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March 11, 2024

**VIA HAND DELIVERY AND EMAIL** [gmarcos@fortlauderdale.gov](mailto:gmarcos@fortlauderdale.gov)

Mr. Glenn Marcos, CPPO, CPPB, FCPM, FCPA  
Chief Procurement Officer  
City of Fort Lauderdale  
100 N. Andrews Avenue  
Fort Lauderdale, FL 33301

Re: **Formal Letter of Protest**  
RFP No. 225 – Rehab. 48”/54” FM Replacement-SE 9<sup>th</sup> and 10<sup>th</sup> Ave to GTL  
PM File No.: 2758/24-26107

Dear Mr. Marcos:

On behalf of our client, Murphy Pipeline Contractor, LLC (“Murphy”), we hereby submit Murphy’s Formal Letter of Protest of the Notice of Intent to award made by the City of Fort Lauderdale (“the City”) in the above-referenced matter posted on March 5, 2024. This Protest is filed pursuant to Section 120.57(3), Florida Statutes; Section 2-182, City of Fort Lauderdale Procurement Ordinance; and Section 1.22 of Request for Proposals No. 225 (“the RFP”). *See* Design Build RFP #225, attached hereto as Exhibit 1. This protest is timely filed within five (5) days of the posting of the Notice of Intent to Award, excluding Saturday and Sunday, pursuant to Section 2-182.1 of the City of Fort Lauderdale Procurement Ordinance, as incorporated into the RFP, in order to protest the Notice of Intent to Award the contract to Lanzo Construction Company (“Lanzo”). Murphy, as the second-ranked proposer with years of experience in successful completion of similar projects in the City of Fort Lauderdale and South Florida, should instead be awarded the contract as the top-ranked, responsible and responsive bidder whose proposal is in the City’s best interests. Enclosed herewith is an attorney’s trust account check payable to the City of Fort Lauderdale for the protest application fee in the amount of \$5,000.00. Accordingly, Murphy has perfected its protest rights under the City’s Procurement Ordinance

Please also note that after the expiration of the Chapter 119 exemption period, a Public Records Request was filed with the City of Fort Lauderdale requesting additional documentation in support of this protest. *See* Public Records Request 2.27.24, attached hereto as Exhibit 2. As these documents were provided with less than two business days left to file this Protest, Murphy reserves the right to supplement this response as additional facts and information become known to it.

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TALLAHASSEE

FORT LAUDERDALE

MIAMI-DADE

## **FACTUAL BACKGROUND**

The solicitation at issue in this protest stems from an Amended Consent Order entered into by the City of Fort Lauderdale and the Florida Department of Environmental Protection (“FDEP”). From 2014 to 2017, a substantial amount of wastewater was released into the surface waters/groundwaters from breaks in the City’s sewer system force mains. As a result, in September of 2017, the City of Fort Lauderdale entered into Consent Order 16-1487 with the Florida Department of Environmental Protection (FDEP). The Consent Order contained several corrective actions with time periods spanning from 2018 through 2026.

Between 2019 and 2020, an even larger amount of wastewater was released into the surface waters/groundwaters from breaks in the City’s sewer system force mains. As a result, the City entered into an Amended Consent Order that superseded and replaced the original Consent Order. Paragraph 6(e) of the Amended Consent Order, dated October 12, 2020, requires the City to complete the following force main rehabilitation projects no later than September 30th, 2026: “SE 10th Ave.”

To timely comply with this Amended Consent Order, on December 20, 2023, the City issued RFP #225 to solicit competitive proposals from a Design-Build Firm (DBF) for the design, permitting, and construction of the project known as the “Rehabilitation of 48/54-inch Force Main; Replacement on SE 9<sup>th</sup> and 10<sup>th</sup> Avenue to GTL” (“the Project”). This project includes the rehabilitation or replacement of approximately 15,150 feet of existing 48-inch and 54-inch force main. The project also includes the installation of approximately 8,220 linear feet of new 48-inch force main in the City of Fort Lauderdale. The project scope includes the design, permitting, construction, testing, and start-up of all phases set forth in the RFP.

The RFP requires that the *“work to be accomplished under the contract includes, but is not limited to: design, permitting, construction, testing and all associated work delineated herein or determined by the DBF as required to meet the project requirements, including all other aspects of the Project to fulfill the intent of the Project as described in the Design Criteria Package and all supporting documents.”* RFP, 1.1., attached hereto as Exhibit 1.

The RFP documents include the Design Criteria Package (DCP), Technical Specifications, and all exhibits and attachments, the City’s Design/Build Services Agreement and the City’s General Conditions that shall form the terms and conditions of the Contract. RFP, 4.1., attached hereto as Exhibit 1. The RFP provides that the *“DCP sets forth the minimum requirements for execution of the work regarding design, construction, and maintenance of traffic during construction...”* *Id.* In addition, *“Exhibit B includes the technical specifications that describe the material quality standards and performance criteria for this Project”* and the *“DBF shall develop a detailed project design based on the criteria set forth in this document and construct the work in accordance with the requirements set forth in this document...”* *Id.*

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As part of the requirements of the Consent Decree, Florida Law, and the City of Fort Lauderdale Procurement Ordinance and Procurement Manual, the City was required to engage the services of a Design Criteria Professional. For this purpose, Hazen was engaged by the City. The purpose of the engagement of Hazen was to serve as a qualified consultant to the City and to serve as program manager to ensure that the City meets the requirements of the Consent Decree with the Florida Department of Environmental Protection and to actively engage in the assessment of existing sanitary sewer infrastructure, prioritization of repair and replacement projects, and the design, permitting and construction management of these projects in order to comply with the Agreement's mandates and to mitigate the occurrence of wastewater releases due to sewer main breaks. *See* City of Fort Lauderdale RFQ# 476-11906, attached hereto as Exhibit 3. Further, the purpose of hiring Hazen was to ensure that the program components are technically, economically, and functionally consistent and are implemented in a manner that meets the requirements of the Clean Water Act, National Pollution Discharge Elimination Permits, FDEP regulation, Environmental Protection Agency (EPA), Broward County Environmental Protection and Growth Management Division (BCEPGM), and any additional applicable regulatory requirements. That engagement included, in part, making recommendations to the City regarding the best overall design based on Hazen's recommendations so that the City can ensure that the conditions set forth in the Consent decree are met, and to prevent additional penalties and corrective action measures. The engagement also includes preparing specifications and related documents as necessary for the purpose of soliciting bids for constructing the project. *See* City of Fort Lauderdale RFQ# 476-11906, sections 3.1. a, e, h, attached hereto as Exhibit 3. In relation to this project, Hazen conducted a very specific evaluation of the potential trenchless rehabilitation methods to be used in the design and construction of the project based on its expertise and work to comply with the Consent decree (*See* RFP, DCP, Exhibit J, attached hereto as Exhibit 4) and developed the DCP in conjunction with the City.

In response to the RFP, the City received proposals from three contractors:

- Murphy Pipeline Contractors, LLC (*See* Murphy Proposal, attached hereto as Exhibit 5)
- Lanzo Construction Company, ("Lanzo") (*See* Lanzo Proposal, attached hereto as Exhibit 6)
- Ric-Man Construction Florida, Inc. (RMC") (*See* Ric-Man Proposal, attached hereto as Exhibit 7).

Murphy timely submitted its proposal on January 26, 24. On March 5, 2024, the City posted its Notice of Intent to Award the RFP to Lanzo Construction company.

