
PANZAMAURER

ATTORNEYS AND COUNSELORS AT LAW
Coastal Towers | Suite 905
2400 East Commercial Boulevard
Fort Lauderdale, Florida 33308
954.390.0100

December 18, 2025

Robert Gleason
Director of Purchasing
Broward County Purchasing Division
115 S. Andrews Avenue, Room 212
Fort Lauderdale, Florida 33301

Re: **Formal Written Bid Protest**
Broward County Solicitation No. PNC2130230B1
Multi-District Inflow and Infiltration Reduction Program

Dear Mr. Gleason:

Please be advised this correspondence constitutes Atlantic Pipe Services, LLC's ("APS") Formal Written Protest of the recommendation of the Broward County Purchasing Division ("the County") in the above referenced matter. This Protest is filed pursuant to Section 120.57(3), Florida Statutes, and Sections 21.65 through 21.67 of the Broward County Procurement Code.

Our firm represents APS in relation to this protest. APS has standing to bring this protest because it submitted the lowest total bid price and would be entitled to the award but for the County's improper disqualification.

A cashier's check containing the required protest bond amount is submitted simultaneously with this protest.

FACTUAL GROUNDS

Broward County Solicitation No. PNC2130230B1

On June 25, 2025, Broward County posted the solicitation documents for Solicitation No. PNC2130230B1 ("the Solicitation") relating to the Multi-District Inflow and Infiltration Reduction Program on its Purchasing Division's website. A copy of the complete solicitation packet is attached hereto as **Exhibit "A"**. Pursuant to this initial solicitation, the submittal deadline was 2:00 p.m. on August 8, 2025.

On July 3, 2025, the County issued Addendum Number 1, which revised and replaced the Office of Economic and Small Business Development's ("OESBD") CBE Goal Participation Document in its entirety. **Exhibit "B"**. Of relevance, subsection (C)(2) of this document directed

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vendors that were unable to attain the CBE participation goal to include in their solicitation submittal an “Application for Evaluation of Good Faith Efforts and all of the required supporting information”. The document also provided that if the required forms and information are not provided with the solicitation submittal, then the bidder must supply the required forms and information no later than three (3) business days after request by OESBD. A copy of the CBE Goal Participation Document is attached hereto as **Exhibit “C”**.

On August 5, 2025, the County issued an additional addendum extending the Solicitation’s closing date to 2:00 p.m. on August 14, 2025. **Exhibit “D”**. Accordingly, APS submitted a proposal response on August 14, 2025. A copy of APS’s Proposal is attached hereto as **Exhibit “E”**. APS’s Proposal was the lowest cost of all bids submitted to the County.

Request for Additional Information: Good Faith Efforts

On September 11, 2025, Olga Sheyner, a specialist at Broward County’s OESBD, contacted APS to request evidence of its good faith efforts to meet the 5% Broward County Business Enterprise (“CBE”) participation goal for this solicitation. **Exhibit “F”**. Specifically, Ms. Sheyner reminded APS that all bidders for this solicitation are “required to submit completed/executed Letters of Intent (LOI) that satisfy the established CBE goal, or provide documentation of the Good Faith Efforts (GFE) conducted by the bidders”.¹

The correspondence further provided that documentation of the good faith efforts conducted for this solicitation:

“includes written evidence that your company solicited to CBEs, identified scopes of work that could be reasonably performed by the CBE firms, and provided project details to the CBE firms. List of CBE firms who were contacted and seriously considered, description of the information provided to CBE firms, explanation of why an agreement could not be reached with the CBE, explanation why a CBE was rejected as an unqualified CBE, and correspondence to and from CBEs”.²

Ms. Sheyner advised APS that it had until 4:30 P.M. on September 16, 2025 to respond to this information request. Ms. Sheyner provided clarification to APS on September 15 noting that it could meet the good faith effort requirement by showing:

“[APS has] already reached out to more than one CBE before the bid opened, [APS] has proof of this (i.e., emails, call logs, etc.). [APS] can prove that [it] sent a full scope of work, [it] gave the CBE ample time to review the scope, and [APS was] rejected by the CBE for whatever reason.... [APS has] to show evidence of trying to find the CBEs, but they would not want to work with [APS].”³

¹ See **Exhibit “F”**. (emphasis included in original)

² *Id.*

³ *Id.*

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On September 15, 2025, APS's Corporate Estimator responded to Ms. Sheyner and provided a completed Good Faith Form and documentation of APS's extensive efforts and communications to thirteen (13) CBE subcontractors prior to the bid opening. **Exhibit "G"**. Notably, the response included the correspondence between APS, Madsen-Barr Corporation, and WSD Contracting, Inc., who were both CBEs that declined to work with APS in this bid.

