

City of Coral Gables City Commission Meeting
Agenda Item I-4
August 24, 2021
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Vince Lago

Vice Mayor Michael Mena

Commissioner Rhonda Anderson

Commissioner Jorge Fors

Commissioner Kirk Menendez

City Staff

City Manager, Peter Iglesias

Assistant City Manager, Ed Santamaria

City Attorney, Miriam Ramos

City Clerk, Billy Urquia

Public Speaker(s)

Manuel Reyes

Emilio Rodriguez

Agenda Item I-4

A Resolution of the City Commission accepting the recommendation of the Chief Procurement Officer to award the Parking Garage 7 Construction Project to Thornton Construction Company, Inc., the lowest responsive and responsible bidder, pursuant to Section 2-763 of the Procurement Code entitled "Contract Award" and Invitation for Bids (IFB) 2021-007.

Mayor Lago: I'd like to move on to H-2. Wait, no, excuse me. That -- no, no, no. Which is the -
-? I want to talk about the Minorca -- the parking garage, so we -- we have a lot of people working
here -- waiting here today for that. Which item is that?

Commissioner Anderson: H-2?

Mayor Lago: Oh, I-4, correct?

City Attorney Ramos: I-4 is a resolution of the City Commission accepting the recommendation
of the Chief Procurement Officer to award the Parking Garage 7 Construction Project to Thornton
Construction Company, Inc., the lowest responsive and responsible bidder.

Assistant Finance Director Walker: Good afternoon -- well, evening. This particular project was
issued as a competitive bid solicitation. We did have seven bidders respond. We evaluated the
response for the lowest responsive bidder. No litigation issues and good reference history as far
as the low bidder is concerned. Specifically, the pricing sheet for the item had several main
categories and subcategories that were listed. We did ask for a clarification for the low bidder,
which we are allowed to do, as long as they have submitted the pricing sheet. And so, they
submitted a pricing sheet that actually gave us the itemized pricing for the subcategory
information. At no time were they allowed to actually issue more than one bid response. And it's
standard for us to ask for clarifications. And again, according to our solicitations and our
regulations in our Section 6.1 of the submittal instructions, we are allowed for -- ask for
clarifications and so that was done. Specifically on the tally sheet, there were seven bidders in the
information that was listed. As part of our responsibility, we do actually list the pricing which we
are supposed to as far as the analysis is concerned. So, we tabulate the math, so any mathematical
errors are then put on the tally sheet, and at no time are we in the position to cure anyone's message
-- anyone's mistake. We simply outline the mathematics of the actual pricing that we receive. So,
we know that there were some questions or issues that were posed with regard to the analysis part
of the solicitation. But as far as the procurement process, everything was followed. They are the

lowest responsive-responsible bidder. Again, we have no litigation issues or any issues with the history or their performance as far as references are concerned. So, we're moving the item forward for a recommendation.

Mayor Lago: Okay. Mr. Clerk, do we have any speaker cards?

City Clerk Urquia: Yes, sir, I have one. Mr. Manuel Reyes.

Mayor Lago: Sir, welcome to the Gables.

Manuel Reyes: Good to be here. Mr. Mayor, Vice Mayor, Commissioners, Mr. Manager, Madam Attorney, Manny Reyes, offices at 2525 Southwest 27th Avenue, Miami, Florida 33133, representing for the photo Lemark Corporation on this item. You know, on item -- on a prior item, the other garage that you discussed, you brought up something which I hold very near and dear is process. And I challenge you that if there is a procurement that you would hang your head on following process, this is clearly not the right procurement to uphold as following process. As I'm sure you're well aware, this item is -- or this project is the second time it was bid. Actually, Florida Lemark, in 2019, won the original proposal. After two meetings, it was cancelled by the City of Coral Gables. And then now two years later, the item comes back around. To the comments of the Procurement Director, there was actually not seven -- in the memo it says there were seven proposals received. There were actually nine proposals received. There were three proposals in our discovery that we've been able to gather so far. There were nine proposals that were received, three of them by Thornton Construction, the person who the City staff has recommended. You know, this kind of reminds me of something that somebody once told me that when a reporter is calling you for a quote, it's because they already have the story that they want to write, they're just looking to get something to fill in the blanks. And it almost seems like in this procurement, it was enamored -- it was a hard bid, but it was such enamored by the price that you were trying to find a way around to hang on to this price. Now, the Procurement Director can argue that you asked questions. We don't know. We still have a public records request, which we submitted, and we're

waiting for answers for all communications, so we still -- I don't know the validity of that. But regardless, there is a section in your code that says that if multiple proposals are submitted by the same proposer, then you will disqualify that proposer. And you know, if you don't want to hang your hat on that, then there's something that you just can't get around, and that is a requirement of a form. If you go to Addendum 1, the answer to question number 73 specifically states that you have to submit a form called the Unit Prices Form, Document 004322. Well, I'll tell you this, in the first proposal, Thornton Construction did not submit that form. In the second proposal submitted, Thornton Construction did not submit that form. In the third proposal that Thornton Construction submitted, it did not submit that form. Yet, process, staff still thinks that everything is okay. You should have just deemed them non-responsive. You know, when you go down and you look at the notations on the bid tabulation -- and as the Procurement Director adequately states, -- there is a difference in prices, right? And you know, Public Administration 101, you don't cure -- and it's funny that she used the word that's in my memorandum -- you do not cure a mistake in a proposal. I've been doing this for 24 years. I have never seen that happen in any procurement. You don't cure it. If there's a mistake, there's a mistake. But you don't take it upon yourself, staff does not take it upon themselves to cure a mistake by someone who submits a proposal. So, in the notes, when you look at the full tabulation from the memorandum that accompanies the recommendation, there's some notes in there. And the note says, first part, that another vendor, KVC, another good company -- I don't think better than Florida Lemark, but another good company -- made a mistake in their submittal, a mistake of just over a million dollars, which staff cured. Again, Public Administration 101, you don't do that. You don't touch it. I tell you this, I repeat it again, it's the process. This is not an RFP that you hang your head on, on following the process. And then you find a second note, and the second note is kind of curious, and that's what caught my client's eye and why he reached out to me to start digging a little bit more. And in just a few days -- because I was just retained on Thursday -- I started to dig around, and what did I find? In that form, on the bottom, the tabulation, it notes that Florida Lemark did not submit pricing for a few of the subcategories, a few of them. But when you go down the page a little bit more to the right, there's another proposer, OHL, another fine company in this community. They didn't submit pricing for any of the subcategories. So, does it pass the smell test? No, it doesn't

pass the smell test. Why is Florida Lemark featured as a star on this tabulation sheet and not OHL? What's going on? Is it meant to be perceived that Florida Lemark is non-responsive? Was that the suggestive role of it? We don't know. We're still waiting for more discovery. You know, you can be enamored by the price, you can try and find hoops, you can jump through them, you can do everything possible to want to grab on to that price, but folks, when you don't follow the process, this entire process of the RFP just doesn't pass the smell test. I'm happy to answer any questions you may have.

