



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 24, 2018

Poole & Kent Company of Florida  
Attention: Brian MacClugage  
1781 N.W. North River Drive  
Miami, FL 33125  
brianm@pkflorida.com

**EMAIL TRANSMITTAL**

Re: Bid No. PNC2115491C1 – North Regional Wastewater Treatment Plant - Effluent

Dear Mr. MacClugage:

We are receipt of your letter dated May 18, 2018, in which you dispute the County's recommendation of award to Kirlin Florida, LLC for Bid No. PNC2115491C1 – North Regional Wastewater Treatment Plant – Effluent. Specifically addressing your objections, we offer the following responses:

**Assertion No. 1 – The Best and Final Offer for Bid No. PNC2115491C1 opened on April 27, 2018 and Poole & Kent Company of Florida was the apparent low bidder.**

**Response:** After review of the responses submitted for Best and Final Offer for Bid No. PNC2115491C1, it was determined that Kirlin Florida, LLC increased the unit price of Bid Line Item 01-04. The bid comments of the Best and Final offer clearly state "If any bid prices are increased, the County reserves the right to revert to the vendor's original bid price for the line item in calculating the best and final offer" (Exhibit 1). The County exercised this right and reverted back to the original price offered by Kirlin Florida, LLC for that specific line item, which subsequently resulted in the firm being the low responsive, responsible bidder.

**Assertion No. 2 – The County does not have the authority to revise Kirlin Florida, LLC's bid price down in order to make them the low bidder for award as per the Broward County Procurement Code, Section 21.30.f.2(d).**

**Response:**

Section 21.30.f.2 (d) of the Procurement Code indicates that the unsuccessful bidder is not permitted to correct mistakes. The County reverted the higher price back to the original lower price submitted, in accordance with the County's Best and Final Offer process.

**Assertion No. 3 – The County gave Kirlin Florida, LLC the opportunity to confirm the recommended amount based on the revised Best and Final amount.**

**Response:** The County advised Kirlin Florida, LLC by email that the County was replacing the higher Best and Final Offer unit price for Line 01-04 with the original lower bid unit price. The

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email was a confirmation of the line item price only and was not for the bidder to accept and/or reject (Exhibit 2).

Assertion No. 4 – Poole and Kent Company of Florida requests that the County immediately discontinue the process of awarding the project to Kirlin Florida, LLC and award the project to Poole & Kent Company of Florida.

Response: In accordance with the Standard Instructions for Vendors Section of the Solicitation, 16.2 – any protest concerning a solicitation or proposed award, after the bid opening, shall be submitted in writing and received by the County within five business days from the posting of the recommendation for award. The recommendation for award for this project was posted to the Purchasing Division website from May 8, 2018 to May 14, 2018. Your letter was submitted to the County on May 18, 2018, which is after the allotted time for the protest period (Exhibit 3). As such, your May 18<sup>th</sup> letter is not being treated as a protest and the County will proceed accordingly.

Sincerely,



Martha Perez-Garviso, Purchasing Manager  
Purchasing Division

Attachment

- c: Brenda Billingsley, Purchasing Director, Purchasing Division
- Fernando Amuchastequi, Assistant County Attorney, County Attorney's Office
- Nancy Olesen, Purchasing Agent, Purchasing Division

## Bid PNC2115491C1 North Regional Wastewater Treatment Plant - Effluent

Bid Number PNC2115491C1  
Bid Title North Regional Wastewater Treatment Plant - Effluent

Bid Start Date Apr 19, 2018 2:05:02 PM EDT  
Bid End Date Apr 26, 2018 5:00:00 PM EDT  
Question &  
Answer End Date Apr 20, 2018 5:00:00 PM EDT

Bid Contact Nancy Olesen  
Purchasing  
954-357-7995  
nolesen@broward.org

Contract Duration One Time Purchase  
Contract Renewal Not Applicable  
Prices Good for 120 days

Bid Comments Vendors who meet the qualifications of the Local Preference Ordinance are afforded the opportunity to make a best and final offer (BAFO) when their bid submittal is within a specified percentage of the apparent low responsive, responsible Vendor.

