



Broward County

Legislation Details (With Text)

File #: 20-366 **Version:** 1

Status: Agenda Ready

In control: RESILIENT ENVIRONMENT DEPARTMENT

On agenda: 2/25/2020 **Final action:** 2/25/2020

Title: A. MOTION TO AWARD fixed contract to low responsive, responsible bidder, Earth Tech Enterprises, Inc. (Earth Tech) for Segment II Nearshore Hardbottom Mitigation, Bid No. PNC2117911C1, for the Environmental Planning and Community Resilience Division, in the amount of \$12,998,228.00, to be substantially completed within 455 calendar days from the Project Initiation Date specified in the Second Notice to Proceed, and requiring Final Completion within 60 calendar days after the date of Substantial Completion; and to waive, as a technical deficiency or irregularity in Earth Tech's bid submittal pursuant to Section 21.30.f.1.(c) of the Broward County Administrative Code, Earth Tech's submission of a reference for a project outside the three year reference window stated in the bid; with the award contingent upon the receipt and approval of insurance/performance and payment guaranty acceptable to the Director of Purchasing and resolution of all pending protests and subsequent appeals; and authorize the Mayor and Clerk to execute the same.

(See Yellow-Sheeted Additional Material 56 and 56(2), dated February 25, 2020, submitted at the request of Finance and Administrative Services Department.)

OR

B. MOTION TO FIND Earth Tech Enterprises, Inc. and Pac Comm, Inc. non-responsible vendors for Segment II Nearshore Hardbottom Mitigation, Bid No. PNC2117911C1, pursuant to Section 21.41.c. of the Broward County Administrative Code (Code), and award fixed contract to Resolve Equipment, Inc. (Resolve) for Segment II Nearshore Hardbottom Mitigation, Bid No. PNC2117911C1, for the Environmental Planning and Community Resilience Division, in the amount of \$14,950,985, to be substantially completed within 455 calendar days from the Project Initiation Date specified in the Second Notice to Proceed, and requiring Final Completion within 60 calendar days after the date of Substantial Completion; and to waive any and all technical deficiencies and irregularities in Resolve's bid submittal pursuant to Section 21.30.f.1.(b), 21.30.f.1.(c), 21.30.f.2.(b), and 21.30.f.2.(d) of the Broward County Administrative Code, including Resolve's references being performed by affiliated legal entities and Resolve not possessing a General Contractor's License; with the award contingent upon the receipt and approval of insurance/performance and payment guaranty acceptable to the Director of Purchasing, receipt of a guaranty from applicable affiliate and parent entities in a form approved by the Office of the County Attorney, and resolution of any protests and subsequent appeals; and authorize the Mayor and Clerk to execute the same.

(See Yellow-Sheeted Additional Material 56 and 56(2), dated February 25, 2020, submitted at the request of Finance and Administrative Services Department.)

ACTION: (T-10:50 AM) Commissioner Fisher made motion to find Earth Tech to be non-responsible to the solicitation, as well as made further motion as read into the record by Commissioner Fisher. The motion was seconded by Commissioner Bogen and carried unanimously.. (Refer to Minutes for full discussion.)

VOTE: 9-0. Vice-Mayor Geller voted in the affirmative telephonically.

OR

C. MOTION TO REJECT all bids for Segment II Nearshore Hardbottom Mitigation, Bid No. PNC2117911C1 and re-solicit the bid. (Commission District 4)

(See Yellow-Sheeted Additional Material 56 and 56(2), dated February 25, 2020, submitted at the request of Finance and Administrative Services Department.)

