

**RESOLUTION No. 12-10**

**A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, DENYING THE FORMAL BID PROTEST OF AWARD FILED BY STEPHEN M. CODY, ON BEHALF OF FLORIDA TURF & LANDSCAPE HORTICULTURE, INC., OF THE RECOMMENDATION OF THE CITY MANAGER DATED AUGUST 12, 2011, AWARDED THE CONTRACT REFERENCED IN ITB 2011-20 (MEDIANS & RIGHT OF WAY MAINTENANCE SERVICES) TO SFM SERVICES, INC.; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, on or about August 12, 2011, the City Manager announced a recommendation of award for ITB 2011-20 (Medians & Right of Way Maintenance Services) (the "ITB") to SFM Services, Inc. ("SFM"), on the basis that SFM was the lowest responsible firm with a responsive bid to the ITB.

**WHEREAS**, Florida Turf & Landscape Horticulture, Inc. (the "Petitioner"), submitted a bid in response to the ITB which was deemed non-responsive and the Petitioner deemed not responsible by the City staff.

**WHEREAS**, on or about August 22, 2011, Stephen M. Cody, Esq., on behalf of the Petitioner, submitted a Formal Bid Protest of Award (the "Formal Bid Protest") alleging that the bid submitted by Petitioner in response to the ITB was responsive, that Petitioner was responsible, and that the bid submitted by SFM was non-responsive and that SFM was not responsible.

**WHEREAS**, on or about September 7, 2011, the City's designated Chief Procurement Officer submitted a written letter to the City Manager that he reviewed the Formal Bid Protest and found it to be without merit.

**WHEREAS**, the City Manager reviewed the Formal Bid Protest, the written recommendation of the Chief Procurement Officer, and rendered a decision that the Formal Bid Protest was without merit.

**WHEREAS**, the Petitioner appealed the decision of the City Manager to the City Council and the City Council held a public hearing at a Special Council Meeting on January 6, 2012, at which the City Council received all the relevant documentation, listened to arguments of council for both the City and SFM, took sworn testimony concerning the Formal Bid Protest, and voted to deny the Petitioner's appeal by unanimous decision.<sup>1</sup>

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<sup>1</sup>The Appellant's counsel did not attend the hearing however the City Council relied upon the Formal Bid Protest and all other supporting documentation to support Petitioner's position.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, THAT:**

**Section 1.** The above recitals are true and correct and incorporated herein.

**Section 2.** The following findings of fact are made based upon evidence and testimony at the public hearing that took place on January 6, 2012:

1. Public notice of the hearing complied with the Doral Code and the Petitioner's Formal Bid Protest was properly before the City Council for consideration.
2. Petitioner had the opportunity to be heard at the hearing.
3. The Petitioner, in submitting its bid in response to the ITB, failed to submit certificates of insurance or a letter of insurability to the City.<sup>2</sup>
4. The two (2) CDs submitted by Petitioner in conjunction with its bid in response to the ITB were not identical to the hard copy of the bid documents submitted by the Petitioner to the City.
5. The decision being appealed from is a determination of the City Manager that the Formal Bid Protest is without merit.

**Section 3.** The following Conclusions of Law are hereby made:

1. City staff processed the Formal Bid Protest in accordance with the applicable provisions of the Doral Code.
2. The Petitioner did not demonstrate through competent substantial evidence that the Formal Bid Protest should be granted.

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<sup>2</sup>At the hearing, a document that purported to be a certificate of insurance that was provided by Petitioner subsequent to submitting its bid to the City, was presented. However, upon further review, the document presented was a bid bond form, not a certificate of insurance. As such, the record unequivocally reflects that there is no evidence that the Petitioner ever provided a certificate of insurance, as required by the ITB, to the City. In any event, and as explained below, Florida law provides that the Petitioner could not cure such a material deviation from the ITB's requirements subsequent to submitting its bid to the City.

3. The bid submitted by the Petitioner was non-responsive as a matter of law. The Petitioner cannot be classified as a responsible firm because it failed to submit the required certificates of insurance or a letter of insurability required by the ITB. Moreover, the bid submitted by Petitioner was not responsive to the ITB because the CDs submitted in conjunction with the bid were not identical to the hard copy of the bid documents submitted by Petitioner to the City. These omissions are material deviations from the bid requirements as set forth in the ITB.
4. No actions taken by the Petitioner subsequent to its submittal of its bid to the City could remedy its non-responsive bid and its status as a not responsible firm. *See, e.g., Harry Pepper & Assoc., Inc. v. City of Cape Coral*, 352 So. 2d 1190, 1192 (Fla. 2d DCA 1977) (finding that a “bidder cannot be permitted to change his bid after the bids have been opened, except to cure minor irregularities”) (citations omitted).
5. SFM’s bid that was submitted to the City in response to the ITB was responsive and responsible as a matter of law.<sup>3</sup>
6. In rendering its decisions as reflected in this Resolution, the City Council has:
  - a. Accorded procedural due process;
  - b. Observed the essential requirements of law;
  - c. Supported its decision by substantial competent evidence of record.
  - d. The Formal Bid Protest is DENIED.

**Section 4.** This resolution shall take effect immediately upon its adoption.

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<sup>3</sup>As discussed at the Public Hearing, SFM did not fully comply with all of the insurance documentation requirements in the ITB when it submitted its bid to the City. However, the City Council finds that SFM made minor and immaterial omissions. Thus, SFM’s bid substantially complied with the ITB. *See, e.g., Robinson Electrical Co., Inc. v. Dade County*, 417 So. 2d 1032, 1035 (Fla. 3d DCA 1982) (finding that a bid “substantially complied” with the invitation to bid when the deviations at issue were held to be minor); *see also Tropabest Foods, Inc. v. State Dept. of General Services*, 493 So. 2d 50, 52 (Fla. 1st DCA 1986) (“minor irregularities can be waived”).

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, THIS 11 DAY OF JANUARY, 2012.**

Mayor Juan Carlos Bermudez  
Vice Mayor Michael DiPietro  
Councilmember Luigi Boria  
Councilmember Pete Cabrera  
Councilmember Ana Maria Rodriguez

Yes  
Yes  
Yes  
Yes  
Abstain (Councilwoman  
abstained as she was not  
present at the hearing)

**CITY OF DORAL, FLORIDA**

  
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**Juan Carlos Bermudez, Mayor**

**ATTEST:**

  
\_\_\_\_\_  
Barbara Herrera, City Clerk  
(City Seal)

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE CITY OF DORAL, FLORIDA ONLY:**

  
\_\_\_\_\_  
City Attorney

**This Resolution was filed in the Office of the City Clerk on the 12 day of January, 2012.**

  
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Barbara Herrera, City Clerk