

Items 58

ADDITIONAL MATERIAL

10:00 a.m. Regular Meeting

DECEMBER 5, 2017

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

DATE: December 4, 2017
TO: Board of County Commissioners
THRU: Kevin B. Kelleher, Deputy CFO/Deputy Director
Finance and Administrative Services Department

Digitally signed by KEVIN
KELLEHER
Date: 2017.12.04
13:38:41 -05'00'

FROM: Brenda J. Billingsley, Director
Purchasing Division

BRENDA
BILLINGSLEY

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BILLINGSLEY
DN: cn=Kevin B. Kelleher, o=Broward County, ou=Users, cn=BRENDA BILLINGSLEY
Date: 2017.12.04 12:59:21 -05'00'

SUBJECT: December 5, 2017 - Commission Meeting - Agenda Item No. 58
Motion to Reject all proposals for Request for Proposals (RFP No. R2114349P1 and Motion to Approve extension of Agreement No. R1048101R1, Group Prepaid Legal Insurance Services for the Human Resources Division

Attached please find Cone of Silence communications dated December 1, 2017 submitted by Mark J. Stempler, Becker & Poliakoff, on behalf of U.S. Legal Services, Inc. and George I. Platt, LSN Partners, on behalf of Preferred Legal Plan regarding the subject procurement.

BJB/jc/lg

c: Bertha Henry, County Administrator
George Tablack, CPA, Chief Financial Officer
Mary McDonald, Acting Director, Human Resources Division
Lisa Morrison, Manager, Human Resources Division
Robert Melton, County Auditor
Andrew Meyers, County Attorney

December 1, 2017

625 N. Flagler Drive, 7th Floor
West Palm Beach, Florida 33401

VIA EMAIL: bbillingsley@broward.org

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

*Re: Agenda Item 58 – Motion to Reject All Bids Pre-Paid Legal Cone of Silence
Communication to Mayor and Commission*

Dear Ms. Billingsley:

As you know, the undersigned law firm represents U.S. Legal Services, Inc. (“U.S. Legal”). **This letter is in support of the County’s Motions to reject all proposals for the RFP and to approve the extension of the current services on a month-to-month basis.** Please forward this letter immediately to the Board of County Commissioners and please attach it to the agenda items for the December 5, 2017 County Commission meeting.

The solicitation and evaluation processes warrant the relief now sought and recommended by both the Purchasing Division and the Finance and Administrative Services Department/Human Resources Division:

- The RFP required that, **“the selected proposer shall, at a minimum, duplicate the current prepaid legal plan benefits.”** While U.S. Legal’s proposal meets this mandated requirement, the proposal submitted by the alleged top ranked proposer, Preferred Legal Plan (“Preferred Legal”), **does not meet this mandate.** In fact, it only meets 40% of the mandate according to County staff. Based on the County’s vast knowledge of what is best for its employees, and to ensure an apples-to-apples level playing field comparison on price, the County rightfully imposed this shall requirement in the RFP. This is typical in many RFP’s.
- **On the merit scores, U.S. Legal won!** However, on the 20 price points U.S. Legal lost points for abiding by the “shall” mandate of the RFP. Preferred Legal was incredulously rewarded with the winning points on scoring for providing 60% less coverage with a much cheaper plan, but not the plan the County mandated that vendors bid to ensure an apples-to-apples comparison on pricing. Since its plan does not cover most of the legal services provided under the current plan, and passes those costs directly onto the Broward County

employees that need them, Preferred Legal has artificially lowered its monthly up-front participant costs. Because Preferred Legal had the “lowest” price up-front on paper, it was awarded the maximum 20 points for price. Conversely, U.S. Legal was awarded less points for price, thereby getting penalized for complying with the County’s RFP requirements. The manipulation of this evaluation scheme is ultimately to the detriment of Broward County’s employees.

- **The Evaluation Committee determined Preferred Legal was responsible without even having reviewed its proposal.** During the initial evaluation meeting on August 10, 2017, the Evaluation Committee determined that all proposers were responsible and responsive. Then the Committee heard oral presentations from the proposers. Following that, **it was revealed that the evaluators had not yet received or reviewed the actual proposals submitted due to a computer system problem.** Therefore, the Evaluation Committee had no basis to determine the proposers were responsible or responsive, rendering that determination arbitrary, capricious and contrary to the RFP. However, that is the only way to explain how Preferred Legal’s proposal could have been deemed responsible.
- Since Preferred Legal did not meet the minimum performance levels required of this RFP, the evaluators were unable to conduct an apples-to-apples comparison of the proposals, thereby giving Preferred Legal an unfair competitive advantage.

