



November 2, 2014

Shawn Smith
City Attorney
3126 Flagler Avenue
Key West, Florida

CITY OF KEY WEST

NOV 03 2014

CITY ATTORNEY

RE: RFP No. 001-015
KEY WEST CITY HALL AT GLYNN ARCHER
PHASE 2 – NEW CONSTRUCTION AND MAJOR RENOVATION

Dear City Clerk:

The purpose of this letter is to voice our concerns over the recent RFP No.001-015 referenced above. Our firm is one of three (3) firms whom tendered a bid proposal; in fact, our firm was the lowest bidder of the three bids proffered by the sum of \$239,000.00.

All three firms are more than qualified and capable of performing this project, so our concern does not stem from a question of qualifications, but the bias perspective of the selection committee in awarding points for each qualification item is what we find to be highly questionable.

Our firm was the only firm to attend the Selection Committee evaluation meeting held on October 30th, 2014 where the selection committee members read the scores each member assigned for each of the proposers. The highest score possible was 600 in total and 100 for any individual category. To our shock and disbelief our firm went from being the lowest bidder to being ranked third (3rd) by the selection committee after appropriating the points for each category. Attached is a summary of the scores assigned to each firm by each of the committee members. You will notice that there is a very wide discrepancy between the committee members in scoring my firm. Although the scores vary greatly the materials provided that is being reviewed by each member does not vary, it is the exact same materials, and it does not change. Hence, even more reason to raise our suspicions regarding the bias in scoring.

Our dismay stems from several points of interest:

- (i) Our bid saves the City close to a quarter of a million dollars;
- (ii) Our firm maintains an office in Key west;
- (iii) Our firm utilizes and listed all local subcontractors for executing the project, we are well known for supporting the local business community on our projects;
- (iv) Our firm completed a very difficult restoration to a six story office building in which we cladded the beams and columns with carbon-fiber to reinforce the structure, which is also a requirement on this project.

10145 NW 19 St. Doral, FL 33172 • 3210 Flagler Ave. Key West, FL 33040

P: 305.468.6604 • F: 305.468.6654 • www.burkeconstructiongroup.com

General Contractors | Construction Management | Design-Build | Pre-Construction | Site Development | Green Construction | Interior Improvements

CGCA# 38309

Another point of interest that we believe lead to a very bias scoring is the fact that the bidder whom the committee ranked the highest and is recommending award had the advantage of working with the design professionals and the City on this project for well over a year. They provided the original detailed cost budgets and had the advantage of studying the project information first-hand a year in advance of the official bid.

Additionally, due to the fact that all of the bidders' proposals exceed the desire targeted budget, the committee members did not consider any of the additive alternates. The committee members did take into consideration the Base Bids and Alternate No. 7 which is a deductive alternate.

Furthermore, we have numerous concerns as it relates to members of the selection committee. The only member who did not to attend the October 30th meeting was Don Craig. We learned at the meeting that Mr. Craig has resigned and is leaving his position with the City. Unfortunately Mr. Craig issued the lowest score to our firm. What is difficult to comprehend is why Mr. Craig is part of the selection committee and his low score is very suspect to us. In addition, the architect Mr. Bender was also part of the selection committee. This is highly unusual due to the fact that Mr. Bender is in direct relationship with Biltmore Construction and has worked closely with them for over a year on this project. Not only is this a conflict of interest for Mr. Bender, it has also gave Biltmore a major advantage over the competition.

In addition, at the selection committee hearing, Mr. Bender stated that we were at a disadvantage because he did not know us personally and that he had worked closely with Biltmore and the other bidder DL Porter. He further stated that because of that we were scored lower.

The final major concern that we have with this process, is that not a single committee member called any of our references. As Mr. Bender clearly stated at the meeting, he had worked with the other firms and had a personal relationship with them that he did not have with us. Had he or any other committee member been diligent and not biased, with just a few phone calls they could have been enlightened to the fact that over the last 15 years my partner and I have completed double the amount of municipal projects than the other two firms combined.

To that end, I would like to offer you the following information by category, each was worth 100 points and see if your conclusion is the same as ours:

a. Successful completion of projects of similar size and complexity: 100pts:

We have completed over \$2 billion worth of projects, 18 schools, ranging from \$11 to 50 Million, 5 courthouses including Freeman Justice Center in Key West, 3 City halls, Parrot Jungle Island, Nevatim Air Force Base in Israel just to name a few.

b. Successful completion of sizeable LEED-certified projects, including providing all documentation for certification: 100 pts.

