

**NB 18. DISCUSS A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE RECOMMENDATION OF THE CITY MANAGER TO AUTHORIZE NEGOTIATIONS RELATING TO REQUEST FOR QUALIFICATIONS NO. 2024-234-ND, FOR ENGINEERING SERVICES FOR SEAWALLS AND LIVING SHORELINES; AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH BCC ENGINEERING, LLC, AS THE PROPOSER DETERMINED TO BE THE BEST QUALIFIED TO SERVE AS THE PRIME/LEAD CONSULTANT FOR SEAWALLS; FURTHER, IF THE ADMINISTRATION IS NOT SUCCESSFUL IN NEGOTIATING AN AGREEMENT WITH BCC ENGINEERING, LLC, AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH CUMMINS CEDERBERG, INC., AS THE PROPOSER DETERMINED TO BE THE SECOND BEST QUALIFIED CONSULTANT FOR SEAWALLS; FURTHER, IF THE ADMINISTRATION IS NOT SUCCESSFUL IN NEGOTIATING AN AGREEMENT WITH CUMMINS CEDERBERG, INC., AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH GHD SERVICES INC., AS THE PROPOSER DETERMINED TO BE THE THIRD BEST QUALIFIED CONSULTANT FOR SEAWALLS; AND FURTHER AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH CUMMINS CEDERBERG, INC., AS THE PROPOSER DETERMINED TO BE THE BEST QUALIFIED TO SERVE AS THE PRIME/LEAD CONSULTANT FOR LIVING SHORELINES; FURTHER, IF THE ADMINISTRATION IS NOT SUCCESSFUL IN NEGOTIATING AN AGREEMENT WITH CUMMINS CEDERBERG, INC., AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH MOFFATT & NICHOL, INC., AS THE PROPOSER DETERMINED TO BE THE SECOND BEST QUALIFIED CONSULTANT FOR LIVING SHORELINES; FURTHER, IF THE ADMINISTRATION IS NOT SUCCESSFUL IN NEGOTIATING AN AGREEMENT WITH MOFFATT & NICHOL, INC., AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH GHD SERVICES INC., AS THE PROPOSER DETERMINED TO BE THE THIRD BEST QUALIFIED CONSULTANT FOR LIVING SHORELINES; AND FURTHER AUTHORIZING THE INTERIM CITY MANAGER AND CITY CLERK TO EXECUTE AGREEMENT(S) UPON THE CONCLUSION OF SUCCESSFUL NEGOTIATIONS BY THE ADMINISTRATION. (PUBLIC WORKS)**

Applicable Area:

C2 F A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE RECOMMENDATION OF THE INTERIM CITY MANAGER TO AUTHORIZE NEGOTIATIONS RELATING TO REQUEST FOR QUALIFICATIONS NO. 2024-234-ND, FOR ENGINEERING SERVICES FOR SEAWALLS AND LIVING SHORELINES; AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH BCC ENGINEERING, LLC, AS THE PROPOSER DETERMINED TO BE THE BEST QUALIFIED TO SERVE AS THE PRIME/LEAD CONSULTANT FOR SEAWALLS; FURTHER, IF THE ADMINISTRATION IS NOT SUCCESSFUL IN NEGOTIATING AN AGREEMENT WITH BCC ENGINEERING, LLC, AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH CUMMINS CEDERBERG, INC., AS THE PROPOSER DETERMINED TO BE THE SECOND BEST QUALIFIED CONSULTANT FOR SEAWALLS; FURTHER, IF THE ADMINISTRATION IS NOT SUCCESSFUL IN NEGOTIATING AN AGREEMENT WITH CUMMINS CEDERBERG, INC., AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH GHD SERVICES INC., AS THE PROPOSER DETERMINED TO BE THE THIRD BEST QUALIFIED CONSULTANT FOR SEAWALLS; AND FURTHER AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH CUMMINS CEDERBERG, INC., AS THE PROPOSER DETERMINED TO BE THE BEST QUALIFIED TO SERVE AS THE PRIME/LEAD CONSULTANT FOR LIVING SHORELINES; FURTHER, IF THE ADMINISTRATION IS NOT SUCCESSFUL IN NEGOTIATING AN AGREEMENT WITH CUMMINS CEDERBERG, INC., AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH MOFFATT & NICHOL, INC., AS THE PROPOSER DETERMINED TO BE THE SECOND BEST QUALIFIED CONSULTANT FOR LIVING SHORELINES; FURTHER, IF THE ADMINISTRATION IS NOT SUCCESSFUL IN NEGOTIATING AN AGREEMENT WITH MOFFATT & NICHOL, INC., AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH GHD SERVICES INC., AS THE PROPOSER DETERMINED TO BE THE THIRD BEST QUALIFIED CONSULTANT FOR LIVING SHORELINES; AND FURTHER AUTHORIZING THE INTERIM CITY MANAGER AND CITY CLERK TO EXECUTE AGREEMENT(S) UPON THE CONCLUSION OF SUCCESSFUL NEGOTIATIONS BY THE ADMINISTRATION. (PUBLIC WORKS)

Applicable Area:



**COMMISSION MEMORANDUM**

TO: Honorable Mayor and Members of the City Commission

FROM: Rickelle Williams, Interim City Manager

DATE: July 24, 2024

TITLE: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE RECOMMENDATION OF THE INTERIM CITY MANAGER TO AUTHORIZE NEGOTIATIONS RELATING TO REQUEST FOR QUALIFICATIONS NO. 2024-234-ND, FOR ENGINEERING SERVICES FOR SEAWALLS AND LIVING SHORELINES; AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH BCC ENGINEERING, LLC, AS THE PROPOSER DETERMINED TO BE THE BEST QUALIFIED TO SERVE AS THE PRIME/LEAD CONSULTANT FOR SEAWALLS; FURTHER, IF THE ADMINISTRATION IS NOT SUCCESSFUL IN NEGOTIATING AN AGREEMENT WITH BCC ENGINEERING, LLC, AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH CUMMINS CEDERBERG, INC., AS THE PROPOSER DETERMINED TO BE THE SECOND BEST QUALIFIED CONSULTANT FOR SEAWALLS; FURTHER, IF THE ADMINISTRATION IS NOT SUCCESSFUL IN NEGOTIATING AN AGREEMENT WITH CUMMINS CEDERBERG, INC., AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH GHD SERVICES INC., AS THE PROPOSER DETERMINED TO BE THE THIRD BEST QUALIFIED CONSULTANT FOR SEAWALLS; AND FURTHER AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH CUMMINS CEDERBERG, INC., AS THE PROPOSER DETERMINED TO BE THE BEST QUALIFIED TO SERVE AS THE PRIME/LEAD CONSULTANT FOR LIVING SHORELINES; FURTHER, IF THE ADMINISTRATION IS NOT SUCCESSFUL IN NEGOTIATING AN AGREEMENT WITH CUMMINS CEDERBERG, INC., AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH MOFFATT & NICHOL, INC., AS THE PROPOSER DETERMINED TO BE THE SECOND BEST QUALIFIED CONSULTANT FOR LIVING SHORELINES; FURTHER, IF THE ADMINISTRATION IS NOT SUCCESSFUL IN NEGOTIATING AN AGREEMENT WITH MOFFATT & NICHOL, INC., AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH GHD SERVICES INC., AS THE PROPOSER DETERMINED TO BE THE THIRD BEST QUALIFIED CONSULTANT FOR LIVING SHORELINES; AND FURTHER AUTHORIZING THE INTERIM CITY MANAGER AND CITY CLERK TO EXECUTE AGREEMENT(S) UPON THE CONCLUSION OF SUCCESSFUL NEGOTIATIONS BY THE ADMINISTRATION. (PUBLIC WORKS)

