



1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

OFFICE OF THE CITY MANAGER

September 5, 2017

Kaufman Lynn Construction, Inc.
jharden@kaufmanlynn.com Joshua Harden
4850 T-Rex Avenue, Suite 300
Boca Raton, Florida 33431

SENT VIA E-MAIL:

RE: REQUEST FOR PROPOSALS NO. 2016-204-KB DESIGN/BUILD SERVICES FOR A NEW PARKING GARAGE FACILITY AND RELATED INFRASTRUCTURE FOR THE COLLINS PARK PARKING GARAGE ("RFP")

Dear Mr. Harden:

This letter responds to Kaufman Lynn Construction, Inc.'s ("Kaufman") July 18, 2017 protest in connection with the above-referenced RFP, as supplemented by the letter dated August 14, 2017, submitted by Kaufman's counsel.

A copy of City's July 17, 2017 non-responsiveness determination is attached hereto as Exhibit "1," and incorporated by reference herein. In the City's July 17, 2017 letter, the City notified Kaufman that its proposal was nonresponsive, based on Kaufman's failure to comply with the mandatory submission requirements for a completed Cost Tender Form, and specifically, its failure to include a fully executed and notarized Section 1 of the Cost Tender Form, the Proposal Certification. In addition, based on Kaufman's failure to submit the required Section 1 of the Cost Tender Form, the City noted that it need not address Kaufman's submission of Section 2 of the Cost Tender Form, which also implicated responsiveness issues, as instead of designating a price in the line item for Site Remediation in Section 2 of the Cost Tender Form, Kaufman stated that Site Remediation was "NIC," or not included.

In its July 18, 2017 protest and subsequent letter, Kaufman makes the following principal arguments, including that:

(i) the Proposal Certification, even though mandatory and part of the Cost Tender Form required of all bidders, was not "material," and that Kaufman's failure to submit the completed Cost Tender Form was a mere technical irregularity that could be waived by city officials at their discretion;

(ii) Kaufman claims that its employees did, in fact, submit the completed Proposal Certification, and therefore City should credit Kaufman and accept an untimely submission of the fully completed and executed Cost Tender Form;

(iii) as to Kaufman's designation of "NIC" in a line item for "Site Remediation" in Section 2 of the Cost Tender Form, the City should have somehow discerned, from the face of Kaufman's bid, that when Kaufman designated "NIC," or "not included," for the Site Remediation line item, Kaufman *really meant* that pricing for this "not included" line item was in fact "included" in another line item; and

(iv) the remaining proposals were also not responsive to the RFP, and therefore, City should have simply ignored Kaufman's failure to submit a responsive proposal in accordance with the RFP's plain requirements.

We are committed to providing excellent public service and safety to all who live, work, and play in our vibrant, tropical, historic community.

The City, after review of Kaufman's protest, hereby denies Kaufman protest and, in support thereof, concludes as follows:

First, as a threshold matter, the City notes that the Cost Tender Form for this RFP consisted of two separate sections, namely (1) Section 1 – the Proposal Certification, which the proposers were required to execute and notarize; and (2) Section 2, the Guaranteed Maximum Price form. The RFP clearly instructs all proposers to take notice of the importance of submitting the Cost Tender Form properly. Specifically, Addendum No. 4 expressly instructs the proposers as follows:

"Failure to submit the attached Cost Tender Form shall render proposal non-responsive, and said non-responsive proposal shall not be considered by the City."

See Addendum No. 4 (emphasis in original).

The City submits that the Proposal Certification, Section 1 of the Cost Tender Form, is a material part of a proposer's submission and as such, the failure to submit the Proposal Certification is not a minor irregularity that could be waived. A responsive vendor is one that submits a bid, proposal or reply that conforms in all material respects to a solicitation. See, e.g., Section 287.012(26), Fla. Stat., and Fla. Admin. Code R. 60D-5.002(18). A responsive bid is therefore submitted on the correct forms, and contains all required information, signatures, and notarizations, and evidences a bidder's promise, on the face of its bid, to provide the items or services called for by the bid.

In *Robinson Electrical Co., Inc., v. Dade County*, 417 So. 2d 1032 (Fla. 3d DCA 1982), the court applied two criteria for determining whether a deviation is material. The first was "whether the effect of a waiver would be to deprive the municipality of its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements, and second, whether it is of such a nature that its waiver would adversely affect competitive bidding by placing a bidder in a position of advantage over other bidders or by otherwise undermining the necessary common standard of competition." *Id.* at 1034. The court further stated that "a variance is material if it gives the bidder a substantial advantage over other bidders, and thereby restricts or stifles competition." *Id.*

The Proposal Certification, which is part of the Cost Tender Form that includes the GMP price proposal for the Project, is a material part of a proposer's submission. A signed and executed Proposal Certification is essential to, and is the very instrument by which, the City is assured that the contract will be entered into and performed according to its specified requirements. Further, by submitting the fully completed and executed Proposal Certification, the City is further assured that the Proposal, including specifically the proposed pricing set forth in the Cost Tender Form, is made fairly and in good faith without collusion or fraud.

Waiver of the Proposal Certification requirements would place Kaufman in a position of advantage over other bidders who, unlike Kaufman, completed and executed the Certification Form, agreed to the RFP terms, and attested to its requirements. In this regard, all proposers were on an equal footing and had the same opportunities as Kaufman to read and utilize the Proposal instructions, and submit the Proposal Certification, fully completed and executed. **Kaufman's submission of an incomplete Cost Tender Form, is not curable, as doing so permitted Kaufman to opt in or out of the process at its will, depriving the City of a valid offer and placing Kaufman, through its omission, at a material advantage over other bidders who, unlike Kaufman, made firm offers.**

In making the determination that Kaufman's proposal was non-responsive (consistent with the

RFP's clear notice to proposers that the failure to submit the Cost Tender Form shall render a proposal non-responsive), the City concludes that it appropriately exercised its broad discretion. Under Florida law, an agency has wide discretion in its procurement decisions and its decisions, when based on an honest exercise of discretion, will not be overturned even if it may appear erroneous and even if reasonable persons may disagree. See *Liberty County v. Baxter's Asphalt and Concrete, Inc.*, 421 So.2d 505 (Fla. 1982); *Department of Transportation v. Groves-Watkins Constructors*, 530 So. 2d 912-913 (Fla. 1988) (noting the "sole responsibility is to ascertain whether the agency acted fraudulently, arbitrarily, illegally, or dishonestly").

Second, although Kaufman employees submitted affidavits as to its general procedures and the process it followed in submitting its proposal, the fact remains that **the Proposal Certification was not in Kaufman's sealed envelope when the Cost Tender Forms were opened at the Evaluation Committee meeting, for the first time, by the Procurement Officer assigned to this RFP.** Attached as Exhibit "2" is the affidavit submitted by Krista Bada, the Procurement Officer responsible for this RFP. In her affidavit, Ms. Bada outlines the City's intake process she followed for receiving and holding the three proposals and sealed Cost Tender Forms the City received in response to this RFP. In her affidavit, Ms. Bada states that the Cost Tender Forms remained in her possession from June 29, 2017, the proposal due date, through July 11, 2017, the date of the Evaluation Committee meeting for the RFP. Ms. Bada further states that she did not open any of the sealed Cost Tender Forms until she did so in the presence of the public, at the July 11, 2017 Evaluation Committee meeting. Finally, Ms. Bada states in her affidavit that she immediately noticed the Proposal Certification was missing, and that this omission prompted her to state, on the record at the Evaluation Committee meeting, that the Cost Tender Forms still needed to be reviewed for responsiveness, as each Cost Tender Form was being opened for the first time at this public meeting.

Although Kaufman has submitted its employees' affidavits as to the process it follows in submitting a proposal, in the absence of any facts indicating that the City somehow (1) opened the sealed Cost Tender Forms in advance of the Evaluation Committee meeting; and (2) misplaced or deliberately withheld Section 1 of Kaufman's Cost Tender Form, City, in an honest exercise of its broad discretion, declines to disregard the plain requirements of the RFP, simply on account of assurances submitted by a bidder's employees.

Third, Kaufman's designation of "NIC," or "not included," on the Cost Tender Form, further supports City's conclusion of non-responsiveness. In its July 18, 2017 protest, Kaufman clarified that the designation "NIC," as stated on its Cost Tender Form, indeed meant that Site Remediation was "not included," but that the City should have somehow discerned, from the face of Kaufman's bid, that when Kaufman indicated "NIC," or "not included," for the Site Remediation line item, Kaufman *really meant* that pricing for the Site Remediation line item was in fact "included" in another line item, for Existing Conditions. By stating **on the face of the Cost Tender Form** that pricing for an item was "NIC," or, as Kaufman has clarified, "not included," the City was within its broad discretion to conclude that, based on the Cost Tender Form, as submitted, Kaufman qualified its bid by stating it would provide something less than what was called for by the RFP.

Fourth, the City disagrees with Kaufman's suggestion that the other bidders were also non-responsive, and that therefore, Kaufman's own non-responsiveness should be disregarded. With respect to Plaza Construction, Kaufman submits this proposal is non-responsive because its total proposed GMP cost exceeded City's budget. However, City never indicated in the RFP that a cost proposal within the stated budget was a minimum requirement of the RFP, or even an issue of responsiveness. Rather, the RFP clearly stated that cost proposals would be evaluated, and weighted, in accordance with the evaluation criteria and the points allocated for pricing in the RFP. Similarly, City rejects the suggestion that KVC Constructors, Inc. ("KVC") was non-responsive based on its submission of a proposal for two (2) elevators, rather than the three (3) elevators required by

Letter to Kaufman Lynn

September 5, 2017

Page 4

the RFP. The plans submitted by KVC as part of its proposal reflect three (3) elevators, and the inclusion of the requisite three (3) elevators were confirmed by City procurement staff and the Design Criteria Professional for the project.

Therefore, based on the foregoing, the City denies Kaufman's protest. Further, as set forth in the Section 2-371 of the City Code (the City's Bid Protest Ordinance) and, specifically, Section 2-371(e) thereof, the City Manager and City Attorney's determination with regard to issues of responsiveness shall be binding upon the parties to the protest.

You may appeal my decision by filing an original action in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, in accordance with the applicable court rules and, with regard to any such action, the City reserves all rights that may be available to it at law and in equity.

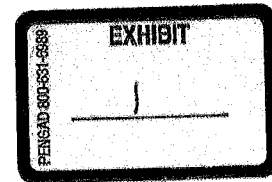
Should you need additional information pertaining to matters of process or procedures, please contact the Procurement Director, Alex Denis, at (305) 673-7000 ext. 6641, or e-mail: alexdenis@miamibeachfl.gov.

Thank you,



Jimmy L. Morales
City Manager

c: Alexander I. Tachmes, Esq.
Raul Aguila, City Attorney
Rafael Granado, City Clerk
Alex Denis, Procurement Director



MIAMI BEACH

Procurement Department, 1755 Meridian Avenue, 3rd Floor, Miami Beach, Florida 33139, www.miamibeachfl.gov, 305-673-7490

July 17, 2017

SENT VIA E-MAIL: lharden@kaufmanlynn.com

Kaufman Lynn Construction, Inc.
Joshua Harden
4850 T-Rex Avenue, Suite 300
Boca Raton, Florida 33431

RE: REQUEST FOR PROPOSALS NO. 2016-204-KB DESIGN/BUILD SERVICES FOR A NEW PARKING GARAGE FACILITY AND RELATED INFRASTRUCTURE FOR THE COLLINS PARK PARKING GARAGE (PHASE II)

Dear Mr. Harden:

The City has reviewed the proposal (the "Proposal") submitted by Kaufman Lynn Construction, Inc. (Kaufman), in response to the above-referenced RFP. The City finds that the Proposal submitted by Kaufman was incomplete, as it failed to comply with the submittal requirements established in Addendum No. 4 to the RFP. To begin with, Addendum No. 4 expressly notified Proposers as follows:

Failure to submit the attached Cost Tender Form shall render proposal non-responsive, and said non-responsive proposal shall not be considered by the City.

The City's required Cost Tender Form, a copy of which is attached hereto as Exhibit "1," consisted of two separate sections, namely (1) Section 1 – Certification, which Proposer was required to execute and notarize (the "Proposal Certification"), and (2) Section 2, for the Guaranteed Maximum Price form. In its Proposal, Proposer altogether failed to include the required Proposal Certification.

A proposal containing a material variance from the RFP requirements is unacceptable. Robinson Electric Co. v. Dade County, 417 So. 2d 1032 (Fla 3d DCA 1982). In determining whether a specific noncompliance constitutes a substantial, and hence nonwaivable, irregularity, the courts have applied two criteria—first, whether the effect of a waiver would be to deprive the municipality of its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements, and second, whether it is of such a nature that its waiver would adversely affect competitive bidding by placing a bidder in a position of advantage over other bidders or by otherwise undermining the necessary common standard of competition. *Id.* at 1034.

Here, the instructions for completing the Cost Tender Form make clear that "[f]ailure to submit the attached Cost Tender Form shall render [the] proposal non-responsive, and said non-responsive proposal shall not be considered by the City." See Addendum No. 4 (emphasis in original). Moreover, a signed and executed Certification Form is nonwaivable, as the executed Proposal Certification is essential to, and is the very instrument by which, the City is assured that the contract will be entered into and performed according to its specified requirements. Further, by submitting the fully completed and executed Proposal Certification, the City is further assured that the Proposal is "made fairly and in good faith without collusion or fraud." *Id.*

The failure to submit the fully completed and executed Certification Form was a material variation from the RFP that cannot be waived, as waiver of the Proposal Certification requirements would place Kaufman in a position of advantage over other bidders who, unlike Kaufman, completed and executed the Certification Form, agreed to the RFP terms, and attested to its requirements. In this regard, all proposers were on an equal footing and had the same opportunities as Kaufman to read and utilize the Proposal Instructions, and submit the Proposal Certification, fully completed and executed.

As permitting a variation of the foregoing requirements after the Proposal Due Date would deprive the City of the assurance that the contract will be entered into in accordance with the RFP requirements, and would undermine the common standard of competition, Kaufman's proposal must be rejected as non-responsive.¹

Should you need additional information pertaining to matters of process or procedures, please contact Kristy Bada at (305) 673-7000 ext. 6218, or e-mail: kristybada@miamibeachfl.gov.

Thank you,



Alex Dennis
Procurement Director

Enclosures:
Proposal Cover Page
Cost Tender Form submitted by Kaufman Lynn, Inc.

C: Rafael Granado, City Clerk

F:\PURC\ALL\Solicitations\2016\2016-204-KB (RFP) DB Collins Park Garage\14 - Phase II\6 - Responsiveness\Letter of Non-Responsiveness - RFP 2016-204-KB ITS.SPS DBOM_KaufmanLynn.doc

¹ Because the Proposal is not responsive for failure to submit an executed and notarized Proposal Certification, the City need not address the deficiencies in the Section 2 Guaranteed Maximum Price Form that separately render the Proposal non-responsive, including, without limitation, the designation of "NIC" (the meaning of which is not clear and was not contemplated by the RFP) in lieu of an amount in the line item for Site Remediation.

EXHIBIT 1

MIAMI BEACH

City of Miami Beach, 1755 Meridian Avenue, 3rd Floor, Miami Beach, Florida 33139, www.miamibeachfl.gov
PROCUREMENT DEPARTMENT
Tel: 305-673-7490 Fax: 786-394-4002

ADDENDUM NO. 4
REQUEST FOR PROPOSALS NO. 2016-204-KB
DESIGN/BUILD SERVICES FOR A NEW PARKING GARAGE FACILITY AND RELATED
INFRASTRUCTURE FOR THE COLLINS PARK PARKING GARAGE
(PHASE II)
April 28, 2017

This Addendum to the above-referenced RFP is being issued to notify you that your proposal was short-listed to proceed with Phase II of Request for Proposals No. 2016-204-KB design/build services for a new parking garage facility and related infrastructure for the Collins Park Parking Garage and to provide other clarifications and revisions issued by the City. The RFP is amended in the following particulars only (deletions are shown by strikethrough and additions are underlined).

I. ATTACHMENTS:

Exhibit A: Cost Tender Form

Failure to submit the attached Cost Tender Form shall render proposal non-responsive, and said non-responsive proposal shall not be considered by the City.

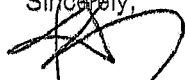
Exhibit B: Sample Design Build Agreement

Any questions regarding this Addendum should be submitted **in writing** to the Procurement Department to the attention of the individual named below, with a copy to the City Clerk's Office at RafaelGranado@miamibeachfl.gov.

Procurement Contact: Kristy Bada	Telephone: 305-673-7000, ext. 6218	Email: KristyBada@miamibeachfl.gov
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Proposers are reminded to acknowledge receipt of this addendum as part of your RFP submission. Potential proposers that have elected not to submit a response to the RFP are requested to complete and return the "Notice to Prospective Bidders" questionnaire with the reason(s) for not submitting a proposal.

Sincerely,



Alex Denis
Procurement Director

EXHIBIT A

Revised Cost Tender Form

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ADDENDUM NO. 4

REQUEST FOR PROPOSALS NO. 2018-204-KB
DESIGN/BUILD SERVICES FOR A NEW PARKING GARAGE FACILITY AND RELATED INFRASTRUCTURE FOR THE
COLLINS PARK PARKING GARAGE (PHASE II)

APPENDIX E



MIAMI BEACH

Cost Tender Form

RFP NO. 2016-204-KB
DESIGN/BUILD SERVICES FOR A NEW PARKING
GARAGE FACILITY AND RELATED INFRASTRUCTURE
FOR THE COLLINS PARK PARKING GARAGE

PROCUREMENT DEPARTMENT
1755 Meridian Avenue, 3rd Floor
Miami Beach, Florida 33139

Failure to submit the attached Cost Tender Form shall render proposal non-responsive, and said non-responsive proposal shall not be considered by the City.

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ADDENDUM NO. 4

REQUEST FOR PROPOSALS NO. 2016-204-KB
DESIGN/BUILD SERVICES FOR A NEW PARKING GARAGE FACILITY AND RELATED INFRASTRUCTURE FOR THE
COLLINS PARK PARKING GARAGE (PHASE II)

Section 1 – Certification

The undersigned, as Proposer, hereby declares that the only persons interested in this proposal as principal are named herein and that no person other than herein mentioned has any interest in this proposal or in the Contract to be entered into; that this proposal is made without connection with any other person, firm, or parties making a proposal; and that it is, in all respects, made fairly and in good faith without collusion or fraud.

The Proposer further declares that it has examined the site of the Work and informed itself fully of all conditions pertaining to the place where the Work is to be done; that it has examined the Contract Documents and all addenda thereto furnished before the opening of the proposals, as acknowledged below; and that it has satisfied itself about the Work to be performed; and all other required information with the proposal; and that this proposal is submitted voluntarily and willingly.

The Proposer agrees, if this proposal is accepted, to contract with the City, a political subdivision of the State of Florida, pursuant to the terms and conditions of the Contract Documents and to furnish all necessary materials, equipment, machinery, tools, apparatus, means of transportation, and all labor necessary to construct and complete within the time limits specified the Work covered by the Contract Documents for the Project entitled:

REQUEST FOR PROPOSALS (RFP) No. 2016-204-KB
DESIGN/BUILD SERVICES FOR A NEW PARKING GARAGE FACILITY AND RELATED INFRASTRUCTURE FOR THE
COLLINS PARK PARKING GARAGE (PHASE II)

The Proposer also agrees to furnish the required Performance Bond and Payment Bond or alternative form of security, if permitted by the City, each for not less than the total proposal price plus alternates, if any, provided in the RFP Price Form in Section 00408 and to furnish the required Certificate(s) of insurance.

In the event of arithmetical errors between the division totals and the total base proposal in the RFP Price Form, the Proposer agrees that the total base proposal shall govern. In the event of a discrepancy between the numerical total base proposal and the written total base proposal, the written total base proposal shall govern. In absence of totals submitted for any division cost, the City shall interpret as no proposal for the division, which may disqualify the Proposer.