We just finished 6 months ago the new Stock Island Fire Station which is the first green building in Monroe County which features the same cisterns as the new city hall, we also completed last year the Camp Blanding Live Fire shoot house for the US Military which was a LEED Silver Certified project.



c. Experience in and knowledge of the labor and materials markets of the Florida Keys. 100pts.

I was born and raised in Key West, a fourth generation conch and my family has been doing business in Key West since 1903. We have a local office on Flagler with one of the best managers Buddy Montgomery who was born and raised in Key West, we completed two successful projects this year in Key West, the Stock Island Fire Station and Nelson English/Willie Ward park. In addition we built the Freeman Justice Center in Key West and the Little Venice Water Treatment Plant in Marathon. None of the bidders have more local history and knowledge than myself.

d. Successful completion of similarly-sized historic restoration projects: 100 pts.

We built the new Parrot Jungle on Watson Island which was one of the most complicated historic projects built in Florida. Nearly \$40 million in size and included the moving, storage and restoration of the historic Japanese gardens to an island that we built on an eco-sensitive strip of coastline. In addition, we just completed the restoration of the historic Thalatta Mansion in the Village of Palmetto Bay which had repurposed wood similar to the City Hall project.

e. Successful experience with reinforcing of existing concrete structures, especially in the use of carbon fiber reinforcing: 100 pts.

We have completed millions of square feet of reinforced concrete structures and are a leading expert in tilt-wall construction. Top 5 in the state of Florida for most Tilt-wall projects completed, which all use reinforced concrete. In addition we just completed the carbon fiber reinforcement of a 6 story building in Hollywood Florida and submitted a recommendation letter from one of Florida's leading carbon fiber engineering firms

f. Successful experience with municipal government projects of similar size: 100pts.

I submitted with my package just a partial sample of municipal projects that we have completed in just the last 10 years. There were 20 projects that totaled over \$360M and averaged over \$18M per project. Eleven of the projects were larger than the City Hall project. I have attached that list for your convenience.

After reviewing just these shortened answers to the qualifications, you tell me whether or not a score of 225 and 390 out of 600 is a fair and balanced assessment of our qualifications.

I want to reiterate our concern as to the appearance of impropriety as it relates to this bid process and the selection process. The architect (Bender & Associates) working with the City staff, selected a firm (Biltmore Construction) in which they hired to review the project and prepare a budget. This process, to my knowledge has gone on for a few years. Working together, Biltmore & Bender, designed the project, developed the budget and created the bid criteria and process. This is a normal occurrence except that it created a major conflict of interest to then allow not only Biltmore to bid the project but further allowed Bender to be one of four members of the final selection committee.

Despite those facts and that conflict of interest, we were still able to submit the lowest bid for the project. At the end of the day, all 3 firms are qualified to do this project but we submitted the lowest bid. We have the

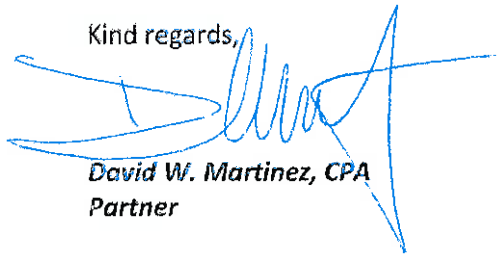


SHAWN SMITH
CITY ATTORNEY
RFP NO. 001-015
NOVEMBER 2ND, 2014
PAGE 4 OF 4

qualifications, the bonding capacity, the experience, the local office and most importantly the lowest bid. There is no logical reason that our firm should not have received the unanimous support of both the City and the selection committee.

Thank you for taking the time to review our concerns and I look forward to hearing from you regarding this matter.

Kind regards,

A handwritten signature in blue ink, appearing to read 'David W. Martinez', is written over the typed name and title.

David W. Martinez, CPA
Partner



RFP No. 001-15
Key West City Hall at Glynn Archer
Request for Proposal

Request for proposal: RFP No. 001-015
Key West City Hall at Glynn Archer
Phase 2 – New Construction and Major Renovation

RFP Date: August 31, 2014

Mandatory Pre-Bid Conference: September 15, 2014 @ 10:00am

Bid Date: October 15, 2014 @ 3:00pm

Revised Bid Date: October 22, 2014 @ 3:00pm

Bid Submission: The Clerk of the City of Key West
3126 Flagler Avenue, Key West

Bid Opening: Bids to be Publicly Opened and Read

Requirements: The successful Proposer must demonstrate that he/she holds, as a minimum, the following licenses and certificates:

- A) City of Key West License as defined in the Code of Ordinances Chapter 66, enabling the Contractor to perform the work as stated herein (the bid documents).
- B) A valid Certificate of Competency issued by the Chief Building Official of the City of Key West, which shall be valid throughout the Contract Time
- C) A valid Business Tax Receipt issued by City of Key West