**RECOMMENDATION**

It is recommended that the Mayor and City Commission approve the Resolution accepting the City Manager's recommendation pursuant to Request for Qualifications (RFQ) 2024-234-ND for engineering services for seawalls and living shorelines, authorizing the Administration to enter into negotiations with BCC Engineering, LLC, as the proposer determined to be the best qualified to serve as the prime/lead consultant for seawalls; further, if the Administration is not successful in negotiating an agreement with BCC Engineering, LLC, authorizing the Administration to enter into negotiations with Cummins Cederberg, Inc., as the proposer determined to be the second best qualified consultant for seawalls; further, if the Administration is not successful in negotiating an agreement with Cummins Cederberg, Inc., authorizing the Administration to enter into

negotiations with GHD Services Inc., as the proposer determined to be the third best qualified consultant for seawalls; and further authorizing the Administration to enter into negotiations with Cummins Cederberg, Inc., as the proposer determined to be the best qualified to serve as the prime/lead consultant for living shorelines; further, if the Administration is not successful in negotiating an agreement with Cummins Cederberg, Inc., authorizing the Administration to enter into negotiations with Moffatt & Nichol, Inc., as the proposer determined to be the second best qualified consultant for living shorelines; further, if the Administration is not successful in negotiating an agreement with Moffatt & Nichol, Inc., authorizing the Administration to enter into negotiations with GHD Services Inc., as the proposer to be the third best qualified consultant for living shorelines. The Resolution also authorizes the City Manager and City Clerk to execute agreement(s) upon the conclusion of successful negotiations by the Administration.

The solicitation is currently under the cone of silence.

## **BACKGROUND/HISTORY**

The City of Miami Beach is investing in infrastructure to reduce flood risk and adapt to climate change. As part of its resilience efforts, the City has updated multiple land use codes for new construction to address stormwater retention and setbacks and to increase base flood and freeboard requirements. Most recently, the City adopted an Ordinance entitled “Resiliency Standards for Tidal and Flood Protection”, requiring all new seawalls, and those being reconstructed, to have a minimum elevation of 5.7 ft. North American Vertical Datum of 1988 (NAVD 88).

The City of Miami Beach has approximately 55 miles of seawalls, of which approximately 50 miles are privately owned, and 5 miles are City-owned. To optimize the benefits of the seawall program, the Public Works Department developed a methodology to prioritize the reconstruction of approximately 2.8 miles of City-owned seawalls within the next 10 years. Factors such as elevation, location, and condition of each seawall were used to develop the initial ranking of each seawall.

The initial rankings were then adjusted to capture the benefits derived from contiguous private seawall segments. Essentially, by optimizing the elevation of public seawalls adjacent to extended private seawall segments, the City can mitigate additional flooding and encourage residents to reconstruct their seawalls. Thus, the ultimate focus of the seawall prioritization was to establish a continuous storm surge and overland flooding barrier throughout the City.

The seawall prioritization was approved and adopted in 2021, and since then, the City has been working on executing the design and construction of prioritized segments. In 2021, the City also identified the most viable locations for implementing a living shoreline within existing City-owned shoreline segments. Living shoreline projects may utilize a variety of structural and organic materials, such as wetland plants, submerged aquatic vegetation, oyster reefs, sand fill, and stone.

The City is interested in partnering with the most innovative and solutions-oriented engineers in the field dedicated to resilience and Miami Beach Rising Above, to continue to carry out the planned improvements to the prioritized seawall segments. These planned improvements include a combination of conventional seawalls, hybrid seawalls, and living shorelines. The intent is to maximize sustainable and resilient solutions for our City.

Accordingly, the Administration developed RFQ 2024-234-ND seeking proposals for the desired services.

## **ANALYSIS**

On April 3, 2024, the Mayor and the City Commission authorized the issuance of RFQ No. 2024-234-ND for engineering services for seawalls and living shorelines. On April 4, 2024, the RFQ was issued. A voluntary pre-proposal conference to provide information to proposers submitting

a response was held on April 17, 2024. One addendum was issued, and 101 prospective bidders accessed the advertised solicitation. RFQ responses were due and received on May 28, 2024. The City received proposals from the following firms for seawalls and living shorelines:

Seawalls:

- BCC Engineering, LLC
- Cummins Cederberg, Inc.
- GHD Services Inc.
- Stantec Consulting Services Inc.
- R.J. Behar & Company, Inc.
- AECOM Technical Services, Inc.
- Kimley-Horn and Associates, Inc.

Living Shorelines:

- Cummins Cederberg, Inc.
- Moffatt & Nichol, Inc.
- GHD Services Inc.
- AECOM Technical Services, Inc.

On May 29, 2024, the City Manager appointed the Evaluation Committee via LTC # 209-2024. The Evaluation Committee convened on June 17, 2024, to consider the proposals received. The Committee was comprised of Eugene Egemba, Principal Engineer, Public Works Engineering Department; Matthew Lepera, Construction Manager, Public Works Engineering Department; Mariela Paez Castillo, Principal Engineer, Public Works Engineering Department; Lindsey Precht, Assistant Director, Environment and Sustainability Department; and Adalberto Vicedo, Chief Structural Engineer, Building Department.

The Committee was provided an overview of the project, information relative to the City's Cone of Silence Ordinance, and the Government Sunshine Law. The Committee was also provided with general information on the scope of services and a copy of each proposal. The Committee was instructed to score and rank each proposal pursuant to the evaluation criteria established in the RFQ. The results of the Evaluation Committee process are detailed in Attachment A and resulted in the following rankings

Seawalls:

- 1st ranked (tie) – BCC Engineering, LLC
- 1st ranked (tie) – Cummins Cederberg, Inc.
- 3rd ranked – GHD Services Inc.
- 4th ranked – Stantec Consulting Services Inc.
- 5th ranked – R.J. Behar & Company, Inc.
- 6th ranked – AECOM Technical Services, Inc.
- 7th ranked – Kimley-Horn and Associates, Inc.

Living Shorelines:

- 1st ranked (tie) – Cummins Cederberg, Inc.
- 1st ranked (tie) – Moffatt & Nichol, Inc.
- 3rd ranked - GHD Services Inc.
- 4th ranked – AECOM Technical Services, Inc.

The Evaluation Committee process resulted in a tie for top rank for seawalls and living shorelines. BCC Engineering, LLC and Cummins Cederberg, Inc. were tied top-ranked in the seawall category. Cummins Cederberg, Inc. and Moffatt & Nichol, Inc. were tied top-ranked in the living shorelines category. After reviewing the submissions, the Evaluation Committee's rankings and commentary, and the City's experience with the tied firms, the Administration recommends that the City negotiate with BCC Engineering as the best-qualified firm to serve as the prime/lead consultant for seawall projects and Cummins Cederberg as the best-qualified firm to serve as the prime/lead consultant for living shoreline projects.

Awarding the contract to a single consultant for each discipline, such as the seawall and living shorelines, ensures continuity and cohesion throughout the project. When the City collaborates with consultants with a proven track record of successful work, it promotes a seamless workflow and consistency in quality. This approach will minimize potential communication issues and design misalignments that can arise from involving multiple consultants. In addition, having one consultant will foster trust and mutual understanding, which are crucial for efficiently addressing any challenges that may emerge during the project.

While splitting the contract among multiple consultants might introduce diverse perspectives, the complexities of coordinating and integrating different consultants can lead to delays and inconsistencies in the final designs. Therefore, the benefits of maintaining continuity and cohesion with experienced, trusted consultants significantly outweigh the advantages of dividing the contract among several consultants. BCC Engineering and Cummins Cederberg have both demonstrated their ability to deliver outstanding results, and their selection as the sole consultants will be advantageous to the City.

Lastly, the available workload and the volume of projects do not justify the engagement of two consultants at this time. The prime/lead consultants in each category should be able to complete all the designs as envisioned in the City's seawall prioritization plan.

