

Finance and Administrative Services Department

**PURCHASING DIVISION**

115 S. Andrews Avenue, Room 212 • Fort Lauderdale, Florida 33301 • 954-357-6066 • FAX 954-357-8535

Certified Mail No. 7006 3450 0003 8479 1001

April 1, 2020

Joseph M. Goldstein, Esq.  
Shutts & Bowen, LLP  
200 East Broward Boulevard, Suite  
2100 Fort Lauderdale, FL 33301

Re: Objection - Request for Proposals (RFP) PNC2119212P1, Consulting Services  
for Port Everglades

Dear Mr. Goldstein:

We are in receipt of your timely objection letter dated December 26, 2019, on behalf of your client, Bermello Ajamil & Partners, Inc. ("BA"). The objection is based upon the summary of the two assertions as follows:

- (1.) Chen Moore and Associates ("CMA") unfairly and incorrectly received credit for Jacobs' seaport experience (Jacobs).
- (2.) If CMA bid with Jacobs as prime or as a joint venture, BA would have been the most qualified vendor [based on location assigned points].

The following will address your assertions, point by point, to explain my determination based upon the Procurement Code and established Committee procedures.

**Objection Assertion No. 1:**

**CMA unfairly and incorrectly received credit for Jacobs' seaport experience.**

Your objection letter claims that CMA did not have multiple projects with required experience and relied on the experience of their subconsultant Jacobs, "CMA's de facto joint venture partner." [Objection letter, page 4]. It further alleges that "if the Selection Committee had properly scored Past Performance based only on the prime Vendor's experience, then in total they would have awarded BA enough points to offset the local preference given to CMA". [Objection letter, page 10]

**Response No. 1:**

The County's solicitation requested responses from qualified firms to provide comprehensive architectural and/or engineering services on a project specific basis for projects in which the estimated construction cost for each individual project does not exceed Two Million Dollars (\$2,000,000). The Scope of Services further states "Consultant shall provide all professional services, including specialty consultant support, where project specifics require it, through either in-house or sub-consultant firms needed to complete an assigned project". [RFP No. PNC2119212P1, page 4].

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The Evaluation Criteria requested information on professional personnel, project approach, past performance and additional criteria in relation to the advertised Scope of Services. Firms were requested to submit evaluation criteria responses identifying qualifications, experience, and ability of all key staff, including all subconsultants' key staff to be assigned to this project. Additionally, per the RFP, the Evaluation Committee may consider other factors in the scoring and ranking of firms, including past performance on Broward County contracts, presentations, and supplemental information received during presentation question and answer periods.

The allegation that the Evaluation Committee has improperly scored based on projects submitted, resumes, and relevant experience is unfounded. The Evaluation Committee is appointed based on their breadth of experience, excellent judgment, and general interest in the subject matter. Your direction to the Director of Purchasing to "instruct the Selection Committee that as to the thirty points available for Past Performance that they shall not consider the experience of any of the prime vendors' subcontractors ... and such experience must be of similar nature ..." is incorrect. The Director of Purchasing ensures the Evaluation Committee is provided copies of the solicitation (including any addenda), responses, and any supporting information required to evaluate and score firms in order to make a recommendation to the County Commission to award a contract to selected vendors which provide the services required that are in the best interest of the County.

The number of points awarded for past performance was not stated to be based exclusively on the number of port or marine projects completed by the prime contractor. Specifically, the Past Performance evaluation criterion sought "a minimum number of three projects of similar nature, scope and duration along with evidence of satisfactory completion, both on time and within budget within the last five years". [RFP PNC2119212P1, page 48]. Further, the RFP did not state that more port or marine projects performed by the prime would result in more points awarded. The use of subconsultants does not signify the Evaluation Committee awarded points in this category based on the team's collective knowledge and experience.

**Objection Assertion No. 2.**

"If Chen Moore bid with Jacobs as prime or as a joint venture, BA would have been the most qualified vendor".

