

Memorandum



Date: July 8, 2010

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Supplemental Report to the Recommendations for the Selection of Developers for the Building Better Communities General Obligation Bond (GOB) Invitation to Negotiate (ITN) for the Northside Station and Caribbean Boulevard Sites

Supplement to
Agenda Item NO. 8K1a

This supplemental report is prepared in response to letters received from Biscayne Housing Group (BHG) and RCDG I, LLC (The Related Group), two of the Building Better Communities General Obligation Bond (GOB) Invitation to Negotiate (ITN) applicants, associated with the agenda item presented on the March 25, 2010, Housing and Community Development (HCD) Committee meeting regarding the GOB ITN for the Northside Station and Caribbean Boulevard Sites. It supports the recommendation in the memorandum and resolution and responds directly to the concerns expressed in the protest letters. While the following information is submitted to ensure full disclosure and transparency for the Board of County Commissioners (Board), it is necessary to note that Resolution R-678-09 specifically waived the bid protest processes as outlined in the Miami-Dade County Code.

Background

On June 2, 2009, Miami-Dade County Board of County Commissioners adopted Resolution R-678-09. The resolution (1) rejected all proposals received in response to RFP #249 for the Construction of Multi-Family Housing on Caribbean Boulevard and Northside Metrorail Station Sites, (2) waived the competitive bidding and bid protest processes as required in Sections 2-8.1 and 2-8.4, Miami-Dade County Code, and (3) authorized the County Mayor or the Mayor's designee to conduct competitive negotiations with all of the responsive bidders for construction of two multi-family developments utilizing GOB funds as "gap" funding.

On July 31, 2009, pursuant to Resolution No. R-678-09, the Department of Housing and Community Development (DHCD) issued a GOB Invitation to Negotiate (ITN). DHCD presented a resolution and recommendation for award, scheduled for consideration at the March 25, 2010, Housing and Community Development Committee (HCD). The scoring and ranking recommendation of the GOB ITN Negotiation Committee was included as part of the item. On March 23, 2010, Biscayne Housing Group (BHG) responded to that action by writing a letter to the County Manager objecting to alleged irregularities in the developer selection process for the Northside Station and Caribbean Boulevard sites. Subsequently, on May 4, 2010, a second letter of objection was received from RDCG, I, LLC, (the Related Group).

The following are the concerns taken verbatim from the March 23, 2010, letter of BHG and the May 4, 2010 letter of the Related Group and HCD responses to these concerns. While in accordance with R-678-09, all bid protests were waived, the following responses to the objection letters are being provided to the Board to provide full disclosure and confirmation of the validity of the selection process in accordance with the established policies and procedures.

Biscayne Housing Group (BHG)

BHG Concern 1:

"The Department of Housing and Community Development ("HCD") issued GOB RFP #249 on January 15, 2008. On April 30, 2008, HCD held a public meeting where it adopted the scoring methodology used to rate applicants. At that meeting, Biscayne Housing Group ("BHG") was deemed the winning applicant for the Northside Station. On May 2, 2008, HCD held another public meeting to address a scoring mistake from the April 30 meeting. Consequently, BHG was deemed the winning applicant for both the Northside Station and Caribbean Boulevard sites. Subsequently, to the May 2 meeting, another public meeting was held with the apparent purpose of adopting a new scoring methodology.

BHG was not provided notice of this meeting and was therefore unable to attend. At this meeting, BHG was overturned as the winner of both sites and new winning applicants were awarded. On June 2, 2009, the Board of County Commissioners rejected all proposals received under GOB RFP #249."

DHCD Response 1:

Miami-Dade County Board of County Commissioners approved Resolution No. R-678-09, June 2, 2009. The resolution was distributed to all ITN proposers at the June 30, 2009, GOB ITN Pre-Negotiation Meeting. All concerns regarding RFP 249, including proper notification of meetings, were addressed through R678-09 which rejected all proposals.

BHG Concern 2:

"On July 31, 2009, HCD advertised the GOB ITN for the Northside and Caribbean Boulevard Sites. A public meeting was held on August 3, 2009, to, among other things, review the terms of the ITN and to discuss the selection process. HCD stated at that meeting that a selection committee of professional staff of county employees would be assembled to score applications. Based upon the scoring of the selection committee, HCD would then enter into negotiations with applicants. Please note that there is no mention of the selection committee, its composition, methodology or findings included in the background Memorandum provided to the Housing & Community Development Committee. Applicants submitted proposals to HCD on August 20, 2009."

