

## Granado, Rafael

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**From:** Rosen Gonzalez, Kristen  
**Sent:** Wednesday, July 20, 2016 1:27 PM  
**To:** Granado, Rafael  
**Subject:** Fwd: July 20 Agenda Item #R9A Reconsideration of Recc. Related To Proposal Requirements Document (PRD) No. 2016-071-KB

Please attach this email to my item.

Kristen Rosen Gonzalez  
City of Miami Beach Commissioner  
305-965-4725

Begin forwarded message:

**From:** David Custin <[custindr@davidrcustin.com](mailto:custindr@davidrcustin.com)>  
**Date:** July 19, 2016 at 9:54:37 AM EDT  
**To:** "Morales, Jimmy" <[JimmyMorales@miamibeachfl.gov](mailto:JimmyMorales@miamibeachfl.gov)>, "Aguila, Raul" <[RaulAguila@miamibeachfl.gov](mailto:RaulAguila@miamibeachfl.gov)>, "Philip Levine (City)" <[PhilipLevine@miamibeachfl.gov](mailto:PhilipLevine@miamibeachfl.gov)>, "Micky Steinberg (City)" <[Micky@miamibeachfl.gov](mailto:Micky@miamibeachfl.gov)>, "Michael Grieco (City)" <[michaelgrieco@miamibeachfl.gov](mailto:michaelgrieco@miamibeachfl.gov)>, "Joy Malakoff (City)" <[joymalakoff@miamibeachfl.gov](mailto:joymalakoff@miamibeachfl.gov)>, "kristenrosengonzalez@miamibeachfl.gov" <[kristenrosengonzalez@miamibeachfl.gov](mailto:kristenrosengonzalez@miamibeachfl.gov)>, "Ricky Arriola (City)" <[rickyarriola@miamibeachfl.gov](mailto:rickyarriola@miamibeachfl.gov)>, "John Aleman (City)" <[johnaleman@miamibeachfl.gov](mailto:johnaleman@miamibeachfl.gov)>  
**Cc:** "Denis, Alex" <[AlexDenis@miamibeachfl.gov](mailto:AlexDenis@miamibeachfl.gov)>, "Granado, Rafael" <[RafaelGranado@miamibeachfl.gov](mailto:RafaelGranado@miamibeachfl.gov)>, "Paz, Rafael" <[RafaelPaz@miamibeachfl.gov](mailto:RafaelPaz@miamibeachfl.gov)>, "Gloria Baez (City)" <[GloriaBaez@miamibeachfl.gov](mailto:GloriaBaez@miamibeachfl.gov)>, "Tathiane Trofino ([TathianeTrofino@miamibeachfl.gov](mailto:TathianeTrofino@miamibeachfl.gov))" <[TathianeTrofino@miamibeachfl.gov](mailto:TathianeTrofino@miamibeachfl.gov)>, "Danila Bonini ([DanilaBonini@miamibeachfl.gov](mailto:DanilaBonini@miamibeachfl.gov))" <[DanilaBonini@miamibeachfl.gov](mailto:DanilaBonini@miamibeachfl.gov)>, "Bonnie Stewart ([BonnieStewart@miamibeachfl.gov](mailto:BonnieStewart@miamibeachfl.gov))" <[BonnieStewart@miamibeachfl.gov](mailto:BonnieStewart@miamibeachfl.gov)>, "David Zaret" <[Davidzaret@miamibeachfl.gov](mailto:Davidzaret@miamibeachfl.gov)>, Erick Chiroles <[Erickchiroles@miamibeachfl.gov](mailto:Erickchiroles@miamibeachfl.gov)>, Cilia María Ruiz-Paz <[cmruiz-paz@miamibeachfl.gov](mailto:cmruiz-paz@miamibeachfl.gov)>, Mark Alhadeff <[mark@alhadefflaw.com](mailto:mark@alhadefflaw.com)>, "Gonzalez, Alfredo" <[agonzalez@gjb-law.com](mailto:agonzalez@gjb-law.com)>  
**Subject:** July 20 Agenda Item #R9A Reconsideration of Recc. Related To Proposal Requirements Document (PRD) No. 2016-071-KB