### **PROTEST SUMMARY**

This Protest challenges the recommended award to Lanzo. As explained below, Lanzo cannot be awarded this contract because:

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1. Contrary to RFP prohibitions, Lanzo improperly amended its Proposal, after its original submission, and cannot be awarded the Contract based on its untimely modifications.
2. Lanzo's proposal was non-responsive to the RFP.
  - a. Lanzo failed to propose to construct the majority of the project in accordance with the RFP and the Design Criteria Professional's recommended method of construction. Even assuming the methods proposed by Lanzo complied with the recommendations by proposing CIPP lining for the Project, which was not preferred by the RFP, they fail to meet the RFP's criteria for the proposed CIPP method. As a result, the City should have deemed Lanzo non-responsive and not responsible and not invited Lanzo to make a presentation, much less award the contract to Lanzo.
3. Lanzo Proposal failed to address a major risk fatal to its design.
4. Lanzo's Proposal directly contravenes technical specific related to environment contaminants.
5. Lanzo's HDD plans in its Proposal is flawed and contrary to the RFP specifications.
6. Lanzo's deviations from the RFP specifications are material and cannot be waived.
7. By failing to consult with Hazen, the City did not act in good faith when evaluating the Proposals.
8. The Evaluation Committee's scoring was arbitrary and capricious.
9. Lanzo's Proposal does not provide the "Best Value" to the City and its citizens.
10. Further, the proposal submitted by the third-place bidder, RMC, failed to comply with the RFP specifications, as the pipeline it proposed failed to meet the required internal diameter requirements.

For these reasons, the City's intended award to Lanzo is contrary to the RFP specifications, the City's Procurement Ordinances, and Florida law. Ric-Man was also non-responsive. Accordingly, the contract should be awarded to Murphy, as the only proposer that submitted a proposal in compliance with the RFP.

## **PROTEST GROUNDS**

### **I. Legal Standard**

Long ago, the Florida Supreme Court set forth that the purpose of competitive bidding is

to protect the public interest against collusive contracts; to secure fair competition upon equal terms to all bidders; to remove not only collusion but temptation for collusion and opportunity for gain at public expense; to close all avenues to favoritism and fraud in its various forms; to secure the best values at the lowest possible expense; and to afford an equal advantage to all desiring to do

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business with the [government], by providing an exact comparison of bids.

*Webster v. Belote*, 138 So. 721, 723-24 (Fla. 1931). This requires the City to ensure that the proposals are considered fairly and not to “arbitrarily or capriciously discriminate between bidders, or make the award on the basis of personal preferences.” *Emerald Corr. Mgmt v. Bay Cty. Bd. Of Cty. Comm’rs*, 955 So. 2d 647, 652 (Fla. 1<sup>st</sup> DCA 2007); *City of Sweetwater v. Solo Constr. Corp.*, 823 So. 2d 798, 802 (Fla. 3d DCA 2002). (Holding that while a government body has wide discretion in awarding public contracts, it must exercise that discretion based on clearly defined criteria and may not do so arbitrarily or capriciously.) This is likewise reflected in the City of Fort Lauderdale Procurement Ordinance, Sec. 2-172.

In order to ensure fair competition in a public solicitation, the City must hold itself and the bidders or proposers to the standards and specifications contained in the solicitation document; failure to do so renders the City’s actions arbitrary. *Emerald Corr. Mgmt.*, 955 So. 2d at 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.”). *See also City of Sweetwater*, 823 So. 2d at 802 (holding that the criteria espoused in the published invitation to bidders controlled the analysis of whether the city acted in an arbitrary manner).

In the instant matter, the City acted in an arbitrary manner when it 1) committed errors in assessing Lanzo’s responsiveness to the solicitation and 2) erroneously scored the proposals contrary to the RFP specifications. As will be discussed further below, these actions by the City have violated the terms of the RFP, the City’s Procurement Ordinance and policies, and the legal notions of fairness that guide competitive solicitations.

## **II. Lanzo Improperly Amended Its Proposal After Submission Contrary to RFP Specifications and Florida Law**

Lanzo’s presentation was significantly and materially different from its proposal, constituting an improper amendment contrary to the RFP and Florida Law. Under the RFP, “[n]o modifications to proposals will be permitted after the date and hour of the proposal opening.” RFP, 1.15., attached hereto as Exhibit 1. In addition, the RFP also states that “[a]fter expiration of the period for receiving proposals, no proposal can be withdrawn, modified, or explained.” RFP, 1.26 attached hereto as Exhibit 1. Contrary to this clear prohibition, in reviewing the documentation related to Lanzo’s proposal, Lanzo’s presentation bears little resemblance to the project presented to the Evaluation Committee in the oral presentation. This calls into question the fairness of the entire process, if a proposer is permitted to effectively bait and switch mid-process and offer the City a project that was not that which was submitted.

In comparing the technical specifications and methods set forth by Lanzo in their written RFP proposal (Lanzo Proposal, attached hereto as Exhibit 6) to the documentation submitted by Lanzo

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during their oral presentation to the selection committee (*See Lanzo Slide Presentation, attached hereto as Exhibit 8*), Lanzo's initial written proposal contained a total of 1,220 linear feet of proposed HDD installation as follows:

Lanzo Proposal, Exhibit 6, p. 136, Page C-10:	420 Linear feet of HDD installation.
Lanzo Proposal Exhibit 6, p. 140-141, Page C-14 to 15:	400 Linear feet of HDD installation.
Lanzo Proposal Exhibit 6, p. 146-147, Page C-20 to 21:	410 Linear feet of HDD I installation

In addition, Lanzo's proposal contained plan view aerial layouts and 52 plan & profile pages (*See Lanzo's Proposal, attached hereto as Exhibit 6, pgs. 125 to 179*) that specifically lay out their project approach in detail. This written proposal called for nearly 40% of the project to consist of open-cut methods. *Id.*

However, the materials Lanzo submitted for their oral presentation and oral statements regarding their project suddenly and inexplicably switched their proposed method to propose 8,979 linear feet of HDD installation and only 1,207 linear feet of open cut installation:

**Project Understanding**



Project Advisor, PE

- Installation of 127 LF of 54-inch Force Main via Open Cut
- Rehabilitation of 1,323 LF of 54-inch
- Installation of 10,186 LF of 48-inch Force Main
  - 1,207 LF via Open Cut
  - 8,979 LF via HDD
- Rehabilitation of 11,701 LF of 48-inch Force Main
- Installation of 33 LF of 42-inch Force Main
- Reuse, Replace Ex./Install New: 35 valves (6" - 54")
- Four (4) Water Bodies Crossings: Tarpon River, Himmarshee Canal, New River, Middle River.

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Lanzo Slide Presentation, attached hereto as Exhibit 8, pg. 6. *See also* Lanzo Audio Presentation, attached hereto as Exhibit 9 at 08:00. **This represents a 736 % change in the amount of proposed HDD installation.** To simplify: what Lanzo presented and what the Evaluation Committee voted on contained significant material differences from the proposal submitted by Lanzo.<sup>1</sup> This is a clear violation of the RFP specifications, and Florida law and therefore, must render Lanzo's proposal ineligible and void.

In *AT&T Co. vs. Brevard School Board*, AT&T, lost a bid for internet provider wide area network service contract with the Brevard County School Board. Case No. 14-1024 (Recommended Order Oct. 1, 2014). AT&T presented a price during its presentation that differed from the price in its proposal. AT&T filed a bid protest disputing the County's decision.

Like the terms of the RFP, the State prohibits submissions to proposals after the bid/proposal opening has closed. Fla. Stat. §120.57(3)(f). The Division of Administrative Hearing held that it was "contrary to fair and competitive processes to allow a vendor to modify its presentation." *Id. at* ¶39. In addition, the Court held the AT&T's attempt to "modify its pricing was contrary to the law governing the RFP process." *Id.* Like AT&T, Lanzo's attempt to present a proposal during the oral presentation, that materially differed from its previously submitted written proposal is contrary to fair and competitive processes and to the RFP itself.

