

Item # 45

ADDITIONAL MATERIAL

Regular Meeting

MARCH 5, 2019

SUBMITTED AT THE REQUEST OF

OFFICE OF ECONOMIC and

SMALL BUSINESS

DEVELOPMENT



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 26, 2019

TO: Robert Melton, County Auditor

Brenda Billingsley, Director
Purchasing Division

FROM: Sandy-Michael McDonald, Director
Office of Economic and Small Business Development

SUBJECT: Good Faith Efforts review for Bid No. PNC2117205C1 – Utility Analysis Zone (UAZ) - 122

On October 25, 2018 the Office of Economic and Small Business Development (OESBD) performed an initial review of all respondents for the above-referenced bid and found that six (6) responders met the project goal and two (2) did not meet the goal. The OESBD communicated with the two (2) firms that did not meet the goal and afforded the responders the three (3) days allowed per the Business Opportunity Act of 2012, as amended, to meet the goal or provided the Good Faith Effort documentation.

On October 29 Giannetti Contracting Corp responded with its documentation for Good Faith Efforts.

On November 6, 2018 the OESBD concluded its reviewed of all applicants that submitted a bid proposal for the above-referenced contract and made a determination of which of those met the goals or demonstrated Good Faith Effort, if not meeting the goal. At that time, OESBD determined that Giannetti Contracting Corp did not meet the Good Faith Effort. The Business Opportunity Act identifies and gives guidance on how Good Faith Efforts can be reviewed and determined to be acceptable or not.

The Business Opportunity Act of 2012, as amended, Sec. 1-81.1. (c) (12) Good Faith Efforts means that the Bidder, without an intent to defraud or to seek an unfair advantage, took all necessary steps to secure and maximize CBE participation to meet or exceed the established CBE goal for the project. The determination of Good Faith Efforts shall be made by the Program Director upon evaluation of the Bidder's response to the solicitation.

Sec. 1-81.5 - Satisfaction of CBE goals; Good Faith Efforts

(a) A Bidder shall be considered responsible as to the CBE requirement if the Bidder's response to the solicitation either satisfies the established CBE goal or demonstrates the Bidder's Good Faith Efforts to satisfy the established CBE goal, as defined in paragraph (d) below. Failure of a Bidder to make any representations regarding its commitment to attain the CBE goal prior to award of the contract shall be cause for the Program Director to recommend that the Bidder's response to the solicitation be deemed non-responsible.

(b) Letters of Intent. A Bidder's response to the solicitation satisfies the responsibility criteria for the established CBE goal if the Bidder submits completed Letter(s) of Intent, stating all of the following information:

- (1) The names and addresses of each CBE that would participate in the contract if awarded to the Bidder;**
- (2) A description of the work that each CBE would perform and the North American Industry Classification System (NAICS) code assigned to each CBE;**
- (3) The percentage of the total contract value that the Bidder intends to subcontract to each CBE ("CBE Work Percentages"), and whether those percentages cumulatively meet or exceed the established CBE goal;**
- (4) The Bidder's commitment to subcontract the CBE Work Percentages to the identified CBEs, as affirmed in writing by authorized representatives of the Bidder and each CBE; and**
- (5) A written certification from the Bidder that the scope of work proposed to be performed by each CBE is within the field of each CBE's current certification, and that each CBE has stated that it is ready, willing, and able to perform at least the percentage of work allocated to it as listed on the schedule.**

(c) Bidder Assurances. Notwithstanding the requirement of a Bidder to provide completed Letter(s) of Intent as required in paragraph (b) above, a solicitation may allow a Bidder to submit completed Bidder Assurances with its response to the solicitation and thereafter submit completed Letter(s) of Intent no later than the timeframe required in the applicable solicitation documents. However, in order for the Program Director to recommend that the Bidder is responsible regarding the established CBE goal of the solicitation, the Bidder must submit completed Letter(s) of Intent that satisfy the established CBE goal no later than the timeframe required in the applicable solicitation documents.

(d) *Determination of Good Faith Efforts.*

(1) A Bidder whose response to a solicitation fails to satisfy the requirements of paragraphs (b) and (c) above, as applicable, shall not be denied award of a contract if the Bidder otherwise timely (within the applicable timeframes provided in the solicitation) provides documentation demonstrating, as determined by the Program Director, the Bidder's Good Faith Efforts to satisfy the requirements.

(2) In determining whether a Bidder has demonstrated Good Faith Efforts under this Act, the Program Director shall consider the quality, quantity, and extent of the various efforts that the Bidder has made to satisfy the established CBE goal. These efforts may include, but are not limited to:

- a. Soliciting through activities such as attendance at prebid meetings, advertising, or written notices, the interest of certified CBEs that have the ability and capacity to perform the contract work. The Bidder must solicit this interest in a timely manner to allow the CBEs to respond to the solicitation. The Bidder must take appropriate steps to follow up initial solicitations of CBEs.**
- b. Identifying the portions of the contract that could reasonably be performed by a CBE in order to increase the likelihood that the CBE goal will be achieved. This may include, where appropriate and commercially practicable, separating contract work items into segments more appropriate for participation by CBEs.**
- c. Providing each interested CBE with adequate information about the plans, specifications, and requirements of the contract in a timely manner.**
- d. Negotiating in good faith with each interested CBE. Evidence of such negotiation includes the names, addresses, and telephone numbers of CBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and explaining why an agreement could not be reached with any of the interested CBEs. The fact that there may be some additional costs involved in subcontracting**

with CBEs is not in itself sufficient reason for a Bidder's failure to meet the contract CBE goal, as long as such additional costs are reasonable, as determined by the Program Director in his or her sole discretion.

