

**Lee County Board Of County Commissioners  
Agenda Item Summary**

Blue Sheet No. 20061572

**1. ACTION REQUESTED/PURPOSE:** Award B-07-02 **CLEANING AND PAINTING FOR MIDPOINT TOLL FACILITIES** to the lowest responsive/responsible bidder meeting all bidding requirements, Progress Company, in the not-to-exceed amount of \$709,972.42, with a project completion time of 150 calendar days. Also, authorize Chairman to execute contract on behalf of the Board. This project was anticipated and funds are available.

**2. WHAT ACTION ACCOMPLISHES:** Provides Lee County with a Contractor for the cleaning and painting of the Cape Coral and Midpoint Toll Facilities.

**3. MANAGEMENT RECOMMENDATION:** Approved recommended.

**4. Departmental Category:** 09 Transportation **C9A** **5. Meeting Date:** JAN 16 2007

<b>6. Agenda:</b> <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Administrative <input type="checkbox"/> Appeals <input type="checkbox"/> Public <input type="checkbox"/> Walk-On	<b>7. Requirement/Purpose: (specify)</b>		<b>8. Request Initiated:</b> Commissioner _____ Department Transportation Division _____ By: <u>Scott Gilbertson, Director</u>
	<input type="checkbox"/> Statute	_____	
	<input type="checkbox"/> Ordinance	_____	
	<input checked="" type="checkbox"/> Admin. Code	AC-4-4	
	<input type="checkbox"/> Other	_____	

**9. Background:**

The Department of Transportation submitted a request to Contracts Management to bid the Cleaning and Painting for Cape Coral and Midpoint Toll Facilities project. The expected cost of the project required the use of the formal, advertised sealed bid procedure.

On the bidding deadline of November 8, 2006, Contracts Management received seven (7) bids. This bids were reviewed by the Department of Transportation it was recommended that award be made to the lowest responsive/responsible bidder, Progress Company, in the not-to-exceed amount of \$709,972.42. Upon receipt of the Notice of Intent to award to Progress Company, Contracts Management received a Notice of Intent to File Protest from Costello & Royston, LLP, Attorneys At Law, on behalf of the second low bidder, Victor Hein, President of Vic's Painting, Inc., on the basis that they did not feel the licensing exemption for Progress Company was justified on this project. The intent was received by Contracts Management within the required time frame of 72 hours after notification, along with the "Formal Written Protest" dated December 6, 2006.

- CONTINUED ON PAGE TWO -

**10. Review for Scheduling:**

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
<i>Amelia H. Davis</i> 12-27	<i>[Signature]</i> 12-20	N/A		<i>[Signature]</i> 12/29/06	Analyst <i>RK</i> 12/29	Risk <i>NM</i> 12/29	Grants <i>[Signature]</i> 12/29/06	Mgr <i>[Signature]</i> 12-29-06	<i>[Signature]</i> 12-21-06

**11. Commission Action:**

- Approved
- Deferred
- Denied
- Other

RECEIVED BY  
COUNTY ADMIN:  
12/29/06 3:00  
" 3:30-RK  
COUNTY ADMIN  
FORWARDED TO:  
12/29/06 5:00 P.M.

REC'D  
by CO. ATTY:  
12/29/06  
10:20am  
CO. ATTY.  
FORWARDED TO:  
12/29/06  
1:00pm

**A Bid Protest Committee was formed, consisting of Jim Lavender, Public Works Director, Chairman, Roland Ottolini, Director of Natural Resources and Pete Winton, Assistant County Manager. Following discussions, it was the consensus of the committee to reject the bid protest, as it was the committee's opinion that licensing requirements for this project were exempt. The motion was made by Roland Ottolini, seconded by Pete Winton and then called and carried with no further questions. Mr. Hein stated he did not intend to proceed any further with the Bid Protest.**

