



Mandese
White Construction, Inc.

APR 8 2010 4:10:50

City of Gainesville
General Government Purchasing
City Hall
200 East University Avenue, Room 339
Gainesville, FL 32601
Phone: (352) 334-5021
Fax: (352) 334-3163

Regarding:

INVITATION TO BID
(Best Evaluated Bid)
Construction of Fire Station #8
BID NO.FMGT100030-DH

Dear Purchasing Manager,

Mandese White Construction has struggled over whether or not to protest the recommendation to award this project. We are a local business and our owners and employees are active members of the community. We do not wish for the City of Gainesville or our competition, especially M.M. Parrish Construction Company, to look on us unfavorably. However, in weighing out our options we determined that there were important reasons to protest. *Regardless of the outcome for us, you, the City win.* If our protest is successful the City will save \$111,000. If our protest fails, the City will have valuable input for consideration toward the selection process on future projects; projects we hope to be involved in. We know that this is an important project for the community. As such, the only undesirable outcome of our protest is that the City decide to decline all bids and abandon the project. We do not intend that result.

We have followed the requirements of 41.580 BID PROTESTS for this filing. We have included in this letter facts clearly supporting the proposition that we, the protester, have reasonable likelihood of obtaining the work if this protest is successful.

We became aware of the alleged aggrieved incident on March 31, 2010, by fax. We were informed of the City's recommendation to award this project to M.M. Parrish Construction Company. We are submitting this protest prior to the five business day limit set by section 41-000. [March 31, the date of notification, not counted; April 1, counted; April 2, not counted (City closed); April 4 through 8, counted] Thursday, April 8 being the last day this protest may be filed.

We protest specification or specific language contained in the solicitation document, and in this letter we specifically identify the specification or language upon which the protest is predicated and why and how such is allegedly improper. We have supported our protest by including all relevant information which, we, the alleged aggrieved party feels is pertinent to the protest.

We contend that a number of innocent errors in evaluating our qualifications has resulted in a recommendation to award the project to a firm that is more expensive, but not more qualified.

We have examined the evaluation criteria provided to the Selection Committee Members as well as the ranking scheme used by the Purchasing Department. The evaluation criterion includes two parts; Technical Qualifications Evaluation (TQE) and Written Proposal Evaluation (WPE). Our protest involves the following elements of the evaluation criterion as applied by Selection Committee Members and Purchasing Staff during the selection process, in parts and finally in whole, in the following grouping and order of consideration:

TQE B-8	Schedule complies with the City's requirements?
WPE A-3	Understanding of the Scope of Work - Traffic Warning Device?
TQE B-2	Budget Included?
TQE B-3	CSI Division Breakdown of Budget?
WPE C-3	Project Manager with firm for longer than 3 years?
WPE F-3	DART Rate
Bid Form	Favor toward Bidder's submitting incomplete Bid Form
WPE E-1	Price Points

We must note at the outset of this protest that the criteria for assigning points for the qualification portion of this evaluated bid was intentionally kept from bidders. Bidders were instructed to provide the information asked for in the ITB document and hope for the best. Some of the reasons for our protest lie in this issue. We will illustrate that the information required of the bidders by the ITB did not match the Evaluation Criteria that Selection Committee Members were given to judge qualifications. For this reason points were denied based on requirements that were not stated. In future qualified bids the City should be careful that the requirements published match the criteria for evaluation. Otherwise, as in a typical RFP, the points system should be released.

I cite this response as evidence:

from Addendum 1, page seven, Question 27, answer states (my italics),

27. Question: According to the information of this project only Qualified firms can bid this Project. Please let me know what is the process to prequalify to bid this Project.

Answer: We are not pre-qualifying to bid, but the review of each bid will include the degree with which the response (not just a dollar value) to the items requested in the RFP are completed. *There are forms included with which you are asked to complete - these are the forms used to score each prospective bidder. The point system for each category is not being released.*

Prior to the bid in a telephone call to Purchasing staff in charge of the Bid, Diane Holder, I asked if there was a "points matrix", or some other the method the City would use rank firms in the qualifications portion of the solicitation process. I was informed that no information would be provided and that to her knowledge there was no point system yet devised.

ITEMS OF PROTEST

The following three protests items can be classified together. These protests are based on points denied to Mandese White Construction by a specific committee member, Mr. Gene Prince. Mr. Prince performed a thorough and careful review of the qualifications submitted by the firms that bid this project. He provided, as instructed by the evaluation instructions, his notes for each score he gave by listing them next to an outline of the evaluation criteria for each section for each bidder. However, we contend that his denial of points in the specific sections we

call out below was not justified. Because he was thorough and labeled his tally of points we are able to pinpoint where we believe his scoring to be in err. We request the following review of his scores.

TQE B-8 Schedule complies with the City's requirements?

We protest points NOT awarded to us by Mr. Prince due to the "Firm's proposed project schedule".

TQE part B, item 8 reads, "Does the Firm's proposed project schedule meet the City of Gainesville and the Gainesville Fire Rescue's construction completion date of January 10, 2011, with emphasis on executing a construction contract no later than January 10, 2010? If yes, award 5 points. If no, award zero points."