### SEAWALLS

The Evaluation Committee deemed BCC Engineering, LLC (BCC Engineering) as one of the best-qualified firms to provide engineering services for seawalls. The Evaluation Committee noted that BCC Engineering has not only completed similar projects for other municipalities in Florida but has also successfully completed various seawall projects for the City. This experience demonstrates a thorough understanding of the City's initiatives. The Evaluation Committee also highlighted BCC Engineering's familiarity with South Florida's structural landscape, which has been beneficial for past projects and will continue to be advantageous for future seawall projects. Finally, the approach and methodology outlined by BCC Engineering's Proposal was detailed and included a seawall evaluation matrix that is used to determine optimal solutions and a quality control and quality management plan that can reduce the workload for City staff.

BCC Engineering, founded in Miami in 1994 as a local Florida-based firm, has steadfastly dedicated itself to fulfilling the demands of both the private and public sector clientele. Its expertise lies in the realm of structural, planning, design, and construction management, encompassing a wide spectrum of services, including civil, environmental, site development, traffic engineering, multi-modal transit, complete streets, and highway engineering projects. Today, BCC Engineering is an award-winning firm with 385 employees and has delivered over \$6 billion in 100+ projects to date. Finally, BCC Engineering has assessed, repaired, and replaced Florida seawalls in Fort Lauderdale, Sarasota, and Miami-Dade County. All references provided positive feedback.

The Evaluation committee also deemed Cummins Cederberg, Inc. (Cummins Cederberg), tied top-ranked proposer, and GHD Services Inc., third-ranked proposer, well qualified and should be considered if the negotiations with BCC Engineering are not successful.

Cummins and Cederberg, founded over 10 years ago, is an engineering firm that has and continues to exclusively focus on coastal and marine projects. Its professional team is comprised of coastal engineers, marine structural engineers, marine biologists, regulatory and policy experts, marine scientists, and surveyors with proven experience in all facets of coastal engineering, environmental planning, and regulatory framework. Cummins Cederberg has significant experience within the City of Miami Beach, with more than 40 waterfront projects over the last 10 years, and the City has been satisfied with its work and offered positive feedback. Finally, its portfolio showcases a range of innovative and resilient seawall projects in Boynton Beach, Pompano Beach, and Highland Beach, among others. All references provided positive feedback.

GHD Services Inc., established in 1928, is one of the world's leading professional services companies. It operates in the global markets of water, energy and resources, environment, property and buildings, and transportation. It provides engineering, environmental, advisory, digital, and construction services. It has completed seawall projects for Biscayne Bay, the City of Miami, and Indian Creek Village, among others. All references provided positive feedback.

### LIVING SHORELINES

The Evaluation Committee deemed Cummins Cederberg as one of the best-qualified firms to provide engineering services for living shorelines. The Evaluation Committee noted that Cummins Cederberg has extensive local experience, including living shoreline projects for the City at Beach View Park, Mid Beach Park, and West 40th Street. Additionally, the Committee recognized that Cummins Cederberg conducted a Citywide living shoreline viability assessment, which was implemented and helped secure a Resilient Florida Grant to fund the design, permitting, and construction of three living shoreline segments. Consequently, it would benefit the City to have Cummins Cederberg continue to support future innovative, fundable, and permitable living shoreline projects. Finally, the Evaluation Committee highlighted Cummins Cederberg's comprehensive knowledge of the local procedures, regulatory permitting requirements, and innovative solutions, such as 3D-printed artificial reef models and 3D habitat units, which contribute to building resilient and sustainable living shorelines.

Cummins and Cederberg, founded over 10 years ago, is an engineering firm that has and continues to exclusively focus on coastal and marine projects. Its professional team is comprised of coastal engineers, marine structural engineers, marine biologists, regulatory and policy experts, marine scientists, and surveyors with proven experience in all facets of coastal engineering, environmental planning, and regulatory framework. Cummins Cederberg has significant experience within the City of Miami Beach, with more than 40 waterfront projects over the last 10 years, and the City has been satisfied with its work and offered positive feedback. Finally, it has a deep understanding of the unique coastal challenges and environmental conditions characteristic of Miami-Dade County as it has completed living shoreline projects for the City of Miami, the City of West Palm Beach, and Key Biscayne. All references provided positive feedback.

The Evaluation committee also deemed Moffatt & Nichol, Inc., tied top-ranked proposer, and GHD Services Inc., third-ranked proposer, well qualified and should be considered if the negotiations with Cummins and Cederberg are not successful.

Moffat & Nichol, Inc. was founded in Long Beach, California, in 1945 to provide design engineering services to the evolving maritime industry; making it one of the first engineering firms in the world to embrace the concept of modern coastal engineering. It opened its Miami office in 1994 and has since opened eight other offices. The firm currently has over 100 personnel, of which over 25 are coastal/maritime engineers and scientists. Its vast local experience includes being a partner and advisor to Miami-Dade County as the US Army Corps of Engineers (USACE) moves forward with the next phase of the Back Bay Coastal Storm Risk Management (CSRM) study, advising North Bay Village on the planning of their Island Walk project, and developing the draft tidal barrier ordinance for the Village of Key Biscayne. All references provided positive feedback.

GHD Services Inc., established in 1928, is one of the world's leading professional services companies. It operates in the global markets of water, energy and resources, environment, property and buildings, and transportation. It provides engineering, environmental, advisory, digital, and construction services. It has completed living shoreline projects for Biscayne Bay, the City of Miami, and Ponce Inlet, among others. All references provided positive feedback.

### FISCAL IMPACT STATEMENT

The Public Works Department has budgeted \$1,000,000 for these services. Fees will be established through the negotiation process. Services pursuant to the award of this RFQ shall be

subject to successful negotiations and the availability of funds approved through the City's budgeting process. It is not anticipated that grant funding will be utilized for this project.

**Does this Ordinance require a Business Impact Estimate?**  
(FOR ORDINANCES ONLY)

The Business Impact Estimate (BIE) was published on . See BIE at:  
<https://www.miamibeachfl.gov/city-hall/city-clerk/meeting-notices/>

**FINANCIAL INFORMATION**

433-0815-061357-29-418-564-00-00-00-29020	\$1,000,000
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**CONCLUSION**

Based on the foregoing, it is recommended that the Mayor and City Commission approve the Resolution accepting the City Manager's recommendation pursuant to Request for Qualifications (RFQ) 2024-234-ND for engineering services for seawalls and living shorelines, authorizing the Administration to enter into negotiations with BCC Engineering, LLC, as the proposer determined to be the best qualified to serve as the prime/lead consultant for seawalls; further, if the Administration is not successful in negotiating an agreement with BCC Engineering, LLC, authorizing the Administration to enter into negotiations with Cummins Cederberg, Inc., as the proposer determined to be the second best qualified consultant for seawalls; further, if the Administration is not successful in negotiating an agreement with Cummins Cederberg, Inc., authorizing the Administration to enter into negotiations with GHD Services Inc., as the proposer determined to be the third best qualified consultant for seawalls; and further authorizing the Administration to enter into negotiations with Cummins Cederberg, Inc., as the proposer determined to be the best qualified to serve as the prime/lead consultant for living shorelines; further, if the Administration is not successful in negotiating an agreement with Cummins Cederberg, Inc., authorizing the Administration to enter into negotiations with Moffatt & Nichol, Inc., as the proposer determined to be the second best qualified consultant for living shorelines; further, if the Administration is not successful in negotiating an agreement with Moffatt & Nichol, Inc., authorizing the Administration to enter into negotiations with GHD Services Inc., as the proposer to be the third best qualified consultant for living shorelines. The Resolution also authorizes the City Manager and City Clerk to execute agreement(s) upon the conclusion of successful negotiations by the Administration.

