



Finance and Administrative Services Department

PURCHASING DIVISION

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Certified Mail No. 7003 1010 0003 0948 2422

April 15, 2014

George I. Platt, Esq.
LSN Government Affairs
333 N. New River Drive East, Suite 3100
Fort Lauderdale, FL 33301

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

Dear Mr. Platt:

I am in receipt of your second letter related to RFP X1159616P1 dated March 27, 2014 in which you describe the "Volume of Previous Work" evaluation criterion as arbitrary, and allege that the evaluation criteria and scoring was distorted to where the most highly qualified firm was not selected contrary to the mandate of the Consultant's Competitive Negotiation Act (CCNA).

In response, I vigorously refute the assertion that the County's use of the "Volume of Previous Work" evaluation criterion as being "arbitrary". Your continuing assertion that the apportionment of ten (10) scoring points for Volume of Previous Work is "arbitrary" is incorrect. In a survey prepared for the Board's March 18 Meeting (Item 22), "Volume of Previous Work" scoring at ten (10) points is used by other public entities in the State of Florida to achieve compliance with the CCNA. (Exhibit 1).

Your letter also contends that the scoring of Volume of Previous Work should have been a combination of subjective and objective factors. The scoring method for RFP Item 9 (Volume of Previous Work) was clearly defined in the RFP solicitation document. The score was based on the Volume of Previous Work, not on information to be subjectively scored. The additional information requested in the RFP, Item 9 was gathered as additional information for the Evaluation Committee members but was not intended to be scored (i.e. "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 will deal with the challenges."). The ten (10) points for Volume of Previous Work were clearly defined in the RFP document and involved a sliding scale of scoring points tied to how much previous work the proposer had performed for Broward County. The dollar amounts for five years of previous work for Broward County are clear and objective numbers to which the pre-defined sliding scale of scoring points was applied for each proposer.

Broward County Board of County Commissioners


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Finally, I will respond to the assertion that the scoring was distorted to where the most highly qualified firm was not selected contrary to the mandate of the Consultant's Competitive Negotiation Act. I agree that the CCNA statute has mandates. One of them is that the statute requires "Volume of Previous Work" to be considered as one of the subject matters in determining the most qualified firm(s). It is not a factor to be considered in addition to qualifications; it is one of the factors in addition to other substantive areas, which determine which firm is the most qualified. Furthermore, the County's allocation of points for "Volume of Previous Work" does not violate the principle of selection of the most highly qualified firms. The ten (10) points for "Volume of Previous Work" when weighed against the remaining ninety (90) points for various other qualification factors mandated by the statute, is not enough to move an unqualified firm into the highest ranks of the scoring totals. This would only happen if the majority of the points were allocated to this one criterion. This was not the case. In this case, it only comprised ten percent (10%) of the points and clearly does not violate the selection principle of the Act. In fact, it accomplishes precisely what the legislature was attempting to achieve, which is distributing work amongst qualified firms. Additionally, the appropriate process or venue for your client to have addressed any issues regarding the Evaluation Criteria would have been during the specification challenge period, not after the evaluation committee met and recorded their scores.

Following a careful review of the process utilized by the Evaluation Committee, it has been determined that the Evaluation Committee followed the guidelines of the solicitation and determined the first-rank firm, BEA Architects to be a highly qualified firm in keeping with the provisions of RFP X1159616P1, and in compliance with Section 287.055, Florida Statutes (CCNA). Furthermore, the assertion that elements of the RFP document and/or the Committee process were arbitrary, are vigorously refuted in both my March 25, 2014 response and this correspondence.

Sincerely,



Brenda J. Billingsley, Director
Purchasing Division

Attachments

BJB/kw/hmm

c: Glenn Marcos, Assistant Director, Purchasing Division
Peter Thomas, Purchasing Manager, Purchasing Division
Karen Walbridge, Purchasing Manager, Purchasing Division
Kevin Cheerangie, Purchasing Agent II, Purchasing Division
Glenn Miller, Assistant County Attorney, County Attorney's Office
John Horne, Project Manager, Port Everglades 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."

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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

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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.

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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	

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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

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

George I. Platt, Esq.

March 27, 2014

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**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. X1159616P1
Architectural-Engineering Services for the Seaport Engineering and Construction Division

