



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.15.

5/18/2021

Subject:

Request Approval of Attachment to Omni Waste Expired Contract to Include FEMA Required Provisions and Authorize the Chair to sign the Attachment

Fiscal Impact:

The fiscal impact results in recouping two hundred six thousand, one hundred twenty dollars and one cent (\$206,120.01)

Dept/Office:

Solid Waste Management Department

Requested Action:

It is requested that the Board of County Commissioners approve the attachment to the expired contract with Omni Waste for Class III Waste Disposal Services and authorize the Chair to sign the attachment.

Summary Explanation and Background:

The expired contract with Omni Waste allowed for hauling and disposal of Class III waste generated during emergencies such as natural disasters. The original contract lacked additional FEMA-required provisions that were added since the original contract was approved. Omni Waste provided Class III waste hauling and disposal services during the cleanup from Hurricane Irma in 2017. However, the State of Florida Department of Emergency Management is stating that the County was not entitled to payback of a percentage of those costs from FEMA, due to the lack of the retroactively required contract provisions. As per the Florida Department of Emergency Management, an attachment to the contract adds those provisions to the original contract and makes the County eligible for reimbursement from FEMA for debris hauling and disposal costs incurred from Hurricane Irma.

Clerk to the Board Instructions:

Please sign and attest three (3) copies of the Attachment and return two (2) originals to the Department.



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

Telephone: (321) 637-2001
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Kimberly.Powell@brevardclerk.us

May 19, 2021

M E M O R A N D U M

TO: Euripides Rodriguez, Solid Waste Management Director

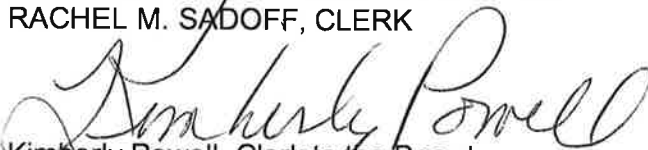
RE: Item F.15., Request Approval of Attachment to Omni Waste Expired Contract to Include Federal Emergency Management Agency (FEMA) Required Provisions and Authorize the Chair to sign the Attachment

The Board of County Commissioners, in regular session on May 18, 2021, approved the Attachment to the expired contract with Omni Waste for Class III Waste Disposal Services; and authorize the Chair to sign the attachment. Enclosed is the fully-executed Attachment.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK


Kimberly Powell, Clerk to the Board

/ns

Encl. (1)

cc: Budget
Finance

ATTACHMENT A
FEMA REQUIRED CLAUSES

1. TERMINATION OF THIS CONTRACT FOR CAUSE

Either party may terminate this contract for cause based upon the failure of the other party to comply with the terms and/or conditions of the contract, or failure to fulfill its performance obligations pursuant to this contract, provided that the non-defaulting party shall give the defaulting party written notice specifying that party's default. If within thirty (30) days after receipt of such notice, the defaulting party shall not have corrected such failure or, in the case of failure which cannot be corrected in thirty (30) days, begun in good faith to correct such failure and thereafter proceeded diligently to complete such correction, then the non-defaulting party may, at its option, place the defaulting party in default and the contract shall terminate on the date specified in such notice.

2. TERMINATION OF THIS CONTRACT FOR CONVENIENCE

Either party may terminate this Contract at any time by giving thirty (30) days written notice to the other party of such termination.

The CONTRACTOR shall be entitled to payment for completed work and deliverables in progress, to the extent work has been performed satisfactorily.

3. OWNERSHIP

If required by law, all records, reports, documents, or other material related to this contract and/or obtained or prepared by CONTRACTOR in connection with the performance of the services contracted for herein shall become the property of COUNTY, and shall, upon request, be returned by CONTRACTOR to COUNTY at CONTRACTOR's expense, at termination or expiration of this contract.

If required by law, all records, reports, documents and other material delivered or transmitted to CONTRACTOR by the COUNTY shall remain the property of the COUNTY and shall be returned by CONTRACTOR to the COUNTY at COUNTY'S expense, at termination or expiration of this contract.

4. RESERVED

5. SUSPENSION OF CONTRACT

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(1) COUNTY Suspension for Cause. The COUNTY may issue a written partial or full Stop Work Notice in the event CONTRACTOR fails to comply with or is negligent in performing any provision hereof. All performance shall immediately cease as per such notice and no further billable costs shall be incurred. The CONTRACTOR shall be entitled to payment for completed work and deliverables in progress, to the extent work has been performed satisfactorily prior to the Stop Work Notice.

(5) Contractor's Right to Stop Work.

(a) Stop Work. CONTRACTOR may stop work only under the following circumstances:

- (i) the Work is ordered temporarily discontinued by a court or other public authority;
- (ii) it is necessary to stop work in order to protect the safety of CONTRACTOR or third persons; or
- (iii) the COUNTY fails to pay CONTRACTOR when due any undisputed and adequately documented sum certified for payment by the COUNTY Project Manager. In such event, CONTRACTOR shall provide the COUNTY not less than seven (7) days prior written notice of its intention to stop work, except in emergency circumstances or when necessary to prevent injury to persons or property.

(6) Dispute Resolution.

