



August 20, 2018

Ms. Jodi S. Hart  
Manager, Procurement & Contracts  
City of Fort Lauderdale  
100 N. Andrews Avenue, Suite 319  
Fort Lauderdale, Florida 33301

**RE: Bid 12149-885 Disaster Debris Removal and Management Services**  
Response to Ashbritt Protest

Dear Ms. Hart:

Ceres can perform all of the scopes of work at costs at or below the bid price. Ceres cannot speak for our competitors regarding why they elected to bid at prices that in many cases are higher than ours. However, Ceres stands by our pricing and our ability to perform.

Ceres owns much of the equipment that our work force uses following an activation. We own heavy equipment shops in several locations in order to perform our own repairs and maintenance. This gives Ceres a pricing advantage over competitors who must use one or more tiers of subcontractors to perform the work.

We have performed sand screening on and plan to use screeners on tracks for high efficiency. We have performed waterway debris removal and have a good understanding of the cost of that work.

Ceres maintains year-round employees, as managers, operators and laborers in our construction and recycling divisions. We are accustomed to making a fair profit on our work and we can support the company during years with few disaster projects without depending on making exorbitant profits in years with major disasters. This allows us to bid using pricing that can be comparatively low to other companies.

Ceres bid this project based on our projected expenses, and only after the City's release of pricing information did we learn of our competitor's pricing. Ashbritt's comparison of our pricing for other projects is irrelevant since each contract and locale is different and it would be foolish not to bid each solicitation separately and independently. We submitted our best price and the City should benefit from our diligence and not be required to pay more to enrich another contractor who lost the competition.

We stand by our pricing; we have never defaulted on a contract; and we are confident in our ability to perform at those prices.

Sincerely,

A handwritten signature in blue ink, appearing to read "David A. Preus".

David A. Preus  
Senior Vice President  
Ceres Environmental Services, Inc.

cc: *James Hemphill, Procurement, Fort Lauderdale*  
*Laurie Platkin, Procurement, Fort Lauderdale*  
*Karl Dix Jr., Attorney at Law, Smith Currie*

REPLY TO:

**KARL DIX, JR.**  
ATTORNEY AT LAW  
DIRECT DIAL 404 582 8038  
kfdix@smithcurrie.com

August 20, 2018

Via Email: [jhart@fortlauderdale.gov](mailto:jhart@fortlauderdale.gov)

Ms. Jodi S. Hart  
Manager, Procurement & Contracts  
City of Ft. Lauderdale  
100 N. Andrews Avenue  
Ft. Lauderdale, FL 33301

**Re: Response to AshBritt Protest Letter Dated August 17, 2018  
RFP#12149-885  
Disaster Debris Removal and Management Services  
for the City of Ft. Lauderdale**

Dear Ms. Hart:

Ceres Environmental Services, Inc. ("Ceres") hereby files this opposition to AshBritt, Inc.'s ("AshBritt") above-captioned protest. In accordance with the solicitation criteria and in faithful and strict adherence to it, the City rated Ceres as the best proposal both for its technical and price proposal. In fact, Ceres' technical proposal was rated 25% higher than AshBritt's technical proposal in the final evaluation of offerors even when the price proposal evaluation is factored out. AshBritt appears to argue that the City should disregard its clearly stated proposal requirements and evaluation criteria to choose an inferior technical, higher-priced proposal and to blindly disregard applicable Florida procurement law. The City's evaluation was fair, reasonable and wholly consistent with the evaluation method contained at Section V of the solicitation. AshBritt's protest is meritless.

Even aside from the merits of AshBritt's protest, it should be summarily dismissed as untimely. AshBritt knew of the proposal requirements and evaluation criteria when Addendum 1 was issued on May 29, 2018; long before the submission of proposals. AshBritt submitted its proposal without objecting to the proposal requirements or the evaluation criteria. Apparently, AshBritt waited for "two bites at the apple" to protest the evaluation criteria contained in the solicitation until after its proposal was rated lower both technically and for the cost proposal than Ceres. Under Florida law, AshBritt's protest is untimely and does not even merit consideration because it is untimely. The Fort Lauderdale, Florida Code of Ordinances provides at Section 2-182(b)(5) that "A written protest may not challenge the relative weight of evaluation criteria or a

formula for assigning points.” AshBritt’s challenges “the relative weight of evaluation criteria” and “the formula for assigning points”. The evaluation criteria are clearly stated in “Section V – Evaluation and Award”. There is no dispute that the City “rigidly” (AshBritt’s words) and faithfully complied with its Solicitation Evaluation Method. AshBritt’s late challenge of the evaluation method is both untimely and a non-protestable issue under the Fort Lauderdale ordinances. AshBritt challenges the evaluation method, not the application of the evaluation method by the City. AshBritt admits this fact in referring to the City’s honest and faithful application of the evaluation criteria as “rigid”. AshBritt’s protest is clearly improper and untimely.

