

Meeting Date
September 27, 2016



AGENDA	
Section	Reports
Item No.	V. 1

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Emergency Exception to Bid Requirements – South Patrick Drive Force Main Replacement
DEPT/OFFICE:	County Manager

Requested Action:
 Request Board approval for County Staff to move forward with waiving formal bid requirements for the South Patrick Drive Force Main Replacement; Authorize the County Manager to execute necessary documents and all contract documents related to this project contingent upon review and approval by the County Attorney and Risk Management; and authorize any associated budgetary changes.

Summary Explanation & Background:
 In case of an emergency, the County is authorized to alter the bid procedures in any manner that is reasonable given the emergency situation and the immediate need to expedite design and construction services to replace the South Patrick Drive force main in order to preserve the public properties in the area.

On August 23, 2016 the Board approved Task Order No. 4 with HDR, Inc. for the engineering and construction assistance associated with the South Patrick Drive Force Main Replacement. HDR, Inc. was competitively selected in 2012 to provide design, permitting and other engineering services. With the recent force main break, County Staff directed HDR, Inc. to work with Atlantic Development Construction to efficiently, effectively and expediently manage this emergency project. Atlantic Development is an existing Brevard County Pre-qualified Underground Utility Contractor qualified under Request for Qualifications RFQ-4-17-01 and has proven themselves responsive and able to perform satisfactory work for the County.

HDR Engineering and Atlantic Development would be working with Utility Services staff as their single point of contact. HDR will be responsible for the design and Atlantic Development for construction of the project.

In accordance with Procurement Policy BCC-25 and F.S. 255.0525, Advertising for competitive bids, Staff is requesting Board ratification after-the-fact of the emergency process outlined.

Fiscal Impact: It is staffs best estimate that project construction costs will be approximately \$1.6M. Funds are available for this project in Fund 4150, Utility Capital Reserves.

Clerk to the Board Instructions:

Exhibits Attached:

Contract /Agreement (If attached):	Reviewed by County Attorney	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
County Manager	Frank Abbate, Assistant County Manager			Department Director / Extension			
Stockton Whitten	Assistant County Manager			Jim Helmer, Utility Services Director			



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 837-2001
Fax: (321) 284-6972
Tammy.Rowe@brevardclerk.us

September 28, 2016

RECEIVED

OCT 10 2016

MEMORANDUM

UTILITY SERVICES

TO: Jim Helmer, Utility Services Director

RE: Item V.1., Emergency Exception to Bid Requirements for South Patrick Drive Force Main Replacement

The Board of County Commissioners, in special session on September 27, 2016, approved staff to move forward with waiving formal bid requirements for the South Patrick Drive Force Main Replacement; authorized the County Manager to execute necessary documents and all contract documents related to this project contingent upon review and approval by the County Attorney and Risk Management; and authorized any associated budgetary changes.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

cc: Finance
Budget



BOARD OF COUNTY COMMISSIONERS

Utility Services Department

2725 Judge Fran Jamieson Way
Building A, Room 213
Viera, Florida 32940

Inter-Office Memo

TO: Stockton Whitten, County Manager

FROM: James Helmer, Utility Services Director 

DATE: February 03, 2017

SUBJ: Execution of Utility Services CIP Construction Contract:
South Patrick Drive Force Main Replacement – Phase I

On September 27, 2016, the Brevard County Board of County Commissioners voted to waive formal bidding of an urgent project to repair the force main on South Patrick Drive in Indian Harbour Beach. This was requested due to repeated failures of the existing 24" force main, which cause discharges to the Indian River Lagoon system. (Please see confirmation of their vote on the attached copy of the memo from the Deputy Clerk.) Negotiations for the first phase of this expedited work have been competed with a local contractor very familiar with making emergency repairs to the existing force main, Atlantic Development of Cocoa, Inc.

The contractor was asked to execute the enclosed, original contract documents, provide the required performance and payment bonds, and provide insurance certificates fulfilling the contract requirements. The Risk Manager was then asked to review the insurance certificates for compliance. The Assistant County Attorney was asked to sign each original contract copy, indicating approval of legal form and content. The approvals of both the Risk Manager and the County Attorney's Office are documented on the attached copy of the Initial Contract Form.

