



Finance and Administrative Services Department

**PURCHASING DIVISION**

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Certified Mail No. 7005 3110 0002 8833 8667

August 28, 2020

George I. Platt, Esq.  
LSN Government Affairs  
1512 East Broward Boulevard, Suite 101  
Fort Lauderdale, FL 33301

Re: Objection - Request for Proposals (RFP) PNC2119546P1, Managing General Contractor for OMETS and BSO Crime Laboratory Combined Facility

Dear Mr. Platt:

We are in receipt of your timely objection letter dated May 26, 2020, submitted on behalf of your client, The Robins & Morton Group ("RMG"), regarding the qualifications and litigation history of the first-ranked vendor, DPR Construction, Inc. ("DPR"). The following will address each of your assertions in accordance with the Procurement Code and established Evaluation Committee ("EC") procedures.

**Objection Assertion No. 1:**

**"DPR's initial response to the solicitation failed to reflect the requisite capabilities, competency, or experience relative to the myriad of Accreditation categories set forth in the Evaluation Criteria." This assertion specifies "three related issues" namely:**

- "1. DPR's complete absence of capability, competency and experience relating to Accreditation in its initial response to the solicitation;**
- 2. The inappropriateness of adding a "new" consultant on the day of the presentation deprived County Staff of an opportunity to vet the new firm's credentials and resulted in an unfair advantage to DPR as it sought to seek to overcome its accreditation deficiency; and**
- 3. The inappropriateness of allowing EC members to consider the credentials of DPR's new consultant ("Supplemental Accreditation Recommendation") when ranking the companies in the Final EC meeting. This violated County procedures and gave an unfair advantage to DPR."**

**Response No. 1:**

The solicitation requested a qualified Managing General Contractor (MGC) to provide preconstruction and construction services for a new state-of-the-art Broward County Office of Medical Examiner and Trauma Services (OMETS) and Broward Sheriff's Office (BSO) Crime Laboratory Combined Facility. The scope of services, in addition to construction phase services, consists of a full array of MGC services including pre-construction design, peer and constructability reviews, cost estimating, scheduling, CBE identification and recruitment, subcontractor bidding, relocation assistance, building systems commissioning, LEED certification, life-cycle cost assistance, warranty services, and post-occupancy evaluations for this complex combined facility.

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As such, the solicitation's Evaluation Criteria requested a variety of information, including professional personnel, project approach, and past performance, in relation to the advertised Scope of Work/Services. Additionally, per the RFP, the EC was authorized to consider other factors in the scoring and ranking of firms, including past performance on Broward County contracts, presentations, and supplemental information received during the vendors' presentation question and answer periods.

1. In its solicitation response, DPR listed their previous projects and indicated whether each project for the applicable client/customer was accredited. DPR also listed the name of the accrediting agencies for each project, where applicable. Two out of the five projects disclosed in DPR's past performance history were accredited by the ANAB/ANSI accreditation agency. This information was provided to the EC as part of DPR's response to the solicitation. DPR was the only proposing firm that listed past projects which included ANAB/ANSI accreditation. Therefore, RMG's assertion of a "complete absence of capability, competency and experience" regarding DPR is without merit.

2. As noted in its initial submittal, DPR worked with Crime Lab Designs in a past performance project. DPR neither introduced nor added Crime Lab Designs as a "new" consultant on the day of the Final EC meeting. Nor did DPR identify Crime Lab Designs as part of its "key staff" presentation to the EC. Instead, DPR was merely responding to a specific question from the EC regarding its approach to assisting customers with their accreditation process. This solicitation did not require that the MGC or its key staff provide accreditation for this project. Rather, the scope of work seeks an MGC to provide preconstruction and construction services for this project. In addition to not being required by the scope of work, accreditation was not required as a matter of responsiveness or responsibility. DPR did not receive an unfair advantage over the other proposing firms.

3. It was within the discretion of the EC to consider all information provided by firms in response to the RFP. As such, at the Initial EC meeting, one EC member asked all firms to include in their presentations a response to the following question: "...will the firms have subject matter experts available should issues of accreditation compliance arise?" DPR responded to this question during its presentation, outlining its past experiences and current relationship with its accreditation subject matter expert, Crime Lab Designs. Additionally, DPR stated it would likely re-utilize the services of Crime Lab Designs to assist the County in accrediting the project, since DPR already worked with Crime Lab Designs in the past in a similar capacity. DPR's response to the EC's question was not a "Supplemental Accreditation Recommendation". County's procedures were not violated during the Final EC meeting.

**Objection Assertion No. 2:**

**"Staff Matrix provided to EC Members failed to indicate DPR's submittal was deficient in providing examples of Accreditation experience in Past Performance or addressing Accreditation in Project Approach."**

**Response No. 2:**

The "Staff Matrix" (i.e. Evaluation Matrix) is a standard informational tool created and distributed to EC members used in County committee-based procurements. The matrix is a summary of the responses and does not provide any additional information not included in the firm's original response. It is the EC's responsibility to evaluate the full response, in addition to the other items previously addressed (i.e. presentations, questions and answers, etc.). The Evaluation Matrix specifically refers the EC to the relevant pages of each firm's submittal. As stated in response to Assertion No. 1 above, DPR's submittal indicated they previously worked with Crime Lab Designs in a past performance project. DPR noted that certain projects listed in their past performance were meeting lab requirements for future accreditation. This information was included in the Evaluation Matrix, with a citation to the relevant pages of DPR's submission, i.e. pages 41 through 60.

