



# Minutes

## Town of Lake Park, Florida

### Protest Committee Meeting

### Town Bid 108-2023

### Second Street Resurfacing & Green Infrastructure

Thursday August 3, 2023, 10:30 a.m.

Commission Chamber, Town Hall, 535 Park Avenue

**John D'Agostino** —Town Manager  
**Jeffrey Duvall** — Finance Director  
**Nadia DiTommaso** —Community Development Director  
**Brett Lashley** — Town Attorney  
**Vivian Mendez, MMC** -Town Clerk

CALL TO ORDER 10:31am

Town Manager D'Agostino opened the meeting and stated that the Committee has come to a decision in regards to the bid protest hearing which was held on June 27, 2023.

Town Manager D'Agostino provided background and analysis of the bid protest (Exhibit A). He stated that the recommendation of the bid protest committee is to proceed forward with the bid from Sunshine Land Design Inc. The committee feels that this bid was received in a timely manner and was opened but was not read aloud. Finance Director Duvall stated that the bidder did not receive a competitive advantage and the fact that the bid was not read aloud was immaterial. Community Development Director DiTommaso agreed with this statement and went on to say that this was a minor deviation and did not provide a competitive advantage to any party.

The Committee directed Town Attorney Lashley to prepare a letter reflecting the Committee's decision and to send the letter to all interested parties.

Town Manger D'Agostino stated that the Committee has done its fiduciary responsibility to the taxpayers of the Town of Lake Park by accepting the lowest responsible bid from Sunshine Land Design, Inc.

#### **ADJOURNMENT:**

Motion to adjourn made by Finance Director Duvall  
Second by Community Development Director DiTommaso  
Meeting adjourned 10:41am

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Town Clerk Vivian Mendez

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Deputy Town Clerk Laura Weidgans

# Memorandum

**To:** John D'Agostino, Town Manager  
**From:** Brett Lashley, Esq. and Thomas J. Baird, Town Attorney  
**Date:** July 25, 2023  
**Subject:** Rosso Side Development Inc.'s Bid Protest

## Background

You have requested our advice regarding the bid protest meeting held on Tuesday, June 27, 2023, at the Town of Lake Park ("Town"). The Committee met to consider the Rosso Side Development Inc.'s ("Rosso") bid protest as it relates to the Town's invitation to bid on its Second Street Resurfacing & Green Infrastructure project. The invitation to bid required all interested bidders to submit their bids no later than June 8, 2023 by 2:00 p.m. The bids were required to be submitted through the DemandStar website. At the invitation to bid opening on June 8, 2023, the Town read aloud two bids. One from Rosso at a bid price of \$637,508.42 and the other from R&D Paving, LLC at a bid price of \$644,458.95. However, due to what was described as a computer error by Public Project Manager, John Wille, there was a third bid that was timely uploaded to DemandStar that was not read aloud during the June 8, 2023, invitation to bid meeting. The third bid was from Sunshine Land Design, Inc. ("Sunshine") at the lowest bid price of \$526,513.52. Sunshine's bid was lower than the second lowest bid by \$110,994.90. Sunshine's bid was not discovered by Mr. Wille until after the bid reading, but Mr. Wille was able to confirm that Sunshine's bid was timely received at 1:51 p.m. on June 8, 2023, before the deadline to submit bids.

Rosso sent the Town its formal bid protest on June 9, 2023, on the grounds that the instructions to the bidders stated that all "bids will be opened publicly, read aloud, and an abstract of the amounts of the base Bids and major alternates (if any) will be made available after the opening of Bids," but Sunshine's bid was not read aloud at the meeting. Additionally, Rosso protested the bid award on the grounds that the project was partially funded by a state grant, which requires the procurement and construction administration process of Federal Procurement Regulations pursuant to 2 CFR 200.320(b)(1)(ii)(C) be strictly followed. Specifically, 2 CFR 200.320(b)(1)(ii)(C) requires all bids be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly.

The Bid Protest Committee did not make a decision as to Rosso's bid protest at the meeting and advised that the committee would take it under advisement before rendering its decision. You have requested that I advise you regarding the issue of the failure to read a bid at the bid opening.

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### Analysis

Courts have opined that “the purpose of competitive bidding is to secure the lowest responsible offer and minor irregularities can be waived in effectuating that purpose.” *Tropabest Foods, Inc. v. State Department of General Services*, 493 So. 2d 50, 51 (Fla. 1<sup>st</sup> DCA 1986).

Here, the facts considered by the Committee were that the Town had a bid, which happened to be the lowest bid, that was not *read aloud* at the invitation to bid meeting. Mr. Polsult, Rosso's representative, argues that this is a deviation from the Town's procedures at bid openings. The evidence produced at the Committee's hearing was that all bids were timely received by the Town. Thus, the only issue presented by Mr. Polsult is whether the Town's failure to read Sunshine's bid aloud is a *material deviation* from the bid documents, or whether by doing so, Sunshine gained a *competitive advantage*.

At the Committee's hearing, Mr. Polsult did not testify or otherwise offer any evidence that the failure to read the Sunshine bid aloud was a *material* deviation from the Town's procedures. Nor did he offer any testimony or evidence that the failure to read the Sunshine bid aloud at the bid opening gave Sunshine a competitive advantage. Mr. Polsult did state that that he did not believe there was any impropriety on the Town's part by its failure to read the Sunshine bid aloud.

Courts have stated that the purpose of competitive bidding is to secure for the public the lowest responsible offer and that minor irregularities can be waived toward effectuating that purpose. *Tropabest Foods, Inc. v. State Department of General Services*, 493 So. 2d 50 (Fla. 1<sup>st</sup> DCA 1986). It is clear that the Town selected Sunshine's bid because it was the lowest bid by \$110,994.90. Sunshine's bid was substantially lower than Rosso's bid. Accepting this bid would represent a substantial savings to the public. The fact that Sunshine's bid was substantially lower did not give it a “competitive advantage.” Rather, the process appears to have achieved for the public what was intended – a financial savings.

### Recommendation

The relevant question is whether the testimony and evidence presented at the meeting was sufficient to demonstrate that the failure to read the Sunshine bid aloud was (1) a material deviation, or whether it was simply a minor irregularity; and (2) whether it gave Sunshine a competitive advantage. The evidence produced at the Committee's hearing suggests this departure from procedure was merely a minor deviation and did not give Sunshine a competitive advantage. The Committee should reconvene and take action to either reject or affirm the bid protest and direct the Town Attorney to prepare a letter which reflects its decision to be transmitted to all parties informing them of its action.



Project # 108-2023

PROJECT: Second Street Resurfacing and Green Infrastructure

DATE/TIME:

August 3, 2023 10:30 A.M.

### Protest Committee Meeting

	CONTACT NAME & COMPANY	ADDRESS	PHONE	EMAIL ADDRESS
11	ROBERTO TRAVIESO LP AW		561-881-3345	
12	JOHN WILLA TOLP	—	561-881-3345	
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