

# DPB & ASSOCIATES

ENGINEERING CONSULTANTS

Tallahassee, Florida

October 23, 2017

Mr., Lewis Shelley, City Attorney  
City Hall, City of Tallahassee  
300 South Adams Street  
Tallahassee, Florida 32301

Re: Written Notice of Intent to File  
Protest of Recommended Award  
RFP No. 0122-17-RM-RC

Dear Mr. Shelley:

This information is submitted to the City Attorney's Office, in lieu of the Procurement Services Division, because our company, DPB & Associates, LLC and its owners believe that we have "standing" to Protest the Recommended Award for the referenced RFP due to improprieties and misconduct by the City; however, the RFP does not allow us to file this Protest and Complaint with the Procurement Division. It is our contention that the City intended to and caused DPB to change their RFP submittal status from "Actual Bidder" to subcontractor, which caused the loss of DPB's standing to protest the recommended award for the referenced RFP project. DPB contends that we were misled by the City when told that it would be "better for everyone" if DPB did not submit for the Market District RFP as a Prime Consultant (as we were intending to do at that time) because of Steve Stewart's criticism and the "name recognition thing", but were instead recommended to serve as a subcontractor to another consultant. In addition, we contend that we were purposefully misled by City Management, through City Staff, to believe that if DPB did as recommended by the City, the discrimination against DPB, intended to address Steve Stewart and Tallahassee Report's continued criticism of the City and City Commissioner Miller based upon her relationship to DPB through her brother-in-law Richard Buss would end. However, as time would prove, we were being purposefully misled by City Management, while other City Officials and employees continued with their conspiracy to discriminate against DPB by influencing the award of bid for the referenced project, as further described below.

As you know, we are longtime Tallahassee residents and have nothing but the City's best long-term interest in mind in confronting the City's actions honestly and head on. However, the controversy surrounding City Hall has taken on new meaning for us over the last several months and appears to be more accurate than we ever imagined.

Would you please review the following and attached materials and, if you would like to discuss it personally with DPB's owners, we are at your disposal and will adjust our schedules accordingly. Our goal is simply to have Management's "rigged bid process" ended, the respective recommendation of award rejected and the project re-advertised for new proposals, with the assurance that the interference will cease and there will be no retribution.

As I know you will appreciate after reading this material and by our having brought it to your attention, this is an important matter to us and we are obviously prepared to confront it. We certainly want to work cooperatively with your office and hope we can resolve it through bid rejection and re-advertisement; there

are certainly enough irregularities to do so. However, if you are not able to do so, we ask that you advise us quickly, so may seek another venue.

### Notice of Intent to File Protest

As referenced, the following is written protest of the Recommendation of Award for RFP No. 0122-17-RM-RC, accompanied by a DPB check for \$5,000.00 as the Required Protest Bond.

This protest is filed by DPB and Associates, LLC, a City certified Minority Business Enterprise, which we believe relieves us of the responsibility to post Bond on City projects, which we interpret to include the City Grievance Procedure Bond. Assuming that interpretation is correct, please notify DPB Vice-President Lynda M. Pfundstein, by telephone at (850) 556-6264, and we will pick up DPB's Protest Bond check and provide a copy, with explanatory notation, for the City's records. As a small MBE company, the \$5,000.00 Bond is a significant amount of money and its return to DPB will reduce the burden on our minority firm.

The term "City", where shown herein, does not include City staff that are uninvolved in the following described improprieties and misconduct. Otherwise, the term is a comprehensive reference to, at present un-named, members of the City staff and others alleged to be involved with the following described improprieties and misconduct.

Identification of specific individuals shouldn't be necessary to implement a Stay on Procurement During Bid Protest and should continue to remain confidential, pending further directions from appropriate authorities.

The following protest alleges and provides sufficient supporting information to illustrate that at present un-named City staff purposefully and with specific intent conspired to:

1. discriminate against DPB and Associates, LLC, a minority-owned company, by conspiring to influence, attempting to influence and influencing the outcome of the referenced City of Tallahassee public bid solicitation with the intent to exclude DPB and it's minority African-American, Woman-minority and other owners from any opportunity to benefit, in whole or in part, from the referenced competitive RFP contract award, see Florida Statute **CHAPTER 838 - BRIBERY; MISUSE OF PUBLIC OFFICE**, and
2. discriminate against DPB and it's minority African-American and Woman owners and others by conspiring to deprive them of their rights to Equal and Fair Treatment under law, and
3. discriminate against DPB and its minority and other owners by conspiring to deprive them of their rights for Equal and Fair Consideration available to other Tallahassee Citizens.

Accordingly, DPB & Associates, LLC, its minority African American and Woman owners and other owners respectfully request that the City of Tallahassee implement a Stay on Procurement During Bid Protest to allow the City Attorney or other authorities sufficient time determine whether the City has engaged in improprieties, misconduct and discrimination including, but not limited to:

- A. attempting to influence or influencing the referenced City of Tallahassee public bid solicitation,
- B. unethical violations of Tallahassee citizens privacy in secretly auditing private citizens and the work of a private company with no notice to the private citizens, company owners or company that such an audit was to be conducted nor any opportunity for the private citizens, company owners or company to protest the City's secret audit, take legal action to defend themselves or to prevent the City from conducting the secret audit or to respond to, provide input or rebut the audit's secret findings,

- C. conducting an audit of private Tallahassee citizens and a private company without the required City Commission direction and approval required to conduct secret audits of private city residents, company owners or company,
- D. publishing and disseminating a draft audit report with only the City's interpretation as to the findings from a secret audit of private citizens and a private minority owned company. Moreover, with no notice or regard as to the affect on private citizens, company owners or company or to the affect that such publication and dissemination could have on the minority owners and their respective practice of private business. All without any opportunity for private citizens or others named in the secret audit to object, respond, provide input or rebut the auditor's findings before it was published and disseminated to unknown persons, and
- E. other unspecified improprieties or misconduct.