**Funds are available in the following accounts: 40504142120.503490 - \$354,986.21  
40504142124.503490 - \$354,986.21**

- Attachments:**
- 1) Bid Tabulation**
  - 2) Department Recommendation**
  - 3) Notice of Intent to File Protest from Costello & Royston, LLP on behalf of Victor Hein, President of Vic's Painting, Inc.**
  - 4) Formal Written Protest from Costello & Royston, LLP on behalf of Victor Hein, President of Vic's Painting, Inc.**

**LEE COUNTY BID TABULATION SHEET  
FOR  
CLEANING AND PAINTING FOR CAPE  
CORAL AND MIDPOINT TOLL  
FACILITIES**

**BID NO.:** B-07-02

**DATE:** November 8, 2006

CONTRACTOR	BID BOND	TOTAL NOT-TO- EXCEED AMOUNT
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Astron General Contracting Mr. Pete Hadiaris 382 E. Midway Road Fort Pierce, FL 34982 PHONE 772-467-1124 FAX 772-462-2275	\$39,956.00	\$1,274,375.48**
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Spencieri Painting Mr. Bernie McElheny 412 No. 12 <sup>th</sup> Street Haines City, FL 33844 PHONE 863-422-3961 FAX 863-422-3962	\$39,956.00	\$869,915.49**
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Amherst Maintenance Mr. Nick Boubaris 3469 Merlin Drive Clearwater, FL 33761 PHONE 727-781-6500 FAX 727-787-3470	\$39,956.00	\$944,832.00**
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Progress Company Ms. Effie Reading P.O. Box 74245 Romulus, MI 48174 PHONE 734-946-2077 FAX 734-946-7203	\$39,956.00	\$709,972.42
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Seminole Equipment Co. Mr. Themis Damalos 204 Tarpon Industrial Circle Tarpon Springs, FL 34689 PHONE 727-944-4481 FAX 727-945-0882	\$39,956.00	\$783,818.55
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LEE COUNTY BID TABULATION SHEET  
FOR  
CLEANING AND PAINTING FOR CAPE  
CORAL AND MIDPOINT TOLL  
FACILITIES

BID NO.: B-07-02

DATE: November 8, 2006

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South Gulf, Inc. Mr. Mike Howell P.O. Box 605 Bonifay, FL 32425 PHONE 850-547-0920 FAX 850-547-5560	\$39,956.00	\$789,859.90
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Vic's Painting Mr. Kent Hein 5420 Division Drive Ft. Myers, FL 33905 PHONE 239-694-31361 FAX 239-694-4850	5%	\$739,605.86**
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**M E M O R A N D U M  
F R O M**

DATE: 11/21/2006

TO: Contracts Management

FROM: **Ehab Guirguis**

**RE: RECOMMENDATION OF BID AWARD**

PROJECT NAME Cleaning and Painting for Cape Coral and Midpoint Toll Facilities.

BID NO: B-07-02 PROJECT MANAGER Ehab Guirguis, P.E.

A review by this office of the experience, qualifications and capabilities of **Progress Company** the apparent low bidder indicates that said bidder, is qualified to construct this project and it is recommended that the Contract be awarded to the above said bidder for:

The total lump sum price/not-to-exceed price of \$709,972.42.

If the total awarded Contract Price is to include alternate bid items indicate which "alternate bid items" are recommended to be included in the award and amounts.

<u>Alternate</u>	<u>Amount</u>
<u>N/A</u>	<u>N/A</u>

Funds are available/will be made available in account string number: **CIP#405041**.

Account Narrative: **CIP405041**

Any additional required information to be included on the Blue Sheet for award (ie; transfer of funds, budget amendment, etc.): N/A

CMO:039  
9/25/01

cc: Candy  
L.R.