Commissioner Fors: One point that I wanted to hear from Procurement on is what's the story or the background behind the multiple bids by the winning bidder?

City Manager Iglesias: Let me -- if I may say something, Commissioner. I think the price Lemark had -- that -- excuse, that Thornton had did not vary. It was \$18,323,000, did not vary. It was consistently there. Lemark's price is 2.7 -- \$20.7 million, so there is a differential of \$2.4 million. So, no matter -- they would be \$2.4 million over the Thornton price. But that Thornton price of \$18,323,000 did not vary. That was consistent. And I think our director, Celeste Walker, can go ahead and verify that. So, whatever happened here, you know, with this bid was consistent. Th at bottom line did not change, and I will let Celeste Walker answer that now. Thank you.

Assistant Finance Director Walker: Commissioner Fors, and City Manager Iglesias is correct. Specifically, unlike what was just communicated to you by the attorney is incorrect. Thornton Construction submitted one bid. When we reviewed their information on the pricing sheet, they had lines that said included, included in the category price, not the sub pricing. So, what we did, through my 30 years of public procurement experience, we reached out to the vendor, which is allowed to as long as we stay within the parameters. They submitted their big pricing sheet, which is a requirement, along with their bid bond. So, we asked them for clarification so that we could get the subcategory pricing. At that time, we reached out to them for that clarification, which is allowed, and is stated in our regulations and our solicitation. They responded back with the subcategory pricing. We indicated that one of the line items did not match up, and we ask them to

submit the information again, and the last time for our review. Like the City Manager stated, the bottom line of the bid pricing never changed, which is not allowed to change. It was \$18,323,945. That bottom line never changed, which means they did not submit three proposals. And I want to clarify, it's not proposals. This was not an RFP. It wasn't a straight bid. It was an information -- was an invitation for bids. It was an IFB, which means this was based on pricing and them meeting the minimum qualifications and no other qualifications that would be considered in a proposal.

Vice Mayor Mena: I have some....

City Manager Iglesias: The bottom line...

Vice Mayor Mena: No, I...

City Manager Iglesias: Nothing changed.

Vice Mayor Mena: I get it. I have some basic questions, and I don't know if, Celeste, maybe you can answer these. And I'd like to just kind of...

Assistant Finance Director Walker: Okay.

Vice Mayor Mena: I want to sort of understand the facts a little bit and then we can kind of get into...

Assistant Finance Director Walker: Okay.

Vice Mayor Mena: Let me ask you the most fundamental question: Was Florida Lemark disqualified or deemed unresponsive?

Assistant Finance Director Walker: No, no. And that notation on the actual bid tally was an error. None of the bidders were deemed non-responsive. So, through the invitation for bid process, which is based on pricing, we go through the process of identifying the lowest responsive bidder, and then we work our way through. If that particular bidder has any issues or concerns, then we find them non-responsive and we move to the next one. So, since we didn't have any issues with the lowest price, we did not move through the progression of having anyone disqualified. And we would normally do that officially through asking for a request through the City Attorney's Office of responsibility as far as that's concerned. So, no, they were not -- nor was anyone else -- considered non-responsive or disqualified from the solicitation.

Vice Mayor Mena: Okay, the other -- and I'll allow whoever to respond to these things in a moment, but I just want to sort of get clarity on a few things. Mr. Reyes made reference to this question 73 and the fact that there's this form that is required. Can you please address that? Is that form required or is not required?

Assistant Finance Director Walker: The form on the actual -- the addendum that was issued said it was required. It is not a required form. All pricing items that are required have merit and play a part in the role of the final bid tally are included on the bid pricing sheet. This was a supplemental bid form that was developed by the architect for them to get pricing specifically for something they called the auger line casting, as far as the unit price and the number of feet that was going to be included. That particular specific information was already included in line number three of the actual bid pricing, which was the concrete. So, it was supplemental information and in no way had a bearing on the final tally of the total bid price of any other proposers or the bidders for this particular project.

City Attorney Ramos: I just want to make clear, if we're talking about process, our Code has a very specific process to challenge the process, which is a bid protest.

Vice Mayor Mena: Yeah, that -- I...

City Attorney Ramos: And that was -- did not occur in this case. That date came and went. And so, I just want to make sure everybody's aware of that.

Vice Mayor Mena: No, and that's -- I literally have...

Assistant Finance Director Walker: And the protest period ended (INAUDIBLE).

Vice Mayor Mena: I wrote here process and I put equals no protest too. I was going to ask Mr. Reyes about that, make that very...

Assistant Finance Director Walker: And specifically, the protest period expired on August 3.

