

CITY OF CORAL GABLES

PROCUREMENT DIVISION

-MEMORANDUM-

TO: Cindy Birdsill
Acting Interim City Manager

DATE: September 24, 2014

FROM: Michael P. Pounds *MPP*
Chief Procurement Officer
&
Pamela Leja-Katsaris *PLK*
Asst. Chief Procurement Officer

SUBJECT: Recommendation re: Protest
from SP Plus Corporation

SP Plus, through their attorney, filed a written protest (attached) on September 15, 2014, which was received by Procurement on September 16, 2014, as well as a supplement to the written protest on September 17, 2014, pursuant to the recommendation to award the Parking Cashiers, Attendants, and Supervisors for City Parking Facilities contract to LAZ Florida Parking LLC. In accordance with Section 2-950(g), the Chief Procurement Officer, after consultation with the City Attorney, shall issue a written recommendation in response to the written protest. Said recommendation shall be sent to the City Manager with a copy to the protesting party.

Procurement had met with the City Attorney on Monday, September 22, 2014, and he opined that there is no legal basis for this protest. Therefore, it is recommended that the protest be denied and the award of contract move forward with LAZ Florida Parking LLC.

BACKGROUND

Following is a summary of the procurement process which led to the City Manager's recommendation to the City Commission that the Parking Cashiers, Attendants and Supervisors for City Parking Facilities contract be awarded to LAZ Florida Parking LLC pursuant to Request for Proposals (RFP) 2014.06.19. This contract requires a parking company/operator to supply trained parking cashiers, attendants, and supervisors to work with the city owned parking facilities. Also required is the operation of a 24/7 central monitoring system for the City's automated facilities. The contract also requires that employees be paid a living wage as outlined in the Miami-Dade County's Living Wage Ordinance.

On June 24, 2014, the Procurement Division of Finance formally advertised, issued, and distributed the Parking Cashiers, Attendants, and Supervisors for City Parking Facilities RFP 2014.06.19.

On July 8, 2014, a non-mandatory pre-proposal conference was held with eight (8) prospective proposers in attendance of the twenty-one (21) proposers who obtained the RFP package from the Procurement Division.

On July 31, 2014, three (3) proposals were received in response to the RFP from Faneuil, Inc., SP+ Municipal Services, and LAZ Florida Parking LLC.

On August 19, 2014, the Evaluation Committee convened to listen to presentations and participate in question and answer sessions with each of the three (3) proposers, as well as discuss, evaluate, score and rank each proposal based on the criteria outlined in the RFP. The Evaluation Committee scored and ranked the three (3) proposals as follows:

	Frank Giallorenzo	Ranking	Kevin Kinney	Ranking	Pete Chircut	Ranking	Low Aggregate Totals	Final Rank
LAZ Florida Parking LLC	98	1	92	1	85	1	3	1
SP+ Municipal Services	95	2	91	2	81	2	6	2
Faneuil, Inc.	73	3	73	3	76	3	9	3

The Evaluation Committee unanimously ranked LAZ Florida Parking LLC as the top ranked proposer.

On September 8, prior to the recommendation for award to LAZ at the September 11, 2014, Commission Meeting, a "Notice of Intent to Protest" was submitted by SP Plus (attached).

During its September 11, 2014 meeting, the Commission opted to stay the award to LAZ Florida Parking LLC at the request of the attorney for SP Plus, provided the firm met the deadline of filing a protest on or before Tuesday, September 16, 2014. The Commission further authorized the continuation of the current contract on a month to month basis with SP Plus as the incumbent provider, until the resolution of the protest. The current contract is less stringent than that of the new agreement to be awarded pursuant to the due to the living wage and remote monitoring requirements.

RESPONSE TO WRITTEN PROTEST AND SUPPLEMENT

The protest and supplement submitted on behalf of SP Plus makes allegations relative to the responsiveness of the proposal submitted by LAZ Florida Parking LLC, as well as the process whereby they are recommended for award of a contract. These allegations are addressed below, however are deemed without merit, as outlined in the following:

Per written protest submitted by Heller Waldman, Attorneys at Law on behalf of SP Plus:

"This firm represents SP Plus Corporation ("SP Plus") with regard to its protest of the Procurement Director's recommendation to award Request for Proposals ("RFP") #2014.06.19-Parking Cashiers, Attendants, and Supervisors for the City's Parking Facilities-to LAZ Parking Florida, LLC ("LAZ").

Section 3.7 of the RFP provides in pertinent part that:

Each response will be reviewed to determine if it is responsive to the submission requirements outlined in the RFP. A "responsive" Response is one which meets the requirements of the RFP...LAZ's Proposal does not comply with the express requirements of the RFP, and fails

to meet the definition of a "responsive" Response pursuant to Section 3.7 of the RFP. Therefore, LAZ's Proposal should be disqualified, and the parking contract should be awarded to SP Plus as the next highest scoring bidder."

Response from Procurement:

The scope of services by its very nature must be accepted by all proposers and provides a common standard upon which proposers are to respond and to comply. The proposal submitted by LAZ did not take any exceptions to any of the terms of the scope of services, and subsequently their proposal was deemed compliant with terms of the RFP.

Per written protest submitted by Heller Waldman, Attorneys at Law on behalf of SP Plus:

The protest alleges that since LAZ did not go into the same level of detail as SP Plus (and Faneuil, per the Supplement to the protest) in their submission pursuant to the requirement for the Remote Monitoring Management System, to include: A) Redundancy/Business Continuity; B) Network Security; C) Locations and Experience; and D) Reporting, that LAZ should be deemed non-responsive. It is further alleged that the Committee could not properly score the proposals due to the level of very specific detail not included the submission by LAZ.

Response from Procurement:

Simply by not addressing the specific items line by line items does not mean non-responsiveness or non-compliance. There were no exceptions taken by LAZ to the requirements of the remote monitoring system. Additionally, as part of their detailed presentation and question and answer session, all items were addressed, discussed at length, and fully met the satisfaction of the Evaluation Committee.

Per written protest submitted by Heller Waldman, Attorneys at Law on behalf of SP Plus:

The protest alleges that LAZ did not provide Client Surveys for the "best projects" and that SP Plus did submit more and, to paraphrase, "better" surveys. Also, the protest indicates that it is unclear what, if any, due diligence was conducted by the Administration pursuant to references.

Response from Procurement:

The RFP clearly states: "The City will not accept Client Surveys provided by the Proposer."

To allege that LAZ did not submit their own surveys is correct. The Client Surveys are not to be provided by the proposer, and should only be submitted, by the clients of the proposer. LAZ did not provide the surveys directly, and had any surveys been provided directly from any proposers, they would not be considered. It is incumbent upon the clients of the proposers to take the time to return the surveys. Additionally, references were reviewed and there was mention of this during the Evaluation Committee meeting by the Administration (Procurement).

Per written protest submitted by Heller Waldman, Attorneys at Law on behalf of SP Plus:

The protest alleges that "The Recommendation to Award the Contract to LAZ is Improperly Based, in Part, on Items Contained in LAZ's Proposal That Were Not Required in the RFP"

And further states:

"The Resolution to award the parking contract to LAZ states that one basis for the recommendation is LAZ's "detailed maintenance plan" for the City's garages that includes, but is not limited to, "power sweeping, contributions towards paint, removing all debris, oil and grease removal from the pavement...".....LAZ also offered to contribute \$1,000 towards painting to improve the curb appeal of the garages.....This level of maintenance was not specified in the RFP, yet, LAZ's detailed maintenance plan is one basis upon which the City has recommended awarding the parking contract to LAZ....The Evaluation Committees' consideration of items outside of the requirements of the RFP unfairly prejudiced other bidders..."

Response from Procurement:

The Resolution itself makes no reference to the "detailed maintenance plan" included in the proposal submitted by LAZ. The cover summary memo agenda item does make reference to the 'proposed plan', however this was not the reason for award, merely a mention of value-added features included in their submittal.

LAZ satisfied all of the requirements of the RFP. By virtue of the fact the LAZ offered additional features that went above and beyond what was required in the RFP, it is the duty of the Administration to inform the Commission of these value-added features. As such, these were mentioned in the Agenda item. The award to LAZ is based solely upon the Committee's scoring and ranking of the proposals pursuant to the Evaluation Criteria outlined in the RFP. In absolutely no way would the resultant recommendation been different if the extra maintenance services were not suggested.

Per written protest submitted by Heller Waldman, Attorneys at Law on behalf of SP Plus:

"LAZ Made an Oral Modification to its Proposal During the Presentation to the Evaluation Committee"

"During its bid presentation to the Evaluation Committee, LAZ Parking's representative advised the Committee that for the first year of the contract, if the RFP was awarded to LAZ, it would not charge the City the \$900 per month cost for remote monitoring of the two garages which have such systems. This would amount to a \$10,800 reduction in the bid price of LAZ's proposal. While the Assistant Chief Procurement Officer advised the Evaluation Committee that they should not consider the amount of the bid reduction, the fact remains that the Committee knew that if they awarded the contract to LAZ, the bid price would be reduced.

Section 1.9 of the RFP provides that "Oral/Verbal modifications [to an RFP Response] will not be allowed."... LAZ's offer not to charge for remote monitoring the first year of the contract amounted to an oral modification of its Proposal, in violation of Section 1.9 of the RFP."

Response from Procurement:

In the presentations to the Committee, LAZ did bring up free monitoring for a year. This in itself is not deemed a formal modification, but rather an offer of additional services, which the City may or may not avail itself to during negotiations. The Assistant Chief Procurement Officer did advise the Evaluation Committee that they should not consider this in their scoring and ranking. As such, there is no evidence that this offer affected the Committee's recommendation.

Furthermore, the discussion relative to a year of free monitoring was not considered when additional funding was requested by the Parking Director for this project after the Committee Meeting and prior to the Commission Meeting of September 11, 2014. The entire amount proposed by LAZ in their RFP submission was made part of the revised budget, and subsequently, the Commission agenda item. As a point of reference, all three (3) proposals submitted exceeded the estimated budget, and additional funding was required for this project. While pricing is one component of the Evaluation Criteria, LAZ's proposed pricing was lowest of the three (3) proposals submitted.

Per written protest submitted by Heller Waldman, Attorneys at Law on behalf of SP Plus:

"LAZ Failed to Itemize the Cost of Remote Monitoring"

"Unlike the Proposal submitted by SP Plus which has a specific line item for the hourly cost of remote monitoring, LAZ's proposal fails to itemize this cost. See Section 7 of Tab 1; page 66 of Tab 4. The Evaluation Committee acknowledged that SP Plus was the only bidder to itemize the cost of remote monitoring. See audio CD of Bid Presentations at 7 minutes, 25 second to 10 minutes, 15 seconds. The importance of this discrepancy cannot be overlooked since the City is moving towards a parking model where more of its garages will use a remote monitoring system that will reduce the amount of required hours for employees to be on-site."

Response from Procurement:

The RFP did not require an itemized cost of remote monitoring, as it was anticipated to be incorporated into the required hourly rates on the Pricing Proposal Form. By virtue of the fact that SP Plus modified the Proposal Pricing Form, and did not submit the required form in its submission response, SP Plus may be deemed non-responsive.

If SP Plus believed the cost of remote monitoring should have been included, the Proposal Pricing form should have been submitted in its original format, with a further explanation of the remote monitoring fees.

Per written protest submitted by Heller Waldman, Attorneys at Law on behalf of SP Plus:

"The Evaluation Committee Did Not Receive Proper Guidance on the Categories for Scoring Proposals"

"Despite that during the Presentations, members of the Evaluation Committee requested guidance from the Assistant Chief Procurement Officer on how to analyze certain categories for which points were to be assigned for each Proposal, no such guidance was provided. For example, with respect to the price category, the Assistant Chief Procurement Officer declined to

provide guidance since she does not believe in the use of "formulas". See audio CD of Bid Presentations at 2 hours, 35 minutes to 2 hours, 36 minutes. Moreover, it appears that the Procurement Department did not provide the Evaluation Committee with any information on whether the various categories contained in the RFP as referenced above were in fact complied with, which was also necessary for the Proposals to be properly evaluated"

Response from Procurement:

The Assistant Chief Procurement Officer provided extensive guidance as the Facilitator of the process. All of the Committee Members had read the proposals and were provided the scoring sheets in advance of the meeting, which outlined the weight of each of the Criteria. Therefore, the Committee was aware of the Criteria by which to evaluate the proposals. Also, the Evaluation Criteria was specified in the RFP document. The ACPO clearly articulated in the meeting that the actual scoring, and how many of the potential points of the score to apply to each of the categories is solely the responsibility of the Committee Members, including the express avoidance of dictating the use formulas.

Pursuant to Section 2-950(f) of the City Code: "*Challenges*. The written protest may not challenge the relative weight of the evaluation criteria or the formula for assigning points in making an award determination."

By no means whatsoever was the Committee informed by Procurement as to how to individually score and rank each proposal. Additionally, if any of the categories in the proposal were not in compliance, the Committee would have been informed as such.

CONCLUSION

In closing, all of the allegations of non-compliance made by SP Plus were fully vetted by the City during the review of proposals prior to Evaluation Committee convening. The proposals were discussed and scrutinized during the Committee Meeting, the presentations, and the question and answer sessions, all before a decision to award was made. The Evaluation Committee unanimously recommended LAZ Parking for award of a contract pursuant to the RFP process.

Under Section 2-950 (j), the recommendation shall be sent to the city manager with a copy to the protesting party. The city manager may then either resolve the protest or reject all proposals. On any protest on a contract for supplies and services not exceeding \$100,000.00 or a contract for construction not exceeding \$25,000.00 the city manager as authorized in Section 2-651 shall have sole authority to resolve in the best interests of the City. Otherwise, the city manager shall submit a recommendation to the City Commission for approval or disapproval thereof. The City Manager and the City Commission have no required time limit to act on this Written Protest, but it is recommended that this matter be resolved as timely as possible as this contract is on a month-to-month extension.

A protest of an award of a contract by the City Commission may be filed with the circuit court pursuant to the Florida Rules of Appellate Procedure.

Copy: Craig E. Leen, City Attorney
Diana M. Gomez, Finance Director
Jason Gordon, Esq., Heller-Waldman Attorneys at Law