

July 28, 2017

Memorandum

**RE: St. Pete-Clearwater International Airport Landside and Parking Lot Improvements
PED No. 001546A
Bid Number: 167-0342-CP(PF)**

Background:

Bids were received by Pinellas County for this airport project on June 29, 2017. The Bid Proposal included an Additive Alternate. Pepper Contracting Services, Inc. (Pepper) was the lowest responsive Bidder with the Additive Alternate included in the amount of \$13,706,174.56.

Pepper submitted a letter dated June 30, 2017 to the County addressing the specialty aspects of the project, including the Additive Alternate.

Pinellas County issued a Recommendation of Bid Award to Pepper on July 7, 2017 (Exhibit A). This Recommendation of Bid Award was emailed to Pepper and it was published in Demand Star on July 7, 2017.

Pinellas County also forwarded the Contract Agreement to Pepper on July 7, 2017 and requested that Pepper execute it on an expedited basis. Pinellas County stated to Pepper that airport staff wanted the award to be presented to the BOCC on August 1, 2017.

Pepper promptly submitted the executed Contract Agreement on July 10, 2017. Pepper also promptly engaged its subcontractors and vendors; and its project staff to prepare for an expedited project start. In addition, Pepper began the necessary coordination of this project with the contiguous Gateway Expressway project with FDOT staff.

On July 17, 2017, ten (10) days after issuing the Recommendation of Bid Award to Pepper, Pinellas County emailed Pepper stating that it believed that Pepper had violated the County Code related to lobbying and that the project would not be awarded to Pepper as a result. On July 18, 2017, Pinellas County issued a Recommendation to reject all bids.

Discussion:

The lobbying code states:

The purpose of this prohibition is to protect the integrity of the procurement process by shielding it from undue influence prior to the contract award, or the competitive selection process is otherwise concluded.

However, nothing herein shall prohibit a prospective bidder/proposer/protestor from contacting the purchasing department or the county attorney's office to address situations such as clarification and/or questions related to the procurement process.

Pepper did not violate the lobbying code for the following reasons:

1. The code provides that it is appropriate for a bidder/proposer/protestor to contact the purchasing department or the county attorney's office at any point during the procurement process.
2. There is a strong precedent for Pepper to conclude that it is appropriate to have open communication with the purchasing department about key aspects of the contract prior to the award.

Pepper contacted the purchasing department in advance of the contract award on a recent Pinellas County project (2016-2018 Countywide Improvements). A meeting with key county staff to discuss and review the project was authorized and held on January 13, 2016. The project pay items, work orders and measurement and payment structure were discussed at the meeting and Pepper was provided a copy of the bid tabulation.

This meeting and open discussions were in advance of that project award and were authorized by Mr. Lauro. Pepper was advised the pre-award communications on this recent Countywide Improvements recent project were appropriate (see attached Exhibit B).

3. On this airport project, Mr. Lauro communicated to Pepper that it was not until July 17, 2017 that he read Pepper's June 30, 2017 letter (Exhibit C). This was ten (10) days after county staff had already issued the Recommendation of Award to Pepper.

So, clearly, staff's Recommendation of Award to Pepper was not influenced by Pepper's June 30, 2017 letter.

There cannot be a violation of the lobbying code in this instance, as Pepper's June 30, 2017 had not even been considered when the Recommendation of Award was issued and published on Demand Star on July 7, 2017.

4. Further, Pepper's June 30, 2017 letter was appropriately written to address the following key aspects of this project in advance of the award:
 - a. This airport project is to be built in conjunction with an adjacent FDOT Gateway Expressway project and Pepper has firsthand knowledge and experience with this project and the FDOT staff.
 - b. The Additive Alternate (digital sign).
 - c. The Allowance pay items and their specialty nature.
 - d. Pepper's comparable project experience performing the same specialty scopes (ITS, toll plazas, security and gate components and canopies).
 - e. Pepper's 100+ FDOT CPPR Score and perfect Pinellas County score on a recent project at this same airport.

Pepper submitted its June 30, 2017 letter to provide clarification to the County of its excellent experience in each of these key aspects of the project and its A+ track record.

Pepper respectfully points out this background information was submitted for the benefit of Pinellas County. This has become a common practice in the industry, particularly, with the increase in Design-Build and CM projects. Public Owners are increasingly focused on the track record and comparable project experience of the Bidder.

So, submitting this type of information to the county purchasing department should not be considered lobbying; especially on a specialty project at the county's airport. This type of information should be considered appropriate, particularly when submitted in an open letter to the Purchasing Director.

Summary

Pinellas County should conclude that the July 7, 2017 staff Recommendation of Bid Award to Pepper was issued appropriately.

**BOARD OF COUNTY
COMMISSIONERS**

EXHIBIT "A"



**Joseph Lauro, CPPO/PPPB
Director**

DATE: July 7, 2017

TIME POSTED: 1:20 PM

PROCUREMENT ANALYST: Patti Fontaine

SUBJECT: Recommendation of Bid Award

Bid No.: 167-0342-CP(PF)

Bid Title: St. Pete-Clearwater International Airport Landside and Parking
Lot Improvements (PID #001546A)

Pinellas County staff recommends award to Pepper Contracting Services, Inc. in the amount of \$13,706,174.56.