This following information also demonstrates that the integrity of the referenced City RFP bid process has been irreparably compromised by improprieties and misconduct by City staff in conspiring to influence the referenced City competitive bid solicitation process. Further, the compromised bid process has resulted in a flawed recommendation for award of contract and it is necessary that the City reject the current recommendation of award of contract.

As a solution to address the following irregularities, the City RFP should be re-advertised to solicit new proposals under fair and equal treatment of law, including provisions for alternative management supervision of the City's RFP process, as is necessary to re-establish the integrity of the City's bid solicitation process.

As will seen in the following information, City staff has discriminated against DPB and its minority and other owners by conspiring to deprive them of their right to fair and equal treatment under law. Moreover, to exclude DPB from any opportunity to participate, in whole or in part, from the referenced RFP award in one or a combination of the following methods and purposes:

1. Racial and/or Gender Discrimination against DPB, a locally owned Minority Business Enterprise (MBE) consulting company with more than 80% ownership by minority African American and Minority-Woman. With such discrimination possibly due to racial or gender prejudice, or the minority owned company's success in the local consulting community and its advancement in replacing Non-MBE companies to serve as the Prime Consultant, versus traditional relegation of MBE's to subcontractor roles, and providing Prime Consultant services directly to the City, local County government and private sector.
2. Discrimination related to an attempt by City staff to address Steve Stewart and Tallahassee Report's continued criticism of the City and City Commissioner Miller based upon her relationship to DPB through her brother-in-law Richard Buss. City staff has previously reported and "warned" DPB of the City's proposal to mitigate Stewart's criticism by discriminatorily eliminating DPB from any current or future services as a City contractor. The purpose of this discrimination is to terminate all future City payments to DPB in order to eliminate those payments to DPB from showing up on the City's "Check-Register" website, which is known to be monitored by Steve Stewart.

Although it would be seemingly implausible to Tallahassee citizens, it is clearly shown in the following that the City conspired to exclude DPB and its owners from participating, in whole or in part, from the referenced RFP award in order to protect the City and Commissioner Miller from additional criticism by Steve Stewart.

As an initial step, with no indication of any impropriety by DPB and with no regard for DPB's minority or other owners or the well-being of DPB's employees, their families or children, the City stopped all City payments to DPB with no cause, notice or opportunity for recourse. The City's stated and obvious purpose in doing so was to eliminate any further payments to DPB and, thereby, eliminate additional opportunity for Steve Stewart to use such payments to continue his criticism of the City and Commissioner Miller.

Moreover, the City advised DPB that their existing contracts, which were already in the City's approval process, would not be approved, again with no cause, notice or opportunity for recourse.

Further, that DPB, a small minority-owned company, would not receive any further City contracts or payments, again with no cause, notice or opportunity for recourse.

However, it will be shown that the City subsequently offered to release and approve DPB's T.O. contracts if DPB would arrange with another company to **"run DPB's payments through the other company"**. DPB declined to do so because the suggested arrangement could be interpreted as DPB defrauding the City, which was later confirmed as correct by DPB attorneys.

Tallahassee citizens, who are familiar this information, believe it is clear that, regardless of other City explanations, the City discriminated against DPB and Associates, LLC, a minority-owned company and influenced a City RFP public bid process to exclude the minority-owned DPB from any opportunity to participate in the RFP contract regardless of DPB's established and well-deserved qualifications. Moreover, that the purpose of this was to protect the City and Commissioner Miller from additional criticism by Steve Stewart.

### Preliminary Background and Timeline:

- The following occurred from approximately June to mid-October of this year.
- DPB and Associates, a local Minority Business Enterprise (MBE) consulting company (with majority ownership by an African-American and a Woman-Minority as the second largest owner) has extensive experience and working knowledge as engineering consultants for the City's Market District Project (M.D.),
- DPB and Associates (DPB) has worked for 2 years with City staff as Project Engineers for the M.D. project including preparation of the preliminary project engineering study, engineering services related to City Electric's relocation of electric transmission tower and Phase I and Phase II of the Market District project,
- City Stormwater Division staff, functioning as the City's Project Manager for the Market District project, provided the Market District RFP Evaluation Committee (EC) with excellent references for DPB,
- Since its organization in 2011, DPB has risen in the local consulting community to serve as the Prime Consultant on projects, providing consulting services to the City, local County government and the private sector,
- In June of this year, DPB's work activity with the City on the Market District project was moving forward rapidly, without any issues. DPB had completed Phase I of the Market District project ahead of schedule and the City had directed DPB to proceed with Phase II, which is a major project component. The City also directed DPB to prepare a design to relocate an existing commercial parking lot located on the project site. To those ends, the City directed DPB to prepare contracts for both projects and that City request for additional DPB contracts, totaling approximately \$295,000.00, is clear confirmation as to the City's satisfaction with DPB's performance and work quality,
- In addition, City Stormwater Division staff will also confirm there were no problems or issues with DPB's performance on the M.D. Project,
- Moreover, a City Audit, just being completed, also confirms there were no problems or issues with DPB's performance and work quality on the M.D. project,

