

Meeting Date
January 6, 2015



AGENDA	
Section	Consent
Item No.	II.C.4

**AGENDA REPORT**  
**BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**

<b>SUBJECT:</b>	Permission to Reject All Bids Received in Response to Bid #B-5-15-11/CDF Slurry Wall Landfill Phase V Side slope Closure to Redesign and Rebid
<b>DEPT/OFFICE:</b>	Solid Waste Management Department (SWMD) Central Services Office / Purchasing Services

**Requested Action:**

It is requested that the Board of County Commissioners 1) authorize Purchasing Services to reject all bids submitted for Bid #B-5-15-11/ CDF Slurry Wall Landfill Phase V Side slope Closure; 2) authorize staff to redesign the project; 3) authorize staff to re-solicit bids and award to the lowest, responsive bidder. It is further requested, the Board authorize the Chairman to execute associated contracts and authorize budget change requests as needed.

**Summary Explanation & Background:**

The Board approved on September 27, 2012 as part of Solid Waste Management Department's Capital Improvements Program for Central Disposal Facility (CDF) Slurry Wall Final Closure consisting of four phases construction in FY 2013-2017. This project is necessary due to the approximately 28 acres of landfill side slopes that have reached the FDEP permitted elevation.

On September 18, 2014, Bid #B-5-15-11, CDF Slurry Wall Landfill Phase V Side slope Closure was solicited utilizing the current contracted professional engineering firm plan with the estimated budget cost of \$6,312,372. Bids were received and opened on October 30, 2014 from the following vendors:

- Southeast Environmental Contracting, \$7,621,480.00
- Thalle Construction, LLC., \$7,953,560.65
- T & K Construction, LLC., \$8,011,679.55
- Environmental Specialties International, Inc., \$13,261,857.00

and three "No Bids" from COMANCO Environmental Corp., Commercial Diving & Marine Services, and Gunnstruction, Inc.

Due to the lowest bid price received exceeds the project budget amount by 18.3% and other high prices from the other responsive bidders, staff requests the opportunity to evaluate other alternatives for the source of soil, type of drainage net, geomembrane liner and other requirements to reduce the overall cost of the project. Permission is requested to authorize staff to resolicit bids under revised specifications and award to the lowest, responsive bidder.

**Fiscal Impact:** Current funding for this project is allocated from the following fund: 4011/352130

**Contact:** Euripides Rodriguez, Solid Waste Management Director, 321-633-2042. [Euripides.Rodriguez@brevardcounty.us](mailto:Euripides.Rodriguez@brevardcounty.us)  
 Leslie Rothering, Purchasing Manager, 321-617-7390, [Leslie.Rothering@brevardcounty.us](mailto:Leslie.Rothering@brevardcounty.us)

Clerk to the Board instruction:

Exhibits Attached:

**Contract /Agreement (If attached):** Reviewed by County Attorney    Yes     No     PR

County Manager

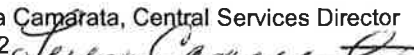
Assistant County Manager (not applicable)

Department Director / Extension:

Stockton Whitten 

Mel Scott 

Euripides Rodriguez, Solid Waste Director/X52042

Teresa Camarata, Central Services Director x55492 



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

Telephone: (321) 637-2001  
Fax: (321) 264-6972

January 7, 2015

**MEMORANDUM**

**TO:** Teresa Camarata, Central Services Director Attn: Leslie Rothering

**RE:** Item II.C.4., Permission to Reject All Bids Received in Response to Bid #B-5-15-11, Redesign the Project, and Re-Solicit Bids and Award to the Lowest, Responsive Bidder for CDF Slurry Wall Landfill Phase V Side Slope Closure

The Board of County Commissioners, in regular session on January 6, 2015, authorized Purchasing Services to reject all bids submitted for Bid #B-5-15-11/CDF Slurry Wall Landfill Phase V Side Slope Closure; authorized staff to redesign the project; authorized staff to re-solicit bids and award to the lowest, responsive bidder; authorized the Chairman to execute associated contracts; and authorized budget change requests as needed.

