



LEGAL REQUEST MEMORANDUM (LRM)

To: ☐ Matthew Minter, County Attorney ☐ Dana E. Olesky, Chief Assistant County Attorney ☒ Elizabeth Alt, Senior Assistant County Attorney ☐ Russell Ward, Assistant County Attorney

From: (Name) Francia Anette (Dept) Procurement Services - 2530
 (Title) Procurement & Contract Analyst (Phone) 352-671-8450
 Signature Anette Francia Date Wednesday, July 21, 2021

The Office of the County Attorney is requested to provide legal assistance as detailed in this legal request and supporting documents (attached).

Request for: ☐ New Document ☒ Review & Comment ☐ RESUBMIT LRM No. _____
☐ Approve as to Form ☐ Other

Description of Request

Attached for review is one rejection letter and vendor evaluation for IES Sales and Services. Due to past performances, Procurement would like to recommend that IES gets debarred for a year. Please advise if this would be sufficient to reject by taking it to the Board for a current solicitation they bid on and debar for 1 year.

Thanks,
Anette

For more information or discussion, contact: ☒ Same as above
 (Name) _____ (Title) _____ (Phone) _____
 Last First

COMPLETION IS REQUESTED BY: (specific date) Wednesday, July 28, 2021
 Please allow for a MINIMUM of five (5) working days from receipt of LRM:

Agenda Item? ☐ Yes ☒ No
 Agenda Deadline Date: N/A Agenda Date: _____

LRM No. 2021-576 DO NOT COMPLETE - Office of the County Attorney use ONLY

Outcome: _____ Date Received: _____

MEMO ENCLOSED.

Marion County Attorney

JUL 22 2021

RECEIVED

Attorney Signature: _____ Date 7-22-2021

Staff Signature: Nebra Trachy Returned: ☒ Department ☐ Admin ☒ Procurement
 Completed

7/23/2021

To: Anette Francia
From: Elizabeth Alt
Re: Debarment, IES Sales & Service, LLC, LRM 2021-576
Date: 07/22/2021

Thank you for the above wherein you have advised the IES Sales & Service, LLC ("Vendor") was the sole bidder for a recent solicitation. The Department has let Procurement know that Vendor has previously performed unsatisfactorily. The Department would like to reject the bid based on this past dissatisfaction and would like to proceed with debarment of Vendor.

You have inquired if the dissatisfaction alleged by the Department are sufficient to justify rejecting the bid and/or debarring Vendor.

Sufficiency of Facts

The sufficiency of facts to justify a particular outcome is not within my authority. However, I can speak to the procedures that must be regarded while proceeding in this direction.

ANALYSIS – SUSPENSION/DEBAR

Step 1 - Suspension

Pursuant to the Code, the first step in managing a non-responsible vendor is to implement a suspension for a period not to exceed three (3) months. The Code at Sec. 2-248(a) authorizes the Procurement Director to unilaterally impose the suspension and immediately inform the Board at the next available regular session and provide notice to the affected vendor. However, the Code at Sec. 2-248(d) provides that the CA or BCC chair shall issue written notice of the decision to suspend. In light of these arguably competing directives, I would recommend a conservative approach of informing the Board of the Director's decision, setting forth the issues and requesting the CA or BCC chair execute a prepared notice to Vendor. I would further recommend the notice set forth the reasons for the suspension.

Step 2 - Debarment

As a second step, the Code provides that after a reasonable notice and opportunity for the suspended vendor to be heard, the Board shall either debar the vendor or terminate the suspension. The debarment may not exceed three (3) years.

Pursuant to Sec. 2-248(c), grounds for debarment include:

1. Failure without good cause to perform in accordance within the contract specifications;
2. Failure to perform within the time limits provided in the contract; and
3. A past record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts.

Such failure by the suspended vendor must be regarded by the Board to be of a character so serious as to justify debarment.

Step 3 – Notice

As a third step, written notice must be provided to the vendor by the CA or BCC chair. Such notice shall inform the vendor of the decision, state the reasons for the action, and advise the vendor of its rights for judicial review by certiorari appeal to the Fifth Judicial Circuit Court.

ANALYSIS - BID REJECTION

Pursuant to the Code, the Board has reserved the right to reject any and all bids for the non-responsibility of a bidder. The term “non-responsibility” is not defined in the Code or Florida statutes. In *Am. Eng’g & Dev. Corp. v. Town of Highland Beach*, 20 So.3d 1000 (Fla. 4th DCA 2009), the Court considered a construction contract under §255.20(1)(d), Florida Statutes, which requires public construction work to be awarded to the lowest qualified and responsive bidder. The appellate court, acknowledging that “qualified and responsive bidder” is not defined in the statutes, referred to the definition of “responsible lessor” under what is now Section 255.248(6), Florida Statutes. Analogizing, the Court found that a “responsible bidder” is one:

“[W]ho has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance.” *Id.* at 1000.

Again, speaking to construction, the Court relied on Section 255.20(1)(d)(1), Florida Statutes, which finding that the competitive bidding requirement:

“[I]s not intended to restrict the rights of any local government to reject the low bid of a nonqualified or nonresponsive bidder and to award the contract to any other qualified and responsive bidder.” *Id.* at 1001.

SUMMARY

Based on the procedure set forth in the Procurement Code, the steps outlined above should be used for proceeding toward debarment of Vendor. Based on the Procurement Code, the analogous statutes and case law, it is my opinion that the County is within its rights to reject any bid by a non-responsible bidder.