduces or modifies the obligation of the prospective contractor to perform in accordance with the terms of the IFB, the bid is responsive; the determination as to whether a bid is responsive must be based solely on the bid documents themselves as they appear at the time of bid opening. Mobility Sys. and Equip. Co., B-243332, Apr. 25, 1991, 91-1 CPD ¶ 412.

CDM does not assert that Metcalf took exception, on the face of its bid, to the requirement that the contractor begin performance using Calgon's facilities and equipment. CDM also does not assert that the IFB itself requires the bidder to use Calgon carbon. Thus, CDM's essential argument is that Metcalf's bid is nonresponsive for not complying with the IFB requirement regarding the identification of carbon suppliers because it has not listed Calgon as a supplier, since, according to CDM, that is the only acceptable source of carbon for use on Calgon equipment.

Generally, a requirement that a bidder list subcontractors in its bid involves a matter of responsibility because it relates to the agency's need to evaluate the subcontractor's qualifications or the bidder's ability to meet equal employment opportunity and minority business requirements. See A. Metz, Inc., B-213518, Apr. 6, 1984, 84-1 CPD ¶ 386; Titan Southern States Constr. Corp., B-189844, Nov. 15, 1977, 77-2 CPD ¶ 371. Normally, the only time a subcontractor listing requirement will be treated as a matter of responsiveness is when the requirement is intended to prevent "bid shopping," that is, the seeking after award by the prime contractor of lower-priced subcontractors than those originally considered in the prime contractor's bid. *Id.*

Here, the IFB specifically permits post-bid-opening substitution of the carbon supplier listed on the bid.^[FN3] Thus, it is apparent that the IFB carbon supplier listing requirement is a responsibility matter and is not intended to prevent bid shopping,^[FN4] since it expressly permits the substitution of suppliers after bid opening. See Seaward Corp., B-237107.2, June 13, 1990, 90-1 CPD ¶ 552. Accordingly, CDM's contention concerning the absence of Calgon in Metcalf's identification of carbon supplier is not an issue of responsiveness; rather, it is a challenge to Metcalf's responsibility. See Adrian Supply Co., B-239681, Aug. 28, 1990, 90-2 CPD ¶ 170, *aff'd*, Adrian Supply Co.—Recon., 70 Comp.Gen. 208 (1991), 91-1 CPD ¶ 79 (where bidder designates a manufacturer in its bid who does not make a product that meets the IFB requirements, and the designation of the manufacturer is for a purpose that concerns the bidder's responsibility, the bid is nonetheless responsive so long as it does not otherwise take exception to the IFB.)

*3 A determination that a bidder is capable of performing a contract is based, in large measure, on subjective judgments which generally are not susceptible to reasoned review. Thus, an agency's affirmative determination of a contractor's responsibility will not be reviewed by our Office, absent a showing of possible fraud or bad faith on the part of procurement officials, or that definitive responsibility criteria in the solicitation may have been misapplied. 4 C.F.R. § 21.3(m)(5); King-Fisher Co., B-236687.2, Feb. 12, 1990, 90-1 CPD ¶ 177. Since CDM has not alleged fraud or bad faith, and since definitive responsibility criteria are not at issue in this protest,^[FN5] the protest provides no basis for us to review Metcalf's responsibility.

The protest is dismissed.

James A. Spangenberg
Assistant General Counsel

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FN1 Apparently, the treatment of water using either the Calgon equipment or substituted equipment will require large amounts of carbon.

FN2 CDM raised other issues in its agency protest. We do not discuss these issues here because CDM has not challenged the Corps of Engineers' decision on these other issues.

FN3 The Corps of Engineers' decision on CDM's agency-level protest, which CDM included with its protest to our Office, also indicates that the IFB permits the contractor to change types of carbon used and participate in a competitive procurement to obtain such carbon.

FN4 Indeed, CDM's allegation that Calgon is the only possible supplier amounts to a concession that bid shopping would not be possible.

FN5 A definitive responsibility criterion is defined as a specific objective standard, i.e., qualitative and quantitative, that is established by a procuring agency in a solicitation to measure a bidder's ability to perform a contract. W.H. Smith Hardware Co., B-228576, Feb. 4, 1988, 88-1 CPD ¶ 110. Since the IFB requirement for identifying carbon suppliers provides no objective standard for judging responsibility, it is not a definitive responsibility criterion.

B- 249022, 1992 WL 186992 (Comp.Gen.)

END OF DOCUMENT

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EXHIBIT 6

C

B- 244936, B- 244936.2, 91-2 CPD P 457, 1991 WL 251277 (Comp.Gen.)

COMPTROLLER GENERAL

*1 Matter of: Hughes Georgia, Inc.

November 13, 1991

John S. Pachter, Esq., Michael K. Love, Esq., John V.

Snyder, Esq., and Jonathan D. Shaffer, Esq., Smith, Pachter, McWhorter & D'Ambrosio, for the protester.

Kenneth S. Kramer, Esq., and James M. Weitzel, Jr., Esq., Fried, Frank, Harris, Shriver & Jacobson, for Raytheon Company, an interested party.

Gregory H. Petkoff, Esq., and Charles M. Klein, Esq., Department of the Air Force, for the agency.

Aldo A. Benejam, Esq., and Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. List of potential subcontractors submitted in response to solicitation provision requesting bidders to submit list of suppliers requiring Equal Employment Opportunity (EEO) preaward clearance, relates to bidders' responsibility, where that information was submitted only to assist the contracting agency in administering its EEO program; information was not necessary to determine whether bidder unequivocally offered to deliver items in accordance with the material terms of solicitation, and list of potential subcontractors may be submitted at any time prior to award.

2. Protest that contracting agency improperly awarded a contract with the intention of materially modifying it after award by adding two new approved suppliers to source control drawings which were not listed on drawings issued with solicitation is denied, where protester was not prejudiced by agency's actions since even if protester could have relied on quotes obtained from new sources in preparing its bid, protester has failed to show that it would have possibly displaced the low bidder.

DECISION

Hughes Georgia, Inc. protests the award of a contract to Raytheon Company, Missile Systems Division, under invitation for bids (IFB) No. F33657-91-B-0044, issued by the Department of the Air Force for 5,255 AGM-65G and 36 AGM-65F Maverick missiles, and 79 spare guidance control sections. Hughes argues that Raytheon's bid should have been rejected as nonresponsive. In a subsequently filed second protest, Hughes argues that the Air Force improperly made award to Raytheon with the intention of materially modifying the contract after award.

We deny the protests.

BACKGROUND

Between 1978 and 1982, the Air Force procured various quantities of the Maverick missile solely from Hughes. In 1983, the Air Force awarded a second source contract to Raytheon for 500 missiles, and in 1987 and in 1989, the agency conducted competitive negotiated procurements, which resulted in split awards to Hughes and Raytheon for the production of additional missiles. In 1990, following a competitive negotiated procurement, the Air Force awarded a contract to Hughes to produce additional missiles. The Air Force states that Hughes's 1990 contract was the last planned production contract for the missiles. The agency issued the instant IFB to replace missiles expended during Operation Desert Storm.

*2 In addition to producing the Maverick missile, Hughes is also responsible for Weapon System Support (WSS) under a separate contract. As the WSS contractor, Hughes manages and maintains technical drawings and specifications of the Maverick missile, which includes a listing of approved sources which supply materials or components used in the production of the missiles. These drawings, referred to as "source control drawings," are part of the configuration identification baseline (CIB) of the missiles.^[FN1]

The agency issued the IFB on June 11, contemplating the award of a firm, fixed-price contract for the missiles and spare guidance control sections. Attachment No. 8 to the IFB was the CIB for the required items, which included the source control drawings for the missiles. Bidders were required to submit unit and extended bid prices for each of three contract line items (CLIN): CLIN 0001, the AGM-65G missiles; CLIN 0002, the AGM-65F missiles; and CLIN 0004, the spare guidance control sections. Award was to be made to the bidder submitting the lowest total extended bid price.

At the July 11 bid opening, Raytheon submitted the low bid (\$264,799,879); Hughes's bid (\$269,974,671) was the only other bid received by the agency. Following bid opening, both bidders were permitted to review each other's bid schedule, and on July 16, with one exception noted below, the agency permitted the protester to review Raytheon's bid in its entirety. The contracting officer awarded the contract to Raytheon on July 17. Hughes protested the award to our Office on July 25. On July 30, in accordance with Federal Acquisition Regulation (FAR) § 52.233-2, the contracting officer issued a stop-work order directing Raytheon to stop contract performance.

Hughes argues that the Air Force should have rejected Raytheon's bid as nonresponsive because in a list of subcontractors furnished with its bid, Raytheon submitted the names of two firms which were not listed as approved sources of supply on the source control drawings included in the CIB issued with the IFB. Hughes also alleges that prior to award, the agency had improperly decided to add the two new suppliers that Raytheon submitted with its bid to the source control drawings after award. According to Hughes, the contract thus awarded to Raytheon is materially different from that advertised in the IFB.

ANALYSIS

Responsiveness of Raytheon's Bid

Section L-854 of the IFB, entitled "Equal Opportunity Preward List of Subcontractors," stated in full:

"The prime contractor shall provide the list of subcontractors who meet the criteria of FAR § 52.222-28 with bid.^[FN2] Submission of the [Equal Employment Opportunity (EEO)] clearance for these subcontractors is desirable but not mandatory to expedite contract award. An award to a subcontractor cannot be made without the contracting officer's approval of the subcontractor's clearance."

In response to this provision, Raytheon submitted with its bid a document entitled "List of vendors over \$1 [million] requiring EEO clearances" (the EEO list).^[FN3] Among the firms listed, Raytheon included Aeroflex International and Cinch Cylindrical Division.

*3 According to Hughes, Aeroflex is the only firm on Raytheon's EEO list that supplies the "torquer assembly," and Cinch the only firm that supplies the "umbilical connector," two source-controlled components of the required missiles. Hughes argues that since neither Aeroflex nor Cinch are listed as approved sources of supply on the source control drawings issued with the IFB, and since bidders were not authorized to use any other suppliers except those listed as approved sources on the drawings, Raytheon's listing of Aeroflex and Cinch demonstrated the firm's intent to provide items that deviate from the CIB. Hughes thus concludes that the Air Force should have rejected Raytheon's bid as nonresponsive.

The agency and Raytheon essentially argue that the information sought by clause L-854 concerns bidders' responsibility, and that the EEO list Raytheon submitted in response to that clause in no way affected the responsiveness of Raytheon's bid. In this connection, the agency states that the information sought by section L-854 is simply used by the Air Force to administer its EEO program. See generally FAR subpart 22.8. The agency explains that by requesting a list of potential subcontractors requiring EEO preaward clearance, the agency can expedite the required compliance check with the Department of Labor, see FAR § 22.805(a)(5), without unduly delaying award of a prime contract.

The test for responsiveness is whether a bid as submitted represents an unconditional offer that will bind the contractor upon acceptance to perform the exact thing solicited in accordance with all the terms of the IFB. Seaward Corp., B-237107.2, June 13, 1990, 90-1 CPD ¶ 552. Unless something on the face of the bid either limits, reduces or modifies the obligation of the prospective contractor to perform in accordance with the terms of the IFB, the bid is responsive. Mobility Sys. and Equip. Co., B-243332, Apr. 25, 1991, 91-1 CPD ¶ 412. Here, we find that nothing on the face of Raytheon's bid limited, reduced or modified its obligation to deliver items in accordance with the terms of the IFB, including the CIB's requirement to obtain components and materials from only approved sources.

Section H-017 of the IFB and the Statement of Work (SOW) require the successful contractor to comply with the requirements of the CIB, including the source control drawings.^[FN4] The source control drawings for the torquer assembly and the connector contained the following notation requiring the use of only approved sources of supply:^[FN5]

"Only the item described on this drawing when procured from the vendor(s) listed hereon is approved by [Hughes] for the use in the application(s) specified hereon. A substitute item shall not be used without prior approval by [Hughes] or by the [Air Force]."

Our review of Raytheon's bid shows that the firm took no exception to this requirement, nor to any other term in the IFB. Contrary to Hughes's suggestion, the information requested by section L-854 of the IFB was not equivalent to a requirement for the submission of a "binding" vendor's list. Rather, since the information requested by that clause was to be used in administering the agency's EEO program, it bears on the bidders' responsibility,^[FN6] something that Hughes has not challenged, and was not related to bid responsiveness. See A & C Bldg. and Indus. Maint. Corp., B-218035, Feb. 13, 1985, 85-1 CPD ¶ 195; Allis-Chalmers Corp., B-179959, Jan. 21, 1974, 74-1 CPD ¶ 19.^[FN7]

*4 Raytheon's EEO list did not qualify or alter the CIB requirements, and in no way affected or modified the government's contractual right to receive items that comply with the CIB—i.e., items that only incorporate components provided by approved sources listed on the source-controlled drawings. Consequently, Raytheon's inclusion of Aeroflex and Cinch in response to the information requested by section L-854 did not render Raytheon's bid non-responsive. See, e.g., Coastal Indus., Inc., B-230226.2, June 7, 1988, 88-1 CPD ¶ 538; Dubicki & Clarke, Inc., B-190540, Feb. 15, 1978, 78-1 CPD ¶ 132. Since Raytheon's EEO list did not affect or modify any of the terms of the IFB, the Air Force could not have properly rejected Raytheon's low bid as nonresponsive solely because the list contained the names of firms which were not listed as approved sources on the source control drawings.

Hughes relies on several decisions of our Office^[FN8] to argue that where an IFB identifies previously approved source-controlled components and requires bidders to certify that it will furnish only those components, failure to

certify requires rejection of the bid as nonresponsive. Each of those cases, however, concerned IFBs which contained a requirement that bidders "certify" that they would furnish components from approved suppliers listed on the source control drawings, and cautioned bidders that failure to do so would result in rejection of their bids.^[FN9] The IFB here simply contained no such certification requirement. This aspect of Hughes's protest is denied.

Modifications to Raytheon's Contract

In its second protest, Hughes contends that the contracting officer had improperly decided before award to modify Raytheon's contract by adding Aeroflex and Cinch as approved sources to the source control drawings after award. Hughes states that the Air Force made it clear during a bidders' conference that the IFB "froze" the CIB as of August 21, 1989, for bidding purposes. Hughes states that in preparing its bid, it followed the agency's instructions and based its bid on providing items that conformed to approved changes made to the CIB as of that date. Hughes primarily relies on an August 16, 1991, Air Force document that Hughes received with the agency's response to Hughes's initial protest, which states that "the government has approved both [Aeroflex and Cinch] as sources of supply"; and a September 16 Air Force letter instructing Hughes under its WSS contract to "add Aeroflex to source control drawing for torquer assembly guidance unit."

The agency explains that as with most major weapon systems, the Maverick program is dynamic and ever-changing, with multiple contracts being performed simultaneously. To keep systems current, the Air Force has an established process whereby new engineering or design changes are incorporated into weapon systems through "engineering change proposals" (ECP) submitted by contractors,^[FN10] and approved by the agency. ECPs allow for cost savings, improvements, and integration of the Maverick missile with other weapon systems. Approved ECPs are ultimately incorporated into the relevant technical drawings, including ECPs to add newly approved sources to the source control drawings.

*5 The record shows that on September 7, 1990, Raytheon, under its 1989 contract, submitted a Class II ECP to add Cinch as an approved source to the source control drawing for the umbilical connector. The agency states that although Hughes challenged that ECP, Cinch was approved as a source of supply after August 21, 1989. On June 20, 1991, also under its 1989 contract, Raytheon submitted an ECP to add Aeroflex as an approved supplier to the source control drawing for the torquer assembly. On June 26, prior to the July 11 bid opening, the agency's CCB approved that change as a Class I ECP. In a July 5 letter which references Raytheon's 1989 contract and its ECP to add Aeroflex, the Air Force notified Raytheon that the "ECP was considered by the [CCB] and is approved for technical content only. This is not authorization to proceed. A formal modification will be required to incorporate this ECP into [Raytheon's 1989] contract." The contracting officer had not effected that modification to Raytheon's 1989 contract by bid opening.

In a June 24 letter to the Air Force that referenced Raytheon's ECPs to add Cinch and Aeroflex as approved sources, Hughes specifically referenced the IFB and stated in part:

"[Hughes] has now determined that these two changes may affect our bid [under the IFB]. If the new vendors are qualified, we may solicit quotations from them ... It is requested that this qualification data be provided to [Hughes] at your earliest convenience, but within a timeframe which will allow us to solicit quotations should that action be appropriate."

The Air Force responded to Hughes in a June 26 letter stating that the data required to add Aeroflex was "reviewed by [the agency], and the Aeroflex Torquer is considered qualified by our engineering staff."

Hughes concedes that ECPs have been authorized that incorporate changes to Hughes's and Raytheon's 1989 and 1990 production contracts, but argues that those ECPs did not affect the CIB issued with the IFB, which was "frozen" as of August 21, 1989. Hughes argues that notwithstanding the "dynamic" and "ever-changing" nature of the Maverick program, the restrictions imposed by sealed bidding procedures precluded the agency from effecting any changes to

the CIB issued with the IFB, except by amendments as required by FAR § 14.208. Hughes maintains that the Air Force's June 26 letter, did not amend the IFB to add Aeroflex and Cinch as approved sources to the source control drawings. Accordingly, Hughes alleges that the agency's preaward decision to add those sources to the CIB issued with the IFB, amounts to an improper award with the intent to modify Raytheon's contract after award.

Prejudice is an essential element of a viable protest, and where no prejudice is shown, or is otherwise evident, our Office will not disturb an award, even if some technical deficiency in the award process arguably may have occurred. American Mut. Protective Bureau, Inc., B-229967, Jan. 22, 1988, 88-1 CPD ¶ 65. Here, even assuming that the Air Force gave Hughes insufficient notice prior to bid opening that Aeroflex and Cinch were approved sources of supply upon which Hughes could rely to prepare its bid, and that the Air Force now intends to add those two sources to the CIB under Raytheon's contract, the record does not show that Hughes was even possibly prejudiced as a result.

*6 The protester's generalized statement that it could have submitted a substantially lower bid had it known prior to bid opening that Aeroflex and Cinch were approved sources is unsupported by the record. Despite our Office's specific requests, Hughes has provided no evidence to show what impact, if any, using Aeroflex would have had on its bid. As for Cinch, even assuming that Hughes—an approved source for the connector—were to obtain that component from Cinch, Hughes estimates that the reduction on its bid would be less than \$100,000—an insufficient amount to displace Raytheon as the low bidder.

Raytheon, on the other hand, has provided our Office the actual quotes it obtained from Aeroflex, as well as from the other two sources of supply listed on the source control drawing for the torquer assembly. Raytheon also provided the quotes it obtained from Hughes and Cinch for the connector.^[FN1] That information reveals that the difference between the Aeroflex quote for the torquer assembly and the next low quote for that component, when added to the difference between the Hughes and Cinch quotes for the connector, does not exceed one-fifth of the difference between Hughes's and Raytheon's bid. Accordingly, even if Hughes had been afforded an opportunity to rely on similar quotes from Aeroflex and Cinch to prepare its bid, Hughes has not shown that it possibly could have, or would have, displaced Raytheon as the low bidder. See, e.g., Logitek, Inc.—Recon., B-238773.2; B-238773.3, Nov. 19, 1990, 90-2 CPD ¶ 401.

Hughes also argues that price is not the only factor we should consider in determining materiality;^[FN12] that the addition of Aeroflex and Cinch will alter Raytheon's legal obligations; and that the additions will improperly change the conditions under which performance will occur. Hughes has not explained, however, and we fail to see how the addition of two new suppliers will change Raytheon's legal obligations under the IFB, nor how having access to two new sources of supply will significantly affect the conditions under which Raytheon will perform the contract. We also deny this ground of Hughes's protest.

CONCLUSION

Since nothing in Raytheon's EEO list restricted, limited, or conflicted with any material requirement of the IFB, the Air Force could not have properly rejected Raytheon's low bid as nonresponsive, solely because the list contained the names of two firms—Aeroflex and Cinch—which were not listed as approved sources on the source control drawings. The mere fact that Aeroflex and Cinch were technically approved by the cognizant authority prior to bid opening and that the agency intends to add those firms as approved sources to the source control drawings after award, does not provide a sustainable basis for protest, where the protester has not shown that it was possibly prejudiced by the agency's actions. Even assuming that Hughes did not receive adequate notice of the technical approval prior to submitting its bid, the protester has failed to show that it could have possibly displaced Raytheon as the low bidder had Hughes been afforded an opportunity to base its bid on quotes obtained from Aeroflex and Cinch.

*7 The protests are denied.

James F. Hinchman
General Counsel

FN1 The CIB essentially consists of performance-oriented specifications. Military Standard (MIL-STD) 480B dated July 15, 1988, entitled "Configuration Control—Engineering Changes, Deviations and Waivers," implements the configuration control requirements of the Department of Defense. MIL-STD 480B defines a "baseline" as a document or a set of documents "formally designated by the government at a specific time during [an item's] life cycle. Baselines plus approved changes from those baselines constitute the current approved configuration identification" for the required items.

FN2 FAR § 52.222-28 is the "Equal Opportunity Preaward Clearance of Subcontracts" clause and states in full:
"Notwithstanding the clause of this contract entitled 'Subcontracts,' the Contractor shall not enter into a first-tier subcontract for an estimated or actual amount of \$1 million or more without obtaining in writing from the Contracting Officer a clearance that the proposed subcontractor is in compliance with equal opportunity requirements and therefore is eligible for award."

FN3 Raytheon placed the legend "COMPETITION SENSITIVE-PROPRIETARY" across the top margin of the two pages of its EEO list. On July 16, Raytheon authorized the public release of the list and the deletion of the restrictive legend. The list was telecopied to Hughes on July 17.

FN4 Section H-017 of the IFB, titled "Configuration Identification Baselines," stated in part that the "[c]ontractor shall comply with the requirement described in ATCH NR 8—[the CIB]—attached hereto," and referred to paragraph 3.1 of the SOW. That portion of the SOW states in pertinent part that "[t]he contractor shall provide ... the AGM-65F and the AGM-65G Maverick missiles, and spare [guidance control sections] in accordance with the [CIB] specified in [section H-017]."

FN5 Drawing No. 260036, labeled "Torquer Assembly, Guidance Unit," lists two different approved suppliers, neither of which is Aeroflex. Drawing No. 252883, labeled "Connector, Electrical—Umbilical Receptacle," lists only Hughes Aircraft Company as the approved source.

FN6 Although clause L-854 states that bidders "shall" provide the EEO list with their bid, it is clear from the precatory language in the second sentence of the clause, making submission of the list "desirable but not mandatory," that the agency could not have properly rejected a bid as nonresponsive solely because it failed to include the EEO list. See, e.g., Aviation Specialists, Inc. v. Aviation Enters., Inc., B-218597; B-218597.2, Aug. 15, 1985, 85-2 CPD ¶ 174 (a contracting agency cannot change a matter of responsibility into one of responsiveness merely by the terms of IFB).

FN7 To the extent that Hughes argues that the legend Raytheon authorized deleted from its EEO list, improperly restricted public inspection of the allegedly "unapproved" nature of the items Raytheon offered, nothing on Raytheon's EEO list directly impacted on the nature, price, quantity, or quality of the items offered. See Ace Fed. Reporters, Inc., B-222584, June 30, 1986, 86-2 CPD ¶ 18, *aff'd*, B-222584.2, Oct. 11, 1986, 86-2 CPD ¶ 432. In any event, Raytheon authorized the agency to delete the restrictive legend and Hughes was not deprived of the opportunity to inspect the list.

FN8 For example, the protester cites Fraser-Volpe Corp., B-213910, Dec. 28, 1983, 84-1 CPD ¶ 35; and Phaostrom Instrument & Elec. Co., Inc., B-214169, Apr. 24, 1984, 84-1 CPD ¶ 474.

FN9 Typically, the certification consisted of checking a box next to the statement "[t]he item/component(s) being offered will be obtained from only the approved source(s) identified on the source control drawing(s)." See, e.g., MVI Precision Machining, Ltd., B-210730, Sept. 27, 1983, 83-2 CPD ¶ 382. Such certification was intended to prevent bid shopping—seeking after award lower-priced suppliers or subcontractors than those originally considered in the for-

mulation of the prime contractor's bid.

FN10 ECPs are classified as either Class I or Class II. Class I ECPs involve changes that impact form, fit, function, or critical items/vendors to be included in source control drawings. Class I ECPs must be approved by the agency's Configuration Control Board (CCB) and require a contract modification before they are incorporated into the relevant source control drawings. Class II ECPs involve minor changes and are approved by the Administrative Contracting Officer. All approved ECPs are periodically processed by Hughes under its WSS contract for inclusion in the drawings.

FN11 This information was provided to counsel for Hughes under an amended protective order issued under our Regulations. See 56 Fed.Reg. 3759 (1991) (to be codified at 4 C.F.R. § 21.3(d)(4)). Due to the nature of that information, it is briefly discussed only in most general terms.

FN12 For example, Hughes cites Schlumberger Indus., B-232608, Dec. 27, 1988, 88-2 CPD ¶ 626 and Atlas Trading and Supply Co., Inc., B-227164, Aug. 10, 1987, 87-2 CPD ¶ 146 (bids that did not comply with IFBs terms and conditions were properly rejected as nonresponsive); Data Copy Supply, Inc., B-229585, Mar. 16, 1988, 88-1 CPD ¶ 270, and Vertiflite Air Servs., Inc., B-221668, Mar. 19, 1986, 86-1 CPD ¶ 272 (failure to acknowledge material amendments to IFBs rendered bids nonresponsive).

B- 244936, B- 244936.2, 91-2 CPD P 457, 1991 WL 251277 (Comp.Gen.)

END OF DOCUMENT

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EXHIBIT 7

C

B- 220050, 86-1 CPD P 21, 1986 WL 69171 (Comp.Gen.)

COMPTROLLER GENERAL

*1 MATTER OF: Consolidated Group

January 9, 1986

DIGEST:

1. Source selection official has the ultimate responsibility for determining what, if any, significance to attach to the technical and cost scores given offers by the source evaluation board. Source selection official properly could decide to disregard scores and base award selection on review of record.
2. Decision of source selection official to award contract to a higher cost, technically superior offeror is not objectionable where award on that basis is consistent with the RFP's evaluation criteria and the source selection official adopted the source evaluation board's determination that the higher cost was justified because awardee's proposed approach of strong, centralized management overseeing numerous local subcontractors entailed less performance risk than protester's proposed approach of using large specialized subcontractors managed by new, untried organization.
3. List of proposed subcontractors required by solicitation was not intended for evaluation purposes, but related to contract administration and the offeror's responsibility, that is, its ability to perform. Therefore, agency evaluators were not required to downgrade proposal for failure to list subcontractors.
4. Protest allegation that agency evaluators failed to downgrade proposal because firm does not have necessary experience required by solicitation is denied. Solicitation provision which required that "[t]he offeror's [stated] competence and experience ... demonstrate his ability to handle general merchandise plus one of the three categories of conveyances: vehicles, aircraft, or watercraft" merely required that the ??(nca,kyc,d010496) competence and experience as stated in its technical proposal show its capability to perform specified work, and agency evaluators determined that offeror had such capability.
5. Protest that technical score was reduced in evaluation of revised best and final offer even though agency did not change technical requirements and offeror did not change its technical approach or capabilities from its initial proposal is rejected where revised best and final offer did not respond to perceived deficiencies regarding personnel and capability, and agency evaluation of these issues was fair and reasonable and consistent with evaluation criteria.
6. Protest that certain cost assumptions in evaluating offerors' cost proposals unfairly narrowed margin between protester's and awardee's cost score is rejected where the agency evaluators presented a reasonable basis for their use of these cost assumptions and, in fact, protester was not adversely affected by use of these assumptions.
7. Where protester raises new ground of protest in its comments to the agency report and the ground was known more than 10 working days prior to the submission of the comments, the new ground of protest is untimely and will not be considered.

Consolidated Group (Consolidated) protests the award of a contract to Northrop Worldwide Aircraft Services, Inc. (Northrop), under request for proposals (RFP) No. CS-85-34 for the management of seized and forfeited property handled by the United States Customs Service (Customs). Consolidated asserts that award by Customs to Northrop was unreasonable and not consistent with the evaluation criteria under the RFP and that award should have been made to Consolidated as the highest rated offeror.

*2 We deny the protest in part and dismiss it in part.

The RFP solicited a cost-plus-award-fee contract. Offerors were to submit separate technical and business (cost) proposals containing information specified by the RFP. The RFP provided for award to the offeror which "provides the quality/cost relationship that is the most advantageous to the government." The RFP identified three specific technical evaluation criteria and the listed maximum number of points a proposal could receive for each criteria, as follows: (1) understanding—15 points; (2) capability—35 points; and (3) approach—30 points. In addition to the maximum of 80 points for technical factors, the RFP assigned 30 points as the maximum score a proposal could receive for cost.

The Source Evaluation Board (SEB) found four proposals to be in the competitive range. The initial technical ranking of these proposals was as follows: National Systems Management Corp. (National) (75.25 points), Consolidated (72.25 points), Boeing Services International, Inc. (Boeing) (70.50 points), and Northrop (67.25 points). The SEB then gave each firm in the competitive range the same list of questions concerning technical and business issues and had each firm make an oral presentation to the SEB. The SEB then reevaluated and rescored the proposals, but the technical rankings remained the same.

Customs requested best and final offers from the four firms. Offerors were instructed that business proposals in the best and final offers should be revised from a total cost basis to a unit cost for each work category and should respond to any issues which were noted in an audit conducted of each proposal by the agency.

All four firms submitted best and final offers. The best and final offers were reviewed by the SEB, and no changes occurred in the technical ratings. However, in the process of source selection, additional questions arose concerning each offeror's capability to perform. Consequently, negotiations were reopened in order to clarify specific points regarding corporate capabilities, use of subcontractors, qualifications of core management, and ability to accommodate changes in workload. Each firm made another oral presentation to the SEB regarding these issues and then submitted revised best and final offers.