A Vendor taking part in a BAFO may only reduce the overall bid price or the bid price of individual line items. Under no instances will a bidder be allowed to increase its overall bid price or the bid price of individual line items. If any bid prices are increased, the County reserves the right to revert to the vendor's original bid price for the line item in calculating the best and final offer.

Your firm has qualified for further consideration for award of the above referenced bid. In order to be included in the final evaluation for award, your firm must submit its best and final offer through BidSync. By submitting a best and final offer, your firm agrees to adhere to the terms, conditions and specifications of the original bid. If a Vendor does not make a submittal to the best and final offer, the Vendor's initial bid submittal will be evaluated as their final bid.

### Item Response Form

Item PNC2115491C1-01-01 - Best and Final Offer - Mobilization and Demobilization  
Quantity 1 lump sum  
Unit Price  
Delivery Location Broward County Board of County Commissioners  
EV0057  
WWS WATER SUPPLY WAREHOUSE  
ATT:ENVIRONMENTAL ENGR 1 FL  
2555 W COPANS ROAD  
POMPANO BEACH FL 33069  
Qty 1

Description  
Mobilization and Demobilization - Included in this item are all mobilization and demobilization activities, scheduling, temporary facilities



From: Akrouk, Sam  
To: Olesen, Nancy  
Cc: Greenfield, Jeffrey; Doyle, Steven; Balicki, Greg; Perez-Garviso, Martha; Tabela, Mary (notary); Levengood, Kyle  
Subject: RE: Broward County Bid No. PNC2115491C1 - North Regional Wastewater Treatment Plant - Effluent  
Date: Friday, April 27, 2018 11:51:21 AM  
Attachments: image876662.png  
image082775.png  
image534938.png  
image395100.png

Dear Ms. Olesen,

We concur with your calculation and confirm and accept the new recommended award amount based on the revised BAFO bid amount \$10,811,190 (including allowance items)

Thank you



**Sam Akrouk**  
Vice President - Florida Environmental, Kirlin Florida, LLC  
t: 954-670-1094 | m: 954-275-1411  
sakrouk@jkkllc.com | https://kirlingroup.com  
3125 W. Commercial Blvd, Suite 200, Fort Lauderdale, 33309



From: Olesen, Nancy <noleesen@broward.org>  
Sent: Friday, April 27, 2018 11:19 AM  
To: Tabela, Mary (notary) <mtabela@jkkllc.com>; 'KLEVENGOOD@JKLL.COM' <KLEVENGOOD@JKLL.COM>; Akrouk, Sam <sakrouk@jkkllc.com>  
Cc: Greenfield, Jeffrey <JGREENFIELD@broward.org>; Doyle, Steven <SDOYLE@broward.org>; Balicki, Greg <GBalicki@broward.org>; Perez-Garviso, Martha <MPEREZGARVISO@broward.org>  
Subject: Broward County Bid No. PNC2115491C1 - North Regional Wastewater Treatment Plant - Effluent

Good morning,

Your company met the qualifications of the Local Preference Ordinance and was afforded the opportunity to make a best and final offer (BAFO). In accordance with the BAFO instructions included in the Bid Comments, a vendor taking part in the BAFO may only reduce the overall bid price or the unit price of individual line items. As stated in the bid comments/instructions, "Under no circumstances will a bidder be allowed to increase its overall bid price or the bid price of individual line items. Below is an excerpt from the BAFO.

**A Vendor taking part in a BAFO may only reduce the overall bid price or the bid price of individual line items. Under no instances will a bidder be allowed to increase its overall bid price or the bid price of individual line items. If any bid prices are increased, the County reserves the right to revert to the vendor's original bid price for the line item in calculating the best and final offer.**

After review of your original bid price and the BAFO for Bid No. PNC2115491C1 - North Regional Wastewater Treatment Plant - Effluent it was determined that for one line item the price was increased: Line 0-04.  
For this item, the County will be replacing the BAFO unit price with your original bid unit price from \$3,979,250 to \$3,786,440. Therefore, your Best and Final Offer for Bid No. PNC2115491C1 is revised from \$11,004,000 to \$10,811,190 (including allowance items).