Lanzo's written Proposal was different than what the other two bidders, Murphy and RicMan, bid. The other two bidders bid a particular solution that was less environmentally disruptive and dangerous and reduced the impact to residents/business. *See generally* Murphy Proposal, attached hereto as Exhibit 5 and Ric-Man Proposal, attached hereto as Exhibit 7. Despite this, after these detailed specifications were submitted, Lanzo decided to gratuitously and impermissibly alter its presentation to offer a different project approach. The fact that Lanzo altered its approach to one that was in line with the other bidders does not waive the impropriety of the material alteration of its bid. This change was not requested through any amendment to the RFP requirements or terms. The change made by Lanzo was not immaterial but was instead a significant change in their proposal. It was not made in response to a requested amendment to the RFP terms or requirements or to clarify an irregularity. In fact, it was provided without any explanation or rationale for why the change was made. As stated herein the entire scheme of bidding on public projects is intended to ensure the sanctity of the competitive process both prior to and after the award. It is intended to protect the entire process. Lanzo's change was not immaterial, as it provided an advantage that

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<sup>1</sup> In addition, the schedule proposed by Lanzo did not change to reflect the differences in the portion of proposed HDD installation. In their initial proposal, Lanzo allocated 5 months for open-cut installation from June to November of 2025, and allocated only 3 months for HDD installation from February 2025 to April 2025. (*See* Lanzo Proposal, attached hereto as Exhibit 6 at pgs. 123-124). After their change in the proposal, the schedule presented on p. 33 of their presentation (see Exhibit 8) did not reflect any change in the schedule for the change in the type of installation. The schedule including nearly 5 months for 1,207 Linear feet of open-cut installation demonstrates Lanzo was not thorough in making the change.

was not enjoyed by the other bidders. For this reason, Lanzo's bid must be rejected. If a City may waive these requirements, it would be conducive to favoritism by allowing some bidders to change their bids, contrary to RFP prohibitions, to be more competitive after the opening of the bids.

### **III. The Lanzo Proposal is Non-Responsive**

Under the City of Fort Lauderdale Procurement Ordinance, a responsive bidder is defined as a "bid, offer, quote or response which conforms in all material aspects to the competitive solicitation document and all of its requirements." City of Fort Lauderdale Procurement Ordinance, Sec. 2-173, attached hereto as Exhibit 10. The City's definition of responsiveness tracks the language in *Robinson Electric Company, Inc. v. Dade County*<sup>2</sup> wherein the court established a two-part test to determine whether a departure from the requirements of a solicitation renders a proposal nonresponsive:

First, whether the effect of a waiver [of the procurement requirements] would be to deprive the municipality of its assurance that the contract will 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.

For the reasons set forth below, Lanzo's proposal fails to meet both prongs of this test and should therefore be deemed non-responsive.

First it is critical to understand what the RFP specified and its impact on the success of the project proposed. The purpose of the RFP was to

solicit competitive proposals from one single entity responsible for the design, permitting, construction, testing and startup of the project. The work to be accomplished includes all associated work delineated [in the RFP] or determined by the [bidder] as required to meet the Project Requirements, including all other aspects of the Project to fulfill the intent of the Project as described in the Design Criteria Package and all supporting documents.

*RFP 1.1, Purpose*, attached hereto as Exhibit 1. In this instance the RFP includes "the Design Criteria Package, Technical Specifications, all exhibits and attachments...the DCP sets forth the minimum requirements for execution of the work regarding design, construction...Exhibit B

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<sup>2</sup> 417 So. 2d 1032, 1034 (Fla. 3d DCA 1982).



includes technical specifications that describe the material quality standards and performance criteria for this Project.” RFP 4.1, Project Objective, attached hereto as Exhibit 1.

The RFP and the DCP informed prospective vendors of the various requirements of the RFP, including the technical components described in part in RFP Exhibits A and B, along with the trenchless pipe recommended methods set forth by Hazen in RFP Exhibit J.

From the outset, it is critical to note the purpose of the Design Criteria Package as set forth in the City’s Procurement Manual. The Design Criteria Package is:

*Concise, performance-oriented drawings or specifications of the public construction project. **The purpose of the Design Criteria Package is to furnish sufficient information to permit design-build firms to prepare a bid or a response to the agency’s request for proposal, or to permit an agency to enter into a negotiated design-build contract. The design criteria package must specify performance-based criteria for the public construction project....***

Procurement Manual, Section T, 5, v., attached hereto as Exhibit 11. The Procurement Manual further provides that the Design Criteria Package must include procedures “*for consultation with the employed or retained design criteria professional concerning the evaluation of the responses or bids submitted by the design-build firms...and for evaluation of the compliance of the project construction with the design criteria package by the design criteria professional.*” *Id.*

As detailed herein, the Lanzo proposal is non-responsive as it proposes methods of construction that fail to meet the requirements and recommendations set forth in the RFP and its incorporated exhibits, including the Design Criteria Package (“DCP”) and the recommendations of the Design Criteria Professional (“Hazen”) set forth in Exhibit J to the RFP.

**a. Contrary to the DCP, Lanzo’s Proposal Failed to Use Compression Fit Lining**

RFP Exhibit J, incorporated into the RFP, is an evaluation of the potential trenchless rehabilitation methods conducted by the Hazen it provides an evaluation and recommendation related to the potential methods of performance of the trenchless pipe rehabilitation. *See* RFP, DCP, Exhibit J attached hereto as Exhibit 4. It is critical to note the purpose of the Design Criteria Professional (“DCP”) in relation to this RFP. The City’s Procurement Manual requires the use of DCP for proposals submitted by design-build firms/proposers, specifically for the supervision and approval of detailed working drawings for the project, and for evaluation of the compliance of the project construction with the design criteria. *See* City Procurement Manual Section T, attached hereto as Exhibit 11. As set forth in Exhibit J to the RFP:



*Based on the factors evaluated, The Design Criteria Professional's (Hazen's) experience, and **discussions with the City**, the Design Criteria Professional recommends compression fit lining for a majority of the force main.*

RFP, DCP, Exhibit J, paragraph 3, Recommendations, p. 15 (emphasis added), attached hereto as Exhibit 4.

Despite this clear recommendation from Hazen to use compression fit lining, Lanzo ignored this recommendation and proposed CIPP accompanied by open cut excavation for the majority of the project route, including areas of known contaminated soils. In doing so, its proposal offers very little technical content regarding their approach to CIPP.

**b. Even if CIPP Was Recommended, Lanzo's Proposal Fails to Conform with the RFP Specifications for CIPP**

Even if CIPP were the method recommended by Hazen, the DCP includes various requirements specific to the use of CIPP lining where it is proposed, and despite this, the CIPP lining proposed by Lanzo for the majority of its proposal fails to conform with the CIPP specifications set forth in the RFP, DCP -Exhibit B, Paragraph 10.3, which specifically states that:

All CIPP lining design and installation **shall conform** to the applicable requirements of the following documents:

- ASTM F1216, and/or,
- ASTM F2019,
- NASSCO – Cured-In-Place (CIPP) Installation performance Specification Guideline, the following criteria<sup>3</sup>:

Design Safety Factor	2.0
Minimum design life	50 years
Internal Pressure	0 - 60 psi
Hydrostatic Pressure	$\Delta$ of King Tide and lowest invert
Soil Load	$\Delta$ of grade and pipe crown
Soil Density (unless otherwise obtained by additional Geotech)	120 pcf
Soil Modulus (unless otherwise obtained by additional Geotech)	900 psi

<sup>3</sup> RFP 10.3 CIPP Liner

Live Load	One AASHTO H-20 Truck
Enhancement Factor "K"	7
Design Condition	Fully-Deteriorated
Creep Retention (unless otherwise measured by 10,000-hr testing)	50%
Ovality (unless observed higher in pre- inspection)	2%

RFP, DCP, Exhibits A & B, attached hereto as Exhibit 12.

Based upon a review of Lanzo’s proposal and presentation session, it is clear that Lanzo represented that its proposed CIPP lining design and installation would conform with ASTM F1216. *See* ASTM F1216-16-Standard Practice for Rehabilitation of Existing Pipelines and Conduits by the Inversion and Curing of a Resin Impregnated Tube, attached hereto as Exhibit 13. However, Lanzo’s proposal and presentation promoted a 46.4” internal diameter after CIPP. This is the result of a proposed CIPP liner that is 20.33 mm in thickness. (48” original – 46.4” = 1.6” loss/2 = 0.8” thick x 25.4mm/in = 20.3mm finished CIPP thickness) *See* CIPP Thickness Design by ASTM F1216-22 for Gravity Flow Pipelines, attached hereto as Exhibit 14. The reduction in thickness to 20.33 mm compromises the required design and safety parameters, such as Factor of Safety as required by ASTM F1216. This is an industry standard that calculates the required minimum liner thickness to withstand forces acting on the liner, like internal and external pressure. Generally speaking, thicker liners are stronger and better-suited to perform to their desired life expectancy of 50-plus years. An under-designed or too thin liner, such as that proposed by Lanzo, is susceptible to failure.

