

BOARD OF COUNTY COMMISSIONERS



April 10, 2017

Mr. Michael J. Kennedy, General Counsel
Ranger Construction Industries, Inc.
101 Sansbury's Way
West Palm Beach, FL 33411
Michael.Kennedy@RangerConstruction.com

Reference: Decision Regarding Protest of Indian River County Invitation to Bid 2017034

Dear Mr. Kennedy:

We are in receipt of your letter of April 3, 2017 protesting the County staff's recommendation of award to the second lowest bidder and Supplement to Protest dated April 5, 2017. After review, and for the reasons stated below, the bid protest is denied.

Background

Your protest letter states the placement of the recommendation of award for bid 2017034 on the April 4, 2017 agenda violates the seven day period during which protests may be made.

Your protest also states that the staff report prepared as part of the April 4, 2017 Board of County Commission agenda, indicating Ranger was non-responsive and non-responsible was erroneous, the decision was based upon inaccurate or incomplete information and was arbitrary and capricious.

The subject bids, to utilize the full depth reclamation (FDR) process to resurface portions of CR512, were opened on February 17, 2017 with Ranger submitting the lowest bid price of \$3,402,846.50, Timothy Rose Contracting, Inc. (TRC) submitting the second lowest bid price of \$3,491,545.38 and Community Asphalt Corporation ("CA") submitting the third bid of \$4,008,129.70.

Article 3 of Section 00200 – Instructions to Bidders states that "...B. Bidder must have successfully constructed, as prime CONTRACTOR, **at least three projects similar in scope** to this project." After concerted effort by the Engineering Division, Purchasing Division and Office of the County Attorney, staff was not able to confirm Ranger's bid meets these qualifications, and therefore plans to make recommendation of award to the second lowest bidder, who did provide sufficient information to confirm they are qualified to perform the work.

Basis for Denial of Protest

In regards to the statement that the recommendation of award for the bid's placement on the April 4, 2017 agenda violates the protest procedure as described in Paragraph 19.08 of Section 00200 of the bid documents, Ranger knew or should have known of the County's intention to recommend award to TRC on Tuesday, March 28, 2017. The bid status was updated from "Under Evaluation" to "Recommendation of Award" on Demandstar.com the morning of March 28, noting the County's intent to recommend award to TRC on April 4, 2017, and thereby opening the window to protest (within "7 calendar days after the bidder or proposer knows or should have known of the facts giving rise to the protest"). Additionally, memos regarding the

Office of Management and Budget • Purchasing Division
1800 27th Street, Vero Beach, Florida 32960 • (772) 226-1416 • Fax: (772) 770-5140
E-mail: purchasing@ircgov.com

recommendation of award were emailed to all three bidders that morning (to the email addresses provided with their submitted bids). As a courtesy to bidders, Ms. Jill Williams sent a copy of the agenda item (the document you refer to as the staff report) to all three bidders immediately after it received final approval on March 27, 2017, detailing the Engineering Division's recommendation of award. The timing issue is moot, as the matter was pulled from the agenda.

Addressing your statement that the County's decision that Ranger is non-responsive and non-responsible was based upon inaccurate or incomplete information, Ranger was afforded two opportunities to provide accurate and complete reference information to evaluate and verify their qualifications, as required in paragraph 3.01 of Section 00200 of the bid documents; first in Section 00456 of the bid ("Qualifications Questionnaire") and again with a Request for Clarification from the Purchasing Division dated February 27, 2017.

The County Engineer, Mr. James Ennis, P.E. attempted to contact each of the 21 project references provided by Ranger in Section 00456 – Qualifications Questionnaire of their bid as SIMILAR to the FDR work detailed for the project. Several references could not be contacted at the phone numbers provided, and Mr. Ennis was only able to identify two qualifying projects.

To adequately assess their qualifications specific to FDR, the Purchasing Division sent a request for clarification to each of the three bidders on February 27, 2017. Bidders were instructed to complete a form (provided) detailing their FDR project experience from the past five years, and to "ensure client references listed...are accurate." Ranger's response to the request for clarification was received on March 2, 2017 and listed six projects as qualifying FDR experience. One Indian River County project reference was listed, but it named and provided client reference for a project that did not include FDR. In response to Ranger's statement in its Protest Supplement that the County "should have known" Ranger meant to list the CR512 from Roseland Road to Easy Street FDR project completed in 2013, it is not appropriate for the County to make assumptions regarding information provided in response to solicitations.

Of the five remaining references, no contact information (contact name, phone or email, as directed) was provided for two and a third reference phone number (with no name or company listed) was not able to provide information regarding the project or Ranger. These three projects were also listed by Ranger as having been completed more than five years ago.