Please respond, in writing to [noleesen@broward.org](mailto:noleesen@broward.org), by close of business Monday, April 30, 2018 to confirm the new recommended award amount based on the revised BAFO bid amount.

Thank you for your continued interest in doing business with Broward County.



Nancy Olesen, Purchasing Agent  
Broward County Purchasing Division  
115 S. Andrews Avenue, Room 212, Fort Lauderdale, FL 33301  
Office: 954-357-7995, Fax: 954-357-8253  
[nolesen@broward.org](mailto:nolesen@broward.org)

*Customer Care is my priority. How am I doing? Please contact my Manager, Connie Mangan at [cmangan@broward.org](mailto:cmangan@broward.org) with feedback.*

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Under Florida law, most e-mail messages to or from Broward County employees or officials are public records, available to any person upon request, absent an exemption. Therefore, any e-mail message to or from the County, inclusive of e-mail addresses contained therein, may be subject to public disclosure.



Poole & Kent Company of Florida  
1781 N.W. North River Drive  
Miami, FL 33125  
P.O. Box 420556  
Miami, FL 33242

Phone: 305.325.1930  
Fax: 305.324.0522

May 18, 2018

sent via email: [nolesen@broward.org](mailto:nolesen@broward.org)

Ms. Nancy Olesen, Purchasing Agent  
**Broward County Purchasing Division**  
115 S. Andrews Ave, Room 212  
Fort Lauderdale, Florida 33301

Re: North Regional Wastewater Treatment Plant Facility Improvements – Effluent  
BCWWS Project No. 9195 (100914)  
Bid No. Y1206701C1

Sub: Broward County's Revision to Kirlin Florida's Best and Final Offer

Ms. Olesen,

Poole & Kent has reviewed the correspondence between Broward County (the County) and Kirlin Florida, LLC. (Kirlin) regarding the above referenced bid that was provided in response to Poole & Kent's Public Records Request of May 8, 2018. The correspondence indicates the County intends to recommend award of the project to Kirlin based upon the County correcting what it considers a mistake in Kirlin's bid. The County's intended action is prohibited by Section 21.30 of the County's Procurement Code, as well as Florida law. Therefore, Poole & Kent requests that the County proceed in accordance with the requirements of the County's Procurement Code and award the Contract to the lowest responsive bidder—Poole & Kent.

### **Background**

On March 9, 2018, Poole & Kent Company of Florida (Poole & Kent) along with Munilla Construction Management, LLC d/b/a MCM (MCM), Cardinal Contractors, Inc. (Cardinal), and Kirlin submitted sealed bids in accordance with Section 21.30 of the County's Procurement Code. Bids were opened and read publically (posted on Bid Sync). Initially, MCM was identified as the low bidder but was later disqualified by the County. Poole & Kent was identified as the apparent low responsive, responsible Bidder, and the two (2) remaining bidders, Kirlin and Cardinal, along with Poole & Kent, were afforded the opportunity to make a best and final offer (BAFO) in accordance with the County's Local Preference Ordinance, Section 1-75 of the Broward County Code of Ordinances.

The BAFO's were submitted on April 26, 2018, and on April 27, 2018, Poole & Kent was identified as the apparent low bidder with a Total Price of \$10,694,000, inclusive of allowances, compared to Kirlin's Total Price of \$10,699,000 and Cardinal's Total Price of \$10,738,750.



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On May 8, 2018, Poole & Kent submitted a public records request for "all post-bid correspondence between Broward County and Kirlin Florida, LLC relating to the referenced project."

On May 11, 2018, the County provided correspondence between the County and Kirlin regarding the referenced bid. The correspondence reveals the County's intention to recommend award of the project to Kirlin after reducing Kirlin's price from \$11,004,000 to \$10,811,190, including allowances.

