

**ITEM # 93**

**ADDITIONAL MATERIAL**

**10:00 a.m. Regular Meeting**

**AUGUST 14, 2018**

**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: August 8, 2018

TO: Board of County Commissioners

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

Digitally signed by  
STEPHEN FARMER  
Date: 2018.08.09  
09:02:31 -04'00'

FROM: Brenda J. Billingsley, Director  
Purchasing Division

BRENDA  
BILLINGSLEY

Digitally signed by BRENDA  
BILLINGSLEY  
DN: dc=city, dc=broward, dc=bc,  
ou=Organization, ou=BCC, ou=PU,  
ou=Users, cn=BRENDA BILLINGSLEY  
Date: 2018.08.08 17:32:24 -04'00'

SUBJECT: August 14, 2018 - Commission Meeting - Agenda Item No. 93  
Motion to Approve Final Ranking of the Qualified Firms for Request for Proposals  
(RFP) No. S2115731P1, Consultant Services for Broward County's Medical  
Examiner's and Broward Sheriff's Office Crime Laboratory Combined Facility

Attached please find Cone of Silence communication dated August 7, 2018 submitted by Mark J. Stempler, Becker & Poliakoff, on behalf of Saltz Michelson Architects regarding the subject procurement for the second ranked proposer.

A timely Objection Letter was submitted and a response provided on July 18, 2018.

At the request of Mr. Stempler, the attached Cone of Silence communication is being submitted to the Board prior to the August 14, 2018 Board meeting.

If you have any questions, please do not hesitate to contact us.

BJB/cmm/mpg/lg

c: Bertha Henry, County Administrator  
Monica Cepero, Deputy County Administrator  
George Tablack, CPA, Chief Financial Officer  
Tom Hutka, Director, Public Works Department  
Robert Melton, County Auditor  
Andrew Meyers, County Attorney

Mark J. Stempler, Esq.  
Shareholder  
Board Certified Construction Lawyer  
LEED Green Associate  
Phone: (561) 820-2884 Fax: (561) 832-8987  
mstempler@beckerlawyers.com



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

August 7, 2018

**Via Email to:** [ameyers@broward.org](mailto:ameyers@broward.org)

Andrew J. Myers, Esq.  
County Attorney  
115 South Andrews Ave, Suite 423  
Fort Lauderdale, Florida 33301

**Via Email to:** [bbillingsley@broward.org](mailto:bbillingsley@broward.org)

Brenda J. Billingsley, Director  
Broward County Purchasing Division  
115 South Andrews Avenue, Room 212  
Fort Lauderdale, Florida 33301

**Re: Solicitation # S2115731P1 - Broward County's Medical Examiner's Office and BSO's Crime Lab Combined Facility ("RFP") – Cone of Silence Communication – Agenda Item 93, August 14, 2018 Meeting**

Dear Mr. Myers and Ms. Billingsley:

The undersigned law firm represents the Broward County CBE Firm, Saltz Michelson Architects ("SALTZ MICHELSON") with regard to the above-referenced RFP. Please attach this correspondence to any agenda item for the August 14, 2018 Commission Meeting, and please distribute this Cone of Silence to the Board of County Commissioners prior to that meeting.

Broward County CBE Firm, **Saltz Michelson** submitted its three-day objection letter in May following the evaluation committee's initial ranking of proposers. A copy is attached hereto as Exhibit "B." The ranking, in which Leo A. Daly, Company ("Daly") is the recommended awardee, **was unfair, incorrect and violated Florida law**, and should be rejected by the County Commission.

**Saltz Michelson** is the go to Broward firm to prime highly successful projects, such as the new BARC facility and the Lauderhill Mall New Transit Center. In addition, Saltz Michelson is proudly one of the few CBE prime firms in the County performing complex architecture and promoting local jobs and local economic development as a prime consultant and NOT as a subconsultant.