- e. Rejecting an interested CBE as being unqualified for participation only after diligently investigating the CBE's capabilities and documenting the sound reasons justifying such rejection (with such documentation to be provided to the Program Director).

(3) In determining whether a Bidder has made Good Faith Efforts, the Program Director may also consider the level of CBE participation proposed by other Bidders as well as any representations made by the Bidder during the bid, proposal, or selection phases of the procurement regarding the Bidder's commitment to attain the CBE goal.

Based on the above a complete evaluation was performed considering all factors and all documentation submitted by Giannetti Contracting Corp (Giannetti). The chart below demonstrates eligible scopes to be considered as well as the number of certified firms available to be considered to complete these scopes of services.

NAICS	Description	Scope %	Certified firms	Total firms in Broward County
238910	General Contractors, site work	23%	26	84
237110	Water & Sewer	50%	20	41
561730	Landscaping	1%	17	601
237310	Asphalt Paving	25%	19	37
484220	Trucking	1%	3	55
	Total	100%	85	818

Total number of firms available to participate as subcontractors was 85.

The following were some of our specific considerations when reviewing the responses for determining Good Faith Efforts :

- a. Giannetti did not provide any proof of advertisement in the documentation submitted with its Good Faith Effort. They did not provide proof of any communications for OESBD to determine their solicitations or advertisement for certified CBE firms.
- b. Giannetti did not provide proof of breakdown in scopes of work to be performed by certified subcontractors other than the letters of intent that were submitted with their bid totaling 9.14% of the 30% project goal.
- c. Giannetti did not provide proof of disseminating information about plans or specifications to CBEs.
- d. Giannetti did not provide documentation of negotiation with CBEs other than the information received from two firms, one certified (Sun-Up Enterprises) and the other (E & N Construction) not certified at the time of bid, though indicating that they were seeking recertification.

Additionally, there were a total of eight (8) bidders for this solicitation and six (6) vendors met or exceeded the CBE requirement. Giannetti was determined to be non-compliant when considering the reasons listed above and when comparing the actual level of participation provided by Giannetti (9.14%) to the other six (6) bidders, who were all 30% goal met or above.

We also considered: Giannetti negotiated with Sun-Up Enterprises to provide scopes under NAICS code 237110 (Water & Sewer) and could not agree on a price. However, there are twenty (20) other certified CBE firms in that category.

Giannetti listed E & N Construction (non-certified at the time of bid) to provide services under NAICS code 237310 (Asphalt Paving). Though they stated that this firm was seeking recertification, there are nineteen (19) other certified CBE firms in that category that may have been able to provide that services.

When all was considered, inclusive of a comparison of all proposers that met the project goal, the OESBD determined that Giannetti did not provide sufficient documentation to support meeting the Good Faith Effort for the contract and this includes their statement of a future vendor who was looking to be recertified. The office stands by its original memo of noncompliance and failure to meet Good Faith Efforts.

I know we will all be discussing this tomorrow so I look forward to our conversation..

Cc: Jed Shank, Office of the County Auditor
Maribel Feliciano, Assistant Director, OESB
Freddy Castillo, Small Business Manager




OFFICE OF THE COUNTY AUDITOR

115 S. Andrews Avenue, Room 520 • Fort Lauderdale, Florida 33301 • 954-357-7590 • FAX 954-357-7592

Date: February 28, 2019

To: Sandy-Michael McDonald, Director
Office of Economic and Small Business Development

From: Bob Melton, County Auditor 

Re: Bid No. PNC2117205C1 – Utility Analysis Zone (UAZ) - 122 County Business Enterprise (CBE) Review (November 6, 2018)

This is to confirm our previous verbal request that you re-review the assessment of Giannetti Contracting Corporation's (Giannetti) compliance with the CBE program requirements as provided within the above referenced memorandum.

Following our request to your office, we reviewed the Good Faith Effort letter submitted by Giannetti dated October 25, 2018. Among other efforts, the letter states that "Giannetti decided upon using a former certified CBE, E&N Construction", "E&N Construction is currently eligible again for CBE status", and "When E&N Construction gets certified and can be considered as part of the attainment goal, Giannetti will meet the 30% CBE goal". This representation may meet the requirements of County Ordinance Section 1-81.5 Section D "Determination of Good Faith Efforts" which allows for considerations of "representations made by the Bidder during the bid proposal, or selection phases of the procurement regarding the Bidder's commitment to attain the CBE goal."

I would appreciate your considering whether this response by Giannetti adequately demonstrates commitment to meet the CBE goal and constitutes a good faith effort and, thus, compliance with the CBE program requirements. Once you have done this re-review, please feel free to proceed as warranted from your review. I would appreciate receiving a copy of your re-review.

Thank you for your assistance. If we can be of any assistance, please feel free to contact me or Jed Shank.

BM/js/besa




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

DATE: March 4, 2019

TO: Bob Melton, County Auditor

FROM: Sandy-Michael McDonald, Director 
Office of Economic and Small Business Development

RE: Bid No. PNC2117205C1 – Utility Analysis Zone (UAZ) – 122 County Business Enterprise (CBE) Review (November 6, 2018)

Per your previous verbal request and your most recent written request (February 28, 2019) that I re-review the assessment of Giannetti Contracting Corporation compliance with the CBE program requirements, this is to inform you that I will be standing by my original review of November 6, 2018 and my most recent written communication sent to you on February 26, 2019. I will not be re-reviewing.

Thank you.

cc: Monica Cepero, Deputy County Administrator
Brenda Billingsley, Director, Purchasing Division
Jed Shank, County Auditor