Sponsors:

Indexes:

Code sections:

Attachments: 1. Exhibit 1 - User Non-Concurrence of Award for PNC2117911C1 - Earth Tech, 2. Exhibit 2 - User Non-Concurrence of Award for PNC2117911C1 - Pac Comm, 3. Exhibit 3 - User Concurrence of Award for PNC2117911C1 - Resolve Marine Services, Inc., 4. Exhibit 4 - Earth Tech Enterprises Inc. User Concurrence Memorandum signed September 25, 2019, 5. Exhibit 5 - Resolve Marine Group, Inc. - Response to Corporate Restructuring, 6. Exhibit 6 - Resolve Marine Group, Inc. - Pre and Post Restructuring Organizational Charts, 7. Additional Material - Information, 8. Additional Material - Information

Date	Ver.	Action By	Action	Result
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Broward County Commission Regular Meeting

Director's Name: George Tablack

Department: Finance and Administrative Services **Division:** Purchasing

Information

Requested Action

A. MOTION TO AWARD fixed contract to low responsive, responsible bidder, Earth Tech Enterprises, Inc. (Earth Tech) for Segment II Nearshore Hardbottom Mitigation, Bid No. PNC2117911C1, for the Environmental Planning and Community Resilience Division, in the amount of \$12,998,228.00, to be substantially completed within 455 calendar days from the Project Initiation Date specified in the Second Notice to Proceed, and requiring Final Completion within 60 calendar days after the date of Substantial Completion; and to waive, as a technical deficiency or irregularity in Earth Tech's bid submittal pursuant to Section 21.30.f.1.(c) of the Broward County Administrative Code, Earth Tech's submission of a reference for a project outside the three year reference window stated in the bid; with the award contingent upon the receipt and approval of insurance/performance and payment guaranty acceptable to the Director of Purchasing and resolution of all pending protests and subsequent appeals; and authorize the Mayor and Clerk to execute the same.

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C. MOTION TO REJECT all bids for Segment II Nearshore Hardbottom Mitigation, Bid No. PNC2117911C1 and re-solicit the bid. **(Commission District 4)**

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Why Action is Necessary

Motion A, B, and C. In accordance with the Broward County Procurement Code, Section 21.31.a.4, Award Authority, Board approval is required for awards exceeding \$500,000 that includes a single bidder, rejection of apparent low bidder, or protested award.

What Action Accomplishes

Motion A and B. Provides for the fabrication and installation of 6.8 acres of mitigation reef units across approximately ten acres of nearshore seafloor. Motion C. Rejects all submittals to allow re-solicitation of the bid.

Is this Action Goal Related

No

Previous Action Taken

None

Summary Explanation/Background

THE ENVIRONMENTAL PROTECTION AND GROWTH MANAGEMENT DEPARTMENT/ENVIRONMENTAL PLANNING AND COMMUNITY RESILIENCE DIVISION RECOMMEND CONSIDERATION OF THE ABOVE MOTIONS.

The Office of Economic and Small Business Development (OESBD) did not reserve this project for Small Business Enterprises under the Sheltered Market Program or assign County Business Enterprise participation goals to this solicitation based on the review of products and services requested. The OESBD determined that this project is not subject to the Broward County Workforce Investment Program.

The purpose of this contract is to reconstruct areas of eroded beach and increase storm protection to upland development along portions of the municipalities of Fort Lauderdale, Pompano Beach and Lauderdale-By-The-Sea. The project calls for the fabrication and installation of 6.8 acres of mitigation reef units across approximately ten acres of nearshore seafloor. The mitigation reef units are to be placed in the nearshore area offshore of southern Lauderdale-By-The-Sea and northern Fort Lauderdale in approximately 18 to 22 feet of water between Florida Department of Environmental Protection monuments R-47 and R-55. The work includes furnishing all labor, equipment, supplies, materials and incidentals required to complete the work including mobilization, demobilization, work site preparation, unit fabrication, operation and testing in connection with reef unit fabrication, temporary storage, transportation, layout, installation, physical surveys, pre-assessment surveys as required by permit, quality control and assurance compliance, and environmental protection.

Background

The solicitation for Segment II Nearshore Hardbottom Mitigation, Bid No. PNC2117911C1 (the "Bid"), posted on November 21, 2018 and opened January 28, 2019; six bids were received with no declinations. At the time of Bid opening, the low bidder, Underwater Engineering Services Inc. (UESI) advised the County that a mistake with their bid submission for the Mitigation Unit Fabrication and installation bid items did not sum up correctly, resulting in their bid total to be significantly low. Since UESI failed to comply with the Bid requirements, UESI was deemed nonresponsive.