(a) During the course of work. In the event any dispute arises during the course of the Work, CONTRACTOR shall fully perform the Work in accordance with the COUNTY's written instructions (or applicable law) and may claim additional compensation. CONTRACTOR is under a duty to seek clarification and resolution of any issue, discrepancy, or dispute by submitting a formal request for additional compensation, schedule adjustment, or other dispute resolution to the COUNTY's Project Manager no later than fifteen (15) calendar days after the precipitating event. If not resolved by the Project Manager within five (5) business days, the Project Manager shall forward the request to the County Manager who shall issue a written decision within fifteen (15) calendar days of receipt. This determination shall constitute final action of the COUNTY and shall then be subject to judicial review upon completion of the Work. CONTRACTOR shall proceed with the Work in accordance with said determination. This shall not waive CONTRACTOR's position regarding the matter in dispute.

(b) Invoices. In the event the COUNTY rejects an invoice as improper, and the CONTRACTOR declines to modify the invoice, the CONTRACTOR must notify the COUNTY in writing within ten (10) calendar days of receipt of notice of rejection that the CONTRACTOR will not modify the invoice and state the reason(s) therefor. Within five (5) business days of receipt of such notice, if not informally resolved through discussion with the COUNTY Project Manager, the Project Manager shall forward the disputed invoice and the CONTRACTOR's written response to the County Manager. The matter shall then proceed as described in subsection (a), above.

6. RIGHT TO AUDIT

The State Auditor General, State Division of Emergency Management, US DHS-OIG, FEMA and federal auditors or State internal auditors shall have the option to audit all accounts directly pertaining to the contract for a period of three (3) years from the date of final payment or as required by applicable State and Federal Law. Records shall be made available during normal working hours upon prior reasonable notice for this purpose for (3) years after final payment.

7. CLEAN AIR ACT

The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

The CONTRACTOR agrees to report each violation to the (COUNTY or local or Indian tribal government) and understands and agrees that the (COUNTY or local or Indian tribal government) will, in turn, report each violation as required to assure notification to FDEM, Federal Emergency Management Agency, COUNTY, and the appropriate Environmental Protection Agency or COUNTY Regional Office.

The CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

8. ENERGY POLICY AND CONSERVATION ACT

The CONTRACTOR hereby recognizes the mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

9. CLEAN WATER ACT

The CONTRACTOR hereby agrees to adhere to the provisions which require compliance with all applicable standards, orders, or requirements issued under Section 508 of the Clean Water

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Act which prohibits the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities.

10. FEDERAL WATER POLLUTION CONTROL ACT

The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

The CONTRACTOR agrees to report each violation to the (name of the state COUNTY or local or Indian tribal government) and understands and agrees that the (name of the state COUNTY or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, the COUNTY, and the appropriate Environmental Protection COUNTY Regional Office.

The CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA."

11. ANTI-LOBBYING AND DEBARMENT ACT

The CONTRACTOR will be expected to comply with Federal statutes required in the Anti-Lobbying Act and the Debarment Act.

The CONTRACTOR hereby agrees to adhere to the mandate dictated by the Copeland "Anti-Kickback" Act which provides that each CONTRACTOR or subgrantee shall be prohibited from inducing, by any means, any person employed in the completion of work, to give up any part of the compensation to which he is otherwise entitled.

12. SUSPENSION AND DEBARMENT

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the CONTRACTOR is required to verify that none of the CONTRACTOR, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The CONTRACTOR must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by CONTRACTOR. If it is later determined that the CONTRACTOR did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of FL, the COUNTY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

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(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."

13. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352 (AS AMENDED)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any County, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

14. PROCUREMENT OF RECOVERED MATERIALS

(1) In the performance of this contract, the CONTRACTOR shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—

- (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
- (ii) Meeting contract performance requirements; or
- (iii) At a reasonable price.

(2) Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

15. DHS SEAL, LOGO AND FLAGS

The CONTRACTOR shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of COUNTY officials without specific FEMA pre- approval.

16. COMPLIANCE WITH FEDERAL EXECUTIVE ORDERS

This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The CONTRACTOR will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

17. NO OBLIGATION BY FEDERAL GOVERNMENT

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The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, CONTRACTOR, or any other party pertaining to any matter resulting from the contract.

18. COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

- (a) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (b) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (a) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.
- (c) *Withholding for unpaid wages and liquidated damages.* FEMA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.
- (d) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a) through (d) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for

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compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.

**BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA**

By: 

Rita Pritchett, Chair

As approved by the Board on September 15, 2020.

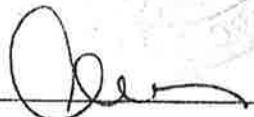
Date signed: May 18, 2021

ATTEST:

By: 

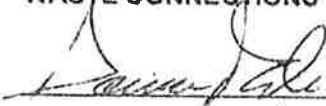
Rachel M. Sadoff, Clerk

Reviewed for legal form and content by:

 5/3/2021
Deputy County Attorney

CONTRACTOR:

WASTE CONNECTIONS OF OSCEOLA COUNTY, LLC

 DERMOT RIBB

DATE: 4/28/2021

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