11/27 2006

**COSTELLO & ROYSTON, LLP**  
ATTORNEYS AT LAW  
A PARTNERSHIP OF PROFESSIONAL ASSOCIATIONS  
Voice (239) 939-2222 • Facsimile (239) 939-2280

**Truman J. Costello, P.A.**  
Board Certified Wills, Trusts and Estates Lawyer

Brittany Professional Centre  
12670 New Brittany Blvd., Suite 101  
Fort Myers, FL 33907

**Robert D. Royston, Jr., P.A.**

Mailing Address  
Post Office Drawer 60205  
Fort Myers, FL 33906-6205

November 27, 2006

Jim Lavender  
Public Works Director  
Lee County Florida  
1500 Monroe St.  
4<sup>th</sup> Floor  
Fort Myers, FL 33901

Sent By:  
Hand Delivery

**Re: Solicitation No. B-07-02**  
**Cleaning and Painting for Cape Coral and Midpoint Toll Facilities**  
**RE: VIC'S PAINTING, INC.**  
**NOTICE OF INTENT TO FILE PROTEST**

Dear Mr. Lavender:

Please be advised this firm represents Vic's Painting, Inc. which submitted the second lowest bid as set forth in the bid tabulation dated November 22, 2006, received by Vic's Painting, Inc. with the Notice of Intended Decision, a copy of which is enclosed for your reference.

Vic's Painting hereby serves on you its Notice of Intent to File Protest pursuant to Lee County Administrative Code, Section AC-4-2 Bid Protest Hearing Guide, paragraph 12.1. The grounds on which Vic's Painting, Inc. bases its protest are as follows:

1. Lee County Construction Licensing Board Ordinance, Article V, Section 8.88 of the Code of Laws and Ordinances of Lee County, Florida, requires all contractors performing work or contracting in Lee County to hold an appropriate license.
2. In order to perform the work required under Solicitation No. B-07-02, the contractor must have met the requirements to obtain a Certificate of Competency as a Painting Contractor as listed in Lee County Administrative Code, Code Number 12-6, Section II-20.
3. There is no exemption for bridge or road work under the Lee County Construction Licensing Board Ordinance, Article V, Section 8.85 (Exemptions) of the Code of Laws and Ordinances of Lee County, Florida.
4. Progress Company, the company to which Lee County intends to award the contract for Solicitation No. B-07-02 has not applied for and does not have a Certificate of Competency as a Painting Contractor in Lee County, Florida and can not legally perform the work required by the bid documents.



A Formal Protest will be filed within ten (10) calendar days with the appropriate bond payable to Lee County in the amount of \$10,000.00.

Thank you for your consideration of this matter.

Very Truly Yours

  
Robert D. Royston, Jr.  
For the Firm

Direct Dial: (239) 939-2222 ext. 205  
E-mail: [rroyston@csrlaw.com](mailto:rroyston@csrlaw.com)

Enclosures: Notice of Intended Decision  
cc: Victor J. Hein

**COSTELLO & ROYSTON, LLP**  
ATTORNEYS AT LAW  
A PARTNERSHIP OF PROFESSIONAL ASSOCIATIONS  
Voice (239) 939-2222 • Facsimile (239) 939-2280

**Truman J. Costello, P.A.**  
Board Certified Wills, Trusts and Estates Lawyer

**Robert D. Royston, Jr., P.A.**

Brittany Professional Centre  
12670 New Brittany Blvd., Suite 101  
Fort Myers, FL 33907

**Mailing Address**  
Post Office Drawer 60205  
Fort Myers, FL 33906-6205

December 6, 2006

**Sent By:**  
Hand Delivery

*Andy*  
Jim Lavender  
Public Works Director  
Lee County Florida  
1500 Monroe St.  
4<sup>th</sup> Floor  
Fort Myers, FL 33901

**Re: Solicitation No. B-07-02**  
**Cleaning and Painting for Cape Coral and Midpoint Toll Facilities**  
**RE: VIC'S PAINTING, INC.**  
**FORMAL WRITTEN PROTEST**

Dear Mr. Lavender:

Pursuant to the Notice of Intent to File a Protest by Vic's Painting, Inc. dated November 27, 2006 and hand delivered to your offices at 3:31 p.m. that day, Vic's Painting, Inc. files its Formal Written Protest pursuant to Lee County Administrative Code, Section AC-4-2, paragraph 12.1.

