



ATTORNEYS AT LAW
106 EAST COLLEGE AVENUE, SUITE 900
TALLAHASSEE, FL 32301-7732
850.222.6100
850.561.6475
WWW.FOLEY.COM

rhosay@foley.com
850.513.3382

MEMORANDUM

CLIENT-MATTER NUMBER
123214-0101

TO: JEA Negotiation Team
Jenny McCollum
John McCarthy

FROM: Robert Hosay
Benjamin Grossman
Mallory Neumann

DATE: November 6, 2019

RE: Negotiation Instructions

Negotiation Instructions

JEA ITN #127-19 for Strategic Alternatives

Please carefully review all of the following instructions regarding the role and responsibilities of a Negotiator for JEA's ITN # 127-19 for Strategic Alternatives.

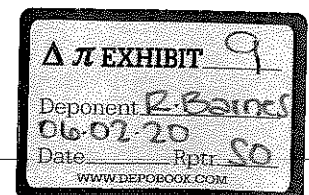
Role of Negotiators:

1. During the procurement process for the ITN, JEA selected the Respondents it intends to negotiate the terms of a potential contract. At the conclusion of negotiations with the Respondents, JEA may award a contract to the Respondent that JEA believes provides the best value. The role of the Negotiators is to devise strategies to use in negotiation sessions to secure contract terms that would provide the best value and to use such strategies in the negotiations sessions with the selected Respondents. Negotiators will also recommend an award.

Questions/Contacts:

2. Questions regarding the ITN and the negotiation process should be directed to the Designated Procurement Representatives.

Designated Procurement Representatives:



Jenny McCollum

Phone: (904) 665-4103

John McCarthy

Phone: (904) 665-5544

Email: StrategicAlternative@JEA.com

Negotiation Rules:

3. Negotiate the terms of potential contracts with the Respondents and make an award recommendation in consideration of the purpose, goals, and questions being explored in the ITN.
 - a. JEA's goals include maximizing customer, community, environmental, and financial value over the long term.
 - b. The ITN will explore the questions of: (1) whether there is a path available to JEA to achieve its goals; (2) whether there are alternative structures that allow JEA to achieve its goals; (3) which alternative structure best achieves JEA's goals; and (4) who is the best partner to help JEA achieve its goals.
 - c. The goals of the ITN are to receive competitive and creative Replies that provide:
 - i. Greater than \$3 billion of value to the City of Jacksonville
 - ii. Greater than \$400 million of value distributed to customers (\$350+ paid to each JEA account; \$1,400+ for customers with electric, water, sewer, and irrigation accounts)
 - iii. At least 3 years of contractually guaranteed base rate stability for customers
 - iv. Commitment to develop and provide the City of Jacksonville and the Duval County Public School system with 100% renewable electricity by the year 2030
 - v. Commitment to develop and provide 40 MGD of alternative water capacity for Northeast Florida by the year 2035
 - vi. Protection of certain employee retirement benefits
 - vii. Maintenance of substantially comparable employee compensation and benefits for 3 years
 - viii. Retention payments to all full-time employees of 100% current base compensation
 - ix. Commitment to new headquarters and employees in downtown Jacksonville, contributing to the economic development of the community
4. The award is to be made to the vendor with the BAFO that the Negotiation Team assesses as providing the best value to JEA based upon the Selection Criteria set forth in the ITN.

The selection criteria to be utilized in selecting a recommended awardee include, but are not limited to, the following:



FOLEY & LARDNER LLP

- i. The Respondent's ability to satisfy the enumerated goals as stated in Section 1.1 of the ITN
- ii. Overall value to the City of Jacksonville and JEA's customers
- iii. The Respondent's capability to deliver innovation to JEA's existing operations
- iv. The feasibility of the Respondent's proposed solution and ability to consummate the plan proposed by the Respondent on a timely basis
- v. The ability of the Respondent to satisfy priorities of JEA, as articulated in the Evaluation Criteria and/or during the Negotiation Phase

Scheduling Negotiation Strategy Sessions and Negotiation Sessions with Respondents:

5. Negotiators shall contact the Designated Procurement Representatives to schedule negotiation strategy sessions with the members of the Negotiation Team and negotiation sessions with the Respondents.
6. No meetings between the Negotiation Team members or with the Negotiation Team and the Respondents should occur without being scheduled through the Designated Procurement Representatives.