On September 24, 2025, Ms. Sheyner notified APS that the documentation was insufficient, *despite compliance with Ms. Shenyer's instructions of September 15, 2025*. Specifically, she stated that "[i]t would be sufficient if you e-mailed the CBEs and followed-up with a phone call". **Exhibit "F"**. OESBD improperly determined that APS did not establish good faith efforts and recommended that APS's bid be declared not responsible based on the alleged failure to engage in good faith efforts to contact CBE subcontractors.

The findings of the OESBD were subsequently forwarded to the County's Purchasing Division, and based on that report, the County rejected APS's bid and recommended awarding the contract to the second lowest bidder. **Exhibit "H"**. On December 17, 2025, the County's Purchasing Division publicly posted its recommendation to the Board of County Commissioners to award this solicitation to BLD Services LLC and listed APS as a rejected vendor.⁴

However, the County's bid tabulation spreadsheet confirms that APS submitted the lowest total bid price for this Solicitation. **Exhibit "I"**. In rejecting APS, the County acted arbitrarily and capriciously because APS in fact made a good faith effort to comply with specified CBE goals and provided sufficient documentation to the County evidencing those good faith efforts.

LEGAL GROUNDS

Among the underlying purposes of the County's Procurement Code include to "provide economy, efficiency, and consistency in County procurement activities [and to] enable the County to maximize the purchasing value of public funds by fostering broad-based competition".⁵ This notion of fair competition is a key underpinning to the procurement process throughout all levels of government. Courts have routinely held that the purpose of the competitive bidding process is, among other things, "to secure fair competition upon equal terms to all bidders . . . and to afford an equal advantage to all desiring to do business with the county, by affording an opportunity for an exact comparison of bids."⁶ Further, the Supreme Court of Florida has characterized the purpose of the public bidding requirement as "providing a means by which goods or services required by public authorities may be acquired at the lowest possible cost" and protecting "against collusion, favoritism, and fraud in the award of public contracts".⁷

⁴ Available at: <https://www.broward.org/Purchasing/Pages/RFANew.aspx> (last visited December 17, 2025).

⁵ Broward County Procurement Code § 21.2(a)-(b).

⁶ *Harry Pepper & Assocs., Inc. v. City of Cape Coral*, 352 So. 2d 1190, 1192 (Fla. 2d DCA 2977) (citing *Wester v. Belote*, 138 So. 721, 723-24 (Fla. 1931)).

⁷ *Dep't of Transp. v. Groves-Watkins Constructors*, 530 So. 2d 912, 913 (Fla. 1988).

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In order to ensure fair competition in a public solicitation, the County must hold itself and the bidders or proposers to the standards and specifications contained in the solicitation document; failure to do so renders the County's actions arbitrary.⁸ In the current case, the County acted arbitrarily, capriciously, and contrary to competition when it determined APS's bid should be rejected. As will be discussed further below, the County's actions have violated the terms of the Solicitation, the County's code and its policies, and the notions of fairness that guide competitive solicitations.

