

# BOARD OF COUNTY COMMISSIONERS



June 4, 2024

Mr. Joseph Goldstein  
Shutts & Bowen LLP  
[jgoldstein@shutts.com](mailto:jgoldstein@shutts.com)

***Subject: Response to Appeal of Denial of Protest of RFP 2024020 – Solid Waste and Recyclables Collection Services***

Dear Mr. Goldstein:

We are in receipt of your firm's May 30, 2024 appeal to the denial of Coastal Waste and Recycling's protest of the subject request for proposals ("RFP"). After review, I agree my calculation of the deadline for receipt of the protest was incorrect, and therefore the denial of Coastal's protest on the grounds it was not timely was not appropriate.

Based on the determination that your appeal should be upheld, I have reviewed the protest submitted on May 22, 2024. After review, Coastal's protest is denied.

**Background**

Five proposals were independently reviewed and scored by a selection committee on the technical portions of the proposal, with point allocations for pricing calculated using a formula provided in the RFP. A total score per proposal, per service option was developed by each committee member, who then listed the proposals by service option in a rank order, with the proposal having the most points ranked as the number one. An initial ranking meeting was held, during which each committee member revealed their rank order of proposals and service options. Proposals from Waste Management and Coastal were tied by rank order for Service Option 4 for second, so each committee member read their total point score for the two tied proposals, with Waste Management having the higher number of total points, and assigned the ranking of second.

The committee determined sufficient information was not received, and requests for clarification were submitted to all five firms. A second ranking meeting was held on April 1, 2024, after receipt of the clarification responses, with committee members asked to identify any changes to their rank order of firms. Two committee members made changes to their rank order, which resulted in a tie for second between Waste Management and Coastal for Service Option 3. After discussions, a committee member changed his rank order of firms to break the tie, resulting in Waste Management receiving the rank of two.

The Board of County Commissioners directed negotiations with the two top ranked firms for Service Options #3 and #4 (FCC Environmental and Waste Management) on April 24, 2024.

***Office of Management and Budget • Purchasing Division***  
1800 27<sup>th</sup> Street, Vero Beach, Florida 32960 • (772) 226-1416  
E-mail: [purchasing@indianriver.gov](mailto:purchasing@indianriver.gov)

Your protest asserts the RFP reserved a second committee meeting for interviews, but the meeting instead was used “to answer written questions.” Your protest states “such a meeting is not mentioned nor authorized by the terms of the RFP” and therefore was improper.

Your protest also claims the committee improperly broke the tie for second during the second committee meeting, because total points were not utilized. You also protest that undue influence was used to persuade a committee member to modify his ranking to break the tie.

Finally, your protest asserts Coastal was “improperly excluded from BAFO Round” because the committee broke the tie for second.

Your protest requests the recommendation of award be rescinded and either a new BAFO be issued including Coastal, or “such other relief deemed just and equitable.”

### **Basis for Decision**

The assertion that the second committee meeting was not authorized is incorrect. The Method of Selection provided in the RFP directs that the Committee of the whole will develop the ranking of firms, but does not detail the number of meetings that will or can be held. Additionally, schedules provided in the RFP, and addendum 9 with events were identified as tentative. Finally, the deadline to protest events of the second committee meeting was April 6, 2024, therefore this protest is not timely.

The claim that points were required to be used to break the tie during the second committee meeting is incorrect. There is no requirement in the purchasing manual or the RFP for re-scoring via the original points. The RFP directs the committee to develop a “combined ranking order of all Submittals meeting minimum qualifications” (initial ranking). Total points received by each firm from all committee members is used to break a tie only in the first combined ranking order, with “the firm with the highest number of points...awarded the higher ranking position. The committee may discuss the rankings and their reasons behind them, and each member may modify their **ranking** [emphasis added] of firms accordingly until the committee is satisfied with the rankings.” Therefore, the RFP and Purchasing Manual do not require scores to break future ties, only modification to ranking.

Your statement that one of the committee members stated “he preferred Coastal Waste & Recycling over WM because Coastal Waste & Recycling presented a more affordable price” is inaccurate. The committee member did not state a preference for Coastal, but indicated his initial ranking of Coastal above Waste Management “was because of the price proposals, primarily.” He went on to state he thought Waste Management overall and consistently had submitted a better proposal overall than Coastal. As reflected in your protest, these comments were made prior to the discussion you allege to be attempted undue influence. Finally, the deadline to protest events of the second committee meeting was April 6, 2024, therefore this protest is not timely.

