

ITEM #35

ADDITIONAL MATERIAL 10:00 REGULAR MEETING APRIL 8, 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 7, 2014

TO: Board of County Commissioners

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

Digitally signed by BCB MIRACLE
DN: cn=cb, o=Broward, ou=bc,
ou=Organization, ou=BCCL, ou=FA,
ou=Users, cn=BCB MIRACLE
Date: 2014.04.07 14:12:56 -0400

FROM: Brenda J. Billingsley, Director BRENDA
Purchasing Division BILLINGSLEY

Digitally signed by BRENDA J. BILLINGSLEY
DN: cn=cb, o=Broward, ou=bc,
ou=Organization, ou=BCCL, ou=FA,
ou=Users, cn=BRENDA J. BILLINGSLEY
Date: 2014.04.07 13:16:27 -0400

SUBJECT: April 8, 2014 Commission Meeting - Agenda Item #35 Ranking Order for
Request for Proposals (RFP), X1159616P1, Architectural/Engineering
Services for the Seaport Engineering and Construction Division

Attached is a Cone of Silence communication consisting of a letter dated March 27, 2014 from LSN Government Affairs (LSN) regarding RFP X1159616P1, Architectural/Engineering Services for the Seaport Engineering and Construction Division. In reviewing this communication there does not appear to be any new information presented.

A letter of objection regarding this procurement was sent by LSN on March 7, 2014. A copy of the letter is attached to the referenced Agenda item as Exhibit 2 along with a copy of the response to the objection letter, Exhibit 3.

In accordance with the Broward County Procurement Code, Section 21.118, there was no protest or appeal filed regarding this procurement.

BJB/kw/hmm

Attachment

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



LSN GOVERNMENT AFFAIRS
Local • State • National

March 27, 2014

Ms. Brenda Billingsley, Director
Broward County Purchasing Division
115 South Andrews Avenue
Fort Lauderdale, FL 33301

**RE: REQUEST FOR PROPOSALS ("RFP") X1159616P1, PORT EVERGLADES
ARCHITECTURAL/ENGINEERING SERVICES FOR THE SEAPORT
ENGINEERING AND CONSTRUCTION DIVISION**

Dear Ms. Billingsley:

This letter addresses issues and poses questions relative to your March 25, 2014 reply to the Objection Letter that I sent on behalf of my client, Bermello Ajamil & Partners ("B&A").

The RFP Evaluation Criterion #9 allocated a maximum of ten (10) points per Evaluation Committee ("EC") member to a firm, BEA Architects, that had no business with Broward County during the past five (5) years, and zero (0) points per Evaluation Committee member to B&A that had over \$1,000,000 in business with Broward County in the last five (5) years. As scored by the County staff, not the five (5) member Evaluation Committee, the firm of BEA Architects was awarded a total of five (50) points and B&A was awarded zero (0) points on Evaluation Criterion #9.

Absent these arbitrary 50 points, B&A was adjudged by all five EC members to be the superior firm: B&A: 429; BEA Architects: 388. The use of preset staff scores on the Volume of Work category substantially skewed the outcome to a result that proposes to award the contract to a firm that was not adjudged to be the most "highly qualified firm."

In your letter to me, you stated that "the state legislature, and not the County staff, made the determination to evaluate 'Location' and 'Volume of Work' in considering the qualifications of a firm" under the Consultants Competitive Negotiations Act ("CCNA"), Sec. 287.055, Fla. Stat. While we agree that Volume of Work is expressly mentioned in CCNA as an acceptable criterion, the explicit modifier of that Statute was conspicuously absent from your reply letter. The modifier language of the CCNA Statute contains a clear caveat: consideration of volume of work previously distributed should "not violate the principle of selection of the most highly qualified firms."