**First**, during oral presentations Daly made material misrepresentations and changes from its written proposal. Those misrepresentations and changes are clearly prohibited by Florida law, Broward County's Code, the RFP, and are just outright unfair and call out for rejection of this ranking! Daly told the evaluation committee Daly had designed "hundreds" of similar facilities, including medical examiner facilities. **That is misleading. According to its written proposal,**

Andrew Myers, County Attorney  
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**none of the Daly personnel assigned to this project have worked on a medical examiner facility that has actually been constructed. Even if the Daly firm generally has experience, the personnel that was proposed for this project do not.** This information misled the evaluation committee by inducing improper reliance on those statements, and resulted in a top-ranking based on false pretenses.

**Second**, Daly submitted false information in its written proposal. It claims Daly's mechanical, electrical and plumbing ("MEP") engineer designed a "medical examiner facility" in Barbados. **Yet, elsewhere in the proposal it is revealed that experience is actually with a "forensic lab," where it performed only upgrades, and not a new design like the project for Broward County. Daly was trying to get credit for performing similar projects that are not at all similar.** Again it appears this misled the evaluation committee, to the unwarranted benefit of Daly. False information again calls out for rejection of this ranking.

**Third**, Daly either misrepresented its compliance with the project's CBE goal, or its proposal was illusory. Daly's MEP engineer was proposed to represent the overwhelming majority of the CBE participation goal for this procurement, approximately 22% of the 25% goal. During the evaluation committee meeting Daly, for the first time, represented that its own in house staff would also provide MEP services on this project where needed. **If Daly were to assume, or even supplement, the MEP work on this project, that would significantly reduce the CBE performance of this contract. This would amount to nothing more than a bait and switch with regard to its compliance with the CBE requirements.** Daly changed its proposal during the presentation based on intense questioning from EC members.

In addition, such a switch would represent an impermissible change from Daly's written proposal. Daly's proposal did not state Daly would self-perform MEP work on the project. Further, its proposal only lists one Daly employee who has a mechanical engineering degree, and that employee was only proposed to provide quality assurance/quality control services, and has no experience with a completed medical examiner's facility. **The providing of additional in-house MEP services was simply not part of the proposal, and the suggestion that Daly would provide those services is a significant departure from its written proposal**

**Fourth**, Two evaluation committee members were from the Broward County Sheriff's Office and the Broward County Medical Examiner's office. Those are the two user agencies for this facility. **Both members from the two user agencies ranked Saltz Michelson number one in the evaluations. These evaluators clearly preferred Saltz Michelson for this project.**

**Fifth**, There appears to be a Bias against Broward County local firms to prime this job. Emails obtained by public records request show top County officials wanted a large national firm as prime to the detriment of local firms like Saltz Michelson as prime. **As a policy matter County Commissioners should encourage their local firms to prime jobs and use nationals as subconsultants, not the reverse as suggested by staff. This ranking must be**

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**rejected! Please see Exhibit A – Email showing bias against Broward Local and CBE firms as prime.**

### CONCLUSION

The County should not award this project to Daly since it was allowed to gain an unfair competitive advantage by inducing the evaluation committee to rely on its material misrepresentation made during oral presentations, which contradicts the statements made in its written proposal. Doing so violated Florida law, Broward County's Purchasing Code, and the RFP. This combined medical examiners' office and crime lab facility is too large, and too important, not to have the best design consultant in place. **It appears the Purchasing Division simply wanted to go with the biggest firm, regardless of qualifications or the proposal, as evidenced by the correspondence attached as Exhibit "B," produced by the Division, in spite of the clear RFP requirements.** Saltz Michelson has performed significant projects for Broward County, and has been a pillar of the community for decades. The ranking should be withdrawn, and Saltz Michelson should be ranked number one. In the alternative, the proposals should be thrown out and the procurement should be re-advertised or the County Commission should vote to hear presentations as the Procurement Authority and rank the proposals themselves as there appears to be a bias against our local homegrown firms.

Thank you for your consideration of the foregoing.