Your protest that the tie should not have been broken conflicts with the Method of Selection provided in the RFP, which states “the Committee may discuss the rankings and their reasons behind them, and each member may modify their ranking of firms accordingly until the

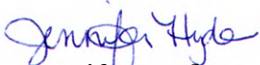
Committee is satisfied with the rankings.” Additionally, the deadline to protest events of the second committee meeting was April 6, 2024, and the deadline to protest staff’s recommendation that the Board authorize negotiations with only FCC and Waste Management was April 24, 2024, five days after the agenda for that meeting was published (April 19, 2024), therefore this protest is not timely.

**Conclusion**

Should you disagree with my denial of your protest, you may appeal to our Board of County Commissioners. To appeal, a written notice of your intent to appeal must be submitted to me within three business days of receipt of this memo. I will submit, and the Board will consider, the appeal with reasonable promptness.

Please feel free to contact me at (772) 226-1575 or by email at [jhyde@indianriver.gov](mailto:jhyde@indianriver.gov) if you have any questions.

Sincerely,



Jennifer Hyde, NIGP-CPP, CPPO  
Purchasing Manager

Encl: Appeal of Denial of Coastal Formal Protest by Coastal

Cc:

Mr. John Casagrande, Coastal Waste & Recycling, [jcasagrande@coastalwasteinc.com](mailto:jcasagrande@coastalwasteinc.com)  
Waste Management, Inc. of Florida, Ms. Debbie Perez, [dperez@wm.com](mailto:dperez@wm.com)  
Waste Pro of Florida Inc., Mr. Kenneth Skaggs, [kskaggs@wasteprousa.com](mailto:kskaggs@wasteprousa.com)  
Republic Services, Mr. Fulton Smith, [fsmith@republicservices.com](mailto:fsmith@republicservices.com)  
FCC Environmental, Mr. Charles Merkley, [Charles.merkley@fccenvironmental.com](mailto:Charles.merkley@fccenvironmental.com)



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EMAIL JGoldstein@shutts.com

May 30, 2024

VIA EMAIL – [JHYDE@IRCGOV.COM](mailto:JHYDE@IRCGOV.COM)

Jennifer Hyde, NIGP-CPP, CPPO  
Purchasing Manager  
Indian River County Purchasing Division  
1800 27<sup>th</sup> Street  
Vero Beach FL 32960

**Re: RFP #2024020, Solid Waste and Recyclables Collection Services  
Appeal of County's Denial of Coastal Waste & Recycling, Inc.'s Formal Bid  
Protest of Recommendation for Franchise Award**

Dear Ms. Hyde:

Shutts & Bowen LLP represents Coastal Waste & Recycling, Inc. ("Coastal Waste & Recycling") regarding Request for Proposal 2024020, Recommendation for Franchise Award for Solid Waste and Recyclables Collection Services ("Recommendation for Award"). The Indian River County Purchasing Manager submitted the County's response to Coastal Waste & Recycling's Formal Bid Protest on May 24, 2024. Coastal Waste & Recycling timely submits this notice of intent to appeal to the Purchasing Manager and requests that this appeal be promptly heard by the Board of County Commissioners.

**I. Factual Background**

On Monday, May 20, 2024, at 10:15 PM, Coastal Waste & Recycling submitted its Notice of Intent to Timely File Protest to Purchasing Manager Jennifer Hyde, NIGP-CPP, copying County Attorney William K. DeBaal, Deputy County Attorney Susan Prado, and Commissioner Susan Adams attached hereto as **Exhibit A**. Ms. Hyde confirmed receipt of the notice at 4:03 AM on Tuesday, May 21, 2024. *See* Email Correspondence, attached hereto as **Exhibit B**. Subsequently, on Wednesday, May 22, 2024, at 10:56 PM, Coastal Waste & Recycling submitted a timely formal bid protest to object to the Recommendation of Award approved by the Board of County Commissioners ("Commission") at its May 21, 2024, Commission Meeting. *See* Timely Submission of Protest, attached hereto as **Exhibit C**. Pursuant to the Indian River County Board of County Commissioners ("County or Board of County Commissioners") Purchasing Manual, Coastal Waste & Recycling's protest was filed within five (5) calendar days from May 18, 2024, which is the date that Coastal Waste & Recycling knew or should have known the facts giving rise to its protest because it is when the Commission published the May 21, 2024, Commission Meeting agenda, which identified that the Commission would be considering, as Item 15.B.5, the

Recommendation for Franchise Award for Solid Waste and Recyclables Collection Services (RFP#2024020).