DHCD Response 2:

The GOB ITN was advertised by DHCD on July 31, 2009, and a Technical Assistance Workshop was conducted on August 3, 2009, to review the terms of the ITN and to discuss the negotiation process to the extent outlined in the GOB ITN. On August 3, 2009, and August 11, 2009, respectively, Addendum #1 and Addendum #2 were e-mailed to all GOB ITN responsible applicants. Addendum #1 detailed the General Obligation Bond (GOB) Administrative Rules applicable to the GOB ITN and Addendum #2 responded to inquiries from the prospective applicants and responses from the DHCD staff regarding the GOB ITN for the Northside Station and Caribbean Boulevard sites.

The GOB ITN Negotiation Committee members, a diverse group of professional County employees, were appointed by the County Manager on September 9, 2009, to commence competitive negotiations with all of the responsible applicants for GOB RFP #249. On September 11, 2009, all responsible applicants were sent 1) a copy of the memorandum appointing the Negotiation Committee, 2) the September 15, 2009, presentation agenda, and 3) the oral presentation schedule correspondence, via both regular mail and electronic mail. The composition and methodology of the Negotiation Committee was discussed and explained by the Negotiation Committee's chairperson prior to the oral presentations and at the beginning of each negotiation session, which were publicly advertised on the Miami-Dade County Calendar. The proposal deadline was extended from August 20, 2009, to August 31, 2009, at the request of one of the principals of Biscayne Housing Group. Proposals were received on August 31, 2009. Lastly, the findings of the GOB ITN Negotiation Committee were presented to the HCDC in the March 25, 2010, resolution package. As a response to the noted item under BHG Concern #2, it is correct that the members of the Negotiation Committee were not listed in the Manager's accompanying memorandum in the agenda item. This information had been provided earlier and as such, it was decided that it was not necessary that the employees' names needed to be included in the memorandum.

BHG Concern 3:

"On Friday, September 11, 2009, I telephoned HCD and inquired as to the status of the ITN, I was informed that all applicants had been sent letters on September 3, 2009 that scheduled public presentations for Tuesday, September 15. Biscayne Housing Group only received this letter after requesting a copy on September 11. We then requested the same amount of time to

prepare for the public presentations as was afforded the other applicants. The presentations required the participation and coordination of BHG staff with our nonprofit partner, The 100 Black Men of South Florida, our architect, Crowell Architects, and our minority business hiring consultant, One Choice. Our request to have the same amount of time to prepare for the public presentations as the other applicants was denied. Unlike the other applications, we had one day in which to prepare our power presentation. (Please see attached Exhibit 1)"

DHCD Response 3:

All GOB ITN proposers were initially informed of the September 15, 2010, GOB ITN Presentations to the GOB ITN Negotiation Committee through the Invitation to Negotiate with the Developers for the Northside Station and the Caribbean Boulevard Sites Addendum #2. Addendum #2 was e-mailed to all the ITN proposers, including BHG, on August 11, 2009. BHG had approximately 35 days to prepare for their presentation before the ITN Negotiation Committee on September 15, 2009. Additionally, on September 3, 2009, a letter was mailed to all proposers, including BHG, reminding the proposers of the oral presentation date. Additionally, on September 11, 2009, staff had numerous conversations and exchanged numerous emails with BHG regarding the September 3, 2009, correspondence, regarding the receipt of the September 3, 2009, letter. Ultimately, the letter of September 3, 2009 was faxed, sent via e-mail and mailed again to BHG on September 11, 2009, after verifying that the address listed in DHCD records

was in fact the correct address. As of this date, none of the September 3, 2009, nor the September 11, 2009, letters have been returned to HCD as undeliverable.

BHG Concern 4:

“After all applicants conducted public presentations, the selection committee scored all of the applications except one, that of RCDG I, LLC. The RCDG I, LLC application was deemed nonresponsive. However, we have learned that, months later, RCDG I, LLC was invited back into the process and allowed to give a public presentation to the selection committee in January 2010. BHG was neither noticed nor invited to this public meeting (Please see attached Exhibit 2).”