Sincerely,



Mark J. Stempler  
For the Firm

MJS2/ers

Enclosures

cc: Glenn Miller, Esq. (via email)  
Fernando Amuchastegui (via email)  
Carolyn Messersmith (via email)  
Connie Mangan (via email)  
Bernie Friedman, Esq. (via email)  
Client (via email)

ACTIVE: S15157/389636:11152415\_3

“EXHIBIT A”

**From: Musarra, Ariadna**

**Sent:** Monday, February 26, 2018 8:11 PM

**To:** Hawke, David

**Cc:** Thompson, Jeffrey

**Subject:** RE: RFP No. S2115731P1, Consultant Services for **MEO and Crime Lab Combined Facility**

**Hi David,**

**I am sorry we did not get the responses from bigger firms as we had hoped.**

**A.**

**From:** Hawke, David

**Sent:** Monday, February 26, 2018 2:45 PM

**To:** Musarra, Ariadna

**Cc:** Thompson, Jeffrey

**Subject:** FW: RFP No. S2115731P1, Consultant Services for MEO and Crime Lab Combined Facility

Ariadna,

Today's Up-Date ; Our Purchasing department received six (6) vendor proposals for our MEO-Crime Lab project.

See (below) the list of prime consultant names.

Thank you,

Respectfully,

David



**David M. Hawke, RA, AIA, LEED FA, NCARB**

**Project Manager IV**

Construction Management Division

115 S. Andrews Avenue, Suite A-550, Ft. Lauderdale, FL 33301

[DHawke@Broward.org](mailto:DHawke@Broward.org)

Office: (954) 357-5638 Mobile: (954) 465-1123 Mobile : (561) 346-5393

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**From:** Williams, Marie

**Sent:** Monday, February 26, 2018 9:22 AM







**To:** Hawke, David <[DHAWKE@broward.org](mailto:DHAWKE@broward.org)>

**Cc:** Thompson, Jeffrey <[JTHOMPSON@broward.org](mailto:JTHOMPSON@broward.org)>

**Subject:** RFP No. S2115731P1, Consultant Services for MEO and Crime Lab Combined Facility

Good morning,

Proposals were received from the below. Once I complete my initial review including the request(s) for additional information/clarifications (as warranted), I will release the proposals to all pertinent parties.

Name	Type
 Arcadd Inc_2080749	File folder
 Bermello Ajamil and Partners Inc_1...	File folder
 Cartaya and Associates Architects P...	File folder
 Leo A Daly_2214449	File folder
 MOBIO Architecture Inc_1845416	File folder
 Saltz Michelson Architects_1557104	File folder



**“EXHIBIT B”**

Mark J. Stempler, Esq.  
Shareholder  
Board Certified Construction Lawyer  
LEED Green Associate  
Phone: (561) 820-2884 Fax: (561) 832-8987  
mstempler@beckerlawyers.com



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

May 11, 2018

**By Hand Delivery and  
Via Email to [bbillingsley@broward.org](mailto:bbillingsley@broward.org)**

Ms. Brenda J. Billingsley, Director  
Broward County Purchasing Division  
115 S. Andrews Avenue, Room 212  
Fort Lauderdale, FL 33301

**Re: Solicitation # S2115731P1 - Broward County's Medical Examiner's Office  
and BSO's Crime Lab Combined Facility – Three-Day Objection Letter**

Dear Ms. Billingsley:

The undersigned law firm represents Saltz Michelson Architects ("Saltz Michelson"). Saltz Michelson submitted a proposal in response to Broward County's Solicitation #S2115731P1 - Broward County's Medical Examiner's Office and BSO's Crime Lab Combined Facility ("RFP"). Pursuant to Section 21.84(f) of the County's Procurement Code ("Code"), Saltz Michelson, the second ranked proposer, submits this Objection to the Evaluation Committee's Proposed Recommendation of Ranking posted on May 9, 2018. The Proposed Recommendation of Ranking, in which the Leo A. Daly Company ("Daly") is the recommended awardee, is unfair and incorrect, and there is significant new information that should be taken into consideration by the Evaluation Committee ("EC").