City Manager Morales:

Thank for your email reply below dated July 18, 2016 concerning the above referenced matter. The attorneys for Miami Beach Mobility Partners (MBMP) have reviewed same and respectfully disagree with your factual and legal conclusions. The City Administration already factored in a form of price. The Evaluation Committee ranked and scored MBMP in a virtual tie with Greater Miami Tramlank Partners (Alstom). Nevertheless, in your recommendation to the City Commission, the Administration attempted to eliminate MBMP from the process based, in large part, upon Connect Miami Beach's (CMB) cost proposal as follows:

"I base my recommended ranking on the fact that Connect Miami Beach stated in its proposal, and during oral presentations, that it would fund its development costs during the interim agreement phase at its sole risk (other than for items such as early works construction activities, or the environmental clearance process), whereas the other teams indicated that funding for their development activities would require further discussion

with the City. I believe that whichever team is selected, the City should require such proposer to fund its development costs during the interim agreement phase.”

Simply stated, the Administration cannot have it both ways. It cannot consider CMB’s cost proposal in usurping the Evaluation Committee’s rankings in the Manager’s Recommendation to the City Commission (i.e. elevating CMB from third ranked proposer to number two ranked proposer), but simultaneously take the position that the City Commission is handcuffed and must select one of the three proposers without considering which proposer would give the City’s taxpayers the best financial value and design option.

Further, as stated in the Manager’s latest recommendation, the ultimate goal of this process is to enter into a comprehensive agreement that will determine a fixed price for the delivery of the project. In fact, at page 976, the Manager’s Recommendation states that a “key element of the draft Interim Agreement Term Sheet” requires a Project Financial Plan which, based on information to be provided by the City, focuses on **a firm price proposal** and financing to advance the project.” This further highlights why the City wisely reserved the right (as explained below) to negotiate with more than one Proposer so as to allow for competition in regards to the final price to be accepted as a part of the comprehensive agreement. **Doing otherwise, and negotiating with just one proposer at this stage of the process, unjustifiably limits competition for this important component of the PRD.**

Critical to this analysis is a review of Sections 8 & 9 of the PRD document. The PRD document and Florida law make clear that the City Commission does have the ability to consider proposals that may **“be in the best interests of the City”** and select from alternative courses of action as permitted under the PRD.

In fact, Section 8 of the PRD document states clearly that “[t]he City Commission may also, at its option, reject the City Manager’s recommendation and select another Proposal **or Proposals** which it deems **to be in the best interests of the City**, or it may also reject all Proposals.” Section 8 further states that negotiations can move forward between the “City and the selected **Proposer(s)**.” Consequently, the City has the clear right and complete discretion to select more than one Proposer for negotiations of the interim and comprehensive agreement. In fact, the City Commission’s discretion to select more than one Proposer to negotiate interim and comprehensive agreements ensures that it is acting in the “best interests of the City.” See *Berbusse v. North Broward Hospital District*, 117 So. 2d 550 (Fla. 2d DCA 1960) (municipal discretion will not be disturbed unless exercised arbitrarily and capriciously); and see *Wester v. Belote*, 103 Fla. 976, 985 (Fla. 1931) (commission may act as long as it has a “reasonable basis” of support for its action).

The “best interests of the City” can be achieved only by negotiating with the three proposers and waiting to execute a comprehensive final agreement until the City knows the exact final price to complete this project from the proposer providing the best total value. To the contrary, **what is not in the “best interests of the City” is to simply give Alstom a proverbial blank check**, without price competition, and essentially selecting them as the winning proposer before they have committed to what the price of their Proposal will be. If the City doesn’t require competition as to price, it will assuredly result in a higher total cost for the completion of this project.