Vice Mayor Mena: Understood, understood. So, you know, that's -- let me -- Mr. Reyes, let me give you sort of where I am with it -- right? -- and then you can -- I'm happy for you to address everything that was just said. So, I think that's a very fair point, if you're talking about process. The protest is a part of the process, and this wasn't protest. You know, you can -- I'll let you address that in a minute. I asked the questions I asked for a few reasons: One, to understand whether that form was required or not. I'm being told the actual form itself wasn't, but that the information was provided. I'll let you address that in a minute. I asked about the unresponsive, you know, about Florida Lemark being disqualified or not. You had articulated that OHL -- for example -- had also not submitted subcategory pricing and it had not been deemed unresponsive. But I'm being told now that neither was your client. So, that's why I kind of asked that question because I would agree with you that if Florida Lemark had been deemed unresponsive and disqualified and OHL had done the same thing and not been disqualified, that would seem unfair. So -- but it doesn't sound like Florida Lemark's bid was actually disqualified. And then the last point -- and I'll turn it over to you to, through the Mayor, address whatever you like -- but at the end of the day, if it's a hard bid, it's about price. None of these things really ultimately affect the price. But I'm with you on process. And so, you know, I'm always going to be respectful of

process. And if I found something to be really wrong with the process, you know, I'd get it. But here, none of this really had anything to do with the price, so what does it ultimately matter, I guess, is the question at that point, you know. And given that -- again and given that your client didn't protest.

Mr. Reyes: Integrity in the process. That's what matters.

Vice Mayor Mena: Right.

Mr. Reyes: If I may.

Mayor Lago: Of course, please.

Mr. Reyes: What matters is integrity in the process.

Vice Mayor Mena: Right.

Mr. Reyes: Right, I mean, I think, you know, the City Beautiful always prides itself in not wanting to be like other communities and like other cities...

Vice Mayor Mena: Sure.

Mr. Reyes: How they handle their business -- right? -- so integrity in the process, at the end of the day, that's all you have. To your point of this was -- there was no big protest, and you're right. Bid protest rules is you have three days to file a bid protest. I mean, I'll be frank. I was hired because I'm working with Florida Lemark on something else and the conversation was stricken, and they showed me the documentation. And in starting to look at the documentation, I started to dig a little bit further, and I said, "Hey, I think there's something wrong in the process." So, back to you, the integrity of the process really matters. Look, to answer a couple of -- I want to rebut a couple of

things. It is -- you're right, Thornton is the lowest price. But if you are required -- it's amazing that in what I've been able to gather from receiving documents -- right? -- and by the way, when you do grab from the Clerk's Office all the copies of the responses, there's actually three packets from Thornton; there's not one. There's not, "Here's a different page." And the first one on their price sheet said all included. The second one -- and you're right, bottom line price didn't change. The second one, all these that are highlighted, all those subcategory prices changed, okay.

Vice Mayor Mena: They changed, but didn't affect the bottom line?

Mr. Reyes: But it did not affect the bottom line.

Mayor Lago: So, you're...

Mr. Reyes: And you can hold on to the bottom line. You can hold on to the bottom line. What you cannot get around from -- every packet that I've been able to receive from the City of Coral Gables includes the unit prices form. In the question 73 -- and I will read it for you verbatim -- the answer is bidders shall -- let me ask you -- let me do the question first if you don't mind.

Vice Mayor Mena: Yeah.er

Mr. Reyes: Specification Section 316316 describes unit pricing per linear foot of auger cast piles, but the RFP did not include a bid form to provide this information. Please provide form or confirm that unit pricing per linear foot of auger cast piles is not required. Response: Bidders shall -- not may -- remember we talked a little while ago about words matter. You change a word in a paragraph, and it matters, okay. Bidders shall submit Document 004322 Unit Prices Form, Attachment 7, with the bid response. In every single -- in all three of the packets that were given to us by the Clerk's Office of Thornton's responses, they acknowledged that they received Addendum 1, 2, and 3. So, you knew -- if you read it -- you had to submit this form. The price is the price. The process, the integrity of the process is a whole separate thing. If you're going to

wrap yourselves around the process, I'm telling you, this is not one that you hang your hat on. There's a form that's required that wasn't in there.

Mayor Lago: So, let me ask you a question. I want to talk to our Procurement Director.

Mr. Reyes: Oh, if I may, if I may, one more thing...

Mayor Lago: Yes.

Mr. Reyes: Mr. Mayor. It's interesting that -- and I just asked my client. So, Procurement called Thornton or communicated with Thornton to ask them for clarifications because their first proposal said prices were included. I just asked my client if he was contacted by procurement because there was -- and she's correct, and that note is correct. There's three subcategories, okay, three subcategories where my client did not put a price. As you know in the industry, it sums out to a zero, right? But we were not contacted to say, "Hey, there is three blanks in your response," but Thornton was contacted to say it says, "Included, included. Can you provide more information?" And you can say, "Well, it's because we're dealing with the cheapest price." But before you're dealing with the cheapest price on this bid, you're not only dealing with the cheapest price. You don't know if there's -- you don't know. You can't forecast the future. You don't know if there's going to be a bid protest that would throw them out -- right? -- and then now, oh, second place. Oh, so now, let's say hypothetically that OHL -- which had no subcategory -- did they do that same thing to OHL and ask them, "Hey, can you please provide clarification on the included prices?" Or you may go down one, two, three, knock them out because of some disqualification, some paperwork wasn't included. Maybe they don't meet some of the thresholds on lawsuits or whatever. You're doing your due diligence. So, if you're going to just marry yourself from the start with the cheapest price -- right? -- you don't know if you're going to end up with the second bidder or the third bidder, you don't. Clarify each packet then, integrity of the process.

City Manager Iglesias: If I may say something. I think...

Mr. Reyes: And with all due respect, Peter, I -- Mr. Manager, I respect you, you know.

City Manager Iglesias: And let me say that Florida Lemark, excellent corporation. I'll be happy to work with them on future projects, and certainly I have no issue with any of you. But in this case, the reason that this was done is because the bid -- the \$18.3 million did not change. It was consistent. Unfortunately, you didn't make it by \$2.4 million, and that's the bottom line. And they were consistent all three times, that price did not change. Any of the bottom line numbers did not change, so it made perfect sense to do that. And I don't see an inconsistency in that. The reason maybe it wasn't brought up to you is because you were \$2.4 million over the bottom, so you were number four. So -- but I do believe that that was a consistent bid. They were - none of the bottom-line numbers changed at all, and everything was actually verified. So, I think it's -- I think you make some interesting arguments, but I don't think they're there.

Mr. Reyes: Mr. Manager, if you hold up a bank but the camera didn't catch you, did you hold up a bank?

City Manager Iglesias: I think this is a consistent bid. You want to make an argument that it's not. It's a consistent bid.

