



Finance and Administrative Services Department

PURCHASING DIVISION

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

DATE: September 9, 2020

TO: Evaluation Committee Members

FROM: Brenda J. Billingsley, Director of Purchasing **BRENDA BILLINGSLEY**

SUBJECT: Reconvening of the Final Evaluation Committee Meeting
Request for Proposals (RFP) No. PNC2119546P1, Managing General Contractor for OMETS and BSO Crime Laboratory Combined Facility

Digitally signed by
BRENDA BILLINGSLEY
Date: 2020.09.09
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Attached for your review is a Cone of Silence communication received September 8, 2020 from LSN Partners on behalf of its client, The Robins & Morton Group, concerning the Final Evaluation Committee reconvene meeting for RFP No. PNC2119546P1, Managing General Contractor for OMETS and BSO Crime Laboratory Combined Facility. The meeting will be held today, September 9, 2020 at 1:30 p.m. virtually.

Attachment

BJB/cm/mr

- c: Fernando Amuchastegui, Assistant County Attorney, County Attorney's Office
- Ben Crego, Assistant County Attorney, County Attorney's Office
- David Hawke, Construction Project Manager Supervisor, Construction Management Division, Public Works Department (Project Manager)
- Glenn Marcos, Assistant Director, Purchasing Division
- Connie Mangan, Purchasing Manager, Purchasing Division
- Mark Roberts, Purchasing Agent Senior, Purchasing Division



LSN PARTNERS
Local * State * National

September 8, 2020

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

Re: Broward County Solicitation no. PNC21194691-Managing General Contractor for
OMETS and BSO Laboratory Facility

Dear Ms. Billingsley:

On behalf of our client, The Robins & Morton Group, we are in receipt of your Response to our Objection Letter of May 26, 2020. We are pleased to see that the Evaluation Committee will reconvene to consider the potentially disqualifying matter of responsibility for undisclosed material litigation in Florida. While we would not ordinarily reply to such a determination, Purchasing's Responses 1 and 2 are so factually inaccurate that we must correct the record. Moreover, the unsupportable Purchasing Responses on the issue of accreditation will seriously impair the integrity and intent of the Broward County Procurement Process and set a dangerous precedent.

Inaccurate Purchasing Responses

Purchasing Introduction: Scope of Work

The introductory paragraph in Purchasing Response No. 1 was lifted word-for -word from the project description on **BidSync** and not the County's actual solicitation document on the Purchasing website. The actual solicitation document is replete with references to the mandatory accreditation experience as a major component in the Scope of Work. To emphasize this, we note that the Scope of Work (page 5) contained 2,419 characters; 565 of those characters or almost 25%, are expressly dedicated to **accreditation** work:

“ The new facility is intended to achieve accreditations for forensic toxicology through the American Board of Forensic Toxicologists (ABFT) and Federal Standards under ANSI, National Accreditation Board (ANAB, ISO 17025 Standards) and Quality Assurance Standards by the ANSI National Accreditation Board, National Association of Coroners and Medical Examiners (IACME), International Association of Coroners and Medical Examiners (IACME), and American National Standards Institute (ANSI) National Accreditation Board (ANAB) under ISO/IEC 17025:2017, in compliance with AR3125, **at a minimum**. “ (Emphasis added).

Purchasing's second paragraph in Response No. 1 purports to address Evaluation Criteria and omits reference to **accreditation** presumably to suggest that accreditation was not part of the Evaluation Criteria. Yet, the explicit Evaluation Criteria in the actual solicitation document mentions accreditation three (3) times, including two express subcategories of Criteria in order to emphasize their importance in relation to point allocation.

Purchasing Response 1.1

This Purchasing Response claims that DPR's submittal listed its accreditation on previous projects. The Purchasing Response is inaccurate and not reflective of what DPR submitted. The Evaluation Criteria relative to Past Performance asked for a minimum of three (3) projects where the company had accreditation experience.