As also provided by Board decision, please execute each original where indicated. Upon completion, please return all of the originals to this Department and we will forward them to the Clerk for attestation.

If you have any questions, please notify me at 633-2091. Thank you for your assistance.

Attachments

Faint, illegible stamps or markings in the bottom right corner.

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

INITIAL CONTRACT FORM

SECTION I- The following information must be completed on all new contracts submitted to the Board.

1. Contractor: Atlantic Development of Cocoa, Inc.	
2. Fund/Account #: 4153/365300	Department Name: Utility Services
4. Contract Description: South Patrick Drive Force Main Replacement – Phase I	
5. Contract Monitor: Jennifer Thomas	6. Mail Stop #: 81
7. Dept./Office Director: James Helmer, Director	8. Contract Type: ZCON
ACTION DATE: 30 days from entry	ACTION REQUIREMENT: Contract Execution

SECTION II - The following departments must approve all contracts submitted to the Board:

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>INITIALS</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency	<u>X</u>	_____	<u>Jm</u>	<u>2/1/17</u>
Risk Management	<u>✓</u>	_____	<u>Mj</u>	<u>2-2-2017</u>
County Attorney	<u>X</u>	_____	<u>see attached</u>	<u>1/25/2017</u>

If any office denies approval, the package will be returned immediately to the User Agency.

SECTION III - CONTRACT MANAGEMENT DATABASE CHECKLIST

DATABASE REQUIRED FIELDS	Complete ✓
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund and GL Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status	<input type="checkbox"/>
Contract Title	<input type="checkbox"/>
Contract Type	<input type="checkbox"/>
Contract Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date	<input type="checkbox"/>
Contract Effective Date	<input type="checkbox"/>
Contract Expiration Date	<input type="checkbox"/>
Contract Absolute End Data (No Additional renewals/extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in database (Initial Contract Form with County Attorney/Risk Management Approval; Signed/Executed Contract)	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>
Note: Insurance Certificates uploaded under collapsible/expandable <u>Monitor Bar Section</u> Change Order/Task Order uploaded under collapsible/expandable <u>Monitor Bar Section</u> Contract Renewal documents uploaded under collapsible/expandable <u>Renewal /Bar Section</u>	
NOTE: This form should be attached to all new contracts being submitted to the Board for approval. After the contract has been approved, the contract package, including this form, will go to the Clerk to the Board. The Clerk's office will return the Initial Contract Form, Executed/Attested Contract to department for contract to be entered and uploaded into the Contract Management System. See AO-29 for additional information.	

Helping, Craig L

From: Yuan, Diana
Sent: Wednesday, January 25, 2017 4:36 PM
To: Callard, Owen
Cc: Helping, Craig L; Beaudoin, Karen
Subject: RE: South Patrick Drive Force Main Replacement - Phase 1-Contract for Review Status

Owen,

Staff having reviewed the technical specifications, this contract is approved for legal form and content.

Diana E. Yuan, Esq.
Assistant County Attorney
Brevard County Attorney's Office
2725 Judge Fran Jamieson Way, Suite 308
Viera, FL 32940
Telephone: 321/633-2090
Fax: 321/633-2096
diana.yuan@brevardcounty.us

Please note: The State of Florida has a broad public records law. Most written communications to or from county employees regarding county business are public records available upon request to the public and media. Your e-mail communications may therefore be subject to public disclosure.

From: Callard, Owen
Sent: Tuesday, January 24, 2017 11:46 AM
To: Yuan, Diana
Cc: Helping, Craig L; Beaudoin, Karen
Subject: RE: South Patrick Drive Force Main Replacement - Phase 1-Contract for Review Status

Diana,

Thank you for your attention to these Contracts. I appreciate it.

Owen Callard
Construction Coordinator
Brevard County Utility Services
633-2089, ext. 56727

"Under Florida Law, email addresses are Public Records. If you do not want your e-mail address released in response to public record requests, do not send electronic mail to this entity. Instead, contact this office by phone or in writing."