**Applicable Area**

Citywide

**Is this a "Residents Right to Know" item, pursuant to City Code Section 2-17?**

No

**Is this item related to a G.O. Bond Project?**

No

**Was this Agenda Item initially requested by a lobbyist which, as defined in Code Sec. 2-481, includes a principal engaged in lobbying?** No



If so, specify the name of lobbyist(s) and principal(s):

**Department**

Procurement

**Sponsor(s)**

**Co-sponsor(s)**

**Condensed Title**

Award RFQ 2024-234-ND, Engineering Services for Seawalls and Living Shorelines PW/PR

ATTACHMENT A - SEAWALLS

RFQ 2024-234-ND Engineering Services for <i>Seawalls</i> and Living Shorelines	Eugene Egemba			Ranking	Matthew Lepera			Ranking	Mariela Paez Castillo			Ranking	Lindsey Precht			Ranking	Adalberto Vicedo			Ranking	Low Aggregate Totals	Ranking
	Qualitative	Quantitative	Subtotal		Qualitative	Quantitative	Subtotal		Qualitative	Quantitative	Subtotal		Qualitative	Quantitative	Subtotal		Qualitative	Quantitative	Subtotal			
BCC Engineering, LLC	89	3	92	2	96	3	99	1	75	3	78	4	91	3	94	1	90	3	93	2	10	1
Cummins Cederberg, Inc.	91	3	94	1	90	3	93	3	95	3	98	2	90	3	93	2	90	3	93	2	10	1
GHD Services Inc.	83	5	88	4	91	5	96	2	70	5	75	5	82	5	87	4	96	5	101	1	16	3
Stantec Consulting Services Inc.	87	3	90	3	83	3	86	6	97	3	100	1	85	3	88	3	83	3	86	5	18	4
R.J. Behar & Company, Inc.	77	5	82	6	82	5	87	5	40	5	45	7	78	5	83	5	83	5	88	4	27	5
AECOM Technical Services, Inc.	86	0	86	5	90	0	90	4	73	0	73	6	74	0	74	7	82	0	82	6	28	6
Kimley-Horn and Associates, Inc.	78	0	78	7	82	0	82	7	97	0	97	3	78	0	78	6	81	0	81	7	30	7

Quantitative Points				
Proposer	Volume of Work	Volume of Work Points	Veteran's Points	Total Quantitative (Volume of Work + Veteran's)
AECOM Technical Services, Inc.	\$ 2,772,410.61	0	0	0
BCC Engineering, LLC	\$ 757,265.74	3	0	3
Cummins Cederberg, Inc.	\$ 1,287,299.57	3	0	3
GHD Services Inc.	\$ -	5	0	5
Kimley-Horn and Associates, Inc.	\$ 2,719,542.34	0	0	0
R.J. Behar & Company, Inc.	\$ 165,125.84	5	0	5
Stantec Consulting Services Inc.	\$ 535,352.32	3	0	3

ATTACHMENT A - LIVING SHORELINES

RFQ 2024-234-ND Engineering Services for Seawalls and <u>Living Shorelines</u>	Eugene Egemba			Ranking	Matthew Lepera			Ranking	Mariela Peaz Castillo			Ranking	Lindsey Precht			Ranking	Adalberto Vicedo			Ranking	Low Aggregate Totals	Ranking
	Qualitative	Quantitative	Subtotal		Qualitative	Quantitative	Subtotal		Qualitative	Quantitative	Subtotal		Qualitative	Quantitative	Subtotal		Qualitative	Quantitative	Subtotal			
Cummins Cederberg, Inc.	89	3	92	2	94	3	97	1	99	3	102	1	90	3	93	2	93	3	96	3	9	1
Moffatt& Nichol, Inc.	90	5	95	1	88	5	93	3	92	5	97	3	90	5	95	1	95	5	100	1	9	1
GHD Services Inc.	85	5	90	4	89	5	94	2	95	5	100	2	82	5	87	3	92	5	97	2	13	3
AECOM Technical Services, Inc.	91	0	91	3	84	0	84	4	74	0	74	4	74	0	74	4	90	0	90	4	19	4

Quantitative Points				
Proposer	Volume of Work	Volume of Work Points	Veteran's Points	Total Quantitative (Volume of Work + Veteran's)
AECOM Technical Services, Inc.	\$ 2,772,410.61	0	0	0
Cummins Cederberg, Inc.	\$ 1,297,299.57	3	0	3
GHD Services Inc.	\$ -	5	0	5
Moffatt& Nichol, Inc.	\$ 20,817.29	5	0	5

## OMB Available Balances

as of 7/15/2024

## RFQ for Engineering Services for Seawalls and Living Shorelines

Procurement Requests - C2 {{item.number}}

# MIAMI BEACH

### COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission

FROM: Rickelle Williams, Interim City Manager

DATE: July 24, 2024

TITLE: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE RECOMMENDATION OF THE CITY MANAGER, PURSUANT TO REQUEST FOR QUALIFICATIONS (RFQ) 2024-234-ND FOR ENGINEERING SERVICES FOR SEAWALLS AND LIVING SHORELINES (PUBLIC WORKS)**

#### FISCAL IMPACT STATEMENT

The Public Works Department has budgeted \$1,000,000 for these services. Fees will be established through the negotiation process. Services pursuant to the award of this RFQ shall be subject to successful negotiations and the availability of funds approved through the City's budgeting process. It is not anticipated that grant funding will be utilized for this project.

#### Does this Ordinance require a Business Impact Estimate? (FOR ORDINANCES ONLY)

The Business Impact Estimate (BIE) was published on . See BIE at:  
<https://www.miamibeachfl.gov/city-hall/city-clerk/meeting-notice/>

#### FINANCIAL INFORMATION

433-0815-061357-29-418-564-00-00-29020	\$1,000,000
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Account Inquiry - OBPIDacA - City of Miami Beach

Account

Fund	433	Stormwater	Acct	433-0815-061357-29-418-564-00-00-29020	
Org	43082170	Public Wor	Acct name	Design-Capital Contracts	<a href="#">Account Notes</a>
Object	061357	Design-Cap	Type	Expense	Status Active
Project	29020	CITYWIDE SEAWALL REI Rollup	Sub-Rollup		
<input type="checkbox"/> Annual Budgeting					
<input checked="" type="checkbox"/> MultiYr Fund					

#### 4 Year Comparison

4 Year Comparison	Current Year	History	4 Year Graph	History Graph						
Yr/Per 2024/09	Fiscal Year 2024		Fiscal Year 2023		Fiscal Year 2022		Fiscal Year 2025		Life	
Original Budget	479,309.04		311,000.00		151,950.00		.00		.00	
Transfers In	1,135,785.84		452,400.00		220,000.00		.00		1,972,485.84	
Transfers Out	.00		.00		.00		.00		.00	
Revised Budget	1,615,094.88		763,400.00		371,950.00		.00		1,972,485.84	
Actual (Memo)	75,007.79		284,090.96		60,950.00		.00		432,398.75	
Encumbrances	396,527.55		.00		.00		.00		396,527.55	
Requisitions	42,397.90						.00		42,397.90	
Available	1,101,161.64		479,309.04		311,000.00		.00		1,101,161.64	
Percent used	31.82		37.21		16.39		.00		44.17	

