

John B. Trawick

Attorney • Counselor • Litigator

September 1, 2017

Via Email (prnobles@myescambia.com)

Board of County Commissioners, Escambia County, Florida
ATTN: Paul R. Nobles, Purchasing Manager
213 Palafox Place
2nd Floor
Pensacola, FL 32502

Via Email (Dodds@wgyates.com)

W.G. Yates & Sons Construction Company, Inc.
ATTN: Dodds Dehmer, General Counsel
One Gulley Ave
Philadelphia, MS 39350

**RE: Bid Protest by W.G. Yates & Sons, PD 16-17.004, Design-Build
Services for Escambia County Correctional Facility**

Dear Mr. Nobles and Mr. Dehmer,

I have been designated as a Special Master with regard to the Bid Protest that was filed by W.G. Yates & Sons Construction Company, Inc. ("Yates") concerning its protest of the ranking and selection for Proposal Specification Number P.D. 16-17.004, Design-Build Services for Escambia County Correctional Facility. Pursuant to such designation, on August 28, 2017, at 11:00 a.m., I presided over a formal hearing that was conducted with regard to Yates' bid protest. At the hearing, Yates presented one witness, James Brown, and the County presented three witnesses: Paul Nobles, Tamyra Jarvis, and Celina Barnes. There were five exhibits introduced at the hearing. Those exhibits consisted of: (1) the undated letter from Yates to Paul Nobles, requesting a "best and final submission;" (2) the August 17, 2017 letter from Paul Nobles to Yates denying Yates' Notice of Protest; (3) the August 21, 2017 letter from Yates to Paul Nobles responding to Mr. Nobles' findings in his August 17 letter; (4) the PowerPoint presentation by Yates; and (5) the "Bid Protest" notebook submitted by the County, including Tabs A-E, and subparts, and CDs of the 08/10/17 BCC meeting and the 08/10/17 Committee of the Whole meeting.

Having considered the evidence presented at the hearing, I have determined that Yates' protest should be granted. My findings of fact and conclusions are as follows:

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Factual Findings

1. Section 2C of the Project Specifications provide that "Criteria Documents describe the **minimum mandatory** scope and needs of the Project." (emphasis added)
2. The Criteria Documents included certain minimum parking space requirements for the existing Juvenile Justice Center. Said parking was required to be located in a parking area adjacent to the JJC, along the St. Mary Avenue side of the Project.
3. The Criteria Documents identified a retention pond which was required to be located next to the JJC parking area, along the St. Mary Avenue side of the project.
4. The Criteria Documents specified that the storm-water retention must be compliant with a 500-year storm event.
5. The Criteria Documents stated that the western area of the Project, along the Pace Boulevard side of the Project and immediately south of the main entrance to the new facility, was designated as, and was to be set aside for, future retail and/or commercial development.
6. In its initial written price proposal, contractor and bidder Whitesell-Green/Caddell ("WGC"), identified a retention pond along the St. Mary Avenue side of the Project which was so large that it encroached upon the available parking spaces for the JJC, thus omitting more than 100 of the required minimum parking spaces.
7. The size of the retention pond in WGC's proposal was necessary in order to satisfy the storm-water runoff containment requirements established by the Criteria Documents.
8. In its initial written price proposal, Yates identified a retention pond along the St. Mary Avenue side of the Project which included and incorporated underground storage vaults. The size of the Yates proposed retention pond and underground vaults was such that it satisfied the storm-water runoff containment requirements established by the Criteria Documents.
9. Additionally, in Yates' proposal, the size of the JJC parking area was large enough to satisfy the minimum number of parking spaces established by the Criteria Documents.

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10. At its presentation to the Board of County Commissioners ("BCC"), WGC altered its proposal by reducing the size of its retention pond so as to accommodate the minimum parking spaces required for the JJC parking area. WGC also altered its proposal by adding an additional retention pond and locating said pond in the area identified in Paragraph #5, above, so as to meet the storm-water runoff containment requirements.
11. Yates' proposal did not locate a retention pond in the area identified in Paragraph #5, above. Instead, in Yates' proposal, such area remained available for future use as retail and/or commercial space.
12. As the result of its incorporation of the aforementioned underground storage vaults in its proposal, Yates' base bid was \$3,500,000.00 higher than it would have been otherwise, had Yates been allowed to locate a retention pond the area identified in Paragraph #5, above, thus making the underground storage vaults unnecessary.

Conclusions

1. The Criteria Documents clearly establish that a bidder's proposal must: (1) incorporate a minimum number of parking spaces for the JJC, which spaces should be located adjacent to the existing JJC; (2) include storm-water retention so as to properly contain storm-water from a 500-year storm event; and (3) not negatively affect or change the use of the western area of the Project, along the Pace Boulevard side of the Project and immediately south of the main entrance to the new facility, which is designated for use as future retail and/or commercial development.
2. WGC's failure, in its initial proposal, to meet the minimum parking space requirements for the JJC parking area was a material deviation from the minimum requirements set forth in the Criteria Documents.
3. Although this material deviation may have been corrected by WGC's alteration of its proposal, at WGC's presentation to the BCC whereby it reduced the size of the retention pond along St. Mary Avenue so as to satisfy the minimum parking space requirements for the JJC parking area, such alteration of the retention pond size created yet another problem—that of storm-water retention.
4. WGC's attempt to solve this problem and to meet the storm-water retention requirements by adding a second retention pond constituted yet another material deviation from the Criteria Documents. By locating the second retention pond in the area which was specifically intended to be used as

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future retail and/or commercial space, WGC materially deviated from the Criteria Documents.

5. WGC's proposal, as amended at its presentation to the BCC, was thus materially deficient and, as such, should not have been considered. *See* RFP, Document 00 1119-9, Article 3.03(B) ("...modifications to RFP documents that reduce the RFP requirements or scope of work...or any other conditions, clarifications that reduce the requirements...will not be allowed...") Alternatively, if WGC's amended proposal was to have properly been considered, then Yates should have been provided an opportunity to amend its proposal so as to locate a retention pond on the same area (that is, the area located on Pace Boulevard which was intended for future retail and/or commercial space) and to eliminate its use of underground storage vaults. Had Yates amended its proposal in such a manner, its base bid price would have been reduced by \$3.5M, which is not an insignificant or inconsequential reduction in the cost of the work.

Wherefore, having determined that the award to WGC is in violation of the policies and procedures of the Office of Purchasing, the undersigned Special Master recommends that the award be cancelled or revised, and that Yates' bond be returned.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke, representing the name John B. Trawick.

John B. Trawick