Name of Proposer's Authorized Representative:	Title of Proposer's Authorized Representative:
Signature of Proposer's Authorized Representative:	Date:

State of FLORIDA) On this ____ day of _____, 20____,
personally

) appeared before me _____ who
) stated that (s)he is the _____ of _____, a
corporation, and that the instrument was signed in behalf of the said corporation by authority of its board of
directors and acknowledged said instrument to be its voluntary act and deed. Before me:

Notary Public for the State of Florida
My Commission Expires: _____.

Section 2 – GUARANTEED MAXIMUM PRICE

REQUEST FOR PROPOSALS (RFP)

No. 2016-204-KB

PHASE II

DESIGN/BUILD SERVICES FOR A NEW PARKING GARAGE FACILITY AND RELATED INFRASTRUCTURE FOR THE COLLINS PARK PARKING GARAGE

FURTHER BREAKDOWN OF LINE ITEMS INDICATED MAY BE PROVIDED AT THE DISCRETION OF THE PROPOSER

DESCRIPTION	UNIT	QTY	UNIT COST	AMOUNT
		(A)	(B)	(A x B)
01 00 00 General Conditions	LS	1	\$	\$
01 50 00 Temporary facilities And Controls	LS	1	\$	\$
02 00 00 Existing Conditions	LS	1	\$	\$
02 50 00 Site Remediation	LS	1	\$	\$
03 30 00 Concrete	LS	1	\$	\$
04 00 00 Mansory	LS	1	\$	\$
05 50 00 Steel & Misc. Metals	LS	1	\$	\$
05 50 00 Steel Canopies	LS	1	\$	\$
07 10 00 Waterproofing	LS	1	\$	\$
08 10 00 Frames, Doors, & Hardware	LS	1	\$	\$
08 40 00 Curtainwall/Storefront	LS	1	\$	\$
09 20 00 Framing & Drywall	LS	1	\$	\$
09 30 00 Tile	LS	1	\$	\$
09 90 00 Painting & Coating	LS	1	\$	\$
10 00 00 Specialties	LS	1	\$	\$
11 00 00 Equipment	LS	1	\$	\$
12 00 00 Furnishings	LS	1	\$	\$
14 00 00 Conveying System	LS	1	\$	\$
21 00 00 Fire Suppression	LS	1	\$	\$
22 00 00 Plumbing	LS	1	\$	\$
23 00 00 HVAC	LS	1	\$	\$
26 00 00 Electrical	LS	1	\$	\$
27 00 00 Communications	LS	1	\$	\$
28 00 00 Safety and Security	LS	1	\$	\$
31 00 00 Earthwork	LS	1	\$	\$
33 00 00 Utilities	LS	1	\$	\$
33 00 00 Off Site Civil Utility Improvements	LS	1	\$	\$
33 00 00 Liberty Avenue Plaza (22 Street to 23 Street)	LS	1	\$	\$
33 00 00 Liberty Ave. Improvement (North of 23 Street)	LS	1	\$	\$
33 00 00 23 rd St.Improvements (Collins Av. To Dade Blvd.)	LS	1	\$	\$
00 00 00 Other Items Not Mentioned Above	LS	1	\$	\$
Bonds and Insurance	LS	1	\$	\$
Design Fees	LS	1	\$	\$

Allowance for Permit Fees	LS	1	\$400,000.00	\$400,000.00
TOTAL GMP FOR COLLINS PARK PARKING GARAGE PHASE I				\$

** In the event of arithmetical errors between the division totals and the GMP , the proposer agrees that the GMP shall govern.

ANY LETTERS, ATTACHMENTS, OR ADDITIONAL INFORMATION TO BE CONSIDERED PART OF THE PROPOSAL MUST BE SUBMITTED IN DUPLICATE.

WRITTEN TOTAL: _____

PROPOSER (Print): _____

ADDRESS: _____

CITY/STATE: _____ ZIP: _____

FEDERAL I.D. #: _____

NAME/TITLE OF REPRESENTATIVE (Print): _____

SIGNED: _____

(I certify that I am authorized to execute this proposal and commit the proposing firm)

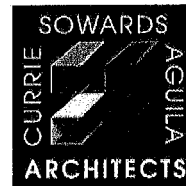
STEP 2 PROPOSAL

RFP NO. 2016-204-KB | City of Miami Beach

Design/Build Services for a New Parking Garage Facility and Related Infrastructure for the

COLLINS PARK PARKING GARAGE

Step 2 | June 29, 2017



Section 2 – GUARANTEED MAXIMUM PRICE

REQUEST FOR PROPOSALS (RFP)

No. 2016-204-KB

PHASE II

DESIGN/BUILD SERVICES FOR A NEW PARKING GARAGE FACILITY AND RELATED INFRASTRUCTURE FOR THE COLLINS PARK PARKING GARAGE

FURTHER BREAKDOWN OF LINE ITEMS INDICATED MAY BE PROVIDED AT THE DISCRETION OF THE PROPOSER

DESCRIPTION	UNIT	QTY (A)	UNIT COST (B)	AMOUNT (A x B)
01 00 00 General Conditions	LS	1	\$	\$ 1,527,624
01 50 00 Temporary facilities And Controls	LS	1	\$	\$ w/GC's
02 00 00 Existing Conditions	LS	1	\$	\$ 528,765
02 50 00 Site Remediation	LS	1	\$	\$ NIC
03 30 00 Concrete	LS	1	\$	\$ 7,160,590
04 00 00 Mansory	LS	1	\$	\$ 88,650
05 50 00 Steel & Misc. Metals	LS	1	\$	\$ 108,324
05 50 00 Steel Canopies	LS	1	\$	\$ 2,666,963
07 10 00 Waterproofing	LS	1	\$	\$ 363,758
08 10 00 Frames, Doors, & Hardware	LS	1	\$	\$ 45,143
08 40 00 Curtainwall/Storefront	LS	1	\$	\$ 604,000
09 20 00 Framing & Drywall	LS	1	\$	\$ 244,195
09 30 00 Tile	LS	1	\$	\$ N/A
09 90 00 Painting & Coating	LS	1	\$	\$ 151,000
10 00 00 Specialties	LS	1	\$	\$ 115,190
11 00 00 Equipment	LS	1	\$	\$ 70,000
12 00 00 Furnishings	LS	1	\$	\$ N/A
14 00 00 Conveying System	LS	1	\$	\$ 660,450
21 00 00 Fire Suppression	LS	1	\$	\$ 315,379
22 00 00 Plumbing	LS	1	\$	\$ 342,618
23 00 00 HVAC	LS	1	\$	\$ 75,000
26 00 00 Electrical	LS	1	\$	\$ 1,750,000
27 00 00 Communications	LS	1	\$	\$ w/Electrical
28 00 00 Safety and Security	LS	1	\$	\$ 78,000
31 00 00 Earthwork	LS	1	\$	\$ w/Existing Cond
33 00 00 Utilities	LS	1	\$	\$ 297,000
33 00 00 Off Site Civil Utility Improvements	LS	1	\$	\$ 868,440
33 00 00 Liberty Avenue Plaza (22 Street to 23 Street)	LS	1	\$	\$ 260,700
33 00 00 Liberty Ave. Improvement (North of 23 Street)	LS	1	\$	\$
33 00 00 23 rd St.Improvements (Collins Av. To Dade Blvd.)	LS	1	\$	\$ 355,330
00 00 00 Other Items Not Mentioned Above	LS	1	\$	\$ 1,806,161
Bonds and Insurance	LS	1	\$	\$ 505,866
Design Fees	LS	1	\$	\$ 1,614,750

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ADDENDUM NO. 4

REQUEST FOR PROPOSALS NO. 2016-204-KB
 DESIGN/BUILD SERVICES FOR A NEW PARKING GARAGE FACILITY AND RELATED INFRASTRUCTURE FOR THE
 COLLINS PARK PARKING GARAGE (PHASE II)

Allowance for Permit Fees	LS	1	\$400,000.00	\$400,000.00
TOTAL GMP FOR COLLINS PARK PARKING GARAGE PHASE II				\$22,993,896

Alternate Facade = Add \$1,032,281

** In the event of arithmetical errors between the division totals and the GMP , the proposer agrees that the GMP shall govern.

ANY LETTERS, ATTACHMENTS, OR ADDITIONAL INFORMATION TO BE CONSIDERED PART OF THE PROPOSAL MUST BE SUBMITTED IN DUPLICATE.

WRITTEN TOTAL: Twenty two million, nine hundred ninety three thousand, eight hundred ninety six

PROPOSER (Print): Kaufman Lynn Construction

ADDRESS: 4850 T-Rex Avenue, Suite 300

CITY/STATE: Boca Raton, FL ZIP: 33431

FEDERAL I.D. #: 65-0098115

NAME/TITLE OF REPRESENTATIVE (Print): Michael Kaufman, President & CEO

SIGNED: 

(I certify that I am authorized to execute this proposal and commit the proposing firm)

Contractor's Clarifications

GENERAL

This scope is intended to expand and/or clarify plan interpretation in instances where the plans are in conflict or silent. Should the plans be in conflict with other contract documents, this proposal is based on the plans being the default.

1. This proposal's description includes the following: Site Development of parking structure, Construction of one (1 ea.) 6 story parking garage building with retail shell space on the ground floor.
2. The following are excluded:
 - a. Building permits fees are included as an allowance of \$400,000.00. We understand this allowance would be applied to building permits, occupancy, connection fees, impact fees, etc.
 - b. Builder's risk insurance and deductibles. Builder's Risk Insurance can be provided for an additional \$65,000.
 - c. Cost of site security and/or police presence throughout construction duration.
 - d. Cost of any and all utility usage and resident trash removal services to the buildings after substantial completion is achieved.
 - e. Owner Direct Purchase (ODP) administration and tax savings, all sales tax is included.
 - f. FPL transformers, Primary Conduits and wire, and Deposits.
 - g. Cable TV/Phone equipment and cable or phone wire from service point to communication room(s) and cable or phone wire from communication room(s) to unit.
 - h. Fire Alarm Monitoring Service Cost
 - i. Water Meters, Fees and Deposits
 - j. Cost relating to Radon Mitigation.
 - k. Commissioning and/or special testing engineer services.
 - l. As-Built survey, vibration monitoring and/or vibration damage to adjacent properties as a result of construction.
 - m. Removal, relocations, and main line installations to building(s) point, including fiber optics for gas (including meter), power, phone, cable, etc. These shall be provided by the appropriate service provider.
 - n. Mock up not incorporated into the finish product.
 - o. Owner FF&E unless specifically addressed in the plans and specifications
 - p. Removal, disposal, remediation, and premiums associated with unforeseen or unsuitable soil conditions, hazardous materials, or other materials requiring a controlled removal/disposal other than Addendum No. 8 dated June 21, 2017.
 - q. Asbestos inspections, reporting documentation and "All Clean" Certifications.
3. This proposal is based on the following documents and plans:
 - a. Request for Proposals Dated 09/16/16 by Miami Beach
 - b. Addendum 3 Dated 04/13/17
 - c. Addendum 4 Dated 04/28/17 (Phase 2 RFP)
 - d. Addendum 5 Dated 06/02/17
 - e. Addendum 6 Dated 06/08/17
 - f. Addendum 7 Dated 06/15/17
 - g. Addendum 8 Dated 06/21/17
4. It is anticipated that work will be performed during normal business hours (7:00 AM to 5:00 PM)
5. Regarding temporary and permanent power, temporary or construction power will be the responsibility of KL in its entirety. On permanent power and consumption, KL is responsible for raceway only for incoming primary feed and for secondary and building power feeds complete. Once the permanent meter(s) have been installed by FPL for the project which cost and installation is an owner responsibility and required for equipment testing, KL will no longer be responsible for its consumption henceforth.



Contractor's Clarifications

6. Due to the volatile state of the construction market, all construction labor, materials and equipment are subject to significant price fluctuation which is beyond our control other than adding artificially to the project cost through escalation and contingency amounts. Resultantly, should the contract agreement not be finalized within 90 days after award, we must reserve our right to adjust/negotiate our proposed price based on these price swings dependant on actual start of construction. We most certainly will do everything possible to offset and/or minimize increases and will provide necessary backup documentation substantiating increased price.

ALLOWANCES

This Proposal includes the following allowances, which accounts for cost of labor, material, freight and handling, taxes, insurance, subcontractor markup and bond premium(if applicable):

1. Permit Fees \$400,000

DIVISION 02-SITE WORK

1. All meters will be provided by local utility providers. They will be purchased by the owner and installed by the contractor.

DIVISION 03-CONCRETE

1. No qualification

DIVISION 04-MASONRY

1. No qualification

DIVISION 05-METALS

1. No qualification

DIVISION 06-WOOD AND PLASTICS

1. No qualification

DIVISION 07-THERMAL AND MOISTURE

1. No qualification

DIVISION 08-DOORS & WINDOWS

1. No qualification

DIVISION 09- FINISHES

1. No qualification

DIVISION 10-SPECIALTIES

1. No qualifications

DIVISION 11-EQUIPMENT

1. Trash bins and compactors are excluded.

DIVISION 12- FURNISHING

1. No qualification

DIVISION 13- SPECIAL CONSTRUCTION

1. No qualification

DIVISION 14 -- CONVEYANCE

1. (3) 3500lb elevators are included as Machine-Room-Less Traction with a travel speed of 200 fpm.

DIVISION 15-MECHANICAL

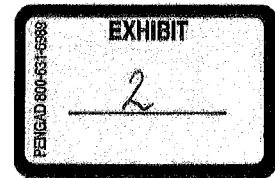
1. No qualification

DIVISION 16-ELECTRICAL

1. No qualification

END OF CONTRACTOR CLARIFICATIONS





AFFIDAVIT OF KRISTY BADA

Kristy Bada hereby submits this affidavit and after being duly sworn states as follows:

1. I am the Contracting Officer III for the City of Miami Beach Procurement Department.
2. As part of my job duties, I manage formal competitive solicitations issued by the City, particularly with respect to construction and major procurement matters. My job responsibilities include the drafting of solicitation documents, responding to questions from proposers or prospective proposers, receiving and maintaining proposal responses, coordination of evaluation committee meetings, and assisting the Department Director on review of proposals for technical requirements, among other duties.
3. I have handled governmental procurement matters for over ten (10) years. I have served in my current position at the City since June 1, 2015. Prior to joining the City, I served in a similar procurement capacity for the Village of Palmetto Bay, Florida since 2007.
4. I am the procurement officer assigned to RFP 2016-204-KB (the "RFP") for the Design Build for the Collins Park Garage.
5. The RFP requires proposers to submit, as part of their proposal submission, one original copy of the proposal, ten copies of the proposal, and one electronic copy of the proposal (collectively, the "Proposal Package"). As part of the Proposal Package, proposers are instructed to separately submit a sealed Cost Tender Form, with their proposed pricing in response to the RFP. Proposers are instructed to include only one (1) copy of the sealed Cost Tender Form, which is opened at the conclusion of the Evaluation Committee deliberations, as the last step in calculating each proposer's total score and ranking.
6. The Procurement Department's intake process calls for a representative of the Procurement Department to time stamp a Proposal Package upon receipt, without opening the contents of the Proposal Package (usually submitted in a box, package or envelope). When a proposer hand delivers a Proposal Package, the person hand-delivering the Proposal Package will sign a Proposal Submission Log, indicating the proposer's company name, and the date and time the Proposal Package was delivered. When a Proposal Package is mailed, a Procurement Department representative will include the proposer's company name, and date and time of receipt on the Proposal Submission Log.
7. Proposal Packages are maintained at the Procurement Department's reception area (without being opened) until the deadline for proposal submissions has expired, which, for this RFP, was 3:00 p.m. on June 29, 2017.


8. On June 29, 2017, after the 3:00 p.m. deadline for proposal submissions for the RFP, as part of my duties for the RFP process, I received, and took possession of, three Proposal Packages relating to this RFP, along with the Proposal Submission Log for this RFP, which was signed by a representative (or courier) for each of the three proposers. At that time, I confirmed that I had in my possession a Proposal Package for each of the three proposers that signed the Proposal Submission Log. I also confirmed that each package in fact included an original, copies, and electronic file.
9. I did not open any of the sealed Cost Tender Forms submitted as part of the Proposal Package and each of the Cost Tender Forms remained sealed. I then took all Proposal Packages to my desk.
10. On June 30, 2017, I reviewed all of the proposal copies and the electronic versions of the proposal submissions, to ensure that proposers did not erroneously include the Cost Tender Form along with the proposal copies. The Cost Tender Forms remained sealed. I placed each sealed Cost Tender Form in a file cabinet in my office, expressly reserved for original proposals and sealed cost tender forms. The only documents I maintain in this file cabinet are the original proposals (and sealed cost tender forms) for my active solicitation matters.
11. After placing the sealed Cost Tender Forms and original proposals in my file cabinet on June 30, 2017, I prepared the materials for Evaluation Committee members, in order to send a copy of each proposal to each Evaluation Committee member. On June 30, 2017, the Evaluation Committee member materials were couriered or mailed to each Evaluation Committee member for their review.
12. At no time did I remove the original submissions, or the sealed cost tender forms, from my file cabinet, at any time from June 30, 2017 until July 11, 2017, the morning of the Evaluation Committee meeting.
13. On July 11, 2017, I attended the Evaluation Committee meeting, which began at 8:30 a.m. That morning, prior to the meeting, I removed the sealed Cost Tender Forms from the file cabinet, and I brought the sealed Cost Tender Forms to the Evaluation Committee conference room, where the sealed Cost Tender Forms remained sealed, and in my possession, throughout the entire Evaluation Committee meeting, until it was time to open the sealed Cost Tender Forms in the presence of all persons attending the Evaluation Committee meeting, a meeting that was open to the public in accordance with the Sunshine Law.
14. After the Evaluation Committee members concluded their deliberations, collected each Evaluation Committee member's scoring matrix. At that time, opened each proposer's sealed Cost Tender Form in the presence of the Evaluation Committee and members of the public, including the proposers, who attended

the meeting, in order to calculate the points allocated to each proposer's cost proposal, based on each proposer's price submission indicated in the Cost Tender Form.

15. Upon opening Kaufmann Lynn's proposal, I immediately noticed that Kaufmann Lynn's Proposal Certification form ("Proposal Certification"), a mandatory requirement of the RFP, was missing. In addition, I noticed that a line item in the Kaufmann Lynn Cost Tender Form, included a term "NIC," a term not familiar to me, particularly in a form calling only for prices in numerical form. I also noticed at that time that Kaufmann Lynn submitted, as part of their Cost Tender Form, an "alternate" cost proposal for a second version of a design for the project, even though the RFP did not contemplate submission of any alternate designs, and even though the Cost Tender Form did not include any provision for submission of an alternate price proposal.
16. The omission as to the mandatory Proposal Certification required by the RFP in Kaufmann Lynn's Cost Tender Form prompted me to state, on the record, at the July 11, 2017 Evaluation Committee meeting, that the Cost Tender Forms still needed to be reviewed by the Department for responsiveness, as each Cost Tender Form was being opened for the first time at the public meeting. As responsiveness determinations are handled formally, in writing, by the Procurement Director, following consultation with the City Manager and City Attorney (none of which were present at the meeting), it is not my role to announce or make any responsiveness determinations during the Evaluation Committee meeting.
17. Upon opening Kaufmann Lynn's Cost Tender Form, I texted the Procurement Director to ask him to come to the conference room, as I needed direction as to whether I should calculate the points allocated to Kaufmann for its price proposal based on the GMP proposal as indicated on the Cost Tender Form, or based on the "alternate" proposal that Kaufmann unilaterally added to the Cost Tender Form. The Procurement Director advised me to use the line item for the GMP proposal called for in the Cost Tender Form, as the RFP did not call for, or provide any process for, evaluation of "alternate" cost proposals.
18. As my efforts in calculating the cost proposal scoring was the final step in the meeting, and because there were over 20 people waiting in the room for the final rankings of the Evaluation Committee process, I did not, at that time, discuss with the Procurement Director the responsiveness issue related to Kaufmann Lynn's failure to submit the mandatory Proposal Certification required by the RFP.
19. Upon calculating the points for the price proposals, I incorporate the points allocated to each proposer in the forms completed by the committee members, and I then tallied the final scores.

20. Following the conclusion of the Evaluation Committee meeting, I raised the issue of Kaufmann Lynn's failure to submit the mandatory Proposal Certification required by the RFP.