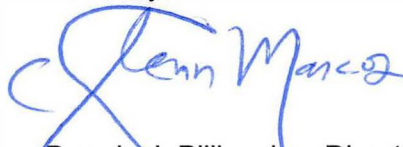
**Response No. 2.**

Chen Moore's response clearly indicated they were submitting as the prime vendor for the project. Inclusion of subconsultants logos is common in responses to Requests for Proposals, especially for continuing services contracts with broad scopes. Chen Moore has submitted all documentation required in the RFP to prove that their principal place of business is located in Broward County and therefor entitled to the location points set forth in the RFP.

Joseph M. Goldstein, Esq., Shutts & Bowen, LLP  
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Upon review of the procurement record, correspondence received by parties to the objection, and the proceedings of the Evaluation Committee, I find that the issues raised in the objection are not of sufficient merit to recall or otherwise alter the recommendation of the Evaluation Committee. No new substantive information was presented to warrant the reconvening of the Evaluation Committee. The evaluation and scoring of firms were conducted appropriately and within the established guidelines, practices, and procedures set forth in the Broward County Procurement Code, Ordinances, and existing written guidelines. As such, the objection is denied.

Sincerely,

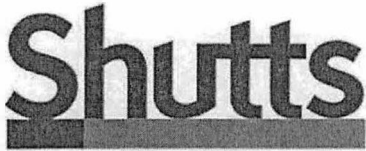
 ON BEHALF OF  
BRENDA J. BILLINGSLEY

Brenda J. Billingsley, Director  
Purchasing Division

Attachment

BJB/ml/gm/lg

- c Don Ellis, Construction Project Manager, Seaport Engineering & Facilities Maintenance Division
- Glenn Marcos, Assistant Director, Purchasing Division
- Connie Mangan, Purchasing Manager, Purchasing Division
- Michelle Lemire, Purchasing Agent, Purchasing Division
- Fernando Amuchastegui, Assistant County Attorney, Office of the County Attorney
- Tricia D. Brissett, Senior Assistant County Attorney, Office of the County Attorney
- Mark Stempler, Esq., Becker & Poliakoff, Counsel for Chen Moore & Associates, Inc.



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December 26, 2019

**VIA E-MAIL BBILLINGSLEY@BROWARD.ORG**

Brenda J. Billingsley  
Director  
Broward County Purchasing Division  
115 S. Andrews Ave., Room 212  
Ft. Lauderdale, FL 33301-4804

**Re: Objection regarding Recommendation of Ranking re Consulting Services  
for Port Everglades (PNC2119212PI)**

Dear Ms. Billingsley:

We represent Bermello Ajamil & Partners, Inc. (BA), and submit this letter, pursuant to Broward County Administrative Code, § 21.84. f., because the proposed recommendation of ranking for the above-referenced solicitation is unfair and incorrect, and the Selection Committee failed to consider this new information identified below.

**I. Summary**

**CMA is unfairly and incorrectly getting to have its cake and eat it too.**

Chen Moore and Associates, Inc. (CMA) sought to have its cake and eat it to, and the Selection/Evaluation Committee unfairly and incorrectly let them do so. Specifically, CMA improperly received all of the benefits of teaming with Jacobs Engineering Group, inc. and its seaport experience, contrary to the terms of the solicitation, yet avoided bidding as a joint venture with Jacobs so that CMA could obtain the full amount of points for Evaluation Factor 5, Location. As further described below, CMA should not have received any evaluation credit for the Past Performance (Evaluation Factor 3) of Jacobs. Further, if the County was to pennit such consideration, then CMA should have been treated as de facto joint venture with Jacobs, and its score should be adjusted accordingly for the Location Evaluation Factor 3. Either way, when these two issues are corrected, BA would become the highest scored Vendor.

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## **II. Introduction**

### **A. The Solicitation only permitted consideration of the prime vendor's past performance, specifically relating to seaports.**

The solicitation sought a firm to provide professional consulting services for Port Everglades to include architectural, engineering, and related services on a continuing basis for remodeling, renovation, and new construction projects with construction costs of each individual project does not to exceed \$2,000,000.00. Solicitation, at 2 & 4 of 52 (attached as Exhibit 1). The procurement is subject to Section 287.055, Florida Statutes, and the Consultants' Competitive Negotiation Act (CCNA). The CCNA requires a qualifications' based selection, without consideration to price until vendors are ranked based on their qualifications. *See generally* Fla. Stat. § 287.055(4) (2019); Broward County Administrative Code, § 21.8S (11-8-11).

