

RESOLUTION NUMBER 24-77

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A SOLE SOURCE PURCHASE AGREEMENT BETWEEN THE TOWN AND STEWART MINE MATERIALS FOR THE PURCHASE OF 53,000 TONS OF BEACH COMPATIBLE SAND FOR \$628,050.00 AS A SOLE SOURCE PROVIDER; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, beach compatible sand is needed to restore the Town's beaches from Hurricane Ian impacts, including but not limited to construction of a sand berm to protect upland properties along the North segment; and

WHEREAS, Section 2-480(c) of the Town of Fort Myers Beach Code of Ordinances permits the award of a contract without competition when the Finance Director, in conjunction with a department director determines in writing after conducting a good faith review of available sources, that there is only one source for the required product; and

WHEREAS, the Environmental Project Manager has provided the Finance Director with written justification of the need to purchase the needed sand from Stewart Mine Materials and the Finance Director agrees with the stated justification that Stewart Materials is the only Florida Department of Environmental Protection approved upland sand source with a moist Munsell 10YR color-value/chroma of 8/1 or lighter to match native beach sand; and

WHEREAS, the needed purchase of the sand from Stewart Materials exceeds \$20,000 and requires approval from the Town Council; and

WHEREAS, the Town Council has determined it is in the best interest of the Town to approve the requested sole source purchase agreement with Stewart Mine Materials.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

Section 1. The above recitals are true, correct, incorporated herein by this reference, and adopted as the legislative and administrative findings of the Town Council.

Section 2. The Town Council hereby approves the sole source purchase agreement between the Town and Stewart Mine Materials, for the purchase of 53,000 tons of beach compatible sand for a cost of \$628,050.00. A copy of the Sole Source Purchase Agreement is attached hereto as Attachment "A".

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member King and seconded by Council Member Safford, and upon being put to a roll vote, the result was as follows:

Dan Allers, Mayor	Aye
Jim Atterholt, Vice Mayor	Aye
John R. King, Council Member	Aye
Scott Safford, Council Member	Aye
Karen Woodson, Council Member	Aye

ADOPTED this 15th day of April 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL



Dan Allers, Mayor

ATTEST:



Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**



Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 30th day of May 2024.



Approved FDOT Aggregate Source Base and Stabilization Materials

Sand Shell Screenings Topsoil Fill

Date Proposed: April 05, 2024
 Proposed to: Town of Ft Myers Beach
 Company Address: 2525 Estero Blvd, Fort Myers Beach, FL 33931
 Contact Name: Chadd Chustz
 Phone: _____
 Cell: 239-462-8127
 Email: chadd@fmbgov.com

Mine Site: Immokalee

Town of Ft Myers Beach
 Project Name

Ft Myers Beach, FL
 Project Location/County/Zip

4/10/2024
 Approximate Start/End Date of Project

NO.	DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL PRICE
1	Beach Sand	53,000	+/- Ton	\$ 11.85	\$ 628,050.00
2			+/- Ton	\$ -	\$ -
3			+/- Ton	\$ -	\$ -
TOTAL					\$ 628,050.00

Daily Volumes Subject to Availability

All prices, unless otherwise noted, are F.O.B. at seller's mine source. Applicable taxes are NOT included in the price of material. This proposal is valid for 60 days from the Date Proposed. This proposal will become null and void if purchaser does not submit a purchase order to seller matching the terms of this quote (including price, quantities, and period of time over which purchases are to be made) within 30 days of purchaser entering into a contract after bid award for the project referenced in this quote. This quote does not apply to any contract extensions for such referenced project – purchaser must request additional quotes for any such contract extensions. This proposal may be withdrawn at any time by seller prior to unconditional written acceptance by purchaser. Seller is not responsible for any delays not caused solely by Seller. In addition to these terms, all bids, proposals, orders, contracts, and agreements relating to the purchase and sale of sand, rock, general fill and/or other aggregate materials from Stewart Materials, LLC are subject to the "General Terms and Conditions" attached hereto (page 2) and incorporated herein by reference.