- In July, the City Stormwater Division, issued a competitive RFP for design services for Phase III of the M.D. Project; a large project with an estimated construction cost of \$16 million, with typical design consulting fees in excess of \$1.6 million,
- Based upon DPB's prior two years of project specific design experience, detailed project knowledge and excellent work performance on Phases I & II of the M .D. project, the MBE company was considered a major potential contender for award of the M.D. Phase III RFP design contract,
- In that event, DPB would become the City of Tallahassee's first African-American and Women-owned MBE to be the Prime Consultant on a multi-million dollar City consulting contract,
- However, also in July, Steve Stewart published articles in the Tallahassee Reports newspaper and blog criticizing the City and City Commissioner Miller, who is a sister-in-law of Richard C. Buss, a DPB engineer who has worked extensively on the City's Market District project,
- In regard to Stewart's articles, it is critical to note that DPB has no experience or connection, positive or negative, with Stewart and there is nothing in DPB's history or the history of any DPB employee that would merit any criticism by Stewart,
- Stewart's articles also singled out Miller's husband, John Buss, a managing engineer for the City, inferring that Buss had acted improperly in signing payment approvals for DPB. However, Stewart selectively ignored that Buss is required, as part of his position with the City, to review and approve or disapprove payments to all engineering consultants and contractors providing services or work to City in his area of oversight. Further, that such payments are approved at three preceding levels of engineering review and approval prior to review by Buss and subsequently by others prior to approval and signature by the City Manager or his designee,
- Moreover, Stewart omitted the critical fact that all of the work Stewart referenced in his articles had been completed under DPB's Continuing Services Agreements with the City, all of which were awarded to DPB based upon competitive RFQ's issued by the City,
- In addition, subsequent to Stewart's articles, the City Auditor completed an audit of the City Stormwater Division, Project Managers for the City's M. D. project, and will issue a final report within the next few weeks. The Audit Report will dismiss all of Stewart's inferences of wrongdoing by DPB, Richard Buss or John Buss. The Audit found no wrongdoing had occurred with respect to DPB obtaining work from the City and that DPB's work was competitively priced, provided high quality work, completed their work on schedule and that no inappropriate amount of work had been assigned to DPB,
- However, at some time after Stewart's articles began criticizing the City and Commissioner, the City implemented an effort to eliminate DPB from any further work with the City because the **"City can't take any more Steve Stewart criticism of the City and Commissioner Miller, based upon her relationship to DPB through her brother-in-law Richard Buss"**,
- In addition, the Stormwater Division's release of the Phase III project RFP raised an even larger concern for the City as to what Stewart would write if DPB won the design contract competition for the \$16,000,000.00 Phase III project. Particularly, since DPB was the major potential contender for award of the M.D. Phase III RFP contract, based upon prior project experience, project knowledge, etc.,
- At this approximate point, DPB's business relationship with the City and other conditions began to change, unknowingly as the result of the City having started to discriminate against DPB and to interfere in DPB's practice of business,
- The assumption, as reported to DPB by City Staff, was that if the City eliminated DPB from City work, that would also eliminate any further payments to DPB (all such payments appear on the City's "Check-

Register” website which Stewart monitors) and, thereby, eliminate any additional payments to DPB on the website for Stewart to use in additional articles criticizing the City and Commissioner Miller,

- Although all of the above is seemingly implausible to a typical Tallahassee resident, the following information illustrates that the above is precisely what the City proceeded to do and interviews or depositions with City staff will confirm City statements to subordinate City employees to the effect of **“it is necessary to exclude DPB from winning the Phase III RFP contract”**,
- **The City’s First Attempt** to eliminate DPB, a minority-owned firm, occurred as part of the City’s audit of its own Stormwater Division. As part of that audit, which DPB understands was not ordered or authorized by the City Commission, the City Auditor reportedly contacted private sector companies and questioned them regarding the quality of DPB’s work for the City, even though City Staff has already told the Auditor there were no problems with DPB’s work,
- The question arises then as to why the City Auditor singled out DPB, a small African-American and Minority Woman-owned MBE company, for audit along with the Stormwater Division and why he felt it was appropriate to audit DPB’s private-sector operations with no notice or contact to the private citizen owners,
- The contrasting question is whether the Auditor would have contacted the City’s large company’s private sector business contacts to interview them about the quality of their work. The answer to the rhetorical question is no; however, it is not rhetorical to ask why then the Auditor felt it was appropriate to question the private-sector contacts of a small MBE company,
- In retrospect, the answer is that the City was looking for some form of impropriety to use to eliminate DPB as a City Consultant but did not want DPB to know they had been targeted by the City,
- However, when that failed due to the audit report of no improprieties in any aspect of DPB’S work with the City, the City turned to other means, including attempting to influence the City’s M.D. RFP Bid process as a means of eliminating DPB and, thereby, eliminating criticism of the City and Commissioner Miller, based upon her relationship to DPB through her brother-in-law Richard Buss”,
- **It is important to note at this point, DPB is not some large corporate entity; it is a small company with employees and families. Never-the-less, the City made a conscious decision that, although they already knew DPB had done nothing wrong, the City cancelled all of DPB’s on-going and future work with no notice, no explanation, no opportunity to defend the company and with ABSOLUTELY NO REGARD for the owners or the well-being of DPB’s employees, their families or their children,**
- It is DPB’s understanding that the City Commission is charged with the responsibility of establishing audit requirements for the Auditor but that, based upon reliable City sources, the City Commission did not request, direct or authorize any audit that included a secret audit of the private, minority-owned DPB,
- Further, it is DPB’s understanding that the audit was undertaken without approval or direction from the City Commission; which raises the questions as to who in the City and/or Officials initiated the audit, who in the City and/or City Officials was aware the City’s secret audit of a private minority-owned DPB, what was the purpose of the audit and why was DPB singled out,
- From this information, it is clear that, regardless of no evidence having been provided to support Stewart’s allegations, the City singled out DPB, an African-American and Minority-Woman owned company, and audited the company, including contacting other private sector companies and soliciting their judgement as to the quality of DPB’s work, all with no notice, discussion or opportunity to respond to or challenge the City audit conclusions,