The final numerical scoring for each offeror was as follows:

Offeror	Technical Score	Cost Score	Total Score
Consolidated	65.50	30.00	95.50
Northrop	67.00	24.60	91.60
Boeing	73.75	14.80	88.55
National	67.75	16.90	84.65

Despite the fact that Consolidated received the highest score, the SEB recommended to the source selection official that award be made to Northrop primarily because Northrop's proposed approach of strong, centralized management entailed less risk than Consolidated's proposed approach. The source selection official followed the recommendation of the SEB and selected Northrop for award.

SOURCE SELECTION OFFICIAL DECISION

*3 Consolidated first asserts that the award to Northrop lacked a rational basis and was not consistent with the RFP award criteria. Consolidated argues that, since its offer received a higher score than any of the other offers, it was entitled to the award under the RFP. Consolidated points out that some discretion in selection would be permissible if the technical superiority of one

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offer warrants the additional cost but, since the Consolidated and Northrop offers were essentially equal technically, cost should be the determining factor and this would have resulted in award to Consolidated as the low cost offeror. It also asserts that the decision to award to Northrop because Northrop's offer entailed less risk involved consideration of a factor which was not included in the RFP as a basis for evaluation.

We have held that, as a general rule, our Office will defer to the source selection official's judgment. Bank Street College of Education, 63 Comp.Gen. 393 (1984), 84-1 C.P.D. ¶ 607. The selection decision and the manner in which such an official uses the results of the technical and cost evaluations and the extent, if any, to which one is sacrificed for the other are governed only by the tests of rationality and consistency with established evaluation factors. InterAmerica Research Associates, Inc., B-219650, Dec. 21, 1985, 85-2 C.P.D. ¶ —.

In considering protests such as this, we do not conduct a de novo review of the technical proposals or make an independent determination of their acceptability or relative merit. Cadillac Gage Co., B-209102, July 15, 1983, 83-2 C.P.D. ¶ 96. That is the function of the selection official who is to exercise informed judgment and sound discretion. Macmillan Oil Co., B-189725, Jan. 17, 1978, 78-1 C.P.D. ¶ 37. Our review is limited to examining whether the evaluation was fair and reasonable and consistent with the stated evaluation criteria. Cadillac Gage Co., B-209102, supra. We will question a selection official's determination concerning the technical merits of proposals only upon a clear showing of unreasonableness, abuse of discretion or violation of procurement statutes or regulations. Bank Street College of Education, supra. The fact that the protester disagrees with the selection official's conclusion does not itself render the evaluation unreasonable. Kaman Sciences Corp., B-190143, Feb. 10, 1978, 78-1 C.P.D. ¶ 117.

The thrust of Consolidated's protest in this regard is that the source selection official's decision to award to Northrop lacked a reasonable basis because the basis for the decision was not consistent with the stated evaluation criteria. We disagree with Consolidated and find that the award selection was reasonable and in accord with the stated award selection factors.

Initially, we note that Consolidated's reliance on the point scores as an indication of its alleged superiority is misplaced. Numerical point scores, when used for proposal evaluation, are useful as guides for intelligent decision-making. Unless a solicitation sets forth a precise numerical formula and provides that a contract will be awarded to the offeror whose proposal receives the highest number of points, award need not be made on that basis. Troy State University, B-212274.2, Aug. 15, 1984, 84-2 C.P.D. ¶ 182. Here, there was no such statement that the highest scored offeror would be awarded a contract. Offerors were specifically advised that:

*4 "Although numerical ratings may be used as a guide in contractor selection, the right is reserved to select a contractor who may not have the highest numerical rating (technical and cost combined)."

Thus, while the numerical scores, of course, must be considered by the source selection official, the selection official ultimately decides what, if any, significance is to be given the scores.

With regard to the selection of Northrop for the award, we cannot say that the determination that Northrop's offer was technically superior and worth the additional cost was unreasonable or inconsistent with the RFP factors for award. The source selection official concurred with the SEB's conclusion that Northrop's offer was superior to Consolidated's because Northrop's offer involved less risk than Consolidated's offer. Customs reports that risk was a particular concern because, for the first time, Customs was attempting to establish overall management of seized property at the national level. Customs believed that, while property management on the national level has the potential for increased revenue, risk existed in this national-level approach by increasing the potential for large-scale fraud and abuse, amplification of errors, and inefficiencies in operations due to the expanded administrative overhead.

The SEB examined the offerors' proposed methods of approach in order to determine which approach would most likely reduce the risk of these potential problems occurring. The record supports the SEB view that Consolidated is a recently formed joint venture composed of two firms—one which has experience in the criminal justice system and the other which is a liquidator of general merchandise—that proposed to manage large, specialized subcontractors for particular items such as cars and art works for each area of operation. The SEB found that Northrop was a large firm with 28 years of experience in government contracting and it proposed to provide centralized management oversight. The SEB concluded that there would be less risk of

administrative difficulties if the contract was performed by Northrop, a large, experienced contractor which offered strong, centralized management.

Consolidated states that there is no risk involved in contracting with Consolidated because the firm offered an alternative proposal under which it would run the project on a no cost basis, and it offered to post a performance bond of any amount to insure performance. It further states that there is actually more risk in contracting with Northrop because Northrop's proposed approach is similar to Customs' current approach which has lost money and Northrop has no experience in performing government contracts concerning property management. Consolidated notes that it has performed many property management contracts in the private sector.

Consolidated has not shown unreasonable the agency's finding that a strong, centralized management overseeing numerous subcontractors, such as that offered by Northrop, would reduce the risk involved in this new effort. Customs explains that a similar approach by Customs to that proposed by Northrop was not profitable because the management of seized property was not Customs' primary mission and its personnel were not suited for these duties. Customs further points out that a contractor having sole responsibility for these duties, on the other hand, could reasonably be expected to perform more efficiently and to be profitable using this approach.

*5 Furthermore, the record indicates that Consolidated did not offer a no-risk, no-cost proposal. Consolidated's initial business proposal indicated that the total cost of its system for each option year would be at no cost and would result in a net profit for Customs. However, in Consolidated's subsequent modification prepared in response to the revised costing instructions, the only mention of a no-cost offer was in Consolidated's cover letter which stated that Consolidated proposes to perform at no cost and with the highest net profit to the government. Other than this statement, Consolidated's best and final offer does not contain a no-cost proposal and the cover letter to the best and final offer stated that the agency "should consider the old assumptions and/or costs to be superseded by the new." Thus, contrary to Consolidated's claim, there is no indication that Consolidated submitted an alternative no-cost proposal that the SEB should have considered. As to the performance bond offered by Consolidated, a performance bond merely guarantees that a firm will perform a contract and, if the contractor defaults and fails to complete the contract, that the surety will complete the contract or pay damages up to the limit of the bond. The bond does not provide any motivation to perform efficiently or economically and it does not guarantee against the other risks expressed by Customs. We also note that Consolidated has not shown that its more decentralized approach addresses concerns such as the potential for amplification of errors.

The selection of a contractor which can best perform a contract involves a choice between methods of operation and the acceptance of a certain level of risk. The agency has decided that it cannot afford the risk that Consolidated's method of operation poses, and Consolidated has not shown that the decision not to select Consolidated's proposal because it represented greater risk than Northrop's in this particular procurement situation is unreasonable. See Laser Photonics, Inc., B-214356, Oct. 29, 1984, 84-2 C.P.D. ¶ 470.

We note that the use of the degree of risk to differentiate between proposals was not unreasonable since the element of risk is clearly related to the evaluation criteria of capability and approach. Under the criterion of capability, an "[o]fferor [was required to] demonstrate his ability to handle the magnitude and scope of the work involved," while under the criterion of approach, an "[o]fferor [was required to] indicate approach for carrying out the elements of this contract." While technical evaluations must be based on the stated evaluation criteria, the interpretation and application of such criteria often involve subjective judgments. Thus, we will not object to the use of evaluation factors not specifically stated in the RFP where they are reasonably related to the specified criteria. Our concern in considering an objection to the use of an evaluation factor not specifically stated in the RFP is whether it is so reasonably related to the specified criteria that the correlation is sufficient to put offerors on notice of the additional criteria to be applied. National Biomedical Research Foundation, B-208214, Sept. 23, 1983, 83-2 C.P.D. ¶ 363. Applying this standard, we find no basis for objecting to the evaluation of the risk of performance problems because the degree of risk present is clearly related to the approach used and the ability of the firm to perform the contract.

*6 Finally, with regard to the selection official's decision, Consolidated is correct in stating that cost should be the determinative factor if two proposals are rated technically equal. However, it is permissible to award the contract to other than the lowest

cost offeror if the RFP so provides and the source selection official's decision to do so is reasonable and consistent with the established evaluation scheme. Schneider, Inc., B-214746, Oct. 23, 1984, 84-2 C.P.D. ¶ 448. The RFP provided that:

"Cost will not be so controlling as to preclude award to an offeror whose costs of performance are higher if the technical superiority of the offer warrants the additional cost involved in the award of a contract to that offeror."

The source selection official agreed with the SEB recommendation that, despite Northrop's and Consolidated's having essentially equal technical scores, Northrop's proposal was, in fact, technically superior to Consolidated's due to the proposed method of approach. As discussed above, the record provides a rational basis for the decision that Northrop's proposal was technically superior. Accordingly, under the RFP, Customs was not required to award the contract to Consolidated as the lowest cost offeror.

TECHNICAL EVALUATION OF NORTHROP'S AND CONSOLIDATED'S PROPOSALS

Consolidated asserts that Northrop should have been downgraded in certain areas and that Consolidated was improperly downgraded in other areas and, consequently, its proposal should have been regarded as technically superior to Northrop's. In this connection, Consolidated states that Northrop's proposal should have been downgraded because Northrop failed to list its proposed subcontractors as required by the RFP and because Northrop's only relevant experience is managing aircraft, which is only 1 percent of the Customs inventory.

With regard to the requirement to list subcontractors, the solicitation referred to subcontractors twice. First, in a section entitled "Contract Administration Data," the solicitation provided that the offeror's proposal shall identify all subcontracts/consultant arrangements proposed for this effort. This obviously relates to contract administration and, generally, such information need not be provided until after the contract is awarded. Second, in the section entitled "Instructions, Conditions, and Notices to Offerors," the solicitation specified information required for proposed subcontracts. However, a list of subcontractors was not required in the section entitled "Evaluation Factors for Award," nor were subcontracts discussed in those parts of the instructions section which advised offerors what to include in their technical and business proposals. Thus, in our view, the solicitation did not require subcontractor information for purposes of evaluation, but rather solicited the information for reviewing the manner in which an offeror proposed to perform and would actually perform, which are matters of responsibility and contract administration, respectively. See Linde Construction, B-206442, Mar. 17, 1983, 83-1 C.P.D. ¶ 271. Under these circumstances, the agency did not act improperly in not downgrading Northrop for failing to list its subcontractors. Furthermore, we note that the SEB recognized that Northrop did not list its proposed subcontractors. The SEB was satisfied by the firm's plan to initially utilize contractors currently providing services to Customs, if they could meet standards established by Northrop and had a record of satisfactory past performance, and to later consolidate its subcontract operations to the extent economically feasible.

*7 As to Northrop's alleged lack of relevant experience, Consolidated points to the solicitation requirement that in the technical proposal "[t]he offeror's competence and experience will demonstrate his ability to handle general merchandise plus one of the three categories of conveyances: vehicles, aircraft or watercraft" and argues that this provision established a threshold requirement of experience which Northrop failed to meet because it has no experience in general merchandise. Consolidated, however, has misinterpreted this solicitation provision. This provision does not require previous experience in handling general merchandise; it merely requires that the offeror demonstrate that its competence and experience, which apparently may be in personal property management and/or other areas, will enable it to handle general merchandise plus one of the three listed categories of conveyances. The agency evaluators determined that Northrop is able to handle general merchandise and at least one of the listed categories, and Consolidated has not shown that this was an unreasonable determination. Thus, we find that Northrop's proposal was evaluated reasonably and in accordance with the evaluation criteria.

Consolidated also asserts that its technical proposal was improperly downgraded. First, it states that its technical score was reduced from its initial point score on the basis of its revised best and final offer even though the agency did not change the original technical requirements or the scope of work and Consolidated did not change its technical approach or capabilities or present any new information in its revised best (nca,kyc,d010496) final offer. Consolidated argues that the reasons given for reducing its technical score were not rationally related to the evaluation criteria or its project organization or design.

Initially, the fact that a proposal is downgraded during the evaluation process is not improper even though the concerns brought out in the final evaluation of the protester's proposal existed in its initial proposal. The evaluators apparently expected that in presentations and revisions, Consolidated would remedy the deficiencies in its proposal; however, in the evaluators' view, Consolidated did not correct its deficiencies. See C.D. Systems, Inc., B-217067, Apr. 5, 1985, 85-1 C.P.D. ¶ 396. As long as the agency evaluation was fair and reasonable and consistent with the evaluation criteria, we will not substitute our judgment for the agency's finding that Consolidated's proposal was less acceptable than it was when initially evaluated. Electronic Data Systems Federal Corp., B-207311, Mar. 16, 1983, 83-1 C.P.D. ¶ 264.

The reductions in Consolidated's technical score were in the criterion of capability, primarily for the firm's failure to propose a definite replacement for project manager for operations and the firm's failure to adequately answer questions relating to managerial, capability and operational skills in its revised best and final offer. As to the project manager, Consolidated states that its proposed manager would be available to perform the contract and that it offered to present backup candidates to the SEB for every managerial position. However, Consolidated never presented a definite replacement whose credentials the evaluators could examine to assure themselves that Consolidated could capably perform the contract in the event the proposed manager was not available. On this record, Customs' concern was reasonable since the project manager is the most significant position in terms of overall daily operational responsibility, and the proposed project manager was offered another position during the evaluation process and, therefore, it was entirely possible that he would not be available to perform the contract for Consolidated.

*8 The other basis for downgrading Consolidated's technical score was Consolidated's failure to adequately answer questions relating to capability. We think the record reasonably supports the agency's finding that Consolidated's final offer did not adequately address the agency's concern regarding Consolidated's capability. The SEB examined the capabilities of the joint venture and of the proposed personnel to provide successful personal property management.

As to general capability, the SEB concluded that Consolidated failed to satisfactorily present itself as one entity that Customs could deal with on all aspects of the project. The record indicates that the evaluators considered this a major problem because Consolidated as a newly formed organization did not have a performance record and, therefore, its capability was unknown and that only one member of the joint venture had any experience in personal property management. The record further indicates that the evaluators were concerned that Consolidated was to be managed by a variety of committees, but the relationships and accountability of these committees were not clearly stated, and that Consolidated did not present evidence that its organization has proven, institutionalized management systems for directing, organizing, staffing, and controlling the project. These factors led to the conclusion that the overall organization did not demonstrate prior experience in personal property management as an organization. The evaluation documents also indicate that the committees and project staff assembled by Consolidated largely included individuals who had never worked together.

With regard to individual experience, the evaluators found that more than half of the personnel offered did not have directly related experience and that those with experience were to serve on management committees and not in management roles on the project staff. In its final presentation, Consolidated did not present any additional information which changed these judgments and, thus, for these reasons, Consolidated's capability score was reduced.

Consolidated contends that the alleged problems in its logistics and management do not exist and that, in previous stages of the evaluation process, it had answered all of the questions raised by the SEB. It stresses that, as a joint venture, its capability must be evaluated as an entity and, as an entity, it has the required capabilities. Consolidated acknowledges that one member of its joint venture does not have experience in personal property management, but points out that its other member is vastly experienced. It also contends that the members of its committees are qualified and the relationship between its committees and the lines of authority is clear and that these committees cover usual corporate functions.

The SEB considered the fact that Consolidated is a joint venture and the experience of its member organizations. However, in assessing the general capabilities of the offeror, the SEB examined not only the components of the joint venture, but also the entity itself: its organization and staff. The SEB found, for example, that none of the individuals filling the four key positions on the project staff were experienced in personal property management. In this connection, the SEB specifically noted that if

Consolidated's proposed project staff had offered more personnel from the experienced member of the joint venture in key positions, the evaluation of the firm's capability would have been different. Thus, the SEB did consider Consolidated as a joint venture, and its evaluation of the capability of the firm and its individual personnel has not been shown to be unreasonable.

*9 Despite the fact that the SEB had originally rated Consolidated's proposal highly, the failure of the firm to provide a definite replacement for the project manager and to adequately address certain managerial issues raised in discussions provided a reasonable basis for finding the proposal less acceptable than when it was originally considered.

Consolidated also complains that the change in cost proposal instructions adversely affected its rating. It states that the change, in addition to comparing proposals on a unit-cost basis instead of on a total-cost basis, instructed offerors to use certain cost assumptions in preparing these proposals. Consolidated asserts that the assumptions did not accurately reflect its technical approach and were highly biased in favor of Northrop's multisubcontractor approach and, as a result, although it remained the low offeror, the margin between its cost score and Northrop's was reduced.

The SEB explains that it was unable to determine the best price under the initial evaluation of cost proposals because each offeror made assumptions or interpretations which made uniform comparison of proposals impossible. Our review of the cost proposals supports this position. Therefore, the request for cost proposals with more specific details appears to be reasonable. We also note that our review of the costs proposed by Northrop and Consolidated indicates that the number of points received for cost by Northrop was, in fact, less under the revised cost instructions than it would have received under the evaluation of its initial cost proposal. Therefore, contrary to its assertion, Consolidated was not prejudiced by the change.

In this connection, we note that, as to the cost assumptions and also the changes in technical scores and the ultimate selection of Northrop, Consolidated has suggested that Customs was biased and its actions were all a pretext designed to justify award to Northrop. The protester has a heavy burden of proving bias on the part of evaluators or the selection official, and unfair or prejudicial motives will not be attributed to those individuals on the basis of inference or supposition. Kelsey-Seibold Clinic, P.A., B-217246, July 26, 1985, 85-2 C.P.D. ¶ 90. Consolidated suggests bias based upon the fact that changes were made during the evaluation process. We do not find any merit in its speculation in this regard. We have found that all of the agency's actions were reasonable and consistent with the evaluation criteria.

Finally, in its comments on the agency's report, Consolidated contends for the first time that no new information was requested for submission with revised best and final offers and that it was not in the government's best interest for agency evaluators to reopen negotiations after the initial best and final offers were received. Consolidated argues that the reopening of negotiations was in violation of Federal Acquisition Regulation, § 15.611(c) (Federal Acquisition Circular 84-5, April 1, 1985).

*10 Protest arguments not raised in a protester's initial submission must independently satisfy the timeliness requirements of our Bid Protest Regulations, 4 C.F.R. part 21 (1985). Where the protester supplements its original timely protest with a new ground of protest in its response to the agency report more than 10 working days after the basis for the new argument should have been known, the new ground is untimely. See Radionic Hi-Tech, Inc., B-219116, Aug. 26, 1985, 85-2 C.P.D. ¶ 230. Consolidated was aware that the agency was reopening negotiations in July 1985. Since we received Consolidated's comments on October 20, the new ground is clearly untimely and will not be considered. 4 C.F.R. § 21.2(a)(2).

The protest is denied in part and dismissed in part.

Harry R. Van Cleve
General Counsel

B- 220050, 86-1 CPD P 21, 1986 WL 69171 (Comp.Gen.)

END OF DOCUMENT

EXHIBIT 8

H

B- 253376, 93-2 CPD P 163, 1993 WL 376637 (Comp.Gen.)

COMPTROLLER GENERAL

*1 Matter of: Gelco Services, Inc.

September 14, 1993

Wade R. Dann, Esq., and Kell E. Bodholt, Esq., Dann, Greenberg & Radder, for the protester.

Virginia A. Cahill, Esq., McDonough, Holland & Allen, and Paul R. Meyer, Esq., P.C., for Mocon Corporation, an interested party.

Richard D. Vergas, Esq., and Robert Walsh, Department of Energy; and Shyamala T. Rajender, Esq., University of California, for the agency.

Behn Miller, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that awardee fails to comply with solicitation's definitive responsibility criterion requiring bidders to submit a list of "five successfully completed sewer relining projects within the last [3] years that are of similar size, design and complexity" to one of two patented sewer relining rehabilitation processes specified in the solicitation is denied where: (1) the awardee holds extensive project experience in a similar sewer rehabilitation technique and is licensed and trained to perform one of the patented methods; and (2) the awardee has submitted evidence—in the form of contractual agreements—from one of the solicitation's specified sewer rehabilitation method licensors—who has completed five identical sewer relining projects to that required under the solicitation—demonstrating that the licensor will supervise and provide other requested technical support to the awardee for the duration of the required sewer relining project.

DECISION

Gelco Services, Inc. protests the award of a contract to Mocon Corporation under invitation for bids (IFB) No. B198949, issued by the Regents of the University of California (University) for sanitary sewer pipeline rehabilitation at the Department of Energy (DOE) Lawrence Livermore National Laboratory (LLNL) research facility located in Livermore, California. The University conducted the procurement by or for DOE in its capacity as an LLNL site management and operations (M & O) contractor.^[FN1] In its protest, Gelco contends that Mocon failed to comply with the solicitation's project experience definitive responsibility criterion.

We deny the protest.

BACKGROUND

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The solicitation was issued in late December 1992 with a March 16, 1993, bid opening date. In addition to a pricing schedule, bidders were required to complete and submit a "List of Sub-Subcontractors," identifying each sub-subcontractor and the corresponding "Sub-Subcontracted Portion of the Work (Base Bid)."

Within the scope of work, the solicitation set forth the following experience requirement, Specification PCS-1030, Section 01210, paragraph 1.03A, entitled "Qualifications," which provides in relevant part:

"[t]he [s]ubcontractor shall show evidence of having adequate experience in the relining of sanitary sewer systems. The [s]ubcontractor shall submit a list of five successfully completed sewer relining projects within the last [3] years that are of similar size, design, and complexity to include: relining, video inspection [of] sanitary sewer systems, and required cleaning. Within these five submitted projects, three shall include work on projects involving relining of sanitary sewer systems with at least 4,000 feet of pipe from 4 to 12 inches in diameter."

*2 To demonstrate compliance with this project experience specification, bidders were directed to complete and submit a "Bidder's Statement of Experience" form which contained five "project" blanks, and which required bidders to indicate the project name, location, contract amount, client name, current address, phone number, architect name (if applicable), and corresponding architect address and telephone number.

The solicitation advised all bidders that an early determination of eligibility under paragraph 1.03A could be obtained prior to bid opening by submitting the "Statement of Experience" form. On March 2, Gelco submitted this form; on March 9, the University "prequalified" Gelco as an eligible bidder under this experience specification, based on the University's knowledge that Gelco had successfully performed over five Insituform ^[FN2] sewer relining projects at various sites throughout California. ^[FN3] VT at 14:18:51. ^[FN4] No other bidder requested prequalification.

At the March 16 bid opening date, three bids were received as follows:

Spiniello	\$1,938,350
Mocon Corporation	2,272,650
Gelco Services, Inc.	2,317,250

Shortly after bid opening, the University Subcontracts Administrator—a position which, for purposes of this discussion, is analogous to a contracting officer—submitted the bids to the project engineer for technical evaluation.

As noted above, because Gelco had been prequalified on March 9, its bid was determined acceptable under the "Qualifications" specification. However, after evaluating both Spiniello's and Mocon's "Statement of Experience" sheet, the project engineer determined that "it was not obvious on the face of the documents [they] ... submitted whether they met the ["Qualifications," paragraph 1.03A definitive] responsibility criteri[on]."

With respect to Mocon's "Bidder's Statement of Experience," Mocon had listed five Inliner projects and indicated that:

"[a]bove projects were performed by Inliner USA who will supervise and assist Mocon on this project."

After contacting each of Mocon's listed project references, the project engineer determined that each of the Inliner projects satisfied the definitive responsibility criterion set forth at paragraph 1.03A; in fact, the project engineer determined that several were more technically difficult than the performance required at the LLNL site. VT at 14:06:47. However, because Inliner had performed these projects, and because none of the listed project references could address Mocon's sewer relining project experience, the project engineer determined that Mocon had not adequately demonstrated its experience with any relining sewer method as required by the solicitation and that further evidence of a direct relationship between Mocon and Inliner was required. VT at 10:13:16; 14:07:10.

*3 By letter dated April 13, the Subcontracts Administrator advised both Spiniello and Mocon that their bids would be rejected since:

"the ... Statement of Experience submitted with your bid[s] ... shows that [the bidder] does not meet the minimum experience (qualification) set forth in the Specification PCS-1030, Section 01210-1.03A."

While Spiniello apparently objected to this determination, the company never submitted any further documentation to demonstrate its compliance with the Qualifications specification, and was therefore eliminated from the competition.

By letter dated April 15, Mocon filed a protest with the University challenging the determination regarding its experience. With its protest letter, Mocon submitted several pieces of additional information to demonstrate its compliance with the "Qualifications" project experience specification, which consisted of: (1) a handwritten 6-page submission explaining the contractual relationship between Mocon and InLiner, and listing numerous sewer rehabilitation projects completed by both entities; (2) a copy of the InLiner/Mocon licensing agreement; and (3) an addendum to that agreement wherein InLiner agreed to provide Mocon with technical support and supervision for the duration of its performance on the LLNL project. To further substantiate Mocon's April 15 explanation, Inliner itself submitted a letter to the University—dated April 22—which generally referenced Inliner's product and technology success as well as the extensive training process which all Inliner licensees are required to complete before being licensed to perform the Inliner sewer relining process.

Based on these additional submissions, the project engineer determined that the Mocon-Inliner contracts "provided adequate reassurances of Inliner's backing" and that such supervision/assistance—when combined with Mocon's own sliplining experience—satisfied the "Qualifications" project experience requirement. VT at 10:15:20; 10:53:00; 14:12:18. As a result, on April 28, the University awarded the contract to Mocon as the lowest-priced, responsible, responsive bidder. On April 30, Gelco filed a protest with the University, challenging the award as improper. On May 10, apparently after receiving a denial of its protest to the University, Gelco filed this protest with our Office.

PROTESTER'S CONTENTIONS

Gelco contends that Mocon was improperly determined acceptable under the "Qualifications" project experience requirement set forth at paragraph 1.03A. Gelco contends that the terms of the solicitation specifically require those entities bidding directly to the University to demonstrate that they have in-house—or without the assistance of a sub-subcontractor or third party—the exact project experience required under paragraph 1.03A. Alternatively, Gelco contends that Mocon cannot rely on the project experience of its licensor, Inliner, to meet the project experience requirement since Mocon did not list Inliner as a sub-subcontractor on the solicitation's "List of Sub-Subcontractors." Gelco also argues that because Inliner's role during performance of the contract will be limited to supervising and assisting Mocon's performance of the work, and because this project requires the use of a unique cured-in-place pipe (CIPP) process which Mocon has not performed as part of its "sliplining" sewer relining repairs, Inliner's experience cannot properly be applied to qualify Mocon under paragraph 1.03A.

*4 As discussed below, we find that the University properly determined Mocon to be qualified under the solicitation's project experience requirement.

DISCUSSION

Standard of Review

Since paragraph 1.03A, "Qualifications," concerns bidder experience, it pertains to bidder responsibility. See *Teltara, Inc.*, B-245806.2, Apr. 14, 1992, 92-1 CPD ¶ 363. Our Office will review an agency's affirmative determination of responsibility only if possible bad faith or fraud on the part of contracting officials is shown or if the solicitation contains definitive responsibility criteria which allegedly have not been met. *Prime Mortgage Corp.*, 69 Comp. Gen. 618 (1990), 90-2 CPD ¶ 48.

Definitive responsibility criteria are specific and objective standards established by an agency as a precondition to award that are designed to measure a prospective contractor's ability to perform the contract; the criteria limit the class of contractors to those meeting specified qualitative and quantitative qualifications necessary for adequate contract performance, e.g., unusual expertise or specialized facilities. *Topley Realty Co., Inc.*, 65 Comp. Gen. 510 (1986), 86-1 CPD ¶ 398. Here, there is no

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dispute by any of the parties that paragraph 1.03A, "Qualifications," constitutes a definitive responsibility criterion since it establishes a specific and objective standard—"five successfully completed sewer relining projects within the last [3] years that are of similar size, design, and complexity" to the Inliner/Insituform method specified in the solicitation, three of which involve 4,000 foot sewer relining projects—from which the University could measure a bidder's ability to perform this sewer contract.

Where an allegation is made that a definitive responsibility criterion has not been satisfied, we will review the record to ascertain whether evidence of compliance has been submitted from which the contracting official reasonably could conclude that the criterion has been met; generally, a contracting agency has broad discretion in determining whether bidders meet definitive responsibility criteria since the agency must bear the burden of any difficulties experienced in obtaining the required performance. *Prime Mortgage Co., supra*. The relative quality of the evidence is a matter within the contracting official's judgment; however, the official may find compliance with the definitive responsibility criterion based upon adequate, objective evidence. *T. Warehouse Corp., B-248951*, Oct. 9, 1992, 92-2 CPD ¶ 235.

Solicitation's Definition of Subcontractor

Gelco first argues that the solicitation itself defines the term "subcontractor" to prohibit a bidder from utilizing a sub-subcontractor's or third party's project experience to comply with the requirements of paragraph 1.03A. In making this argument, Gelco relies on the first sentence of the solicitation's definition of "subcontractor," which is set forth in the solicitation's "Definition of Terms and Responsibilities" segment, section 01010-1, paragraph 1.02.A.2, and which provides:

*5 "Subcontractor: The person, company, or corporation responsible for the execution of a construction subcontract, or any portion thereof, that has been awarded by the University."

Apparently, based on this sentence, Gelco believes that only the bidder itself can be construed as the subcontractor to whom the project experience requirement applies.

Gelco ignores the remaining definition of "Subcontractor" set forth at paragraph 1.02.A.2 which, following the sentence set forth above, provides:

"This term shall include the general or prime Subcontractor, all lower tier subcontractors and suppliers. The term Subcontractor may refer to any lower tier subcontractor concerned with the section or division of the subcontract specifications in which the term is used. This in no way relieves the Subcontractor from sole responsibility for completing the entire work as required by the subcontract."

