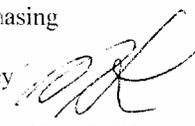


  
RCUD APR 22 '05

MONROE D. KIAR  
TOWN ATTORNEY  
TOWN OF DAVIE  
6191 SW 45<sup>th</sup> Street, Suite 6151A  
Davie, Florida 33314  
(954) 584-9770

MEMORANDUM

SCANNED

DATE: April 21, 2005  
TO: Chris Kovanes, Town Administrator  
CC: Mayor and Councilmembers  
Herb Hyman, Director of Purchasing  
FROM: Monroe D. Kiar, Town Attorney   
RE: Rev. of value engineering process/ Public Works building  
Control Number: 050407

APR 22 2005  
INITIALS: \_\_\_\_\_

This memorandum is being written pursuant to the direction of the Town Council at the April 7, 2005 meeting of the Town Council for the Town Attorney's Office to review the "value engineering process" utilized by the Town in its selection of Double E Contracting, Inc. to construct the Public Works/Fire Administration building and the Public Works storage building. As you know, the selection of Double E Contracting, Inc. was conditionally approved by the Town Council subject to a determination by this office as to the propriety of the Town's utilization of this process. Accordingly, this memorandum will address the propriety of the Town's actions as well as any potential ramifications.

**STATEMENT OF FACTS**

The undisputed facts indicated within the Town Council Agenda Report addressing this item specify that the Town conducted a competitive bidding process relative to its selection of a contractor and received two bids on this project. The Town received a bid from Seldin Construction and another bid from Double E Contracting, Inc. Upon review of the bid received from Seldin Construction, the Town made a determination that that applicant's bid was nonconforming and this bid was thereby rejected as nonconforming. Conversely, the bid transmitted by Double E Contracting was deemed to be conforming by the Town. However, Double E Contracting's bid exceeded the amount allotted within the Town's budget for this project. It is further indicated that the Town's consultant, CPZ Architect, Inc. met with Double E Contracting to "see if there were opportunities to reduce the project cost through value engineering". As indicated within the letter from CPZ Architect, Inc. dated February 27, 2005, CPZ and

Double E Contracting agreed upon a list of items to be changed in order to reduce the cost of the project. The Town Council subsequently conditionally approved the selection of Double E Contracting subject to the review of the Town Attorney's Office.

### ANALYSIS

Upon review of the facts indicated within the agenda review and other documents attached to this item, it is apparent that after the Town received and reviewed the bids transmitted by Double E Contracting and Seldin Construction, it was determined that the sole responsive bidder on the project was Double E Contracting. Thereafter, the Town disqualified Seldin Construction and it was determined that the Town should work with Double E Contracting as it was the only responsive bidder. The subsequent actions taken by the Town's consultants in its negotiations with Double E Contracting and the Town's subsequent selection of Double E Contracting with the value engineering reductions are the sole basis of this inquiry. As indicated within the value engineering document, in order to decrease the cost of the project, the contractor proposed several modifications to the original bid specifications using the value engineering process. The scope of the amendments, as well as, the timing of these amendments are important factors in determining the validity of the Town's actions.

The law is well settled that a bidder in a competitive bidding process cannot be permitted to change its bid after the bids have been opened, except to cure minor irregularities. *Harry Pepper & Associates, Inc v. Cape Coral*, 352 So. 2d 1190 (Fla. 2<sup>nd</sup> DCA, 1977); *Air Support Services International, Inc. v. Dade County*, 614 So.2d 583, (Fla. 3<sup>rd</sup> DCA, 1993); *Robinson Electric. Co. v. Dade County*, 417 So.2d 1032 (Fla. 3<sup>rd</sup> DCA 1982). In rendering its decision, the court in *Harry Pepper* explained that the deviation would sufficiently destroy the bid's "competitive character" if the variation affects the amount of a bid by giving the bidder an advantage or benefit not enjoyed by the other bidders. In that case, the court decided that a low bidder sufficiently destroyed the competitive character of its bid by bidding nonconforming equipment, thus enabling it to decide, after bids were open, whether it wanted the job enough to incur the additional expense of supplying conforming equipments. *Harry Pepper & Associates, Inc.* 352 So.2d at 1193. It is clear from its decision that the courts will invalidate any bid that **benefits a bidder or provides a bidder with an unfair advantage over other bidders.**