- Again, why would the City audit DPB, a small MBE company, that is ranked 11<sup>th</sup> out of 11 companies in City dollars earned over the last 3 years and that earned less than 10% of the amount the City has paid to the two highest ranked companies,
- In that same period, as a small minority-owned firm, DPB earned less than 10% of the two highest paid companies, Kimley-Horn and Atkins Consultants, which were both paid almost \$5,000,000.00 each by the City, based upon the City's website,
- Why were these other companies not audited? Both companies do enormous amounts of work for Stormwater and other City Departments, but were not audited,
- The only common connection in all of the above questions is the Steve Stewart articles criticizing the City and Commissioner Miller, which answers the question as to **what purpose would auditing DPB serve and the answer is to look for some plausible reason to justify what the City intended to do anyway and that was to eliminate DPB as a means to eliminating the Steve Stewart criticism,**
- Arguably, if a sufficient impropriety had been found by the Auditor, it could have been used to eliminate DPB as a City contractor due to impropriety,
- However, that didn't happen – the Auditor found nothing but good work from good, hard working DPB employees,
- Never the less, it is clear that, DPB, the Minority-Owned firm with the lowest earnings on the City's website list, was audited as **City's First Step** in attempting to eliminate DPB as a means of stopping Stewart's criticism of the City and Commissioner Miller,
- Again, although seemingly implausible to regular citizens, the secret audit of DPB, a small MBE company, by the City will be clearly seen as **the first of three attempts** since July, by the City, to eliminate the minority-owned DPB from providing services to the City, all of which culminated in the City conspiring to influence a City public bid process for the purpose of excluding the minority-owned DPB from any opportunity to participate in the RFP contract, in whole or in part, regardless of DPB's established and well-deserved qualifications for the purpose of eliminating DPB and, thereby, any further payments to DPB from the City's website that Stewart would use to continue criticizing the City and Commissioner Miller,
- Sometime prior to the RFP's July 16th advertisement date, City staff also changed the City's RFP Specification, previously prepared by Stormwater, to add an unnecessary and discriminating requirement to the RFP Specifications stipulating that the design consultants for the M.D. RFP were required to be FDOT Major- Highway design certified, **even though there are no FDOT roads or highways involved in the project, only City streets,**
- Later investigation by DPB determined that this design requirement was not included as part of City Engineering's most recent RFP for the City's Richview Road project. On that basis, it is assumed this requirement was not part of previous RFP's either and that the requirement was added by the City in another attempt to discriminate against and manipulate DPB's proposal since, as a small MBE firm, DPB has no need for and is not FDOT Major - Highway design certified,
- Regardless of that specification, DPB has the necessary civil engineers licensed by the State of Florida and with the requisite engineering skills, knowledge, experience and authority to design City streets. DPB is fully qualified to perform civil engineering design of City streets and, further, has two separate City Continuing Services Agreements, both of which were competitively awarded and both of which authorize DPB to design City streets, including a Continuing Services Agreement previously approved by City Engineering that authorizes DPB to design City streets,

- By specifically inserting this FDOT major highway certification requirement into the RFP Specifications, when there are no highways on the M.D. RFP project, it is clear to experienced engineering consultants that the City was discriminating against DPB. It is clear to experienced Professional Engineers that the City was attempting to force DPB into teaming up with a large FDOT Major - Highway design certified company, who would be expected to insist on being the Prime Consultant due to size and, thereby, force DPB into a subcontractor role with no City payments in DPB's name,
- **The City's Second Attempt** occurred shortly after Stewart's July articles. Regardless of there being no evidence supporting Stewart's inferences, City staff suggested to DPB that it would be "better for everyone" if DPB did not submit for the M.D. RFP as a Prime Consultant because of Steve Stewart's criticism and the "name recognition thing", and recommended that DPB serve instead as a subcontractor to another consultant contract,
- Since it appeared at the time that the suggestion had come from Stormwater Division staff, DPB entertained the idea in the context of all working together,
- However, DPB eventually declined to do so because of the unique opportunity to serve as the first MBE Prime Consultant on a multi-million dollar City of Tallahassee project,
- The City continued to recommend DPB submit as a subcontractor and DPB was eventually influenced to do so by the City which, unknown to DPB at the time, would destroy DPB's standing as a Prime Consultant along with DPB's ability to protest the City's improprieties and misconduct, except through the court system and public opinion venues,
- The above recommendation was **the Second Attempt by the City** to influence the RFP process and eliminate any further payments to DPB from showing up on the City's "check register" website. The intended outcome of this second attempt was that, if DPB was not the Prime Consultant, all future City payments would show up on the City website in the name of the Prime Consultant and not DPB's name (assuming DPB agreed to serve as a subcontractor),
- **The City's Third Attempt** occurred when the City moved to influencing, directly or indirectly, the award of a publicly bid contract by discriminating against DPB,
- Again, it is unarguably clear that DPB had done nothing wrong and was unaware of the **City's discriminatory conspiracy and willingness to destroy a small MBE company, along with all of the company's employees and their families financial security and well-being, to eliminate Steve Stewart's criticism of the City and Commissioner Miller,**
- To accomplish this, in Mid-July the City began to violate the first of a long list of City Purchasing Manual rules regarding the selection of an Evaluation Committee and members for RFP's,
- As its initial action, the City actually dismissed City Stormwater staff's previous, legitimately selected RFP Evaluation Committee, which had been selected in accordance with the City's Purchasing Manual,
- Instead, the City then directed City staff to replace the original, fully qualified Evaluation Committee with other committee-members that **"can be relied upon to not select DPB because the City can't take anymore Steve Stewart criticism of the City and Commissioner Miller based upon her relationship to DPB through her brother-in-law Richard Buss",**
- However, at this same approximate time, various City Staff began to decline to participate in the City's RFP process due to the obvious attempt by the City to influence a public bid,
- With the City now having to act on its own behalf and, under their own names, to influence or "rig" the public bid process, delays began to develop as the City failed to execute the necessary steps required by the City's Purchasing Manual,



