

Item # 75 (2)

ADDITIONAL MATERIAL

10:00 a.m. Regular Meeting

DECEMBER 12, 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 11, 2017

TO: Board of County Commissioners

THRU: Kevin B. Kelleher, Deputy CFO/Deputy Director
Finance and Administrative Services Department

FROM: Brenda J. Billingsley, Director
Purchasing Division

SUBJECT: December 12, 2017 - Commission Meeting - Agenda Item No. 75
Motion to Approve final ranking of the qualified firms for Request for
Proposals (RFP) No. R2114673P1, Employee Benefits Consulting Services

Digitally signed by KEVIN
KELLEHER
Date: 2017.12.11
16:29:18 -05'00'

BRENDA
BILLINGSLEY

Digitally signed by BRENDA
BILLINGSLEY
DN: cn=brenda.billingsley, o=Broward County, ou=Users, cn=BRENDA BILLINGSLEY
Date: 2017.12.11 15:43:32 -05'00'

We are in receipt of the letter submitted by Gelin Benefits Group (Gelin) dated December 6, 2017, where Gelin advised of specific concerns with RFP No. R2114673P1 for Employee Benefits Consulting Services.

This memorandum is being forwarded as a formal response to the issues outlined in Gelin's letter:

Issue 1:

According to staff, this procurement did not have any CBE goals because code section 19.40.4(b)(4) requires that "At least two (2) certified CBE firms must be listed in the directory as potentially able to participate on the contract in order to establish a contract goal." There is no question that there were 2 CBE firms listed in the directory as potentially able to participate on the contract. (See July 26, 2017 Memo from Chris Atkinson through Sandy-Michael McDonald to Jacqueline A. Chapman.) However, staff sent some questions to both firms and as a result, determined that only 1 firm was actually interested in participating in the contract and thus established no CBE goals for this procurement.

However, the language in section 19.40.4 is very clear. In order to establish goals, the only requirement is that there are 2 certified CBS firms listed in the directory. There is nothing in this section requiring or authorizing staff to send out additional questions to see if any of the listed firms will subsequently have an interest in participating in the procurement. Because of the undisputed fact that there were 2 CBE firms listed in the directory as required by the code, staff should have included CBE goals in this procurement.

Board of County Commissioners
December 12, 2017 - Commission Meeting - Agenda Item No. 75 - Motion to Approve
final ranking of the qualified firms for Request for Proposals (RFP) No. R2114673P1,
Employee Benefits Consulting Services
December 11, 2017
Page 2

Gelin Benefits Group, LLC is a certified CBE, headquartered in Broward County, which submitted a proposal as a joint venture with Bolton Partners, Inc. Gelin Benefits Group would be performing fifty-one percent (51%) of the contract. The fact that Gelin was able to submit this joint venture proposal clearly shows that a CBE component was feasible for this procurement.

An additional issue for the Commission to consider is that at the Commission's meeting of September 27, 2017, Commissioner Bogen proposed the following change to the County's Procurement Code, to which Commissioner Holness requested to be added as a sponsor.

Item 42. MOTION TO DIRECT Office of the County Attorney to draft an Ordinance amending the Broward County Business Opportunity Act, Sections 1-81 through 1-81.8 of the Broward County Code of Ordinances (the "Business Opportunity Act"), and to draft a Resolution amending any related provisions of the Broward County Administrative Code, to require all County contracts that may be validly assigned County Business Enterprise (CBE) participation goals (e.g., contracts that are not subject to federal or state participation goals, are otherwise ineligible for participation under federal or state law, and sole source contracts) to have a minimum CBE participation goal of 25%, unless County staff demonstrates, at the time a related solicitation or motion to award a contract, as applicable, is presented to the Board for approval, that there is an insufficient number of available, certified County Business Enterprises (CBEs) that are qualified to participate in a specific project or that there are other compelling reasons to assign a lower CBE goal to a particular County contract. (Commissioner Bogen)

This item passed the Commission on a 7 -1 vote. I believe that this change to the County's code would have resulted in the inclusion of CBE goals for this procurement and would have likely changed the outcome of the scoring for RFP R2114673PI Employee Benefits Consulting Services.

Response to Issue 1:

Gelin's Benefit Groups correspondence to the Director of Purchasing, dated December 6, 2017, alleges that the County Administrative Code requires the OESBD Director to establish a County Business Enterprise (CBE) goal for all contracts where there are at least two CBE firms listed in the OESBD directory as potentially able to participate in the contract (collectively, "Issue 1"). According to Mr. Gelin, Issue 1 is supported by Section 19.40.4(b)(4) of the County Administrative Code.

Board of County Commissioners

December 12, 2017 - Commission Meeting - Agenda Item No. 75 - Motion to Approve final ranking of the qualified firms for Request for Proposals (RFP) No. R2114673P1, Employee Benefits Consulting Services

December 11, 2017

Page 3

Contrary to Mr. Gelin's assertions, the Business Opportunity Act of 2012 (the "Act"), as codified as Sections 1-81 through 1-81.8 of the Broward County Code of Ordinances, is the controlling legislation regarding CBE goal setting and all other matters related to the Broward County Small Business Development Program. Section 19.40 of the County Administrative Code are the administrative procedures that implement, but are secondary to, the Act.