On March 18, 2019, after review of the bid submitted by Earth Tech Enterprises Inc. (Earth Tech), the second lowest bidder, the Environmental Planning and Community Resilience Division submitted a non-concurrence for award indicating that Earth Tech had not successfully completed their City of Naples Oyster Reef Renovation project to demonstrate their experience in the fabrication, transport, and controlled placement of structures, similar in size, scope and nature as specified in the "Specialized Required Experience" requirement of the Bid (Exhibit 1).

On April 25, 2019, after review of the bid submitted by Pac Comm, Inc. (Pac Comm), the third lowest bidder, the Environmental Planning and Community Resilience Division submitted a non-concurrence for award indicating that Pac Comm did not meet the requirements of the Bid regarding successfully completing a project with the experience in offshore/open waters, as required in the "Specialized Required Experience" section of the Bid (Exhibit 2).

On May 28, 2019, after review of the bid submitted by Resolve Marine Services, Inc. (Resolve Marine), the fourth lowest bidder, the Environmental Planning and Community Resilience Division submitted a concurrence for award (Exhibit 3).

On July 29, 2019, a recommendation for award (Initial RFA) for the Bid was posted for Resolve Marine. Additionally, the rejected vendors (UESI, Earth Tech, and Pac Comm) were notified via the

same posting.

On July 30, 2019, a protest was received from Pac Comm contesting the rejection of Pac Comm's bid and arguing that Pac Comm's references demonstrated Pac Comm's compliance with the Specialized Required Experience requirement of the Bid. The Environmental and Planning and Community Resilience Division and Purchasing Division confirmed their initial determination that Pac Comm did not meet the Specialized Experience Requirement of the Bid and thus was properly determined to be non-responsible.

During the review of Pac Comm's protest, new information was brought to the Purchasing Division's attention by the Environmental Planning and Community Division regarding the responsibility of Earth Tech, indicating that Earth Tech had successfully completed the artificial reef module deployment for the City of Naples Oyster Reef Renovation project after the bid opening date, thereby potentially meeting the Specialized Required Experience per the Bid. Upon consultation with the County Attorney's Office, which opined that there is no legal prohibition on considering responsibility related events that occur after submittal but before evaluation or award (as applicable), the Purchasing Division decided to consider this new information regarding the responsibility of a bidder. On September 25, 2019, after further review of the Bid and references submitted by Earth Tech, the Environmental Planning and Community Resilience Division submitted a concurrence for award to Earth Tech (Exhibit 4).

Given the circumstances and the approximate two million dollars difference in bid amounts (\$1,952,757) between Earth Tech and Resolve Marine, on September 27, 2019, the Purchasing Division determined it would be in the best interest of the County to move forward with Earth Tech; as such, the Purchasing Division posted a rescission of the Initial RFA to Resolve Marine and simultaneously posted a new recommendation of award to Earth Tech (Final RFA). On October 1, 2019, the Purchasing Division issued a response to Pac Comm's July 30, 2019, protest, notifying Pac Comm of the rescission of the Initial RFA and posting of the Final RFA.

On or about October 7, 2019, protests contesting the Final RFA were submitted by Pac Comm and by Resolve Marine Group, Inc. (an affiliated entity to the bidder, Resolve Marine). The Purchasing Division inquired regarding the difference in the name between the bidder (Resolve Marine Services) and the protestor (Resolve Marine Group), and counsel for the protestor indicated the protest contained a scrivener's error and that the protest was submitted on behalf of the bidding entity, Resolve Marine Services.

Upon reviewing the protests, Earth Tech's references were once again vetted to verify whether the firm is indeed capable of performing the scope of work for the Bid. Although the time frame for completion of the Specialized Required Experience was not specified in the Bid, the "References" section of the Bid required vendors to submit three references within the past three years. One of the references submitted by Earth Tech and relied upon to confirm compliance with the Specialized Required Experience was for a project completed over ten years ago, in 2008.