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

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE RECOMMENDATION OF THE INTERIM CITY MANAGER TO AUTHORIZE NEGOTIATIONS RELATING TO REQUEST FOR QUALIFICATIONS NO. 2024-234-ND, FOR ENGINEERING SERVICES FOR SEAWALLS AND LIVING SHORELINES; AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH BCC ENGINEERING, LLC, AS THE PROPOSER DETERMINED TO BE THE BEST QUALIFIED TO SERVE AS THE PRIME/LEAD CONSULTANT FOR SEAWALLS; FURTHER, IF THE ADMINISTRATION IS NOT SUCCESSFUL IN NEGOTIATING AN AGREEMENT WITH BCC ENGINEERING, LLC, AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH CUMMINS CEDERBERG, INC., AS THE PROPOSER DETERMINED TO BE THE SECOND BEST QUALIFIED CONSULTANT FOR SEAWALLS; FURTHER, IF THE ADMINISTRATION IS NOT SUCCESSFUL IN NEGOTIATING AN AGREEMENT WITH CUMMINS CEDERBERG, INC., AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH GHD SERVICES INC., AS THE PROPOSER DETERMINED TO BE THE THIRD BEST QUALIFIED CONSULTANT FOR SEAWALLS; AND FURTHER AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH CUMMINS CEDERBERG, INC., AS THE PROPOSER DETERMINED TO BE THE BEST QUALIFIED TO SERVE AS THE PRIME/LEAD CONSULTANT FOR LIVING SHORELINES; FURTHER, IF THE ADMINISTRATION IS NOT SUCCESSFUL IN NEGOTIATING AN AGREEMENT WITH CUMMINS CEDERBERG, INC., AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH MOFFATT & NICHOL, INC., AS THE PROPOSER DETERMINED TO BE THE SECOND BEST QUALIFIED CONSULTANT FOR LIVING SHORELINES; FURTHER, IF THE ADMINISTRATION IS NOT SUCCESSFUL IN NEGOTIATING AN AGREEMENT WITH MOFFATT & NICHOL, INC., AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH GHD SERVICES INC., AS THE PROPOSER DETERMINED TO BE THE THIRD BEST QUALIFIED CONSULTANT FOR LIVING SHORELINES; AND FURTHER AUTHORIZING THE INTERIM CITY MANAGER AND CITY CLERK TO EXECUTE AGREEMENT(S) UPON THE CONCLUSION OF SUCCESSFUL NEGOTIATIONS BY THE ADMINISTRATION.

**WHEREAS**, on April 3, 2024, the Mayor and City Commission approved the issuance of the Request for Qualifications (RFQ) No. 2024-234-ND for Engineering Services for Seawalls and Living Shorelines; and

**WHEREAS**, Request for Qualifications No. 2024-234-ND (the "RFQ") was released on April 4, 2024; and

**WHEREAS**, a voluntary pre-proposal meeting was held on April 17, 2024; and

**WHEREAS**, on May 28, 2024, the City received proposals from the following firms for seawalls and living shores:

Seawalls:

- BCC Engineering, LLC
- Cummins Cederberg, Inc.

- GHD Services Inc.
- Stantec Consulting Services Inc.
- R.J. Behar & Company, Inc.
- AECOM Technical Services, Inc.
- Kimley-Horn and Associates, Inc.

Living Shorelines:

- Cummins Cederberg, Inc.
- Moffatt & Nichol, Inc.
- GHD Services Inc.
- AECOM Technical Services, Inc.; and

**WHEREAS**, on May 29, 2024, the City Manager, via Letter to Commission No. 209-2024, appointed an Evaluation Committee consisting of the following individuals: Eugene Egemba, Principal Engineer, Public Works Engineering Department; Matthew Lepera, Construction Manager, Public Works Engineering Department; Mariela Paez Castillo, Principal Engineer, Public Works Engineering Department; Lindsey Precht, Assistant Director, Environment and Sustainability Department; and Adalberto Vicedo, Chief Structural Engineer, Building Department; and

**WHEREAS**, the Evaluation Committee convened on June 17, 2024, to review and score the proposals; and

**WHEREAS**, the Evaluation Committee received an overview of the project, information relative to the City's Cone of Silence Ordinance and the Government Sunshine Law, general information on the scope of services, and a copy of each proposal; and

**WHEREAS**, the Evaluation Committee was instructed to score and rank each proposal pursuant to the evaluation criteria established in the RFQ; and

**WHEREAS**, the Evaluation Committee process resulted in the ranking of proposers as follows:

Seawalls:

- 1<sup>st</sup> ranked (tie) – BCC Engineering, LLC
- 1<sup>st</sup> ranked (tie) – Cummins Cederberg, Inc.
- 3<sup>rd</sup> ranked – GHD Services Inc.
- 4<sup>th</sup> ranked – Stantec Consulting Services Inc.
- 5<sup>th</sup> ranked – R.J. Behar & Company, Inc.
- 6<sup>th</sup> ranked – AECOM Technical Services, Inc.
- 7<sup>th</sup> ranked – Kimley-Horn and Associates, Inc.

Living Shorelines:

- 1<sup>st</sup> ranked (tie) – Cummins Cederberg, Inc.
- 1<sup>st</sup> ranked (tie) – Moffatt & Nichol, Inc.
- 3<sup>rd</sup> ranked – GHD Services Inc.
- 4<sup>th</sup> ranked – AECOM Technical Services, Inc.; and

**WHEREAS**, after reviewing all of the submissions and the Evaluation Committee's rankings and commentary, the City Manager, for the reasons set forth in the accompanying commission memorandum, recommends that the Mayor and City Commission authorize the Administration to enter into negotiations with BCC Engineering, LLC, as the proposer determined to be the best qualified to serve as the prime/lead consultant for seawalls; further, if the Administration is not successful in negotiating an agreement with BCC Engineering, LLC,



authorizing the Administration to enter into negotiations with Cummins Cederberg, Inc., as the proposer determined to be the second best qualified consultant for seawalls; further, if the Administration is not successful in negotiating an agreement with Cummins Cederberg, Inc., authorizing the Administration to enter into negotiations with GHD Services Inc., as the proposer determined to be the third best qualified consultant for seawalls; and further authorizing the Administration to enter into negotiations with Cummins Cederberg, Inc., as the proposer determined to be the best qualified to serve as the prime/lead consultant for living shorelines; further, if the Administration is not successful in negotiating an agreement with Cummins Cederberg, Inc., authorizing the Administration to enter into negotiations with Moffatt & Nichol, Inc., as the proposer determined to be the second best qualified consultant for living shorelines; further, if the Administration is not successful in negotiating an agreement with Moffatt & Nichol, Inc., authorizing the Administration to enter into negotiations with GHD Services Inc., as the proposer to be the third best qualified consultant for living shorelines; and further authorizing the interim City Manager and City Clerk to execute agreement(s) upon the conclusion of successful negotiations by the Administration.

**NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA,** that the Mayor and City Commission hereby accept the recommendation of the City Manager, pursuant to Request for Qualifications (RFQ) No. 2024-234-ND for Engineering Services for Seawalls and Living Shorelines; authorize the Administration to enter into negotiations with BCC Engineering, LLC, as the proposer determined to be the best qualified to serve as the prime/lead consultant for seawalls; further, if the Administration is not successful in negotiating an agreement with BCC Engineering, LLC, authorize the Administration to enter into negotiations with Cummins Cederberg, Inc., as the proposer determined to be the second best qualified consultant for seawalls; further, if the Administration is not successful in negotiating an agreement with Cummins Cederberg, Inc., authorize the Administration to enter into negotiations with GHD Services Inc., as the proposer determined to be the third best qualified consultant for seawalls; and further authorize the Administration to enter into negotiations with Cummins Cederberg, Inc., as the proposer determined to be the best qualified to serve as the prime/lead consultant for living shorelines; further, if the Administration is not successful in negotiating an agreement with Cummins Cederberg, Inc., authorize the Administration to enter into negotiations with Moffatt & Nichol, Inc., as the proposer determined to be the second best qualified consultant for living shorelines; further, if the Administration is not successful in negotiating an agreement with Moffatt & Nichol, Inc., authorize the Administration to enter into negotiations with GHD Services Inc., as the proposer to be the third best qualified consultant for living shorelines; and further authorize the interim City Manager and City Clerk to execute agreement(s) upon the conclusion of successful negotiations by the Administration.

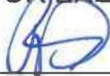
**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_ 2024.

