

ADDITIONAL MATERIAL

Regular Meeting

MAY 19, 2020

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: May 14, 2020

TO: Board of County Commissioners

THRU: Kevin B. Kelleher, Deputy Chief Financial Officer
Finance and Administrative Services Department

FROM: Brenda J. Billingsley, Director
Purchasing Division

**BRENDA
BILLINGSLEY**

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BRENDA BILLINGSLEY
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SUBJECT: May 19, 2020 - Commission Meeting – Agenda Item No. 53
MOTION TO APPROVE final rankings of the qualified firms for Request for
Proposals (RFP) No. PNC2119212P1 Consulting Services, for the Port
Everglades Department

Attached is additional material for Agenda Item No. 53 as follows:

1. Becker & Poliakoff response to objection letter on behalf of Chen Moore & Associates, Inc. (dated January 14, 2020)

Attachment

BJB/cm/lg

- c:
- Bertha Henry, County Administrator
 - Monica Cepero, Deputy County Administrator
 - George Tablack, Chief Financial Officer
 - Glenn Wiltshire, Acting Director, Port Everglades Department
 - John Foglesong, Director, Seaport Engineering & Facilities Maintenance Division, Port Everglades Department
 - Robert Melton, County Auditor
 - Andrew Meyers, County Attorney

Mark J. Stempler, Esq.
Shareholder
Board Certified Construction Lawyer
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Becker & Poliakoff
625 N. Flagler Drive
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West Palm Beach, Florida 33401

January 14, 2020

VIA Email: bbillingsley@broward.org

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

**Re: Response to Objection Regarding Recommendation of Ranking Re:
Consulting Services for Port Everglades – PNC2119212P1 (“RFP”)**

Dear Ms. Billingsley:

We represent Chen Moore & Associates, Inc. (“CMA”) regarding the above-referenced RFP. We submit this letter in response and opposition to Bermello Ajamil & Partners, Inc.’s (“BA”) Objection Regarding the Recommendation of Ranking for the RFP (“Objection”).

BA’s Objection fails identify any significant new information regarding CMA’s proposal that has not already been considered by the Evaluation Committee. In addition, BA fails to establish that the Recommendation of Ranking was unfair or incorrect. Therefore, BA has failed to meet the requirements set forth in Section 21.84.f. of the Broward County Code, and its Objection must be denied. BA is merely a disappointed second-ranked proposer that subjectively and incorrectly thinks it should be ranked higher.

Contrary to BA’s allegations, CMA’s vast experience and expertise satisfied the past performance requirements for this project. CMA, a locally-headquartered firm for 33 years and a graduate of Broward County’s CBE program, has worked on dozens of Broward County projects and has a long track record of success. The Purchasing Division and the Evaluation Committee conducted a comprehensive and thorough review and analysis of all proposals based on the RFP specifications. Following that evaluation, the Evaluation Committee determined that CMA’s proposal “takes the cake.” CMA’s inclusion of Jacobs, a worldwide leader in marine and port engineering, as a sub-consultant on this project was simply the “icing on the cake.”

I. INTRODUCTION

The RFP sought a qualified firm to provide professional consulting services for Port Everglades. These services included professional architectural, engineering and related services on a continuing basis for the remodeling, renovation and new construction projects within Port Everglades. The costs of the future construction projects contemplated for these services were not to exceed two million dollars. The anticipated fees to the consulting engineer are \$1,000,000 annually. Thus, the type of projects at issue are relatively small and confined in scope. The consultant was not to provide design services on major Port projects. Those projects will be the subject of future solicitations and will carry more significant project dollar values, the like of which will not apply under this RFP.

This solicitation was governed in part by Section 287.055, Florida Statutes, commonly known as the Consultants Competitive Negotiation Act (“CCNA”). Price was not considered in the final evaluation and ranking of the qualified firm. As described in its proposal, CMA has dozens of similar contracts, including two current contracts with Broward County. Managing continuing contracts requires a vastly different skill set than completing a capital project, and CMA has demonstrated experience managing these types of projects.

CMA’s proposal clearly set forth its experience and expertise. CMA is led by a team of team of engineers who have many years of experience with the types of projects contemplated at the Port under this RFP. In fact, as described in its proposal, CMA’s personnel have served as engineers at the Port before. As BA points out in its Objection, CMA also listed a significant project in which it served as the lead engineering consultant for the development of a port in Panama (the “Punta Limon” project). CMA’s team includes several sub-consultants, which the RFP encouraged the use of. BA’s proposals included numerous sub-consultants as well.

On December 9, 2019, the Evaluation Committee met and heard oral presentations from several proposers. CMA’s oral presentation and question and answer period lasted more than 30 minutes, and it was asked numerous questions regarding its experience and capabilities by Evaluation Committee members. At the conclusion of the meeting the Evaluation Committee ranked CMA as the top firm.

The proposers were scored on a 100-point scale, and there were four evaluation committee members. Points were assigned for seven different categories. At issue in BA’s objection letter is Category 3, which evaluated proposers’ “Past Performance.” **In that category, BA received more points than CMA:**

Past Performance – Maximum Points = 30

- BA – 112
- CMA - 107

Both in CMA's written proposal and during its oral presentation, it was crystal clear which prior projects were performed by CMA, and which were performed by any of its sub-consultants. **There is no indication that the Evaluation Committee was confused in this regard, or that it assigned points to CMA based on a sub-consultant's experience.**

The other evaluation category raised by BA is Category 5 for "Location," which was based on the location of a proposer's principal place of business in Broward County, CMA received the maximum five points because it is a local business. **Its headquarters is in Broward County, and has been for 33 years.** BA, on the other hand, does not have its principle place of business in Broward County, and rightfully did not receive any points for that category.

