

ITEM # 52

**ADDITIONAL MATERIAL
10:00 REGULAR MEETING
APRIL 22, 2014**

**SUBMITTED AT THE REQUEST OF
FINANCE AND ADMINISTRATIVE
SERVICES DEPARTMENT**



Finance and Administrative Services Department

PURCHASING DIVISION

115 S. Andrews Avenue, Room 212 • Fort Lauderdale, Florida 33301 • 954-357-6066 • FAX 954-357-8535

MEMORANDUM

April 21, 2014

TO: Board of County Commissioners

THRU: Scott G. Miller, Ph.D., Director/CFO
Finance and Administrative Services Department

Digitally signed by
sbaldwin@broward.org
DN:
cn=sbaldwin@broward.org
Date: 2014.04.21 15:31:54
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FROM: Brenda J. Billingsley, Director
Purchasing Division

Brenda J.
Billingsley

Digitally signed by Brenda J. Billingsley
DN: cn=Brenda J. Billingsley, o=Broward
County, ou=Purchasing Division,
email=bjbillingsley@broward.org, c=US
Date: 2014.04.21 13:51:06 -04'00'

SUBJECT: April 22, 2014 - Commission Meeting - Agenda Item # 52- Ranking Order for Request for Proposals (RFP), X1159616P1, Architectural/Engineering Services for the Seaport Engineering and Construction Division

Attached is a letter dated April 17, 2014 received from Stephanie J. Toothaker of Tripp Scott, regarding Request for Proposals (RFP), X1159616P1, Architectural/Engineering Services for the Seaport Engineering and Construction Division.

BJB/hmm

Attachment

c: Bertha Henry, County Administrator
Evan Lukic, County Auditor
Joni Armstrong Coffey, County Attorney
Tom Hutka, Director, Public Works Department

Broward County Board of County Commissioners

Sue Gunzburger • Dale V.C. Holness • Kristin Jacobs • Martin David Kiar • Chip LaMarca • Stacy Ritter • Tim Ryan • Barbara Sharief • Lois Wexler
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STEPHANIE J. TOOTHAKER
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April 17, 2014

Ms. Brenda Billingsley, Director
Broward County Purchasing Division
115 S. Andrews Avenue, Room 212
Fort Lauderdale, Florida 33301

RE: Request for Proposals ("RFP") X1159616P1, Port Everglades Architectural/Engineering Services for the Seaport Engineering and Construction Division

Dear Ms. Billingsley:

Our firm represents BEA Architects, Inc. ("BEA"), the highest ranked vendor by the Selection Committee in the above-referenced RFP. Counsel for Bermello Ajamil & Partners ("B&A"), the second ranked vendor, submitted an objection letter to the proposed ranking and you replied in writing on March 25, 2014. On March 27, 2014, counsel for B&A sent you another letter attempting to refute points made in your response letter. In light of B&A's improper attempt to influence this process, we write to address certain issues raised in its letters.

It is important to note at the outset that BEA is an extremely qualified firm that stands ready to provide premium Architectural and Engineering services to the Seaport Engineering and Construction Division at a competitive cost. This is evidenced by the high scores received from the Selection Committee Members. Specifically, the five Selection Committee Members gave BEA scores of 82, 86, 88, 93, and 89 respectively, for a total of 438. The next highest point recipient was B&A, with a total of 429, and below B&A was Calvin, Giordano & Associates, Inc. at 366. Therefore, BEA clearly is in the top echelon of proposers in this RFP process and looks forward to exceeding the County's expectations under this on-call contract. With all the sound and fury created by B&A, there is a risk that this fact might be lost in the shuffle. But, make no mistake: BEA is the most qualified and deserving proposer.

Another introductory point worth emphasizing is B&A did not file a protest concerning the solicitation specifications or requirements when the RFP was published or a protest concerning the proposed recommendation of ranking when it was posted. Sections 21.118(a)(1) and (2) of the Broward County Procurement Code ("Procurement Code") authorize aggrieved proposers to submit protests on these grounds. Thus, quite obviously B&A is attempting to

circumvent the procedural requirements of the Procurement Code in a misguided effort to influence the decision-making of the County Commission. For this reason alone, B&A's letters should be summarily rejected.