PLEASE ADDRESS REPLY TO:
400 South Ft. Harrison, Sixth Floor
Clearwater, Florida 33756
Phone: (727) 464-3311
FAX: (727) 464-3925

Website: www.pinellascounty.org/purchase



Doug Ebbers

From: Doug Ebbers
Sent: Thursday, January 14, 2016 11:43 AM
To: Fernandez, Ivan J; Becotte, Kevin; Giuliani, Paul A
Cc: Terry Cradick; Jason Dare; Celeste, Merry E
Subject: RE: FY 2016 - 2018 Countywide Improvements

Ivan:

Thank you!

Doug J. Ebbers, Ex. VP



8920 Asphalt Ave. Tampa, FL 33614

p: 813.868.7719 | f: 813.868.7718
m: 813.267.0346

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From: Fernandez, Ivan J [mailto:ifernand@co.pinellas.fl.us]
Sent: Wednesday, January 13, 2016 1:18 PM
To: Doug Ebbers <doug_e@peppercontracting.com>; Becotte, Kevin <kbecotte@co.pinellas.fl.us>; Giuliani, Paul A <pgiuliani@co.pinellas.fl.us>
Cc: Terry Cradick <terry_o@peppercontracting.com>; Jason Dare <JasonD@peppercontracting.com>; Celeste, Merry E <mceleste@co.pinellas.fl.us>
Subject: RE: FY 2016 - 2018 Countywide Improvements

Joe Laufo (purchasing Dept) confirmed it was OK to send you the attached spreadsheet.

Ivan Fernandez, P.E., Planning & Design Division Manager
Engineering and Technical Support, Pinellas County
14 S. Ft Harrison Ave., Clearwater, FL 33756
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ifernandez@pinellascounty.org

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From: Doug Ebbers [mailto:doug_e@peppercontracting.com]
Sent: Wednesday, January 13, 2016 1:10 PM

To: Becotte, Kevin; Fernandez, Ivan J; Giuliani, Paul A
Cc: Terry Cradick; Jason Dare
Subject: FY 2016 - 2018 Countywide Improvements

Kevin/Ivan/Paul:

I sincerely appreciate the time together this morning. It was a very constructive discussion. It certainly helps us appreciate your goals for this project and the other topics we covered. As discussed, Pepper will proceed with executing the contract, bonds and insurance and submit them to David Fechter in advance of the BOCC award scheduled for their February 9th meeting.

Attached is a copy of the General Conditions that describes a 30 day period before the County releases bid information. Since it has been over 30 days, please provide Pepper a copy of the County's bid tabulation.

We sincerely look forward to making this a successful project and providing excellent service to Pinellas County.

Doug J. Ebbers, Ex. VP



p: 813.868.7719 | f: 813.868.7718
m: 813.267.0346

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Doug Ebbers

From: Lauro, Joseph <jlauro@co.pinellas.fl.us>
Sent: Tuesday, July 25, 2017 8:32 AM
To: Doug Ebbers
Cc: Patel, Brijesh
Subject: Letter received 7/24/17
Attachments: July 24 Letter from Pepper Contracting Services.pdf; June 30 Letter from Pepper Contracting.pdf; Lobbying Code.pdf

Dear Mr. Ebbers

I am in receipt of your letter dated 7/24/17 concerning the rejection of your firm's bid due to lobbying. After review of your letter I offer to you the following response:

- The letter dated June 30, 2017 was placed in the bid file. I did not view that letter until I sent you an email on July 17, 2017 acknowledging the letter and confirming that it was in fact an attempt to lobby the award of this contract to your firm. The lobbying code does provide for clarification and/or questions regarding the procurement process. Your letter dated June 30, 2017 was sent after the conclusion of the procurement process and was not an attempt to clarify the procurement process (see attached).
- What was published on Demand Star was simply the total amounts of the bids received, the same amounts that are **publically** read at a bid opening.
- While the item published on Demand Star recommended award to Pepper Contracting, once the June 30th letter was discovered, I had no choice but to reject your bid as per County Code
- The County Code that pertains to lobbying states that lobbying of all county employees is prohibited; that would include the Director of Purchasing.

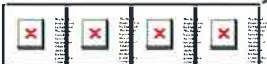
I attached a copy of the County Lobbying Code for your reference

In my opinion, the bid process has been compromised and all bids pertaining to this project will be rejected and re-solicited with revised requirements. I invite Pepper Contracting to participate in the re-solicitation of this project.

Sincerely

Joe Lauro CPPO/CPPB
Director of Purchasing
Pinellas County Board of County Commissioners
400 South Forth Harrison Ave
Annex Building 6th Floor
Clearwater, FL 33756
Phone (727) 464-4710
Fax (727) 464-5531
jlauro@pinellascounty.org

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