I. APS MADE GOOD FAITH EFFORTS

The Solicitation established a Broward County Business Enterprise Goal of 5% CBE participation.⁹ Accordingly, all vendors were directed to include either a letter of intent with CBE subcontractor(s) or, if unable to attain the CBE participation goal, an application for evaluation of its good faith efforts.¹⁰

Of relevance, the application requires a representative of the prime contractor to certify that the prime contractor has made good faith efforts to meet the solicitation's CBE goal by contacting CBE-certified firms to serve as subcontractors. **Exhibit "J"**. The prime contractor must also attach documentation of its recruitment efforts for evaluation by Broward County's OESBD. The County's Business Opportunity Act explicitly establishes that

"Good Faith Efforts may include, but are not limited to, **soliciting**, through activities such as attendance at prebid meetings, advertising, or **written notices**, the interest of certified CBEs that have the ability and capacity to perform the work. The Bidder or Prime Contractor must solicit this interest in a timely manner to allow the CBEs an opportunity to respond. The Bidder or Prime Contractor must take appropriate steps to follow up on initial solicitations of CBEs".¹¹

The Act provides a non-exclusive list of efforts that may be considered by the OESBD to determine whether a prime contractor's efforts are sufficient to be deemed Good Faith Efforts. Notably absent from the Act is any specification of one or more mandatory communication methods, how many CBE firms must be contacted when more than one firm exists, a requirement that follow-up must be telephonic, and/or a minimum number or type of follow-up attempts required. In fact, the Act expressly recognizes written notices, like those given to thirteen (13) CBEs by APS, as a valid solicitation method.

⁸ *Emerald Corr. Mgmt. v. Bay County Bd. of County Comm'rs*, 955 So. 2d 647, 653 (Fla. 1st DCA 2007) ("Whether the Board acted arbitrarily is generally controlled by a determination whether the Board complied with its own proposal criteria as outlined in the RFP."); *City of Sweetwater v. Solo Const. Corp.*, 823 So. 2d 798, 802 (Fla. 3d DCA 2002) (holding that the criteria espoused in the published invitation to bidders controlled the analysis of whether the city acted in an arbitrary manner).

⁹ See **Exhibit "A"** at 152.

¹⁰ *Id.* at 158.

¹¹ Broward County Code of Ordinances Art. IV, § 1-81.5.

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Here, APS conducted outreach to thirteen (13) CBE-certified firms capable of performing portions of the work contemplated by the Solicitation prior to bid opening. *See Exhibit "G"*. This outreach consisted of written email solicitations sent in a timely manner and included sufficient information regarding the scope, timing, and nature of the work. Further, two (2) CBE-certified firms affirmatively responded that they were not interested in participating in the Project. Specifically, on July 11, 2025, Madsen/Barr Corporation confirmed it was not interested in bidding on this Solicitation, but might be interested in another contract that APS was pursuing.¹² On July 24, 2025, WSD Contracting, Inc. also confirmed that it was not interested in bidding on this Solicitation.

Additionally, APS did follow up with at least one other CBE beyond the initial email solicitations. As an example, APS initially contacted Casimir Underground Construction, Inc. on July 24, 2025, to gauge their interest in the Solicitation.¹³ After not receiving a response, APS again contacted Casimir Underground Construction on July 30, 2025.¹⁴

Finally, APS further submits that the OESBD Director's determination fails to account for the actual availability of qualified CBE firms capable of performing the specialized work required by the Solicitation. As discussed above, the scope of the Solicitation involves rehabilitation of gravity sewer systems throughout Broward County, a narrow and technically specialized category of construction work. A review of OESBD's own online directory of certified County Business Enterprises reveals that only approximately **fifteen (15)** CBE-certified construction firms specifically identify *sewer*-related work among their listed products and services. Against this limited universe of eligible firms, APS contacted **86%** of potentially qualified CBE firms.

These efforts far exceed minimal or perfunctory outreach and reflect a substantial, targeted, and diligent attempt to secure CBE participation under the circumstances. Where the pool of available CBEs is demonstrably small, a bidder cannot be faulted for failing to achieve participation simply because most or all qualified firms decline to participate. Penalizing APS despite outreach to nearly the entire universe of relevant CBEs is unreasonable, contrary to the purpose of Section 1-81.5, and further evidence that APS satisfied its Good Faith Efforts obligation.

II. THE COUNTY IS ESTOPPED FROM REJECTING APS'S DOCUMENTATION

The County is equitably estopped from rejecting APS's documentation as it clearly complied with the instructions provided by Ms. Sheyner on September 15, 2025. Therein, she instructed APS that it could either engage with a CBE or it could provide the documentation that it had reached out to **more than one CBE** before the bid opened and sent the full scope of work in sufficient time to allow review by the CBE, and APS was rejected by the CBE. APS did this with

¹² *See Exhibit "G"* at 38.

