

MEMORANDUM

TO: Board of County Commissioners

FROM: Courtney Gabriel, Purchasing Manager, Boulder County Purchasing

DATE: March 3, 2022

RE: Appeal of RFP #7301-22 award from ECC Constructors, LLC

I. Background

Grass wildfires and straight-line winds of epic proportions beginning on December 30, 2021 resulted in severe damage and total loss of residential homes and commercial buildings in unincorporated Boulder County, the City of Louisville, and Town of Superior, Colorado (the "Disaster").

Over 1,000 residences were destroyed by fire in the Disaster. The sheer amount of destruction from the Disaster across the City of Louisville (City), Town of Superior (Town), and unincorporated Boulder County has resulted in unprecedented amounts of debris that will need to be removed. Boulder County (County) is assisting residents within its boundaries, including those within the City and Town, by operating a coordinated private property debris removal (PPDR) program.

On January 18, 2022, the County issued RFP #7301-22, Private Property Structural Debris and Hazard Tree Removal Operations, in order to competitively procure debris removal services for the PPDR program. The evaluation committee included two representatives from each jurisdiction – Boulder County, City of Louisville, and Town of Superior.

RFP #7301-22 sets forth the following evaluation criteria with corresponding point allocation:

- Project Cost (50/100 points)
- Timeline for Project Schedule (20/100 points)
- Past Experience with Similar Projects (20/100 points)
- References from Similar Project Customers (10/100 points)

The Committee met on February 1, 2022 to discuss Boulder County Purchasing (Purchasing) procedures for the evaluation process, including RFP Evaluation Guidelines requiring fairness, confidentiality, and a prohibition on conflicts of interest.

Section 9.1(G)(5)(a) of the Boulder County Procedure Manual (Procedure Manual) states: "Fairness and Integrity. All evaluations shall be conducted in an impartial, objective, and professional manner and the same level of effort shall be extended to the evaluation of each vendor's proposal."

The County received eleven (11) proposals as of the February 1, 2022 deadline, which Purchasing shared with Committee members. On this date, the County sought additional information from all bidders through issuance of a Best and Final Offer. Responses were due on February 3, 2022 and provided to Committee members for their consideration.

On February 3, 2022, the County issued Written Interview #1 seeking additional information regarding each bidder's past performance and quality of service delivery, including information from the past five (5) years concerning any criminal investigations, civil actions, debarments, or government contract

terminations for breach involving the firm, any principle, owner, officer, or other person involved in the bidding and contracting process. Responses were due on February 4, 2022 and provided to Committee members for their consideration.

Committee members individually reviewed the proposals, including the additional information solicited by the County and provided by bidders, and evaluated them as a group. Due to the complex and advanced nature of the project, the Committee worked collaboratively to compile, analyze, and agree upon a single controlling Score Sheet (Score Sheet) and Rate Sheet (Rate Sheet). Committee members recorded individual notes and informational calculations in addition to collectively compiling the Score Sheet and Rate Sheet.

The Committee worked collaboratively to assess project cost and value in consideration of the project's particular challenges. Project outcomes depend on numerous outstanding variables, such as the scope of FEMA-funded work and participating property details. Given these variables and the significance of project cost in evaluating proposals, the Committee conducted extensive calculations and evaluated various scenarios to refine its analysis.

The Committee held a two (2) hour evaluation meeting on February 2, 2022 and a one and one-half (1.5) hour meeting on February 3, 2022. On February 4, 2022, the Committee met for four and one-half (4.5) hours to evaluate the proposals. During this meeting, the Committee identified two (2) finalists and determined that finalist interviews were necessary to make a recommendation decision. Committee members continued to conduct independent review and analysis of proposals outside of meetings.

Section 9.1(G)(4)(i) of the Procedure Manual states: "Prior to choosing a vendor using the bid process, interviews may be conducted with bidders. Bidders may be asked to clarify their bids. No additional information will be accepted that materially alters the submitted bid after the deadline for submission. There will be no negotiation with a bidder before an award is made by the BOCC." Section 9.1(G)(4)(j) further states that "[p]rior to choosing a vendor using the RFP process, interviews may be conducted with the proposers for clarification of their proposals."

On February 7, 2022, the Committee conducted two (2) finalist interviews followed by another one and one-half (1.5) hour evaluation meeting. The Committee reconvened on February 8, 2022 for seven (7) additional hours of discussions, which resulted in a unanimous award recommendation in favor of DRC Emergency Services, LLC (DRC). *See Award Recommendation, attached.*

On February 10, 2022, the Board of County Commissioners (Board or BOCC) adopted the committee's recommendation to award RFP #7301-22 to DRC Emergency Services, LLC (DRC). On February 22, 2022, ECC Constructors, LLC (ECC), the other finalist, submitted an Appeal of Award Decision Under Request for Proposals No. 7301-22 ("Appeal Letter").