This thickness of liner is dangerously thin by accepted industry practices and per the assessment of independent, third-party Florida licensed professional engineers. *See* Liner Thickness, attached hereto as Exhibit 15; Consequence of Failure, attached hereto as Exhibit 16; Cost, attached hereto as Exhibit 17 and R&D Independent Liner Design Evaluation, dated 3.6.24, attached here as Exhibit 18. In addition, the thickness of the liner should change based on the conditions at each site. Deeper sewers, higher groundwater elevations, increased live load, etc. will result in the need for thicker liners. To say that 21 mm can be used across the board in a project like this is misleading at best. To assume that a single liner thickness of 21 mm could be used takes an overly aggressive assumption on the strength of the liner- 4 times the typical strength. What happens if the pipeline fails as a result of an inadequate liner? Since liners are designed to withstand forces acting on them, an improperly designed and installed liner will not be able to withstand the forces acting on it and will fail by buckling or cracking. Liner failures may result in the very problem that led the City to the Consent Decree in the first place: sanitary sewer overflow. This includes pressurized raw sewage bursting through the liner, escaping at the ground surface in a geyser-like



fashion, dumping 50-100 million gallons of untreated wastewater per day until the pumping stations can be shut down and a bypass system established. The environmental and political implications of the failure of a substandard liner, such as that proposed by Lanzo, are high.

If Lanzo increases its CIPP liner thickness from that included in its proposal to complete the project according to the RFP specifications, it will significantly impact the pricing offered. Based on estimated calculations for increasing the liner thickness, an increase would result in roughly an additional \$1.9 MILLION in material differences alone. This does not include additional labor, equipment, or profit. In addition, these costs are not linear, as the cost for materials, labor, and equipment all escalate as the CIPP liner thickness increases. As a result, it can be assumed that material costs would increase by in excess of \$2 MILLION, and a potential for an increase in nearly \$5 MILLION once labor, equipment, and profit are added. *See Cost*, attached hereto as Exhibit 17. With such a material difference in the pricing, it is clear Lanzo would be in violation of the Guaranteed Maximum Price (GMP) portion of the Price Proposal required by Section 3.18 of the RFP.

Lanzo also claimed in its proposal and presentation that CIPP liners provide for adhesions in bends in the pipeline. More specifically, Lanzo presented to the City that the CIPP “accommodates bends...up to 90-degree bend.” *See Lanzo Slide Presentation*, pg. 23, attached hereto as Exhibit 8. However, that representation is false per ASTM F1216 and widely accepted CIPP industry knowledge. CIPP by design claims no adhesion or bonding to the host pipe. Rather, CIPP is installed in a manner to fit smoothly and tightly inside the host pipe. Bends in the host pipe threaten to compromise this. *See CIPP in Bends*, attached hereto as Exhibit 19. Bends often create wrinkles in the liner as excess material accumulates or bunches up on the inside of the turn. While wrinkles may be regarded as cosmetic in CIPP for gravity sewers, wrinkles in CIPP are perhaps the number one concern for pressure pipelines such as this. Up to 60 psi of internal pressure will attack wrinkles where the liner can no longer gain its strength by laying smooth and tight against the host pipe. Lanzo has failed to address bends, wrinkles, and how these known risks will be mitigated. If Lanzo’s liner did adhere to the host pipe bends as they claim, they would not need end seals “to ensure a tight fit” and to “prevent water passage through the host and liner.” *See Lanzo Proposal*, attached hereto as Exhibit 6, at p. 114.

**c. Lanzo’s Proposal Failed to Address a Major Risk of its Design**

It is common industry knowledge that CIPP will wrinkle at bends, and that such wrinkles in CIPP propose a substantial risk for pressure applications, and that such risks could lead to total failure of the pipeline in these areas. In fact, Hazen specifically noted that “the Integrity of the CIPP liner is largely based on the quality of the installation as any wrinkles can become a weak spot where the liner’s pressure capability is reduced.” *RFP*, Exhibit J, 2.3, Constructability, p. 6 of 15, attached hereto as Exhibit 4. Hazen’s Recommendations noted that, in general, using CIPP will have minor-

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to-moderate constructability issues, but in 48-in to 54-in pipelines, such as that at play in this RFP, **“there will be more challenges.”** RFP, Exhibit J, 2.3, pg. 6, attached hereto as Exhibit 4. In fact, Hazen’s recommendations ultimately noted that the constructability of the CIPP Lining was “the most challenging,” noting that as there are no access points along the alignment, and therefore “excavation will be needed to allow for insertion” and the need for “on-site wet out.” RFP, Exhibit J, 2.3, Constructability, p. 6, attached hereto as Exhibit 4. It was also noted to have the highest level of public impact, moderate risk of unsuccessful installation, and highest relative construction costs, in comparison to the other recommended methods. RFP, Exhibit J, 2.8, Summary of Evaluation Criteria, p. 14, attached hereto as Exhibit 4.

Despite these recommendations by Hazen, who was hired by the City to provide professional guidance on the scope and terms of the RFP, the Evaluation Committee completely ignored those recommendations and selected a non-responsive, unsafe and inferior solution likely to cost the City significantly more in the implementation of the project. These risks have not been addressed by Lanzo. This will further impact the cost and timeline of the project as proposed by Lanzo.

When Lanzo does address risk, it does so generally and inaccurately. For example, in its presentation, Lanzo presents styrene barrier as a potential mitigation measure against the risk of odor complaints. See Lanzo Slide Presentation, pg. 39, attached hereto as Exhibit 8. However, there are many styrene barrier lining materials which vary dramatically in effectiveness. It is also clear through its presentation that Lanzo intends to use Over the Hole (“OTH”) installs. OTH installs have a huge footprint and require taking raw resin to the site and pumping it into the liner just prior to going into the ground. OTH places tens of thousands of gallons of resin and other chemicals in neighborhoods rather than in a controlled factory environment, and the styrene barrier will offer no protection whatsoever on the chemical mixing and pumping operation. While these are usually tented operations, the barriers are exposed to the atmosphere and are the absolute worst-case scenario when it comes to managing odors.

As a result of Lanzo’s failure to propose a compression lining as recommended by Hazen, and further by proposing a CIPP solution that fails to comply with the technical requirements, Lanzo’s proposal is precisely contrary to the definition of “responsive.”

**d. Lanzo’s Proposal Directly Contravenes Technical Specifications related to Environmental Contaminants**

Dewatering will be required at several locations throughout the project while performing activities to comply with the DCP. Per the terms of the RFP, “[a]ll excavations shall be free from water before pipes or structures are installed.” RFP, DCP, Exhibits A & B, Exhibit B, Section 11 attached hereto as Exhibit 12. The RFP’s technical specifications further states:

[t]he liquid contained in the dewatering tank cannot be discharged in City sewer or stormwater systems. The liquid must be hauled

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away via vacuum trucks. The DBF is responsible for providing continuous water control until trench backfill is complete.

RFP, DCP, Exhibits A & B, Exhibit B, Section 11 attached hereto as Exhibit 12. The RFP also states:

[w]ater from dewatering operations such as trenches, excavations, and drilling operations shall be disposed of in such a manner that will not cause injury to public health, to public or private property, to the work completed or in progress, to the surface of the streets, cause any interference with the use of the same by the public, or cause pollution of any waterway or stream.

RFP, DCP, Exhibits A & B, Exhibit B, Section 3.4 attached hereto as Exhibit 12. As part of the Environmental Management Plan, the DBF must propose methods “to permit construction in a dry condition.” *Id.* To comply with all of these specifications, a vendor must either 1) have create a barrier mitigating water from entering the trench or 2) procure pumpers trucks to pump the water out and haul away. Either activity would be required throughout the project where a vendor will excavate and encounter groundwater.