It is obvious that the criteria given to the Selection Committee in the evaluation criteria is incorrect. The bid date for this project was 3/17/2010, months after the date listed for "executing a construction contract". Based on the criteria set forth in the ITB the project schedule we submitted meets the City of Gainesville and the Gainesville Fire Rescue's construction completion date. The dates shown in our schedule are as follows:

Contract awarded by City within 60 days of the opening of bids, March 17, 2010 (ITB Section III, 8.2). We allowed 30 days for the selection process and award (beginning with bid day March 17, ending 30 days later, April 16). We show mobilization within 14 days of PO issuance or other notice (as stipulated in the ITB, Section IV, 5.1). We allow 358 days from the start date to the end date, with end date included (commencement on May 6, 2010 and final completion on May 2, 2011), which is 37 days fewer than the 395 calendar days after commencement to complete the project stipulated in the ITB (Section IV, 7).

THE PROTESTER'S REQUIRED ADJUSTMENT OR REMEDY: We request the correction of this error and the award of 5 points for TQE part B, item 8.

WPE A-3 Understanding of the Scope of Work - Traffic Warning Device?

We protest points DENIED to us by Mr. Prince due to the an error made by the selection committee member regarding our understanding the specifications and expectations associated to "The traffic beacons along NW 34 Street"

We were denied 10 points by the selection committee member for not addressing the signaling at 34th Street. However, we checked the box on page 41 of our proposal (Proposed Project Team Worksheet) that stated that our firm clearly understands the specifications expectations associated to "The traffic beacons along NW 34 Street". The wording of the "Proposed Project Team Worksheet " matches word for word the instructions given to the Selection Committee Members (Written Proposal Evaluation, A-3). In addition, we refer to the work required to put the beacons in place in other areas of our proposal. We refer to the jack and bore for the flashing light as an item in our construction schedule (R1140). We refer to the construction at the 34th Street tie-in numerous times with a concentration on the coordination it will require (Statement of Proposer's Qualifications" item 8, page 17 of our proposal submission).

THE PROTESTER'S REQUIRED ADJUSTMENT OR REMEDY: We submit that we should be granted 10 points for this question, not 0 points.

TQE B-2 Budget

We protest points DENIED to us by Mr. Prince due to the an error made by the selection committee member regarding our submitted budget.

We were denied 5 points by the selection committee member for not including a budget. The BID FORM and the accompanying SCHEDULE OF VALUES was the budget. Therefore, we *did* include a budget. In the packet this item would have been called "Schedule of Values" and had costs (some of them hand written) formatted with CSI division row names. Perhaps the evaluator did count this as a "Budget".

THE PROTESTER'S REQUIRED ADJUSTMENT OR REMEDY: We request the correction of this error and the award of 5 points for TQE part B-2.

TQE B-3 CSI Division Breakdown

We protest points DENIED to us by Mr. Prince due to the an error made by the selection committee member regarding our submitted budget, broken down by CSI division.

We were denied 5 points by the selection committee member for not including a budget broken down by CSI division. The bid form and the schedule of values we submitted was broken down by CSI Divisions. Again, since we are writing of the same item mentioned above, in the packet this item would have been called "Schedule of Values" and would have had costs (some of them hand written) formatted with CSI division row titles. Perhaps the evaluator did not count this as a "Budget broken down by CSI division".

THE PROTESTER'S REQUIRED ADJUSTMENT OR REMEDY: We request the correction of this error and the award of 5 points for TQE part B-3.

At this stage of our protest, should the protested points we have requested be granted, our new total points will be 1154.88, surpassing M.M. Parrish Construction Company's points (1151.56) by 3.32. The items that we are requesting to have remedied are minor and yet the correction would result in a savings to the City of \$111,000.

The question must be asked, by saving this money would the City be getting a less qualified Contractor?

No. Other Selection Committee Members gave us the maximum number of points for "Project Understanding" and remarked, "Excellent". One Selection Committee Member noted that our qualifications submittal was the "Most comprehensive response. Very well organized, professional proposal."

We submit these further items of protest.

As stated by the City in Section II, 8.6 of the Instructions To Bidders, "The City of Gainesville reserves the right to accept or reject any or all bids, reserves the right to waive any or all irregularities, and to award the contract to the responsible and responsive Bidder whose bid is determined by the City to be in its best interest."

Therefore, we present the following protest:

We protest the FAVOR given to bidder's who did not respond completely to the Bid Form:

The top ranked firm (M.M. Parrish Construction Company) has "no bid" listed for Alternates #6B, #7B (there were two other lower ranking firms that also disregarded the pricing of these alternates). A decision was made by the

City staff or the selection committee to waive these irregularities, rather than count the bid(s) as unresponsive. This can be concluded by referring to the "Price Points 3/29/2010" worksheet. Instead of disqualifying the three firms that failed to complete the bid form, the alternates mentioned were *left out* of the totals used to determine the lowest bid. We maintain that failing to complete the bid form is more than a "minor" irregularity. Failure to complete the bid form typically results in the firm's disqualification.

THE PROTESTER'S REQUIRED ADJUSTMENT OR REMEDY: We submit that waiving these irregularities is not in the City's best interest, as it results in the City paying more for the project. We request that the City remedy this by disqualifying the non-responsive bidders.