The two final projects listed were a storage lot at Martin County's landfill and the FDR of NASA Boulevard for FDOT. While confirmed to be an FDR project, the work at Martin County's landfill is subjected to minimal traffic flow, and is not similar to a major roadway project.

The County Engineer spoke with Mr. Greg Sholar in FDOT's State Material Office regarding the referenced NASA Boulevard project, and was informed that project is not considered successful due to several failure points along the corridor. Mr. Sholar indicated that after two attempts at FDR, sections of roadway remained that did not meet the FDR process specification requirements and ultimately required sections of the reclaimed roadway to be reconstructed with Full-Depth Asphalt Base.

As suggested by Ranger in its Protest Supplement, Mr. James Boughnam, FDOT Resident Construction Engineer for Brevard County, was contacted by Mr. Richard B. Szyrka, P.E., the County's Public Works Director. Mr. Boughnam described 12 failures of base material and insufficient asphalt placement. He stated FDOT required Ranger to remedy the 12 failures by use of black base alternative. Additionally, as of April 7, 2017, the County was informed there is a dispute regarding the failed areas and who is responsible for them. Thus, the County has concluded, the NASA Boulevard project was not successfully constructed.

In regards to the statement that the County's decision that Ranger is non-responsive and non-responsible was arbitrary and capricious, the references provided by bidders in response to the request for clarification were reviewed, contacted and verified in the same manner, and therefore the decision was consistent with the invitation to bid.

Conclusion


Ranger's protest is denied. Ranger failed to provide evidence of its qualifications in the form of three similar and successful projects as directed in the request for clarification. Multiple contacts at FDOT indicated the NASA Boulevard project was not successfully constructed. Because of the failure to provide evidence of qualifications, in accordance with Paragraphs 3.03 and 19.01 of Section 00200 – Instructions to Bidders, Ranger is considered non-responsive. In accordance with Paragraph 19.01 of Section 00200, based on the failures indicated by FDOT regarding the NASA Boulevard project, Ranger is also determined to be non-responsible to perform this FDR project.

Should Ranger disagree with the denial of the protest and the bases described in this response, you may appeal this decision to the Board of County Commissioners at its April 18, 2018 meeting, when the Board will be asked to consider award of the bid. If you do intend to appeal, please notify me in writing, as required by the Protest Procedure contained in the Purchasing Manual.

As a reminder, the cone of silence remains in effect, and will remain in effect until the item is called at the April 18, 2017 commission meeting. Per the policy, Ranger and any other bidders shall not communicate in any way with the Board of Commissioners, County Administrator or any County staff other than Purchasing personnel from the time of bid advertisement through and including bid award. Such communication may result in disqualification.

Please feel free to contact me at (772) 226-1575 or by email at jhyde@ircgov.com if you have any questions regarding the protest procedure.

Sincerely,


Jennifer Hyde
Purchasing Manager

cc:

Mr. Timothy Rose, President Timothy Rose Contracting, Inc.
Mr. Manuel Aguiar, Vice President, Community Asphalt Corp.

Attachments:

Attachment #3 to Section 00456 – Ranger Construction Industries Bid
Response to Request for Clarification – Ranger Construction Industries
Initial Notice of Protest by Ranger Construction Industries, Inc.
Supplement to Ranger Protest



Attachment #3

Construction Experience/References

Name of Project	Date Completed	Owner	Contact Person	Phone Number	Contract Amount
Parkwood Neighborhood Restoration	May-16	Martin County	George Dzama	(772) 288-5481	\$1,207,609.90
Asphalt Resurfacing Fiscal Year 2015-20156	Still working	Seminole County	Alexis Stewart	(407) 665-7112	\$1,518,230.07
I595/Broward County	Still working/Started 06/21/10	FDOT/Dragados	Jesus Dies Ulzurum(Dragados)	(954)668 2015	\$52,414,328.00
SR 417 & I4	5/29/2015	FDOT	Kim Navarro	(321)690-3249	\$357,779.00
Port St. Lucie Resurfacing/Asphalt Paving +200 tons.	04/01/2015(contract was extended until 2017)	City of Port St. Lucie	Denis Burton	(772)371-5157	\$3,726,434.60
SR 5 US 1 & SR 500	11/28/2013	FDOT Brevard Operations/Infrastructure Engineering, Inc.	Kim Navarro	(321)690-3250	\$6,162,905.00
SR400 Interchange @ SR 46	10/18/2013	FDOT District 5	Armando Perez	(800)780-7102	\$33,679,044.35
SR 60	2/19/2013	FDOT	Glenn Bridges	(321)388-5667	\$18,487,769.32
SR 528 East of Dallas Blvd. Mainline & Ramp Toll Plazas 528-403	2/20/2012	Orlando-Orange County Expressway Authority	Ben Dreiling	(407)316-3801	\$22,071,248.80
Polk County Road 54	3/17/2010	Polk County Purchasing	Chris Rewis	(863)534-5610	\$17,255,380.38
SR 414 John Land Apopka Expressway	6/12/2009	Orlando-Orange County Expressway Authority	Ben Dreiling	(407)316-3800	\$105,620,368.24