\_\_\_\_\_  
Steven Meiner, Mayor

**ATTEST:**

\_\_\_\_\_  
Rafael E. Granado, City Clerk

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

  
\_\_\_\_\_  
City Attorney *DR* Date 7/11/2024

OFFICE OF THE CITY ATTORNEY

*City of Miami Beach*

F L O R I D A



**RICARDO J. DOPICO**  
City Attorney

Telephone: (305) 673-7470  
Facsimile: (305) 673-7002

July 23, 2024

Via e-Mail: [dmoscoso@beckerlawyers.com](mailto:dmoscoso@beckerlawyers.com)

David J. Moscoso, Esq.  
2525 Ponce De Leon Boulevard, Suite 825  
Coral Gables, FL 33134-6051

**RE: Response to Bid Protest Relating to Request for Qualifications No. 2024-234-ND, Engineering Services for Seawalls and Living Shorelines (the "RFQ") on behalf of Moffatt & Nichol, Inc. (the "Client" or "Moffatt"), pursuant to Section 2-371(2) of the City of Miami Beach Code.**

Dear Mr. Moscoso:

The City has reviewed the bid protest you filed on July 19, 2021 on behalf of your Client, Moffatt & Nichol, Inc. ("Moffatt"), with regard to the City Manager's award recommendation pursuant to the RFQ. After reviewing the particulars upon which Moffatt's protest has been submitted, the City hereby rejects Moffatt's protest and, in support thereof, finds as follows.

**Background**

Moffatt's protest claims "[t]he City Manager's decision to recommend an award of the RFQ to Cummins Cederberg was not exercised upon clearly defined criteria and is arbitrary and capricious," and also that the City Manager "failed to provide a clearly defined criteria for deciding an award recommendation in the event of a tie between two proposers for the RFQ and made its decision based on criteria which was established outside of the RFQ specification." Moffatt further argues the City Manager considered factors outside of the RFQ specifications and in the process gave preference to the recommended bidder.

**The City Manager's Authority and the Role of the Evaluation Committee**

Moffatt's protest mischaracterizes the City Manager's award process and fails to acknowledge the City Manager's broad discretion in making an award recommendation, as outlined in the RFQ. To describe the City Manager's award recommendation as a "tie breaker" misconstrues the roles of the City Manager and the Evaluation Committee. In making an award recommendation, the City Manager's recommendation need not be consistent with the



Evaluation Committee's rankings. Rather, the City Manager's recommendation is intended to encompass a holistic assessment of each bidder's overall qualifications.

The City Manager's authority and discretion in recommending an award to the Mayor and City Commission is granted by Section 2-369 of the City of Miami Beach City Code, which is referenced in Section 0100, 12 (Determination of Award) of the RFQ. Section 2-369 of the code states "[i]n determining the...best bidder...[the City Manager shall consider]"<sup>1</sup> the following:

- (1) the ability, capacity and skill of the Bidder to perform the contract;
- (2) whether the bidder can perform the contract within the time specified, without delay or interference;
- (3) the character, integrity, reputation, judgment, experience and efficiency of the Bidder;
- (4) the quality of performance of previous contracts; and
- (5) the previous and existing compliance by the Bidder with laws and ordinances relating to the contract.

Furthermore, Section 0100, 12, of the RFQ clearly states that the City Manager's recommendation need not align strictly with the Evaluation Committee's findings and, in addition to the factors listed in Section 2-369, may consider other information deemed relevant in making a recommendation to City Commission. Thus, consideration of a bidder's performance under previous contracts was not arbitrary and capricious, nor should information included in the RFQ and City Code be described as "an unwritten bias" or as a consideration that was not identified in the RFQ specifications.

By placing too much emphasis on the results of the Evaluation Committee, Moffatt incorrectly conflates its favorable Evaluation Committee ranking with a guaranteed outcome. Moffatt disagrees with the results of the RFQ and finds that its own credentials provide no rational basis for an award to anyone other than itself. However, Florida courts have repeatedly made clear that, in reviewing challenges to a public agency's procurement decisions, a "public body has wide discretion" in the bidding process and "its decision, when based on an honest exercise" of the discretion, should not be overturned "even if it may appear erroneous and even if reasonable persons may disagree." *Department of Transportation v. Groves-Watkins Constructors*, 530 So.2d 912, 913 (Fla.1988)(quoting *Liberty County v. Baxter's Asphalt & Concrete, Inc.*, 421 So.2d 505 (Fla.1982)) (emphasis in original). "[The] sole responsibility is to ascertain whether the agency acted fraudulently, arbitrarily, illegally, or dishonestly." *Groves-Watkins*, 530 So.2d at 914. The City Manager made an award recommendation clearly within her discretion and in accordance with the terms of the RFQ and City Code.

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<sup>1</sup> Because this solicitation is a request for qualifications, where prices and bids are not collected, certain references to "price" and the "lowest" bidder have been omitted from the quoted language for the avoidance of confusion.

David J. Moscoso, Esq.  
July 23, 2024  
Page 3

For the reasons set forth above, the City denies Moffatt's protest. Moffatt may appeal this decision by filing an original action in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, in accordance with the applicable court rules. Any action not brought in good faith shall be subject to sanctions including damages suffered by the City and attorney's fees incurred by the City in defense of such wrongful action.

Sincerely,



Ricardo J. Dopico  
City Attorney

cc: Mayor Steven Meiner and Members of the City Commission  
Rickelle A. Williams, Interim City Manager  
Rafael Granado, City Clerk  
Kristy Bada, Interim Procurement Director

David J. Moscoso  
Attorney at Law  
Phone: 305.260.1003 Fax: 305.442.2232  
dmoscoso@beckerlawyers.com



Becker & Poliakoff  
2525 Ponce de Leon Blvd, Suite 825  
Coral Gables, FL 33134

July 19, 2024

Via electronic mail: [RickelleWilliams@miamibeachfl.gov](mailto:RickelleWilliams@miamibeachfl.gov)

**Re: Bid protest letter to the City Miami Beach (the “City”) on behalf of Moffatt & Nichol, Inc. (the “Client” or “Moffatt”), pursuant to Section 2-371(2) of the City of Miami Beach Code. Providing the City with notice of deviations from the competitive solicitation guidelines and violations of established case law precedent in Florida.**

Dear Ms Williams:

The undersigned firm has the privilege of representing Moffatt & Nichol, Inc. (“Moffatt” or “Client”). Our Client has asked us to provide you with a letter detailing several instances in which the City has failed to uphold its duties under the Code and established case law. Supporting documentation in favor of the claims made on behalf of D.L Porter Constructors, Inc. is submitted with this response.

## **I. BACKGROUND**

The City of Miami Beach (the “City” or “Miami Beach”) issued a Request for Qualifications (“RFQ”), RFQ No. 2024-234-ND, titled “Engineering Services for Seawalls and Living Shorelines” in April of 2024. On July 17, 2024 the City issued an Award Notification pursuant to the RFQ. The Award Notification notified Moffatt that the City Manager will be recommending to the Mayor and City Commission at its July 24, 2024 meeting for the Commission approve a resolution accepting two recommendations, one for engineering services for seawalls and another for engineering services for living shorelines, and to approve the administration to enter into negotiations with BCC Engineering, LLC for seawalls and Cummins & Cederberg, Inc. for living shorelines.

The Evaluation Committee process resulted in a tie for top rank for seawalls and living shorelines. BCC Engineering, LLC and Cummins Cederberg, Inc. (“Cederberg”) were tied top-ranked in the seawall category. Cummins Cederberg, Inc. and Moffatt & Nichol, Inc. were tied top-ranked in the living shorelines category. After reviewing the submissions, the Evaluation Committee’s rankings and commentary, and the City’s experience with the tied firms, the Administration recommended that the City negotiate Cummins Cederberg as the prime/lead consultant for living shoreline projects.