Recording Sessions/Public Records:

7. All negotiation strategy sessions between the Negotiation Team are "shade meetings," meaning that the negotiation strategy sessions are not open to the public. However, negotiation strategy session meetings become public record after the conclusion of the procurement. All negotiation strategy session meetings must be recorded in their entirety and retained.
8. All negotiation sessions with the Respondents are "shade meetings" and are not open to the public. However, negotiation sessions with Respondents become public record after the conclusion of the procurement. All negotiation sessions with the Respondents must be recorded in their entirety and retained.
9. All documents and notes associated with the negotiations become public record. If the Negotiator takes notes, the notes must be provided to the Designated Procurement Representatives at the end of the negotiation phase.
10. Any documents presented to the Negotiation Team by the Respondents during negotiation sessions become public records. Any documents a Negotiator receives from the Respondents during a negotiation session must be provided to the Designated Procurement Representatives at the end of the negotiation phase.

Ex Parte Communications:

11. The Negotiators shall not speak with Respondents outside of the scheduled negotiation sessions. The ITN strictly prohibits ex parte communications. An ex parte communication is “any communication concerning this ITN during the time beginning when the ITN was released on August 2, 2019 through the time of an award resulting from this solicitation process between a firm or any agent or representative of a firm submitting or potentially submitting a Reply and any JEA board member, employee, agent or representative (other than the two Designated Procurement Representatives).” “Examples of such prohibited communications include but are not limited to: details or merits of or participation in this ITN by which a Respondent becomes privy to information not available to the other Respondents.” See Addendum 3 to the ITN.
12. If a Negotiator is contacted regarding the ITN, the Negotiator shall not reply to the communication and must immediately advise the Designated Procurement Representatives of the contact.

Improper Influence:

13. If an attempt is made to influence a Negotiator, the Negotiator must immediately report the incident to the Designated Procurement Representatives.

Confidential Information:

14. At this time, all material submitted as part of the Replies and any information disclosed in negotiation sessions with Respondents is confidential. Do not discuss any information obtained from the Replies or in negotiation sessions with anyone outside of the designated Negotiation Team unless otherwise authorized by the ITN or by the Designated Procurement Representatives.

Use of Subject Matter Experts:

15. The Negotiation Team is permitted to use the assistance of the designated subject matter experts. If the assistance of a subject matter expert is desired, the Negotiation Team must contact one of the Designated Procurement Representatives. The Designated Procurement Representatives will connect a subject matter expert to the Negotiation Team. To obtain a list of subject matter experts, please refer to the Subject Matter Expert Memorandum.

Reserved Negotiation Rights

16. During the Negotiation Process, JEA has reserved the right to exercise any or all of the following non-exhaustive list of rights at any time during the Negotiation Process:



FOLEY & LARDNER LLP

- a. Schedule additional negotiating sessions with any or all Respondents
- b. Require any or all Respondents to provide additional, revised, or final written Replies addressing specified topics
- c. Require any or all Respondents to provide written BAFO(s)
- d. Require any or all Respondents to address or match frameworks, concepts, terms, or conditions offered by any other Respondent
- e. Arrive at an agreement with any Respondent, finalize principal contract terms with such Respondent, and terminate negotiations with any or all other Respondents, regardless of the status of or scheduled negotiations with such other Respondents
- f. Decline to conduct further negotiations with any Respondent
- g. Re-open negotiations with any Respondent
- h. Take any additional administrative steps deemed necessary in determining the final award, including additional fact-finding, evaluation, or negotiation where necessary and consistent with the terms of this ITN
- i. Review and rely on relevant information contained in the Replies
- j. Check references provided to obtain independent verification of the information provided by Respondents. JEA also reserves the right to contact references not provided by a Respondent
- k. Request financial models different from those initially provided by a Respondent. This information may be used in negotiations to determine the best financial model to be used in any resulting contract
- l. Waive Minor Irregularities if JEA determines that doing so will serve the best interest of JEA

JEA has sole discretion in deciding whether and when to take any of the foregoing actions, over the scope and manner of such actions and the Respondent or Respondents affected, and whether to provide concurrent public notice of such decision.