Attachment #3

Name of Project	Date Completed	Owner	Contact Person/Phone Number	Phone Number	Contract Amount
Blue Heron & congress Ave. Milling and resurfacing	7/5/2015	Palm Beach county Eng. & Public Works	John Corcoran	(954) 914-5577	\$1,456,526.00
Various Streets in Volusia County, Milling, Resurfacing, Striping	7/3/2015	Volusia County Public Work	David Meeks	(386) 736-5935	\$2,660,673.75
CR 512 EB Roseland Rd. East St. Indian River County	May-13	Indian River County	Christopher Kafer	(772) 226-1416	\$1,049,787.70
27th Avenue(Oslo Rd. to SR 60), Indian River County	Feb-13	Indian river BOCC	Christopher Kafer	(772) 226-1416	\$1,243,157.53
SR 25(US 27) Polk County Mill and Resurface	2012	FDOT	FDOT District 1 Office	(863) 519-4130	\$9,735,715.00
SR 429 Milling & Resurfacing Orange County	May-11	OOCEA	Ben Drelling	(407) 690-5000	\$9,780,812.52
Village of Wellington/Yearly Paving Contract	2012-2013-2014-2015-2016	Village of Wellington	Dennis Flaherty	(561) 791-4000	\$5,988,122.00
City of West Palm Beach Gardens/Annual Asphalt Milling and Resurfacing	2012-2013-2014-2015-2016	City of West Palm Beach Gardens	Michael Morrow	(561) 804-7023	\$356,356.00
Floridian Way in Caribbean Beach turn lane improvements/Caribbean Beach Resort existing bus loop modifications	2013	World Disney World	Michael McGinnis Jeff Piggrem	(407-934-6980 (407)828-3355	\$545,000.00
Animal Kingdom Parking lot improvements	12/1/2015	World Disney World	Michael McGinnis Jeff Piggrem	(407-934-6980 (407)828-3355	\$1,800,000.00

BOARD OF COUNTY COMMISSIONERS



February 27, 2017

Ranger Construction Industries, Inc.
Attn: F. Scott Fowler
4510 Glades Cutoff Road
Fort Pierce, FL 34981
estimating@rangerconstruction.com

RANGER CONSTRUCTION INDUSTRIES, INC.

VIA EMAIL

REQUEST FOR CLARIFICATION

**Subject: Indian River County Bid No. 2017034
CR512 WESTBOUND RESURFACING (ROSELAND ROAD TO US 1) AND CR512 EASTBOUND
RESURFACING (EASY STREET TO US1)**

Dear Mr. Fowler:

Additional information is necessary to assess your firm's qualifications to perform the work requested under the subject bid.

Please complete and execute the attached form in the same manner as your submitted bid, and deliver one original in a sealed envelope, clearly marked with "Bid 2017034" and your firm's name to the Purchasing Division, 1800 27th Street, Vero Beach, FL 32960 by 10:00 A.M. on Monday, March 6, 2017 (please note our office is open Monday through Friday from 8:30 a.m. until 5:00 p.m.). Failure to respond to this request as directed will result in declaration of your bid non-responsive.

Thank you for your prompt attention and if you have any questions, please do not hesitate to contact me.

Sincerely,

Jennifer Hyde
Purchasing Manager

Attachment:
Clarification form

Supplement to Indian River County Bid 2017034 – CR512 WESTBOUND RESURFACING (ROSELAND ROAD TO US 1) AND CR512 EASTBOUND RESURFACING (EASY STREET TO US1)

1. List all full depth reclamation projects completed by your firm as Prime Contractor in the past five years (attach additional copies of this sheet, as necessary). List ONLY full depth reclamation projects, do not include any other types of work. For each project, indicate whether mixing work was self-performed or completed by a specialty subcontractor. For projects completed by a subcontractor, provide that firm's name. Ensure client references listed below are accurate.

