



August 25, 2022

Eduardo S. Lombard
Radey Attorneys & Counselors at Law
P.O. Box 10967
Tallahassee, FL 32302

SENT VIA:

Certified Mail No. 91-7199-9991-7039-9616-6858
and
Email: elombard@radeylaw.com

RE: Response to Protest- Request for Qualifications (RFQ) No. 12665 - 1026: Program Management and Mapping Services

Dear Mr. Lombard:

The City of Fort Lauderdale ("City") is in receipt of your protest on behalf of WGI, Inc. ("WGI") regarding Request for Qualifications No. 12665-1026 ("RFQ"). The protest indicates it is being filed pursuant to RFQ Section 2.10 and the City's Procurement Ordinance 2-182 based on the City's Notice of Intent to Award to Craven. Under your first footnote, you further state that WGI expressly reserves the right to supplement or amend this protest based on facts or additional protest grounds discovered in the future that are not currently known by WGI, because your public records requests have not been provided by the City. The City's Procurement Ordinance Section 2-182(b)(4) clearly requires for the written protest to state the specific facts and law or ordinance upon which the protest of the proposed award is based and shall include all relevant documents and evidence. It does not allow for the protest to be supplemented or amended after the protest is filed. Therefore, I will only acknowledge and address the protest as filed and received on August 16th, 2022, with the accompanied protest bond of \$5,000.

It is alleged in your protest that Craven, Thompson & Associates, Inc.'s ("Craven") proposal should not have been considered and deemed non-responsive for failure to comply with the scope of work requiring services to be completed by July 2023. The protest mentions section 3.3.1 and 3.3.3 of the solicitation highlighting the fact that the RFQ states the contractor will ensure the conditions set forth by the Florida Department of Environmental Protection (FDEP) Consent Agreement are met in a timely fashion and that the mapping must be certified complete and accessible in accordance with the Consent Order by July 23, 2023. It is important to underscore that throughout your protest great emphasis and primary focus is placed on the "time" element. This is apparent based on your references to certain sections of the RFQ. For instance, besides the sections mentioned above, you also refer to additional sections, including Section 4.2.3, where it states proposers must include information on their ability to meet time and budget requirements and Section 4.2.5, seeking proposer's approach and proposed scheduling methodology and/or timeline for effectively managing and executing the work in optimum time. Addendum No. 2 is also referenced. This addendum was issued to incorporate Section 3.5 into the RFQ to include an incentive-disincentive clause to expedite the rendering of professional services to complete the Water Consent Program Management and Mapping Services by providing a \$3,000 daily incentive to encourage the firm to complete the services in advance of the desired date and a \$3,000 daily disincentive for each day after the desired date work is completed.



All of the previously cited sections and documents are undisputed and factual, as they originate from the RFQ. However, the allegation that Craven's proposal should have been deemed non-responsive because they failed to meet the requirements of these sections is disputed and inaccurate. Interestingly enough, your argument is narrowly tailored to just the time factor, but every other factor in the RFQ is completely ignored. Based on your arguments, it seems that you are under the impression that the City issued an Invitation to Bid ("ITB"), as you are incorrectly applying the ITB standards to this RFQ. These two types of procurement methods are vastly different. When using an ITB as a procurement method, a bid shall be considered responsive only if it conforms to the requirements of the formal competitive bidding process concerning pricing, surety, insurance, specifications of the goods or services requested, and any other matter unequivocally stated in the ITB as a determinant of responsiveness.¹ A RFQ is a qualification-based formal competitive process containing various factors that may include a proposer's method of approach, proposer's experience, capabilities, implementation procedures, past performance, qualifications to meet time and budget, etc.²

After misunderstanding the procurement standards to this RFQ, you then turn your focus on to the Evaluation Process, the Evaluation of Proposals, and the Evaluation Committee. In this part of the protest, your allegations are speculative in nature and contains general presumptions despite being contrary to the facts, standards, and practice of this RFQ procurement process. This is evidenced by the erroneous assumption that the highest ranked, responsive, and responsible firm, Craven, was required to file a challenge to the specifications of the RFQ, if it believed that the July 23rd completion date and scope of services were impossible to perform. No such requirement to challenge the specifications is necessary, when the Evaluation Committee has the ability to consider the methodology and approach to the scope of work, which includes the firm's proposed timelines and scheduling, and score the proposal accordingly. The maximum score for this criterion was 40 points/percent. As a matter of fact, two out of the three Evaluation Committee members agreed that WGI's proposed methodology and approach was superior to Craven's. However, there were two other evaluation factors that for whatever reason are not mentioned in your protest. These two other factors consist of a firm's qualifications and experience and project team experience and qualifications with a weighted factor of 30% for each category totaling 60% percent out of a 100% scale. The three Evaluation Committee members unanimously decided that Craven in these two criteria far exceeded WGI. Therefore, the scoring involving these two factors tipped the scale in favor of Craven.

With regard on how the Evaluation Committee members scored Craven's proposal, WGI nor anyone else is in the position to substitute their judgment, opinions, beliefs, or thoughts for those of the Evaluation Committee. Moreover, the City has the opportunity to negotiate the terms, conditions, approach, methodology (which includes proposed timelines and scheduling), scope of work, and pricing. As a result, the City might be able to improve upon any portion of Craven's proposal, including timelines considered to be advantageous and its best interest. Pursuant to Section 5.1.3 of the RFQ, if at a given point in time during negotiations, the City fails to negotiate a contract with the highest rank, responsive, and responsible proposer, it can move forward with entering into the negotiations with the next ranked, responsive, and responsible firm.

As a side note, the City has been recently informed by Florida Department of Environmental Protection that it has extended the deadline to complete the project from July 2023 to December 2024.

¹ Pursuant to the City of Fort Lauderdale Procurement Manual, Section M., Competitive Sealed Bid Process

² Pursuant to the City of Fort Lauderdale Procurement Manual, Section O., Request for Qualifications Solicitations



Notwithstanding FDEP's revised deadline, and in response to your protest, Craven's responsiveness determination and the Evaluation Committee's decision is correct and without bias, and is not arbitrary or capricious. Further, the decision contains no material deviation from the solicitation and fully complies with all legal and procurement standards and practices of a qualification-based procurement, and is in full compliance with the solicitation requirements of this RFQ.

For the reasons provided herein, I am hereby denying your protest and will move forward with recommending an award to Craven.

Respectfully,

Glenn Marcos Digitally signed by Glenn Marcos
Date: 2022.08.25 15:26:50 -04'00'

Glenn Marcos, CPPO, CPPB, FCPM, FCPA
Chief Procurement Officer
Assistant Finance Director – Procurement and Contracts

cc: Susan Grant, Director of Finance
Alan Dodd, P.E., Director of Public Works
Alain E. Boileau, City Attorney
Rhonda Montoya Hasan, Assistant City Attorney
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