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CERTIFIED CIRCUIT COURT MEDIATOR\*

July 14, 2020

**VIA E-MAIL AND U.S. MAIL**

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

**Re: Broward County Solicitation No. PNC2119955P1 – General Planning Consultant Services for the Transportation Department (the “Solicitation”)**

Dear Ms. Billingsley:

This firm represents CTS Engineering, Inc. (“CTS”) with respect to the above-referenced Solicitation. This letter provides CTS’s response to the letter of Joseph Goldstein, Esq. dated June 12, 2020<sup>1</sup> submitted on behalf of his client, CDM Smith, Inc. (“CDM”), expressing his concerns as to the Evaluation Committee’s (“EC”) scoring of the proposals submitted in response to the Solicitation. We note that Mr. Goldstein’s letter does not contend that CTS was non-responsive to the Solicitation, or that its proposal should have been summarily rejected. Instead, CDM seems to take issue with the EC’s discretionary scoring authority, and the work of Broward County (“County”) staff. For the reasons set forth herein, CDM’s concerns should be summarily rejected.

Although unstated, the CDM letter appears to be submitted pursuant to the provisions of Section 21.84.f of the Broward County Procurement Code (“Code”). Section 21.84.f allows a proposer to submit an objection if the proposed recommendation of ranking is “unfair, incorrect, or there is significant new information that should be taken into consideration,” before your recommendation as Purchasing Director, and/or the County Commission votes on the EC’s rankings. Section 21.84.f further provides that “the vendor shall provide the objection or information in writing to the Purchasing Director within three (3) business days from the posting of the Proposed Recommendation of Ranking.” The EC met to rank the proposals on June 3, 2020, then adjourned to June 4, 2020 for final rankings. Those rankings were exhibited to all on

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<sup>1</sup> A copy thereof was not provided to CTS until July 7, 2020, almost one month later. This was CTS’ first notice of any potential issue with its headquarters location.

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Zoom at the conclusion of the June 4, 2020 EC meeting, a copy of which rankings is attached as Exhibit "A." However, the CDM letter is dated June 12, 2020, well past the three (3) business day deadline. Thus, the objection is untimely and should be summarily rejected.<sup>2</sup>

Moreover, the Code, Section 21.84.f, has several additional requirements which the CDM letter clearly lacks. In particular, the CDM letter does not contain the following required certifications:

The letter must include any and all supporting documentation along with a statement attesting that all statements made in support of the submission are accurate, true and correct. The vendor shall acknowledge that the determination of inaccurate, untruthful, or incorrect statements made in support of this submission may serve as a basis for debarment of the vendor regardless of whether the submission is directly provided by the vendor or a representative on behalf of the vendor.

The Summary of Vendor Rights Regarding Broward County Competitive Solicitations, Section 1, makes clear that "[t]he contents of an objection must comply with the requirements set forth in Section 21.84 of the Procurement Code. Failure to timely and fully meet any requirement will result in a loss of the right to object." CDM's objection contains neither the required attestation nor acknowledgement. Accordingly, based on these omissions, the CDM objection must also be summarily rejected.

Nonetheless, in an abundance of caution, CTS responds to CDM's substantive allegation that it was not entitled to twenty-five (25) points for its Location under the Evaluation Criteria. For the reasons hereinafter set forth, such argument must also be rejected.

#### **1. Solicitation Criteria**

The Solicitation provides for two separate provisions relevant to the location of a proposed vendor's business operations. The first is the Evaluation Criteria, which provides for a total of five (5) Location points to be awarded to any vendor with its principal place of business located in the County for the six (6) months prior to the Solicitation submittal deadline, February 12, 2020. To be eligible, the vendor must complete the required Vendor Business Location Attestation Form. That Form then defines a principal place of business as one that is "the nerve center or center of overall direction, control and coordination of the activities of the bidder [Vendor]."

Second, the Solicitation also incorporates the Code's Local Preference provisions, and requires the submission of RFP-RLI-RFQ Local Preference and Tie Breaker Certification Form. Separate and apart from the Evaluation Criteria points, this provision provides a preference to any vendor whose business operations are located within the County and meet its six (6) requirements. A vendor who is within "five percent (5%) of the highest total ranked Vendor outside of the preference area will become the Vendor with whom the County will proceed with negotiations for a final contract." See, Solicitation, Standard Instructions to Vendors, Section O.

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<sup>2</sup> As discussed further below, on May 4, 2020 the Purchasing Department released its Memorandum finding that CTS was entitled to both the Local points and the local preference. No one ever complained of that determination prior to the EC meeting on June 3 and 4, 2020.

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CTS properly submitted both required forms to obtain both the 5 Location points, and qualify for the vendor preference. As a result, its base score of 447 not only ranked second overall, but it qualified for the vendor preference given that it was within 5% of CDM's score of 459. After application of the preference to all applicable vendors, CTS was determined to be one of the two top proposers that the County would negotiate a contract with under the Solicitation. That determination should not be disturbed as to CTS.

