



Finance and Administrative Services Department

PURCHASING DIVISION

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

May 15, 2018

Keith M. Poliakoff, Esq.
Saul Ewing, Arnstein & Lehr
200 E. Las Olas Blvd, Suite 1000
Fort Lauderdale, FL 33301

Re: Bid No. PNC2115212C1 – District 2A Ground Storage Tank

Dear Mr. Poliakoff:

I am in receipt of your letter dated March 2, 2018, on behalf of your client, Munilla Construction Management LLC (MCM), in which you disagree with the County's non-responsible determination and request that MCM have the opportunity to participate in the Best and Final Offer process for the above referenced bid. Specifically addressing your objections, I offer the following:

Assertion No. 1:

As stated, the County's determination is erroneous and does not comport with the requirements of Sections 1-83.3 and 1-81.5 of the Broward County Code of Ordinances:

Response No. 1:

In accordance with Section 1-83.3(a) of the Broward County Code of Ordinances, the Office of Economic and Small Business Development (OESBD) established a County Business Enterprise (CBE) goal of 30% for this bid.

In accordance with Section 1-81.5(a) of the Broward County Code of Ordinances, "A bid shall be considered non-responsible unless a bidder meets either the CBE goal established for the contract or demonstrates good faith effort to meet the CBE goal". MCM did not meet the established goal of 30% for this project. The OESBD provided MCM with three (3) business days to provide the Letter of Intent Between/Offeror and County Business Enterprise (CBE) Subcontractor/Supplier and Application for Evaluation of Good Faith Effort to meet the established CBE goal of 30%. Upon review of the documents received from MCM by OESBD, the firm commitment to 22.38% CBE participation is less than the 30% CBE requirement (**Attachment 1**). Upon consideration of MCM's good faith effort, OESBD determined that MCM did not meet the quality, quantity and extent in its efforts, to meet the goal in accordance with Section 1-81.5.

Assertion No. 2:

The County is not permitted by the above sections to disqualify MCM from participating in the Best and Final Offer.

Keith M. Poliakoff, Esq., Saul Ewing, Arnstein & Lehr
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Response No. 2:

In accordance with Section 1-74 of the Broward County Code of Ordinances, in order for a firm to be qualified to participate in the Best and Final Offer process, the firm must be determined to be responsive and responsible. Four of the six firms who bid on the project met the established CBE participation goal of 30%. After careful review of the Good Faith Effort documentation provided by MCM, it was determined that MCM did not meet the established goal for this bid and was determined non-responsible for not complying with the CBE program requirements for this solicitation.

In review of the above, MCM was deemed a non-responsible bidder and was not eligible to participate in the Best and Final Offer process for this bid.

Sincerely,



Brenda J. Billingsley, Director
Purchasing Division

BJB/mpg/no/lg

Attachment

c: Glenn Marcos, Assistant Director, Purchasing Division
Martha Perez-Garviso, Purchasing Manager, Purchasing Division
Nancy Olesen, Purchasing Agent, Purchasing Division
Glenn Miller, Assistant County Attorney, Office of the County Attorney
Fernando Amuchastegui, Assistant County Attorney, Office of the County Attorney



OFFICE OF ECONOMIC AND SMALL BUSINESS DEVELOPMENT
Governmental Center Annex

115 S. Andrews Avenue, Room A680 • Fort Lauderdale, Florida 33301 • 954-357-6400 • FAX 954-357-5674

MEMORANDUM

DATE: February 2, 2018

TO: Nancy Olesen, Purchasing Agent
Purchasing Division

THRU: Sandy-Michael McDonald, Director
Office of Economic and Small Business Development *SM*

FROM: Freddy Castillo, Small Business Development Manager *FC*
Office of Economic and Small Business Development

SUBJECT: Bid No. PNC2115212C1 - District 2A - Ground Storage Tank
County Business Enterprise (CBE) Evaluation

The Office of Economic and Small Business Development (OESBD) conducted a review of the respondents' compliance with CBE Program requirements for the above referenced project. An overview is provided as follows:

The CBE goal for this project: 30%

Met the CBE Requirements:

| <u>Firms</u> | <u>Category</u> | <u>Percentage</u> |
|---|------------------------|--------------------------|
| Poole & Kent Company of Florida (Prime) | | |
| RF Environmental Services, Inc., d/b/a Milan Construction | CBE | 31.54% |
| Champion Controls, Inc. | CBE | 1.35% |
| Southland Painting Corporation | CBE | 0.20% |
| | | <u>33.09%</u> |
| Contractor's Bid Amount: \$7,610,000.00 | | |
| CBE Participation Commitment: 33.09% | | |
| Cardinal Contractors, Inc. (Prime) | | |
| Palm Construction Services Inc. | CBE | 31.77% |
| Gene Contracting Demolition, Inc. | CBE | 2.81% |
| | | <u>34.58%</u> |

Bid No. PNC2115212C1 - District 2A - Ground Storage Tank
County Business Enterprise (CBE) Evaluation

Contractor's Bid Amount: \$7,748,203.00
CBE Participation Commitment: 34.58%

Florida Design Contractors, Inc. (Prime)

RF Environmental Services, Inc., d/b/a Milan
Construction

CBE 30.1%

Contractor's Bid Amount: \$8,590,000.00
CBE Participation Commitment: 30.1%

Kiewit Infrastructure South Co. (Prime)

Pipecon Corporation, Inc.