Additionally, the courts have determined that agreements based on a bid which materially and substantially differ from the invited bids are also invalid. *Miami Beach v. Klinger*, 179 So.2d 864 (Fla. 3<sup>rd</sup> DCA, 1965); *Glatstein v. City of Miami*, 399 So.2d 1005 (Fla. 3<sup>rd</sup> DCA, 1981). In formulating its holding in these cases, the 3<sup>rd</sup> DCA interpreted the Florida Supreme Court's decision in *Wester v. Belote* to hold that agreements which deviated from initial bid specifications were invalid. In *Wester*, the Supreme Court emphatically stated that public officers are "without power to reserve in the plans or specifications so prepared in advance of the letting the power to make exceptions, releases, and modifications in the contract after it is let, which will afford opportunities

for favoritism, whether any favoritism is actually practiced or not...a contract made by public officers in violation of the statutes requiring them to be let pursuant to competitive bids, to the best responsible bidder, is absolutely void, and no rights can be acquired thereunder by the contracting party....” *Wester v. Belote*, 138 So. 721, (Fla. 1931). The Supreme Court’s decision in *Lassiter & Co. v. Taylor* also lends support to the Court’s holding that a contract based upon a bid must comply with the plans and specifications indicated within the bid documents. *Lassiter & Co. v. Taylor*, 128 So.14, (Fla. 1930). In that case, a taxpayer sought the invalidation of the City of Sebring’s contract with a contractor where the City Council approved a contract with the winning bidder based upon specifications which deviated from the original specifications indicated within the bid invitations. Additionally in that case, the contract allowed the contractor to utilize a type of pavement not indicated within the bid specifications. In its holding, the Court held that any contract entered into by the city for construction work, other than the kind authorized by the plans and specifications which were referred to in the notice to bidders would have been in violation of the City’s charter and therefore illegal and void. *Id.* at 17. Furthermore, the Florida Supreme Court in its decision in *Universal Construction* held that when a public contract has been awarded pursuant to competitive bidding, it cannot be impaired or modified by agreement of the parties. To give effect to such a modification, there must be a fresh advertisement and opportunity for renewed competitive bidding. *Universal Const. Co. v. Gore*, 51 So.2d 429, (Fla. 1951). It should be noted, however, that the Florida Supreme Court has held that this general rule requiring re-advertising did not extend to alterations made to plans and specifications during the course of construction where no substantial change is made in the general plan or character of the building and where there has been no attempt to evade the legal effects of the statute. *Escambia County v. Blount Const. Co.*, 62 So. 650, (Fla. 1913). In stating its rationale, the Court argued that extending the competitive bidding statutes to amendments made during the construction of a public building would lead to delays and the expense of advertising for separate alterations and additions. *Id.*

The present situation at bar may be distinguished from the vast majority of cases cited for two important reasons. First, the original bid submitted by Double E Contracting was deemed to be conforming instead of nonconforming. As such, it cannot be claimed that Double E Contracting attempted to cure deficiencies in its bid through the proposed alterations. Additionally in the present situation, no other bidders were deemed to have been conforming. As such, the proposed alterations do not seemingly provide an advantage to Double E Contracting over other bidders. Furthermore, this office is unaware of any evidence indicating that the Town attempted to show favoritism to any bidder submitting bids in this matter. However, in light of the Florida Supreme Court decisions in *Lassiter* and *Wester*, it is clear that any contract entered into by and between the Town and Double E Contracting must be substantially similar to the specifications within the bid invitations. Accordingly, notwithstanding the lack of any attempt by the Town to show favoritism or circumvent the competitive bidding statutes, the Town may not enter into a contract with Double E Contracting based upon the “value engineering process”. However, since Double E Contracting was the lowest and sole

responsive bidder, the Town may either accept or reject the contractor's conforming bid which was based upon the original bid invitations.

# TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT

**TO:** Mayor and Councilmembers  
**FROM/PHONE:** Bruce Bernard/797-1240 by Herb Hyman/797-1016  
**SUBJECT:** Resolution

**AFFECTED DISTRICT:** District 2

**TITLE OF AGENDA ITEM:** A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, ACCEPTING THE BID FOR CONSTRUCTION OF THE PUBLIC WORKS/FIRE ADMINISTRATION BUILDING AND THE PUBLIC WORKS STORAGE BUILDING.

**REPORT IN BRIEF:** A competitive bid was conducted for the construction of the Public Works/Fire Administration building and the Public Works storage building. The Town sent out specifications to fifteen (15) prospective bidders. Additionally, the bid was advertised state-wide in Florida Bid Reporting and nationally in BidNet and also posted on the Town's web site. The Town received two (2) bids. The bid received from Seldin Construction was considered to be non-responsive as they did not include the paving and site work identified by the specification as Phase II of the PW/Fire Admin. building. The bid received from Double E Contracting, Inc. was responsive but exceeded the allotted budget. CPZ Architect, Inc., the Town's consultant, met with Double E Contracting, Inc. to see if there were opportunities to reduce the project cost through value engineering. The attached documentation details a \$456,513.00 reduction that will be presented as Change Order #1. This change order will be presented concurrently with the contract document on a future council agenda. The recommendation is for Double E Contracting, Inc. as the lowest responsive and responsible bidder.