To be reasonable, an interpretation of solicitation language must be consistent with the solicitation when read as a whole and in a reasonable manner. See *Lithos Restoration, Ltd., 71 Comp. Gen. 367 (1992), 92-1 CPD ¶ 379*. Here, we conclude that the only reasonable interpretation of the term "subcontractor" in light of the full text of the solicitation's paragraph 1.02.A.2 definition set forth above is that the term is to be interpreted broadly to include third party entities committed by the bid documents to assist the prime bidder in its performance of the sub-contract.

List of Sub-Subcontractors

As noted above, bidders were required to complete and submit a "List of Sub-Sucontractors" indicating the name of all sub-subcontractors, and the percentage of contract work which each identified sub-subcontractor would provide.

In its bid, Mocon left this form blank. Gelco argues that Mocon's failure to list Inliner on its sub-subcontractor list renders its bid nonresponsive. Gelco further asserts that because Mocon failed to list Inliner on this form, Inliner's project experience cannot be applied to qualify Mocon under the solicitation's paragraph 1.03A.

The purpose of the sub-subcontractor list is to assist the University in determining whether a prospective bidder is capable of performing the contract work. As such, completion of the sub-subcontractor list involves an issue pertaining to Mocon's responsibility. Since it is an issue of bidder responsibility, information pertaining to the identity of proposed sub-subcontractors

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may be submitted any time prior to award. See *John Short & Assocs., Inc.: Comprehensive Health Servs., Inc.*, B-236266; B-236266.4, Nov. 9, 1989, 89-2 CPD ¶ 448. Accordingly, the fact that Mocon submitted a blank sub-subcontractor list form does not render its bid nonresponsive or preclude the University from considering Inliner's project experience to qualify Mocon under the project experience requirement.^[FN5] See *BBC Brown Boveri, Inc.*, B-227903, Sept. 28, 1987, 87-2 CPD ¶ 471.

*6 Generally, the experience of a technically qualified subcontractor may be used to satisfy definitive responsibility criteria relating to experience for a prime contractor.^[FN6] *Tama Kensetsu Co., Ltd., and Nippon Hodo*, B-233118, Feb. 8, 1989, 89-1 CPD ¶ 128; *BBC Brown Boveri, Inc., supra*. The classification of the third party contractor as a "subcontractor" is not required. Rather, so long as the assisting third party's participation has been sufficiently identified in the bid documents, its experience may properly be considered. See *Hardie-Tynes Mfg. Co.*, 69 comp. Gen. 359 (1990), 90-1 CPD ¶ 347, *aff'd*, B-237938.2, June 25, 1990, 90-2 CPD ¶ 587.

Regardless of how the Mocon-Inliner contractual relationship is characterized—*i.e.*, regardless of whether Inliner legally constitutes a consultant, licensor, sub-subcontractor or supplier in relation to Mocon as the bidder on this contract—Mocon's bid clearly indicates that Inliner would be supervising and assisting Mocon in its performance of the sub-contract. Since Mocon's bid unquestionably established Inliner's supervision and assistance role, the University could properly consider Inliner's project experience in evaluating whether Mocon was qualified under the "Qualifications" definitive responsibility criterion set forth at paragraph 1.03A. *Id.*

We now turn to the question of whether it was reasonable, in light of the supervision/assistance role of Inliner and the CIPP procedure required in performing this project, for the University to qualify Mocon based on Inliner's project performance experience.

Application of Inliner's Project Experience

In advancing its argument that Inliner's experience should not be applied to qualify Mocon, Gelco relies heavily on our decision in *Townsko Contracting Co., Inc.*, B-240289, Oct. 18, 1990, 90-2 CPD ¶ 313, *aff'd*, B-240289.2, Mar. 15, 1991, 91-1 CPD ¶ 290. In *Townsko*, the bidder did not have sufficient experience in airfield pavement work to qualify under the solicitation's experience definitive responsibility criterion and sought to qualify for the procurement by means of a subcontractor's experience. In sustaining the protest, we concluded that because the contracting officer lacked any objective evidence from which he could reasonably determine that the subcontractor's experience was directly applicable to the bidder, the subcontractor's paving experience could not be applied to qualify the bidder under the definitive responsibility criterion. The case at hand is distinguishable from *Townsko*.

First, in this case, Mocon clearly identified Inliner as a "supervising" and "assist[ing]" entity in its bid; in *Townsko*, the bidder had failed to submit any information concerning proposed subcontractors in its bid. Next, unlike *Townsko*—where the awardee's intended subcontractor contacted the procuring agency directly and made it clear that there was only a remote possibility that the subcontractor would perform work on the project—here there is no question about the nexus between Inliner and Mocon or the commitment by Inliner to its supervision/assistance role.

*7 Although evidence of a firm commitment is not a prerequisite to considering the subcontractor's experience in determining that a prime contractor is responsible under a definitive responsibility criterion,^[FN7] in this case Mocon submitted two contractual agreements which substantiate its representations that Inliner will perform the supervision and assistance referenced in Mocon's bid. The first agreement, a March 1, 1993, "Sublicense Agreement," establishes a direct relationship between Mocon and Inliner; in this agreement, Inliner grants Mocon an "EXCLUSIVE license to use Inliner USA Intellectual Property and Inliner USA Technology." From this agreement, it is also clear that Mocon is only authorized to use materials, equipment, and technology which are approved by Inliner in its performance of the Inliner sewer rehabilitation method. Finally, the March 1 agreement demonstrates that Inliner is obligated to "provide initial training to Mocon in the practice of Inliner" and that "subject to availability, [Inliner] will provide a technician to assist [Mocon] and to render advice."

The second agreement, which is identified as a March 15 "Addendum to Sublicense Agreement," becomes effective "if [Mocon] is the successful bidder for [the] LLNL Project" and provides in relevant part:

"ARTICLE A. SUPPORT

"A.1 [Inliner] shall provide to [Mocon], at fair and customary rates (through Cat Contracting, Inc.),^[FN8] any and all equipment and materials required to complete the LLNL Project or until [Mocon] has taken delivery of its own equipment and materials currently being designed or procured.

"A.2 [Inliner] shall provide to [Mocon], at fair and customary rates, an experienced technical advisor, engineer or expert knowledgeable in Inliner USA Technology throughout the duration of the LLNL Project."

Thus, Inliner is committed to provide the supervision and assistance referenced by Mocon in its bid.

Finally, unlike *Townsc*—where the contracting officer's determination expressly contradicted the project engineer's determination that the awardee was not qualified—here the project engineer expressly found that the combination of Mocon's sliplining experience and Inliner's supervision unquestionably qualified Mocon. VT at 11:20:57.

Mocon's Experience and Capability

The Inliner sewer relining technique bid by Mocon requires the following steps: (1) visually inspecting the pipe for obstacles—such as tree roots, slipped pipe joints, grout, concrete or other pipe wall calcification—by means of a video camera; (2) cleaning the pipe and removing or repairing all obstacles; (3) establishing a bypass pumping system for sewer water so that the pipe requiring rehabilitation remains empty throughout the relining process; (4) winching a flattened premanufactured felt liner into the empty pipe using a hydraulic steel cable; (5) filling the pipe cavity with water—a process which simultaneously inflates the liner and inverts a premanufactured tube of resin through the felt liner; (6) heating the pipe cavity water to a 2-hour temperature of 140 degrees and 4-hour temperature of 190 degrees to "cure" the liner—a step which causes the resin to become sufficiently "sticky" so that the resinsaturated pipe liner is glued to the walls of the pipe; (7) cooling down the pipe cavity water to a temperature of 100 degrees; (8) inspecting the pipe to ascertain the success of the installation—again by means of a video camera; and (9) testing cuts of pipe to ensure the sewer relining's success.^[FN9]

*8 Sliplining, the sewer rehabilitation technique with which Mocon has extensive experience, is fundamentally similar to the Inliner method except for the following three significant differences. First, whereas the Inliner method requires the contractor to winch a flexible felt liner into place—thus, it is referred to as a "softlining" method—sliplining requires the contractor to winch a pre-manufactured, non-flexible plastic pipe into the sewer cavity. Second, unlike the Inliner method, sliplining is not a patented process; rather it is a technology within the public domain. Finally, unlike the Inliner method, sliplining does not involve a curing or CIPP process; that is, a sliplining contractor does not use water or CIPP equipment to inflate or cure the winched-in (flexible) pipe.

With respect to the difference between the installation of Inliner's flexible felt liner and the installation of a sliplining non-flexible pipe, the record shows that a sliplining installation presents two obstacles which an Inliner contractor does not encounter. First, the degree of cleaning and repair required in the sewer cavity prior to sliplining installation is more difficult because unlike the Inliner soft flexible liner, which can be easily woven through uneven joints in the sewer cavity because of its flattened, flexible shape, the sliplining hardened pipe—by virtue of its rigid form—cannot be installed unless the interior of the sewer cavity is in perfect condition. VT at 18:56:07–18:58:23. Additionally, the degree of difficulty inherent in winching in the reliner pipe under the sliplining method is greater than that involved in the Inliner method since sliplining requires the contractor to winch in a heavier, rigid form. VT at 19:00:20. Based on this evidence, we think a sliplining contractor's winching installation experience reasonably may be considered superior to an Inliner contractor's,^[FN10] and accordingly, Mocon's sliplining installation experience is directly transferrable to the Inliner installation required here.

Additionally, only licensed contractors may utilize the Inliner technology and method, which is patented. In locating qualified contractors to perform its technology, Inliner reports that it specifically seeks out sewer rehabilitation contractors with sliplining experience because of the correlation between the Inliner and sliplining installation methods, and because of the heavy

construction skills and experience which sliplining contractors possess.^[FN11] VT at 19:01:39. Inliner also reports that before it licenses a contractor to use Inliner, requires the contractor to complete extensive and intensive training. With respect to Mocon's training, the record shows that Mocon was introduced to the Inliner technology in 1991 and received on the job site training at four of the five Inliner projects referenced in its bid as well as at two 1992 Houston projects. VT at 15:43:46.

Based on this showing of sliplining experience and Inliner training, we think the record supports the University's conclusion that Mocon possesses the requisite background and skills to successfully perform this project using Inliner's supervision and assistance, even though Mocon does not itself hold the CIPP project experience called for under the definitive responsibility criterion.

***9 Inliner's Supervision/Assistance Role**

As evidenced by the bid documents, Mocon intends to rely on Inliner for supervision and assistance in its performance of the required sewer relining. The University's investigation into the precise parameters of Inliner's supervision/assistance role shows that Inliner's role will consist of selling Mocon all of the inversion lining materials and equipment which Mocon will use for this Inliner project; providing a CIPP foreman to oversee Mocon's performance; and providing any experienced Inliner installation laborers which Mocon desires to hire in its performance of this requirement. Because Inliner will not perform any of the actual manual labor on this project, Gelco argues that it was improper for the University to apply Inliner's project experience to qualify Mocon for this contract under the "Qualifications" definitive responsibility criterion. We disagree.

The intent of the experience requirement was to obtain a contractor with CIPP expertise.^[FN12] VT at 9:57:30 and 9:58:14. The technical expertise required to successfully perform Inliner's CIPP process—which Mocon arguably lacks by virtue of the fact that does not hold the requisite five CIPP projects experience—lies in the resin technology and the curing schedule. VT at 14:16:18; 14:35:45 through 14:38:00; 19:07:36.

With respect to the CIPP resin materials, Inliner reports that the required resin compound, felt liner, and resin hose will all be premanufactured at an Inliner facility and supplied by Inliner to Mocon in a ready-to-install form. VT at 14:35:26; 14:57:28; 15:08:49; 19:11:35. With respect to the CIPP curing stage, the record shows that in its supervisory/assistance role, Inliner will monitor Mocon's performance of the curing process to ensure that the heating equipment, curing schedule and technology are performed and applied properly. VT at 19:11:27. The record shows that the heating boilers which Inliner will supply for Mocon's use "automatically heat" the water in the curing stage and do not require any special mechanical skill not otherwise inherent in the operation of sliplining or construction machinery. VT at 19:07:14. Finally, as established by the Mocon-Inliner sublicensing agreement, as well as by testimony at the hearing, any testing of the installed Inliner pipe will be conducted by Inliner. VT at 19:07:28.

Mocon's reliance on Inliner's project experience to qualify under this solicitation's project experience definitive responsibility criterion—based on its use of Inliner's technical supervision and technical support—is analogous to a corporation applying the individual experience of its management personnel to meet an experience definitive responsibility criterion. See *DJ Enters., Inc.*, B-233410, Jan. 23, 1989, 89-1 CPD ¶ 59 (newly incorporated company's reliance on two principal officers' individual experience to qualify under solicitation's definitive responsibility criterion unobjectionable). As evidenced by the Mocon-Inliner agreements, representations made to the University during the course of its project experience investigation, and testimony from both Mocon and Inliner, Inliner will be available for the duration of the LLNL project—and ready to provide any technical support or assistance which Mocon may require at any stage of its performance—including steps not involving CIPP expertise. We conclude, therefore, that Inliner's supervision and assistance role—while not involving performance of actual manual labor by Inliner personnel—nevertheless is so pervasive that it constitutes an integral technical component of Mocon's performance. Under these circumstances, we think the University's application of the supervising entity's project experience to qualify Mocon was reasonable.

***10 The protest is denied.**

Robert P. Murphy for

James F. Hinchman
General Counsel

FN1. The University is subject to our bid protest jurisdiction as an M & O contractor that effectively awards subcontracts "by or for" the government since DOE's regulations specifically provide for our Office to consider protests involving acquisitions by M & O contractors such as the University. See 4 C.F.R. 21.3(m)(10) (1993); *AT & T*, B-250516.3, Mar. 30, 1993, 93-1 CPD ¶ 276. We review subcontract awards by prime M & O contractors under a "federal norm" standard, *i.e.*, to determine whether the procurements and subsequent awards are consistent with the policy objectives set forth in statutes and regulations which apply directly to federal agency procurements: *Elma Eng'g*, 70 Comp. Gen. 81 (1990), 90-2 CPD ¶ 390.

FN2. The solicitation required bidders to use one of two specified patented sewer relining methods to perform the LLNL project: the Insituform method—which was bid by Gelco—and the Inliner method—which was bid by Mocon.

FN3. On its "Bidder's Statement of Experience Sheet," Gelco had listed five of these projects.

FN4. A hearing was conducted pursuant to 4 C.F.R. 21.5 to receive testimony regarding: (1) the technical differences between the sliplining, Insituform, and Inliner sewer rehabilitation methods; (2) the project experience of Gelco, Mocon, and Inliner; (3) the steps of the University's project experience evaluation; and (4) whether the March 3 amendment materially modified the solicitation. References to the hearing transcript are identified by "VT" (videotape).

FN5. While Mocon did not identify Inliner on the sub-subcontractors list, Mocon did reference Inliner in its "Bidder's Statement of Experience" sheet. Specifically, as noted above, Mocon's statement of experience form clearly stated that "Inliner ... will supervise and assist Mocon on this project"; Mocon's statement of experience sheet also listed five Inliner sewer relining projects.

FN6. An exception is where a solicitation contains an express clause which prohibits satisfying a particular experience requirement through the experience of the offeror's subcontractor; such a provision limits a prime contractor's reliance on a subcontractor. See *Allen-Sherman-Hoff Co.*, B-231552, Aug. 4, 1988, 88-2 CPD ¶ 116. Here, there is no clause in the solicitation prohibiting bidders from applying a sub-subcontractor's or third party's experience to qualify under paragraph 1.03A.

FN7. See *Hardie-Tynes Mfg. Co.*, *supra*.

FN8. Under a January 1, 1991, agency agreement between Inliner and Cat Contracting, Inc.—which this Office has reviewed—Cat Contracting is obligated to provide "at the request of Inliner ... personnel and equipment necessary to demonstrate the Inliner process, train Inliner licensees and their employees and provide technical support for such licensees." Gelco does not dispute that Cat holds the requisite Inliner project experience required by the definitive responsibility criterion here. VT at 9:10:31.

FN9. The Insituform method—the other patented sewer rehabilitation method specified in the solicitation and the sewer relining process bid by Gelco—involves nearly identical steps; however, instead of winching in the liner, the Insituform method pushes the liner into place by using water or steam pressure to invert the liner within the sewer cavity—a method which is analogous to a sock being pulled on or off.

FN10. Even the protester's expert witness admitted that a sliplining contractor would have a "head start" in learning to utilize the Inliner method. VT at 17:28:39.

FN11. The record shows that beyond the actual pipe rehabilitation technique, sliplining can typically involve heavy construc-

tion where the diameter of pipe requiring rehabilitation exceeds the corresponding manhole diameters; in such situations, the sliplining contractor must create an access point by excavating into both the ground and the sewer pipe requiring repair. VT at 19:00:00.

FN12. In the opinion of Gelco's expert witness, this solicitation's definitive responsibility criterion "requires somebody to have experience in the CIPP process." VT at 17:17:43.

B- 253376, 93-2 CPD P 163, 1993 WL 376637 (Comp.Gen.)

END OF DOCUMENT

EXHIBIT 9

C

B- 290158, 2002 CPD P 100, 2002 WL 1316190 (Comp.Gen.)

COMPTROLLER GENERAL

***1 Matter of:
Great Lakes Dredge & Dock Company**

June 17, 2002

Daniel C. Sauls, Esq., Thomas P. Barletta, Esq., and Paul R. Hurst, Esq., Steptoe & Johnson, for the protester.

Michael H. Payne, Esq., Starfield & Payne, for Weeks Marine, Inc., an intervenor.

Peter M. Kilcullen, Esq., Kilcullen Law, for Bean Stuyvesant, LLC, an intervenor.

Madeline Shay, Esq., U.S. Army Corps of Engineers, for the agency.

Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency was not required to reject as nonresponsive bid for dredging and disposal of dredged material that failed to include all permits for proposed disposal site, because submission of permits pertains to bidder responsibility.

DECISION

Great Lakes Dredge & Dock Company protests the award of a contract to any bidder other than itself under invitation for bids (IFB) No. DACW51-01-B-0024, issued by the U.S. Army Corps of Engineers, New York District for a navigation improvement project for New York Harbor, Kill Van Kull and Newark Bay Channels. Great Lakes contends that the agency should have rejected as nonresponsive the two bids that were lower in price than its own.

We deny the protest.

The IFB, which was issued on September 4, 2001 and amended ten times prior to bid opening, required the dredging and disposal of rock and non-rock material from the channels. The solicitation provided for placement of the non-rock material removed at the Historic Area Remediation Site (HARS), IFB § 02900, ¶ 7.2.1, but also identified some of the material to be dredged as "[n]on-rock material unsuitable for placement at the HARS [disposal facility]." IFB, § 02900, ¶ 6. The IFB gave bidders the option of using the OENJ Cherokee Bayonne Landfill Remediation Site or of proposing their own facility for disposal of this material. IFB Amend. No. 0010, § 00010, Item No. 0001AC. Bidders proposing their own facilities were to enter the name, address, and permit number of their site(s) on the bid schedule, and Note 8 to the schedule instructed bidders as

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follows:

Should bidders choose to supply their own site in 0001AC, bidders shall submit the documents specified [in] Section 00800: Special Contract Requirements within 70 calendar days from the date the bids were opened and determined as an apparent low bidder or the Contractor's bid will be considered non-responsible and rejected. In addition the bidders should submit with the bid, permits demonstrating that the chosen disposal site(s) is legal to operate on or before the date of the bid opening must accompany the bid package, or the bid will be considered non-responsible and rejected.

IFB amend. No. 0010, 00010, Note 8.^(FN1)

Four bids were opened on the March 15, 2002 opening date. The three lowest bids were as follows:

<u>Bidder</u>	<u>Total Bid</u>
Weeks Marine, Inc.	\$44,199,621
Bean Stuyvesant LLC	\$47,403,111
Great Lakes	\$47,928,201

*2 On May 10, the contracting officer determined that Weeks was non-responsible and rejected its bid, leaving Bean in line for award as the apparent low bidder. The contracting officer determined that Bean's bid was responsive and is currently in the process of examining Bean's responsibility.

Great Lakes proposed to use the Cherokee site for disposal of the non-rock material not suitable for placement at the HARS, while Bean proposed an alternate site, the City of Linden, New Jersey landfill. Specifically, in materials accompanying its bid, Bean explained that it intended to process the raw dredged material at the CTI Claremont Dredged Material Processing Facility, Jersey City, New Jersey, which already possessed all necessary permits and approvals (copies of which Bean furnished with its bid package), and then dispose of it in the City of Linden landfill. Bean listed the permits that the City of Linden landfill already possessed and noted that disposal of the dredged material in the landfill would require approval of a Revised Landfill Closure/Post-Closure Plan and issuance of a Final Landfill Closure and Disruption Permit and an Acceptable Use Determination permit.^(FN2) Bean enclosed with its bid a copy of the Revised Landfill Closure/Post-Closure Plan submitted to the NJDEP on January 17, 2002 and a copy of its Final Closure Permit application, but did not furnish copies of any permits for the landfill.

The protester argues that it was a material requirement of the IFB that bidders commit to disposing of the non-rock materials not suitable for placement at HARS in a facility that was legal to operate and had all permits necessary to receive the material from this project as of the bid opening date. Great Lakes contends that Bean failed to comply with this requirement in that, by its own admission, it did not have all of the requisite permits at the time of bid opening, and in that its bid documentation affirmatively establishes that the City of Linden landfill was not "legally able to operate" at the time of bid opening. In support of its argument, the protester cites two decisions that, in its view, stand for the proposition that a bid's failure to propose an approved and permitted facility for contaminated material as required in a solicitation renders the bid nonresponsive, Aqua-Tech, Inc. v. United States Army Corps of Engineers, 564 F. Supp. 773 (D.D.C. 1983), and Waste Conversion, Inc., B-224425.2, Nov. 7, 1986, 86-2 CPD ¶ 534.

A requirement for the submission of the permits necessary for performance at a particular site relates to how the contract requirements will be met, rather than to the performance requirements themselves; such a requirement thus pertains to bidder responsibility. VA Venture: St. Anthony Med. Ctr., Inc., B-222622, B-222622.2, Sept. 12, 1986, 86-2 CPD ¶ 289 at 5. A bidder need not demonstrate compliance with solicitation requirements pertaining to its responsibility, that is, its ability to perform as promised, in order to have its bid determined responsive. Moreover, the fact that the IFB called for submission of a permit showing that the proposed disposal site was "legal to operate" as of the bid opening date does not convert the permit requirement into a matter of bid responsiveness. The terms of a solicitation cannot convert a matter of responsibility into one of responsiveness. Integrated Prot. Sys., Inc., B-254457.2, B-254457.3, Jan. 19, 1994, 94-1 CPD ¶ 24 at 3; Norfolk Dredging Co., B-229572.2, Jan. 22, 1988, 88-1 CPD ¶ 62 at 3. Accordingly, we see no merit in the protester's argument that Bean's bid should have been rejected as nonresponsive.

*3 We think that the cases cited by the protester in support of its argument that the Corps should have rejected Bean's bid as

nonresponsive are distinguishable. In Aqua-Tech, which concerned an Army Corps of Engineers IFB for removal of toxic waste from a site in Ohio, the IFB required transportation of the waste materials directly to an Environmental Protection Agency (EPA) approved disposal site, and disposal of the waste material at that site. Bidders were required to designate their proposed disposal sites in their bids. Aqua-Tech failed to propose an EPA-approved site in its bid; accordingly, the bid was rejected as nonresponsive. In the case at hand, in contrast, the IFB did not require that the dredged material be disposed of in an approved disposal site; hence, the identity of the disposal site did not bear on the responsiveness of the bid. Moreover, the issue that the court considered in Aqua-Tech was whether the Corps had correctly rejected Aqua-Tech's bid, and not whether the grounds for rejection of the bid pertained to responsiveness as opposed to responsibility.

The other decision cited by the protester, Waste Conversion, concerned a Corps of Engineers IFB (for excavation and removal of contaminated soil and hazardous wastes from an inactive hazardous waste disposal site located in New Jersey) that required bidders to furnish the name and address of an approved off-site disposal facility that they intended to use for disposal of contaminated materials. We did not address the issue of whether the Corps had correctly rejected the protester's bid as nonresponsive for failing to furnish the name of an approved site; the issue that we considered was whether the bidder should be permitted to substitute an alternate disposal site for the one that it had designated in the bid. We concluded that Waste Conversion should not be permitted to substitute one site for the other after bid opening "irrespective of how the requirement at issue is classified, that is, whether it is considered a matter of responsiveness or one of responsibility." Waste Conversion, Inc., *supra*, at 3. In other words, we did not reach a conclusion as to whether the issue was one of responsiveness or responsibility.

The protest is denied.

Anthony H. Gamboa
General Counsel

FN1. Paragraph 1.45 of Section 00800 provided detailed guidance regarding the documentation that bidders were required to submit with their bid packages and that the apparent low bidder was required to furnish within 70 days after bid opening. The opening section of the paragraph stated as follows:

If the bidder selects to bid an alternate disposal site(s) for the processing and disposal of Non-rock material unsuitable for placement at the HARS other than the Government designated upland site, the Apparent low bidder must submit with his bid the site(s)'s permit, and must demonstrate to the Government within 70 calendars [sic] from the bid opening that the alternate disposal site(s) is operational, capable of processing and disposing of the Non-rock material unsuitable for placement at the HARS on that date and is in compliance with the New Jersey Department of Environmental Protection and/or with the New York State Department of State Coastal Zone Management Program Policies or other host state compliance as appropriate for disposal of dredged material.

FNFurther along, the paragraph noted that all necessary permits required for the dredged material placement were to be provided to the government with the bid package, including "placement site permits as applicable and others as related to transportation, processing and placement of the dredged material, or any other aspects of the Apparent low bidder's proposed disposition of the dredged material including any and all permits, authorizations, contracts, agreements, licenses, [and] rights of entry" relating to legal or regulatory requirements concerning interim storage, dewatering and other treatment or processing, zoning compliance, waterfront development, water quality certification, coastal zone management, tideland management, and wetland management. The paragraph went on to note that documentation of compliance with any other legal or regulatory requirement was required to be provided to the government within 70 calendar days after bid opening. IFB amend. No. 0010, § 00800, ¶ 1.45.

FN2. The introductory section of the revised closure plan explained that the Linden landfill had been closed for acceptance of waste on December 31, 1999, and that in July 2000, the City of Linden had requested the use of stabilized dredge material as the final capping system of the landfill. The document went on to explain that the use of dredge material, which had not been included in the previously approved landfill cap, required the approval of the New Jersey Department of Environmental Protection (NJDEP), and hence, the submission of a new Revised Closure Plan application.

B- 290158, 2002 CPD P 100, 2002 WL 1316190 (Comp.Gen.)

Page 4

B- 290158, 2002 CPD P 100, 2002 WL 1316190 (Comp.Gen.)

END OF DOCUMENT

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(EXHIBIT C)



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

August 9, 2011

Michael J. Kurzman, Esq.
SIEGFRIED, RIVERA, LERNER,
DE LA TORRE & SOBEL, P.A.
8211 West Broward Boulevard
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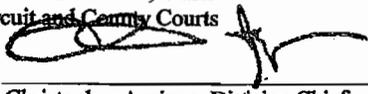
Re: Bid Protest – Project No. 2007-022 ESP
Wharves Strengthening Program
Protester: Dragados USA, Inc.

Dear Mr. Kurzman:

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 August 4, 2011.

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 
Christopher Agrippa, Division Chief
Clerk of the Board Division

CA/fcd
Attachment

cc: Honorable Carlos A. Gimenez, Mayor, Miami-Dade County (via email)
Alina T. Hudak, Deputy Mayor/County Manager (via email)
Hugo Benitez, Assistant County Attorney (via email)
Richard Seavey, Assistant County Attorney (via email)
Bill Johnson, Director, Miami-Dade Seaport (via email)
George Navarete, Director, Office of Capital Improvements (via email)
Maria H. Cerna, Contract Manager, Miami-Dade Seaport (via email)
Dorian K. Valdes, P.E., Project Manager, Miami-Dade Seaport (via email)
Penelope Townsley, Director, Small Business Development (via email)
Miguel A. De Grandy, Esq. (via email)
Pablo Tamayo, Esq. (via email)
Olga Ramirez-Scijas, Esq. (via email)
Christopher Agrippa, Director, Clerk of the Board Division (via email)
GLF Construction, Corp. (via US mail)
Odebrecht Construction, Inc. (via US mail)
American Bridge Company (via US mail)
Dragados USA, Inc. (via US mail)

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**CLERK OF THE
BOARD OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA**

DRAGADOS USA, INC.

Petitioner,

vs.

MIAMI-DADE COUNTY, FLORIDA,

Respondent.

In re: Bid Protest – Project No. 2007-022 ESP Wharves Strengthening Program

CLERK OF THE BOARD
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CLERK, CIRCUIT & COUNTY
MIAMI-DADE COUNTY, FL
#1

[PROPOSED] FINDINGS AND RECOMMENDATIONS OF HEARING EXAMINER

Pursuant to Section 2-8.4 Miami-Dade County Code and Administrative Order 3-21

This matter was heard before the undersigned Hearing Examiner on August 4, 2011 at 9:00 a.m. at the Stephen P. Clark Center, 111 N.W. 1st Street, Suite 2810, Miami, Florida (the "Hearing"), upon the bid protest filed by Dragados USA, Inc. ("Dragados") protesting the County Mayor's recommendation of award to Odebrecht Construction, Inc. ("Odebrecht") of Construction Contract No. 2007-022 ("Contract") to be awarded pursuant to ITB Project No. 2007-022 ESP Wharves Strengthening Program ("ITB") for construction work needed to strengthen wharves for future dredging to negative 50 foot depth berths ("Project) at the Port of Miami ("Port").