Setting aside the procedural deficiencies, B&A's letters are wholly without merit. The main focus of B&A's letters is that the RFP allocated in the Evaluation Criteria 10 points for "Volume of Work." The Evaluation Criteria set up a 100 point review structure with 10 distinct categories, such as Qualifications and Experience. Specific to B&A's gripe, the scoring sheet indicated a vendor would get 10 points for the "Volume of Work" category if it had less than \$150,000.00 of County project work in the last five years, and a vendor would get 0 points in this category if it had over \$1,000,000.00 of County work in the last five years, with varying point distributions corresponding with dollar amounts in between. BEA received 10 points for this category because it had no projects with the County in the last five years, and B&A received 0 points for this category because it had performed so much work for the County in the last five years. Since there were five Selection Committee Members that each had the 100 point Evaluation Criteria sheets, BEA effectively received 50 total points and B&A received 0 points for this "Volume of Work" category.

B&A's objection on this issue is way off base. Florida Statute 287.055(4)(b) actually **mandates** that government entities when procuring services governed by this statute (commonly referred to as "CCNA") consider the amount of prior work competing firms have performed for the government entity. The relevant provision of the CCNA states in no uncertain terms:

In determining whether a firm is qualified, the agency **shall** consider such factors as . . . the volume of work previously awarded to each firm by the agency, with the object of effecting an equitable distribution of contracts among qualified firms

Fla. Stat. 287.055(4)(b) (emphasis added).

Accordingly, it is obvious from the statute that the County can and must include "Volume of Work" in the list of evaluation criteria. Failing to analyze that factor would violate Florida law. The extent to which "Volume of Work" was considered in this RFP process was, of course, a matter of discretion unquestionably vested in the procuring authority. See *Miami-Dade County v. Church & Tower, Inc.*, 715 So.2d 1084 (Fla. 3d DCA 1998); *Liberty County v. Baxter's Asphalt & Concrete, Inc.*, 421 So.2d 505 (Fla. 1982). B&A's complaint that it is being mistreated as a result of the voluminous work it received from the County in the past should fall on deaf ears at the County Commission, since at core it is a baseless, self-interested disagreement with a discretionary decision.¹ In point of fact, the County's decision to allocate a mere 10% of the total points available to a "Volume of Work" analysis was a perfectly fair exercise of discretion and a practice that has been implemented in County solicitations for two years with no ill effect.

Moreover, B&A's letters should be rejected because the County Commission recently publicly discussed the "Volume of Work" issue and voted overwhelmingly to not disturb any rfps with point allocations for amount of prior work already evaluated by selection committees. At the March 18, 2014 regular commission meeting, agenda item 22 set forth a motion to discuss the point allocation for "Volume of Work" as defined in the CCNA. At least 18 members of the community, including multiple representatives from the B&A team, spoke on the matter. In addition, the County Commissioners debated the topic for over two hours, with the majority of the Commissioners expressing grave concern about retroactively changing point allocations of published rfps. Ultimately, the Commission voted 8-1 that the County should not disturb any rfps that have proceeded past the selection committee phase, which includes the RFP that is the subject of B&A's objection letter. This vote, on its own, is dispositive of the issues raised in B&A's letters.

Fearing the obvious implications of this recent vote, B&A attempts in its March 27, 2014 letter to exempt this RFP from the ambit of the County Commission's unequivocal policy decision. B&A spuriously argues, "By filing the 3 Day Objection Letter, B&A preserved its right to raise these issues before staff and the County Commission as permitted in the Procurement Code ." and that this RFP and the objection must be exempted from the vote because it was not properly before the Commissioners. Like so many of B&A's arguments, this one is without basis in law or fact. Nowhere in the Procurement Code does it say the act of filing an objection letter exempts an rfp from a valid Commission vote. More importantly, B&A knows the County Commissioners extensively discussed the exact issues raised in its letters and made a principled policy decision, by 8-1 vote, against retroactively changing the rules of published rfps or rejecting submitted proposals to allow for a re-solicitation. The Commission vote controls, and B&A's letters should be rejected.

Another facet of B&A's first objection letter was that the "Volume of Work" criterion unfairly penalized local companies, such as B&A and its subcontractors. BEA believes it is helpful for the County Commissioners to know that B&A and BEA both have their headquarters in Miami-Dade and that both B&A and BEA included multiple Broward-based subcontractors on their teams, thus mitigating the extent to which local firms are supposedly punished by the structure of the RFP.