The Evaluation Committee deemed Cummins Cederberg as one of the best-qualified firms to provide engineering services for living shorelines. The Manager's position expressed in the Award Notification is that it would benefit the City to have Cummins Cederberg as the awardee based on their past experience in working with the City and their experience in local projects. However, the Evaluation Committee also deemed Moffatt & Nichol, Inc., as a tied top-ranked proposer and noted Moffatt & Nichol, Inc. also has several local projects which were specific to shorelines.

Moffatt & Nichol, Inc. submits this letter on July 19, 2024.

## II. LEGAL STANDARD

**Although public authorities have wide discretion in awarding public contracts through a competitive procurement process, that discretion, "must be exercised based upon clearly defined criteria, and may not be exercised arbitrarily or capriciously."** *Liberty County v. Baxter's Asphalt & Concrete, Inc.*, 421 So. 2d 505 (Fla. 1982) (emphasis added); *Emerald Correctional Management v. Bay County Bd. Of County Commissioners*, 955 So. 2d 647 (Fla. 1st DCA 2007). Public authorities cannot exercise that discretion in a manner that is arbitrary, capricious, dishonest, fraudulent, unreasonable, or in any other way that would subvert or undermine the purpose and object of competitive bidding. *D.O.T. v. Groves-Watkins Constructors*, 530 So.2d 912, 913-14 (Fla. 1988); *Caber Systems v. Department of General Services*, 530 So.2d 325, 336 (Fla. 1st DCA 1988). A contract let without regard to required bidding is void and payments may be enjoined. *Wester v. Belote*, 103 Fla. 976, 138 So. 721 (1931). A public entity may not reserve the right to modify the specifications, because to do so would permit favoritism and prevent an equal comparison of bids. *Id.*

No fair comparison of bids may be made unless all bidders are responding to the same specifications. When an invitation to bid lacks definite specifications, a trio of bid violations occurs: each bidder is free to submit bids on what amounts to the bidder's own scope of the work; the agency cannot make an adequate evaluation; and the agency must arbitrarily choose the successful bidder. Any one of the foregoing defects will render a contract void *Id.*; *Glastein v. City of Miami*, 399 So.2d 1005 (Fla. 3d DCA 1981).

A public entity may not avoid the competitive bidding requirement of its charter by amending a contract properly let through competitive bidding. *Robert G. Lassiter & Co. v. Taylor*, 99 Fla. 819, 128 So. 14 (1930), 69 A.L.R. 689.

Material variances are those that give one bidder a substantial advantage over the other bidders and restrict competition. Nonmaterial variances are those that do not affect price, give one bidder an advantage or benefit not enjoyed by other bidders, or adversely affect the interests of the agency. *Tropabest Foods, Inc. v. State, Dept. of General Services*, 493 So.2d 50 (Fla. 1st DCA 1986).

"A capricious action is one taken without thought or reason or irrationally. An arbitrary decision is one not supported by facts or logic." *Agrico Chem. Co. v. Dep't of Envir. Reg.*, 365

So. 2d 759, 763 (Fla. 1st DCA 1978). **In the contract procurement context, whether an action was arbitrary or capricious depends upon whether the awarding authority complied with its own proposal criteria.** See Acad. Express, LLC v. Broward City., 53 So. 3D 1188 (Fla. 4th DCA 2011)(Emphasis added).

**If an agency fails to observe pre-established specifications, or its code, “that action will render meaningless the basis upon which bids were initially sought, and so must be deemed arbitrary, illegal, fraudulent, or dishonest.”** *MCI Telecommunications Corp. v. Dept. of Corrections*, 1995 WL 1053092 (Fla.Div.Admin.Hrgs.)(Emphasis added).

### III. PROTEST

**A. The City Manager’s decision to recommend an award of the RFQ to Cummins Cederberg was not exercised upon clearly defined criteria and is arbitrary and capricious.**

**a. The City Manager failed to provide a clearly defined criteria for deciding an award recommendation in the event of a tie between two proposers for the RFQ and made its decision based on criteria which was established outside of the RFQ specifications.**

The specifications for the RFQ were provided to all Bidders at the same time on April 04, 2024. The specifications for this RFW provided clear proposal evaluation criteria in Section 0400 of the RFQ guidelines, titled “Proposal Evaluation”. Section 0400 provided a clearly defined evaluation criteria in sub-section 7 of the Proposal Evaluation Criteria, titled “Determination of Final Ranking”. The evaluation criteria for a determination of final ranking provided to all Bidders was as follows:

**7. DETERMINATION OF FINAL RANKING.** The sum of the evaluation criteria points will be converted to rankings in accordance with the example below:

		Bidder A	Bidder B	Bidder C
Committee Member 1	Qualitative Points	82	74	80
	Quantitative Points	5	5	0
	Total	87	79	80
	Rank	1	3	2
Committee Member 2	Qualitative Points	82	85	72
	Quantitative Points	5	5	0
	Total	87	90	72
	Rank	1	2	3
Committee Member 2	Qualitative Points	90	74	66
	Quantitative Points	5	5	0
	Total	95	79	66
	Rank	1	2	3
Low Aggregate Score		3	7	8
Final Ranking*		1	2	3

The determination of final rankings also notes that the results of the proposal evaluation process in accordance with Section 0400 does not represent an award recommendation and that the City Manager may use “any other information he deems appropriate to develop an award

recommendation to the City Commission, which may differ from the results of the proposal evaluation process and final rankings”. No further elaboration, specification, or definition for the City Manager’s criteria for developing the award recommendation was provided to the Bidders.

Following the Evaluation Committee’s sum of the evaluation criteria points, Moffet and Cederberg were determined to be in a tie, even though Moffet was given more first place votes by the Committee Members. However, because the RFQ specifications provide that the Evaluation Committee’s decision is not an award recommendation, the scores were simply passed to the City Manager and the Evaluation Committee’s participation in the competitive process ended.

The City Manager then proceeded to break the tie and make an award recommendation to Cederberg based on the fact their “significant experience with the City of Miami Beach” and their “deep understanding of the unique coastal challenges and environmental conditions characteristic of Miami-Dade County”. However, nothing contained in the RFQ specifications provided a local bidder preference, nor were any requirements set forth indicating that proposers should tailor their bids toward a focus on local project. Moreover, even if the Bidders would have known that an unwritten bias in favor of experience with local projects existed, multiple members of the Evaluation Committee, including those who ranked Moffatt & Nichol above Cederberg noted specifically the breadth of Moffatt’s local experience and their familiarity with local permitting. Moreover, unlike Cederberg, all the projects submitted by Moffatt & Nichol were focused exclusively on shoreline projects. As such Moffatt & Nichol’s projects included in their proposal were both more narrowly tailored and locally focused specifically for the engineering services sought by the City. There simply is no rational basis by which the City Manager could have arrived that Cederberg was better suited to be awarded the engineering services for the living shoreline portion of the RFQ.

Even if the consideration of Cederberg’s history in working with the City of Miami Beach was a factual basis by which the City could determine that one Bidder displayed a more robust record of knowledge, performance, and aptitude for the shoreline portion of the RFQ, to make the decision based on that criteria would be to rely on a series of factors not contemplated by the RFQ guidelines; it deprives all bidders of a fair opportunity to compete by giving an unwritten advantage based on a criteria which no bidders could have tailored their bids to reflect.

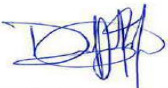
Because the City Manager relied on the local history and preference for a bidder with local experience as criteria in awarding this RFQ, and because there is no clearly defined standard for the evaluation of such, the Bidders in this RFQ were prevented from competing on an even playing field and the decision to make an award recommendation is based on an arbitrary and capricious standard. The RFQ for the living shoreline portion of the RFQ should be reissued for

competitive solicitation, with a clear indication of procedure in the event of a tie and a clear methodology of scoring for Bidders regarding experience with local shoreline projects.