The next two items are offered as examples of disparities between the information required from bidders by the ITB and the Evaluation Criteria Selection Committee Members were given to judge qualifications.

WPE C-3 Project Manager with firm for longer than 3 years?

Points were DENIED to us to us by Mr. Prince (and possibly other Committee Members) due to length of time our proposed Project Manager has been with our firm.

We chose to list a project manager for this project that we felt best met the needs of your project. We list his attributes clearly in our proposal. The ITB did not state that it was a requirement that the proposed Project Manager must have worked with our company for 3 years. Had we known that we would lose points for assigning a Project Manager that has been with our firm for less than 3 years we would have assigned another PM that met this requirement. In support of our selected PM, Milito Zapata, you will see that in his resume (page 45 in our proposal) we have cited his experience working with Joey Mandese, co-owner of Mandese White Construction on projects with other firms. Technically, Mr. Zapata has worked with Mr. Mandese for more than 7 years.

THE PROTESTER'S REQUIRED ADJUSTMENT OR REMEDY: Requesting a correction to this item would mean the City would have to set aside the qualifications portion of the selection process because it is a general grievance affecting all bidders.

WPE F-3 DART Rate

Points were DENIED to us to us by Mr. Prince (and possibly other Committee Members) due to not providing the firm's DART rate.

The ITB asked specifically for the "Company's/Firm's OSHA Violations in the Last 5 years". We provided this information (Proposed Project Team Sheet, page 38 of our proposal submission) However, the ITB did not specifically ask for the firm's DART Rate. This information was not requested, yet we were denied points because we did not provide it. Additionally, the ITB did not specifically ask for the firm's fatalities or the firm's Insurance Experience Modification Rate. However, as far as we can tell from evaluator's notes, points were not denied for the absence of this information.

THE PROTESTER'S REQUIRED ADJUSTMENT OR REMEDY: Again, Requesting a correction to this item would mean the City would have to set aside the qualifications portion of the selection process because it is a general grievance affecting all bidders.

Finally, We protest points DENIED to us for having a substantially lower Bid Price.

We contend that the lowest responsive bid was not properly weighted to insure that the city got the best value. Typically, the price component of a "best value" ranking system constitutes as much as 50% of the overall grading. From the score sheets, our bid was less than the highest ranked firm by \$111,000, according to Purchasing's "Price Points 3/29/2010" worksheet (which does not include the alternates mentioned above) yet we received only 4.33 points per selection committee member towards our overall score. I used the current "Price Points" scheme to do a calculation in order to illustrate a possible outcome of this Best Evaluated Bid. **All other points remaining as awarded, M.M. Parrish Construction Company's price could have been as much as \$265,350.49 higher than our price and they still would be awarded the project. The City would be obligated to pay an additional \$265,350.48 for this project.**

THE PROTESTER'S REQUIRED ADJUSTMENT OR REMEDY: We submit that the "Price Points" evaluation criteria is not in the best interest of the City. Requesting a remedy to this grievance would mean the City would have to set aside the qualifications portion of the selection process. We therefore request that the qualifications portion of the bid (with the exception of local preference) be discarded. Furthermore, we request that the City review it's priorities regarding Price Points evaluations in future projects.

CONCLUSION

We have taken you through a brief examination of errors and flaws in this Best Evaluated Bid selection process. As we stated at the beginning of this letter of protest, it is the best interest of the City that we have in mind, no matter the outcome for our firm. We have presented more than one scenario that could result in the City awarding this project to the lowest qualified bidder, Mandese White Construction, and saving \$111,000. In the process of doing so we think that we have called into question the validity of the entire qualifications portion of this bid.

Therefore we request as final and total remedy to our protest, that you discard the qualifications portion of the bid (with the exception of local preference).

I have included, as instructed by section 41-000, a Power of Attorney with a Corporate Seal which verifies that I, Stephen Bender, have legal authority to act on behalf of the corporation, Mandese White Construction.

My signature below constitutes a sworn statement that Mandese White Construction, the protester, is acting alone and not in concert with any other party for any other reason but direct financial interest.

Respectfully,



Stephen D. Bender, AR94748, LEED AP
Preconstruction & Design-Build

Mandese White Construction, Inc.
2631 NW 41st Street, Suite E-2
Gainesville, FL 32606
352-373-8883 Phone
352-682-4986 Mobile
352-373-7334 Fax



April 7, 2010

Diane Holder, Senior Buyer
City of Gainesville
Budget & Finance Department – Purchasing Division
PO Box 490, Station 32
Gainesville, FL 32602-0490

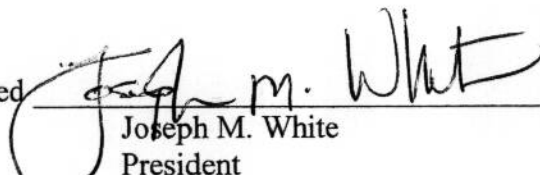
RE: Letter of Authorization as Power of Attorney

POWER OF ATTORNEY

Ms. Holder,

I, Joseph M. White, President of Mandese White Construction, Inc, do hereby grant **Power of Attorney** authority to **Stephen D. Bender** to execute written documents on my behalf. By virtue of my signature below, I agree that I am the License holder, and Qualifying Agent for Mandese White Construction, Inc.