On Friday, May 24, 2024, the County's Purchasing Manager provided Coastal Waste & Recycling with the County's response, denying Coastal Waste & Recycling's formal bid protest. As a basis for the County's denial, it was alleged that Coastal Waste & Recycling's protest was not timely because rather than giving Coastal Waste & Recycling five calendar days to file its protest, the Purchasing Manager only gave Coastal Waste & Recycling 120 hours (5 x 24 hours).

## **II. Summary of Argument**

Coastal Waste & Recycling disagrees with the County's basis for decision that Coastal Waste & Recycling's formal bid protest was not timely filed. In fact, Coastal Waste & Recycling's timely filing of its protest complies with the County's Purchasing Manual as well as state and federal rules of practice governing the computation of time.<sup>1</sup>

## **III. Legal Argument**

### **A. Coastal Waste & Recycling's Formal Bid Protest Was Timely.**

1. ***Coastal Waste & Recycling's Submission of its Formal Bid Protest Complies with the Indian River County's Purchasing Manual and Code of Ordinances.***

Pursuant to the protest procedure outlined in the County's Purchasing Manual:

Any actual or prospective bidder or proposer who is aggrieved in connection with a competitive selection process may protest to the Purchasing Manager. The protest shall be submitted to the Purchasing Manager in writing **within five (5) calendar days after** the bidder or proposer knows or should have known of the facts giving rise to the protest.

Protest Procedure, Section 7.1, County Purchasing Manual. (emphasis added.)

Coastal Waste & Recycling, as an aggrieved actual proposer of RFP#2024020, submitted its formal bid protest in writing to the Purchasing Manager on Wednesday, May 22, 2024, within five (5) calendar days after the agenda for the Recommendation of Award for RFP#2024020 to the

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<sup>1</sup> In the alternative, the County should have treated Coastal's May 20, 2024, notice of intent to protest as a timely protest in that it summarized its protest by alleging "the County failed to secure fair competition and did not afford an equal advantage to all responsive bidders when it arbitrarily and capriciously denied Coastal Waste the ability to submit a best and final offer." See Exhibit A.

Board of County Commissioners for the May 21, 2024, Commission Meeting, was posted on the County's website.

Neither Section 7 nor any other sections of the County's Purchasing Manual state any period of time for submissions in hours.<sup>2</sup> Rather, the only reference to the submission of a bid protest is within Section 7.1, as detailed above, which specifies a submission time period quantified in *days*. Furthermore, the County's Purchasing Manual and Code of Ordinances are silent regarding the computation of time and provides no guidelines for any such rule or process.

The Code of Indian River County (the "Code") support's Coastal Waste & Recycling's position as to the counting of days versus the Purchasing Manager's counting of hours. The Code states that "In computing any period of time in the Code the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which case the period shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday." Code, § 100.02. Thus, as the County published the agenda for the May 21, 2024 Board of County Commissioners meeting, including staff report, on the County's website on Friday, May 17, at 8:44 a.m., the fifth calendar day following the posting would be "the end of the day" five days later, i.e., Wednesday, May 22, 2024, before midnight.

2. ***Coastal Waste & Recycling's Submission of its Formal Bid Protest Complies with State and Federal Rules of Procedure and Practice for Computing Time.***

Coastal Waste & Recycling's position is consistent with the County Code, and with relevant state and federal rules, which the County's Purchasing Manual states should be considered - "[p]rocurement is regulated by this manual, the Indian River County Code and, to the extent applicable, state and federal statutes." Section 1.2, County Purchasing Manual.

The County Code is consistent with Rule 2.514 of the Florida Rules of Judicial Administration, which provides for the computation of "time periods specified in any rule of procedure, local rule, court order, or statute that does not specify a method of computing time," provides that "[w]hen the period is stated in days or longer unit of time" (1) the day of the event that triggers the period should be excluded (2) every day, including intermediate Saturdays, Sundays, and legal holidays should be counted, and (3) the last day of the period should be included, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is

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<sup>2</sup> In its response to Coastal Waste & Recycling's formal bid protest, the County's Purchasing Manager stated: Your protest is not timely. The agenda for the May 21, 2024 Board of County Commissioners meeting, including the staff report, was published to the County's website on Friday, May 17, 2024 at 8:44 a.m. The deadline to file a protest against the recommendation of award to Waste Management expired at 8:43 a.m., Wednesday, May 22, 2024.