## **B. Conclusion.**

The City of Miami Beach issued an RFQ for engineering services for a living shoreline with a clearly identified RFQ approach and methodology. The Evaluation Committee for this RFQ reviewed proposal submitted by Bidders based on a clearly defined criteria and standards. The scoring provided by the Evaluation Committee resulted in a tie for two bidders in this process. The Manager proceeded to break the tie by making a recommendation to award Cederberg based on their familiarity and experience in local shoreline projects. The Evaluation Committee provided in their notes an emphasis on Moffett's experience and familiarity with local shoreline projects as a rationale for their high scores. The City Manager clearly did not rely on the experience and familiarity with local shoreline projects as the criteria for breaking the tie, however even if she did, and to the extent she did, doing so would constitute a reliance on an undefined and unspecified criteria which should be deemed as arbitrary and capricious based on Florida case law. Because the City Manager's award recommendation is based on an arbitrary and capricious application of undefined criteria, the RFQ recommendation should be denied and the Commission should either award Moffett & Nichol the living shoreline engineering services or rebid that portion of the RFQ.

Respectfully submitted,



David J. Moscoso

DJM/



**ACTION: Resolution 2024-33164 adopted. Bradford Kaine and Kristy Bada to handle.**

- C2 D A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO SELECT, NEGOTIATE, AWARD, AND REJECT ALL BIDS, CONTRACTS, AGREEMENTS, AND GRANT APPLICATIONS; RENEW EXISTING CONTRACTS WHICH MAY EXPIRE; AND TERMINATE EXISTING CONTRACTS, AS NEEDED, FROM THE LAST COMMISSION MEETING ON JULY 24, 2024, UNTIL THE FIRST REGULARLY SCHEDULED MEETING ON SEPTEMBER 11, 2024, SUBJECT TO RATIFICATION BY THE CITY COMMISSION AT ITS FIRST REGULARLY SCHEDULED MEETING ON SEPTEMBER 11, 2024. **JOINT CITY COMMISSION, RDA, AND NBCRA**  
Applicable Area: Citywide  
Procurement

**ACTION: Resolution 2024-33165 adopted. Kristy Bada to handle.**

- C2 E A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE RECOMMENDATION OF THE CITY MANAGER PURSUANT TO INVITATION TO NEGOTIATE NO. 2024-289-ND, FOR TRAFFIC SIGNAL OPTIMIZATION SYSTEM; AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS FOR PHASE I WITH RHYTHM ENGINEERING, LLC, AS THE TOP-RANKED PROPOSER; FURTHER, IF THE ADMINISTRATION IS NOT SUCCESSFUL IN NEGOTIATING AN AGREEMENT WITH RHYTHM ENGINEERING, LLC, AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH 360 NETWORK SOLUTIONS, LLC, AS THE SECOND-RANKED PROPOSER; FURTHER, IF THE ADMINISTRATION IS NOT SUCCESSFUL IN NEGOTIATING AN AGREEMENT WITH 360 NETWORK SOLUTIONS, LLC, AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH GRIDMATRIX INC., AS THE THIRD-RANKED PROPOSER; AND FURTHER AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE AN AGREEMENT FOR PHASE I UPON CONCLUSION OF SUCCESSFUL NEGOTIATIONS BY THE ADMINISTRATION. (TRANSPORTATION)  
Applicable Area: Citywide  
Procurement  
Mayor Steven Meiner  
Commissioner David Suarez  
Vice-Mayor Laura Dominguez

**ACTION: Resolution 2024-33166 adopted. Jose Gonzalez and Kristy Bada to handle.**

- C2 F A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE RECOMMENDATION OF THE INTERIM CITY MANAGER TO AUTHORIZE NEGOTIATIONS RELATING TO REQUEST FOR QUALIFICATIONS NO. 2024-234-ND, FOR ENGINEERING SERVICES FOR SEAWALLS AND LIVING SHORELINES; AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH BCC ENGINEERING, LLC, AS THE PROPOSER DETERMINED TO BE THE BEST QUALIFIED TO SERVE AS THE PRIME/LEAD CONSULTANT FOR SEAWALLS; FURTHER, IF THE ADMINISTRATION IS NOT SUCCESSFUL IN NEGOTIATING AN AGREEMENT WITH BCC ENGINEERING, LLC, AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH CUMMINS CEDERBERG, INC., AS THE PROPOSER DETERMINED TO BE THE SECOND BEST QUALIFIED CONSULTANT FOR SEAWALLS; FURTHER, IF THE ADMINISTRATION IS NOT SUCCESSFUL IN NEGOTIATING AN AGREEMENT WITH CUMMINS CEDERBERG, INC., AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH GHD SERVICES INC., AS THE PROPOSER DETERMINED TO BE THE THIRD BEST QUALIFIED



CONSULTANT FOR SEAWALLS; AND FURTHER AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH CUMMINS CEDERBERG, INC., AS THE PROPOSER DETERMINED TO BE THE BEST QUALIFIED TO SERVE AS THE PRIME/LEAD CONSULTANT FOR LIVING SHORELINES; FURTHER, IF THE ADMINISTRATION IS NOT SUCCESSFUL IN NEGOTIATING AN AGREEMENT WITH CUMMINS CEDERBERG, INC., AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH MOFFATT & NICHOL, INC., AS THE PROPOSER DETERMINED TO BE THE SECOND BEST QUALIFIED CONSULTANT FOR LIVING SHORELINES; FURTHER, IF THE ADMINISTRATION IS NOT SUCCESSFUL IN NEGOTIATING AN AGREEMENT WITH MOFFATT & NICHOL, INC., AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH GHD SERVICES INC., AS THE PROPOSER DETERMINED TO BE THE THIRD BEST QUALIFIED CONSULTANT FOR LIVING SHORELINES; AND FURTHER AUTHORIZING THE INTERIM CITY MANAGER AND CITY CLERK TO EXECUTE AGREEMENT(S) UPON THE CONCLUSION OF SUCCESSFUL NEGOTIATIONS BY THE ADMINISTRATION. (PUBLIC WORKS)

Applicable Area: Citywide  
Procurement

**7:06:22 p.m.**

**ACTION:** The Item was referred to the Finance and Economic Resiliency Committee. The Item was separated from the Consent Agenda by Commissioner Fernandez. Commissioner Fernandez motioned to refer the Item to the Finance Committee, seconded by Mayor Meiner. **Vote: 7-0. Jason Greene is to place on the Committee Agenda pending list. Kristy Bada to handle.**

Commissioner Fernandez stated that he separated this Item for further discussion but would like to refer this Item to the Finance and Economic Resiliency Committee.

Commissioner Fernandez motioned to refer the Item to the Finance Committee, seconded by Mayor Meiner. **Vote: 7-0.**

Handouts or Reference Materials:

1. Letter from David J. Moscoso, dated July 19, 2024, Addressed to Interim City Manager Rickelle Williams, RE: Bid Protest letter to the City of Miami Beach (the "City") on behalf of Moffatt & Nichol, Inc. (the "Client" or "Moffatt"), pursuant to Section 2-371(2) OF THE City of Miami Beach Code. Providing the City with notice of deviations from the competitive solicitation guidelines and violations of established case law precedent in Florida.
2. Letter from City Attorney Ricardo J. Dopico, dated July 23, 2024, Addressed to David J. Moscoso, Esq., RE: Response to Bid Protest Relating to Request for Qualifications No. 2024-234-ND, Engineering Services for Seawalls and Living Shorelines (the "RFQ") on behalf of Moffatt & Nichols, Inc. (the "Client" or "Moffatt"), pursuant to Section 2-371(2) of the City of Miami Beach Code.

C2 G REQUEST FOR APPROVAL OF ROUTINE RENEWAL OPTIONS, TASK ORDERS, CHANGE ORDERS, OR CONTRACT AMENDMENTS FOR CITY-AWARDED CONTRACTS.  
Applicable Area: Citywide  
Procurement

**ACTION:** The request was approved. **Kristy Bada to handle.**