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February 26, 2019

Via Hand Delivery

The Honorable Mayor Dean J. Trantalis
The Honorable Vice Mayor Ben Sorensen
The Honorable Heather Moraitis
The Honorable Steven Glassman
The Honorable Robert L. McKinzie
City Manager Chris Lagerbloom
Alain E. Boileau, City Attorney
Jodi S. Hart, Chief Procurement Officer
Kirk Buffington, Director of Finance
City of Fort Lauderdale
City Hall
100 North Andrews Avenue
Fort Lauderdale, FL 33301

**RE: Letter of Protest – Request for Proposal 12209-895: Residential
Curbside Collection Services (“RFP”)**

Dear Mayor Trantalis, Vice Mayor Sorensen, Commissioners Moraitis, Glassman, and McKinzie and Manager Lagerbloom, Mr. Boileau, Ms. Hart & Mr. Buffington:

This firm represents World Waste Recycling, Inc. (“World Waste”) and Coastal Waste & Recycling, Inc. (“Coastal”). Coastal owns and controls World Waste. Collectively, World Waste and Coastal were one of the three shortlisted bidders for the above referenced RFP regarding Residential Curbside Collection Services (“Services”). **This letter serves as World Waste’s and Coastal’s bid protest pursuant to Sec. 2-182, City of Fort Lauderdale Code of Ordinances regarding the award of Request for Proposal 12209-895.**

I. Background

World Waste, incorporated on January 16, 2002, is a privately held waste and recycling company with extensive experience in the collection and processing of solid waste, recyclables and construction and demolition materials. World Waste operates a construction and demolition material recovery facility in Miami Dade County. World Waste provided the City of Fort Lauderdale (the “City”) a letter dated January 25, 2019, describing how World Waste entered

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into and signed a Stock Purchase Agreement with Coastal on January 7, 2019. The Stock Purchase Agreement allowed Coastal to acquire all of the issued and outstanding stock of World Waste (the "Transaction")¹. Coastal thereby owned 100% of the shares of World Waste becoming its sole shareholder. As a result of the Stock Purchase Agreement, Coastal obtained an interest in the RFP proposal submitted by World Waste. The bid period for the RFP concluded on January 8, 2019.

On January 28, 2019, Brendon J. Pantano, Chief Executive Officer of Coastal, followed up with the Senior Procurement Specialist of Fort Lauderdale to further notify the City of the Stock Purchase Agreement. Mr. Pantano also provided notification of the anticipated closing date for the Transaction as February 8, 2019. Representatives also supplied the Senior Procurement Specialist with a copy of the Stock Purchase Agreement on January 29, 2019.

II. Request for Proposal Timeline

The City of Fort Lauderdale (the "City") posted the RFP on November 26, 2018. The Pre-Bid Conference took place on December 04, 2018 at 11:30AM. Addendum Three was added on December 06, 2018 which changed certain dates pertaining to the last day for questions and the due date for proposals to be submitted. The last day for questions was December 12, 2018, and addendum three changed the last day to December 18, 2018. The last day for proposals to be submitted was December 19, 2019 and addendum three changed the proposal submission date to January 8, 2019.

After all proposals were accepted on January 8, 2019, the City posted a Notice of Meeting for the Evaluation Committee on January 10, 2019. The meeting for the Evaluation Committee took place on January 23, 2019 at 1:30 PM, which World Waste and Coastal representatives were present. The Evaluation Committee further considered proposals from World Waste, Waste Pro of Florida, Inc., ("Waste Pro"), and Republic Services of Florida, LP, ("Republic"). Although public comment was allowed prior to the discussion of rankings, once the rankings were discussed, comments were barred. The Evaluation Committee took provided multiple rankings at this meeting. Specifically, the Evaluation Committee provided separate rankings as it pertained to Garbage, Yard Waste, Recycling, and an All Inclusive calculation. Pursuant to the All-Inclusive Calculation, the final rankings provided at the January 23, 2019 meeting are as follows:

1. Waste Pro
2. World Waste
3. Republic²

The final rankings were then posted on January 30, 2019. The final all-inclusive rankings are as follows:

1. Waste Pro

¹ See Stock Purchase Agreement, *Exhibit A*.

² See, Shortlist Rankings for RFP # 12209-895 from January 23, 2019, *Exhibit B*.

