



To: Michael Pounds

From: Craig E. Leen, City Attorney for the City of Coral Gables

A handwritten signature in black ink, appearing to be "C. Leen", is written over the name "Craig E. Leen" in the "From:" line.

RE: Legal Opinion Regarding RFQ Questions

Date: February 10, 2015

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I have considered the questions, reviewed the Code, and conferred with you. As this is urgent, I will provide an expedited opinion pursuant to sections 2-201(e)(1), 2-201(e)(8), and 2-584 of the City Code:

It is my understanding that you spoke with multiple firms as part of this solicitation, and ultimately received two responses to the RFQ. The City has therefore done everything it can to comply with applicable statutes and Codes. State law, as well as the City Code, recognizes the principle of impracticability/impossibility, as well as the idea that there are certain contracts where there may be a sole source (or perhaps only two sources). In my opinion, the important point here is that it was a competitive solicitation open to any firm that wished to apply, that you contacted multiple firms in an effort to have them apply, and that you spoke with more than three firms as part of the solicitation. The City should now evaluate the two responses received and make a recommendation to the Commission as to which is best.

You have also raised the issue of whether one of the firms meets the minimum qualifications and is responsive. I have reviewed the RFQ and believe that the firm we spoke about is responsive. The fact that they do not have a prior experience as CMAR does not disqualify them from the solicitation, as that is not expressly stated in the solicitation (CMAR is listed as one of the qualifications/criteria that will be evaluated; it is true that they cannot provide certain information requested regarding this experience, as they have none, but there is nothing that says expressly they are disqualified from not having this experience). Of course, this lack of any CMAR experience means that they will receive a reduction in their total score based on one of the listed criteria that is being evaluated (i.e. prior experience as CMAR). You have informed me that this could potentially be offset by design-build experience, which is acceptable based on Glenn's professional opinion, but it cannot be completely offset, as you have expressly included the CMAR experience as one of the criteria being evaluated.

## Herbello, Stephanie

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**From:** Chen, Brigitte  
**Sent:** Tuesday, February 10, 2015 4:06 PM  
**To:** Herbello, Stephanie  
**Subject:** FW: Opinion on RFQ Questions

**Importance:** High

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**From:** Leen, Craig  
**Sent:** Tuesday, February 10, 2015 1:13 PM  
**To:** Chen, Brigitte  
**Subject:** FW: Opinion on RFQ Questions  
**Importance:** High

Please place in opinion folder.

**Craig E. Leen, City Attorney**  
*Board Certified by the Florida Bar in  
City, County and Local Government Law*  
City of Coral Gables  
405 Biltmore Way  
Coral Gables, Florida 33134  
Phone: (305) 460-5218  
Fax: (305) 460-5264  
Email: [cleen@coralgables.com](mailto:cleen@coralgables.com)

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**From:** Leen, Craig  
**Sent:** Tuesday, February 10, 2015 1:12 PM  
**To:** Pounds, Michael  
**Cc:** Chen, Brigitte; Gomez, Diana; Kephart, Glenn ([gkephart@coralgables.com](mailto:gkephart@coralgables.com)); Pino, Ernesto  
**Subject:** RE: Opinion on RFQ Questions  
**Importance:** High

I have considered the questions, reviewed the Code, and conferred with you. As this is urgent, I will provide an expedited opinion pursuant to sections 2-201(e)(1), 2-201(e)(8), and 2-584 of the City Code:

It is my understanding that you spoke with multiple firms as part of this solicitation, and ultimately received two responses to the RFQ. The City has therefore done everything it can to comply with applicable statutes and Codes. State law, as well as the City Code, recognizes the principle of impracticability/impossibility, as well as the idea that there are certain contracts where there may be a sole source (or perhaps only two sources). In my opinion, the important point here is that it was a competitive solicitation open to any firm that wished to apply, that you contacted multiple firms in an effort to have them apply, and that you spoke with more than three firms as part of the solicitation. The City should now evaluate the two responses received and make a recommendation to the Commission as to which is best.

You have also raised the issue of whether one of the firms meets the minimum qualifications and is responsive. I have reviewed the RFQ and believe that the firm we spoke about is responsive. The fact that they do not have a prior experience as CMAR does not disqualify them from the solicitation, as that is not expressly stated in the solicitation

(CMAR is listed as one of the qualifications/criteria that will be evaluated; it is true that they cannot provide certain information requested regarding this experience, as they have none, but there is nothing that says expressly they are disqualified from not having this experience). Of course, this lack of any CMAR experience means that they will receive a reduction in their total score based on one of the listed criteria that is being evaluated (i.e. prior experience as CMAR). You have informed me that this could potentially be offset by design-build experience, which is acceptable based on Glenn's professional opinion, but it cannot be completely offset, as you have expressly included the CMAR experience as one of the criteria being evaluated.

Please let me know if you have any further questions.

**Craig E. Leen, City Attorney**

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**From:** Pounds, Michael  
**Sent:** Monday, February 09, 2015 5:31 PM  
**To:** Leen, Craig  
**Cc:** Chen, Brigitte; Gomez, Diana; Kephart, Glenn ([gkephart@coralgables.com](mailto:gkephart@coralgables.com))  
**Subject:** Opinion on RFQ Questions

Craig:

Please provide an opinion on the following questions:

1. Please provide an opinion on the three firm requirement contained in Sec. 2-1089. Construction Manager-At-Risk of the Procurement Code.
2. Please provide an opinion as whether a Construction Manager-At-Risk RFQ is subject to the Consultants Competitive Negotiations Act (Section 287.055 of the Florida Statutes).
3. Please provide an opinion as to whether a firm should be excluded from the RFQ evaluation process for no experience with CMAR (a minimum RFQ requirement) or allowed to be evaluated by the Evaluation Committee.

Mike Pounds  
Chief Procurement Officer  
City of Coral Gables  
2800 SW 72<sup>nd</sup> Avenue  
Miami, FL 33155  
Phone (305) 460-5101