- As one critical example, which is probably sufficient to require rejection of the proposals and resubmittal of new proposals, the City failed to appoint the replacement Evaluation Committee until **AFTER THE BID PROPOSALS HAD ALREADY BEEN OPENED BY CITY STAFF**, which is 40 days after the City's Purchasing Manual requirement stating that the Evaluation Committee HAS to be approved the City Manager and MUST be in place prior to advertisement of the RFP (not optional),
- Subsequently, there is a long list of other violations of City Purchasing Manual and other requirements by the City as part of influencing the RFP process, including packing the Evaluation Committee with unqualified replacements subject to influence by a superior manager or supervisor representing the City,
- Although the City has several hundred engineers as employees, all of whom have legitimate qualifications to serve on a technical Evaluation Committee, the City instead selected a Committee comprised of several unqualified individuals with direct ties to City Management. In addition, a third unqualified person was included, along with a fourth person who, while technically qualified, has a potential ethical conflict of interest due to a former employment with one of the companies competing for the M.D. RFP,
- One Committee-member was a former working associate of one of the Senior City Managers, with no technical qualifications to serve on the Evaluation Committee. A second appointment, by the City was an employee, who is also the husband of the same Senior City Manager's Administrative Assistant. A third appointee, who also has no qualifications to make judgements in technical or engineering matters later, changed the scoring of the DPB Team from perfect 5.0 scores in the written Proposal scoring session, to less than perfect after the Presentation session. Because perfect is perfect, these and other changes in Committee members scoring are assumed to be due to influence by the City, either directly or indirectly, or by influence of the other biased appointees placed on the Evaluation Committee by City,
- At this point, three of the Evaluation Committee-members appointed by the City have **none** of the required knowledge or experience required by the City's Purchasing Manual. In fact, the only common denominator between the City's Committee Appointees appears to be the fact that they have no qualifications to participate as part of a City Technical Evaluation Committee and could not possibly meet the City's Purchasing Manual qualification requirements,
- Moreover, it is noted that these appointees were either personal associates of Senior City Management or have a family-member that is in a subordinate employee position to that same Senior City Manager who was participating in the bid influencing process,
- Never the less, the City appointed a replacement 5-member Evaluation Committee, without the required Project Manager as a member, and comprised of a minimum of three unqualified committee-members (60% of the Committee) based upon the City's own Purchasing Manual requirements. In addition, with a fourth Committee member having a potential conflict of interest due to having been a former employee of Genesis, one of the companies competing for the M.D. RFP. On that basis, 80% of the City staff Evaluation Committee was either compromised by a complete lack of technical qualifications or a potential conflict of interest,
- Moreover, for good reason, it is established public policy that the qualifications of professional engineers should not be judged by non-engineers and that professional engineers preparing and submitting technical proposals are ethically entitled to be evaluated by qualified professionals, as is also required by the City's Purchasing Manual. This is in contrast to the City's unqualified individuals with no knowledge of the subject matter and who are, thus, technically incapable of providing independent judgement in regard to the technical matters at hand and are therefore, potentially subject to influence by the City and other biased Committee members,

- On that basis, it is the responsibility of the City to refer this matter to the State Engineering Board. The City should request the Board's opinion as to whether the City, who should by their experience and position be aware of professional engineering procurement policy and standards as well as the respective requirements of the City's Purchasing Manual, appears to have purposefully violated public policy for procurement of Professional Engineering services,
- If the Engineering Board believes there is probable cause for further investigation of the City's process for selecting Professional Engineering services for the subject RFP, the matter should be submitted to the State Engineering Board to determine what action, if any, should be taken to correct the City's selection of Professional Engineering services by non-qualified persons. In addition, whether the City ignored commonly known public government requirements intended to protect the public's health safety and welfare from decisions and selections by unqualified individuals, as were selected by City Management,
- The Engineering Board's opinion and other information should be provided to the City Attorney and City Commission for purposes of evaluating City Management's maintaining professional engineering standards in the selection of professional engineering services for the RFP and in matters of the health, safety and welfare of Tallahassee residents,
- Any reasonable assessment of the unqualified persons appointed by City staff indicates that the City was "rigging the bid" by "packing" the Evaluation Committee with unqualified persons and others subject to influence by City Management, with the purpose of influencing the RFP review process to discriminate against DPB, the Minority-owned company, and deny DPB their rights to equal treatment by their own government,
- It is clear that City staff operated in complete disregard of the City requirements set out in the City's Purchasing Manual and replaced correctly-qualified Committee-members, previously appointed by City Staff in accordance with the City's Purchasing Manual, and appointed a biased Evaluation Committee that was subject to manipulation by City Management,
- On approximately August 16th, not having found any impropriety to eliminate DPB, the City, with no legal basis or legitimate reason, directed subordinate City staff to cancel all of DPB's City work with no notice, explanation or opportunity to defend itself,
- In addition to canceling all of DPB's on-going work, the City also cancelled the "in-process" approval of additional project Task Order contracts, again with no notice, explanation or opportunity to defend itself,
- Subsequently, on August 17th, DPB was informed by City staff that DPB would not be paid any further payments, awarded any further City contracts until Steve Stewart discontinued his attacks on the City because additional contracts would provide material for Stewart's continued criticism of the City. **In addition, that the City had taken steps to exclude the Minority-owned DPB from any opportunity to win the RFP contract, in whole or in part,**
- It should also be noted that the City efforts to exclude DPB could not possibly have been based upon qualifications because the City does not have the qualifications to make that judgment. Further, the City could not have been relying upon any other opinion or judgement because RFP proposals had not yet been submitted, at that point in time, and the City would have had no way to know who was going to submit or who was qualified or not qualified,
- Further, knowledgeable City Staff had already told City Management that DPB was qualified and had done excellent work on Phases I & II of the RFP project, which can be verified by interviewing City staff,
- On that basis alone, it is clear that the City had already made their decision to exclude DPB before Proposals had been submitted or any Presentations and before any measure of qualifications had been