Mayor Lago: So, outside of that, I'd like to speak to Ms. Walker, please, if possible. Ms. Walker, now I can see you. Can you do me a favor? Can you walk me through Mr. Reyes' comments or his concerns in regards to the proposal? And I'd also like for our City Attorney to interject when appropriate in reference to whether she saw any inconsistencies. Are there any concerns, legal concerns? Mr. Reyes makes some assumptions -- not assumptions. He made some statements based on the findings that Thornton -- that you reviewed the spreadsheet -- Thornton's spreadsheet to make corrections, and you gave them some leeway that you didn't give to other general contractors who were submitting for this project. I need to understand, and as you know, again, I appreciate the process, and I want to make sure this is as clean a process as possible. And before

you answer that question, I'd like to know for the record -- and please, I want to make it very clear. I ask -- when I do this procurement process, I ask every single contractor, how are we looking in regards to litigation, insurance, and those things. Please advise.

Assistant Finance Director Walker: Okay, so specifically to his questions regarding asking Thornton and not his client for clarification on pricing. Because this is a bid and the bid is primarily evaluated on pricing, we start with the lowest responsive bidder as far as pricing is concerned, and we work our way through on the progression of eliminating those bidders. So, we looked at their pricing sheet and saw that on the lines where they did not include the subcategory pricing, where they just put "included." We asked them for clarification for us -- for them to give us the detail of those line items, keeping in mind that they were instructed at no time would you be allowed to change the bottom total line of your bid response, which neither time did they do that. So, the first time that we asked them for the pricing, they came back with a line that was slightly different from what we said was in the original, as far as the category total, not the bottom total. We told them absolutely that is not permissible. You cannot change any category pricing. Again, we only wanted the subcategory pricing, which is the detail. They then -- the second time that we asked them to provide that document, once that was clarified, there was no reason for us to progress through the other bidders as far as clarifying any pricing. So, not only did we not ask his client, we also didn't ask KVC, we didn't ask OHL, we didn't ask any of the bidders any clarifications as far as their pricing was concerned. Mayor, just as you've always emphasized and part of our process, we submit the lowest recommended bidder for a check to the City Attorney's Office. They do a litigation check to make sure there's no -- any outstanding litigation issues or anything that would cause us any concern. So, all of those due diligence checks, and the litigation check were done for this particular bidder, and we had no issues or concerns with saying that they were a viable company and someone that could actually do the job and perform as required. So, those things were checked as normal.

Mayor Lago: Okay, so there was a statement made by Mr. Reyes that the City of Coral Gables shall -- or the bidder shall address or sign a document. Supposedly, the document was not signed.

Vice Mayor Mena: Submit a form.

Mayor Lago: Submit a form, excuse me. Not once, twice, but three times. Can you give me a little clarity in regards to that document that was not submitted?

Assistant Finance Director Walker: So, the document is number 00234 something. It's something that was put together by the architect for the project. And again, it asked for pricing -- unit pricing for a very specific item as far as some augers cast piles. That particular item was already included in line number three on the bid pricing sheet, which is concrete. That particular purpose of that item was to get the detail as far as that was concerned, because it wasn't included on the bid pricing sheet. It said "shall," but it is not treated as such as far as my evaluation is concerned because it had no effect on the total bottom line of the pricing. And so, if Mr. Reyes wants to get specific as far as my regulations are concerned, which is the R-2-685.104, it allows us the right to waive any informalities as far as we're concerned, if any amendment that is issued had no bearing on the bottom line as far as price, quantity, quality or delivery of an item. That particular form had no bearing on the bottom line of the total bid price, and it was only for information purposes. Our project manager, Ernesto Pino, is the one who obviously is our subject matter expert and gives us the go ahead on whether or not we can move forward with a project. He evaluates all the information, and that was the determination that was made, that that was for informational purposes only, and again, had no effect on the bottom-line total of the price for the total bid.

City Manager Iglesias: Mayor, if I...

Mayor Lago: So, if I...

City Manager Iglesias: If I may just say one thing. Remember that we had already done the Public Safety Building. The building is right next door. We had a geotechnical report. We went with the same foundation system that we went with the Public Safety Building. It was very effective

and gave us a lot of flexibility. We also had a load test already done on that adjacent site, so we've taken care of -- we -- knowing that this project was what was coming, we did that, and we also took care of the DERM issue as far as drainage is concerned, so we took care of multiple issues during the Public Safety Building, so we knew -- we had a lot of experience as to what that geotechnical report and what the auger cast pile -- including a load test.

Mayor Lago: So, Ms. Walker, just to kind of explain to my colleagues on the Commission -- I'm surrounded by lawyers. What you're saying is that the 16 division construction on line -- on division number three, it encompasses the auger cast structural system, which is like the pile structural system, which is used for the foundation. And that was located in that third division as a lump sum.

Assistant Finance Director Walker: Correct.

Mayor Lago: So, it is covered in the plans, and the whole purpose of that was that the architect was requesting a breakout of Division 3 to see the additional breakdowns and see how it was broken down. But the auger -- but you feel comfortable that the entire structural design is covered within Division 3 -- or line item 3.

City Manager Iglesias: And Mayor, looking at the experience we had adjacent, and the fact that we've covered everything with the geotechnical report, I see no issue there.

Mayor Lago: So, Mr. Reyes, what other concerns did you have? Because I want to make sure I address them all on the record. Was the fact that the bid sheet was...

Mr. Reyes: Look -- I'm sorry.

Mayor Lago: That the bid sheet was kind of -- I don't want to say tampered, but it was kind of manipulated and that you didn't have that opportunity to have that discussion.

Mr. Reyes: We didn't have that opportunity to have that discussion. If the unit price is for -- because let's not -- let's make something clear. It is not a form and architectural thing. It's not -- no, no, no, no. It's a unit pricing form, which, by the way, every single response which I have reviewed so far includes it. If you say -- or if you have the -- if you take the position that you do not have to submit it, then the answer to number 73 should be different. You wrap your arms around again, the price, and it seems like the price -- you were -- it's the reporter with the story. You wrap your arms around the price and you're trying to jump through loop -- hoops and anything possible to be able to grab on to this price. The fact is that they should be disqualified because there is a unit price form which "shall be submitted" -- not my words, not my words, Procurement's words. Mr. Mayor, you submit forms. I mean, you submit proposals, okay. If you don't submit a unit prices form that you're told that you shall submit, not that it was -- the answer could have been, it's included in line item such and such of your response of the revised bid pricing sheet. Well, then...