**PREVIOUS ACTIONS:** Not applicable

**CONCURRENCES:** The recommended award has been reviewed by the Public Works/Capital Projects Director and the Bid Specification Committee who concur with the decision to award to Double E Contracting, Inc.

**FISCAL IMPACT:**

Has request been budgeted?     yes

If yes, expected cost: \$2,457,887.00

Account Name:     Capital Improvement Program-PW/Fire Compound Exp.

Account Numbers 030-3004-522-6827 and 030-3001-541-6827

Additional Comments: Not applicable

**RECOMMENDATION(S):** Motion to approve the resolution.

**Attachment(s):**

Procurement Authorization

Bid Opening Report

CPZ recommendation letter and value engineering list from Double E Contracting, Inc.

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, ACCEPTING THE BID FOR CONSTRUCTION OF THE PUBLIC WORKS/FIRE ADMINISTRATION BUILDING AND THE PUBLIC WORKS STORAGE BUILDING.

WHEREAS, the Town is in need of the construction of the Public Works/Fire Administration building and a Public Works storage building; and

WHEREAS, the Town solicited sealed bids for such construction services; and

WHEREAS, after review, the Town Council wishes to accept the bid from Double E Contracting, Inc.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council hereby accepts the bid from Double E Contracting, Inc. for construction of the Public Works/Fire Administration building and a Public Works storage building in the amount of \$2,457,887.00.

SECTION 2. The Town Council hereby authorizes the expenditure from the Capital Improvement Program-PW/Fire Compound Expansion Account Numbers 030-3004-522-6827 and 030-3001-541-6827.

SECTION 3. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2005

\_\_\_\_\_  
MAYOR/COUNCILMEMBER

Attest:

\_\_\_\_\_  
TOWN CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2005

# TOWN OF DAVIE PROCUREMENT AUTHORIZATION

ACCOUNT NUMBER.	BUDGET ITEM & DESCRIPTION	APPROXIMATE COST
030-3004-522-6204 <sup>6827</sup> 04Fire	Construct a Fire and Public Works Administration Building &	\$1,100,000.00
030-3001-541-6827	Public Works Storage Facility	\$1,100,000.00

#W/FIRE compound exp

**METHOD OF PROCUREMENT (check the one that applies)**

- Open Competitive Bidding
- Piggyback on Contract Number \_\_\_\_\_
- Sole Source
- Request For Proposals

**SPECIFICATIONS & LIST OF VENDORS MUST BE ATTACHED**

Signed B. Beumel  
Department Head

Have Funds been Reserved REAR. 30891

Date 3/14/05 Signed RA

Signed [Signature]  
Town Administrator

VENDOR	BIDS SUBMITTED	COST
* <u>DOUBLE E CONTRACTING, INC</u>		<u>\$2,903,100</u>
** <u>SELDIN CONSTRUCTION</u>		<u>3,179,757</u>

\* THE TOTAL PRICE FROM DOUBLE E CONSTRUCTION IS REDUCED BY VALUE ENGINEERING IDENTIFIED IN CHANGE ORDER #1. THE NEW TOTAL PRICE IS \$2,457,887.00.

\*\* THE BID FROM SELDIN CONSTRUCTION IS CONSIDERED TO BE NON-RESPONSIVE. THE BID DID NOT INCLUDE PAVING + SITE WORK IDENTIFIED IN THE SPECIFICATION.

Signed [Signature]  
Procurement Manager

BID SPECIFICATION COMMITTEE'S RECOMMENDATION	
Vendor	Cost
<u>DOUBLE E CONTRACTING, INC.</u>	<u>\$2,457,887.00</u>

BID OPENING REPORT

BID NAME: CONSTRUCT PW/FIRE ADMIN. BLDG.

TIME: 2:01 PM

BID NUMBER: B-05-04

DATE: 2/1/05

ESTIMATED COST: \$2,200,000

NO.	CONTRACTOR'S NAME	BID AMOUNT	RANK
1.	<u>DOUBLE E CONSTRUCTION</u>	A \$2,564,400 B \$2,567,700 C \$337,700	
2.	<u>SELDIN CONSTRUCTION</u>	A \$2,237,827 B \$2,247,206 C \$941,930	
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

REMARKS

A = PW/FIRE ADMIN BLDG - BASE BID

B = PW/FIRE ADMIN BLDG w/ A.L.T.