Having reviewed the bid protest, the motion to dismiss, the memorandum in opposition to the bid protest, and the exhibits admitted at the Hearing; having heard the testimony and arguments of Miami-Dade County ("County"), Dragados and Odebrecht; and being otherwise fully advised, I find that protest of Dragados should be denied, and that the County's determination that the bid of Odebrecht was the lowest responsive bid, and the County Mayor's recommendation to award to OAC, was not based on "illegality, fraud, oppression, or

misconduct.” *Liberty County v. Baxter’s Asphalt & Concrete, Inc.*, 421 So. 2d 505, 507 (Fla. 1982).

Factual Findings

The ITB was advertised on March 30, 2011 with the issuance of the initial ITB. The non-technical specifications portion of the final ITB is attached at Tab 5B of Dragados’ Hearing Binder admitted into evidence at the Hearing. The Parties agree that the Project consists of construction necessary for strengthening the existing Cargo Wharves at the Port, to provide additional capacity to existing structures to allow for a future dredged depth of negative 50 feet at mean low water. The ITB provides, inter alia, in several places that “As part of its bid each bidder shall also provide a detailed written statement of its policies and procedures for awarding subcontracts. (Dade County Ordinance 97-35).” *See, e.g.*, ITB at 244, ¶ h & 246, ¶ c. The ITB also provides that “MDC reserves the right to waive any informalities or irregularities in any bid, to reject any or all Bids and/or to extend the bidding period.” ITB at 6. The ITB further provides:

The Contractor agrees to abide by and be governed by all Applicable Laws. Applicable Laws shall mean, whether singular or plural, all federal, state, county and local statutes, codes, laws, rules, regulations, ordinances, orders and standards applicable to the Contract, any other such law hereafter enacted, and any rules adopted pursuant thereto, as all such laws and rules may be amended from time to time.

ITB at 16. The ITB also contains a number of forms and instructions for bidders to follow and submit to the County with its bid. *See generally* ITB at 33-86.

The Parties agree that the bids were submitted on May 18, 2011. The testimony showed that five bids were found by the County to be compliant with the Community Small Business Enterprise (CSBE) measures and subsequently opened. The lowest bid, in the amount of

\$51,631,054, was submitted by American Bridge, a non-local firm. *See* Bid Tabulation (County Exhibit 3). The second lowest bid, in the amount of \$55,449,964, was submitted by Odebrecht, a local firm. *Id.* In contrast, and quite significantly, the bid of Dragados was substantially higher, coming in at \$58,261,727.00. *Id.*

The testimony showed that since the two lowest bids were within 10% of each other, the Local Preference Ordinance applied, and therefore, in accordance with the Code of Miami-Dade County, Section 2-8.5, the County requested a Best and Final Bid from both Odebrecht and American Bridge to be submitted on May 31, 2011. Two bids were received and subsequently opened. Odebrecht submitted a bid in the amount of \$50,549,237 and American Bridge submitted a bid in the amount of \$50,787,209. Because Odebrecht submitted the lowest bid, it was found by the County to be the lowest responsive and responsible bidder. The County Mayor's recommended award was filed on July 20, 2011, and this timely protest was filed on July 22, 2011.

It was undisputed that neither Odebrecht nor American Bridge submitted their written subcontracting policies and procedures with their bid packages submitted on the bid due date of May 18, 2011. However, Odebrecht provided its written subcontracting policies and procedures to the County on July 8, 2011 in response to the County's request on June 7, 2011.

The testimony of Art Tilberg, Chief of Construction for the Port, demonstrated that the County found the bids of Odebrecht, American Bridge and Dragados to be responsive. Mr. Tilberg's testimony and a review of County Exhibits 1 and 4 also demonstrate that the Port's checklist for determining whether a bid was responsive did not include the submission by the bidder of its written subcontracting policies and procedures. Mr. Tilberg's testimony also supports the conclusion that the County did not deem the failure to submit the bid to be an

irregularity, and that if it were, the County waived that irregularity. Mr. Tilberg's testimony also demonstrated that Odebrecht had submitted a responsive bid on the forms required in the bid forms section of the ITB, and that Odebrecht had submitted the required listing of subcontractors and suppliers. Mr. Tilberg's testimony also showed that no bidder, other than Dragados, had attempted to submit their subcontracting policies and procedures with their bids on this bid, and that Mr. Tilberg, in reviewing bids at both the Port, and while he was in the County's Office of Capital Improvements, had not ever received written subcontracting policies and procedures with a bid.

At the Hearing, Dragados' Minority Contracting Compliance officer, Ms. Del Rio, testified that after she concluded that Ordinance 97-35 was still in effect, Dragados attempted to comply with the repealed requirements by filing its M/W/DBE Policy & Procedure Manual (See Odebrecht Exhibit 1). During cross-examination, Ms. Del Rio confirmed that this manual applied only to subcontracting opportunities for Minority and Disadvantaged business enterprises, and was not a detailed reporting of Dragados' policies regarding subcontracting in general (i.e. Minority and Non-Minority subcontractors). When asked during cross-examination whether the filing of a policy relevant only to Minority subcontracting would comply with the broader requirement of listing its general Subcontracting Policies (Minority and Non-Minority), Ms. Del Rio conceded that Dragados' filing would not comply with the requirements of Ordinance 97-35. Mr. Tilberg also testified that the submission of Minority subcontracting policies only would not comply with the requirements of providing a detailed listing of a bidder's general Subcontracting Policies.

DISCUSSION

This Protest by Dragados is based on the contention that the failure of Odebrecht and American Bridge to submit written subcontracting policies and procedures with their bids on May 18, 2011 rendered their bids non-responsive, leaving Dragados as the lowest responsive bidder. Dragados seeks either a recommendation that Dragados be awarded the Contract, that the County be ordered to negotiate a best and final price with Dragados and award the Contract to it, or that the County reject all bids and rebid the project. It is my opinion that this Protest should be denied, and I concur in the County Mayor's recommendation to award the Contract to Odebrecht as the lowest responsive and responsible bidder.

It is well settled law that a public body has wide discretion in awarding a contract for a public service and that discretion cannot be overturned absent a finding of "illegality, fraud, oppression or misconduct." *Liberty County v. Baxter's Asphalt & Concrete, Inc.*, 421 So. 2d 505, 507 (Fla. 1982). As such, "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); *Miami-Dade County v. Church & Tower, Inc.*, 715 So. 2d 1084, 1089-90 (Fla. 3rd DCA 1998). "Even where a public entity makes an erroneous decision over which reasonable persons may disagree, the exercise of its discretion in soliciting and accepting bids should not be interfered with absent a showing of dishonesty, illegality, fraud, oppression or misconduct." *City of Cape Coral v. Water Services of America, Inc.*, 567 So. 2d 510, 513 (Fla. 2d DCA 1990).

Further, the burden of proof in a bid protest proceeding rests with the protester, Dragados, not the County or Odebrecht. See *GTech Corp. v. State Dept. of the Lottery*, 737

So. 2d 615, 619 (Fla. 1st DCA 1999) ("The burden is on the party protesting the award of the bid to establish a ground for invalidating the award.").

Moreover, "there is a strong public policy in favor of awarding contracts to the low bidder, and an equally strong public policy against disqualifying the low bidder for technical deficiencies which do not confer an economic advantage on one bidder over another." *Intercontinental Props., Inc. v. State Dep't of Health & Rehabilitative Servs.*, 606 So. 2d 380, 387 (Fla. 3d DCA 1992) (emphasis added). Stated another way, there is a "very strong public interest in favor of saving tax dollars in awarding public contracts." *Id.* at 386.

Here, the County did not act illegally, fraudulently, capriciously or arbitrarily. In recommending award to the lowest responsive and responsible bidder, Odebrecht, the County acted completely consistent with Florida law governing competitive bidding of contracts. The County's decision to not disqualify Odebrecht and American Bridge did not confer any economic advantage to either bidder over Dragados, as the only factor at issue in recommending the award of the contract was price.

I. Current County Law Provides that the Submission of Written Subcontracting Policies and Procedures is a Condition of Contract Award, not an Issue of Responsiveness, and the ITB Did Not State that a Bid Shall Be Deemed Non-Responsive if a Bidder Failed to Include It's Subcontracting Policies and Procedures with Its Bid.

At the Hearing Dragados contended that (1) Dade County Ordinance 97-35 was still valid County law, and (2) that the terms of the ITB incorporate the language of Ordinance 97-35 to the extent it provided that "for all contracts in which a bidder may use a subcontractor, the bidder shall provide a detailed statement of its policies and procedures for awarding subcontracts. The county manager shall include language in the specifications of applicable county contracts for

the provision of such a statement. Any bid which does not provide such a statement shall be considered nonresponsive.”

I reject both arguments.

First, Ordinance 97-35 was codified as Section 2-8.8 of the Code of Miami-Dade County. See Miami-Dade County’s Motion to Dismiss and Memorandum in Opposition to the Bid Protest Filed by Dragados, USA, Inc. (“Opposition Memorandum”), Tab 2 at 2. The legislative history at the end of the Section 2-8.8 clearly shows that the first Ordinance creating the code section was Ordinance 97-35. Miami-Dade County Ordinances are codified in the Code of Miami-Dade County. The legislative history at the end of Section 2-8.8 shows that the Section was amended by Ordinances 98-31, 98-124, 98-159, and 02-121. Notably, Ordinance 98-124 deleted the sentence “Any bid which does not provide such a statement shall be considered nonresponsive” and inserted the phrase “prior to contract award” in sub-section (4) of Code Section 2-8.8. See Ordinance 98-124 in Opposition Memorandum Tab 4 at 3. The subsequent amendments to Section 2-8.8 did not change this deletion and insertion.

Nonetheless, Dragados contends that Ordinance 02-121 revived Ordinance 97-35 because Ordinance 02-121 deleted the sunset provisions of Ordinances 97-35, 98-124, and 98-159. This argument is meritless. Ordinances 97-35, 98-124, and 98-159 all created and amended the operative County law, Miami-Dade County Code Section 2-8.8. The language and intent of Ordinance 02-121 was simply to remove the five year sunset provision for Section 2-8.8 of the Code and make the Section permanent. Indeed the Title of Ordinance 02-121 reads:

ORDINANCE REPEALING SUNSET PROVISIONS OF ORDINANCE NOS. 97-35, 98-124 AND 98-159 TO MAKE PERMANENT THE REQUIREMENT OF SECTION 2-8.8 OF THE CODE OF MIAMI-DADE COUNTY THAT FOR ALL CONTRACTS WHERE A BIDDER MAY USE A SUBCONTRACTOR THE BIDDER PROVIDE PRIOR TO AWARD A STATEMENT OF ITS

POLICIES AND PROCEDURES FOR SELECTION OF
SUBCONTRACTORS; PROVIDING SEVERABILITY, INCLUSION IN CODE
AND EFFECTIVE DATE

Ordinance 02-121, Opposition Memorandum Tab 4 at 8. Further, the body of Ordinance 02-121 recites that “this Board included sunset provisions in Ordinance Nos. 97-35, 98-124 and 98-159 requiring bidders for contracts in which a bidder may use a subcontractor to provide, prior to award, a statement of their policies and procedures for selection of subcontractors” and that “this Board wishes to make permanent the requirement of Section 2-8.8 of the Code of Miami-Dade County for submission of such a statement prior to award.” *Id.* (emphasis added). There simply is no credible argument that Ordinance 97-35 exists as current County law.

Second, while the ITB did state “[a]s part of its bid each bidder shall also provide a detailed written statement of [the bidder’s] policies and procedures for awarding subcontracts (Dade County Ordinance 97-35),” the ITB did not state that the failure to do so would make the bid non-responsive, and the ITB did not state that it incorporated the terms of County Ordinance 97-35. Even if it had incorporated the terms of Ordinance 97-35 into the ITB as specifications despite its subsequent amendment, Ordinance 97-35 expressly stated that it had sunset five years after its enactment in 1997. Therefore, a bidder, following the Contract’s requirement at page 16 of the ITB that it follow current County law should have determined that Ordinance 97-35 was no longer in effect and that Section 2-8.8 of the Code of Miami-Dade County was the operative law, requiring only that the procedures be submitted prior to award.

II. The Submission of the Subcontracting Policies and Procedures Is an Issue of Responsibility Not Responsiveness, and the Terms of the ITB Cannot Transform an Issue of Responsibility Into one of Responsiveness.

The submission of the written subcontracting policies and procedures is an issue of bidder responsibility, not bidder responsiveness. Solicitation requirements for information

relating to a bidder's financial condition, capability, business procedures, experience and past performance pertain to a bidder's responsibility. *See Coach Constr. Co. v. FDOT*, 361 So. 2d 184, 187 (Fla. 1st DCA 1978) (reasoning that a bidder's responsibility relates to "the honesty and integrity of the bidder necessary to a faithful performance of the contract upon his skill and business judgment, his experience and his facilities for carrying out the contract, His previous conduct under other contracts, and the quality of his previous work . . .").

The identification of subcontracting information – which the submission of written subcontracting policies and procedures clearly is – goes to the bidder's ability to perform the contract and, thus, relates to bidder responsibility, not responsiveness. Accordingly, the failure of Odebrecht and American Bridge to submit written subcontracting policies and procedures with their bid does not render their bids nonresponsive. *See Matter of: CDM Federal Programs Corp.*, B- 249022, 1992 WL 186992, at *2 (Comp. Gen. 1992) ("Generally, a requirement that a bidder list subcontractors in its bid involves a matter of responsibility because it relates to the agency's need to evaluate the subcontractor's qualifications or the bidder's ability to meet equal employment opportunity and minority business requirements."); *see also Matter of: Hughes Georgia, Inc.*, B- 244936, B- 244936.2, 91-2 CPD 457, 1991 WL 251277 (Comp. Gen. 1991) (holding that submission of list of potential subcontractors relates to issues of bidders' responsibility); *Matter of: Consolidated Group*, B- 220050, 86-1 CPD P 21, 1986 WL 69171 (Comp. Gen. 1986) (holding that list of proposed subcontractors required by solicitation was not intended for evaluation purposes, but related to contract administration and the offeror's responsibility); *Matter of: Gelco Servs., Inc.*, B-253376, 93-2 CPD P 163, 1993 WL 376637, at *5 (Comp. Gen. 1993) (holding that principal purpose of a sub-subcontractor list is to assist the agency in determining whether a prospective bidder is capable of performing the contract work

and, as such, submittal and completion of a sub-subcontractor list involves an issue pertaining to bidder responsibility). Since the identification of subcontractor information is an issue of bidder responsibility, such information may be submitted any time prior to award, as current Miami-Dade County law allows. *See id.* & Miami-Dade County Code § 2-8.8.

Moreover, “[t]he terms of a solicitation cannot convert a matter of responsibility into one of responsiveness.” *Matter of: Great Lakes Dredge & Dock Company*, B-290158, 2002 CPD P 100, 2002 WL 1316190 *2 (Comp. Gen. 2002), *citing Integrated Prot. Sys., Inc.*, B-254457.2, B-254457.3, Jan. 19, 1994, 94-1 CPD ¶ 24 at 3; *Norfolk Dredging Co.*, B-229572.2, Jan. 22, 1988, 88-1 CPD ¶ 62 at 3. In *Great Lakes* the solicitation documents concerned navigation improvements for New York Harbor and were issued by the Army Corps. of Engineers. *Id.* *1. The work involved the dredging and disposal of rock and non-rock materials from navigation channels. *Id.* The solicitation documents provided that “permits demonstrating that the chosen disposal site(s) is legal to operate on or before the date of the bid opening must accompany the bid package, or the bid will be considered non-responsive and rejected.” *Id.* The first lowest bidder was deemed non-responsive on other grounds, but the second lowest bidder was deemed by the Contracting Officer to be responsive, even though permits did not accompany the bidder’s bid package showing that the proposed disposal site was legal to operate on or before the bid opening date. *Id.* at *2. The third lowest bidder appealed this finding, and asserted that the second lowest bidder’s bid should be deemed non-responsive and rejected for failure to include the permits required by the terms of the solicitation. The Comptroller General denied the protest, holding that whether or not permits were submitted demonstrating that a proposed disposal site was legal to operate on the date of bid opening concerned the performance of the contract, and

was thus a matter of responsibility, despite the terms of the solicitation stating that a bid would be rejected without such permits. *Id.*

Here, a bidder's written subcontracting policies and procedures concern the performance of its contract, making the submission of those procedures a matter of responsibility. In this protest, Dragados seeks to turn that issue of responsibility into one of responsiveness, simply because, in its view, the ITB incorporated language from an expired and superseded ordinance which stated that a bid shall be deemed non-responsive if the written subcontracting policies and procedures were not included with a bid submission. Under the authority above, even if the ITB expressly stated that the failure to submit the subcontracting policies and procedures would make a bid non-responsive, the bids of Odebrecht and American Bridge would be responsive because that hypothetical requirement in the ITB would be a requirement attempting to convert an issue of responsibility into one of responsiveness.

III. Allowing Odebrecht or American Bridge to Correct the Purported Irregularity after Bid Opening Would Not Provide Either Bidder a Material Advantage Not Shared by Other Bidders.

Even assuming that the ITB required the submission of the bidder's subcontracting policies and procedures with its bid, the County had the discretion to waive the irregularity and find the bid responsive.

In determining whether a specific noncompliance constitutes a substantial and hence non-waivable irregularity, the courts have applied two criteria -- first, whether the effect of a waiver would be to deprive the municipality of its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements, and second, whether it is of such a 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.

Robinson Electrical Co., Inc. v. Dade County, 417 So. 2d 1032, 1034 (Fla. 3rd DCA 1982). Under *Robinson Electrical*, the failure of Odebrecht and American Bridge to include their written subcontracting policies and procedures with their bids was a waivable irregularity, assuming it is an irregularity in the first place.

First, the failure of Odebrecht and American Bridge to include their subcontracting policies and procedures did not, and could not, deprive the County of its assurance that the Contract would be entered into, performed, and guaranteed according to the ITB's requirements. Indeed, both firms signed all the required forms and affidavits, took no exception to any of the ITB's technical specifications, and provided the bid bond required by the ITB. Consequently, the County was assured that the Contract would be completed at the price quoted.

Second, the failure of Odebrecht and American Bridge to submit their written subcontracting policies and procedures did not place either firm at an advantage over Dragados, nor did it undermine the competitive process in the bid at issue. The recommended award pursuant to the ITB was made to the lowest responsive, responsible bidder. Since Dragados submitted its subcontracting policies and procedures with its bid, neither Odebrecht nor American Bridge was aware of those policies at the time those two firms submitted their bids. Accordingly, there is no way, as a matter of common sense, that either firm gained any advantage in the competitive process. Simply put, the submission of the policies had nothing to do with the price quoted by any of the bidders, the sole determinative factor in the award of the Contract.

Dragados attempts to create an aura of competitive disadvantage by asserting that it spent time in bid preparation submitting the policies and procedures, and that allowing a bidder to submit the policies after bid submission undermined the integrity of the competitive bidding

process. Neither argument is persuasive. Neither assertion has anything to do with the whether or not Odebrecht had an advantage over Dragados in this competitive process, the award of the Contract pursuant to this ITB. That award was made only on price, and the submission of the policies and procedures had nothing to do with price.

Further, even if the failure to include the policies was an irregularity, the County would not be acting arbitrarily in waiving the irregularity because it had a completely rationale basis to do so, keeping the two lowest bids and saving itself nearly \$8 million in doing so. It would have been arbitrary, for example, if the County had decided to find American Bridge nonresponsive and, at the same time, find Odebrecht responsive, despite the same supposed defect. The County treated all bidders the same and required none of them to submit their subcontracting policies and procedures. Accordingly, the County would not be acting fraudulently, dishonestly, illegally, arbitrarily or capriciously in waiving the irregularity, and would not have been showing any favoritism.

IV. Assuming *Arguendo* The Original Provisions Of 97-35 Applied – Despite Subsequent Amendments – Dragados Is Barred From Maintaining These Grounds For Protest Based On Its Failure To Comply.

Dragados' complaint centers on an allegation that Odebrecht did not comply with the requirement of filing a detailed statement of its subcontracting policies and procedures at time of bid, based on its erroneous belief that Ordinance 97-35 – repealed by its own terms – still had validity. However, even assuming *arguendo* that Dragados' argument had any merit, well-settled Florida law would dictate that Dragados lacks standing to maintain this protest.

At the Hearing, Dragados' Minority Contracting Compliance officer, Ms. Del Rio, testified that after she concluded that Ordinance 97-35 was still in effect, Dragados attempted to comply with the repealed requirements by filing its M/W/DBE Policy & Procedure Manual (See

Odebrecht Exhibit 1). However, during cross-examination, Ms. Del Rio confirmed that this manual applied only to subcontracting opportunities for Minority and Disadvantaged business enterprises, and was not a detailed reporting of Dragados' policies regarding subcontracting in general (i.e. Minority and Non-Minority subcontractors). When asked during cross-examination whether the filing of a policy relevant only to Minority subcontracting would comply with the broader requirement of listing its general Subcontracting Policies (Minority and Non-Minority), Ms. Del Rio conceded that Dragados' filing would not comply with the requirements of Ordinance 97-35.

Mr. Tilberg also testified that the submission of Minority subcontracting policies only would not comply with the requirements of providing a detailed listing of a bidder's general Subcontracting Policies.

In closing argument, counsel for Dragados pointed to a subsection within the 18-Page submission by Dragados of its Minority contracting policies to assert that such provision alluded to general subcontracting policies. However, such language is contained within a section of its Minority policies titled "Bid/Pre-Award Procedures for Developing a M/W/DBE Participation Plan and the solicitation and use of M/W/DBE firms".

Based on the credible evidence presented – including the admissions of Dragados' own Compliance Officer – the undersigned Hearing Examiner finds that even assuming *arguendo* that the original language of Ordinance 97-35 had any applicability, Dragados' submission in response thereto did not comply with the original terms of said Ordinance.

In *Intercontinental Properties, Inc. v. State of Florida, Department of Health and Rehabilitative Services*, 606 So. 2d 380 (3rd DCA 1992), the Third District Court of Appeals held that:

At least, a party protesting an award to the low bidder must be prepared to show not only that the low bid was deficient, but must also show that the protester's own bid does not suffer from the same deficiency. To rule otherwise is to require the state to spend more money for a higher bid which suffers from the same deficiency as the lower bid.

Id. at 384 (Emphasis added).

Therefore, the undersigned concludes that even if the original terms of Ordinance 97-35 were still in effect, Dragados would be barred from maintaining a protest on these grounds, since its submission failed to comply with the requirements of Ordinance 97-35.

CONCLUSION

WHEREFORE, for the reasons described above, I deny the protest and fully affirm the County Mayor's recommended contract award.



The Honorable Philip Cook
Dated this 9th day of Aug. 2011

Contract Addendum No. 1

This Addendum No. 1 to Contract No. 2007 022 ("Contract") is hereby accepted by Odebrecht Construction, Inc. ("Contractor") this _____ day of August, 2011.

WHEREAS, the Contract was recommended for award by the Mayor on July 20, 2011 and is being submitted for approval by the Board of County Commissioners on September 1, 2011; and

WHEREAS, Contractor acknowledges the passage of Senate Bill (SB) 444, effective July 1, 2011, related to scrutinized companies; codified in Section 287.135, Florida Statutes prohibiting a state agency or local government entity from contracting for goods or services of more than a certain amount with a company that is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List as created under, and codified in Section 215.473, Florida Statutes; and

WHEREAS, Contractor agrees to include in the Contract the language herein;

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Contractor, Contractor agrees as follows:

1. Contractor's Consent to Scrutinized Companies Clause

By execution of this Addendum through a duly authorized representative, the Contractor certifies that the Contractor is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, as those terms are used and defined in sections 287.135 and 215.473 of the Florida Statutes. In the event that the Contractor is unable to provide such certification, the Contractor shall execute the Addendum through a duly authorized representative and shall also initial this space: _____. In such event, the Contractor shall furnish together with this Addendum a duly executed written explanation of the facts supporting any exception to the requirement for certification that it claims under Section 287.135 of the Florida Statutes. The Contractor agrees to cooperate fully with the County in any investigation undertaken by the County to determine whether the claimed exception would be applicable. The County shall have the right to terminate the Contract for default if the Contractor is found to have submitted a false certification or to have been, or is subsequently during the term of the Contract, placed on the Scrutinized Companies for Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List

Accepted and Agreed to by:

ATTEST _____

ODEBRECT CONSTRUCTION, INC.

By: _____
Corporate Secretary

By: _____
Title: _____

(Corporate Seal)

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ATTEST: _____

HARVEY RUVIN, CLERK OF THE BOARD

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

By: _____

By: _____

Mayor

Approved as to form
and legal sufficiency:

Assistant County Attorney



MEMORANDUM
(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: September 1, 2011

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 8(Q)(1)(A)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor

Agenda Item No. 8(Q)(1)(A)

Veto _____

9-1-11

Override _____

RESOLUTION NO. R-684-11

RESOLUTION AWARDING, APPROVING AND AUTHORIZING THE EXECUTION BY THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE OF A CONTRACT IN THE AMOUNT OF \$57,120,637.81 BETWEEN MIAMI-DADE COUNTY AND ODEBRECHT CONSTRUCTION, INC. FOR THE WHARVES STRENGTHENING PROGRAM, CONTRACT NO. 2007-022; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE ANY TERMINATION AND RENEWAL PROVISIONS CONTAINED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board:

Section 1. Awards and approves the Contract between Miami-Dade County and Odebrecht Construction, Inc. in the amount of \$57,120,637.81 ("Contract") for the Wharves Strengthening Program – Project No. 2007 022 ESP, in substantially the form attached hereto and made part hereof.

Section 2. Authorizes the County Mayor or the County Mayor's designee to execute the Contract after review and approval by the County Attorney's Office; and to exercise any cancellation and renewal provisions therein.

The foregoing resolution was offered by Commissioner **Jose "Pepe" Diaz** who moved its adoption. The motion was seconded by Commissioner **Audrey Edmonson** and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman			aye
Audrey M. Edmonson, Vice Chairwoman			aye
Bruno A. Barreiro	aye	Lynda Bell	aye
Esteban L. Bovo, Jr.	nay	Jose "Pepe" Diaz	aye
Sally A. Heyman	aye	Barbara J. Jordan	aye
Jean Monestime	aye	Dennis C. Moss	aye
Rebeca Sosa	aye	Sen. Javier D. Souto	nay
Xavier L. Suarez	aye		

The Chairperson thereupon declared the resolution duly passed and adopted this 22nd day of September, 2011. This resolution shall become effective upon the earlier of (1) ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the exercise by the County Mayor or the County Mayor's Designee of the authority granted herein.



MIAMI-DADE COUNTY, FLORIDA
 BY ITS BOARD OF
 COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By **Christopher Agrippa**
 Deputy Clerk

Approved by County Attorney as
 to form and legal sufficiency.

Richard Seavey
 Hugo Benitez

Odebrecht Construction, Inc

June 6, 2011

Maria H. Cerna
Chief, Seaport Construction Contracts
Port of Miami
1015 North America Way, 2nd Floor
Miami, FL 33132-2081

Re: Wharves Strengthening Program
Project No. 2007-022 ESP

Dear Ms. Cerna:

As requested in your letter of today, this is to confirm Odebrecht's commitment to provide the required services included in the Bid Documents for the price submitted in our Best & Final Bid on May 31, 2011.

Sincerely,



Gilberto Neves
President & CEO

cc: Clerk of the Board

FLORIDA
201 Alhambra Circle, Suite 1400
Coral Gables, FL 33134
Phone: (305) 341-8800
Fax: (305) 569-1500

LOUISIANA
818 Howard Avenue, Suite 400
New Orleans, LA 70113
Phone: (504) 799-1500
Fax: (504) 799-1501

TEXAS
5100 Westheimer Road, Suite 585
Houston, TX 77056
Phone: (713) 961-9024
Fax: (305) 569-1500

COPY

MIAMI-DADE SEAPORT DEPARTMENT
BEST & FINAL BID SUBMITTAL
FOR: WHARVES STRENGTHENING PROGRAM
PROJECT NO. 2007-022 ESP
IN ACCORDANCE WITH MIAMI-DADE COUNTY CODE 2-8.5.(2)(a)

To: Miami-Dade County
Board of County Commissioners
Miami, Florida

Bid Opening Date: May 31, 2011
Bid Opening Time: 2 p.m.
Local Time

Gentlemen:
We Odebrecht Construction, Inc.
Bidder's Name

have received, have examined and are familiar with the Contract Documents bearing the title **WHARVES STRENGTHENING PROGRAM - PROJECT NO. 2007-022 ESP**, the forms for the Submittal of Bids and have included the cost of their provisions, in our Best & Final Bid Submittal. We have examined, are familiar with, and do accept the conditions of the Work site and other conditions affecting the Work.

The undersigned hereby agrees, should we be awarded the Contract on the basis of this Bid, that:

1. This Bid may be neither revoked nor withdrawn after the Bid Opening date but shall remain open for acceptance for a period of 180 calendar days following that date, except that the period of time may be extended by written agreement by and between ourselves and MDC.
2. Should we be notified in writing by mail, e-mail or hand-delivery of the acceptance of this Bid within the time set forth herein after the Bid Opening date, we will execute, within 10 calendar days after receipt of the prescribed forms, a Contract for the Work for the compensation stipulated hereinafter and within the same time period, will finish and deliver the Surety Performance and Payment Bond in the form identified in the Bid Documents, and with surety or sureties acceptable to MDC and authorized to issue surety bonds in the State of Florida. The bonds will be in an amount in accordance with Article 1.03, "CONTRACT SECURITY" of the Contract Conditions. We will concurrently furnish and deliver Certificates of Insurance as stipulated in Article 1.02 of the Contract Conditions.

3. We will commence contract work with adequate forces, material and equipment within 10 consecutive calendar days after the effective date of the Notice to Proceed, and will fully complete the Work within the number of days stipulated in the Bid Documents, from and including that effective date.