Lanzo’s Proposal does not address this project challenge and in fact it specifically states that it will not be in compliance:

The dewatering strategy involves a comprehensive approach, including the identification of all relevant permitting agencies, an understanding of each agency’s requirements, and the preparation of a dewatering plan aimed at efficiently dewatering the excavation while safeguarding the environment from contamination. To achieve these objectives, CES will develop a dewatering plan incorporating well points, sedimentation tanks, and suitable stormwater pollution prevention devices. This plan will enable the safe discharge of excavation groundwater while substantially reducing turbidity.

Lanzo Proposal, pg. 109, attached hereto as Exhibit 6. Further, Lanzo states: [t]he trenchless rehabilitation process necessitates the creation of access manholes designed for dewatering the existing pipeline, with the discharged water **directed into the Sanitary Sewer System.**” Lanzo Proposal, pg. 113, attached hereto as Exhibit 6. Discharging the water directly into the sanitary system is contrary to Lanzo’s above assertion that its plan will “enable the safe discharge of excavation groundwater...” and more importantly, directly violates the RFP’s open-cut excavation and backfill technical specifications. *See* RFP, DCP, Exhibits A & B, Exhibit B, Section 11 attached hereto as Exhibit 12.

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In addition, the RFP specifically lists Contaminated Site Locations. RFP, DCP, Exhibit H, attached hereto as Exhibit 20. Lanzo plans to open-cut and excavate through these known contaminated sites. Lanzo fails to propose mitigation or any construction approach to address the risk of these known contaminated locations. Lanzo also does not address dewatering activities to not expand the plumes, haul away contaminated soils and bring clean soil. This is a significant challenge with installation and has huge ramifications with schedule. The cost associated with installation as depicted through Lanzo's proposal is in excess of \$5 million dollars.

Lanzo's Proposal reflects an intention to operate directly in contravention of the above listed specifications and therefore, must be rejected.

**e. Lanzo's Plan Using Horizontal Direction Drilling (HDD) Is Contrary to the RFP Specifications and Flawed**

The RFP specifications provided detailed instructions for HDD. Under the Technical Specifications:

[a]ll pipe installed by HDD shall be fused HDPE pipe. The DBF's Engineer shall verify that the DR specified is adequate for the DBF's proposed design. The DBF's Engineer shall consider pipe loads such as operational and installation loads, internal pressure loads, external hydraulic and earth loads, pipe resistance to external loads, axial bending stress, pulling force, axial tensile stress, torsional stress, combined loads during installation and combined loads during operation. The assumption of soil arching is permitted but shall be in accordance with the information in Appendix D, or additional geotechnical investigations, and the guidelines of ASTM F1962 and AASHTO. The design and selection of the product piping shall be done in accordance with the requirements of ASTM F1962 as well as the guidelines in the appropriate ASCE MOP.

If the DBF determines that casing piping is required, it shall be included with its bid. The diameter of the casing pipe shall be as determined by the DBF.

RFP, DCP, Exhibits A & B, Exhibit B, Section 12 attached hereto as Exhibit 12. Lanzo has proposed an HDD method in locations where waterways are crossed or new pipeline is needed without interconnection, claiming that this method offers significant reduction in impact on the local community, by reducing the overall size of the required MOT (Maintenance of Traffic). Lanzo Proposal, pg. 116., attached hereto as Exhibit 6.

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Lanzo also proposes to address certain waterway crossings by using a pipeline diameter that is smaller than the required pipeline diameter set out in the DCP minimum internal diameter requirements. *See* Lanzo Proposal, p. 115, attached hereto as Exhibit 6. Their Middle River Waterway crossing information in the proposal proposes this HDD approach, but their proposal later uses CIPP in this section, eliminating any certainty regarding Lanzo's approach. *See* Lanzo Proposal, p. 179, attached hereto as Exhibit 6.

Lastly, the RFP requires compliance with the Florida Department of Transportation (FDOT) Utility Accommodation Manual (UAM). *See* RFP, DCP, Exhibits A & B, Exhibit B, Sections 4 and 6 attached hereto as Exhibit 12. The FDOT UAM requires a depth of 10 times the bore diameter, *See* FDOT, UAM, 3.16.9.1, attached hereto as Exhibit 21. Under these requirements, for the 48-inch pipe required by the project, the HDD reaming bore would be 60 inches. In the Lanzo proposal, Lanzo plans a depth of 22 feet under US-1, a depth of 19 feet under Tarpon River and depth of 22 feet under US-1 from SE 6<sup>th</sup> Street. Lanzo Proposal, pgs. 136; 140-14; and 146, attached hereto as Exhibit 6. These depths are half the depth that is required by the FDOT UAM which does not comply with sections 4 and 6 of the DCP technical requirements. In addition, their measurements do not account for proper entry and exit angles that will allow safe traffic flow above the road. The Lanzo design is not only not constructable but doesn't follow the technical requirements of the RFP and is a danger to US-1 traffic and the Tarpon River.

#### **IV. Lanzo's Deviations from the RFP Specifications are Material and Cannot Be Waived**

Lanzo's proposal fails to meet the required use of compression fit lining for the majority of the main line in the project as recommended by Hazen and incorporated into the terms of the RFP, and its CIPP solution fails to meet the requirements for such a solution. This is a material requirement that cannot be altered without changing the nature of the item procured, and, as a result, removes all notions of fairness and equity in the competitive process. This must also be viewed in the context of the recommendations that were made by Hazen that were clearly, arbitrarily, and capriciously ignored by the evaluation committee. Based on information and belief, the proposals submitted by the responding bidders were not even evaluated by Hazen prior to the selection of Lanzo. If Hazen did review, their own specifications had to have been ignored entirely by the selection committee.

While the procurement does allow for some latitude in the proposed materials, the City must ensure that the process is fair and equitable for all proposers. *City of Sweetwater*, 823 So. 2d at 802 ("While a public authority has wide discretion in award of contracts for public works on competitive bids, such discretion must be exercised based upon clearly defined criteria and may not be exercised arbitrarily or capriciously."). Florida Courts have held that when a public entity is required to competitively award a contract based on a fair review of the proposals, "the Board cannot be allowed to write out this competitive requirement by affording itself overly broad discretion to capriciously and arbitrarily award contracts without established criteria." *Emerald*

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*Corr. Mgmt. v. Bay County Bd. of County Comm'rs*, 955 So. 2d 647, 653 (Fla. 1st DCA 2007). Because the proposal contains these material deviations from the RFP, the approval of Lanzo would deprive the City of the assurance that the contract would be entered into, performed, and guaranteed according to the requirements. Instead of deeming the proposal nonresponsive, the City has instead stated its intent to award the contract to Lanzo. This proposed action is not what the City specified in its procurement, and, as a result, these actions by the City have no rational basis and are arbitrary.

By allowing Lanzo to submit a proposal that fails to comply with the RFP requirements set forth above, it is a material deviation that adversely affects the competitive bidding by placing Lanzo in a position of advantage over other proposers, including Murphy. This goes squarely against established legal precedent and the City's own guidelines. A bid is responsive if it "conforms in all material respects to the competitive solicitation document and all of its requirements." City of Fort Lauderdale Procurement Ordinance, Sec. 2-173, attached hereto as Exhibit 10. A bid is not responsive if it has a deviation that "adversely affects the competitive process by placing a bidder or proposer in a position of advantage over the other bidders or by otherwise undermining a common standard of competition." *Robinson*, 417 So. 2d at 1034.

The thinner, substandard CIPP liner proposed by Lanzo allowed it to propose its solution to the City at a lower cost than the recommended and specified compression fit proposal made by Murphy. If Murphy had been provided the opportunity to deviate from the RFP requirements as well, it could have reduced its pricing, thereby making it more competitive. The disparate treatment here is contrary to fair competition.