FURTHER AFFIANT SAYETH NAUGHT.



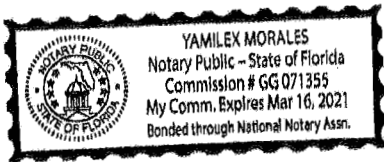
Kristy Bada

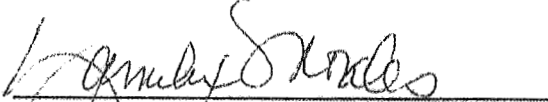
STATE OF FLORIDA)
) ss:
COUNTY OF MIAMI-DADE)

BEFORE ME, the undersigned authority, personally appeared Kristy Bada, Contracting Officer III of the City of Miami Beach, who is personally known to me or has produced _____ as identification and, who after being duly sworn, deposes and says that he has executed the foregoing Interrogatories and that they are true and correct to the best of his/her knowledge and belief.

SWORN TO and SUBSCRIBED before me this 5th day of September, 2017.

My commission expires:





NOTARY PUBLIC – State of Florida
Yamilex Morales
Print Name

cc: Alex Demis



RECEIVED

17 AUG 14 PM 3:25

CITY ATTORNEY'S OFFICE

ALEXANDER I. TACHMES, ESQ.
PARTNER
Shutts & Bowen LLP
200 South Biscayne Boulevard
Suite 4100
Miami, Florida 33131
DIRECT (305) 347-7341
FAX (305) 347-7754
EMAIL ATachmes@shutts.com

August 14, 2017

VIA COURIER

Mr. Raul J. Aguila
City Attorney
City of Miami Beach
1700 Convention Center Drive, 4th Floor
Miami Beach, FL 33139

Re: RFP No. 2016-204-KB - Collins Park Garage

Dear Raul:

Shutts & Bowen LLP (the "Firm") has been retained to represent Kaufman Lynn Construction, Inc. ("Kaufman Lynn") in connection with the procurement of the contract to build the City of Miami Beach's (the "City's") Collins Park Garage, also known as Request For Proposals No. 2016-204-KB (the "RFP"). Please accept this correspondence as a follow-up to my recent telephone conference with you.

At the July 11, 2017 Phase II Technical Presentation, Kaufman Lynn was ranked by the City's RFP Evaluation Panel as the most responsive and responsible bidder for the RFP. Six days later, on July 17, 2017, the City Procurement Department notified Kaufman Lynn via letter that its bid was allegedly non-responsive to the RFP and would not be recommended for final approval to the City Commission. A true and correct copy of the "Non-Responsiveness Letter" is attached as **Exhibit "A."**

In the Non-Responsiveness Letter, the Procurement Department contends that the City discovered that a Cost Tender's Certification Page was purportedly missing from its envelope. The Procurement Department claims it made this discovery almost three weeks after Kaufman Lynn provided a sealed envelope to the City containing the Cost Tender's Certification Page.¹ Please note that during that intervening three week period, **the sealed envelope had been handled, opened, and maintained by the City. The Procurement Department's claim is**

¹ As is mentioned in Ms. Kathleen Bernard's Affidavit (attached), during the course of the July 11, 2017 meeting, Procurement Department Employee, Kristy Bada stated that she had a question regarding scope and pricing information in Kaufman Lynn's proposal. Certainly an enhanced level of scrutiny, as was provided to Kaufman Lynn's documents would have apprised Ms. Bada, or evaluation committee members present of a missing Cost Tender's Certification Page. No member of the Procurement staff or evaluation committee member made mention of the missing form during the July 11, 2017 meeting.

2017 AUG 21 PM 1:43

Mr. Raul J. Aguila
August 11, 2017
Page 2

erroneous; Kaufman Lynn did include this Page in its sealed packet. Kaufman Lynn responded to the Non-Responsiveness Letter directly to the City Manager Jimmy Morales on July 18, 2017. A true and correct copy of the "Response Letter" is attached as **Exhibit "B."**

For the reasons stated below, the Procurement Department's claim of non-responsiveness is without merit. Kaufman Lynn was appropriately ranked first and should be awarded the contract.

First, contrary to the Procurement Department's claim, the Certification Page was included with the bid. Among other things, we have enclosed herewith sworn affidavits from our client confirming that the page was included. We also have included evidence of our client's typical course of conduct in compiling RFP responses as well as the specific protocol for compiling the response in this case. All the evidence supports the position that the page was included with our submission.

Second, even if one assumes, solely for the sake of argument, that the page was not turned in, the omission is an innocent, clerical mistake that is immaterial and cannot be the basis for disqualification. Our client always intended, and attests its intent now, to comply fully with the statements in the Certification Page. Case law makes clear that an innocent clerical error of this type cannot be the basis for disqualification of a bid.

Cost Tender's Certification Page Was Included

Since its founding in 1989, Kaufman Lynn has competed for hundreds of municipal construction projects through the request for proposal process. As one of the largest construction companies headquartered in South Florida, Kaufman Lynn has developed and maintained specific in-house processes to ensure that RFP submissions are complete and accurate. To that end, enclosed please find **Exhibit "C,"** Kaufman Lynn's summary of internal processing safeguards and a listing of those steps taken specifically for this RFP.

Attached please also find affidavits from company employees and executives who have intimate knowledge of the RFP, and the preparation of our client's bid and state unequivocally that the Cost Tender's Certification Page was included in the sealed RFP packet. True and correct copies of executed affidavits are attached as **Exhibit "D."** According to the affidavits, the Cost Tender's Certification Page was signed on May 2, 2017. It is worth noting that the copy of the allegedly omitted Cost Tender's Certification Page that is attached to this document as part of Exhibit B is dated the same date. The date and notarization alone should be sufficient evidence that the Cost Tender's Certification Page was included with the original submission.

Cost Tender's Certification Page Is Not Material

Notwithstanding the aforementioned assuming *arguendo* Kaufman Lynn did not include the Cost Tender's Certification Page the omission is a minor irregularity that must be waived by the City. *Tropabest Foods Inc v. State of Florida Department of General Services*, 493 So. 2d 50

Mr. Raul J. Aguila
August 11, 2017
Page 3

(Fla. 1st DCA 1986)(Finding that the test for measuring whether a deviation in a bid is sufficiently material to destroy its competitive character is whether the variation affects the amount of the bid by giving the bidder an advantage or benefit not enjoyed by the other bidders).

As attested to by Kaufman Lynn's President and CEO, notwithstanding the alleged omission, Kaufman Lynn does and always has intended to comply with the requirements of the RFP and the specific terms of the Cost Tender's Certification Page. The inadvertent omission or, in the alternative, the inadvertent misplacement by the City of the (one page) Cost Tender's Certification Page in no way altered the offer made by Kaufman Lynn to the City. As you may know, the Cost Tender's Certification Page merely certifies that only the party making the proposal has an interest in the proposal, that Kaufman Lynn visited the worksite, and that Kaufman Lynn agrees to contract with the City, if selected. All proposers make the exact same commitments in various other places in their bid, regardless of the existence, misplacement, or inadvertent omission of the certification page.

While a case-by-case analysis is not necessary for the purposes of this correspondence, it is important to note that the City cites to *Robinson Elec. Co., Inc. v. Dade County*, 417 So.2d 1032 (Fla. 3rd DCA 1982) in support of its position. The City's reliance on *Robinson* is misplaced because the Court's analysis and holding actually support Kaufman Lynn's position that minor irregularities should be waived if they are immaterial. *Robinson* states that a "variance is material if it gives the bidder a substantial advantage over the other bidders, and thereby restricts or stifles competition." *Id.* A missing Cost Tender's Certification Page, whether inadvertently misplaced by Kaufman Lynn, the City, or otherwise, did not impact the proposal that was ultimately made to the City and does not prejudice any other parties.

Case law and relevant authorities indicate definitively that an inadvertent failure to include a signature page cannot lead to disqualification. Furthermore, the remainder of Kaufman Lynn's proposal, not to mention the staff hours and expense associated with producing same, shows a clear intent to be bound to the terms submitted by Kaufman Lynn. See *Compaq Computer Corp. v. Dep't of Revenue*, DOAH 02-1721BID ¶¶ 51-60, 2002 WL 31440728, at *7-8 (Fla. Div. Admin. Hrgs. Sept. 23, 2002)(finding that an improperly executed signature on a required form is not a material irregularity, particularly where the intent of the bidder to be bound is evident). The Third District Court of Appeal found that:

There is a very strong public interest in favor of saving tax dollars in awarding public contracts. There is no public interest, much less a substantial public interest, in disqualifying low bidders for technical deficiencies in form, where the low bidder did not derive any unfair competitive advantage by reason of the technical omission."

Intercontinental Properties, Inc. v. State Dept. of Health and Rehabilitative Services, 606 So.2d 380 (Fla. 3rd DCA 1992).

Mr. Raul J. Aguila
August 11, 2017
Page 4

In *Intercontinental*, the court ruled that the failure of bidders to include attachments documenting agent's authority to bind owner did not make bid nonresponsive. *id.* While not identical to the situation at bay, *Intercontinental*, provides significant support to Kaufman Lynn's argument that the allegedly omitted form is not a substantial deficiency.

Waiver of Irregularities

Again, assuming *arguendo* that Kaufman Lynn did not include the Cost Tender's Certification Page the City Commission has the authority under Section 2-368, City of Miami Beach Code (the "Code"), to waive "any and all irregularities" in all formal bids. Additionally, and ever more clearly, pursuant to Section 21 of the RFP solicitation documents, "the City may, at its sole and absolute discretion... waive any irregularities in this RFP, or in any responses received as a result of this RFP."

Certainly, something as *de minimus* as an innocent, inadvertence is immaterial. The City Commission is well within its rights to waive such an insignificant irregularity, particularly in light of the significant evidence of Kaufman Lynn's intent to be bound to all of terms submitted for consideration.

Remaining Bidders

Ironically, it is worth noting that, while our client's bid has no material deficiencies, the remaining bids *do have* significant deficiencies. If the City determines that the omission of a single page (that in no way impacts the substantive proposal offered) renders Kaufman Lynn non-responsive, there must certainly be a review of the remaining bids.

Those invited to participate in the Phase II Technical Proposal portion of the RFP were Kaufman Lynn, KVC Constructors, Inc. ("KVC"), and Plaza Construction ("Plaza"). Out of the three bidders, Kaufman Lynn was ranked first by three out of the four evaluation committee members (and ranked second by the remaining member). In addition to the superior ranking, and notwithstanding the potentially omitted certification, Kaufman Lynn's proposal otherwise conformed to the RFP requirements and is in the best interest of the City. Both KVC and Plaza's responses to the RFP should be deemed non-responsive for nonconformity with the substantive RFP requirements.

KVC's proposal appears to have violated the express requirements of the RFP Technical Criteria. Section 1.2 clearly states that "a minimum of three (3) passenger elevators shall be included" in the garage. KVC's proposal only provides for two (2) elevators, as was made apparent during the July 11, 2017 Phase II meeting. Additionally, KVC is also non-responsive for failure to comply with the Section 5.1 requirement which states that "two lobby spaces shall serve upper floor parking and include elevator and stairs." Unlike Kaufman Lynn's immaterial alleged omission of the Cost Tender's Certification Page, KVC's violations are substantive in nature and directly impact the cost of the project, and if accepted, unfairly prejudice other

Mr. Raul J. Aguila
August 11, 2017
Page 5

proposals that meet such requirements. Most certainly, the elimination of an elevator (as required by the RFP) decreases the cost of the project to KVC's benefit and other bidders' detriment.

Plaza's proposal is also non-responsive in that its cost for the project exceeds the City's budget. The total budget for the project, as set by the City, is proposed at \$23 Million dollars. Plaza's proposal came in at \$23,989,390. In contrast, Kaufman Lynn's proposal came in at \$22,993,896. Kaufman Lynn was required to, and did comply with the budget provided by the City. Certainly a bidder that adds almost one million dollars to a proposal has greatly impacted the technical, design and production criteria of their own project while limiting the abilities of those bidders who complied with the budgetary restraints. A proposal that would cost the taxpayers almost a million dollars more than the most qualified proposal would not be in the City's best interest.

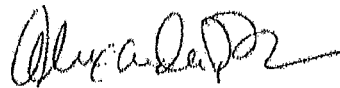
Conclusion

For the aforementioned reasons, Kaufman Lynn respectfully requests that it be recommended to the City Commission for award of the contract as the most responsive and responsible bidder. We are happy to meet and discuss this matter with you at your convenience. Kaufman Lynn's proposal was identified by the City's own evaluation committee, to be in the best interest of the City and to disqualify Kaufman Lynn in the face of overwhelming documentation establishing immateriality while approving two other proposals that violated the city's technical, budgetary, and design criteria is ultimately harming the City, community, and taxpayers.

Please note Kaufman Lynn is not waiving and hereby reserves all of its arguments, claims, and rights. Thank you for your time and attention.

Sincerely,

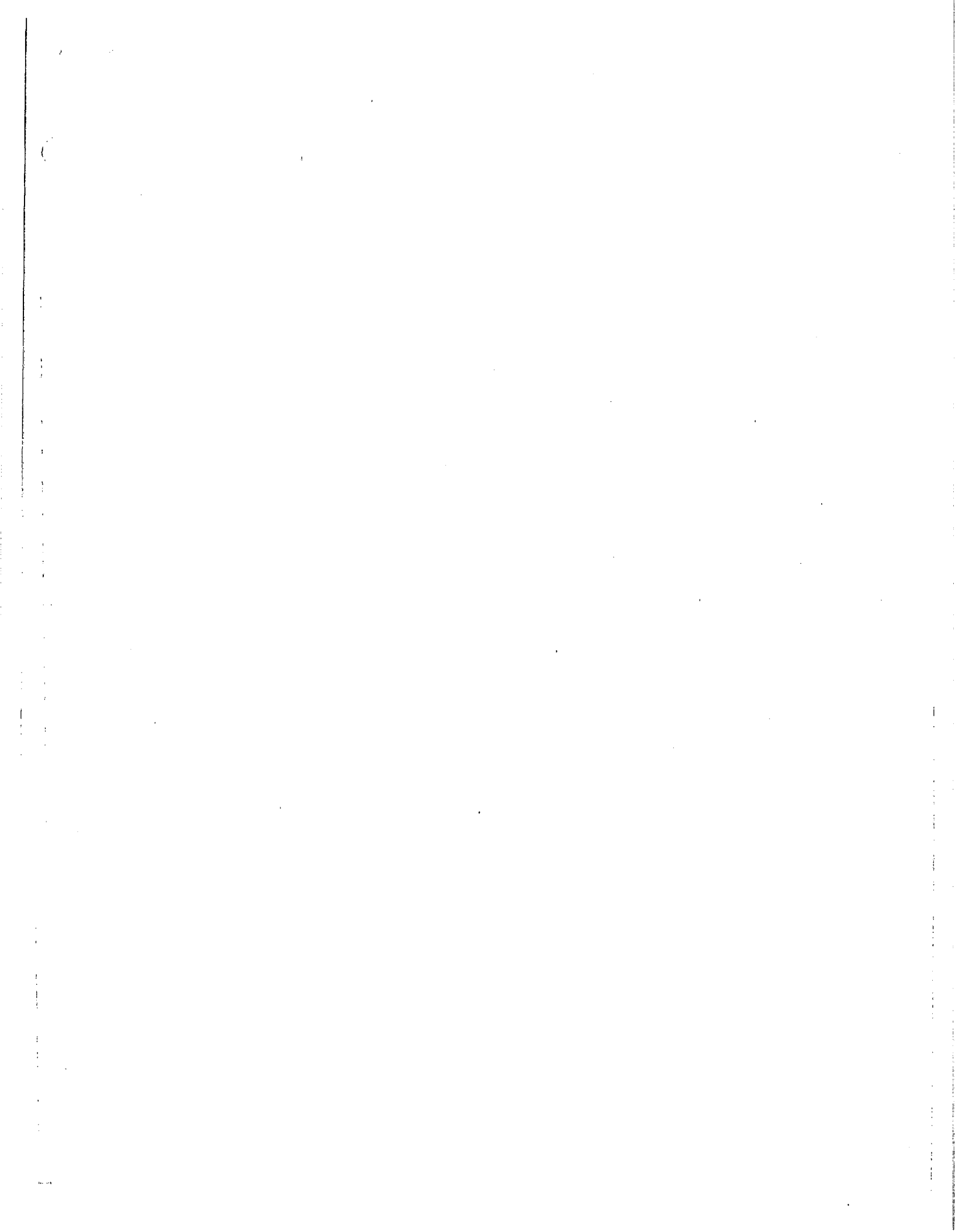
Shutts & Bowen LLP



Alexander I. Tachmes, Esq.

Attachments

MIADOCs 15188361 5 45608.0001



MIAMI BEACH

Procurement Department, 1755 Meridian Avenue, 3rd Floor, Miami Beach, Florida 33139, www.miamibeachfl.gov, 305-673-7490

July 17, 2017

SENT VIA E-MAIL: jharden@kaufmanlynn.com

Kaufman Lynn Construction, Inc.
Joshua Harden
4850 T-Rex Avenue, Suite 300
Boca Raton, Florida 33431

RE: REQUEST FOR PROPOSALS NO. 2016-204-KB DESIGN/BUILD SERVICES FOR A NEW PARKING GARAGE FACILITY AND RELATED INFRASTRUCTURE FOR THE COLLINS PARK PARKING GARAGE (PHASE II)

Dear Mr. Harden:

The City has reviewed the proposal (the "Proposal") submitted by Kaufman Lynn Construction, Inc. (Kaufman), in response to the above-referenced RFP. The City finds that the Proposal submitted by Kaufman was incomplete, as it failed to comply with the submittal requirements established in Addendum No. 4 to the RFP. To begin with, Addendum No. 4 expressly notified Proposers as follows:

Failure to submit the attached Cost Tender Form shall render proposal non-responsive, and said non-responsive proposal shall not be considered by the City.

The City's required Cost Tender Form, a copy of which is attached hereto as Exhibit "1," consisted of two separate sections, namely (1) Section 1 – Certification, which Proposer was required to execute and notarize (the "Proposal Certification"), and (2) Section 2, for the Guaranteed Maximum Price form. In its Proposal, Proposer altogether failed to include the required Proposal Certification.

A proposal containing a material variance from the RFP requirements is unacceptable. Robinson Electric Co. v. Dade County, 417 So. 2d 1032 (Fla 3d DCA 1982). In determining whether a specific noncompliance constitutes a substantial, and hence nonwaivable, irregularity, the courts have applied two criteria—first, whether the effect of a waiver would be to deprive the municipality of its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements, and second, whether it is of such a nature that its waiver would adversely affect competitive bidding by placing a bidder in a position of advantage over other bidders or by otherwise undermining the necessary common standard of competition. *Id.* at 1034.


Here, the instructions for completing the Cost Tender Form make clear that "[f]ailure to submit the attached Cost Tender Form shall render [the] proposal non-responsive, and said non-responsive proposal shall not be considered by the City." See Addendum No. 4 (emphasis in original). Moreover, a signed and executed Certification Form is nonwaivable, as the executed Proposal Certification is essential to, and is the very instrument by which, the City is assured that the contract will be entered into and performed according to its specified requirements. Further, by submitting the fully completed and executed Proposal Certification, the City is further assured that the Proposal is "made fairly and in good faith without collusion or fraud." *Id.*

The failure to submit the fully completed and executed Certification Form was a material variation from the RFP that cannot be waived, as waiver of the Proposal Certification requirements would place Kaufman in a position of advantage over other bidders who, unlike Kaufman, completed and executed the Certification Form, agreed to the RFP terms, and attested to its requirements. In this regard, all proposers were on an equal footing and had the same opportunities as Kaufman to read and utilize the Proposal Instructions, and submit the Proposal Certification, fully completed and executed.

As permitting a variation of the foregoing requirements after the Proposal Due Date would deprive the City of the assurance that the contract will be entered into in accordance with the RFP requirements, and would undermine the common standard of competition, Kaufman's proposal must be rejected as non-responsive.¹

Should you need additional information pertaining to matters of process or procedures, please contact Kristy Bada at (305) 673-7000 ext. 6218, or e-mail: kristybada@miamibeachfl.gov.