Scoring Sheet Evaluation - Project Specific Criteria	Max Points Available	SEA Architecture, Inc.	Gerencia Ajm & Partners, Inc.	Calvin, Glendene & Associates, Inc.	Salinas Design Consultants	Macmillan Architecture	Simon Architectural Group
1. Describe the qualifications and relevant experience of the Project Manager and all key personnel that are most likely to be assigned to the 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., Lead Designer, Geotechnical Engineering, Civil Engineering, Transportation and Traffic Engineering, Surveying/Photogrammetry, Landscape Architecture, Structural Engineering, Interior Design, Lighting Design, Fire Protection, Plumbing, Mechanical Engineering, Electrical Engineering, Telecommunications and Data Engineering. Submit information Modeling (BIM) and LEED/AP related activities. Describe the Prime Proposer's approach to the project. Include how the Prime Proposer will use sub-consultants in the project.	20	20	20	19	18	12	
2. Describe enterprise experience within a limited environment during the past 10 years demonstrating a broad based multi-disciplinary project working with multiple diverse stakeholders in developing an overall project plan including civil structural design, engineering and construction which provided the ability to obtain authority of operations during the implementation.	20	20	20	16	18	10	
3. Provide previous experience within a marine environment. Include active and completed projects related to cruise ships or large marine operations/infrastructure, marine infrastructure, dredging, roadway and utility construction within a seaport environment.	10	8	10	7	7	5	
4. Provide evidence of technology and experience working with the Pacific Building Code in conjunction with the governing jurisdiction (Alameda County and other agencies such as the Federal Emergency Management Agency (FEMA)).	10	10	10	7	9	5	
5. Describe your firm's related experience and projects completed related to utility construction and other related. Include experience with Environmental Systems Research Institute (ESRI) software.	4	4	6	4	4	4	
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 certified professionals employed by your firm within the proposed project team. Provide a list of projects your firm is currently pursuing and has completed using Building Information Modeling (BIM).	10	8	10	5	5	5	
7. This subsection is for the award of a revolving contract. The specific projects regarding professional services under the contract have not yet been identified. However, to qualify, please explain your firm's approach to creating "revolving contract" firm and how your firm will be able to deliver the services as described in need (use requirements when identified under this period).	4	4	5	4	4	2	
8. Identify the most active location responsible for the project. Main firm (Check Address) = (Marked Office) 9-10 Miles = 5 Points 11-15 Miles = 4 Points Over 15 Miles = 3 Points	5	5	5	5	5	5	
9. List all projects, including project number, with Alameda County during the past 10 years - completed and active, with regard to the Prime Proposer's, Veterans of Wars Veterans Association, Purchase Office, Charge Office and Work Authorization. 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 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 to managing these projects. Note that if you have any changes for any of the listed projects, if so describe how your firm deal or will deal with the changes. 50 - \$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	0	10	0	10	
10. Provide overall experience and related information, including agency number and award letters for all of your related projects. Note:	4	4	4	2	5	3	
TOTAL POINTS	100	93	89	79	75	61	
Prop Name: KARL ECKHARDT							
Shown on file list:							

JK

Comparison Data: CCNA Statute Requirement - Compliance in Florida

	Procurement Methodology Used	Volume of Previous Work to Prime considered?	Volume of Previous Work to Subconsultants Considered?	Points for volume of Previous Work	Criteria for assigning points for volume of work
Broward County	Request For Proposal (RFP)	YES	NO	5 or 10 depending on complexity of project	<p>\$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</p> <p>NOTE: Dollar ranges will vary depending on estimated value of project</p>
Miami-Dade	RFP	YES	YES	5	Not available
Palm Beach County	RFP	YES	YES	10	<p>Adjusted Fee (AF) <\$200,000 10 points \$200,000<AF<\$400,000 9 points \$400,000<AF<\$600,000 8 points \$600,000<AF<\$800,000 7 points \$800,000<AF<\$1,200,000 6 points \$1,200,000<AF<\$1,600,000 5 points \$1,600,000<AF<\$2,200,000 4 points \$2,200,000<AF<\$2,800,000 3 points \$2,800,000<AF<\$3,400,000 2 points \$3,400,000<AF<\$4,000,000 1 point AF>\$4,000,000 0 points</p>
Pinellas County	RFP	YES	YES	5	<p>\$0 - \$200,000 – five (5%) percent of points available \$200,001 - \$400,000 – four (4%) percent of points available \$400,001 – 600,000 – three (3%) percent of points available \$600,001- \$800,000 – two (2%) percent of points available \$800,001 - \$1,000,000 – one (1%) percent of points available Over \$1,000,000 – zero (0%) percent of points available</p>

Comparison Data: CCNA Statute Requirement - Compliance in Florida

	Procurement Methodology Used	Volume of Previous Work to Prime considered?	Volume of Previous Work to Subconsultants Considered?	Points for volume of Previous Work	Criteria for assigning points for volume of work
Hillsborough County	RFP	YES	NO	5 out of 120 (i.e. 4 out of 100)	<div> <div>\$0 to \$200,000</div> <div>5 out of 120 points</div> </div> <div> <div>\$200,001 to \$400,000</div> <div>4 out of 120 points</div> </div> <div> <div>\$400,001 to \$600,000</div> <div>3 out of 120 points</div> </div> <div> <div>\$600,001 to \$800,000</div> <div>2 out of 120 points</div> </div> <div> <div>\$800,001 to \$1,000,000</div> <div>1 out of 120 points</div> </div> <div> <div>\$1,000,001 and above</div> <div>0 points</div> </div>
Orange County	RFP	YES	NO	5	<div> <div>No previous work with the County</div> <div>5 Points</div> </div> <div> <div>Firms with adjusted fees of \$1 through \$2,000,000</div> <div>4 Points</div> </div> <div> <div>Firms with adjusted fees of \$2,000,001 through \$3,000,000</div> <div>3 Points</div> </div> <div> <div>Firms with adjusted fees of \$3,000,001 through \$4,000,000</div> <div>2 Points</div> </div> <div> <div>Firms with adjusted fees of \$4,000,001 through \$5,000,000</div> <div>1 Point</div> </div> <div> <div>Firms with adjusted fees exceeding \$5,000,000</div> <div>0 Points</div> </div> <div> <div>NOTE: 5 points per policy however solicitations support 5, 10 or 15 points depending on complexity of project</div> </div>
Duval County	RFP	YES	NO	10	Not available
South Florida Water Management District	RFP	YES	YES	10	<div> <div>\$0 - \$150,000</div> <div>10 points</div> </div> <div> <div>\$150,001 - \$300,000</div> <div>8 points</div> </div> <div> <div>\$300,001 - \$500,000</div> <div>6 points</div> </div> <div> <div>\$500,001 - \$750,000</div> <div>4 points</div> </div> <div> <div>\$750,001 - \$1,000,000</div> <div>2 points</div> </div> <div> <div>Over \$1,000,000</div> <div>0 points</div> </div>