To determine the best qualified firm to commence negotiations with, the Solicitation specified seven evaluation criteria worth a total of one-hundred points. Evaluation criterion three, Past Performance, was worth thirty points. In assigning point scores for Past Performance, only the "prime Vendor's" past performance as to similar work at seaports was to be considered. Specifically, the Solicitation stated as follows:

[remainder of page blank - continues on next page]

3.	<p><b>Past Performance: • Maximum 30 points</b></p> <p>Describe prime Vendors' experience on projects of similar nature, and type a duration along with evidence of satisfactory completion, both on time and within budget; for the past five years. Provide a minimum of three projects with references.</p> <p>Vendor should provide references for similar work performed in the past five years and previous experience. Refer to the following form and submit as instructed. Only provide information for Broward County Board of Commissioners. For Broward County contract, the County will list performance ratings in its database for vendors with contracts with the County. The County will evaluate and performance evaluation in the evaluation and if-entireance ..</p> <p><b>a. Include active and completed projects related to cruise and/or cargo terminal expansion/construction and any other seaport transportation projects.</b></p> <p><b>Points Value: 15</b></p>
	<p><b>b. Include active and completed projects related to marine infrastructure and dredging.</b></p> <p><b>Points Value: 10</b></p>
	<p><b>c. Include active and completed projects related to roadway and utility construction within a seaport environment.</b></p> <p><b>Points Value: 5</b></p>

Solicitation at 48 (emphasis-added).

**13. The most points that a locally headquartered venture could receive for the location evaluation criterion was three.**

The solicitation provides for a local preference of five points for "a vendor whose principal place of business is located in Broward County." Solicitation at 49. If a locally headquartered vendor teamed with a nonlocally headquartered company, then at most it could receive three points if it had a significant equity stake in the company. Solicitation at 48-49. Otherwise, regardless of a firm's location and connection with Broward County, no points were available for this evaluation criterion. Indeed, even if a company was headquartered next-door in Miami. Dade County had a long-standing significant presence in Broward County, then it could not receive any points for this evaluation criterion.

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m. Argument

A. Chen Moore unfairly and incorrectly received credit for Jacobs' seaport experience.

1. CMA only had one relevant project.

CMA is a well-respected firm with much experience in projects involving civil engineering, water resources, water and sewer, transportation, and landscape architecture, but no such depth of experience related to seaports. Indeed, it has not one directly relevant project that it has performed in the United States similar to what is sought in this solicitation. Knowing of its lack of experience on projects of similar nature of those in this solicitation, CMA teamed with Jacobs in a de facto joint venture.

As noted above, the Past Performance evaluation criterion was only to be judged on the "prime Vendor's experience on projects of similar nature," specifically three types:


- a. cruise and/or cargo terminal expansion/construction and any other seaport transportation projects (worth 15 points);
- b. marine infrastructure and dredging (worth 10 points); and
- c. roadway and utility construction within a seaport environment (worth 5 points).

Solicitation, at 48.

Only one of the fourteen projects (relating to a greenfield port in Central America) that CMA submitted for its past performance was related to the solicitation's three designated types of similar projects. *See* CMA Proposal, at 208-210 and 218- 233 (attached as Exhibit 2). Instead, CMA's identified projects are primarily for water and sewer projects and not even in a seaport environment as required by this solicitation.

Realizing its lack of relevant experience in the context as required by the solicitation, CMA relied on the experience of Jacobs, and sought to make it appear that the companies were submitting as a joint venture, which would have allowed the Selection Committee to properly consider the relevant experience of Jacobs. For example, nearly every page of CMA's proposal is branded as if being submitted by both companies as a joint venture:

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<p><b>GREGORY MENDEZ, P.E.</b> Project Manager Telephone: +1(954) 730-0707, Ext. 1125 Fax: +1(954) 730-2030 email: gmendez@chenmoore.com</p>	<p>Office Location: 500 West Cypress Creek Road Suite 630 Fort Lauderdale, FL 33309</p>	 <p><b>JACOBS.</b></p>
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Broward County Board of PNC2119212P1

and



**JACOBS**

CMA Proposal, at *passim*.

