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VIA EMAIL

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**Re: RFP PNC2128678P1 - Engineering Services for District 3A System Fire Flow
Improvements Objection to Proposed Recommendation of Ranking to the
Board of County Commissioners**

Dear Messrs. Meyers and Gleason:

Shutts & Bowen LLP represents Thompson & Associates, Inc., Civil Engineering ("T&A") regarding PNC2128678P1--01-01, Engineering Services District 3C System Fire Flow Improvements (the "RFP"). On April 8, 2025, T&A received The Broward County Purchasing Division's ("Purchasing") protest response and denial of T&A's Protest to the Recommendation of Ranking of the RFP. T&A is aware that in accordance with Broward County Procurement Code, Section 21.72, a protester may appeal the Director of Purchasing's protest denial, and that a written appeal must be accompanied by an original appeal bond and received by the Director of Purchasing within ten (10) days after the date of the determination. However, T&A wishes to formally communicate its decision not to appeal the denial of its bid protest concerning the referenced RFP. While T&A has opted not to pursue an appeal, it remains significantly concerned about several aspects of the procurement process. In light of these concerns, T&A feels it is important to formally outline the issues, that warrant further attention and corrective action.

I. PRIMARY COMPLAINTS

T&A has identified two (2) primary complaints regarding the current procurement process. However, the cost and resources required to pursue a formal bid protest before an Administrative Law Judge are prohibitively high. These barriers make it difficult for T&A, a Broward County

April 21, 2025
Page 2

CBE firm, with less than 15 employees, to effectively challenge the process despite the validity of their concerns. Consequently, T&A faces a significant obstacle in seeking a resolution through the formal protest channels. As an alternative, as detailed below, T&A outlines these two (2) issues that are worthy of further attention and corrective action.

A. Cone Of Silence Violation

T&A's first concern pertains to a potential violation of the Broward County Cone of Silence Ordinance, which T&A believes provided Chen Moore and Associates, Inc. ("CMA") with an undue competitive advantage. As T&A has brought to the County's attention in its Formal Bid Protest, CMA has engaged in communication with County staff regarding the dewatering permit, which is directly related to the pending procurement. This interaction contravenes the established procurement protocols designed to ensure fairness and transparency, as there would have been no basis to receive the dewatering permit but for the pending procurement, therefore making contact with the County staff about said permit a merited violation of the County's Cone of Silence. By communicating with County staff, CMA obtained a competitive advantage. Therefore, the determination that no violation occurred, as stated in the Professional Standards Section's Report and Notice of Determination (Case No. 25-0007-PS_PS), appears to be misplaced and does not adequately address the potential for competitive imbalance, to the detriment of T&A.

1. *Protest Denial Does Not Adequately Address a Full Investigation*

While T&A has decided not to appeal the Purchasing Director's decision, T&A would also like to note that the County's Response to Assertion No.4 ("Response") seems to suggest an incomplete investigation, and thus incomplete determination from the Professional Standards Section. The County's Response states as follows:

The Professional Standards Section was provided the Cone of Silence Complaint Form and a copy of the related documentation from the protest. On April 3, 2025, the Professional Standards Section issued a Report and Notice of Determination (Case No. 25-0007-PS_PS). *The determination was that Chen Moore and Associates, Inc. did not violate Section 1-266 of the Broward County Code **because its President, Peter Moore, did not engage in prohibited communication with county staff**, regarding Request for Proposals PNC2128678P1, Engineering Services for District 3A System Fire Flow Improvements (Exhibit 2).*

(Emphasis added.)

T&A's Cone of Silence Complaint named Peter Moore as well as two (2) other vendor representatives as persons T&A believed violated the County Cone of Silence Ordinance. However, nowhere in the County's Response or its attached Exhibit 2, the Professional Standards Section Report and Notice of Determination, is there any mention of an investigation into the other two representatives Amy Navarro and Vincent Locigno.