developed and that their motivation was prejudicial, based upon efforts to protect the City and Commissioner Miller from further criticism by Steve Stewart, resulting in discrimination against DPB, as a minority firm that was an anticipated top contender to win the RFP contract award,

- Again, all of the above may be verified by interviewing knowledgeable City staff; however, it may necessitate depositions or subpoenas to protect staff,
- Subsequently, the City approached DPB with the suggestion that DPB arrange with another company to take over DPB's "unapproved" Task Orders, in the amount of \$296,000.00, that were personally being held up by the City and that the T.O.'s would be approved if DPB could make arrangements with a replacement company to take the contracts themselves and then pay DPB out of the replacement company's T.O.'s,
- DPB's responded that the subject T.O. contracts had been previously approved by knowledgeable City employees who are responsible for such contracts. Thus, why was DPB being told by the City that, if we wanted to be paid for our work, we needed to participate in what sounded like fraud? DPB declined to do so and DPB's Attorney later confirmed that the suggested process was probably fraud,
- Again, readily verified by interviewing knowledgeable City staff, examination of City e-mail and other records.
- On September 26<sup>th</sup>, the written RFP Proposals were scored and, in despite of the obvious biased scoring by the City's unqualified committee appointees, DPB was the RFP winner by only 1-1/2 points, with extremely close scoring representing the near-equal qualifications of the three companies that had submitted written Proposals,
- Presentations were presented on October 17<sup>th</sup> and, in the Professional Opinions of the other Professional Engineers, Landscape Architects and Biologists, actually qualified by the City's Purchasing manual to participate in evaluation of the Presentations, DPB's team provided a presentation that was equal to any others presented by any other company and was second to none,
- On that basis, a reasonable person would expect some minor change in relative ranking but nothing extreme since all presentations were well done and DPB's Team had a distinct advantage due to DPB's prior two years of project specific design experience, detailed project knowledge and excellent work performance on Phases I & II of the M .D. project,
- However, when a DPB professional engineer and other staff-member returned to monitor the Presentation scoring process, it was evident that Evaluation Committee members had already scored the presentations outside of the public meeting venue requirement,
- Moreover, in the opinion of Professional Engineers and others, who are qualified by the City's Purchasing Manual to participate in a technical RFP process, the proposal scoring changed unrealistically between the written Proposal scoring and Presentation scoring, with Genesis (previously the last of the three companies) score increasing by 14%, with DPB, the previous leader and winner of the written Proposal Phase, dropping by 6%, to third place, after delivering a presentation equal to all others,

**In the opinion of Professional Engineers, who are qualified based upon the City's Purchasing Manual, it is apparent that the RFP scoring was inappropriately influenced and that the scores were not competitively obtained,**

The above information unequivocally demonstrates that the City has discriminated against DPB, a minority-owned company, in conspiring to intentionally influence or attempt to influence, directly or indirectly, the referenced competitive solicitation undertaken by the City for the procurement of Professional Engineering services for a \$16,000,000.00 City project,

Further, that the City dismissed City staff's previously selected and technically competent RFP Evaluation Committee, which had been selected in accordance with the City's Purchasing Manual,

That the City then "packed" the replacement Evaluation Committee with a majority of unqualified, non-engineering or non-technical persons. In addition, at a minimum, several of the City's appointees had obvious conflicts of interests with and/or were subject to influence by the City, with a fourth City appointee having a potential conflict of interest due to prior employment by one of the competing companies, leaving 80% of the City's replacement Evaluation Committee technically or ethically compromised,

Regardless of these known conditions, the City proceeded forward with a technically or ethically compromised Evaluation Committee, that failed to even closely meet City procurement requirements, to procure Professional Engineering services for a \$16,000,000.00 City project,

As part of this, the City conspired to discriminate against DPB, either due to racial and/or gender prejudice or to exclude DPB from any opportunity to win or participate, either in whole or part, as a prime contractor or as a subcontractor for the referenced RFP contract in an attempt to protect the City and Commissioner Miller from any further criticism by Steve Stewart articles,

As described above, the City's actions are clear and indisputable; however if disputed, DPB suggests interviews with specific City staff, under oath, to determine the truth and avoid other costly resolution.

