

BROWARD COUNTY, FLORIDA

SOUTHERN UNDERGROUND INDUSTRIES, INC.,

Protester/Petitioner,
v.

BROWARD COUNTY, FLORIDA,

Respondent.

FORMAL PROTEST AND REQUEST FOR HEARING

Pursuant to Broward County Code of Ordinances Section 21.65 through 21.72, the Bid Specifications and applicable Florida law, Petitioner Southern Underground Industries, Inc. ("Southern Underground") submits this Formal Protest and Request for Hearing regarding the Recommendation for Award of the contract regarding Broward County Bid No. PNC2129131C1, BCWWS Project No. 105643, Regional Effluent and Reuse Solutions, Bid Pack No. 2, as follows.

Name and Address of Protestor

The name and address of the protestor is Southern Underground Industries, Inc., 794 South Military Trail, Deerfield Beach, Florida 33442.

Parties

Broward County, Florida ("County") is a governmental entity in the State of Florida that issued the bid package at issue. Southern Underground is a contractor that performs construction work in Florida, including the type of work at issue in the subject bid.

Standing

Southern Underground has standing under County Ordinance 21.65 and applicable Florida law because it is the lowest responsive and responsible bidder who submitted the

competitive bid that the County found to be the second low bid and who is aggrieved in connection with the pending award of the contract. The Purchasing Recommendation for Award shows that the contract is to be awarded to R.P. Utility & Excavation Corp. d/b/a RPU ("RPU"). That finding is in error because RPU does not possess the requisite level of experience required by the bid documents. A copy of the Purchasing Recommendation for Award is attached hereto as Exhibit "A."

Statement of Grounds and Facts and Legal Basis for the Protest

I. Southern Underground Meets the Experience Requirements and RPU Does not Meet the Experience Requirements.

The specifications set forth certain requirements as to the relevant experience mandated for the successful bidder, and Southern Underground meets those requirements. The experience requirement at issue in this bid protest is found at Part 1, Section 1.01 (A), Notice to Bidders in the bid solicitation. That experience is required to consist of successful installation of a minimum of 50,000 total linear feet of Ductile Iron Pipe 24 inches or larger as of the date of the solicitation as well as having constructed at least three (3) force main projects of similar size and complexity in an urban environment. A copy of Southern Underground's bid is attached as Exhibit "B."

While Southern Underground meets the experience requirements as demonstrated by the experience it listed, Southern Underground contends, on information and belief, that the low bidder, RPU, does not meet the requirement for experience in installing at least 50,000 total linear feet of Ductile Iron Pipe 24 inches or larger. Southern Underground has submitted a public records request to confirm the experience information that the County possesses, and upon which it relied to recommend award of the Contract to RPU. Pursuant to County

Ordinance, Southern Underground will furnish additional information from the County when that is obtained.

II. Southern Underground's Bid is Responsible and RPU's Bid is Not Responsible

Analysis of bidder responsibility proves that Southern Underground is a responsible bidder. Florida law holds that the determination of a responsible bidder vests public authorities with some limited discretionary power to “pass upon the honesty and integrity of the bidder necessary to a faithful performance of the subcontract—upon his skill and business judgment, his experience and facilities for carrying out the contract, his previous conduct under other contracts, and the quality of his previous work” *Engineering Contractors Association of South Florida, Inc. v. Broward County*, 789 So. 2d 445, 451 (Fla. 4th DCA 2001). As discussed herein, any such discretion must be exercised in a manner that avoids arbitrary and capricious results.

The seminal case on these bidding issues is *Liberty County v. Baxter's Asphalt & Concrete, Inc.*, 421 So. 2d 505, 507 (Fla. 1982). That case held that public bidding is intended to protect the public against collusive contracts and to ensure fair competition between all bidders on an equal footing. *Id.*

Because Southern Underground meets the bid requirements, there is no dispute that Southern Underground is a responsible bidder with the required experience with prior work. In contrast, based on information and belief, RPU lacks the requisite experience. As such, RPU cannot be found to be a responsible bidder.

Florida law holds that the County's failure to follow its own bid requirements renders the bid award arbitrary. In the public procurement and funding context, an arbitrary decision is one that is not governed by a fixed rule or standard, or one where the public entity fails to follow its own standards. See *Youth Crime Watch of America v. Dep't. of Health and Rehabilitative Servs.*, 619 So. 2d 405, 406 (Fla. 3d DCA 1993); *Procacci v. Dep't. of Health and Rehabilitative Servs.*, 603 So. 2d 1299, 1300 (Fla. 1st DCA 1992). Here the proposed award, as evidenced by the published Notice of Intent to Award, was not based on the standards established by the County, instead awarding the bid to a bidder who lacked the requisite experience.

A public entity cannot modify or change the criteria for bid award after the bids are submitted in a manner that favors one bidder over the other bidders. See *Central Florida Equip. Rentals of Dade County, Inc. v. Lowell Dunn Co.*, 586 So.2d 1171 (Fla. 3d DCA 1991); *City of Opa-Locka v. Trustees of the Plumbing Industry Promotion Fund*, 193 So.2d 29 (Fla. 3d DCA 1966); *City of Miami Beach v. Klinger*, 179 So.2d 864, 866 (Fla. 3d DCA 1965). Here the County has shown its intent to arbitrarily change the criteria to disregard experience requirement that Southern Underground proved that it met in a manner that improperly favors RPU over Southern Underground. That is not allowed.

An arbitrary decision, in the context of public procurement, is an action not governed by a fixed rule or standard. See *Youth Crime Watch of America*, 691 So.2d at 406. Courts have determined that a public owner's failure to follow its own bid evaluation procedure is arbitrary. See *Procacci*, 603 So.2d at 1300.