While the City states in the RFP that it reserves the right to accept or reject any oral bids, part of bids, and to waive minor irregularities or variations to specifications contained in bids, and minor irregularities in the process this language cannot be used to materially alter the terms of the RFP. *Emerald Corr. Mgmt*, 955 So. 2d at 654. In *Emerald Correction Management v. Bay County Board of County Commissioners*, the court explained 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.'" *Id.* at 653 (quoting *State, Dep't of Lottery v. Gtech Corp.*, 816 So. 2d 648, 652 (Fla. 1st DCA 2001)). The county also attempted to argue in *Emerald Correction Management* that it was entitled to accept the proposal and then later reject certain terms of the proposal, since the RFP stated that the county could accept or reject any portion of the proposal. *Emerald Corr. Mgmt*, 955 So. 2d at 654. The court rejected the county's argument and found that the county's actions in this regard violated the competitive award process. *Id.* Moreover, the court held that "[i]f, as alleged in the complaint, the county accepted terms from one party which were not contemplated by the RFP, the County would have engaged in favoritism." *Emerald Corr. Mgmt*, 955 So. 2d at 654 citing *Gtech*, 816 So. 2d at 652. This is improper since a "public authority may not arbitrarily and capriciously discriminate between bidders or make the award on the basis of personal preference." *Emerald Corr. Mgmt*, 955 So. 2d

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at 652 citing *Hotel China & Glassware Co. v. Bd. of Pub. Instruction of Alachua County*, 130 So. 2d 78, 81 (Fla. 1st DCA 1961).

Like the county in *Emerald Correction Management*, the City has engaged in improper favoritism by allowing Lanzo to submit a proposal that was expressly rejected in the RFP documents and totally contrary to the highest recommended constructed methods recommended by Hazen. “Determining that a vendor who will not agree to be bound by the terms and conditions of [a solicitation] is responsive defeats the purpose of the requirement that the reply must be responsive in order to be qualified to negotiate and goes to the heart of the competitive nature of a procurement.” *Infinity Software Dev., Inc. v. Dep’t of Educ.*, No. 11-1662 at \*24 (Fla. DOAH June 7, 2011) (Recommended Order). Allowing Lanzo to move forward in the evaluation process provided it a significant advantage – namely that it was able to keep its costs lower than what they would have been if it had complied with the RFP requirements. This created an unfair disadvantage for other Proposers, like Murphy, that complied with the material requirements of the RFP. Additionally, evaluating Murphy against Lanzo destroyed the common standard of competition, since the City was no longer comparing remotely similar products. As a result, the City’s failure to reject Lanzo’s proposal as nonresponsive is an arbitrary action.

**V. The City Did Not Act in Good Faith When Evaluating Lanzo’s Proposal by Failing to Consult with Hazen**

Section 2-175 of the City Procurement Ordinance requires **all parties** involved in the procurement of goods or services and the issuance of contracts for the city to act in good faith. City of Fort Lauderdale Procurement Ordinance, Sec. 2-175, attached hereto as Exhibit 10. In addition, the City’s Procurement Manual requires that a consultant shall be available for consultation regarding the evaluation of proposals submitted by the design-build firms/proposers, for the supervision and approval of detailed working drawings for the project, and for evaluation of the compliance of the project construction with the design criteria. Procurement Manual, T.3., attached hereto as Exhibit 11. The Procurement Manual also provides that

[f]or consultation with the employed or retained design criteria professional concerning the evaluation of the responses or bids submitted by the design-build firms, the supervision or approval by the agency of the detailed working drawings of the project; and for evaluation of the compliance of the project construction with the design criteria package by the design criteria professional.

Procurement Manual, Y.5-iv., attached hereto as Exhibit 11. Here, the City failed to consult Hazen in any way when evaluating the proposals. If the City would have utilized the consultants in the evaluation process, in good faith, it would have been clear that Lanzo’s Proposal fell well outside Hazen’s recommendations.

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The purpose of Hazen’s recommendations was to provide expertise in the DCP and the requirements set forth therein. Those recommendations and the DCP were developed by Hazen specific to this project and in consultation with the City. Hazen was hired to serve as a “qualified consultant” to the City and to serve as program manager to ensure that the City meets the requirements of the Amended Consent Decree with the FDEP and to actively engage in the assessment of existing sanitary sewer infrastructure, prioritization of repair and replacement projects, and the design, permitting and construction management of these projects in order to comply with the Agreement’s mandates and to mitigate the occurrence of wastewater releases due to sewer main breaks. City of Fort Lauderdale RFQ# 476-11906, Section 3.1, attached hereto as Exhibit 3. Further, the purpose of hiring Hazen was to ensure that the program components are technically, economically, and functionally consistent and are implemented in a manner that meet the requirements of the Clean Water Act, National Pollution Discharge Elimination Permits, FDEP regulations, Environmental Protection Agency (EPA), Broward County Environmental Protection and Growth Management Division (BCEPGM) and any additional applicable regulatory requirements.

The point of Hazen’s involvement is to have expertise in what is included in the RFP. However, instead of following Hazen’s recommendations, the Lanzo Proposal proposed methods and materials contrary to Hazen’s professional design criteria.

**VI. The Evaluation Committee’s Scoring was Arbitrary and Capricious**

The RFP’s Evaluation and Scoring Criteria states that the Design-Build Team’s responses to the RFP will be evaluated and ranked by an RFP Evaluation Committee. Submittals shall be evaluated based on the information and references contained in the proposals as submitted. RFP, Section 6.1, attached hereto as Exhibit 1. The RFP scoring criteria are as follows:

<b>CRITERIA</b>	<b>PERCENTAGE</b>
Qualifications of the Firm & the Team	30
Project Methodology & Approach	40
Price Proposal	20
References	10
<b>TOTAL</b>	<b>100</b>

RFP Section 6.1, attached hereto as Exhibit 1. Based on the recordings and scoring of the evaluation committee, it is clear that the Evaluation Committee wholly disregarded the material flaws in Lanzo’s proposal and inappropriately penalized Murphy, despite Murphy meeting the RFP requirements. These actions by the Evaluation Committee are arbitrary and warrant the overturning of the recommended award to Lanzo.



**a. The Evaluation Committee Disregarded Material Flaws in Lanzo's Proposal and Improperly Scored It.**

While Lanzo's failure to meet material requirements of the RFP was discussed at great length previously herein, it is worth reviewing this issue again through the lens of the evaluation process. Lanzo failed to provide the City with the methods recommended by the City's consultant, Hazen, and even those methods selected by Lanzo fail to comply with requirements for CIPP lining. In this regard, it is incomprehensible how the Evaluation Committee was able to meaningfully evaluate Lanzo's proposal. With a non-compliant solution, there is no justification for awarding any points for project methodology to Lanzo, as that section is based on the notion that the proposal evaluated complies with the material specifications of the RFP. It is unclear how Lanzo could be ranked number one (1) by four (4) out of five (5) Evaluation Committee members when the Lanzo proposal fails to provide the City with the solution recommended by Hazen, and its solution does not meet the requirements of the RFP.

**b. The Evaluation Committee Did Not Meet the Criteria of the Procurement Manual and RFP.**

The Evaluation Committee Consisted of the following individuals:

1. Sylejman Ujkani, City of Fort Lauderdale Program Manager  
Public Works Consent Order Program Manager
2. William Power; City of Fort Lauderdale Senior Program  
Manager, Public Works Engineering.
3. Roberto Betancourt; Program Manager, Public Works
4. Mark Roads, City of Fort Lauderdale Project Manager II, Public  
Works Engineering
5. Deborah Cueva, Project Manager Public Works Engineering  
Division.

The Procurement Manual states:

[a] primary objective in selecting the E-Team is to select members who are knowledgeable in the subject matter of the solicitation. Members must be able to render an objective recommendation as to which proposal is most advantageous to the City. The ideal makeup will be one from the City department, one qualified member from another department that is knowledgeable in the field, and one from outside of the City staff (maybe from another entity or a citizen that is knowledgeable in the field, who is not a proposer.)