Respectfully submitted,

**DPB & Associates**

A handwritten signature in cursive script that reads "Lynda M. Pfundstein".

Lynda M. Pfundstein  
Managing Member

Attachment

# Project Understanding

## INTRODUCTION

The purpose of this section is to demonstrate our Team's thorough understanding of the project and its requirements.

Understanding the project is critically important to providing responsive, high quality design and our Project Team staff and sub-consultants have demonstrated a thorough understanding of the Market District Multi-Purpose Stormwater Project in successfully providing design services for the Market District Project since 2015, including our design of both preceding Phase I and Phase II projects.

Stormwater staff and Team members have participated in public meetings with Market District residents, the local Business Association and adjacent Neighborhood Homeowner Associations and in project meetings with City Electric, Parks and Recreation, City Engineering, Streets and Drainage and other City Departments. Through this collaborative process, the Team has developed a unique and thorough understanding of the project, as well as its goals and requirements from both a Public and City perspective.

Our Team members have worked directly with Stormwater on the Market District Project for more than 2 years. In that time, we have worked with Stormwater to combine the technical stormwater expertise of City staff and our Team's years of engineering experience into an effective client-consultant team that has completed Phase I of the project and is currently designing Phase II.

Our project Team proposes to continue this successful teamwork with Stormwater and to apply our understanding of the project and its requirements in providing design services for Phase III of the Market District Multi-Purpose project.

## HISTORICAL CONTEXT

The following sections of the proposal illustrate the history behind our Team's involvement and understanding of the project and its requirements. They describe our long-term involvement in development of the project concept; which began in 2011 as the collaborative work of our Team's Engineers, Urban Planners and Architects, and which continued over the following 5 years before the City's undertaking the project in late 2015.

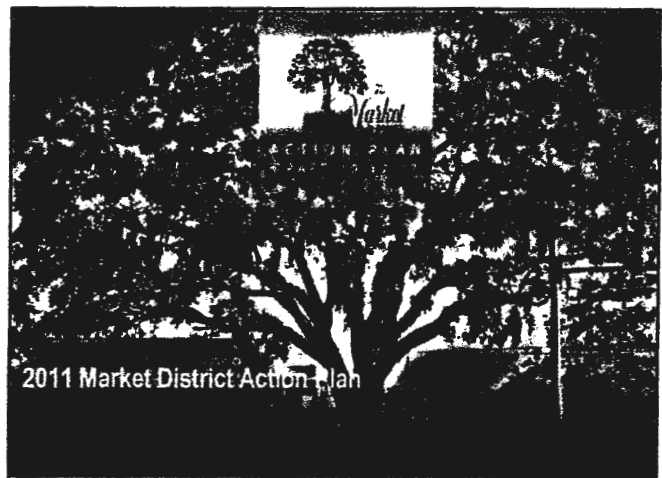
In the two-year period since 2015, City Stormwater and Team members have worked to improve and

adapt the concept plan to meet the City's needs as part of the Phase I and II projects. However, although improved, the concept plan for the City's Multi-Purpose Project, as shown on Attachment D of the RFP, is largely the Team's original concept plan.

Our Project Team, by almost 7 years of experience and direct involvement with the proposed project, has the most thorough understanding of the project and its requirements of any RFP respondent. Although others may have greater knowledge in a specific area, no other respondent has a better understanding of the overall project concept or its components and "how it is all intended to fit together in the end to make it work" than the Team that originated the concept plan.

## ORIGIN OF THE PROJECT

The "Market District Multi-Purpose Project" concept originated with a group of Market District residents and business owners working on a "Sense of Place Action Plan" for the Market District. As part of the City's Sense of Place initiative, Planning staff had worked with Market District community groups and businesses to develop specific community recommendations to guide future City public improvements in the Market District. At completion, the goals and recommendations were incorporated into a Sense of Place "Action Plan" for the Market District, shown below, which was reviewed and adopted by the City Commission.



As a "Top Priority" for Market District Residents, the Action Plan noted: **"The existing stormwater facilities in the center of the Market District are an unsightly dividing line, and re-purposing this area is a top priority for most citizens."**



The "unsightly" Maclay Boulevard Stormwater Facilities were constructed in 1983 as part of the Market District Commercial District, south of the Facilities. As shown below, the facilities have no vegetative screening, are enclosed with industrial-grade fencing and highway traffic barriers, and are surrounded by overhead electric lines and towers. A major high-voltage transmission line bisects the site from east to west.