DPR did not list projects where it had accreditation experience, but instead provided a reference page for each of the 5 projects presented. Under the required header, EXPERIENCE WITH ACCREDITATION AGENCIES, DPR responded to every entry with "DPR did not directly work with accreditation agencies." In its own words, DPR states it did not perform work on accreditation on any of the projects proffered for Past Accreditations. Other than LEED, this is the only place in the DPR submittal that addresses any accreditations sought in the Scope of Work and in the Evaluation Criteria.

DPR states DPR did not work with accreditation agencies. This statement supports the claim that DPR demonstrated a complete absence of capability, competency, and experience relating to accreditation in its initial response to the solicitation. Absent is any reference to past experience or approach on achieving accreditation and no DPR team member references accreditation capabilities.

Purchasing takes the position that our Objection is without merit because two DPR projects had received an ANAB/ANSI certification. First, it is clear from DPR's own words that it played **NO** role in these accreditations. Secondly, the Vivex project which received an ANAB/ANSI certification was incomplete and should not have been considered by the EC. Nor should it have been referenced by Purchasing in its Response. This citation of the Vivex project by Purchasing in its Response support the Robins & Morton Assertion No. 3 that this rose to the significance of new information to be brought to the attention of the EC. If Purchasing is so confused in its Response to our Objection letter as to which projects may be considered in Past Performance, the EC members were likely confused as well.

The Project page for GBI stated under the heading EXPERIENCE WITH ACCREDITATION AGENCIES, "DPR did not directly work with accreditation agencies. Crime Lab Designs ensured DPR was meeting lab requirements for accreditation. DPR's contact with Crime Lab Designs is Nerissa Jemmotte, Crime Lab Designs, 404-960-0078." DPR clearly states they did not oversee or facilitate accreditation and attribute that work to Crime Lab. This is the sole reference to Crime Lab Designs in DPR's submittal. Purchasing's response to our objection allocates DPR credit for experience with accreditation agencies despite not performed by a company included in their proposal for evaluation. The Evaluation Criteria did not seek to determine if the facility was accredited, but rather the experience with accreditation agencies of the contractor or a member of the contractor's team as submitted to the County.

Purchasing Response 1.2

Purchasing states:

“As noted in its initial submittal DPR worked with Crime Lab Design 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.”

The Purchasing Response incorrectly states that DPR’s submittal noted that it, “worked with Crime Lab Designs in a past performance.” The DPR’s submittal only states:

“DPR did not directly work with accreditation agencies. Crime Lab Designs ensured DPR was meeting lab requirements for accreditation. DPR’s contact with Crime Lab Designs is Nerissa Jemmotte, Crime Lab Designs, 404-960-0078.”

There is no indication who Crime Lab Designs was employed by, or if the two firms worked together. The submittal only states that DPR did not work with accreditation agencies. Crime Lab Design's accreditation experience was not under evaluation as they were not a member of the DPR submittal.

Purchasing states DPR neither introduced nor added Crime Lab Designs as “new” on the day of the Final EC Meeting. That statement is contradicted by the record. As per the recorded meeting during DPR’s presentation, Johnathon Whitney from DPR states, “what we propose is to employ the consulting resources of yet another design team, Crime Lab Design, with whom we have worked with in the past. (58:20); and, at (31:45) of the video presentation meeting Whitney states “we would propose they (Crime Lab Design) work as a consultant to DPR.” DPR clearly states its intent to use Crime Lab Design as its subconsultant. This was not proposed in DPR’s submittal, hence our use of the term “new.”

No subconsultant forms were filed for Crime Lab Design (as was required by the solicitation), no litigation review for Crime Lab Design and there is no evidence that Crime Lab Design was ever part of the original DPR proposal.

Several provisions of the solicitation explicitly require disclosure of proposed subconsultants. The solicitation document states:

“A vendor is required to disclose to the County any and all cases(s) that exist between the County and any of the Vendor’s subcontractors/subconsultants proposed to work on this project during the last five (5) years prior to the solicitation response.