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It was within the discretion of the EC to evaluate and score firms based on information applicable to evaluation criteria. The scope of services for this RFP is for an MGC to manage pre-construction and construction services. To reiterate, accreditation was not required by this solicitation as a matter of responsiveness or responsibility. Rather, a firm's experience with accreditation agencies and in assisting in the accreditation process were included among several other evaluation criteria. As previously noted, the EC asked all firms to address whether they have subject matter experts available should issues of accreditation compliance arise. DPR responded to the EC's specific question. DPR's past experience includes building similar facilities to the requirement of this solicitation. As a point of clarification, it is the project owner (i.e. the County), not the MGC, that ultimately obtains accreditation after the facility is completed.

**Objection Assertion No. 3:**

**“Litigation review performed by the County was deficient. (1) Not all cases were cited in the Staff Matrix, unclear if all were reviewed by County Attorney. (2) DPR failed to report a material case in Florida in its litigation disclosures.”**

**Response No. 3:**

The failure of a firm to disclose a material case does not mean the County's litigation review was deficient. The County Attorney's Office (“CAO”) reviewed the material cases disclosed by each firm and verified whether firms have litigation history with the County. CAO followed its standard procedures in reviewing this litigation history. Per Standard Instructions to Vendors, Section B.1. (“Litigation History”), all firms were required to disclose to the County all “material” cases filed, pending, or resolved during the last three (3) years prior to the solicitation response due date, whether such cases were brought by or against the firm, any parent or subsidiary of the firm, or any predecessor organization. Additionally, all firms were required to disclose to the County all material cases filed, pending, or resolved against any principal of the firm, regardless of whether the principal was associated with the firm at the time of the material cases against the principal, during the last three (3) years prior to the solicitation response. Section B.1 clearly defines what constitutes a “material” case for purposes of this disclosure requirement.

CAO reviewed LSN's May 26, 2020, letter submitted on behalf of RMG, DPR's June 16, 2020 response, and RMG's July 29, 2020 supplemental reply to Purchasing's request for additional information. RMG identified one (1) additional case involving DPR. In response to RMG's objection, DPR identified ten (10) additional cases involving RMG. CAO opined the one case identified by RMG should have been disclosed by DPR since it is a material case; however, this case does not present a substantial litigation related concern. CAO further opined that eight (8) of the ten (10) additional cases identified by DPR should have been disclosed by RMG since they are material cases; however, these eight cases do not present a substantial litigation related concern. The remaining two (2) additional cases identified by DPR were not required to be disclosed by RMG since they do not qualify as a material case. As noted in CAO's supplemental litigation review memorandum dated August 4, 2020, litigation history is a matter of responsibility for the EC to ultimately decide upon. As a result of this new information pertaining to undisclosed material litigation history, the EC will be reconvened to consider this new significant information. The EC will have the opportunity to ratify its previous ranking from May 1, 2020, or re-order the list.

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**Objection Assertion No. 4:**

**“There are discrepancies in the DPR information shared with Staff and the EC in reference to the Vivex Project. The project should not have been listed or considered as Past Performance if the project is not complete.”**

**Response No. 4:**

The Evaluation Criteria, Section 3.A. Past Performance, required a minimum of three projects of a comparable nature, scope, complexity and duration along with evidence of satisfactory completion, both on time and within budget, for the past seven years. Section 3.B required Vendor Reference Forms for the projects referenced in Section 3.A. DPR met this minimum requirement by listing at least three projects that were completed at time of submittal and providing corresponding reference verification forms. Regarding the Vivex Project, DPR clearly noted in its vendor reference form that the "project is not yet completed." This fact is also clearly noted on page 64 of DPR's submission. Although DPR's Vivex Project was not completed at time of submittal, DPR already met the minimum requirements by submitting at least three completed projects with vendor reference forms.

**Determination:**

Upon review of the procurement record, correspondences received by the involved parties to the objection, and the proceedings of the EC, I find that RMG's Assertions Nos. 1, 2, and 4 do not represent new or significant information per Section 21.84.f of the Procurement Code. The evaluation and scoring of DPR was conducted appropriately and within the established guidelines, practices, and procedures set forth in the Broward County Procurement Code and existing written guidelines. Assertions No. 1, 2 and 4 of RMG's objection dated May 26, 2020, have no legal merit. However, RMG's Assertion No. 3 is partially upheld since new information regarding undisclosed litigation warrants reconvening the EC. As such, the EC will be reconvened to review new significant information pertaining to undisclosed material cases involving DPR and RMG. As previously noted, litigation history is a matter of responsibility for the EC to ultimately decide upon.

Sincerely,

**GLENN  
MARCOS**

Digitally signed by GLENN  
MARCOS  
DN: dc=ctly, dc=broward, dc=bc,  
ou=Organization, ou=BCC, ou=PU,  
ou=Users, cn=GLENN MARCOS  
Date: 2020.08.28 14:31:26 -04'00'

on behalf of  
Brenda J. Billingsley

Brenda J. Billingsley, Director  
Purchasing Division

BJB/mr/gm/lg

**Attachments**

- Exhibit 1. LSN Government Affairs Objection Letter dated May 26, 2020 (on behalf of RMG)
- Exhibit 2. County Attorney's Supplemental Litigation Review Memorandum dated August 4, 2020

- c: David Hawke, Construction Project Manager Supervisor, Construction Management Division  
Glenn Marcos, Assistant Director, Purchasing Division  
Connie Mangan, Purchasing Manager, Purchasing Division  
Mark Roberts, Purchasing Agent Senior, Purchasing Division  
Fernando Amuchastegui, Assistant County Attorney, Office of the County Attorney  
Michael W. Moskowitz, Esq., Attorney for DPR Construction, Inc.