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Procurement Manual N-3-1, attached hereto as Exhibit 11. Here, every individual worked in the same department, Public Works. As noted above, Mark Roads and William Power work in the same sub-department of Public Works. This is contrary to the Procurement Manual's recommendation that Committee members come from different departments. Without any opinion outside of the Public Works department, the Evaluation Committee lacked objectivity, contrary to the City of Fort Lauderdale Procurement Ordinance requirement that the members **must** be able to render an objective recommendation. Rather, with all individuals in the same, the relationship amongst committee members rendered the team narrow and parochial.

## **VII. The Lanzo Proposal Does Not Provide Best Value for the City and Its Citizens**

The City of Fort Lauderdale Procurement Ordinance, 2-172 sets forth “[t]he City wishes to provide for the purchase of the **highest quality and best value of goods and services at fair and reasonable cost, and ensure that equitable treatment of firms doing business with the City.**” City of Fort Lauderdale Procurement Ordinance 2-172, attached hereto as Exhibit 10. It further provides that the procurement functions of the City will enable the City to “*obtain goods and services of quality and appropriate quantity at a fair and reasonable costs for the City*” and to “*provide safeguards for the maintenance of a procurement system of quality and integrity.*” *Id.*

According to the City, Procurement Services is the centralized authority responsible for procuring quality materials, supplies, services, and construction at the best possible value and price, with fairness and integrity for the City of Fort Lauderdale's government leaders, its employees, its stakeholders, and its citizens. Procurement Manual, Section A. 1, attached hereto as Exhibit 11. The notion of best possible value and price, along with fairness, quality and integrity are key underpinnings 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 [government], by affording an opportunity for an exact comparison of bids. *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)).

Best Value is defined in the City of Fort Lauderdale Procurement Ordinance as

[a] procurement method that emphasizes value as much as, or more than, price. Best value may be based on, but not limited to the following: the competitive solicitation evaluation criteria, subsequent discussions, presentations, demonstrations, negotiations, past performance, project management experience, prime contractor qualifications, sub contractor qualifications, similar project's completed, adequacy of facilities or equipment, technology, location, sustainability, diversity, contract terms and

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conditions, project completion time, technical solutions, and pricing.

City of Fort Lauderdale Procurement Ordinance, 2-173, attached hereto as Exhibit 10. As detailed above, best value is based on several factors, and not just price. “Awards of contracts are generally based not solely on price, but on the results of an extensive evaluation which includes criteria, qualifications, experience, methodology, management, approach, and responsiveness to the RFP, etc.” *Emerald Corr. Mgmt*, 955 So. 2d 647, at 651.

Despite the variety of factors that go into “best value”, it is clear that the City was only interested in which proposal was the least expensive. *See e.g.*, Email from Paulette Turner to William Power, dated January 10, 2024 at 12:39 PM, at pg. 1., attached hereto as Exhibit 22 (“Also, when the amount for the alternate is lumped in the pricing for all the phases and the decision is taken not to adopt the alternate, how would the low bidder be determined?”). Murphy was prejudiced by the City’s decision to abandon the Procurement Manual requirement to consider all of the factors of “best value,” and instead only pick the “lowest cost proposal.” Email Chain between Paulette Turner to William Power, dated January 11, 2024 at 9:38 AM, at pg. 3, attached hereto as Exhibit 23.

In addition, as part of the RFP, the City engaged a Design Criteria Professional, Hazen, to make recommendations regarding the method for the pipeline rehabilitation. Hazen very clearly states within the RFP, Exhibit J, as follows:

Based on the factors evaluated, the Design Criteria Professional’s (Hazen’s) experience, and *discussions with the City*, the Design Criteria Professional recommends compression fit lining for the majority of the force main. ...Due to the erosion-corrosion that has occurred and will likely to continue to occur in these pipelines, ***a fully structural liner is recommended to ensure the integrity and longevity. It is even recommended to evaluate an increased thickness of the HDPE and CIPP lining to increase service life.*** As discussed in Section 2.7.2.2, the compression fit lining reduces or eliminates the annual space between the old and new pipes, thereby minimizing impacts on hydraulic capacity....Compression fit liners can be installed at production rates of up to 5,000 feet in a single pull and are able to negotiate field bends of up to 22.5 degrees. Although several access pits will need to be excavated...the excavation requirements are significantly less than open-cut replacement.

RFP, DCP, Exhibit J, p. 15, attached hereto as Exhibit 4.

In addition, Hazen included a chart “Summary of Evaluation Criteria,” which sets forth the results of its evaluation of the various methods compared to one another. For purposes of this analysis,

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by reordering the table, we are highlighting the CIPP Lining Method proposed by Lanzo and the Compression Fit Lining Method proposed by Murphy and recommended by Hazen.

Table 2-1: Summary of Evaluation Criteria <sup>4</sup>				
	CIPP Lining	Compression Fit Lining	Sliplining	Spray-Applied Lining
Structural Improvement (AWWA M28)	Class III to Class IV	Class III to Class IV (+ added benefit)	Class III to Class IV	Class I to Class II
Erosion-Corrosion Resistance	High	Highest	Highest	Moderate to High
Negative Hydraulic Impacts	Low to Slight Improvement	Negligible	Highest	Lowest to Improvement
Longevity	50+ years	50+ years	50+ years	20+ years
Constructability	Most Challenging	Moderately Challenging	Moderately Challenging	Least Challenging
Relative Public Impacts	Highest	Medium	Low (bell and spigot) Medium (fused pipe)	Lowest
Risk of Unsuccessful Installation	Moderate	Low	Low	High
Relative Construction Costs	Highest	Moderate	Moderate	Lowest

Despite this information included in the RFP, 4 out of 5 Evaluation Committee Members ranked Lanzo highest in the Methodology and Approach Method. *See* Scoring, attached hereto as Exhibit 24. At the same time, in the Qualifications Category, 3 out of 5 Evaluation Committee Members ranked Murphy first over Lanzo. *Id.* In addition, in the References Category, 3 of out of 5 Evaluation Committee Members ranked Murphy first, while Lanzo received no first-place rankings. *Id.*

The Lanzo proposal fails to provide the best value to the City because it proposes methods of construction that fall below the recommendations and requirements set forth in the RFP and its

<sup>4</sup> This chart is reproduced from RFP, Exhibit J p. 14, and emphasis is placed on the 2 methods proposed by Lanzo (CIPP Lining) and Murphy (Compression Fit Lining). Colors have been added to designate the (Blue) superior solution and weaker solution (Red) as included in the report by Hazen.



Exhibits. Namely, the Lanzo Proposal does not propose to use compression fit lining for the majority of the force main and proposes to open-cut (excavate) the project route through contaminated areas, without appropriately accounting for the costs of excavating and removing contaminated soil and for replacement with clean soil. *See* Lanzo Proposal, attached hereto as Exhibit 6. Nor does it account for dewatering in these areas. *Id.* These facts may also be significantly exacerbated by the actual amount of excavation and the severity of the contaminated sites. Each of these processes includes significant environmental risks and high potential of exposure to nearby waterways. In addition to cost for these processes, there is also significant time involved in these processes. These major risk items are difficult to quantify but have significant and material impact on the cost of the project as well as the impact on the timeline and community.

In addition, based upon information gathered from a public records request, and the presentation by Lanzo to the City in relation to its proposal, it appears that Lanzo's price proposal has gamed the system. The Lanzo bid appears to be strategically unrealistic fails to consider a number of factors and calls into question whether Lanzo has the ability to meet the RFP requirements for the price proposed. For example, as set forth elsewhere in this protest, Lanzo proposes a CIPP lining thickness that fails to meet the RFP specifications that were designed to ensure the safety and durability of the new pipeline. As these factors are critical to the success of this project and compliance with the consent decree, and to avoid further sewage spillage as led to the replacement of this pipeline. The differential in the proposed CIPP lining thickness raises suspicion of a deliberate attempt to submit a bid that compromises the integrity of the design in order to justify a low-ball price.