¹³ *See Exhibit "G"* at 32.

¹⁴ *Id.* at 33.

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its good faith efforts submission which included outreach to two firms who rejected APS's offer to participate in this bid.

APS reasonably relied upon the County's affirmative assurances that email records would be sufficient to substantiate that it made good faith efforts necessary to satisfy the CBE requirement. At no point did OESBD indicate that follow-up telephone calls were required, expected, or necessary to satisfy the Good Faith Efforts standard. APS structured its outreach and documentation in direct reliance on this guidance.

Despite this, on September 24, 2025, Ms. Sheyner advised that the County had reviewed the good faith efforts backup documentation and found it insufficient, noting that it *would have been sufficient* had APS made follow-up phone calls to the CBEs, a standard that was never shared with APS during its communications with the County, nor was legally mandated as detailed above. Additionally, in the same email, the County appears to verify that APS engaged in good faith efforts, stating that "[a] number of CBEs said that they never saw the e-mail because it went straight into their spam folder" and that "this is not [the CBE's] fault." **Exhibit "F"**. As such, the County appears to have actual knowledge of APS's engagement in good faith efforts to solicit CBEs, but arbitrarily penalized APS for a recipient-side issue: aggressive spam filtration. This further underscores the arbitrary nature of the determination.

As such, the County applied an undisclosed, method-specific, requirement (phone follow up) that is not contained in the solicitation, Section 1-81.5, or the County's own written representations as to what would constitute good faith efforts. APS reasonably relied upon the County's explanation of what would constitute good faith efforts, structured its outreach accordingly, and was later penalized for failing to satisfy a requirement that was never disclosed. Furthermore, the County verified that the outreach conducted by APS actually occurred and that non-receipt by an undisclosed number of CBEs resulted from the CBE's own aggressive spam filtering practices.

Email spam filtering is entirely outside APS's control and does not reflect any lack of diligence or intent on APS's part. Penalizing APS for third-party email filtering is unreasonable and unsupported by law. There is no rational basis to conclude that a telephone follow-up would have materially altered the outcome, as CBE firms could just as readily decline, ignore, or auto-reject unsolicited phone calls. The County's assumption that telephonic outreach would be inherently more effective is purely speculative and unsupported by any standard articulated in the governing ordinance or solicitation.

The doctrine of equitable estoppel bars the County from asserting rights it might otherwise possess (i.e., to reject APS's bid based on the alleged lack of good faith efforts) when it was the County's own conduct (through Ms. Sheyner's instructions) that induced reliance by APS, such that allowing the assertion of those rights would be fundamentally unfair and contrary to principles

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of equity.¹⁵ As a result, the rejection of APS's bid was inappropriate and contrary to the laws and rules governing the County's conduct in this procurement.

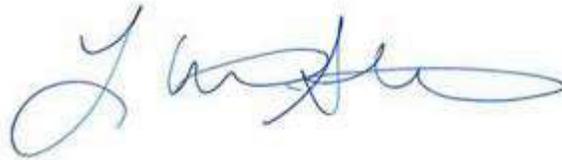
ADDITIONAL INFORMATION

Due to the short time frame within which this Formal Written Protest is required to be filed, APS reserves the right to supplement its Protest should further documents and evidence bring additional issues to light that would be subject to a bid protest, consistent with Section 21.66 of the Broward County Procurement Code. APS submitted a public records request on December 17, 2025, for procurement documents related to this protest and may supplement or amend this protest upon receipt of those additional documents.

Please acknowledge receipt of this filing by providing a read receipt and stamping the date and time on the copy of this letter delivered to your office with the original.

Thank you for your time and consideration.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Louise St. Laurent".

LOUISE ST. LAURENT, ESQ.
Counsel for Atlantic Pipe Services, LLC

LWS/TDS

Enclosures

¹⁵ *Marcus v. Florida Bagels, LLC*, 112 So. 3d 631 (Fla. 4th DCA 2013).