Moreover, B&A never even alleges, in either of its letters, that the Selection Committee deviated from the procedures or requirements of the Procurement Code or the County guidelines. Numerous reported cases have held that unless an aggrieved proposer can show deviation from established procedures or requirements a procuring authority's discretionary decision should not be disturbed. This principle of law further undermines B&A's complaints.

While B&A's failure to file a protest should be fatal to their post-Selection Committee politicking, the fact that it did not file a protest at the outset of this process is particularly telling. B&A received the RFP documents and submitted a proposal, by definition indicating it reviewed and analyzed the RFP. The Evaluation Criteria with the clearly identified scoring structure that was included in the RFP documents is attached to this letter. B&A got this Evaluation Criteria

sheet at the very beginning of this entire process. That B&A read the RFP, saw the published scoring sheet with the 10% point allocation for Volume of Work, and then chose not to protest it reveals B&A does not actually think the point structure violated the law or the dictates of common sense. B&A's silence on this issue, at the beginning of the process, amounts to acquiescence. What is more, none of the other proposers protested the point allocation for Volume of Work, further undermining the argument that it was irrational or illegal. To put it flatly, if the 10% point allocation for prior work were so bad, at least one of the competitive proposers would have said something. As B&A knows, many other procuring authorities around the state governed by CCNA give a similar number of points for Volume of Work.

So, B&A waited until the scoring took place, and only once it found out that it came in second place did B&A attempt to cry foul. The timing of B&A's letters shows its complaints are not about fundamental fairness but rather about a disgruntled proposer trying to get another bite at the apple.

Yet another weakness in B&A's letters is the exaggerated emphasis it places on the impact of the Volume of Work point allocation in the Selection Committee's ranking and the related counterfactual exercise B&A engages in. Specifically, B&A goes to great pains to contend BEA only was ranked first because of the Volume of Work criterion and that if that criterion were removed, B&A would have been ranked the superior firm.

But, that argument oversimplifies the process. Proposers received points in 10 different, subjective categories. Removing one category and assuming the Selection Committee's results would be exactly the same in all of the remaining categories as the original scoring is a logical fallacy. On the next page is the actual Scoring Sheet the Evaluation Committee Members received at the Evaluation Meeting:

RFP No. X1159616P1
Architectural-Engineering Services for the Seaport Engineering and Construction Division