This project is too large and too important not to have the best design consultant in place. **The two evaluators from the two departments for which these facilities are being built, the BSO and the Medical Examiner, both ranked Saltz Michelson number one in their evaluations.** The County's Proposed Recommendation of Ranking for this multi-million dollar design services project is fatally flawed for several reasons, including:

- Daly's improper, material changes between its written proposal and its representations made during oral presentations. **Such proposal changes are clearly prohibited by Florida law and Broward County's Code;**
- Material misrepresentations by Daly, **including its overstated experience in building**

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**medical examiner facilities**, and the types of services it proposed to provide in-house on this project, misled and prejudiced the EC in its evaluation and led to its misinformed Proposed Recommendation of Ranking;

- According to its proposal **no Daly personnel proposed for this project has ever completed a design of a medical examiner facility, or designed such a facility that has actually been built;**
- The inherently biased oral presentation procedure for this procurement gave Daly, as the last presenting proposer, an unfair competitive advantage because it and its sub-consultants had the benefit of knowing the EC's issues with other proposers and sub-consultants, **which violated Florida law as well as Saltz Michelson's right to a fair and just evaluation;** and
- The EC meeting lasted all day and into the night. As a result Daly, as the final proposer, benefited because the EC members, who were clearly fatigued, asked far fewer questions of Daly as compared with the other proposers. Half of the proposers did not even ask Daly a single question.

For these reasons, the County must reject the Proposed Recommendation of Ranking, in accordance with its Purchasing Code and Florida law, and reevaluate the proposals or re-advertise the Solicitation. It is in the public's best interest to do so.

### **I. BACKGROUND**

The County issued the RFP on December 27, 2017. It sought proposers for consultant services for the construction of Broward County's new medical examiner's office and crime laboratory combined facility (the "Project"). The RFP states, "Consultant will be tasked with the programming, site analysis and design of highly functional, efficient structure(s)...". This procurement was pursuant to Florida Statutes, Chapter 287.055, Consultants' Competitive Negotiation Act ("CCNA"). **The design services at issue were estimated between \$6 - \$11 million, and the estimated cost of the ultimate construction project was anticipated between \$95 - \$125 million.** All six proposers which submitted proposals were shortlisted and permitted to present during the final evaluation.

Proposers were evaluated on several different criteria, as follows:

- |    |                                   |               |
|----|-----------------------------------|---------------|
| 1. | Ability of Professional Personnel | Max.25 points |
| 2. | Project Approach                  | Max 20 points |

3.	Past Performance	Max 30 points
4.	Specialized Experience, knowledge and capabilities	Max 10 points
5.	Workload of the Firm	5 points
6.	Location	5 points
7.	Willingness to meet time and budget requirements	2 points
8.	<u>Volume of previous work</u>	<u>3 points</u>
	<b>Total</b>	<b>100 points</b>

The proposers each proposed using sub-consultants for this Project. Some of the proposers' sub-consultants overlapped, meaning multiple proposers used the same sub-consultant(s), an nuance that ultimately was exploited to the unfair benefit of Daly.

## **II. THE EVALUATION**

The final evaluation was conducted on May 7, 2018. The Evaluation Committee ("EC") meeting lasted all day and into the night, and was more than seven (7) hours long. During the later stages of the EC meeting, it was clear that the evaluators were worn out by the time they were able to score the proposals. In fact, at least one EC member joked or commented that she was losing coherence toward the end of this marathon session, but prior to scoring. This alone calls into question the legitimacy of the evaluation.

In preparation for the evaluation, the EC was provided a Vendor Evaluation Criteria Response Matrix ("Matrix") regarding information about the proposers' responses to the evaluation criteria in the RFP. The Matrix, however, was incomplete as discussed further below. It had been predetermined that the proposers would be allowed to make their presentations up to a maximum of thirty minutes. Additional time immediately following each presentation was reserved for questions and answers.

Through a random drawing, Daly was chosen to present last. Following oral presentations, the EC members ranked the proposals. The scoring sheets listed the evaluation categories, but did not list the greater detail found in the evaluation criteria listed in the RFP. The scoring sheets are attached hereto as composite Exhibit "A" for convenience. The proposers were all subjected to numerous questions from the EC members following their respective presentations. The glaring exception was Daly who was asked far fewer questions than the other proposers.

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Following deliberation, the evaluators ranked Daly as number 1, with 435 points. Saltz Michelson was ranked as number 2 with 430 points.

### III. OBJECTION

The Evaluation of this RFP was unfair and incorrect. The purpose of the public procurement process is to, “ensure fair and equitable treatment of all persons who deal with County procurement; and provide for increased public confidence and trust in the procedures of public procurement.” Broward County Code §26-80; Procurement Code §21.3(b).