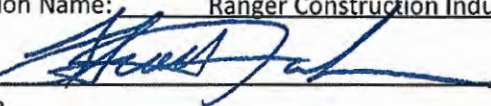
Client/Project	Client contact name, phone and email	Date completed	Reclamation completed by (state "self" or provide name of subcontractor)
Nasa Boulevard T5514	FDOT / Robert Martens (321) 631-6564 robert.martens@dot.state.fl.us	February 2017	Self
Solid Waste Transfer Facility Repavement	Martin County BOCC / John Polley (772) 288-5481 pur_div@martin.fl.us	February 2017	Self
CR 512 (125th Av to I-95)	Indian River County/Kimberly Graham (772) 226-1568 kgraham@ircgov.com	May 2016	Mixing - Self Injection - Contracted with Asphalt Recycling, Inc.
Timber Ridge	Ft. Pierce, FL HOA phone number: (772) 562-9031	March 2009	Contracted with Asphalt Recycling, Inc.
Castaway Cove III	Vero Beach, FL	October 2011	Contracted with Asphalt Recycling, Inc.
Port of Sanford	Seminole County Port Authority	August 2010	Mixing - Self Injection - Contracted with Asphalt Recycling, Inc.

2. Indicate which of the following applies to your bid:

My firm will perform the reclamation work and have the following equipment available to perform the work: R-M 500 Caterpillar Reclaimer/Mixer equip with computer AC Injection

We will utilize _____ as subcontractor for the reclamation.

Corporation Name: Ranger Construction Industries, Inc. State of Incorporation: Florida

By:  (SEAL)
Signature

F. Scott Fowler
Typed or Printed Name

Vice President
Title

Attest:  Rick Fowler
Signature of Corporate Secretary
Assistant Secretary

(SEAL)

February 28, 2017
Date



April 3, 2017

By E-mail: purchasing@ircgov.com
And Federal Express

Jennifer Hyde
Purchasing Manager
Office of Management and Budget
Purchasing Division
Indian River County
1800 27th Street, Vero Beach, FL 32960

INITIAL NOTICE OF PROTEST BY RANGER CONSTRUCTION INDUSTRIES, INC

Re: Project Number 1139 -Bid # 2017034
CR 512 Resurfacing

Dear Ms. Hyde:

I am writing to you on behalf of Ranger Construction Industries, Inc. ("Ranger") regarding IRC-1139 CR512 Resurfacing Award of Bid (The Contract") and the Staff Report dated March 27, 2017 which was transmitted by way of an email from Jill Williams on Thursday March 30, 2017 at 11:42 AM. Pursuant to Article 19-Award of Contract, Section 19.08, Ranger Construction Industries, Inc., the low bidder **HEREBY SERVES ITS INITIAL PROTEST** in response to the staff recommendation that the second low bidder be awarded to subject contract.

In serving this protest Ranger first challenges to procedural process employed by Indian River County ("The County") to submit The Contract for approval by the County Commission before Rangers right to protest has expired. . Ranger will also assert among other things, that the decision reflected in the Staff Report was based upon inaccurate or incomplete information, that the decision was arbitrary and capricious or that the procedure employed was applied in an arbitrary or capricious fashion. Given that Ranger was compelled to serve this notice based upon the date chosen by the County for the presentation of the Contract for Board of County

101 Sansbury's Way, West Palm Beach, FL 33411 * Phone: (561) 793-9400 * Fax: (561) 790-4332
Mailing Address: PO Box 15065; West Palm Beach, FL 33416 * www.rangerconstruction.com

Commissioner's approval, **Ranger reserves the right to supplement its protest within the time period allowed under Section 19.08.**

PLACING THE CONTRACT'S APPROVAL ON THE APRIL 4, 2017 COMMISSION AGENDA VIOLATES SECTION 19.08-INSTRUCTION TO BIDDERS.

Ranger's initial objection is based upon the of the contract award being placed on the consent agenda for April 4, 2107. Both Mr. Williams' e-mail and the Staff Report indicate that The Contract's award is scheduled for the Consent Agenda of Indian River's Board of County Commissioners April 4, 2017 meeting. Mr. William's email is attached as Exhibit 1 and the referenced report is attached as Exhibit 2. The Instruction to Bidders, Article 19-Award of Contract in Section 19.08 on its face provides that "[a]ny actual or prospective bidder or proposer who is aggrieved in connection with the bidding and/or the selection process may protest to the Owner's Purchasing Manager.... [i]n writing within seven (7) calendar days after the bidder or proposer knows or should have known of the facts giving rise to the protest." Section 19.08 is attached as Exhibit 3.

Here as evidenced by Mr. William's email, Ranger's first notice of the Staff recommendation was on Thursday, March 30th and The Contract award is set on the Consent Agenda for the Tuesday, April 4, 2017 Board of County Commissioners meeting. Under the County's own published process, Ranger would have until Thursday, April 6, 2107 to serve its protest. The presentation of the recommendation of award to and the approval by the Commission before the expiration of the time in which Ranger is required to submit its protest deprives Ranger of the opportunity to effectively state its case and requires Ranger to effectively "unring the bell" of approval by the Commission. The presentation of this Contract for approval on the April 4th agenda is contrary to the County's process contained in Section 19.08 and the Contract should be removed from the Agenda until Ranger has had time to fully investigate the recommendation, and to develop and present its Protest.