This option is not prohibited under Florida Statute Section 287.05712 (renumbered as Fla. Stat. 287.065) (the “P3 Statute”). In fact, the P3 Statute specifically states that before approval the “responsible public entity must determine that the proposed project is in the public’s best

interest.” See Fla. Stat. 287.05712(4)(d) (renumbered as Fla. Stat. 287.065). Further, the P3 Statute requires that it be “liberally construed...and construed cumulatively and supplemental to any other authority or power vested in or exercised by the governing board of any municipality.” Fla. Stat. 287.05712(15). Thus, the requirements of the PRD, which allow for negotiation by the City with more than one Proposer, are applicable to the City and all proposers.

Accordingly, we will be respectfully urging the City Commission to do what is in the best interests of the City as articulated above. Thank you for all your work on this PRD to date.

Dear Mayor Levine and Honorable City Commissioners:

I encourage you to read the emails below and the reply above regarding PRD 2016-071-KB (“PRD”). This PRD is a high profile solicitation and major city taxpayer investment. It also impacts one of the top issues that will impact your constituents’ quality of life, now and in the future – **transportation**, local and to the mainland.

We applaud Commissioner Aleman’s moral compass, sound business judgment, good government sensibility, and courage to place the above referenced item on the July 20, 2016 Commission agenda for reconsideration. As it stands, the City’s Administration is recommending you improvidently go down a path that would give Alstom carte blanche to design, build, and operate your light rail project without the ability to factor in and consider the TOTAL FINAL COST from each of the three proposers. That this procurement process began with an unsolicited bid from Alstom (whose team is now exclusively ranked number one by the City Manager), and that the Administration is recommending you exclusively negotiate with Alstom (thereby preventing a competitive pricing competition with the other two highly qualified proposers) prior to entering into a final comprehensive agreement, should be sufficient to cause you alarm.

If you follow the present course of action and allow last week’s City Commission vote to stand, you are essentially instructing the Manager to **commence exclusive negotiations** with a non-Buy America proposer (**which paid the largest-ever criminal foreign bribery fine to the U.S. Department of Justice (\$772 million) for violations of the Foreign Corrupt Practices Act**), and to deprive the City’s taxpayers of the benefit of negotiating with MBMP and Connect Miami Beach for a less expensive total final price for this project. In this regard, it is vital to note MBMP is on record, multiple times, that it believes its total final price for the project will be \$40 to \$60 million less than the City’s estimated budget.

Therefore, we suggest you have at least the following two options in order to arrive at the goal of selecting and entering into a final agreement with a team only after you have received and considered the total final price from all three proposers. Either approach is the only way you can remove any cloud of scandal or stain from this procurement process and look your constituents in their eyes and honestly say, **“We selected the best team, with the best system design, for the best price for the City of Miami Beach’s taxpayers.”**

Option A:

Instruct and authorize the City Manager to enter into negotiations for an interim agreement with all three proposers, and continue with the procurement process until such time that the City Administration may receive a Best and Final Offer (BAFO) that includes technical and price considerations with which to base a final recommendation to the City Commission.

## Option B

Instruct the City Manager to meet with and negotiate with all three proposers from now through September 2016. The purpose of which is to further his due diligence on the proposers, and negotiate and receive the best project design and price options for the City. Then have issued a City Manager recommendation during the October 2016 City Commission meeting that includes both the best total final price and the best wireless light rail design option.

In the end, we would submit to you it is in the best interests of the City of Miami Beach to follow a transparent, prudent, and legal procurement process that includes a total price comparison between all three teams before you arrive at an agreement (interim or final) with just one of them. In good conscience, we hope you decide to do what is right for Miami Beach's taxpayers, NOT what is right and best for Alstom's Greater Miami Tramlink Partners team.

Thank you for your time and consideration.