In any event, neither the Act nor its administrative procedures require the OESBD Director or the County to establish CBE goals for contracts. Section 1-81.3(b) of the Act indicates that a "CBE goal is not required to be set for each contract," and indicates that capacity and availability, among other criteria, may be considered in determining whether a goal should be established. Moreover, Section 19.40.4(b) of the Administrative Code states that the OESBD Director is responsible for establishing CBE goals for County contracts "consistent with the overall goal established pursuant to the Act." Although the Act's administrative procedures allow the OESBD Director to establish a CBE goal when "at least two certified CBE firms [are] listed in the directory as potentially able to participate on the contract," the OESBD Director's "decision to establish or not establish a goal and the level at which a goal is established for a project are not administratively appealable." Sections 19.40.4(b)(3), (4), County Administrative Code.

For this solicitation, OESBD identified one CBE firm that could potentially perform subcontracting work for this project, based on and OESBD NAICS code and keyword search. No goal was established at that point because sufficient availability had not been demonstrated. Given an additional later review, an additional firm was identified that might potentially be available and have capacity for the project work. OESBD, acknowledging that the additional firm was missed, then met with Human Resources for additional clarification of the scope of the project work to allow OESBD to determine whether the availability and capacity was sufficient to establish a goal. Human Resources provided the additional information and queried both identified firms on their expertise and skill set, relevant to the work of the project. One firm affirmed that they did in fact have the capacity to participate on the project. The other wrote to the County in response that they did not have the necessary capacity for the work of the project. Once again, the County had one firm available, which did not present sufficient capacity to establish a goal for the project.

It is important to consider that the standard of two firms to establish a goal is a minimum standard. There is no requirement, per the Act or its supporting administrative procedures, to establish a goal on the basis of the mere existence of two firms as certified. In fact, the more common standard in this program and programs like it is the availability of 'ready, willing, and able' firms to participate in proposed projects, because firms listed in a directory is, by itself, not sufficient for determining availability in a market. In this case, the standard of availability and capacity required by the Act was not achieved, and no goal was applied for the project as a result.

Board of County Commissioners

December 12, 2017 - Commission Meeting - Agenda Item No. 75 - Motion to Approve final ranking of the qualified firms for Request for Proposals (RFP) No. R2114673P1, Employee Benefits Consulting Services

December 11, 2017

Page 4

Gelin Benefits Group statement regarding Item No. 42 Motion to Direct from September 27, 2017, is a recommended future goal change to the ordinance but is yet enacted. Even if it was, it would not be retroactive and it too, would follow the same process when determining eligibility of firms as well as subcontracting opportunities. If passed, it would not have automatically resulted in the inclusion of CBE goals for this procurement in question.

Issue 2:

The number one ranked firm is Wells Fargo. Wells Fargo has since been acquired by USI (see attached article). USI was not responsive to the RFP. USI did not submit a proposal, financial records, company information, or otherwise subject the company to the evaluation and procurement process. I believe that in the past when a respondent was acquired by another company in the middle of the procurement process, as is the case here, staff rejected the "new" respondents as they were not the same party who provided the response.

Finally, when you review the back-up, you will find that Gelin Benefits Group/Bolton Partners joint venture had the least objections to the County's standard contract.

Response to Issue 2:

The statement is correct that USI Insurance Services (USI) did not submit a proposal in response to the solicitation, the proposal was submitted by Wells Fargo Insurance Services USA, Inc. However, on October 30, 2017 at the Combination Initial and Final Evaluation meeting, Wells Fargo Insurance Services USA, Inc. (WFIS) disclosed to the Committee of their upcoming acquisition by USI. In addition to this notification, on November 9, 2017, a letter was received from Gallagher Benefits Services, Inc., informing County staff and the County Commissioners of the recent acquisition of WFIS by a national brokerage, USI (See December 12, 2017, Agenda Item No. 75, Exhibit 3).

It is not County policy to reject proposers in the midst of the solicitation process due to an acquisition. In any instance if an acquisition is finalized during the solicitation process, the County follows the established process of vetting the new company and presents the findings to the committee for consideration.

On December 4, 2017, the County was advised of the acquisition of WFIS and that WFIS is a wholly owned subsidiary of USI. Upon completion of their name change, the County will finalize the name change.

Board of County Commissioners

**December 12, 2017 - Commission Meeting - Agenda Item No. 75 - Motion to Approve
final ranking of the qualified firms for Request for Proposals (RFP) No. R2114673P1,
Employee Benefits Consulting Services**

December 11, 2017

Page 5

At the Combination Initial and Final Evaluation meeting, the County Attorney's Office addressed all exceptions taken by each proposer to the County's terms and conditions. Upon conclusion of the meeting, it was determined that the exceptions taken by all proposers were negotiable.

- c: Bertha Henry, County Administrator**
- Monica Cepero, Deputy County Administrator**
- George Tablack, CPA, Chief Financial Officer**
- Sandy-Michael McDonald, Director, Office of Economic & Small Business Development**
- Robert Melton, County Auditor**
- Andrew Meyers, County Attorney**
- Glenn Miller, Assistant County Attorney, Office of the County Attorney**