Thank you,


Alex Davis
Procurement Director

Enclosures:
Proposal Cover Page
Cost Tender Form submitted by Kaufman Lynn, Inc.

C: Rafael Granado, City Clerk

F:\PURC\ALL\Solicitations\2016\2016-204-KB (RFP) DB Collins Park Garage\14 - Phase II\6 - Responsiveness\Letter of Non-Responsiveness - RFP 2016-204-KB ITS.SPS DBOM_KaufmanLynn.doc

¹ Because the Proposal is not responsive for failure to submit an executed and notarized Proposal Certification, the City need not address the deficiencies in the Section 2 Guaranteed Maximum Price Form that separately render the Proposal non-responsive, including, without limitation, the designation of "NIC" (the meaning of which is not clear and was not contemplated by the RFP) in lieu of an amount in the line item for Site Remediation.

EXHIBIT 1

MIAMI BEACH

City of Miami Beach, 1755 Meridian Avenue, 3rd Floor, Miami Beach, Florida 33139, www.miamibeachfl.gov
PROCUREMENT DEPARTMENT
Tel: 305-673-7490 Fax: 786-394-4002

ADDENDUM NO. 4
REQUEST FOR PROPOSALS NO. 2016-204-KB
DESIGN/BUILD SERVICES FOR A NEW PARKING GARAGE FACILITY AND RELATED
INFRASTRUCTURE FOR THE COLLINS PARK PARKING GARAGE
(PHASE II)
April 28, 2017

This Addendum to the above-referenced RFP is being issued to notify you that your proposal was short-listed to proceed with Phase II of Request for Proposals No. 2016-204-KB design/build services for a new parking garage facility and related infrastructure for the Collins Park Parking Garage and to provide other clarifications and revisions issued by the City. The RFP is amended in the following particulars only (deletions are shown by strikethrough and additions are underlined).

I. ATTACHMENTS:

Exhibit A: Cost Tender Form

Failure to submit the attached Cost Tender Form shall render proposal non-responsive, and said non-responsive proposal shall not be considered by the City.

Exhibit B: Sample Design Build Agreement

Any questions regarding this Addendum should be submitted in writing to the Procurement Department to the attention of the individual named below, with a copy to the City Clerk's Office at RafaelGranado@miamibeachfl.gov.

Procurement Contact: Kristy Bada	Telephone: 305-673-7000, ext. 6218	Email: KristyBada@miamibeachfl.gov
-------------------------------------	---------------------------------------	--

Proposers are reminded to acknowledge receipt of this addendum as part of your RFP submission. Potential proposers that have elected not to submit a response to the RFP are requested to complete and return the "Notice to Prospective Bidders" questionnaire with the reason(s) for not submitting a proposal.

Sincerely,



Alex Denis
Procurement Director

EXHIBIT A

Revised Cost Tender Form

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ADDENDUM NO. 4

REQUEST FOR PROPOSALS NO. 2016-204-KB
DESIGN/BUILD SERVICES FOR A NEW PARKING GARAGE FACILITY AND RELATED INFRASTRUCTURE FOR THE
COLLINS PARK PARKING GARAGE (PHASE II)

APPENDIX E



MIAMIBEACH

Cost Tender Form

RFP NO. 2016-204-KB
DESIGN/BUILD SERVICES FOR A NEW PARKING
GARAGE FACILITY AND RELATED INFRASTRUCTURE
FOR THE COLLINS PARK PARKING GARAGE

PROCUREMENT DEPARTMENT
1755 Meridian Avenue, 3rd Floor
Miami Beach, Florida 33139

Failure to submit the attached Cost Tender Form shall render proposal non-responsive, and said non-responsive proposal shall not be considered by the City.

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ADDENDUM NO. 4

REQUEST FOR PROPOSALS NO. 2016-204-KB
DESIGN/BUILD SERVICES FOR A NEW PARKING GARAGE FACILITY AND RELATED INFRASTRUCTURE FOR THE
COLLINS PARK PARKING GARAGE (PHASE II)

Section 1 – Certification

The undersigned, as Proposer, hereby declares that the only persons interested in this proposal as principal are named herein and that no person other than herein mentioned has any interest in this proposal or in the Contract to be entered into; that this proposal is made without connection with any other person, firm, or parties making a proposal; and that it is, in all respects, made fairly and in good faith without collusion or fraud.

The Proposer further declares that it has examined the site of the Work and informed itself fully of all conditions pertaining to the place where the Work is to be done; that it has examined the Contract Documents and all addenda thereto furnished before the opening of the proposals, as acknowledged below; and that it has satisfied itself about the Work to be performed; and all other required information with the proposal; and that this proposal is submitted voluntarily and willingly.

The Proposer agrees, if this proposal is accepted, to contract with the City, a political subdivision of the State of Florida, pursuant to the terms and conditions of the Contract Documents and to furnish all necessary materials, equipment, machinery, tools, apparatus, means of transportation, and all labor necessary to construct and complete within the time limits specified the Work covered by the Contract Documents for the Project entitled:

REQUEST FOR PROPOSALS (RFP) No. 2016-204-KB
DESIGN/BUILD SERVICES FOR A NEW PARKING GARAGE FACILITY AND RELATED INFRASTRUCTURE FOR THE
COLLINS PARK PARKING GARAGE (PHASE II)

The Proposer also agrees to furnish the required Performance Bond and Payment Bond or alternative form of security, if permitted by the City, each for not less than the total proposal price plus alternates, if any, provided in the RFP Price Form in Section 00408 and to furnish the required Certificate(s) of Insurance.

In the event of arithmetical errors between the division totals and the total base proposal in the RFP Price Form, the Proposer agrees that the total base proposal shall govern. In the event of a discrepancy between the numerical total base proposal and the written total base proposal, the written total base proposal shall govern. In absence of totals submitted for any division cost, the City shall interpret as no proposal for the division, which may disqualify the Proposer.

Name of Proposer's Authorized Representative:	Title of Proposer's Authorized Representative:
Signature of Proposer's Authorized Representative:	Date:

State of FLORIDA
personally

On this ____ day of _____, 20__

)
_____) appeared before me _____ who
) stated that (s)he is the _____ of _____ a
corporation, and that the instrument was signed in behalf of the said corporation by authority of its board of
directors and acknowledged said instrument to be its voluntary act and deed. Before me:

Notary Public for the State of Florida
My Commission Expires: _____

Section 2 - GUARANTEED MAXIMUM PRICE

REQUEST FOR PROPOSALS (RFP)

No. 2016-204-KB

PHASE II

DESIGN/BUILD SERVICES FOR A NEW PARKING GARAGE FACILITY AND RELATED INFRASTRUCTURE FOR THE COLLINS PARK PARKING GARAGE

FURTHER BREAKDOWN OF LINE ITEMS INDICATED MAY BE PROVIDED AT THE DISCRETION OF THE PROPOSER

DESCRIPTION	UNIT	QTY (A)	UNIT COST (B)	AMOUNT (A x B)
01 00 00 General Conditions	LS	1	\$	\$
01 50 00 Temporary facilities And Controls	LS	1	\$	\$
02 00 00 Existing Conditions	LS	1	\$	\$
02 50 00 Site Remediation	LS	1	\$	\$
03 30 00 Concrete	LS	1	\$	\$
04 00 00 Masonry	LS	1	\$	\$
05 50 00 Steel & Misc. Metals	LS	1	\$	\$
05 50 00 Steel Canopies	LS	1	\$	\$
07 10 00 Waterproofing	LS	1	\$	\$
08 10 00 Frames, Doors, & Hardware	LS	1	\$	\$
08 40 00 Curtainwall/Storefront	LS	1	\$	\$
09 20 00 Framing & Drywall	LS	1	\$	\$
09 30 00 Tile	LS	1	\$	\$
09 90 00 Painting & Coating	LS	1	\$	\$
10 00 00 Specialties	LS	1	\$	\$
11 00 00 Equipment	LS	1	\$	\$
12 00 00 Furnishings	LS	1	\$	\$
14 00 00 Conveying System	LS	1	\$	\$
21 00 00 Fire Suppression	LS	1	\$	\$
22 00 00 Plumbing	LS	1	\$	\$
23 00 00 HVAC	LS	1	\$	\$
26 00 00 Electrical	LS	1	\$	\$
27 00 00 Communications	LS	1	\$	\$
28 00 00 Safety and Security	LS	1	\$	\$
31 00 00 Earthwork	LS	1	\$	\$
33 00 00 Utilities	LS	1	\$	\$
33 00 00 Off Site Civil Utility Improvements	LS	1	\$	\$
33 00 00 Liberty Avenue Plaza (22 Street to 23 Street)	LS	1	\$	\$
33 00 00 Liberty Ave. Improvement (North of 23 Street)	LS	1	\$	\$
33 00 00 23 rd St.Improvements (Collins Av. To Dade Blvd.)	LS	1	\$	\$
00 00 00 Other Items Not Mentioned Above	LS	1	\$	\$
Bonds and Insurance	LS	1	\$	\$
Design Fees	LS	1	\$	\$

Allowance for Permit Fees	LS	1	\$400,000.00	\$400,000.00
TOTAL GMP FOR COLLINS PARK PARKING GARAGE PHASE II				\$

** In the event of arithmetical errors between the division totals and the GMP , the proposer agrees that the GMP shall govern.

ANY LETTERS, ATTACHMENTS, OR ADDITIONAL INFORMATION TO BE CONSIDERED PART OF THE PROPOSAL MUST BE SUBMITTED IN DUPLICATE.

WRITTEN TOTAL: _____

PROPOSER (Print): _____

ADDRESS: _____

CITY/STATE: _____ ZIP: _____

FEDERAL I.D. #: _____

NAME/TITLE OF REPRESENTATIVE (Print): _____

SIGNED: _____

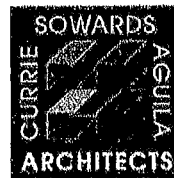
(I certify that I am authorized to execute this proposal and commit the proposing firm)

STEP 2 PROPOSAL

RFP NO. 2016-204-KB | City of Miami Beach
Design/Build Services for a New Parking Garage Facility and Related Infrastructure for the

COLLINS PARK PARKING GARAGE

Step 2 | June 29, 2017



Section 2 -- GUARANTEED MAXIMUM PRICE

REQUEST FOR PROPOSALS (RFP)

No. 2016-204-KB

PHASE II

DESIGN/BUILD SERVICES FOR A NEW PARKING GARAGE FACILITY AND RELATED INFRASTRUCTURE FOR THE COLLINS PARK PARKING GARAGE

FURTHER BREAKDOWN OF LINE ITEMS INDICATED MAY BE PROVIDED AT THE DISCRETION OF THE PROPOSER

DESCRIPTION	UNIT	QTY (A)	UNIT COST (B)	AMOUNT (A x B)
01 00 00 General Conditions	LS	1	\$	\$ 1,627,624
01 50 00 Temporary facilities And Controls	LS	1	\$	\$ w/GC's
02 00 00 Existing Conditions	LS	1	\$	\$ 528,765
02 50 00 Site Remediation	LS	1	\$	\$ NIC
03 30 00 Concrete	LS	1	\$	\$ 7,160,590
04 00 00 Masonry	LS	1	\$	\$ 88,650
05 50 00 Steel & Misc. Metals	LS	1	\$	\$ 108,324
05 50 00 Steel Canopies	LS	1	\$	\$ 2,666,963
07 10 00 Waterproofing	LS	1	\$	\$ 383,758
08 10 00 Frames, Doors, & Hardware	LS	1	\$	\$ 46,143
08 40 00 Curtainwall/Storefront	LS	1	\$	\$ 604,000
09 20 00 Framing & Drywall	LS	1	\$	\$ 244,195
09 30 00 Tile	LS	1	\$	\$ N/A
09 90 00 Painting & Coating	LS	1	\$	\$ 151,000
10 00 00 Specialties	LS	1	\$	\$ 115,190
11 00 00 Equipment	LS	1	\$	\$ 70,000
12 00 00 Furnishings	LS	1	\$	\$ N/A
14 00 00 Conveying System	LS	1	\$	\$ 660,450
21 00 00 Fire Suppression	LS	1	\$	\$ 315,379
22 00 00 Plumbing	LS	1	\$	\$ 342,618
23 00 00 HVAC	LS	1	\$	\$ 75,000
26 00 00 Electrical	LS	1	\$	\$ 1,760,000
27 00 00 Communications	LS	1	\$	\$ w/Electrical
28 00 00 Safety and Security	LS	1	\$	\$ 78,000
31 00 00 Earthwork	LS	1	\$	\$ w/Existing Cond
33 00 00 Utilities	LS	1	\$	\$ 297,000
33 00 00 Off Site Civil Utility Improvements	LS	1	\$	\$ 858,440
33 00 00 Liberty Avenue Plaza (22 Street to 23 Street)	LS	1	\$	\$ 260,700
33 00 00 Liberty Ave. Improvement (North of 23 Street)	LS	1	\$	\$
33 00 00 23 rd St.Improvements (Collins Av. To Dade Blvd.)	LS	1	\$	\$ 355,330
00 00 00 Other Items Not Mentioned Above	LS	1	\$	\$ 1,806,161
Bonds and Insurance	LS	1	\$	\$ 606,866
Design Fees	LS	1	\$	\$ 1,614,750

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ADDENDUM NO. 4

REQUEST FOR PROPOSALS NO. 2016-204-KB

DESIGN/BUILD SERVICES FOR A NEW PARKING GARAGE FACILITY AND RELATED INFRASTRUCTURE FOR THE COLLINS PARK PARKING GARAGE (PHASE II)

Allowance for Permit Fees	LS	1	\$400,000.00	\$400,000.00
TOTAL GMP FOR COLLINS PARK PARKING GARAGE (PHASE II)				\$22,993,896

Alternate Facade = Add \$1,032,281

** In the event of arithmetical errors between the division totals and the GMP, the proposer agrees that the GMP shall govern.

ANY LETTERS, ATTACHMENTS, OR ADDITIONAL INFORMATION TO BE CONSIDERED PART OF THE PROPOSAL
MUST BE SUBMITTED IN DUPLICATE.

WRITTEN TOTAL: Twenty two million, nine hundred ninety three thousand, eight hundred ninety six

PROPOSER (Print): Kaufman Lynn Construction

ADDRESS: 4650 T-Rex Avenue, Suite 300

CITY/STATE: Boca Raton, FL ZIP: 33431

FEDERAL I.D. #: 65-0098115

NAME/TITLE OF REPRESENTATIVE (Print): Michael Kaufman, President & CEO

SIGNED: 

(I certify that I am authorized to execute this proposal and commit the proposing firm)

Contractor's Clarifications

GENERAL

This scope is intended to expand and/or clarify plan interpretation in instances where the plans are in conflict or silent. Should the plans be in conflict with other contract documents, this proposal is based on the plans being the default.

1. This proposal's description includes the following: Site Development of parking structure, Construction of one (1 ea.) 6 story parking garage building with retail shell space on the ground floor.
2. The following are excluded:
 - a. Building permits fees are included as an allowance of \$400,000.00. We understand this allowance would be applied to building permits, occupancy, connection fees, impact fees, etc.
 - b. Builder's risk insurance and deductibles. Builder's Risk Insurance can be provided for an additional \$65,000.
 - c. Cost of site security and/or police presence throughout construction duration.
 - d. Cost of any and all utility usage and resident trash removal services to the buildings after substantial completion is achieved.
 - e. Owner Direct Purchase (ODP) administration and tax savings, all sales tax is included.
 - f. FPL transformers, Primary Conduits and wire, and Deposits.
 - g. Cable TV/Phone equipment and cable or phone wire from service point to communication room(s) and cable or phone wire from communication room(s) to unit.
 - h. Fire Alarm Monitoring Service Cost
 - i. Water Meters, Fees and Deposits
 - j. Cost relating to Radon Mitigation.
 - k. Commissioning and/or special testing engineer services.
 - l. As-Built survey, vibration monitoring and/or vibration damage to adjacent properties as a result of construction.
 - m. Removal, relocations, and main line installations to building(s) point, including fiber optics for gas (including meter), power, phone, cable, etc. These shall be provided by the appropriate service provider.
 - n. Mock up not incorporated into the finish product.
 - o. Owner FF&E unless specifically addressed in the plans and specifications
 - p. Removal, disposal, remediation, and premiums associated with unforeseen or unsuitable soil conditions, hazardous materials, or other materials requiring a controlled removal/disposal other than Addendum No. 8 dated June 21, 2017.
 - q. Asbestos inspections, reporting documentation and "All Clean" Certifications.
3. This proposal is based on the following documents and plans:
 - a. Request for Proposals Dated 09/16/16 by Miami Beach
 - b. Addendum 3 Dated 04/13/17
 - c. Addendum 4 Dated 04/28/17 (Phase 2 RFP)
 - d. Addendum 5 Dated 06/02/17
 - e. Addendum 6 Dated 06/08/17
 - f. Addendum 7 Dated 06/15/17
 - g. Addendum 8 Dated 06/21/17
4. It is anticipated that work will be performed during normal business hours (7:00 AM to 5:00 PM)
5. Regarding temporary and permanent power, temporary or construction power will be the responsibility of KL in its entirety. On permanent power and consumption, KL is responsible for raceway only for incoming primary feed and for secondary and building power feeds complete. Once the permanent meter(s) have been installed by FPL for the project which cost and installation is an owner responsibility and required for equipment testing, KL will no longer be responsible for its consumption henceforth.



Contractor's Clarifications

6. Due to the volatile state of the construction market, all construction labor, materials and equipment are subject to significant price fluctuation which is beyond our control other than adding artificially to the project cost through escalation and contingency amounts. Resultantly, should the contract agreement not be finalized within 90 days after award, we must reserve our right to adjust/negotiate our proposed price based on these price swings dependant on actual start of construction. We most certainly will do everything possible to offset and/or minimize increases and will provide necessary backup documentation substantiating increased price.

ALLOWANCES

This Proposal includes the following allowances, which accounts for cost of labor, material, freight and handling, taxes, insurance, subcontractor markup and bond premium (if applicable):

1. Permit Fees . \$400,000

DIVISION 02-SITE WORK

1. All meters will be provided by local utility providers. They will be purchased by the owner and installed by the contractor.

DIVISION 03-CONCRETE

1. No qualification

DIVISION 04-MASONRY

1. No qualification

DIVISION 05-METALS

1. No qualification

DIVISION 06-WOOD AND PLASTICS

1. No qualification

DIVISION 07-THERMAL AND MOISTURE

1. No qualification

DIVISION 08-DOORS & WINDOWS

1. No qualification

DIVISION 09- FINISHES

1. No qualification

DIVISION 10-SPECIALTIES

1. No qualifications

DIVISION 11-EQUIPMENT

1. Trash bins and compactors are excluded.

DIVISION 12- FURNISHING

1. No qualification

DIVISION 13- SPECIAL CONSTRUCTION

1. No qualification

DIVISION 14 - CONVEYANCE

1. (3) 3500lb elevators are included as Machine-Room-Less Traction with a travel speed of 200 fpm.