DHCD Response 4:

On September 10, 2009, DHCD mailed a letter to RCDG I, LLC advising the proposer that due to the late submission of its proposal, DHCD would not evaluate the proposal. Subsequently, the Miami-Dade County Attorney’s Office opined that the application from RCDG I, LLC was responsive and instructed HCD to negotiate with RCDG I, LLC because the BCC resolution directed DHCD to conduct negotiations with all of the responsible applicants to GOB RFP #249. All GOB ITN applicants were notified by regular and electronic mail of their own negotiation sessions. (Letters were sent to the ITN applicants dated September 28, 2009, informing the applicants of the next phase of negotiations, the ITN Negotiations Meetings. Further, all ITN Negotiation meetings were advertised in the Miami-Dade County Calendar.)

ITN applicants were not notified by personal communications of the other applicants’ negotiations. (Letters were sent to the ITN applicants dated September 28, 2009, informing the applicants of the next phase of negotiations, ITN Negotiation Meetings. All ITN Negotiation Meetings were advertised in the Miami-Dade County Calendar.) Schedules of the Negotiation Meetings were available at each of these sessions: September 29, 2009; October 10, 2009; October 21, 2009; October 22, 2009; October 27, 2009; October 28, 2009; November 4, 2009; November 5, 2009; December 1, 2009; and January 19, 2010. Moreover, all GOB ITN Negotiation Committee Meetings with RCDG I, LLC were published on the Miami-Dade County Calendar, as were all negotiation sessions with the other responsible applicants before the GOB ITN Negotiation Committee. RCDG I, LLC was invited on January 12, 2010 to make a presentation before the GOB ITN Negotiation Committee on January 19, 2010.

BHG Concern 5:

“On March 19, 2010, the Housing & Community Development Committee published its March 25 Agenda and Memorandum in connection with Agenda Item No. 3(F). The Memorandum makes no mention of the ITN selection committee. It is alarming to note that the applicant who was ranked last by the selection committee has actually been awarded the Northside Station development rights. In other words, HCD established a public scoring and selection procedure that was later totally discarded without explanation.”

DHCD Response 5:

It is assumed that this concern is referring to the evaluation/scoring before the negotiations began. On September 23, 2009, before the negotiation meetings began, the GOB ITN Negotiation Committee evaluated and scored the GOB ITN Northside Station site presentations and proposals as part of Phase I. In Phase I, the Negotiation Committee scored the Northside Station site applicants as follows: Pinnacle (94.8), Biscayne (93.6), and Carlisle (93.0). After all the negotiation meetings were held for the Northside Station site, in Phase II, the Negotiation Committee ranked the ITN applicants in the following order on November 4, 2009: Carlisle (1), Pinnacle (2) and Biscayne (3). If this assumption is correct, then Carlisle was in third place after the scoring, but in first place after negotiations and final rankings. The selection criteria was explained and consistently applied throughout this process. The scoring status in Phase I was used to determine the order of negotiations. The BCC Resolution No. R-678-09 directed HCD to conduct negotiations with all of the responsible applicants to GOB RFP #249.

The GOB ITN Negotiation Committee was established by the County Manager on September 9, 2009. All GOB ITN Negotiation Committee meetings were advertised on the Miami-Dade County Calendar. The GOB ITN Negotiation Committee evaluated, scored and ranked all ITN applications as stated in the March 15, 2010, Memorandum submitted to the Miami-Dade County Board of County Commissioners' Housing and Community Development Committee (HCDC).

BHG Concern 6:

"Biscayne Housing Group protests the following aspects of the ITN: (1) Notice: BHG was repeatedly not provided the same notice rights as other applicants; (2) Selection Committee: HCD has apparently totally disregarded the findings of the selection committee and the scoring process established at the August 3 public meeting and, instead, arrived at findings in secret in complete opposition to the findings of the selection committee."

