

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: March 08, 2022

Consent

Regular

Workshop

Public Hearing

Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a continuing construction manager (CM) at risk contract with the following contractors for the Fire Station Capital Improvements Program - Renovations on an as needed basis through March 07, 2027.

| <u>Contractor</u> | <u>Status</u> | <u>SBE/Non-SBE</u> |
|--|---------------|--------------------|
| A) Robling Architecture Construction, Inc. (Robling) | Local | Non-SBE |
| B) Kast Construction Company LLC (Kast) | Local | Non-SBE |

Summary: This continuing contract provides for the implementation of the renovation component of the Fire Rescue’s Comprehensive Capital Improvements program. The aforementioned construction managers (CM) at risk will provide preconstruction and construction management services for each renovation project pursuant to a contractually Guaranteed Maximum Price (GMP). The specific requirements of the work shall be determined by individual task orders, work orders and amendments issued against this continuing contract. Projects will be assigned on a per station basis with the possibility of multiple renovation projects proceeding concurrently at numerous County owned and managed Fire Stations. The scope of work includes but is not limited to: 1) roof repairs and/or replacement; 2) window and/or door replacements; 3) primary and back-up power system replacements; 4) heating and air conditioning system upgrades and replacements; 5) replacement of fueling systems; 6) parking, paving, grading/drainage improvements; 7) interior improvements to better facilitate operations; 8) fencing and site security work; and 9) access control/ closed circuit television (CCTV) system improvements and installation. The solicitation for the construction managers was advertised on February 28, 2021 according to the Equal Business Opportunity (EBO) Ordinance, with final selection taking place on June 10, 2021. Protests to the proposed award were filed by Kast, Robling and Core Construction Services of Florida, LLC (Core). Kast’s protest was denied by the County’s Purchasing Director due to lack of standing. Robling’s protest was upheld, leading to a revised award posting which then triggered Core’s protest filing. A lengthy protest process ensued which included a hearing before a Special Master. On November 30, 2021, the Special Master issued its decision to deny Core’s protest and uphold the Purchasing Director’s decision. (Continued on Page 3.)

Attachments:

1. Disclosure of ownership – Kast
2. Disclosure of ownership – Robling
3. Contract - Kast
4. Contract –Robling
5. Purchasing Director’s Letter to Kast
6. Purchasing Director’s Letter to Robling
7. Purchasing Director’s Letter to Core
8. Special Master Decision

Recommended by:  3/03/2022
Department Director Date

Approved by:  2/11/22
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

| Fiscal Years | 2022 | 2023 | 2024 | 2025 | 2026 |
|---|-------|-------|-------|-------|-------|
| Capital Expenditures | * | _____ | _____ | _____ | _____ |
| Operating Costs | _____ | _____ | _____ | _____ | _____ |
| External Revenues | _____ | _____ | _____ | _____ | _____ |
| Program Income (County) | _____ | _____ | _____ | _____ | _____ |
| In-Kind Match (County) | _____ | _____ | _____ | _____ | _____ |
| NET FISCAL IMPACT * | _____ | _____ | _____ | _____ | _____ |
| # ADDITIONAL FTE POSITIONS (Cumulative) | _____ | _____ | _____ | _____ | _____ |

Is Item Included in Current Budget? Yes X No _____

Does this item include the use of federal funds? Yes _____ No X

Budget Account No: Fund _____ Dept _____ Unit _____ Object _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

*There is no fiscal impact associated with this agenda item. The work will be funded through the Fire Rescue Improvements fund. Amendments requiring the Board of County Commissioners' (Board) approval will be brought to the Board and fiscal impact will be addressed at that time.