Scoring Sheet: Evaluation - Project Specific Criteria	Max Points Available	BEA architecture, inc.	Bornelle Ayami & Partners, Inc.	Calvin, Giordano & Associates, Inc.	DeRose Design Consultants	Kosinski architecture
1. Describe the qualifications and relevant experience of the Project Manager and key personnel that are most likely to be assigned to this proposed project. Include resumes for the Project Manager and any key personnel described. Include the qualifications and relevant experience of all sub-consultants to be used in this project. Provide a comprehensive organizational chart including all members of the proposed project team, i.e., Land Surveying, Geotechnical Engineering, Civil Engineering, Transportation and Traffic Engineering, Environmental Protection, Landscape Architecture, Structural Engineering, Interior Design, Lighting Design, Fire Protection, Planning, Mechanical Engineering, Electrical Engineering, Telecommunications and Data Engineering, Imaging Information Modeling (BIM) and LEED/AP related services. Describe the Prime Proposer's approach to the project. Include how the Prime Proposer will use sub-consultants in the project.	20	18	20	15	15	13
2. Outline a comparable experience within a seaport environment during the past 10 years, including a brief history that describes project work with major source stakeholders in developing operational projects such as dredging, environmental design, engineering and construction which provided the ability to maintain continuity of operations during the implementation.	20	17	19	15	15	14
3. Provide project experience within a maritime environment. Include active and completed projects related to cruise and/or cargo terminal expansion/construction, marine infrastructure, dredging, roadway and utility construction within a seaport environment.	10	10	10	7	7	5
4. Provide evidence of knowledge and experience working with the Florida Building Code in conjunction with the governing municipalities: Broward and Dade County and other agencies such as the Federal Emergency Management Agency (FEMA).	10	8	10	10	8	7
5. Outline your firm's CH2DAD capabilities and projects completed related to utility databases and data creation. Include experience with Environmental Systems Research Institute (ESRI) software.	5	4	5	5	4	3
6. Describe your LEED experience and knowledge. Provide a comprehensive list of completed projects that achieved LEED certification and completed projects that successfully obtained LEED certification. In addition, provide the credentials of the LEED accredited professionals employed by your firm and on the proposed project team. Provide a list of projects your firm is currently producing and has completed using Building Information Modeling (BIM).	10	9	10	7	7	9
7. The selection is for the award of a consulting contract. The specific projects requiring professional services under the contract have not yet been identified. However, in general, please explain your firm's approach in meeting "project specific" time and budget requirements and indicate whether your firm is committed to meet these requirements when identified under the contract.	5	4	5	5	4	3
8. Identify the staff office location responsible for this project. (Exact Address) = Numerical Score 0-60 Miles = 5 Points 61-100 Miles = 3 Points Over 100 Miles = 0 Points	5	5	5	5	5	5
9. List all projects, including project number, with Broward County during the past five (5) years - completed and active, with regard to the Prime Proposer only. Volume of Work, size, complexity, Amendments, Purchase Orders, Change Orders and Work Administrations. In addition, list all projected projects that your firm will be working on in the near future. Projected projects will be defined as a project(s) that your firm has been awarded a contract but the Notice To Proceed has not been issued. Identify any projects that your firm is working on concurrently. Describe your approach to managing these projects. Were there or will there be any challenges for any of the listed projects? If so describe how your firm plans to deal with the challenges. \$0 - \$150,000 = 10 Points \$150,001 - \$300,000 = 8 Points \$300,001 - \$500,000 = 6 Points \$500,001 - \$750,000 = 4 Points \$750,001 - \$1,000,000 = 2 Points Over \$1,000,000 = 0 Points	10	10	9	10	5	10
10. Provide current references and contact information, including Project Number and Exact Address, for all of your projects, 2011, 2010.	5	4	5	2	3	3
TOTAL POINTS:	110	89	89	81	68	72
Firm Name: <u>Leonard Vialpando</u>						
Signature (Firm): <u>Leonard Vialpando</u>						

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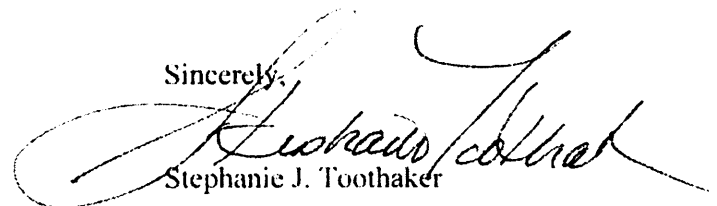
Naturally, the Selection Committee Members reviewed this Scoring Sheet and saw that points were being provided to proposers based on the Volume of Work criterion. If no points or less points were allocated for Volume of Work, the Selection Committee Members might give points to proposers differently. The Scoring Sheet would have looked differently and made different impressions on the Selection Committee Members. There is no way to know how the process would have played out. What we do know is B&A and BEA were the two highest ranked proposers, and that they were extremely close in all other categories other than Volume of Work. The Volume of Work point allocation, *and* all of the other subjective points BEA received and B&A did not receive allowed BEA to edge out B&A and receive the most points.

And this warrants mentioning again the clear mandate of CCNA. It requires procuring authorities to effect an equitable distribution of contracts among qualified firms. In this RFP, the scoring structure and Selection Committee ultimately fulfilled the exact objectives of CCNA. The ranking came down to two closely qualified proposers, and the proposer with no prior work with the County got a slight bump and was ranked first. In point of fact, this RFP yielded an optimal result from CCNA and fairness perspectives. Allocating anything less than 10% of the total points to the Volume of Work category actually might run afoul of CCNA. If the percentage is too low, it will have nothing more than a de minimis impact on the process, when CCNA explicitly requires that it be a meaningful part of these rfps. Quite contrary to the accusations and criticism from B&A, BEA believes the Purchasing Director has done an admirable job juggling the priorities of CCNA.

In conclusion, the RFP to which B&A objected complied with Florida and Broward County law. The structure of the RFP and the process by which the Selection Committee ranked vendors were fair and honest. Accordingly, BEA respectfully requests B&A's letters be overruled or ignored by the County Commission and that the County Commission approve the Final Recommendation of Ranking.

