



August 20, 2019

Ms. Rita Silva, CPPO
Chief, Policy, P3 and Innovative Procurements
Miami-Dade County Internal Services Department
111 NW 1st Street – Suite 2100
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Via email: Rita.Silva@miamidade.gov

Re: RFP-00953 – Design, Build, Finance, Operate and Maintain Civil and Probate Courthouse

Dear Ms. Silva:

Now that the Selection Committee has concluded its scoring of all proposer submissions and prepares to make a report/recommendation to the Mayor, on behalf of M-S-E Judicial Partners, LLC (MSE), I would like to first thank you, the Selection Committee, the technical advisors and all the stakeholders for all the diligence and effort put forth up to this point in this most important P3 procurement process for a new Miami-Dade Civil Courthouse.

In order to be succinct, staff reports and Selection Committee discussion make it abundantly clear that the ranking process resulted in the recommendation of a technically and structurally inferior building, and this inferior, non-functional (see Former Chief Judge Farina's comments below) and non-compliant design is reflected by a price that presents enormous risk and hidden extra cost to the County. This lowball price that is so far outside of the range of other proposers or similar category of buildings resulted in both other proposers receiving ZERO points for price, and the selected proposer, Plenary Justice Partners, LLC (Plenary), scoring a full 1000 points, despite their non-compliant, non-functional design.

While MSE understands the Selection Committee's intent to move forward with a report indicating that Plenary due to its unusually low price, is the highest ranked and preferred proposer for contract negotiations, **we respectfully ask the Committee to undertake a further review and conduct oral presentations to determine how each proposer meets the technical and quality requirements of the ITP, the number and magnitude of deficiencies in their technical submissions, and most importantly, how the building designs offered by each proposer relate to the prices offered.** This should not only include some of the architectural elements that the Selection Committee had access to but also an evaluation on structural elements, mechanical systems and electrical systems in order to ensure overall compliance and highlight any further deficiencies.

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The Technical Provisions set out in the ITP are not “nice to have” options but are rather the “manual” that all stakeholders have signed onto as requirements of the building to be delivered. Any assessment of the material deviations from the ITP Technical Provisions should also include the same stakeholders and users that helped create the Technical Provisions, as they are the people who will use the building and live with its design for years to come. We understand the administration is under a tight timeline to reach an award recommendation by November 19th, but we also believe the Selection Committee taking time now to conduct oral presentations, inclusive of the stakeholders, to review the technical submissions in relation to the price submissions of each proposer will save time and effort in reaching a commercial close on this process. As you pointed out during the meeting on August 13th, there is an approximately 1-month process available to accommodate this very important step.

Echoing the above, the following are the words of Former Chief Judge and Selection Committee Member, Joseph Farina, in the final minutes of the August 13, 2019 meeting of the Selection Committee in response to your inquiry as to whether any of the Selection Committee Members had anything they would want to highlight in the Selection Committee’s Report and Memorandum:

“I want to really speak about some of my concerns and cautions about what we’ve done here and what this recommendation is about, because I think based upon Dan’s detailed analysis of the C1, C2 and C3 [sections of the Proposers’ technical submissions] there are significant deficiencies that were presented by all 3 of these proposers and certainly by the preferred proposer. And to me they raise significant red flags, quite frankly. So, I know there is going to be some sort of a meeting where those deficiencies are going to be brought to the attention of this now preferred proposer. I’m hoping and expecting that the court and clerk are going to be at each one of those meetings, because living in a courthouse that is not fully functional and operational to me reminds me of the old technology adage, ‘garbage in, garbage out, deficiencies in, deficiencies out’. And I’m concerned they will be ingrained in concrete and it really does concern me. So, I’m going to assume that it’s going to happen. I’m just wondering out loud when it’s going to happen, because looking at page number 9 of the ITP and looking at this very demanding schedule between now, August 13th, and something happening the week of November 19th, we have a very tight window to which changes shall and need to be made. Otherwise, we will be ending up with a courthouse and living with it for 30 years and getting it back to us after the 30 years, with 90% of the same way that it was inefficient and deficient, then living with it again for another 30 years based upon the County’s experience with courthouses...”. “...I raise my concerns and my cautions. Red Flags are waving.”