**2. CTS is and has been locally headquartered in Broward County.**

CTS is a local business, as defined by the County Local Business Preference Ordinance, Code of Ordinance Section 1-74(d), as such definition was incorporated into the Solicitation. For at least the one (1) year period immediately preceding the bid posting date, CTS has continuously maintained its principal place of business in Broward County. The Local Preference Ordinance and the Solicitation state that "principal place of business means the nerve center or center of overall direction, control, and coordination of the activities of the bidder." It is also where its "officers direct, control, and coordinate the [bidder's] day-to-day activities." CTS does not have more than one (1) principal place of business. That principal place of business is in fact located at 3230 West Commercial Blvd, Suite 220, Fort Lauderdale, FL 33309.

CTS' Solicitation response clearly reflects that principal place of business address. In fact, pages 347 through 349 contain its Broward County Local Business Tax Receipt from 2017 to date. Not only do they reflect that local address, but they note further that the "Business Opened: 08/12/2015." Thus, it is readily apparent that CTS has had its headquarters in the County since at least that date.

The Evaluation Criteria requires that the principal place of business be located within the County for the "last six months prior to the solicitation submittal." It says nothing about the location also being displayed by the Florida Department of State Division of Corporations. The required Location Attestation Form adds that inquiry and requests confirmation that the address in the Solicitation submittal is the same as listed with the State. That particular provision is not contained in the Local Preference Ordinance. Indeed, nowhere in the Code of Ordinances, including the Local Preference Ordinance and the Procurement Code, is any such requirement codified. In fact, the recent amendments to the Local Preference Ordinance specifically eliminate any reliance on any Sunbiz filing, now providing in Section 1-74 that the "principal address' or other location(s) on file with the Florida Department of State Division of Corporations shall not be determinative of the vendor's principal place of business."

On May 4, 2020, the Purchasing Division issued its Memorandum to the EC Members. Therein, Purchasing confirms that Sunbiz reflected that CTS maintained its principal business location in Fort Lauderdale and was a local business entitled to the Local Preference. CTS did amend its address on November 12, 2019, prior to the issuance of the Solicitation, to reflect what had long been a fact, namely that its principal place of business was located in Fort Lauderdale. As discussed further below, but for an administrative oversight, CTS' listing with the State should have been updated once the Fort Lauderdale headquarters was opened in 2015 and has been continuously maintained at that address since 2015.

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**3. Any deviation or error is immaterial and can be waived.**

CTS completed the Attestation Form based on the instructions in the Code, the Solicitation and the Form that referenced the “nerve center” test for its business operations. As evident from its 393 page proposal, CTS maintains four offices throughout the State, yet most of its personnel are located in the Fort Lauderdale office. Indeed, all of the personnel indicated as being involved in the project contemplated by the Solicitation are located here. Out of approximately 53 total employees, just over 40 are located here including its principal officers and directors. Indeed, a majority of CTS’ employees have been located in its Fort Lauderdale headquarters since it opened in 2015. CTS directs all or substantially all of its day-to-day activities from that Fort Lauderdale office, including its marketing, finance, accounting, human resources, payroll, and operations departments. In all respects, CTS’ principal place of business is located in Broward County and it satisfies the nerve center test provided under the Code and set forth in the Solicitation. That such office was not listed on Sunbiz is not only immaterial but now clearly irrelevant under the Local Preference Ordinance.

The County clearly has the right to waive any immaterial deviation. As to the ability of an agency to overlook items in a proposal that meet the definition of a “material deviation” from its written specifications, it is clear that “a public body is not entitled to omit or alter material provisions required by the RFP because in doing so the public body fails to ‘inspire public confidence in the fairness of the [RFP] process.’” (Emphasis in original). Emerald Corr. Mgmt. v. Bay Cty. Bd. Of Cty. Comm’rs, 955 So.2d 647, 652 (Fla. 1<sup>st</sup> DCA 2007), (citing Dep’t of Lottery v. Gtech Corp., 816 So.2d 648, 651 (Fla. 1<sup>st</sup> DCA 2001)). Every deviation from a solicitation is not material and does not mandate rejection of the proposal. The agency reserves the right to waive minor irregularities. The standard for determining whether a variance is a material deviation, or a minor irregularity is as follows:

“Although a bid containing a material variance is unacceptable, not every deviation from the invitation is material.” Robinson Elec. Co. v. Dade County, 417 So.2d 1032, 1034 (Fla. 3d DCA 1982); Tropabest Foods, Inc. v. State, Dep’t of Gen. Servs., 493 So.2d 50, 52 (Fla. 1<sup>st</sup> DCA 1986) (citation omitted); Glatstein v. Miami, 399 So.2d 1005 (Fla. 3d DCA 1981), review denied, 407 So.2d 1102 (Fla. 1981). “It is only material if it gives the bidder a substantial advantage over the other bidders and thereby restricts or stifles competition.” Tropabest, 493 So.2d at 52; Harry Pepper & Assocs., Inc. v. City of Cape Coral, 352 So.2d 1190, 1193 (Fla. 2d DCA 1977).

