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May 6, 2024

Via electronic mail: mgraham@ppines.com

Re: Protransportation, Inc.’s formal appeal of the “Bid Protest Determination Letter to Protransportation, Inc. D/B/A Prokel Mobility (“Prokel”) / City of Pembroke Pines (“City”) Request for Proposals No. AD-23-02” issued by the Purchasing Manager on May 1, 2024, pursuant to Pembroke Pines Code of Ordinances § 35.38(h), titled BID PROTEST PROCEDURES.

Dear Mr. Dodge:

This firm represents Protransportation, Inc. D/B/A Prokel Mobility (“Prokel Mobility” or “Prokel”) regarding above referenced Request for Proposal #AD-23-02, Operation and Management of Transportation Services (“Proposal”, “the Proposal”, or the “RFP”). Submitted with this appeal are supporting documentation in favor of Prokel’s responsive submission to the Proposal, including letters from key members of the ProKel team.

I. BACKGROUND

The City of Pembroke Pines, through its Procurement Department, issued a request for proposals (“RFP”) from vendors capable of operating, maintaining, and managing the City of Pembroke Pines Transportation Services for the City’s Charter Schools, the Community Bus System, and the Senior Transportation Program. The RFP seeks a respondent capable of operating the City-owned fleet of 53 buses, five of which are wheelchair accessible, and provide transportation services to just under 2,500 students who live between 2.0 and 3.5 miles from the school.

In addition, the RFP seeks proposals for the City’s Community Bus System, from qualified firms to operate three fixed routes, which works in conjunction with an interlocal agreement between Broward County and Pembroke Pines, that allows additional public transportation services for residents of the city and those persons traveling within the City to supplement existing mass transit services provided by the County.

Finally, the proposal seeks a respondent to provide shuttle services within the Pembroke Pines limits and transportation for residents 60 years of age or older as provided under the subcontracted services in its agreement with the Aging and Disability Resource Center of

Broward County (the Areawide Council on Aging of Broward County), as mandated by the 2002 Older Americans Act Title IIIB.

The RFP titled #AD-23-02, "Operation and Management of Transportation Services" was solicited on December 13, 2023.

Prokel submitted their formal bid protest on March 29, 2024. The Purchasing Manager issued his Bid Protest Determination Letter on May 1, 2024. Prokel submits this appeal to the Purchasing Manager's Determination Letter on May 06, 2024.

II. LEGAL STANDARD

The discretion awarding public contracts through a competitive procurement process "must be exercised based upon clearly defined criteria, and may not be exercised arbitrarily or capriciously." *Liberty County v. Baxter's Asphalt & Concrete, Inc.*, 421 So. 2d 505 (Fla. 1982)(emphasis added); *Emerald Correctional Management v. Bay County Bd. Of County Commissioners*, 955 So. 2d 647 (Fla. 1st DCA 2007). Public authorities cannot exercise that discretion in a manner that is arbitrary, capricious, dishonest, fraudulent, unreasonable, or in any other way that would subvert or undermine the purpose and object of competitive bidding. *D.O.T. v. Groves-Watkins Constructors*, 530 So.2d 912, 913-14 (Fla. 1988); *Caber Systems v. Department of General Services*, 530 So.2d 325, 336 (Fla. 1st DCA 1988).

An agency's wide discretion in evaluating bids will not be interfered with unless, exercised arbitrarily or capriciously, or unless based upon a misconception of law, or upon ignorance through lack of inquiry, or in violation of the law... ." *William A. Berbusse, Jr., Inc. v. North Broward Hospital District*, 117 So. 2d 550, 551 (Fla. 2d DCA 1960)(Emphasis added). "A capricious action is one taken without thought or reason or irrationally. An arbitrary decision is one not supported by facts or logic." *Agrico Chem. Co. v. Dep't of Envir. Reg.*, 365 So. 2d 759, 763 (Fla. 1st DCA 1978). **In the contract procurement context, whether an action was arbitrary or capricious depends upon whether the awarding authority complied with its own proposal criteria.** See *Acad. Express, LLC v. Broward City.*, 53 So. 3D 1188 (Fla. 4th DCA 2011)(Emphasis added).

If an agency fails to observe pre-established specifications, or its code, "that action will render meaningless the basis upon which bids were initially sought, and so must be deemed arbitrary, illegal, fraudulent, or dishonest." *MCI Telecommunications Corp. v. Dept. of Corrections*, 1995 WL 1053092 (Fla.Div.Admin.Hrgs.)(Emphasis added).

Finally, Section 35.38(h) of the City of Pembroke Pines Code states that "the City Manager shall overturn the selection if the protester proves that the selection did not comply in material respects with the requirements contained in the invitation to bid, request for proposal, request for qualifications or request for letters of interest; with this procurement code, or with Florida law. The decision of the City Manager shall be final. The City Manager's decision shall be e-mailed to the protester on the date of issuance unless otherwise directed by the protester".

III. RESPONSE

A. The City Manager should overturn the selection because Transportation Authority is a non-responsive party.

a. The RFP guidelines explicitly states that respondents cannot provide the City of Pembroke Pines projects as a reference.

The scoring for this RFP is based on points which can be gained through the submission of Attachment K and a questionnaire. The questionnaire, which contains the bulk of the scoring for this RFP is divided into four tabs, one of those tabs, Tab 2, is titled "Previous Experience / References". Tab 2 clearly states, in bold and underlined text, "**do not provide City of Pembroke Pines projects as any of your references**".