Failure to disclose any material case, including all requested information in connection with each such case, as well as failure to disclose the Vendor’s subcontractor/subconsultants litigation history against the County, may result in the Vendor being deemed no-responsive.”

This disclosure is a requirement of the RFP.

The Scope of Work in the solicitation clearly and expressly stated that “the facility is intended to achieve accreditations.” Under the Standard Instructions of the Solicitation and Section C (additional Information and Certifications), Section 3 (Subconsultants/Suppliers Requirements) mandates the inclusion in a submittal as follows:

“The Vendor shall submit a listing of all subcontractors, subconsultants, and major material suppliers, if any, and the portion of the contract they will perform. Vendors must follow the instructions included on the Subcontractors/Subconsultants/Suppliers Information Form and submit as instructed.”

The mandatory attachments for the Solicitation require in pertinent part:

“Subcontractors/Subconsultants/Suppliers Requirement Form:

The following forms and supporting information (if applicable) should be returned with a Vendor’s submittal....

- a. The Vendor shall submit a listing of all subcontractors, subconsultants and major material suppliers (firms), if any, and the portion of the contract they will perform.
- c. The list shall be kept up-to date for the duration of the contract.

E. The Vendor has confirmed that none of the recommended subcontractor/subconsultants...have been debarred from doing business in Broward County or any other government agency.”

A fundamental principal of Florida procurement law is that a proposer is not allowed a material deviation from the solicitation requirements. A material deviation includes one which confers upon the proposer a material advantage over other proposers. Robinson Electric v. Dade County, 417 So. 2nd 1032,1034 (Fla. 3rd DCA 1982). A proposer is not permitted to make a material change of personnel or consultants through a substitution after step 1 in the process. In Broward, step 1 is the initial meeting of the Evaluation Committee and the determinations of responsiveness and responsibility.

DPR’s action in seeking to add a new consultant on the day of the presentation created an unacceptable advantage. DPR ignored the Scope of Work accreditation component in its submittal. Because the Scope of Work expressly included accreditation and because the Evaluation Committee wanted to hear how the shortlisted firms would address accreditation, DPR’s unauthorized effort to bootstrap Crime Lab Design and its credentials tainted their presentation and violated the requirements of the solicitation.

Purchasing asserts in its Response No 1.2. that:

“This solicitation did not require 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 the work, accreditation was not required as a matter of responsiveness and responsibility.”

The Scope of Work for the Solicitation states:

“The new facility is intended to achieve accreditations for forensic toxicology through the American Board of Forensic Toxicologists (ABFT) and Federal Standards under ANSI, National Accreditation Board (ANAB, ISO 17025 Standards) and Quality Assurance Standards by the ANSI National Accreditation Board, National Association of Coroners and Medical Examiners (IACME), International Association of Coroners and Medical Examiners (IACME), and American National Standards Institute (ANSI) National Accreditation Board (ANAB) under ISO/IEC 17025:2017, in compliance with AR3125, at a minimum. (Emphasis added).

Accreditation is part of the Scope. The last three words of the paragraph set a minimum standard to include accreditation. Purchasing’s interpretation of the Scope and requirements as stated in the Response to our Objection letter is incorrect. Requirements of an RFP are not always responsiveness or responsibility issues. The experience with accreditation agencies was a minimum qualification as outlined in the scope of work to be considered by the EC in 2 of 11 categories of the 25 points assigned to the Past Performance of 3 projects.

Purchasing’s misinterpretation of the requirements of the scope of work and failure to acknowledge the lack of the requested experience working with accreditation agencies in DPR’s proposal may have better informed the Evaluation Committee had it been properly noted as deficient in the Staff Evaluation Matrix. Had they done so, it is not known whether DPR may have been deemed not responsible or not responsive on this issue alone. What is known is that staff did not properly and fairly vet all of the firms relative to the accreditation experience and capability.