2. Republic
3. World Waste³

Pursuant to the January 23, 2019 evaluation, Republic placed third. Once the final rankings were released on January 30, 2019, Republic placed second. A Joint Bid Presentation between Coastal and World Waste was scheduled to take place on January 31, 2019; however, during a telephone conference with the Chief Procurement Officer on January 30, 2019, Coastal and its representatives were told they would not be permitted to speak at the meeting. At the January 31st meeting, the three bidders provided presentations; however, Coastal was not permitted to participate.

On February 8, 2019, the Transaction closed and Coastal was officially the majority shareholder and owner of World Waste. Finally, on February 19, 2019, the Notice of Intent to Award was published, recommending Republic for MSW (Garbage) and Yard Waste.⁴ No City action occurred between the meeting on January 31, 2019, and the Notice of Intent to Award of February 19, 2019.

Republic was not the highest all-inclusive ranking in either the January 23, 2019 or the January 30, 2019 ranking; however, Republic was awarded the bid on February 19, 2019. Furthermore, Republic had an existing contract with the City of Fort Lauderdale for MSW (Garbage) and Yard Waste which they failed to renew. This failed renewal resulted in the RFP for which World Waste and Coastal bid. The RFP resulted in the award of the same contract for services to Republic without the recycling component, at a significantly higher price.

III. Basis for Protest

a. The City failed to acknowledge common ownership of Coastal and World Waste, therefore, materially affecting the information contained in the RFP.

World Waste submitted the proposal to the City on January 7, 2019, prior to the January 8, 2019 deadline. On the same day as submission, Coastal purchased World Waste pursuant to the Transaction. Prior to the January 31, 2019 presentation, Coastal and World Waste provided the Stock Purchase agreement to City officials at their request to show the common ownership and rationale for the joint presentation.

Coastal was not permitted to attend or speak at the January 31, 2019 meeting. Representatives of Coastal and World Waste were told that in order to attend and not be in violation of the meeting requirements, representatives must have World Waste email addresses, no representatives of Coastal were allowed to present or speak, and any designation of a Coastal logo at the meeting would be a violation of the procurement rules and sunshine laws according to the Chief Procurement Officer of the City.

³ See Final Rankings for RFP# 12209-895 dated January 30, 2019, *Exhibit C*.

⁴ See Notice of Intent to Award for RFP # 12209-895 dated February 19, 2019, *Exhibit D*.

This is not an instance where a bidder teamed up after the fact with another entity that would actually perform the services. Coastal and World Waste share common ownership. For all practical purposes after the Transaction, which took place before the bidding ended on January 8, 2019, Coastal and World Waste are the same company. The Transaction completed before the Notice of Intent to Award was published. *See AT & T Corp. v. State, Dept. of Mgmt. Services*, 201 So. 3d 852, 853 (Fla. 1st DCA 2016) (holding the public body could rely on qualifications of bidder's parent corporation rather than relying solely on qualifications of bidder to meet experience and bonding requirements); *see also Corp. Exp. Office Products, Inc. v. Phillips*, 847 So. 2d 406, 413 (Fla. 2003) (stating that surviving corporation of a merger "shall have all the rights, privileges, immunities and powers, and shall be subject to all of the duties and liabilities" of the merged corporation.).

As such, Coastal and World Waste have the requisite capability in all respects to perform the Services and Coastal's assets must be considered in the evaluation process. Coastal and its representatives, a crucial part of the bid, were excluded by City officials during discussions, presentations, and demonstrations. Failure to permit Coastal representatives to take part of World Waste's bid proposal materially affected the bid proposal for RFP 12209-895.

b. The City violated Section 2-181(a)(2), City of Fort Lauderdale Code of Ordinances, by not choosing the lowest responsible bid.

The City and Evaluation Committee violated Section 2-181(a)(2), *City of Fort Lauderdale Code of Ordinances*, by failing to choose the lowest bid, a reasonably priced bid. The City failed to acknowledge the rationale for the difference in rankings from the short-list ranking on January 23, 2019 to the publication of the Notice of Intent to Award letter on February 19, 2019.

The only event which occurred between the initial rankings and the final award are the presentations given on January 31, 2019. Coastal and its representatives were not permitted to attend or speak on behalf of the World Waste bid at the January 31, 2019 meeting; even though Coastal had provided the City with a stock purchase agreement prior to submission of the bid. Coastal, as owner, had the same interest as World Waste in the outcome of the presentation and bid.

The City and Evaluation Committee also failed to inform the bidders that recycling would ultimately not be a component of the RFP; reducing the requirements by 33% and only including two out of the three required services. By excluding recycling from the final request, yet making the three bidders present their capabilities to handle the recycling component, the Evaluation committee arbitrarily changed the terms of the RFP during the process to conform to the strengths of Republic.