**AN AWARD TO KIRLIN BASED UPON A REDUCTION OF KIRLIN'S  
TOTAL BID PRICE VIOLATES OF SECTION 21.30 OF THE COUNTY'S  
PROCUREMENT CODE**

The relevant sections of 21.30 of the County's Procurement Code provide:

f.2.(b), Correction of Non-Judgmental Errors. A bidder shall be permitted to correct **clerical, non-judgmental mistakes of fact** in his or her bid, including unit prices, when the intended bid is reasonably proven by **submission of proof of evidentiary value** or is ascertained from the bid document.

f.2.(c), Voluntary Reduction of Price. The County may accept a voluntary reduction from a low bidder after bid opening, if such reduction is not conditioned on, nor results in, the modification or deletion of any condition contained in the Invitation for Bids. A **voluntary reduction may not be used to ascertain the lowest responsive bid.**

f.2.(d), Unsuccessful Bidders Not Permitted to Correct Bid Mistakes. No bidder shall be **permitted to correct a bid mistake**, with the exception of mathematical computation, **which would cause such bidder to have the low bid and receive an award which otherwise would go to another vendor** except in accordance with the provisions of Section 21.30.f.2.(b).

On April 27, 2018, the County sent an e-mail to Kirlin, which stated in part:

In accordance with the BAFO instructions included in the Bid Comments, a vendor taking part in the BAFO may only reduce the overall bid price or the unit price of individual line items. As stated in the bid comments/instructions, "Under no circumstances will a bidder be allowed to increase its overall bid price or the bid price of individual line items...."

After review of your original bid price and the BAFO... it was determined that for one line item the price was increased: Line 0-04. For this item, the County will be replacing the BAFO unit price with your original bid unit price from \$3,979,250 to \$3,786,440. Therefore, your Best and Final Offer for Bid No.

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PNC2115491C1 is revised from \$11,004,000 to \$10,811,190 (including allowance items.).

The County does not have the legal authority to revise Kirlin's bid price downward in order to make Kirlin the low bidder so that it can receive an award, as Section 21.30.f.2(d) prohibits such actions. While the County has the right to establish rules that a bidder may not increase the price of its overall bid or individual line items, if a bidder fails to follow those rules, the remedy is to find the bid non-responsive. The County cannot reward bidders who fail to follow the instructions to bidders by allowing them to lower their bid after bid opening.

In Harry Pepper & Associates, Inc. v. City of Cape Coral, 352 So.2d 1190, 1192 (Fla. 2nd DCA 1977), the Court held, "[I]t is apparent that the entire scheme of bidding on public projects is to insure the sanctity of the competitive atmosphere prior to and after the actual letting of the contract. In order to insure this desired competitiveness, a bidder cannot be permitted to change his bid after the bids have been opened, except to cure minor irregularities."

The Court's analysis continued, "Therefore, Gulf had everything to gain and nothing to lose. After everyone else's bid were opened, Gulf was in a position to decide whether it wanted the job bad enough to incur the additional expense of supplying conforming pumps."

In this case, the County's email gave Kirlin the opportunity, "to confirm the new recommended award amount based on the revised BAFO bid amount." Thus, Kirlin, like Gulf had everything to gain and nothing to lose, it just had to decide whether it wanted this job bad enough to drop its price by \$192,810, or 1.75%.

See also, Bright House Networks v. AT&T Corp., 205 So.2d 837 (Fla. 5th DCA 2016), where the Court found that Bright House was not permitted to revise its BAFO price below AT&T's once AT&T's BAFO price was announced.

Based upon the above, Poole & Kent requests that the County immediately discontinue the process of awarding the project to Kirlin and, instead, commence with awarding the project to Poole & Kent, the responsive and responsible bidder offering the lowest best and final bid.

Sincerely,  
**Poole & Kent Company of Florida**



Brian MacClugage  
Executive Vice President

CC: Andrew J. Meyers, County Attorney (via email only [ameyers@broward.org](mailto:ameyers@broward.org))