Indeed, the entire purpose of competitive bidding is avoiding favoritism by creating a fair, impartial evaluation process that "levels the field" by imposing the same standards on each bidder, without later imposing additional unstated standards or preferences on certain

bidders and without changing those standards. See *Engineering Contr. Association of South Florida v. Broward County*, 789 So. 2d 445, 451 (Fla. 4th DCA 2001); *Klinger*, 179 So. 2d at 866. Where the apparent low bidder is nonresponsive or non-responsible, then the second low bidder is deemed the low bidder entitled to the award of the contract. See *Greenhut Constr. Co. v. Henry A. Knott, Inc.*, 247 So.2d 517 (Fla. 1st DCA 1971).

The bid documents here require a particular level of experience to be met by the successful bidder. Here Southern Underground meets the required level of experience and should be awarded the contract because the only bidder that submitted a lower bid is not qualified. The County's action in deviating from its own standards is the very definition of arbitrary and capricious and must not stand.

III. Southern Underground's Bid is Responsive.

Southern Underground's bid was responsive and, by contrast, RPU's bid was not responsive.

Florida Statutes Section 255.248(6) defines a responsive bid as one which "conforms in all material respects to the solicitation." Southern Underground's bid conforms in all material respects to the solicitation, including the requirement for experience including the installation of over 50,000 linear feet of Ductile Iron Pipe. In contrast, RPU does not have the requisite experience and therefore its bid must be considered non-responsive.

The Florida Supreme Court, in determining whether or not a bid deviation is material (thus rendering the bid non-responsive), has set forth the following two-pronged test:

. . . first, whether the effect of a waiver would be to deprive the municipality of its assurance that the contract would be entered into, performed and guaranteed according to its specified requirements, and second, *whether it is of such a nature that its waiver would adversely affect competitive bidding by placing a bidder in a*

position of advantage over other bidders or by otherwise undermining the necessary common standard of competition.

Robinson Electr. Co. v. Dade County, 417 So.2d 1032, 1034 (Fla. 1982) (Emphasis supplied).

Here, the waiver of the very material experience requirement places RPU in a position of advantage over the other bidders that undermines the necessary common standard of competition by ignoring that experience requirement. Thus, the second prong of the test rendering a bid non-responsive mandates that RPU's bid must be set aside, with award made to the second highest bidder, Southern Underground.

The first prong of the test also bars the award. Due to RPU's lacking the requisite level of experience, the County will have no assurance that the contract will be "performed and guaranteed according to its specified requirements." The experience requirement provides the assurance that the work will be performed and guaranteed according to its specified requirements, and this award lacks such assurance.

In *Tropabest Foods, Inc. v. Department of General Servs.*, 493 So.2d 50 (Fla. 1st DCA 1986), the Court distinguished a material deviation in a bid from a minor bid deviation that is waivable. The Court held that a deviation from the Invitation to Bid is material "if it gives the bidder a substantial advantage over the other bidders and thereby restricts or stifles competition." The Court also cited to Rule 13A-1.02(9) of the Florida Administrative Code which states that a minor irregularity is "a variation which 'does not affect the price of the bid, or give the bidder an advantage or benefit not enjoyed by other bidders or does not adversely impact the interests of the agency.'" That rule is persuasive in this matter because one bidder is given an unfair advantage and the award adversely impacts the County.

The award to RPU is contrary to the County's own bid requirements and as such is arbitrary and capricious. The award should instead be made to Southern Underground.

Conclusion

Southern Underground meets the experience requirements of the bid documents, and Southern Underground is the lowest responsive and responsible bidder. The Recommendation for Award should be voided, and the contract should be awarded to the lowest responsive and responsible bidder, which is Southern Underground.

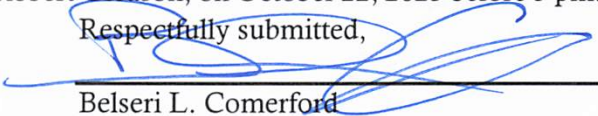
Relief Requested

Southern Underground requests that the Recommendation for Award to RPU be voided, and the award be made to Southern Underground instead as the lowest responsive and responsible bidder. Southern Underground requests a hearing and all rights set forth in the County ordinances.

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing together with a Certified Check payable to Broward County has been furnished via Hand Delivery to Broward County's Director of Purchasing, Robert Gleason, on October 22, 2025 before 5 pm.

Respectfully submitted,



Belseri L. Comerford
President
Southern Underground Industries, Inc.
794 South Military Trail
Deerfield Beach, Florida 33442

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Purchasing

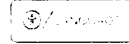
Recommendation for Award

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Solicitation Number	Solicitation Title	Recommended Vendor	Recommended Amount	Rejected Vendors	Posted Date	Release Date
PNC2130531C1	Regional Effluent and Reuse Solutions Bid Pack No. 2	R.P. Utility & Excavation Corp d/b/a RPU	Fixed Award Amount is \$16,017,549.80		2025/10/15	2025/10/22

Showing 1 to 1 of 1 entries

Recommendations to Director of Purchasing

Search

Solicitation Number	Solicitation Title	Recommended Vendor	Recommended Amount	Rejected Vendors	Posted Date	Release Date
OPN2130342B2	Liquid Carbon Dioxide and Monthly Rental Storage Tanks	CARLON INC. dba BROWARD NELSON FOUNTAIN SERVICE	Initial Two-year Award Amount: \$141,760.00 Potential Five-Year Award Amount: \$354,400.		2025/10/15	2025/10/23

Showing 1 to 1 of 1 entries

Notice of Intent

Search

Solicitation Number	Solicitation Title	Recommended Vendor	Recommended Amount	Posted Date	Release Date
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