Mayor Lago: But our...

Mr. Reyes: Then the other part -- I'm sorry.

Mayor Lago: But our Procurement Department, along with our Attorney, stated that that item was cured, that issue was cured because it was included in Division 3.

Mr. Reyes: But the form...

City Attorney Ramos: So, to be clear...

Mr. Reyes: Was not submitted.

City Attorney Ramos: I'm not taking a legal position as to the form. My position is, this is a bid protest that is untimely.

Mr. Reyes: Well...

City Attorney Ramos: That's the only position I've taken.

Vice Mayor Mena: (INAUDIBLE) in protest.

Mr. Reyes: Listen, I'm not an attorney.

Vice Mayor Mena: Right.

Mr. Reyes: I'm not an attorney so -- I consulted with an attorney. And I asked them -- and I had to look through my notes here, and I asked him for his opinion. If a person that's in fourth place, do you have standing for a big protest? And the response is, depends on the facts. To have standing...

City Attorney Ramos: The issue's not about standing. It's about timeliness.

Mr. Reyes: To have standing, a protesting party must show that it had a substantial chance of winning the subject contract. In other words, the fourth-place finisher would have to show it can knock out each offer in line above it for the award. Whether there was a bid protest or not, okay, you can't get around the facts. The fact is that there is a form that was required that was not submitted, that the proponent or the bidder that is recommended for award was given the opportunity to correct their subcategory pricing sheet, that they did not call OHL, they did not call Florida Lemark.

Mayor Lago: So, let me stop you there. So, the Manager is of the belief that the form, while they were called to correct it or to shine a light on potentially, you know, some ambiguities in the form, the number didn't change. That's their argument. What I need to hear from Celeste Walker is regards to the issue about the "shall." "Shall submit this document." But can you -- I would like to understand how she can explain that to me and cure that issue.

Assistant Finance Director Walker: Okay.

Mayor Lago: Explain it to me.

Assistant Finance Director Walker: Can I address something that Mr. Reyes said first?

Mayor Lago: Of course.

Assistant Finance Director Walker: When Attorney Ramos stated that their formal or informal protest is untimely, he said that they have standing. I do want to inform him that, in fact, you would not. I've explained before that because this is a bid and it's based off pricing, we go through the progression of eliminating bidders. Had we actually made it to the fourth bidder, Florida Lemark, they would have in fact been deemed non-response themselves for their lack of providing pricing for three of the bid lines. It's not like they indicated that the pricing was zero or that it was included. And I want to clarify something you said earlier. In your business, a blank line is a zero. In my business, it is not. So, therefore, you would have been deemed...

Vice Mayor Mena: But this isn't...

Assistant Finance Director Walker: Non-responsive...

Vice Mayor Mena: But Celeste, this isn't...

Assistant Finance Director Walker: In that process.

Vice Mayor Mena: I just want to be clear. And not to echo what the City Attorney said, but it's important. This isn't a bid process. We're not here today on...

Assistant Finance Director Walker: No, it's not.

City Attorney Ramos: Right.

Vice Mayor Mena: A bid protest. That time has come and gone, Mr. Reyes.

Assistant Finance Director Walker: Okay.

Vice Mayor Mena: You can't deny that; he's not here denying that. So...

Assistant Finance Director Walker: Okay.

Vice Mayor Mena: What are we doing? We have inherent authority to say something about the process was unsatisfactory to us and throw the whole thing out. We have that authority.

City Attorney Ramos: Yes, you do.

Vice Mayor Mena: Now, so that's the analysis we're undertaking, so whether you guys...

Mayor Lago: That's what I'm asking.

Vice Mayor Mena: Have standing or not is really neither here nor there to me.

Commissioner Fors: And -- sorry.

Vice Mayor Mena: Yeah.

Commissioner Fors: No, just in parentheses that Celeste did not opine regarding the "shall."

Mayor Lago: That's why I'm waiting for that.

Vice Mayor Mena: No, no, no. I wanted her to, but...

Assistant Finance Director Walker: Okay.

Vice Mayor Mena: I just -- we went sort of, you know, on a tangent about standing, and it really doesn't matter, to be honest with you.

Assistant Finance Director Walker: Okay.

Vice Mayor Mena: At the end of the day.

Assistant Finance Director Walker: As far as the "shall" is...

Vice Mayor Mena: Yes.

Mayor Lago: Yep.

Assistant Finance Director Walker: Okay. The information that was actually put in the addendum said "shall." It said that they -- I think "the bidder shall return this with the bid pricing form." So, as far as that's concerned, it's saying that it was a requirement. However, we are allowed the latitude of saying that any minor, informality of something that is issued through an addendum that does not have any bearing or standing as far as the pricing and the delivering quality is

concerned, the project manager opined that they intended for that to be for informational purposes only, and that it had no bearing or final effect on the bottom line of the actual bid pricing. So, it was for the unit pricing that was already included in line number three, which is the concrete on the bid pricing sheet. For a matter of pricing is concerned, all formal and information that is considered in the final evaluation of any bid, whether it be a proposal or a bid, is included on the official bid pricing sheet. We do not issue supplemental pricing sheets to actually get pricing that it has a final -- a bearing on the final line of the bid of any project.

City Manager Iglesias: And the foundation design was on the drawings. The geotechnical report, we have experience from the site -- adjacent site. A load test has been done. That's been completely defined in the drawings...

Vice Mayor Mena: Yeah.

City Manager Iglesias: In the price.

Vice Mayor Mena: Here's my issue. And Mr. Reyes, you know, I think you've done a fine job advocating for your client here, and you pointed out things that, you know, maybe weren't perfect, but you know, are sort of -- I'll describe generally speaking as sort of technicalities, and I don't mean that in any sort of condescending way, but there're...

Mr. Reyes: None taken.