RANGER RESERVES ITS RIGHT TO TIMELY SUPPLEMENT ITS PROTEST WITH THE TIME PROVIDED IN SECTION 19.08

As more fully stated above, Ranger in order to protect its right to protest the premature award of a contract to which it objects, finds itself in a position of having to state its preliminary protest based upon the procedure set forth in Section 19.08 and reserve the right to supplement its submission within the time established in Section 19.08. Ranger will further supplement its protest with facts showing that the recommendation made in the Staff Report was based upon inaccurate or incomplete information, that the decision was arbitrary and capricious or that the procedure employed was applied in an arbitrary or capricious fashion.

THE STAFF REPORT WHICH CONCLUDED THAT RANGER'S BID WAS NOT RESPONSIVE WAS ERRONEOUS AND THAT DECISION WAS ARBITRARY AND CAPRICIOUS

Ranger objects to the recommendation in the Staff Report and reserves the right to more fully advance and support these grounds by way of a timely supplement to this Initial Notice of Protest. As will be further shown by Ranger, the decision was based upon inaccurate information, the guidelines/ requirements were arbitrarily and capriciously applied and the findings of the Staff Report were erroneous.

CONCLUSION

Ranger reserves the right to timely supplement its Initial Notice of Protest. Ranger objects to the consideration of The Contract being placed on the April 4th Board of County Commission agenda in any fashion; whether on the consent agenda or the regular agenda as to do so will violate Ranger's right to protest which is granted to Ranger in section 19.08!

PLEASE CONFIRM THAT THIS ITEM WILL BE REMOVED FROM THE APRIL 4th AGENDA

Respectfully submitted

A handwritten signature in blue ink, consisting of several overlapping loops and lines, positioned above the typed name.

Michael J. Kennedy
General Counsel

①

Scott Fowler

From: Ranger Estimating
Sent: Thursday, March 30, 2017 2:04 PM
To: Steve Skubal; Scott Fowler; Pete Scholer
Subject: FW: IRC-1139 CR512 Resurfacing Award of Bid
Attachments: IRC-1139 Staff Report Award of Bid.pdf

From: Jill Williams [mailto:jwilliams@ircgov.com]
Sent: Thursday, March 30, 2017 11:42 AM
To: Ranger Estimating <estimating@rangerconstruction.com>; Tim Rose Contracting <timrose7@comcast.net>; jbickford@cacorp.net
Cc: Jennifer Hyde <jhyde@ircgov.com>
Subject: IRC-1139 CR512 Resurfacing Award of Bid

Good morning,

Attached is the Staff Report scheduled for the April 4, 2017 Board of County Commissioner's meeting for the subject project.

If you have any questions, please contact IRC Purchasing Manager, Jennifer Hyde at purchasing@ircgov.com.

Thank you.


Jill Williams
Staff Assistant III, Engineering Division
Indian River County
1801 27th Street, Vero Beach, FL 32960
(772) 226-1380
Email jwilliams@ircgov.com


2

INDIAN RIVER COUNTY, FLORIDA
MEMORANDUM

CONSENT

TO: Jason E. Brown, County Administrator

THROUGH: Richard B. Szyrka P.E., Public Works Director 

FROM: James W. Ennis P.E., County Engineer 

SUBJECT: Award of Bid No. 2017034
CR512 Westbound Resurfacing (Roseland Road to US 1) and CR512 Eastbound Resurfacing (Easy Street to US 1)

DATE: March 27th, 2017

DESCRIPTION AND CONDITIONS

On March 22nd, 2016 the Board of County Commissioners approved a Small County Outreach Program (SCOP) Grant from the Florida Department of Transportation (FDOT) in the maximum amount of \$2,404,264.00 for the resurfacing of CR512 which includes the dual westbound lanes from Roseland Road to US-1 of CR512 and the eastbound lanes from Easy Street to US-1. The grant also includes reimbursement for construction engineering inspection (CEI) services.

The bids for this project specified use of the Full Depth Reclamation (FDR) process. This process shortens the duration of the construction process but requires special expertise and equipment. A bid opening for the CR-512 Resurfacing was held on February, 17th 2017. Three (3) bids were received and opened. A detailed bid tabulation is on file and available for viewing in the County Engineering Division. Bid totals are as follow:

Ranger Construction Industries, Inc.	Fort Pierce, Florida	\$3,402,846.50
Timothy Rose Contracting, Inc.	Vero Beach, Florida	\$3,491,545.38
Community Asphalt, Corp.	Vero Beach, Florida	\$4,008,129.70

The bid specified that the bidder was to "have successfully constructed, as Prime Contractor, at least three projects similar in scope to this project". After the bids were opened, staff met to review the bids, especially the responses concerning whether the bidders had successfully completed, as Prime Contractor, three similar projects using the FDR process. Following the review, on February 27th, 2017 the Indian River County Purchasing Department issued a request for clarification to the three bidders which asked for reference projects specific to their firm's history of using the Full Depth Reclamation (FDR) process and accurate references for the projects listed.