4. Should this Bid be accepted within the time set forth herein after the Bid Opening date and we fail to execute a Contract and to furnish and deliver the Surety Performance and Payment Bond and Certificates of Insurance, the obligation of the bid security will remain in full force and effect, and the money payable thereon shall be paid into the funds of MDC as liquidated damages, but not as a penalty, for such failure; otherwise the obligation of the Bid

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COPY

WHARVES STRENGTHENING PROGRAM

IF THIS PROPOSAL IS ACCEPTED, THE UNDERSIGNED BIDDER AGREES TO COMPLETE ALL WORK UNDER THIS CONTRACT WITHIN THE CONTRACT DURATION AS SPECIFIED IN THE CONTRACT CONDITIONS.

Item No.	Division of Work:	Unit	Quantity	Unit Price	Total Price
DIVISION 1 - GENERAL REQUIREMENTS					
1	Mobilization and Demobilization	LS	1	2,765,867.00	2,765,867.00
2	General Requirements	LS	1	4,200,000.00	4,200,000.00
DIVISION 2 - SITE CONSTRUCTION					
3	Site Demolition - pro rated per linear foot of project	LF	6,118	110.00	672,980.00
4	Condition Verification Excavations for Tie Rods (including all excavation, shoring, de-watering, backfilling, compacting, or other associated activities to facilitate the work)	EA	10	6,500.00	65,000.00
5	Granular Fill (Crushed Rock) between existing and Proposed Sheet Pile, per linear foot, along wharf, of installed bulkhead	LF	5,280	160.00	844,800.00
6	Concrete Fill (unreinforced) between existing and proposed Sheet Pile, per linear foot, along wharf, of installed bulkhead	LF	5,280	360.00	1,900,800.00
7	30-inch Steel Pipe Piles - Coated (includes furnishing and installing each, and PDA Restrikes for 3 piles) Wharf I - 28 piles	EA	28	19,300.00	540,400.00
8	Coated Steel Combi-Sheet Pile (PA 30/26-700) - includes installation, socketing, temporary bracing, end closures, test sockets, outfall penetrations, if any. Per linear foot, along wharf, of installed bulkhead.	LF	1,154	4,200.00	4,846,800.00
9	Coated Steel Combi-Sheet Pile (PA 36/26-700) - includes installation, socketing, temporary bracing, end closures, test sockets, outfall penetrations, if any. Per linear foot, along wharf, of installed bulkhead.	LF	2,534	4,550.00	11,529,700.00
10	Coated Steel Sheet Pile (AZ 26-700) - includes installation, temporary bracing, end closures, outfall penetrations, if any. Per linear foot, along wharf, of installed bulkhead.	LF	1,592	2,700.00	4,298,400.00
11	Water Service - includes trenching, equipment and piping, testing, installation, testing, site repair	EA	19	14,000.00	266,000.00
12A	King Pile Splice (PA 30/26-700) - splice weld and coating touchup	EA	15	900.00	13,500.00

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COPY

WHARVES STRENGTHENING PROGRAM

IF THIS PROPOSAL IS ACCEPTED, THE UNDERSIGNED BIDDER AGREES TO COMPLETE ALL WORK UNDER THIS CONTRACT WITHIN THE CONTRACT DURATION AS SPECIFIED IN THE CONTRACT CONDITIONS.

Item No.	Division of Work:	Unit	Quantity	Unit Price	Total Price
DIVISION 2 - SITE CONSTRUCTION (Continued)					
12B	King Pile Splice (PA 30/26-700) - material, labor and equipment, per linear ft installed, for advancing socket and king pile tip	LF	150	485.00	72,750.00
13A	King Pile Splice (PA 36/26-700) - Splice weld and coating touchup	EA	33	860.00	28,380.00
13B	King Pile Splice (PA 36/26-700) - material, labor and equipment, per linear ft installed, for advancing socket and king pile tip	LF	330	540.00	178,200.00
14	Site Drainage Improvements	LS	1	1,400,000.00	1,400,000.00
15	Asphalt Concrete Paving (include subgrade preparation and base)	LS	1	1,200,000.00	1,200,000.00
16	Painted Pavement Markings	LS	1	95,000.00	95,000.00
17	Furnish, install, and test soil anchors (includes necessary engineering design, shop drawings, and any required abandonment, closure and offset due to obstruction or test failure)	EA	453	5,800.00	2,627,400.00
18	Coral Relocation (includes survey & reporting)	EA	125	576.00	72,000.00
DIVISION 3 - CONCRETE					
19	Cast-in-Place Bulkhead Cap and Fascia, per linear foot, along wharf	LF	5,281	1,360.00	7,182,160.00
20	Cast-in-Place Breasting Structures	EA	14	85,000.00	1,190,000.00
21	Cast-in-Place Crane Rail Beams	EA	67	13,200.00	884,400.00
22	Cast-in-Place Water Stations	EA	19	5,200.00	98,800.00
23	Cast-in-Place Electrical Stations	EA	19	5,000.00	95,000.00
24	Adhesive Anchors at Existing Cap	LS	1	166,000.00	166,000.00
25	Concrete Spall Repairs (Wharf I)	CF	1000	550.00	550,000.00
26	Pile Repair Type 2 (Wharf I)	EA	17	13,500.00	229,500.00
27	Pile Repair Type 3 (Wharf I)	EA	3	10,500.00	31,500.00
28	Sawcut, Remove, and Replace Precast Concrete Desk Panel & CIP Topping	EA	5	7,500.00	37,500.00

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COPY

WHARVES STRENGTHENING PROGRAM

IF THIS PROPOSAL IS ACCEPTED, THE UNDERSIGNED BIDDER AGREES TO COMPLETE ALL WORK UNDER THIS CONTRACT WITHIN THE CONTRACT DURATION AS SPECIFIED IN THE CONTRACT CONDITIONS.

Item No.	Division of Work:	Unit	Quantity	Unit Price	Total Price
DIVISION 10 - SPECIALTIES					
29	100 Ton Bollards - Provide 17, install 16	EA	17	2,500.00	42,500.00
30	150 Ton Bollards - Provide 81, install 76	EA	81	3,000.00	243,000.00
31	Purchase and Install New Fenders, including Mounting Hardware	EA	52	30,200.00	1,570,400.00
32	Refurbish per Contract Drawings and Reinstall Existing Fenders, including New Mounting Hardware	EA	19	12,100.00	229,900.00
33	Remove and Reinstall Existing Fenders, including New Mounting Hardware	EA	12	14,300.00	171,600.00
DIVISION 16 - ELECTRICAL					
34	Electrical Services - includes trenching, conduit and equipment installation, testing, and site repair	EA	19	11,000.00	209,000.00

BASE BID TOTAL \$ 50,549,237.00

(Instructions: The spaces provided in the Bid Form must be filled in and no spaces left blank. In addition, the sum of all Line Items must represent your Base Bid Total. Failure to submit a complete and accurate Bid Form may result in your bid found non-responsive.)

A TEN PERCENT (10%) CONTINGENCY ALLOWANCE AND OTHER DEDICATED ALLOWANCES AS STIPULATED IN THE CONTRACT CONDITIONS WILL BE ADDED TO THE BASE BID TOTAL.

THE BIDDER UNDERSTANDS AND AGREES THAT THE ABOVE BASE BID TOTAL IS INCLUSIVE OF ALL WORK NECESSARY TO COMPLETE THE WORK AS DESCRIBED IN THE CONTRACT DOCUMENTS, AND IF THIS PROPOSAL IS ACCEPTED, THE UNDERSIGNED BIDDER AGREES TO ENTER INTO AND EXECUTE THE CONTRACT WITH THE NECESSARY BOND AND ACCEPT THE ABOVE TOTAL PRICE AS FULL COMPENSATION FOR THE WORK PERFORMED UNDER THIS CONTRACT.

D. C. CERTIFICATE OF COMPETENCY NO. CGC054396 BIDDER'S NAME Odebrecht Construction, Inc.

BIDDER'S TELEPHONE NUMBER 305-341-8800 BIDDER'S ADDRESS 201 Alhambra Circle, Suite 1400
Coral Gables, FL 33134

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COPY

When Bidder is a Corporation:

In witness whereof, the Bidder hereto has executed this Bid Form this 31 day of May 20 11.

Odebrecht Construction, Inc.
(Printed name of Corporation)
Florida
(Printed State of Incorporation)

By: Gilberto Neves, President
(Signature of President or Vice-President & capacity)
Nicholas Sprague, Secretary
(Printed name of Secretary or Assistant Secretary & capacity)
201 Alhambra Circle, Suite 1400
Coral Gables, FL 33134
(Business Address of Corporation)

(CORPORATE SEAL)

ACKNOWLEDGEMENT:

STATE of FLORIDA)ss.:
COUNTY of MIAMI-DADE)

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Before me personally appeared Gilberto Neves, as President, to me well known or has presented _____ as
(Type of Identification)

identification and Nicholas Sprague, as Secretary, to me well known, or has presented _____ as
(Type of Identification)

identification and known to me to be the person described in and who executed the foregoing instrument as Gilberto Neves

President and Nicholas Sprague as Secretary of the above name Odebrecht Construction, Inc. a Corporation, and

PROJECT NO. 2007-022 ESP

BEST & FINAL BID SUBMITTAL

MAY 2011

PAGE 6

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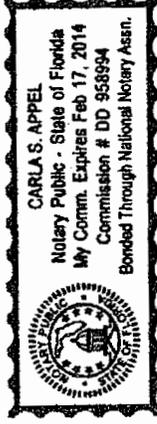
severally acknowledged that they executed such instrument as such Gilberto Neves President and Nicholas Sprague Secretary, respectively, of said corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that it was affixed to said instrument by due and regular corporate authority, and said instrument is the free act and deed of said corporation.

SUBSCRIBED AND SWORN TO (or affirmed) before me on May 31, 2011 by Gilberto Neves & Nicholas Sprague (Date) (Affiant)

He/She is personally known to me or has presented _____ as identification (Type of Identification)

Notary Public Carla S. Appel DD958994 02-17-2014 Florida (Signature of Notary) (Serial Number) (Expiration Date) (State)

Carla S. Appel Notary Seal:
(Print or Stamp Name of Notary)



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MIAMI-DADE SEAPORT DEPARTMENT
BID FORM

FOR: WHARVES STRENGTHENING PROGRAM
PROJECT NO. 2007-022 ESP

To: Miami-Dade County

Board of County Commissioners

Miami, Florida

Bid Opening Date: May 20, 2011

Bid Opening Time: 2 p.m.

Local Time

Gentlemen:

We Odebrecht Construction, Inc.

Bidder's Name

have received, have examined and are familiar with the Contract Documents bearing the title **WHARVES STRENGTHENING PROGRAM - PROJECT NO. 2007-022 ESP**, the forms for the Submittal of Bids and

Addendum No. 1 Dated 04-20-2011 Addendum No. 5 Dated 05-06-2011

Addendum No. 2 Dated 04-28-2011 Addendum No. 6 Dated 05-10-2011

Addendum No. 3 Dated 05-03-2011 Addendum No. 7 Dated 05-11-2011

Addendum No. 4 Dated 05-05-2011 Addendum No. _____ Dated _____

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(Failure to acknowledge receipt of all addenda may cause the bid to be considered not responsive to the invitation, which would require rejection of the bid), and have included the cost of their provisions, in our Bid. We have examined, are familiar with, and do accept the conditions of the Work site and other conditions affecting the Work.

The undersigned hereby agrees, should we be awarded the Contract on the basis of this Bid, that:

1. Pursuant to Section 10-33.02 of the Code of Miami-Dade County, Florida, "a contractor who fails to meet an established CSBE goal shall submit a CSBE Make-Up Plan for approval of the [Small Business Development ("SBD")] Director. A Make-up Plan and a corresponding Schedule of Intent Affidavit must be submitted as part of any bid or proposal submitted for future contracts at the time of bid or proposal

submittal." Failure to include the required Schedule of Intent Affidavit with bids or proposals for any future contracts shall result in the submittal being deemed nonresponsive. **To verify whether your company has a CSBE make-up requirement**, please refer to the SBD webpage at <http://www.miamidade.gov/sba/reports-goal-deficit.asp>. For questions regarding this requirement, contact Penelope Townsley, SBD Director at 305-375-3131.

2. This Bid may be neither revoked nor withdrawn after the Bid Opening date but shall remain open for acceptance for a period of 180 calendar days following that date, except that the period of time may be extended by written agreement by and between ourselves and MDC.

3. Should we be notified in writing by mail, e-mail or hand-delivery of the acceptance of this Bid within the time set forth herein after the Bid Opening date, we will execute, within 10 calendar days after receipt of the prescribed forms, a Contract for the Work for the compensation stipulated hereinafter and within the same time period, will finish and deliver the Surety Performance and Payment Bond in the form identified in the Bid Documents, and with surety or sureties acceptable to MDC and authorized to issue surety bonds in the State of Florida. The bonds will be in an amount in accordance with Article 1.03, "CONTRACT SECURITY" of the Contract Conditions. We will concurrently furnish and deliver Certificates of Insurance as stipulated in Article 1.02 of the Contract Conditions.

4. We will commence contract work with adequate forces, material and equipment within 10 consecutive calendar days after the effective date of the Notice to Proceed, and will fully complete the Work within the number of days stipulated in the Bid Documents, from and including that effective date.

5. Should this Bid be accepted within the time set forth herein after the Bid Opening date and we fail to execute a Contract and to furnish and deliver the Surety Performance and Payment Bond and Certificates of Insurance, the obligation of the bid security will remain in full force and effect, and the money payable thereon shall be paid into the funds of MDC as liquidated damages, but not as a penalty, for such failure; otherwise the obligation of the Bid Bond will be null and void. We agree that the amount shown in our Bid Security is the proper compensation for damages which MDC would sustain should we fail to execute the Contract and to furnish and deliver the Surety Performance and Payment Bond, and Certificates of Insurance in the event this Bid is accepted. We agree to the stipulations of the Instructions to Bidders regarding the disposition of the Bid Security.

6. We will not use, during and in the performing of the Work, those facilities which have been listed on the Environmental Protection Agency's List of Violating Facilities; we will promptly notify MDC, prior to the award of the Contract, of the receipt of communications from the Director, Office of Federal Activities, Environmental Protection Agency, indicating that facilities which we propose to use in the performance of the Work are under consideration to be listed on the EPA List of Violating Facilities; and we will include this requirement in every subcontract, the value of which is more than \$100,000.00.

We declare that the only persons and firms interested in this Bid, as principals, are those named below; that this Bid is made without collusion with any other person, firm or corporation; and that we are not included on the U.S. Comptroller General's Consolidated List of Persons or

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COPY

Firms Currently Debarred for Violations of Various Public Contracts. The full names and addresses of persons and firms interested in this Bid, as principals, are as follows:

<u>Names of Principals</u>	<u>Addresses of Principals</u>
Gilberto Neves	201 Alhambra Circle, Suite 1400, Coral Gables, FL 33134
Gabriel Franca	201 Alhambra Circle, Suite 1400, Coral Gables, FL 33134
Jim Storey	201 Alhambra Circle, Suite 1400, Coral Gables, FL 33134
Nicholas Sprague	201 Alhambra Circle, Suite 1400, Coral Gables, FL 33134
Cynthia Cardoso	201 Alhambra Circle, Suite 1400, Coral Gables, FL 33134

The following forms must be submitted with the Bid. Failure to submit these forms with the Bid may render the Bid non-responsive and may require its rejection in accordance with the Instructions to Bidders - Article 6 - Preparation of Bid - Paragraph B.

Bid Form - The execution of this Form constitutes the unequivocal offer of Proposer to be bound by the terms of its proposal. Failure to sign this solicitation where indicated below by an authorized representative shall render the proposal non-responsive. The County may, however, in its sole discretion, accept any proposal that includes an executed document, which unequivocally binds the Proposer to the terms of its offer.

- Bid Bond
- Bidder's Statement of Qualification and Business References
- Listing of Subcontractors and Suppliers
- CSBE Requirements - Schedule of Intent Affidavit
- DPM Requirements - Affirmation of Vendor Affidavit

(Note: Complete instructions for preparation and submission of Bids is contained in the Instructions to Bidders portion of the Bid Documents).

An 8.22% Community Small Business Enterprise (CSBE) Subcontractor goal and a 13.10% Community Workforce Program (CWP) goal has been established for this project. The bidder is aware that a condition for the award of this contract is that it must meet the goal or submit, to the person or office to whom the bid was submitted by bid submission due date, evidence sufficient to MDC and as required and listed in the CSBE Participation Provisions, proving the lack of available CSBEs to afford effective competition to provide the services to meet the goal.

Should we be awarded the Contract on the basis of this Bid, we will furnish and install all products; furnish all services, labor, tools, equipment, supplies and transportation; and do the Work in accordance with the Contract Documents for the following prices:

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WHARVES STRENGTHENING PROGRAM

IF THIS PROPOSAL IS ACCEPTED, THE UNDERSIGNED BIDDER AGREES TO COMPLETE ALL WORK UNDER THIS CONTRACT WITHIN THE CONTRACT DURATION AS SPECIFIED IN THE CONTRACT CONDITIONS.

Item No.	Division of Work:	Unit	Quantity	Unit Price	Total Price
DIVISION 1 - GENERAL REQUIREMENTS					
1	Mobilization and Demobilization	LS	1	2,368,784	2,368,784
2	General Requirements	LS	1	4,500,000	4,500,000
DIVISION 2 - SITE CONSTRUCTION					
3	Site Demolition - pro rated per linear foot of project	LF	6,118	115	703,570
4	Condition Verification Excavations for Tie Rods (including all excavation, shoring, de-watering, backfilling, compacting, or other associated activities to facilitate the work)	EA	10	6,700	67,000
5	Granular Fill (Crushed Rock) between existing and Proposed Sheet Pile, per linear foot, along wharf, of installed bulkhead	LF	5,280	130	686,400
6	Concrete Fill (unreinforced) between existing and proposed Sheet Pile, per linear foot, along wharf, of installed bulkhead	LF	5,280	373	1,969,440
7	30-inch Steel Pipe Piles - Coated (includes furnishing and installing each, and PDA Restrikes for 3 piles) Wharf I - 28 piles	EA	28	21,000	588,000
8	Coated Steel Combi-Sheet Pile (PA 30/26-700) - includes installation, socketing, temporary bracing, end closures, test sockets, outfall penetrations, if any. Per linear foot, along wharf, of installed bulkhead.	LF	1,154	4,800	5,539,200
9	Coated Steel Combi-Sheet Pile (PA 36/26-700) - includes installation, socketing, temporary bracing, end closures, test sockets, outfall penetrations, if any. Per linear foot, along wharf, of installed bulkhead.	LF	2,534	5,000	12,670,000
10	Coated Steel Sheet Pile (AZ 26-700) - includes installation, temporary bracing, end closures, outfall penetrations, if any. Per linear foot, along wharf, of installed bulkhead.	LF	1,592	3,000	4,776,000
11	Water Service - includes trenching, equipment and piping, testing, installation, testing, site repair	EA	19	15,000	285,000
12A	King Pile Splice (PA 30/26-700) - splice weld and coating touchup	EA	15	1,450	21,750
12B	King Pile Splice (PA 30/26-700) - material, labor and equipment, per linear ft installed, for advancing socket and king pile tip	LF	150	800	120,000
13A	King Pile Splice (PA 36/26-700) - Splice weld and coating touchup	EA	33	1,500	49,500

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Item No.	Division of Work:	Unit	Quantity	Unit Price	Total Price
13B	King Pile Splice (PA 36/26-700) - material, labor and equipment, per linear ft installed, for advancing socket and king pile tip	LF	330	870 =	287,100 =
14	Site Drainage Improvements	LS	1	1,600,000 =	1,600,000 =
15	Asphalt Concrete Paving (include subgrade preparation and base)	LS	1	1,300,000 =	1,300,000 =
16	Painted Pavement Markings	LS	1	130,000 =	130,000 =
17	Furnish, install, and test soil anchors (includes necessary engineering design, shop drawings, and any required abandonment, closure and offset due to obstruction or test failure)	EA	453	7,000 =	3,171,000 =
18	<i>Coral Relocation (includes survey & reporting)</i>	EA	125	670 =	83,750 =
DIVISION 3 - CONCRETE					
19	Cast-in-Place Bulkhead Cap and Fascia, per linear foot, along wharf	LF	5,281	1,470 =	7,763,070 =
20	Cast-in-Place Breasting Structures	EA	14	129,000 =	1,806,000 =
21	Cast-in-Place Crane Rail Beams	EA	67	16,500 =	1,105,500 =
22	Cast-in-Place Water Stations	EA	19	4,900 =	93,100 =
23	Cast-in-Place Electrical Stations	EA	19	4,900 =	93,100 =
24	Adhesive Anchors at Existing Cap	LS	1	180,000 =	180,000 =
25	Concrete Spall Repairs (Wharf I)	CF	1000	620 =	620,000 =
26	Pile Repair Type 2 (Wharf I)	EA	17	15,000 =	255,000 =
27	Pile Repair Type 3 (Wharf I)	EA	3	12,000 =	36,000 =
28	Sawcut, Remove, and Replace Precast Concrete Desk Panel & C/P Topping	EA	5	8,000 =	40,000 =
DIVISION 10 - SPECIALTIES					
29	100 Ton Bollards - Provide 17, install 16	EA	17	2,600 =	44,200 =
30	150 Ton Bollards - Provide 81, install 75	EA	81	3,000 =	243,000 =
31	Purchase and Install New Fenders, including Mounting Hardware	EA	52	30,000 =	1,560,000 =
32	Refurbish per Contract Drawings and Reinstall Existing Fenders, including New Mounting Hardware	EA	19	20,000 =	380,000 =
33	Remove and Reinstall Existing Fenders, including New Mounting Hardware	EA	12	8,000 =	96,000 =

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Item No.	Division of Work:	Unit	Quantity	Unit Price	Total Price
DIVISION 16 - ELECTRICAL					
34	Electrical Services - includes trenching, conduit and equipment installation, testing, and site repair	EA	19	11,500 =	218,500 =

BASE BID TOTAL \$ 55,449,964 =

(Instructions: The spaces provided in the Bid Form must be filled in and no spaces left blank. In addition, the sum of all Line Items must represent your Base Bid Total. Failure to submit a complete and accurate Bid Form may result in your bid found non-responsive.)

A TEN PERCENT (10%) CONTINGENCY ALLOWANCE AND OTHER DEDICATED ALLOWANCES AS STIPULATED IN THE CONTRACT CONDITIONS WILL BE ADDED TO THE BASE BID TOTAL.

LOCAL PREFERENCE CERTIFICATION: For the purpose of this certification, a "local business" is a business located within the limits of Miami-Dade County (or Broward County in accordance with the Interlocal Agreement between the two counties) that conforms with the provisions of Section 1.10 of the General Terms and Conditions of this solicitation and contributes to the economic development of the community in a verifiable and measurable way. This may include, but not be limited to, the retention and expansion of employment opportunities and the support and increase to the County's tax base.

Place a check mark here only if affirming bidder meets requirements for Local Preference. Failure to complete this certification at this time (by checking the box above) shall render the vendor ineligible for Local Preference.

LOCAL CERTIFIED SERVICE-DISABLED VETERAN BUSINESS ENTERPRISE CERTIFICATION: A Local Certified Service-Disabled Veteran Business Enterprise is a firm that is (a) a local business pursuant to Section 2-8.5 of the Code of Miami-Dade County and (b) prior to bid submission is certified by the State of Florida Department of Management Services as a service-disabled veteran business enterprise pursuant to Section 295.187 of the Florida Statutes.

Place a check mark here only if affirming bidder is a Local Certified Service-Disabled Veteran Business Enterprise. A copy of the certification must be submitted with this proposal.

THE BIDDER UNDERSTANDS AND AGREES THAT THE ABOVE BASE BID TOTAL IS INCLUSIVE OF ALL WORK NECESSARY TO COMPLETE THE WORK AS DESCRIBED IN THE CONTRACT DOCUMENTS, AND IF THIS PROPOSAL IS ACCEPTED, THE UNDERSIGNED BIDDER AGREES TO ENTER INTO AND EXECUTE THE CONTRACT WITH THE NECESSARY BOND AND ACCEPT THE ABOVE TOTAL PRICE AS FULL COMPENSATION FOR THE WORK PERFORMED UNDER THIS CONTRACT.

D. C. CERTIFICATE OF COMPETENCY NO. CGC054396 BIDDER'S NAME Odebrecht Construction, Inc.
201 Alhambra Circle, Suite 1400
BIDDER'S TELEPHONE NUMBER 305-341-8800 BIDDER'S ADDRESS Coral Gables, FL 33134

PROJECT NO. 2007-022 ESP
BID FORM
ADDENDUM NO. 4

MAY 5, 2011

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When Bidder is an Individual:

In witness whereof, the Bidder hereto has executed this Bid Form this _____ day of _____ 20 _____.

Witness By: _____
(Signature of individual)

Witness By: _____
(Print name of individual)

(Address)

ACKNOWLEDGEMENT:

STATE of _____)ss.:

COUNTY of _____)

SUBSCRIBED AND SWORN TO (or affirmed) before me on _____ by _____
(Date) (Affiant)

He/She is personally known to me or has presented _____ as identification
(Type of Identification)

Notary Public _____ (Serial Number) _____ (State)
(Signature of Notary) (Expiration Date)

(Print or Stamp Name of Notary) Notary Seal:

When the Bidder is a sole proprietorship or operates under a trade name:

In witness whereof, the Bidder hereto has executed this Bid Form this _____ day of _____ 20 _____.

(Printed name of firm)

Witness
By: _____
(Signature of individual)

Witness
By: _____
(Print name of individual)

(Address)

ACKNOWLEDGEMENT:

STATE of _____)ss.:

COUNTY of _____)

SUBSCRIBED AND SWORN TO (or affirmed) before me on _____ by _____
(Date) (Affiant)

He/She is personally known to me or has presented _____ as identification
(Type of Identification)

Notary Public _____
(Signature of Notary) (Serial Number) (Expiration Date) (State)

(Print or Stamp Name of Notary) Notary Seal:

When the Bidder is a Partnership:

In witness whereof, the Bidder hereto has executed this Bid Form this _____ day of _____ 20 _____.

(Printed name of partnership)

Witness _____
By: _____
(Signature of Partner)

Witness _____
By: _____
(Print name of Partner)

(Address)

ACKNOWLEDGEMENT:

STATE of _____)ss.:

COUNTY of _____)

SUBSCRIBED AND SWORN TO (or affirmed) before me on _____ by _____
(Date) (Affiant)

He/She is personally known to me or has presented _____ as identification
(Type of Identification)

Notary Public _____ (Serial Number) _____ (Expiration Date) _____ (State)
(Signature of Notary)

(Print or Stamp Name of Notary) Notary Seal:

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CCPY

When Bidder is a Corporation:

In witness whereof, the Bidder hereto has executed this Bid Form this 18 day of May 20 11.

Odebrecht Construction, Inc.

(Printed name of Corporation)

Florida

(Printed State of Incorporation)

(CORPORATE SEAL)

By:

Gilberto Neves, President

(Signature of President or Vice-President & capacity)

Nicholas Sprague, Secretary

(Printed name of Secretary or Assistant Secretary & capacity)

201 Alhambra Circle, Suite 1400
Coral Gables, FL 33134

(Business Address of Corporation)

ACKNOWLEDGEMENT:

STATE of FLORIDA)ss.:

COUNTY of MIAMI-DADE)

Before me personally appeared Gilberto Neves, as President, to me well known or has presented _____ as

(Type of Identification)

identification and Nicholas Sprague, as Secretary, to me well known, or has presented _____ as

(Type of Identification)

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COPY

identification and known to me to be the person described in and who executed the foregoing instrument as Gilberto Neves
President and Nicholas Sprague as Secretary of the above name Odebrecht Construction, Inc. a
Corporation, and severally acknowledged that they executed such instrument as such Gilberto Neves President and
Nicholas Sprague Secretary, respectively, of said corporation, and that the seal affixed to the foregoing instrument is the corporate seal of
said corporation and that it was affixed to said instrument by due and regular corporate authority, and said instrument is the free act and deed
of said corporation.

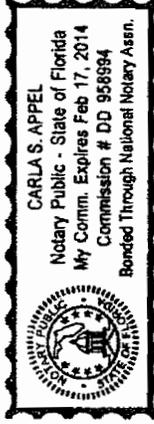
SUBSCRIBED AND SWORN TO (or affirmed) before me on May 18, 2011 by Gilberto Neves & Nicholas Sprague
(Date) (Affiant)

He/She is personally known to me or has presented _____ as identification
(Type of Identification)

Notary Public Carla S. Appel DD958994 02-17-2014 Florida
(Signature of Notary) (Serial Number) (Expiration Date) (State)

Carla S. Appel
(Print or Stamp Name of Notary)

Notary Seal:



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When Bidder is a Joint Venture:

(Printed name of Joint Venture)

(Business address of Joint Venture)

Note: Complete in accordance with Article 10 of the Instructions to Bidders.

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MIAMI-DADE SEAPORT DEPARTMENT
CONTRACT SPECIFICATIONS
WHARVES STRENGTHENING PROGRAM
PROJECT NO. 2007-022 ESP

BID BOND
(7 PAGES)

COPY

BID BOND

STATE OF Florida)ss.:
COUNTY OF Miami-Dade)

KNOW ALL MEN BY THESE PRESENTS, that we, Odebrecht Construction, Inc. as Principal, and Liberty Mutual Insurance Company as Surety, are held and firmly bound unto Miami-Dade County in the penal sum of Dollars (\$ Five Percent of Bid Amount) lawful money of the United States, which sum represents five percent of the Total Bid Price, and for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has submitted the accompanying Bid, dated May 18, 20 11 for PROJECT NO. 2007-022 ESP entitled, WHARVES STRENGTHENING PROGRAM.