The Boulder County Procedure Manual, Section 9.1(G)(9), sets forth the County's procurement appeals process, which states:

"Appeals Process. Vendors may appeal the bid award decision of the BOCC by filing a letter of appeal with the Purchasing Agent within ten (10) calendar days of official notification of bid/RFP award.

a. The Purchasing Agent and the bidding office/department will draft a written response to the letter of appeal. The vendor's letter, along with the bidding office's/department's and Purchasing's response, will be sent to the BOCC for its review.

b. The BOCC may, at its sole discretion, permit the vendor to address its appeal in a business meeting, or may make a decision based upon the written appeal and response. In the event the BOCC schedules the matter for a business meeting, it will notify the vendor in writing of the date and time of such meeting."

This Memorandum sets forth Purchasing's response to the Appeal Letter in accordance with County procedures and further recommends that the Board deny ECC's appeal of the award of RFP #7301-22 to DRC.

II. Response

ECC asserts five (5) grounds for appeal, each of which are responded to below:

1. The Evaluation of DRC Improperly Was Based on Understated Project Costs Given the Committee's Adjustment to DRC's Project Timeline

The Committee properly evaluated project costs based on an estimated four (4) month project schedule for DRC. DRC's proposal in response to RFP #7301-22 included an assumption of 30 debris crews while making clear that "[a]dditional crews can be mobilized as needed." Consistent with such language and based on the entirety of information before it, the Committee determined that DRC could perform the work in an estimated four (4) month timeframe by assigning more crews to the project. The Committee's determination was supported by DRC's proposal including Tab 2: Timeline for Project Schedule.

Line Item #1, Disaster Debris Removal Crews, represents a one-time mobilization fee, per crew, for the entire project; this line item also includes ancillary costs for traffic control, air quality monitoring, asbestos crews, tree hazard crews, and dust control.

The Committee evaluated project cost by calculating estimated project costs on a per parcel basis. Accordingly, one-time costs, such as crew mobilization fees (Line Item #1), equipment (Line Items #3-5), and debris management site closure (Line Item #6), were apportioned across each of the 1,067 estimated properties used in the Committee's calculations.

DRC provided a highly competitive rate for Line Item #1, which represents a one-time mobilization fee for each debris removal crew. In light of DRC's cost-effective crew mobilization rate, the Committee conducted found additional costs attributable to a four (4) month project schedule to be insignificant. For example, the Committee calculated and compared project costs where DRC mobilized thirty (30) versus sixty (60) crews. Doubling the number of DRC crews from thirty (30) to sixty (60) results in less than a 0.75% increase to DRC's "Per Parcel w/o Fill Total" on the Rate Sheet, which did not change DRC's assigned score for project costs (i.e. 50 out of 50) on the Score Sheet during the Committee's evaluation. The Committee ultimately found such change to be inconsequential and declined to include this analysis in its final Rate Sheet and Score Sheet.

2. *The Evaluation of DRC Was Based On the Wrong Project Timeline*

In evaluating proposals, the Committee exercised its judgment and expertise to determine estimated timelines for project schedule in consideration of the different assumptions and approaches utilized by bidders. For example, bidders' project schedules differed in the way they addressed weather delays and other factors, which had a substantial impact on how the Committee evaluated and estimated timelines.

The Committee determined that DRC's proposal supported a four (4) month project schedule based on its findings that DRC has the resources and capability to implement the project as described in Tab 2: Timeline for Project Schedule in an expedient manner. Both DRC's and ECC's proposals included information that supported a July 1, 2022 estimated end date. In order to assign points for project schedule to DRC and ECC, the Committee required clarification of their proposals to gain a better understanding as to whether each firm could, in fact, target a July 1, 2022 end date.

Upon confirmation of the Committee's interpretation of each proposal, the Committee then assigned the same project schedule score to DRC and ECC using its judgement and expertise in consideration of the intricacies and disparities reflected across project schedules. Absent such clarification, DRC may have received an inappropriately low score for project schedule which could have impacted the award outcome. As DRC is the overall low-cost bidder, the Committee's careful analysis reached the outcome most beneficial to the County by supporting the most cost reasonable option.

Due to the nature and complexity of each bidder's project schedule and proposal, interested parties may adopt alternative perspectives as to how such language should be interpreted. For example, on page two (2) of Ceres Environmental Services, Inc. Notice of Protest dated February 22, 2022, Ceres accuses ECC of "reduc[ing] its proposed contract time by 1.3 months" through the interview process. Notwithstanding differing viewpoints, the Committee's scoring of DRC for project schedule is consistent with a reasonable interpretation of DRC's proposal.