CMA's narrative also adopts this de facto joint venture theme. In the first sentence of text in the submission, CMA states that it is submitting "in association with **JACOBS.**" CMA Proposal, at 8 (emphasis in original); see also *id* at 59. ("Chen Moore and Associates, Inc. (CMA), in association with Jacobs, is pleased to submit. . ."). Looking at the organizational chart and the key personnel identified in the proposal, it is even more apparent that CMA was bidding this project as a de facto joint venture with Jacobs, who is supplying more of the key personnel than CMA. For key personnel, CMA identifies and provides resumes for approximately thirty-eight persons. Of that thirty-eight, sixteen are from Jacobs, thirteen are from CMA, six are from Cummings Cederberg, two are from Stoner & Associates, Inc., and one is from PanGeo Consultants.<sup>1</sup> See CMA Proposal, at 59-77 and 83-185. Of the eleven primary disciplines of work, CMA lacks any key personnel in seven. CMA Proposal, at 63.

Within the Past Performance section of CMA's proposal, CMA seeks to adopt Jacobs' seaport experience as its own:

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<sup>1</sup>It is surprising that only 1 key personnel is identified from PanGeo, when CMA intends to subcontract 20% of the work to PanGeo as its Community Business Enterprise (CBE) Contractor. Based on BA's experience at Port Everglades for the work to be performed under this Solicitation, it is highly unlikely that there is sufficient scope to reach the 25% CBE subcontracting to subcontract 20% for geotechnical engineering and 5% for surveying as CMA intends to accomplish.



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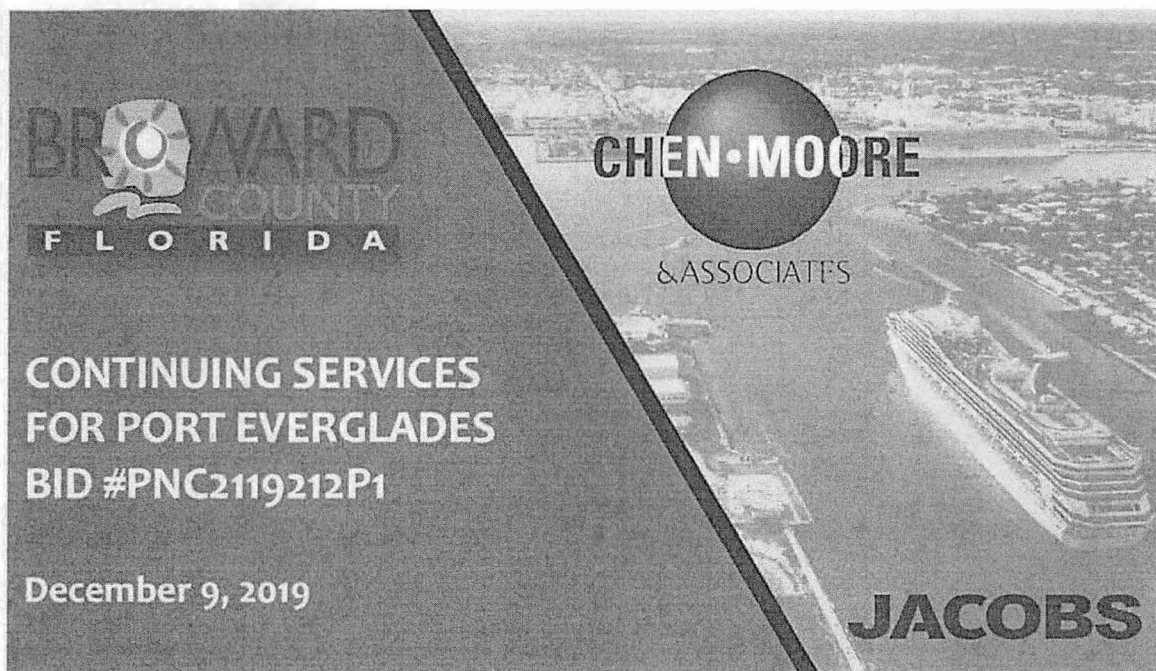
**Port General Consultant and Civil Contracts**