NOW THEREFORE, if the Principal shall not withdraw said Bid within 180 days after the Bid opening date, shall submit complete information required, and shall within 10 days after the prescribed forms are presented to him for signature, enter into a written Contract with Miami-Dade County, in accordance with the Bid as accepted, and give a Surety Performance and Payment Bond with good and sufficient surety or sureties and provide the necessary Insurance Certificates, as may be required, for the faithful performance and proper fulfillment of such Contract and for the prompt payment of all persons furnishing labor or materials in connection therewith, or in the event of withdrawal of said Bid within the period specified, or in the event of the failure to enter into such Contract and give such Bond within the time specified, if the Principal shall pay Miami-Dade County the difference between the amounts specified in said Bid and the amount for which Miami-Dade County may procure the required work and supplies, ~~provided the latter amount be in excess of the former, then the above obligations shall be void and of no effect; otherwise, to remain in full force and virtue.~~

When Principal is an individual:

IN WITNESS WHEREOF, the above bounden parties have caused this Bond to be executed by their appropriate officials as of the ___ day of _____, 20__.

Witness

By: _____
(Signature of individual)

Witness

(Printed name of individual)

(Address)

ACKNOWLEDGEMENT:

STATE OF _____)ss.:

COUNTY OF _____)

SUBSCRIBED AND SWORN TO (or affirmed) before me on _____ by
(Date)

_____. He / She is personally known to me or has presented
(Affiant)

_____ as identification
(Type of Identification)

(Signature of Notary)

(Serial Number)

(Print or Stamp Name of Notary)

(Expiration Date)

Notary Public _____
(State)

Notary Seal:

When Principal is a sole proprietorship or operates under a trade name:

IN WITNESS WHEREOF, the above bounden parties have caused this Bond to be executed by their appropriate officials as of the ____ day of _____, 20__.

(printed name of firm)

Witness

By: _____
(signature of individual)

Witness

(printed name of individual)

(Address)

ACKNOWLEDGEMENT:

STATE OF _____)ss .:

COUNTY OF _____)

SUBSCRIBED AND SWORN TO (or affirmed) before me on _____ by
(Date)

_____. He / She is personally known to me or has presented
(Affiant)

_____ as identification.
(Type of Identification)

(Signature of Notary)

(Serial Number)

(Print or Stamp Name of Notary)

(Expiration Date)

Notary Public _____
(State)

Notary Seal:

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When Principal is a partnership:

IN WITNESS WHEREOF, the above bounden parties have caused this Bond to be executed by their appropriate officials as of the _____ day of _____, 20__.

(printed name of partnership)

Witness

(signature of partner)

Witness

(printed name of partner)

(address)

ACKNOWLEDGEMENT:

STATE OF _____)ss.:

COUNTY OF _____)

SUBSCRIBED AND SWORN TO (or affirmed) before me on _____ by
(Date)

_____. He / She is personally known to me or has presented
(Affiant)

_____ as identification.
(Type of Identification)

(Signature of Notary)

(Serial Number)

(Print or Stamp Name of Notary)

(Expiration Date)

Notary Public _____
(State)

Notary Seal:

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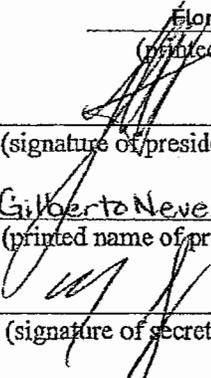
When Principal is a corporation:

IN WITNESS WHEREOF, the above bounden parties have caused this Bond to be executed by their appropriate officials as of the 6th day of May, 2011.

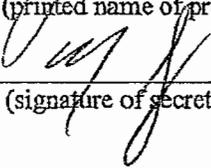
(CORPORATE SEAL)

Odebrecht Construction, Inc.
(printed name of corporation)

Florida
(printed state of incorporation)

By: 
(signature of president or vice-president & capacity)

Gilberto Neves President & CEO
(printed name of president or vice-president & capacity)

By: 
(signature of secretary or assistant secretary & capacity)

Nicholas Sprague Secretary
(printed name of secretary or assistant secretary & capacity)

201 Alhambra Circle, Ste 1400, Coral Gables, FL 33134
(Business address of corporation)

ACKNOWLEDGEMENT:

STATE OF Florida ss.:

COUNTY OF Miami-Dade

Before me personally appeared Gilberto Neves, as President to me well known or has presented _____ as identification and
(Type of identification)

Nicholas Sprague as Secretary, to me well known, or has presented _____ as identification and known to me to be individuals described
(Type of identification)

in and who executed the foregoing instrument as Gilberto Neves, President and Nicholas Sprague, Secretary of the above named Odebrecht Construction, Inc. a Corporation, and severally acknowledged that they executed such instrument as such Gilberto Neves President and Nicholas Sprague Secretary, respectively, of said corporation, and that the seal affixed to the foregoing instrument

COPY

is the corporate seal of said corporation and that it was affixed to said instrument by due and regular corporate authority, and said instrument is the free act and deed of said corporation.

SUBSCRIBED AND SWORN TO (or affirmed) before me on May 17, 2011
(Date)

by Gilberto Neves + Nicholas Sprague He / She is personally known to me or has presented
(Affiant)

_____ as identification.
(Type of Identification)

Carla S. Appel
(Signature of Notary)

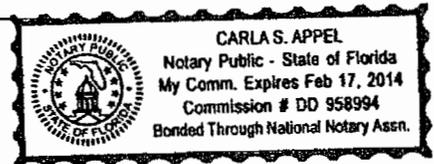
DD 958994
(Serial Number)

Carla S. Appel
(Print or Stamp Name of Notary)

02/17/2014
(Expiration Date)

Notary Public Florida
(State)

Notary Seal:



When Principal is a joint venture:

IN WITNESS WHEREOF, the above bounden parties have caused this Bond to be executed by their appropriate officials as of the ___ day of _____, 20__.

(printed name of joint venture)

(business address of joint venture)

Note: Complete in accordance with Article 10 of the Instructions to Bidders.

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COPY

SURETY:

(CORPORATE SEAL)

Liberty Mutual Insurance Company
(printed name of Surety)

450 Plymouth Road, Suite 400

Plymouth Meeting, PA 19462
(address of Surety)

By: Ana W. Oliveras
(Attorney-in-Fact)

Ana W Oliveras
(printed name of Attorney-in-Fact)

By: Ana W. Oliveras
(resident Florida agent)

Ana W Oliveras
(printed name of agent)

Note: Copy of Resident Agent's current license as issued by State of Florida Insurance Commissioner must be attached.

State of Florida

County of: Palm Beach

On May 6, 2011 before me, Gail Mazzei
Date Name and Title of Officer

personally appeared Ana W Oliveras
Name of Signer(s)

- Personally known to me
- Proved to me on the basis of satisfactory evidence

to be the person whose name is subscribed to me on the instrument and acknowledged to me that he executed the same in his authorized capacity and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.



Place Notary Seal above

WITNESS my hand and official seal.

Gail Mazzei
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another.

Description of the Attached Document

Title or Type of Document: Surety Bond

Document Date: _____ Number of Pages: _____

Signer(s) other than Named Above: _____

Capacity(ies) Claimed by Signer

Signers Name: Ana W Oliveras

- Individual
- Corporate Officer – Title(s): _____
- Partner
- Attorney in Fact of Liberty Mutual Insurance Company
- Trustee
- Guardian or Conservator
- Other: _____

Signer is representing:

COPY

FLORIDA DEPARTMENT OF INSURANCE

ANA W. OLIVERAS

License Number E077488

**IS LICENSED TO TRANSACT THE FOLLOWING CLASSES OF INSURANCE:
General Lines (Prop. & Cas.)**



**RESIDENT
LICENSE**



This Licensee must have an active appointment with the insurer or employer for which products or services are being marketed. See reverse for additional requirements.
The Florida Community College System is Florida's subcontractor for printing and mailing the full text of its contract with the Florida Department of Insurance.

**LIBERTY MUTUAL INSURANCE
COMPANY**

is hereby authorized to transact
insurance in the State of Florida.

This certificate signifies that the company
has satisfied all requirements of the
Florida Insurance Code for the issuance
of a license and remains subject to
all applicable laws of Florida.

Date of Issuance: October 11, 1918
No. 91-04-1543470

COPY

Tom Gallagher

Tom Gallagher
Treasurer and Insurance Commissioner



**Florida
Department
of Insurance**

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

LIBERTY MUTUAL INSURANCE COMPANY
BOSTON, MASSACHUSETTS
POWER OF ATTORNEY

COPY

KNOW ALL PERSONS BY THESE PRESENTS: That Liberty Mutual Insurance Company (the "Company"), a Massachusetts stock insurance company, pursuant to and by authority of the By-law and Authorization hereinafter set forth, does hereby name, constitute and appoint
ANA W. OLIVERAS, OF THE CITY OF SUNRISE, STATE OF FLORIDA.....

....., each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations in the penal sum not exceeding **SEVENTY MILLION AND 00/100******* DOLLARS (\$ **70,000,000.00*******) each, and the execution of such undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents, shall be as binding upon the Company as if they had been duly signed by the president and attested by the secretary of the Company in their own proper persons.

That this power is made and executed pursuant to and by authority of the following By-law and Authorization:

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

By the following instrument the chairman or the president has authorized the officer or other official named therein to appoint attorneys-in-fact:

Pursuant to Article XIII, Section 5 of the By-Laws, Garnet W. Elliott, Assistant Secretary of Liberty Mutual Insurance Company, is hereby authorized to appoint such attorneys-in-fact as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

That the By-law and the Authorization set forth above are true copies thereof and are now in full force and effect.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Company and the corporate seal of Liberty Mutual Insurance Company has been affixed thereto in Plymouth Meeting, Pennsylvania this 15th day of October, 2010.

LIBERTY MUTUAL INSURANCE COMPANY



By Garnet W. Elliott
Garnet W. Elliott, Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA ss
COUNTY OF MONTGOMERY

On this 15th day of October, 2010, before me, a Notary Public, personally came Garnet W. Elliott, to me known, and acknowledged that he is an Assistant Secretary of Liberty Mutual Insurance Company; that he knows the seal of said corporation; and that he executed the above Power of Attorney and affixed the corporate seal of Liberty Mutual Insurance Company thereto with the authority and at the direction of said corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Plymouth Twp., Montgomery County
My Commission Expires March 28, 2013
Member, Pennsylvania Association of Notaries

By Teresa Pastella
Teresa Pastella, Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of Liberty Mutual Insurance Company, do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy, is in full force and effect on the date of this certificate; and I do further certify that the officer or official who executed the said power of attorney is an Assistant Secretary specially authorized by the chairman or the president to appoint attorneys-in-fact as provided in Article XIII, Section 5 of the By-laws of Liberty Mutual Insurance Company.

This certificate and the above power of attorney may be signed by facsimile or mechanically reproduced signatures under and by authority of the following vote of the board of directors of Liberty Mutual Insurance Company at a meeting duly called and held on the 12th day of March, 1980.

VOTED that the facsimile or mechanically reproduced signature of any assistant secretary of the company, wherever appearing upon a certified copy of any power of attorney issued by the company in connection with surety bonds, shall be valid and binding upon the company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said company, this 6th day of May, 2011.



By David M. Carey
David M. Carey, Assistant Secretary

Not valid for mortgage, note, loan, or of credit, bank deposit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.

MIAMI-DADE SEAPORT DEPARTMENT

CONTRACT SPECIFICATIONS

WHARVES STRENGTHENING PROGRAM

PROJECT NO. 2007-022 ESP

BIDDER'S STATEMENT OF QUALIFICATIONS AND
BUSINESS REFERENCES
(6 PAGES)

MIAMI-DADE SEAPORT DEPARTMENT

BIDDER'S STATEMENT OF QUALIFICATIONS AND BUSINESS REFERENCES

This statement is an integral part of the Contractor's Bid, and must be completed as directed in the Instructions to Bidders, Paragraph 6.B.1. All references and information shall be current and traceable. If Bidder is a joint venture, a separate form must be prepared by each venturer (extra forms are available from the Port Representative).

NAME OF BIDDER Odebrecht Construction, Inc.

PRINCIPAL OFFICE 201 Alhambra Circle, Suite 1400
(Street Address or P. O. Number)

Coral Gables FL 33134
(City) (State) (Zip Code)

305-341-8800
(Area Code) (Telephone Number)

1. Are you registered to do business in Florida? Yes Registration No. L94532
Classification General Contractor
2. Do you hold a certificate of competency issued by Miami-Dade County, Florida? No
Classification State of Florida - General Contractor License CGC054396
3. Are you an individual , a partnership , a corporation X or a joint venture
(Check as applicable).

If a partnership, list names and addresses of partners; if a corporation, list names of officers and directors and State of incorporation; if a joint venture, list names and addresses of venturers and, if any venturer is a corporation, partnership or joint venture, list the same information for each such corporation, partnership and joint venturer.

See Attachment 1

4. How many years has your organization been in business as a contractor under your present business name? 13 years.
5. How many years of experience has your organization had in marine construction work similar to the work of this Contract?
 - (a) As a general contractor? 18 - USA / 63 - Abroad
 - (b) As a subcontractor? N/A

11. List work, which you have currently underway.

Contract Price	Type of Construction	Location of Work	Percent Completed	Expected Completion Date	Name & Address of Owner/Client and Engineer or Architect
See Attachment 4					

12. List engineers, architects and owners, including public bodies, for whom you have done work:

NAME	ADDRESS	BUSINESS	TELEPHONE
See Attachment 5			

13. Reference is hereby made to the following financial institutions as to the financial responsibility of the Bidder:

Name of Bank: Suntrust Bank
Street Address: 777 Brickell Avenue
City and State: Miami, FL 33131 Telephone: 305-579-7179
Officer Familiar with Bidder's Account: Hilda Irigoyen

Name of Bank: J.P. Morgan Chase
Street Address: 1 chase Manhattan Plaza, 18th Floor, NY1-A306
City and State: New York, NY 10005 Telephone: 713-216-3899
Officer Familiar with Bidder's Account: Alex Lara

Name of Bank: _____
Street Address: _____
City and State: _____ Telephone: _____
Officer Familiar with Bidder's Account: _____

14. Reference is hereby made to the following surety company or companies as to the financial responsibility and general reliability of Bidder:

Name of Surety Company: Liberty Mutual Insurance Company
Name of Local Agent (if different): _____
Local Street Address: 450 Plymouth Road, Suite 400
City and State: Plymouth Meeting, PA Telephone: 610-832-8301
Person Familiar with Bidder's Account: Peter Worthington

Name of Surety Company: _____
Name of Local Agent (if different): _____
Local Street Address: _____
City and State: _____ Telephone: _____
Person Familiar with Bidder's Account: _____

15. Is any litigation pending against your organization? See Attachment 6

If so, give details See Attachment 6

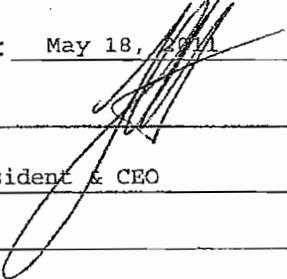
16. Is any litigation presently being prosecuted by your organization or on behalf of your organization? No

If so, give details N/A

The undersigned certifies that he is legally authorized by the Bidder to make the statements and representations contained in this document, and represents and warrants that the foregoing information is true and accurate to the best of his knowledge, and intends that the Miami-Dade County, MIAMI-DADE SEAPORT DEPARTMENT, rely thereon in awarding the Contract.

BIDDER'S NAME: Odebrecht Construction, Inc.

DATE OF SIGNING: May 18, 2011

SIGNATURE:  By: Gilberto Neves

TITLE: President & CEO

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ATTACHMENT 1 – Question 3

Shareholder: **Belgravia Empreendimentos Imobiliarios S.A.** **(100 % of Ownership)**
(owned 100% by CONSTRUTORA NORBERTO ODEBRECHT S.A.)
Avenida das Nações Unidas, 8.501 - 28º andar
CEP: 05425-070 São Paulo - SP, Brasil

Shares Owned 86,806,032
Authorize Shares: 150,000,000

BOARD OF DIRECTORS:

Gilberto Neves – Director
201 Alhambra Circle, Suite 1400
Coral Gables, FL 33134

Luiz Augusto Teive Rocha – Director
Quinta da Fonte, Edifício Forum, Piso 1
2770-192 Paço de Arcos, Portugal

Gabriel França – Director
201 Alhambra Circle, Suite 1400
Coral Gables, FL 33134

Sergio Campos – Director
Quinta da Fonte, Edifício Forum, Piso 1
2770-192 Paço de Arcos, Portugal

OFFICERS:

Gilberto Neves – *President & CEO*
201 Alhambra Circle, Suite 1400
Coral Gables, FL 33134

Nicholas Sprague – *Secretary*
201 Alhambra Circle, Suite 1400
Coral Gables, FL 33134

Gabriel França – *Vice President*
201 Alhambra Circle, Suite 1400
Coral Gables, FL 33134

Cynthia Cardoso – *Treasurer*
201 Alhambra Circle, Suite 1400
Coral Gables, FL 33134

Jim Storey – *Vice President*
201 Alhambra Circle, Suite 1400
Coral Gables, FL 33134

Similar Project Experience

Marine Construction
 Deep Water Pile
 Sheet Pile Bulk Heads
 Soil / Lateral Anchor
 Pier Construction

WHARF 5 OF SUAPE

Completion Date: July 2009
 Contract Price: \$74.7 M
 Type of Construction: MARINE
 Location: Pernambuco, Brazil

OWNER:

Suape Complexo Industrial Portuário
 Governador Eraldo Guerlos
 Rodovia PE-60, KM 10,
 Engenho Massangana, Brazil
 0055 81 3527-5000

ARCHITECT / ENGINEER:

Vicente Garambone - Projetos e Consultoria Ltda
 Vicente Garambone Filho
 Av. Mal Camera, 271 gr 504 centro
 Rio de Janeiro, Brazil
 0055 11 2220-1853

SUAPE PORT TERMINAL

Completion Date: March 2011
 Contract Price: \$47.5 M
 Type of Construction: MARINE / PIER
 Location: Pernambuco, Brazil

OWNER:

Suape Complexo Industrial Portuário
 Rodovia PE-60, KM 10,
 Engenho Massangana, Brazil
 0055 81 3527-5000

ARCHITECT / ENGINEER:

Vicente Garambone - Projetos e Consultoria Ltda
 Vicente Garambone Filho
 Av. Mal Camera, 271 gr 504 centro
 Rio de Janeiro, Brazil
 0055 11 2220-1853

CVRD PIER III

Completion Date: August 2007
 Contract Price: \$31 M
 Type of Construction: MARINE / PIER
 Location: São Luis, Brazil

OWNER:

CVRD - Cia. Vale do Rio Doce
 Eduardo Bartolomeo
 Av. Graça Aranha, 25 - ed. Barão de Mauaá, 26 Ed. Barão de Mauá Centro
 Rio de Janeiro, Brazil
 0055 21 3814-8888

ARCHITECT / ENGINEER:

EXE Engenharia Ltda
 Rubens Sabino
 Alameda de Carvalho, 603
 Curitiba, Brazil
 0055 41 3014-3515

LONDON CANAL

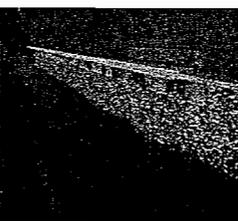
Completion Date: October 2006
 Contract Price: \$12.4 M
 Type of Construction: MARINE
 Location: New Orleans, LA

OWNER:

US Army Corps of Engineers
 Jeffrey Falati
 PO Box 60267
 New Orleans, LA 70160
 504-628-5078

ARCHITECT / ENGINEER:

URS
 6200 Falls of the Neuse Road
 Raleigh, NC 27610
 704-522-0330



6. Similar Project Experience

Marine Construction
Deep-Water Pile
Sheet Pile Bulk Heads
Soil / Lateral Anchor
Pier Construction

SANTA ROSA -

GARCON POINT BRIDGE

Completion Date: June 1999

Contract Price: \$57.3 M

Type of Construction: MARINE / BRIDGE

Location: Santa Rosa, FL

OWNER:

Santa Rosa Bay Bridge Authority

Mahlon McCall

PO Box 582 Milton, FL 32572

850-983-6003

ARCHITECT / ENGINEER:

Fligg Engineers Inc.

424 North Calhoun Street

Tallahassee, FL 32301

850-224-7400

✓

✓

MARINE EXPORT FACILITIES AT

PAMPA a MELCHORITA

LNG PLANT

Completion Date: April 2010

Contract Price: \$333.4 M

Type of Construction: MARINE / PIER

Location: Lima, Peru

OWNER:

Peru LNG S.R.L.

Av. Victor Andres Belaunde.

Via Principal,

147 Torre Real 12, Piso 2

San Isidro, Lima, Peru

+511 611 5100

ARCHITECT / ENGINEER:

EXE Engenharia Ltda

Rubens Sabino

Alameda de Carvalho, 603

Curitiba, Brazil

0055 41 3014-3515

✓

✓

✓

NASSAU SOUND BRIDGE

Completion Date: July 2000

Contract Price: \$12.2 M

Type of Construction: MARINE / BRIDGE

Location: Jacksonville, FL

OWNER:

Florida Department of Transportation

David Taylor

2250 Irene Street

Jacksonville, FL 32204

904-360-5561

ARCHITECT / ENGINEER:

EC Driver

7119 Beech Ridge Trail

Tallahassee, FL 32312

850-893-6148

✓

✓

MATANZAS BRIDGE

Completion Date: August 1999

Contract Price: \$21.7 M

Type of Construction: MARINE / BRIDGE

Location: St. Augustine, FL

OWNER:

Florida Department of Transportation

Dave Zander

105 Yellwington Road

East Palatka, FL 32131

904-329-3750

ARCHITECT / ENGINEER:

RS&H

Dough Geiger

1720 Highway A1A South

St. Augustine, FL 32084

407-893-5873

✓

✓

✓

6. Similar Project Experience

Marine Construction
Deep-Water Pile
Sheet Pile Bulk Heads
Soil / Lateral Anchor
Pier Construction

SEVEN OAKS DAM

Completion Date: June 2005
Contract Price: \$28.3 M
Type of Construction: MARINE / PIER
Location: Djibouti

OWNER:

US Army Corps of Engineers
Thomas D. Mckercher
32330 Santa Ana Canyon Road
Highland, CA 92346
909-794-6860

ARCHITECT / ENGINEER:

US Army Corps of Engineers
Thomas D. Mckercher
32330 Santa Ana Canyon Road
Highland, CA 92346
909-794-6860

PORT DOLERAH

Completion Date: June 2005
Contract Price: \$28.3 M
Type of Construction: MARINE / PIER
Location: Djibouti

OWNER:

DPW - Dubai Port World
Mr. H. Edward Bilkey
PO. Box 17000
Dubai, UAE
+971-4-881-1110

ARCHITECT / ENGINEER:

EXE Engenharia Ltda
Rubens Sabino
Alameda de Carvalho, 603
Curitiba, Brazil
0055 41 3014-3515

BELMONTE MARITIME

TERMINAL
Completion Date: May 2002
Contract Price: \$14.7 M
Type of Construction: MARINE / PIER
Location: Belmonte, Brazil

OWNER:

Veracel Celulose S/A
Antonio Jose
Rodovia Fazenda
Brasiliandia, 275
BA, Brazil
73 3166-8503

ARCHITECT / ENGINEER:

Pöyry Consultoria e Projetos Ltda.
Urbanismo & Transporte
Rua Alexandre Dumas, 1630 - 1º
andar, CEP: 04717-004-004
São Paulo, Brazil
0055 11 5187 555

COPY

ATTACHMENT 3 - QUESTION 10

Individual's Name	Present Position or Office in Your Organization	Years of Construction Experience	Magnitude and Type of Work	In What Capacity	Is this a "Key Person" as defined in Addendum No. 6
Gilberto Neves	President & CEO	29	\$1.1B Airport	Project Executive	
			\$322.5M Environmental	Project Executive	X
			\$42.4M Highway	Project Executive	
Marcos Tepedino	VP Infrastructure	34	\$27.7M Public Transportation	Project Executive	
			\$125.4M Marine	Project Executive	X
			\$2.8B Airport	Project Executive	
			\$27.7M Public Transportation	Project Executive	
Carlos N. Nunez, P.E.	Project Manager	38	\$77M Building	Technical Dept. Chief	
			\$256.7M Marine	Project Manager/Engineer	X
			\$907M Airport	Project Manager/Engineer	
			\$360.4M Public Transportation	Project Manager/Engineer	
			\$113M Building	Project Manager/Engineer	
Alexander Christiani	Technical Director	39	\$194.3M Marine	Marine Supt./Construction Mgr.	X
			\$267.8M Environmental	Contract Admin/Commercial Mgr.	
			\$35.1M Highway	Underground Superintendent	
			\$23M Mining	Strategic Planning Executive	
Joseph Wyman	General Superintendent	49	\$8.57B Marine	General Superintendent	
			\$26.5M Marine	Project Controls Manager	
			\$357.5M Cultural Center	Project Executive	
Luiz Simon	Project Executive	25	\$287.1M Public Transportation	Project Executive	
			\$89.8M Building	Project Executive/Engineer	
			\$30.4M Airport	Project Executive/Engineer	
Lucas Prado	Project Executive	28	\$21.7M Marine	Project Manager	
			\$1.1B Airport	Project Executive	
			\$357.5M Cultural Center	Contract Administrator	
			\$75.3M Highway	Project Engineer	

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ODEBRECHT

CCPY

Is this a "Key Person" as defined in Addendum No. 6

In What Capacity

Magnitude and Type of Work

Years of Construction Experience

Present Position or Office in Your Organization

Individual's Name

Individual's Name	Present Position or Office in Your Organization	Years of Construction Experience	Magnitude and Type of Work	In What Capacity
Rudy Armenta	Project Executive	16	\$256.6M Marine \$1.9B Airport \$42.5M Stadium \$31.7M Building \$4.2M Airport	Project Executive Project Manager / Eng. Project Executive Project Engineer Project Executive
Antonio Pinto	Project Executive	32	\$360.4M Public Transportation \$216M Hydroelectric \$843M Airport \$360.4M Public Transportation	Project Executive Technical Director Project Controls Project Executive
Jorge Mendoza	Project Executive	10	\$357.5M Cultural Center \$60M Marine \$943.6M Airport \$259.4M Public Transportation \$280M Highway \$42.5M Stadium	Change Order Manager General Superintendent General Superintendent General Superintendent General Superintendent General Superintendent
Greg Mears	General Superintendent	31	\$2B Airport \$360.4M Public Transportation \$3.4B Airport \$338M Building	General Superintendent General Superintendent General Superintendent General Superintendent
Mark Poropat	General Superintendent	30	\$50M Cultural Center \$1.9B Airport \$357.5M Cultural Center \$164M Building	General Superintendent General Superintendent General Superintendent General Superintendent
Jim Eldridge	General Superintendent	38		
Tommy Valentine	General Superintendent	21		

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ODEBRECHT

Current Work



LPV 3.2 WEST RETURN FLOODWALL

Contract Price: \$84.7 M
Type of Construction: CONCRETE T-WALL / SHEET PILING / LEVEE
Location: New Orleans, LA
Percent Completed: 55%
Expected Completion Date: April 7, 2011

OWNER:
 US Army Corps of Engineers,
 New Orleans District
 Charles Zammit
 7400 Leak Ave.
 Room 172
 New Orleans, LA 70118
 504-862-2340

ARCHITECT / ENGINEER:
 US Army Corps of Engineers,
 New Orleans District
 Charles Zammit
 7400 Leak Ave.
 Room 172
 New Orleans, LA 70118
 504-862-2340



LPV 9.2, FRONTING PROTECTION, JEFFERSON LAKEFRONT, PUMPING STATIONS 1-4

Contract Price: \$176.7 M
Type of Construction: LEVEE / TRS / BREAKWATER WALL
Location: New Orleans, LA
Percent Completed: 36%
Expected Completion Date: July 4, 2013

OWNER:
 US Army Corps of Engineers,
 New Orleans District
 Charles Zammit
 7400 Leak Ave.
 Room 172
 New Orleans, LA 70118
 504-862-2340

ARCHITECT / ENGINEER:
 US Army Corps of Engineers,
 New Orleans District
 Charles Zammit
 7400 Leak Ave.
 Room 172
 New Orleans, LA 70118
 504-862-2340



AirportLink Metrorail Extension

Contract Price: \$360.4 M
Type of Construction: RAIL & MASS TRANSIT
Location: Miami, FL
Percent Completed: 81%
Expected Completion Date: April 29, 2012

OWNER:
 Miami-Dade Transit
 Surinder Sahota
 701 NW 1st Court
 Suite 1500
 Miami, FL 33136-3912
 786-469-5431

ARCHITECT / ENGINEER:
Guideway:
 URS Corporation Southern
 7650 Corporate Center Dr,
 Suite 400
 Miami, FL 33126
 305-262-7466
Station:
 Perez & Perez Architects-
 Planners, Inc.
 2121 Douglas Rd.
 Miami, FL 33145
 305-444-4545
Roadway:
 A&P Consulting
 Transportation Engineers
 Corporation
 10305 NW 41st Street
 Suite 115
 Miami, FL 33178
 305-593-7283

11. Current Work



**NORTH TERMINAL PROGRAM
AT MIAMI INT'L AIRPORT**
Contract Price: \$1.1 B
Type of Construction: AIRPORT
Location: Miami, FL
Percent Completed: 94%
Expected Completion Date: February 11, 2012

OWNER:
 Miami-Dade Aviation
 Department
 PO Box 592075
 Miami, FL 33159
 305-876-7067

ARCHITECT / ENGINEER:
Rodriguez & Quiroga
 Jim Palma
 2100 Ponce de Leao Blvd
 Coral Gables, FL 33134
 305-448-7417
Wolfberg Alvarez
 Raul Estevez
 1500 San Remo Ave.
 Suite 300
 Coral Gables, FL 33146
 305-666-5474
MC Harry Associates
 Thomas Carlson
 2780 SW Douglas Rd.
 Suite 302
 Miami, FL 33133
**Bermello Ajamil & Partners,
 Inc.**
 Jim Despirito
 2601 S. Bayshore Dr.
 Suite 1000
 859-2050
Sequeira & Gavarette, Inc.
 Fernando Gavaerette
 811 Ponce de Leon Blvd
 Coral Gables, FL 33134
 305-441-1556



MIA Mover APM System
Contract Price: \$259.4 M
Type of Construction: RAIL & MASS TRANSIT
Location: Miami, FL
Percent Completed: 85%
Expected Completion Date: Septemeber 2011

OWNER:
 Miami-Dade Aviation
 Department
 Miami International Airport,
 Building 5A
 Miami, FL 33122
 305-876-7922

ARCHITECT / ENGINEER:
Station:
Rodriguez & Quiroga
 Jim Palma
 2100 Ponce de Leao Blvd
 Coral Gables, FL 33134
 305-448-7417
Guideway:
**Parsons-Odebrecht Joint
 Venture**
 Barbara Schroeder
 7600 Corporate Center Dr.
 Suite 500
 Miami, FL 33126
 786-464-1000

Engineers, Architects & Owners whom we have done work for

NAME	ADDRESS	BUSINESS	TELEPHONE
US Army Corps of Engineers	7400 Leak Ave. Room 172 New Orleans, LA 70118	Government - Federal	504-862-2340
Miami-Dade Aviation Department	PO Box 592075 Miami, FL 33159	Aviation	305-876-7922
Miami-Dade Transit Department	701 NW 1st Court Suite 1500 Miami, FL 33136	Mass Transit	786-469-5071
Miami-Dade County	Stephen P. Clark Center 10th Floor 111 NW 1st Street Miami, FL 33128	Government - Local	305-375-1584
Florida Department of Transportation	605 Suwannee Street Tallahassee, FL 32399	Government - State / Transportation	850-414-4100
Federal Aviation Administration	PO Box 20636 Atlanta, GA 30320	Government - Federal / Aviation	404-305-5792
American Airlines	901 Ponce de Leon Suite 800 Coral Gables, FL 33134	Aviation	305-526-0724
Florida International University	11200 SW 8th Street Miami, FL 33199	Education	305-348-2000
Greater Orlando Aviation Authority	5850 B Cargo Road Orlando, FL 32827	Aviation	407-825-3469

ATTACHMENT 6 – Question 15

It is the policy of Odebrecht Construction, Inc. (“Odebrecht”) to pursue contract construction in a non-adversarial manner, resolving all contract issues through timely and effective communications among the owner, contractor, design team, and subcontractors. Despite these efforts, some contract matters result in claim/litigation which we work to settle through negotiation, arbitration or mediation, whenever possible.

