EA Engineering, Science, and Technology, Inc., PBC

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03 January 2024

Broward County Purchasing Division
c/o Michael Mullen
115 South Andrews Avenue
Room 212
Fort Lauderdale, FL 33301

RE: Letter of Opposition to the Recommendation for Ranking of Bid GEN2126632P1, Risk Assessment for Contaminated Sites

Dear Mr. Mullen:

EA Engineering, Science, and Technology, Inc., PBC (EA) asks that the following letter be transmitted to the Broward County Commissioners related to the Proposed Recommendation of Ranking for Bid GEN2126632P1. This letter is being submitted in accordance with Section 21.42(h) of the Broward County Procurement Code (Code) to object to the proposed Recommendations for Ranking posted on 29 December 2023 with respect to the above referenced Solicitation. EA submits two objections to the proposed rankings as follows and requests the Broward County (County) reconsider its evaluation Committee's (EC) evaluation procedures to avoid the appearance of a misapplied, biased decision-making process. EA enthusiastically responded to all stages of this solicitation under the premise that it was a fair and open competition; however, the selection process appears to have been improperly scored relative to the pricing factor and local contractor preferences to award to a less qualified local vendor for this highly specific and technically emerging science even at potential fiscal detriment to the County.

Background

The solicitation was released on 1 September 2023 with an original Bid End Date of 25 September 2023 at 2:00PM EST. At 1:56PM EST, the bid was extended to 4 October 2023, presumably because the number of bidders had not yet met the bid deadline. At the end of the extended bid deadline EA and NV5, Inc. dba NV5 AQC (NV5) had submitted bids. Upon original review, EA was notified that itself and NV5 were found as being responsive and responsible and were being asked to progress to the next stage of procurement, which was the Initial Evaluation Committee (EC) on 4 December 2023. At the Initial EC meeting, it was stated by Gregory Mount (Project Manager), that both bidders "were nearly double the budget available for this project" and that the County's planned budget of approximately "$500,000" and "is not anticipated at this time that the budget will increased." Bidders were then asked to present a breakdown of the proposed cost specific to each subtask in order to respond to the newly provided County budget. EA and NV5 presented the requested items to the EC on 11 December 2023.

Objection 1 – Correct scoring on the "Pricing" criteria would result in EA being the winning bidder.

The Scoring Summary Sheet (provided with the Final Evaluation Meeting) show that EA received a raw score of 235.58 and NV5 received a raw score of 224.00. All evaluators scored the "Pricing" Criteria of EA's submission at 17.86 points and scored NV5 submission at 20 points. The basis for this scoring was that EA's submission at the time was more expensive than NV5's submission.

Subsequent to this, the County proceeded to final evaluation with both participants and provided budgetary information that both Bidders used to provide updated details on pricing and scope as requested by the County. On 11 December 2023, during NV5's presentation, Mr. Gregory Mount (County Project Manager) questioned "as the scope is prescribed you would not be able to do the work for $535,000? Is that correct?" and Mr. Stephen Crotty, who as required in the evaluation meeting invite had authority to bind NV5, responded "No, we could get it down to a close amount but again that would be further be negotiations."

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During EA's presentation, Mr. Gregory Mount questioned ""So that's a no? You wouldn't be able to do this scope as prescribed for the $535,000? There would be changes correct?" and Mr. Mike Hertz, who has the authority to bind EA, stated "What I saw in the RFP is that it is up to eight sites, so if it's up to eight sites then I'm saying yes." With respect to performing the scope for the County's budget of $535,000.

Based on this information, the County should have revised or excluded the Pricing factor based on the changed pricing posture of the Bidders post-negotiation. Either revision would result in EA winning the competition, as noted below:

1. The Evaluation Criteria be revised to give EA the full 20 points as the lowest bidder (at $525,000) and NV5 a fraction of those points (10.77 as a higher bidder at $975,000). (Note $ value was later corrected to $525,000 by the County)
    a. This realignment of lowest price would have resulted in a bid total of:
        i. EA = (81+82+79) =242
        ii. NV5 = (62.77+63.77+69.77) =196.31.
            1. Assuming 5% of EA's total points (12.10 points) as a non-local vendor was then removed resulting in a new EA score = 229.90 which is higher than and NV5's 196.31; **OR**

2. Assume both bidders would perform the work for the new County budget ($525,000) provided after bids were submitted. The evaluation criteria for price should then be removed, which would have resulted in:
    a. EA = 182
    b. NV5 =164
        i. Removing 5% of EA's total score as a non-local bidder (9.1 points) would result in a new EA score of 172.9 which is higher than NV5's 164.

Objection 2 – Local preference should not be utilized if federally funded projects are used

The RFP states: "If the solicitation involves a federally funded project where the fund requirements prohibit the use of state and/or local preferences, such preferences contained in the Local Preference Ordinance and Broward County Procurement Code will not be applied in the procurement process." The rationale behind this is to ensure that Broward County does not run afoul of federal fiscal law limitations around federal funding.

The solicitation currently states under "Project Funding Source" that "This project is funded in whole or in part by County Funds;" therefore it is unclear if federal funds are being utilized for a part of the funding. If federal funds are used for this project—either now or in the future—the County must not apply the local preference and EA would win the competition.

There is strong reason to believe that even if Broward County funds the initial scope of work without federal funding, the entire contemplated project will require federal funding in order to maximize Broward County's return. Task 5.2 "Future Funding Strategies" states that the consultant will identify and provide a framework and analysis of state and **federal grant** opportunities as related to the findings in Task 5.1". Additionally, Task 9 "Optional Grant-funded Services" states that "Optional and Grant-funded Services may include work which is agreed upon in the scope, and that may arise from future grant opportunities. The deliverables for this task will be negotiated separately as needed. Any Optional and Grant-funded Services will require a description of tasks and deliverables and a separate work Authorization from the Contract Administrator or Purchasing Director to proceed with such services"

The future use of **federal** grant-funds, even for optional tasks, requires that the County evaluate and award the project without discriminating against non-local contractors such as EA. Utilizing the local preference on the initial assignments does not meet federal funding solicitation restraints and should not be applied to this solicitation.

Solutions for New Challenges may Require a Non-Local Consultant

EA is a leader in the nationally emerging field of climate science and remediation. As evident by EA's superior technical scores, which were awarded by the County in response to the RFP, we are at the forefront of this emerging field as

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demonstrated by our experience advising various universities and governments. EA has vast experience with the EPA and this science and would request the County consider this when deliberating on this matter. This highly technical field clearly does not yet lend itself to contract awards that overwhelmingly favor local consultants.

All statements made in support of this letter are accurate, true and correct.

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ONE PROJECT AT A TIME®

EA ENGINEERING, SCIENCE,
AND TECHNOLOGY, INC., PBC

Michael Hertz, PG
Vice President