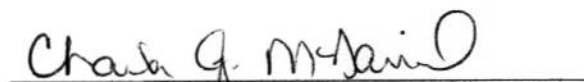
Sworn and Subscribed



Joseph M. White
President
License # CBC 055308

Sealed

This ____ 7th ____ day of ____ April ____, 2010.



Notary Public

Commission Expires

CHARLA J. McDANIEL
Notary Public, State of Florida
My comm. exp. July 25, 2011
Comm. No. DD 692118

TO: Russ Blackburn, City Manager

FROM: Amy Raimer, Hearing Protest Officer

SUBJECT: Fire Station 8 Bid Protest

DATE: April 28, 2010

On April 8, 2010 Mandese White Construction, Inc. (Mandese) filed a bid protest regarding Bid No. FMGT 100030-DH for construction of Fire Station 8. The letter from Mandese outlining the details of the protest is attached.

Pursuant to bid protest procedures a hearing was held on April 21, 2010 to allow Mandese to present information in support of their protest. Following are staff's comments related to the protest letter and the facts represented in support of the letter at the April 21 hearing.

GENERAL DISCUSSION

The Evaluation criteria was developed by some members of the selection committee in advance of the bid being distributed. Purchasing staff coordinated the bid process, but did not have a member on the evaluation team that participated in scoring each proposal.

Mandese has objected to the fact that "the criteria for assigning points for the qualification portion of this evaluated bid was intentionally kept from bidders." This was not an effort specifically utilized for this particular bid process - it is and has been standard practice not to release the weighting of the criteria to bidders prior to receiving their responses. Staff would not presume to dictate to potential vendors how they should put together their responses. It is their responsibility to craft their proposals as in their professional opinion they deem best to address the project at hand. In any case, if the City were to release such criteria it would go to all respondents; therefore not releasing it has not disadvantaged Mandese in any way relative to other proposers on this project.

Finally, Mandese has stated that they placed a call prior to the bid during which they were told that no point system was yet devised. It is typical for the weighting of the criteria to be developed just prior to the responses being provided to the Selection Committee.

ITEMS OF PROTEST

Schedule complies with City requirements The Technical Qualifications Evaluation (TQE) document developed by the Selection Committee was completed well in advance of the distribution of the Invitation to Bid (ITB), accounting for the inconsistency between the project schedule contained in the TQE and construction schedules provided in the various responses. Therefore the construction schedules submitted by proposers were not measured against the January 10, 2010 through January 10, 2011 time frame outlined in the TQE, but rather the 395 days from commencement requirement outlined in Section IV, Item 7 of the ITB. The score of 0 assigned by the Selection Committee member

challenged by Mandese was not based on the fact that the Mandese schedule did not fit within required timeframes, but rather that in the opinion of the Selection Committee member the Mandese time frame was the least favorable of the respondents as a whole.

Traffic Warning Device Mandese did check the box indicating that they understood the specifications and expectations associated with the need for traffic beacons along NW 34th Street on page 41 of their proposal. On page 47 as part of their construction schedule they reference the jack and bore work associated with a flashing light. Finally, they reference on page 17 that the work “will require careful coordination during the construction of the new connection to FDOT highway 121 and 34th Street”. The score of 0 assigned by the Selection Committee member was based on the fact that in his opinion the Mandese proposal did not contain a fully-described plan for dealing with the issues associated with the traffic warning device as did the other respondents.

Budget & CSI Breakdown Mandese asserts that the “BID FORM” and the accompanying SCHEDULE OF VALUES was the budget”. They go on to state that the in the packet this item would have been called “Schedule of Values” and had costs (some of them handwritten) formatted with CSI division row names. Their contention was that this would have qualified as both a budget and a CSI division breakdown, which was required. While the Bid Form was a part of the packet submitted, staff did not find the aforementioned Schedule of Values or CSI breakdown therefore no points were awarded. In addition, this was specifically asked for in the bid document, and at the pre-bid meeting. Staff decided that lack of a CSI breakdown of the budget was an irregularity that could be waived, and did not disqualify Mandese for the exclusion of this requested information.

Bidders who did not respond completely to the Bid Form Mandese asserts that an advantage was granted to firms who listed no bid on Alternates 6B and 7B in that failing to bid on these alternates constituted more than a minor irregularity that should have resulted in the firms’ disqualification. As they point out in their protest letter, the City reserves the right to waive any or all irregularities in bids. The alternates listed related to pricing on a soil cement base for the roadway and for the construction site; the decision was made to utilize crushed cement rather than soil base, so the failure to price the soil base was not germane to the overall bid price and therefore constituted an irregularity.

Length of time the proposed Project Manager has been with the firm Mandese protests that had they known that the City would assign points based on whether or not a Project Manager had been with the firm more than three years, they would have assigned a different Project Manager. Once again, the point weighting was not provided to any of the prospective bidders, therefore no bidder was disadvantaged relative to their competitors. As Mandese themselves pointed out in their protest letter, they assigned the Project Manager for this project “that we felt best met the needs of your project.” The City would not presume to dictate to any firm on what basis they make the determination as to who to assign to the project, but we reserve the right to establish criteria upon which to judge the project teams, and we utilized the same criteria to assess all proposals.