The experience we have gained across ports throughout the country will be used in tackling your day to day engineering needs. We understand the nuances and the types of services required. Our goal is to develop long lasting relationships with the client and to bring the technologies to help meet their needs. We have multi-decade relationships with port authorities throughout the southeast.

Our subconsultant Jacobs has performed these services at both cruise heavy and cargo heavy ports and understands the specifics required of each. From traffic studies for cruise and cargo vehicles, to paving for cargo storage, to gate operations for cargo interchange. Jacobs has done it and done it well.

CMA Proposal, at 207. The "we" referenced to experience "gained across ports throughout the country" refers to Jacobs not CMA as CMA admittedly has no experience in ports in the United States.

CMA continued this de facto joint venture language in its presentation. Again, the cover page of its presentation is an implied joint proposal:



In its oral presentation, CMA noted only one of its contracts related to seaports, the Punta Limon Panama project. CMA Presentation, at 9 (the CMA Presentation is attached as Exhibit 3 and the audio and video files for the meeting are incorporated by reference). To demonstrate its Past Performance, CMA relied nearly exclusively on Jacob's seaport experience, citing numerous projects and contending that Jacobs is the "No. 1 ENR Port Firm in the World." *Id.* at 11-15 and 25-27.

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In response to questions during the oral presentations, CMA candidly admitted that it had not completed any domestic port project (and only one in its history in Central America), but emphasized that it offered a "true partnership with Jacobs." Thus, on one hand CMA is seeking to have the Jacobs' seaport experience count as if it were its own as if a de facto joint venture partnership, but on the other hand, as explained below, it does not want the County to consider CMA and Jacobs as a "true partnership" because then CMA would not have received enough points to outscore BA because such "true partnership" would have jeopardized CMA's Location points.

**2. All of BA's submitted past performance was similar in nature to that of the Solicitation.**

Compared to CMA, BA has objectively greater experience in the three types of projects of similar nature as those required by the solicitation, specifically relating to (a) cruise and/or cargo terminal expansion/construction and any other seaport transportation projects (worth 15 points); (b) marine infrastructure and dredging (worth 10 points); and (c) roadway and utility construction within a seaport environment (worth 5 points).

All of BA's submitted past performance relates to these required similar projects, including such work at Port Everglades, Port Miami, Port Canaveral, Port of Seattle, New York City Piers and Cruise Terminal, Cape Liberty Cruise Terminal in New Jersey, Port of San Francisco, Port of San Diego, and Singapore Marina Bay Cruise Centre. *See* BA Proposal, at 131- 159 (BA's Proposal is attached as Exhibit 4) (BA's oral presentation is attached as Exhibit 4(a)).

**3. CMA must have improperly received credit for Jacob's experience,**

Despite the objective greater experience of BA over CMA projects of similar nature, the Selection Committee scored the two Vendors similarly, with only a slight advantage to BA, indicating that they must have unfairly and inconsiderately considered the past performance of Jacobs, which is not permitted by the Solicitation. BA received 112 out of 120 points, and CMA received 107 points. *See* Scoring Sheet (attached as Exhibit 5).