Basis for Decision Paragraph of County's Response. (emphasis added.)

not a Saturday, Sunday, or legal holiday and does not fall within any period of time extended through an order of the chief justice. Fla. R. Gen. Prac. Jud. Admin. Rule 2.514.

Rule 2.514 further provides that the “**last day ends** for electronic filing or for service by any means, **at midnight.**” Fla. R. Gen. Prac. Jud. Admin. 2.514(a)(4)(A) (emphasis added). Therefore, the last day of the period, which should be included in the computation of time here, May 22, 2024, for electronic filing or service to the County, ended at midnight. Coastal Waste & Recycling submitted its formal bid protest electronically before midnight, at 10:56 PM. *See Exhibit B.* Therefore, the last day had not yet ended when Coastal Waste & Recycling submitted its protest, thus its submission was timely. *See also* Fed. R. Civ. Pro. Rule 6(a)(1) (period stated in days) v. (a)(2) (period stated in hours).<sup>3</sup>

Here, the date that triggers the period for submission of a protest to the County is May 17, 2024, the day the agenda for the May 21, 2024, Board of County Commissioners meeting, including the staff report, was published to the County’s website. As provided by Rule 2.514, May 17, 2024, should be excluded. Per Rule 2.514, every day, including intermediate Saturdays, Sundays, and legal holidays should be counted, thus, May 18, 2024, was Day 1; May 19, 2024, was Day 2; May 20, 2024, was Day 3; May 21, 2024, was Day 4; and May 22, 2024, up to 11:59 p.m., was Day 5. Coastal Waste & Recycling filed its written bid protest on Day 5, before May 22, 2024, 11:59 p.m., and thus its filing was timely.

a. ***Distinction Between Periods Stated in Days and Periods Stated in Hours.***

As evidenced in Fla. R. Gen. Prac. Jud. Admin. Rule 2.514 and Fed. R. Pro. Rule 6, a clear distinction is made between periods stated in days and periods stated in hours. This distinction sheds light on the logical premise that periods of time should be clearly delineated since there is more than one way to compute time. Consequently, the County’s Purchasing Manual’s mandate for protests to be submitted within five (5) days can only be interpreted to mean that the submission time period for protests is computed in days, and not hours. Furthermore, as detailed above under Argument (A)(1), neither the County’s Purchasing Manual, the County Code, nor its Code of Ordinances mentions any period of time for submissions in hours. Therefore, the County’s basis

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<sup>3</sup> “Computing Time. The following rules apply in computing any time period specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time. (1) Period Stated in Days or a Longer Unit. When the period is stated in days or a longer unit of time: (A) exclude the day of the event that triggers the period; (B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and (C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday. (2) Period Stated in Hours. When the period is stated in hours: (A) begin counting immediately on the occurrence of the event that triggers the period; (B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and (C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.” *Id.*



for denying Coastal Waste & Recycling's formal bid protest and its position that Coastal Waste & Recycling's formal bid protest was due at a time certain on May 22, 2024, well before midnight, is erroneous.

**IV. Conclusions and Request for Relief**

The County's denial of Coastal Waste & Recycling's formal bid protest was erroneous and should be overturned by the Board of County Commissioners. Therefore, as a matter of law and public policy, the Board of County Commissioners should use its discretion to affirm Coastal Waste & Recycling's Appeal of the County's denial of its protest as untimely and provide such other relief deemed just and equitable.

Sincerely,

Shutts & Bowen LLP

A handwritten signature in blue ink that reads "Joseph M. Goldstein". The signature is written in a cursive, flowing style.

