



City of Fort Lauderdale • Procurement Services Division
100 N. Andrews Avenue, 619 • Fort Lauderdale, Florida 33301
954-828-5933 Fax 954-828-5576
www.fortlauderdale.gov/purchasing

March 6, 2019

Stephanie Toothaker, Esq.
Tripp Scott
110 Southeast Sixth Street, Fifteenth Floor
Fort Lauderdale, FL 33302
954-525-7500
sjt@TrippScott.com

Via Email and U.S. Certified Mail

Re: Response to Bid Protest received February 26, 2019
RFP 12209-895 - Residential Curbside Collection Services
Bid Opening: January 8, 2018

Dear Ms. Toothaker,

The City of Fort Lauderdale, Florida ("City") is in receipt of the Letter of Protest of Award by your firm on behalf of World Waste Recycling, Inc. ("World Waste") and Coastal Waste & Recycling, Inc. ("Coastal" or "Coastal Waste") regarding the subject solicitation. As more fully explained below, inasmuch as the proposer was World Waste, and not Coastal Waste, Coastal Waste is without standing to protest the City's notice of intent to award.

Staff has reviewed your correspondence and the purpose of this letter is to respond to your concerns individually.

Basis for Protest Item (a) states, "The City failed to acknowledge common ownership of Coastal and World Waste, therefore, materially affecting the information contained in the RFP."

Response: With regard to your suggestion that the "City failed to acknowledge common ownership of Coastal and World Waste, therefore, materially affecting the information contained in the RFP," there was no requirement that the City consider stock ownership of the proposers, much less an anticipated change of stock ownership, and therefore no "failure by the city to follow the city's procurement ordinance or any applicable law," as required by Subsection 2-182(b)(1), Code of Ordinances of the City of Fort Lauderdale, Florida, for a successful protest. As you indicated in your letter, "the anticipated closing date for the Transaction" was February 8, 2019, after the January 8, 2019, proposal submission date, and after the January 31, 2019, evaluation committee meeting.

In *AT & T Corp. v. State, Dept. of Management Services*, 201 So.3d 852 (Fla. 1st DCA 2016), cited in your letter, the appellee, CR MSA, LLC, was a wholly owned subsidiary of the Harris Corporation, apparently at the time of responding to the Invitation to Negotiate. While the court did not find that the administrative law judge had erred in allowing the State to consider the parent company's experience and bonding requirements, the case does not stand for the proposition that the State was required to do so. Indeed, the court pointed out, "[A] 'public body has wide discretion' in the bidding process and 'its decision, when based on an honest exercise' of the discretion, should not be overturned even if reasonable persons might disagree," citing, *Emerald Corr. Mgmt. v. Bay City Bd. of Cty. Comm'r's*, 955 So.2d 647, 651 (Fla. 1st DCA 2007).



Any portion of a meeting at which a negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation is exempt from s. 286.011 and s. 24(b), Art. 1 of the State Constitution.

§286.0113, Fla. Stat. (2018). As of January 31, 2019, the day of the evaluation committee meeting that was exempt from the Government-in-the Sunshine Law, the transaction between World Waste Recycling, Inc., and Coastal Waste & Recycling, Inc., had not yet closed, and at that time World Waste was the proposed vendor.

Your letter also cites *Corporate Exp. Office Products, Inc. v. Phillips*, 847 So.2d 406 (Fla. 2003), for the proposition that “a 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.” State records do not show a merger of World Waste with Coastal Waste. The opinion, citing *St. Petersburg Sheraton Corp. v. Stuart*, 242 So.2d 185, 190 (Fla. 2d DCA 1970), also explains,

‘Ownership by one corporation of all the stock of another corporation does not destroy the identity of the latter as a distinct legal entity....’). In fact, a foundation of corporate law is that, unlike a partnership or a sole proprietorship, the existence of a corporate entity is not affected by changes in its ownership or changes in management.

Accordingly, the City did not err in excluding from the evaluation committee meeting anyone other than representatives of World Waste, and Coastal Waste is without standing to protest the City’s notice of intent to award.

Basis for Protest Item (b) states, “The City violated Section 2-181(a)(2), City of Fort Lauderdale Code of Ordinances [sic], by not choosing the lowest responsible bid.”

Response: Section 2-181(a)(2) referenced in the City of Fort Lauderdale Code of Ordinances (CFLCOO) is applicable to an Invitation to Bid. Solicitation 12209-895-Residential Curbside Collection Services is a Request for Proposal (RFP) therefore not subject to Section 2-181(a)(2). The section of the CFLCOO that correlates to RFP’s is section 2-181(b)(1) which states,

Request for Proposals: When it is determined by the Chief Procurement Officer that the use of competitive sealed bidding is either not practical, not advantageous to the city due to the technical or specialized nature of the goods and/or services sought, or best value procurement will result in selection of the best qualified vendor/contractor at a reasonable price, the city may use the competitive sealed proposal process. A request for proposals may be used as the solicitation document.

Basis for Protest Item (c) states, “The City arbitrarily and capriciously awarded the bid to Republic.” Further stated, “...the Chief Procurement Officer arbitrarily removed the recycling component from the Notice of Intent to Award.”



City of Fort Lauderdale • Procurement Services Division
100 N. Andrews Avenue, 619 • Fort Lauderdale, Florida 33301
954-828-5933 Fax 954-828-5576
www.fortlauderdale.gov/purchasing

Response: Per the solicitation 12209-895 in the General Conditions Section "3.17 RESERVATIONS FOR AWARD AND REJECTION OF BIDS: The City reserves the right to accept or reject any or all bids, part of bids, and to waive minor irregularities or variations to specifications contained in bids, and minor irregularities in the bidding process. The City also reserves the right to award the contract on a split order basis; lump sum basis, individual item basis, or such combination as shall best serve the interest of the City..."

The ranking for the all-inclusive highest ranking vendor would have resulted in an additional cost of Three Million Dollars (\$3,000,000) per year based on 2020 contract costs. This additional cost led to a staff decision to utilize section 3.17, and award on an individual item basis and award to the highest ranking vendor for MSW (Garbage) and Yard Waste and maintain the City's existing Curbside Recycling Collections contract.

Basis for Protest Item (d) states, "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."

Response: All evaluation committee meetings were noticed and held publicly. Evaluation scores and rankings were recorded and noticed publicly as well. The review committee ranked Republic Services of Florida, LP first for both MSW (Garbage) and Yard Waste, and in the best interest to the City, we are choosing to remain with our current Recycling vendor.

As such, in accordance with CFLCOO Section 2-182(c)(1), this letter serves as the Chief Procurement Officer's written decision denying the protest.

Sincerely,

Jodi S. Hart, CPPO, CPPB, MBA
Chief Procurement Officer

C: Kirk Buffington, Director of Finance
Alain E. Boileau, City Attorney