From: Yuan, Diana
Sent: Tuesday, January 24, 2017 11:23 AM
To: Callard, Owen
Cc: Helping, Craig L; Beaudoin, Karen
Subject: RE: South Patrick Drive Force Main Replacement - Phase 1-Contract for Review Status

Owen,

I'll finish reviewing tomorrow and get back to you.

Best,

Diana E. Yuan, Esq.
Assistant County Attorney
Brevard County Attorney's Office
2725 Judge Fran Jamieson Way, Suite 308
Viera, FL 32940
Telephone: 321/633-2090
Fax: 321/633-2096
diana.yuan@brevardcounty.us

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From: Callard, Owen
Sent: Tuesday, January 24, 2017 11:20 AM
To: Yuan, Diana
Cc: Helpling, Craig L
Subject: South Patrick Drive Force Main Replacement - Phase 1-Contract for Review Status

Good Morning Diana,

On January 12th, Craig uploaded the Division 0 and 1 sections for the above referenced project to the CAO folder. Have you had an opportunity to review these documents? I want to provide an update to our Engineering Staff. Since Craig is not in the office today or tomorrow, I would like to confirm. I apologize in advance if you have already reviewed them and sent Craig notification.

Thanks,

Owen Callard
Construction Coordinator
Brevard County Utility Services Department
2725 Judge Fran Jamieson Way, A-213
Melbourne, FL 32940-6602
Tel: 321.633.2089 x56727
Cell: 321.243.8939
Fax: 321.633.2095
owen.callard@brevardcounty.us



PLEASE NOTE: Florida has a very broad public records law. This agency is a public entity and is subject to Chapter 119 of the Florida Statute concerning public records. Email communications are covered under such laws and may be subject to public disclosure.

SECTION 00500

CONTRACT

THIS CONTRACT, by and between the Brevard County, Florida Board of County Commissioners, a political subdivision of the State of Florida (hereinafter called the "Owner"), and Atlantic Development of Cocoa, a Florida Corporation, doing business at 2185 W King Street, Cocoa, FL 32926 (hereinafter called the "Contractor").

WITNESSETH: That the parties hereto, for the consideration hereinafter set forth, mutually agree as follows:

1.01 SCOPE OF THE WORK

The Contractor shall furnish all labor, materials, equipment, machinery, tools, apparatus, and transportation and perform all of the work shown on the Drawings and described in the Specifications entitled,

South Patrick Drive Force Main Replacement – Phase 1

as prepared by HDR Engineering, Inc., acting as, and in the Contract Documents entitled, the Engineer, and shall do everything required by this Contract and the other Contract Documents.

1.02 THE CONTRACT SUM

- A. The Owner shall pay to the Contractor for the faithful performance of the Contract, in lawful money of the United States, and subject to additions and deductions as provided in the Contract Documents, as follows:
- B. Based upon the price shown in the Contractor's Price Schedule heretofore submitted to the Owner, which Price Schedule is a part of these Contract Documents, the aggregate amount of this Contract is the sum of One million one hundred forty thousand five hundred forty-one dollars and fifty-six cents (\$1,140,541.56).

1.03 COMMENCEMENT AND COMPLETION OF WORK

- A. The Contractor shall commence work within 10 calendar days after the start of the Contract Time identified on the Notice to Proceed.
- B. The Contractor shall prosecute the Work with faithfulness and diligence and shall complete the Work no later than 160 days after the date specified in the Notice to Proceed.