The Indian River County Public Works Department and Attorney's office reviewed the supplementary project references and made the following determinations:

- Ranger Construction listed 6 reference projects: 1 FDR project was noted by FDOT as having significant failures of the roadway and was not deemed "successfully completed", 1 project was listed incorrectly along with incorrect contact information, 1 project was listed which was not FDR, 1 project was not able to be determined, and 2 projects were listed with correct contact information and positive quality references. County Purchasing staff was specific in its request for clarification, including whether the bidder subcontracted the FDR process or did the FDR as the Prime Contractor without a subcontractor. Ranger's response to the request for clarification was incomplete, erroneous and vague. Despite the poor information provided in the response, staff

diligently attempted to verify the request for clarification. After review of Ranger's request for clarification, staff determined that Ranger Construction has not successfully completed three similar projects in scope to the project at hand.

- Timothy Rose Contracting, Inc. listed 7 reference projects: 6 projects were listed with correct contact information and positive quality references, and 1 project where the reference was not able to be contacted. All 6 projects listed by Rose were FDR projects and all 6 projects were completed successfully and were similar to size and scope to the project at hand.
- Community Asphalt, Corporation listed 10 reference projects: 10 projects were listed with correct contact information and positive quality references.

Ranger Construction Industries of Ft. Pierce, FL provided the lowest bid, of \$3,402,846.50, for the project; however, Ranger Construction failed to meet the requirements of the supplementary questionnaire to the bid and Article 3.01(B) 'Qualifications of Bidders' which required the Bidder to "have successfully constructed, as Prime Contractor, at least three projects similar in scope to this project" and has been declared a non-responsive and non-responsible bidder. Timothy Rose Contracting, Inc. is considered to be the lowest, responsive, responsible bidder for the project with a bid totaling \$3,491,545.38. Timothy Rose Contracting, Inc. has completed various construction projects within the County, including FDR-style projects, and has consistently performed work in a satisfactory manner.

FUNDING

Per the SCOP grant agreement, the County must fund the project and then request the reimbursement of the grant share from FDOT to a maximum amount of \$2,404,264.00. Funding from the County's cost share in the amount of \$1,087,281.38 is budgeted in the Account No. 10921441-053360-16010 Secondary Roads/FDOT SCOP Grant/CR512 Resurfacing (Easy Street/US-1/Roseland Road).

RECOMMENDATION

Staff recommends the Board approve award to the lowest responsive and responsible bidder, Timothy Rose Contracting, Inc. for \$3,491,545.38. Staff further recommends the Board authorize the Chairman to execute the attached agreement upon review and approval of both the agreement and required public construction bond by the County Attorney as to form and legal sufficiency, and the receipt and approval of required insurance by the Risk Manager.

ATTACHMENTS

Sample Agreement

DISTRIBUTION

Ranger Construction Industries, Inc.
Timothy Rose Contracting, Inc.
Community Asphalt, Corp.
FDOT

APPROVED AGENDA ITEM FOR April 4th, 2017

(3)

ARTICLE 18 - BIDS TO REMAIN SUBJECT TO ACCEPTANCE

18.01 All Bids will remain subject to acceptance for the period of time stated in the Bid Form, but OWNER may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

ARTICLE 19 - AWARD OF CONTRACT

19.01 OWNER reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. OWNER further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to be non-responsible. OWNER may also reject the Bid of any Bidder if OWNER believes that it would not be in the best interest of the Project to make an award to that Bidder. OWNER also reserves the right to waive all informalities not involving price, time, or changes in the Work and to negotiate contract terms with the Successful Bidder. The County will not reimburse any Bidder for bid preparation costs. Owner reserves the right to cancel the award of any Contract at any time before the execution of such Contract by all parties without any liability to the Owner. For and in consideration of the Owner considering Bids submitted, the Bidder, by submitting its Bid, expressly waives any claim to damages, of any kind whatsoever, in the event the Owner exercises its right to cancel the award in accordance herewith.

19.02 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.

19.03 In evaluating Bids, OWNER will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.

19.04 In evaluating Bidders, OWNER will consider the qualifications of Bidders and may consider the qualifications and experience of Subcontractors, Suppliers, and other individuals or entities proposed for those portions of the Work for which the identity of Subcontractors, Suppliers, and other individuals or entities must be submitted as provided in the Supplementary Conditions.