April 21, 2025
Page 3

B. Inappropriate Borrowing from T&A's Proposal

Additionally, T&A is concerned about CMA's conduct in utilizing elements from T&A's original proposal. Specifically, during oral presentations, CMA made significant amendments to its project approach that closely mimicked T&A's original proposal. Namely, the following are the major design approach items that CMA changed from its original RFP on September 16, 2024 submittal to its presentation to the Evaluation Committee on November 5, 2024:

- i. On page 98¹ of the original CMA submittal to the RFP, an HDD was proposed under I-95. On slides 25 and 28 of the CMA presentation, however, the design changed and added an open-cut design as the option under I-95, which is the same design submitted by T&A on page 104/106² (Figure 5) of its original submittal to the RFP for PW-9.
- ii. On page 108 of the original CMA submittal to the RFP, an HDD was proposed under I-595. On slide 25 of the CMA presentation, the design changed to an open-cut to cross under I-595, which is exactly the open-cut design submitted by T&A on page 108/110 (Figure 7) of its original submittal to the RFP.
- iii. On page 108 of the original CMA submittal to the RFP, an HDD was proposed under the northern culvert crossing on SW 30th Avenue. On slide 25 of the CMA presentation, the design changed to an open-cut design to cross over the northern culvert, which is exactly the open-cut design submitted by T&A on page 108/110 (Figure 7) of its original submittal to the RFP.
- iv. On page 108 of the original CMA submittal to the RFP, an HDD was proposed under the southern culvert crossing on SW 30th Avenue. On slide 25 of the CMA presentation, the design changed to an open-cut design to cross over the southern culvert, which is exactly the design submitted by T&A on page 108/110 (Figure 7) of its original submittal to the RFP.

The following items are completely new findings that were not included in CMA's original proposal:

- i. Utility test holes completed on October 3, 2024 on SW 30th Avenue as represented in the CMA presentation, that were not included in its original RFP submittal. *See* CMA Written Presentation, at 22 of 57.

¹ For CMA, the page references are solely to the BidSync numbering in the bottom right hand corner of the pages of CMA's proposal.

² The BidSync numbering in the bottom right hand corner of the pages of T&A's proposal is two numbers higher (due to the initial BidSync electronic forms) than T&A's proposal numbering in the bottom middle of the pages.

April 21, 2025
Page 4

- ii. Environmental studies completed within the Dania Cut-Off Canal as represented in the CMA presentation, that were not included in its original RFP submittal.
- iii. Coordination with permitting agencies was completed as represented in the CMA presentation with a letter from BCRED dated November 1, 2024, that was not included in its original RFP submittal.

CMA reviewed T&A's original RFP proposal and changed their design approach to eliminate the advantage held by T&A from its creative design approach. This conduct undermines the integrity of the procurement process and raises questions about the fairness of this evaluation and the County's evaluation process.

II. PROPOSED PROCESS CHANGE REGARDING PUBLIC RECORDS EXEMPTION

To prevent similar issues in future procurements, T&A respectfully asks the County to consider its proposed procurement process change to help protect the integrity and fairness of competitive solicitations. Specifically, to prevent vendors from accessing and leveraging information from their competitors' proposals, T&A proposes that the County exercise its authority under Section 119.071(1)(b), Florida Statutes, and not disclose vendors' proposals until 30 days after the proposal opening. This statute provides for a permissive exemption to the Publics Records law, but early disclosures that are not legally necessary undermine the integrity of the procurement process where the County will make an award following oral presentations.

In the context of an RFP, opening of proposals does not occur upon the initial submission where the County intends to conduct oral presentations consistent with the Sunshine Law, which provides for a temporary exemption where a vendor makes an oral presentation as part of a competitive solicitation. While these exemptions are permissive, it is inconsistent and counterproductive to allow the disclosure of written proposals before oral presentations while still prohibiting competitors from observing each other's presentations. Both exemptions exist to ensure a fair and impartial process. Allowing one vendor—such as CMA—to access another's proposal and adjust its approach accordingly during oral presentations undermines the purpose of these protections and compromises the integrity of the procurement process. T&A's proposed change would help maintain the integrity of the procurement process by ensuring that all parties present their original ideas without the influence of competitors' submissions.

April 21, 2025
Page 5

III. REQUEST

T&A respectfully requests that this letter be included in the backup materials for the County Commission's review when this proposed ranking is before the Commission for approval. We appreciate your attention to these matters and look forward to your response, as well as to continued improvements in the procurement process that reflect the values of fairness, ethics, and transparency.

Sincerely,

Shutts & Bowen LLP

A handwritten signature in blue ink that reads "Joseph M. Goldstein". The signature is written in a cursive, flowing style.

Joseph M. Goldstein

cc: Fernando Eugenio Amuchastegui, FA@broward.org