

**INDIAN RIVER COUNTY
OFFICE OF MANAGEMENT AND BUDGET
PURCHASING DIVISION**

DATE: June 5, 2024

TO: BOARD OF COUNTY COMMISSIONERS

THROUGH: John A. Titkanich, Jr., County Administrator
Kristin Daniels, Budget Director

FROM: Jennifer Hyde, Purchasing Manager

SUBJECT: Appeal of Denial of Protests Relating to RFP 2024020

BACKGROUND:

On behalf of the Solid Waste Disposal District, Request for Proposals (RFP) 2024020 for Solid Waste and Recyclables Collection Services was issued on November 17, 2023, with proposals due February 21, 2024. An initial ranking meeting was held on March 8, 2024, requests for clarification were submitted to all five proposals, and a subsequent committee meeting was held on April 1, 2024, to establish a final ranking of proposals, after receipt of responses to the clarifications. The committee's final ranking of firms was presented to the SWDD Board at a special call meeting on April 24, 2024. During that meeting, the Board approved the final ranking of firms by service option established by the committee, and directed staff to negotiate, by way of best and final offers (BAFOs), with the two top ranked proposers for service options 3 and 4, FCC Environmental (FCC), and Waste Management, Inc. of Florida (Waste Management), and the subsequently ranked firms, should the received BAFOs not meet staff's satisfaction.

The results of the BAFOs, and the SWDD's final recommendation relating to the proposals and service options were presented to the SWDD Board on May 21, 2024. At that meeting, the Board made award to Waste Management, and directed staff to return an agreement for approval at a later date.

DISCUSSION:

On May 21, 2024, the Purchasing Manager received a protest from FCC. After review, and consultation with the SWDD Managing Director and County Attorney, the Purchasing Manager denied the protest. FCC's complaints and the Purchasing Manager's responses are summarized below.

1. The integrity of the RFP process was not maintained because the identity of the proposals by firm was revealed at the second selection committee meeting, and the committee changed its ranking of firms after it was disclosed that incumbent Waste Management was ranked third.

The Committee was aware of the identities of the firms throughout the entire review and scoring process. Additionally, the protest of events at the second committee meeting was not timely.

2. No clarification relating to modification to resources as related to the received best and final offers (“BAFOs”) was requested by the County.
No modification of resources was contemplated in the BAFO process, as both firms were instructed, “all previous submissions by the Proposer in response to the RFP remain as is”. FCC suggests changes to the level of resources dedicated to the County are certain under WM’s BAFO, but the County has never indicated that any such changes would be considered or accepted.
3. The BAFO process, including the release of the pricing received, allows competing firms to “undercut the lowest bid.”
The submitted proposals were requested on March 22, 2024, and made available to the requester and all five proposers when the exemption period expired later that day. As the documents were no longer exempt from public records under Chapter 119, Florida Statute, there was no legal option for the County to withhold the proposals and pricing. Additionally, the protest of the release of the pricing was not timely.
4. Staff failed to comply with Board of County Commissioners decision by requesting BAFOs, and that the BAFO directly contradicts the Board’s direction to “pursue simultaneous negotiations with the top two firms.”
The motion passed by the Board was “as staff recommended.” Staff’s recommendation relating to negotiations in the staff report was to “pursue simultaneous negotiations with the top two firms of FCC Environmental Services of Florida, Inc. and Waste Management, Inc. of Florida to obtain their “Best and Final Offer” for that option.” Additionally, the protest of the contents of the request for Best and Final Offer was not timely.
5. The recommendation to the Board for its May 21, 2024 special call meeting was misleading.
The Purchasing Manager was not able to affirm the recommendation was misleading.

In accordance with the protest procedure detailed in the Purchasing Manual, FCC was notified of its right to appeal the denial of the protest to the Board. FCC submitted a notice of intent to appeal, and would like to speak before the Board.

On May 22, 2024, Coastal Waste & Recycling (Coastal) submitted a protest, which was initially denied by the Purchasing Manager as not being timely. Coastal subsequently filed a notice of its intent to appeal the denial to the Board. After review of the appeal, the Purchasing Manager determined it should be upheld, and the protest reviewed. The Purchasing Manager, in consultation with the SWDD Managing Director and County

Attorney, denied the protest. Coastal's complaints and the Purchasing Manager's responses are summarized below.

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

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 was not timely.

2. The committee improperly broke the tie for second during the second committee meeting, because total points were not utilized. Undue influence was used to persuade a committee member to modify his ranking to break the tie.

The RFP and Purchasing Manual do not require scores to break future ties, only modification to rank order of firms. The "influenced" 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 protest is not timely.

3. Coastal was "improperly excluded from BAFO Round" because the committee broke the tie for second.

The RFP 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 protest is not timely.

FUNDING:

There is no cost to the SWDD associated with hearing the appeals of FCC and Coastal.

RECOMMENDATION:

Staff recommends the Board separately hear the appeals of FCC and Coastal, and either uphold or deny the protest. Should the Board uphold either protest, Staff requests the Board provide direction on next steps in the award and negotiation process.

ATTACHMENTS:

Response to FCC Environmental Appeal

Response to Coastal Waste Appeal