Joseph M. Goldstein

cc: William K. DeBaal, County Attorney ([bdebaal@indianriver.gov](mailto:bdebaal@indianriver.gov))  
Susan Prado, Deputy County Attorney ([sprado@ircgov.com](mailto:sprado@ircgov.com))  
Commissioner Susan Adams ([sadams@ircgov.com](mailto:sadams@ircgov.com))  
Matthew Cowan, General Counsel ([mcowan@coastalwasteinc.com](mailto:mcowan@coastalwasteinc.com))

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# **EXHIBIT A**



May 20, 2024

*Via email: [jhyde@ircgov.com](mailto:jhyde@ircgov.com)*

Jennifer Hyde, NIGP-CPP, CPPO  
Purchasing Manager  
Indian River County Purchasing Division  
1800 27th Street  
Vero Beach, FL 32960

**Re: RFP#2024020  
Coastal Waste & Recycling, Inc.  
Notice of Intent to Timely File Protest**

Dear Ms. Hyde:

Please allow this letter to serve as notice by Coastal Waste & Recycling, Inc. ("Coastal Waste") that it intends to file a protest in connection with Request for Proposal Number 2024020 ("RFP#2024020"), pursuant to the Indian River County Board of County Commissioners Purchasing Manual and Section III of RFP#2024020.

Coastal Waste intends to file this protest on Wednesday, May 22<sup>nd</sup>. This filing shall be within five (5) calendar days from Friday, May 18<sup>th</sup>, which is the date that Indian River County (the "County") released the Board of County Commissioners ("Commissioners") agenda for the May 21<sup>st</sup> meeting. The agenda identified that the Commissioners would be considering, as Item 15.B.5, the Recommendation for Franchise Award for Solid Waste and Recyclables Collection Services (RFP#2024020).

Coastal Waste intends to demonstrate through a timely filed protest that the County failed to secure fair competition and did not afford an equal advantage to all responsive bidders when it arbitrarily and capriciously denied Coastal Waste the ability to submit a best and final offer.

Accordingly, Coastal Waste respectfully requests that the Commissioners remove Item 15.B.5 from the May 21<sup>st</sup> agenda in order to allow you as Purchasing Manager to investigate the basis of the protest per Section 7.1 of the Purchasing Manual and to ensure that Coastal Waste is not further harmed by the improper procurement procedures utilized in RFP#2024020.

Thank you for your time and consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "MC", followed by a horizontal line.

Matthew Cowan  
General Counsel

cc: William K. DeBraul, County Attorney ([bdebraal@indianriver.gov](mailto:bdebraal@indianriver.gov))  
Susan Prado, Deputy County Attorney ([sprado@ircgov.com](mailto:sprado@ircgov.com))  
Commissioner Susan Adams ([sadams@ircgov.com](mailto:sadams@ircgov.com))

# **EXHIBIT B**

**From:** Jennifer Hyde <jhyde@indianriver.gov>

**Sent:** Tuesday, May 21, 2024 4:03 AM

**To:** Matthew Cowan <mcowan@coastalwasteinc.com>

**Cc:** Bill Debraal <bdebraal@indianriver.gov>; Susan J. Prado <sprado@indianriver.gov>; Susan Adams <sadams@indianriver.gov>

**Subject:** RE: RFP#2024020 - Coastal Waste & Recycling, Inc. Notice of Intent to Timely File Protest

You don't often get email from jhyde@indianriver.gov. [Learn why this is important](#)

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Mr. Cowan,  
Your letter has been received.

Jennifer L. Hyde, NIGP-CPP, CPPO  
Purchasing Manager  
Indian River County, FL  
1800 27<sup>th</sup> Street, Vero Beach, FL 32960  
(772) 226-1575

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**From:** Matthew Cowan <mcowan@coastalwasteinc.com>

**Sent:** Monday, May 20, 2024 10:15 PM

**To:** Jennifer Hyde <jhyde@indianriver.gov>

**Cc:** Bill Debraal <bdebraal@indianriver.gov>; Susan J. Prado <sprado@indianriver.gov>; Susan Adams <sadams@indianriver.gov>

**Subject:** RFP#2024020 - Coastal Waste & Recycling, Inc. Notice of Intent to Timely File Protest

**CAUTION:** This message is from an external source. Please use caution when opening attachments or clicking links.

Please see attached. Thank you.