19.05 OWNER may conduct such investigations as OWNER deems necessary to establish the responsibility, qualifications, and financial ability of Bidders, proposed Subcontractors, Suppliers, individuals, or entities to perform the Work in accordance with the Contract Documents.

19.06 If the Contract is to be awarded, OWNER will award the Contract to the Bidder whose Bid is in the best interests of the Project.

19.07 OWNER has no local ordinance or preferences, as defined in FS 255.0991 (2) in place, therefore no preference prohibited by that section will be considered in the acceptance, review or award of this bid.

19.08 Any actual or prospective bidder or proposer who is aggrieved in connection with the bidding and/or selection process may protest to the OWNER's Purchasing Manager. The protest shall be submitted in writing to the Purchasing Manager within seven (7) calendar days



April 5, 2017

By E-mail: purchasing@ircgov.com

And Federal Express

Jennifer Hyde
Purchasing Manager
Office of Management and Budget
Purchasing Division
Indian River County
1800 27th Street, Vero Beach, FL 32960

Re: Project Number 1139 -Bid # 2017034
CR 512 Resurfacing

SUPPLEMENT TO PROTEST OF RANGER CONSTRUCTION INDUSTRIES, INC.

Dear Ms. Hyde:

Ranger Construction Industries, Inc. ("Ranger") serves its Supplement to its Initial Protest regarding IRC-1139 CR512 Resurfacing Award of Bid (The Contract"). This Protest is brought pursuant to Article 19-Award of Contract, Section 19.08 and Section 7.1 of the Purchasing Manual of the Indian River Board of County Commissioners and is directed to the Staff Report dated March 27, 2017 in which staff found Ranger had "not successfully completed three similar projects in scope" to the project that was the subject of Bid # 2017034. That report was the basis for the staff decision that Ranger was not a responsive bidder. That report was first transmitted to Ranger by way of an email from Jill Williams on Thursday March 30, 2017 at 11:42 AM. Pursuant to Article 19-Award of Contract, Section 19.08 and Section 7.1 of the Purchasing Manual of the Indian River Board of County Commissioners Ranger Construction Industries, Inc., the low bidder, **HEREBY SERVES ITS SUPPLEMENT TO ITS PROTEST** which is directed to the staff recommendation that the second low bidder be awarded the subject Contract.

In serving its Initial Protest Ranger first challenged to procedural process employed by Indian River County ("The County"). Ranger since received word that the item had been removed from the subject agenda. Ranger also asserted that the decision reflected in the Staff Report was based upon inaccurate or incomplete information, that the decision was arbitrary and capricious or that the procedure employed was applied in an arbitrary or capricious fashion. Given that Ranger was compelled to serve this notice based upon the date chosen by the County for the presentation of the Contract for Board of County Commissioner's approval, Ranger reserved its right to supplement its protest within the time period allowed under Section 19.08. Additionally, one of the references was unavailable for comment until this morning. This filing is intended to supplement and not supplant Ranger's previously filed Initial Protest. It is noted that the first

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time Ranger became aware of the Staff Report was by way of the Williams email and that for some unexplained reason the Staff Report which shows a date of March 27, 2017 was not sent to Ranger until three days later, even though it was in staff's possession.

THE STAFF REPORT WHICH CONCLUDED THAT RANGER'S BID WAS NOT RESPONSIVE WAS ERRONEOUS AND THAT DECISION WAS ARBITRARY AND CAPRICIOUS

Ranger objects to the recommendation in the Staff Report as it is inaccurate. First, the Staff Report fails to provide any details whatsoever of the efforts it undertook or even to identify the projects' clients that were contacted, the specific responses of the clients for those projects that were contacted and what projects clients could not be reached. The Staff Report is so vague that a meaningful response cannot be framed. Staff should be required to provide sufficient details that would allow Ranger to determine the accuracy of the report. As written the report fails to provide any names, responses or additional details of the projects.

First, the most significant projects successfully completed by Ranger is CR 512 (Roseland Road to Easy Street Project 1132). **This project was successfully completed for Indian River County! That project is part of the CR 512 roadway system and directly across the median from the project which is the subject of this bid!** While it is noted that it was misidentified in the Clarification, staff should have been aware of this project when it attempted to diligently verify the information. The CR 512-Roseland to Easy Street alone should provide the best reference of Ranger's capabilities, **yet, the staff report fails to mention this project by name or even the fact that Ranger has performed such work for the County.**