DIVISION 15-MECHANICAL

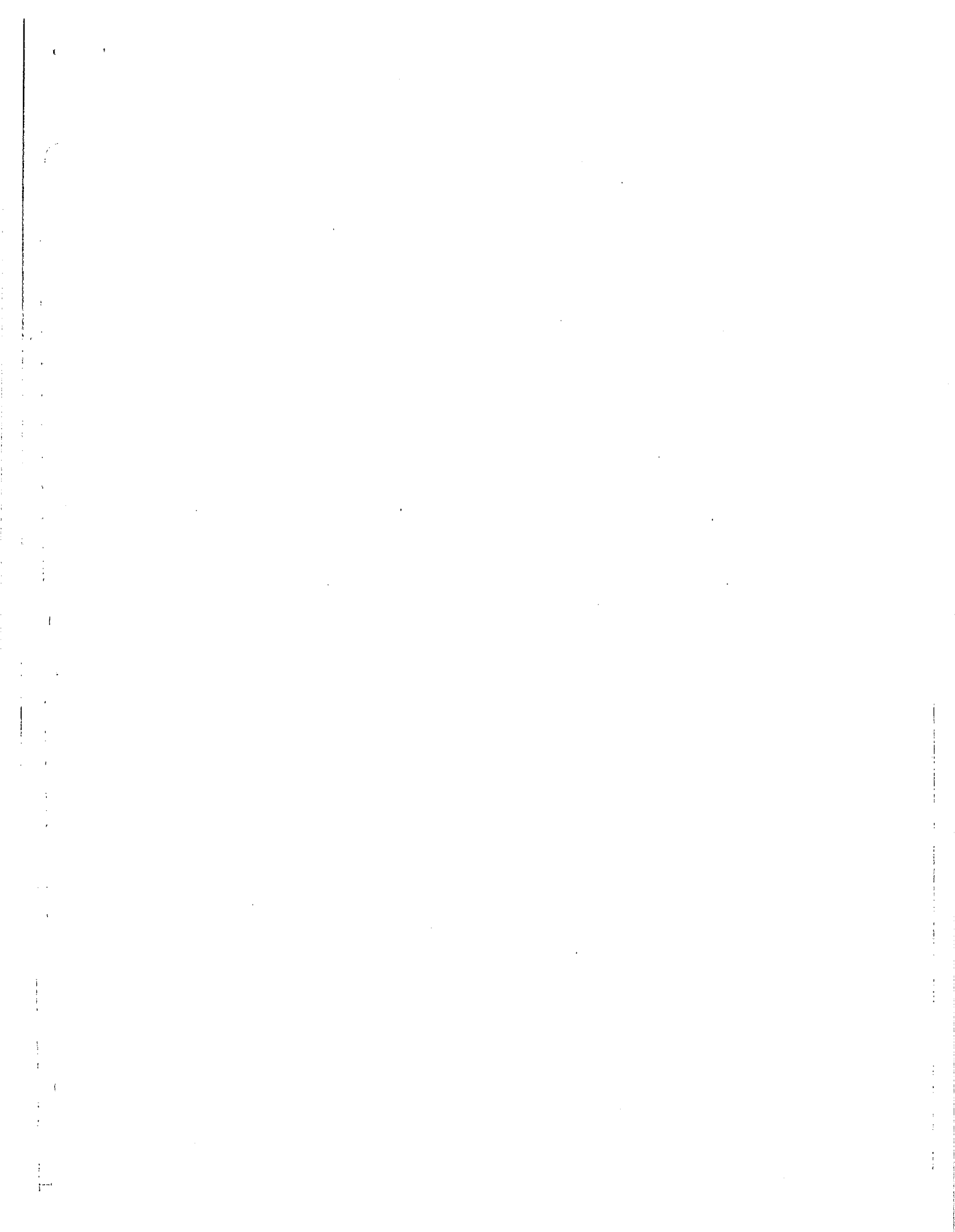
1. No qualification

DIVISION 16-ELECTRICAL

1. No qualification

END OF CONTRACTOR CLARIFICATIONS







**KAUFMAN LYNN
CONSTRUCTION**

July 18, 2017

HANS H. HUANG
CHIEF LEGAL OFFICER
HHUANG@KAUFMANLYNN.COM
561.886.4311 (P)
561.361.6979 (F)

(Via Hand Delivery, Overnight Mail, and Email(JimmyMorales@miamibeachfl.gov))

Jimmy Morales, City Manager
City of Miami Beach
1700 Convention Center Drive
4th Floor
Miami Beach, FL 33139

**RE: RESPONSE TO CITY'S CORRESPONDENCE AND REQUEST FOR RECONSIDERATION/MEETING
CITY OF MIAMI BEACH REQUEST FOR PROPOSAL NO. 2016-204-KB**

Mr. Morales,

Kaufman Lynn Construction, Inc. is in receipt of the City of Miami Beach (the "City") Procurement Departments' correspondence dated yesterday July 17, 2017 identified as a "Letter of Non-Responsiveness" and asserting that Kaufman Lynn Construction's proposal in connection with City RFP No. 2016-204-KB ("RFP") was not responsive and will therefore not be recommended to the City Commissioner. As Chief Legal Officer, I have been asked to respond to the legal and factual allegations set forth therein as well as request reconsideration. We also respectfully request a meeting with the City Manager before a recommendation is presented to the City Commission that excludes Kaufman Lynn Construction's Proposal. Upon receipt, please contact our Vice President of Development Jeffrey Zalkin (954.812.7852) so that we may fully have an opportunity to meet and discuss the City's position.

Lack of Responsiveness Letter

The City's Procurement Department asserts that the Cost Tender Form's Certification Page was missing from Kaufman Lynn Construction's Sealed Cost Proposal and relies on the case Electric Co. v. Dade County. Based on our internal review and investigation, Kaufman Lynn Construction provided a complete Cost Tender Form which was removed from a Sealed Cost Proposal envelope, read from, and relied upon as part of the technical proposal, presentation, and deliberations held on July 11, 2017 by the City as set forth in Section 0400 detailed in the RFP, page 18. As you are aware, the City Manager's representative David Martinez was present during such deliberations and at that time, there was no objection that the Cost Tender Form was incomplete or otherwise unresponsive. To establish chain of custody, enclosed please find a copy of our original file version maintained as part of Kaufman Lynn Construction's record keeping process which mirrors what was included in the Sealed Cost Proposal envelope and required by the City. Regardless, for the reasons set forth below, Kaufman Lynn Construction's Bid was responsive and must be considered for the best interest of the city.

Overview

On July 11, 2017, Kaufman Lynn Construction participated in the Phase II Technical Presentation as part of the RFP process. As part of the presentation, the city reviewed the Cost Tender Form and Technical Proposal. At that time, the City, by and through four panelists, collectively ranked Kaufman Lynn Construction's Proposal as superior to the other participants and in the best interest of the City. In particular, three out of four panelists ranked Kaufman Lynn Construction's Proposal first and

BOCA RATON
4850 T-Rex Ave., Suite 300, Boca Raton, FL 33431
P: 561.361.6700 ■ F: 561.361.8979

FORT LAUDERDALE
500 E Broward Blvd., #1710, Ft. Lauderdale, FL 33394
P: 954.320.7022 ■ F: 954.320.7025

MIAMI
1200 Brickell Ave., #1950, Miami, FL 33131
P: 786.350.1055 ■ F: 786.523.7889



accumulatively, Kaufman Lynn Construction's Proposal exceeded the second ranked proposal by a significant 10 points.

At no relevant time did the City upon the review and incorporation of the Tender Cost Form identify any deficiencies. At no relevant time during the bidding process, phase I, or phase II evaluation process were any deficiencies identified that might give Kaufman Lynn Construction an unfair advantage over the other bidders or otherwise restrict or stifle competition. In other words, at the time of City's July 11, 2017 deliberation, nothing was deemed to unfairly impact the evaluation or review of Kaufman Lynn Construction's Proposal or other bidder's information.

Any deficiency in the Cost Tender Form would have been noted during the July 11, 2017 deliberation because the Cost Tender Form was specifically highlighted and discussed due to the alternate façade notation. As part of the deliberations and presentation, Kaufman Lynn Construction discussed the façade and pricing while committing to the pricing as set forth in the Tender Cost Form. Again, as part of the deliberations, the City confirmed receipt and applied the Cost Tender Form without noting any deficiency.

City Manager's Duties and Responsibilities

Pursuant to the RFP, the City Manager is authorized to recommend to the City Commission the respondent(s) he deems to be in the best interest of the City. To exclude Kaufman Lynn Construction's Proposal from the City Manager's review would not be in the best interest of the City. Instead, the RFP highlights Miami Beach City Code (the "Code") Section 2-369 which lists relevant factors such as ability, capacity, and skill. Under Code Section 2-371, it is the City Manager or city attorney that determines responsiveness of a proposal and not the Procurement Department. Accordingly, Kaufman Lynn Construction hereby requests the opportunity to speak with the City Manager as part of its request that the City reconsider its determination of lack of responsiveness.

Materiality

It is important to note that even assuming, *arguendo*, Kaufman Lynn Construction's Cost Tender Form did not include Section 1, such omission, which is again denied, lacks materiality as defined under applicable case law or otherwise as to overcome the July 11, 2017 deliberations finding Kaufman Lynn Construction's proposal was in the best interest of the city. Under Florida Statute, 287.012(26) "Responsive bid," "responsive proposal," or "responsive reply" means a bid, or proposal, or reply submitted by a responsive and responsible vendor which conforms in all material respects to the solicitation. In this matter, the City asserts that Kaufman Lynn Construction did not certify its commitment to performing as required by the RFP.

Kaufman Lynn Construction meets this requirement because Section I of the Cost Tender Form was contained in the Sealed Cost Proposal. In addition, Section II of the Cost Tender Form includes a certification which specifically states, "I certify that I am authorized to execute this proposal and commit the proposing firm" among other language affirmatively committing to the proposal presented especially in conjunction with the attached Contractor's Clarifications. Contractor's Clarifications commit to the pricing set forth in Section II of the Cost Tender Form as well as other requirements contained in the RFP



and Addendums. The Phase II evaluation and deliberations further included oral commitments that Kaufman Lynn Construction to Guaranteed Maximum Price. Further, Kaufman Lynn Construction will not and has not provided any indication that it will not commit to the representations already contained in Section II, the Cost Tender Form, its Proposal, or the Clarifications set forth therein.

Irregularities may be Waived

Kaufman Lynn Construction further notes that the City has the authority to waive any and all irregularities in any and all formal bids per Code Section 2-367 and applicable law. Even if Kaufman Lynn did not submit a one-page Proposal Certification, such absence would be immaterial (a minor irregularity) and is certainly waivable. Such page has nothing to do with the competitive nature of the solicitation or place a proposer such as Kaufman Lynn in a competitive advantage. See Harry Pepper & Associates, Inc. v. City of Cape Coral, 352 So.2d 1190, 1193 (Fla. 2d DCA 1977) ("The test for measuring whether a deviation in a bid is sufficiently material to destroy its competitive character is whether the variation affects the amount of the bid by giving the bidder an advantage or benefit not enjoyed by other bidders.").

This claimed omission does NOT impact the price or affect the price in any way. It does NOT destroy the competitive nature of the RFP's bidding process. It does NOT give one proposer a competitive advantage over another proposer. And, it does NOT and did not prevent the City from making a fair comparison of the proposals it received. See Tropabest Foods, Inc. v. State, Dept. of General Services, 493 So.2d 50 (Fla. 1st DCA 1986) (finding that although successful bidder's bid violated bid specification the violation did not affect the price of the bid and the "purpose of competitive bidding is to secure the lowest responsible offer and minor irregularities can be waived in effectuating that purpose.") As the Tropabest Foods Court long maintained,

However, although a bid containing a material variance is unacceptable, not every deviation from the invitation to bid is material. It is only material if it gives the bidder a substantial advantage over the other bidders and thereby restricts or stifles competition.

493 So.2d at 52. This long-standing principle was further confirmed by the Third District in Intercontinental Properties, Inc. v. State Dept. of Health and Rehabilitative Services, 606 So.2d 380, 386 (Fla. 3d DCA 1992), stating that there is a very strong public interest in favor of saving tax dollars in awarding public contracts. There is no public interest, much less a substantial public interest, in disqualifying superior bidders for technical deficiencies in form, the superior bidder did not derive any unfair competitive advantage by reason of the technical omission.

Indeed, in Intercontinental Properties, the Third District stated that the bidder's failure to attach proof of the agent's authority was nonconforming and easily remedied: "This is plainly the sort of deficiency which a public agency can, in its discretion, allow a bidder to cure after the fact." *Id* at 386-87.

Hence, although a bidder cannot change its bid after bid-opening, a proposer can cure minor irregularities after bid-opening. See Harry Pepper & Associates, Inc., 352 So.2d at 1192 (Fla. 2d DCA 1977) (explaining bid could not be amended post opening because the bid included the wrong brand of pumps to be installed per the specifications and there was a big difference between the pumps that impacted the solicitation).



The Robinson Case Supports Kaufman Lynn Construction's Request for Reconsideration

The Procurement Department's reliance on the Robinson Case is misplaced. The Robinson Court, when applying the two prongs of determining materiality, stated that a direct and intentional variance of the instructions did not amount to materiality. In Robinson, although required and set forth in direct contradiction of a government agency's written instructions, a superior bidder failed to provide a bid bond and instead provided a cashier's check. The Court held that the superior bidder should have prevailed because the variance should not be deemed material. The lack of a bid bond did not deprive the municipality of its assurance that the contract will be entered into, performed, and guaranteed according to its specified requirements. The Robinson Court highlighted the fact that the request for bid contemplates the need for the superior bidder will be required to enter into an agreement as described in the "Advertisement to Bid." Even more importantly, the Court determined that a variance should only be considered material "if it give the bidder a substantial advantage over the other bidders, and thereby restricts or stifles competition." *Id.* at 1034.

The City has not and cannot state how a missing signature page gives Kaufman Lynn Construction an substantial advantage over the other bidders, especially in light of the fact deliberations took place before any deficiency was asserted. Like in Robinson, every bidder responding to the RFP were on equal footing during the Phase I and Phase II evaluations and deliberations.

Further, in addition to the RFP requiring the successful bidder to enter into, perform, and guaranty according to the specific requirements of the RFP, Kaufman Lynn Construction made commitments to perform the same by responding the RFP with its Proposal, including a certification on Section II, verifying its commitment as part of the oral presentation and deliberations, and set forth the commitment in detail in its Clarification. Kaufman Lynn Construction's commitments besides those found on the missing Section I go beyond those commitments required by applicable law. Kaufman Lynn Construction's purported lack of responsiveness does not rise to the level of failing to provide a bid bond which our Courts have deemed immaterial.

Summary of other Relevant Cases

Although Kaufman Lynn did submit the Section I of the Cost Tender Form, the City's Letter of Non-Responsiveness letter is really much ado about nothing since this deals with a minor, waivable irregularity. In further support of this, in Technical Sales of Jacksonville, Inc. v City of Jacksonville, 258 So.2d 839 (Fla. 1st DCA 1972), the First District held that the City could waive the fact that the successful bidder failed to submit a bid on the proper form contrary to the instructions to bidders that also required the bidders to note any exception to the specifications, which the successful bidder failed to do. *See also, e.g., Trimble Navigation Limited Corp. v. Department of Transportation*, Case No. 12-3862BID, 2013 WL 2395587 (DOAH May 28, 2013) (Department's decision to waive RFP's requirements for three references on letterhead did not give proposer a competitive advantage); Sunshine Towing @ Broward, Inc. v. Department of Transportation, Case No. 10-0134BID, 2010 WL 1417770 (DOAH April 6, 2010) (Department could waive proposer's failure to include required occupational licenses as this was a minor irregularity); Palm Beach County Youth Coalition v. Palm Beach County Workforce Development Board, Case No. 00-1527BID, 2000 WL 1612168 (DOAH October 20, 2000) (omissions in proposer's proposal



including not providing a certification was a minor irregularity that should have been waived in light of the circumstances); Professional Centre IV, Inc. v. Department of Health and Rehabilitative Services, Case No. 90-4063BID, 1990 WL 749245 (DOAH August 6, 1990) (failure to include certification letter set forth in bid submittal form could have been waived in light of the circumstances).¹

"NIC"

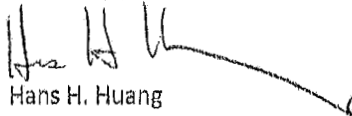
To the extent required, please also accept this correspondence as a response to the footnote on page 2. As clarified in Addendum 8, existing and unforeseen conditions includes management of soil encountered. The GMP form includes duplicative line items based on Addendum 8: (1) existing conditions and (2) site remediation. In other words, line items for existing conditions includes managing all soil encountered as affirmatively addressed in Contractor's Clarifications (sections 2.p. and 3.g.). Accordingly, Site Remediation costs different and distinct from those required under Addendum 8 are not included and hence "NIC" which stands for Not Included. Likewise to the extent Site Remediation involves Existing Conditions, such costs are part of the Existing Conditions and the total GMP as clarified by Contractor's Clarification.

Using the same analysis in connection with the Section I page of the Cost Tender Form above, the use of the term "NIC" or Not Included in light of Addendum 8, the Tender Cost Form, and Contractor's Clarifications should not be considered unresponsiveness.

Conclusion

Kaufman Lynn Construction trusts that the City will consider Kaufman Lynn Construction's factual and legal arguments and look forward to speaking with you in greater detail. Please note, we are providing this correspondence in response to the City's Letter of Non-Responsiveness and not as part of a Protest Process because, among other reasons, the initiating a Bid Protest would be pre-mature at this time and Kaufman Lynn Construction is hopeful we can avoid protracted dispute resolution procedures. However, Kaufman Lynn Construction is not waiving and hereby reserves its right to pursue all remedies available including protesting any award or recommendation that does not include Kaufman Lynn Construction's proposal. As stated above, we are hopeful a meeting between yourself and Jeffrey Zalkin can take place as soon as possible and before a recommendation is provided to the City's Commission. In the meantime, should you or your city attorney require any additional information please do not hesitate to contact me. Thank you for your time and attention.

Very truly yours,



Hans H. Huang

cc: via email:

Krista Bada, Kristabada@miamibeachfl.gov

Rafael Granado, RafaelGranado@miamibeachfl.gov

¹ This is just an example of decisions treating analogous omissions as nothing more than a waivable, minor irregularity.

Section 1 -- Certification

The undersigned, as Proposer, hereby declares that the only persons interested in this proposal as principal are named herein and that no person other than herein mentioned has any interest in this proposal or in the Contract to be entered into; that this proposal is made without connection with any other person, firm, or parties making a proposal; and that it is, in all respects, made fairly and in good faith without collusion or fraud.


The Proposer further declares that it has examined the site of the Work and informed itself fully of all conditions pertaining to the place where the Work is to be done; that it has examined the Contract Documents and all addenda thereto furnished before the opening of the proposals, as acknowledged below; and that it has satisfied itself about the Work to be performed; and all other required information with the proposal; and that this proposal is submitted voluntarily and willingly.

The Proposer agrees, if this proposal is accepted, to contract with the City, a political subdivision of the State of Florida, pursuant to the terms and conditions of the Contract Documents and to furnish all necessary materials, equipment, machinery, tools, apparatus, means of transportation, and all labor necessary to construct and complete within the time limits specified the Work covered by the Contract Documents for the Project entitled:

REQUEST FOR PROPOSALS (RFP) No. 2016-204-KB
DESIGN/BUILD SERVICES FOR A NEW PARKING GARAGE FACILITY AND RELATED INFRASTRUCTURE FOR THE COLLINS PARK PARKING GARAGE (PHASE II)

The Proposer also agrees to furnish the required Performance Bond and Payment Bond or alternative form of security, if permitted by the City, each for not less than the total proposal price plus alternates, if any, provided in the RFP Price Form in Section 00408 and to furnish the required Certificate(s) of Insurance.

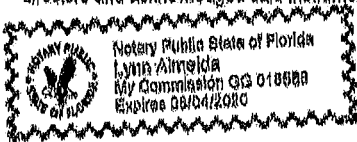
In the event of arithmetical errors between the division totals and the total base proposal in the RFP Price Form, the Proposer agrees that the total base proposal shall govern. In the event of a discrepancy between the numerical total base proposal and the written total base proposal, the written total base proposal shall govern. In absence of totals submitted for any division cost, the City shall interpret as no proposal for the division, which may disqualify the Proposer.