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Evaluation Criteria	Maximum Points	<u>Ms. Khater</u>		<u>Mr. Gambril</u>		<u>Mr. Hamid</u>		<u>Mr. CohP.n</u>	
		<u>BA</u>	<u>CMA</u>	<u>BA</u>	<u>CMA</u>	<u>BA</u>	<u>CMA</u>	<u>BA</u>	<u>CMA</u>
Past Performance									
3.a (cruise/cargo terminal or other seaport transportation projects)	15	15	14	15	14	15	14	13	13
3.b (marine infrastructure projects)	10	10	09	09	09	10	09	08	08
3.c (roadway and utility construction within a seaport environment)	05	05	04	04	04	04	04	04	04
Subtotal	30	30	28	28	27	29	27	25	25
Total BA	112								
Total CMA	107								

Where the Solicitation permitted the Vendor submitting a proposal to obtain evaluation credit, i.e., points, for the qualifications for subcontractors, such as Jacobs, the Solicitation used terms such as "Project Manager," "key staff," and "project team" without restricting the evaluation to the Vendor. Solicitation, at 47, Evaluation Criterion 1, Ability of Professional Personnel.<sup>2</sup> As to Evaluation Criterion 3, Past Performance, however, the Solicitation specifically called for the "prime Vendor's experience on projects of similar nature." and then gave three examples of what the solicitation meant by "similar nature." Consideration of the past performance of Jacobs as to Evaluation Criterion 3, is in violation of the Solicitation, and thus unfair and incorrect. See, e.g., *Emerald Co. v. Mgmt. v. Bay Cnty. Bd of Cnty. Comm'rs*, 955 So. 2d 647, 652-S3 (Fla. 1st DCA 2007) ("Whether the Board acted arbitrarily is generally controlled by a determination of whether the Board complied with its own proposal criteria as outlined in the RFP"); *All Seasons Air Conditioning v. Fla. Dep't of Transp., DOAH*

<sup>2</sup> Half of the points for Evaluation Criterion 1.b., relating to "your firm's [as opposed to your team or something more generic indicating it was appropriate to consider subcontractors] 01S/CAD/BIM capabilities," should also be restricted to the Vendor submitting the proposal, and like Past Performance, CMA relied on Jacob's qualifications here also, and such is unfair and incorrect.

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No. 17-3184BID ff 3-9, 15-27, 49-59, 2017 WL 5958620, at \*2-5, 9-10 (Fla. Div. Admin. Hrgs. Aug. 28, 2017) (although bidders had to demonstrate their ability to perform by providing references for recently performed work that was similar in type, scope and volume to that called for in the solicitation the awardee's references consisted entirely of jobs that were significantly less complex than and for a very small fraction of the work called for in the solicitation); *Phil's Expert Tree Service, Inc. v. Broward County School Board*, DOAH Case No. 06-4499BID (March 19, 2007) (agency improperly considered experience of key personnel where solicitation specifically called for experience of the vendor).

If Broward County had intended the solicitation to permit the consideration of a subcontractor's experience to evaluate the Past Performance of the prime Vendor, then the solicitation should have clearly stated so. Instead, the Solicitation clearly stated for Past Performance, only the experience of the "prime Vendor" was to be considered.

**4. H CMA bid with Jacobs as prime or as a joint venture, BA would have been the most qualified vendor.**

Without the twenty points CMA received under Evaluation Criterion 5 relating to Location, to the zero points that BA received, BA would have been rated the highest 342 to 327.<sup>3</sup> Knowing that CMA had to make up for its lack of seaport experience, CMA had two appropriate choices to ensure that it received credit for Jacobs' seaport experience under the Past Performance evaluation criterion - either have Jacobs bid as the prime or form a joint venture. Under either scenario, however, based on the existing scores, BA would have been the highest scored Vendor.

If Jacobs served as the prime contractor, with CMA as the subcontractor, then it would have not received any points for the local headquarters preference evaluation criterion. Jacobs Engineering Group, Inc. is a foreign corporation with its principal place of business in Dallas, Texas. See 2019 Foreign Profit Corporation Annual Report of Jacobs (attached as Exhibit 6). Thus, with Jacobs as the prime contractor, CMA would not have been entitled to any points for the local headquartered preference Evaluation Criterion 5, and the total point scores would be 342 for BA and 327 for CMA.