Points denied due to not providing the firm’s DART rate Mandese protested that a Selection Committee member denied points on the Mandese proposal due to the fact that Mandese did not

provide the firm's DART rate. In fact, the selection committee member in question gave Mandese the one point for this criteria and the maximum five points for this scoring category (proposal organization). This was another situation where the evaluation scoring was prepared in advance, so the evaluation was scored only on the items which were asked for. (Bond Rating and OSHA violations) Mandese did in fact receive the points for providing these two items.

Points denied for having a substantially lower Bid Price Mandese contends that price was not properly weighted as a component of the evaluative criteria and therefore they were not adequately awarded points for the fact that their bid price was second lowest among the proposers. As clearly indicated in the ITB, this was a Best Evaluated Bid process. As such, price was only one of the criteria categories used to evaluate the proposals. There has been much discussion over time about what weighting is appropriate to assign to price in the Best Evaluated Bid process. In the past, City policy had addressed the issue by mandating that the price component be a minimum of 30%. That policy was later amended to allow the Selection Committees to assign what they felt was a reasonable price weighting given the nature of the specific proposal since the importance of price could vary significantly dependent upon the specifics of each individual process. It should be noted that the 33% price weighting assigned to this process is greater than the minimum required earlier under policy and constitutes what the Selection Committee deemed reasonable given the nature of the Fire Station 8 process.

In Closing After reviewing all of the items of protest, there were two items (schedule compliance & traffic warning device) where points could have been awarded by the evaluator in question. This evaluator used the range of points in a comparative basis, so with the response given by Mandese as compared to other responses, this evaluator would not likely have given Mandese the maximum number of points. However, even if Mandese had been given the maximum amount of points available for these two items, it would only have changed Mandese's ranking for this evaluator from third to second. Overall, this would not have changed the ranking of MM Parrish as the number one, and Mandese as the number two.

Hearing Officer Recommendation After reviewing the information in the protest letter as well as the supporting evidence presented at the protest hearing, I recommend denial of the protest, and the selection committee ranking remain unchanged.

Thank you,

Amy Raimer

Hearing Protest Officer



Office of the City Manager

PO Box 490, Station 6
Gainesville, FL 32602-0490
(352) 334-5010
(352) 334-3119 (fax)
www.cityofgainesville.org

May 3, 2010

Mr. Stephen D. Bender
Mandese White Construction, Inc.
2631 NW 41st Street
Suite E2
Gainesville, FL 32606

Dear Mr. Bender:

I received your letter protesting the bid award of the City of Gainesville Fire Station 8. After reviewing the information in the protest letter, as well as the supporting evidence presented at the protest hearing, I am denying the protest and affirming that the Selection Committee ranking remain unchanged.

I appreciate Mandese White's participation in the Fire Station 8 bidding process. As you have noted from review of the bids, a majority of the top ranked firms are Gainesville affiliated construction firms. It is my hope that you will continue to bid on City projects and I feel confident that as you continue to refine your bid numbers and additional projects come forward on which you can bid, I will see you working on a City project soon.

Sincerely,

A handwritten signature in black ink, appearing to read "Russ Blackburn". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Russ Blackburn
City Manager

Copy: Amy Raimer
Mark Benton
Diane Holder
Paul Folkers
Interim Fire Chief Gene Prince



City of Gainesville
General Government Purchasing
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Regarding:

INVITATION TO BID
(Best Evaluated Bid)
Construction of Fire Station #8
BID NO.FMGT100030-DH

Dear Mayor and Commissioners,

We are appealing the denial of our protest of this bid. An injustice has occurred.

Mandese White Construction won the bid to construct Fire Station #8 for the City of Gainesville and is not being awarded the project. We are the most responsive qualified bidder, but the project is being taken from us.

We are not surprised by the response we received from the office of the City Manager. This response was based on the Memorandum from Amy Raimer, hearing Protest Officer, dated Thursday April 29, 2010, which contained the Protest Hearing Officer Recommendation. This recommendation served only to refute or defend decisions made by City Staff during the bid process. It is a defensive piece of work that fails to be objective and fails to address the real issue that the evaluation process for this bid was botched and open to manipulation. The Protest Hearing Officer simply defends the individual points protest without considering the overall picture of what has occurred in this bid. The response rests on rebuttals that are convenient to City staff and selection committee members and that seem convincing to the City Manger, but are geared toward upholding an outcome that is suspect.

We have three points to be considered.

POINT ONE - The Evaluation Portion of the Bid Was Botched

Inconsistencies in the bid process that run against those adopted by the City in *Chapter 41 Purchasing Procedures* caused the outcome of this bid be questionable, perhaps illegal and certainly not in the best interest of the City of Gainesville and its citizens.

In our original protest letter we included many examples of evaluation inconsistencies.

Contrary to the Chapter 41 Procedures, additional criteria was considered during BID EVALUATION (see section 41-510). The evaluators were provided with evaluation criteria that were not coordinated with and were in excess of the information requested from bidders. This created inequities among the bidders and resulted in points being awarded based on pure luck, not qualification.