David R. Custin, President  
David R. Custin & Associates, Inc.  
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E-mail: [CustinDR@DavidRCustin.com](mailto:CustinDR@DavidRCustin.com)  
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**From:** Morales, Jimmy [<mailto:JimmyMorales@miamibeachfl.gov>]  
**Sent:** Monday, July 18, 2016 1:48 PM  
**To:** Aguila, Raul <[RaulAguila@miamibeachfl.gov](mailto:RaulAguila@miamibeachfl.gov)>; David Custin <[custindr@davidrcustin.com](mailto:custindr@davidrcustin.com)>  
**Cc:** Rafael Granado ([SilviaPrieto@miamibeachfl.gov](mailto:SilviaPrieto@miamibeachfl.gov)) <[SilviaPrieto@miamibeachfl.gov](mailto:SilviaPrieto@miamibeachfl.gov)>; Denis, Alex <[AlexDenis@miamibeachfl.gov](mailto:AlexDenis@miamibeachfl.gov)>; Granado, Rafael <[RafaelGranado@miamibeachfl.gov](mailto:RafaelGranado@miamibeachfl.gov)>; Paz, Rafael <[RafaelPaz@miamibeachfl.gov](mailto:RafaelPaz@miamibeachfl.gov)>  
**Subject:** RE: Item #R9A Reconsideration of Recc. Related To Proposal Requirements Document (PRD) No. 2016-071-KB

David,

The procurement documents, as ultimately revised and approved by the Commission earlier this year, do not contemplate price. Any effort to introduce price at this point would represent changing the rules in midstream, which we certainly cannot do without opening the city up to legal challenge. Furthermore, as I am sure you and your client know, there can be no meaningful analysis of price until the project is further developed. The specifications and details that would be required to accurately price will not be available during the time period to negotiate the interim agreement. We are where we are at this point in the process. Thanks

## MIAMI BEACH

**Jimmy Morales**

**City Manager**

OFFICE OF THE CITY MANAGER

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

**From:** Aguila, Raul  
**Sent:** Monday, July 18, 2016 12:12 PM

**To:** 'David Custin'; Morales, Jimmy  
**Cc:** Rafael Granado ([SilviaPrieto@miamibeachfl.gov](mailto:SilviaPrieto@miamibeachfl.gov)); Denis, Alex; Granado, Rafael; Paz, Rafael  
**Subject:** RE: Item #R9A Reconsideration of Recc. Related To Proposal Requirements Document (PRD) No. 2016-071-KB

David:

I was advised by the City Administration that price/cost WILL NOT be negotiated as part of the interim agreement phase; that discussion will not be had until the comprehensive agreement phase. It is not counter to my e-mail below, however, but rather receives information received after subsequent analysis.

Again, I am told that price will not be a factor for the interim agreement.

Thanks.

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**From:** David Custin [<mailto:custindr@davidrcustin.com>]  
**Sent:** Monday, July 18, 2016 11:48 AM  
**To:** Aguila, Raul; Morales, Jimmy  
**Cc:** Rafael Granado ([SilviaPrieto@miamibeachfl.gov](mailto:SilviaPrieto@miamibeachfl.gov)); Denis, Alex; Granado, Rafael; Paz, Rafael  
**Subject:** Item #R9A Reconsideration of Recc. Related To Proposal Requirements Document (PRD) No. 2016-071-KB

Raul:

There seems to be a very wicked rumor being spread that runs counter to your email below.

It is "alleged" that you have issued an opinion to City Commissioners that their hands are tied to recommend to the City Manager to negotiate with all three proposers and receive their price/cost proposals for this project, so that the City Manager may then submit in September or October of this year to the City Commission a holistic and complete recommendation that includes total cost to the City's taxpayers for this project.

Please clarify if that rumor is incorrect, or if somehow the City Commission's hands are tied on this matter (which would run counter to the email reply below and past City Commission leeway and actions on procurement items).

Your prompt reply is greatly appreciated.

David R. Custin, President  
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**From:** Aguila, Raul [<mailto:RaulAguila@miamibeachfl.gov>]  
**Sent:** Thursday, July 07, 2016 5:58 PM  
**To:** David Custin <[custindr@davidrcustin.com](mailto:custindr@davidrcustin.com)>; Morales, Jimmy <[JimmyMorales@miamibeachfl.gov](mailto:JimmyMorales@miamibeachfl.gov)>  
**Cc:** Rafael Granado ([SilviaPrieto@miamibeachfl.gov](mailto:SilviaPrieto@miamibeachfl.gov)) <[SilviaPrieto@miamibeachfl.gov](mailto:SilviaPrieto@miamibeachfl.gov)>; Denis, Alex <[AlexDenis@miamibeachfl.gov](mailto:AlexDenis@miamibeachfl.gov)>; Granado, Rafael <[RafaelGranado@miamibeachfl.gov](mailto:RafaelGranado@miamibeachfl.gov)>; Paz, Rafael <[RafaelPaz@miamibeachfl.gov](mailto:RafaelPaz@miamibeachfl.gov)>  
**Subject:** RE: Item #R7S Resolutions Related To Proposal Requirements Document (PRD) No. 2016-071-KB

David:

The below title refers to the City Manager's recommendation to the City Commission, which is different than the Committee's rankings.