1. **Bond:** Pursuant to AC-4-2, paragraph 12.1((5) & (7) Vic's Painting, Inc. submitted the County standard form Bond for 5% of the bid amount, a copy of which is attached hereto and made a part hereof, in compliance with the requirement of the Lee County Administrative Code.
2. **Formal Written Protest:** Pursuant to AC-4-2 paragraph 12.1(8) Vic's Painting, Inc. submits the following.
  - a. **County bid/proposal identification number and title:** Solicitation No. B-07-02 / Cleaning and Painting for Cape Coral and Midpoint Toll Facilities
  - b. **Name and Address of Affected Party and Title or Position of Person submitting the Protest:**

Vic's Painting, Inc.  
5420 Division Drive  
Fort Myers, FL 33905  
Victor J. Hein, as President of Vic's Painting, Inc.; and  
Robert D. Royston, Jr., as attorney for Vic's Painting, Inc.





- c. **Statement of all claimed disputed issues of material fact.** Vic's Painting, Inc. claims that the bid can not be awarded to an unlicensed painting contractor in Lee County, Florida.
- d. **Concise Statement of the facts alleged and the Rules, regulations, statutes or constitutional provisions.**
- i. In order to perform the work required under Solicitation No. B-07-02, the contractor must have met the requirements to obtain a Certificate of Competency as a Painting Contractor as listed in Lee County Administrative Code, Code Number 12-6, Section II-20 and required by the Lee County Construction Licensing Board Ordinance, Article V, Section 8.83 through 8.93.
  - ii. There is no exemption for bridge or road work under the Lee County Construction Licensing Board Ordinance, Article V, Section 8.85 (Exemptions) of the Code of Laws and Ordinances of Lee County, Florida.
  - iii. Progress Company, the company to which Lee County intends to award the contract for Solicitation No. B-07-02 has not applied for and does not have a Certificate of Competency as a Painting Contractor in Lee County, Florida as required by Section 8.88 of the Lee County Construction Licensing Board Ordinance and can not legally perform the work required by the bid documents.
  - iv. Lee County can not lawfully award the work under Solicitation B-07-02 to a contractor not legally qualified to conduct the work required by the bid documents in Lee County, Florida. The county would be required to serve a citation against Progress Company under Section 8.91 of the Lee County Construction Licensing Board Ordinance to stop the work.
- e. **Information, documents, other materials, calculations and statutory and case law authority in support of the grounds for the Protest.**
- i. Lee County Construction Licensing Board Ordinance, Article V, Section 8.83 through 8.93.
  - ii. Lee County Administrative Code, Code Number 12-6, Section II-20
  - iii. Lee County Administrative Code, Code Number 4-2, Protest Hearing Guide.
  - iv. Legal Notice to Bidders
  - v. Bid bond of Vic's Painting, Inc.
  - vi. Notice of Intended Decision
  - vii. Bid Tabulation
  - viii. Notice of Intent to File Protest with stamped filing date
- f. **Statement of Relief.** Vic's Painting, Inc. requests that the contract for Solicitation B-07-02 be awarded to it as the lowest bidder listed in the Bid Tabulation which has the required Lee County certificate of competency as a painting contractor.

g. **Other Relevant Information Material to Protest. None**

Thank you for your consideration of this matter.

Very Truly Yours

  
Robert D. Royston, Jr.  
For the Firm

*Direct Dial:* (239) 939-2222 ext. 205  
*E-mail:* [rroyston@csrlaw.com](mailto:rroyston@csrlaw.com)

Enclosures: As indicated  
cc: Victor J. Hein