March 27, 2014
Request for Proposals X1159616P1
Port Everglades Architectural/Engineering
Services for the Seaport Engineering and
Construction Division

Moreover, the use of an inflated and arbitrary total of 10 points out of a 100 point total was a number selected by County staff (not the State Legislature). This evaluation criterion was never discussed at any time by the County Commission prior to this RFP. The County Commission vote on March 18, 2014 to use a maximum of three (3) points for Volume of Work and the substantial increase of the dollar volumes being proposed is the first time that the Commission weighed in on this important issue, and also a far more measured approach than the inflated, arbitrary numbers used by staff on this issue in the RFP.

The result of the arbitrary use of the maximum of 10 points and a minimum of zero distorted the result to where the most highly qualified firm was not selected and where the full mandate of CCNA was not followed.

A second aspect of Evaluation Criterion #9 (Volume of Work) is also at issue. According to your March 25th letter to me, you state that the EC members had no role in scoring this category because staff had pre-scored Volume of Work. As you indicated, that is how Purchasing arrived at the conclusion that B&A would receive zero (0) points and BEA Architects the full 10 points.

The problem with your conclusion is that a clear reading of Evaluation Criterion #9 reflects a series of questions to be addressed by proposers and to be subjectively scored by EC members:

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. (Emphasis added)**

\$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

March 27, 2014
~~Request for Proposals~~ X1159616P1
Port Everglades Architectural/Engineering
Services for the Seaport Engineering and
Construction Division

By County staff presuming to pre-score this part of the evaluation with a number based solely on Volume of Work, the EC members were deprived of their right and duty to subjectively judge each proposer on how they responded to the questions specifically contained on the face of the Evaluation Criterion #9.

In both its proposal and its presentation, B&A specifically addressed the questions posed in Criterion #9. Moreover, some of the subjective questions set forth above in Criterion #9 were asked by the EC during B&A's presentation. Yet, the EC members were deprived of the ability to consider these issues in the scoring under Evaluation Criterion #9.

Using a hard and fast number defeats the purpose of properly weighing Volume of Work. All contracts are not the same and utilization of questions that allow subjective considerations is a fair way to approach this issue so long as EC members are afforded the opportunity to carry out their duty to evaluate the proposer fairly. So the questions under Evaluation Criterion are relevant:

"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."

Those are good questions; and, B&A provided good responses. The problem is that the EC could not score those responses.

With the County Commission policy of allocating a maximum of three (3) points for Volume of Work over five (5) years, these kinds of questions will likely be addressed in other categories. But not so here on this RFP, where the questions were an express part of Evaluation Criterion #9.

An indication of the confusion relative to the scoring of the Evaluation Criterion #9 is exemplified by the scoring sheet of EC member Karl Eckhardt. (See Attached hereto). Mr Eckhardt's ballot was the only one that appropriately did not have scores for #9 already typed in by staff. It appears that Mr. Eckhardt was directed to write in certain scores at the direction of staff, but then perhaps realizing the scoring also had a subjective element, Mr. Eckhardt crossed out his scores for #9 without scoring. Nonetheless, when staff totaled Mr. Eckhardt's ballot at the bottom labeled "total points" the crossed out scores were added back in by staff. The total on Mr. Eckhardt's ballot as entered by staff is not a correct reflection of his scoring. Thus, Mr. Eckhardt's ballot total should not have reflected those scores that Mr. Eckhardt had deleted by striking them out. Deletion of the stricken scores on the ballot changes the outcome of the overall scoring and ranking.

March 27, 2014
Request for Proposals X1359616P1
Port Everglades Architectural/Engineering
Services for the Seaport Engineering and
Construction Division

It is notable that under the Commission's more measured new policy of a maximum three (3) point system, on this RFP, the B&A team would have received a total score of 429 points and BEA Architects would have received 403 points.

Consequently, the failure to allow a full and fair scoring of the Volume of Work Evaluation Criterion has, in fact, tainted the result of this procurement. As a result, the Commission should reject all proposals and re-solicit with a new RFP consistent with a more well-reasoned scoring matrix.

A re-solicitation will not harm the Port or the County. This RFP relates to an "on call" contract and there is no single project that will be negatively affected by a delay of the three (3) months it will take to re-solicit with a new RFP. The Port currently has coverage by existing on-call contracts that will not expire until almost a year from now.