Name of Proposer's Authorized Representative: Michael Kaufman	Title of Proposer's Authorized Representative: President and CEO
Signature of Proposer's Authorized Representative: 	Date: 5/2/2017

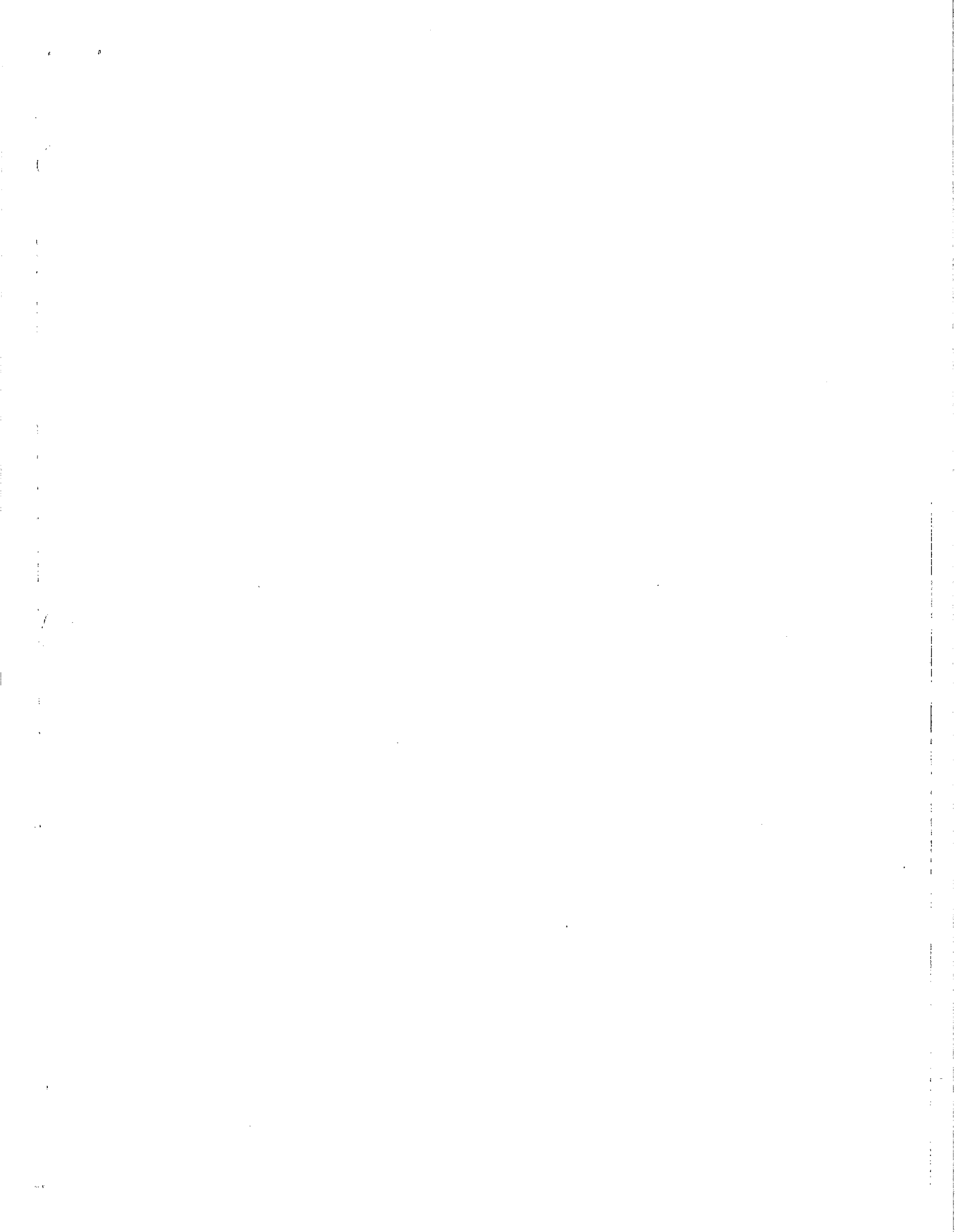
State of FLORIDA
personally

On this 2nd day of May, 2017

appeared before me Michael Kaufman
stated that (s)he is the President of Kaufman LLC a corporation, and that the instrument was signed in behalf of the said corporation by authority of its board of directors and acknowledged said instrument to be its voluntary act and deed. Before me:



Lynn Almeida
Notary Public for the State of Florida
My Commission Expires: 8/4/2020





INTRODUCTION

The marketing department of Kaufman Lynn Construction (Kaufman Lynn) follows a set process for creating, assembling, and responding to Request For Proposals (RFPs) and Request For Qualifications (RFQs). This process is Kaufman Lynn's set procedures to ensure that proposals are compliant regarding the requirements of the RFP/RFQ.

PROCESS

The process of creating, assembling, and responding to a RFP/RFQ is one that is followed on all of Kaufman Lynn's submittals and was utilized in the Design/Build for a New Parking Garage Facility for The Collins Park Parking Garage (RFP No 2016-2014-KB).

This process is as follows:

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- Related dates put into marketing calendar.
- Marketing personnel creates Kick-Off Worksheet which includes all requirements of the RFP/RFQ.
- Kick-off meeting is held to review Kick-Off Worksheet.
- Marketing sends out Responsibility Matrix based on Kick-Off Worksheet covering the complete deliverable(s).
- As items are completed the Responsibility Matrix is updated to reflect same.
- The team reviews a final draft for completeness.
- Once the final proposal is completed, the Marketing Manager completes a final compliance check utilizing the Responsibility Matrix ensuring all components and forms are included.

MIAMI BEACH COLLINS PARK PARKING GARAGE SPECIFIC

- Addendum No. 3 Released
Thursday April 3, 2017 Kaufman Lynn Construction received Addendum No. 3 from William Garviso of the City of Miami Beach kicking off Phase II of the RFP process.
- Kick-Off Worksheet and Responsibility Matrix (Checklist) Created
Upon receipt of Addendum 3, Kaufman Lynn's marketing department created a Kick-Off Worksheet and Responsibility Matrix (checklist) for all parties involved with the response to the RFP.
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The Kaufman Lynn team attended the Pre-Submittal Meeting held by the City on Tuesday, April 25 and we as a team held our "kick-off" meeting a few hours after that on the same day and reviewed the Kick-Off Worksheet and assigned tasks and deadlines for the Responsibility Matrix.
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As part of the process we held on-going status meetings to review progress and update the Responsibility Matrix.

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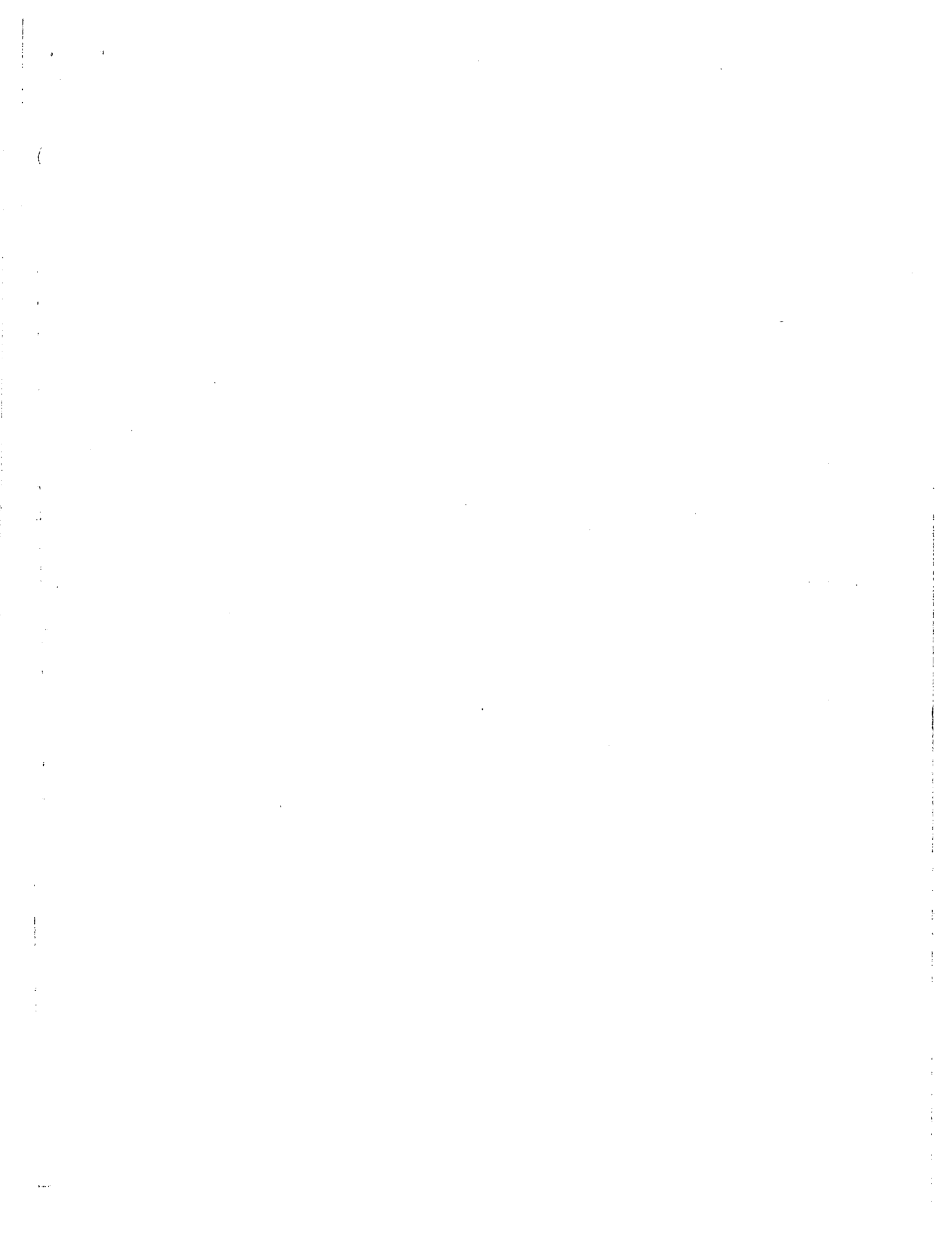
500 E Broward Blvd., #1710, Ft. Lauderdale, FL 33394
P: 954.320.7022 ■ F: 954.320.7025

MIAMI

1200 Brickell Ave., #1950, Miami, FL 33131
P: 786.350.1055 ■ F: 786.523.7989



- Addendum 4
On Friday April 28, 2017, Addendum No. 4 was received and the matrix was subsequently updated to reflect the new requirements and forms on Monday, May 1st. On Tuesday, May 2nd, Section 1 of Exhibit A and Exhibit B (Sample Agreement) were printed. Exhibit B was left with legal for review and two copies of Section 1 of Exhibit A were given to the executive assistant (Lynn Almeida) for processing by the President/CEO (Michael Kaufman). Both copies were signed by President/CEO, Michael Kaufman, and notarized by Lynn Almeida. The copies were then returned to marketing specialist, Kathleen Bernard. Kathleen stored both files in the proposal response folder until June 28th when the proposal was bound for review and submission.
- Additional Addendums
For Addendums 5-8 each were received and the Responsibility Matrix updated as needed.
- Review
Before submitting on Thursday, June 29th the book underwent a thorough review by our "Red Team" to check for compliance and responsiveness on Wednesday, June 28th. The Red Team is responsible for ensuring all of the RFP/RQ requirements are met prior to submission. Then on June 29th the Marketing Manager reviewed the proposal for compliance prior to sealing and then were placed in to a box and sealed for submission. At that point Kaufman Lynn's response was delivered to the City.



AFFIDAVIT OF KATHLEEN BERNARD

STATE OF FLORIDA)
)
COUNTY OF PALM BEACH)

Kathleen Bernard hereby submits this affidavit in the above-captioned matter after being duly sworn stating the following:

1. I am the Marketing Specialist for Kaufman Lynn Construction, Inc.
2. As part of my role as Marketing Specialist, I provide research, compile information, collect information, draft documents including responses to requests for proposals or requests for qualifications, as well as organize and compile such responses, among other responsibilities. I have been involved with over ten (10) proposals associated with construction projects for various government agencies and municipalities.
3. I make this affidavit in connection with the City of Miami Beach's ("City's") Request for Proposal No. 2016-204-KB.
4. As part of my role as Marketing Specialist, I received the City's Addendum No. 4 which contained an Exhibit "A" ("Addendum Exhibit"). The Addendum Exhibit was comprised of Section 1, a certification form, and Section 2, the Guaranteed Maximum Price form. The Addendum Exhibit required Kaufman Lynn Construction, Inc.'s CEO and President, Michael Kaufman, to execute both sections.
5. On May 2, 2017, as part of the typical procedures at Kaufman Lynn Construction, Inc., I forwarded two copies of the Addendum Exhibit for Mr. Kaufman's signature and left them with his assistant, Lynn Almeida.
6. It is Ms. Almeida's job to obtain and notarize Mr. Kaufman's signature for any documents requiring such execution.
7. Later that day, I specifically recall receiving two executed and notarized copies of the Addendum Exhibit from Ms. Almeida. As with other projects, I kept the two sets of documents at my desk until Kaufman Lynn Construction, Inc. finalized and packaged the documents in a sealed envelope.
8. Kaufman Lynn Construction, Inc.'s standard processes and procedures requires that Marketing Manager Alexandra Brown review all project documents, responses, and

information for compliance before delivery to government agencies or municipalities. Ms. Brown performed the review in the response to the RFP.

9. After Alexandra Brown's compliance review, I specifically recall that I packaged the signed and notarized Addendum Exhibit in an envelope, sealed the envelope, and placed the sealed envelope in a specified binder containing the original response to the City's Request for Proposal.

10. I directly handed the box containing the specified binder and thereby the sealed envelope (which contained one full set of the Addendum Exhibit), among other binders, to a City representative on the morning of June 29, 2017, the day the proposals were due.

11. On July 11, 2017, I attended the City's deliberations and specifically recall that when the contents of the envelopes were reviewed from all proposers, each envelope appeared to already be open. In other words, I do not recall on July 11, 2017, that any of the envelopes were sealed at the time the contents were removed.

12. During the July 11, 2017 deliberations, I recorded the City's selection committee's discussions until scoring began.

13. During the July 11, 2017 deliberations, the City paid close attention to the contents of each bidder's envelope and information contained in each Addendum Exhibit specifically asking and clarifying pricing and scope information.

14. At no relevant time did any individual indicate Kaufman Lynn Construction, Inc.'s proposal was incomplete, insufficient, lacked specificity regarding scope or pricing, or lacked responsiveness. The contents of the envelope did not appear to be missing based on my observations.

15. For example, I recall Procurement Department staff member, Kristy Bada handling the contents of the envelope containing the Addendum Exhibit and made specific observations. In one instance she texted someone using her cell phone and then left the room; and upon return, explained to David Gomez that her text involved a question regarding the information contained in Kaufman Lynn's envelope. Further, upon the conclusion of deliberations, one of the selection committee members specifically asked Ms. Bada what the particular question was. She responded that she needed clarification regarding how to treat the alternative pricing and scope information for the second option provided by Kaufman Lynn contained therein. At no relevant time during this entire exchange did she (nor others) indicate any deficiencies or grounds to disqualify Kaufman Lynn Construction, Inc.

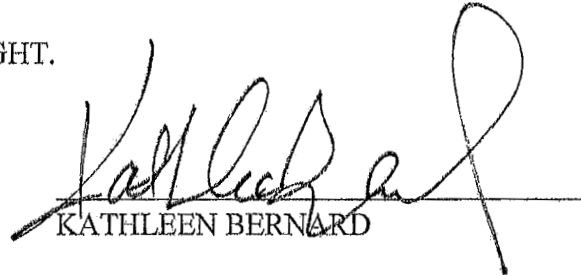
16. Upon return to Kaufman Lynn Construction, Inc.'s office, I do not recall finding any extra or misplaced documents that should have been included in the sealed envelope.

17. Upon receipt of the City's letter of non-responsiveness, I thoroughly checked my desk and our marketing department offices and did not find any extra or misplaced documents that should have been included in the sealed envelope.

18. I affirm that I placed one set of the complete Addendum Exhibit in a sealed envelope and handed such envelope to a representative of the City on June 29, 2017.

I hereby declare, certify or state, under penalty of perjury, that the foregoing is true and correct. Executed on August 9, 2017.

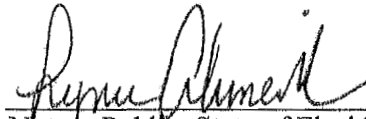
FURTHER AFFIANT SAYETH NAUGHT.

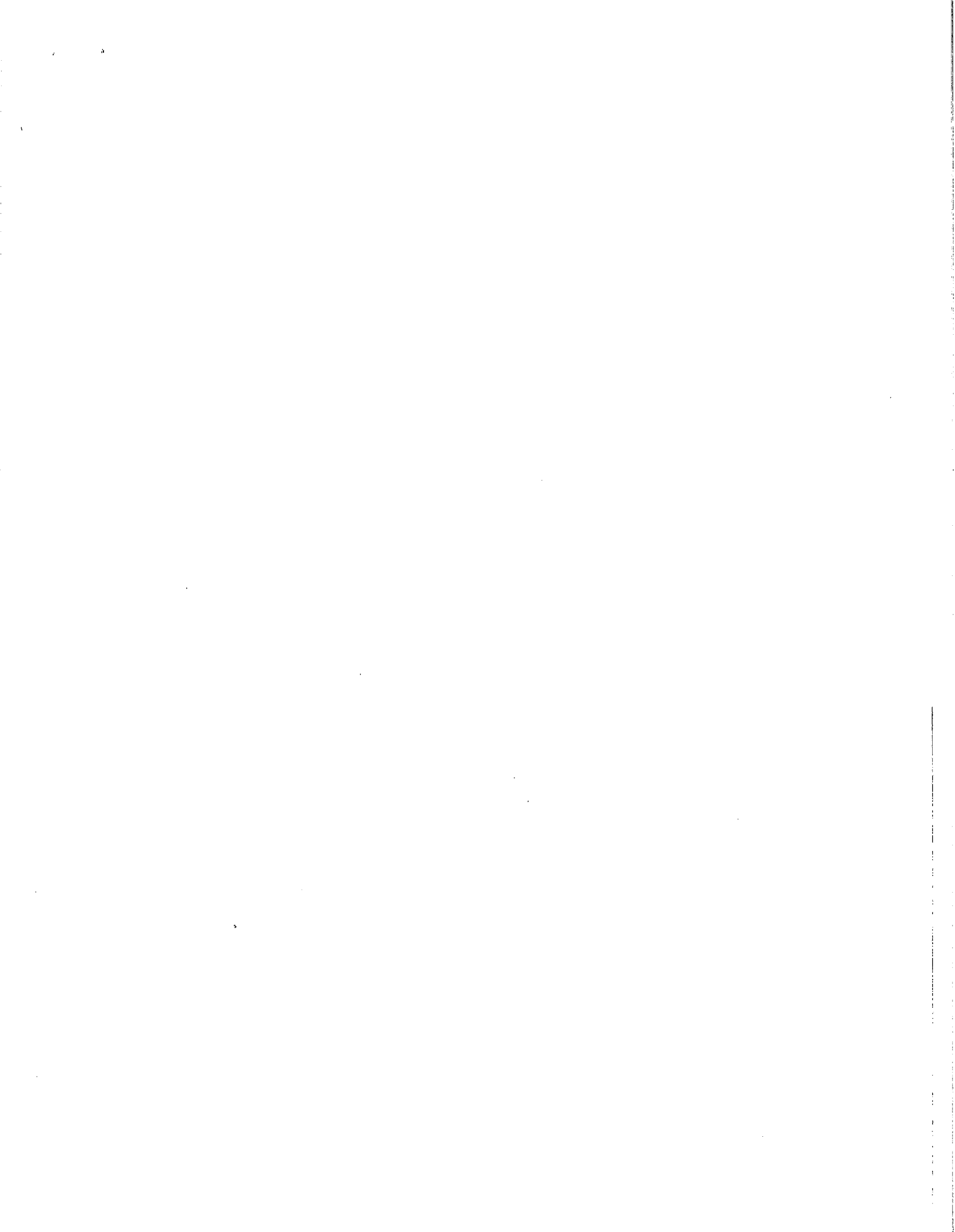

KATHLEEN BERNARD

STATE OF FLORIDA)
COUNTY OF PAIM BEACH)

The foregoing instrument was acknowledged before me this 9th day of August 2017 by KATHLEEN BERNARD. She is () personally known to me or () has produced ✓ as identification.




Notary Public, State of Florida
Print Name: LYNN ALMEIDA
Commission No.: _____
My Commission Expires: 8/4/2020



AFFIDAVIT OF LYNN ALMEIDA

STATE OF FLORIDA)
)
COUNTY OF PALM BEACH)

Lynn Almeida hereby submits this affidavit in the above-captioned matter after being duly sworn stating the following:

1. I am the Executive Assistant for Kaufman Lynn Construction, Inc. In addition to being an Executive Assistant, I am a Notary Public pursuant to Chapter 117 of the Florida Statutes.