Despite Preferred Legal’s claims, the County is not requiring that an “identical model” be used, but rather that the minimum benefits are provided. Preferred Legal’s plan removes benefits that Broward County employees currently receive across approximately two dozen categories of legal services, and passes the costs for that legal representation onto the employees. The plan fails to meet 60% of the RFP’s requirements. It is simply a bait and switch. Preferred Legal’s plan will be significantly more expensive for the County’s employees should they need legal representation and services. The RFP evaluation for price allowed Preferred Legal to manipulate the system.

As a result, Broward County should reject all proposals and re-solicit this RFP to address the issues outlined above, for the benefit of its employees. U.S. Legal is ready, willing and able to compete for the new award. In addition, U.S. Legal stands ready, willing and able to continue to provide prepaid legal insurance services to the County on a month-to-month basis until a new award is determined.

Ms. Brenda J. Billingsley
Director of Purchasing Division
December 1, 2017
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Thank you for your consideration of the foregoing.

Respectfully Submitted,



Mark J. Stempler, Esq.
For the Firm

MJS/jhb

cc: Lisa Morrison (lmorrison@broward.org)
Glen Miller, Esq. ([gmiller@broward.org](mailto:gmilller@broward.org))
Daphne Jones, Esq. (dajones@broward.org)
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Bernie Friedman, Esq. (bfriedman@bplegal.com)
Client

ACTIVE: 10363015_1



LSN PARTNERS
Local * State * National

December 1, 2017

Ms. Brenda J. Billingsley, Director
Broward County Purchasing Division
115 South Andrews Avenue, Rm. 212
Fort Lauderdale, FL 33316

Re: RFP No. R2114349P1, Group Prepaid Legal Insurance Services/Item 58 on Dec. 5, 2017
Commission Agenda

Dear Ms. Billingsley:

With respect to Agenda Item #58, I urge you to modify the Requested Action to be consistent with the requirements of the Broward County Procurement Code (Code).

Sec. 21.84 of the Code requires that the Evaluation Committee's ranking under this RFP be forwarded to the County Commission for its consideration. The current Agenda Item fails to do that.

I do not question your authority to request rejection of all proposals. However, the Code requires you to proffer the Evaluation Committee's recommended ranking and appropriate backup to the Board for approval.

Project Manager Lisa Morrison's memorandum dated October 27, 2017 requests that the procurement be terminated so that she can add an evaluation criterion to quantify how proposers replicate the model of the current provider. Such a change would create a de facto sole source purchase in violation of the letter and spirit of the Code. I detailed our reasoning on this in my November 27, 2017 letter to you where I requested a meeting to discuss this procurement.

Our Public Records requests failed to turn up any email or written documents of any consequence other than Ms. Morrison's October 27, 2017 memorandum. We are shocked and skeptical that this entire RFP process from April 2017 through November 16 did not generate any other communications. The EC did its ranking on August 14, 2017 and, not until October 27, 2017, does Ms. Morrison write her memorandum recommending termination of the RFP because she claims she made a mistake. Noticeably, Ms. Morrison's memorandum and your Agenda Report totally

fail to detail the extensive vetting of the proposer's plans that was done by the EC before the final vote to rank.

I have been doing this work a long time and I am admittedly an advocate for my client. I have great respect for you and your staff. But when the Code is not followed and the EC's hard work is ignored, then such action undermines public confidence in our government and the fairness of its procurement policies.

I hope that the County Commission recognizes these issues and approves the EC ranking. Kindly provide a copy of this letter to the County Commission.

Very Truly Yours,

A handwritten signature in black ink that reads "George I. Platt". The signature is written in a cursive style with a large initial "G" and a stylized "P".

George I. Platt

Cc: Andrew Meyers, County Attorney
Robert Melton, County Auditor
Brian Samuels, Esq.
Jason Rudolph, Esq.