3. *The Evaluation of DRC's Past Experience Was Based on Unsubstantiated Projects and Mischaracterizations*

The Committee relied on the entirety of available information and the judgment and expertise of its members to assess and assign weight to each bidder's prior experience. The Committee even collected additional information from all bidders through issuance of Written Interview #1 in order to gain further information regarding bidders' prior business relationships and conduct. DRC's proposal includes sufficient information to support the score for "Past Experience with Similar Projects" assigned to DRC.

The County did not dictate how bidders should describe or support their past experience in their proposals, and each bidder submitted its own narratives with varying levels of detail as to their roles, scopes of work, and outcomes. The Committee found DRC's proposal to be reliable and the DRC's score is consistent with a reasonable interpretation of DRC's proposal. The Committee ultimately found that DRC has participated in six (6) wildfire debris removal projects of sufficiently similar size and scope to support an award of fifteen (15) out of twenty (20) points for past experience; ECC received eighteen (18) points for past experience. DRC's proposal includes at least six (6) wildfire debris removal projects

that could have contributed to DRC's score, including the Southern Branch – California wildfires, Town of Malden Fire (Phase I and Phase II), Woolsey Fire, Paradise Camp Fire, and Marshall Fire.

The Committee exercised its discretion in determining which past projects of bidders constitute "projects of similar size and scope" to contribute to a higher score for past experience. The Committee generally emphasized wildfire and debris removal experience, as distinguished from other types of disasters and scopes of services.

4. *BOCC's Overall Award Determination Was Unreasonable, Arbitrary, and Capricious*

The Committee's recommendation of RFP #7301-22 to DRC represents the best value to the County pursuant to the Committee's extensive evaluation of each proposal. The Committee spent nearly twenty (20) hours as a group evaluating and discussing proposals in order to make its award recommendation to the BOCC for RFP #7301-22, in addition to tens of additional hours spent by Committee members reviewing proposals on their own. The Committee includes government personnel experienced in disaster recovery, debris removal, solid and hazardous waste disposal, construction, public works, and project management and who also possess specialized knowledge of the project and operation areas. The Committee properly applied the evaluation criteria set forth in RFP #7301-22 in order to reach its recommendation as adopted by the Board on February 10, 2022, awarding RFP #7301-22 to DRC as determined to be in the County's best interest.

5. *BOCC's Redactions of Proposals and Section Committee Notes Is Contrary to Colorado Law*

The County released the records related to RFP #7301-22 in accordance with the Colorado Open Records Act (CORA), and even made such records publicly available online. C.R.S. § 24-72-204 (3)(a)(IV) prohibits the County from releasing "[t]rade secrets, privileged information, and confidential commercial, financial, geological, or geophysical data, including a social security number unless disclosure of the number is required, permitted, or authorized by state or federal law, furnished by or obtained from any person" and the County has no discretion to otherwise release such information. Following extensive review and analysis of the RFP #7301-22 records, the County applied and limited redactions only to such information as the County is required to withhold by law.

III. Recommendation

For the reasons stated above, Boulder County Purchasing recommends that the Board deny ECC's appeal and uphold the Board's award of RFP #7301-22 to DRC.

Courtney Gabriel, Boulder County Purchasing Manager Date

For the reasons set forth herein, the Board of County Commissioners hereby ADOPTS the recommendation of Boulder County Purchasing to deny the appeal of RFP #7301-22, without additional opportunity for ECC to be heard, and AFFIRMS the award of RFP #7301-22 to DRC.

Chair, Board of County Commissioners Date

Attest: _____
Clerk to the Board Date



Boulder County Purchasing

Downtown Courthouse • 1325 Pearl Street • Boulder, Colorado 80302 • 303.441.3525
Mailing Address: P.O. Box 471 • Boulder, Colorado 80306 • www.bouldercounty.org

RFP ANALYSIS AND RECOMMENDATION

Requesting Department: Public Works
Resource Conservation Division

RFP Title: Private Property Structural Debris
and Hazard Tree Removal Operations

RFP No.: 7301-22

RFP Opening Date: February 1, 2022

No. of Vendors Contacted: 792

No. of Minority Owned, Women Owned: 213

Disadvantaged, Veteran Owned Vendors Contacted

This RFP has been posted in accordance with County Policy.

