

January 20, 2010

Mr. James R. Hardiman, Vice President
American Lighting & Signalization, Inc.
11639 Davis Creek Road East
Jacksonville, Florida 32256

Subject: American Lighting & Signalization, Inc. Bid Protest of
RFP NO PWDA 100019-FB, Dated December 22, 2009

Dear Mr. Hardiman:

Ms. Teresa Scott, Director of Public Works, heard your protest presentation on January 12, 2010. Subsequently, Public Works staff has reviewed the issue raised in the protest related to a computational error in the ranking process. Attached is a copy of the Public Works Department's report.

Mr. Ron Combs of the City Attorney's Office has reviewed the issue raised regarding the participation of an engineering firm with two different contractors submitting proposals. A copy of Mr. Combs' opinion is attached.

As you can see by the attached Public Works report, computational errors were corrected. This not only included adding calendar days to the schedule submitted by James D. Hinson Electrical Contracting Company, but also disallowing the schedule modification presented after the RFP due date at the oral presentation and interview by your firm. Only the schedules submitted with the RFP submittals on November 23, 2009 should have been considered as outlined in Section G. page 3 of the RFP. The result of these computational correction is that the proposal submitted by James D. Hinson Electrical Contracting Company remains highest ranked.

If you have any questions regarding this matter please contact Diane Holder.

Sincerely,



Russ Blackburn
City Manager

Copy: ✓ Teresa Scott
Diane Holder

**American Lighting and Signalization Award Protest
Evaluation & Recommendation**

On October 12, 2009, the City issued a Request for Proposal for Design-Build services associated with the reconstruction of three traffic signals. The city received six proposals and a team of evaluators used established scoring criteria to develop a short list of three proposals for oral interviews. Those proposers were American Lighting and Signalization (ALS), Florida Industrial Electric (FIE), and James D. Hinson Electrical Contracting Company (Hinson).

Immediately following the interviews, the proposals were evaluated and scored. The proposal prices were then opened by Purchasing and the final ranking determined. A recommendation for award was made in favor of James D. Hinson, Inc. as the highest ranking proposer. Subsequently, the notice of intent to award was sent to all three proposers.

On December 22, 2009, the City was officially notified by representatives of ALS that they wished to lodge a protest of that bid award. The material supporting their protest, that no single engineering firm could participate on two proposals, was received by the City and reviewed by in-house counsel. The City Attorney's office opined that their protest was without merit and as per award protest procedure; a meeting was scheduled to formally receive their bid protest.

On Tuesday, January 12, 2010 at 2:00 PM, ALS presented their arguments and documentation to the Public Works Director.

ALS's protest is based primarily on two elements of the proposal. A design consultant, Volkert teamed with more than one proposal team. ALS claims that this is a violation of the terms of the proposal because of the statement "services performed by the Design-Build firm shall be in compliance with all applicable Manuals and Guidelines, including the City of Gainesville and Florida Department of Transportation." Ron Combs of the City Attorney's Office has prepared an opinion on this matter, a copy of which is attached, that this claim is without merit.

The second element presented by ALS involves the project schedule submitted by Hinson. The Request for Proposal requires a minimum of 15 working days be included in the schedule in order for the City to review the structural shop drawings of the mast arms associated with this project. ALS claimed the Hinson schedule did not meet that requirement.

The Design-Build RFP does contain specifications for minimum City review times that must be reflected in the RFP schedule. Those requirements are identified in the table below.

Review Element	Requirement Days
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**American Lighting and Signalization Award Protest
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60% Construction Document City Review	14 (calendar)
90% Construction Document City Review	14 (calendar)
Final Construction Document City Review	14 (review)
Shop Drawings City Review	15 (working)

The schedules as submitted with the RFPs on November 23, 2009, for the three short-listed proposals were closely re-examined for review time requirements. The schedules submitted by ALS and FIE were determined to be in compliance and no adjustments needed. Hinson's submitted schedule did not allow for some of the required review times.

When ALS presented their protest, they referred to item number 180 on the Hinson schedule, claiming that item represented the City shop drawing review element. Hinson item number 180 is the shop drawing preparation element for Hinson's engineer. The shop drawing City review element is item number 250. The Hinson schedule provides 11 working days for item number 250. The Hinson schedule indicates these 11 working days translate to 16 calendar days, from March 31, 2010 through April 15, 2010. Calendar days are used in the proposal evaluation and ranking process. As such, working days must be converted to calendar days for this corrective action. The minimum number of calendar days necessary to achieve 15 working days is 19. Therefore, 3 additional calendar days needs to be added to the Hinson schedule for the City shop drawing review requirement.

While ALS did not identify any other Hinson schedule issues, our review determined that the Hinson schedule did not provide the required time for the final construction document review. This correction requires an additional 14 calendar days be added to the Hinson schedule.