In the past twenty years alone, Odebrecht has built several major projects in South Florida and Southern states with total revenue in excess of \$5 Billion. With this level of volume, Odebrecht is unavoidably involved as a party of legal actions or lawsuits.

There are currently only two pending litigations against Odebrecht, and neither of them will have a materially adverse effect on our financial position or ability to perform on the project.

1. *Steadfast Insurance Company a/s/o Jefferson Plaza Ltd. v. Odebrecht Construction, Inc.*
This case is a subrogation action valued at approximately \$300,000 in relation to an alleged latent construction defect from 1998. Odebrecht’s insurance company is handling the defense and Odebrecht anticipates no liability for this claim.

2. *United States of America vs. 6.17 Acres of Land.*
A property owner in the adjacent area to a hurricane protection system construction site is seeking an injunction from the US Army Corps of Engineers to halt construction in the area. Odebrecht is part of the Joint Venture that is performing the construction works on behalf of the US Army Corps and does not anticipate any liability related to this equity action.

MIAMI-DADE SEAPORT DEPARTMENT

CONTRACT SPECIFICATIONS

WHARVES STRENGTHENING PROGRAM

PROJECT NO. 2007-022 ESP

LISTING OF SUBCONTRACTORS AND SUPPLIERS

(1 PAGE)

“The attention of the Contractor is hereby directed to the requirements of MDC Code Section 10-34 in that the award of this contract is conditioned on the Contractor providing the County, when required, with a listing of FIRST TIER SUBCONTRACTORS and direct suppliers to be used in performance of the work of the contract, if subcontractors and suppliers are required.”

“Subcontractor/Supplier Listing Form may be utilized to provide the information required by this paragraph. A successful bidder or respondent who is awarded the contract shall not change or substitute first tier subcontractors or direct suppliers or the portions of the contract work to be performed or materials to be supplied from those identified in the listing submitted except upon written approval of the County.”

“The listing of the subcontractors as identified above shall be provided by the Contractor as a condition of award and, unless otherwise specified, to comply with specific goals established for this Contract. When specific goals are established within these Documents, the subcontractors listing which complies with the established goals shall be submitted with the respondents’ submittal package.

COPY

SUBCONTRACTOR/SUPPLIER LISTING
(Miami-Dade County Code Sections 2.8.1 and 10-34)

Firm Name of Prime Contractor/Respondent Odebrecht Construction, Inc. Project Name Wharves Strengthening Program
Project Number 2007-022 ESP

This form should be completed by all bidders, and respondents on County contracts for purchase of supplies, materials or services, including professional services which involve expenditures of \$100,000 or more, and all bidders and respondents on County or Public Health Trust construction contracts which involve expenditures of \$100,000 or more. A bidder or respondent who is awarded the contract shall not change or substitute first tier subcontractors or direct suppliers or the portions of the contract work to be performed or materials to be supplied from those identified except upon written approval of the County.

Business Name and Address of First Tier Subcontractor/Subconsultant	Principal Owner	Scope of Work to be Performed by Subcontractor/Subconsultant	(Principal Owner) Gender	(Principal Owner) Race
G-I Construction Group, Inc. 2520 SW 22 nd St, Ste 2-169, Miami, FL 33145	Rafael Garcia-Tejada	Site Preparation / Project Admin.	M	
Overnight Success, Inc. 6150 NW 22 nd Ave, Miami, FL 33147	Samuel Gilmore	Poured Concrete Foundation	M	Black
Clearwater Marine Construction, Inc. 6538 Collins Ave., Unit 376, Miami Beach, FL 33144	Fay Ramensari	Reinforcing Steel Installation	F	Asian
Business Name and Address of Direct Supplier	Principal Owner	Supplies/Materials/Services to be Provided by Supplier	(Principal Owner) Gender	(Principal Owner) Race
T Felleborg Marine Systems 3470 Martinsburg Pike, Clearwater, VA 22624		Fenders + Bollards		

I certify that the representations contained in this Subcontractor/Supplier listing are to the best of my knowledge true and accurate.

Prime Contractor/Respondent's Signature Gilberto Neves Print Name President & CEO Date 05/18/11
(Duplicate if additional space is needed) SUB 100 Print Title

150

COPY

**SUBCONTRACTOR/SUPPLIER LISTING
(Miami-Dade County Code Sections 2.8.1 and 10-34)**

Firm Name of Prime Contractor/Respondent Odebrecht Construction, Inc. Project Name Wharves Strengthening Program
Project Number 2007-022 ESP

This form should be completed by all bidders, and respondents on County contracts for purchase of supplies, materials or services, including professional services which involve expenditures of \$100,000 or more, and all bidders and respondents on County or Public Health Trust construction contracts which involve expenditures of \$100,000 or more. A bidder or respondent who is awarded the contract shall not change or substitute first tier subcontractors or direct suppliers or the portions of the contract work to be performed or materials to be supplied from those identified except upon written approval of the County.

Business Name and Address of First Tier Subcontractor/Subconsultant	Principal Owner	Scope of Work to be Performed by Subcontractor/Subconsultant	(Principal Owner) Gender	(Principal Owner) Race
Ebsary Foundation Company 2154 NW North River Dr., Miami, FL 33125	Scott Alfede	Sheet Pile + Combi-Wall	M	Caucasian
CSA International, Inc. 8502 SW Kansas Ave., Stuart, FL 34997	Kevin Peterson	Coral Relocation	M	Caucasian
Vector Construction Group 1153 Mallabar Rd. NE Ste 8-287, Palm Bay, FL 32907	Dave Whitmore	Pile Repair	M	White
Business Name and Address of Direct Supplier	Principal Owner	Supplies/Materials/Services to be Provided by Supplier	(Principal Owner) Gender	(Principal Owner) Race

I certify that the representations contained in this Subcontractor/Supplier listing are to the best of my knowledge true and accurate.

05/18/11

President & CEO

Print Title

Date

Gilberto Neves
Print Name

SUB 100

(Duplicate if additional space is needed)

PROJECT NO: 2007-022 ESP
LISTING OF SUBCONTRACTORS AND SUPPLIERS

MARCH 2011

PAGE 63

15

COPY

SUBCONTRACTOR/SUPPLIER LISTING (Miami-Dade County Code Sections 2.8.1 and 10-34)

Firm Name of Prime Contractor/Respondent Odebrecht Construction, Inc. Project Name Wharves Strengthening Program
 Project Number 2007-022 ESP

This form should be completed by all bidders, and respondents on County contracts for purchase of supplies, materials or services, including professional services which involve expenditures of \$100,000 or more, and all bidders and respondents on County or Public Health Trust construction contracts which involve expenditures of \$100,000 or more. A bidder or respondent who is awarded the contract shall not change or substitute first tier subcontractors or direct suppliers or the portions of the contract work to be performed or materials to be supplied from those identified except upon written approval of the County.

Business Name and Address of First Tier Subcontractor/Subconsultant	Principal Owner	Scope of Work to be Performed by Subcontractor/Subconsultant	(Principal Owner) Gender	(Principal Owner) Race
V.I. Electrical Contractor, Inc. 7091 W 30th Lane, Hialeah, FL 33018	Victor Castro	Electrical	M	
Roberts Traffic Marking 21355 Dixie Hwy, Ste 104, Aventura, FL 33180	Diane Salafia	Markings	F	
Tru-Steel Corp 3208 Industrial 31st St, Ft. Pierce, FL 34946	Angel Biosca	Misc Metals	M	
Business Name and Address of Direct Supplier	Principal Owner	Supplies/Materials/Services to be Provided by Supplier	(Principal Owner) Gender	(Principal Owner) Race

I certify that the representations contained in this Subcontractor/Supplier listing are to the best of my knowledge true and accurate.
 Gilberto Neves, President & CEO, Date 05/18/11

Prime Contractor/Respondent's Signature Gilberto Neves Print Name Gilberto Neves
 (Duplicate if additional space is needed) SUB 100 Print Title President & CEO Date 05/18/11

152

COPY

SUBCONTRACTOR/SUPPLIER LISTING (Miami-Dade County Code Sections 2.8.1 and 10-34)

Firm Name of Prime Contractor/Respondent Odebrecht Construction, Inc. Project Name Wharves Strengthening Program
 Project Number 2007-022 ESP

This form should be completed by all bidders, and respondents on County contracts for purchase of supplies, materials or services, including professional services which involve expenditures of \$100,000 or more, and all bidders and respondents on County or Public Health Trust construction contracts which involve expenditures of \$100,000 or more. A bidder or respondent who is awarded the contract shall not change or substitute first tier subcontractors or direct suppliers or the portions of the contract work to be performed or materials to be supplied from those identified except upon written approval of the County.

Business Name and Address of First Tier Subcontractor/Subconsultant	Principal Owner	Scope of Work to be Performed by Subcontractor/Subconsultant	(Principal Owner) Gender	(Principal Owner) Race
People's Plumbing + Mechanical 7320 NW 70th St. Unit B, Miami, FL 33166	Angela Pina	Water Service	F	
Business Name and Address of Direct Supplier	Principal Owner	Supplies/Materials/Services to be Provided by Supplier	(Principal Owner) Gender	(Principal Owner) Race

I certify that the representations contained in this Subcontractor/Supplier listing are to the best of my knowledge true and accurate.
 Print Name Gilberto Neves Print Title President & CEO Date 05/18/11

Prime Contractor/Respondent's Signature [Signature] (Duplicate if additional space is needed) SUB 100

153

MIAMI-DADE SEAPORT DEPARTMENT
CONTRACT SPECIFICATIONS
WHARVES STRENGTHENING PROGRAM
PROJECT NO. 2007-022 ESP

COMMUNITY SMALL BUSINESS ENTERPRISE (CSBE)
SCHEDULE OF INTENT AFFIDAVIT
(1 PAGE)

COPY

**THIS FORM MUST BE COMPLETED
SCHEDULE OF INTENT AFFIDAVIT
COMMUNITY SMALL BUSINESS ENTERPRISE PROGRAM**

Name of Prime Contractor Firm Odebrecht Construction, Inc. Contact Person Luiz Simon
 Address 201 Alhambra Circle, Suite 1400, Coral Gables, FL 33134 Phone 305-341-8800 Fax 305-569-1500
 Project Name Wharves Strengthening Program Project Number 2007-022 ESP
 CSBE Contract Measure 6.2.2.0/a

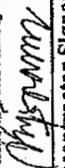
This form must be completed by the Prime Contractor and the CSBE Subcontractor that will be utilized for scopes of work on the project. Bidders must include this form in a separate envelope at the time of bid submission. This form must also include the percentage for CSBE make-up, if applicable.

Name of Prime Contractor	Certification No. (if applicable)	Certification Expiration Date (if applicable)	Type of CSBE work to be performed by Prime Contractor	Prime Contractor % of Bid
Odebrecht Construction, Inc.	N/A	N/A	N/A	0
Prime Contractor Total Percentage:				0

The undersigned intends to perform the following work in connection with the above contract:

Name of Subcontractor	Certification No.	Certification Expiration Date	CSBE Make-Up		Subcontractor % of Bid CSBE	Make-Up % of Bid
			Yes	No		
CLEARWATER MARINE CONSTRUCTION INC.	13781	03/31/2012			1.80	0
Subcontractor Total Percentage:					1.80	0

I certify that the representations contained in this form are to the best of my knowledge true and accurate.

Prime Signature:  Prime Print Name: Gilberto Neves Prime Print Title: President & CEO Date: 5/17/11
 Subcontractor Signature:  Subcontractor Print Name: ENLI RAMONASARI Subcontractor Print Title: PRESIDENT Date: 5/17/2011

The undersigned has reasonably uncommitted capacity sufficient to provide the required goods or services, all licenses and permits necessary to provide such goods or services, ability to obtain bonding that is reasonably required to provide such goods or services consistent with normal industry practice, and the ability to otherwise meet the bid specifications.

- Check this box if this project is a set-aside and you are performing 100% of the work with your own work forces.
- Check this box if Form DBD 305A and Form DBD 305B have been submitted in your pricing envelope.



miamidade.gov

COPY

Small Business Development
111 NW 1 Street, 19th Floor
Miami, Florida 33128
T 305-375-3111 F 305-375-3160

May 2, 2011

CERT. NO: 13781

APPROVAL DATE(s): 03/31/2011 - CSBE Level 1

EXPIRATION DATE: 03/31/2012

Ms. Fnu Ramonasari
CLEARWATER MARINE CONSTRUCTION, INC.
6538 Collins Ave, Unit #376
Miami Beach, FL 33141-0000

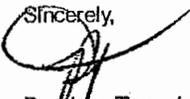
Dear Ms. Ramonasari:

The Department of Small Business Development (SBD) has completed the review of your application and attachments submitted for certification. Your firm is officially certified as a Community Small Business Enterprise (CSBE) in the categories listed below.

This certification is valid for twelve (12) months, which will expire on March 31, 2012. This certification affords your company the opportunity to benefit from participation in county contracts with small business measures. Please note the trade categories listed below. These are the only sheltered market areas that your company is eligible to bid or participate in under your current certification.

Because your application was received prior to the expiration date, your recertification approval date will correspond with your previous expiration date.

If any changes occur within your company during the certification period (such as ownership, address, telephone number, trade category, licensing, technical certification, bonding capacity, or if the business ceases to exist) you are required to notify this department within 30 days in writing. It is of critical importance that current information regarding your company be maintained. All inquiries or changes related to this certification should be directed to Jeanise Cummings-Labossiere at cumming@miamidade.gov in the Certification Unit. An application for re-certification must be submitted and forwarded to this office four (4) weeks prior to the referenced expiration date. Should your firm fail to re-certify, or lose its certification for any reason, the ability to work on contracts with measures will be affected. Thank you for doing business with Miami-Dade County.

Sincerely,

Penelope Townsley
Director

- CATEGORIES: (Your firm may bid or participate on contracts only under these categories)
- NEW SINGLE-FAMILY HOUSING CONSTRUCTION (EXCEPT OPERATIVE BUILDERS) (CSBE)
 - NEW MULTIFAMILY HOUSING CONSTRUCTION (EXCEPT OPERATIVE BUILDERS) (CSBE)
 - NEW HOUSING OPERATIVE BUILDERS (CSBE)
 - RESIDENTIAL REMODELERS (CSBE)
 - INDUSTRIAL BUILDING CONSTRUCTION (CSBE)
 - COMMERCIAL AND INSTITUTIONAL BUILDING CONSTRUCTION (CSBE)
 - WATER AND SEWER LINE AND RELATED STRUCTURES CONSTRUCTION (CSBE)
 - POURED CONCRETE FOUNDATION AND STRUCTURE CONTRACTORS (CSBE)
 - STRUCTURAL STEEL AND PRECAST CONCRETE CONTRACTORS (CSBE)
 - SITE PREPARATION CONTRACTORS (CSBE)

156

COPY

THIS FORM MUST BE COMPLETED SCHEDULE OF INTENT AFFIDAVIT COMMUNITY SMALL BUSINESS ENTERPRISE PROGRAM

Name of Prime Contractor Firm Odebrecht Construction, Inc. Contact Person Luiz Simon
 Address 201 Alhambra Circle, Suite 1400, Coral Gables, FL 33134 Phone 305-341-8800 Fax 305-569-1500
 Project Name Wharves Strengthening Program Project Number 2007-022 ESP
 CSBE Contract Measure 8.22%

This form must be completed by the Prime Contractor and the CSBE Subcontractor that will be utilized for scopes of work on the project. Bidders must include this form in a separate envelope at the time of bid submission. This form must also include the percentage for CSBE make-up, if applicable.

Name of Prime Contractor	Certification No. (if applicable)	Certification Expiration Date (if applicable)	Type of CSBE work to be performed by Prime Contractor	Prime Contractor % of Bid
Odebrecht Construction, Inc.	N/A	N/A		0
Prime Contractor Total Percentage:				0

The undersigned intends to perform the following work in connection with the above contract:

Name of Subcontractor	Certification No. (if applicable)	Certification Expiration Date	CSBE Make-Up		Type of CSBE work to be performed by Subcontractor	Subcontractor % of Bid CSBE	Make-Up % of Bid
			Yes	No			
G-T Construction Group, Inc.	983	10/31/11	X	X	Site Preparation / Project Admin	0.63	0
Subcontractor Total Percentage:						0.63	0

I certify that the representations contained in this form are to the best of my knowledge true and accurate.

Prime Signature Gilberto Neves Prime Print Name Gilberto Neves Date 5/18/11
 Subcontractor Signature Rafael Garcia-Toledo Subcontractor Print Name Rafael Garcia-Toledo Date 5/18/11

The undersigned has reasonably uncommitted capacity sufficient to provide the required goods or services, all licenses and permits necessary to provide such goods or services, ability to obtain bonding that is reasonably required to provide such goods or services consistent with normal industry practice, and the ability to otherwise meet the bid specifications.

Check this box if this project is a set-aside and you are performing 100% of the work with your own work forces.

Check this box if Form DBD 305A and Form DBD 305B have been submitted in your pricing envelope.

COPY



Carlos Alvarez, Mayor

Small Business Development
111 NW 1st Street • 19th Floor
Miami, Florida 33128-1906
T 305-375-3111 F 305-375-3160

miamidade.gov

November 12, 2010

CERT. NO: 983

APPROVAL DATE(s): 10/31/2010 - CSBE Level 1

EXPIRATION DATE: 10/31/2011

Mr. Rafael A. Garcia - Toledo
G - T CONSTRUCTION GROUP, INC.
2520 SW 22 St, 2-169
Miami, FL 33145-0000

Dear Mr. Garcia - Toledo:

The Department of Small Business Development (SBD) has completed the review of your application and attachments submitted for certification. Your firm is officially certified as a Community Small Business Enterprise (CSBE) in the categories listed below.

This certification is valid for twelve (12) months, which will expire on October 31, 2011. This certification affords your company the opportunity to benefit from participation in county contracts with small business measures. Please note the trade categories listed below. These are the only sheltered market areas that your company is eligible to bid or participate in under your current certification.

Because your application was received prior to the expiration date, your recertification approval date will correspond with your previous expiration date.

If any changes occur within your company during the certification period (such as ownership, address, telephone number, trade category, licensing, technical certification, bonding capacity, or if the business ceases to exist) you are required to notify this department within 30 days in writing. It is of critical importance that current information regarding your company be maintained. All inquiries or changes related to this certification should be directed to Coralee Walkine-Taylor at coralee@miamidade.gov in the Certification Unit. An application for re-certification must be submitted and forwarded to this office four (4) weeks prior to the referenced expiration date. Should your firm fail to re-certify, or lose its certification for any reason, the ability to work on contracts with measures will be affected. Thank you for doing business with Miami-Dade County.

Sincerely,

Penelope Townsley
Director

CATEGORIES: (Your firm may bid or participate on contracts only under these categories)

NEW SINGLE-FAMILY HOUSING CONSTRUCTION (EXCEPT OPERATIVE BUILDERS) (CSBE)
NEW MULTIFAMILY HOUSING CONSTRUCTION (EXCEPT OPERATIVE BUILDERS) (CSBE)
NEW HOUSING OPERATIVE BUILDERS (CSBE)
RESIDENTIAL REMODELERS (CSBE)
INDUSTRIAL BUILDING CONSTRUCTION (CSBE)
COMMERCIAL AND INSTITUTIONAL BUILDING CONSTRUCTION (CSBE)
WATER AND SEWER LINE AND RELATED STRUCTURES CONSTRUCTION (CSBE)
POURED CONCRETE FOUNDATION AND STRUCTURE CONTRACTORS (CSBE)
STRUCTURAL STEEL AND PRECAST CONCRETE CONTRACTORS (CSBE)
SITE PREPARATION CONTRACTORS (CSBE)

COPY

THIS FORM MUST BE COMPLETED
SCHEDULE OF INTENT AFFIDAVIT
COMMUNITY SMALL BUSINESS ENTERPRISE PROGRAM

Name of Prime Contractor Firm Odebrecht Construction, Inc. Contact Person Luiz Simon
Address 201 Alhambra Circle, Suite 1400, Coral Gables, FL 33134 Phone 305-341-8800 Fax 305-569-1500
Project Name Wharves Strengthening Program Project Number 2007-022 ESP
CSBE Contract Measure 8.22%

This form must be completed by the Prime Contractor and the CSBE Subcontractor that will be utilized for scopes of work on the project. Bidders must include this form in a separate envelope at the time of bid submission. This form must also include the percentage for CSBE make-up, if applicable.

Name of Prime Contractor	Certification No. (if applicable)	Certification Expiration Date (if applicable)	Type of CSBE work to be performed by Prime Contractor	Prime Contractor % of Bid
Odebrecht Construction, Inc.	N/A	N/A		0
Prime Contractor Total Percentage:				0

The undersigned intends to perform the following work in connection with the above contract:

Name of Subcontractor	Certification No.	Certification Expiration Date	CSBE Make-Up		Subcontractor % of Bid CSBE	Make-Up % of Bid
			Yes	No		
Overnight Success, Inc.	12423	05/31/11	X		4.91	0
Type of CSBE work to be performed by Subcontractor						
Paired Concrete Foundation						
Subcontractor Total Percentage:					4.91	0

I certify that the representations contained in this form are to the best of my knowledge true and accurate.

Prime Signature Gilberto Neyes Prime Print Name Gilberto Neyes President & CEO Date 5/11/11
Subcontractor Signature Samuel Lee Gilmore Subcontractor Print Name Samuel Lee Gilmore President Date 5/6/11

The undersigned has reasonably uncommitted capacity sufficient to provide the required goods or services, all licenses and permits necessary to provide such goods or services, ability to obtain bonding that is reasonably required to provide such goods or services consistent with normal industry practice, and the ability to otherwise meet the bid specifications.

Check this box if this project is a set-aside and you are performing 100% of the work with your own work forces.

Check this box if Form DBD 305A and Form DBD 305B have been submitted in your pricing envelope.

COPY



Small Business Development
111 NW 1st Street • 19th Floor
Miami, Florida 33128-1906
T 305-375-3111 F 305-375-3160

miamidade.gov

Carlos Alvarez, Mayor

CERT. NO: 12423

APPROVAL DATE(s): 05/31/2010 - CSBE Level 1

EXPIRATION DATE: 05/31/2011

January 12, 2011

Mr. Samuel Gilmore
OVERNIGHT SUCCESS, INC.
P O Box 420557
Miami, FL 33242-0000

Dear Mr. Gilmore:

The Department of Small Business Development (SBD) has completed the review of your application and attachments submitted for certification. Your firm is officially certified as a Community Small Business Enterprise (CSBE) in the categories listed below.

This certification is valid for twelve (12) months, which will expire on May 31, 2011. This certification affords your company the opportunity to benefit from participation in county contracts with small business measures. Please note the trade categories listed below. These are the only sheltered market areas that your company is eligible to bid or participate in under your current certification.

Because your application was received prior to the expiration date, your recertification approval date will correspond with your previous expiration date.

If any changes occur within your company during the certification period (such as ownership, address, telephone number, trade category, licensing, technical certification, bonding capacity, or if the business ceases to exist) you are required to notify this department within 30 days in writing. It is of critical importance that current information regarding your company be maintained. All inquiries or changes related to this certification should be directed to Jacob Mizrahy at jmizrah@miamidade.gov in the Certification Unit. An application for re-certification must be submitted and forwarded to this office four (4) weeks prior to the referenced expiration date. Should your firm fail to re-certify, or lose its certification for any reason, the ability to work on contracts with measures will be affected. Thank you for doing business with Miami-Dade County.

Sincerely,


Penelope Townsley
Director

CATEGORIES: (Your firm may bid or participate on contracts only under these categories)

SWIMMING POOLS (CSBE)
NEW SINGLE-FAMILY HOUSING CONSTRUCTION (EXCEPT OPERATIVE BUILDERS) (CSBE)
NEW MULTIFAMILY HOUSING CONSTRUCTION (EXCEPT OPERATIVE BUILDERS) (CSBE)
NEW HOUSING OPERATIVE BUILDERS (CSBE)
RESIDENTIAL REMODELERS (CSBE)
INDUSTRIAL BUILDING CONSTRUCTION (CSBE)
COMMERCIAL AND INSTITUTIONAL BUILDING CONSTRUCTION (CSBE)
WATER AND SEWER LINE AND RELATED STRUCTURES CONSTRUCTION (CSBE)
POURED CONCRETE FOUNDATION AND STRUCTURE CONTRACTORS (CSBE)
STRUCTURAL STEEL AND PRECAST CONCRETE CONTRACTORS (CSBE)
ROOFING CONTRACTORS (CSBE)
SITE PREPARATION CONTRACTORS (CSBE)

160

COPY

THIS FORM MUST BE COMPLETED
SCHEDULE OF INTENT AFFIDAVIT
COMMUNITY SMALL BUSINESS ENTERPRISE PROGRAM

Name of Prime Contractor Firm Odebrecht Construction, Inc. Contact Person Luiz Simon
Address 201 Alhambra Circle, Suite 1400, Coral Gables, FL 33134 Phone 305-341-8800 Fax 305-569-1500
Project Name Wharves Strengthening Program Project Number 2007-022 ESP
CSBE Contract Measure 8.22%

This form must be completed by the Prime Contractor and the CSBE Subcontractor that will be utilized for scopes of work on the project. Bidders must include this form in a separate envelope at the time of bid submission. This form must also include the percentage for CSBE make-up, if applicable.

Name of Prime Contractor	Certification No. (if applicable)	Certification Expiration Date (if applicable)	Type of CSBE work to be performed by Prime Contractor	Prime Contractor % of Bid
Odebrecht Construction, Inc.	N/A	N/A		0
Prime Contractor Total Percentage:				0

The undersigned intends to perform the following work in connection with the above contract:

Name of Subcontractor	Certification No.	Certification Expiration Date	CSBE Make-Up		Type of CSBE work to be performed by Subcontractor	Subcontractor % of Bid CSBE	Make-Up % of Bid
			Yes	No			
People's Plumbing & Mechanical	1846	10/31/11	X		Water Service	0.45	0
Subcontractor Total Percentage:						0.45	

I certify that the representations contained in this form are to the best of my knowledge true and accurate.

Prime Signature Gilberto Neves Prime Print Name Gilberto Neves Date 5/18/11
Subcontractor Signature Gustavo Pino Subcontractor Print Name Gustavo Pino Subcontractor Print Title Vice President Date 5/17/11

The undersigned has reasonably uncommitted capacity sufficient to provide the required goods or services, all licenses and permits necessary to provide such goods or services, ability to obtain bonding that is reasonably required to provide such goods or services consistent with normal industry practice, and the ability to otherwise meet the bid specifications.

Check this box if this project is a set-aside and you are performing 100% of the work with your own work forces.

Check this box if Form DBD 305A and Form DBD 305B have been submitted in your pricing envelope.



Carlos Alvarez, Mayor

COPY

Small Business Development
111 NW 1st Street • 19th Floor
Miami, Florida 33128-1906
T 305-375-3111 F 305-375-3160

miamidade.gov

CERT. NO: 1846
APPROVAL DATE(s): 10/31/2010 - CSBE Level 1
EXPIRATION DATE: 10/31/2011

December 21, 2010

Mr. Gustavo Pino
PEOPLE'S PLUMBING & MECHANICAL, INC.
7320 NW 70th St, Unit - B
Miami, FL 33166

Dear Mr. Pino:

The Department of Small Business Development (SBD) has completed the review of your application and attachments submitted for certification. Your firm is officially certified as a Community Small Business Enterprise (CSBE) in the categories listed below.

This certification is valid for twelve (12) months, which will expire on October 31, 2011. This certification affords your company the opportunity to benefit from participation in county contracts with small business measures. Please note the trade categories listed below. These are the only sheltered market areas that your company is eligible to bid or participate in under your current certification.

Because your application was received prior to the expiration date, your recertification approval date will correspond with your previous expiration date.