The undersigned accepts the above quotation:

Signature:
 Printed Name: Dan Allers
 Title: Mayor
 Date: 6.3.2024

STEWART MATERIALS, LLC

Signature:
 By: Amanda Stewart
 Title: VP of Sales
 Date: 4/5/2024



GENERAL TERMS AND CONDITIONS

In addition to the terms and conditions contained in the bid, proposal, order, contract, or agreement you have obtained from us regarding the sale/purchase of rock, sand, fill, and/or any other aggregate material (collectively, "Aggregate"), the following terms and conditions (collectively, "Terms") shall apply:

1. As used herein: (i) "we", "our", or "us" shall mean Stewart Materials, LLC and its directors, officers, employees, owners, affiliates, and subsidiaries; and (ii) "you" or "your" refers to all individuals and/or entities that have obtained a bid, proposal, order, contract, or agreement from us or who are purchasing or have purchased Aggregate from us.
2. You shall be deemed to have read and irrevocably and unconditionally agreed to these Terms as posted on our website before accepting a bid or proposal for the sale of Aggregate, placing an order for Aggregate, or purchasing Aggregate from us. Additionally, you acknowledge and agree that: (i) all bids, proposals, orders, contracts, or agreements relating to the sale/purchase of Aggregate from us are subject to these Terms; (ii) these Terms may be amended from time to time and all such bids, proposals, orders, contracts, or agreements are subject to the Terms in effect and published by us as of the date such bids, proposals, orders, contracts, or agreements are entered into; (iii) any amendments or changes to these Terms shall be effective immediately upon publication by us; and (iv) it is your responsibility to request the then current Terms published by us.
3. Under Florida's Construction Lien Laws (Florida Statutes Sections 713.001-713.37) we are classified as a materialman. Our standard practice is to provide a proposal setting out pricing for the specific job request and general information, such as our payment terms, which are net thirty (30) days from the date of the applicable statement. Unless otherwise stated in writing, a proposal from us is valid for sixty (60) days from date issued. Upon agreement to the terms set forth in our proposal and the required completed job information sheet and notice to owner information, we will set up your order and hauling can commence. In the absence of a returned signed proposal, ordering or taking delivery of Aggregate from us after receipt of a proposal shall be deemed your unconditional acceptance to the terms of the proposal and these Terms as if the proposal had been signed by you.
4. Our terms are FOB our mine sites. Once your hauler generates a ticket at our weight scale at our mine site(s) (whether or not your hauler takes physical possession of the ticket generated) and your hauler leaves our mine site(s), you are responsible for payment.
5. We are not responsible for overweight trucks.
6. Without a written manifest/dispatch on file in our scale house at the mine site(s), we will not be held responsible for incorrect materials or destinations and tickets will not be changed.
7. Requests for copies of tickets should be emailed to amanda@stewartmaterials.com and will be supplied as time permits. Before requesting a copy of a ticket from us, we suggest you first attempt to retrieve the tickets from your hauler.
8. Payment terms are net thirty (30) days from the date of the applicable statement or invoice and interest accrues at one and a half percent (1.5%) per month (eighteen percent (18%) per annum) from the due date. In the event of non-payment per the Terms, you agree to be obligated and liable to us, and to reimburse us immediately upon demand, for all costs of collection including reasonable attorney's fees, whether or not suit is filed, and through all efforts regarding collection including any appeal and collection efforts.
9. Accounts not paid within net thirty (30) days will be placed on hold until said account is brought current. No advance notice will be given to you if your account is placed on hold.
10. Any discrepancies on tickets must be brought to our attention within ten (10) calendar days from the date of invoice.
11. No terms not included herein have been or will be accepted by us unless in writing and signed by us.
12. If no valid sales tax exemption certificate is provided to us, you will be charged applicable sales tax.
13. We will be excused from entire or part performance under any bids, proposals, orders, contracts, or agreements to the extent such performance is prevented by an event of Force Majeure. As used herein, the term "Force Majeure" will include, but shall not be limited to, any of the following: allocations, expropriations, requisitions, priorities, restraints, or other acts of governmental, civil, military, or naval authorities (whether acting legally or otherwise); pandemic; acts of God or the elements; perils or accidents of the sea or other waters; cave-in, flood, windstorm, hurricane, or other damage from the elements; labor strike; riot; inability to obtain, or delay in obtaining necessary equipment or materials; inability or failure to obtain, delay in obtaining, or loss of any governmental authorizations, approvals, or permits; any federal, state, or local law or any order, rule, or regulation of any governmental authority; litigation; catastrophic failure or breakage in hull, machinery, plant, or equipment; acts of war, hostilities, interferences of public enemies or belligerents; fire or explosion; or any cause whatsoever beyond our reasonable control whether of the kind enumerated or otherwise. Such excuse from performance will continue until such Force Majeure event is eliminated or ceases to exist.
14. You agree to provide us with certificate(s) of insurance evidencing your general liability and workers compensation coverage upon request.
15. We do not make any representations or warranties of any kind whatsoever with respect to any sand, rock, general fill and/or other aggregate materials purchased or acquired from us, whether express or implied, and specifically disclaims any implied warranties, whether of merchantability, suitability, fitness for a particular use or purpose, or otherwise for said aggregate materials.