Vice Mayor Mena: Small things that were part of the process. And what Celeste just highlighted is really -- I'm sort of glad that she said it that way because it's exactly where I was on it, which is okay, but it didn't have any bearing on the outcome, you know. If they had gone down the line to each of you, if you had filled in those blanks, you still would have been \$2 million over the first bid. Because to your point, you know, you're talking about holding on to the price, and it's kind

of like, yeah, that's the type of bid this was. It was a hard bid. If this had been the type of RFP was scoring and different factors and all these kind of things that...

Mayor Lago: Qualifications.

Vice Mayor Mena: Yeah, with qualification and whatnot, maybe the aggregation of these technicalities might arguably have had an impact on the outcome. But I don't see how any of the things we're talking about, the technicalities, if you will, had any impact on the result at the end of the day. And so that's -- we talk about the integrity of the process. In this type of process, the integrity comes down to did that impact the result. And to me it didn't because the result was driven by the price. So, that's where I am right now. You're welcome to respond to that or address that, but I just kind of want to walk you through where I am on it.

Mr. Reyes: I appreciate that. If I don't submit my insurance documents, I'm deemed non-responsive, and I'm kicked out. It doesn't affect my price, right? If I do not list any lawsuits that my client may be involved in, that's deemed non-responsive and I'm kicked out, but that doesn't change the price.

Vice Mayor Mena: Right.

Mr. Reyes: So, you can't -- I go back to it. You cannot get away from the fact that you were told that you were supposed to -- curious enough, every other bidder submitted it, right?

Vice Mayor Mena: Right. And I hear you on that one.

Mr. Reyes: You know, Procurement, you know, cured the -- took it upon themselves to cure the price sheet on KVC, a difference of over a million dollars. From the bid opening, it was 19.8, and when they put it into the tabulation, it was 18 million, so a million-dollar difference. I mean...

Vice Mayor Mena: I hear you on that.

Mr. Reyes: The integrity of the process -- and don't get married on the price.

Vice Mayor Mena: No, no.

Mr. Reyes: Don't get married on the price.

Vice Mayor Mena: Well, but I am kind of married on the price.

Mr. Reyes: But if -- okay, so let's...

Vice Mayor Mena: Here's my issue with that. And I'm -- you haven't been here on other awards we've talked about, and maybe I have the wrong mindset on this. But my mindset has always been, I don't like to disqualify people on technicalities. I like competition. I frankly would hate to disqualify somebody who has a bid that's 2 million better than the next person, you know. Because now I'm -- as a steward of the City's finances, I'm losing \$2 million.

Mr. Reyes: You're not a criminal defense attorney, clearly.

Vice Mayor Mena: On a technicality.

Mr. Reyes: You would have a different of opinion if you were a criminal defense attorney.

Vice Mayor Mena: So, you know, these are technicalities, and I just don't see how -- at the end of the day -- any of them made any difference. If they had done the things that you're suggesting should have been done, other than the "shall" -- I'll give you that because your position is, well, "shall," therefore, they should have been disqualified. I hear you, but then wouldn't it have gone to the second bidder, not your client.

Mr. Reyes: Well, it would have gone -- second bidder would have been KVC, and KVC is the one who the staff took it upon themselves to correct their scoring sheet.

Vice Mayor Mena: Right.

Mr. Reyes: Their submittal.

Vice Mayor Mena: Right.

Mr. Reyes: Again...

Vice Mayor Mena: Right. And OHL?

Mr. Reyes: Huh?

Vice Mayor Mena: And then OHL?

Mr. Reyes: Then you have MCM.

Vice Mayor Mena: MCM, excuse me.

Mr. Reyes: And then you would have us.

Vice Mayor Mena: So, we still don't get to your client, right?

Mr. Reyes: I understand, but I'm -- listen...

Vice Mayor Mena: I hear you; I hear you.

Mayor Lago: The whole concept is to start the process over again.

Vice Mayor Mena: That's right.

Mr. Reyes: This process is just -- like I wrapped up before, this process does not pass the smell test. This is not one to hang your hat on.

Vice Mayor Mena: I don't disagree with you on that final point, but I come back to, "Did it have any bearing on the bottom line?" And I don't -- and my concern and where I am is I don't see that it did.

Mr. Reyes: I understand.

Vice Mayor Mena: So, I -- you know...

City Manager Iglesias: Well...

Vice Mayor Mena: I hear your concerns about some of the, again, technicalities that occurred.

Mr. Reyes: And I think that's...

City Manager Iglesias: But let me say that there's technicalities in every bid, and this is a straight bid. This is a bottom-line bid, and all the unit prices are there. And so, as you said, Vice Mayor, this is very -- there's always some technicalities in any bid.

Vice Mayor Mena: Sure.

City Manager Iglesias: And this bid is \$2.4 million less than Lemark's bid. And so, they are number four. So, I do think that to not take this bid, this is a solid company, and so are they, but they didn't win this one, and that's about the bottom line.

Commissioner Fors: I think that's -- I have to say that's where I'm at too. You made a very compelling argument, you really do. But just like it's no longer a bid protest and we can still award the bid to you or award it to whoever we want, at the same time, we can look past those inconsistencies when you're dealing with that big of a difference. I think if it was less of a difference, we'd be having a different conversation. But you know, you have to work with the facts you're given. And the fact is, we had a \$2.4 million dollar difference.

Mayor Lago: So, what does the Commission...

Commissioner Fors: Do we elevate form over substance to do anything about it this time?

Mayor Lago: What's the will of the Commission? Did you sign up to speak?

Unidentified Speaker: I'll sign up. I'll put the...

Mayor Lago: Go ahead, please.