Our review also found that during the Oral Presentations and Interviews, ALS submitted a revised schedule. While staff accepted the revised schedule at that time and used it in the evaluation and ranking process, Section G. on page 3 of the RFP states that "Modifications received after the Proposal Due Date are also late and will not be considered." The Schedule is included as part of the Technical Proposal; therefore the revised schedule should have been rejected. The original schedule submitted by ALS is the schedule document used in this corrected evaluation and ranking process. Neither FIE or Hinson submitted revised schedules.

The table below reflects this evaluation and schedule total time corrections.

**American Lighting and Signalization Award Protest
Evaluation & Recommendation**

RFP No. PWDA 100019-FB

**Design and Reconstruction of Three Intersection Signalization Projects
Review & Adjustments to Submitted Proposal Schedules**

	ALS			FIE			Hinson		
	RFP Schedule (Calendar Days)	Requirement (Calendar Days)	Adjustments (Calendar Days)	RFP Schedule (Calendar Days)	Requirement (Calendar Days)	Adjustments (Calendar Days)	RFP Schedule (Calendar Days)	Requirement (Calendar Days)	Adjustments (Calendar Days)
60% Construction Document City Review	14	14	0	18	14	0	17	14	0
90% Construction Document City Review	14	14	0	19	14	0	14	14	0
Final Construction Document City Review	14	14	0	19	14	0	0	14	14
Shop Drawings City Review	21	19	0	20	19	0	16	19	3
Total Adjustment			0			0			17
RFP Project Schedule	243			241			216		
Adjusted Project Schedule	243			241			233		

The project schedules are a component in the evaluation and ranking process for the proposals. The adjusted project schedule for the total number of calendar days from issuance of the notice to proceed to completion have been inserted into the Final Ranking table below.

Final Ranking

**American Lighting and Signalization Award Protest
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Finalist	Technical Score	Contract Time (Days)	Time Value (Contract Days x \$2,000)	Price Proposal	Time Adjusted Price	Adjusted Score
American Lighting & Signalization	236	243	\$486,000	\$666,662.45	\$1,152,662.45	4,884.2
Florida Industrial Electric	239	241	\$482,000	\$792,095.00	\$1,274,095.00	5,330.9
James D. Hinson	242	233	\$466,000	\$696,498.00	\$1,162,498.00	4,803.7

Using the schedules as submitted with the RFPs as required and adding 17 calendar days to the Hinson schedule to meet RFP requirements for City review time, the defined evaluation process indicates that Hinson is ranked first; ALS is ranked second; and FIE is ranked third. The lower adjusted score is deemed more favorable.

Therefore, Public Works' recommendations are the ALS award protest be denied; the RFP evaluation computational errors be corrected as above; and the contract be awarded to the highest ranked proposal as submitted by Hinson.

TO: Diane Holder

DATE: January 4, 2010

FROM: Ronald D. Combs
Senior Assistant City Attorney

SUBJECT: Bid Protest of American Lighting Signalization
RFP NO. PWDA 100019-FB

You have asked my opinion in regards to the bid protest of American Lighting & Signalization, Inc on the above referenced Request For Proposal (RFP).

The essence of the bid protest is that the City of Gainesville's selection process was not in compliance with the criteria set forth in the RFP, to wit: Section III entitled "Project Requirements and Provisions for Work" which states that "[t]he services performed by the Design-Build firm shall be in compliance with all applicable Manuals and Guidelines including the City of Gainesville, Florida Department of Transportation, FHWA, AASHTO and additional requirements specified in this document."

The City of Gainesville's alleged non-compliance, according to the bid protester, is that two proposals submitted (James D. Hinson Electrical Contracting and Florida Industrial Electric) both used Volkert as the design professional. This was improper, the bid protested alleges, based on a provision in the FDOT manual entitled "Design-Build Procurement Manual" which contains a provision that a Design-Build Firm may include a construction contractor as the primary party with the design professional as the secondary party or vice versa. The contractor or design professional cannot team with other partners to submit more than one bid per project.

There are two relevant points to consider. First, the allegation is that the City did not comply with the provisions of the above-referenced manual as required by the RFP. The RFP does not require that the City comply with its selection process. Rather it requires that the "services performed by the Design-Build firm shall be in compliance with ...". It is clear that the City is not providing the services, it is selecting a firm that will provide the services; that firm must then provide those services in compliance with the referenced standards.

Secondly, assuming solely for the sake of argument, that the provision was applicable to the City, there would still be no violation by the City as the bid protester erroneously equates the administrative selection process with the operational provision of services under the RFP. As noted by the bid protester, it is the services to be provided under the RFP that must be in compliance with the referenced provisions. This provision is not applicable to the selection process.