Section 41-450 requires Purchasing to "Review the Invitation to Bid to verify the exact evaluation factors stated in the bid. **No others should be considered.**"

Further, the Procurement Procedures state (section 41-423, Information Disclosed in the Solicitation) that "regardless of the solicitation method utilized, convey and include all known provisions affecting the purchase to prospective vendors." Included in the list of this required information is "**Evaluation criteria and method**". This information was requested but not provided. This violates your own policies.

The impact of the failure of Purchasing to release this criteria became even clearer after the recommendation of award. The evaluation criteria we received from Purchasing was based on the City's Professional Services Handbook, the format for RFP evaluation. It contained very detailed requirements and each one was assigned point values. In the RFP acquisition method, the criteria to be used in the evaluation of the proposals must be included in the RFP specifications. *The Invitation to Bid* for this project never mentioned the "City's Professional Services Handbook" as a basis for evaluation.

All of this matters because this additional criteria created inequities among the bidders and resulted in points being awarded based on pure luck, not qualification, AND therefore result in the awarding of the project to a firm other than the lowest responsive, responsible bidder. This inequity disadvantaged Mandese White Construction, and gave advantages to another bidder (MM Parrish Construction).

The coordination of the ITB and the evaluation criteria was so *poorly handled* that the results are not only questionable, but also have been easily manipulated by staff to obtain a desired outcome.

POINT TWO – The Method Used By Purchasing To Assign Points to Each Bidders Price Is Flawed

The flawed method cannot and does not result in the best value to the City.

The City's Chapter 41 Purchasing Procedures states that an *Invitation to Bid* (ITB) acquisition method is used where price is used as a determining factor for award. The Protest Hearing Officer has stated that the weight given to the pricing component of this bid was greater than the minimum of 30%. The claim is that the weighting was 33%. In the sense that price was given 100 out of 300 points this assertion is correct. However, because of the method used by Purchasing to award these 100 points, only 21.61 points, not 100 points were ever in play. The lowest bidder got 100 points and the highest bidder got 78.39 points. The cost difference between lowest bid and highest bid was \$669,717.00. We have attached a proposed "Price Points" scheme as a counterpoint to the one used by Purchasing.

The current scoring scenario awards points as a simple ratio of bidders cost divided by lowest bidders cost taken as a percent. Using this method, the difference in cost becomes trivial from one firm to the next. For example, a difference in cost of \$111,000 is awarded only 4.33 points! The insignificance of the price points component becomes even more forceful considered next to what points were awarded as part of the other 100 point sections of the evaluation, the Written Proposal and Technical Proposal sections. Here is an example of one of the things evaluators awarded points for:

From Written Proposal Evaluation Section C, item 3: "Has the project manager been with the firm longer than three years? If yes, award five points. If no, award zero points." **Should this insignificant factor have more weight than price?**

We used this example in our filed protest because it represents some of the "additional" evaluation criteria mentioned above. It also illustrates flaws in the pricing scheme used by Purchasing. Two birds, one stone. It follows.

WPE C-3 Project Manager with firm for longer than 3 years?
Points were DENIED to us by Selection Committee Members due to length of time our proposed Project Manager has been with our firm.

We chose to list a project manager for this project that we felt best met the needs of your project. We list his attributes clearly in our proposal. The *ITB did not state that it was a requirement that the proposed Project Manager must have worked with our company for 3 years.* This is a very specific requirement to which five very valuable points were assigned. Had this criteria been provided we would have assigned a PM that met this requirement. We have a PM on our staff that would meet this requirement.

How did this play out when we were pitted against the other bidders? A competing bidder with a higher price, by shear luck (since no criteria was given in the ITB) included a Project Manager that met this criteria and was awarded five points, most likely by each of the four evaluators. In summary, they got 20 points, we got zero points, because Purchasing used non-published, *additional evaluation criteria*.

What is the value of this piece of criteria? This seemingly insignificant *and unstated* requirement is worth approximately \$128,000 (In the current evaluation process an approximately \$128,000 difference in cost is worth 5 points). Explain to us how we **lose 5 points** (per evaluator) for listing a Project Manager with over 25 years experience, who happens to have less than three years at our firm but, **we gain only 4.33 points for being \$111,000 lower!** This alone is cause for alarm and should be investigated fully.

POINT THREE - Two of the Eight Bidders Failed To Fill Out the Bid Form Completely

In other words, two bidders submitted an incomplete bid. City staff chose, at their convenience, to ignore the missing costs in their Price Points calculations, claiming that failure to price these items that was not "germane" to the project and therefore constituted an irregularity. The determination that these items are not germane to the project AFTER receiving bid prices constitutes a "convenient" and illegal change in the project scope that allowed the unresponsive bidders to BECOME responsive. If the items were not "germane" to the project, staff could have removed them from the bid form PRIOR to receiving bids. In this way they would have avoided any suspicion of foul play. There was ample opportunity to do this since the Bid Form that included the list of alternates was reissued numerous times in the days leading up the bid date (Addendum #2 and Addendum #5). Since the specific items that these bidders did not price were added in Addendum #5, the final addendum, perhaps their bids did not actually incorporate Addendum #5?

