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April 25, 2022

Via Email: rgleason@broward.org

Robert Gleason, Director
Broward County Purchasing Division
115 S. Andrews Avenue, Room 212
Fort Lauderdale, FL 33301

**Re: RLI No. PNC2119994R1 – Parking Access in Revenue Control
Equipment and Maintenance
Response to Objection by Scheidt & Bachmann USA, Inc. (“S & B”)**

Dear Mr. Gleason:

The undersigned law firm represents DESIGNA Access Corporation (“DESIGNA”) regarding the above-referenced RLI. We submit this correspondence in response and opposition to the Objection Letter (“Objection”) submitted by S & B dated April 8, 2022. Although the Purchasing Division has analyzed and opined on the core issue raised by S & B by virtue of the Purchasing Division’s March 23, 2022, Memorandum, DESIGNA is compelled to respond to S & B’s allegations.

In sum, **S & B’s Objection is both procedurally and substantively deficient, and therefore must be denied.** DESIGNA and S & B were initially tied for the top-ranking of this RLI. After appropriately applying the tie-breaking criteria as mandated in the County’s Procurement Code, the Selection Committee selected DESIGNA as the top-ranked firm. There is no reason for the County to deviate from what was a “by-the-book” and sound evaluation process.

First, **procedurally S & B’s Objection fails to meet the requirements of Section 21.42(h) of Broward County’s Procurement Code (“Code”).** The Objection does not raise information which has not been presented or submitted to the Selection Committee when it made the ranking. The Code specifically requires such information to be presented, and failing that requirement, the Objection must fail. Instead, S & B improperly takes issue with the process to rerank the tied vendors, and the way one of the evaluators scored the initially third ranked firm in the tiebreak process. Those issues are not issues that can form the basis of a valid Objection based the requirements of Section 21.42(h). In addition, S & B’s Objection fails to include a statement from it attesting all statements made in support of the objection are accurate, true and correct, as required by Section 21.42(h) of the Code. Therefore, S & B’s Objection must be denied.

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Second, even if the Purchasing Division were to consider the merits of the Objection, it substantively fails based on Section 21.42(d) of the Procurement Code. S & B's core claim is the Selection Committee did not adhere to the Procurement Code when reranking the proposers which were initially deemed to be tied. Section 21.42(d), sets forth the criteria for breaking ties in the evaluation of a request for Letters of Interest. It initially states, in pertinent part, "the criteria shall be applied by the Purchasing Division based on the information provided in the responses to the solicitation or any additional information determined appropriate for consideration by the Director of Purchasing." Section 21.42(d) then sets forth five (5) criteria for breaking ties. The first three criteria were either inapplicable or did not break the tie in this evaluation. Therefore, the Selection Committee went to the fourth criteria, which states, "if the foregoing does not resolve the tie, the Selection Committee shall reconsider the responses and rerank the tied vendors."

The Selection Committee followed the Code. It reconsidered the responses to the solicitation and re-ranked the vendors. The term "reconsider" is not defined in the Code. Reconsider is generally defined as "to consider again, especially with a view to changing or reversing"; or, "to consider something again." See, Miriam Webster's Dictionary definition of "reconsider." The Selection Committee executed that process. The Code does not require a certain length of time for discussion or reconsideration, or any discussion at all. Nor does the Code require new information be presented, despite S & B's argument to the contrary. In fact, the Code is clear proposers are to be evaluated based on the responses to the solicitation, or any additional information determined appropriate by the Director of Purchasing. The meeting Chair did not designate any additional information appropriate for consideration, therefore, the proposers were reconsidered based on their responses to the solicitation. **The Selection Committee did not deviate from the requirements of the Procurement Code to break the tie and rank DESIGNA as the top-ranked vendor.**

S & B next argues there was an implicit bias among the Selection Committee members because when they re-ranked, they knew how other Committee members initially voted. This is speculative and factually incorrect. There is nothing to indicate the Selection Committee members were swayed by anything. On our review of the video of the meeting we can see no evidence the initial ranking of the Selection Committee was display internally or externally via the connected MS® Teams call. Therefore, we do not believe the Selection Committee members were, at any time, informed of the initial ranking of other team members. The Selection Committee members were informed by the meeting Chair and clearly understood DESIGNA and S & B were initially tied in the ranking. The Selection Committee fulfilled their required duty under Section 21.42 of the Procurement Code and reconsidered the responses and re-ranked the tied vendors.

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Lastly, the claim regarding the ranking of the third-place vendor, TIBA Parking Systems LLC. ("TIBA"), is misplaced. The ranking of TIBA bore no impact on the reranking of S & B or DESIGNA during the tie-breaker process. The contention by S & B that TIBA did not follow County instructions for the Oral Presentation are baseless. There was no requirement, expressed by the County that rankings would consider the compliance, or otherwise of County requests for the conduct of the Oral Presentation.

CONCLUSION

In conclusion, S & B's Objection is procedurally and substantively flawed. Its Objection does not meet the Code's requirement of identifying information not presented or submitted to the Selection Committee, and it failed to include the required attestation that all statements made in it are true and correct. On that basis alone the Objection must be denied. Further, S & B's Objection is substantively flawed because the Code's mandatory tie-breaking criteria was followed exactly in this evaluation.

S & B is merely a disappointed vendor which does not like the outcome of this procurement. DESIGNA is the top-ranked responsive and responsible vendor to this RLI. There is no reason set forth by S & B to deviate from that determination. Therefore, the Purchasing Division should reject S & B's objection, and proceed with its recommendation of this award to DESIGNA. DESIGNA remains ready, willing, and able to perform these important services for Broward County.

Respectfully submitted,



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For the Firm

MJS/ms

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