The RFP and City of Fort Lauderdale Procurement Ordinance require bidders be "responsible." A "responsible bidder" is generally defined as one who has the capability in all respects to perform fully the contract requirements and the integrity and reliability that will ensure good-faith performance. *See* City of Fort Lauderdale Procurement Ordinance Procurement, Section 2-173, attached hereto as Exhibit 10. Under the RFP, the City of Fort Lauderdale Procurement Ordinance, and general Florida law, the City must consider the responsibility and responsiveness of Lanzo's proposal. "Where a bidder's price is below cost, an agency may consider this as a basis to determine a bidder is non-responsible." *Willis v. Hathaway*, 117 So. 89, 91 (1928); *Sunshine Cleaning Services, Inc. v. Florida Dept of Transportation*, 2007 WL 4287224 (DOAH Dec. 3, 2007). A below-cost bid increases the risk of non-performance of the contract causing increased costs and delays to achieve completion of the work.

In this regard it is important to note that Lanzo's proposal was nearly \$20 MILLION below the second-ranked bidder, Murphy, and nearly \$30 MILLION lower than that of the third-ranked bidder, RMC. *See* Bid Tabulation, attached hereto as Exhibit 25. In addition, the City's Informational Page for Bid Packet estimated costs for the Project at \$59,300,000. *See* Informational Page for Bid Packet, attached hereto as Exhibit 26. It defies reason and logic that a

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bidder could responsibly submit a bid that undercuts the City's own project estimate by nearly \$20 MILLION.

Although Florida law is clear that there is a substantial public interest in favor of saving tax dollars in awarding public contracts, it is equally clear that it cannot be done at the expense of the competitive bidding process. See, *Intercontinental Properties, Inc. v. State of Florida Department of Health and Rehabilitative Services*, 606 So. 2d 380, 386 (Fla. 3d DCA, 1992); *Wood-Hopkins Contracting Co. v. Roger J. Au & Son, Inc.*, 354 So. 2d 446, 449 (Fla. 1st DCA, 1978). The law is clear that, even when what is involved is a request for proposals, the agency is not entitled to omit or alter material provisions required by the RFP because by doing so the agency fails to "inspire public confidence in the fairness of the RFP process." *Emerald Correctional Management*, 995 So. 2d at 654 (Fla. 1<sup>st</sup> DCA 2007); citing *Gtech Corp.*, 816 So. 2d at 653.

There is also a clear interest in protecting the safety of the public in the execution of public contracts. This interest is reflected in the numerous safety provisions in the RFP, some of which are reflected above. With such a large undertaking, the City has further provided for the safety of the public by stating that the:

services provided by the DBF shall comply with all applicable City ordinances, rules and requirements, Occupational Safety and Health Administration (OSHA) Guidelines, South Florida Water Management District (SFWMD) Manuals and Guidelines, FDEP regulations and guidelines, and Broward County Environmental Protection and Growth Management Department regulations and guidelines.

RFP, DCP, Exhibits A & B, Exhibit A, Section 2.3, attached hereto as Exhibit 12. Lanzo's Proposal, by ignoring several of these safety rules, requirements, and specifications, eviscerates the public safety focus of this project, rendering its Proposal non-responsive and non-responsible. By proposing a lower quality, sub-standard process, which includes, in part, the failure to meet technical requirements by use of a CIPP liner that is too thin, non-compliant HDD drilling, the improper discharge of wastewater into the City's sewer system, open-cut through contaminated sites, failure to account for construction noise, allowance for unforeseen conditions and, Lanzo has sacrificed public safety in the interest of providing a low offer that fails to meet the minimum standards of hazard protection, disaster prevention and functionality. By saddling the taxpayers with a substandard system, Lanzo's proposal is not only the worst value to the City, but also, will cost the City significant wide-sweeping repair costs in the long run.

To evidence an application of the plans proposed by Lanzo and Murphy to the specifications of this RFP, we have developed the following chart:

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<b>Lanzo</b>		<b>Murphy</b>	
Proposed 48" CIPP liner that is 20.33 mm in thickness.	<b>Does Not Meet DCP Technical Specifications 10.3 CIPP Liner</b>	Proposed 48" CIPP liner that is 31.7mm thick under the river & 26.1mm thick under the land.	<b>Meets DCP Technical Specifications 10.3 CIPP Liner</b>
Proposed to Dewater into City Sewer System & Stormwater System	<b>Does Not Meet DCP Technical Specifications 11. Open-Cut Excavation and Backfill</b>	Proposes to use Soil Injection to Mitigate Dewatering & Risk of Contaminated Site.	<b>Meets DCP Technical Specifications 11. Open-Cut Excavation and Backfill</b>
Horizontal Directional Drill Plan	<b>4. Compliance with Codes and Technical Requirements (Page B-5) &amp; 6. Permit Requirements (Page B-6)</b>	Horizontal Directional Drill Plan	<b>4. Compliance with Codes and Technical Requirements (Page B-5) &amp; 6. Permit Requirements (Page B-6)</b>
Open-Cut through Contaminated Sites	<b>High Environmental Risk</b>	Proposed Soil injection and drilled to avoid contaminated site impacts	<b>Mitigated Environmental Risk</b>
Does Account for construction Noise through residential Business areas	<b>Does not comply with section 8.1 General Requirements &amp; 8.2 Noise Management Plan</b>	Provide an approach that mitigates construction noise with Sound Barriers and construction noise monitoring.	<b>Complies with section 8.1 General Requirements &amp; 8.2 Noise Management Plan</b>
Allowance for Other Unforeseen Conditions	<b>Proposal Doesn't Cover Risk</b>	Allowance for Other Unforeseen Conditions	<b>Proposal Covers Major Risk Items</b>
Submitted Value Engineering	<b>NO</b>	Submitted Value Engineering	<b>YES</b>

In light of the foregoing, Lanzo was and is not a responsive or responsible bidder. Its proposal fails to comply with critical requirements of the RFP. Its price proposal lacks consideration of key components required for successful completion of the project under the DCP. The City's



acceptance of a proposal that fails to comply with the DCP and pricing requirements is contrary to accepted business practices, provides a clear competitive advantage, and cannot be ignored. These critical omissions call into question the integrity and reliability of the proposal and bidder and renders the Proposal non-responsive. The Lanzo proposal should therefore be rejected altogether, and the contract awarded to Murphy as the next highest-ranked bidder.

### **VIII. Ric-Man's Proposal Is Non-Responsive**

The Ric-Man Proposal should also be deemed non-responsive, as it proposes methods of construction that fail to meet the requirements and recommendations set forth in the RFP and its incorporated exhibits, including the DCP. Specifically, Section 9 of the Exhibit B to RFP states that "[n]o newly installed or rehabilitated pipe shall have an internal diameter of less than 44.4 inches." RFP, DCP, Exhibits A & B, Exhibit B, Section 9, attached hereto as Exhibit 12. Despite this clear specification, Ric-Man's proposal offers a pipe diameter less than 44.4 inches. Ric-Man Proposal, pg. 106, attached hereto as Exhibit 7. As a result of this failure to comply with the clear specification of the RFP, the Ric-Man proposal must be deemed non-responsive and rejected from any further consideration.

### **IX. Conclusion and Requested Relief**

For the reasons stated above, the City's intended contract award to Lanzo fails to comply with the RFP, the City's purchasing ordinance, and Florida law. Any substituted proposed contract award to Ric-Man would also fail to comply with the RFP, the City's purchasing ordinance, and Florida law. As such, Murphy respectfully requests that you grant this protest and recommend corrective action consisting of the City 1) withdrawing the Notice of Intent to Award to Lanzo, and 2) awarding the contract to Murphy. Alternatively, Murphy requests corrective action consisting of a rejection of all proposals. Murphy also requests return of its protest application in full.

Due to the short time frame within which this Protest is required to be filed, Murphy 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 2-182(1), City of Fort Lauderdale Procurement Ordinance.

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.

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**PANZAMAURER**

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Mr. Glenn Marcos  
March 11, 2024  
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Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Thomas F. Panza', with a long horizontal line extending to the right.

THOMAS F. PANZA, ESQ.

TFP/ELP/LKE  
Enclosures

cc: Paulette Hemmings Turner, Senior Procurement Specialist [pturner@fortlauderdale.gov](mailto:pturner@fortlauderdale.gov)

**PANZAMAURER**