1.04 CONTRACTOR'S ACCEPTANCE OF CONDITIONS

- A. The Contractor hereby agrees that Contractor has carefully examined the surface of the site and has made sufficient reasonable test holes, or other surface and subsurface investigations and is fully satisfied that said site is a correct and suitable one for this work and Contractor assumes full responsibility therefore. The provisions of the Contract shall control any inconsistent provisions contained in the specifications. All Drawings and Specifications have been read and carefully considered by the Contractor, who understands the same and agrees to their sufficiency for the work to be done. It is expressly agreed that under no circumstances, conditions or situations shall this Contract be more strongly construed against the Owner than against the Contractor and Contractor's Surety.
- B. Any ambiguity or uncertainty in the Drawings or Specifications shall be interpreted and construed by the Owner and such decision shall be final and binding upon all parties. If the ambiguity or uncertainty could have been identified during the price negotiation process, such discrepancy or inconsistency shall not serve as a claim for additional time or money.
- C. It is distinctly understood and agreed that the passing, approval and/or acceptance of any part of the work or material by the Owner, or by any agent or representative as being in compliance with the terms of this Contract or with the Drawings, and Specifications covering said work, shall not operate as a waiver by the Owner of strict compliance with the terms of this Contract, or the Drawings and Specifications covering said work; and that the Owner may require the Contractor and Surety to strictly comply with this Contract and the Drawings and Specifications; and that the Owner may require the Contractor and the Surety to repair, replace, restore any and all of said work and materials which within a period of two years from and after the date of the acceptance of work are found to be defective or to fail in any way to comply with this Contract or with the Drawings and Specifications. This provision shall not apply to material or equipment normally expected to deteriorate or wear out and become subject to normal repair and replacement before their condition is discovered. Failure on the part of the Contractor or Contractor's Surety, immediately after Notice to either repair or replace any such defective materials and workmanship shall entitle the Owner, if the Owner sees fit, to replace or repair the same and recover the reasonable cost of such replacement or repair from the Contractor and Surety who, shall in any event be jointly and severally liable to the Owner by reason of the Contractor's breach of this Contract or Contractor's failure to comply strictly with this Contract and with the Drawings and Specifications.

1.05 LIQUIDATED DAMAGES

- A. Both parties recognize that precise actual damages for delay are impossible to determine. The parties therefore agree to fix liquidated damages for delay in the Substantial Completion of the Project, as that term is more fully defined in Section 00700 of this Contract. **As a condition precedent to the issuance of the Notice to Proceed, a written addendum setting forth a reasonable date by which the Contractor must realize Substantial Completion shall be executed by the Contractor and the Owner. The reasonable Substantial Completion date set forth in the addendum shall be determined by the Owner's Engineer after consultation with the Contractor.**

On the Substantial Completion date, or such revised Substantial Completion date of the Project as may occur because of an authorized written Change Order of contract time for Substantial Completion, all essential elements of the Project must be ready for their intended use. Therefore, the agreed upon liquidated damages for failure to substantially complete the essential elements of the Project by the Substantial Completion date shall be \$100.00 per day for each calendar day of delay in the Substantial Completion of the work, beyond the Substantial Completion date, up to but not including the date the Project is deemed substantially complete by the Owner's Engineer.

- B. The liquidated damages for delay in the completion or construction of non-essential elements of the Project after the date of Substantial Completion is fixed at \$75.00 per calendar day.
- C. Final completion must occur within 14 days after the Project is deemed substantially complete by the Owner's Engineer. The liquidated damages for delay of final completion of the Project beyond the established date are fixed at \$50.00 per calendar day.
- D. This liquidated damages clause applies only to delay claims arising out of the Contractor's failure to timely perform the work required under the Contract. Nothing in this liquidated damages provision shall be deemed to preclude the prosecution of a claim for actual damages involving defects in the work, breach of contract or any other claim for damages not involving a claim based solely on delay caused by the Contractor's untimely performance of the work.
- E. For each day that any part of the work remains uncompleted after the expiration of the time allowed for completion of the work stipulated in the Contract or as increased by an authorized written Change Order, the sum per day set forth in the applicable subparagraph A, B or C above, shall be deducted from any moneys due the Contractor, or if no money is due the Contractor, the Owner shall have the right to recover said sum or sums from the Contractor, from the Surety, or from both. The amount of these deductions are to cover liquidated damages to the Owner incurred by additional and other expenses due to the failure of the Contractor to complete the work or any part of the work within the completion time specified in subparagraph A, B or C, whichever is applicable, and such deductions are not to be considered as penalties.