Please ensure this letter is included in the information provided to the Board of County Commissioners at the time when the ranking is placed on the agenda for Commission consideration.

Sincerely,



Stephanie J. Toothaker

¹ It is noteworthy that neither of B&A's letters reference any case law whatsoever on these issues. In this case, the simplest explanation is the right one: B&A's position is not based on the law but on their biased interpretation of it.

CC: Ms. Joni Armstrong Coffey, County Attorney
Mr. John Horne, Project Manager
Mr. Glenn Miller, Assistant County Attorney
Mr. Bruno Ramos, BEA Architects. Inc.



Broward County Purchasing Division

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Evaluation Criteria

The following list of Evaluation Criteria total 100 points. Subsequent pages will further detail and define the Evaluation Criteria which are summarized with their numerical point ranges.

1. Describe the qualifications and relevant experience of the Project Manager and all key personnel that are most likely to be assigned to this proposed project. Include resumes for the Project Manager and all key personnel described. Include the qualifications and relevant experience of all sub-consultants to be used in this project. Provide a comprehensive organizational chart including all members of the proposed project team, i.e., Land Surveying, Geotechnical Engineering, Civil Engineering, Transportation and Traffic Engineering, Environmental Protection, Landscape Architecture, Structural Engineering, Interior Design, Lighting Design, Fire Protection, Plumbing, Mechanical Engineering, Electrical Engineering, Telecommunications and Data Engineering, Building Information Modeling (BIM) and LEED/AP related services. Describe the Prime Proposer's approach to the project. Include how the Prime Proposer will use sub-consultants in the project.	20
2. Describe comparable experience within a seaport environment during the past 10 years coordinating a broad based multi-disciplined project working with multiple diverse stakeholders in developing an overall project plan including environmental design, engineering and construction which provided the ability to maintain continuity of operations during the implementation.	20
3. Provide previous experience within a maritime environment. Include active and completed projects related to cruise and/or cargo terminal expansion/construction, marine infrastructure, dredging, roadway and utility construction within a seaport environment..	10
4. Provide evidence of knowledge and experience working with the Florida Building Code in conjunction with the governing municipalities throughout Broward County and other agencies such as the Federal Emergency Management Agency (FEMA)..	10
5. Describe your firm's GIS/CAD capabilities and projects completed related to utility databases and atlas creation. Include experience with Environmental Systems Research Institute (ESRI) software.	5
6. Describe your LEED experience and knowledge. Provide a comprehensive list of current projects that LEED certification is being pursued and completed projects that successfully obtained LEED certification. In addition, provide the credentials of the LEED accredited professionals employed by your firm and on the proposed project team. Provide a list of projects your firm is currently producing and has completed using Building Information Modeling (BIM)..	10



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7. This solicitation is for the award of a continuing contract. The specific projects requiring professional services under the contract have not yet been identified. However, in general, please explain your firm's approach in meeting "project specific" time and budget requirements and indicate whether your firm is committed to meet these requirements when identified under this contract.	5
8. Identify the exact office location responsible for this project. Miles from _____ (Exact Address) = Numerical Score 0-50 Miles = 5 Points 51-100 Miles = 3 Points Over 100 Miles = 0 Points	5
9. List all projects, including project number, with Broward County during the past five (5) years – completed and active, with regard to the Prime Proposer only. Volume of Work also includes Amendments, Purchase Orders, Change Orders and Work Authorizations. In addition, list all projected projects that your firm will be working on in the near future. Projected projects will be defined as a project(s) that your firm has been awarded a contract but the Notice To Proceed has not been issued. Identify any projects that your firm worked on concurrently. Describe your approach in managing these projects. Were there or will there be any challenges for any of the listed projects? If so describe how your firm dealt or will deal with the challenges. \$0 - \$150,000 = 10 Points \$150,001 - \$300,000 = 8 Points \$300,001 - \$500,000 = 6 Points \$500,001 - \$750,000 = 4 Points \$750,001 - \$1,000,000 = 2 Points Over \$1,000,000 = 0 Points	10
10. Provide named references and contact information, including phone number and e-mail address, for all of your cited projects. Note: Broward County Performance Evaluations will be considered in the evaluation of proposers. The Project Manager will provide the Performance Evaluations to the Evaluation Committee Members.	5
TOTAL POINTS	100