CBE 25.0%

Gene Contracting Demolition, Inc.

CBE 3.0%

Alen Construction Group, Inc.

CBE 2.0%

Triple Nickel Paving, Inc.

CBE 0.5%

Champion Controls, Inc.

CBE 1.0%

31.5%

Contractor's Bid Amount: \$8,834,775.00
CBE Participation Commitment: 31.5%

Did Not Meet the CBE Requirements:

Firms

TLC Diversified, Inc. (Prime)

Alen Construction Group, Inc.

CBE 3.00%

Champion Controls, Inc.

CBE 2.00%

Pam Blount Plumbing and Supplies, Inc.

CBE 20.00%

25.00%

Contractor's Bid Amount: \$7,587,777.00
CBE Participation Commitment: 25.00%

Munilla Construction Management, LLC (Prime)

Pam Blount Plumbing and Supplies, Inc.

CBE 15.65%

WSD Contracting, Inc.

CBE 0.80%

Triple Nickel Paving, Inc.

CBE 0.44%

Alen Construction Group, Inc.

CBE 4.15%

Champion Controls, Inc.

CBE 1.34%

22.38%

Contractor's Bid Amount: \$7,687,000.00
CBE Participation Commitment: 22.38%

Bld No. PNC2115212C1 - District 2A - Ground Storage Tank
County Business Enterprise (CBE) Evaluation

CBE Compliance Comments:

Poole & Kent Company of Florida, Cardinal Contractors, Inc., Florida Design Contractors, Inc., and Kiewit Infrastructure South Co. submitted the required documentation in accordance with the solicitation's requirements and are compliant with the CBE program requirements.

TLC Diversified, Inc. initially submitted incomplete CBE Letters of Intent (LOIs) for this solicitation. The firm was given three (3) business days to provide complete LOIs or documentation demonstrating their good faith efforts to meet the goal. TLC Diversified, Inc. submitted three (3) complete CBE LOIs. However, the firm's CBE commitment was less than the 30% CBE goal and no supporting documentation for the evaluation of good faith effort was submitted. Therefore, TLC Diversified, Inc. is not in compliance with the solicitation and CBE program requirements.

Munilla Construction Management, LLC initially submitted incomplete CBE Letters of Intent (LOIs) for this solicitation. The firm was given three (3) business days to provide complete LOIs or documentation demonstrating their good faith efforts to meet the goal. Munilla Construction Management, LLC submitted five (5) complete CBE LOIs. However, the firm's CBE commitment was less than the 30% CBE goal. Upon review of their good faith effort, OESBD has determined that they did not meet the quality, quantity and extent in their efforts to meet the goal in accordance with Section 1-81.5 of the Broward County Business Opportunity Act of 2012. Therefore, Munilla Construction Management, LLC is not in compliance with the CBE requirements of this solicitation.

In addition, per Section 1-81.5 (e) (3) Determination of a Good Faith Effort of the Broward County Equal Opportunity Act of 2012 states: "In determining whether a bidder has made a good faith effort, the Program Director may also consider the level of participation proposed by other bidders. The closer the bidder's proposed participation is to the goal or to the proposed participation by other bidders, the greater the indication of good faith effort by the bidder." There were six (6) bids submitted for this project of which four (4) bids met or exceeded the CBE requirement. Therefore, it is determined that Munilla Construction Management, LLC Company is non-compliant with the CBE program requirements.

cc: Nichole Francis, Small Business Development Specialist, OESBD

**SAUL EWING
ARNSTEIN
& LEHR^{LLP}**

Keith M. Poliakoff

Phone: 954.713.7644

keith.poliakoff@saul.com

www.saul.com

March 2, 2018

Nancy Olsen
Purchasing Agent
Broward County Purchasing Division
115 South Andrews Avenue, Room 212
Fort Lauderdale, FL33301

Brenda J. Billingsley
Director of Purchasing
Broward County Purchasing Division
115 South Andrews Avenue, Room 212
Fort Lauderdale, FL33301

**Re: Solicitation Bid No. PNC2115212C1 – District 2A
Ground Storage Tank**

Dear Ms. Olsen and Ms. Billingsley:

This firm represents Munilla Construction Management LLC (MCM) in connection with the above referenced bid. It has come to our attention that the County may have found MCM to be non-responsive due to its alleged failure to meet the bid's CBE requirements. We believe this determination was erroneous for the reasons discussed below, and respectfully request that the County rescind the determination and allow MCM to participate in a Best and Final Offer (BAFO). A brief timeline of pertinent events concerning the solicitation is set forth below:

- 1/17/2018: MCM submitted a bid via Bidsync, where MCM placed 3rd among bidders at 1.31% over the lowest bidder (TLC Diversified which is not a local company).
- 1/23/2018: MCM made a public records request for bid packages submitted by all bidders, and the County (Nancy Olsen) sent MCM all packages the same day.
- 1/30/2018: The County (Nichole Francis) requested documentation with respect to MCM's CBE participation for the bid.
- 2/1/2018: The County (Nancy Olsen) requested a copy of MCM's general contractor's license, and MCM responded the same day by email, submitting a copy of their license.
- 2/2/2018 MCM responded by email and submitted an Evaluation of CBE Good Faith Effort.
- 2/8/2018: The County (Nancy Olsen) requested additional information (see below).
 - 1) Vendor Questionnaire, Item 26 – Non-Collusion Certification: Please provide response to this question.
 - 2) Litigation History Form – Complete and return form.
 - 3) Subcontractor/Subconsultant/Suppliers Requirement Form – Complete and return form.
- 2/12/2018 MCM responded by email submitting the information requested on 2/8/2018.

200 E. Las Olas Blvd • Suite 1000 • Fort Lauderdale, FL 33301
Phone: (954) 713-7600 • Fax: (954) 713-7700

DELAWARE FLORIDA ILLINOIS MARYLAND MASSACHUSETTS NEW JERSEY NEW YORK PENNSYLVANIA WASHINGTON, DC

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- 2/28/2018: MCM requested the opportunity to participate in a BAFO since its bid was within 5% of the lowest bidder and MCM is entitled to a local preference. The County (Nancy Olsen) responded the same day that MCM did not qualify for a BAFO since it did not meet the CBE requirements.

As stated, the County's determination is erroneous and does not comport with the requirements of sections 1-83.3 and 1-83.5 of the County code (Ord. No. 2012-33, §1). Section 1-83.3 provides in relevant part:

Sec. 1-81.3. - CBE goals and reserves.

(b) Contract goals shall be established as follows:

- (1) Unless the Program Director determines that no CBE goal should be set on a contract for the reasons set forth below, the Program Director shall establish CBE goals on each County contract in a manner designed to achieve, as nearly as practicable, the cumulative annual CBE goal then in effect.
- (2) A CBE goal is not required to be set for each contract, and goals set on any given contract may be higher or lower than the cumulative annual goal, depending on factors including whether the contract contains scopes of work suitable for performance by subcontractors; the capacity and availability of CBEs to perform the work required under the particular contract; and CBE participation on other County contracts. (emphasis added)

It is clear from the above sections that CBE participation is not an absolute, but a goal to strive for, the level of which may be "lower" than the goal "depending on factors including whether the contract contains scopes of work suitable for performance by subcontractors; the capacity and availability of CBE to perform the work required under the particular contract; and CBE participation on other County contracts." Here, we believe the CBE goal was impossible to achieve because the precast concrete tanks required for this contract (accounting for approximately 25% of the project) are proprietary to Crom Tanks and Precon Corporation which are not CBE's. Therefore, this scope should not be counted towards the CBE goal. Removal of this scope would result in MCM's bid having 30% CBE participation. Further, MCM has met or exceeded the CBE requirements on every other County project.

Section 1-81.5 provides in relevant part:

Sec. 1-81.5. - Satisfaction of CBE goals; good faith effort.

- (d) If the [CBE] information required by section (b) above is not provided in accordance with section (c) above, the information must be provided to the

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Nancy Olsen

Brenda J. Billingsley

March 2, 2018

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County within three (3) business days after OESBD notifies the bidder that it has not provided all the required information with its response. Failure to provide the County with this information within such three (3) business days *may* be cause for the response to the solicitation to be deemed non-responsible.

(e) Determination of Good Faith Effort.

(1) A bidder **shall not be denied** award of a contract due to failure to meet the assigned contract goal if the bidder...provides documentation demonstrating, as determined by the Program Director, the bidder's **good faith effort** to meet the goal. In making such determination, the Program Director shall consider the quality, quantity, and extent of the various efforts that the bidder has made to meet the goal.

...

(3) In determining whether a bidder has made a good faith effort, the Program Director may also consider the **level of participation proposed by the bidder** and the **level of participation proposed by other bidders**. . . .

Here, the County is not permitted by the above sections to disqualify MCM from participating in a BAFO (which is tantamount to denying MCM award of the contract) where MCM has made a good faith effort to comply but is unable to due to impossibility given the value of the proprietary tanks which cannot be obtained through use of CBE's. As stated, notwithstanding this fact, MCM still achieved 30% towards the goal. Even if MCM's level of participation was lower, this in and of itself does not justify a finding of non-compliance.

In light of the foregoing, MCM respectfully disagrees with the County's non-responsiveness determination and requests the opportunity to participate in a BAFO. In closing, MCM always appreciates the opportunity to work with the County and is hopeful that the County will allow MCM to continue with this solicitation.

Sincerely,



Signed in his absence to avoid delay
Keith Poliakoff

cc: Gary Brown, Esq. (via email)
MCM (via email)

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