



April 24, 2019

Mr. Harold Buckley Jr., AICP, Esquire
Wilson Brock & Irby, LLC
2849 Paces Ferry Road, Overlook I, Suite 700
Atlanta, Georgia 30339

Via E-Mail: HBUCKLEY@WBILEGAL.COM

Dear Mr. Buckley:

This is in response to your bid protest appealing the City of Savannah's pending decision to award a contract for design assistance services as part of a phased contract to include the future lease, operations and management of the new Savannah arena and other facilities, Event #6488. This morning we held an administrative appeal in my office pursuant to Section 2-4121 of the Savannah City Code. You were accompanied by Mr. Harry Cann, SMG; Mr. Michael Vaquer, the Vaquer Firm; and Mr. Miquel Camacho, Brownstone Group. The City was represented by Bret Bell, Assistant to the City Manager; Glenn Hull, Special Projects Coordinator; Brittany Gashi, Acting Purchasing Director; Manuel Dominguez, Director of the Office of Business Opportunity; and Jennifer Herman, Interim City Attorney.

Since the City Code provides for an administrative appeal to the city manager but does not detail the grounds for protesting a proposed contract award, we communicated to you on April 22, 2019 the parameters for today's hearing. Specifically, we identified the following three subject areas that would be covered in our administrative appeal hearing:

- 1) Allegation of bias, discrimination, or conflict of interests on the part of any evaluators;
- 2) Errors in computing the scores assigned to each criteria and overall score; and/or
- 3) Non-compliance with procedures described in the solicitation or City purchasing policies or procedures.

Matters of law raised by you concerning the construction of the City's code section addressing bid protests and whether the City was authorized to conduct an executive session discussion on the pending award were beyond the scope of this appeal and therefore not considered during our hearing.

You alleged that the City of Savannah deviated from the scope and process described in the published solicitation, inappropriately assigned higher scores to a joint venture between the Oak View Group, LCC and Pat Mathis' (collectively "OVG") relevant firm experience and capabilities in comparison to the experience and capabilities of the two other respondents, arbitrarily changed the scope of work, improperly assigned points based on Disadvantaged Business Enterprise (DBE) participation, waived the requirement for three years of audited financial statements from OVG, and eliminated any objectivity from the evaluation process.

As a remedy, you requested that I:

- 1) Sustain your appeal;
- 2) Schedule a hearing before the City Council in the event I deny your appeal;
- 3) Disqualify OVG as being non-responsive;
- 4) Reject the acceptance of part of OVG's DBE subcontractors;
- 5) Provide SMG with an opportunity to revise its proposal; and
- 6) Defer any further action until all "legal deficiencies" are addressed.

Allegation 1: *City deviated from the scope and process described in the published solicitation.*

Finding: Unsubstantiated. The proposed phased approach does not constitute a material deviation from the scope and process described in the published solicitation. Future additions to the scope of work to be performed is planned to be accomplished through subsequent contract amendments at the time the additional services are needed. The services recommended to be awarded on April 25th are contemplated and identified as Phase 1 services.

Allegation 2: *The Evaluation Committee inappropriately assigned higher scores to OVG's relevant firm experience and capabilities in comparison to the other two respondents.*

Finding: The proposal scoring process consists of a qualitative score and a quantitative score. The qualitative score is arrived by averaging the scores of the five senior staff members that participated on the Evaluation Committee. This qualitative score consists of the firm's experience and capabilities (25 points), team experience and qualifications (15 points) and strategic approach (25 points). This is a subjective score assigned by each evaluation committee member based on that individual's assessment of the submitted written materials and firm interview/presentation. It is impractical to assess the rationale behind each member's individual decision-making process used in arriving at their score.

Allegation 3: *The City arbitrarily changed the scope of work.*

Finding: Unsubstantiated. The scope of work is unchanged.

Allegation 4: *The City improperly assigned points based on DBE participation.*

Finding: Unsubstantiated. DBE participation points were assigned based on a firm's commitment to achieving a specific, self-identified level of DBE participation rather than on signed formal commitments from certified DBE subcontractors. In fact, this method was changed following SMG's correct assertion that rating DBE participation on the subcontractor level two to three years before the onset of services was impractical. The City agreed and changed its approach to assign a score

based on prime level DBE participation and a commitment to a level of participation on the subcontractor level.

Allegation 5: *The City waived the requirement for three years of audited financial statements from OVG*

Finding: Unsubstantiated. While OVG is a privately-held company and did not submit audited statements with their proposal, they did in fact, respond to the question on page 25 of their response. The firm offered to provide City staff and representatives access to additional financial information upon request. This request was made and granted to the City. Furthermore, while submittal of financial statements was a requirement of the response to the solicitation, it was not a graded criteria.

Allegation 6: *The City removed any objectivity from the evaluation process.*

Finding: Unsubstantiated. The RFP scoring process is inherently a subjective and objective process. This was the case here in which qualitative (subjective) and quantitative (objective) elements were included.

After careful consideration of the facts and evidence presented at the hearing, I conclude that your protest is without merit and I uphold the Acting Purchasing Director's decision to recommend awarding this contract to OVG. Should you find this decision unacceptable, you may appeal this decision before the mayor and alderman on or before the date the award recommendation is to be heard. In this case, the City Council is scheduled to consider this award on Thursday, April 25, 2019 at 2:00 P.M. in the Council Chambers, 2 East Bay Street, Savannah, Georgia.

While we understand your firm is disappointed in our recommendation, we do appreciate the time and effort it took to respond to this proposal. Thank you for your interest in doing business with the City of Savannah.

Sincerely,

Rob Hernandez

Roberto "Rob" Hernandez
City Manager