We want to emphasize that as an on-call contractor in Port Everglades, B&A has over the past five (5) years passed more than 47% of its revenues through to other qualified firms, 99% of which are CBE firms:

CONSULTANT NAME	TOTAL AMOUNT	
Aylward Engineering & Surveying, Inc.	\$ 197,804.05 CBE	
Cordova Rodriguez & Associates, Inc.	\$ 583,584.29 CBE	
Hammond & Associates, Inc.	\$1,305,269.42 CBE	
James Santiago	\$ 15,350.08	
Joseph B. Kaller & Associates, P.A.	\$ 5,000.00	
KABA Total	\$ 95,925.90 CBE	
Lakdas/Yohalem Engineering, Inc. Total	\$1,818,818.98 CBE	
PME Engineering Corp. Total	\$ 2,544.12	
S & F Engineers, Inc. Total	\$ 132,884.37 CBE	
Sejas Consulting, Inc. Total	\$ 400.00	
Spacial Visionz, Inc. Total	\$ 6,600.00	
Tierra South Florida, Inc. Total	\$ 272,600.61 CBE	
Total for Consultants	\$4,436,781.81	47%
Total for B&A	\$4,971,270.19	53%
Grand Total	\$9,408,052.00	

March 27, 2014
Request for Proposals X1159616P1
Port Everglades Architectural/Engineering
Services for the Seaport Engineering and
Construction Division

In an on-call contract, as issues arise, the Port contacts B&A and requests them to find the right subcontractor for the job. In many respects this is quite different from a project where an architect may be hired to design a specific building. Yet, in evaluating Volume of Work with a hard and fast point allocation of points fails to consider the pass-through aspect of an "on-call" contract.

B&A's Objection Letter that raised these issues was written and submitted on March 7, 2014. B&A and its representatives have observed the Cone of Silence that applies to this RFP. 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. As a matter of procedural due process and fundamental fairness, this RFP must be exempted from any Commission vote (on March 18, 2014) to preempt our Objection since it was not properly before them at the time but was in fact already filed. Each RFP must be addressed on its own merits as to whether the process followed comported with State law, the Procurement Code and/or procedural due process. To the best of my knowledge, no other pending County RFP has had the outcome determined solely based on the use of this disproportionate allocation of point criterion. Therefore, the Commission's concern about "retroactivity" of its new policy should not apply to B&A's Objection Letter and its right to have these issues considered.

Based on the foregoing, we believe that the scoring of this particular RFP was inconsistent with the CCNA statute and common sense. In addition, the scoring of the Volume of Work Evaluation Criterion was tainted by staff's pre-determined scoring of this category. Consequently, this particular RFP process should be thrown out and a solicitation should go forward under the County's new policy.

On behalf of Bermello Ajamil & Partners, Inc., I hereby attest that the matters and statements contained herein are accurate, true, and correct. Moreover, on behalf of my client, we acknowledge that the determination of inaccurate, untruthful, or incorrect statements herein may serve as a basis for debarment.

Thank you for your consideration. Please ensure that this response is included in the information provided to the County Commission when the item is placed on the Agenda.

Very truly yours,

George I. Platt

George I. Platt, Esq.

Digitally signed by George I. Platt
DN: cn=George I. Platt, o=ISN
Partners, ou,
email=gplatt@isnpartners.com, c=US
Date: 2014.03.28 16:01:10 -0400

March 27, 2014

Request for Proposals X1159616P1

Port Everglades Architectural/Engineering
Services for the Seaport Engineering and
Construction Division

cc: Ms. Joni Armstrong Coffey, County Attorney
Mr. John Horne, Project Manager
Mr. Glenn Miller, Assistant County Attorney
Mr. Mark Ittel, Senior Vice President, Partner in Charge
Bermello Ajamil & Partners, Inc.
Mr. Luis Ajamil, Bermello Ajamil & Partners, Inc.
Mr. Tom McDonald, Craven Thompson & Associates

RFP No. X1159618P1
Architectural-Engineering Services for the Senior Engineering and Construction Division

[illegible]

JK