AshBritt’s “bid unbalancing” argument demonstrates a fundamental misunderstanding of the concept. A bid is unbalanced when certain line items are higher in price and others lower in price thus raising a concern regarding whether the pricing will actually yield the lowest cost for the awarding authority. Although AshBritt’s submission cherry picks certain line items and demonstrates AshBritt’s pricing attempts to overcharge the City compared to the pricing of other offerors, AshBritt has failed to demonstrate any pricing by Ceres that is unreasonably high which would result in a greater contract cost to the City that presents an unreasonable risk.

AshBritt complains of Ceres “gaming” the system. In fact, if any company was “gaming” the system, it was AshBritt. For example, the pricing for the Section A pricing exceeded \$10 Million. The pricing for Section C was only for \$1,499.00 for the Crowder Gulf price. Ceres was low on the Section A pricing, AshBritt received the benefit of disproportionate weighting for Section C of the price proposal as Ceres’ lower pricing for Section A was not as heavily weighted.<sup>1</sup>

AshBritt’s protest assumes that its pricing is reasonable. It is not. Even in AshBritt’s submission, it admits that for one of its cherry-picked line items, Phillips & Jordan, Inc. proposed \$39.00 per cubic yard for line items 18 and 19, whereas AshBritt \$175 and \$195 per cubic yard or over 4 ½ times more than the Phillips & Jordan price. Another item in which AshBritt was attempting to overcharge the City related to line item 13, “Management and Haul Out of Household Hazardous Waste”. For that particular items, AshBritt bid a price of \$20.00 per pound. At this pricing, the City would pay AshBritt \$160 per full gallon paint can to haul it to a disposal site and over \$10,000 for a truck load of 63 gallons of liquid home laundry products. While Line Item 13 does require management of the waste, it does not require payment for the final disposal fees of the hazardous waste. By comparison, AshBritt’s price was almost four times more than Crowder Gulf’s price for this particular item. On its face,

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<sup>1</sup> Using Crowder Gulf’s price proposal for Section C of \$1500 and a \$10 Million price for Section A (Crowder Gulf’s price proposal exceed \$16 Million), the dollar per point for Section A would have been over \$37 Million whereas the dollar per point for Section C was only about \$100,000.00. If anyone was “gaming” the system, AshBritt sought to do so by quoting higher prices for Section A, but then lower prices for Section C. Like AshBritt, Ceres knew the weighting provided in the solicitation and chose to compete under those conditions without protest. So did AshBritt and should not be allowed a second bite at the apple now once it has become dissatisfied with the evaluation methods clearly stated in the solicitation.



AshBritt also argues for a cost realism analysis. Cost realism is a term of art in federal procurement law and it is axiomatic under such law that a price realism analysis is not required unless the evaluation criteria in the solicitation clearly state that a price realism analysis will be performed. See *World Travel Service v. U.S.*, 49 Fed. Cl. 431, 437 (cost realism analysis not required for a contract with fixed prices since the contractor bears the cost risk and not the government (as under a cost contract)). In the evaluation criteria for this solicitation, the City did not include any requirement for a cost realism analysis.<sup>2</sup>

The Comptroller General's decision in *WW Contractors, Inc.*, B-410825, 2015 CPD ¶84 cited by AshBritt demonstrates the misunderstanding by AshBritt of "unbalancing" of pricing and the decision supports the denial of AshBritt's decision. In the decision, the Comptroller General stated that "an offer is unbalanced when it is based on prices which are significantly less than cost for some work, and prices which are significantly overstated for other work." *Id.* at p. 2 (citations omitted). AshBritt has not and cannot show that Ceres has overstated prices such that the City is at risk of paying more for Ceres' performance than AshBritt at the offered prices. AshBritt quoted excessively high pricing and cannot complain that competition has exposed their pricing to be unreasonably high. In *WW Contractors*, the Comptroller General upheld the acceptance of a higher priced offer because the solicitation required a cost realism analysis and the Agency had a legitimate fear that the offeror could not perform. Here, the City followed the evaluation criteria, Ceres satisfied any responsibility criteria and the City properly proposed Ceres for award. *WW Contractors*, also, was a best value trade-off between technical merit and price. Here, the solicitation provided an evaluation method faithfully followed by the City which determined Ceres to be the best offeror for both technical merit and price.