Procacci Commer. Realty v. Dep’t of HRS, 690 So.2d 603, 606 (Fla. 1<sup>st</sup> DCA 1997).

Clearly, CTS not updating its listing on Sunbiz to reflect its long-time Fort Lauderdale location as its principal place of business is not material to the “nerve center” test that is the intended heart and soul of the Local Preference Ordinance and the Location criteria, and any error in its proposal is clearly a minor irregularity that can and should be waived by the County. But for an

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internal administrative oversight, the address should have been changed in 2015 when CTS moved its headquarters to its Fort Lauderdale address. As an immaterial mistake, the County can and should waive any alleged irregularity or deviation.

**CONCLUSION**

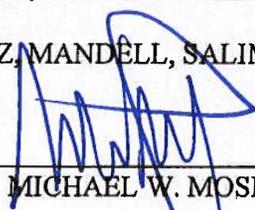
As outlined above, the CDM letter should be rejected outright as untimely and given the attestation and acknowledgement omissions first noted above. Furthermore, even if considered substantively, CDM's Location argument is without merit and must be rejected. We respectfully submit that there is no significant new information or significant change noted by CDM. Clearly, the EC properly evaluated the proposals submitted in accordance with the Evaluation Criteria in the Solicitation and its discretionary scoring authority cannot be challenged. The recommendation of the EC should be sustained. In all respects, the County should proceed with a recommended award to CTS and thereafter contract negotiations as one of the two top-ranked proposers.

Your courtesy and consideration in this matter is greatly appreciated. Should you require any additional information or clarification, please do not hesitate to contact the undersigned.

Very truly yours,

MOSKOWITZ, MANDELL, SALIM & SIMOWITZ, P.A.

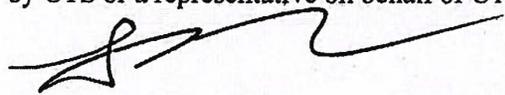
BY: \_\_\_\_\_

  
MICHAEL W. MOSKOWITZ

cc: Andrew Meyers, County Attorney (via email)  
Fernando Amuchastegui, Assistant County Attorney (via email)  
Mark Roberts, Purchasing Agent, Senior (via email)  
Wendell Jean-Pierre, Purchasing Agent (via email)  
Client

**CERTIFICATION**

The factual statements as to CTS' principal place of business; the dates the same was established; the number of employees located there; and the critical departments located there, are accurate, true and correct. CTS acknowledges that the determination of inaccurate, untruthful, or incorrect statements made in support of this submission may serve as a basis for debarment regardless of whether the submission is directly provided by CTS or a representative on behalf of CTS.

  
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Sheng Yang, President  
July 14, 2020

	A	B	C	D	E	F	G	H	I	J	K	
	Firm Name	Derrick Chan	Barney McCoy	Darby Delsalle	Natacha Yacinthe	William Castillo	Total	Ranking (bf appl. of LP/Tie Breaker)	Local/Non-Local Preference	5% Range	Rank after LP	
1	CDM Smith, Inc.	88	90	95	95	91	459	1	Non-local	22.95 (436 points)	4	
2	CTS Engineering, Inc.	84	85	99	99	80	447	2 (Tie)	Local	Eligible for LP	Break Tie (4th Criteria)	
3	H.W. Lochner, Inc.	82	75	95	90	75	417	6	Non-local		7	
4	Kimley-Horn and Associates, Inc.	85	80	94	94	84	437	3	Local	Eligible for LP	3	
5	Kittelson & Associates, Inc.	78	75	91	95	73	412	7	Non-local		8	
6	The Corradino Group, Inc.	79	77	91	90	73	410	8	Local		9	
7	Tindale-Oliver & Associates, Inc.	80	83	92	92	77	424	5	Non-local		6	
8	Whitehouse Group, Inc.	84	75	98	93	78	428	4	Non-local		5	
9	WSP USA, Inc.	87	88	94	95	83	447	2 (Tie)	Local	Eligible for LP	Break Tie (4th Criteria)	
10	<b>THE BREAKER CRITERIA</b>											
11	1. Vendor located within Broward County as set forth in Subsection 21.31.c.											
12	2. Vendor which provides domestic partner benefits.											
13	3. Vendor that has the lowest dollar volume of work, calculated by payments to vendor, by County over a five (5) year period from the date of the submittal.											
14	4. A review or re-assessment of only the tied vendors.											
15	Derrick Chan   Barney McCoy   Darby/Delsalle   Natacha Yacinthe   William Castillo   SCORE SUMMARY											

EXHIBIT  
"A"