Purchasing States in Response No. 1.3

“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 and compliance arise?” DPR responded to this question during its presentation, outlining its past experiences and current relationship with its accreditations 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 procedures were not violated during the Final EC meeting.”

Purchasing’s response takes the position that an unvetted subconsultant’s capabilities proffered during the presentation to bolster DPR’s deficient response to accreditation in the approach to Scope and Past Performance experience did not breach Purchasing Procedures since, “DPR already worked with Crime Lab Designs in the past in a similar capacity.”

When the EC Member asked “...will the firms have subject matter experts available should issues of accreditation compliance arise?”, the only legal and logical interpretation of this was for proposers to cite members of the MGC or its vetted subcontractors. It was not permission that a firm without accreditation experience or experts could supplement the solicitation’s requested experience working with accreditation agencies as part of the presentation. DPR proposed no subconsultant qualifications and experience as part of their proposal. The

unvetted appointment of Crime Lab Design to the DPR team contravenes DPR's own Project Approach on selection of subcontractors as described in its proposal. RMG strategically arranged and presented its diverse team of local professionals and CBE companies as its value proposition to Broward County. All other subcontractors must be appropriately solicited by the MGC. Subcontractor credentials not part of the proposal cannot be included in the evaluation of experience, or approach as they have not been retained through the appropriate procedures. Purchasing may not ignore procurement procedures for vetting of subcontractor responsible for critical components of the project, nor allow that experience to be included in the EC's evaluation prior to inclusion on the team.

The Purchasing Response incorrectly states that by allowing DPR to add a new subject matter expert as part of its presentation, it "did not receive an unfair advantage over the other proposing firms." That statement ignores the public record where some EC members gave DPR perfect scores on Ability of Professional Personnel and Project Approach which included accreditation criteria.

It is an untenable precedent if Broward Purchasing rewards this kind of vendor misbehavior in a significant \$200 million project. Aside from sowing potential chaos in future procurements by encouraging proposers to add new and unvetted experts and/or subconsultants at any point in the procurement process; it will lead to conflict, litigation, delays and added expense. Given Purchasing's desire to maintain its integrity and public confidence in a transparent purchasing process, this precedent is a very slippery slope.

CONCLUSION

Broward County Procurement Code Sec. 21.81 (Policy)

"a. It is the policy of Broward County ...to award contracts on the basis of demonstrated capability and qualifications...."

In this instance, capability and qualifications for accreditation were not demonstrated by either DPR or Crime Lab Design, despite DPR violating procedures to interject a new subconsultant's credentials late into the process.

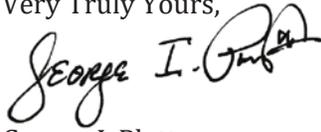
We understand that soliciting work and responding to objection letters is difficult during this time in Broward County. Misstatements of fact, misinterpretations of the Code and solicitations, and weak reasoning may be unintentional but Purchasing can still demonstrate sound leadership and correct the record and the unfair determination presented in its Response to our Objection Letter.

When the EC reconvenes, we urge that it take action to disqualify DPR for its brazen conduct. Consistent with Section 21.31 (i), we urge the Director of Purchasing to reject DPR as a competitor in this Solicitation for the reasons set forth in RMG's May 26, 2020 Objection letter and this letter. Please include this letter with materials to be sent to the EC.

On behalf of the Robins & Morton Group, I hereby certify that the statements made in our May 26, 2020 letter and in this letter are accurate, true and correct; and, I further acknowledge that the determination of inaccurate, untruthful, or incorrect statements made in support of these submissions may serve as basis for debarment.

Thank you for your consideration.

Very Truly Yours,

A handwritten signature in black ink that reads "George I. Platt". The signature is written in a cursive style with a large, stylized initial "G".

George I. Platt

Cc: Andrew (Drew) Meyers, County Attorney
Mark Roberts, Purchasing Agent
Michael M. Moskowitz, Esq.
Seth Platt
Leigha Taber, The Robins & Morton Group