Proposer must meet all Insurance and Bond requirements

Composite Tabulation

Alternate Combination:

NEW CITY HALL AT GLYNN ARCHER

Proposal Date:

10/22/2014

Proposer:

- 1 Don Craig
- 2 Jim Bouquet
- 3 Mike Viewx
- 4 Bert Bender

Base Only

Burke Baltimore Porter

1	225	555	390
2	450	550	300
3	535	590	555
4	390	549	548

Total Qualification Points	800	955	838
Total Price Points	400	394	390
Total Score, this Option	400	394	390

Base Only

10/22/2014

Burke Baltimore Porter

	0	0	0
	0	0	0
	0	0	0
	0	0	0

	-	-	-
400		394	390
400		394	390

Low Pricing

Low Price 14,997,500

÷ This price

x

This pricing

14,997,500

15,236,557

15,400,000

Low Pricing

14,919,500

14,919,500

15,139,707

15,304,020

This pricing

14,919,500

15,139,707

15,304,020

This pricing

400

400

400

Base

Alt 1: Solar Array 2

Alt 2: Solar Array 3

Alt 3: Concrete for Asphalt

Alt 4: Commission Roof Framing

Alt 5: Butterfly Pavilion

Alt 6: Drip Irrigation

Alt 7: Delete Fire Escapes

Alt 8: Motorized Shades

14,997,500	14,997,500	15,236,557	15,400,000
340,000	148,333	222,436.50	222,436.50
325,000	144,131	216,009.68	216,009.68
235,000	261,733	268,283.66	268,283.66
28,000	55,084	55,869.99	55,869.99
32,000	22,661	20,311.85	20,311.85
12,200	47,856	22,440.00	22,440.00
(78,000)	(96,850)	(95,980.00)	(95,980.00)
19,300	13,826	44,223.57	44,223.57

14,997,500	14,997,500	15,236,557	15,400,000
340,000	148,333	222,436.50	222,436.50
325,000	144,131	216,009.68	216,009.68
235,000	261,733	268,283.66	268,283.66
28,000	55,084	55,869.99	55,869.99
32,000	22,661	20,311.85	20,311.85
12,200	47,856	22,440.00	22,440.00
(78,000)	(96,850)	(95,980.00)	(95,980.00)
19,300	13,826	44,223.57	44,223.57

Burke Construction Group / The Tower Group, Inc.



Large Municipal Projects Completed in last 10 Years

	<u>Description</u>	<u>Contract Amount</u>	<u>Owner</u>
1	Hallandale Elementary	18,276,025	Broward County School Board
2	Central County Transfer Station	20,252,726	Palm Beach County
3	Matanzas High School	23,603,025	Flager County School District
4	Central Region Operations Center	16,507,138	Palm Beach County Water Utilities Department
5	Hickory Creek Elementary	11,904,855	St. Johns County School Board
6	Freeman Justice Center	14,761,414	Monroe County
7	Yulee High School	23,673,891	Nassau County School Board
8	Green Cove Springs City Hall	11,906,839	City of Green Cove Springs
9	BBB High School	16,230,213	Flager County School District
10	South Dade Cultural Center	38,412,280	Miami Dade County
11	Emerald Office Building	9,000,000	US Army Corp of Engineers
12	Pacetti Bay Middle School	33,248,114	St. Johns County School Board
13	Wards Creek Elementary School	14,899,000	St. Johns County School Board
14	Timberlin Creek Elementary	21,869,000	Nassau County School Board
15	Ninth Grade Addition	12,013,000	St. Johns County School Board
16	Creekside High School	48,154,000	St. Johns County School Board
17	Nevatim AFB	17,637,470	US Army Corp of Engineers
18	Camp Blanding Live Fire Shoot House	3,988,125	US Department of Military Affairs
19	Stock Island Fire Station	3,260,594	Monroe County
20	Nelson English/Willie Ward Park	1,204,747	City of Key West
	Total	\$360,802,456	

Sue Harrison

From: Sue Harrison
Sent: Wednesday, November 12, 2014 1:54 PM
To: 'rhardy@sourcelinkinc.com'
Subject: RE: Revised Bid Tabulation RFP 001-15 Key West City Hall at Glynn Archer Phase 2

Mr. Hardy:

All the information regarding RFP 001-15 will be available to view on the November 18, 2014 City Commission Agenda due to be published by end of business today.

Please note my new Email Address and update your contact information.