Your continued cooperation is greatly appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Tammy Etheridge, Deputy Clerk

cc: Solid Waste Management Director  
Finance  
Budget

Original  
went to  
Gloria /  
Solid Waste  
TOM Packer  
up

**AGREEMENT**

**CDF Slurry Wall Landfill Phase V Sideslope Closure  
Brevard County Solid Waste Management Department**

THIS AGREEMENT in **Three (3) copies**, made this 26 day of October, 2015 by and between the **BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**, a political subdivision of the State of Florida, (herein referred to as the "OWNER"), whose mailing address is 2725 Judge Fran Jamieson Way, Viera, FL 32940 and **THALLE CONSTRUCTION COMPANY, INC.** (herein referred to as the "CONTRACTOR"), whose mailing address is 900 NC Highway 86 North, Hillsborough, NC 27278. All correspondence, submittals and notices relating to or required under this Contract shall be sent, in writing, to the CONTRACTOR's and OWNER's addresses above; unless either party is notified, in writing, of a change in address.

**WITNESSETH:**

WHEREAS, it is the intent of the OWNER to obtain the services of the CONTRACTOR in connection with the construction of CDF Slurry Wall Landfill Phase V Sideslope Closure Bid No. B-5-15-101, hereinafter referred to as the "Project" or the "Work"; and

WHEREAS, the CONTRACTOR desires to perform such construction on the Project in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the promises made herein and other good and valuable consideration, the following terms and conditions are hereby mutually agreed to, by and between the OWNER and the CONTRACTOR:

**Article 1 - DEFINITIONS**

All terms in this Agreement which are defined in the Advertisement for Bids, Information to BIDDERS and the General Conditions shall have the meanings designated herein.

The Contract Documents are as defined in the General Conditions. Such documents form the Contract, and all are as fully a part hereof as if attached to this Agreement or repeated therein.

**Article 2 - STATEMENT OF THE WORK**

The CONTRACTOR shall provide and pay for all materials, tools, equipment, labor and professional and non-professional services, and shall perform all other acts and supply all other things necessary, to fully and properly perform and complete the Work, as required by the Contract Documents.

The CONTRACTOR shall further provide and pay for all related facilities described in any of the Contract Documents, including all Work expressly specified therein and such additional Work as may be reasonably inferred therefrom, saving and excepting only such items of Work as are specifically stated in the Contract Documents not to be the obligation of the CONTRACTOR. The totality of the obligations imposed upon the CONTRACTOR by this Article and by all other provisions of the Contract Documents, as well as the structures to be built and the labor to be performed, is herein referred to as the "Work".

**Article 3 - ENGINEER**

The Engineer (as defined in the General Conditions) shall be Neel-Schaffer, Inc. (NSI), however, that the OWNER may, without liability to the CONTRACTOR, unilaterally amend this Article from time to time by designating a different person or organization to act as its ENGINEER and so advising the CONTRACTOR in writing, at which time the person or organization so designated shall be the ENGINEER for purposes of this Contract.

**Article 4 - TIME OF COMMENCEMENT AND COMPLETION**

The CONTRACTOR shall commence the Work promptly upon the date established in the Notice to Proceed.

Time is of the essence. The CONTRACTOR shall achieve Substantial Completion, as defined in SECTION 5 -General Conditions, within **210 calendar days** from the date of Notice to Proceed. This time period shall be designated the Contract Time.

The CONTRACTOR shall also complete the following activities of Work within the interim Milestone dates indicated, as applicable:

	<u>ACTIVITY</u>
A. Execution of Contract	Within 30 days from Notice of Award
B. Notice to Proceed	Follows Execution of Contract
C. Substantial Completion	<b>210</b> days from Notice to Proceed (Beneficial occupancy of the entire project)
D. Final Completion	<b>30</b> days from contracted Substantial Completion Date or <b>240</b> days from date of the Notice to Proceed
E. Warranty Period	<b>1</b> year from the date of final completion and acceptance by the OWNER

Should the CONTRACTOR fail to substantially complete the Work on or before the date stipulated as a Milestone date above, or for Substantial Completion (or such later date as may result from an extension of time granted by the OWNER), CONTRACTOR shall pay the OWNER, as liquidated damages, the sum of **\$500.00** for each consecutive calendar day that terms of the contract remain unfulfilled beyond the date allowed by the Contract, which sum is agreed upon as a reasonable and proper measure of damages which the OWNER will sustain per day by failure of the CONTRACTOR to complete within time as stipulated; it being recognized by the OWNER and the CONTRACTOR that the injury to the OWNER which could result from a failure of the CONTRACTOR to complete on schedule is uncertain and cannot be computed exactly. In no way shall cost for liquidated damages be construed as a penalty on the CONTRACTOR.