Not completely filling out the bid form is not a minor irregularity that should be waived at all, especially out of **convenience**. The firms who did not complete the form should be disqualified. **This inequity disadvantaged Mandese White Construction, and gave advantages to another bidder (MM Parrish Construction).**

It is our position that this evaluation process is continually being twisted to obtain a desired outcome and reeks of illegality.

CONCLUSION

Explain how the City can ask its citizens to pay more to a contractor for the same project, when a responsive, responsible bid from a local contractor that meets the qualifications is **\$111,000 lower**.

Best Value = Lowest Qualified Bid. Mandese White has the lowest qualified bid for this project.

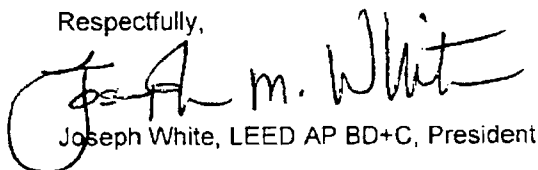
THE PROTESTER'S REQUIRED ADJUSTMENT OR REMEDY: We request that the City throw out the botched evaluation of this bid and award the construction of Fire Station #8 to the lowest qualified, responsive bidder, Mandese White Construction.

FINALLY and additionally, we request that the City Commission direct staff to create a well coordinated format for Invitations to Bid that include "Best Evaluated Bid" criteria. This should include an official statement that when using this acquisition method "Evaluation criteria and method" WILL be released during bidding. This will help to ensure that bidders will be on equal footing, with outcomes not left to chance and opinion AND that City staff will put themselves in questionable situations such as this during future bids.

I Joseph M. White, have legal authority to act on behalf of the corporation, Mandese White Construction. My signature below constitutes a sworn statement that Mandese White Construction, the protester, is acting alone and not in concert with any other party for any other reason but direct financial interest.

This appeal is being filed with the Purchasing Manager within three (3) business days of receipt of the City Manager's decision. It addresses the areas or matters in the Charter Officers' decision which the protester believes are materially inconsistent with applicable City policies, practice or procedures and references these inconsistencies.

Respectfully,

A handwritten signature in black ink, appearing to read "J. M. White", is written over the typed name "Joseph White, LEED AP BD+C, President".

Joseph White, LEED AP BD+C, President

Mandese White Construction, Inc.
2631 NW 41st Street, Suite E-2
Gainesville, FL 32606

352-373-8883 Phone
352-373-7334 Fax

Attachments: Proposed Price Point Worksheet
Office of the City Manager Response to Bid Protest



Attachment Regarding Appeal of Protest for
INVITATION TO BID
(Best Evaluated Bid)
Construction of Fire Station #8
BID NO.FMGT100030-DH

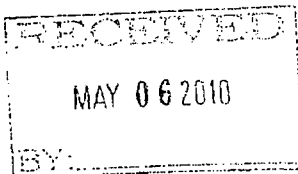
PROPOSED PRICE POINTS SCHEME

RANK		FRIM	BID PRICE (including Alts according to CoG)	Difference	Proposed Price Points Method	Purchasing Price Points Method
1	low	Bradanna	\$2,430,050.00	\$0.00	100.00%	100.00%
2		MWCI	\$2,443,094.00	\$13,044.00	98.05%	99.47%
3		MMP	\$2,554,150.00	\$124,100.00	81.47%	95.14%
4		Slack	\$2,588,154.73	\$158,104.73	76.39%	93.89%
5		BCBE	\$2,639,304.00	\$209,254.00	68.75%	92.07%
6		Scherer	\$2,661,647.00	\$231,597.00	65.42%	91.30%
7		MDM	\$2,982,548.86	\$552,498.86	17.50%	81.48%
8	high	Etheridge	\$3,099,767.00	\$669,717.00	0.00%	78.39%

The equation above is:

The difference between the highest price, Etheridge, and the price of the bidder whose score is being figured, subtracted from the difference between the highest price, and the lowest price, Bradanna (which equals \$699,717). This is then divided by the difference between the highest price, and the lowest price, taken as a percent. We propose that this should be the weighting given to price because it apportions points (0-100) over the range of the difference in bids, which results in a range of points that is more meaningful.

The current Purchasing "Price Points" scoring scenario awards points as a simple ratio of bidders price divided by lowest bidders price, taken as a percent. This result of this is the difference in costs become trivial when used as a method of weighting the cost component.

**Office of the City Manager**

PO Box 490, Station 6
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May 3, 2010

Mr. Stephen D. Bender
Mandese White Construction, Inc.
2631 NW 41st Street
Suite E2
Gainesville, FL 32606

Dear Mr. Bender:

I received your letter protesting the bid award of the City of Gainesville Fire Station 8. After reviewing the information in the protest letter, as well as the supporting evidence presented at the protest hearing, I am denying the protest and affirming that the Selection Committee ranking remain unchanged.

I appreciate Mandese White's participation in the Fire Station 8 bidding process. As you have noted from review of the bids, a majority of the top ranked firms are Gainesville affiliated construction firms. It is my hope that you will continue to bid on City projects and I feel confident that as you continue to refine your bid numbers and additional projects come forward on which you can bid, I will see you working on a City project soon.