C = PW STORAGE BLDG

NOTE: THE ABOVE BID AMOUNTS HAVE NOT BEEN CHECKED, AND BID TOTALS ARE SUBJECT TO CORRECTION AFTER THE BIDS HAVE BEEN COMPLETELY REVIEWED.

THIS IS ONLY A FINANCIAL RANKING OF ALL THE BIDS RECEIVED. THE USING DEPARTMENT IS RESPONSIBLE FOR REVIEWING THE BIDS FOR COMPLIANCE WITH ALL THE BID SPECIFICATIONS PRIOR TO SUBMITTAL OF LETTER OF RECOMMENDATION.

PURCHASING OFFICIAL: [Signature]

DATE: 2/1/05

WITNESS: [Signature]

DATE: 2/1/05

February 27, 2005

Town Of Davie  
Bruce Bernard, Public Works Director  
6591 Orange Drive  
Davie, Florida, 33314



Architect, Inc.  
AA 26000685

**RE: Davie Fire and Public Works Administration Building  
Bid Review and Recommendation**

Dear Mr. Bernard:

We have reviewed the two bids received for the Town of Davie, Fire and Public Works Administration Building.

The first bidder, Sedlin Construction Company, Inc. was found to be non responsive. The bid forms were incorrectly completed for the two buildings being bid. Their bid, although apparently low, did not include the paving and site work identified as Phase II of the Davie Fire and Public Works Administration Building. When the bids for both the Administration Building and the Storage Building, for Sedlin Construction were combined, the total cost was considerable higher than the other bidder.

The bid forms for the second bidder, Double E Contracting, Inc. were completed properly. I have worked with Double E in the past and have found them to perform their work correctly. When the bids for both the Davie Fire and Public Works Administration Building and the Storage Building were added together, they are the low bidder.

This office would recommend approval of the bid submitted by Double E Contracting, Inc., as amended by the value engineering identified in Change Order #1 for a total project cost of \$2,457,887.00.

Please call me if you have any questions.

Respectfully  
CPZ Architect, Inc.

A handwritten signature in black ink, appearing to read 'Chris P. Zimmerman', written in a cursive style.

Chris P. Zimmerman, AIA  
President

CPZ Architect, Inc.  
4310 West Broward Boulevard, Plantation, Florida 33317  
(954) 792-8525, (954) 337-0359 Fax

Page 1 of 1



Architect, Inc.  
AA 26000685

February 27, 2005

Town Of Davie  
Bruce Bernard, Public Works Director  
6591 Orange Drive  
Davie, Florida, 33314

**RE: Davie Fire and Public Works Administration Building  
Bid Review and Recommendation**

Dear Mr. Bernard:

We have met with your office and Double E Contracting, Inc. on several occasions to determine ways to value engineer the project to reduce the overall cost of the project.

Attached is the current list of items proposed by the contractor. We have reviewed the list and agree with the items proposed in the list.

This office would recommend the issuance of a change order to Double E Contracting, Inc. to revise the project and reduce the cost based on these items.

Please call me if you have any questions.

Respectfully  
CPZ Architect, Inc.

A handwritten signature in black ink, appearing to read 'Chris', written in a cursive style.

Chris P. Zimmerman, AIA  
President

PROJECT: DAVIE FIRE & PUBLIC WORKS

VALUE ENGINEERING

DESCRIPTION			
	General Conditions	3,500	
		90,000	Delete full time project manager & laborer
2550	Asphalt Paving	143,000	Delete paving & marking
2900	Landscaping	5,000	Delete trees in phase 2
	Fencing	89,000	Delete aluminum fence & gates
	Masonry	7,000	Delete split face block sub. Stucco
7550	Modified Bituminous Roofing	12,000	Change roof insulation to Lt weight
7610	Standing Seam Roof Panels	29,073	Eliminate canopy except @ S/E corner & North end
		3,240	Deduct concrete under canopy
		8,200	Remove canopy @ storage building
	Add Canvas conopy	-1,500	Install a 5-0 X 3-0 conopy over door 104 of the storage bldg. & doors 107 & 201
8520	Aluminum Windows & Doors	9,500	Change windows to X O X
		2,500	Change windows Both floors to fixed glass
9511	Acoustical Ceilings	15,000	Change ceilings to class a fissured
15600	H V A C	10,000	Change metal ducts to fiberglass
		5,000	change VAV to Zone dampers
16010	ELECTRIC	25,000	
<b>SUB TOTAL</b>		<b>456,513</b>	
	Change remaining canopy to metal trusses & stucco soffit	5,000	

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