Contrary to the Judge’s explicit request, none of these concerns were set forth in the final Selection Committee Report and Memorandum. The reason that red flags are indeed waving is related to the extraordinary differential between Plenary’s price and that of both the 2nd and 3rd ranked Proposers. The Selection Committee was never afforded any explanation as to how one proposer’s design-build price could be \$72MM and \$57MM cheaper than that of the other proposers, respectively. Most importantly, it must be noted that there was no discussion by the Committee, other than the “red flags” raised by Judge

Farina at the conclusion of the meeting, as to the quality of the buildings being proposed in relation to the prices submitted. These are important questions to ask when trying to determine the proposal that provides the “best value” for Miami-Dade County, especially in light of an ongoing incident broadly reported in the media that the Design-Builder on the Plenary team is in the process of withdrawing from the construction management contract to build the Broward County Courthouse and has reportedly demonstrated a pattern of questionable bait and switch behavior.

Unfortunately, the ITP scoring formula on price did not allow for any consideration of the quality of the building being offered, in other words, the best value for the best price. It merely gave 1000 points to the lowest price offered and then discounted the score of each other proposer in comparison. The highly punitive nature of the scoring formula on the overall evaluation enables any materially inferior design to prevail. Due to the extraordinary low price offered by Plenary, the 2nd and 3rd ranked proposers received ZERO points on price, while Plenary received 1000 points, despite offering a materially deficient building. The result appears to be an unfortunate situation where Plenary lowered their price by offering an inefficient design in order to “buy” the opportunity to get into a negotiation with the County and execute a contract based upon price alone. The ultimate, unfortunate and sad situation could be the “red flag” situation Judge Farina raises and cautions in his comments cited above, namely that after all the time, effort, labor and money poured into this process by all involved, the legal community and the public could very well end up with a deficient and inferior “new” courthouse and pay extremely large sums later on through change orders to make the building somewhat better. As the County is well-aware, through its ongoing experience with the historic courthouse, inefficient spaces may only be improved through extraordinary efforts and great costs but can never be properly adjusted.


If oral presentations by each proposer were conducted now and included the key stakeholders, the risk of winding up in this most unfortunate situation could be averted. Judge Farina inquired more than once during the Selection Committee Process as to whether the Committee would be able hear oral presentations, which is allowed under the ITP. On August 5, he made this request to you in writing. We believe that Judge Farina made those inquiries because he understood very well at the time, well before the price submissions were provided to the Selection Committee, that there were many aspects of buildings being proposed that merited further review and inquiry, and that the Selection Committee needed to have the ability to understand the offerings and receive explanation on the compliance comments offered by staff and advisors. Some of these comments relate to non-compliance with zoning and permitting while other comments are related to the lack of functionality and missing spaces in the new courthouse. As set forth in Section 6.1 of the ITP and as is consistent with industry practice, no changes to the final draft of the Project Agreement (and the Technical Proposal contained therein) can be made following the submission since these negotiations have already occurred to ensure that prices can be evaluated on an apples-to-apples basis. Accepting an inferior design could therefore also be a breach of the RFP document.

Moreover, the simple fact that the Selection Committee, when it inquired about holding oral presentations was guided by the County's financial advisor to NOT hold oral presentations should raise additional red flags. Outside of the obvious abnormality of why the County's financial advisor would respond to a process question about whether oral presentations should be conducted, it is extraordinary in Miami Dade County to make a selection on a project of this magnitude without holding oral presentations.

Simply put, if oral presentations are now conducted, the red flags referenced by Judge Farina, and other lingering questions that deal with very material risks to the County, could be clarified for all proposers and whether or not Plenary is simply "buying" this project by offering an inferior design could be determined. As such, we respectfully request that the Committee be reconvened in short order to conduct oral presentations by all three proposers in order to fully evaluate the quality of the buildings being proposed.

We appreciate your attention and consideration and again thank you for all your efforts thus far in the process.

Sincerely



Brian E. May

cc: Clerk of the Board