If CMA and Jacobs had bid as a joint venture, assuming that CMA had 51% or more of the equity, then at most, CMA would have received 3 points for Evaluation Criterion 5, leading to 12 points rather than the 20 it received. Thus, with CMA and Jacobs bidding as a joint

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<sup>3</sup> BA has had a significant office presence in Broward County since 1995 and has approximately 25 employees in the office servicing Port Everglades directly: living, working, and paying taxes - both personal and corporate. Thus, for purposes of assessing the qualifications of a vendor under CCNA to give 5 points to CMA and 0 points to BA is illogical. Such points, however, is not the primary basis of this letter.

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venture, the total point scores would be 342 for BA for 339 for CMA.<sup>4</sup>

*III.*

**Conclusion: BA should be the highest scored Vendor**

The County must follow the requirements of its solicitation. For Evaluation Criterion 3, Past Performance, it was only to evaluate the past performance of the prime Vendor on projects of a similar nature, which was essentially defined as those at a seaport environment. It is obvious from the scores that the Selection Committee considered the experience of CMA's de facto joint venture partner because they awarded essentially the same score to BA and CMA despite the objective differences in their relevant experience. CMA has at most one foreign project that is of a similar nature. On the other hand, BA included at least twenty projects of a similar nature performed at ten different seaports in the United States and abroad, including at least seven projects at Port Everglades and two at the Port of Miami. If the Selection Committee had properly scored Past Performance based only on the prime Vendor's experience, then in total they would have awarded BA enough points to offset the local preference given to CMA.

Even if such consideration of Jacobs' experience was not prohibited by the solicitation, which it was, then CMA cannot have its cake and eat it too. If the County wrongly interprets the solicitation to permit the Selection Committee to consider Jacobs' experience, then for purposes of scoring the Evaluation Criterion for Location, the County should consider CMA and Jacobs as a de facto joint venture, and accordingly CMA should earn no more than three points per evaluator for this criterion, and with such adjustment, BA would be the highest scored Vendor.

Accordingly, consistent with Administrative Code § 21.84.f. and 21.84.g., you should take the following action. Based on the new information, unfairness, or incorrectness, as identified above, you should instruct the Selection Committee that as to the thirty points available for Past Performance that they shall not consider the experience of any of the prime Vendors' subcontractors, specifically Jacobs for CMA, and such experience must be of a similar nature (as defined in Evaluation Criterion 3(a), 3(b), and 3(c), because the solicitation calls for only consideration of the "prime Vendor's experience on projects of similar nature." Further, even if you believe that the Selection Committee may consider the experience of the prime Vendor's subcontractors for the Past Performance Evaluation Criterion, then you should re-score

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<sup>4</sup> By only awarding points for Evaluation Criterion 3 for Location as an all or nothing based on where a company has its principal place of business, the County is violating its Code of Ordinances and Florida Statutes. Section 287.0SS(4)(b). First, the County's Code prohibits the use of the local preference in CCNA procurements. Code § 1-74(8) (excluding CCNA procurements from the term "professional services" for purposes of the application of Broward County's Local Preference Ordinance.) Second, while the CCNA requires the location to be considered in determining the qualifications of a potential vendor in a CCNA procurement, to presume that a vendor whose principal office is located in Broward County deserves all of the evaluation credit, and a vendor whose principal office is located in Miami-Dade County that also has an existing Broward County Office providing the exact same services is entitled to zero points is an arbitrary and overly restrictive interpretation of a firm's location and its qualifications.

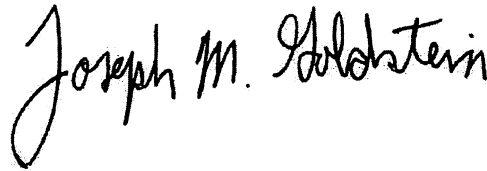
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th◆ EvalAAion Criterion 3, Location, .aslf CMA bid as a joint venture with Jacobs.

Thankyou for your thoughtful consideration of h e above.

Sincerely,

Shutts & Bowen.LLP



Joseph M. Goldstein

cc: Tricia D. Brissett; Assistant County Attorney, [Jbrissett@broward.org](mailto:Jbrissett@broward.org)  
Bernie Jo Ajandi ;& Partners, Inc

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Mark H. Ittel  
Partner | Sr. Vice President, Ports & Maritime  
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