Remember that the Evaluation Committee is advisory to the C.M. He may adopt their recommendation or make a different one (which he has chosen to do in this instance).

Similarly, the Manager's recommendation is advisory to the City Commission; they may adopt his recommendation ; make a different recommendation; or do nothing and reject.

The Manager's memo sets forth the basis for his recommendation.

Thanks,

Raul

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**From:** David Custin [<mailto:custindr@davidrcustin.com>]  
**Sent:** Thursday, July 07, 2016 5:18 PM  
**To:** Aguila, Raul; Morales, Jimmy  
**Cc:** Rafael Granado ([SilviaPrieto@miamibeachfl.gov](mailto:SilviaPrieto@miamibeachfl.gov)); Denis, Alex; Granado, Rafael  
**Subject:** Item #R7S Resolutions Related To Proposal Requirements Document (PRD) No. 2016-071-KB

Gentlemen:

Sending the email below one last time.  
Please reply to confirm receipt.  
Thank you.

David R. Custin, President  
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**From:** David Custin  
**Sent:** Thursday, July 07, 2016 5:09 PM  
**To:** Raul Aguila ([RaulAguila@miamibeachfl.gov](mailto:RaulAguila@miamibeachfl.gov)) <[RaulAguila@miamibeachfl.gov](mailto:RaulAguila@miamibeachfl.gov)>; Jimmy Morales ([jimmymorales@miamibeachfl.gov](mailto:jimmymorales@miamibeachfl.gov)) <[jimmymorales@miamibeachfl.gov](mailto:jimmymorales@miamibeachfl.gov)>  
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**Subject:** Item #R7S Resolutions Related To Proposal Requirements Document (PRD) No. 2016-071-KB

Mr. Manager &/or Mr. City Attorney:

With regard to the above referenced item, with the full Individual Item agenda text that is presently online and pasted below, is there a misprint written?

The Evaluation Committee had scored my client's team (Miami Beach Mobility Partners) second, but in this agenda it lists a different proposer as second (Connect Miami Beach).

Is that a typo or misprint, or was the Evaluation Committee scoring changed by the City Manager since then?  
Please clarify.

R7S Resolutions Related To Proposal Requirements Document (PRD) No. 2016-071-KB Notice Of Unsolicited Proposal And Request For Alternative Proposals For Light Rail Modern Streetcar Project In Miami Beach.

1. A Resolution Accepting The Recommendation Of The City Manager With Respect To The Ranking Of Proposals, Pursuant To Proposal Requirements Document (PRD) No. 2016-071-KB, Notice Of Receipt Of Unsolicited Proposal For Light Rail/Modern Streetcar Project In Miami Beach; And Authorizing Negotiations For An Interim Agreement With The Top-Ranked Proposer, Greater Miami Tramlink Partners, And Should Negotiations With The Top-Ranked Proposer Not Be Successful, Authorizing Negotiations For An Interim Agreement With The Second Ranked Proposer, Connect Miami Beach.  
(Procurement/Transportation)

2. A Resolution Approving The Interim Agreement Term Sheet And Key Concepts For A Comprehensive Agreement For A Light Rail/Modern Streetcar Project In Miami Beach Pursuant To Section 255.065 Of The Florida Statutes And Proposal Requirements Document (PRD) No. 2016-071-KB.  
(Procurement/Transportation)

Also, Manager Morales, approximately how soon will your full recommendation memo/write up be posted online?

Thank you and respectfully,

David R. Custin, President  
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