The Recommendation of Ranking was posted on December 20, 2019. BA, the disappointed second ranked firm, filed its Objection on December 26, 2019.

II. RESPONSE IN OPPOSITION TO BA'S OBJECTION

BA presents two incorrect arguments. First, based on "new information" the Evaluation Committee unfairly and incorrectly evaluated CMA's experience. Second, that CMA and Jacobs submitted for this project as a joint venture, and therefore CMA should not have been awarded as many location points as it received. Both arguments are simply false.

A. CMA's Experience was Fairly and Correctly Evaluated

CMA's proposal clearly and unequivocally sets forth its experience that qualifies it for this project. BA even admits that CMA's respective firm has much experience in projects involving civil engineering. BA also admits CMA has experience as a primary contractor on a major international port project. **BA argues that it has more experience than CMA in port projects, but the Evaluation Committee awarded BA more points for past performance than CMA.**

The number of points awarded for past performance, however, was not commensurate with the number of projects performed. Category 3 sought a minimum number of three projects of similar nature, scope and duration within the last five years generally. Further, the RFP did not state that more port or marine projects performed would result in more points awarded. Rather, the RFP indicates proposers would be evaluated on their qualitative experience. While points were awarded for experience, proposers were asked to "include" projects related to ports or marine environments. CMA did so, and its experience was evaluated accordingly. All proposers' Broward County projects were also reviewed and evaluated per the Category 3 specifications.

CMA clearly demonstrated its experience on "projects of similar nature, scope and duration." CMA did not seek to receive credit for Jacobs' seaport experience, nor did the Evaluation Committee award points based on Jacobs' seaport experience for Category 3. In fact,

none of Evaluation Committee members awarded CMA the maximum 30 points for Past Performance.

BA too intended to use several sub-consultants on this project. BA too relied on its “team” in touting their collective knowledge and experience. The use of sub-consultants did not mean that the Evaluation Committee awarded Past Performance points based on the team’s collective experience. The Evaluation Committee understood the evaluation of the prime vendor was required, and there is nothing to suggest the committee deviated from that criteria.

Under Florida law, where an unsuccessful proposer alleges that the awarding agency abused its discretion in awarding a public contract to a competing vendor, the reviewing body must not substitute its judgment for that of the agency, and logically its evaluation committee, to determine whether reasonable persons may reach a contrary result. See, *Scientific Games, Inc. v. Dittler Brothers, Inc.*, 586 So. 2d 1128 (Fla. 1st DCA 1991); *Intercontinental Properties, Inc. v. State Dept. of HRS*, 606 So. 2d 380 (Fla. 3d DCA 1992). Further, “in Florida ... a public body has wide discretion in soliciting and accepting bids for public improvements and its decision, *when based on an honest exercise of this discretion*, will not be overturned... even if it may appear erroneous and even if reasonable persons may disagree.” *Liberty County v. Baxter’s Asphalt & Concrete, Inc.*, 421 So.2d 505 (Fla.1982).

BA has failed to demonstrate there is new information that the Evaluation Committee should consider regarding this issue. BA has also failed to demonstrate that the Evaluation Committee’s Recommendation of Ranking is unfair or incorrect. For those reasons, BA’s Objection must be denied.

B. CMA and Jacobs Did Not Submit as a Joint Venture

CMA is clearly the prime vendor for this RFP. Its written proposal states so. Further, that was the representation made during the oral presentation. Nowhere in CMA’s proposal does it state that Jacobs and CMA are a joint venture. CMA’s proposal is clear that Jacobs is a sub-consultant, which is of course allowed and encouraged for this project. Together, CMA and all its sub-consultants were determined to form the best team for the services sought in this RFP. If a prime vendor had all the personnel and know-how to perform every facet contemplated under this RFP, the prime vendor would not need to propose sub-consultants. Yet, BA, CMA and several other proposers did.

Since CMA is the prime vendor, and because it is headquartered in Broward County and has been for three decades, it is entitled to location points as set forth in this RFP based on the sound evaluation by the Purchasing Division.¹

¹ In a footnote, BA’s Objection incorrectly states that Location points should not have been awarded because this procurement was conducted pursuant to CCNA, Section 287.055, Fla. Stat. BA admits, however, that Section 287.055(4)(b) requires location to be evaluated under CCNA. Further, if BA had an issue with Location evaluation

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III. CONCLUSION

BA's Objection has failed to meet the requirements set forth under Section 21.84.f of the Broward County Administrative Code. BA has not cited any new significant information, nor has it demonstrated that the Evaluation Committee's ranking was unfair or incorrect. Rather, the Evaluation Committee ranked CMA number one after a thorough and comprehensive review of its proposal and presentation.

The Evaluation Committee was armed with CMA's complete proposal. It had the ability to ask any questions it wanted of CMA, and the committee members did so. CMA is qualified to perform these services at issue in this RFP and looks forward to working with Broward County regarding this important port project.

Respectfully submitted,



Mark J. Stempler, Esq.
For the Firm

MJS/mrw

cc: Tricia D. Birsett, Esq. (via e-mail: tbrissett@broward.org)
Bernie J. Friedman, Esq.
Nick Matthews, Esq.
Client

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criteria set forth in the RFP, it was required to raise that issue in a specification challenge under section 21.118 of the Administrative Code within seven business days from the posting of the solicitation or addendum. Section 21.118(a)(1) further states, "Failure to timely protest bid specifications or requirements is a waiver of the ability to protest the specifications or requirements." Therefore, BA has waived any argument in that regard.