Public authorities have wide discretion in awarding a public contract through the competitive procurement process. That discretion, however, “must be exercised based upon clearly defined criteria, and may not be exercised arbitrarily or capriciously.” Liberty County v. Baxter’s Asphalt & Concrete, Inc., 421 So. 2d 505 (Fla. 1982). An agency’s wide discretion in evaluating bids will not be interfered with unless exercised arbitrarily or capriciously, or unless based upon misconception of law, or upon ignorance through lack of inquiry, or in violation of the law, or was the result of improper influence. William A. Berbusse, Jr., Inc. v. North Broward Hospital District, 117 So. 2d 550, 551 (Fla. 2nd DCA 1960). Further, it is wholly improper for an agency to fail to follow the terms of its evaluation process, and doing so is arbitrary and capricious. State Dep’t of Lottery v. Gtech Corp., 816 So. 2d 648, 652-53 (Fla. 1st DCA 2001).

The object of competitive procurement is:

“to close all avenues to favoritism and fraud in its various forms;... and to afford an equal advantage to all desiring to do business with the county, by affording an opportunity for an exact comparison of bids'....

From the above quote, it is apparent that the entire scheme of bidding on public projects is **to ensure the sanctity of the competitive atmosphere** prior to and after the actual letting of the contract.” (**Emphasis added**).

Harry Pepper & Associates, Inc. v. City of Cape Coral, 352 So. 2d 1190, 1192 (Fla. 2d DCA 1190; quoting, in part, Wester v. Belote, 138 So. 721, 723-23 (Fla. 1931).

Moreover, the irregularities in applying the evaluation criteria cannot provide one proposer with an unfair competitive advantage, and cannot be deemed minor technicalities. See Robinson Electrical Co., Inc. v. Dade County, 417 So.2d 1032 (Fla. 3rd DCA 1032).

**A. Daly Improperly Changed its Proposal during Oral Presentation**

**1. Experience**

During the EC meeting, the EC was misled by Daly regarding its experience designing medical examiner's facilities, and the statements it made materially changed its written proposal. During Daly's oral presentation, **its presenter said that Daly has designed "hundreds" of the types of facilities at issue, including medical examiner facilities.** Daly is a large national firm so while that may be true of the firm, **it does not accurately reflect the level of experience of the Daly personnel who would actually perform the work on this project, or that Daly represented in its written proposal.** Audio of the oral presentation can be found on the County's electronic repository.

**Of the 10 project design personnel from Daly listed in Daly's written proposal, not one of them has completed work on a medical examiner's facility. Not one of them has worked on a medical examiner's facility that has actually been constructed. The only medical examiner project listed by Daly personnel in its proposal is a Minnesota project where design professional services are expected to be completed in 2019. Thus, the actual people working on this project for Daly have no track records of actually designing a medical facility, much less one that has actually been constructed.**

Thus, the EC's evaluation of Daly on this most critical section of the evaluation was based on false and/or misleading information. Daly's misrepresentations about the experience of its "in-house" personnel proposed in designing medical examiner facilities caused the EC to ranking Daly as the top proposer. Daly's proposal is attached as Exhibit "B."

Further, the proposal and the presentation by Daly also misled the EC as to its sub-consultant's experience with medical examiner facilities. In the written proposal, Daly's MEP engineer Gartek claimed it had experience designing a "Medical Examiner Facility" in Barbados. *See, pg. 656 of Daly's proposal from BidSync.* Yet, elsewhere in the proposal Gartek reveals its experience was with a "forensic lab," and that its experience was limited to upgrades at an existing forensic lab facility, not a new design. *See pgs. 594 and 643 of Daly's proposal.* During the presentation, Gartek ultimately revealed its lack of experience designing new medical examiner facilities, and this otherwise hidden disparity in Daly's written proposal.