The report claims that "1 FDR project was noted by FDOT as having significant failures of the roadway and was deemed not 'successfully completed'". Again, while the project or the individual giving the reference is not identified, it is presumed that this reference is to the NASA Boulevard Project (T5514). Ranger strongly objects to this statement as being inaccurate! The statement infers that Ranger's work was defective or resulted in failures. This is simply not the case. Ranger's work was accepted by the FDOT and it is in the process of final acceptance, without any assessments for penalties or incomplete or non-complying work. The issues with the project were not a product of Ranger's errors. The FDOT representative with intimate knowledge of the project is James Boughnam, FDOT Resident Construction Engineer for Brevard County. Upon information and belief and based upon a conversation with Mr. Boughnam of this date, Mr. Boughnam is of the view that while there were a very nominal percentages of areas which were problematic, **but those issues related to the existing base (soil cement) and not to Ranger's work.** Mr. Boughnam urges County staff to contact him so he can give a factually correct assessment of that project. Ranger also urges that an independent staff member be directed to contact Mr. Boughnam to confirm Ranger's understanding. Ranger submits that it has successfully completed this project and has asked for a letter from the FDOT confirming same, but it is expected that it will take a week to 10 days to obtain such correspondence. The FDOT Resident Engineer considered Ranger's work on the NASA Boulevard Project was successfully completed, that is contrary to the statement or inference contained in the Staff report.

The Bid Documents for the Project required that the bidder was to have successfully completed at least three projects similar in scope. The Staff report concluded that Ranger had not successfully completed three similar projects. The report goes on the state: "2 projects were listed with correct contact information and positive quality references". While the report does

not identify which of the two projects were acceptable, it infers that there were at least two projects which matched the criteria and which Ranger had successfully completed. Ranger submits that with an accurate representation regarding the listed FDOT project, it will have been deemed to have to have successfully completed three similar projects and thus had complied with the project's bid requirements. Further, while the projects which were rejected were not identified, if staff rejected the CR 512 Roseland-Easy Street project (which was misidentified) as one which had the inaccurate listing, then that would be another qualifying project- one of which the County had firsthand experience. These facts alone require that the staff recommendation be rejected and that the Contract awarded to Ranger as the lowest responsible bidder!

RANGER's RESPONSE TO THE REQUEST FOR CLARIFICATION WAS SUFFICIENT

Further, Ranger disputes that its response to a request for clarification was incomplete, erroneous and vague. As stated above Ranger was required to show three such projects and its listing of "**all full depth reclamation projects**" included a list of six (6) such projects. This information was requested by correspondence dated February 27, 2017 from you to F. Scott Fowler. As requested Ranger did respond and listed the relevant projects. If staff had any difficulty in contacting representatives of the listed projects, the most obvious course would have been for staff to ask Ranger to provide additional contact information or even technical specifications for the specific projects. Further the Staff Report simply states that staff made a diligent attempt to verify the request for clarification, but the Report fails to provide any details of the actions staff undertook to verify the information. The request only sought projects which were completed in the past five years, thus the two projects which lacked sufficient contact information, were for information only and were provided in an abundance of caution; but as they were beyond the five year look-back period, they should not be considered.

It is clear that staff failed or neglected to reach out to the most obvious source of such contact information, Ranger. It is also noted that the letter requesting clarification did not warn that the failure to completely respond would result in declaration of the bid as being unresponsive, rather it was the "[f]ailure to respond that would result in the bid being determined as unresponsive. Ranger responded timely and provided sufficient references to meet the established criteria. Thus, the statement in the Staff Report that Ranger's response to the request for clarification was incomplete, erroneous or vague is not accurate, nor is it a relevant fact to be considered in the evaluation of Ranger's qualifications.


CONCLUSION

The recommendation of the Staff Report that Ranger failed to meet the requirements of the bid was based upon staff's finding that Ranger failed to have successfully completed three projects similar in scope" to the instant project. That finding is erroneous with regard to the FDOT project and is wholly vague as to the other projects listed, including the CR 512 Roseland -Easy Street project. With clarification of the response from the FDOT regarding the NASA Boulevard Project, it is clear that Ranger meets the required criteria. Further if the CR 512 project was disregarded due to Ranger's incorrect listing, that would be an additional qualifying project.

As shown by Ranger, the decision contained in the Staff Report was based upon inaccurate information, the guidelines/ requirements were arbitrarily and capriciously applied and the findings of the Staff Report were erroneous. Alternatively, staff should be required to supplement its report to include the comments of Mr. Boughnam and provide complete information so that Ranger can understand what" diligent efforts" were undertaken, what the

several listed project clients told the staff member conducting the inquiry and why if there was difficulty in contacting the listed clients, why Ranger was not contacted.

In the end, it is clear that Ranger has successfully completed three similar projects and should be deemed to be responsive and thus it is the lowest responsive bidder.



Respectfully submitted,

Michael J. Kennedy
General Counsel

cc Dylan Reingold, Esq
