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INTER-OFFICE CORRESPONDENCE
MEMORANDUM NO. 2025-036

TO: Charles F. Dodge, City Manager

CC: Jonathan Bonilla, Assistant City Manager
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FROM: Samuel S. Goren, City Attorney *SSG*
Jacob G. Horowitz, Deputy City Attorney *JGH*
Susannah Nesmith, Assistant City Attorney *SN*

DATE: March 28, 2025

RE: Consultants' Competitive Negotiation Act Update

This memorandum serves to respond to an inquiry from City staff regarding Request for Qualifications #PSPW-23-20, while also providing a supplement and update to Memorandum 2018-48, dated April 5, 2018, which summarized the requirements of Section 287.055, F.S., the Consultants' Competitive Negotiation Act, or CCNA.

Factual Background:

On January 17, 2024, the Commission approved a motion to advertise a Request for Qualifications #PSPW-23-20 (the "RFQ") for the award of continuing contracts for professional architectural, engineering, and other professional services. The RFQ specified it was being solicited under CCNA and included that the City intended to award one (1) contract in each of the nine (9) categories in which the City was seeking professionals. The intent to award a single contract in each category was stated multiple times in the initial solicitation materials, as well as in addenda that was issued in response to bidder questions during the question and answer period.

Additionally, Sec. 3.25 of the RFQ includes a "Reservations for Rejection and Award" provision in which the City reserves the right to "award a contract on such item(s) or service(s) the city deems will best serve its interests" and that the City may "accept or reject any and all bids."

Multiple qualification packages were received and evaluated by city staff consistent with the requirements of the CCNA. Staff selected one (1) consultant per category of professional service to recommend to the Commission, as the RFQ contemplated. On February 19, 2025, the City

Commission considered the staff recommendation to approve contracting with one consultant in each category but instead unanimously voted to instruct staff to come back with contracts with each qualified consultant in each category.

Legal Update:

As explained in Memorandum 2018-48, the CCNA lays out a procedure the City may use to engage consultants in certain professions on an ongoing basis without the necessity of a separate competitive selection process for each project or study. In 2024, the Florida Legislature increased the statutory maximum cost of an individual construction project for which the City can access a CCNA consultant continuing contract to \$7.5 million. The maximum for any study activity engagement under a CCNA continuing contract was also raised to \$500,000. The 2024 law also includes a provision to automatically update the project ceiling annually, based on increases to the Consumer Price Index. The study activity ceiling will not be updated, under the current law. The Department of Management Services was tasked with calculating the new project ceiling each year on July 1, beginning this year.

Additionally, the 2024 law amended the provision regarding competitive selection, eliminating the prohibition on requiring contractors engaged under a CCNA process to bid against each other on individual projects. Pembroke Pines may now require CCNA contractors under continuing contracts with the City to bid against each other for each project or study activity, but it is not required to do so. *See Fla. Stat. § 287.055(2)(g)2.* The amendment went into effect on July 1, 2024.

Multiple Consultants

While CCNA contemplates government agencies may select a single firm as the most qualified to provide a specific professional service, it does not require the agency to engage only one (1) firm in a continuing contract for any type of professional service. The law has long allowed governments to engage multiple firms in continuing contracts. In 2008, Florida’s Attorney General pointed out that:

Nothing in section 287.055, Florida Statutes, limits the number of continuing contracts into which an agency may enter at one time. In fact, the statute appears to recognize that multiple contracts may be in effect simultaneously; otherwise, the statutory language precluding firms from being required to bid against one another would be superfluous.

Fla. Att’y Gen. Informal Guidance, August 6, 2008.

The Florida Attorney General’s Office guidance on this point has been consistent. *See, eg. Fla. Att’y Gen. O. 93-56* (advising a municipality that it was permitted to develop its own criteria for determining which firm under a continuing contract pursuant to CCNA will be selected for a given

project, and thereby assuming more than one firm was under contract). The recent amendment to the language regarding firms bidding against one another continues to contemplate the potential for multiple firms being contracted pursuant to CCNA.

Options:

The City Commission’s decision to award multiple continuing contracts to consultants in each category is not inconsistent with Florida law. While the RFQ expressed an intent to award to one (1) contractor in each category, it also reserved the right of the City Commission to award the RFQ in the best interest of the City. The City Commission has determined that awarding the RFQ to multiple contractors in each category is in City’s best interests. As a result, at this time, City Administration may proceed consistent with the City Commission action and bring forward contracts with multiple qualified consultants in each category. To do this, the City may use the results of the evaluation process it already conducted to rank the responsive bidders. City staff may select the qualified bidders in each category and enter into negotiations with each of them. The resulting contracts may then be presented to the City Commission for approval and execution.

Alternatively, City Administration may return to the City Commission to request that it reconsider the award. Should the City Administration determine to return to the City Commission, it can present the following options:

1. Cancel the Current RFQ and Resolicit

The City may cancel this solicitation and start over. Section 35.19(F), Pembroke Pines Code of Ordinances, permits the City Manager and the City Commission to reject all bids “when the public interest will be served thereby.” Additionally, the Reservations For Rejection and Award section of the RFQ preserves the right of the City to “reject any and all bids,” allowing for a complete cancellation of the RFQ. Finally, Florida courts have affirmed the right of government agencies to reject all bidders in a competitive solicitation as long as they do not do so “fraudulently, arbitrarily, illegally or dishonestly.” *Dep’t of Transp. v. Groves-Watkins Constructors*, 530 So. 2d 912, 914 (Fla. 1988).

If the solicitation is cancelled, the City can re-advertise an RFQ under CCNA, changing the terms of the current RFQ to specify that multiple contracts will be awarded in each category of professional service. The new RFQ will fall under CCNA, *as amended*, meaning the City may require competitive bids from contracted consultants for each project, but is not required to do so.

2. Proceed with the Current RFQ and Award One Contract Per Category

The City may proceed with the current RFQ and award a single contract per category of consultant.

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