Evaluated by:

- Darla Arians, Division Manager, Resource Conservation Division, Public Works, Boulder County
- Cody Lillstrom, Zero Waste Program Manager, Resource Conservation Division, Public Works, Boulder County
- Kurt Kowar, Director of Public Works and Utilities, City of Louisville
- Craig Duffin, City Engineer, Public Works and Utilities, City of Louisville
- Allison James, Disaster Preparedness and Recovery Manager, Town Manager's Office, Town of Superior
- Emily Clapper, Management Analyst, Town Manager's Office, Town of Superior

Bid Responses:

Company Name
Dig Deep Excavation, 4212 Aryshire Lane, Durango, CO
Environmental Restoration, LLC, 1666 Fabick Drive St. Louis, MO 63026
TFR Enterprises, Inc., 601 Leander Drive, Leander, TX 78641
Western State Reclamation, Inc., 3756 Imperial St, Frederick, CO 80516
KDF Enterprises, LLC, 370 Mountain View Rd, Springville, AL 35146
AshBritt, Inc., 565 E Hillsboro Blvd, Deerfield Beach, FL 33441
Ceres Environmental Services, Inc., 6968 Professional Pkwy, Sarasota, FL 34240
DRC Emergency Services, LLC, 111 Veterans Memorial Blvd, Ste 401, Metairie, LA 70005
Looks Great Services of MS, Inc., 1501 Highway 13 North, Columbia, MS 39429
Odin Construction Solutions, 1774 Platte St, Denver, CO 80202
ECC Constructors, LLC, 1746 Cole Blvd, Bldg 21, S-350, Lakewood, CO 80401

BB

Background:

Beginning on December 30, 2021, grass wildfires and straight-line winds of epic proportions resulted in severe damage or total loss of more than 1,000 residential homes in Boulder County, including in the City of Louisville and Town of Superior (the “Marshall Fire”). The Marshall Fire involved hundreds of structure fires within a dense, and densely populated, area and generated a massive amount of structural debris across each jurisdiction. Due to public health concerns over structural fire debris, as well as economic recovery considerations, Boulder County submitted a Personal Property Debris Removal (PPDR) request to the Federal Emergency Management Agency (FEMA) seeking public assistance funding for private property debris removal.

Procurement Process:

Request for Proposals (RFP) #7301-22, Private Property Structural Debris and Hazard Tree Removal Operations, was issued on January 18, 2022. RFP #7301-22 was sent to 792 potential bidders. The County published the RFP on bouldercounty.org, the Rocky Mountain E-Purchasing System, and forwarded the RFP to the Minority Business Development Center. The County also emailed the RFP directly to 128 vendors. The project consists of three Operational Areas: Operation 1 (unincorporated Boulder County), Operation 2 (Town of Superior), and Operation 3 (City of Louisville).

Bidders had the opportunity to review RFP #7301-22 and submit questions to the County. On January 26, 2022, Boulder County (County) issued answers to 360 bidder questions via Addendum #1. Addendum #1 also included an Updated Rate Sheet (Rate Sheet) and Updated Submittal Checklist.

The County assembled a well-rounded and knowledgeable Evaluation Committee for RFP #7301-22 (Committee). The Committee included two (2) representatives from each jurisdiction – Boulder County, City of Louisville (City), and Town of Superior (Town). Committee members include government personnel experienced in disaster recovery, debris removal, solid and hazardous waste disposal, construction, public works, and project management.

Consistent with County Purchasing Procedures Manual Section 9.1(G)(4)(h), RFP #7301-22 includes the following evaluation criteria and corresponding priority:

Description	Points
Project Cost	50
Timeline for Project Schedule	20
Past Experience with Similar Projects	20
References from Similar Project Customers	10
Total Possible	100

The Committee met on February 1, 2022 to discuss County Purchasing procedures for the evaluation process, including RFP Evaluation Guidelines requiring fairness, confidentiality, and a prohibition on conflicts of interest.

The County received eleven (11) proposals as of the February 1, 2022 deadline, which County Purchasing shared with Committee members. On this date, the County sought additional information from all bidders through issuance of a Best and Final Offer. Responses were due on February 3, 2022 and provided to Committee members for their consideration.

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informational calculations in addition to collectively compiling the Score Sheet and Rate Sheet.

The Committee worked collaboratively to assess project cost and value in consideration of the project's particular challenges. Project outcomes depend on numerous outstanding variables, such as the scope of FEMA-funded work and participating property details. Given these variables and the significance of project cost in evaluating proposals, the Committee conducted extensive calculations and evaluated various scenarios to refine its analysis.