**2. Sub-consultant Performance**

Further, Daly's written proposal indicates its sub-consultant Gartek would be the Project's exclusive MEP engineer. None of Daly's personnel listed in its proposal were proposed to provide direct MEP design work. *See, pg. 581 of Daly's proposal.* In fact, the only Daly employee who has a mechanical engineering degree was proposed to provide quality assurance/quality control

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services only and does not have completed specific medical examiner's facility experience. Id.; *See also* pg. 590.

During oral presentations, however, Daly improperly changed this aspect of its proposal. During its presentation, it specifically told the EC that it could and would perform MEP design work "in house" for this project, "as needed." That contradicts, and thus changes, its written proposal. Such a material change from its proposal is forbidden under Florida law and should have disqualified Daly right then. *See, Harry Pepper & Associates, Inc. v. City of Cape Coral* ("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."). Instead, the EC relied on Daly's proposal change, ignored the express terms of its written proposal, and ranked Daly as the top firm. This is not a minor irregularity; rather this gave Daly an unfair advantage not enjoyed by other proposers such as Saltz Michelson.

### 3. CBE Change

Similarly, Daly's material alteration regarding its in-house performance of MEP design work represents a significant change to its CBE compliance requirement. The CBE goal for this project is 25% of the total project value. In its proposal, Daly represented that Gartek, as a CBE, would account for 22% of the total project value. If Daly performs MEP work for this project as it represented at its presentation, that would certainly cut into the percentage of work that would have been performed by its CBE Gartek. Not only would that effect the CBE goal, but it would also render Daly's proposal illusory on this issue. *See, Harry Pepper & Associates, Inc. v. City of Cape Coral*.

#### B. The Evaluation Committee Meeting was Unfair because it provided Daly with an Unfair Competitive Advantage and Violated Florida Law

##### 1. Presenting Last Gave Daly an Unfair Competitive Advantage

First, Daly received an unfair advantage by presenting last at the EC meeting. By presenting last, Daly was able to listen to and analyze all other proposers' presentations before it, and then better tailor its presentation accordingly.

For example, Daly's proposal, on page 581 from the BidSync document and in SF330 Part I, states that Daly will use the engineering firm TLC Engineering for four aspects of this project. TLC was to be involved with, "Geotechnical Engineering," "Subsurface Investigation," "Sustainability Consulting," and "Energy Modeling." Daly, however, did not make a single mention of TLC during its oral presentation. The most obvious explanation for this is the fact that TLC came under great scrutiny by the EC during the presentation of Cartaya and Associates Architects, P.A., another proposer which presented well before Daly.

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Cartaya, like Daly, proposed to use TLC as a key design consultant for this project. During Cartaya's oral presentation however, it became clear that some of TLC's work on other Broward County projects was not looked upon favorably. Specifically, evaluator Dr. Craig Mallak raised several issues regarding his experience with TLC. The exchange was not pleasant, but was keenly observed by all of the EC members and directly impacted their scoring of the proposers in Category 1 which considered the makeup of the consulting team, where Daly consistently scored higher than Cartaya.

Importantly, some of Daly's other sub-consultants were involved in presentations from other prior proposers. By participating in those presentations those sub-consultants, such as McClaren, Wilson & Lawrie, Inc. ("MWL") witnessed first-hand the questions posed by EC members, and were able to change or manipulate their responses knowing what issues the EC was concerned with. By utilizing sub-consultants who had already been through the evaluation process, Daly received an unfair competitive advantage, which was evidenced by its top ranking.

## **2. The Evaluation Committee Meeting Violated Florida's Sunshine Law**

In addition, by allowing sub-consultants and other proposers to participate in or listen to the prior proposals, the EC meeting violated Florida law. Specifically, Florida's Government in the Sunshine law generally provides that all meetings of county government committees are to be held open to the public. However, Section 286.0113, Florida Statutes, states:

Any portion of a meeting at which a negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

The EC meeting at issue clearly falls into the exemption under 286.0113. Notably, when the Florida Legislature passed this law, it declared that exempting oral presentations being open to the public is a, "**public necessity**":

The Legislature also finds that it is a **public necessity** that a meeting at which a negotiation with a vendor is conducted pursuant to a competitive solicitation, **at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation be made exempt from public meetings requirements.** In addition, it is a public necessity that any records presented at such meetings be made temporarily exempt from public records requirements. The recording of the meeting and any such records shall be made available when the agency provides notice of an



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intended decision, or when the agency rejects all bids, proposals, or replies and ultimately withdraws a reissued competitive solicitation. (Emphasis added).