1.06 PARTIAL AND FINAL PAYMENTS

In accordance with the provisions fully set forth in the General Conditions, and subject to additions and deductions as provided, the Owner shall pay the Contractor as follows:

- A. The Owner shall make partial payments to the Contractor, on the basis of the estimate of work as approved by the Owner's Engineer, pursuant to provisions of Section 219.70, Florida Statutes, Florida Prompt Payment Act, less five percent (5%) of the amount of such estimate which is to be retained by the Owner until all work has been performed strictly in accordance with this Contract and until such work has been accepted by the Owner. The Owner shall not be responsible for payment to the Contractor for delays.
- B. Upon receipt of the payment bond Surety's written consent to the release of final payment to the Contractor who has furnished and recorded a payment bond and after all guarantees that may be required in the specifications have been furnished and are found acceptable by the Owner, final

payment on account of this Contract shall be made within twenty (20) days after completion by the Contractor of all work covered by this Contract and acceptance of such work by the Owner. If the payment bond surety serves a written revocation of consent to payment or a written direction that the Owner withhold a specified amount from a payment, the Owner shall withhold from the final payment the amount specified by the payment bond Surety.

1.07 ADDITIONAL BOND

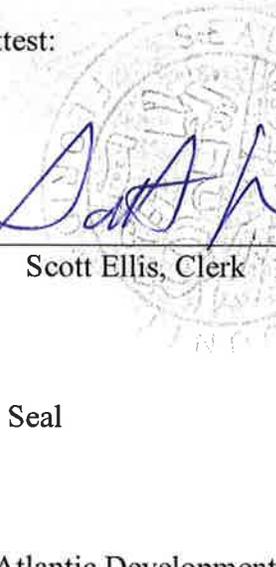
- A. It is further mutually agreed between the parties hereto that if, at any time after the execution of this Contract and the Performance and Payment Bonds hereto attached for its faithful performance, the Owner shall deem the surety or sureties upon such bonds to be unsatisfactory, or if, for any reason, such bond(s) ceases to be adequate to cover the performance of the Work, the Contractor shall, at Contractor's expense, and within three days after the receipt of Notice from the Owner to do so, furnish an additional bond or bonds, in such form and amount, and with such sureties as shall be satisfactory to the Owner. In such event, no further payment to the Contractor shall be deemed due under this Contract until such new or additional security for the faithful performance of the work shall be furnished in manner and form satisfactory to the Owner.

1.08 CONTRACT DOCUMENTS

- A. The Contract Documents are those referenced in Section 00700 of the Contract in Article 1 entitled "Definitions", as set forth in the Contract Instructions, which may or may not be attached hereto, and such contract documents also include any approved and fully executed change or task orders. All of the above described contract documents are incorporated as a part of this Contract as if set forth in full herein.

IN WITNESS WHEREOF the parties hereto have executed this Contract on the dates indicated below:*

Attest:


Scott Ellis, Clerk

Board of County Commissioners of
Brevard County, Florida (Owner)

By: Stockton Whitten
Stockton Whitten, County Manager

Date: 2/6/17

Seal

As approved by the Board on:

September 27, 2016

Atlantic Development of Cocoa, Inc.

Contractor

Date: 1/26/17

By: Alvan Moore
(Printed Name)

Signature: Alvan Moore

Title: president

(Seal)

Reviewed for legal form and content:

[Signature]
(Assistant) County Attorney

(*) In the event that the Contractor is a Corporation, there shall be attached to the Contract a certified copy of a resolution of the Board of Directors of the Corporation, authorizing the officer who signs the Contract to do so in its behalf.

CERTIFICATE

STATE OF FLORIDA

COUNTY OF BREVARD

I HEREBY CERTIFY that a meeting of the Board of Directors of Atlantic Development of Coastal Corporation under the laws of the State of Florida, held on January 15th, 2017, the following resolution was duly passed and adopted:

“RESOLVED, that Alva Monroe Moore, as ✓ President of the Corporation, be and he is hereby authorized to execute the Contract dated January 25, 2017, between BREVARD COUNTY, FLORIDA, and this Corporation, and that his execution thereof, attested by the Secretary of the Corporation and with corporate seal affixed, shall be the official act and deed of this corporation.”

I further certify that said resolution is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Corporation this 26 day of January, 2017.

Suzan Moore
Secretary

END OF SECTION