**Matthew Cowan**  
General Counsel



**P:** 954-947-4000

**M:** 305-803-1890

[www.coastalwasteinc.com](http://www.coastalwasteinc.com)

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# **EXHIBIT C**



JOSEPH M. GOLDSTEIN  
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DIRECT (954) 847-3837  
EMAIL JGoldstein@shutts.com

May 22, 2024

VIA EMAIL – [JHYDE@IRCGOV.COM](mailto:JHYDE@IRCGOV.COM)

Jennifer Hyde, NIGP-CPP, CPPO  
Purchasing Manager  
Indian River County Purchasing Division  
1800 27<sup>th</sup> Street  
Vero Beach FL 32960

**Re: RFP #2024020, Solid Waste and Recyclables Collection Services  
Formal Bid Protest of Recommendation for Franchise Award**

Dear Ms. Hyde:

Shutts & Bowen LLP represents Coastal Waste & Recycling, Inc. (“Coastal Waste & Recycling”) regarding Request for Proposal 2024020, Recommendation for Franchise Award for Solid Waste and Recyclables Collection Services (“Recommendation for Award”). Coastal Waste & Recycling submits this timely formal bid protest to object to the Recommendation of Award approved by the Board of County Commissioners (“Commission”) at its May 21, 2024 Commission Meeting. This protest is being filed within five (5) calendar days from May 18, 2024, which is the date that Coastal Waste & Recycling knew or should have known the facts giving rise to this protest<sup>1</sup> because it is when the Commission published the May 21<sup>st</sup> Commission Meeting agenda, which identified that the Commission would be considering, as Item 15.B.5, the Recommendation for Franchise Award for Solid Waste and Recyclables Collection Services (RFP#2024020). As grounds for its protest, Coastal Waste & Recycling states as follows:

**I. Summary of Argument**

On November 17, 2023, the County posted RFP 2024020, Solid Waste and Recyclables Collection Services (“RFP”), requesting the submittal of proposals from vendors interested in providing solid waste and recyclables collection services. On March 8, 2024, the County held its initial Selection Committee (“Committee”) meeting ranking the five proposers who responded to the RFP, Coastal Waste & Recycling, FCC Environmental Services Florida, LLC, Waste Pro of Florida, Inc., Republic Services of Florida, Limited Partnership, and Waste Management Inc., of Florida (“WM”).

On April 1, 2024, the Committee held yet another meeting, the purpose of which was apparently to allow the Committee to re-rank the proposers, despite it already having fully evaluated each

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<sup>1</sup> On May 20, 2024, Coastal Waste & Recycling submitted a notice of intent to timely protest to Purchasing Manager Jennifer Hyde, NIGP-CPP, copying County Attorney William K. DeBraul, Deputy County Attorney Susan Prado, and Commissioner Susan Adams. Ms. Hyde confirmed receipt of the notice at 4:04 am on Tuesday, May 21<sup>st</sup>.



proposer's responses. On May 21, 2024, the Commission voted to approve the Recommendation of Award after the Committee permitted two of the five proposers to submit a Best and Final Offer ("BAFO").

The Recommendation of Award to WM is improper, arbitrary and capricious because the Committee failed to follow the County's Purchasing Manual and the RFP's instructions, which led to the undue influence of a Committee member and the improper and unfair second ranking of vendors that resulted in Coastal Waste & Recycling being precluded from submitting a BAFO.

## **II. Legal Argument**

### **A. Committee Members Did Not Follow the Award Process as Advertised in Bid Documents and the County's Purchasing Manual**

Under Florida procurement law, selection committee members are not allowed to complete their scoring randomly or haphazardly; rather, they must follow the award process advertised in the solicitation documents and provided in the County's Purchasing Manual. *See City of Sweetwater v. Solo Constr. Corp.*, 823 So. 2d 798, 802 (Fla. 3d DCA 2002) (noting that rather than following the award process advertised in the bid documents or provided in the City Code, the award process for the project seemed to be improvised as it went along and was based upon the fundamentally flawed logic that the project could be awarded otherwise).

#### **1. *The County Failed to Follow the RFP's Instruction as to Second Meeting.***

Per the RFP, the second meeting of the solicitation process is reserved for interviewing vendors. As made evident through this procurement's documentation, the second meeting of the evaluation process was not used for interviews but was rather, and contrary to the RFP, a meeting to answer written questions. Such a meeting is not mentioned nor authorized by the terms of the RFP, and as such, the County's failure to adhere to the instructions of the RFP was improper.

#### **2. *The Selection Committee Improperly Broke Tie Between Vendors.***

Section 5.3 of the County's Purchasing Manual provides that:

In the event of a tie, the ranking of the tied firms **shall be determined by a comparison of the total number of points received by each firm for all criteria from all committee members**. The firm with the highest number of points will be awarded the higher ranking position. The Committee may discuss the rankings and their reasons behind them, and each member may modify their ranking of firms accordingly.