DHCD Response 6:

BHG was informed of the September 15, 2010, GOB ITN Presentations to the GOB ITN Negotiation Committee, the same as all the other applicants, through the Invitation to Negotiate with the Developers for the Northside Station and the Caribbean Boulevard Sites Addendum #2, Question/Answer # 11. Addendum #2 was e-mailed to all the ITN proposers, including BHG, on August 11, 2009. BHG had approximately 35 days to prepare their presentation for the ITN Negotiation Committee on September 15, 2009. Further additional correspondence between BHG and DHCD occurred as follows:

- September 3, 2010: all ITN applicants, including BHG, were mailed an invitation letter to present to the GOB ITN Negotiation Committee on September 15, 2009.
- September 11, 2009: BHG principal said that he had not seen the September 3, 2009 letter. However, the September 3, 2009, letter was never

returned to DHCD as undeliverable and HCD Staff verified BHG's mailing address.

- September 11, 2009: BHG was e-mailed and faxed the September 3, 2009, letter and the signed copy was again sent via US Mail.
- September 11, 2009: all ITN applicants were individually e-mailed: 1) the location and time of their oral presentation before the ITN Negotiation Committee, 2) the oral presentation agenda; and 3) a copy of the September 9, 2009 memorandum from the County Manager appointing the Negotiation Committee,

The GOB ITN Negotiation Committee evaluated, scored and ranked all ITN applications in publicly advertised meetings conducted in the "sunshine". All presentations and meetings were advertised in the Miami-Dade County Calendar. All ITN applications were ranked based on the ITN Negotiation Committee's evaluations, scores and negotiations for each of the ITN proposals as stated in the March 25, 2010, Memorandum to the Miami-Dade County BCC's HCDC.

All ITN Negotiation Meetings were audio taped, with transcribed minutes of each session. Agendas were prepared, and evaluation and ranking sheets were maintained.

It is assumed that the second portion of this concern is referring to the evaluation/scoring before the negotiations began. On September 23, 2009, before the negotiation meetings, the GOB ITN Negotiation Committee evaluated and scored the GOB ITN Northside Station site presentations and proposals as part of Phase I. In Phase I, the Negotiation Committee scored the Northside Station site applicants as follows: Pinnacle (94.8), Biscayne (93.6), and Carlisle (93.0). (There is less than a 2-point margin between the highest and lowest scores.) The scoring was done prior to commencing negotiations and served the sole purpose of determining the order of the negotiation meetings. After the negotiation meetings were held for the Northside Station site, in Phase II, the Negotiation Committee ranked the ITN applicants in the following order on November 4, 2009: Carlisle (1), Pinnacle (2) and Biscayne (3). The rankings were re-confirmed by the committee on January 25, 2010. If this assumption is correct, then Carlisle was in third place after the scoring, but in first place after negotiations and final rankings. The negotiation process was explained and consistently applied throughout this process. On September 23, 2009, before the negotiation meetings, the ITN Negotiation Committee also evaluated and scored the GOB ITN Caribbean Boulevard site presentations and proposals as part of Phase I. In Phase I, the Negotiation Committee scored the Caribbean Boulevard site applicants as follows: Pinnacle (90.2), Biscayne (86.5), and Carlisle (85.6). Note the scoring is less than five (5) points between the highest/lowest scores for the Caribbean Boulevard site. The RCDG I, LLC proposal was not considered at this time.

Subsequently, it was deemed necessary to score the RCDG I, LLC proposal as explained later on in this supplemental memorandum. RCDG I, LLC earned a score of 87.6 which resulted in the second position.

The scoring was done prior to commencing negotiations. After all the negotiation meetings were held for the Caribbean Boulevard Site, in Phase II, the Negotiation Committee ranked the ITN applicants in the following order on January 25, 2010: Pinnacle (1), RCDG I, LLC (2), Biscayne (3) and Carlisle (4).

BHG Concern 7:

“The allocation of precious resources, in this case the land for the development of critically needed affordable housing, must be conducted with fairness and in the open. The current ITN process has failed on both accounts and violated the rights of BHG. We respectfully request a meeting with you to discuss this matter.”

DHCD Response 7:

DHCD scheduled a meeting with BHG for April 1, 2010, to discuss this matter; however, the meeting was cancelled by DHCD due to a conflict in scheduling.