For each complete calendar day that the Work remains incomplete after the date established for Final Completion, The OWNER will retain from the compensation otherwise to be paid to the CONTRACTOR the sum of \$500.00. This amount is the minimum measure of damages the OWNER will sustain as a failure of the CONTRACTOR to complete all remedial Work, correct deficient Work, clean up the Project and other miscellaneous tasks as required to complete all Work specified. This amount is in addition to the liquidated damages prescribed above and represents compensation for additional costs the OWNER could incur or suffer caused by on-going construction while occupying the Project. Such costs could include, but are not limited to, additional security and safety measures, temporary facilities or structures, reduced employee efficiency, additional operating costs, employee overtime, split shift, insurance, etc.

The amount of liquidated damages set forth herein above and in SECTION 6 - Supplementary Conditions herein above shall be assessed cumulatively. The items of cost included in the assessment of liquidated damages are as defined in the General Conditions.

#### **Article 5 - CONTRACT SUM**

Provided that the CONTRACTOR shall strictly and completely perform all of its obligations under the Contract Documents, and subject only to additions and deductions by Modification or as otherwise provided in the Contract Documents, the OWNER shall pay to the CONTRACTOR, in current funds and at the time and in the installments hereinafter specified, the sum of **Seven Million, Four Hundred Seven Thousand, Five Hundred Forty Eight and 50/100 Dollars (\$7,407,548.50)**, herein referred to as the "Contract Sum".

#### **Article 6 - PROGRESS PAYMENTS**

The CONTRACTOR hereby agrees that on or about the last day of every month during the performance of the Work the CONTRACTOR will deliver to the Engineer an Application for Payment of the Work for the preceding thirty (30) days in accordance with the provisions of Article 14 of the General Conditions (SECTION 5). This date may be changed upon mutual agreement, stated in writing, between the OWNER and CONTRACTOR. Payment under this Contract shall be made as provided in the General Conditions.

#### **Article 7 - OTHER REQUIREMENTS**

The CONTRACTOR shall submit the Performance Bond, Labor and Material Payment Bond, Maintenance Bond, and Certification of Insurance as required by the Contract Documents.

The OWNER shall furnish to the CONTRACTOR, at the CONTRACTOR's request, any leftover set(s) of drawings and specifications, at no extra cost, for use in the Construction of the Work. Additional sets of Drawings or Specifications shall be obtained by the CONTRACTOR at the CONTRACTOR's own expense.

The CONTRACTOR shall perform at least twenty-five percent (25%) of the total Work with forces that are in the direct employment of the CONTRACTOR's organization.

#### **Article 8 - COPYRIGHT**

No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the Owner, under this agreement shall be subject to copyright by Contractor in the United States or any other Country.

#### **Article 9 - MODIFICATION**

This Agreement, together with Contract Documents, constitutes the entire contract between the COUNTY and the CONTRACTOR and supersedes all prior written or oral understandings. No modification of this agreement shall be binding on OWNER or CONTRACTOR unless reduced to writing and signing by a duly authorized representative of OWNER and CONTRACTOR.

**Article 10 - RIGHT TO AUDIT RECORDS**

In the performance of this Agreement, the Contractor shall keep books, records, and accounts of all activities, related to this Agreement, in compliance with generally accepted accounting procedures. Books, records and accounts related to the performance of this agreement shall be open to inspection during regular business hours by an authorized representative of the Owner and shall be retained by Contractor for a period of five (5) years after termination of the agreement. All records, books and accounts related to the performance of this agreement shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes.

**Article 11 - UNAUTHORIZED ALIEN WORKERS**

Brevard County will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324 (e) Section 274(e) of the Immigration and Nationality Act. The Owner shall consider a contractor's intentional employment of unauthorized aliens as grounds for immediate termination of this Agreement.