C. Departmental Fiscal Review: *Kyn Syles*

III. REVIEW COMMENTS:

A. OFMB Fiscal and/or Contract Development and Control Comments:

Lisa Mante 2/7/22
 OFMB 9A 2-7-22
 LM 2/7

Ann J. Jaworski 2/9/22
 Contract Development and Control
 2-9-22 TW

B. Legal Sufficiency:

[Signature] 2/10/22
 Assistant County Attorney

C. Other Department Review:

[Signature]
 Department Director

Summary:

On February 3, 2021, the Goal Setting Committee established the following Affirmative Procurement Initiatives (API): for selection an Small Business Enterprise (SBE) evaluation preference of up to 15 evaluation points for SBE plan and CM/SBE partnering, and for the construction phases under the contract a 20 % SBE subcontracting goal, of which 5% must be African American and or Hispanic American participation, for the continuing contract. Neither Robling nor Kast are certified Small/Minority/Women-Owned (S/M/WBE) Business Enterprises. Robling has partnered with MCO Construction and Services Inc., a MBE CM, for preconstruction and construction management services in the amount not less than 15% over the duration of the contract. Kast has partnered with two MBE firms, Cooper Construction Management (Cooper) and All-Site Construction Inc. (All-Site), for services in the amount not less than 5% of its preconstruction CM fees, 25% of the CM overhead and profit fee, and 100% of the firm's construction phase staffing cost, respectively. The funding source for projects under this continuing CM at Risk contract is from the Fire Rescue Improvement fund. **(Capital Improvements Division) Countywide (MWJ)**

Background and Justification: Construction Management (CM) at Risk is a project delivery method where the CM provides design phase assistance, evaluation of cost, schedule and implications of alternate designs, systems and materials, and serves as the general contractor bidding the subcontracts for construction.

In February 2021, FDO proceeded with the advertisement of a request for proposals to select two CM firms on a continuing contract basis for the implementation of the renovation component of Fire Rescue's comprehensive fire station capital improvements program. Preliminary construction cost was estimated at \$20,000 to \$4,000,000 per project with a total contract duration of 5 years. The final selection committee meeting to select the construction managers was held on June 10, 2021. The Final Selection Committee recommended Core Construction Services of Florida, LLC (Core) and Kast for award. On June 22, 2021, Robling submitted a protest which in essence alleged that the Final Selection Committee had incorrectly awarded Core the five (5) local preference points reflecting a local office in the County. Under Robling's protest, if Core were to lose the five (5) local preference points, then the recommended award would go to Kast and Robling. Kast submitted a protest as well (dated June 21, 2021) alleging that the Final Selection Committee had erred in awarding the five (5) local preference points to Core and that, for a myriad of reasons, Core should have been found non-responsive to the RFP. As required under the County's Purchasing Code, the Purchasing Director considered both protests. On July 21, 2021, the Purchasing Director notified Kast that its protest was denied as Kast was not an *aggrieved* proposer (per section 2-55(a) of the County's Purchasing Code) in connection with the RFP. Concurrently, the Purchasing Director upheld Robling's protest with a finding that the Final Selection Committee had erred in awarding the five (5) local preference points to Core. The Purchasing Director determined to remove the five (5) local preference points awarded to Core, an action that had the net effect of excluding Core from the list of CM recommended for award. On July 26, 2021, FDO posted a revised recommended award listing Kast and Robling as proposed awardees. On July 30, 2021, Core submitted a protest to the revised award, questioning the Purchasing Director's authority to remove the five (5) local preference points and alleging, among other matters, violations to the Sunshine Law. On September 24, 2021, the Purchasing Director notified Core that its protest was denied. On October 1, 2021, pursuant to Section 2-55(c)(4) of the County's Purchasing Code, Core requested a hearing before a Special Master. The hearing was held on November 12, 2021 and on November 30, 2021, the Special Master issued its decision to deny Core's protest along with its recommendation to uphold Purchasing Director's decision to remove the five (5) local preference points. The net result of the herein described lengthy protest process was the upholding of the revised award listing Kast and Robling as proposed awardees.

The contract herewith recommended for approval will provide for the phased implementation of the renovation component of Fire Rescue's comprehensive capital improvements program for all County-owned and managed fire stations. Construction services may include but are not limited to additions, renovations, or remodeling to Fire Rescue facilities. Through a separate effort, the county has retained architectural/engineering (A/E) design services, which will provide for the assessment of the existing fire stations, and the development of the corresponding scope of work for each location to attain compliance with the existing codes, regulations and departmental programmatic needs.