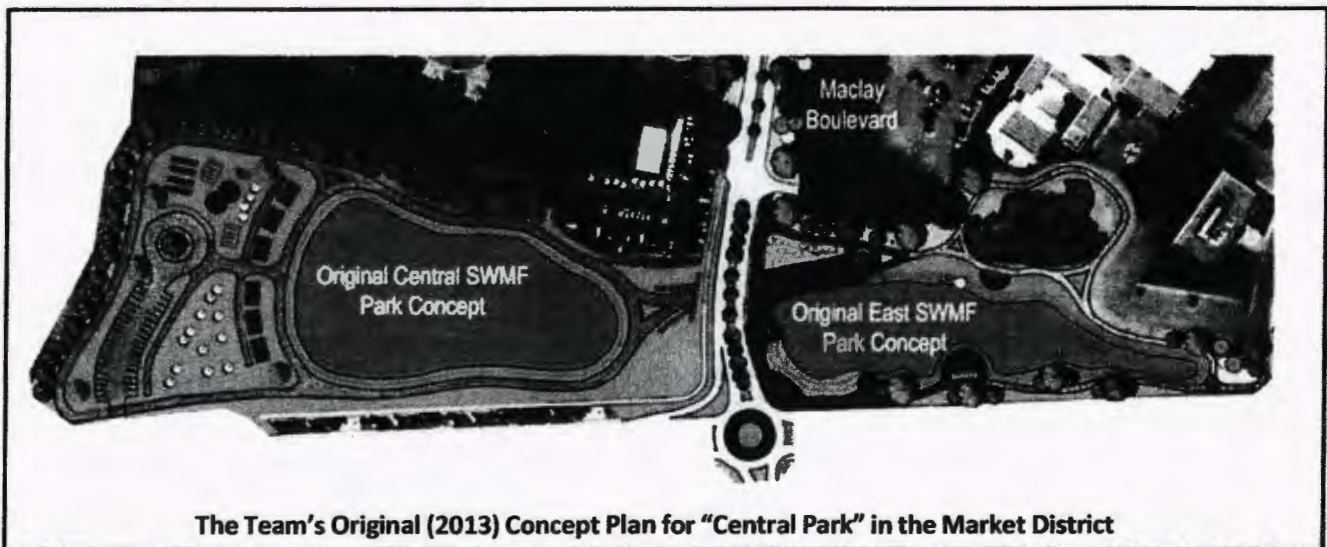
The initial concept for renovating the Maclay Boulevard Stormwater Facilities came from a Market District Sense of Place Meeting where representatives from Premier Fitness, suggested a project to "remove chain link fences, add landscaping and a pedestrian or running track around the East Stormwater Facility." Other Market District residents agreed and the concept was adopted as a Top Priority "Action Plan" goal.

An early rendering from the Market District Sense of Place Action Plan, shown below, depicts the initial concept for redevelopment of the East Stormwater Facility. Although the rendering illustrates a pedestrian path around the East Facility, the facility abuts Maclay Boulevard and Maclay Commerce Drive. Constructing the proposed exercise track under those conditions was not feasible.



#### DEVELOPING THE "CENTRAL PARK" CONCEPT

Two Design Team members who are residents and business owners in the Market District, participated with neighbors and other business owners in the Market District Sense of Place process. As part of that process, the Team members developed an interest in the concept of redeveloping the existing Market District stormwater facilities as a new multi-use, linear park for the District. Their continued interest resulted in development of the Original Market District Central Park Concept Plan, shown below, which illustrates redevelopment of the Maclay Stormwater Facilities as a Central Park and open space for the Market District.



The Team's Original (2013) Concept Plan for "Central Park" in the Market District



As public interest in the Market District Central Park concept developed, Team members presented the "Central Park" concept to Market District residents and business owners, the Mayor, City Commissioners, and various City staff. Response to the concept plan was supportive and Staff requested Team-members present the Concept Plan directly to the City Manager. The City Manager was also supportive of the project concept and subsequently used the Team's Market District Redevelopment Concept Plan as a major part of the Manager's Closing Address to local government representatives, community leaders, business owners and others at the Chamber of Commerce Annual Retreat. An excerpt from Manager's presentation video is below. At completion of the presentation, the City Manager directed the Team to proceed with design of the Market District Improvements Concept Plan and to develop an initial project to redevelop the existing East Stormwater Facility "as a representative model and catalyst for future infrastructure improvements for the Market District Corridor".

The Team's original Concept Plan emphasized recommendations from the Market District's earlier Sense of Place Action Plan. The Plan focused on reconstruction of infrastructure in the central Market District area, including wide sidewalks, bike lanes, multi-use trails and other pedestrian safety improvements, while providing an aesthetically attractive yet "Interconnected Market District" with pedestrian links between businesses and neighborhoods.



**City Manager's Presentation to the Chamber of Commerce referencing the Team's Market District Concept Plan as the "Future for the Market District"**

As noted at the time, the proposed redevelopment of the Market District Stormwater Facilities as a Central

Park is consistent with community-wide design concepts, including Blueprint's planning philosophy for a "Holistic Approach" to project design. The Blueprint design philosophy emphasizes that various project design factors are often inter connected and may be "positively affected by a holistic planning approach". The City's proposed redevelopment of the existing Market District Stormwater Facilities as an urban park will integrate each of following Blueprint "Holistic Approach Design Factors" as a positive attribute of the proposed project:

- stormwater management,
- stormwater quality retrofit,
- public accessibility,
- greenway development, and
- improved land use compatibility with adjacent land uses.

**TEAM'S CONCEPTUAL SITE DESIGN FOR A MARKET DISTRICT MULTI-USE PROJECT**

At the Manager's direction, the Market District project became a new City project; however, it was unfunded and required submittal through the City's Budget process for Capital Improvements for City Commission review and approval of the project and respective funding. Following the Commission's approval of the project, the City Manager assigned the new Market District Multi-Use Stormwater project to the Stormwater Division for design and construction.

As pre-qualified City Continuing Services engineers, who have working knowledge and experience with the Market District project concept, the City retained the project Team members to provide preliminary engineering services for the Market District Multi-Purpose Stormwater Project. While waiting through the annual budget approval period, Team members had continued to develop the Market District Concept Plan, focusing on an active children's park combined with a large passive park and walking trails.

As part of that process, Stormwater and Team members solicited project input from other City Departments and staff, including other Stormwater staff, City Electric, Engineering, Real Estate, Parks and Recreation, Streets and Drainage and Water and Sewer. The Departments provided their design requirements and offered suggestions for design revisions to address those requirements. As needed, City Departments have assisted in addressing issues related to their oversight, e.g., Stormwater's negotiations with City Electric for relocation of Electric's existing transmission towers has allowed the