The reason it is a “**public necessity**” to keep such meetings private initially is to avoid this very situation, where one proposer can gain a competitive advantage over others by virtue of the order in which oral presentations are presented. Had Daly not been able to listen to the other proposers, it would not have gained the competitive advantage that propelled it to the top ranking.

Notably, the Purchasing Division agrees with this position. In its agenda item for the May 22, 2018 Board of County Commissioners meeting, the County recommends changing the procurement code to require:

“Closing the meetings for committee-based procurements to both the public and competitors during the vendor presentation and the subsequent question and answer period, consistent with Section 286.0113, Florida Statutes. The presentations will be video-recorded and posted on the Purchasing Division's website, along with the recommended final ranking, within three business days after the final ranking meeting, and the time period for any protest shall not commence until such posting of the final ranking.”

*See*, Draft Agenda Requested Action Item, attached at Exhibit “C.” While this would change the County’s Code, it does not change the fact that this has been the law and proper procedure in Florida since 2011.

**C. The EC was also not aware that TLC was also a Daly Sub-consultant Due to an Error in the Evaluation Matrix**

In addition to Daly intentionally hiding its use of TLC as a sub-consultant during the oral presentation, the Purchasing Division also shielded that relationship from the EC. The Purchasing Division’s Vendor Evaluation Criteria Response Matrix incorrectly omitted mention of TLC from Daly’s team of consultants for this project. There is no mention on the face of the Matrix that TLC is affiliated with Daly on this project. While there is a reference to Daly’s proposal in the Matrix regarding sub-consultants, the EC members would have had to dig through Daly’s proposal to locate the information. In stark contrast, the sub-consultants for the other proposers (with the exception of Bermello Ajamil & Partners, Inc.) were disclosed on the Matrix and readily available for review. Therefore, the EC was not aware that Daly and TLC were paired on this project. Had the EC been aware of this issue, their evaluation and scoring of Daly may have changed based on the issues raised regarding TLC, and the subsequent scoring of Cartaya regarding Category 1.

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#### IV. CONCLUSION

The EC's Proposed Recommendation of Ranking is unfair and incorrect, and there is significant new information that should be taken into consideration. Daly's changes to its written proposal during oral presentations is expressly forbidden by Florida law and Broward County's Code. That, coupled with Daly's material misrepresentations during oral presentations makes this evaluation process fatally flawed. In addition, Daly was allowed to gain an unfair competitive advantage by presenting last, largely due to the County's violation of Florida's Sunshine Law in allowing Daly, and all proposers and sub-consultants, to listen to and analyze prior proposals. This allowed Daly to unfairly reshape and more specifically tailor its presentation as the last proposer.

The Proposed Recommendation of Ranking should be withdrawn, and Saltz Michelson should be ranked number one. In the alternative, the proposals should be reevaluated, or the solicitation should be re-advertised.

On May 11, 2018, Saltz Michelson submitted a public records request to Broward County. However, to date the County has not provided all the information sought. The County may have records that may lead to additional objections and additional new information. Saltz Michelson reserves the right to supplement this objection when it receives all the information sought, and requests the County defer posting any Final Recommendation of Ranking until Lamar is able to submit any supplemental objections.

Very truly yours,



Mark J. Stempler  
For the Firm

Brenda Billingsley  
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All statements made in support of this submission are accurate, true, and correct. Saltz Michelson acknowledges that the determination of inaccurate, untruthful, or incorrect statements in support of this submission may serve as a basis for debarment of the vendor regardless of whether the submission is directly provided by Saltz Michelson or a representative on behalf of Saltz Michelson.



\_\_\_\_\_  
Saltz Michelson Architects, Inc.

MJS2/bam

Enclosures

cc: Glenn Miller, Esq. (via email)  
Andrew Meyers, Esq. (via email)  
Constance Mangan (via email)  
Marie Williams (via email)  
Client (via email)

ACTIVE: 10902964\_1

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