Indian River County Purchasing Manual, Section 5.3 (emphasis added.)

The Selection Committee failed to follow the process outlined in the County's Purchasing Manual. Per the Purchasing Manual, to break the tie between Coastal Waste & Recycling and WM, the Committee was mandated to compare the total number of points received by each firm for all criteria from all committee members. However, the Committee once again failed to adhere to the directives of the County's Purchasing Manual. Instead of following the Purchasing Manual and determining by a comparison of the total number of points received by each firm for all criteria from all Committee members in the initial ranking, Himanshu H. Mehta, PE, Managing Director of the Solid Waste Disposal District, and another member of the County's procurement team requested that a member of the Committee change their scores which rearranged the final rankings to the detriment of Coastal Waste & Recycling.

Such a departure from the County's Purchasing Manual is arbitrary, capricious, and contrary to the County's procedures.

a. *A Committee Member Was Unduly Influenced to Change Score.*

Although the Committee's departure from the County's procurement procedures alone is enough to warrant nullifying the County's Recommendation to Award, even if the County is to uphold the process the Committee followed on that ground, this solicitation process should not stand because a Committee member was unduly influenced to change their score.

During the discussion process soliciting new scores from Committee members after a tie was announced between Coastal Waste & Recycling and WM, multiple Committee members indicated that they had no changes to their scores. However, another Committee member further elaborated by stating that he was new to the procurement department and did not have much experience. That Committee member went on to share that he preferred Coastal Waste & Recycling over WM because Coastal Waste & Recycling presented a more affordable price. Upon disclosing this information, Himanshu H. Mehta and another member of the procurement team informed the Committee member that he should not let pricing guide his decision because the Committee can always ask WM to reduce its price. Such instructions to the Committee member were improper and contrary to the terms of the Purchasing Manual, RFP, and the fundamental fairness of the procurement process.

Moreover, the logic behind the instructions from the procurement team to the Committee member was deeply flawed, improper, and seems to evidence impermissible favoritism since no one knew whether Coastal Waste & Recycling could have further reduced its pricing and still be lower than WM's pricing.

Arguendo, even if the County finds that the Committee's original departure from the procedures outlined in the Purchasing Manual was immaterial (which it is not), it would be unsound to conclude that the undue influence of a member on the Committee is not improper and contrary to the fundamental fairness required in procurement procedures in the State of Florida. *See Emerald*

*Corr. Mgmt. v. Bay Cnty. Bd. of Cnty. Cmmr's*, 955 So. 2d 647, 652-54 (Fla. 1st DCA 2007) (Allegations of impermissible favoritism were sufficient to state a cause of action challenging county's award of contract to another contractor in Request for Proposals process.)

**B. Coastal Waste & Recycling Was Improperly Excluded from BAFO Round**

The Committee's initial scores after the second meeting, when Coastal Waste & Recycling and WM had tied scores, should have been sent directly to the Solid Waste Disposal District Board of Commissioners ("Board") for the Board to make its final decision. It is unreasonable not to provide the Board with the initial scores given the tie between the vendors. It is even more unreasonable to uphold the process when contrary to the County's Purchasing Manual, the Committee improperly allowed the changing of scores based on flawed or no reasoning that resulted in the unfair second rankings.

**III. Conclusions and Request For Relief**

Local governmental agencies must evaluate proposals consistent with the terms of the solicitation. "While a public authority has wide discretion in award of contracts for public works on competitive bids, such discretion must be exercised based upon clearly defined criteria, and may not be exercised arbitrarily or capriciously." *City of Sweetwater v. Solo Const. Corp.*, 823 So. 2d 798, 802 (Fla. 3d DCA 2002).

To award this contract to WM is contrary to the terms of this solicitation and the fundamental fairness clearly established in Florida law. Furthermore, this solicitation provided clearly defined mandates that the County must follow in executing the procurement process, but as detailed above, the County was outside the parameters of those directives.

Therefore, as a matter of law and public policy, the County should use the broad discretion afforded to it under Florida law to rescind the Recommendation of Award and either direct a new BAFO that includes Coastal Waste & Recycling or provide such other relief deemed just and equitable.

Sincerely,

Shutts & Bowen LLP



Joseph M. Goldstein

May 22, 2024  
Page 5

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