This procurement carries a 100% performance and payment guaranty.

Motions A, B, and C are alternate motions and mutually exclusive.

MOTION A. This motion, if approved, would award the Bid to Earth Tech. Environmental Planning and Community Resilience Division has submitted a concurrence for award to Earth Tech. The Purchasing Division has confirmed with the surety company that Earth Tech has the capacity to obtain the required guaranty. Other than the single project that was completed ten years ago (rather than within the past three years, as required for the “References” section of the Bid) and the project that was completed after the bid opening (Exhibit 1), Earth Tech complied in all material aspects with the requirements of the Bid.

MOTION B. This motion, if approved, would award the Bid to Resolve Equipment Inc. (new company), and would determine that Earth Tech and Pac Comm are not responsible bidders for the Bid. In further review of the bid submission by Resolve Marine, there are three potential issues with compliance with the Bid requirements: (1) corporate organizational issues; (2) prior experience submitted by a firm that was not the official bidder; and (3) possession of the required licensure.

Representatives for Resolve Marine Group, Inc. indicated that the companies under Resolve Marine Groups, Inc.’s corporate umbrella underwent a significant restructuring at the end of 2019. In pertinent part, Resolve Marine Services, the original bidding entity, along with four other affiliated companies, merged into Resolve Equipment, Inc. (REI) (Exhibit 5). Both entities (parent Resolve Marine Group, Inc. and REI) have confirmed that the surviving entity post-merger (REI) is the entity that would contract with County if awarded the Bid.

Upon discovery of the corporate restructuring, representatives of REI provided pre-restructuring and post-restructuring organization charts for the Resolve corporate umbrella (Exhibit 6), and the Purchasing Division, in conjunction with Environmental Planning and Community Resilience Division and the County Attorney’s Office, conducted due diligence on the surviving entity, REI. REI reaffirmed the responses of bidding entity Resolve Marine Services in the bid submittal and indicated that there was no material change to same. The County Attorney’s Office has prepared a guaranty document that is recommended to be a condition of award to be executed by certain entities under the Resolve corporate umbrella, if the Bid is awarded to REI, to address any concerns regarding the surviving bidding entity REI.

Resolve Marine has indicated the appropriate parent and affiliate companies will provide the required guaranty to assure performance. The County Attorney’s Office has provided legal guidance that the guaranty resolves any legal concerns as to corporate structure.

In connection with resolving the discrepancy in names between the bidder entity and the protestor, the Purchasing Division re-reviewed Resolve Marine Services’ entire bid submittal and determined that the projects submitted as References were completed by affiliated legal entities rather than the bidder entity. Representatives for the parent company confirmed that the references submitted by the bidder were completed by affiliated companies.

Finally, REI indicated that while it does not possess a General Contractor License, it can legally perform this work and that it has on its staff for this project a Professional Engineer licensed in the State of Florida, who specializes in Naval Architecture and Marine Engineering, and who has performed complex offshore projects around the world. REI also indicated that two other licensed

engineers are also on staff.

The Bid provides that:

“In order to be considered a responsible and responsive Vendor for the scope of work set forth in these Contract Documents, a Vendor shall possess one of the following licenses (including any specified State registration, if applicable) at the time of bid submittal. Any certificate of competency that meets or exceeds those specified or can legally perform the scope of work specified will be considered responsible and responsive to the bid.

STATE OF FLORIDA: Certified General Contractor”

The project manager for the project has confirmed that the Environmental Planning and Community Resilience Division is satisfied that REI can perform the scope of work specified.

MOTION C. This motion, if approved, would reject all bids and allow for re-solicitation.

There is no previous contract for these services.

Source of Additional Information

Henry Sniezek, Director, Environmental Protection and Growth Management, (954) 357-6670

Fiscal Impact

Fiscal Impact/Cost Summary

The source of funding for this project is the Beach Erosion Capital Outlay Fund.

Requisition No. ENV0000320