Sincerely,

Russ Blackburn
City Manager

Copy: Amy Raimer
Mark Benton
Diane Holder
Paul Folkers
Interim Fire Chief Gene Prince

The Memorandum of the Protest Hearing Officer's Recommendation dated April 29, 2010 from Amy Raimer was in response to the specific issues in the bid protest letter received from Mandese White Construction.

In the bid protest appeal letter from Mandese White received on May 12, 2010, three points are listed to be considered. The following are staff's responses to their concerns.

- Point One – The Evaluation Portion of the Bid was Botched

This was not a point of concern in the original bid protest and is new evidence; however, in response to this item, this was a best evaluated bid (BEB) as stated in Section II Instructions to Bidders, Item 8.1 of the bid document and Addendum #1 from discussion at the mandatory pre-bid conference. It is not an ITB as noted by the protester in the citing of Purchasing Procedures Section 41-510. Purchasing Procedures, Section 41-423 as cited by the protestor includes "Evaluation criteria and method" as required information. The City's Professional Services Handbook was used as an evaluation tool, consistent with other evaluated projects. The BEB document stipulated criteria and request for information forms (Statement of Proposer's Qualifications, Qualifications Supplement Form and Fire Station 8 Proposed Project Team Sheet) were part of the bid document as referenced on Section 8.1, page 6 of the bid document.

The criteria were listed as:

- a. Price
- b. Qualifications, reputation, history of the firm; firm's demonstrated capabilities
- c. Completeness of the proposals and degree to which it responds to and complies with all of the requirements and requests for information.

Completion of the request for information forms provided information necessary for the evaluators to complete their review and evaluation of the responses utilizing guidelines they had developed prior to the bid due date which patterned weights within the Professional Services Handbook.

Points are developed before the due date of a bid/RFP and are not published during the bidding process. On this project staff worked very hard to make the evaluation as objective as possible. The evaluators consisted of City of Gainesville subject experts; (Construction Manager, Fire Chief, Fire Lieutenant, and the General Services Director) that evaluated independently and objectively.

- Point Two – The method used by Purchasing to assign points to each bidders price is flawed.

Again, the protester cites Chapter 41 Purchasing Procedures on an ITB where price is the determining factor. This was a BEB where price was not the only determining factor.

There are numerous algorithms that could be used in assigning points for price. However, the point system for this project is consistent with the City's method used on all similar projects.

In regards to WPE C-3 Project Manager with Firm for longer than 3 years. As Amy Raimer pointed out in her Memorandum dated April 29, 2010, "Mandese protests that had it known that the City would assign points based on whether or not a Project Manager had been with the firm more than three years, they would have assigned a different Project Manager. Once again, the point weighting was not provided to any of the prospective bidders, therefore no bidder was disadvantaged relative to their competitors. As Mandese themselves pointed out in their protest letter, it assigned the Project Manager for this project "that we felt best met the needs of your project." The City would not presume to dictate to any firm on what basis they make the determination as to who to assign to the project, but we reserve the right to establish criteria upon which to judge the project teams, and we utilized the same criteria to assess all proposals."

Again, the protestor alleges no criteria were published. Clearly this is a false allegation as criteria were published and there were no additional criteria used. **Again the protester refers to ITB, which this was a BEB and not an ITB.** As published in the BEB Section 8.1, page 6 the required information forms (Statement of Proposer's Qualifications, Qualifications Supplement Form and Fire Station 8 Proposed Project Team Sheet) were attached. As stated previously, points are developed before the due date of the BEB and are not published. All bidders in the process participate with equally requested requirements; where no one receives an advantage.

- Point Three – Two of the Eight Bidders Failed to Fill out the Bid Form Completely

As Amy Raimer pointed out in her Memorandum dated April 29, 2010, "Bidders who did not respond completely to the Bid Form" Mandese asserts that an advantage was granted to firms who listed no bid on Alternates 6B and 7B and that failing to bid on these alternates constituted more than a minor irregularity that should have resulted in the firms' disqualification. As it points out in its protest letter, the City reserves the right to waive any or all irregularities in bids. The alternates listed related to pricing on a soil cement base for the roadway and for the construction site; the decision was made to utilize crushed cement rather than soil base, so the failure to price the soil base was not germane to the overall bid price and therefore constituted an irregularity."

In addition, as noted in Ms. Raimer's memorandum,

"Budget & CSI Breakdown" Mandese asserts that the "BID FORM" and the accompanying SCHEDULE OF VALUES was the budget". They go on to state that the in the packet this item would have been called "Schedule of Values" and had costs (some of them handwritten) formatted with CSI division row names. Their contention was that this would have qualified as both a budget and a CSI division breakdown, which was required. While the Bid Form was a part of the packet submitted, staff did not find the aforementioned Schedule of Values or CSI breakdown therefore no points were awarded.

In addition, this was specifically asked for in the bid document, and at the pre-bid meeting. Staff decided that lack of a CSI breakdown of the budget was an irregularity that could be waived, and did not disqualify Mandese for the exclusion of this requested information.”

DRAFT