AshBritt is wrong in stating that Ceres' pricing is mathematically and materially unbalanced. Using AshBritt's unreasonably excessive pricing as a guide is fundamentally flawed. Mathematical unbalancing means that pricing is overstated for some items and understated for others. Ceres' pricing is not overstated and, thus, is not mathematically unbalanced. Ceres' pricing is not materially unbalanced since it is unquestioned that Ceres' pricing will result in a lower cost to the City than AshBritt's pricing. See *Ig Bauer Associates, Inc.*, B-228485, 87-2 CPD 618 at p. 2 ("An offer is material unbalanced where: (1) it is mathematically unbalanced in that each item does not carry its share of the cost of work, or is based on nominal prices for some of the work, and enhanced prices for other work; and (2) award based on the mathematically unbalanced offer will not result in the lowest overall cost to the government.").

AshBritt has also argued that somehow Ceres is not responsible despite the billions of dollars of work that Ceres has successfully performed since Hurricane Andrew and the successful performance of over \$100 Million worth of work during the storms striking the United States during the past year. Ceres is also one of the Corps of Engineers vetted and chosen

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<sup>2</sup> In its protest, AshBritt relies upon the State of Florida Administrative Procedures Act. However, that Act does not apply to municipalities. Fla. Stat., Title X Public Officers, Employees and Records, Section 120.52(1).

contractors to perform debris removal work throughout the United States and its possessions. Clearly, Ceres is a responsible contractor to perform this work. Ceres satisfied the specific experience requirements contained in the solicitation. Florida Courts afford governmental entities broad discretion in determining the responsibility of offerors. *See Willis v. Hathaway*, 95 Fl. 608, 628 (responsibility of an offeror's financial ability, skill and judgment). Through its prior work and its proposal, Ceres has shown all three elements of responsibility. The Florida Supreme Court in *Willis*, *id.* held that to overturn such a determination, a protestor must show that the decision was arbitrary, capricious, improperly influenced or in violation of law – a very high burden that AshBritt cannot satisfy. In any event, determinations of contractor responsibility are subject to the reasonably exercised discretion of the City and is generally not a proper basis of a protest. *See e.g.*, 4 C.F.R. §21.5(c) ("Because the determination that a bidder or offeror is capable of performing a contract is largely committed to the contracting officer's discretion, GAO will generally not consider a protest challenging such determination.").


### SUMMARY

Ceres was evaluated as the best proposal for technical merit and for price under the City's faithful application of the solicitation evaluation criteria. AshBritt's proposal was inferior technically as well as substantially higher in price. It strains credulity to argue that somehow AshBritt is entitled to award of this contract and that the City is required to disregard its clear evaluation criteria (which AshBritt failed to question prior to the submission of its proposal) to choose a proposal that is inferior technically as well as substantially higher in price. Ironically, it is AshBritt's pricing which is unbalanced under the law since its prices are overstated for Section A and understated for the minor Section C pricing (mathematically unbalanced) and will result in higher costs to the City (materially unbalanced). The procurement laws are designed to protect the taxpaying public, not AshBritt. Ceres won this competition competing on a level playing field with the other offerors according to the proposal requirements and the evaluation criteria in this solicitation. AshBritt should not be rewarded for its technically inferior proposal that would overcharge the City for much of the pricing. The City faithfully and honestly evaluated pricing as promised and clearly state in the Solicitation's Evaluation Method.

If you should have any questions regarding this response, please do not hesitate to contact the undersigned. Thank you for your consideration in this matter and Ceres looks forward to performing this work for you.

Ms. Jodi S. Hart  
August 20, 2018  
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Sincerely,

  
**SMITH, CURRIE & HANCOCK LLP**

Karl Dix, Jr.  
Attorneys for Ceres Environmental Services, Inc.  
Florida Bar No. 37422

KFD:alq

cc: Y. Lisa Colon, Esq.  
Mr. David McIntyre  
Mr. David Preus  
Ms. Dawn Brown