Subsequently, DHCD scheduled and held a meeting with BHG Principals, Michael Cox and Gonzalo DeRamon on Monday, May 3, 2010, to discuss these matters. At the meeting, Biscayne Housing Group expressed their concerns with the process and the outcome. The DHCD Director informed BHG that DHCD will prepare a response to their March 23, 2010 letter to Miami-Dade County.

The Related Group

The Related Group Concern 1:

“We were originally excluded from the presentation and negotiation process and then received an invitation to negotiate on January 12, 2010; months after the other presentations were made. Our presentation was ultimately made to the committee on January 19, 2010. In fact one of the committee members was not even present to hear our presentation. And yet, it was our understanding that this committee member voted on the respective projects.”

DHCD Response 1:

The Miami-Dade County Attorney’s Office opined that the application from RCDG I, LLC was responsive and instructed HCD to negotiate with RCDG I, LLC because the BCC resolution directed DHCD to conduct negotiations with all of the responsible applicants to GOB RFP #249. RCDG I, LLC (Related) made their presentation to the General Obligation Bond (GOB) Invitation to Negotiate (ITN) Caribbean Boulevard Negotiation Committee on January 19, 2010. The GOB ITN Caribbean Boulevard Negotiation Committee was appointed by the County Manager on September 9, 2009. The ITN Caribbean Boulevard Negotiation Committee was composed of six (6) members, with five (5) voting members. One of the Negotiation Committee members, Maria Rodriguez-Porto, was unable to attend RCDG I, LLC’s January 19, 2010, presentation to the Negotiation Committee.

RCDG I, LLC presented to the remaining four (4) Negotiation Committee members. The Caribbean Boulevard Negotiation Committee, with the exception of Ms. Rodriguez-Porto, scored and evaluated the RCDG I, LLC proposal, at the January

19, 2010, meeting resulting in the score of 90.5, number 2 in scoring order. Subsequently, on January 25, 2010, Ms. Rodriguez Porto was able to score RCDG I, LLC, which reduced their score to 87.6, however, they still remained at the number 2 position.

To ensure that Mrs. Rodriguez-Porto was as fully prepared as the other committee members, she reviewed RCDG I, LLC's original proposal, the updated information on the project distributed by RCDG I, LLC at the January 19, 2010 Presentation meeting and listened to the audio tapes of the January, 19, 2010, meetings. All of these actions by Ms. Rodriguez-Porto were done prior to commencing the negotiation with RCDG and prior to the discussions of the negotiation committee to determine the final rankings.

On January 25, 2010, the ITN Caribbean Boulevard Negotiation Committee reconvened to rank all of the ITN Caribbean Boulevard proposals. The first order of business required the completion of phase I scoring with the submittal of Ms. Porto's scores of the RCDG I, LLC proposal.

Thereafter, the ranking process commenced for the applicants that yielded the following order:

1. Pinnacle
2. RCDG I, LLC
3. Biscayne Housing
4. Carlisle

Although Ms. Rodriguez-Porto was able to rank the four projects with a thorough understanding of each, a review of her ranking sheets was performed to ensure proper due diligence was performed prior to submitting a final recommendation to the Board. A review of the ranking sheets showed RCDG I, LLC in second place regardless of Ms. Rodriguez-Porto's vote.

The Related Group Concern 2:

At the end of the presentation, we were advised that we would be notified of the committee's decision in a timely fashion with final scores distributed accordingly. Since the presentation, we have not had any communications with your department and subsequently learned that rankings were made and a resolution was sent to the County Commission for ratification of the awards."

DHCD Response 2:

At the conclusion of the Negotiation meetings, Phase II, for the Caribbean Boulevard Site, on January 25, 2010, the Negotiation Committee ranked the ITN applicants in the following order: Pinnacle Housing Group (1), RCDG I, LLC (Related) (2), Biscayne Housing Group (3) and Carlisle (4). All ITN applications were ranked based on the GOB ITN Negotiation Committee's evaluations, scores, and negotiations for each of the ITN proposals as stated in the March 25, 2010, Memorandum submitted to the Miami-Dade County Board of County Commissioners Housing and Community Development Committee. No communication has been distributed to the proposers concerning the final

rankings. Note that tabulations were recorded during the final meeting of the negotiations of the committee on January 25, 2010, a meeting that was advertised and conducted in the "Sunshine."



Irene Taylor-Wooten
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