

ATTACHMENT A



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July 21, 2020

**VIA CERTIFIED UNITED STATES MAIL
AND ELECTRONIC MAIL TO:
jhyde@ircgov.com**

Jennifer Hyde, Purchasing Manager
Indian River County Purchasing Department
Administration Building B, Room B1-301
1800 27th Street
Vero Beach, FL 32960

**Re: *Moorhen Marsh Low Energy Aquatic Plant System
Bid Number 2020030; Project Number SW-2020-001
Bid Protest by Allen Concrete & Masonry, Inc.
Bid Opening Date: July 14, 2020***

Dear Ms. Hyde:

This law firm represents Allen Concrete & Masonry, Inc. (“Allen Concrete”). Pursuant to section 7.1 of the Indian River County Purchasing Policies & Procedures (the “PP&P Manual), please accept this letter as Allen Concrete’s formal written protest of the bid submitted by Prime Construction Group, Inc. for the Project described below.

The Bidding Documents for the Moorhen Marsh Low Energy Aquatic Plant System (the “Project”) dated June of 2020 contain detailed specifications for the Project. This bid protest concerns Section 3.01, which specifies the required qualifications for all bidders (the “Required Qualifications”). Section 3.01 states that:

Because of the nature of this project, the BIDDER shall (1) be a Florida Certified General Contractor; (2) be known and recognized in the industry by its peers as a concrete construction contractor, skilled and experienced in the installation of concrete flatwork as well as concrete structures such as large pump stations, weirs, tanks, etc.; and (3) guarantee that a minimum of fifty-one (51) percent of the total billed work performed on the Project will be performed by BIDDER's bona fide employees. The bid of any BIDDER who does not meet these requirements shall be rejected.

(Bold in original.)

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On July 14, 2020 the bids for the Project were opened. The lowest total bid was submitted by Prime Construction Group, Inc. (“Prime Construction”) at \$11,965,000.00. The second lowest total bid was submitted by Allen Concrete at \$12,456,498.11. Allen Concrete believes that Prime Construction does not meet the requirements of Section 3.01 and its bid must therefore be rejected. Allen Concrete is submitting this bid protest now – even before the County has determined that Prime Construction is qualified and will be awarded the contract for the Project – in order to ensure that it has complied with the seven day time requirement in Section 7.01 of the PP&P Manual.

All bidders on the Project are required to be certified general contractors. But because the primary component of the Project is the construction of large specialized concrete structures, all bidders are required to **“be known and recognized in the industry by its peers as a concrete construction contractor, skilled and experienced in the installation of concrete flatwork as well as concrete structures such as large pump stations, weirs, tanks, etc.”** (Bold in original.) This requirement effectively splits general contractors into two categories: those that are recognized in the industry for self-performing the type of concrete work that the County is contracting for, and those that are known for merely subcontracting that type of concrete work to others.

The County has gone even further with the Required Qualifications. The contractor must not only be “known and recognized” for self-performing this type of concrete work. It also must guarantee that at least 51% of the total work that is billed on the Project will be self-performed by the bidder’s bona fide employees.

Allen Concrete believes that Prime Construction does not meet two of the three Required Qualifications and that the County is required to reject Prime Construction’s bid.

First, Prime Construction is not “known and recognized in the industry by its peers as a concrete construction contractor, skilled and experienced in the installation of concrete flatwork as well as concrete structures such as large pump stations, weirs, tanks, etc.” It is clear from the Required Qualifications that the County is requiring all bidders to come to the Project as skilled and experienced concrete contractors and to already employ a skilled and experienced concrete labor force. After-the-fact hiring to fill that void or to create skill and experience is obviously prohibited.

Prime Construction is primarily a site work and road contractor, not a concrete contractor. It may be skilled and experienced in constructing water and wastewater treatment facilities, but Allen Concrete does not believe that Prime Construction self-performs the concrete work on those projects. Instead, Allen Concrete believes that Prime Construction generally subcontracts the concrete work to skilled and experienced concrete contractors. That is not what the County is requiring from bidders.

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Second, the bidder must guarantee that it will self-perform at least 51% of the total work to be billed. It will be virtually impossible for any bidder to comply with this requirement if it does not self-perform the concrete work on the Project.

Prime Construction's bid is \$11,965,000. Because that bid has not yet been released to the public or other bidders, Allen Concrete does not know the breakdown of Prime Construction's bid. However, Allen Concrete knows its own bid of \$12,456,498.11. It knows that it estimated the concrete work on the Project at over \$5,850,000. That is approximately 47% of Allen Concrete's total bid. The same should be true for Prime Construction's bid. The supply and installation of the Geosynthetic Clay Liner on the Project is required to be performed by a specialized subcontractor. The concrete work and GCL work alone clearly exceed 50% of the total work to be billed.

In addition to the foregoing, Prime Construction asked Allen Concrete to submit a subcontractor bid to Prime Construction for the concrete scope of work on the Project. Prime Construction also verbally told Allen Concrete that it was going to subcontract the concrete scope of work on the Project. While Allen Concrete did not ultimately give Prime Construction a bid for the concrete scope of work, it is patently obvious that Prime Construction is not and cannot self-perform at least 51% of the work.

The Project is primarily a concrete construction project. The Bidding Requirements make it clear that the County wants – and in fact expressly requires – that all bidders come to the table as skilled and experienced self-perform concrete contractors and guarantee that they will self-perform at least 51% of the work. Because the concrete work is approximately 50% of the work, it is obvious that the Bidding Requirements implicitly require all bidders to self-perform the concrete work. Allen Concrete believes that Prime Construction does not, and cannot, satisfy the Bidding Requirements. If Allen Concrete is correct, the County is required to reject Prime Construction's bid.

Allen Concrete is willing to provide the County with any additional information that the County believes is relevant to its review of the bids.

Sincerely,

MARK H. MULLER, P.A.



Mark H. Muller

cc: Christopher L. Allen
Zachary Allen
Andrew Rieke
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