

**City of Coral Gables City Commission Meeting**  
**Agenda Item F-1**  
**July 26, 2016**  
**City Commission Chambers**  
**405 Biltmore Way, Coral Gables, FL**

**City Commission**

**Mayor Jim Cason**  
**Commissioner Pat Keon**  
**Commissioner Vince Lago**  
**Vice Mayor Frank Quesada**  
**Commissioner Jeannett Slesnick**

**City Staff**

**City Manager, Cathy Swanson-Rivenbark**  
**City Attorney, Craig E. Leen**  
**City Clerk, Walter J. Foeman**  
**Deputy City Clerk, Billy Urquia**  
**Assistant City Manager, Peter Iglesias**  
**Chief Procurement Officer, Michael Pounds**

**Public Speaker(s)**

**Mario Garcia-Serra, Representing Behar Font**

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Agenda Item F-1 [3:29:52 p.m.]

Discussion regarding RFQ No. 2016.05 MSG (Public Safety Building Design Consultant Services) and request for legislation or policy addressing future participation of firms under continuing contracts with the City in

Mayor Cason: Let's do F-1 and then we'll see what else.

Vice Mayor Quesada: F-1, this is my item. Thank you Mr. Mayor. Relating RFQ No. 2016.05 MSG, related to the Public Safety Building Design Consultant Services. So I asked the City Clerk to put this on the agenda. I have a big problem the way that this has been carried out; and I'm actually going to ask the City Attorney and this is something that I've just been going through now, it's something I was looking at last night and this morning. Florida Statutes 28705717(c), I don't know if you can pull it up on your computer, because it's something I want

you to take a look at as I'm introducing this item. So this relates to the Public Safety Building, obviously as we all know, I don't want to say it's in disrepair, it's just not in the best possible state. It's definitely something that we've been aggressively discussing and pursuing for more than the past year to try to resolve this issue. Why I put this on the agenda?- why it really concerns me?- why it really bothers me is you have an entity that created the RFQ, which is pretty substantial, I think it was more than 20 or 30 or 40 pages, don't quote me on the exact length, but relatively substantial; and then that entity is being allowed to be one of the bidders in the process. So for me in my eyes that creates a massive perception of a conflict of interest or a perception of an unfair advantage. Now, I want to be clear, the entity that created it is AECOM and AECOM has done spectacular work in our City, so I'm not casting any aspersions on them, I'm not coming down on them. I don't think it's their fault in this process. I think it's more that we as a City need to be better to avoid these potential perceptions of conflict, or perceptions of unfair advantage. When I talk about AECOM, the most recent project that comes to mind is Ingraham Park. For those who were not on the Commission at the time, we were all very happy with the way that turned out, and that design. So again, I want to be very clear, they have no fault in this at all. It's just sort of the predicament that they've been placed in; and so everyone understands the facts chronologically. What happened is the City contract with AECOM to prepare the Request for Qualifications. Typically for those of you not familiar with it, it's a very detailed process, talking about the planning, and the scope of the project and really meeting with staff to understand the details of what staff is looking for in a bidder to be able to win that bid, and then work with the City to develop that project. So it's a very intimate relationship that the person preparing this report is going to have. So they were told by someone on staff, which I still haven't been told who that person told them was, that they were going to be allowed if they prepared the RFQ for the City, that they were going to be allowed to bid on it as well, and that's where the problem arises for me, a very big problem for me. I have a huge problem for me. However, I don't want to throw the whole – I'm not bringing this item up because I want to throw it all out, because we have a timing issue with regard to the building itself, the Public Safety Building. This is the building that we have one of the fire trucks parked outside, so this is something that we should be moving expeditiously on. So that's my concern. So, I don't have, as I bring this item up it's truly for discussion purposes. I have a concern the way it's been played out; I have a concern with the perception of impropriety. I know there is no ill-will here by any of the staff members that created this after my speaking to the different staff members. I think this was either an oversight or that staff member who gave that opinion to AECOM did not have the authority to give that opinion, because I interpret that as a legal opinion. If that is not being told by either the City Attorney or one of the City Attorney's designated agents for that or the City Manager, I see it as being invalid communication of authority to be able to participate in the bidding process.

Mayor Cason: So you're talking, the way this reads, future participation of firms.

Vice Mayor Quesada: Well, so the conversation that I had with the City Manager and the City Attorney about this is, well we want to keep this moving forward, we don't want to stop this process, because it's the Public Safety Building and we want to move this as quickly as possible, but maybe, and there is specifically nothing in the Code that makes this an illegal or improper or contrary to our Code, there is nothing of that nature in our Code, so it's not specific, it's in the gray area of the Code. I mentioned this Florida Statute at the beginning of my statement here because it's something that I found last night and this morning as I was preparing for today's hearing that I had not had a chance to discuss it with the City Attorney. So, I'm giving you the full detailed background to give the City Attorney an opportunity to review it a little bit more. So my concern is, moving forward we absolutely need to have it in the Code, no question about it. And I think I haven't heard you guys opinions on it, but knowing other issues I think you guys would be in agreement with me on it, obviously correct me if I'm wrong. However, I still have an issue with this one. Again, I think AECOM has done great work in the City and here's my concern and Commissioner Lago said this at a previous hearing because in your private life you deal with the RFP and the RFQ process, because of the nature of your business. I think the rest of us, I've never dealt with an RFP or RFQ, and I don't think any of us have in our private lives. The perception that something is being given away to a bidder, the perception, or the fear that other bidders would have and not submitting responding to an RFP or RFQ of the City scares me to death, because we get great projects, we get great partners, we get good vendors and contractors when we have 20 applicants so that our selection committee has the pick of the litter, when there is great competition for the specific item that it is we are going out for bid on, so that's my concern. Again, I don't want to throw it out. My ideal situation is to knock AECOM out of this, however there has already been a legal memorandum provided by the City Attorney saying that it was allowed to be done. Now my conversation to him says, he doesn't like it, but there is no adequate precedent on point, or there is no Code or law on point. I'm asking him, I've asked him to take a look at the Florida Statute that I found last night and reviewed this morning to tell me if that changes his opinion. But AECOM the question is, would they be unfairly prejudiced by now being told they cannot apply, because if I'm AECOM I would argue we never would have done the preparation of the RFQ if we knew we weren't allowed to bid, because the money they make on the RFQ is peanuts compared to the money they make if they win the bid. So, I'm trying to put all the facts out there as I anticipate them that they would play out. Before you comment I would ask, actually I'll wait after to give me more time to think about it. So yes, go ahead.

Commissioner Lago: I'll be very brief. I agree 110 percent of your comments. In my private life, like you mentioned with both design and construction and when we get involved in projects, we are very skiddish to entertain any project if there is a firm that's competing against us that was involved in the formulation of the scope of the RFQ, and in very few occurrences that happens

because the entity or owner does not allow that firm to become an active bidder in either the construction of the design. That person or that firm who may have formulated the scope could act as not only the entity that formulate the scope, but they could also be an owner/rep and represent the client throughout the construction or design, preconstruction, to construction, to handle its CO, but they are not allowed, in my opinion, and we would never entertain becoming involved in that type of process, because there is always that sense of not impropriety, but there is that sense that they have a leg up on you, they know where they have to focus, where certain details. They spent a year formulating the documents, so they know the project inside and out.

Commissioner Keon: Does it take that long?

Commissioner Lago: Yes. Usually in a preconstruction contract, you are working six months to a year preparing design documents to basically then hit the street to find a qualified list of contractors to bid on the project. You probably have two, three, four weeks to bid on a project, while if you allow that entity who formulated the RFQ to become involved, they've had a year to prepare the documents. So we view it as a leg up and we have yet to become involved in a procedure which allows that type of procedure, excuse me, allows that type of firm to become involved.

Mayor Cason: I think it's clear going forward what we have to do. You are exactly right, this can't happen again. The question is, can we be sued by AECOM if they want to go forward.

Vice Mayor Quesada: We can be sued for anything.

Mayor Cason: I know, but I mean...

Vice Mayor Quesada: The likelihood of success.

City Attorney Leen: My office was asked to become involved in this when the initial controversy started to ensue; and we have received legal briefs essentially from two of the applicants, including AECOM. So what we did was, there were two statutes that were raised, 287.055, which is part the CCNA, which is applicable to cities.

Vice Mayor Quesada: What is the CCNA?

City Attorney Leen: That's for the Competitive Consultant Negotiations Act, and that's for like architects and landscape architects and engineers; and when the City procures their services state law applies, and so we follow that. We also apply our Procurement Code, but we predominantly and principally governed by state law; and there is a provision in there 287.0559 that if

applicable would have barred this participation. However, it wasn't applicable because it is only applicable to design-build contracts. And initially there was some confusion whether this was a design-build or design-bid-build contract. It was clarified that this is design-bid-build contract and in a design-bid-build contractor the designer works for the City whereas in a design-build contract it works with the contractor, is that correct Peter?

Assistant City Manager Iglesias: Yes. This is a little bit different Commissioner Lago, in the sense that they are not doing, they are not preparing contract documents. What they are doing is preparing criteria and programming only. So there are no bid documents that are going to be prepared.

Commissioner Lago: But I mean the criteria...

Assistant City Manager Iglesias: But criteria mean code requirements, facilities and programming means square footages.

Commissioner Lago: The program is going to be the fabric of what eventually is going to turn into design documents.

Assistant City Manager Iglesias: That is true, but all the firms have that document themselves, so it's not in the sense that you are thinking, plus I think we can assure that AECOM will not be – we can chose whoever is going to go out and inspect the services, it could be us, it could be some other firm and it won't be AECOM. So I think that we can control that and the fact that it is not a design, it's not design documents.

City Attorney Leen: I want to continue with at least legal analysis, I asked Peter because he's very familiar with the design-build versus design-bid-build versus construction manager at risk. So this was not a design-build contract, clearly, so that statute didn't apply. So then we looked at 287.057, which the Vice Mayor just raised; 287.057 is part of a statute that applies to the State. Cities are not governed by State Law related to procurement except for in very specific areas; 287.057 in my view do not apply to the City. Nevertheless, we looked at it as if it applied, and we also checked with the City of Miami who had the same view. City of Miami Attorney's Office has the same view on this issue, but we actually looked at 287.057 as if it applied, because of course we want to hold ourselves up to the higher standards. This statute, we felt didn't apply either, because it says that if the underlying contract is competitively bid, and the question was, well what does that mean?- because AECOM was hired by the City under a competitive contract, it's a continuing contract. This particular PO, which was issued as you indicated, not by procurement, but by the department who was the one that interacted with AECOM and told AECOM, at least we've been informed, has told AECOM that they could participate in the later

RFQ that was through appeal, that was issued pursuant to this contract which was competitively bid. So when we looked at the whole situation, we didn't see an express prohibition on AECOM participating. Now, I will tell you we were troubled, we were troubled by AECOM's participation. Miriam called the Ethics Commission, spoke with Joe Santorino and said, could this be some sort insider issue where the party certain information because they are able to put together the RFQ and they get a benefit. And he looked at it and said well, in his view they did not have jurisdiction, that's what Joe Santorino said, that they did not have jurisdiction but he was troubled by it too.

Vice Mayor Quesada: So does that mean that you have jurisdiction since you are Chief Ethics Officer.

City Attorney Leen: We do have jurisdiction. This issue is that when we took a look at the whole provision, I did not see – let me explain this. We had a representative of the City, whether they had authority or not, as a condition of awarding the contract to AECOM, they told them the PO, that they could participate. AECOM has asserted that, our side has confirmed that, we haven't been able to identify the specific person, but the Chief Procurement Officer has told me that at the time he did believe that they could participate. So that's the City's position. Now in the future we are going to be proposing a rule that will prohibit that from happening. Number two, I had Miriam take a look at it, the substance of it, and confer with staff, and she did not feel that it gave AECOM the type of material advantage that would call this whole thing into question. Now there could be a perception issue, but we are talking about from an actual issue, and she issued an opinion indicating that. My concern is in a situation where – I always am in favor of having as many people participate as possible if it's legal, because the goal here, remember this is not quasi-judicial, the goal here is for the City to get the best possible deal for its residents. I just want to give you my...

Commissioner Lago: And I agree, I agree with what you are saying in reference to let's have as many people bid on the process, but it goes back to what the Vice Mayor said. I just think the optics will deter people from getting involved; and you know Assistant City Manager...we are clear...

City Attorney Leen: Because we could be sued in this matter, so I wanted to be very clear what my view is on this. So in a situation where you have someone from the City who has said that they can participate and AECOM participated under that condition and there is no express provision of law which prohibits them and our RFQ did not prohibit them either. In my view there is nothing in statute, contract or rule or case law.

Vice Mayor Quesada: Here's the thing though...

City Attorney Leen: I just want to finish my opinion. So in those situations, in my view, there is nothing that we can rely on to exclude them, and if we do exclude them the concern is that they will be able to, under our Procurement Code, they would be able to challenge this. They will be able to file a bid protest. They may go to court and try to enjoin the whole matter and the concern I have is because ultimately it's the City's interest that's important here and we need to get, and I'm talking about a legal perspective, the bidders don't have rights. For example – they have limited rights, but they don't have rights in the way of a quasi-judicial proceeding. The City can reject all bids at any time and the City could also waive its Procurement Code and award this directly to AECOM, if it wished. So in my view the best way to deal with this situation while limiting our liability was to allow AECOM to participate because there was nothing prohibiting it, but requiring them to disclose at each stage what happened and then ultimately leaving it up to the Commission to decide what to do, and you could weigh that in your determination as a matter of weighing who would be the best to serve you. So if it's a close question that's something that might factor into your final determination. My view ultimately that will limit our liability the most, because for example, if AECOM doesn't receive the award then there is no issue. If it's a close question there may be an issue and then we would have to deal potentially with a bid protest, but I always thought that the best thing to do would be to allow this process to go forward so that we can get an actual award issued. That was my legal judgement. I could definitely see a lot of debate here. There are a lot of different ways you could handle this.

Vice Mayor Quesada: So where it comes back to me on this is sort of an assumption that's built into your opinion.

City Attorney Leen: I understand. I understand.

Vice Mayor Quesada: There is an assumption in there that I can't stomach and that is, I guess the analogy of the situation, can a bank teller give an opinion as to what the bank's, Citi Bank's tax policy is?- no. What I haven't been told or been given who is the individual that told them that communicated this, which still has not been told to me.

Assistant City Manager Iglesias: We are going to find out, but Vice Mayor, I think that – one of the first questions that AECOM would ask or any big firm would ask is, if I do the programming am I allowed to go for the design of the project?

Vice Mayor Quesada: And you know something?- they should have gotten a legal opinion from our City Attorney at that time. Now, I know subsequent to it you gave a legal opinion saying that, yes, they could go through it, which puts us “in a rock and a hard place,” because essentially if I was opposing counsel and we were to knock them out right now that would be exhibit A to

the complaint, and that would be the estoppel argument right there off that legal opinion, and we are probably shooting ourselves in the foot by putting this on the record.

City Attorney Leen: We haven't bound you though. For example, you could reject all bids, I don't recommend this.

Vice Mayor Quesada: I vehemently disagree with the legal opinion that you provided to us.

City Attorney Leen: I just don't see what statute or contractual basis we could do it. I felt that if I gave the other opinion, we would be sued and we would have no defense.

Mayor Cason: We haven't gone to RFP yet, right?

Vice Mayor Quesada: Hold on. But you are still travelling under the assumption that the person that gave that opinion to AECOM had authority to give that opinion.

City Attorney Leen: I'm not even talking about the statement, but remember the department did have the authority to issue the PO, so I would assume that the department would also have the opinion to tell them what the conditions of that contract are, whether we should allow that is a different. I don't recommend it.

Vice Mayor Quesada: Isn't that a Procurement question? That's not a contractual question.

Assistant City Manager Iglesias: [Inaudible]...RFP, we just haven't received the...

Vice Mayor Quesada: Hold on a second. I want to clarify this. Wouldn't you say that that question, if it was asked, is a Procurement question that could be addressed by the Procurement Department, the Legal Department, or the Manager and not that department?

City Attorney Leen: I agree 100 percent that that question should have been sent to us and if that question had been given to us, I would have recommended, and I'm sure that the City Manager would have well...

Vice Mayor Quesada: I don't want you to speculate, at least on the record, I don't want you to speculate on the record.

City Attorney Leen: I need to be open with it, but that doesn't mean as a legal matter that they are prevented from participating, and that's the question. If you are going to not allow someone to participate in a solicitation, which does not exclude them, because it doesn't exclude them,

you need to have a statute, contractual basis, a rule, or a binding case, and we don't have any of those things here, in my opinion.

Mayor Cason: Mario Garcia wanted to speak.

Mr. Garcia-Serra: Good after Mr. Mayor and Commissioners, Mario Garcia-Serra with offices at 600 Brickell Avenue. I actually represent one of the other bidders, RFQ; Behar Font is the name of the firm. And I've been familiar with the discussions, raised some of the initial questions that started the discussion, and I think a good way of sort of summarizing State Law the way I see it, and particularly the statute that Commissioner Quesada was pointing out, is that firms that are involved in the creation of the RFQ should not be allowed to be bidding on the RFQ, except under certain circumstances. One of those exceptions is that the work that they did was competitively bid, meaning that everybody else would have had the opportunity to try to bid on that work and be involved. Here the firm in question was awarded that work pursuant to a continued contract, so they are part of a big pool of contractors which are periodically called upon to do miscellaneous work and that's how they were called upon. You know, our point sort of in this discussion is that that actual award, that award to that firm of that work to help put together the RFQ was not competitively bid. Maybe the overall award of being part of this pool was competitively bid, but not that actual award of that contract. Why are these rules in place? It's to avoid unfair advantage. Not to let anybody sort of have a leg up on the competition of being able to be awarded a particular work, and you know, in the discussions I've seen various different determinations of different points in time by the City as new facts and new laws become available to them, and so its sort is a gray area. I think that's the one thing that everybody has said here, it's a gray area, and issues of gray areas, especially ethics and conflicts, I would submit to you that it is safer to err on the side of caution and take the more conservative approach, and the one that would preclude....

Vice Mayor Quesada: But if we throw everything out, which is what you are implying, it puts the City at a detriment from completing that project, which is something that is a priority for us right now.

Mr. Garcia-Serra: Of course, but the options that are available to you, I don't think are just continue as it, or throw everything out.

Vice Mayor Quesada: What if we file a declaratory action?

City Attorney Leen: But the concern I have is that, that delays that could take a year. That's part of what I was thinking here was that, in my view the best legal interest of the City is to have this go forward and anything where we eliminate someone from participating where there is not an

expressed basis, in my view opens the whole thing up at the end, and they can go all the way back to the beginning, and they can sue us, and this can get held up for a couple of years.

Commissioner Lago: Let me just say one simple thing. Again, I'm not an attorney, and you are using some legal terminology that I'm not very familiar with. The Vice Mayor wants to throw a declaratory action; I got to look that up for a second. We are talking about a significantly important project to the City of Coral Gables on all fronts, Police, Fire. Why don't we take this scope, pay the bill, and move forward. It may delay us what?- two or three months?- but two or three months in a \$20-\$30 million project...

Vice Mayor Quesada: I don't understand what you mean – get the scope and pay the bill. What does that mean?

Commissioner Lago: They are providing us with information...

Commissioner Keon: You are going to pay them, throw it out, and start over, that's what he's saying.

Commissioner Lago: That's it.

Vice Mayor Quesada: So it's throwing it out.

Commissioner Lago: We are not throwing it out. Hold on. We are not throwing them out. We pay them for a service; pay them for a service...

Vice Mayor Quesada: Have we not already paid them for the service already?

Commissioner Lago: I don't know. I don't check our daily balance so see if we paid them or not. I'm saying, obviously there is probably there is some retainage or something; but we pay them for their service in full, we make sure that everything that they provided was in line with the scope and we move to basically do a new RFQ in reference to finding a design firm that meets our needs, and includes not allowing a firm that was included that provided that type of service that they did.

Commissioner Keon: I want to make sure that I fully understand exactly what we are talking about. Did AECOM do the work that provided the information that went into the RFQ?

Assistant City Manager Iglesias: Yes, they provided....

Commissioner Keon: OK. They provided that information. So the concern here is that one could possibly, if you know you want to bid on it, you could design an RFQ where you have some favorability, you know there may be some favorability toward you because of the way you write the RFQ if you are going to do it.

Assistant City Manager Iglesias: This project is not that complex.

Commissioner Keon: OK. But I just want to know why, so why would it be a problem? The only thing I could think of is because you think it may be favorable to you, or someone thinks it's favorable to the party that created the RFQ. So the question is, do we not have people do that service and then be allowed to be subject to the RFQ that they prepared?- is that what you are saying?

Assistant City Manager Iglesias: I would assume the day they provide that service, the first thing they would say is, is this going to prevent me from going after this project?- and maybe they would have said yes, and they said, well we don't want to, we are not interested in doing it. That's what most firms...

Commissioner Keon: If you were to go forward -- my other thing I have a concern with is, either we make some sort of a policy that -- you know I hate to not be able to have continuing contracts because we need to have those continuing contracts available to us so that we can get work done. So maybe the preparation of RFQ's should not be part of that, is that what you are saying?

Assistant City Manager Iglesias: In the future, I think what we can do is bid the programming separately into the RFQ, so...

Commissioner Lago: We have to include language that clearly delineates the involvement of a firm...

Assistant City Manager Iglesias: This won't happen again.

Vice Mayor Quesada: I know, but it happened this time.

Commissioner Keon: It happened this time.

Mayor Cason: Do you have any reason to believe that there won't be a lot of bidders regardless of the fact that some people may think they have a leg up?

Commissioner Lago: Mayor, like what I said before, I would not bid on this project if I was looking to be the designer based on the fact that we were allowing another firm who built the scope. I wouldn't do the RFQ. I wouldn't do it.

Vice Mayor Quesada: Here's a question for you Mr. City Attorney, how heavily can we weigh all that has played out in our decision to select the bidder?

City Attorney Leen: Well my view if it's a close call, a close question that, that could be the deciding factor to you; and also at the end if you're uncomfortable with the situation you could at that time throw out all bids. You could also send it back with instructions for additional weighing. You have that ability at any time. Typically, the best way to handle these situations is, if it's going to be – if the procurement is going to be affected is to throw out all bids. I do think there is a concern in this particular case, though just because of the emergency – this is a matter of public safety and its time sensitive, and I do think that we can still proceed in a way that's fair, but that's ultimately a judgement for you, and I'm not trying to substitute my judgement. I just didn't feel that we could reject only AECOM. I want to be clear. I did not feel that we should totally reject them.

Mayor Cason: Commissioner Lago what he would do – when was this finished?- the RFQ?- how long ago?

Assistant City Manager Iglesias: I don't know Commissioner.

Commissioner Lago: A while?

Mayor Cason: Since that time have we had a lot of companies?

Assistant City Manager Iglesias: The RFQ was not put out too long ago, when I first got here.

Mayor Cason: Do we have companies that are saying they want to participate regardless?

City Manager Swanson-Rivenbark: Mike Pounds do you have the information as to when the RFQ is due? I have to step back and say, if our Public Works Department said to AECOM, yes you can, that's an important piece. If it goes to the City Attorney's office and they say, City Attorney tell us, can they compete, and City Attorney's office with respect says yes, that's another important piece, and so we believe in a credible open process. The number one criteria in this RFQ, and I don't know who's going to bid on it, is that they have absolute experience and expertise in building a public safety building. No one is going to get recommended by our office if they just want to do this for the first time. So we want to look at criteria, but I believe they

relied on the Public Works Department with that answer, I believe they relied on the City Attorney's office with that answer, and so for us my personal feeling is to block them at this point would be unfortunate, to build new procedures moving forward for future RFP's that either say, if you are in the CCNA and your building scope you cannot period, compete in the design process, we can build those provisions, but right now we are kind of stuck.

Mayor Cason: Given that and we know what we have to do in the future, how much interest is in this in spite of the concerns maybe that its favoring somebody else?

Mr. Pounds: We received seven qualification statements.

Mayor Cason: When is the RFP...?

Mr. Pounds: The deadline has already past. We received the seven qualification statements; we excluded AECOM until City Attorney issued the opinion.

Mayor Cason: So then there would be eight bidders.

Commissioner Keon: Well they received eight. How many of them are responsive?- or how many of those RFQ's?

Mr. Pounds: They are still being evaluated. I can't say how many are responsive.

Commissioner Keon: Well, I think if you have a competitive pool for this time, and I would hope that you would take a very good look at that RFQ and ensure that there isn't only one firm or two firms that could fulfill the requirements of the RFQ, that it's not written in such a way that you don't get a competitive field of applicants.

Assistant City Manager Iglesias: I'm going to be on the selection committee, Commissioner, to make sure that we have a qualified firm. We look at qualifications, as the Manager said...

Commissioner Keon: Right.

Assistant City Manager Iglesias:...number one, that we get a first class building, and so the qualifications would be number one, and then of course the programming would an idea of the scope of the work.

Commissioner Keon: Right. I mean I think it is, I agree with you. I think it's a problem and I think going forward that language should be become the policy of the City, but I think for right

now, if you take a look at, I mean you can look at the RFQ, you are a structural engineer you can look at what are the qualifications of the people that have done it, and if you have seven applicants, or seven proposers...

Mr. Pounds: We have seven firms that have submitted qualifications.

Commissioner Keon: Right. If out of that seven, you have five firms that can compete for this project and have the qualifications for this project then you still have a competitive bid.

Vice Mayor Quesada: That's not the issue though, that's not the issue.

Mayor Cason: We are in a dilemma; we are "between a rock and a hard place."

Vice Mayor Quesada: Let me try to wrap this up. Let me try to wrap this. So if we were to throw out AECOM right now, which would be my ideal scenario even though I think they are a great applicant because of the work we've seen them do in the City. Again, I don't think it's their fault, I think it's our fault on the City side. If we throw them out, I think we are going to get sued, and I think because of the legal opinion that was given and from this phantom employee that I'm beginning to think by design, I'm not being told who the person is, because of those two factors I think it's a high likelihood of failure for us if we get sued on that. That's number one, so we can't take that route. If we were to throw out all bids would AECOM be allowed to bid again?

City Attorney Leen: If you threw out all bids and drafted the solicitation to say that a party could not – well, I would recommend going all the way back to the beginning.

Vice Mayor Quesada: Answer the simple question.

City Attorney Leen: It depends on what you mean. Are we going to hire someone...

Vice Mayor Quesada: If we throw out all bids right now....

City Attorney Leen: And go right back to the RFQ?

Vice Mayor Quesada: And we go right back, is AECOM allowed to bid? The answer is yes.

City Attorney Leen: You should pass a rule that says that they can't...

Vice Mayor Quesada: We would be creating that rule subsequent to this issue.

City Attorney Leen: Then you should apply it retroactively.

Assistant City Manager Iglesias: Have you ever seen conflict Vice Mayor...

City Attorney Leen: But you could apply it retroactively, you can do that and they would potentially sue us for breach of contract, but I agree with you.

Vice Mayor Quesada: I don't like our position in that situation.

City Attorney Leen: I do because I think we have sovereign immunity. I do agree with your statement that we could assert that that individual did not have authority to commit the City. I just don't like taking that position because AECOM relied on it.

Mayor Cason: I have a question. Could we possibly continue this discussion until tomorrow after the Executive Session, where you could look at and see do we have a pool of qualified bidders that you think would – in other words there is only one company...?

Vice Mayor Quesada: We can't really do anything. Here's the final issue, I guess what I was trying to wrap up is, we can't knock out AECOM, we can't throw it out because we'll end up in the same spot, so we have no choice but to proceed the exact same way we were proceeding from what I've gathered from this conversation.

City Attorney Leen: Yes. Although I would do a motion and a second, if you are willing and I would just adopt a policy that no contractor, including continuing contractors may prepare solicitations and then participate in the solicitation.

Commissioner Lago: So moved.

Vice Mayor Quesada: Second.

Mayor Cason: OK. Commissioner Lago made the motion, the Vice Mayor seconds – City Clerk on that issue.

Commissioner Slesnick: Yes

Commissioner Keon: Yes

Commissioner Lago: Yes

Vice Mayor Quesada: Yes

Mayor Cason: Yes

(Vote: 5-0)

Vice Mayor Quesada: And I would also like to make a request through the Mayor to the Manager, I want to know all the different staff members that were involved in working with AECOM in the preparation of this RFQ.

Commissioner Keon: But I would also like to know when you go through the applicants that have responded to this RFQ, whether or not you feel you have a competitive pool, not that you only have two applicants.

Assistant City Manager Iglesias: We can't go each by individual applicant, but we can give you a general.

Commissioner Keon: I don't need to know the name of them, but I'm assuming you are on the selection committee.

Assistant City Manager Iglesias: I will be on the selection committee.

Commissioner Keon: So you will look at the RFQ's as they are presented and you'll evaluate them and you'll tell out of the seven how many of these can participate in, to move beyond the RFQ for an RFP.

Mr. Pounds: What firms are qualified to move forward with the evaluation?

Commissioner Keon: Right. What's a competitive pool?- three people?- five people?- what's a competitive pool?

Mr. Pounds: I think that five firms would be adequate in this case.

Mayor Cason: Here we have only two or three, so.

Commissioner Keon: Well we have five originally.

Mayor Cason: We have eight now, if AECOM comes back.

Assistant City Manager Iglesias: Even four firms I think would be competitive.

Commissioner Keon: OK. So if you have less than four firms, will you come back and talk to us about it?

Assistant City Manager Iglesias: Yes, I will.

Mayor Cason: That's why I was wondering whether we needed to somehow continue this discussion till after tomorrow when you can find that out and then we could...

Commissioner Keon: Well, I don't think they've reviewed all of the RFQ's.

City Attorney Leen: My feeling is I would expedite it actually. I would get it so that the thing is done as quickly as possible and brought back to you, so that you can make your final decision.

Mayor Cason: We can do it tomorrow after the...

Commissioner Keon: But I don't know if they have time to go through all of the RFQ's.

City Attorney Leen: I just don't see how we can eliminate AECOM without something express that we can point to.

Commissioner Keon: Well only if we don't get a competitive pool.

City Attorney Leen: Even then you could just reject all bids.

Commissioner Keon: Then we would reject all bids for a non-competitive pool.

City Attorney Leen: You could do that at the end of the solicitation too after you see everything.

Mayor Cason: Alright, let's do that then.

City Attorney Leen: One other thing, AECOM has agreed to this. You know we did tell them that it was going to be considered at each stage and that it could be weighed, and they accepted that opinion. So you definitely could consider that at the end and award to someone other than AECOM, if you believe it's appropriate under the circumstances.

Mayor Cason: So we'll know when the RFQ's, RFP's come in, if there is a pool of five or six or seven that are qualified then we can make a decision then.

Commissioner Keon: Yes.

Mayor Cason: Alright. Thank you.

Commissioner Lago: Thank you.

[End: 4:07:40 p.m.]