**Article 12 - PUBLIC ENTITY CRIMES**

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid/quote/proposal on a contract to provide goods or services to a public entity, may not submit a bid/quote/proposal on a contract with a public entity for construction or repair of a public building or public work, may not submit bids/quotes/proposals on leases of rental property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of threshold amount provided in **Section 287.017 Florida Statutes for CATEGORY TWO** for a period of 36 months from date of being placed on convicted vendor list.

**Article 13 - CONSTRUCTION OF AGREEMENT**

The parties hereby acknowledge that they fully reviewed this Agreement, its attachments and had the opportunity to consult with legal counsel of their choice, and that this Agreement shall not be construed against any party as if they were the drafter of this Agreement.

**Article 14 - GOVERNING LAW**

This Agreement shall be deemed to have been executed and entered into the State of Florida and this Agreement, and any dispute arising hereunder, shall be governed, interpreted and construed according to the laws of the State of Florida.

**Article 15 - VENUE**

Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida, and any trial shall be non-jury.

**Article 16 - ATTORNEY'S FEES AND COSTS**

In the event of any legal action to enforce the terms of this Agreement each party shall bear its own attorney's fees and costs.

**Article 17 - SEVERABILITY**

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

**Article 18 - INDEPENDENT CONTRACTOR**

The Contractor shall perform the services under this Agreement as an independent contractor and nothing contained herein shall be construed to be inconsistent with this relationship or status. Nothing in this Agreement shall be interpreted or construed to constitute the ENGINEER or any of its agents or employees to be the agent, employee or representative of the COUNTY.

**Article 19 - SUPPLEMENTAL CONDITIONS**

These Supplementary conditions amend or supplement the (SECTION 6) amend or supplement the SECTION 5 - General Conditions for Brevard County and other provisions of the Contract Documents as indicated. All provisions which are not so amended or supplemented remain in full force and effect.

**Article 20 - FEDERAL TAX ID NUMBER**

The CONTRACTOR shall provide to the COUNTY their Federal Tax ID Number or, if the CONTRACTOR is a sole proprietor, a Social Security Number.

**Article 21 - EMPLOYMENT**

The CONTRACTOR shall not engage the service of any person or persons now employed by the COUNTY, including any department, agency, board, or commission thereof, to provide services relating to the Agreement without written consent from the COUNTY.

(Remainder of page is intentionally left blank)

IN WITNESS WHEREOF, BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS (hereinafter called the "OWNER") by resolution of its authorized body and directing the same during adoption of Final Budgets for FY2014-2015, Item Number II. B.5., Public Hearing meeting thereof, duly called and held in the County of Brevard, Florida on Tuesday the 9th day of September, 2014, has caused these presents to be signed and its corporate seal to be hereunto affixed, attested by the Brevard County Clerk of the Courts and Thalle Construction Company, Inc. herein before called "CONTRACTOR") has caused these presents to be signed by its President and its Corporate seal to be hereunto affixed, as hereinafter attested, all as of the day and year first above written.

ATTEST:

  
\_\_\_\_\_  
Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

  
\_\_\_\_\_  
Robin Fisher, Chairman

This 26 day of October 2015

As approved by the Board on September 9, 2014

Reviewed for legal form and content:

  
\_\_\_\_\_  
Christine Lepore, Assistant County Attorney

ATTEST:

  
\_\_\_\_\_  
Signature

YUANYUAN WANG  
\_\_\_\_\_  
Name - Printed or Typed

Assistant Secretary  
\_\_\_\_\_  
Title

(Corporate Seal)

THALLE CONSTRUCTION COMPANY, INC.  
NAME OF FIRM

  
\_\_\_\_\_  
Authorized Signature

LARRY A FANTOZZI  
\_\_\_\_\_  
Name - Printed or Typed

EVP  
\_\_\_\_\_  
Title

900 NC Highway 86 North  
\_\_\_\_\_  
Mailing Address

Hillsborough, NC 27278  
\_\_\_\_\_  
City, State, Zip

919.241.1601  
\_\_\_\_\_  
Telephone Number

**END OF AGREEMENT**