Emilio Rodriguez: Commission, thank you. Mayor, Vice Mayor, Emilio Rodriguez, Florida Lemark, qualifier/owner, former Marine, father of two. I reside at 10240 Southwest 84th Avenue. I just want to say for the record, I've been doing this for 30 years with qualifier. We win. We lose all the time. We bid; we work with Thornton. We bid; we work with KVC. We bid; we work with OHL. We bid; we work with MCM. We've bid and worked directly for City of Coral Gables many times. We are a woman minority businessowner enterprise, and we have about 150 in-house employees, including managers. So, some of the work that gets done gets done by our own staff. Now, as I sit here and I listen to these proceedings going on back and forth, we've lost bids on a

piece of paperwork missing, been found non-responsive. And we sat back and just went away and said, "We made a mistake," as we have in this one. We did make a mistake. At no point did Mr. Reyes say to anybody here, "We did not make a mistake," which is why we didn't file a protest because we knew the bid would never get to us, nor did we care that it would never get to us. What I did take offense to -- and I hold my honor high -- is we're the only company outlined in your form. And as the Procurement Manager basically stated, if they would have...

Vice Mayor Mena: What do you --? I'm sorry. When you say outlined in your form, what do --?

Mr. Rodriguez: As being -- having a technical omission within their submission. Yet, we found through our own discovery that four of the respondents ahead of us have similar technical issues, but we're the only ones highlighted. Why? If we're unimportant at five, why is our company being singled out? Now, being that there's private -- that there's prior history, by the way, and if we're going to talk simply on price, we were at 17 -- I'm sorry, just below \$17 million on the design build, including the design during COVID, for which we were found not responsive, sorry, unwilling to negotiate, even though we're a million dollars lower than the next lowest bidder and two and a half million lower than the next highest qualified bidder. We were also found with the letter canceling the project to have lack of negotiation on the contract or an impasse. That impasse was basically identifying errors and issues within the contract stipulating that the answers provided in the RFIs were in conflict with the original contract. So, we pointed that out to Procurement. We pointed it out to project management, and we received the letter two days later after that notification and after that identification of the process to have lack of mobility and an impasse on the contract, and lack of mobility on price. Now, if we're going to sit here today and say that the City truly is justified on price, well, it could have had this garage at a million dollars or a million plus less, and probably already constructed, if it would have stuck with the process back then. Now, we respect process. Again, as a former Marine, I do respect process, and I do respect what's required. "Shall" is an indicative term in legal that it will be supplied. "May" is a different term. Thus, we supplied it. So, at the end of the day, what we ask the Board and the Commission always to take into consideration is the effort by each and every respondent and how those get put together.

And as Mr. Reyes said it, "You don't get married with the price first." You find out if everybody is in compliance with the response, because if somebody's at \$15 million for the structure, yet their documents are out of line, that \$15 million holds no bearing. Your own rules and regulations state one package. It was three packages submitted. That is an omission. The "shall" was not. That is an omission.

Vice Mayor Mena: That's not -- but...

Mr. Rodriguez: I get it, I understand it. I'm not...

Vice Mayor Mena: There wasn't really three packages submitted. There was one, then there was follow-up...

Mr. Rodriguez: According to our...

Vice Mayor Mena: Then there was more follow-up, right?

Mr. Rodriguez: According to our document's request and what we received from the City, there was three separate packages. The information was different in all three of them. The bottom-line number -- you are correct -- did not change, but the litigation log was different. The E-Verify was different. There is noticeable differences. The subcontractor values of how you achieve that bottom line number were different.

Mayor Lago: What do you mean the E-Verify --? I mean, how can the --?

Mr. Rodriguez: There's information that's different.

Mayor Lago: E-Verify be different? I mean, this is (INAUDIBLE).

Mr. Rodriguez: We have the documentation back at our office.

Mayor Lago: How can your litigation history be different? I mean, it's a simple Excel spreadsheet that says what you...

Mr. Rodriguez: All I can tell you...

Mayor Lago: I mean, my litigation history says zero litigation. That's what it says. It shouldn't be any different. If you have litigation, it should -- Case 1, Case 2, Case 3. What is the difference between that? And I'd like Ms. Walker to please walk me through that because I'm just perplexed by that. How could that be?

Mr. Rodriguez: I do not have all three packages in my possession, Mr. Mayor.

Mayor Lago: So, let me have Ms. Walker -- I don't mean to interrupt you, but you're making comments that I want to be able to either validate or refute. So, Ms. Walker, explain to me -- he says that the E-Verify was inconsistent on multiple documents and along with the litigation history.

Assistant Finance Director Walker: Okay, so I'm not sure what he's talking about because, again, the bidder only supplied one bid submittal. As far as the pricing was concerned, we asked for clarifications on that, which is why the other two versions of that form only. The E-Verify that they submitted for their proposal probably had their FEIN number.

Unidentified Speaker: Yeah.

Assistant Finance Director Walker: Once we get ready to validate them and verify anything, we have them update that number because it's actually a different number that's supplied by the government; that's not your FEIN number. But again, that was not part of the submittal package. So, I am not sure what information he's receiving, and again...

Mayor Lago: But what about the litigation history?

Assistant Finance Director Walker: And the litigation history is initially -- that form that they fill out is part of our affidavits. They tell us if they're having litigation. And again, that information is submitted to the City Attorney. That information can't change because, again, that is your litigation and something we're going to have researched by the City Attorney regardless because we have times where people put they have zero, and in fact, that's not the case.

Unidentified Speaker: Yep.

Assistant Finance Director Walker: So, again, we're going to go by the form and the information they submitted, and we re-validate everything.

Mr. Rodriguez: At this point, Mr. Mayor, we're dealing with the information that we received from the City. We've done a public records search, as Mr. Reyes has stated. Our attorney, (INAUDIBLE), has made that request today to the City Attorney. We're not here to protest the award. We're here to make sure that the future awards and the future business that Florida Lemark and other contractors that decide to do business with the City, that it's done in a fair, judicial manner and that follows the process. And we don't believe that that that happened here with multiple respondents. Now, I can't give you all of the specifics other than my staff with the documentation provided with the City today has noted, flagged, and identified the issues that I've stated here as anomalies within the three packets that the City provided us. Again...

Mayor Lago: When did you make a public records request?

Mr. Rodriguez: We made a public records request today.

Mayor Lago: Today?

Mr. Rodriguez: Today, earlier today. Yes, again, we only received the notification of the intent to award...

Vice Mayor Mena: But you had made prior requests, no? This is a subsequent request.

Mr. Reyes: We made a request for the packets. It's...

Vice Mayor Mena: Okay.

Mr. Reyes: Right, we made a request for packets, and so this is the story of, you know, when -- the more you dig, the more you find. And so, the more you dig, the more you find, so the more you want to know. That's -- so that's what led to the public records request now of all communications pertaining to this IFB between staff. So, again, the more we dig, the more we find.

Mayor Lago: So, listen, I don't know what -- we need to bring this in for a landing. Anybody else have any other questions or any other statements? Does anybody want to make a motion?

Commissioner Anderson: I have no questions. You all have covered it very well. I was going to make some of the same comments. I'll move this forward. Make a motion.

Mr. Rodriguez: Thank you for the platform and your time.

Mayor Lago: No.

Mr. Reyes: Thank you.

Mayor Lago: Always, please. Thank you for being here. Thank you for bidding on work in the City. Anyone else? You have a motion on the floor by Commissioner Anderson, correct, right?

Commissioner Anderson: Yes.

Mayor Lago: I need a second to move forward.

Vice Mayor Mena: I'll second.

Mayor Lago: You want to second for discussion, or you want to second for a vote?

Vice Mayor Mena: I don't know. Do you have any comments?

Mayor Lago: Oh, I mean, I just want to make sure everybody gets everything on the record. At the end of the day, this has been a stickler for me.

Vice Mayor Mena: Yeah.

Mayor Lago: Since I've been here. We need to do everything in our power. We have great staff, and we need to do everything in our power to make sure that little things like this that can become a two-and-a-half-hour discussion do not become a two-and-a-half-hour discussion. Look how well it went in the last discussion about the design build, and we moved forward very quickly. We clarified certain issues. I do not want to stop this process moving forward. We need to move forward. But to me, I just -- I feel that we could have tightened ourselves up just a tad bit more and avoided maybe shooting ourselves in the foot on this issue. I'm voting in favor of this today because of the simple fact that the price -- there's such a big difference in price. And one of my concerns -- and I was going to ask the staff, and I'll ask the Manager -- the difference between first and second place is like 9 percent, correct?

City Manager Iglesias: First to second is about \$600,000.

Mayor Lago: Which is a big number, a big number.

City Manager Iglesias: And Mayor, this is a straight bid.

Mayor Lago: I know, it's a hard bid.

City Manager Iglesias: It's always -- as you know...

Mayor Lago: It's not an RFQ, RFP, I got it.

City Manager Iglesias: You've been in this many years. There's always some slight inconsistencies and the City has a right to take care of those inconsistencies.

Mayor Lago: I understand.

City Manager Iglesias: And so, I do think that sometimes the bids come in and there are inconsistencies that can be taken care of; there are inconsistencies that cannot. And we believe that these are inconsistencies that can be taken care of, and we believe it's a solid bid. It was -- the price, the bottom line has not changed on any of the bottom-line numbers. And we believe that to not have -- not accept a bid for these minor inconsistencies really is not in the benefit of the City from a cost perspective.

Mayor Lago: You feel comfortable that everything that was cured is not an issue?

City Manager Iglesias: Yes, yes, Mayor.

Mayor Lago: Okay. Mr. Clerk.

City Clerk Urquia: Commissioner Fors?

Vice Mayor Mena: The gentleman -- I don't know...

Mayor Lago: You want to speak again?

Mr. Rodriguez: I just want to make sure that everybody understands that I am not in favor of our City spending more taxpayer money where it's not necessary. So, you know, I'm not advocating for anybody else except for process.

Vice Mayor Mena: And...

Mayor Lago: I appreciate that.

Vice Mayor Mena: And listen, as -- I want -- you know, we want you to know -- I want you to know at least that, you know, some of the things that you've addressed, you know, I don't like the fact that it said "shall" and they didn't -- like I get it, you know. Again, I come back to, I don't feel like it ultimately really made a difference on the end result. The first question -- I think the first or second question I asked at the outset was to clarify whether you all had been disqualified or not. You know, and she kind of explained that comment. I would have had a problem if you had been disqualified for an omission that I was told OHL also made and I understood had not been disqualified -- so, you know, I'm trying to walk through these technical issues you highlighted. And there's always going to be technical issues, technicalities. At the end of the day, where I end up is I just don't ultimately think it changed the outcome. And as -- again, from my perspective, the fact that there's such a big price difference, I feel like we have to proceed with this price given this bid. But I appreciate...

City Manager Iglesias: And...

Mr. Rodriguez: And again...

Vice Mayor Mena: Things you provided.

Mr. Rodriguez: Vice Mayor Mena, I appreciate economics and I appreciate the decision. However, on the construction side and on the contractor side, inclusive of Thornton, inclusive of yourself, Mayor Lago, "shall" an omission on a bid means your bid gets discarded and there is a financial impact to the contractor because we put together the bids, we put together these efforts, and you lose the job. I've lost work because I had the incorrect litigation log, and it had no bearing on the price. And I'm talking about less than a month ago. For Monroe County, we do DOT. We do a lot of county work. We do a lot of city work. We do a lot of institutional work and government work, from federal level all the way down to local level. So, little things like that in the procurement process get your bids thrown out, and there is an economic impact. And your bid is considered non-responsive for those tasks.

Vice Mayor Mena: And I -- yeah, I appreciate that. And look...

Mr. Rodriguez: At the end of the day, again, as I've told Mr. Reyes, the only reason that we're here today is again, for one, is the respect of the process; and two, respect of our company, because again, our company was the only one that was singled out as having an omission, when in fact, there's four respondents ahead of us that have omission and none of them were noted.

Mayor Lago: Listen, I -- at the end of the day, I respect you being here and helping us with the process and continuing to get involved in the City business, okay? It means a lot.

Mr. Rodriguez: Thank you.

Mayor Lago: I've been in the situation that you're in right now, forgetting to notarize or forgetting to seal a document and being kicked out and being in first place. So, at the end of day -- but that was obviously very clearly delineated in the construction documents -- excuse me, in the RFP documents and proposal. So, moving forward, we have a first and a second.

Commissioner Fors: Yes.

Vice Mayor Mena: Yes.

Commissioner Menendez: Yes.

Commissioner Anderson: Yes.

Mayor Lago: Yes.

(Vote: 5-0)

Mayor Lago: Thank you.