The Committee held a two (2) hour evaluation meeting on February 2, 2022 and a one and one-half (1.5) hour meeting on February 3, 2022. On February 4, 2022, the Committee met for four and one-half (4.5) hours to evaluate the proposals. During this meeting, the Committee identified two (2) finalists and determined that finalist interviews were necessary to make a recommendation decision. Committee members continued to conduct independent review and analysis of proposals outside of meetings.

On February 7, 2022, the Committee conducted two (2) finalist interviews followed by another one and one-half (1.5) hour evaluation meeting. The Committee reconvened on February 8, 2022 for seven (7) additional hours of discussions, which resulted in a unanimous award recommendation as set forth herein. Committee members subsequently provided their evaluation materials to County Purchasing for its records.

Recommendation:

Upon consideration of the evaluation criteria in accordance with County Policy and Procedures, the Committee recommends that the Board of County Commissioners (BOCC) award RFP #7301-22, in its entirety, to DRC Emergency Services, LLC (DRC). Based on extensive review and consideration of the proposals and additional requested information, the Committee finds DRC's proposal to provide the best value to the County.

The Committee found DRC's proposal to be the most competitive in terms of project cost. RFP #7301-22 does not define the specific components of work for each property that will cumulatively comprise the total project. In order to assess project cost in light of the complex and variable nature of the project, the Committee carefully reviewed various scenarios as to how the project could proceed, such as whether or not foundations are removed and holes (i.e. basements) are filled. Upon completion of such analysis, DRC's proposal was determined to be the most cost reasonable on a per parcel basis.

DRC's proposal is also highly competitive based on timeline for project schedule. DRC's proposal includes thoughtful analysis with respect to project schedule and potential weather delays. The Committee believes that DRC is able to perform the project in an efficient and expeditious manner consistent with County goals and expectations. During its interview, DRC confirmed that it has sufficient resources to mobilize additional crews to complete the project by July 1, 2022, subject to circumstances outside DRC's control (e.g. weather delays). DRC's proposal indicated a greater resource capacity than other bidders.

In evaluating project cost and project schedule, the Committee determined that it would be most efficient to proceed with a single contractor for the entire project area. In evaluating the two finalists, DRC and ECC Constructors LLC, the Committee determined that it would be significantly more expensive to hire multiple contractors, as compared to a single contractor, as the bidders offered more favorable rates to be used if they received the entire award. Such an approach is industry standard based on economies of scale, which leads contractors to establish robust subcontracting relationships to facilitate project completion in an expeditious manner.

Given DRC's resource availability and ability to mobilize sufficient crews to target a July 1, 2022 completion date, the Committee unanimously determined that the increase in costs necessary to hire multiple contractors would not be matched or outweighed by any potential time savings in hiring multiple contractors. In making its determination, the Committee considered DRC's proposed subcontractors and internal resources, as well as project management efficiencies.

DRC received one of the highest scores for the Timeline for Project Schedule criteria, as determined by the Committee including representatives from each jurisdiction – Boulder County, the City of Louisville, and Town of Superior. The Committee unanimously agreed to give DRC a favorable score based on project schedule and to ultimately award the project to DRC in light of a July 1, 2022 project completion target date.

The Committee appreciated DRC's past experience with similar projects. DRC has extensive experience on FEMA-declared disaster projects, including debris removal for numerous large wildfires. The Committee particularly acknowledges the similarity of DRC's past work to the current project, as well as the size and complexity of DRC's past wildfire cleanup projects. During the evaluation process, the Committee found a number of other bidders lacked sufficient relevant experience. Based on DRC's extensive experience, the Committee believes DRC will be able to provide quality services and complete the project in a timely manner.

DRC also received excellent references for three prior debris removal projects. References indicate that DRC has a history of coming in under budget and working to avoid delays, including completing projects early when possible.

Based on extensive analysis and discussion, the Committee determined that DRC's proposal represents the best overall value to the County. The Committee believes that DRC is able to efficiently and expeditiously perform quality work in a cost reasonable manner.

The Committee hereby recommends that the BOCC award RFP #7301-22 to DRC in order to promote the best interests of the County.

SAM.gov: DRC Emergency Services, LLC is not debarred.

Contract Required: Yes No

Account Code:

Jeff Maxwell February 9, 2022
 _____ / _____
 Department Date

I certify this RFP has been conducted in accordance with Boulder County policy. County Purchasing makes no representation regarding the evaluations or recommendations contained in this analysis.

Courtney Gabriel February 9, 2022
 _____ / _____
 Purchasing Date

Comments: *Marta Loachamin* 2/10/2022
 _____ / _____
 Chair, Board of Commissioners Date

Attest: *Brianna Barber* 2/10/2022
 _____ / _____
 Clerk to the Board Date

Date of Board Action: