

Bachteler, James J

From: Justice, Charlie
Sent: Monday, August 08, 2016 1:16 PM
To: BoardRecords
Subject: FW: [BULK] Deny File# 16-1152A & Require Re-Bidding of Ferry Pilot Project
Attachments: Letter to Pinellas BCC re Ferry Pilot.pdf; Exhibit A - Interlocal Agreement for High Speed Ferry.pdf; Exhibit B - Tampa Bay Times Article 12.27.15.pdf

Importance: Low

For tomorrow's meeting regarding Agenda Item #42.

From: Hilary Busby [mailto:hilary.busby@coastalyfe.com]
Sent: Monday, August 08, 2016 6:39 AM
To: Long, Janet C <JanetCLong@co.pinellas.fl.us>; Gerard, Pat <pgerard@co.pinellas.fl.us>; Justice, Charlie <cjustice@co.pinellas.fl.us>; Eggers, Dave <deggers@co.pinellas.fl.us>; Seel, Karen <kseel@co.pinellas.fl.us>; Morroni, John <jmorroni@co.pinellas.fl.us>; Welch, Kenneth <kwelch@co.pinellas.fl.us>
Cc: Kriseman.Rick <mayor@stpete.org>; council@stpete.org; codonnell@tampabay.com; kvarn@tampabay.com; info@pambondi.com; Cliff Nees <cliff.nees@coastalyfe.com>
Subject: [BULK] Deny File# 16-1152A & Require Re-Bidding of Ferry Pilot Project
Importance: Low

Dear Honorable Commissioners,

Please find attached correspondence and supporting exhibits for your review ahead of the regular BCC meeting on Tuesday, August 9, 2016. Thank you for your consideration.

Sincerely,
Hilary Busby
Co-Founder/Director of Legal & International Affairs
Burg Technology Firm LLC

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2016 AUG - 8 PM 2: 38
PINELLAS COUNTY FLORIDA

VIA ELECTRONIC MAIL
Pinellas County Board of County Commissioners
315 Court Street
Clearwater 33756

August 8, 2016

RE: Deny File# 16-1152A & Require Re-Bidding of Pilot Project

Dear Honorable Commissioners,

As a taxpaying resident of Pinellas County and local business owner, I urge your denial of the proposed "Interlocal Agreement" for the high speed ferry pilot program led by the City of St. Petersburg and scheduled for hearing before your Honors on August 9, 2016, file #16-1152A. The procurement proceedings for the program's underlying award of approximately \$1.4 million violates multiple codes, ordinances, and even state statutes; an interlocal agreement cannot be made on an illegally procured proposal. Respectfully, your Honors must deny the Interlocal agreement and require the City of St. Petersburg to re-bid the underlying request for qualifications in accordance with the law(s).

Per the Interlocal Agreement (attached as Exhibit A), "the City of St. Petersburg issued a request for qualifications seeking entities qualified in establishing a pilot passenger ferry service;" however, the City failed to properly notice the public of its request as required by law including the City's own Ordinances. In fact, the City's purchasing manager, Barbara Grilli, is quoted in the Tampa Bay Times news article dated December 27, 2015 that "city officials followed standard procedure and guidelines, which don't require that they advertise the request. Employees conducted online research to find ferry companies that met the requirements they established" (attached as Exhibit B). This is far from the standard procedure and guidelines for procurement and is in direct violation of multiple laws including but not limited to the following:

1. Chapter 2, Article V, Division 3 of the City of St. Petersburg's Code of Ordinances requires the City to "provide for the fair and equitable treatment of all persons and entities involved in the public procurement by the City" ... "and ensure procurements are conducted in an open and competitive manner." The City failed to make its request for qualifications public thereby refuting fair and equitable treatment as required by law. Instead, the City informed only seven entities of its request and hand-picked one of those entities, HMS Ferries, to lead the program and receive an estimated \$1.4 million of taxpayer dollars. These activities by City employees and elected and appointed officials are "subject to all applicable federal, State and local laws, regulations and penalties which include but are not limited to bid tampering, bribery, corruption, misrepresentation, false statements and laws governing the conduct of City employees, elected officials and appointed officials."

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COMMISSIONERS

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2. Chapter 2, Article V, Section 2-189 of the Pinellas County Code of Ordinances prohibits any lobbying on any award of request for qualification so as to protect the integrity of the procurement process. The County defines lobbying as “communicating, directly or indirectly, outside a duly noticed public meeting or hearing on the record” for the purpose of “encouraging the passage, defeat or modification of any item before the Board.” The pilot program’s proposal of which the County is participating in is the result of these prohibited lobbying activities directed by the City of St. Petersburg as described above.
3. Title XIX, Chapter 287, Section 057 of the Florida Statutes requires a “competitive solicitation process” for the procurement of contractual services in excess of \$35,000. Any competitive solicitation must be publicly open to all vendors. The underlying request for qualifications to this Interlocal Agreement was never publicly announced until after the \$1.4 million request was awarded to HMS Ferries flagrantly violating Florida Statute(s) including but not limited to Statute 287.057.

I plea for your Honors’ denial of an Interlocal Agreement on a fraudulently procured proposal that violates city, county, and state laws and that your Honors require the City of St. Petersburg to re-bid the request for qualifications for the pilot program so that due process may prevail. It is your duty as County Commissioners to uphold the law. It is also your duty to act in the best interest of the general public. There are resources that have gone unnoticed during this procurement process including the existing water taxi businesses already operating in Tampa Bay and an on-demand mobile application platform, Coastalyfe, that is innovating water transportation business models and empowering existing water taxi businesses with its new technology. The procurement process must be opened to the public not only to abide by the law(s), but for true competition to determine the best proposal to connect Tampa Bay via water transportation.

Thank you for your consideration. We welcome any questions or concerns that you may have.

Sincerely,

Hilary Busby
Co-Founder/Director of Legal & International Affairs
Burg Technology Firm LLC

cc:
Florida Attorney General Pam Bondi
City of St. Petersburg Mayor Rick Kriseman
City of St. Petersburg City Council Members
TBO Staff Writer Christopher O’Donnell
Times Staff Writer Kathryn Varn

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT ("Agreement") is made and entered into as of this _____ day of _____, 2016 by and between the City of St. Petersburg, Florida ("City of St. Petersburg") and Pinellas County, Florida ("Pinellas"), City of Tampa, Florida ("Tampa"), and Hillsborough County, Florida ("Hillsborough"). For purposes of this Agreement, Pinellas, Tampa and Hillsborough shall be referred to collectively as the "Participating Governmental Agencies" and the "Parties" to this Agreement shall be the City of St. Petersburg and the Participating Governmental Agencies.

RECITALS

WHEREAS, passenger ferries represent one of the most cost-effective options for providing transportation capacity and service between communities and destinations located around Tampa Bay; and

WHEREAS, passenger ferries represent a regional transportation capacity option that can be implemented faster than other options; and

WHEREAS, passenger ferries can provide an elegant and iconic connection to and between major cities and destinations around Tampa Bay and have significant potential to boost urban and environmental tourism in Tampa, St. Petersburg, Pinellas County and Hillsborough County by providing greater participation and attendance at major sporting events, museums, restaurants and special events in these areas; and

WHEREAS, the City of St. Petersburg issued a request for qualifications seeking entities qualified in establishing a pilot passenger ferry service; and

WHEREAS, HMS Ferries, Inc. ("HMS") submitted a response to the request for qualifications and, after reviewing HMS's response, the City of St. Petersburg determined that HMS was qualified to establish and operate a pilot passenger ferry service; and

WHEREAS, the City of St. Petersburg and HMS intend to enter into a license and operating agreement for HMS to manage and operate a pilot passenger ferry service between St. Petersburg and Tampa ("Pilot Ferry Service"); and

WHEREAS, the City of St. Petersburg is requesting funding from the Participating Governmental Agencies for the Pilot Ferry Service.

NOW, THEREFORE, for and in consideration of the foregoing recitals (all of which are hereby adopted as an integral part of this Agreement), the mutual promises, covenants, and conditions herein contained and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City of St. Petersburg and the Participating Governmental Agencies hereby agree as follows:

16 AUG - 8 PM 2:38
CLERK OF SUPERIOR COURT
PINELLAS COUNTY FLORIDA

1. PURPOSE

The City of St. Petersburg and the Participating Governmental Agencies desire to enter into this Agreement for the Participating Governmental Agencies to provide funding for the Pilot Ferry Service.

2. DESCRIPTION OF PILOT PROJECT

A. The Pilot Ferry Service is a pilot project to (i) determine if a ferry service can be sustained in the future for the Tampa Bay region and (ii) measure demand for commuter and non-commuter service, pricing feasibility, revenue generation, consumer preferences, marketing effectiveness and impact on vehicle use. HMS will manage and operate the Pilot Ferry Service pursuant to and in accordance with the License and Operating Agreement between the City of St. Petersburg and HMS ("License and Operating Agreement"), which License and Operating Agreement shall be consistent with the primary business points set forth in Exhibit A of this Agreement; provided, however, that the duration of the Pilot Ferry Service shall be as set forth in the License and Operating Agreement.

B. Tampa will negotiate in good faith with HMS to allow HMS to obtain necessary dockage for the Pilot Ferry Service.

3. NEGOTIATION OF LICENSE AND OPERATING AGREEMENT

The City of St. Petersburg shall be responsible for negotiating the terms and conditions of the License and Operating Agreement, provided that the City of St. Petersburg shall ensure the License and Operating Agreement requires the Participating Governmental Agencies to be named as additional insureds on all insurance policies in which the City of St. Petersburg is a named insured or an additional insured.

4. FUNDING AND WAIVER OF FEES

A. On or before August 30, 2016, each of the Participating Governmental Agencies shall pay the City of St. Petersburg three hundred fifty thousand dollars (\$350,000) for the Pilot Ferry Service. The Participating Governmental Agencies shall not be responsible for contributing any additional funds to the Pilot Ferry Service.

B. If the Pilot Ferry Service does not commence due to the fault of HMS, the City of St. Petersburg shall reimburse the Participating Governmental Entities the full amount of their funding contribution.

C. If the Pilot Ferry Service does not commence because the City of St. Petersburg does not obtain any required permits and approvals from all applicable environmental and regulatory agencies or due to a force majeure event, any of the funds paid to the City of St. Petersburg for the Pilot Ferry Service that are not expended pursuant to the License and Operating Agreement shall be reimbursed to the Participating Governmental Agencies in equal shares.

D. Once the Pilot Ferry Service commences, if any of the funds paid to the City of St. Petersburg for the Pilot Ferry Service are not expended pursuant to the License and Operating Agreement (e.g., early termination of the License and Operating Agreement or excess funds available at the end of the term of the License and Operating Agreement), the City of St. Petersburg shall reimburse the Participating Governmental Agencies equal shares of such unexpended funds.

E. Tampa shall waive all docking fees for the Pilot Ferry Service.

5. REVENUE SHARING

Pursuant to the License and Operating Agreement, the City of St. Petersburg shall receive all gross revenues, excluding third party costs, fees and selling commissions and sales taxes, generated from the Pilot Ferry Service above one hundred twenty-five thousand dollars (\$125,000) ("Revenues"). In the event that the City of St. Petersburg receives any Revenues from the Pilot Ferry Service, the Parties shall equally share such Revenues. Any Revenues due to the Participating Governmental Agencies shall be paid by the City of St. Petersburg to the Participating Governmental Agencies within thirty (30) days after the City of St. Petersburg's receipt of Revenues.

6. TERM OF AGREEMENT

This Agreement shall be effective on August 11, 2016, and shall remain in effect during the term of the License and Operating Agreement.

7. AMENDMENTS

This Agreement may be modified or amended only by a document in writing executed by the Parties with the same formality of this Agreement.

8. GOVERNING LAW

The laws of the State of Florida shall govern this Agreement.

9. SEVERABILITY

The terms and conditions of this Agreement shall be deemed to be severable. Consequently, if any clause, term, or condition hereof shall be held to be illegal or void, such determination shall not affect the validity or legality of the remaining terms and conditions, and notwithstanding any such determination, this Agreement shall continue in full force and effect, unless the particular clause, term or condition held to be illegal or void renders the balance of the Agreement impossible to perform.

10. NOTICES

Unless and to the extent otherwise provided in this Agreement, all notices, demands, requests for approvals and other communications which are required to be given by one party to another shall be in writing and shall be deemed given and delivered on the date delivered in person,

upon the expiration of five (5) days following the date mailed by registered or certified mail, postage prepaid, return receipt requested to the address provided below, or upon the date delivered by overnight courier (signature required) to the address provided below.

CITY OF ST. PETERSBURG

City of St. Petersburg
175 Fifth Street North
St. Petersburg, FL 33701
Attn: Rick Kriseman, Mayor

PINELLAS COUNTY

Pinellas County
315 Court Street
Clearwater, Florida 33756
Attn: Mark S. Woodard,
County Administrator

CITY OF TAMPA

City of Tampa
306 E. Jackson Street, 2N
Tampa, Florida 33602
Attn: Bob McDonough,
Administrator of Economic Opportunity

HILLSBOROUGH COUNTY

Hillsborough County
601 E. Kennedy Blvd., 26th Floor
Tampa, Florida 33602
Attn: Michael S. Merrill,
County Administrator

11. ENTIRE AGREEMENT

This Agreement reflects the full and complete agreement between the Parties regarding the subject matter contained herein and supersedes all prior or contemporaneous agreements (whether oral or written) between them regarding the subject matter contained herein.

12. EXECUTION

This Agreement may be signed in counterparts by the Parties hereto.

REMAINING PORTION INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above.

CITY OF ST. PETERSBURG, FLORIDA

ATTEST

By: _____
Rick Kriseman, as its Mayor

City Clerk

(SEAL)

Approved as to Form and Content

City Attorney (Designee)
280515

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above.

PINELLAS COUNTY, FLORIDA

ATTEST

By: _____
Chairman, Pinellas County Board of County Commissioners

APPROVED AS TO FORM:

Office of the County Attorney

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above.

HILLSBOROUGH COUNTY, FLORIDA

ATTEST

By: _____
Lesley "Les" Miller, Jr., Chairman,
Hillsborough County Board of County Commissioners

APPROVED AS TO FORM:

Office of the County Attorney

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above.

CITY OF TAMPA, FLORIDA

ATTEST

By: _____
Bob Buckhorn, as its Mayor

APPROVED AS TO FORM:

Office of the City Attorney

EXHIBIT A

Tampa Bay Times

WINNER OF 12 PULITZER PRIZES

St. Petersburg to Tampa ferry project raises questions of bid rigging



Kathryn Varn, Times Staff Writer

Sunday, December 27, 2015 7:29pm

ST. PETERSBURG — Three weeks after the City Council set aside \$350,000 for its share for a ferry service between St. Petersburg and Tampa — a top priority for Mayor Rick Kriseman — city officials are defending the project's bidding process from charges of favoritism.

HMS Ferries was the only company to meet the Dec. 18 deadline for proposals for the six-month pilot program, city officials said. Companies were given about three weeks to make a bid.

But two industry professionals say city officials didn't reach out to enough businesses or give them enough time to develop a reasonable proposal. They charge that officials purposely excluded other companies because HMS, a company with ties to a former Hillsborough County commissioner, sealed the deal from the beginning.

"There was no way a company like mine could've submitted a proposal within three weeks," said Charles Donadio, owner of Rhode Island Fast Ferry, a business that runs ferries to Martha's Vineyard, an island off the Massachusetts coast, and parts of Rhode Island with about 20 years of experience. "I've never seen anything like it."

Donadio's company was on a list of seven bidders the city was in contact with regarding the request for bids. Also on the list was HMS Global Maritime, the parent company of HMS Ferries, and Ed Turanchik, an attorney with the Akerman law firm and a former Hillsborough commissioner who has previously discussed the pilot program with city officials.

HMS Ferries is the same company working with Hillsborough County to establish a ferry service between south county and the MacDill Airforce Base. Turanchik is representing the company in that project.

But in his discussions with the city about the cross-bay ferry, Turanchik said he was serving as a transportation policy adviser not for HMS, but for the Tampa Bay Lightning and Strategic Property Partners LLC, a real estate development company run by Jeff Vinik, the Lightning's owner.

"We were just understanding what could be done, if something like this could work," he said. "We asked the question about it, but really it was Mayor Kriseman's initiative."

Yet a copy of HMS' proposal lists Turanchik as a potential consultant if city officials were to move forward with the plan. But he has not been involved in the process up to this point, said Greg Dronkert, president of HMS Ferries. Dronkert added that his company specializes in working with governments and has participated in about half a dozen pilot projects over the years.

"This is pretty standard stuff for us," he said. "We didn't find the timeline aggressive. It's not uncommon for things to turn quickly."

Still, Rob Smith, CEO of EarthWise Ventures, said the process is unfair. The city's request called for a business with 10 years of maritime management and operation experience, an arbitrary requirement beyond stringent U.S. Coast Guard standards that Smith said is shutting out several reputable ferry companies, including his own.

Smith's company, based in Everett, Wash., has been manufacturing boats for about a decade and operating ferries for about five years in parts of Africa.

Both Smith and Donadio said they felt the request wasn't advertised enough to ferry companies.

Donadio was particularly frustrated that he wasn't contacted for a program he feels would be a perfect fit for his business, which has a brief history in the Tampa Bay area carrying passengers to the Ocean Jewel Casino ship in the mid-2000s, he said. His company has boats available during the off-season that meet the city's requirements for a seating capacity of at least 100 passengers and a minimum speed of 25 knots.

Barbara Grilli, St. Petersburg's purchasing manager, said city officials followed standard procedure and guidelines, which don't require that they advertise the request. Employees conducted online research to find ferry companies that met the requirements they established. Grilli said the three-week response time was typical.

"On the average, proposals and bids are on the street between two and four weeks," she said.

Donadio submitted a letter requesting more time. It was denied by the city "due to the aggressive schedule of administrative activities required in advance of initiating this service," according to an email from Grilli.

"We do encourage your participation," she wrote.

Times researcher Caryn Baird contributed to this report. Contact Kathryn Varn at (727) 893-8913 or kvarn@tampabay.com. Follow @kathrynavarn.

St. Petersburg to Tampa ferry project raises questions of bid rigging 12/27/15
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Bachteler, James J

From: Vandenberg, Courtney
Sent: Tuesday, August 09, 2016 8:24 AM
To: BoardRecords
Subject: FW: [BULK] Online Customer Service Contact Us Form Result #7399432
Importance: Low

Testimony on Agenda Item 42. Mr. Bach planned to attend today's meeting, but is unable to do so due to health issues.

From: form_engine@fs30.formsite.com [mailto:form_engine@fs30.formsite.com]
Sent: Tuesday, August 09, 2016 8:15 AM
To: Justice, Charlie <cjustice@co.pinellas.fl.us>
Subject: [BULK] Online Customer Service Contact Us Form Result #7399432
Importance: Low

This information is the result of a Pinellas Online Customer Service form submission from the Pinellas County web site.

Direction of inquiry * Commissioner Janet C. Long - District 1 (2016 Vice Chairman)
Commissioner Pat Gerard- District 2
Commissioner Charlie Justice - District 3 (2016 Chairman)
Commissioner Dave Eggers- District 4
Commissioner Karen Williams Seel - District 5
Commissioner John Morroni - District 6
Commissioner Kenneth T. Welch - District 7
County Administrator

Subject * TAMPA BAY FERRY BOAT - **** BCC MEETING AUGUST 9, 2016

Message * TAMPA BAY FERRY BOAT - PINELLAS COUNTY COMMISSION HEARING – AUGUST 9. 2016

I'm Ernie Bach, a Largo resident and taxpayer in Pinellas County for 41 years and I comment on this issue because I'm certain many other county residents would appreciate my queries on the proposed Tampa Bay ferry boat which is at the end of your agenda today. While I expected to make these comments in person I cannot attend due to a medical condition so I send these comments and questions I feel are relevant and I would appreciate you asking yourselves to ensure they are discussed as you debate this issue.

As a Pinellas citizen I'm only too happy to see something occur or something in place that adds to my pride of living here but this proposal while sounding good has me seriously concerned.

At this point I'm not sure whether this is really a good thing or just another pie in the sky, sound good bit of hyperbole for Tampa Bay. Sue Carlton in the Times last week called this a "no brainer" and when I look at the negatives I am inclined to agree, this appears brainless.

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COMMISSIONERS
PINELLAS COUNTY FLORIDA

To my points:

-A primary argument in favor is that it will improve transportation and so I ask if the regular commuters across the Bay were to use the ferry every day and fill it with 149 passengers each way each trip which equals 596 passengers and even if they traveled one passenger to a car, would those 596 car trips each day across the Gandy and Howard Frankland bridges really improve transportation?

-That brings the question, what would the time schedule for these ferry trips be? Would they coincide with rush hour traffic where the difference is needed or would it be during other hours when traffic is no problem across the bridges?

-The follow-up to the improved transportation argument is that it would take cars off the road. 600 per day versus 140,000 on Howard Frankland and 40,000 on Gandy. Really??? During my activist lifetime, I ensured that when I made statements, they were viable, realistic and factual.

-Another meaningless argument in favor is to "look at the popularity of Tampa's water taxi's which ride along the channel and river". A non-point since that is a completely different venue more like the rides at Busch Garden and the tourist boat rides out of Clearwater Harbor and have nothing in common with this ferry or improving transportation.

-Cost of the ride is projected at \$10 per trip. At that price I have no doubt that this would be a successful money maker.... if it carries an almost full boat for every trip. Suppose only 50 or only 25 make the daily trips? I also have no doubt that it would be in the red from its onset.

-And I haven't even touched upon what I consider the strongest argument "against" this proposal and please - come with me on this trip.

We have to drive down to St Pete from Clearwater or Largo to the pier, 25 to 30 minutes whereas from my house in Largo it normally takes me 30-35 minutes to downtown Tampa. Then we have to park our car (I'm sure it will not be free). We have to make sure we have arrived early so we don't miss the boat and by the time we have left the St Pete dock, it is likely about 45-60 minutes up to now so we have already taken longer than our normal drive to Tampa. I've not heard how long it would take for the crossing, 25 to 30 minutes at the very least dock to dock. So now we will have to have left home an hour and a half before our usual drive across the bridge.

-And NOW, what are the transportation options in Tampa? For a concert at the Straz Center its only a short walk but for a Lightning game it's a fair hoof to the ice palace... and suppose its raining... and if its during a 90 degree day, what about the walk in the heat? And if its to go to a Tampa restaurant like the Columbia or Ybor City, the Aquarium or any one of its better upscale places, how do we get there other than the walking or a taxi, or waiting for a trolley etc etc etc, all at additional cost. Trip is getting expensive and time consuming by now isn't it?

-As Sue Carlton said in her column, this is a no-brainer but you can count me out. My brain is totally addled by this proposal and I see it as a white elephant sucking tax dollars down the drain.

Thank you.

Ernest Wm. Bach

Largo

Your Name Ernest Wm. Bach
Your Street Address 700 Starkey Rd.
**City/Unincorporated
County** Largo
Zip Code 33771
Your Phone Number 727 581 0009
Your Email Address * Largoca@aol.com