Sue Harrison, CMC
Sharrison@Cityofkeywest-fl.gov
Senior Deputy City Clerk
City of Key West
305-809-3834

Under Florida law, e-mail addresses are public records. If you do not want your email address released in response to a public-records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing." Fl. Stat. 668.6076

From: Randy Hardy [mailto:rhardy@sourcelinkinc.com]
Sent: Tuesday, November 11, 2014 12:40 PM
To: Sue Harrison
Subject: RE: Revised Bid Tabulation RFP 001-15 Key West City Hall at Glynn Archer Phase 2

Mrs. Harrison,

Could you please send me a copy of biltmore construction bid? I specifically want to see the breakdown by divisions if they broke it out on their quote.

Thanks,
Randy Hardy
Executive Assistant
SourceLink Communications Inc
Phone: (407) 654-2400 Ext 206
Toll Free: (888) 692-5100
Fax: (407) 654-2428
E-Mail: rhardy@sourcelinkcommunications.com
Web: <http://www.sourcelinkcommunications.com>



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-----Original Message-----

From: daniel a. metzler [<mailto:thedanmetzler@gmail.com>]

Sent: Tuesday, November 18, 2014 12:00 PM

To: Cates Craig; Weekley Jimmy; Johnston Teri

Subject: the right thing to do

I think the value of the vacant land not used for the new City Hall on Simmington St. vs the cost for the reconstructed City Hall on White St. needs to be considered when looking at the costs of the reconstruction on White St.

The vacant land on Simmington St. still owned by the City after the new City Hall is complete on White St. has tremendous value due to its location and size. It could be sold as an asset to offset costs on White St, although I would not recommend that.

This asset would not have existed if the City Hall was built on the Simmington St. site. The Simmington St. land value needs to be recognized as an asset when discussing the cost on White St. as it would not exist if the City Hall was built on Simmington St.

The preservation of the old high school as the new City Hall is the right thing to do even if it cost some more. It is a wonderful historic building in the right location, very central to the residents of the City. It has the right building and land size with good parking. It has a nice, large auditorium for meetings so we do not have to pay rental for Old City Hall meetings (unless the City has some obligation to do so). It will spur economic activity on that end of White St. as an anchor tenant does in a shopping center by bringing more people to the area. It creates more civic pride for our City as it is a structure we are all proud of due to its history and image.

And we still have the vacant property on White St. which is worth a lot more than the recent added cost of preservation.

Sent via the Samsung Galaxy Mega™, an AT&T 4G LTE smartphone

----- Original message -----

From: Michael Vieux

Date: 11/17/2014 2:33 PM (GMT-05:00)

To: "James K. Scholl" ,Greg Veliz , "Sarah H. Spurlock" ,Don Craig ,blbender@bellsouth.net

Cc: James Bouquet

Subject: FW: New City Hall

FYI

From: Gary Loer [<mailto:gary@dlporter.com>]

Sent: Monday, November 17, 2014 2:10 PM

To: Michael Vieux

Cc: Marshall White

Subject: New City Hall

Michael,

After giving your request for D. L Porter to participate in the next City of Key West Commission meeting considerable thought, we have decided not to participate further in what we have felt for some time now is an inappropriate process. It is our intent to send the City a letter shortly expounding on our position with regards to handling of the New City Hall project.

Respectfully,

GL

Gary A. Loer, President

D.L. Porter Constructors, Inc.

6574 Palmer Park Circle

Sarasota, FL 34238

941-929-9400 Ofc – 941-929-9500 Fax

From: Paulette Jewell [<mailto:paulette@dlporter.com>]
Sent: Tuesday, November 18, 2014 4:21 PM
To: Cheri Smith
Subject: FW: Key West City Hall at Glynn Archer Ph 2

Cheri,

I inadvertently omitted your email on the attached letter. My apologies and could you see that it is received by the appropriate parties involved with the project referenced.

Thank you,

Paulette Jewell, Office Manager
D.L. PORTER CONSTRUCTORS, INC.
6574 Palmer Park Circle, Sarasota, FL 34238
941.929.9400 - Fax 941.929.9500
www.DLPorter.com



Please consider the environment before printing this email.

From: Paulette Jewell
Sent: Tuesday, November 18, 2014 4:01 PM
To: 'mvieux@cityofkeywest-fl.gov'
Cc: 'ccates@keywestcity.com'; 'jweekley@keywestcity.com'; 'mrossi@keywestcity.com'; 'bwardlow@keywestcity.com'; 'tyaniz@keywestcity.com'; 'tjohnston@keywestcity.com'; 'clopez@keywestcity.com'; 'clopez@keywestcity.com'; 'sdsmith@cityofkeywest-fl.gov'; 'blbender@bellsouth.net'; Gary Loer; Marshall White
Subject: Key West City Hall at Glynn Archer Ph 2

Mr. Vieux,

Attached please find our response to the Executive Summary on the Key West City Hall at Glynn Archer bid and your intention to award the project to Biltmore Construction, Inc. and explaining our reasons for not attending the City Commissioner's meeting this evening.