Section 3.7.3 of the Residential Curbside Collection Services Description (the "Description"), published by the City describing the RFP, states what the Recycling Pick-Up

Policy shall be when the contract is awarded to the respective bidder.⁵ Further, Section 3.5 of the Description states that “it is strongly suggested that the bidder become familiar with all routes to understand the requirement and equipment necessary to provide . . . recycling cart collection to each customer.” Lastly, Section VI – Cost Proposal Page, listed within the Description, requires each proposal to include individual pricing for recycling and the combined pricing for MSW (garbage), Yard Waste, and Recycling. A material deviation from the original bid is defined as material if it gives the bidder a substantial advantage over the other bidders and thereby restricts or stifles competition. *Tropabest Foods, Inc. v. State, Dept. of Gen. Services*, 493 So. 2d 50, 52 (Fla. 1st DCA 1986). The ultimate disregard of the recycling component and the all-inclusive ranking of the RFP constituted a material change to the RFP specifications and procedural requirements as listed in the Description which gave a substantial advantage to Republic.

The City and Republic had the option to renew its prior contract for the same services at a much lower price, but Republic chose not to, and instead bid the same contract at a significantly higher price. World Waste’s bid is more than \$40 million less than Republic’s, and the City failed to account for the recycling component when making its final recommendation. Section 2-181, *City of Fort Lauderdale Code of Ordinances*, requires the chief procurement officer to award the selection of procurement to the “lowest responsive and responsible bidder, considering all pertinent qualifications of the recommended awardee.” *See Section 2-181(a)(2), City of Fort Lauderdale Code of Ordinances*. However, the chief procurement officer may utilize a request for proposals if “best value procurement will result in selection of the best qualified vendor/contractor at a reasonable price.” *See Section 2-181(b)(1), City of Fort Lauderdale Code of Ordinances*. Best value is a procurement method that emphasizes value as much as or more than, price. Best value is based on, among other criteria, the competitive solicitation evaluation criteria, subsequent discussions, presentations, demonstrations, and price. *See Sec. 2-173, City of Fort Lauderdale Code*.

Coastal was not able to give its presentation, be present in official discussions with the City, nor was Coastal able to demonstrate the appropriate specifications as to its assets which would be used in conjunction with World Waste’s. And while price is not the ultimate factor, a difference of over \$40 Million is not reasonable coupled with the inability for Coastal to prove itself as the best value through demonstrations, discussions, and presentations. This constitutes an arbitrary and capricious bidding process which has cost the other two bidders extensive time and money for the City ultimately to revert back to its prior contract and show favoritism to Republic without any rationale as to why the most expensive bid without the highest ranking for all-inclusive purposes was chosen.

c. The City arbitrarily and capriciously awarded the bid to Republic.

Competitive bidding statutes are enacted for the protection of the public. They create a system by which goods or services required by public authorities may be acquired at the lowest possible cost. The system confers upon both the contractor and the public authority reciprocal benefits, and exacts from each them reciprocal obligations. The bidder is assured fair consideration of his offer, and is guaranteed

⁵ See RFP # 12209-895 – Residential Curbside Collection Services Description, *Exhibit E*.

the contract if his is the lowest and best bid received. The principal benefit flowing to the public authority is the opportunity of purchasing the goods and services required by it at the best price obtainable.

Emerald Corr. Mgmt. v. Bay County Bd. of County Com'rs, 955 So. 2d 647, 651 (Fla. 1st DCA 2007). Under this system, the public authority may not **arbitrarily or capriciously** discriminate between bidders, or make the award on the basis of personal preference. *Hotel China & Glassware Co. v. Bd. of Pub. Instruction of Alachua County*, 130 So. 2d 78, 81 (Fla. 1st DCA 1961); *see also City of Sweetwater v. Solo Constr. Corp.*, 823 So. 2d 798 (Fla. 3d DCA 2002) (applying this arbitrary and capricious standard to RFPs as well as bids). When applying the standard to determine if a recommending board has acted arbitrarily, the first step is to determine if the Board followed with its own proposal criteria as outlined in the RFP. *Id.* at 802 (stating that “that the criteria espoused in the published invitation to bidders controlled the analysis of whether the city acted in an arbitrary manner”).