If any changes occur within your company during the certification period (such as ownership, address, telephone number, trade category, licensing, technical certification, bonding capacity, or if the business ceases to exist) you are required to notify this department within 30 days in writing. It is of critical importance that current information regarding your company be maintained. All inquiries or changes related to this certification should be directed to Keva Pace at kpace@miamidade.gov in the Certification Unit. An application for re-certification must be submitted and forwarded to this office four (4) weeks prior to the referenced expiration date. Should your firm fail to re-certify, or lose its certification for any reason, the ability to work on contracts with measures will be affected. Thank you for doing business with Miami-Dade County.

Sincerely,

Penelope Townsley
Director

CATEGORIES: (Your firm may bid or participate on contracts only under these categories)
PLUMBING, HEATING, AND AIR-CONDITIONING CONTRACTORS (CSBE)

Delivering Excellence Every Day

DDF0020 v20101108

142

COPY

THIS FORM MUST BE COMPLETED
SCHEDULE OF INTENT AFFIDAVIT
COMMUNITY SMALL BUSINESS ENTERPRISE PROGRAM

Name of Prime Contractor Firm Odebrecht Construction, Inc. Contact Person Luiz Simon
Address 201 Alhambra Circle, Suite 1400, Coral Gables, FL 33134 Phone 305-341-8800 Fax 305-569-1500
Project Name Wharves Strengthening Program Project Number 2007-022 ESP
CSBE Contract Measure 8.22*

This form must be completed by the Prime Contractor and the CSBE Subcontractor that will be utilized for scopes of work on the project. Bidders must include this form in a separate envelope at the time of bid submission. This form must also include the percentage for CSBE make-up, if applicable.

Name of Prime Contractor	Certification No. (if applicable)	Certification Expiration Date (if applicable)	Type of CSBE work to be performed by Prime Contractor	Prime Contractor % of Bid
Odebrecht Construction, Inc.	N/A	N/A		0
Prime Contractor Total Percentage:				0

The undersigned intends to perform the following work in connection with the above contract:

Name of Subcontractor	Certification No.	Certification Expiration Date	CSBE Make-Up		Type of CSBE work to be performed by Subcontractor	Subcontractor % of Bid CSBE	Make-Up % of Bid
			Yes	No			
Roberts Traffic Marking	2040	4-30-12		X	PAVEMENT MARKINGS	0.13	0
Subcontractor Total Percentage:						0.13	0

I certify that the representations contained in this form are to the best of my knowledge true and accurate.

Prime Signature:  Prime Print Name: Gilberto Neves President & CEO Date: 5/11/11
 Subcontractor Signature:  Subcontractor Print Name: Diane J. Salafia VP Date: 5/17/11

- Check this box if this project is a set-aside and you are performing 100% of the work with your own work forces.
- Check this box if Form DBD 305A and Form DBD 305B have been submitted in your pricing envelope.

163

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Carlos Alvarez, Mayor

Small Business Development
111 NW 1st Street • 19th Floor
Miami, Florida 33128-1906
T 305-375-3111 F 305-375-3160

miamidade.gov

March 2, 2011

CERT. NO: 2040

APPROVAL DATE(s): 04/30/2011 - CSBE Level 1

EXPIRATION DATE: 04/30/2012

Ms. Lisa Birchfield
ROBERTS TRAFFIC MARKING CORP.
21355 East Dixie Hwy, Suite 104
Aventura, FL 33180-0000

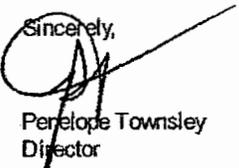
Dear Ms. Birchfield:

The Department of Small Business Development (SBD) has completed the review of your application and attachments submitted for certification. Your firm is officially certified as a Community Small Business Enterprise (CSBE) in the categories listed below.

This certification is valid for twelve (12) months, which will expire on April 30, 2012. This certification affords your company the opportunity to benefit from participation in county contracts with small business measures. Please note the trade categories listed below. These are the only sheltered market areas that your company is eligible to bid or participate in under your current certification.

If any changes occur within your company during the certification period (such as ownership, address, telephone number, trade category, licensing, technical certification, bonding capacity, or if the business ceases to exist) you are required to notify this department within 30 days in writing. It is of critical importance that current information regarding your company be maintained. All inquiries or changes related to this certification should be directed to Coralee Walkine-Taylor at coralee@miamidade.gov in the Certification Unit. An application for re-certification must be submitted and forwarded to this office four (4) weeks prior to the referenced expiration date. Should your firm fail to re-certify, or lose its certification for any reason, the ability to work on contracts with measures will be affected. Thank you for doing business with Miami-Dade County.

Sincerely,


Penelope Townsley
Director

CATEGORIES: (Your firm may bid or participate on contracts only under these categories)
HIGHWAY, STREET, AND BRIDGE CONSTRUCTION (CSBE)
PAINTING AND WALL COVERING CONTRACTORS (CSBE)

144

COPY

THIS FORM MUST BE COMPLETED
SCHEDULE OF INTENT AFFIDAVIT
COMMUNITY SMALL BUSINESS ENTERPRISE PROGRAM

Name of Prime Contractor Firm Odebrecht Construction, Inc. Contact Person Luiz Simon
Address 201 Alhambra Circle, Suite 1400, Coral Gables, FL 33134 Phone 305-341-8800 Fax 305-569-1500
Project Name Wharves Strengthening Program Project Number 2007-022 ESP
CSBE Contract Measure 8.22%

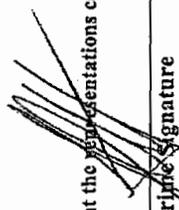
This form must be completed by the Prime Contractor and the CSBE Subcontractor that will be utilized for scopes of work on the project. Bidders must include this form in a separate envelope at the time of bid submission. This form must also include the percentage for CSBE make-up, if applicable.

Name of Prime Contractor	Certification No. (if applicable)	Certification Expiration Date (if applicable)	CSBE Make-Up		Prime Contractor Total Percentage:
			Yes	No	
Odebrecht Construction, Inc.	N/A	N/A		N/A	0
Type of CSBE work to be performed by Prime Contractor					0

The undersigned intends to perform the following work in connection with the above contract:

Name of Subcontractor	Certification No.	Certification Expiration Date	CSBE Make-Up		Subcontractor Total Percentage:
			Yes	No	
Tru-Steel Corp.	13910	06/30/11	X		0.37
Type of CSBE work to be performed by Subcontractor					0
Miss Metals					0.37
Subcontractor Total Percentage:					0

I certify that the representations contained in this form are to the best of my knowledge true and accurate.

Prime Signature  Angel Biosca President & CEO Date 5/11/11
Subcontractor Signature Angel Biosca President & CEO Date 05/09/201

The undersigned has reasonably uncommitted capacity sufficient to provide the required goods or services, all licenses and permits necessary to provide such goods or services, ability to obtain bonding that is reasonably required to provide such goods or services consistent with normal industry practice, and the ability to otherwise meet the bid specifications.

Subcontractor Print Name Angel Biosca Subcontractor Print Title President & CEO

Subcontractor Print Name Angel Biosca Subcontractor Print Title President & CEO

Check this box if this project is a set-aside and you are performing 100% of the work with your own work forces.

Check this box if Form DBD 305A and Form DBD 305B have been submitted in your pricing envelope.

COPY



Carlos Alvarez, Mayor

Procurement Management

111 NW 1st Street • Suite 1300

Miami, Florida 33128-1974

T 305-375-5289 F 305-375-4407 305-372-6128

miamidade.gov

CERT. NO: 13910

APPROVAL DATE(s): 06/14/2010 - CSBE Level 2

EXPIRATION DATE: 06/30/2011

June 17, 2010

Mr. Angel Biosca
TRU-STEEL CORP.
3208 Industrial 31st St
Fort Pierce, FL 34946-0000

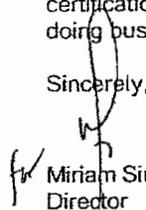
Dear Mr. Biosca:

The Department of Procurement Management (DPM) has completed the review of your application and attachments submitted for certification. Your firm is officially certified as a Community Small Business Enterprise (CSBE) in the categories listed below.

This certification is valid for twelve (12) months, which will expire on June 30, 2011. This certification affords your company the opportunity to benefit from participation in county contracts with small business measures. Please note the trade categories listed below. These are the only sheltered market areas that your company is eligible to bid or participate in under your current certification.

If any changes occur within your company during the certification period (such as ownership, address, telephone number, trade category, licensing, technical certification, bonding capacity, or if the business ceases to exist) you are required to notify this department within 30 days in writing. It is of critical importance that current information regarding your company be kept current. All inquiries or changes related to this certification should be directed to Jacob Wilson Jr. at jw2@miamidade.gov in the DPM Vendor Services Section. An application for re-certification must be submitted and forwarded to this office four (4) weeks prior to the referenced expiration date. Should your firm fail to re-certify, or lose its certification for any reason, the ability to work on contracts with measures will be affected. Thank you for doing business with Miami-Dade County.

Sincerely,


Miriam Singer, CPPO
Director
singer@miamidade.gov

CATEGORIES: (Your firm may bid or participate on contracts only under these categories)

- NEW SINGLE-FAMILY HOUSING CONSTRUCTION (EXCEPT OPERATIVE BUILDERS) (CSBE)
- NEW MULTIFAMILY HOUSING CONSTRUCTION (EXCEPT OPERATIVE BUILDERS) (CSBE)
- NEW HOUSING OPERATIVE BUILDERS (CSBE)
- RESIDENTIAL REMODELERS (CSBE)
- INDUSTRIAL BUILDING CONSTRUCTION (CSBE)
- COMMERCIAL AND INSTITUTIONAL BUILDING CONSTRUCTION (CSBE)
- WATER AND SEWER LINE AND RELATED STRUCTURES CONSTRUCTION (CSBE)
- POURED CONCRETE FOUNDATION AND STRUCTURE CONTRACTORS (CSBE)
- STRUCTURAL STEEL AND PRECAST CONCRETE CONTRACTORS (CSBE)
- SITE PREPARATION CONTRACTORS (CSBE)

Delivered to...

1466

CCPY

**THIS FORM MUST BE COMPLETED
SCHEDULE OF INTENT AFFIDAVIT
COMMUNITY SMALL BUSINESS ENTERPRISE PROGRAM**

Name of Prime Contractor Firm Odebrecht Construction, Inc. Contact Person Luiz Simon
Address 201 Alhambra Circle, Suite 1400, Coral Gables, FL 33134 Phone 305-341-8800 Fax 305-569-1500
Project Name Wharves Strengthening Program Project Number 2007-022 ESP
CSBE Contract Measure 8.228

This form must be completed by the Prime Contractor and the CSBE Subcontractor that will be utilized for scopes of work on the project. Bidders must include this form in a separate envelope at the time of bid submission. This form must also include the percentage for CSBE make-up, if applicable.

Name of Prime Contractor	Certification No. (if applicable)	Certification Expiration Date (if applicable)	Type of CSBE work to be performed by Prime Contractor		Prime Contractor % of Bid
			Yes	No	
Odebrecht Construction, Inc.	N/A	N/A	N/A		0
Prime Contractor Total Percentage:					0

The undersigned intends to perform the following work in connection with the above contract:

Name of Subcontractor	Certification No. (if applicable)	Certification Expiration Date (if applicable)	CSBE Make-Up		Type of CSBE work to be performed by Subcontractor	Subcontractor % of Bid CSBE	Make-Up % of Bid
			Yes	No			
V.I. Electrical Contractor, Inc.	12344	05/02/11	X		Electrical	0.33	0
Subcontractor Total Percentage:						0.33	0

I certify that the representations contained in this form are to the best of my knowledge true and accurate.

Prime Signature: [Signature] Prime Print Name: Gilberto Neves Date: 5/11/11
 Subcontractor Signature: [Signature] Subcontractor Print Name: VICTOR CASTO Date: 5/11/11
 Prime Print Title: President & CEO
 Subcontractor Print Title: President

The undersigned has reasonably uncommitted capacity sufficient to provide the required goods or services, all licenses and permits necessary to provide such goods or services, ability to obtain bonding/other reasonably required to provide such goods or services consistent with normal industry practice, and the ability to otherwise meet the bid specifications.

- Check this box if this project is a set-aside and you are performing 100% of the work with your own work forces.
- Check this box if Form DBD 305A and Form DBD 305B have been submitted in your pricing envelope.

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miamidade.gov

Small Business Development
111 NW 1 Street, 19th Floor
Miami, Florida 33128
T 305-375-3111 F 305-375-3160

CERT. NO: 12344

APPROVAL DATE(s): 05/02/2011 - CSBE Level 1

EXPIRATION DATE: 05/31/2012

May 2, 2011

Mr. Victor M. Castro
V. I. ELECTRICAL CONTRACTOR, INC.
7091 W 30th Ln
Hialeah, FL 33018-0000

Dear Mr. Castro:

The Department of Small Business Development (SBD) has completed the review of your application and attachments submitted for certification. Your firm is officially certified as a Community Small Business Enterprise (CSBE) in the categories listed below.

This certification is valid for twelve (12) months, which will expire on May 31, 2012. This certification affords your company the opportunity to benefit from participation in county contracts with small business measures. Please note the trade categories listed below. These are the only sheltered market areas that your company is eligible to bid or participate in under your current certification.

If any changes occur within your company during the certification period (such as ownership, address, telephone number, trade category, licensing, technical certification, bonding capacity, or if the business ceases to exist) you are required to notify this department within 30 days in writing. It is of critical importance that current information regarding your company be maintained. All inquiries or changes related to this certification should be directed to Lawanda Wright-Robinson at wawand@miamidade.gov in the Certification Unit. An application for re-certification must be submitted and forwarded to this office four (4) weeks prior to the referenced expiration date. Should your firm fail to re-certify, or lose its certification for any reason, the ability to work on contracts with measures will be affected. Thank you for doing business with Miami-Dade County.

Sincerely,

A handwritten signature in black ink, appearing to read "Penelope Townsley".

Penelope Townsley
Director

CATEGORIES: (Your firm may bid or participate on contracts only under these categories)
ELECTRICAL CONTRACTORS AND OTHER WIRING INSTALLATION CONTRACTORS (CSBE)

DBDR0020 v20101108

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MIAMI-DADE SEAPORT DEPARTMENT

CONTRACT SPECIFICATIONS

WHARVES STRENGTHENING PROGRAM

PROJECT NO. 2007-022 ESP

DEPARTMENT OF PROCUREMENT MANAGEMENT (DPM)
AFFIRMATION OF VENDOR AFFIDAVITS
(1 PAGE)



Miami-Dade County
 Department of Procurement Management
 Affirmation of Vendor Affidavits

In accordance with Ordinance 07-143 amending Section 2-8.1 of the Code of Miami-Dade County, effective June 1, 2008, vendors are required to complete a new Vendor Registration Package, including a Uniform Affidavit Packet (Vendor Affidavits Form), before being awarded a new contract. The undersigned affirms that the Vendor Affidavits Form submitted with the Vendor Registration Package is current, complete and accurate for each affidavit listed below.

Project No. 2007-022 ESP Federal Employer Identification Number (FEIN): 65-0220703
 Contract No.: 2007-022 ESP
 Contract Title: Wharves Strengthening Program

Affidavits and Legislation/ Governing Body

1. Miami-Dade County Ownership Disclosure Sec. 2-8.1 of the County Code	2. Miami-Dade County Vendor Obligation to County Section 2-8.1 of the County Code
2. Miami-Dade County Employment Disclosure County Ordinance No. 90-133, amending Section 2-8.1(c)(2) of the County Code	7. Miami-Dade County Code of Business Ethics Article 1, Section 2-8.1(f) and 2-11(b)(1) of the County Code through (k) and (j) of the County Code and County Ordinance No 00-1 amending Section 2-11.1(c) of the County Code
3. Miami-Dade County Employment Drug-free Workplace Certification Section 2-8.1.2(b) of the County Code	8. Miami-Dade County Family Leave Article V of Chapter 11 of the County Code
4. Miami-Dade County Disability Non-Discrimination Article 1, Section 2-8.1.5 Resolution R182-00 amending R-385-95	9. Miami-Dade County Living Wage Section 2-8.9 of the County Code
5. Miami-Dade County Debarment Disclosure Section 10.38 of the County Code	10. Miami-Dade County Domestic Leave and Reporting Article 8, Section 11A-60 11A-67 of the County Code

Gilberto Neves President & CEO
 Printed Name of Affiant Printed Title of Affiant
Odebrecht Construction, Inc. 5/18/11
 Name of firm Date
201 Alhambra Circle, Suite 1400 FL
 Address of firm State Zip Code
Coral Gables 33134

Notary Public Information

Notary Public - State of Florida County of Miami-Dade

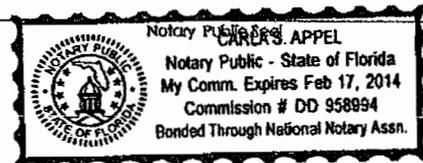
Subscribed and sworn to (or affirmed) before me this 18 day of May 20 11

by Gilberto Neves He or she is personally known to me or has produced identification

Type of identification produced _____

Carla S. Appel DD958994
 Signature of Notary Public Serial Number

Carla S. Appel 02/17/2014
 Print or Stamp of Notary Public Expiration Date



170

MIAMI-DADE SEAPORT DEPARTMENT
CONTRACT SPECIFICATIONS
WHARVES STRENGTHENING PROGRAM
PROJECT NO. 2007-022 ESP

CONTRACT FORMS

Construction Contract.....	69
Collusion Affidavit.....	77
Surety Performance and Payment Bond.....	80
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MIAMI-DADE SEAPORT DEPARTMENT
CONTRACT SPECIFICATIONS
WHARVES STRENGTHENING PROGRAM
PROJECT NO. 2007-022 ESP

CONSTRUCTION CONTRACT
(7 PAGES)

CONSTRUCTION CONTRACT

STATE OF FLORIDA) ss.:

COUNTY OF MIAMI-DADE

THIS AGREEMENT made and entered into as of the ____ day of _____, 2011, by and between Miami-Dade County and ODEBRECHT CONSTRUCTION, INC. hereinafter called the Contractor:

WITNESSETH, that the said Contractor for and in consideration of the payments hereinafter specified and agreed to be made by Miami-Dade County, hereby covenants and agrees to furnish and deliver all the materials required, to do and perform all the work and labor required to complete **PROJECT NO. 2007-022 ESP**, entitled, **WHARVES STRENGTHENING PROGRAM**, within the time specified, in strict and entire conformity with the Contract Documents hereinafter listed, which are hereby incorporated into this Contract by reference:

Contract Documents: Conformed Contract Specifications and Drawings

The Contractor agrees to make payment of all proper charges for labor and materials required in the aforementioned work, and to defend, indemnify and save harmless Miami-Dade County and all its officers and agents against and from all suits and costs of every kind and description, and from all damages to which the said Miami-Dade County or any of its officers and agents may be put, by reason of injury or death to persons or injury to property of others resulting from the performance of said work, or through the negligence of the Contractor, or through any improper or defective machinery, implements or appliances used by the Contractor in the aforesaid work, or through any act or omission on the part of the Contractor, or his agent or agents, employees or servants.

The Contractor agrees that the requirements of this contract are reasonable and achievable.

The Contractor further agrees that the Rates of Wages for all laborers, mechanics and apprentices employed by the Contractor or any Subcontractor shall be not less than the prevailing rate of wages for similar skills or classifications, all in accordance with Section 215.19, Florida Statutes, which said Section is hereby incorporated into this Contract by reference, or in accordance with the decision of the Secretary of Labor of the United States Department of Labor, as applicable and all provisions thereof shall be strictly complied with by the Contractor and his Subcontractors.

In consideration of the premises, Miami-Dade County hereby agrees to pay to the Contractor for said work, when fully completed, the total sum of Fifty-Seven Million, One Hundred and Twenty Thousand, Six Hundred and Thirty-Seven Dollars and 81/100 (\$ 57,120,637.81),

being the amount obtained from either the aggregate lump sum prices, the application of unit prices to the quantities shown in the Bid Form or the combination of both.

The total sum is subject to such additions and deductions as may be provided for in the Contract Documents.

Payments on account will be made as provided for in the Contract Documents.

In Witness whereof, the parties hereto have caused this Contract to be executed by their appropriate officials, as of the date first above written.

(OFFICIAL SEAL)

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

ATTEST:

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

By: _____
County Manager

Approved by County Attorney
as to Form and Legal Sufficiency _____

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When Contractor is an individual:

Witness

By _____
(Signature of individual)

Witness

(printed name of individual)

(address)

ACKNOWLEDGMENT:

STATE OF _____)ss.:

COUNTY OF _____)

SUBSCRIBED AND SWORN TO (or affirmed) before me on _____
(Date)

by _____ . He / She is personally known to
(Affiant)

me or has presented _____ as identification.
(Type of Identification)

(Signature of Notary)

(Serial Number)

(Print or Stamp Name of Notary)

(Expiration Date)

Notary Public _____
(State)

Notary Seal:

175

When Contractor is a sole proprietorship or operates under a trade name:

(printed name of firm)

By:

(signature of individual)

Witness

(printed name of individual)

Witness

(address)

ACKNOWLEDGMENT:

STATE OF _____) ss:

COUNTY OF _____)

SUBSCRIBED AND SWORN TO (or affirmed) before me on _____
(Date)

by _____ . He / She is personally known to me
(Affiant)

or has presented _____ as identification.
(Type of Identification)

(Signature of Notary)

(Serial Number)

(Print or Stamp Name of Notary)

(Expiration Date)

Notary Public _____
(State)

Notary Seal:

When Contractor is a partnership:

	(printed name of partnership)
Witness _____	By _____
	(signature of partner)
Witness _____	_____
	(printed name of partner)

	(address)

ACKNOWLEDGMENT:

STATE OF _____) ss.:

COUNTY OF _____)

SUBSCRIBED AND SWORN TO (or affirmed) before me on _____
(Date)

by _____ . He / She is personally known to me
(Affiant)

or has presented _____ as identification.
(Type of Identification)

_____	_____
(Signature of Notary)	(Serial Number)

_____	_____
(Print or Stamp Name of Notary)	(Expiration Date)

Notary Public _____
(State)

Notary Seal:

177

When Contractor is a corporation:

(CORPORATE SEAL)

ODEBRECHT CONSTRUCTION, INC.
(printed name of corporation)

Florida
(printed state of incorporation)

By: _____
(signature of president or vice-president & capacity)

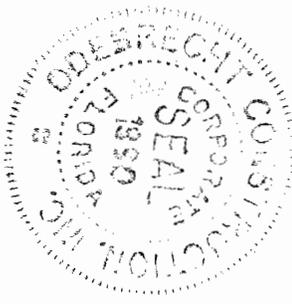
By: Gilberto Neves, President
(printed name of president or vice-president & capacity)

By: _____
(signature of secretary or assistant secretary & capacity)

Nicholas Sprague, Secretary
(printed name of secretary or assistant secretary & capacity)

201 Alhambra Circle, Suite 1400

Coral Gables, FL 33134
(business address of corporation)



ACKNOWLEDGMENT:

STATE OF FLORIDA) ss.:

COUNTY OF MIAMI-DADE)

Before me personally appeared Gilberto Neves, as President, to me well known or has presented _____ as
(Type of Identification)

identification and Nicholas Sprague, as Secretary, to me well known or has presented _____ a
(Type of Identification)

identification and known to me to be the individuals described in and who executed the foregoing instrument as Gilberto Neves President and Nicholas Sprague Secretary of the above named Odebrecht Construction, Inc. a Corporation, and severally acknowledged that they executed such instrument as President and _____ Secretary, respectively, of said corporation, and that the seal affixed to the foregoing instrument

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is the corporate seal of said corporation and that it was affixed to said instrument by due and regular corporate authority, and said instrument is the free act and deed of said corporation.

SUBSCRIBED AND SWORN TO (or affirmed) before me on June 7, 2011
(Date)

by Gilberto Neves and They are
Nicholas Sprague ~~He/She is~~ personally known to me
(Affiant)

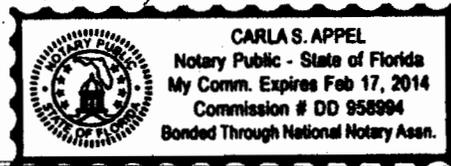
or has presented _____ as identification.
(Type of Identification)

Carla S. Appel DD958994
(Signature of Notary) (Serial Number)

Carla S. Appel 02/17/2014
(Print or Stamp Name of Notary) (Expiration Date)

Notary Public Florida
(State)

Notary Seal:



When Contractor is a joint venture: N/A

(printed name of joint venture)

(business address of joint venture)

Note: Complete in accordance with Article 10 of the Instructions to Bidders.

COLLUSION AFFIDAVIT

(Code of Miami-Dade County Section 2-8.1.1 and 10-33.1) (Ordinance No. 08-113)

BEFORE ME, A NOTARY PUBLIC, personally appeared Gilberto Neves who being duly sworn states: (insert name of affiant)

I am over 18 years of age, have personal knowledge of the facts stated in this affidavit and I am an owner, officer, director, principal shareholder and/or I am otherwise authorized to bind the bidder of this contract.

I state that the bidder of this contract:

is not related to any of the other parties bidding in the competitive solicitation, and that the contractor's proposal is genuine and not sham or collusive or made in the interest or on behalf of any person not therein named, and that the contractor has not, directly or indirectly, induced or solicited any other proposer to put in a sham proposal, or any other person, firm, or corporation to refrain from proposing, and that the proposer has not in any manner sought by collusion to secure to the proposer an advantage over any other proposer.

OR

is related to the following parties who bid in the solicitation which are identified and listed below:

Note: Any person or entity that fails to submit this executed affidavit shall be ineligible for contract award. In the event a recommended contractor identifies related parties in the competitive solicitation its bid shall be presumed to be collusive and the recommended contractor shall be ineligible for award unless that presumption is rebutted by presentation of evidence as to the extent of ownership, control and management of such related parties in the preparation and submittal of such bids or proposals. Related parties shall mean bidders or proposers or the principals, corporate officers, and managers thereof which have a direct or indirect ownership interest in another bidder or proposer for the same agreement or in which a parent company or the principals thereof of one (1) bidder or proposer have a direct or indirect ownership interest in another bidder or proposer for the same agreement. Bids or proposals found to be collusive shall be rejected.

By: _____ June 7 2011
Signature of Affiant Date

Gilberto Neves, President 6 / 5 - 0 / 2 / 2 / 0 / 7 / 0 / 3 /
Printed Name of Affiant and Title Federal Employer Identification Number

ODEBRECHT CONSTRUCTION, INC.
Printed Name of Firm

201 Alhambra Circle, Suite 1400, Coral Gables, FL 33134
Address of Firm

180

SUBSCRIBED AND SWORN TO (or affirmed) before me this 7th day of June, 2011

He/~~She~~ is personally known to me or has presented _____ as
identification.

Carla S. Appel
Signature of Notary
Carla S. Appel
Print or Stamp Name of Notary

Type of identification

DD958994

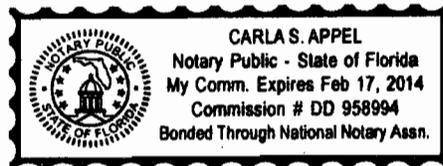
Serial Number

02/17/2014

Expiration Date

Notary Public – State of Florida

Notary Seal



Contract Addendum No. 1

This Addendum No. 1 to Contract No. 2007 022 ("Contract") is hereby accepted by Odebrecht Construction, Inc. ("Contractor") this 17th day of August, 2011.

WHEREAS, the Contract was recommended for award by the Mayor on July 20, 2011 and is being submitted for approval by the Board of County Commissioners on September 1, 2011; and

WHEREAS, Contractor acknowledges the passage of Senate Bill (SB) 444, effective July 1, 2011, related to scrutinized companies; codified in Section 287.135, Florida Statutes prohibiting a state agency or local government entity from contracting for goods or services of more than a certain amount with a company that is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List as created under, and codified in Section 215.473, Florida Statutes; and

WHEREAS, Contractor agrees to include in the Contract the language herein;

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Contractor, Contractor agrees as follows:

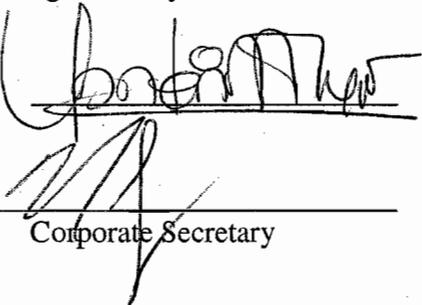
1. Contractor's Consent to Scrutinized Companies Clause

By execution of this Addendum through a duly authorized representative, the Contractor certifies that the Contractor is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, as those terms are used and defined in sections 287.135 and 215.473 of the Florida Statutes. In the event that the Contractor is unable to provide such certification, the Contractor shall execute the Addendum through a duly authorized representative and shall also initial this space: _____. In such event, the Contractor shall furnish together with this Addendum a duly executed written explanation of the facts supporting any exception to the requirement for certification that it claims under Section 287.135 of the Florida Statutes. The Contractor agrees to cooperate fully with the County in any investigation undertaken by the County to determine whether the claimed exception would be applicable. The County shall have the right to terminate the Contract for default if the Contractor is found to have submitted a false certification or to have been, or is subsequently during the term of the Contract, placed on the Scrutinized Companies for Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List

Accepted and Agreed to by:

ATTEST

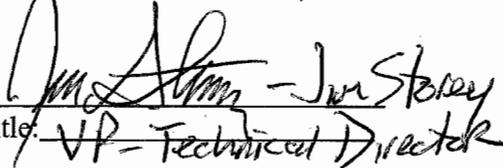
By:



Corporate Secretary

ODEBRECHT CONSTRUCTION, INC.

By:



Title: VP-Technical Director

(Corporate Seal)

ATTEST: _____

HARVEY RUVIN, CLERK OF THE BOARD

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

By: _____

By: _____
Mayor

Approved as to form
and legal sufficiency: _____
Assistant County Attorney