Paulette Jewell, Office Manager
D.L. PORTER CONSTRUCTORS, INC.
6574 Palmer Park Circle, Sarasota, FL 34238
941.929.9400 - Fax 941.929.9500
www.DLPorter.com



Please consider the environment before printing this email.

November 18, 2014

By E-Mail: mviewx@cityofkeywest-fl.gov

J. Michael Vieux
Senior Construction Manager
City of Key West
3140 Flagler Avenue
Key West, Florida 33040

Re: RFP No. 001-015 - Key West City Hall at Glynn Archer - Phase 2

Dear Michael:

D.L. Porter Constructors, Inc. ("Porter") has decided not to participate in the City of Key West's Commission meeting scheduled later today because it believes that the procurement process engaged by the City in connection with the above-referenced project has: 1) provided one of the bidders an unfair bidding advantage and has potentially resulted in a conflict of interests; 2) the selection process is based on a vague set of criteria, which promotes an arbitrary and capricious result; and 3) fails to comply with applicable law.

As to the unfair competitive advantage, there is no doubt that Biltmore Construction, Inc. ("BCI") has obtained an unfair competitive advantage over all bidders. As you are aware, BCI was either hired or used by the architect of record to assist on a number of matters during the design phase, which included among other things, developing pricing and assisting with identification of building systems and materials. None of the other bidders ever had such opportunities, and in fact, the product of BCI's estimating efforts have never been made public for the benefit of all other bidders. Moreover, the resulting relationship between BCI and the architect of record during the design phase, has favored BCI in the eyes of the architect of record, and therefore, has resulted in a conflict of interest which is ripe for misuse, as the architect is one of the contributors to the point system which could influence who is the recommended successful bidder. Moreover, BCI has had an inordinate amount of time to review the bid, contact subcontractors and negotiate favorable pricing, which none of the other bidders ever had.

As to the selection criteria, Porter believes that same is vague, and as a result thereof, is ripe for abuse and is likely to bring about an arbitrary and conspicuous result. As an example, each and every one of the selection criteria items is premised with the word "successful". Whether or not a project is successful is a subjective standard and could be viewed differently depending from what perspective "successful" is perceived. In addition, much of the selection

criteria is based on "similar size and complexity" comparisons which are also ripe for broad and vague interpretations.

As you know, in Florida, there is great public interest in insuring that contracts be awarded to effectuate the intent of the competitive bidding laws. The purpose of competitive bidding laws is to secure the lowest responsible offer. Although, public authorities have wide discretion in awarding public works contracts, the discretion cannot be arbitrary or capricious, and must be exercised based on a clear and defined criteria. Porter asserts that the manner in which the City has tentatively selected its recommended bidder fails to comply with the spirit, intent and the specificity of the procurement requirements of the State and the City.

There is no question that each and every bidder has the requisite background and experience to perform the work. It is Porter's position that the weighted values for the selection criteria was crafted in a way whereby the bid process is no longer a pure competitive process, but instead a popularity contest of sorts. Since the City is tasked with protecting the public's purse, the criteria relies more on subjective standards than the necessary funding that will be required on the project. To that end, it is Porter's belief that the principles of competitive bidding have not been met by the criteria and the implementation of same in connection with this project.

In conclusion, the fact that the third lowest bidder was able to trump the lowest bid by more than a quarter of a million dollars, based solely on a subjective criteria, should be concerns enough. The fact that the City failed to provide within its bidding documents the reason why the selection by low bid was not practical, adds to the problem. Lastly, the fact that all bids exceeded the City's budget should be the final straw in causing the City to reconsider its procurement process on this project.

Sincerely,

D.L. PORTER CONSTRUCTORS, INC.



Gary A. Loer
President

GAL/lc

cc: Mayor Cates - ccates@keywestcity.com
Jimmy Weekley - jweekley@keywestcity.com
Mark Rossi - mrossi@keywestcity.com
Billy Wardlow - bwardlow@keywestcity.com
Tony Yaniz - tyaniz@keywestcity.com
Teri Johnston - tjohnston@keywestcity.com
Clayton Lopez - clopez@keywestcity.com
Shawn Smith, Atty - sdsmith@cityofkeywest-fl.gov
Bender & Assoc. - blbender@bellsouth.net