2. As part of my role as Executive Assistant, I assist the company's CEO and President Mike Kaufman, including preparing and finalizing documents for his review and signature as well as notarizing his signature when required.

3. I make this affidavit in connection with the City of Miami Beach's ("City's") Request for Proposal No. 2016-204-KB.

4. As part of my role as Executive Assistant, on May 2, 2017, I received two copies of documents from Kathleen Bernard, Kaufman Lynn Construction, Inc.'s Marketing Specialist. These documents included two copies of the Cost Tender's Certification Page, which were provided to Mr. Kaufman for his review and signature. Upon Mr. Kaufman's signature and my notarization on Section I, I returned the forms to Kathleen Bernard.

5. I specifically recall Mr. Kaufman signing two copies of the Cost Tender's Certification on May 2, 2017. I also notarized his signature twice on the same date.

6. I specifically recall delivering two executed and notarized documents (Exhibit "A") to Ms. Bernard.

I hereby declare, certify or state, under penalty of perjury, that the foregoing is true and correct. Executed on August 9, 2017.

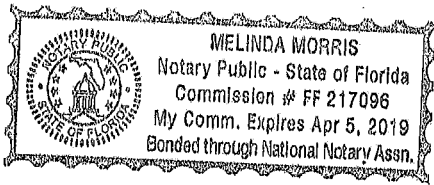
FURTHER AFFIANT SAYETH NAUGHT.

Lynn Almeida
LYNN ALMEIDA

STATE OF FLORIDA)
COUNTY OF Palm Beach)

The foregoing instrument was acknowledged before me this 9 day of August 2017 by Lynn Almeida. She is () personally known to me or () has produced _____ as identification.

(NOTARY SEAL)



Melinda Morris
Notary Public, State of Florida
Print Name: Melinda Morris
Commission No.: _____
My Commission Expires: _____

AFFIDAVIT OF JEFFREY ZALKIN

STATE OF FLORIDA)
)
COUNTY OF PALM BEACH)

Jeffery Zalkin hereby submits this affidavit in the above-captioned matter after being duly sworn stating the following:

1. I am the Vice President of Development for Kaufman Lynn Construction, Inc.
2. As part of my role as Vice President of Development, I oversee all construction pursuits and proposals involving the public sector such as for governments, cities, and municipalities. I have held similar positions with various companies for over 18 years.
3. I make this affidavit in connection with the City of Miami Beach's ("City's") Request for Proposal No. 2016-204-KB.
4. I worked with various departments including operations, development, and marketing to compile and review the information and documents responsive to the City's Request for Proposals.
5. Enclosed as Exhibit "C" to the correspondence provided by our outside counsel, is an accurate summary of Kaufman Lynn Construction, Inc.'s internal processes and procedures when responding to requests for proposals similar to the City's. Those procedures were complied with in responding to the RFP.
6. As the Vice President of Development for Kaufman Lynn Construction, Inc., part of my responsibility is to ensure the company has sufficiently reviewed, responded to, and committed to proposals submitted in response to a request for proposal.
7. On June 28, 2017, as part of the review of the proposal for responsiveness, I found the RFP packet to be complete. This included the Cost Tender Certification Page (Section

1 and Section 2), which was properly executed and included in a separate envelope. Section 1 was also notarized as required.

8. I affirm that upon compilation of the documents on June 28, 2017, the sealed envelope that was provided to the City included all required documents including the Cost Tender's Certification Page that was executed and notarized.

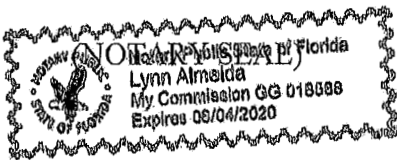
I hereby declare, certify or state, under penalty of perjury, that the foregoing is true and correct. Executed on August 9, 2017.

FURTHER AFFIANT SAYETH NAUGHT.

[Signature]
JEFFREY ZALKIN

STATE OF FLORIDA
COUNTY OF Palm Beach }

The foregoing instrument was acknowledged before me this 9th day of August 2017 by JEFFREY ZALKIN. He is () personally known to me or () has produced [Signature] as identification.



[Signature]
Notary Public, State of Florida
Print Name: LYNN ALMEIDA
Commission No.: _____
My Commission Expires: 8/4/2020

EXHIBIT C



INTRODUCTION

The marketing department of Kaufman Lynn Construction (Kaufman Lynn) follows a set process for creating, assembling, and responding to Request For Proposals (RFPs) and Request For Qualifications (RFQs). This process is Kaufman Lynn's set procedures to ensure that proposals are compliant regarding the requirements of the RFP/RFQ.

PROCESS

The process of creating, assembling, and responding to a RFP/RFQ is one that is followed on all of Kaufman Lynn's submittals and was utilized in the Design/Build for a New Parking Garage Facility for The Collins Park Parking Garage (RFP No 2016-2014-KB).

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MIAMI BEACH COLLINS PARK PARKING GARAGE SPECIFIC

- Addendum No. 3 Released
Thursday April 3, 2017 Kaufman Lynn Construction received Addendum No. 3 from William Garviso of the City of Miami Beach kicking off Phase II of the RFP process.
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Upon receipt of Addendum 3, Kaufman Lynn's marketing department created a Kick-Off Worksheet and Responsibility Matrix (checklist) for all parties involved with the response to the RFP.
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The Kaufman Lynn team attended the Pre-Submittal Meeting held by the City on Tuesday, April 25 and we as a team held our "kick-off" meeting a few hours after that on the same day and reviewed the Kick-Off Worksheet and assigned tasks and deadlines for the Responsibility Matrix.
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As part of the process we held on-going status meetings to review progress and update the Responsibility Matrix.

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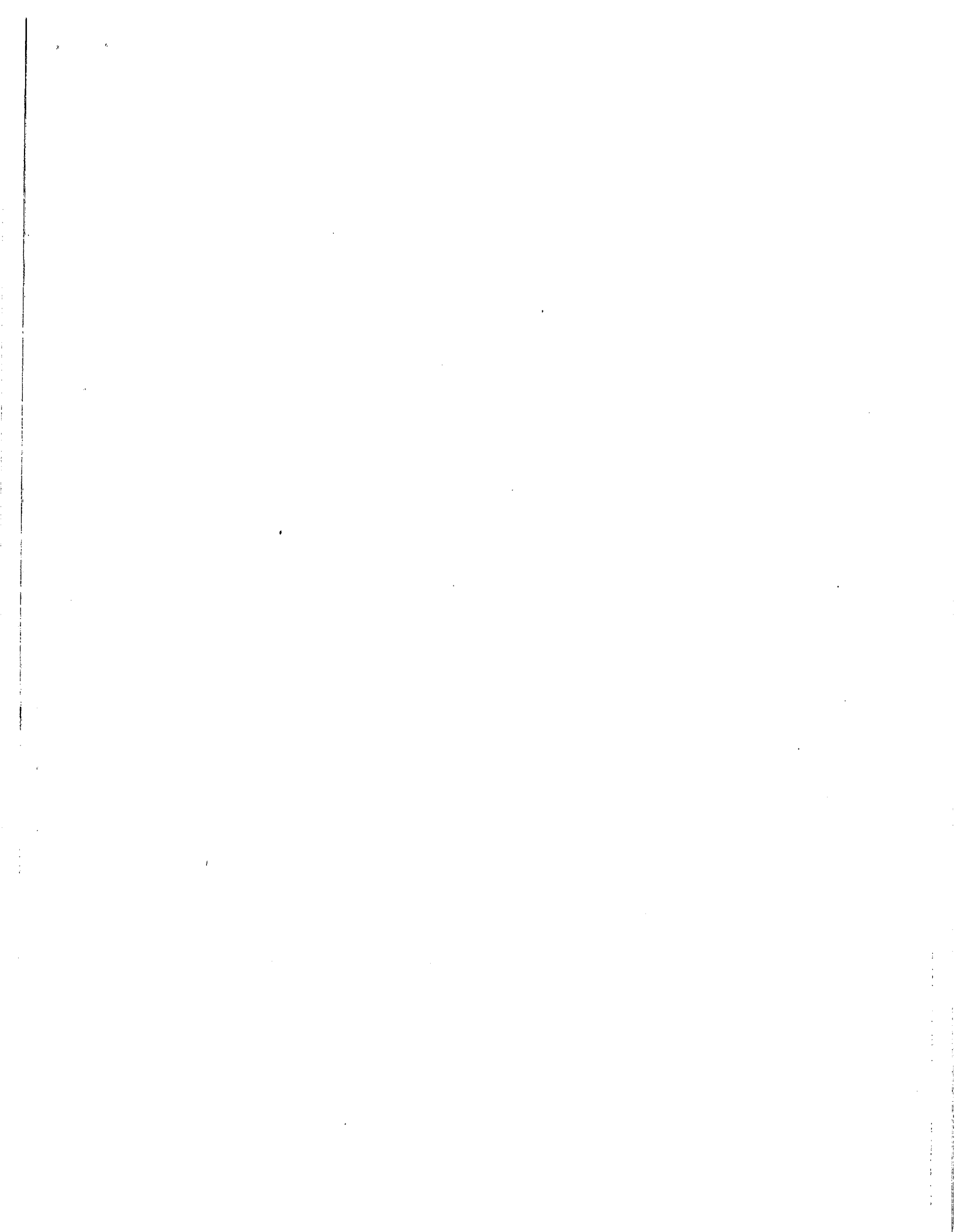
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MIAMI

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AFFIDAVIT OF ALEXANDRA BROWN

STATE OF FLORIDA)
)
COUNTY OF PALM BEACH)

Alexandra Brown hereby submits this affidavit in the above-captioned matter after being duly sworn stating the following:

1. I am the Marketing Manager for Kaufman Lynn Construction, Inc. I have been working with Kaufman Lynn Construction, Inc. in that position for seven (7) years.

2. As part of my role as Marketing Manager, I provide oversight and review of responses to requests for proposals, including verification that Kaufman Lynn Construction, Inc. complies with requests substantively and procedurally. I have been involved in the production and review of responses to Requests for Proposals associated with construction projects for various government agencies and municipalities for nearly 20 years.

3. I make this affidavit in connection with the City of Miami Beach's ("City's") Request for Proposal No. 2016-204-KB.

4. As part of my role as Marketing Manager, I reviewed the Request for Proposals and all subsequent Addenda, noting all response requirements.

5. I collaborate with various departments and individuals within Kaufman Lynn Construction, Inc. including estimating, operations, and marketing. I recall specifically that Kaufman Lynn Construction, Inc.'s proposal, including pricing and cost information, was reviewed by the company's CEO and President, Michael Kaufman, among other members of the company's senior and executive teams.

6. Enclosed as Exhibit "C" attached to the correspondence provided by our outside counsel, is an accurate summary of Kaufman Lynn Construction, Inc.'s internal processes and procedures when responding to requests for proposals similar to the City's. Those processes and procedures were followed in the response to the RFP.

7. I supervised Kathleen Bernard, Kaufman Lynn Construction's Marketing Specialist, who was coordinating the overall preparation of the proposal, tracking progress on completion of the various proposal sections, and compilation of the company's proposal in its final form.

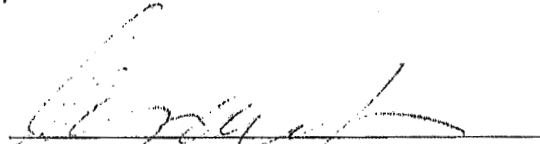
8. On June 28, 2017, as part of the typical procedures at Kaufman Lynn Construction, Inc., I reviewed the proposal for responsiveness prior to assembly. I verified that the Cost Tender's Certification Page, provided with Addendum 4, was properly executed and sealed in a separate envelope.

9. On the morning of June 29, 2017 I performed a final review and verified that Kaufman Lynn Construction's responses complied with all requirements including: (1) inclusion of the correct number of copies of proposals; (2) inclusion of a clearly marked original; (3) inclusion of an electronic version of the proposal on a CD; and (4) inclusion of a completed Cost Tender Form sealed in an envelope.

10. I affirm that based upon my review of Kaufman Lynn Construction, Inc.'s Proposal, a fully executed certification form was included and placed in an envelope that was sealed and delivered to the City.

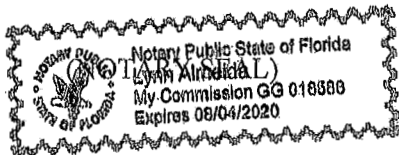
I hereby declare, certify or state, under penalty of perjury, that the foregoing is true and correct. Executed on July 12, 2017.

FURTHER AFFIANT SAYETH NAUGHT.


ALEXANDRA BROWN

STATE OF FLORIDA)
COUNTY OF Palm Beach)

The foregoing instrument was acknowledged before me this 9th day of August 2017 by Alexandra Brown. She is () personally known to me or () has produced as identification.



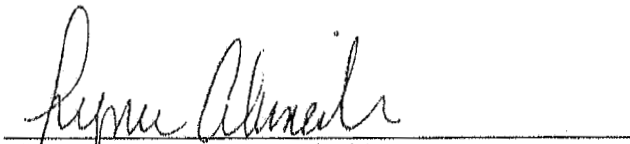

Notary Public, State of Florida
Print Name: Lynn Almeida
Commission No.:
My Commission Expires: 8/4/2020

EXHIBIT C



INTRODUCTION

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FORT LAUDERDALE

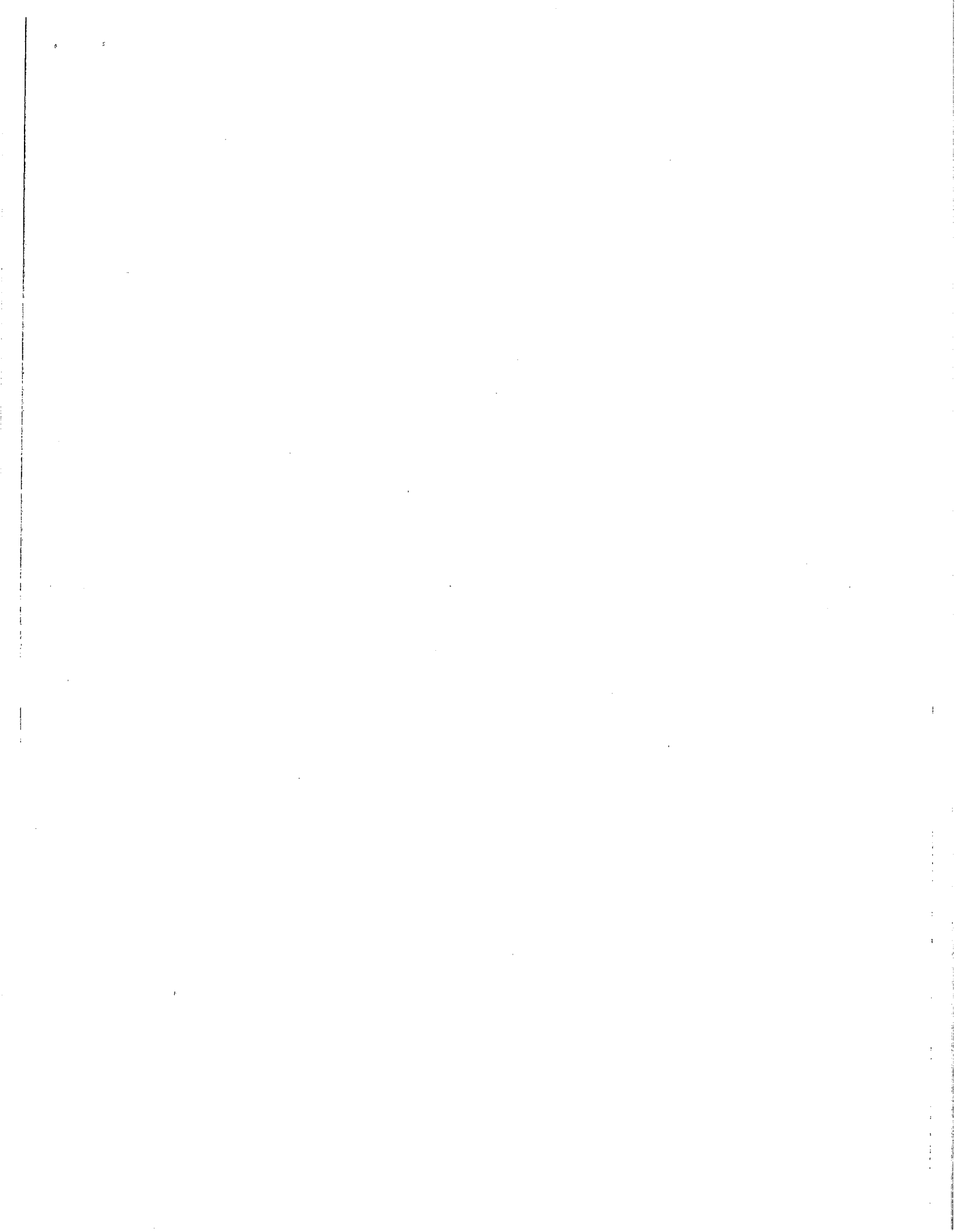
500 E Broward Blvd., #1710, Ft. Lauderdale, FL 33394
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MIAMI

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- Addendum 4
On Friday April 28, 2017, Addendum No. 4 was received and the matrix was subsequently updated to reflect the new requirements and forms on Monday, May 1st. On Tuesday, May 2nd, Section 1 of Exhibit A and Exhibit B (Sample Agreement) were printed. Exhibit B was left with legal for review and two copies of Section 1 of Exhibit A were given to the executive assistant (Lynn Almeida) for processing by the President/CEO (Michael Kaufman). Both copies were signed by President/CEO, Michael Kaufman, and notarized by Lynn Almeida. The copies were then returned to marketing specialist, Kathleen Bernard. Kathleen stored both files in the proposal response folder until June 28th when the proposal was bound for review and submission.
- Additional Addendums
For Addendums 5-8 each were received and the Responsibility Matrix updated as needed.
- Review
Before submitting on Thursday, June 29th the book underwent a thorough review by our "Red Team" to check for compliance and responsiveness on Wednesday, June 28th. The Red Team is responsible for ensuring all of the RFP/RQ requirements are met prior to submission. Then on June 29th the Marketing Manager reviewed the proposal for compliance prior to sealing and then were placed in to a box and sealed for submission. At that point Kaufman Lynn's response was delivered to the City.



AFFIDAVIT OF MICHAEL KAUFMAN

STATE OF FLORIDA)
)
COUNTY OF PALM BEACH)

Michael Kaufman hereby submits this affidavit after being duly sworn stating the following:

1. I am the President and Chief Executive Officer of Kaufman Lynn Construction, Inc. and have held those positions for 28 years.

2. I make this affidavit in connection with the City of Miami Beach's ("City's") Request for Proposal No. 2016-204-KB (Collins Park Garage).

3. It is and has always been the intent of Kaufman Lynn Construction, Inc. to comply with the terms of the Cost Tender's Certification Page (the "Certification"). I hereby state unequivocally that Kaufman Lynn Construction, Inc. will comply with the terms of the Certification. At the time we submitted our bid in response to the RFP, and all other relevant times, Kaufman Lynn Construction, Inc. intended to comply with the Certification.

4. I was provided Kaufman Lynn Construction, Inc.'s proposal response (including two copies of Addendum 4, Exhibit A, Sections 1 and 2) for Phase II of the Miami Beach Collins Park Parking Garage by my assistant, Lynn Almeida on Tuesday, May 2, 2017 for my review and signature.

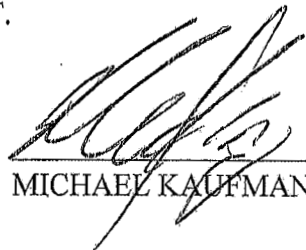
5. I signed both copies of the proposal on May 5, 2017, in the presence of Lynn Almeida for notarization. A true and correct copy of the executed Cost Tender's Certification page that was provided with the original submission is attached to the Affidavit as **Exhibit "B."**

6. Kaufman Lynn Construction, Inc.'s internal procedures in responding to RFP's are attached hereto as **Exhibit "C."** These procedures are followed with every RFP response and these same procedures have been in effect for at least the past four years of operation.