Following Transportation Authority's presentation on March 19, 2024, the Evaluation Committee Chairman noted that Transportation Authority deviated from the guidelines provided in the RFP by providing references which included the City of Pembroke Pines. (*See: Time Stamps from the recording of the March 19, 2024 Meeting of the Evaluation Committee as recorded in the file named "6&8 - Audio Recording AD-23-02.wav", provided to Protransportation, Inc. by the City of Pembroke Pines*) (known hereafter as "Exhibit C") Transportation Authority audibly admitted that they did not realize that Pembroke Pines was included as a reference in their proposal. However, the City of Pembroke Pines is the only reference provided by Transportation Authority on their proposal submitted in response to the RFP. ("Exhibit B").

While the Evaluation Committee has the discretion to waive minor irregularities included in the answers submitted by a proposer, here, Transportation Authority's deviation is material. A waiver of Transportation Authority's clearly violative response to Tab 2 would mean a waiver of one of the only four sections upon which the Evaluation Committee is to base the merit of proposals submitted in response to this RFP.

Waiving Transportation Authority's response on this question would lead to an entirely blank section, and in the contract procurement context, whether an action is arbitrary or capricious depends upon whether the awarding authority is compliant with its own proposal criteria. Waiving Transportation Authority's deviation invalidates an entire section of the questionnaire, is not in compliance with its own proposal criteria, and as such consists of arbitrary and capricious action by the Evaluation Committee and does not comply in material respects with the requirements contained in the Proposal.

Because awarding Transportation Authority this RFP could only be achieved by failing to observe pre-established specifications provided in the instructions to this RFP, because doing so would render meaningless the basis upon which bids were initially sought, and so must be deemed arbitrary, illegal, fraudulent, or dishonest, and because awarding Transportation Authority would be violative of Pembroke Pines Code Section 35.38(h), The City Manager should overturn the Purchasing Manager's selection.

a. The RFP guidelines prohibit any current City of Pembroke Pines employees as reference contacts.

The Evaluation Committee noted that Transportation Authority's inclusion of Pembroke Pine employees as a reference in their proposal was clearly prohibited in the RFP guidelines. ("Exhibit C"). The scoring for this RFP is based on points which can be gained through the submission of Attachment K and a questionnaire. The questionnaire, which contains the bulk of the scoring for this RFP, is divided into four tabs, one of those tabs, Tab 2, is titled "Previous Experience / References". Tab 2 clearly states, in bold and underlined text, **"do not utilize any current City of Pembroke Pines employees as reference contacts"**.

In the reference contact information portion of the proposal response, Transportation Authority listed three contact names. All three names listed by Transportation Authority are City of Pembroke Pines Employees. ("Exhibit B"). Moreover, one of the Contact Names, Jonathan Bonilla, is a member on the Evaluation Committee for this RFP. ("Exhibit B"). Furthermore, Jonathan Bonilla is the Chair of the Evaluation Committee for this RFP and led the Evaluation Committee's meeting on March 19, 2024.

While the Evaluation Committee has the discretion to waive minor irregularities included in the answers submitted by a proposer, here, Transportation Authority's deviation is material. A waiver of Transportation Authority's clearly violative response to Tab 2 would mean a waiver of one of the only four sections upon which the Evaluation Committee is to base the merit of proposals submitted in response to this RFP.

Waiving Transportation Authority's response on this question would lead to an entirely blank section, and in the contract procurement context, whether an action is arbitrary or capricious depends upon whether the awarding authority is compliant with its own proposal criteria. Waiving Transportation Authority's deviation invalidates an entire section of the questionnaire, is not in compliance with its own proposal criteria, and as such consists of arbitrary and capricious action by the Evaluation Committee.

Because awarding Transportation Authority this RFP could only be achieved by failing to observe pre-established specifications provided in the instructions to this RFP, because doing so would render meaningless the basis upon which bids were initially sought, and so must be deemed arbitrary, illegal, fraudulent, or dishonest, and because awarding Transportation Authority would be violative of Pembroke Pines Code Section 35.38(h), the City Manager should overturn the Purchasing Manager's selection.

B. Conclusion.

The City of Pembroke Pines award to Transportation Authority must be set aside because Transportation Authority is a non-responsive party. The RFP guidelines explicitly states that respondents cannot provide the City of Pembroke Pines projects as a reference and the City of Pembroke Pines is the only reference provided by Transportation Authority in their proposal. The

RFP guidelines explicitly states that respondents cannot provide City of Pembroke Pines employees as reference contacts and all three of the reference contacts submitted by Transportation Authority in their proposal are employees of Pembroke Pines.

Based on the foregoing, and because the Transportation Authority did not comply in material respects with the requirements under the proposal, pursuant to the Pembroke Pines Code of Ordinances Section 35.38(h), titled Bid Protest Procedures, the City Manager must overturn the selection.

In accordance with Pembroke Pines Code of Ordinances 3538(h), we hereby issue this written appeal to the City Manager to the City Clerk's office within three business days of issuance of the Purchasing Manager's decision.

Best regards,

A handwritten signature in blue ink, appearing to read 'DJM', with a stylized flourish at the end.

David J. Moscoso

DJM/