However, Florida Statutes specifically requires counties to “competitively award” contracts based on a fair review of the proposals. *Emerald Corr. Mgmt.*, 955 So. 2d at 653. This requires that the recommending board shall not be allowed to set aside this competitive requirement by affording itself overly broad discretion to capriciously and arbitrarily award contracts without established criteria; thus instituting the potential for favoritism. *Id.*

In this RFP, the Evaluation Committee created its own standards and guidelines which required services in MSW (Garbage), Yard Waste, and Recycling. The three bidders submitted their proposals in accordance with these three requirements, but during the process the Chief Procurement Officer arbitrarily removed the Recycling component of the RFP in the final recommendation. Republic was ranked third in the short list ranking published on January 23, 2019 under the recycling component. The Evaluation Committee then removed recycling from the Notice of Intent to Award and stated that Republic was the highest ranking firm, which it was not under the original RFP.

Republic was not the all-inclusive highest ranking firm, nor was it the highest ranking firm in regards to recycling. This act to remove the recycling component from the Notice of Intent to Award is a deviation from the RFP and favorites the party which had a prior contract for the exact same services, but is now being awarded millions of dollars more.

d. The City violated Section 286.011, Florida Statutes and Art. I, § 23, Florida Constitution when the Evaluation Committee materially changed the RFP in the final decision making process in private without notice or evidence as to the rationale.

The City did not adhere to Florida’s Sunshine Laws which require open meetings for boards, commissions, state agencies, and the like. *See* § 286.011, Fla. Stat.; *see also* Art. I, § 23, Fla. Const. The statute, which the Legislature enacted in the public interest to protect the public from backdoor politics, serves two purposes: (1) there is criminal liability for officials who knowingly disregard it, and (2) “where officials have violated section 286.011, the official action

is void ab initio.” *Carlson v. State*, 227 So. 3d 1261, 1264 (Fla. 1st DCA 2017) (quoting *Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755, 762 (Fla. 2010)).

In *Spillis Candela & Partners, Inc. v. Centrust Savings Bank*, the Third District Court stated, “[t]he law is quite clear. An ad hoc advisory board, even if its power is limited to making recommendations to a public agency and even if it possesses no authority to bind the agency in any way, is subject to the Sunshine Law. The committee here, made a ruling affecting the decision-making process that was of significance because it reached a recommendation in private in violation of Sunshine Law.” 535 So. 2d 694 (Fla. 3d DCA 1988); *see also Silver Exp. Co. v. Dist. Bd. of Lower Tribunal Trustees of Miami-Dade Cmty. Coll.*, 691 So. 2d 1099, 1101 (Fla. 3d DCA 1997) (stating that when a committee's function was to weed through the various proposals, to determine which were acceptable and to rank them accordingly, which would help crystalize the decision to be made by the final decision making board, that committee is governed by the Sunshine Law and its closed selection meeting violated that law, thus its actions taken at the meeting are void ab initio).⁶

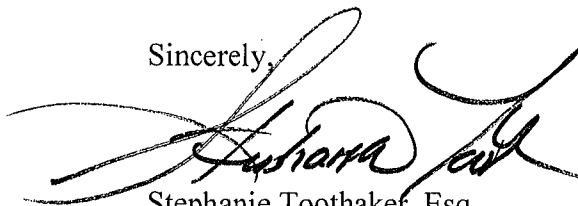
The Evaluation Committee's private and closed-door decision to remove one-third of the RFP and ultimately award Republic with a bid that is more than \$40 Million more than World Waste's without any notice or rationale as to why, constitutes a violation of the Sunshine laws.

IV. Conclusion

The bid submitted by World Waste and Coastal in response to the RFP was a viable bid that deserves due consideration. The City revised the RFP during the process to favor one bidder, Republic, whose bid is approximately \$40 million more than World Waste and Coastal's bid. The Evaluation Committee failed to consider Coastal's assets as the owner of World Waste and also failed to allow Coastal to represent itself as owner of World Waste in presentations and meetings. Lastly, the Notice of Intent to Award removed one-third of the bidding requirements to unreasonably favor Republic at great cost to the taxpayers of Fort Lauderdale. If the City wished to renew their contract, then Republic should abide by the current price for services.

Should you have any questions, please do not hesitate to contact me. Please govern yourselves accordingly.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stephanie Toothaker', with a stylized flourish at the end.

Stephanie Toothaker, Esq.
For the Firm

⁶ Section 286.0113, Florida Statutes, does allow an exemption for competitive solicitations at which a vendor makes an oral presentation; however, barring the actual presenter from participating in the presentation would not be subject to one of the Sunshine law exemptions for competitive solicitations.