7. The procedures outline in Exhibit C were followed in Kaufman Lynn Construction, Inc.'s response to the RFP.

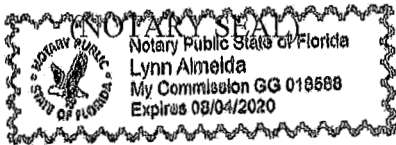
I hereby declare, certify or state, under penalty of perjury, that the foregoing is true and correct. Executed on August 9, 2017.

FURTHER AFFIANT SAYETH NAUGHT.


MICHAEL KAUFMAN

STATE OF FLORIDA
COUNTY OF Palm Beach }

The foregoing instrument was acknowledged before me this 9th day of August 2017 by Michael Kaufman. He is () personally known to me or () has produced _____ as identification.



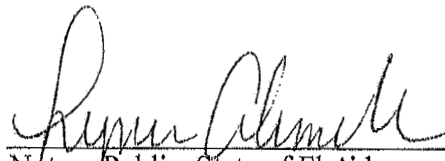

Notary Public, State of Florida
Print Name: LYNN ALMEIDA
Commission No.: _____
My Commission Expires: 8/4/2020

EXHIBIT B

EXHIBIT C



INTRODUCTION

The marketing department of Kaufman Lynn Construction (Kaufman Lynn) follows a set process for creating, assembling, and responding to Request For Proposals (RFPs) and Request For Qualifications (RFQs). This process is Kaufman Lynn's set procedures to ensure that proposals are compliant regarding the requirements of the RFP/RFQ.

PROCESS

The process of creating, assembling, and responding to a RFP/RFQ is one that is followed on all of Kaufman Lynn's submittals and was utilized in the Design/Build for a New Parking Garage Facility for The Collins Park Parking Garage (RFP No 2016-2014-KB).

This process is as follows:

- RFP/RFQ received by Kaufman Lynn and distributed to all involved parties.
- Related dates put into marketing calendar.
- Marketing personnel creates Kick-Off Worksheet which includes all requirements of the RFP/RFQ.
- Kick-off meeting is held to review Kick-Off Worksheet.
- Marketing sends out Responsibility Matrix based on Kick-Off Worksheet covering the complete deliverable(s).
- As items are completed the Responsibility Matrix is updated to reflect same.
- The team reviews a final draft for completeness.
- Once the final proposal is completed, the Marketing Manager completes a final compliance check utilizing the Responsibility Matrix ensuring all components and forms are included.

MIAMI BEACH COLLINS PARK PARKING GARAGE SPECIFIC

- Addendum No. 3 Released
Thursday April 3, 2017 Kaufman Lynn Construction received Addendum No. 3 from William Garviso of the City of Miami Beach kicking off Phase II of the RFP process.
- Kick-Off Worksheet and Responsibility Matrix (Checklist) Created
Upon receipt of Addendum 3, Kaufman Lynn's marketing department created a Kick-Off Worksheet and Responsibility Matrix (checklist) for all parties involved with the response to the RFP.
- Kick-off Meeting
The Kaufman Lynn team attended the Pre-Submittal Meeting held by the City on Tuesday, April 25 and we as a team held our "kick-off" meeting a few hours after that on the same day and reviewed the Kick-Off Worksheet and assigned tasks and deadlines for the Responsibility Matrix.
- Update Meetings
As part of the process we held on-going status meetings to review progress and update the Responsibility Matrix.

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HANS H. HUANG
CHIEF LEGAL OFFICER
HHUANG@KAUFMANLYNN.COM
561.886.4311 (P)
561.361.6979 (F)

July 18, 2017

(Via Hand Delivery, Overnight Mail, and Email(JimmyMorales@miamibeachfl.gov))

Jimmy Morales, City Manager
City of Miami Beach
1700 Convention Center Drive
4th Floor
Miami Beach, FL 33139

**RE: RESPONSE TO CITY'S CORRESPONDENCE AND REQUEST FOR RECONSIDERATION/MEETING
CITY OF MIAMI BEACH REQUEST FOR PROPOSAL NO. 2016-204-KB**

Mr. Morales,

Kaufman Lynn Construction, Inc. is in receipt of the City of Miami Beach (the "City") Procurement Departments' correspondence dated yesterday July 17, 2017 identified as a "Letter of Non-Responsiveness" and asserting that Kaufman Lynn Construction's proposal in connection with City RFP No. 2016-204-KB ("RFP") was not responsive and will therefore not be recommended to the City Commissioner. As Chief Legal Officer, I have been asked to respond to the legal and factual allegations set forth therein as well as request reconsideration. We also respectfully request a meeting with the City Manager before a recommendation is presented to the City Commission that excludes Kaufman Lynn Construction's Proposal. Upon receipt, please contact our Vice President of Development Jeffrey Zalkin (954.812.7852) so that we may fully have an opportunity to meet and discuss the City's position.

Lack of Responsiveness Letter

The City's Procurement Department asserts that the Cost Tender Form's Certification Page was missing from Kaufman Lynn Construction's Sealed Cost Proposal and relies on the case Electric Co. v. Dade County. Based on our internal review and investigation, Kaufman Lynn Construction provided a complete Cost Tender Form which was removed from a Sealed Cost Proposal envelope, read from, and relied upon as part of the technical proposal, presentation, and deliberations held on July 11, 2017 by the City as set forth in Section 0400 detailed in the RFP, page 18. As you are aware, the City Manager's representative David Martinez was present during such deliberations and at that time, there was no objection that the Cost Tender Form was incomplete or otherwise unresponsive. To establish chain of custody, enclosed please find a copy of our original file version maintained as part of Kaufman Lynn Construction's record keeping process which mirrors what was included in the Sealed Cost Proposal envelope and required by the City. Regardless, for the reasons set forth below, Kaufman Lynn Construction's Bid was responsive and must be considered for the best interest of the city.

Overview

On July 11, 2017, Kaufman Lynn Construction participated in the Phase II Technical Presentation as part of the RFP process. As part of the presentation, the city reviewed the Cost Tender Form and Technical Proposal. At that time, the City, by and through four panelists, collectively ranked Kaufman Lynn Construction's Proposal as superior to the other participants and in the best interest of the City. In particular, three out of four panelists ranked Kaufman Lynn Construction's Proposal first and

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accumulatively, Kaufman Lynn Construction's Proposal exceeded the second ranked proposal by a significant 10 points.

At no relevant time did the City upon the review and incorporation of the Tender Cost Form identify any deficiencies. At no relevant time during the bidding process, phase I, or phase II evaluation process were any deficiencies identified that might give Kaufman Lynn Construction an unfair advantage over the other bidders or otherwise restrict or stifle competition. In other words, at the time of City's July 11, 2017 deliberation, nothing was deemed to unfairly impact the evaluation or review of Kaufman Lynn Construction's Proposal or other bidder's information.

Any deficiency in the Cost Tender Form would have been noted during the July 11, 2017 deliberation because the Cost Tender Form was specifically highlighted and discussed due to the alternate façade notation. As part of the deliberations and presentation, Kaufman Lynn Construction discussed the façade and pricing while committing to the pricing as set forth in the Tender Cost Form. Again, as part of the deliberations, the City confirmed receipt and applied the Cost Tender Form without noting any deficiency.

City Manager's Duties and Responsibilities

Pursuant to the RFP, the City Manager is authorized to recommend to the City Commission the respondent(s) he deems to be in the best interest of the City. To exclude Kaufman Lynn Construction's Proposal from the City Manager's review would not be in the best interest of the City. Instead, the RFP highlights Miami Beach City Code (the "Code") Section 2-369 which lists relevant factors such as ability, capacity, and skill. Under Code Section 2-371, it is the City Manager or city attorney that determines responsiveness of a proposal and not the Procurement Department. Accordingly, Kaufman Lynn Construction hereby request the opportunity to speak with the City Manager as part of its request that the City reconsider its determination of lack of responsiveness.

Materiality

It is important to note that even assuming, *arguendo*, Kaufman Lynn Construction's Cost Tender Form did not include Section 1, such omission, which is again denied, lacks materiality as defined under applicable case law or otherwise as to overcome the July 11, 2017 deliberations finding Kaufman Lynn Construction's proposal was in the best interest of the city. Under Florida Statute, 287.012(26) "Responsive bid," "responsive proposal," or "responsive reply" means a bid, or proposal, or reply submitted by a responsive and responsible vendor which conforms in all material respects to the solicitation. In this matter, the City asserts that Kaufman Lynn Construction did not certify its commitment to performing as required by the RFP.

Kaufman Lynn Construction meets this requirement because Section I of the Cost Tender Form was contained in the Sealed Cost Proposal. In addition, Section II of the Cost Tender Form includes a certification which specifically states, "I certify that I am authorized to execute this proposal and commit the proposing firm" among other language affirmatively committing to the proposal presented especially in conjunction with the attached Contractor's Clarifications. Contractor's Clarifications commit to the pricing set forth in Section II of the Cost Tender Form as well as other requirements contained in the RFP

and Addendums. The Phase II evaluation and deliberations further included oral commitments that Kaufman Lynn Construction to Guaranteed Maximum Price. Further, Kaufman Lynn Construction will not and has not provided any indication that it will not commit to the representations already contained in Section II, the Cost Tender Form, its Proposal, or the Clarifications set forth therein.

Irregularities may be Waived

Kaufman Lynn Construction further notes that the City has the authority to waive any and all irregularities in any and all formal bids per Code Section 2-367 and applicable law. Even if Kaufman Lynn did not submit a one-page Proposal Certification, such absence would be immaterial (a minor irregularity) and is certainly waivable. Such page has nothing to do with the competitive nature of the solicitation or place a proposer such as Kaufman Lynn in a competitive advantage. See Harry Pepper & Associates, Inc. v. City of Cape Coral, 352 So.2d 1190, 1193 (Fla. 2d DCA 1977) ("The test for measuring whether a deviation in a bid is sufficiently material to destroy its competitive character is whether the variation affects the amount of the bid by giving the bidder an advantage or benefit not enjoyed by other bidders.").

This claimed omission does NOT impact the price or affect the price in any way. It does NOT destroy the competitive nature of the RFP's bidding process. It does NOT give one proposer a competitive advantage over another proposer. And, it does NOT and did not prevent the City from making a fair comparison of the proposals it received. See Tropabest Foods, Inc. v. State, Dept. of General Services, 493 So.2d 50 (Fla. 1st DCA 1986) (finding that although successful bidder's bid violated bid specification the violation did not affect the price of the bid and the "purpose of competitive bidding is to secure the lowest responsible offer and minor irregularities can be waived in effectuating that purpose.") As the Tropabest Foods Court long maintained,

However, although a bid containing a material variance is unacceptable, not every deviation from the invitation to bid is material. It is only material if it gives the bidder a substantial advantage over the other bidders and thereby restricts or stifles competition.

493 So.2d at 52. This long-standing principle was further confirmed by the Third District in Intercontinental Properties, Inc. v. State Dept. of Health and Rehabilitative Services, 606 So.2d 380, 386 (Fla. 3d DCA 1992), stating that there is a very strong public interest in favor of saving tax dollars in awarding public contracts. There is no public interest, much less a substantial public interest, in disqualifying superior bidders for technical deficiencies in form, the superior bidder did not derive any unfair competitive advantage by reason of the technical omission.

Indeed, in Intercontinental Properties, the Third District stated that the bidder's failure to attach proof of the agent's authority was nonconforming and easily remedied: "This is plainly the sort of deficiency which a public agency can, in its discretion, allow a bidder to cure after the fact." *Id* at 386-87.

Hence, although a bidder cannot change its bid after bid-opening, a proposer can cure minor irregularities after bid-opening. See Harry Pepper & Associates, Inc., 352 So.2d at 1192 (Fla. 2d DCA 1977) (explaining bid could not be amended post opening because the bid included the wrong brand of pumps to be installed per the specifications and there was a big difference between the pumps that impacted the solicitation).

The Robinson Case Supports Kaufman Lynn Construction's Request for Reconsideration

The Procurement Department's reliance of the Robinson Case is misplaced. The Robinson Court, when applying the two prongs of determining materiality, stated that a direct and intentional variance of the Instructions did not amount to materiality. In Robinson, although required and set forth in direct contradiction of a government agency's written instructions, a superior bidder failed to provide a bid bond and instead provided a cashier's check. The Court held that the superior bidder should have prevailed because the variance should not be deemed material. The lack of a bid bond did not deprive the municipality of its assurance that the contract will be entered into, performed, and guaranteed according to its specified requirements. The Robinson Court highlighted the fact that the request for bid contemplates the need for the superior bidder will be required to enter into an agreement as described in the "Advertisement to Bid." Even more importantly, the Court determined that a variance should only be considered material "if it give the bidder a substantial advantage over the other bidders, and thereby restricts or stifles competition." *Id. at 1034.*

The City has not and cannot state how a missing signature page gives Kaufman Lynn Construction an substantial advantage over the other bidders, especially in light of the fact deliberations took place before any deficiency was asserted. Like in Robinson, every bidder responding to the RFP were on equal footing during the Phase I and Phase II evaluations and deliberations.

Further, in addition to the RFP requiring the successful bidder to enter into, perform, and guaranty according to the specific requirements of the RFP, Kaufman Lynn Construction made commitments to perform the same by responding the RFP with its Proposal, including a certification on Section II, verifying its commitment as part of the oral presentation and deliberations, and set forth the commitment in detail in its Clarification. Kaufman Lynn Construction's commitments besides those found on the missing Section I go beyond those commitments required by applicable law. Kaufman Lynn Construction's purported lack of responsiveness does not rise to the level of failing to provide a bid bond which our Courts have deemed immaterial.

Summary of other Relevant Cases

Although Kaufman Lynn did submit the Section I of the Cost Tender Form, the City's Letter of Non-Responsiveness letter is really much ado about nothing since this deals with a minor, waivable irregularity. In further support of this, in Technical Sales of Jacksonville, Inc. v City of Jacksonville, 258 So.2d 839 (Fla. 1st DCA 1972), the First District held that the City could waive the fact that the successful bidder failed to submit a bid on the proper form contrary to the instructions to bidders that also required the bidders to note any exception to the specifications, which the successful bidder failed to do. *See also, e.g., Trimble Navigation Limited Corp. v. Department of Transportation*, Case No. 12-3862BID, 2013 WL 2395587 (DOAH May 28, 2013) (Department's decision to waive RFP's requirements for three references on letterhead did not give proposer a competitive advantage); Sunshine Towing @ Broward, Inc. v. Department of Transportation, Case No. 10-0134BID, 2010 WL 1417770 (DOAH April 6, 2010) (Department could waive proposer's failure to include required occupational licenses as this was a minor irregularity); Palm Beach County Youth Coalition v. Palm Beach County Workforce Development Board, Case No. 00-1527BID, 2000 WL 1612168 (DOAH October 20, 2000) (omissions in proposer's proposal

including not providing a certification was a minor irregularity that should have been waived in light of the circumstances); Professional Centre IV, Inc. v. Department of Health and Rehabilitative Services, Case No. 90-4063BID, 1990 WL 749245 (DOAH August 6, 1990) (failure to include certification letter set forth in bid submittal form could have been waived in light of the circumstances).¹

"NIC"

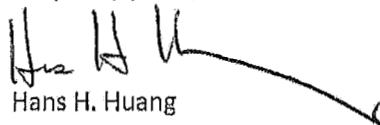
To the extent required, please also accept this correspondence as a response to the footnote on page 2. As clarified in Addendum 8, existing and unforeseen conditions includes management of soil encountered. The GMP form includes duplicative line items based on Addendum 8: (1) existing conditions and (2) site remediation. In other words, line items for existing conditions includes managing all soil encountered as affirmatively addressed in Contractor's Clarifications (sections 2.p. and 3.g.). Accordingly, Site Remediation costs different and distinct from those required under Addendum 8 are not included and hence "NIC" which stands for Not Included. Likewise to the extent Site Remediation involves Existing Conditions, such costs are part of the Existing Conditions and the total GMP as clarified by Contractor's Clarification.

Using the same analysis in connection with the Section I page of the Cost Tender Form above, the use of the term "NIC" or Not Included in light of Addendum 8, the Tender Cost Form, and Contractor's Clarifications should not be considered unresponsiveness.

Conclusion

Kaufman Lynn Construction trusts that the City will consider Kaufman Lynn Construction's factual and legal arguments and look forward to speaking with you in greater detail. Please note, we are providing this correspondence in response to the City's Letter of Non-Responsiveness and not as part of a Protest Process because, among other reasons, the initiating a Bid Protest would be pre-mature at this time and Kaufman Lynn Construction is hopeful we can avoid protracted dispute resolution procedures. However, Kaufman Lynn Construction is not waiving and hereby reserves its right to pursue all remedies available including protesting any award or recommendation that does not include Kaufman Lynn Construction's proposal. As stated above, we are hopeful a meeting between yourself and Jeffrey Zalkin can take place as soon as possible and before a recommendation is provided to the City's Commission. In the meantime, should you or your city attorney require any additional information please do not hesitate to contact me. Thank you for your time and attention.

Very truly yours,


Hans H. Huang

cc: via email:

Krista Bada, Kristabada@miamibeachfl.gov

Rafael Granado, RafaelGranado@miamibeachfl.gov

¹ This is just an example of decisions treating analogous omissions as nothing more than a waivable, minor irregularity.

Section 1 -- Certification

The undersigned, as Proposer, hereby declares that the only persons interested in this proposal as principal are named herein and that no person other than herein mentioned has any interest in this proposal or in the Contract to be entered into; that this proposal is made without connection with any other person, firm, or parties making a proposal; and that it is, in all respects, made fairly and in good faith without collusion or fraud.

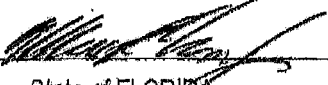
The Proposer further declares that it has examined the site of the Work and informed itself fully of all conditions pertaining to the place where the Work is to be done; that it has examined the Contract Documents and all addenda thereto furnished before the opening of the proposals, as acknowledged below; and that it has satisfied itself about the Work to be performed; and all other required information with the proposal; and that this proposal is submitted voluntarily and willingly.

The Proposer agrees, if this proposal is accepted, to contract with the City, a political subdivision of the State of Florida, pursuant to the terms and conditions of the Contract Documents and to furnish all necessary materials, equipment, machinery, tools, apparatus, means of transportation, and all labor necessary to construct and complete within the time limits specified the Work covered by the Contract Documents for the Project entitled:

REQUEST FOR PROPOSALS (RFP) No. 2016-204-KB
DESIGN/BUILD SERVICES FOR A NEW PARKING GARAGE FACILITY AND RELATED INFRASTRUCTURE FOR THE
COLLINS PARK PARKING GARAGE (PHASE II)

The Proposer also agrees to furnish the required Performance Bond and Payment Bond or alternative form of security, if permitted by the City, each for not less than the total proposal price plus alternates, if any, provided in the RFP Price Form in Section 00408 and to furnish the required Certificate(s) of Insurance.

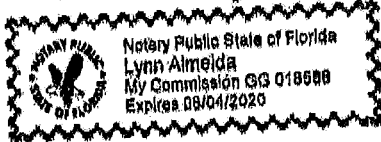
In the event of arithmetical errors between the division totals and the total base proposal in the RFP Price Form, the Proposer agrees that the total base proposal shall govern. In the event of a discrepancy between the numerical total base proposal and the written total base proposal, the written total base proposal shall govern. In absence of totals submitted for any division cost, the City shall interpret as no proposal for the division, which may disqualify the Proposer.

Name of Proposer's Authorized Representative:	Title of Proposer's Authorized Representative:
Michael Kaufman	President and CEO
Signature of Proposer's Authorized Representative:	Date:
	5/2/2017

State of FLORIDA)
personally)

On this 2nd day of May, 2017

) appeared before me Michael Kaufman the
) stated that (s)he is the President of Kauffman's Lynn a
corporation, and that the instrument was signed in behalf of the said corporation by authority of its board of
directors and acknowledged said instrument to be its voluntary act and deed, before me.



Lynn Almeida
Notary Public for the State of Florida
My Commission Expires: 09/01/2020